SB 785

Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 785 (Senator Peters, *et al.*)
Finance

Public Investment Protection Act

This bill requires employers who receive at least $250,000 in State economic development subsidies in any form to pay specified employees the higher of a federal prevailing wage, State prevailing wage, or 130% of the minimum wage, and provide supplemental payments for fringe benefits. These employers must also enter into specified agreements with labor unions that provide for collective bargaining on behalf of employees and prohibit the unions from organizing job actions against the employer. Affected employers who employ construction workers must use labor union hiring halls to hire their employees. The bill's provisions are severable.

Fiscal Summary

State Effect: General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by at least $88,700 in FY 2011 to enforce employers' compliance with the bill's wage provisions. Out-year costs reflect annualization and inflation. Potential minimal increase in general fund revenues from cases heard in District Court due to imposition of existing penalties. The cost of economic development projects that receive at least $250,000 in State aid likely increases, reducing the number of projects that can be supported by the State.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF Expenditure	$88,700	$114,100	$119,200	$124,700	$130,400
Net Effect	($88,700)	($114,100)	($119,200)	($124,700)	($130,400)

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

Local Effect: The cost of economic development projects that are undertaken by local governments with State assistance may increase due to contractors and other vendors having to pay their employees higher wages required by the bill. Potential minimal increase in local revenues for cases heard in circuit courts due to imposition of existing penalties.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill applies to real estate development projects or any other employer that receives at least $250,000 in financial assistance in any form from the State for economic development, community development, job growth or retention, or other similar purposes. Affected employers of construction employees must also participate in an apprenticeship program approved under current law. Small businesses with 10 or fewer employees and nonprofit organizations are exempt from the bill's provisions, unless a small business contracts to provide building or food services.

The bill's requirements apply to each employer involved in an affected project, including tenants, subtenants, and on-site contractors and subcontractors, regardless of whether the employer directly received State assistance. The bill's requirements last a minimum of 10 years or as long as the project receives State economic assistance, whichever is longer. The wage requirements apply to construction workers, building service employees, food service employees, grocery employees, and hotel employees, as defined by the bill.

The bill includes employee notification and recordkeeping requirements for affected employers. The Commissioner of Labor and Industry within DLLR enforces the bill's provisions, and the bill authorizes employees, individuals, or organizations to file complaints with the commissioner for any violation of the bill. Penalties for noncompliance include restitution and double damages payable to employees, as well as applicable existing civil and administrative penalties for employers. Employers may also be sued for wages; if successful, the employee is entitled to compensation for reasonable legal fees in addition to any restitution and/or liquidated damages awarded by the court.

The bill is to be liberally construed to favor its purposes. DLLR must develop regulations to interpret, implement, and enforce the bill's provisions.

The bill applies only prospectively to State economic assistance subsidies provided after the bill's effective date.

Current Law:

Maryland Minimum Wage and Living Wage

Under the Maryland Wage and Hour Law, employers are generally required to pay each employee at least $7.25 per hour (the current federal minimum wage). Exceptions exist for training wages and disabled employees of a sheltered workshop.

Chapter 284 of 2007 made Maryland the first state to require State service contractors to pay their employees a "living wage." For fiscal 2008, the living wage was set at $11.30 in Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore counties and Baltimore City (Tier 1). It was set at $8.50 for all other areas of the State (Tier 2). The living wage rates are adjusted annually for inflation by the Commissioner of Labor and Industry. The commissioner approved inflation-based increases to both the Tier 1 and Tier 2 living wage rates for fiscal 2010. The Tier 1 living wage is currently $12.25, and the Tier 2 wage is $9.21. Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services. The living wage law does not apply to recipients of State economic development assistance.

Prevailing Wage

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.

Federal Service Contract Act (SCA) of 1965

SCA requires federal service contractors with contracts valued at more than $2,500 to pay their employees the higher of the federal minimum wage or a prevailing wage issued under a determination by the U.S. Department of Labor, plus fringe benefits.

Background: The State operates a multitude of economic development assistance programs, primarily through the Department of Business and Economic Development (DBED), the Department of Housing and Community Development (DHCD), the Maryland Department of Transportation (MDOT), and through a variety of tax breaks available to employers and developers. The number and scope of those programs cannot be fully summarized or reflected in this fiscal and policy note. For instance, in its fiscal 2009 annual report, DBED notes that it assisted 490 businesses through a variety of programs, including (but not limited to) the Maryland Economic Development Assistance Authority and Fund, the Community Development Block Grant program, and the Economic Development Opportunities Program (Sunny Day Fund). MDOT is engaged in several transit-oriented development projects and public-private partnerships that provide economic incentives to businesses to support public transportation. DHCD offers, among other programs, community investment tax credits and the Maryland Capital Access Program to organizations involved in community development projects.

The prevailing wages under SCA are significantly higher than the $7.25 State and federal minimum hourly wage. A sampling of SCA prevailing wages for the Baltimore metropolitan region found hourly wages of $8.52 for a dishwasher, $12.98 for a cook, and $9.37 for a food service worker or maid. Fringe benefit payments for these positions were $3.35 per hour in addition to the wage rates.

State Fiscal Effect: The bill does not directly affect the amount of funding provided for State economic assistance; however, the number of types of projects undertaken could be affected.

The bill applies only prospectively, so none of the entities that have already received economic assistance from the State are affected. Given the prospective nature of the bill and the broad scope of economic assistance programs, the Department of Legislative Services (DLS) cannot reliably estimate the number of recipients of State economic assistance that are affected by the bill. However, the number is likely to be significant.

DLLR's prevailing wage unit currently monitors approximately 140 prevailing wage projects, many involving multiple contractors and subcontractors. It employs four wage and hour investigators to review payroll records submitted every two weeks and to visit job sites to ensure compliance with the prevailing wage law. DLS believes it is reasonable to assume that the bill increases the number of employers required to pay prevailing wages by at least 50%. Based on that estimate, DLLR must hire at least two additional wage and hour investigators to monitor compliance.

Therefore, general fund expenditures by DLLR increase by at least $88,680 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring two wage and hour investigators to monitor affected employers' compliance with the bill's wage requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	$72,170
Start-up Costs	4,645
Ongoing Operating Expenses	11,865
Minimum Fiscal 2011 State Expenditures	**$88,680**

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses. To the extent that the number of affected employers is higher than the projected increase of 50%, or to the extent complaint volume is higher than anticipated, general fund expenditures increase further, potentially significantly

General fund revenues may increase minimally due to the imposition of existing penalties for violations of the bill's provisions.

Local Fiscal Effect: A great deal of State economic assistance aid is distributed through local governments. For instance, Community Development Block Grants provided by DHCD are awarded to county and municipal governments for redevelopment projects. As local governments, not the State, often distribute State funds to redevelopment projects, it is not clear whether contractors who work on their projects are subject to the bill's requirements. The bill's provision that it be liberally construed seems to indicate that it should apply in these and similar instances.

Therefore, contractors that work on projects that receive at least $250,000 in State assistance provided through local governments will have to pay the higher wages required by the bill, and likely pass along those costs to the local governments that fund the projects. Therefore, the number of local projects that can be supported by State economic assistance programs will likely decrease, and the cost of economic development projects paid for by local governments in part with State funds may increase.

Local revenues may increase minimally due to the imposition of existing penalties for violations of the bill’s provisions.

Small Business Effect: Small businesses that receive State economic assistance in excess of $250,000 must pay affected employees higher prevailing wages. This applies to all retail and food service companies, hotels, construction companies, and similar firms that work directly on or become tenants of retail or commercial developments that receive at least $250,000 in State economic assistance.

State economic assistance is also distributed through nonprofit organizations, which are exempt from the bill’s requirements. For instance, the Community Investment Tax Credit program gives companies tax credits in exchange for their charitable donations to nonprofit organizations that support approved community development programs. Although the nonprofit organizations themselves are exempt from the bill, it is not clear whether employers who receive State funds passed through nonprofit organizations are subject to the bill’s requirements. Again, the bill’s provision that it be liberally construed appears to indicate that those employers are subject to the bill.

Therefore, small businesses in the affected trade areas with more than 10 employees that receive State tax credits or other State assistance of at least $250,000 passed through nonprofit organizations may be less likely to contribute to or support community-based nonprofit organizations because the bill significantly increases their labor costs. As a result, the availability of financing for community development projects undertaken by nonprofit organizations will likely be affected.

Additional Information

Prior Introductions: None.

Cross File: HB 1317 (Delegate Glenn, *et al.*) - Economic Matters.

Information Source(s): Department of Budget and Management, Department of Business and Economic Development, Department of Housing and Community Development, Maryland Department of Transportation, Judiciary (Administrative Office of the Courts), U.S. Department of Labor, Department of Legislative Services

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