HB 1211

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1211 (Delegate Hucker, *et al.*)
Economic Matters

Procurement - Prevailing Wage Rate - Penalties for Violations

This bill increases the penalties paid by contractors on public works projects to a public body and to their employees if they pay their eligible employees less than the prevailing wage. In addition to liquidated damages already required, contractors must pay the public body an amount equal to 75% of the difference between the fixed wages that should have been paid and the wages actually paid. In addition to paying full restitution to the affected employees, the contractor must also pay them 25% of the difference between the fixed wages they should have been paid and the amount they were actually paid.

Fiscal Summary

State Effect: General fund revenues increase by approximately $158,500 in FY 2013, which accounts for the bill's effective date, due to increased penalty payments by public works contractors who do not pay employees the prevailing wage. Out-year projections reflect annualization. No effect on expenditures.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	$158,500	$211,300	$211,300	$211,300	$211,300
Expenditure	0	0	0	0	0
Net Effect	$158,500	$211,300	$211,300	$211,300	$211,300

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

Local Effect: Local governmental revenues increase by approximately $52,800 in FY 2013, which accounts for the bill's effective date, due to the bill's additional penalty payments. In subsequent years, combined local revenues increase by approximately $70,400 annually, reflecting annualization. No effect on local governmental expenditures.

Small Business Effect: Meaningful for contractors on eligible public works projects who do not pay their employees the mandated prevailing wage.

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 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 (either the State or the local government that procured the project) in the amount of $20 a day for each laborer who is paid less than the prevailing wage. If an employer fails to comply with an order by the commissioner to pay restitution, either the commissioner or an employee may sue the employer to recover the difference between the prevailing wage and paid wage. The court may order the employer to pay double or triple damages if it finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard for the law.

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 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 public works projects.

Liquidated damages paid by contractors to public bodies have averaged $351,118 for the last three full fiscal years. DLLR estimates that about 75% of those damages have been paid to the State ($263,338), and the rest has been paid to local public bodies. In addition, contractors have paid an average of $375,664 in restitution to employees for the last three full fiscal years. It is also assumed that 75% of that amount was paid to employees on State projects and the remainder was paid to employees on local projects.

State/Local Revenues: The average restitution amount cited above represents the difference between wages that should have been paid and wages that were paid, which is the basis for calculating increased penalties under the bill. **Exhibit 1** summarizes the additional penalty revenues that are paid to State and local public bodies, respectively, assuming that employers continue to violate the prevailing wage requirements at current rates. The exhibit also assumes that the State share of restitution payments is 75% of the total, as it is for liquidated damage payments.

Exhibit 1
Additional Penalty Revenue under the Bill

	State	Local
Total Restitutions	$375,664	
Proportional Share	$281,748	$93,916
Additional Annual Penalty Revenue	211,311	70,437
Fiscal 2013 Impact (3/4 year)	158,483	52,828

Source: Department of Legislative Services

As the exhibit shows, State general fund revenues increase by approximately $211,311 annually, except in fiscal 2013 due to the bill's October 1, 2012 effective date. Local revenues increase by approximately $70,437 annually, which would be distributed among public bodies whose contractors violate the prevailing wage requirements. In fiscal 2013, the revenue increase is estimated to be $52,828, due to the bill's October 1, 2012 effective date.

Small Business Effect: Small businesses working on State or local public works projects that have to pay prevailing wages but do not do so must pay increased penalties to both public bodies and employees. Total penalty payments increase by about $375,664 annually, with 75% paid to public bodies and 25% paid to employees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services; Department of Labor, Licensing, and Regulation; Public School Construction Program; Department of Legislative Services

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mlm/rhh

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