Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 699 (Senator Rosapepe, *et al.*)
Finance and Budget and Taxation Economic Matters

Providing Our Workers Education and Readiness (POWER) - Apprenticeship Act

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This bill requires each contractor or subcontractor awarded a contract for at least $500,000 for a capital construction project that receives at least $1.0 million in the State's capital budget to, under specified circumstances, (1) be affiliated with a registered apprenticeship program and use apprentices in each covered craft that is used; (2) make payments to the State Apprenticeship Training Fund (SATF); or (3) make specified payments directly to a registered apprenticeship program.

The bill takes effect June 1, 2017.

Fiscal Summary

State Effect: No effect in FY 2017; however, special fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) and the Department of General Services (DGS) increase by a combined $191,000 in FY 2018 for DLLR to implement and enforce the bill and DGS to monitor and provide assistance to capital grantees. Out-year costs reflect salary increases and termination of contractual and one-time expenses. Revenues to SATF likely do not increase under the bill, but revenues generated under current law may cover the full cost of implementing the program through FY 2022; to the extent that revenues projected under current law do not materialize, general funds may be needed to cover some of the cost in the out-years. The bill's penalty provisions are not expected to materially affect general or special fund revenues. No effect on total State spending in the capital budget, which is set annually through the capital budget process.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	$0	$0	$0	$0	$0
SF Expenditure	191,000	144,700	151,400	158,400	165,900
Net Effect	($191,000)	($144,700)	($151,400)	($158,400)	($165,900)

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

Local Effect: Local capital construction projects that receive at least $1.0 million from the State capital budget but are not prevailing wage projects must abide by the bill's requirements. Any payments made by contractors may be passed on to local governments, but total capital funding by local governments is not necessarily affected. To the extent that the bill increases the cost of individual local projects, fewer projects may be funded in a given year. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Contractors and subcontractors are not subject to the bill's requirements if (1) there are no registered apprenticeship programs for the craft or trade employed by the contractor or subcontractor or (2) the project is required to pay prevailing wages under State law.

Payments to SATF are determined by the Secretary of Labor, Licensing, and Regulation, but they may not exceed 25 cents per hour for each of the contractor's or subcontractor's employees working on the project. If a contractor or subcontractor makes payments directly to an apprenticeship program that are less than those required by the bill, the contractor must pay the difference to the fund. All payments to the fund must be made on a monthly basis. Proceeds from the fund may be used to pay any costs associated with implementing the bill.

The Secretary of Labor, Licensing, and Regulation must adopt regulations to implement the bill's provisions. The regulations must establish a process for auditing organizations that provide registered apprenticeship programs to ensure that all funds received under the bill are used to improve and expand apprenticeship programs in the State.

A contractor or subcontractor that fails to meet the bill's requirements is liable for twice the amount of unpaid apprenticeship contributions required by the bill. A person, firm, or corporation that willfully (as defined by the bill) makes a false or fraudulent representation or omission regarding a material fact in connection with contributions required by the bill is liable for a civil penalty of up to $1,000 for each employee for whom contributions are required and each falsification. A penalty is recoverable in a civil action and must be paid to the State. The Secretary of Labor, Licensing, and Regulation may file suit to enforce the bill in any court of competent jurisdiction. In any such action, the court must require the contractor or subcontractor to pay double the amount of unpaid apprenticeship contributions (as mentioned above), including interest, reasonable counsel fees, and court costs.

The bill includes additional provisions regarding the designation of payments to specific programs, verification requirements for contractors and subcontractors, and certification requirements for recipients of payments.

Current Law/Background:

Apprenticeship

Generally, apprenticeship is a voluntary, industry-sponsored system that prepares individuals for occupations typically requiring high-level skills and related technical knowledge. Apprenticeships are sponsored by one or more employers and may be administered solely by the employer or jointly by management and labor groups. An apprentice receives supervised, structured, on-the-job training under the direction of a skilled journeyperson and related technical instruction in a specific occupation. Apprenticeships are designed to meet the workforce needs of the program sponsor. Many industry sponsors use apprenticeship as a method to train employees in the knowledge necessary to become a skilled worker. This also means the number of apprenticeships available is dependent on the current workforce needs of the industry.

Apprenticeships are available to individuals age 16 and older; an employer, however, may set a higher entry age. By law, individuals must be age 18 to apprentice in hazardous occupations. Apprenticeships last from one to six years, although most are three to four years, and involve a minimum of 144 hours of classroom instruction per year and at least 2,000 hours per year of on-the-job training. A national apprenticeship and training program was established in federal law in 1937 with the passage of the National Apprenticeship Act, also known as the Fitzgerald Act. The purpose of the Act was to promote national standards of apprenticeship and to safeguard the welfare of apprentice workers.

Along with 24 other states, Maryland has chosen to operate its own apprenticeship programs. In 1962, Maryland created the 12-member Maryland Apprenticeship Training Council (MATC). Within the framework established in federal law, the State's apprenticeship and training law also established the guidelines, responsibilities, and obligations for training providers and created certain guarantees for workers who become apprenticed.

MATC, along with the Division of Workforce Development and Adult Learning (DWDAL) in DLLR, serves in a regulatory and advisory capacity by providing guidance and oversight to the Maryland Apprenticeship and Training Program, which is responsible for the daily oversight of State apprenticeship programs. More specifically, MATC and DWDAL approve new apprenticeship programs and changes to current programs. The approval process involves assessing the appropriateness of an apprenticeship program in a proposed industry, the education that will be provided to the apprentice, the current staffing level of the entity proposing the program to determine whether adequate supervision can be provided, recruitment and retention efforts, and the overall operations of the entity. MATC also serves in an advisory role for legislation and regulations, recommending changes to update apprenticeship laws.

In fiscal 2016, there were 11,821 active apprentices in Maryland, of whom 1,070 apprentices had just begun their apprenticeship, and there were 428 active apprenticeship programs.

State Apprenticeship Training Fund

Chapter 687 of 2009 established SATF and requires contractors and some subcontractors on public work contracts that are subject to the prevailing wage law to either participate in an apprenticeship training program, make payments to a registered apprenticeship program or to an organization that operates registered programs for the purpose of supporting the programs, or contribute to the fund. The fund's revenues consist entirely of payments made by contractors and penalties collected due to violations of the statutory provisions.

Monies from the fund may be used only to promote preapprenticeship programs and other workforce development programs in the State's public secondary schools and community colleges and to cover the cost of administering the fund. The programs should prepare students to enter apprenticeship training programs. As of December 2016, the fund held approximately $326,000, and it has not made any payments or grants to preapprenticeship programs since its inception.

Prevailing Wages

For a complete description and history of the State's prevailing wage statute, please see the **Appendix – Maryland's Prevailing Wage Law**.

State Fiscal Effect:

Program Administration

Public work projects that are subject to the State's prevailing wage requirement are exempt from the bill because they already must comply with the bill's requirements under Chapter 687 of 2009. That means that virtually all State construction projects and local school construction projects are not affected by the bill. Thus, the bill affects primarily projects that receive grants of at least $1.0 million through the capital budget (including local projects for which State funding is not 50% of the total project cost). DGS, which administers the capital grant program for the State, advises that there are approximately

100 such projects at any given time; in each of the last three years, 20 projects have received at least $1.0 million from the capital budget. Although most recipients of State capital grants are small nonprofit organizations with limited staff and minimal experience managing capital projects, recent recipients of grants of at least $1.0 million tend to be larger, more experienced organizations. Recent recipients have included the University of Maryland Medical Center, Johns Hopkins Hospital, the Maryland Zoo, and other large institutions.

Responsibility for implementing the project, monitoring compliance, and providing technical assistance to grantees is shared by DLLR and DGS. DLLR has responsibility for monitoring compliance by prevailing wage projects, and DGS has expertise in providing direct assistance to grantees. Although the number of new grantees is relatively small in any given year, the projects involved are typically large and complex, and both agencies are already understaffed. DLLR has experienced a 12% decrease in staffing since fiscal 2002, after accounting for the transfer of adult education programs from the Maryland State Department of Education. Even though the number of prevailing wage investigators was doubled several years ago, the number of projects being monitored has grown more than tenfold in just six years. DGS, meanwhile, has seen its staff reduced by more than 25% since fiscal 2002, even as its responsibilities have grown. Thus, neither agency can carry out its responsibilities under the bill with existing resources.

DLLR requires one additional investigator to ensure compliance with the program's requirements, specifically whether grantees participate in apprenticeship programs, make direct payments to apprenticeship programs, or pay into the fund. DLLR also needs a contractual assistant Attorney General for six months to develop program requirements and regulations. DGS requires one additional administrative officer to conduct outreach and provide direct assistance to grantees regarding compliance with the bill's requirements.

Therefore, general fund expenditures increase by $191,013 in fiscal 2017, which accounts for a 30-day start-up delay from the bill's June 1, 2017 effective date. This estimate reflects the cost of hiring one investigator in DLLR, an administrator in DGS, and a contractual assistant Attorney General for six months to carry out the duties specified above. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	2.0
Contractual Position	0.5
Salaries and Fringe Benefits	$175,687
Operating Expenses	15,326
Total FY 2018 DLLR and DGS State Expenditures	**$191,013**

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Future year expenditures reflect annual salary increases and employee turnover, termination of the contractual position and one-time expenses, as well as ongoing operating expenses.

It is assumed that the burden of complying with the bill's requirement that apprenticeship programs that receive payments from grantees be audited to ensure they are using the payments falls on the programs and not the State. Therefore, there are no additional costs associated with that requirement.

Revenues for the State Apprenticeship Training Fund

Since its inception in fiscal 2010, SATF has collected about $326,000 in payments from contractors on prevailing wage projects; DLLR advises that the bulk of contributions to the fund were made in calendar 2015 and 2016 as several large projects concluded and made payments to the fund. Therefore, the Department of Legislative Services assumes that, going forward, the fund earns $100,000 each year under current law. Given the small number of projects affected by the bill and the likelihood that they use or pay apprenticeship programs rather than pay into the fund (since many of the grantees have extensive experience with capital projects), the bill is not likely to have a material effect on fund revenues.

Net Effect

The bill allows SATF to be used to cover the costs of implementing the bill. **Exhibit 1** shows that, under the assumptions used in this analysis, the cost of implementing the bill's provisions can be covered by the fund. However, this also assumes that the fund continues to not be used for its other authorized purpose: promoting preapprenticeship programs and other workforce development programs. After fiscal 2022, however, it is likely that general funds will have to be used to supplement program funding. To the extent that revenues to the fund fall short of the assumptions used in this analysis, general funds may be needed sooner than projected.

Exhibit 1
Fund Balance Calculation

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SATF Beginning Balance	$326,156	$235,143	$190,465	$139,092	$80,651
Revenues	100,000	100,000	100,000	100,000	100,000
Total Revenues Available	**$426,156**	**$335,143**	**$290,465**	**$239,092**	**$180,651**
DGS Expenditures	$82,017	$78,858	$82,427	$86,191	$90,163
DLLR Expenditures	108,996	65,820	68,946	72,250	75,750
Total Expenditures	**$191,013**	**$144,678**	**$151,373**	**$158,441**	**$165,913**
End of Year Fund Balance	**$235,143**	**$190,465**	**$139,092**	**$80,651**	**$14,738**

SATF: State Apprenticeship Training Fund
DGS: Department of General Services
DLLR: Department of Labor, Licensing, and Regulation

Source: Department of Legislative Services

Small Business Effect: Small construction contractors that work on affected projects have to comply with one of the three options provided by the bill. In some circumstances, participation in an apprenticeship program may actually reduce labor costs because employers can pay apprentices less than more skilled laborers, as long as they have a journey laborer to supervise the apprentice; in other circumstances, it may increase costs by requiring the contractor to hire additional labor. Otherwise, contractors have to make one of the other payments required by the bill and bear the cost of doing so. In addition, apprenticeship programs that receive payments under the bill must pay the cost of an audit to ensure they are using the funds appropriately.

Additional Information

Prior Introductions: Legislation containing similar provisions was considered during the 2016 session. HB 108 of 2016 received a hearing in the House Health and Government Operations Committee and was withdrawn. Its cross file, SB 457, was withdrawn without a hearing in the Senate Finance Committee.

Cross File: HB 467 (Delegate McCray, *et al.*) - Economic Matters.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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Appendix – Maryland's Prevailing Wage Law

Contractors and subcontractors working on eligible public works projects in Maryland must pay their employees the prevailing wage rate. "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.

Eligible public works projects are:

- those carried out by the State;
- an elementary or secondary school for which at least 25% of the money used for construction is State money; and
- any other public work for which at least 50% of the money used for construction is State money.

Any public works contract valued at less than $500,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to (1) any part of a public works contract funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government or (2) specified construction projects carried out by public service companies under order of the Public Service Commission.

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 based on annual surveys of contractors and subcontractors working on both public works and private construction projects.

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 in the amount of $20 a day for each laborer who is paid less than the prevailing wage, or $250 per laborer per day if the employer knew or reasonably should have known of the obligation to pay 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 Governor must include at least $385,000 in the budget each year for the Prevailing Wage Unit within the Department of Labor, Licensing, and Regulation (DLLR).

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.

History of the Prevailing Wage

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 of $500,000 or more. 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. Chapters 281 and 282 of 2014 further lowered the State funding threshold for school construction projects to 25% of total construction costs, making almost all public school construction projects in the State required to pay the prevailing wage, subject to the $500,000 contract value threshold.

The number of prevailing wage projects has risen dramatically in recent years. DLLR advises that its prevailing wage unit currently monitors about 2,300 projects compared with 187 in fiscal 2011 and 446 in fiscal 2012. To accommodate the increase in projects, the number of prevailing wage investigators increased in fiscal 2016 from three to six, with each having a caseload of about 250 projects at any given time; there are currently five filled positions.

Five Maryland jurisdictions – Allegany, Charles, Montgomery, and Prince George's counties and Baltimore City – have local prevailing wage laws requiring public works projects in the jurisdiction to pay prevailing wages; Montgomery County's prevailing wage ordinance does not apply to school construction projects.

Research on the Effects of Prevailing Wage on Contract Costs

The Department of Legislative Services (DLS) regularly reviews research on the effect of prevailing wage laws on the cost of public works contracts and has found inconsistent and/or unreliable results. The primary challenge confronted by all prevailing wage researchers is identifying an appropriate "control group" consisting of projects of similar type, timing, and location that do not pay the prevailing wage. In most jurisdictions that require a prevailing wage, all projects of a specified type and size are subject to it, so there is no natural control group. Some researchers have compared project costs in states or localities before and after they adopted prevailing wage requirements, but their findings are clouded by the difference in time, during which construction costs changed and other factors were not consistent. Another deficiency in the research is that it almost always relies on project bid prices (*i.e.*, the anticipated cost prior to the beginning of construction) rather than actual final costs. As most construction projects experience change orders or cost overruns affecting their cost, reliance on bid prices negatively affects the validity of the findings. Therefore, research findings related to the effect of the prevailing wage on project costs are inconsistent and often inconclusive. A similar review of research conducted by DLLR for the Task Force to Study the Applicability of the Maryland Prevailing Wage Law also concluded that "data limitations create difficulty for researchers on both sides of the issue."

Early theoretical studies concluded that higher wages under prevailing wage contracts increase contract costs by between 10% and 30%, but many of those studies were flawed, and their findings could not be replicated. For instance, a frequently cited study of 18 projects by the then U.S. General Accounting Office was found to have omitted from its analysis 12 projects in which the prevailing wage was actually lower than the market wage. Empirical studies carried out in the 1990s found much smaller contract cost effects, often in the range of between 2% and 10%, but those studies were hampered by the control group and data quality challenges identified above.

More recent empirical data from several counties yields similar results. Local school systems occasionally solicit side-by-side bids with and without prevailing wages to help them decide whether they want to accept the full State match (and, thus, be subject to the prevailing wage) or a lesser State match without being subject to the prevailing wage. Data provided to the Public School Construction Program by Anne Arundel, Carroll, Frederick, Howard, and Washington counties from 2012-2015 shows that the cost differential between bids with and without prevailing wages for 266 individual bids submitted for 26 different school construction and renovation projects averaged 11.7%, with a range from 0% to 49%. As with other research data, these represent bid prices, not actual construction costs.

These empirical findings have been countered over the past 10 to 15 years by multiple large-scale studies that have found no statistically significant effect of prevailing wages on contract costs. As with the earlier studies that found a project cost effect, control group and data quality issues may have also affected these studies' findings, but the studies themselves cited the following possible explanations for the absence of a cost effect:

- higher wages are associated with higher productivity, reducing the overall cost of the project;
- contractors may be saving money in other areas, such as using lower cost supplies and materials; and
- contractors may absorb some of the cost of paying higher prevailing wages in order to remain competitive in government procurement.

One area of the research in which there is a general consensus, and which is supported by the federal Bureau of Labor Statistics, is that labor costs represent between 20% and 30% of construction costs. Therefore, a 10% gap between prevailing wages and market wages could theoretically increase total contract costs by about 2.5%, and a 40% gap in wages could increase total contract costs by about 10%. That is consistent with the findings of some of the empirical studies that have been conducted, but as noted above, more recent empirical studies have failed to find an effect even of that size. Nevertheless, given the empirical evidence that prevailing wages tend to be higher than nonprevailing wages and that labor costs are a significant portion of overall project costs, DLS believes that it is reasonable to expect that the prevailing wage requirement adds between 2% and 5% to the cost of a public works project. Given the inconsistency and inconclusiveness of the empirical research, however, actual effects may vary by project, with some projects exhibiting higher cost differences and others experiencing negligible differences.