

House Bill 145/Senate Bill 1

Date: February 10, 2022

Committee: Senate Finance

Bill Title: State Finance and Procurement - Prevailing Wage - Stop Work Orders

RE: **Letter of Information**

HB0145/SB0001 makes significant changes to the Prevailing Wage section of the State Finance and Procurement Article that may negatively impact the prevailing wage system, make contractors less likely to want to perform prevailing wage work, and could result in less competition and increased pricing on public works projects. This proposal could result in entire public works projects being placed under a stop work order and construction workers being prevented from working and receiving wages without a final determination having been issued by the Commissioner. This bill broadly expands the authority of the Commissioner to issue a stop work order to an entire jobsite when there is a mere suspicion that there may be a violation of the prevailing wage law.

Under this proposal, a single contractor, who may not even actually be in violation of the law, can trigger an investigation that would allow the Commissioner to cease operations of an entire jobsite. All contractors working on the site would be prevented from working, delaying the progress of the project and pushing back completion dates for vital projects such as highways, schools, and other public works. The proposal also allows for stop work orders to be issued to worksites where the contractor in question is no longer performing work but may have been in violation. This is significant as large projects employ dozens of individual subcontractors, and one investigation could bring the entire jobsite to a halt.

Under this proposal, a contractor violating the stop work order, even if unrelated to suspected violations, faces penalties up to \$5,000 per day.

The Department is concerned that the authority granted under this proposal is overly broad and unnecessary. Currently, the Commissioner has the authority to require the procuring agency to stop payment if a contractor is determined by investigation to be in violation of the prevailing wage laws. The power granted under the current law is so strong that in the last ten years, not a single case has made it to a court hearing. Every investigation where a contractor has been determined to be in violation of the law has resulted in the workers being made whole within the existing means of the Commissioner.

Many, if not most, violations of the prevailing wage laws are minor issues that can be quickly rectified. Issues such as a miscalculation of the number of hours of overtime worked or counting a tradesman in the wrong category (for example having a “tile and terrazzo mechanic” being paid as a “tile and terrazzo finisher”). Once the errors are brought to the attention of the employer, they are typically quickly corrected without issue.

In addition to the extreme power given to the Commissioner to stop work on an entire jobsite, the bill also gives the Commissioner the power to impose civil fines *without limit*. 17-221(k)(1) allows the Commissioner to “impose a civil fine of not less than \$1,000 against a contractor or subcontractor that knowingly fails to produce records or attend a hearing or deposition..”, yet includes no maximum limit on this new fine.

Testimony to the House Economic Matters Committee on January 25 brought up several issues from New Jersey that are not pertinent to Maryland because our law already has enough authority to ensure Prevailing Wage law compliance. Misclassification in the Prevailing Wage context is when a worker performing one task such as carpentry is classified and paid the wages of a different trade like a common laborer. It is not the employee vs. independent contractor issue because any worker performing work on the jobsite is required to be paid the prevailing wage rate, whether they are an employee or independent contractor, and they all have to submit wages to the Prevailing Wage system. Compliance is already effectively monitored and enforced.

Further testimony was presented on the issue of construction safety which are serious issues, but not solved by prevailing wage enforcement. Work that is not done to specifications is enforced by building inspectors who are experts in the building codes and have had years of experience and training. Prevailing wage investigators do not, have not, and can not monitor whether or not a contractor's work meets building code specifications. Prevailing wage investigators ensure a contractor is paid the correct wage. Safety is an issue, but that responsibility is already protected by code enforcement, not wage enforcement.

In conclusion, the Commissioner of Labor and Industry, who is tasked with enforcing the prevailing wage laws, does not believe the enhanced powers granted under this proposal are necessary to ensure compliance with prevailing wage and hour laws in the state.