

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 688
(Delegate Krebs, *et al.*)
Economic Matters

Prevailing Wage - Exclusion of Public Work from Annual Determination

This bill requires the Commissioner of Labor and Industry to exclude wages paid on public works projects under contract from the calculation of prevailing wages.

Fiscal Summary

State Effect: No effect on total State capital expenditures, which are established annually by the Governor and General Assembly. Construction costs for individual public works projects funded by the State may decrease, especially in rural and outlying areas of the State. To the extent that individual project costs decrease, it is assumed that more State projects are funded. No effect on revenues.

Local Effect: The cost of local public works projects that are subject to the prevailing wage requirement may decrease, especially in rural and outlying jurisdictions of the State. However, there is no assumed reduction in local capital expenditures; to the extent that individual project costs decrease, it is assumed that more local projects are funded. No effect in four counties with local prevailing wage laws.

Small Business Effect: 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 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 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 Commissioner of Labor and Industry in the Department of Labor, Licensing, and Regulation (DLLR) is responsible for determining prevailing wages annually for each public works project and job category, subject to the advice and recommendations of a six-member advisory council appointed by the Governor. Prevailing wages are established for both straight time and overtime and must include a fringe benefit component to cover benefits enumerated in statute. In determining prevailing wage rates for a locality, the commissioner must consider, among other things, any payroll information relevant to the determination and wage rates established in local collective bargaining agreements.

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: The DLLR commissioner's office advises that information concerning project type in the surveys it uses to collect information about wage rates does not currently distinguish between public works and private projects. However, based on knowledge of the construction industry, the commissioner's office believes that, in the more rural and outlying areas of the State, wages paid on public works projects are likely higher than those paid on private construction projects. The differential between wages paid for public and private projects is likely less pronounced in the metropolitan areas, according to the commissioner's office.

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 public works projects.

DLLR advises that its prevailing wage unit currently monitors about 160 prevailing wage projects throughout the State, including those procured by local governments. This number is higher than totals reported in recent years, which have tended to be between 110 and 130 projects. In 2010, the unit investigated 375 project sites for prevailing wage compliance and recovered \$360,000 in unpaid wages on behalf of workers.

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 Expenditures: Assuming the wage rates for public works projects in rural and outlying areas of the State are higher than wage rates for private projects, as suggested by DLLR, prevailing wage rates for those regions of the State likely decrease. That, in turn, reduces the cost of State public works projects in those areas. There may be a slight decrease in prevailing wage rates in metropolitan areas of the State, but it is likely less pronounced. Although the cost of individual State public works projects may decline, there is no assumed decrease in the State's total capital budget, which is established each year by the Governor and General Assembly. Instead, it is assumed that more projects receive funding.

DLLR advises that it can modify its wage survey instruments and processes to distinguish between public works and private projects with existing resources.

Local Expenditures: Except in the four jurisdictions with local prevailing wage laws (Montgomery, Prince George's, and Allegany counties and Baltimore City), the cost of individual local public works projects that receive at least 50% of their funding from the State may decline, especially in rural and outlying areas of the State. However, there is no assumed decrease in local capital budgets. Instead, it is assumed that more local projects are funded.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:

(410) 946-5510

(301) 970-5510