Agenda Item #10B
February 15, 2022
Action

M E M O R A N D U M

February 15, 2022

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 35-21, Prevailing Wage Requirements – Construction Contracts – Amendments

PURPOSE: **Final Action Addendum –** roll call vote expected

We received the attached revised Fiscal Impact Statement from the Office of Management and Budget after the Action Staff Report was published. The revised FIS was released on the evening of Monday, February 14, and attached with this addendum.

In addition, the Council received written public testimony for consideration related to proposed Amendment #3.

This packet contains:	Circle #
Revised Fiscal Impact Statement	1
Testimony	
Making Home Possible - Robert A. Goldman	4
Montgomery Housing Alliance	6

Fiscal Impact Statement
Bill 35-21 Prevailing Wage Law (PWL) Amendments

1. **Legislative Summary**.

Bill 35-21 as amended would:

1. alter definitions related to construction and prevailing wage requirements;
2. adopt the State prevailing wage law regarding the contract threshold limit;
3. apply prevailing wage requirements to certain public-private partnerships;
4. require construction contracts to include local hiring requirement;
5. specify violations of the local hiring mandate;
6. authorize the Department to adopt regulations; and
7. generally, amend the law regarding applicability to prevailing wage requirements.

Due to vagueness in the existing law, some construction contracts had been classified as maintenance contracts. The Administration corrected this application of the law last year. As a result of the amendments, Bill 35-21 now clarifies County law to conform with existing practice regarding construction projects.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used**.

No change in County revenues is expected.

The Maryland General Assembly's non-partisan Department of Legislative Services (DLS) uses a consistent methodology for assessing the impacts of prevailing wage requirements for multiple pieces of proposed legislation. Their analysis concludes that construction projects required to pay prevailing wages have higher labor costs of approximately 10 percent and higher total project costs of between two to five percent. After enacting similar changes, Baltimore County and Anne Arundel County governments reported a similar impact on costs. DLS also reports that there is no automatic effect on total State capital expenditures, but the cost of some public work projects may increase. As a result, fewer projects may be funded in a given year.

The Montgomery County Department of Transportation (DOT) estimates that $32 million is expended annually on construction contracts that had been previously classified as maintenance contracts. These contracts are for multi-year terms. Thus, any change in costs as a result in the change of classification, should they materialize, will occur over the next several years.

In addition to the clarification of the definition of "construction", the amended Bill also adds "mechanical systems service contracts" to the Prevailing Wage Law. As this type of work requires, in most cases, specific Maryland licenses for both contractors and employees, competition from out-of-state or out-of-region firms will be negligible. Therefore, this change will have minimal impact on expenditures.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**
   No direct change to County revenue is expected over the next six years.
   When the two to five percent potential increase identified by DLS is applied to the $32 million in DOT construction contracts previously classified as maintenance contracts, the total **estimated annual cost** of this policy could be between $640,000 and $1.6 million. Considering the expiration schedule for existing contracts and the $192 million in estimated expenditures over the next six years for this work, the total estimated additional cost **for the next six years** using the DLS analysis, could range from $2.3 million to $5.8 million.

4. **An actuarial analysis through the entire amortization period for each Bill that would affect retiree pension or group insurance costs.**
   The legislation does not affect retiree pension or group insurance costs.

5. **An estimate of expenditures related to the County's information technology (IT) systems, including Enterprise Planning (ERP) systems**.
   The legislation would not result in any IT-related expenditures.

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**
   The legislation does not authorize future spending.

7. **An estimate of the staff time needed to implement the Bill.**
   No additional staff time is expected as this Bill does not increase the number of contracts.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**
   Current staff in Procurement and department Contract Administrators (i.e., DGS, DOT, DHCA) will manage the increased number of construction contracts that are subject to this Bill.
   DOT's Contract Administrators and administrative staff were already preparing for the additional PWL documentation resulting from classification of more contracts as requiring prevailing wage compliance.

9. **An estimate of costs when an additional appropriation is needed.**
   No additional appropriation would be needed until Fiscal Year 2024.

10. **A description of any variable that could affect revenue and cost estimates.** Inflationary increases, or lack thereof, that are impacting all labor costs could alter the estimates.

Procurement's compliance auditing contract (CCMI) cost increase is contingent on how many contracts are ultimately added.

Estimates for Public Private Partnerships (P3) were not included in this analysis.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    The impact of the local hiring requirement is difficult to determine as a similar policy contained in the "WMATA PILOT" Bill has not yet affected a construction contract. Similar enactments by other Maryland counties all occurred over the past year. As a result, there are not similar contracts to base an estimate on for this provision.

    In addition, the impact on wage inflation is difficult to predict at the current time due to the lingering impacts of the COVID-19 pandemic. Wage inflation could grow at a rate higher than over the past two decades.

12. **If a bill is likely to have no fiscal impact, why is that the case.**

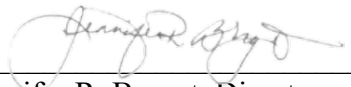
    Not applicable.

13. **Other fiscal impacts or comments.**

    Not applicable.

14. **The following contributed to and concurred with this analysis:**

    Avinash G. Shetty, Director, Procurement
    Pam Jones, Division of Operations, Procurement
    Grace Denno, Division of Business Relations and Compliance, Procurement
    John Gibala, PWL Program Manager, Procurement
    Melissa Garner, Department of Transportation
    Pamela Parker, Department of Environmental Protection
    Derrick Harrigan, Office of Management and Budget



_____ 2/14/2022

Jennifer R. Bryant, Director Date
Office of Management and Budget

MHP Making Home Possible

12200 Tech Road, Suite 250, Silver Spring, MD 20904-1938 | P: 301-622-2400 | F: 301-622-2800 | mhpartners.org

February 14, 2022

The Honorable Gabriel Albornoz
President, Montgomery County Council
100 Maryland Avenue Rockville, MD 20850

Dear Council President Albornoz:

MHP respectfully requests that the Council delay action on Amendment #3 to Bill 35-21, which is expected to be offered during tomorrow's deliberations, until the Council has received additional input from the affordable housing development community and DHCA.

As introduced, Bill 35-21 explicitly exempted affordable housing development from prevailing wage requirements; however, we understand that the Council will be considering an amendment tomorrow from Councilmember Jawando to require prevailing wage for projects which receive a payment in lieu of taxes (PILOT) from the County. If this amendment is adopted, it would in turn necessitate removing the exemption for affordable housing projects. If the bill applies to affordable housing projects that receive loans from the HIF, it has the potential to significantly impact affordable housing development in the County for projects large and small.

MHP only recently became aware of the bill and the amendments, as have most of our peers, and we are still assessing the impacts of the bill. At this time, we do not believe the Council will have sufficient information to make an informed decision regarding the amendment. The Council packet itself states: "**However, if the PILOT amendment is adopted and the removal of the HIF exclusion (lines 42-53) then DHCA believes it would increase construction costs to an unknown extent. Further, depending on the impact, this could increase the amount of public subsidy required to achieve the same number of units each year or decrease the total number of affordable units DHCA lending could support."**

Construction costs have increased dramatically over the last 24 months due to supply chain and other issues. Our preliminary analysis shows that a prevailing wage requirement would increase projects costs another 10 to 15 percent for low-rise housing, and potentially much more for high-rise rehab or new construction projects. For new construction projects with budgets approaching $100 million, a 10 to 15% increase is a nontrivial issue. We fully support the goal of paying prevailing wages, but the County will need to offset the increase in labor costs with additional subordinate funding, i.e. additional funding from the HIF. Otherwise, projects will simply not have the financing to move to construction.

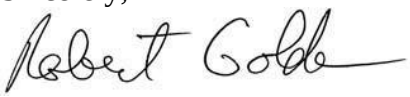
We also have questions about how the legislation will impact projects in our pipeline that have a commitment of HIF funds from DHCA, but which have not broken ground yet. Requiring projects that are on the cusp of construction to pay prevailing wages threatens to jeopardize projects that have been carefully budgeted for years in advance. Non-profit developers need assurances from DHCA that they are prepared to cover any increase in costs if the amendment is adopted.

Putting aside concerns about wages, we also have concerns with bill's local hiring requirement. It will be extremely difficult for affordable housing projects to meet the requirement of 51% of labor being derived from Montgomery County residents. Typically, contractors have their sub-contractors that they are accustomed to using, and using subs solely because of their location could create issues for quality of work and working relationships. Our contractors report that achieving a 30% local residency requirement is already difficult. If the Council mandates jobs be filled by County residents, it will likely result in contractors seeking to game the system by hiring ghost contractors like some have done in the District of Columbia. **Our recommendation is to amend the bill to have a goal or best-efforts approach rather than a mandate and waiver process.**

Again, MHP supports the goal of raising wages for projects where public funds are involved, but we believe the Council needs more information regarding the impacts on affordable housing development before acting on the PILOT amendment.

Thank you for your consideration of our views. Please feel free to reach out to MHP President, Rob Goldman, with any follow-up at rgoldman@mhpartners.org or 301-812-4114.

Sincerely,



Robert A. Goldman, ESQ.
President

MONTGOMERY HOUSING ALLIANCE

www.montgomeryhousingalliance.org

A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County

Action in Montgomery
Affordable Housing Conference of Montgomery County
AHC, Inc.
APAH
Coalition Homes, Inc.
Coalition for Smarter Growth
Enterprise Community Partners
Habitat for Humanity Metro Maryland
Housing Association of Nonprofit Developers
Housing Initiative Partnership
Housing Opportunities Commission of Montgomery County
Housing Unlimited
Interfaith Works
Jewish Community Relations Council of Greater Washington
Keystar Real Estate
Latino Economic Development Center
MHP
Montgomery County Coalition for the Homeless
Rebuilding Together Montgomery County
Victory Housing

February 14, 2021

Hon. Gabe Albornoz, President
Montgomery County Council

Re: Bill 35-21 Prevailing Wage Requirements – Construction Contracts

Dear Council President Albornoz and Members of the Council,

As you consider action on Bill 35-21 regarding prevailing wage requirements for construction contracts, Montgomery Housing Alliance (MHA) strongly urges you to defer a decision on the proposed Amendment #3 until you have had the opportunity to hear from affordable housing providers and explore unintended negative impacts the amendment could have on efforts to address affordable housing need in the County.

Amendment #3 would extend the prevailing wage requirement to projects receiving payment in lieu of taxes (PILOT). MHA commends the Council for unanimously passing Bill 26-21 last year, ensuring that many future affordable housing projects will receive automatic PILOT. Bill 35-21 includes an exemption for affordable housing developed by the Housing Opportunities Commission (HOC) as well as developments that receives funding from the County's Housing Initiative Fund (HIF) or Affordable Housing Opportunity Fund (AHOF). As noted in the Council report, Amendment #3 presents a conflict because, as a result of Bill 26-21, most affordable housing developments that receive funds through the HIF or the AHOF will also receive automatic PILOT. Given this conflict, we urge you to address how prevailing wage requirements may be extended to projects receiving PILOT in a later piece of legislation, after further research and consultation with the affordable housing community.

If Amendment #3 is passed at this time, it could jeopardize the future of affordable housing development in the County, including projects currently in the pipeline. Construction costs have dramatically increased in recent months, and continue to rise. These increases are already threatening to derail shovel-ready projects. Effectively imposing the requirements included in Bill 35-21 on affordable housing developments without allocating funding to defray increased construction costs would amount to an unfunded mandate, which would significantly jeopardize developers' ability to undertake projects. As DHCA has noted in its analysis of Amendment #3, extending the bill to affordable housing

could increase the amount of public subsidy required to achieve the same number of units each year or decrease the total number of affordable units DHCA lending could support. The County is already falling short in the number of units produced each year toward meeting the Council's adopted housing targets. Imposing additional costs on affordable housing will further slow development and deepen need.

MHA supports efforts to ensure higher wages and better access to jobs for County residents, but we urge you to preserve the original exemption for affordable housing in Bill 35-21 and defer a decision about how the requirements may be extended to projects receiving PILOT until after further analysis and discussion with stakeholders, including affordable housing providers. MHA thanks the Council for your consistent support for affordable housing; please continue that support by holding a decision on the issue raised in Amendment #3.

Sincerely,

Montgomery Housing Alliance

CC: Aseem Nigam, Director, Department of Housing and Community Affairs