SB 796

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE
Revised

Senate Bill 796 (Senator Derr, *et al.*)
Finance | Referred to Economic Matters

Prevailing Wage - Overtime

This amended bill alters the overtime compensation requirements under the State's prevailing wage law by providing that a contractor must pay overtime to employees for each hour worked in excess of ten hours in any single calendar day or in excess of 40 hours during a single work week including a Saturday, Sunday, or legal holiday. Under current law, overtime must be paid for each hour worked in excess of eight hours in a single day and on a Sunday or legal holiday. Contractors and subcontractors are also allowed to designate Friday as a make-up day. The bill requires that public works contracts over $400,000 be subject to prevailing wage laws. Under current law, public works contracts over $500,000 are subject to prevailing wage laws.

The bill also increases the liquidated damages for prevailing wage violations and creates a civil penalty for failing to post a statement of prevailing wage rates at the work site. It also increases from one to two years, the period that a contractor who persistently and willfully violates prevailing wage requirements is prohibited from directly or indirectly entering into a contract to provide public works. The Governor is required to provide an appropriation for two additional Wage and Hour Inspectors in the Prevailing Wage Unit of the Department of Labor, Licensing, and Regulation in fiscal 1999. The bill applies only to contracts resulting from requests for proposals made after the bill's effective date.

Fiscal Summary

State Effect: General fund personnel expenditure increase of about $66,000 in FY 1999. Expenditures could also increase by an indeterminate amount due to increased construction costs on public works projects. Out-year expenditure projections reflect inflation. General fund revenue could increase by a minimal amount as a result of increased liquid damage fees and the bill's civil penalty provision.

(in dollars)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
GF Revenues	---	---	---	---	---
GF Expenditures	0	66,000	63,000	66,000	68,000
Net Effect	$0	($66,000)	($63,000)	($66,000)	($68,000)

Note: ( ) - decrease; GF - general funds; FF - federal funds; SF - special funds

Local Effect: Expenditures could be affected as discussed below. Revenues would not be affected.

Small Business Effect: Potential meaningful effect on small businesses as discussed below.

Fiscal Analysis

State Revenues: The Department of Labor, Licensing, and Regulation (DLLR) collected $72,000 in liquidated damages from contractors under public works contracts in 1996. The bill increases the liquidated damages DLLR could collect from contractors under such public works contracts by raising the contractor's liability from $10 to $20 for each day that each employee is not paid the prevailing wage rate. While doubling the liquidated damages penalty could conceivably generate an additional $72,000 annually, it could also serve as a deterrent to violations. Accordingly, any increase in revenue from increasing the penalty cannot be reliably estimated at this time.

In addition, general fund revenues could increase as a result of the $50 civil penalty that may be imposed on contractors under a public works contract subject to prevailing wage if the contractors do not post the statement of prevailing wage rates at the work site. The revenue generated through these civil penalties is assumed to be minimal.

State Expenditures: The bill requires that the Governor include an appropriation in the annual budgets beginning in fiscal 1999 for two additional Wage and Hour Inspectors in the Prevailing Wage Unit of DLLR. Assuming that the funds will be appropriated for the two positions, general fund expenditures could increase by $66,000 in fiscal 1999. This reflects salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Out year expenditures reflect 3% turnover, 3.5% salary increases, and 2% increases in ongoing operating expenses.

The bill also increases the number of public works contracts subject to prevailing wage by requiring that capital projects that cost from $400,000 to $500,000 be subject to prevailing wage. Under current law, public works projects over $500,000 are subject to prevailing wage. In 1995, the Department of Fiscal Services (DFS) conducted research on the fiscal implications of prevailing wage laws. Based on this research, DFS estimates that the State's prevailing wage laws increase construction costs on affected projects by 5% to 15%. Thus, increasing the number of projects subject to the prevailing wage would increase general fund expenditures on public works projects. This increase is assumed to be minimal based on the relatively small number of public works projects estimated to cost between $500,000 and $400,000, the exact number of which is unknown. As a point of reference, under current law approximately $602 million of the State's capital program is subject to prevailing wage.

In addition, altering the requirements for overtime compensation as provided by the bill could give contractors more flexibility in work scheduling and possibly eliminate the need for overtime in some situations. Therefore, the cost of construction on certain public works contracts could decline. Conversely, requiring that overtime be paid for work performed on Saturday, could increase the cost of construction on certain public works contracts. Any such decrease or increase cannot be reliably estimated prior to the establishment of such public works contracts.

Local Expenditures: Expenditures could increase due to the requirement that overtime be paid on Saturdays and based on the bill's requirements that public works projects over $400,000 be subject to prevailing wage. Conversely, expenditures could also decrease based on the increased flexibility in work scheduling and potential elimination of overtime based on the allowance of ten-hour work days at straight pay.

Small Business Effect: The majority of the contractors and subcontractors in the State are small businesses. It is assumed the majority of businesses hired for State projects that require prevailing wages are also small businesses. The bill could reduce expenditures for these businesses to the extent that the allowance of up to four ten-hour days per week at straight pay would reduce overtime costs and create greater scheduling flexibility. Conversely, this bill would increase expenditures to the extent that these businesses currently do not pay overtime for work performed on Saturdays. Expenditures for wages would also increase for public works projects that cost between $400,000 and $500,000 due to the bill's requirements that such projects be subject to prevailing wage laws.

The bill could also increase expenditures to the extent that contractors under public works contracts subject to prevailing wage violate either the prevailing wage posting requirements or fail to pay their employees the prevailing wage. A $50 civil penalty may be assessed for failure to post the prevailing wage at the work site. The liquid damages charged to contractors who do not pay the prevailing wage when required doubles under the bill from $10 to $20 for each day, each employee is not paid the prevailing wage. Contractors who willfully and persistently violate prevailing wage requirements may not directly or indirectly enter into contracts to perform public works for two years as a result of the bill. Under current law, such contractors are prohibited from contracting to do public work for one year.

Information Source(s): Department of Labor, Licensing and Regulation; Department of Budget and Management; Department of Fiscal Services

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