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## Maryland Procurement Law Alert

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### **2018 SESSION OVERVIEW**

The 2018 Session of the Maryland General Assembly adjourned *Sine Die* at midnight on Monday, April 9<sup>th</sup>. This last year of Governor Hogan's first term saw the largest number of bills introduced (3,198 combined from both the House and Senate) in over a decade. With all statewide offices and General Assembly seats up for election in the primary (June 26<sup>th</sup>) and the general election (November 6<sup>th</sup>), much of the legislative activity unfolded in front of a backdrop of six rivals vying for the Democratic nomination for Governor, a number of announced retirements by legislators, and still more legislators filing to run for local and federal office.

One of the most significant actions took place early in the session when the General Assembly overrode the Governor's veto of Maryland Healthy Working Families Act which requires many employers to provide mandatory paid and unpaid sick leave for their employees. This new law became effective February 11<sup>th</sup> and is estimated to affect about 700,000 employees in the State.

For the third year, the General Assembly passed a number of bills relatively early in the Session so they would have the ability to override any veto while still in session. The Governor allowed most of those bills to pass into law without his signature. The one bill vetoed during the Session, concerning accountability in education, was overridden.

### **PROCUREMENT LEGISLATION - PASSED**

## **HB 546/SB 278 – Prevailing Wage – Tax Increment Financing Developments – Application**

This bill requires that prevailing wages be paid for the construction of a public structure or work, as defined by the bill, that is (1) located in a tax increment financing (TIF) district created on or after July 1, 2018 and (2) built using proceeds from local government bonds authorized in statute for use in those districts. However, the bill applies only if a political subdivision, Baltimore City, or the Revenue Authority of Prince George's County authorizes the payment of prevailing wages for the relevant construction project.

Result: Passed. The bill takes effect July 1, 2018, and applies only to contracts executed on or after that date.

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb0546T.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0008/sb0278.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0008/sb0278.pdf)

## **SB 492 – Procurement – Responsible Workforce Development Percentage Price Preference Act**

As originally introduced, this bill established a procurement price preference of at least 4% for a responsive bid for which the responsible bidder or subcontractor certifies that its total payments for employee health care expenses are at least 6.5% of the aggregate wages paid by the bidder or subcontractor.

As passed, the price preference provisions are stricken. Instead, BPW must collect information from construction-related contract awards showing whether the bidder is providing health care coverage to workers on the project. BPW shall report by November 1, 2018.

Result: Passed. The bill takes effect July 1, 2018.

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb0492T.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0002/sb0492.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0002/sb0492.pdf)

## **HB 858/SB 251 – Minority Business Enterprises – Required Regulations – Liquidated Damages Prohibition**

This bill requires that regulations governing the State's Minority Business Enterprise (MBE) program prohibit a State agency from assessing liquidated damages against contractors under indefinite delivery contracts if the unit fails to request work that would have been performed by the MBE. The bill does not impair any existing obligation or contract right.

Result: Passed. The bill takes effect October 1, 2018.

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb0858T.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0008/hb0858.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0008/hb0858.pdf)

### **HB 1243 – Prevailing Wage Rates – Public Work Contracts – Suits by Employees**

This bill authorizes an employee under a public work contract who is paid less than the appropriate prevailing wage to sue to recover the difference in wages paid without first filing a complaint with the Commissioner of Labor and Industry. A determination by the commissioner that a contractor is required to make restitution does not preclude the employee from a private cause of action.

Result: Passed. The bill takes effect October 1, 2018.

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb1243T.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0003/hb1243.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0003/hb1243.pdf)

### **SB 245 – Procurement – Security Requirements - Forms**

This bill requires the Board of Public Works to adopt regulations that establish separate forms for security for construction contracts and contracts for supplies, services, or construction-related services. The latter forms must provide for annual and renewable contracts.

Result: Passed. The bill takes effect October 1, 2018.

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb0245T.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0005/sb0245.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0005/sb0245.pdf)

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## PROCUREMENT LEGISLATION - FAILED

### **HB 62 – Procurement Contracts – Gender Wage Gap Reporting**

This bill requires bidders or offerors who submit a bid or offer on a procurement contract to a State or local government agency, including State agencies otherwise exempt from most provisions of State procurement law, to report on differences in wages between male and female employees of the bidder or offeror.

Result: Failed

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb0062F.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0002/hb0062.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0002/hb0062.pdf)

### **HB 138/SB 1080 – Assembly Areas – State-Funded Construction or Renovation – Assistive Listening System Requirement**

This bill requires certain recipients of State funds to install an assistive listening system in an assembly area during construction or renovation of the assembly area under certain circumstances. It requires the Department of General Services to establish a certain waiver process and a certain penalty process relating to the requirement to install an assistive listening system in an assembly area during construction or renovation of the assembly area. It authorizes the Department to adopt certain regulations.

Result: Failed, Withdrawn

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb0138f.pdf>

Fiscal Note - Bill was withdrawn before a fiscal note was drafted.

### **HB 224 – Procurement – Small Businesses and Minority Businesses – Qualifications and Certification**

This bill requires that regulations governing the Small Business Preference (SBP) program require qualification of a business as a small business if the business has obtained certification under a comparable federal program, without filing any additional paperwork other than evidence of federal certification. It also requires that regulations governing the State's Minority Business

Enterprise (MBE) program allow for the certification of a business as an MBE if the business has obtained certification under the federal Disadvantaged Business Enterprise (DBE) Program and meets the eligibility requirements of the State's MBE program.

Result: Failed, Unfavorable Report

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb0224T.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0004/hb0224.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0004/hb0224.pdf)

### **HB 1108 – State Procurement – Use of Electronic Means to Conduct Procurement**

This bill requires that primary procurement units, beginning July 1, 2020, conduct procurement by electronic means, including the solicitation, bidding, award, execution, and administration of a contract. Electronic procurement must be carried out in accordance with the Maryland Uniform Electronic Transactions Act (MUETA). However, a bidder or offeror may elect to submit a bid or offer and conduct all elements of procurement in hard copy form.

Result: Failed, Withdrawn

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb1108F.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0008/hb1108.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0008/hb1108.pdf)

### **HB 1796 – State Procurement – Service Contracts – Renegotiation**

This legislation authorizes a person that has entered into a service contract with the State to enter into renegotiations with the State if the State enacts legislation that impacts the personnel costs of the contract in an amount that is at least 25% of the value of the contract.

Result: Failed

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/hb/hb1796F.pdf>

Fiscal Note – No fiscal note drafted.

### **SB 778 – Procurement – Payment Security – Construction Contracts**

This bill requires contractors to provide payment security for at least 100% of the total amount payable under a construction contract valued at more than \$100,000, up from at least 50%.

Result: Failed, Unfavorable Report

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb0778f.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0008/sb0778.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0008/sb0778.pdf)

### **SB 1127 – Procurement Contracts – Disclosures to Secretary of State – Beneficial Ownership**

This bill alters the definition of “beneficial ownership” under State procurement law, which alters the types of individuals who must disclose their ownership stake in businesses that have contracts with the State.

Result: Failed

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb1127F.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0007/sb1127.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0007/sb1127.pdf)

### **SB 1139 – Procurement – Minority Business Enterprise Certification – Sale to Nonminority Entity**

This bill requires certain regulations to be adopted by the Board of Public Works, including provisions establishing that, if a certified minority business enterprise is sold to a legal entity that is not a certified minority business enterprise, the certified minority business enterprise retains its certification for 3 years after the date of sale.

Result: Failed, Withdrawn

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb1139f.pdf>

Fiscal Note - Bill was withdrawn before a fiscal note was drafted.

### **SB 1160 – Procurement – Subcontractors – Bond Amount**

This bill prohibits a prime contractor from requiring a subcontractor on certain procurement contracts a bid, performance, or payment bonding that is for an amount that exceeds the total amount of the subcontract.

Result: Failed

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb1160F.pdf>

Fiscal Note - No fiscal note drafted.

### **SB 1224 – Procurement – Prevailing Wage – Modifications**

This bill alters the definition of "public body" to increase, from 25% to 50%, the percentage of money used for construction that must be State money for a certain entity or person to be included with respect to the construction of an elementary or secondary school for purposes of certain provisions of law governing the prevailing wage. It authorizes the Commissioner of Labor and Industry to set regional prevailing wage rates for each classification of worker engaged in work of the same or similar character for certain regions.

Result: Failed

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb1224F.pdf>

Fiscal Note - No fiscal note drafted.

### **SB 1230 – Task Force to Investigate the Challenges of and Opportunity for Minorities in Business – Report and Sunset Extension**

This bill alters the date to December 31, 2018, rather than 2017, by which the Task Force to Investigate the Challenges of and Opportunities for Minority Business is required to report its findings and recommendations to the Governor and the General Assembly; and extending the termination date of the Task Force for an additional year to June 30, 2019.

Result: Failed

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb1230F.pdf>

Fiscal Note - No fiscal note drafted.

### **SB 1236 – Public-Private Partnerships – Transportation Facility Projects – Environmental Impact Statement**

This bill requires that a reporting agency for a transportation facilities project submit a draft environmental impact statement (EIS) that complies with the National Environmental Policy Act (NEPA) to specified agencies and the budget committees at least 45 days before requesting that the Board of Public (BPW) designate the project as a public-private partnership (P3).

Result: Failed

Copy of Bill - <http://mgaleg.maryland.gov/2018RS/bills/sb/sb1236F.pdf>

Fiscal Note - [http://mgaleg.maryland.gov/2018RS/fnotes/bil\\_0006/sb1236.pdf](http://mgaleg.maryland.gov/2018RS/fnotes/bil_0006/sb1236.pdf)

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*Don't let your competitors outsmart you when it comes to Maryland bid protests. **Scott Livingston, Esq.***

*Give us a call at [301.951.0150](tel:301.951.0150) or send an [email](#) to find out how we can help.*

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