

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 626
Finance

(Senator Benson)

Prevailing Wage Rates - Public Work Contracts - Suits by Employees

This bill authorizes an employee under a public work contract who is paid less than the appropriate prevailing wage to sue to recover the difference in wages paid. A determination by the Commissioner of Labor and Industry that a contractor is required to make restitution does not preclude the employee from a private cause of action. If a court finds that an employer withheld wages knowingly and willfully or with deliberate ignorance or reckless disregard of the employer's obligations, the court must award treble damages.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: Assuming actions are filed in circuit courts, as for other civil actions brought by employees in prevailing wage suits under current law, any increase in caseloads is not anticipated to materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An action filed under the bill is considered to be a suit for wages, and a judgment resulting from an action has the same force and effect as any other judgment for wages.

An employee's failure to protest orally or in writing that the wages paid are not sufficient is not a bar to recovery of lost wages under the bill. For any suit resulting in an award to

an employee, the court must award the plaintiff reasonable counsel fees and costs. If a court finds that an employee has submitted a false or fraudulent claim, the court may order the employee to pay the employer reasonable counsel fees and costs.

Current Law/Background: Contractors and subcontractors working on eligible public works projects in Maryland must pay their employees the prevailing wage rate. “Public works” are structures or works, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that are constructed for public use or benefit or paid for entirely or in part by public money.

Eligible public works projects are:

- those carried out by the State;
- an elementary or secondary school for which at least 25% of the money used for construction is State money; and
- any other public work for which at least 50% of the money used for construction is State money.

Any public works contract valued at less than \$500,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to (1) any part of a public works contract funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government or (2) specified construction projects carried out by public service companies under order of the Public Service Commission.

Prevailing wages are wages paid to at least 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category based on annual surveys of contractors and subcontractors working on both public works and private construction projects.

The commissioner has the authority to enforce contractors’ compliance with the prevailing wage law. Contractors found to have violated the prevailing wage law must pay restitution to the employees and liquidated damages to the public body in the amount of \$20 a day for each laborer who is paid less than the prevailing wage, or \$250 per laborer per day if the employer knew or reasonably should have known of the obligation to pay the prevailing wage. If an employer fails to comply with an order by the commissioner to pay restitution, either the commissioner or an employee may sue the employer to recover the difference between the prevailing wage and paid wage by bringing a civil action to enforce the order in the circuit court in the county where the employee or employer is located. The court

may order the employer to pay double or treble damages if it finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard for the law.

Small Business Effect: Small contractors may be subject to lawsuits by their employees for recovery of wages, including the possibility of treble damages and counsel fees, under the bill. Currently, most cases are brought by the commissioner, so authorizing employees to bring lawsuits independently of the commissioner may increase the number of lawsuits.

Additional Information

Prior Introductions: None.

Cross File: HB 1511 (Delegate Morales, *et al.*) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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