

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 281

(Chairman, Finance Committee)

(Departmental – Labor, Licensing, and Regulation)

Finance

Economic Matters

Public Work Contracts - Prevailing Wage Rate - Liability

This departmental bill provides that if a contractor or subcontractor pays an employee less than the employee is entitled to under the Prevailing Wage Law, the contractor and subcontractor are jointly and severally liable for restitution to a subcontractor's employees.

The bill is effective June 1, 2002.

Fiscal Summary

State Effect: None. The bill codifies existing practice.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: A contractor or subcontractor is liable for any restitution to a subcontractor's employee for underpayments related to the prevailing wage.

Background: In a recent Court of Appeals decision in *Maryland Division of Labor and Industry v. Triangle General Contractors, Inc.*, November 25, September Term, 2001, the

court concluded that general contractors are not liable for underpayment of a subcontractor's employees on prevailing wage jobs.

The Division of Labor and Industry's position is that the language "contractor or subcontractor" was added to the statute in 1998 during recodification to clarify that the subcontractor, as well as the general contractor, was liable for underpayments, and not to remove the general contractor from liability for underpayments to a subcontractor's employees. Although the Revisor's Note indicated that there was no substantive change, the Court of Appeals concluded that the inclusion of the term "or subcontractor" was a clear change in the Prevailing Wage Act.

The Division of Labor and Industry's position is that the general contractor, with whom the State has a contract, is responsible for ensuring compliance with the law, including payment of the prevailing wage to all employees on the job, including the subcontractor's employees.

State Fiscal Effect: The bill codifies the current practice of the Division of Labor and Industry to hold contractors liable for underpayments to employees of subcontractors, and therefore does not directly affect State expenditures or revenues.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services; Maryland State Treasurer's Office; Department of Health and Mental Hygiene; University System of Maryland; Department of Transportation; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Public Safety and Correctional Services; Department of Legislative Services

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