SB 843

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 843 (Senator Kittleman)
Finance

Prevailing Wage Rate - Public School Construction - Moratorium

This bill exempts public school construction projects from the State's prevailing wage law if they begin construction during fiscal 2011 or 2012.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: No effect on State funding for public school construction projects. To the extent that the prevailing wage unit within the Department of Labor, Licensing, and Regulation (DLLR) experiences a modest decline in the number of prevailing wage contracts it monitors, resources may be shifted to other understaffed responsibilities, including enforcement of the State's living wage law.

Local Effect: No effect in Anne Arundel, Baltimore, Kent, Montgomery, Talbot, and Worcester counties, whose school construction projects are already essentially exempt from the prevailing wage law. Also no effect in Baltimore City and Allegany, Montgomery (which falls into both categories), and Prince George's counties, which have local prevailing wage statutes. Local expenditures for public school construction projects in the remaining counties that would otherwise qualify for prevailing wages and that begin construction in fiscal 2011 or 2012 may decline by up to 7%, depending on project size and timing.

Small Business Effect: None.

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 works, 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 works 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 works 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. DLLR's 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: 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. Government Accountability 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 past 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.

For school construction projects that normally are subject to the prevailing wage, determining its effect on school construction costs has been complicated by dramatic fluctuations in factor costs over the past eight years, including labor rates. Research conducted in 2004 by Dr. Yale Stenzler, former executive director of the State's Public School Construction Program (PSCP), concluded that, from fiscal 2001 to 2003, prevailing wage rates increased school construction costs by between 5% and 10%. However, the study coincided with a steep increase in the cost of all construction inputs, including fuel, materials, and labor, and the study was not able to completely isolate the effect of the prevailing wage from that of other inputs on total construction costs.

DLLR advises that it currently monitors 143 prevailing wage projects throughout the State, of which 28 (20%) are school construction projects.

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, including school construction.

State Fiscal Effect: Given the small number of school construction projects monitored by DLLR's prevailing wage unit, and that all existing contracts will continue to be monitored, the two-year moratorium on the application of the prevailing wage to school construction projects does not lower DLLR's enforcement workload enough to reduce expenditures on monitoring and enforcement. To the extent that workload is reduced, DLLR's prevailing wage unit can redistribute resources to its other understaffed responsibilities, including enforcement of the State's living wage law.

Local Fiscal Effect: The State pays at least 50% of *eligible* school construction costs in all counties, as shown in **Exhibit 1**. Costs that are ineligible for State funding include, among other things, planning and design fees and movable objects or equipment. Since total construction costs are higher than eligible construction costs, the State often pays less than 50% of total school construction costs in jurisdictions that receive a 50% State match of eligible costs. Therefore, almost all school construction projects in jurisdictions with a 50% State match are not required to pay the prevailing wage. It is assumed, therefore, that a moratorium on the application of the prevailing wage has no effect on the cost of school construction projects in nine jurisdictions (Montgomery County falls into both categories):

- six jurisdictions have a 50% State share (Anne Arundel, Baltimore, Kent, Montgomery, Talbot, and Worcester counties) and are essentially not now subject to the State prevailing wage law; and

- Baltimore City and Allegany, Montgomery, and Prince George's counties also have local prevailing wage laws, so the cost of school construction projects in those jurisdictions remains unaffected.

Exhibit 1
State Share of Eligible School Construction Costs
Fiscal 2006-2012

County	FY 2006-2009	FY 2010	FY 2011	FY 2012
Allegany	90%	91%	91%	91%
Anne Arundel	50%	50%	50%	50%
Baltimore City	97%	94%	94%	94%
Baltimore	50%	50%	50%	50%
Calvert	69%	64%	61%	61%
Caroline	89%	86%	86%	86%
Carroll	65%	61%	61%	61%
Cecil	70%	75%	75%	75%
Charles	70%	77%	77%	77%
Dorchester	77%	72%	71%	71%
Frederick	72%	72%	72%	72%
Garrett	70%	65%	60%	59%
Harford	65%	60%	59%	59%
Howard	58%	61%	61%	61%
Kent	50%	50%	50%	50%
Montgomery	50%	50%	50%	50%
Prince George's	69-75%*	73%	73%	73%
Queen Anne's	70%	65%	60%	55%
St. Mary's	72%	75%	75%	75%
Somerset	97%	92%	88%	88%
Talbot	50%	50%	50%	50%
Washington	65%	73%	73%	73%
Wicomico	81%	87%	87%	87%
Worcester	50%	50%	50%	50%

*For fiscal 2006-2008, the State share for Prince George's County is 75% for funding allocated up to $35 million, and 69% for funding allocated in excess of $35 million as required in law. The split share expired in June 2008, and for fiscal 2009 the State share for Prince George's County is 69%.

Source: Public School Construction Program

One strategy for estimating the impact of prevailing wage rates on school construction costs is to compare project bids that provide both prevailing wage and market wage rates. Local school systems occasionally solicit side-by-side bids to help them determine whether they want to accept the full State match (and be subject to the prevailing wage), or a lesser State match without being subject to the prevailing wage. PSCP is aware of a handful of such side-by-side bids procured in fiscal 2008 by Carroll and Frederick counties. The bids show an average cost difference of 7.8% between prevailing wage bids and market wage bids in Carroll County and approximately 6.0% on one project in Frederick County. However, PSCP acknowledges that the sample of bids is not sufficient to draw any firm conclusions, and notes that those bids occurred before the recent downturn in the construction market.

Legislative Services advises that the local share of school construction costs may decrease by up to 7.0% for projects that begin construction in fiscal 2011 or 2012 in counties that may no longer have to pay prevailing wages, but this estimate is uncertain given recent turmoil in the construction market and lack of consensus among studies of the effect of prevailing wages. However, the timing of school construction projects may not generate any local savings for projects that begin construction early in fiscal 2011. In some cases, construction contracts for those projects may be signed before enactment of this bill, locking in prevailing wage rates for workers on those projects.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Harford, and St. Mary's counties; Board of Public Works; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Public School Construction Program; Department of Legislative Services

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