

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 716
Finance

(Senators Kittleman and Colburn)

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: The bill affects State construction projects only to the extent that the State would otherwise use PLAs in the future, which it historically has not done. To the extent that the prohibition applies to future projects, there is no direct effect on labor costs because all large State-funded public works projects must still pay prevailing wages, which typically equal or exceed union wages that would be required by a PLA. However, other PLA provisions involving work rules and work stoppages may affect project timing and efficiency; the net fiscal effect of prohibiting the use of those provisions under a PLA, if any, cannot be reliably estimated.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Current law does not address the use of PLAs on State public works contracts.

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;
- Department of Natural Resources for conservation service opportunities;
- Maryland Stadium Authority;
- Department of General Services for the renovation of historic structures;
- State Retirement and Pension System; and
- Chesapeake Bay Trust.

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 and to abide by union work rules, as established by the PLA. 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.

Effects of PLAs

There are significant disagreements regarding the economic effects of PLAs. Supporters argue that PLAs provide a reliable and stable supply of labor for large construction projects by establishing clear and consistent work rules, compensation, and benefits. They also argue that the use of skilled labor at union pay scales provides high quality results. Also, they maintain that PLAs minimize disruptions and ensure on-time completion by prohibiting work stoppages and establishing dispute resolution procedures. Opponents argue that PLAs increase project costs by requiring payment of union pay scales and restricting flexible use of skilled labor. They also say that PLAs are unfair to nonunionized workers; even if they join the union for the duration of the project, they may not work long enough to vest in the union's pension plan. They also dispute claims that projects with PLAs are safer and more likely to finish on schedule. The Congressional Research Service, the nonpartisan research arm of the U.S. Congress, conducted a review of research on the economic effects of PLAs and concluded that it is inconclusive, with some studies finding that PLAs increase project costs by as much as 20%, and others finding either no effect on costs or modest savings.

According to Associated Builders and Contractors, nine states have banned PLAs for state and/or local public works projects by statute (Michigan, Maine, Louisiana, Tennessee, Arizona, Idaho, Missouri, Montana, and Utah) and three states have banned them for state projects by executive order (Iowa, Nevada, and Arkansas). Several states, including Illinois and Washington, authorize the use of PLAs, either through executive order or statute.

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, for projects costing the federal government at least \$25 million. In 1993, the U.S. Supreme Court affirmed the right of states and municipalities to use PLAs for public works projects.

PLAs in Maryland

Maryland has not traditionally used PLAs for State-funded projects, although they are used occasionally for federally funded projects in the State. However, the planning and design of the new Cheltenham youth detention facility for the Department of Juvenile Services (DJS) was halted in early 2011 when it was revealed that DJS intended to require a PLA for the construction phase of the project. The decision to use a PLA was made after the award of a design contract for the project; although the use of a PLA should not affect the project design, there was concern that the project was moving forward before the details of the PLA were established and a construction manager, who

would have to implement the PLA, had been selected. Activity on the project has not resumed, in part because there are no clear guidelines on how best to implement a PLA.

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 due to any wage effect because they are still subject to the prevailing wage.

To the extent that other features of PLAs (*e.g.*, work stoppage prohibitions or adherence to union work rules) may exert an effect on project costs, the prohibition against PLAs for projects for which they would otherwise be used may affect project costs, but as noted earlier, research on the net effect of PLAs is inconclusive.

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, but only to the extent that PLAs would otherwise be used for future projects. However, those companies would still have to pay prevailing wage rates to their employees for those projects.

Additional Information

Prior Introductions: SB 661 of 2011 received a hearing by the Senate Finance Committee, but no further action was taken on the bill.

Cross File: None.

Information Source(s): Associated Builders and Contractors; Board of Public Works; Congressional Research Service; Cornell University; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and

Regulation; Maryland Department of Transportation; University System of Maryland;
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Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510