

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 836
Appropriations

(Allegany County Delegation)

Education - Public School Construction - Procurement - Preference for Local
Business Entities

This bill authorizes a local government to give a preference for local businesses in bidding for school construction projects that are not subject to the State's prevailing wage law. It also requires the Board of Public Works (BPW) to develop regulations governing the use of local bidding preferences under this bill.

Fiscal Summary

State Effect: The bill does not affect State funding for school construction or enforcement of the State's prevailing wage law. The Interagency Committee on School Construction (IAC) can implement the bill with existing resources. BPW can develop the necessary regulations with existing budgeted resources.

Local Effect: Counties that have a preference for local businesses for school construction projects not subject to the State's prevailing wage may experience an increase in the costs of those projects due to diminished competition from nonlocal bidders.

Small Business Effect: Potential meaningful benefit for local construction companies.

Analysis

Current Law: Local school construction contracts are subject to approval by IAC if they include State funds for any portion of the project. In procuring school construction services, local governments are required to adhere to certain requirements contained in State procurement law and BPW regulations, including the use of competitive sealed bidding under most circumstances, adherence to the State's minority business enterprise

program requirements, and awarding contracts to the responsible bidder with the lowest responsive bid.

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, 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 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. The State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works 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.

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 local public works projects.

The State pays at least 50% of *eligible* school construction costs in all counties. 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. Six jurisdictions have a 50% State share – Anne Arundel, Baltimore, Kent, Montgomery, Talbot, and Worcester counties. In all other counties, at least some school construction projects may be subject to the prevailing wage, depending on the financing arrangements. Of those, Allegany and Prince George’s counties and Baltimore City also have local prevailing wage laws.

Allegany County has a 5% bid preference for construction projects funded solely with county funds (and therefore not subject to the State’s prevailing wage). According to county officials, the preference affects the award of about 10% of applicable contracts. Montgomery and Somerset counties indicate that they also have a local bid preference for county contracts.

Small Business Effect: Small construction companies in counties with a local bid preference may win more contracts for small school construction projects.

Additional Comments: The absence of a statutory definition of “local business entity” may increase the number of bid protests from construction companies claiming to be local under county preference programs.

Additional Information

Prior Introductions: None.

Cross File: SB 551 (Senator Edwards) - Budget and Taxation and Finance.

Information Source(s): Board of Public Works; Public School Construction Program; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Allegany, Charles, Montgomery, and Somerset counties; Department of Legislative Services

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