

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 300

(Senator Benson, *et al.*)

Finance

Economic Matters

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 without first filing a complaint with the Commissioner of Labor and Industry. A determination by the commissioner that a contractor is required to make restitution does not preclude the employee from a private cause of action. A contractor and subcontractor are jointly and severally liable for any violation of the subcontractor's obligations associated with civil actions (brought either by the commissioner or the employee).

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

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 contractor compliance with the prevailing wage law. If an employee under a public work contract is paid less than the prevailing wage rate for that employee's classification, the employee may file a complaint with the Commissioner of Labor and Industry (at this stage, the employee may not file a suit against the contractor). A contractor found by the commissioner to have violated the prevailing wage law must pay restitution to the employee(s) 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. The contractor and the subcontractor are jointly and severally liable for restitution to the subcontractor's employees.

If an employer fails to comply with an order by the commissioner to pay restitution, either the commissioner or an employee may then 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.

In fiscal 2018, the Commissioner of Labor and Industry received 35 prevailing wage complaints from 23 workers on 11 different projects (some workers filed multiple claims for different projects worked). The commissioner advises that all complaints were resolved administratively, typically within two to three months, without recourse to the courts. From those complaints, approximately \$266,500 in restitution was collected, including restitution for workers on the same projects who did not file their own complaints. Overall, the Prevailing Wage Unit collected almost \$1.4 million in restitution, with the additional restitution coming from investigators' review of submitted payroll records rather than from employee complaints.

Small Business Effect: Small contractors and subcontractors 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. Also, contractors assume liability in civil actions where their subcontractors fail to pay prevailing wages to their employees on public works contracts; currently, contractors are not held responsible for the behavior of their subcontractors in such actions (although they are jointly and severally responsible for restitution ordered by the commissioner).

Additional Information

Prior Introductions: SB 572 of 2018 and HB 1243 of 2018 each passed both houses and were vetoed by the Governor for policy reasons.

Cross File: HB 524 (Delegate Wilson, *et al.*) - Economic Matters.

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

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