Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1192 (Delegate Hucker, *et al.*)
Economic Matters

Prevailing Wages - Debarment or Suspension Process and Penalty

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This bill requires that a contractor or subcontractor who is found to have willfully violated the statutory requirement to pay an employee a prevailing wage be automatically debarred from procurement with a public body for three years. A contractor or subcontractor who unintentionally does not pay a prevailing wage must be given the opportunity to remedy the violation. The Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) must forward the names of contractors who persistently and willfully violate the prevailing wage law to the Attorney General, who may impose additional unspecified sanctions beyond those already authorized by law.

Fiscal Summary

State Effect: DLLR can implement the bill's requirements with existing budgeted resources. However, DLLR advises that determining whether a violation is willful may require more extensive review of an employer's records than is currently undertaken, potentially detracting from other enforcement activities.

Local Effect: No direct fiscal effect. To the extent that local public bodies may not contract with debarred contractors, competition for local public works contracts may diminish.

Small Business Effect: Minimal, assuming that small businesses comply with the prevailing wage statute.

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 commissioner must forward a list of contractors and subcontractors who persistently and willfully violate the prevailing wage statute to the Secretary of State. Individuals on the list are prohibited from entering into a public works contract with a public body for two years.

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.

DLLR advises that no persistent and willful violators of the prevailing wage law have been reported to the Secretary of State's office for many years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 20, 2012
ncs/rhh

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