

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1363
Economic Matters

(Delegate Boteler, *et al.*)

Procurement - Prevailing Wage - Rates

This bill requires that the Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) determine a single set of prevailing wage rates for all public work projects in the State instead of separate prevailing wage rates by locality. The bill also requires that any request for a review of a prevailing wage determination be made within 10 days of its establishment, instead of within 10 days of when a public body issues a call for bids or proposals in which the determination is being used for the first time.

Fiscal Summary

State Effect: The bill's effect on the aggregate cost of future public works projects cannot be reliably estimated because the effects will vary depending on the geographic distribution of projects. DLLR can make minor modifications to its computer system and otherwise handle the bill's requirements with existing budgeted resources.

Local Effect: The cost of public works projects in high-income counties will likely drop, while the cost of projects in low-income counties will likely increase.

Small Business Effect: Potential minimal.

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 a 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. If the commissioner determines, for a given job category, that there are not enough workers performing similar work in a given locality, the prevailing wage is based on wages paid in the nearest locality within the State that most closely approximates the locality in population, industrialization, and work force skill levels.

The DLLR Commissioner of Labor and Industry is responsible for determining prevailing wages for each public work project and job category on an annual basis, subject to the advice and recommendations of a six-member advisory council appointed by the Governor. Determination of prevailing wages by job category and locality is based on:

- actual payroll information relevant to the determination; and
- wage rates established by collective bargaining agreements.

A prevailing wage rate determination by the commissioner is subject to review only when a public body issues a call for bids or proposals in which the determination is used for the first time. Requests for a review of a determination must be submitted to the commissioner within 10 days of the issuance of a call for bids or proposals by a public body.

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: Currently, prevailing wage rates are established by county, with separate rates for building construction and highway construction. Median household income in the State in 2008 was \$70,400, with a high of \$99,800 in Howard County and a low of \$35,850 in Somerset County.

State/Local Fiscal Effect: DLLR will have to make some minor modifications to its computer system for calculating a single statewide prevailing wage rate for each covered craft but otherwise can implement the bill's requirements with existing budgeted resources. The commissioner will still conduct annual employer surveys throughout the State and collect union pay scales and payroll data for the purpose of determining prevailing wages by covered craft. Instead of separating the data it receives from these sources by county, however, DLLR will instead use the data to develop a weighted State wage scale for prevailing wage projects.

Based on the median income data cited above, a single prevailing wage rate for the State will not reflect local wage rates in many counties. Employees in low-income regions of the State will receive higher wages, while those in high-income regions of the State may be underpaid. The effect on the cost of State public works projects cannot be determined without knowing the geographic distribution of future projects. For projects in low-income areas, project costs likely increase, while the cost of projects in high-income regions of the State likely decrease.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Montgomery County; Public School Construction Program; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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