

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 661
Finance

(Senator Kittleman)

Procurement - Required Clauses - Project Labor Agreement Prohibition

This bill requires each State procurement contract to include a clause that prohibits participation in a project labor agreement (PLA) that requires the contractor to adhere to obligations regarding union referral, union security, or collectively bargained compensation or benefits.

Fiscal Summary

State Effect: None. The prohibition against participation in PLAs for State public works contracts has no effect on project costs because contractors on large public works contracts are still required to pay the State's prevailing wage, which meets or exceeds union wages and benefits typically required by PLAs.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Current law does not prohibit State contractors from participating in PLAs.

The University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in-whole or in-part from most State procurement law:

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Maryland Stadium Authority; and
- State Retirement and Pension System.

Procurements by these entities that are exempt from procurement law must nonetheless be made under procedures that promote the purposes underlying State procurement law.

Statute requires that procurement contracts contain clauses covering causes for termination, contract modification, stop-work orders, nonperformance penalties, and other related issues.

Prevailing Wage 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 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 defined in statute as the 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. 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.

Background: According to the School of Industrial and Labor Relations (ILR) at Cornell University, a PLA is a “project-specific, uniform agreement governing all crafts on a project and lasting only as long as the project.” It establishes uniform terms and conditions that, where specified, supersede existing labor agreements for specific trades. It also typically requires nonunion contractors to pay collectively bargained wages and benefits to workers on the project. A PLA is intended to minimize disruptions on construction projects governed by multiple collective bargaining agreements governing different trades. According to ILR, typical PLA provisions include:

- collectively bargained wage rates and fringe benefit payments, even for nonunion labor;
- a requirement for waivers from negotiated apprentice ratios;
- no new negotiations on wages or benefits in effect at the start of the project;
- uniform work schedules;
- hiring conducted through union referral procedures, often with a defined percentage of nonunion contractors selected outside of those referral procedures;
- exclusive representation for appropriate labor organizations in each craft;
- strike and lockout prohibitions;
- dispute resolution procedures; and
- fringe benefit payment requirements.

Nonunion contractors can sign on to a PLA and work on a project, but doing so requires them to abide by the terms of the PLA. Therefore, many nonunion contractors choose not to sign on because they do not want to abide by union rules and requirements. To the extent that they do not, they are excluded from working on projects subject to PLAs.

According to Associated Builders and Contractors, six states have banned PLAs for state public works projects (Montana, Utah, Missouri, Minnesota, Iowa, and Arkansas), and 15 other states are currently considering similar bans. The Department of Labor, Licensing, and Regulation advises that Maryland has not traditionally used PLAs for State-funded projects, but is currently exploring the possibility of doing so.

For decades, the federal government made common use of PLAs for large public works projects, but PLAs were banned for federal projects by executive order in 2001. In

February 2009, the ban was reversed, also by executive order. In 1993, the U.S. Supreme Court affirmed the right of states and municipalities to use PLAs for public works projects.

State Fiscal Effect: PLAs are used almost exclusively on large public works projects that involve multiple trades. For the State, such projects are already governed by the prevailing wage law. In practice, prevailing wages equal or exceed collectively bargained wages for building trades in each region of the State. Established prevailing wages also include allocations for fringe benefits and apprentice training programs, such as those typically required by PLAs. For nonunion workers operating in the absence of a PLA, it is possible that those allocations are paid directly to workers instead of to a union pension or fringe benefit fund or apprenticeship training program, as typically required by PLAs. However, the overall wage does not change. Therefore, even in the absence of PLAs for State public works contracts, there should be no meaningful effect on the cost of large State public works projects that are still subject to the prevailing wage. Smaller projects (those valued at less than \$500,000) that are not subject to the prevailing wage statute typically would not be candidates for PLAs because of their small size, so they likely are not affected either.

Small Business Effect: Small construction companies that normally use nonunion labor may experience increased opportunities to participate in large State public works projects. However, they would still have to pay prevailing wage rates to their employees for those projects.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Associated Builders and Contractors; Cornell University; Department of Legislative Services

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