

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 1330 (Chair, Economic Matters Committee)(By Request -
 Departmental - Labor, Licensing and Regulation)

Economic Matters

Construction Safety and Health Training - Public Work Contracts

This departmental bill requires contractors on public works contracts to ensure and certify that each individual performing manual labor on the project has completed, or will complete, a construction safety training course authorized by the federal Occupational Safety and Health Administration (OSHA) within the past five years. Each individual must complete the course before beginning work on the project. The Commissioner of Labor and Industry is authorized to develop regulations and is required to enforce the bill's provisions.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by \$124,900 in FY 2012 to enforce the bill's provisions. Out-year expenditures reflect annualization and inflation. General fund revenues increase, potentially significantly, beginning in FY 2012 due to the bill's penalty provisions but are assumed to decline annually due to increased compliance. Potential minimal increase in the cost of State public works projects due to contractors passing on to the State the cost of providing the mandated training to their employees.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	-	-	-	-	-
GF Expenditure	\$124,934	\$154,566	\$162,567	\$171,044	\$180,030
Net Effect	-	-	-	-	-

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

Local Effect: Potential minimal increase in the cost of affected local public works projects due to contractors passing on the cost of providing the mandated training to their employees. Increased operational burdens on local governments to assist in enforcing the bill's provisions.

Small Business Effect: DLLR has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: Before beginning work on a public works contract, a contractor must certify that all individuals working on the project, including subcontractors, meet or will meet the bill's requirement. The contractor must maintain evidence of compliance until the project is completed.

The commissioner must investigate as necessary to determine contractors' compliance with the bill. If the commissioner determines that a contractor has violated the bill's requirement, the commissioner must notify the public body responsible for the project and issue a notice of hearing within 30 days after completing the investigation. The notice must be served on all interested parties, including the appropriate public body, and include a statement of facts disclosed during the investigation and the time and place of the hearing. Upon receiving notice, the public body must withhold payment from the contractor in the amount necessary to cover liquidated damages specified in the bill. A contractor may also withhold payment from a subcontractor who is suspected of violating the bill's provisions in an amount equal to the amount withheld from the contractor, or may sue to recover that amount if payment has already been made to the subcontractor.

Responsibility for the hearing may be delegated to the Office of Administrative Hearings (OAH). A decision by an administrative law judge is final unless, within 15 days, the commissioner orders a review of the decision or the employer submits a written request to the commissioner for a review of the decision. After a review, and either with or without another hearing, the commissioner must issue an order that affirms, modifies, or vacates the administrative law judge's decision.

A contractor or subcontractor who is found to have violated the bill's provisions is liable for liquidated damages of between \$250 and \$500 per day for each employee who is not in compliance. Liquidated damages are payable to the State general fund. A contractor or subcontractor who knowingly submits a false certification is liable for liquidated damages of between \$1,000 and \$3,000, also payable to the general fund, for each day that the contractor or subcontractor operated under a false certification. A contractor who violates the bill's provisions two or more times may not enter into a public works

contract directly or indirectly for three years. The commissioner must notify the Secretary of State of contractors or subcontractors with two or more violations within the previous five years.

Current Law: 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. A public body means:

- the State;
- a unit of State government or instrumentality of the State;
- any political subdivision, agency, person, or entity with respect to the construction of a public work for which 50% or more of the money used for construction is State money; and
- a political subdivision that by ordinance or resolution makes itself subject to the State's prevailing wage law.

A unit of State government or instrumentality of the State that is funded wholly from a source other than the State is not a public body.

The Division of Labor and Industry within DLLR administers the Maryland Occupational Safety and Health (MOSH) program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by OSHA.

There are no State requirements for workers on a public works contract to complete construction safety training. However, OSHA regulations establish standards for practices and procedures to protect employees from the hazards of entry into "permit-required confined spaces." The term "permit-required confined space" refers to spaces that meet OSHA's definition of a confined space and contain health or safety hazards. For this reason, OSHA requires workers to have a permit to enter these spaces.

Background: DLLR advises that the training required by the bill consists of a 10-hour training course provided by private individuals who have completed an OSHA trainer course and are authorized by OSHA to conduct such training. The curriculum must cover:

- an introduction to OSHA, including the general duty clause and employer/employee rights; and
- safety training in areas of fall protection, electrical work, personal protective equipment, and health hazards in construction.

The course also includes an elective segment that can address materials handling, scaffolds, cranes, derricks, hoists and elevators, excavations, and stairways and ladders. The course typically costs about \$120 per individual.

Laws with provisions similar to the ones in this bill have recently been enacted by seven other states.

State Revenues: General fund revenues increase, potentially significantly, due to the bill's penalty provisions. A reliable estimate is not possible because it depends on the level of compliance by employers. DLLR advises that it currently oversees 163 public works projects, with an average number of 14 contractors on each project, each employing an average of 15 workers, for a total of 34,230 employees. *For illustrative purposes only*, an assumption of 85% compliance in the first year results in approximately 5,100 direct violations, which are assumed to last an average of two days, and an additional 51 knowing violations, each lasting one day. Based on this illustrative example, liquidated damage assessments paid to the general fund may total as much as \$2.6 million in fiscal 2012. However, assuming increased compliance after the first year, general fund revenues are assumed to decrease annually thereafter.

State Expenditures: DLLR advises that enforcement will be provided by wage and hour investigators who currently visit public works job sites to enforce other provisions of State law, including the prevailing wage and living wage laws. Due to the additional workload required by the bill, DLLR advises that it requires one additional investigator and related support and clerical staff to carry out its enforcement responsibilities.

Therefore, general fund expenditures by DLLR increase by \$124,934 in fiscal 2012, which accounts for a 90-day start-up delay given the bill's July 1, 2011 effective date. It reflects the cost of hiring one wage and hour investigator, an office clerk, and an administrative specialist to conduct investigations and manage the bill's notification and hearing requirements. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$104,650
Operating Expenses	<u>20,284</u>
Total FY 2012 Expenditures	\$124,934

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

The cost of State public works projects may increase minimally due to contractors passing on the cost of the training courses to the State in the form of higher bids for those projects. Some agencies, most notably the State Highway Administration and the
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Maryland Transit Administration, advise that they already require their contractors to comply with comparable requirements. Given that the course costs \$120 per individual, that workers must take the course only every five years, and that some agencies already require contractors to comply with the bill's requirements, those costs are expected to be negligible.

State procurement units can incorporate the required contractor certification into the current procurement process with existing resources.

Local Fiscal Effect: The bill may impose an operational burden on local governments that have local public works projects that receive at least 50% of their funding from the State. If their contractors are alleged to have violated the bill's provisions, the local governments will have to withhold payments from those contractors in the amount of the liquidated damages for which the contractors may be liable. The local governments may also have to participate in an investigation and subsequent hearing related to the alleged violation. It is assumed that local governments can carry out these activities with existing resources.

The bill may also increase minimally the cost of local public works projects due to contractors passing on the cost of the safety training to the public body in the form of higher contract bids. For the reasons given above, those costs are expected to be negligible.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): **Information Source(s):** Montgomery and Worcester counties; Baltimore City; Maryland State Department of Education; Department of General Services; Department of Labor, Licensing, and Regulation; Public School Construction Program; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - March 28, 2011
ncs/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of Labor, Licensing and Regulation

BILL NUMBER: HB 1330

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.