HB 1133

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1133 (Delegate Boteler, *et al.*)
Economic Matters

Procurement - Prevailing Wage - Rates

This bill requires the Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) to determine a single set of prevailing wage rates for all public work projects in the State instead of separate prevailing wage rates by locality. The rates must be based on wages paid for projects costing at least $100,000 in the prior calendar year. The bill also requires that any petition for review of a prevailing wage rate be submitted within 10 days of its establishment, instead of within 10 days of when a public body issues a call for bids or proposals in which the rate is being used for the first time.

Fiscal Summary

State Effect: The bill's effect on the aggregate cost of future eligible public works projects cannot be reliably estimated because the effects will vary depending on the geographic distribution of projects. It is assumed that any net increase or decrease in expenditures for public works projects does not increase or decrease the State's annual capital budget, but that fewer or more projects may receive funding, respectively. DLLR can make minor modifications to its computer system and otherwise handle the bill's requirements with existing budgeted resources. Revenues are not affected.

Local Effect: The cost of eligible public works projects in high-income counties likely drops, while the cost of projects in low-income counties likely increases. As with the State, no changes in local capital budgets are assumed, but fewer or more projects may receive funding annually in each jurisdiction. No effect on four counties with local prevailing wage laws.

Small Business Effect: Potential minimal.

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.

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 works project funded with federal funds that is subject to a 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. If the commissioner determines, for a given job category, that there are not enough workers performing similar work in a given locality, the prevailing wage is based on wages paid in the nearest locality within the State that most closely approximates the locality in population, industrialization, and work force skill levels.

The DLLR Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category on an annual basis, subject to the advice and recommendations of a six-member advisory council appointed by the Governor. Determination of prevailing wages by job category and locality is based, among other things, on:

- payroll information relevant to the determination; and
- wage rates established by collective bargaining agreements.

A prevailing wage rate determination by the commissioner is subject to review when a public body issues a call for bids or proposals in which the new rate is used for the first time. Petitions for review of a determination must be submitted to the commissioner within 10 days of the issuance.

The commissioner has the authority to enforce contractors' compliance with the prevailing wage law. If the commissioner concludes after an investigation that a violation has occurred and issues an order to that effect, the public body that contracted with the violator must reimburse the affected employees from the money due to the contractor or subcontractor. Contractors found to have violated the prevailing wage law are also liable for liquidated damages to the public body in the amount of $20 a day for each employee who is paid less than the prevailing 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: Currently, prevailing wage rates are established by county by covered craft, with separate rates for building construction and highway construction. The range of median household incomes in Maryland is very wide and varies by region. Although the estimated median household income in the State in 2009 was $70,050, the highest median was $100,100 in Howard County and the lowest was $39,900 in Allegany County.

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/Local Expenditures: DLLR will have to make some minor modifications to its computer system in order to calculate a single statewide prevailing wage rate for each covered craft but otherwise can implement the bill's requirements with existing budgeted resources. The commissioner will still conduct annual employer surveys throughout the State and collect union pay scales and payroll data for the purpose of determining prevailing wages by covered craft. Instead of separating the data it receives from these sources by county, however, DLLR will instead use the data to develop a weighted State wage scale for prevailing wage projects.

Based on the median income data cited above, a single prevailing wage rate for the State will not reflect local wage rates in many counties. Employees in low-income regions of the State will receive higher wages, while those in high-income regions of the State may be underpaid. The effect on the cost of eligible State and local public works projects cannot be determined without knowing the geographic distribution of future projects. For projects in low-income areas, project costs likely increase, while the cost of projects in high-income regions of the State likely decrease. Any net increase or decrease in capital expenditures for public work projects is not expected to change either the State's or local governments' annual capital budgets. Instead, it is assumed that fewer or more projects receive capital funding, respectively.

Additional Information

Prior Introductions: HB 1363 of 2010 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Talbot and Harford counties; Baltimore City; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Public School Construction Program; Maryland Department of Transportation; Maryland Department of Planning, University System of Maryland; Department of Legislative Services

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