HB 1409

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1409 (Chair, Economic Matters Committee)(By Request - Departmental - Labor, Licensing and Regulation)

Economic Matters

Public Work Contracts - Prevailing Wage - Application

This departmental bill reduces from $500,000 to $100,000 the project cost threshold for public works projects that determines whether a project is covered by the State's prevailing wage law.

Fiscal Summary

State Effect: General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by $49,100 in FY 2010 to enforce compliance with the prevailing wage law. Out-year costs reflect annualization and inflation. No effect on total State funding for public works projects, including public school construction and legislative initiative grants, but fewer small projects may receive State grant funding. Potential minimal increase in general fund revenues from increased collection of liquidated damages from employers who violate the prevailing wage law.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
GF Expenditure	$49,100	$57,900	$60,700	$63,700	$66,800
Net Effect	($49,100)	($57,900)	($60,700)	($63,700)	($66,800)

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

Local Effect: Potential increase in the cost of small public works projects, including public school systemic renovation projects, that receive at least half of their funds from the State.

Small Business Effect: DLLR has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below.

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, including school construction projects.

Public works are structures or work, 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. The State prevailing wage rate does not apply to any part of a public work project funded with federal funds for which the contractor must pay the 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 Commissioner of Labor and Industry within DLLR 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: The federal Davis-Bacon Act, originally enacted in 1931, requires contractors working on federal public works contracts valued at more than $2,000 to pay their employees the prevailing local wage for their labor class, as determined by the U.S. Secretary of Labor. The general intent of the law, and similar state and local laws, is to stabilize local wage rates by preventing unfair bidding practices and wage competition.

Thirty-two states and the District of Columbia currently have prevailing wage laws; since 1979, nine states have repealed their prevailing wage laws.

Maryland adopted a prevailing wage law in 1945 (Chapter 999), but it only applied to road projects in Allegany, Garrett, and Washington counties. In 1969, the statute was amended to include State public works contracts exceeding $500,000. There have been periodic changes to the law and the definition of prevailing wage. In 1983, the law was broadened to include public works projects in which the State funds 50% or more of the total project costs and 75% or more in the case of public schools. Chapter 208 of 2000 reduced the prevailing wage threshold for public schools from 75% to 50% of construction costs, thereby bringing school construction projects in line with prevailing wage requirements for other public works projects.

The effect of prevailing wage laws on the cost of public works contracts has been studied extensively since the 1980s. Early theoretical studies concluded that higher wages under prevailing wage contracts increase contract costs by between 10% and 30%, but many of those studies were flawed and their findings could not be replicated. For instance, a frequently cited study of 18 projects by the U.S. General Accounting Office was found to have omitted from its analysis 12 projects in which the prevailing wage was actually lower than the market wage. Empirical studies carried out in the 1990s found much smaller contract cost effects, often in the range of between 2% and 10%. However, an increasing number of studies carried out in the past 10 years have found no statistically significant effect on contract costs.

Labor costs, including benefits and payroll taxes, represent between 20% and 30% of construction costs. Therefore, a 10% gap between prevailing wages and market wages increases total contract costs by about 2.5%. As noted above, however, most recent studies have failed to find an effect even of that size. Among the reasons cited in the research for the absence of a cost effect include:

- the gap between prevailing wages and market wages has been closing due to the construction boom in the early and middle part of this decade;
- higher wages are associated with higher productivity, reducing the overall cost of the project;
- contractors may be saving money in other areas, such as using lower-cost supplies and materials; and
- contractors may absorb some of the cost of paying higher prevailing wages in order to remain competitive in government procurement.

The virtual collapse of the construction sector recently makes speculation about the effects of the prevailing wage on contract costs a perilous endeavor. Although research over the past decade indicates that there may be no measurable effect on contract costs, the conditions that existed when that research was conducted no longer exist. There is no reliable information about the relationship between prevailing and market wages in the current economic environment. An expanding pool of available labor could widen the gap between market and prevailing wages, or it could exert downward pressure on all wages, yielding no gap between the two wage rates.

DLLR advises that it currently oversees 110 prevailing wage projects throughout the State. Over the last five years, it has overseen an average of 90 prevailing wage projects annually. Four full-time equivalent wage and hour investigators monitor compliance with the prevailing wage law.

Four Maryland jurisdictions – Allegany, Montgomery (beginning in July 2009), and Prince George's counties and Baltimore City – have local prevailing wage laws requiring public works projects in the jurisdiction to pay prevailing wages.

State Fiscal Effect: The bill increases the number of public school systemic renovation projects and other small public works projects that are covered by the prevailing wage law. In general, State capital construction and renovation projects are of sufficient size and scope that they already exceed the $500,000 threshold and are not affected. Also, school construction projects involving new buildings, renovations, or additions virtually always exceed the $500,000 threshold. Indeed, all such projects recommended or approved for funding so far in the Interagency Committee on School Construction's (IAC) fiscal 2010 *Capital Improvement Program* exceed the current threshold.

However, IAC has recommended funding 53 systemic renovation projects in fiscal 2010, which upgrade individual school building systems such as heating, cooling, windows, or roofs. Those projects typically cost much less than school construction projects. Of the 53 systemic renovation projects slated for funding in fiscal 2010, Legislative Services has identified 3 projects that cost between $100,000 and $500,000 and receive at least 50% of their funding from the State. The three projects are in Calvert and Queen Anne's counties and Baltimore City; the Baltimore City project is likely subject to the city's prevailing wage statute, so only two projects are affected.

In addition, the State's capital budget includes dozens of grant and loan programs that support public works projects, including community college construction projects, sewer and water treatment infrastructure projects, public park development, and much more. Also, the General Assembly awards about $15 million in legislative grants to public and nonprofit entities each year, many of them for public works projects. It is assumed that virtually all public works projects that receive State grants meet the $100,000 project cost threshold proposed by this bill, whereas a significant number do not meet the current $500,000 threshold. However, as the number and type of grants vary from year to year, Legislative Services cannot determine how many projects will meet the 50% State-funded threshold to become eligible for the prevailing wage. To the extent that more State grant-funded projects become eligible for the prevailing wage, and to the extent that the prevailing wage may increase total project costs compared with market wages, the cost of those projects likely increases. Since total State funding available for grant programs, including school construction, is not affected, the result is either that fewer projects receive State funding or the State share of their total project cost decreases.

DLLR projects that the bill doubles the number of projects statewide that are subject to the prevailing wage. Although Legislative Services does not concur that the effect will be that large, the increase in the number of covered projects is likely to be sufficient to warrant additional staff for enforcement and oversight. Therefore, general fund expenditures by DLLR increase by $49,104 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost of hiring one wage and hour investigator to monitor employers' compliance with the prevailing wage law. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	$40,786
Operating Expenses	8,318
Total FY 2010 State Expenditures	**$49,104**

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

Local Fiscal Effect: The bill likely increases the number of small local public works projects covered by the prevailing wage law, to the extent that they receive more than 50% of their funding from the State. As noted above, a small number of public school systemic renovation projects become subject to the prevailing wage requirement. Other small local government projects are likely affected, but Legislative Services cannot reliably estimate how many or to what extent. If the application of the prevailing wage requirement increases the cost of those projects, and if those costs are not covered by State funds, local expenditures for small public works projects may increase.

Small Business Effect: Construction companies that are small businesses and work on small public works projects may have to pay their employees a prevailing wage for projects that previously were not eligible. However, they likely pass on any additional costs related to the payment of prevailing wages to the public body that contracts them to do the work, so the effect on the small business is minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - March 23, 2009
mcp/rhh

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Public Works Contracts – Prevailing Wage - Application

BILL NUMBER: HB 1409

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

____ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The Department believes that when the benefits and costs are compared that the overall economic impact on small businesses will be minimal