HB 948

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 948 (Delegate Mizeur, *et al.*)
Economic Matters

Prevailing Wage Enforcement Act

This bill requires that all civil penalties and liquidated damages paid by contractors who violate the State's prevailing wage law be paid to the Division of Labor and Industry (DLI) within the Department of Labor, Licensing, and Regulation (DLLR), and not to the general fund.

Fiscal Summary

State Effect: Special fund revenues for DLLR increase by an estimated $263,300 in FY 2013; $65,800 of which is due to the redirection of liquidated damages currently paid to local public bodies to DLI. The other $197,500 is due to redirection of current revenues from the general fund to DLI; thus, there is a corresponding decrease in general fund revenues. Out-year estimates reflect annualization.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	($197,500)	($263,300)	($263,300)	($263,300)	($263,300)
SF Revenue	$263,300	$351,100	$351,100	$263,300	$263,300
Expenditure	0	0	0	0	0
Net Effect	$65,800	$87,800	$87,800	$0	$0

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

Local Effect: Local government revenues decline by approximately $65,800 in FY 2013 due to the redirection of liquidated damages from local public bodies to the State. Out-year estimates reflect annualization.

Small Business Effect: None.

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 are liable for the following civil penalties or liquidated damages for violating various provisions of the State's prevailing wage statute:

- a civil penalty of up to $50 for failing to post notice of the prevailing wages that must be paid;
- liquidated damages of $10 for each calendar day that a submission of payroll records to the commissioner is late;
- a civil penalty of $1,000 for each false or fraudulent payroll record submitted; and
- liquidated damages of $20 per day for each employee who is not paid the appropriate prevailing wage.

Civil penalties are paid to the State's general fund regardless of whether the project is a State or local public works project; however, liquidated damages are paid to the public body (either the State or the local government) that procured the project for which a violation occurs.

Contractors found to have violated the prevailing wage law must also pay restitution to the employees. 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.

Over the past three full fiscal years, DLLR has assessed an average of $351,118 in liquidated damages annually against contractors. No civil penalties have been assessed. DLLR further estimates that 75% of liquidated damages are for State projects and 25% are for local projects.

By law, the Governor is required to appropriate at least $385,000 annually to DLI for prevailing wage enforcement. The fiscal 2013 budget, as introduced, includes $653,133 for the prevailing wage unit.

State Fiscal Effect: General administration of DLI is funded primarily from the Workers' Compensation Commission (WCC), with additional funding coming from federal Occupational Safety and Health funds; less than 10% of general administration is paid for with general funds. The prevailing wage unit within DLI, which enforces the prevailing wage statute, is entirely general funded.

The bill makes no provision for the allocation or expenditure of penalty revenue retained by DLI under the bill. It is unclear whether the funds (1) are retained to increase funding for prevailing wage enforcement; (2) supplant a portion of special funds from WCC for DLI general administration; or (3) are credited against the minimum mandated general fund allocation to the prevailing wage unit, allowing general funds to be redirected to other purposes or agencies. The bill specifically states that the penalty revenue may not be deposited into the general fund, but it does not establish or designate a special fund within DLLR to receive the revenue. Nevertheless, for the purpose of this analysis, Legislative Services assumes that the revenues are treated as special funds and are retained for additional prevailing wage enforcement.

Under this assumption, the bill's fiscal effect for the State manifests in two ways:

1. a slight increase in special fund revenues due to the redirection of liquidated damages currently paid to local public bodies to DLLR in the form of unspecified special funds; and
2. an increase in the special fund allocation to DLLR and a corresponding diminution in allocations to the general fund.

As noted above, liquidated damages assessed against contractors on local projects are paid to the local governmental unit that procured the public work. Under the bill, those liquidated damages are redirected to DLLR in the form of special funds. Assuming that 25% of total liquidated damages are for local projects, State special fund revenues increase by approximately $87,780 annually; in fiscal 2013, however, revenues increase by an estimated $65,835 due to the bill's October 1, 2012 effective date.

Regarding the second effect, civil penalties and liquidated damages paid to the State currently accrue to the general fund. Therefore, the bill's fiscal effect manifests as an increase in the annual special fund allocation to DLLR of approximately $263,339 for prevailing wage enforcement, which is the State's current share of liquidated damages. There is a corresponding reduction in allocations of revenue to the general fund. In fiscal 2013, the increase for DLLR is approximately $197,504 due to the bill's October 1, 2012 effective date. Increased revenues for prevailing wage enforcement may result in additional positions for the prevailing wage unit, but that contingency is not reflected in this analysis.

Local Fiscal Effect: Local government revenues decline by approximately $87,780 annually due to the redirection of liquidated damages from local public bodies to DLLR. In fiscal 2013, revenues decline by approximately $65,835 due to the bill's October 1, 2012 effective date.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, and Montgomery counties; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Public School Construction Program; Department of Legislative Services

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