


F R O M	NAME & TITLE	Khalil A. Zaied, Director	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Transportation 417 East Fayette Street, Room 527		
	SUBJECT	City Council Bill 11-0287R		

TO
The Honorable President and Members of the City Council
c/o Karen Randle
Room 400 City Hall

June 27, 2011

I am herein reporting on City Council Bill 11-0287R.

The purpose of this bill is to investigate the efficacy of adopting a policy that would require resident preference hiring by certain entities contracting to supply goods and/or services to Baltimore City government; examine the impact to date of similar programs nationwide; forecast the employment benefits for City residents; and analyze the legal restrictions limiting local hiring programs and the likely impact on the economic development of Baltimore City if a local hiring program put in place was crafted to successfully withstand a legal challenge.

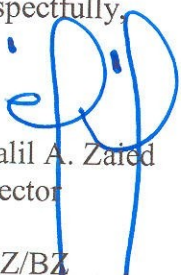
The Department of Transportation (DOT) supports City Council Bill 11-0287R and the Council's efforts to investigate the efficacy and legality of potential resident preference hiring mandates in City contracts. Local hiring mandates in the City would not only increase job opportunities for Baltimore residents and taxpayers, but would also relieve traffic congestion and roadway wear and tear caused from City contractors' employees commuting from long distances.

DOT is particularly interested in ensuring that City residents benefit from the significant job creation projected from the coming Red Line. DOT has worked with the State of Maryland to develop a policy to provide Red Line contractors and subcontractors financial incentives for hiring individuals referred from the Baltimore City workforce development program. These contractors will be reimbursed \$1.60 per hour of documented, approved training provided to qualifying individuals. If the contractor subsequently hires one of these trainees into one of 10 qualifying construction jobs, that contractor will be reimbursed an additional \$2.40 per hour of the individual's employment. DOT staff members have also worked with students in the University of Baltimore, School of Law Clinical Law Program to investigate potential options to promote local hiring opportunities in transportation. One such result of that collaboration is the attached document inventorying local hiring best practices nationwide.

DOT would like to call the Council's attention to the fact that a significantly large percentage of the Department's transportation contracts rely upon federal funding, which always requires compliance with additional mandates. Before the City adopts any local hiring policies, consideration should be paid to the stipulations accompanying DOT's federal funding agreements to ensure that those new mandates do not jeopardize access to federal transportation funds.

DOT has particular interest in this issue and looks forward to working with the City Council to investigate possible methods for ensuring more City employment opportunities benefit our residents.

Respectfully,



Khalil A. Zaied
Director

KAZ/BZ



Cc: Ms. Angela C. Gibson
Mr. Jamie Kendrick
Mr. Frank Murphy

Attachment

Local Hiring Best Practices

Issue

How can governments ensure that their residents are employed by publicly funded projects?

Rule/Reasoning

There are three policies that impact Baltimore's ability to create local hiring mandates. They are the Commerce Clause and Privileges and Immunities Clause of the US Constitution and the Baltimore City Charter.

The overriding purpose of the Commerce Clause is to ensure producers and consumers have access to the American market unrestricted by state interference. For Baltimore this clause would not be problematic as Baltimore would be market participant.

In 1984, in *United Building & Construction Trades Council v. Mayor of Camden*, the Supreme Court held that, because preference acts discriminated against nonresidents, and thereby infringed their "fundamental" privilege to secure employment from private contractors, the acts fell within the "purview" of the privileges and immunities clause of article IV of the Constitution. Because the record had failed to show sufficient evidence to justify Camden's discrimination against nonresidents, the Court remanded the case, and did not address what form a preference act must take to survive a constitutional challenge.

At the local level, the Baltimore City Charter grants the Board of Estimates the power to award a contract "as an entirety to the lowest responsive and responsible bidder." (Baltimore City Charter ART. VI, § 11(h)(ii)). An ordinance that alters the bidding requirements set in the City Charter usurps the Charter authority of the BOE to award contracts and supervise purchasing. It also violates the Charter requirement that contracts over a certain dollar amount be awarded to the lowest responsive and responsible bidder.

Analysis

The model hiring and apprenticeship policies that states and cities have developed in recent years have grown out of several key insights. First, proactive steps are needed to ensure access by residents of low-income communities and by workers of color and women to jobs on publicly funded construction projects. Second, that "high road" construction contractors (most of them unionized) that participate in federal- or state-certified apprenticeship programs are the best and most effective vehicle for training and placement into sustained construction careers. And third, that high quality pre-apprenticeship training that includes work readiness, GED skills and other basic preparation is important for ensuring success in apprenticeship.

The specific models used by cities and states have taken several different forms. These include:

- Minimum percentage requirements for work hours that will be performed on the job by low-income workers and/or workers from underrepresented populations, and by state or federally-certified apprentices. The most effective models combine hiring and apprenticeship requirements with funding for pre-apprenticeship courses to recruit these workers and prepare them to succeed as apprentices.
- Targeted hiring and apprenticeship utilization as “plus factors” used in evaluating proposals and determining which one offers the best value for the community. Plus factors are not mandates. They are qualitative add-ons that factor into the overall quality of the proposal.
- Project labor agreements (PLA’s), which provide a project-wide framework for implementing and coordinating targeted hiring and apprenticeship requirements across multiple contractors and unions, while also ensuring quality and project stability.
- The most effective models combine hiring and apprenticeship requirements with linked pre-apprenticeship training. Such pre-apprenticeship programs, which are often funded as part of the construction project, serve to recruit workers from underrepresented populations, especially workers of color and women, provide them the preparation and support needed to succeed in construction careers, and then feed them directly into apprenticeships, in addition to GED and work readiness preparation, assistance with meeting childcare and transportation needs are key elements of effective pre-apprenticeship programs.

Models from other jurisdictions

Jurisdiction	Name of Rule/Law/Program	Highlights
Baltimore, Maryland	Red Line Local Hiring Incentives	<ul style="list-style-type: none"> ➤ The reimbursement rate for individuals referred from a Baltimore City workforce program is \$1.60 per hour for each hour of documented approved training. ➤ If a trainee is hired into any of the following construction trades on the project, an additional \$0.80 per hour will be reimbursed to the contractor. <ul style="list-style-type: none"> ○ Backhoe Operator ○ Concrete finisher (highway or bridge form builder) ○ Curb and gutter builder ○ Curb and gutter machine operator ○ Front-end loader ○ Ironworker structural ○ Mason structural ○ Office engineer

		<ul style="list-style-type: none"> ○ Pipe layer
Cleveland, Ohio	Fannie M. Lewis Cleveland Resident Employment Law (Lewis Law)	<ul style="list-style-type: none"> ➤ Applies to all construction contracts for the City of Cleveland where the City will expend \$100,000.00. ➤ 20% of all work hours must be performed by Cleveland residents. Also, there is a 4% Low Income Persons' objective calculated from the 20% requirement. Low income status is determined by guidelines established by the United States Department of Housing and Urban Development. ➤ Residents employed by the Contractor or Sub at the time that work on a construction contract begins, but who are otherwise employed for the Contractor or Subcontractor on projects that are not pursuant to a City of Cleveland Construction Contract, may be counted.
Los Angeles	30/20/10 Countdown to Success	<ul style="list-style-type: none"> ➤ On City of LA DPW projects covered by a PLA, 30% of work must be done by local residents, 20% by apprentices and 10% by disadvantaged or "at-risk" residents. ➤ Local hire policies also create outreach structures to move community members into apprenticeship programs. Partnerships between community organizations, the workforce development program and other local job training resources provide job readiness and job retention support services.
San Francisco		<ul style="list-style-type: none"> ➤ Beginning February 2011, San Francisco public works contracts will require no less than 20 percent of workers within each construction trade to be city residents and half of all apprentices to be local. ➤ The 20 percent figure will increase by 5% annually until reaching 50% over 7 years.
Portland, Oregon	Workforce Training and Hiring Program	<ul style="list-style-type: none"> ➤ Ensures that a minimum of 20% of labor hours in each apprenticeable trade performed by the Prime and subs of \$100,000 or more are worked by state registered apprentices ➤ A primary goal is to make every possible effort to employ a workforce that reflects the diversity of the city of Portland. ➤ Resulted from a diversity study which uncovered a disparity in

		the hiring of local women and minorities
Grand Rapids, Michigan	Equal Business Opportunity – Construction Policy (bid discount is a business incentive practice allowing an original bid to be reduced by a certain percentage for having engaged in activities that embrace the City’s mission statement and commission sustainability plan. The discounted bid amount is used in the selection process.)	<ul style="list-style-type: none"> ➤ Provides bid discounts to contractors who employ Grand Rapids residents. ➤ A contractor whose labor force is comprised of 24% or higher Grand Rapids residents shall receive a 1% bid discount. ➤ A contractor whose labor force is comprised of 24% or higher Grand Rapids residents and at least 50% of those residents reside in the City’s General Target Area shall receive an additional 1% bid discount. ➤ Also provides bid discounts when micro-LBE subs are voluntarily obtained. The higher % of micro-LBE sub participation the higher the bid discount. 1% is the lowest and 5% is the highest. ➤ City will apply a 5% bid discount for partnering with an approved micro-LBE. ➤ Through the mentor protégé programs, the city will apply a bid discount of 2% to approved mentor protégé programs that facilitate the business development of small and emerging firms. ➤ Primes that show evidence of equal opportunity in subcontracting on private sector projects and utilize micro-LBE subs on non-City projects for work completed during the previous 12 months may be eligible for a bid discount up to 2%.
St. Louis, MO	I-64 Work Force Utilization Plan Partnering Agreement	<ul style="list-style-type: none"> ➤ An agreement between MoDOT and a number of agencies, organizations, private and public stakeholders. ➤ It outlined goals for local hiring but didn’t mandate it ➤ Allocated up to \$2.5 million for workforce development and pre-apprentice training and employment programs and contractor incentives ➤ Award up to 5% incentive to contractors who exceeded the 20% OJT trainees.
Hartford, CT	Jobs Funnel (honorable mention)	<ul style="list-style-type: none"> ➤ Since 1999 ➤ Coordinated system of outreach and recruitment, assessment,

		<p>case management, pre-employment prep, job training, placement and retention services for individuals seeking employment.</p> <ul style="list-style-type: none"> ➤ Greater Harford residents over 18 have the opportunity to learn skills to attain careers in the construction industry. ➤ Oversight provided by steering community and administered by Capital Workforce partners ➤ Direct residents into 15 construction trades from bricklayers to sprinkler fitters
Washington, D.C.	First Source Agreement Program	<ul style="list-style-type: none"> ➤ Assures city residents priority for new jobs created by municipal financing and development programs. It mandates that all projects funded in whole or in part with District of Columbia funds, or other funds which the District administers, shall provide for increased employment opportunities for District residents. ➤ Each employer in the program must sign an agreement ensuring that: <ul style="list-style-type: none"> ○ All job openings created are listed with the Department of Employment Services. ○ 51 percent of new hires are District residents.

Conclusion

Taking into account all of the Supreme Court's concerns, the requirement of a Model Hiring Preference Act would appear to be as follows:

- No durational requirements for residency. These violate the equal protection clause of the fourteenth amendment.
- No quota of residents. Quotas may bear no relation to the degree to which nonresidents constitute the peculiar source of the evil.
- No exemptions from discrimination for the residents of states which offer similar exemptions in return. These reciprocal agreements undermine the basic policy of the privileges and immunities clause.

- No retaliatory provisions enforced only against states which enforce their own acts against the preference act's state. Again, these retaliatory measures undermine the basic policy of the privileges and immunities clause.
- Preference given only to the "unemployed" whose condition is the "evil against which the statute is aimed." No preference given to those who become "available" merely to switch jobs.
- The state must provide at least some funding to avoid "regulating" in conflict with the commerce clause. Also for this reason, to avoid commerce clause challenges, the state should not impose restrictions on municipalities or other political subdivisions of the state on projects for which the state has provided no funds of its own.
- The preference act's reach may extend only to the state's direct dealings with primary contractors. Again, this limit is necessary to avoid conflict with the commerce clause.
- The act must set up procedural steps through which the state can produce the evidence necessary to justify discrimination in the first place and to monitor conditions thereafter.