

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 555
 Finance

(Senator Garagiola, *et al.*)

Construction Safety and Health Training - Public Work Contracts

This bill requires contractors on public works contracts to ensure and certify that each individual performing manual labor on the project has completed, or will complete, a 30-hour construction safety training course authorized by the federal Occupational Safety and Health Administration (OSHA) within the past five years. Each individual must complete the course before beginning work on the project. The Commissioner of Labor and Industry is required to enforce the bill’s provisions, and contractors who submit, or knowingly operate under, false certifications are liable for liquidated damages payable to the State general fund.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by at least \$86,500 in FY 2014 to enforce the bill’s provisions. Out-year expenditures reflect annualization and inflation. General fund revenues increase, potentially significantly, beginning in FY 2014 due to the bill’s penalty provisions but are assumed to decline annually due to increased compliance. Potential significant increase in the cost of State public works projects due to contractors passing on to the State the cost of providing the mandated training to their employees.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	-
GF Expenditure	\$86,500	\$108,600	\$113,600	\$118,900	\$124,400
Net Effect	(\$86,500)	(\$108,600)	(\$113,600)	(\$118,900)	(\$124,400)

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

Local Effect: Potential significant increase in the cost of affected local public works projects, especially in the first year, due to contractors passing on the cost of providing the mandated training to their employees. Increased operational burdens on local governments to assist in enforcing the bill's provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Before beginning work on a public works contract, a contractor must certify that all individuals working on the project, including subcontractors, meet or will meet the bill's requirement. The contractor must maintain evidence of compliance until the project is completed.

The commissioner may adopt regulations to administer the bill's provisions and must investigate as necessary to determine contractors' compliance with the bill. If the commissioner determines that a contractor has violated the bill's requirement, the commissioner must notify the public body responsible for the project and issue a notice of hearing within 30 days after completing the investigation. The notice must be served on all interested parties, including the appropriate public body, and include a statement of facts disclosed during the investigation and the time and place of the hearing. Upon receiving notice, the public body must withhold payment from the contractor in the amount necessary to cover liquidated damages specified in the bill. A contractor may also withhold payment from a subcontractor who is suspected of violating the bill's provisions in an amount equal to the amount withheld from the contractor, or the contractor may sue to recover that amount if payment has already been made to the subcontractor.

Responsibility for the hearing may be delegated to the Office of Administrative Hearings (OAH). A decision by an administrative law judge is final unless, within 15 days, the commissioner orders a review of the decision or the employer submits a written request to the commissioner for a review of the decision. After a review, and either with or without another hearing, the commissioner must issue an order that affirms, modifies, or vacates the administrative law judge's decision.

A contractor or subcontractor who is found to have violated the bill's requirement is liable for liquidated damages of between \$250 and \$500 per day for each employee who is not in compliance. Liquidated damages are payable to the State general fund. A contractor or subcontractor who knowingly submits a false certification is liable for liquidated damages of between \$1,000 and \$3,000, also payable to the general fund, for

each day that the contractor or subcontractor operated under a false certification. A contractor who violates the bill's requirement two or more times may not enter into a public works contract directly or indirectly for three years. The commissioner must notify the Secretary of State of contractors or subcontractors with two or more violations within the previous five years.

Current Law: 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. A public body means:

- the State;
- a unit of State government or instrumentality of the State;
- any political subdivision, agency, person, or entity with respect to the construction of a public work for which 50% or more of the money used for construction is State money; and
- a political subdivision that by ordinance or resolution makes itself subject to the State's prevailing wage law.

A unit of State government or instrumentality of the State that is funded wholly from a source other than the State is not a public body.

The Division of Labor and Industry within DLLR administers the Maryland Occupational Safety and Health (MOSH) program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by OSHA.

There are no State requirements for workers on a public works contract to complete construction safety training. However, OSHA regulations establish standards for practices and procedures to protect employees from the hazards of entry into "permit-required confined spaces." The term "permit-required confined spaces" refers to spaces that meet OSHA's definition of a confined space and contain health or safety hazards. For this reason, OSHA requires workers to have a permit to enter these spaces.

Background: OSHA offers two levels of construction industry safety training, which is provided by private individuals who have completed an OSHA trainer course and are authorized by OSHA to conduct such training: (1) a 10-hour course for entry-level construction workers that provides information about their rights, employer responsibilities, how to file a complaint, and how to identify and prevent job-related hazards; and (2) a 30-hour course for more experienced workers with some safety responsibility that emphasizes hazard identification, avoidance, control, and prevention.

According to OSHA, approximately 17,000 independent trainers nationwide are authorized to provide the safety training. In federal fiscal 2012, almost 690,000 individuals participated in OSHA safety training, but only 15% completed the 30-hour course. The 10-hour course typically costs about \$100 per individual, and the 30-hour course costs about \$220 per individual.

In recent years, seven states have enacted similar laws requiring safety training for workers on public works projects.

State Revenues: General fund revenues increase, potentially significantly, due to the bill's penalty provisions. A reliable estimate is not possible because it depends on the level of compliance by employers. The number of public works projects monitored by DLLR's Prevailing Wage unit has risen dramatically in the last two years, with DLLR advising that it currently oversees more than 500 projects (there were approximately 300 new projects in fiscal 2012) with an average number of 14 contractors on each project, each employing an average of 10 workers engaged in manual labor. This yields a rough estimate of 70,000 employees subject to the training requirement. From an informal survey of contractors, DLLR estimates that approximately 2.0% of affected employees have undergone the 30-hour OSHA training.

It is unclear whether the bill requires compliance by ongoing public works projects at the time the bill becomes effective. Certification by a contractor that all individuals working on a project have met, or will meet, the training requirement must occur before work begins on a project. However, the enforcement provisions of the bill do not specify that they apply only to new projects. If the bill is interpreted to apply to all ongoing projects, the level of compliance will likely be quite low at the outset, prompting significant payment of penalties and liquidated damages, as specified by the bill. DLLR estimates that penalty revenue could be as high as \$900,000 in fiscal 2014. If the bill is interpreted to apply only prospectively to new public works projects begun after the bill's effective date, compliance levels will likely be higher, resulting in less penalty revenue collected, in part because the bill's requirements will be phased in over time as new projects are launched. Regardless, it is assumed that, over time, compliance levels increase and penalty revenue collected decreases.

State Expenditures: DLLR advises that enforcement will be provided by wage and hour investigators who currently visit public works job sites to enforce other provisions of State law, including the prevailing wage law. Enforcement will consist primarily of spot checks of contractors' records to ensure that on-site workers have completed the training. Due to the additional workload required by the bill to verify contractor certifications and the training certificates of on-site workers, DLLR requires at least one additional investigator and one clerical staff to carry out its enforcement responsibilities. DLLR

advises that additional legal expenses associated with implementing the penalty provisions, including debarment, can be handled with existing resources. DLLR intends to delegate only legally complex cases to OAH.

Therefore, general fund expenditures by DLLR increase by at least \$86,488 in fiscal 2014, which accounts for a 90-day start-up delay given the bill's July 1, 2013 effective date. It reflects the cost of hiring one wage and hour investigator and one office clerk to conduct investigations and manage the bill's notification and hearing requirements. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$73,060
Operating Expenses	<u>13,428</u>
Total FY 2014 Expenditures	\$86,488

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The cost of State public works projects may increase substantially, especially in the first year, due to contractors passing on the cost of the training courses to the State in the form of higher bids for those projects. Given that the course costs \$220 per individual, and that most workers will have to take the course in the first year, those costs may be as high as several million dollars.

State procurement units can incorporate the required contractor certification into the current procurement process with existing resources.

Local Fiscal Effect: The bill may impose an operational burden on local governments that have local public works projects that receive at least 50% of their funding from the State. If their contractors are alleged to have violated the bill's provisions, the local governments will have to withhold payments from those contractors in the amount of the liquidated damages for which the contractors may be liable. The local governments may also have to participate in an investigation and subsequent hearing related to the alleged violation. It is assumed that local governments can carry out these activities with existing resources.

The bill may also increase the cost of local public works projects due to contractors passing on the cost of the safety training to the public body in the form of higher contract bids. For the reasons given above, those costs may be significant in the first year.

Additional Comments: The Department of Legislative Services notes that the bill's requirements may exceed the capacity of the OSHA training program to meet the demand for training. Based on current estimates, approximately 103,500 individuals nationwide complete the 30-hour training annually (15% of 690,000 trainees). This bill adds about 70,000 additional trainees, almost doubling the national demand for the 30-hour training session, all concentrated in one state.

Additional Information

Prior Introductions: HB 1330 of 2011, a similar bill, received a hearing in the House Economic Matters Committee and was referred for interim study by that committee.

Cross File: HB 330 (Delegate Feldman, *et al.*) - Economic Matters.

Information Source(s): Montgomery and Worcester counties; Baltimore City; Department of Budget and Management; Maryland State Department of Education; Department of General Services; Department of Labor, Licensing, and Regulation; Public School Construction Program; Maryland Department of Transportation; University System of Maryland; U.S. Occupational Safety and Health Administration; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2013
ncs/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of Labor, Licensing and Regulation

BILL NUMBER: HB 1330

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.