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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
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September 13, 2022

The Honorable President and Members  
of the Baltimore City Council  
Attn: Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 22-0249 – Prevailing Wage Revision and Petitions

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0249 for form and legal sufficiency. The bill would change when the Board of Estimates (“BOE”) could revise the prevailing wage rate for certain construction contracts. Currently, the prevailing wage can be revised by the BOE based on recommendations from the City’s Wage Commission. This bill would allow revisions based on the prevailing wage set in the City by the Maryland State Commissioner of Labor and Industry, or by petition. A petition to review the rate can be made “within 21 days of a contracting agency publishes a request for bids or proposals for a project for which the prevailing hourly wage rate would be used for the first time following its initial establishment.”

State law authorizes the City to establish by ordinance the minimum wage rates for certain contracts made by the Mayor and City Council of Baltimore, or on its behalf. City Charter, Art II, § (4). Pursuant to this authority, Subtitle 25 of Article 5 of the City Code provides that the prevailing wages will be set by the BOE. City Code, Art.5, § 25-2.

State law also allows the City to follow the prevailing wage rates set by the State Commissioner of Labor and Industry for certain contracts over \$250,000 by adopting an ordinance or resolution that provides that the City agrees to be covered by the provisions of this state subtitle. Md. Code, State Fin & Proc., § 17-201(i)(1)(iv). If the intent is to adopt the state prevailing wage rates for the types of constructions to which they apply, the bill should be amended to make this clear. A suggested amendment is attached to this report.

If the City decides to follow these state rates, only the state Commissioner could modify the rates, not the City. Md. Code, State Fin & Proc., § 17-211; *see, e.g., Rosecroft Trotting & Pacing Ass’n, Inc. v. Prince George’s County*, 298 Md. 580, 599 (1984) (when “a public local law enacted by a charter county conflicted with a public general law so that, under the rule provided in Art. XI–A, § 3, the public general law prevailed.”).

If the City adopts the state rate scheme but fails to follow it— such as could happen in this bill where the BOE changes the rate after a petition— the State could sue the City for non-compliance. Md. Code, State Fin & Proc., § 17-223 (“As soon as possible after being informed by the Commissioner, the Attorney General shall sue, in the name of the State, in the circuit court for the county where the public body is located to seek any remedies that the court may find appropriate to carry out the policies of this subtitle.”).

Assuming the intent is to adopt the state prevailing wage rates when they apply, the bill must be amended to remove the petition process so that the City can comply with the state prevailing wage law that does not provide for changes in that rate. Removing the petition process does not remove the public’s ability to comment on the prevailing wage rates as the public can be heard at the BOE hearing when the rates are set. An amendment to this effect is included with this bill.

Subject to the amendments, the Law Department can approve it for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Nina Themelis, Mayor’s Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Jeff Hochstetler, Chief Solicitor  
Ashlea Brown, Chief Solicitor  
D’ereka Bolden, Assistant Solicitor  
Michelle Toth, Assistant Solicitor

**AMENDMENTS TO COUNCIL BILL 22-0249**  
(1<sup>st</sup> Reader Copy)

Proposed by: Law Dep't

**Amendment No. 2** {adopt state prevailing wage law when it applies}

On page 2, in line 8, delete “; OR” and substitute “, WHICH THE CITY OF BALTIMORE HEREBY INTENDS TO FOLLOW WHEN IT IS APPLICABLE.”

**Amendment No. 1** {Remove the petition process to conform to state prevailing wage law}

On page 2, delete line 9 and lines 19-27.