

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
 Revised

Senate Bill 406
 Finance

(Senator Conway, *et al.*)

Economic Matters

Prevailing Wage Rates - Public Works Contracts - Payment of Liquidated Damages

This bill raises the liquidated damages that a public works contractor must pay to a public entity if the contractor fails to pay applicable prevailing wages to its employees. Liquidated damages payments increase from \$20 to \$50 per employee per day.

Fiscal Summary

State Effect: General fund revenues increase by approximately \$187,500 in FY 2010 based on the higher liquidated damages penalty assessed against contractors that violate the prevailing wage law by the Department of Labor, Licensing, and Regulation (DLLR). Out-year estimates reflect annualization and increased contractor compliance with the prevailing wage law in response to the higher penalties. Expenditures are not affected.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$187,500	\$205,000	\$164,500	\$128,100	\$95,200
Expenditure	0	0	0	0	0
Net Effect	\$187,500	\$205,000	\$164,500	\$128,100	\$95,200

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

Local Effect: Local government revenues increase to the extent that local governments collect liquidated damages from public works contractors subject to the prevailing wage.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Contractors working on eligible public works projects must pay their employees the prevailing wage rate. Eligible public works projects are those valued at more than \$500,000 and carried out by:

- the State; or
- a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by State funds.

Public works are structures or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant that is constructed for public use or benefit or paid for entirely or in part by public money. The State prevailing wage rate does not apply to any part of a public work project funded with federal funds that is subject to prevailing wage rate determined by the federal government.

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 work 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 work project and job category, subject to the advice and recommendations of a six-member advisory council appointed by the Governor.

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.

Regardless of the commissioner's findings, an employee on an eligible public works project who is not paid the prevailing wage may sue the employer to recover the difference between the prevailing wage and paid wage.

The University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Maryland Stadium Authority are all exempt from the prevailing wage law.

Background: In fiscal 2008, DLLR's prevailing wage unit investigated 706 project sites for violations of the prevailing wage law. The unit recovered \$477,322 in lost wages for employees, or \$676 per project investigated. From March 2008 to February 2009, the

unit collected \$187,200 in liquidated damages from employers. This was nearly double the amount of liquidated damages collected during the same period a year earlier. DLLR attributes the increase to new leadership in its prevailing wage unit and a renewed focus on compliance monitoring and enforcement.

State Fiscal Effect: At the current pace, Legislative Services estimates that the State collects approximately \$200,000 in liquidated damages from employers by the end of fiscal 2009. Legislative Services further assumes that, in response to the increased penalties under the bill, compliance with the prevailing wage law improves by 10% each year. Based on these assumptions, general fund revenues increase by \$187,500 in fiscal 2010, which reflects the bill's October 1, 2009 effective date. In future fiscal years, general fund revenues increase by diminishing amounts to reflect increased compliance with the prevailing wage law.

Small Business Effect: Small construction companies that work on public works projects subject to the prevailing wage and do not pay the prevailing wage are subject to higher liquidated damage penalties.

Additional Information

Prior Introductions: None.

Cross File: HB 543 (Delegate Braveboy, *et al.*) - Economic Matters.

Information Source(s): Anne Arundel, Charles, Frederick, and Somerset counties; Judiciary; Public School Construction Program; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Department of Budget and Management; University System of Maryland; Board of Public Works; Department of Legislative Services

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