



SB 1

State Finance and Procurement - Prevailing Wage - Stop Work Orders

Finance Committee

Position: Favorable with Amendment

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation's largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC respectfully urges SB 1 be amended, and, as amended, be given a favorable report.

SB 1 would allow the Commissioner of Labor and Industry to impose stop work orders if a contractor or subcontractor were found to have failed to pay the correct prevailing wage. The stop work order could be lifted if the Commissioner finds that the correct wage is being paid and all penalties also have been paid. The bills allow for an appeal to the Appeals Board if taken within 72 hours of the issuance of the stop work order. The bill allows a prime contractor to terminate without liability a subcontractor against whom a stop work order has been issued.

Imposition of a stop work order is a drastic tool that cripples work on a project even if issued against a single subcontractor. As the Fiscal Note points out, "Imposition of stop work orders has the potential to disrupt and even derail public works and infrastructure projects, likely increasing the costs of those projects." Sequencing of tasks on a project is crucial, indeed it is the critical path. Imposition of a stop work order on one subcontractor affects every subcontractor down the line whose work and schedule are dependent on the timely execution of work by the subcontractor subject to a stop work order. Innocent employees of innocent subcontractors will be idled – and not paid – in that situation.

Moreover, as the Fiscal Note points out, "Current law authorizes agencies to withhold progress payments from contractors found to be in violation of the prevailing wage law, and the commissioner advises that this enforcement mechanism has been very effective in recovering more than \$4 million in unpaid wages since fiscal 2018. The assessment of liquidated damages, also authorized under current law, serves as both a deterrent and enforcement mechanism for violations of the prevailing wage law."

The bill imposes no limitations on the discretion of the Commissioner of Labor and Industry in issuing a stop work order, allowing a commissioner to impose a stop work order for simple misunderstandings, miscalculations, or good faith disputes over the correct wage. Rather than allow this, the bill should focus on the true "bad actors" that knowingly and willfully fail to pay the prevailing wage. Thus, the bill should be amended to limit the issuance of stop work orders to cases where the contractor or subcontractor knew or reasonably should have known of the obligation to pay the correct prevailing wage and willfully and deliberately failed or refused to do so. This distinction is already recognized in §17-222, which sets different levels of liquidated damages for failure to pay the prevailing wage: \$20/laborer/day for non-malicious failures and \$250/laborer/day for deliberate failures. An amendment to that effect is attached to my testimony.

Secondly, the bill is not entirely clear on whether a stop work order would apply to the entire site, which would punish innocent contractors, or just to the offending contractor. A second amendment is attached to add greater clarity.

Existing remedies are working effectively, and the proposed stop work order remedy is fraught with collateral damage and unintended consequences. Accordingly, for the reasons set forth above, Maryland AGC respectfully urges SB 1 be amended, and, as amended, be given a favorable report.

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Lobbyist for Maryland AGC

AMENDMENTS TO SENATE BILL 1
(First Reading File Bill)

AMENDMENT NO. 1

On page 5, in line 7, strike beginning with "MAY" through "REQUIREMENT" in line 8 and insert "THAT KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE OBLIGATION TO PAY THE PREVAILING WAGE RATE MAY HAVE DELIBERATELY FAILED OR REFUSED".

AMENDMENT NO. 2

On page 5, in line 9, immediately after "ORDER", insert "AGAINST SAID CONTRACTOR OR SUBCONTRACTOR".