



Gregory J. Swain, County Attorney

MEMORANDUM

To: Members, Anne Arundel County Council

From: Lori L. Blair Klasmeier, Deputy County Attorney /s/

Via: Gregory J. Swain, County Attorney /s/

Date: September 7, 2021

Subject: Bill No. 72-21 – Purchasing – Capital Improvement Contracts – Prevailing Wage and Local Hiring

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 72-21, which establishes prevailing wage and local hiring requirements for certain capital improvement contracts.

Background.

Article 17, Title 2 of the State Finance and Procurement Article of the State code sets forth prevailing wage laws applicable to the construction of “public works”, as defined therein, with a value of \$500,000 or more undertaken by the State and not subject to federal prevailing wage laws. The Commissioner of Labor and Industry is required to set prevailing wage rates for different types of workers and apprentices engaged in the construction of public works. The rates required include hourly rates and fringe benefit rates based on localities in the State, and must be based on a number of enumerated factors. The current “Informational Wage Rates” for building construction and highway construction are attached hereto.

Purpose.

The purpose of this Bill is to enact a prevailing wage law similar to and based on the State law that will apply to certain capital improvement contracts. The prevailing wage provisions are similar to those enacted by Baltimore County. The Bill also includes provisions requiring best efforts to meet enumerated local hiring goals under certain capital improvement contracts.

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

Summary.

SECTION 1 of the Bill renumbers certain provisions of Article 8, Title 2 of the County Code to accommodate the addition of the two new provisions added by Section 2.

SECTION 2 adds new § 8-2-115 relating to prevailing wage and new § 8-2-116 relating to local hiring.

Subsection 8-2-115(a) defines terms used in the section for the purposes of the section, including “apprentice,” “capital project,” “capital improvement contract,” “contractor,” “department,” “director,” “employee,” “overtime rate,” and “prevailing wage.” For purposes of prevailing wage applicability, a “capital improvement project” is a contract related to a County capital project with a value over \$250,000, or a non-County capital project to which the County contributes more than \$5,000,000. In addition, as stated in **subsection (b)**, the section is not applicable to certain capital improvement contracts, including those subject to a federal or state prevailing wage law, those awarded without competition, if the contractor is precluded from complying by federal or state law, and emergency purchases.

Subsection (c) requires contractors who do measurable work on a capital improvement contract to pay employees at the applicable prevailing wage rate. It also requires that apprentices be paid at the rates set by Maryland’s Apprenticeship and Training Council, which is based on a percentage of the prevailing wage rate.

Subsection (d) limits deductions to pay to those required by law, authorized in writing by the employee, and required by a collective bargaining agreement.

Subsection (e) sets forth provisions to be included in a capital improvement contract subject to prevailing wage, including requiring compliance with the section, and specifying that an aggrieved employee or apprentice may file a civil action to recover the difference between prevailing wage and actual pay plus interest and attorney’s fees. The contract may also include a provision for liquidated damages up to three times the amount of wages owed to the employee or apprentice.

Subsection (f) prohibits a contractor from splitting a capital improvement contract or subcontract and from treating an employee as a subcontractor to avoid the applicability of the section. Contractors are also prohibited from employing helpers or trainees to perform measurable work on a capital improvement contract to which the section applies.

Subsection (g) requires that notice of prevailing wage rates be posted at a worksite.

Subsection (h) requires a contractor to submit a certified copy of its payroll to the director of the department chosen by the County Executive to administer the prevailing wage requirements within 14 days after the end of each payroll period. That subsection also sets forth the information that must be included in the payroll reporting, including classification of each employee, wage rates for each employee, hours worked by each employee, and the amount paid to each employee. Contractors are required to maintain payroll records for five years after the work is completed and

to allow the director to inspect the payroll records at reasonable times. If the contractor is late in submitting the records, the County may deem the contractor's invoices deficient and not make payments to the contractor until the contractor submits the required records. (§ 18-2-115(j)(6)).

The director is also required to maintain the payroll records submitted for five years after the work is completed, and, subject to exemptions or denials under the Maryland Public Information Act, make the records available for public inspection during regular business hours.

Subsection (i) provides that the director may perform random or regular audits relating to prevailing wage payment and may investigate complaints of violations of the section.

Subsection (j) addresses violations of the section. If the director determines that a violation has occurred, the director may withhold payment from the contractor in an amount sufficient to pay employees as required and to satisfy liquidated damage claims. The contractor may appeal a decision of the director to the Purchasing Agent, who may then investigate, request written testimony, or conduct a hearing. The decision of the Purchasing Agent is not subject to appeal. If the contractor does not appeal the director's decision within 10 working days of receipt, that decision is deemed final.

If the final decision is that the contractor has violated the section and that the violation was intentional, then, at the discretion of the director, the contractor may not be awarded a County contract or perform any work under a County contract for one year from the decision. A contractor may not discharge or otherwise retaliate against an employee for asserting rights under the section or for filing a complaint.

Subsection (k) requires the director to publish a report on the County's website in compliance with the section.

Subsection (l) allows the director to promulgate policies and guidelines for the implementation and enforcement of the section.

Subsection 8-2-116(a) defines terms used in the section for the purposes of the section addressing local hiring, including "capital improvement contract," "capital project," "contractor," "department," and "director." The definitions of "capital improvement contract" and "capital project" are the same as those set forth in § 8-2-115.

Subsection (b) requires a contractor to make best efforts to fill at least 51% of new jobs required for a capital improvement contract or capital project with County residents. **Subsection (c)** requires a contractor to submit quarterly reports that include for the reporting period, among other information, the number of new hires needed, the number of County residents hired, and the total number of employees hired. If the reporting is late, the County may postpone payments to the contractor until the contractor submits the required records. (§ 18-2-116(d)(4)).

Subsection (d) relates to violations and provides that, if the director of the department that the County Executive has designated to administer the section determines that best efforts have not been made, the director shall issue a written determination. The contractor may appeal the

decision to the Purchasing Agent, who may then investigate, request written testimony, or conduct a hearing. The decision of the Purchasing Agent is not appealable. If not appealed, the decision of the director is deemed final. If the final decision is that the contractor has violated the section and that the violation was intentional, then, at the discretion of the director, the contractor may not be awarded a County contract or perform any work under a County contract for one year from the decision.

SECTION 3 provides that the ordinance will apply to all capital improvement contracts initially solicited on or after July 1, 2022.

SECTION 4 provides that the ordinance shall take effect on July 1, 2022.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you.

cc: Honorable Steuart Pittman, County Executive
Kai Boggess-deBruin, Chief of Staff
Matthew Power, Chief Administrative Officer
Peter Baron, Legislative Liaison
Chris Trumbauer, Budget Officer
Chris Phipps, Director, Department of Public Works
Christine Anderson, Central Services Officer
Andrew Hime, Purchasing Agent