

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 219
Finance

(Senator Manno)

Procurement - Public Work Contracts - Project Labor Agreements

This bill requires a public body to include a project labor agreement (PLA) in a public works contract if the public body determines that the PLA advances the State's interests regarding cost, efficiency, quality, safety, timeliness, skilled labor, or labor stability. The bill does not apply to public works projects valued at less than \$500,000 or in which State funds are paying for less than half of the total project cost.

Fiscal Summary

State Effect: To the extent that PLAs are required for prospective public works projects, there is no *direct* effect on labor costs because all large State-funded public works projects already must 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 requiring their use under a PLA, if any, cannot be reliably estimated.

Local Effect: None. To the extent they are allowed or authorized by local law, local governments may already use PLAs on public works projects.

Small Business Effect: Potential meaningful for small construction companies that work on public works projects in the State.

Analysis

Bill Summary: If a public body determines that a public works contract should include a PLA, the PLA must (1) be in writing; (2) include terms and conditions necessary for securing an adequate supply of labor; (3) be executed by labor organizations able to

supply adequate labor for the project; and (4) be included in the project's procurement contract. The bill further specifies the terms that must be included in a PLA.

The Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation must adopt regulations to carry out the bill's provisions.

Current Law: State law does not address the inclusion of PLAs in public works projects.

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. For the purpose of public works projects, State law defines a public body as the State, any unit or instrumentality of the State, and any political subdivision in which State funds account for at least 50% of the funding for the project; a political subdivision may, by ordinance or resolution, declare itself to be a public body for purposes related to public works projects. Therefore, the bill generally does not apply to public works projects in which a majority of funding for the project comes from non-State sources.

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.

Small Business Effect: Small construction companies are affected only to the extent that State and local governments opt to use PLAs on public works projects. In those instances, nonunion companies will have to agree to the terms of the PLAs or be excluded from working on those projects. Legislative Services notes, however, that PLAs may be used on public works projects under current law, as they are not explicitly forbidden.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Associated Builders and Contractors; Cornell University; Congressional Research Service; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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