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FISCAL IMPACT REPORT

SPONSOR Scott/GallegosDM /Ezzell/Townsend **ORIGINAL DATE** 2/11/19 **LAST UPDATED** _____ **HB** 377

SHORT TITLE Repeal Public Works Minimum Wage Act **SB** _____

ANALYST Klundt

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	Unquantifiable, possibly negative	Unquantifiable, possibly negative	Recurring	Personal Income Taxes
	Unquantifiable	Unquantifiable	Recurring	Corporate Income Taxes

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		≥ (\$20 million)	≥ (\$20 million)	≥ (\$40 million)	Recurring	GF, STB, SSTB, Local GOB, Transportation & Other
		\$905.0	\$905.0	\$1,810.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
Public School Facilities Authority (PSFA)

Responses Received From

Department of Finance and Administration (DFA)
Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 377 (HB 377) proposes to repeal all of the provisions of the Public Works Minimum Wage Act (PWMWA) but does not propose a replacement. The bill does not have an impact on any existing public works contracts or any contracts that are entered into as a result of any pending invitations to bid. HB 377 will take effect on July 1, 2020.

FISCAL IMPLICATIONS

The Public School Facilities Authority (PSFA) reported difficulty quantifying the fiscal implications of this bill on public school construction projects. However, based upon a 2002 report regarding a similar bill in Ohio, a 5 percent and 10 percent decrease on average in school construction projects was realized after the repeal of prevailing wage rates on school construction projects. However, the report also discussed that prevailing wage rates alone do not impact the overall cost of a construction project; many other factors must also be considered. Another report, The Interagency Committee on School Construction reported as late as April 2016 that Maryland experienced an increase in costs between 11 percent and 14 percent due to prevailing wage requirements. The agency also reported if HB 377 follows the trends as demonstrated in Ohio, it can be assumed that there would be a reduction in project labor costs for the Public School Capital Outlay Council (PSCOC) awarded projects.

WSD reported the Labor Relations Program (LRD) of the Department currently receives a registration fee of \$400.00 every two years from each contractor and sub-contractor that registers with WSD to bid on public works projects. The registration fees are deposited in the Special Revenue Labor Enforcement Fund, which is appropriated to the LRD for “administration and enforcement” of the PWMWA. These fees totaled \$437.6 thousand and \$325.2 thousand in FY17 and FY18, respectively. The fees fluctuate minimally from year to year. Additionally, WSD has contractor registration fees that are collected for Public Works and deposited into the Special Revenue Public Works Apprenticeship Training Fund. For FY18, these fees totaled \$371.2 thousand. HB 377 would eliminate both the registration fees and the authority of the LRD to enforce the PWMWA. As set forth below, *see* Significant Issues, the need for some of the employees involved in the inspection of public works projects and audits of contractor and subcontractor payrolls may be impacted.

Additionally, WSD reported HB 377 would result in the LRD losing the ability to collect the registration fees from the employer, which currently account for nearly half of the program operating budget. The program’s mandate to investigate wage claims, however, would not be reduced. Upon repeal of PWMWA, instead of filing complaints of wage violations under the PWMWA, affected workers would file normal wage violation claims. Those claims would still require investigation but would lack the enforcement protections PWMWA afforded as well as the resources specifically afforded under the PWMWA.

Unquantifiable changes to personal income taxes (PIT) would likely result from raising or reducing wages. Any potential increases from the possibility of additional workers hired may be more than offset by the lower wages paid. The effective PIT rate increases as the income level of a person increases, particularly in the lower income strata, so the net effect of this bill is likely to be a negative PIT revenue impact. For example, one person making \$25 thousand annually will contribute more than double the PIT revenues than two people each making \$12.5 thousand

would contribute. In FY18, PIT contributed \$1.5 billion, or 22 percent of recurring revenues, to the general fund.

Unquantifiable impacts to corporate income taxes (CIT) may also result from raising or reducing the wages. In FY18, CIT contributed \$106.6 million, or 1.6 percent of recurring revenues, to the general fund.

Previous analysis NMDOT estimated a direct impact to the cost of highway and related infrastructure construction projects could result from similar proposed legislation. Previously NMDOT reported repeal of the provisions of the Public Works Minimum Wage Act would likely to reduce public works wage rates on NMDOT public works projects by 30 percent based on average construction project labor costs incorporating WSD implementation of prevailing wages under the Act. As applied to the NMDOT construction program, this could result in a 3 percent decrease in program costs. Based on recent active construction program, HB 377 could result in a decrease of \$20 million to the ongoing cost of highway construction, beginning FY21.

SIGNIFICANT ISSUES

By repealing the Public Works Minimum Wage Act (PWMWA), any construction project to which the state or any political subdivision of the state becomes a party after June 30, 2020 would not be subject to prevailing wage and fringe benefits rates. The PWMWA allows for the director to establish a prevailing wage that would apply to all laborers or mechanics in a respective class employed on public works projects based upon the collective bargaining agreements in place. This allows for consistency and transparency across the state. PWMWA oversees these projects to ensure workers are properly classified and appropriately paid.

Eliminating the PWMWA would mean the pay rates and fringe benefits for workers on the public works projects would be negotiated on a contract-by-contract basis. However, WSD reported the ability of the Director of LRD to force compliance with the PWMWA will be eliminated and the tools that currently enable the Director to require prompt payment of workers on public works projects will be eliminated. WSD would not have the ability to terminate contracts of offending employers, the subpoena power granted to the director would be eliminated, additional damages would not be available and enforcement assistance from the local district attorney would be reduced. Enforcement of any violations of the pay rates and fringe benefits would have to be investigated and pursued under the Wage Payment Act, Sections 50-4-1 through 50-4-12 NMSA 1978 (WPA) or the Minimum Wage Act, Sections 50-4-19 through 50-4-30, NMSA 1978 (MWA).

WSD reported HB 377 would eliminate revenue received from the \$400 registration fees collected every two years from participating contractors. The proposed loss of funding would significantly impact overall operational capacity and could result in loss of FTE. As proposed HB377 would not reduce duties of the staff; LRD would see an increase in their duties in investigating and pursuing wage and hour violations.

Previously NMDOT reported, to the extent the applicable wage rates established by WSD were higher than applicable federal minimum wage rates established through the Davis Bacon Act, 40 USC §3142 (2006), NMDOT incorporated the state's prevailing minimum wage rates on its public works contracts. NMDOT estimated the WSD rates were approximately 30 percent higher than the established federal rates. HB 377 repeals application of state prevailing wage rates. In

the absence of state prevailing wage rates, federal prevailing wage rates will continue to apply to NMDOT public works projects. Implementation of HB 377, as applicable to NMDOT public works projects, is anticipated to decrease labor costs on public works projects by eliminating the higher state rates.

OTHER SUBSTANTIVE ISSUES

The federal Davis-Bacon Act requires that prevailing wages be paid on federally funded public works projects, such as construction, repair or alteration of public buildings, or construction of public roads or bridges. The federal law sets a minimum threshold of \$2,000, meaning if a public works contract is for an amount in excess of \$2,000, then prevailing wages must be paid. States must abide by the Davis-Bacon Act when federal funds are involved in public works projects within the state

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