SB 451

Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 451 (Senator Conway, *et al.*)
Finance Economic Matters

Prevailing Wage Rates - Public Works Contracts - Suits by Employees

This bill restricts the ability of an employee to file a civil suit for recovery of unpaid wages under the State's prevailing wage law, and instead requires that the employee first file a complaint with the Commissioner of Labor and Industry. Only in instances in which an employer fails to comply with an order from the commissioner to reimburse unpaid wages may an employee or the commissioner file a civil suit for unpaid wages and up to triple damages.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's civil penalty provisions. Potential operational impact on the Department of Labor, Licensing, and Regulation (DLLR) to the extent it increases prevailing wage investigation activity. DLLR advises that the bill largely codifies its existing practice for investigating complaints. Potential reduction in the caseload for the District Court.

Local Effect: Potential increase in the caseload for circuit courts; however, the requirement to exhaust administrative remedies before filing suit may offset any such impact.

Small Business Effect: Potential meaningful for small businesses that do not pay their employees prevailing wages on eligible public works projects. Under the bill, they may be required to pay double or triple damages and plaintiffs' legal fees if found liable for not paying prevailing wages.

Analysis

Bill Summary: The commissioner must investigate a complaint for unpaid prevailing wages filed by an employee in accordance with current law. If the commissioner's investigation determines that the employer violated the prevailing wage law, the commissioner must try to resolve the issue informally. If the commissioner is unable to resolve the complaint informally, the commissioner must issue an order for a hearing. If, after the hearing, the commissioner determines that an employee is entitled to restitution for unpaid wages, the commissioner must order the public body to pay restitution to the employee from the money owed to the contractor that failed to pay the wages. If the public body no longer has a contract with the contractor, the commissioner may order the employer to pay restitution directly to the employee. If the employer fails to comply with an order, either the commissioner or the employee may file a suit in the circuit court where the employee or employer is located; cases must be filed within three years from the date the employee knew or should have known of the violation.

If a court finds that an employer paid less than the required prevailing wage, the court must order the employer to pay the employee the difference between the wage paid and the wage that should have been paid. Any unpaid fringe benefit contribution must be paid directly to a benefit fund, plan, or program, or in the absence of those, directly to the employee. The court may order the employer to also pay double or triple damages if it finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard of the law. Employers found liable under this provision must also pay reasonable attorney's fees for the plaintiffs. The bill also allows suit to be brought by one or more employees on behalf of a group of similarly situated employees.

Employees who file false or fraudulent claims must pay reasonable attorney's fees to the employer. Any individual who makes a false or fraudulent representation or omission is liable for a civil penalty of $1,000 paid to the State's general fund.

The bill also includes protections for employees who file a complaint or participate in an investigation of a complaint. Employers guilty of retaliating against an employee must reinstate the employee, pay restitution and triple back wages, and pay reasonable attorney's fees.

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 DLLR 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. If the commissioner concludes after an investigation that a violation has occurred and issues an order to that effect, the public body that contracted with the violator must reimburse the affected employees from the money due to the contractor or subcontractor. Contractors found to have violated the prevailing wage law are also liable for 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 2009, DLLR's prevailing wage unit investigated 366 project sites for violations of the prevailing wage law. The office recovered $308,945 in lost wages for employees, or $844 per project investigated.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, HB 1100 (Delegate Braveboy, *et al.* – Economic Matters) is identical.

Information Source(s): Caroline, Montgomery, and Prince George's counties; Department of Budget and Management; Department of General Services; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

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