SB 694

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 694 (Senator Kittleman, *et al.*)
Finance

Procurement - Living Wage - Repeal

This bill repeals the State's living wage for employees of State service contractors.

Fiscal Summary

State Effect: General fund expenditures decline by approximately $1.1 million in FY 2010, of which $760,000 is for the Comptroller's Office and $298,700 is for the Department of General Services (DGS). This assumes that current living wage contracts are cancelled and rebid in FY 2010; out-year expenditure reductions reflect the two years left on existing DGS service contracts and continued funding for the higher cost of temporary labor in the Comptroller's Office. Additional savings may be realized in the form of foregone expenditures for living wage contracts, but those savings cannot be reliably estimated and are not reflected below.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	$0	$0	$0	$0	$0
GF Expenditure	(1,058,700)	(1,058,700)	(760,000)	(760,000)	(760,000)
Net Effect	$1,058,700	$1,058,700	$760,000	$760,000	$760,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal. Small businesses that have service contracts with the State generally pass along to the State any additional cost stemming from paying the living wage.

Analysis

Current Law: Chapter 284 of 2007 made Maryland the first state to require State service contractors to pay their employees a "living wage." For fiscal 2008, the living wage was set at $11.30 in Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore counties and Baltimore City (Tier 1). It was set at $8.50 for all other areas of the State (Tier 2). The living wage rates are adjusted annually for inflation by the Commissioner of Labor and Industry.

The higher living wage rate (Tier 1) applies to contracts in which at least 50% of the contract services will be performed in locations subject to the higher rate, as determined by the State agency responsible for the contract. The lower living wage rate (Tier 2) applies to all other contracts. State contractors or subcontractors with a State contract for services valued at greater than $100,000 must pay the living wage to employees who spend at least half their time during any work week working on the State contract. However, the living wage requirement does not apply to employees who are younger than age 18 or who work full-time for less than 13 consecutive weeks for the duration of the contract. Employers who provide health insurance to workers may reduce wages by all or part of the hourly cost of the employer's share of the premium for each employee. The Commissioner of Labor and Industry may allow an employer who contributes to its employees' tax-deferred retirement savings accounts to reduce the living wage rate by the hourly cost of the employer's contribution, up to 50 cents per hour.

State contractors are not required to pay a living wage if doing so would conflict with a federal requirement or if they are:

- providing emergency services to prevent or respond to an imminent threat to public health or safety;
- a public service company;
- a nonprofit organization;
- another State agency;
- a county government (including Baltimore City); or
- a firm with 10 or fewer employees that has a State contract valued at less than $500,000.

The commissioner may adopt regulations, investigate wage complaints, issue orders for hearings, issue determinations, serve each interested party, and determine the amount of restitution for violations. Every three years, the commissioner must assess the appropriateness of the inflation measure used to recalculate the living wage rate on an annual basis (the Consumer Price Index for all Urban Consumers in the Washington-Baltimore metropolitan area). The commissioner must also assess whether Maryland counties are subject to the appropriate living wage rates, given labor costs in their jurisdictions. An employee may sue for damages when an employer fails to pay the living wage, regardless of whether the State has required the employer to pay restitution.

Employers who violate the living wage requirements must pay the affected employees the amount determined by the commissioner and pay the State $20 per day per employee in liquidated damages. Employers must post a notice of the living wage rate, the employees' rights, and contact information for the commissioner in English, Spanish, and any other language commonly used at the work site; the commissioner is responsible for providing these notices to employers.

Background: The commissioner approved inflation-based increases to both the Tier 1 and Tier 2 living wage rates for fiscal 2009. The Tier 1 living wage is currently $11.72, and the Tier 2 wage is $8.81. Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

According to the Department of Labor, Licensing, and Regulation (DLLR), 356 service contracts are currently subject to the State's living wage, or almost double the 190 living wage contracts at the end of September 2008. The total value of the contracts is almost $1.4 billion.

Although exempt from the living wage statute, the Maryland Stadium Authority has elected to follow it with respect to cleaning crews for Oriole Park at Camden Yards and M&T Bank Stadium.

The Department of Legislative Services (DLS) completed a study of the early effects of the living wage on State procurement costs in December 2008 as required by Chapter 284 of 2007. For reasons delineated in the report, DLS was not able to determine definitively by how much State procurement costs have increased as a result of the living wage. Although DLS analysts extracted data from about 80 service contracts subject to the living wage, and from prior contracts for similar services, the contracts did not contain sufficient data to allow a calculation of the difference in labor costs attributable to the living wage. Moreover, the timing of the mandated report did not provide enough time to analyze contractor invoices and State payments, which might have provided adequate wage and hour data to allow for a more rigorous analysis. Instead, the report conducted eight case studies of service contracts that were subject to the living wage.

In fiscal 2007, the most recent aggregate data available, Maryland awarded $5.67 billion in procurement contracts. Of that, $854.3 million, or 15%, was for service contracts. The DLS study found that 50% of the dollar value of service contracts awarded during the law's first year was exempt from the living wage mandate, as permitted by Chapter 284. The most frequent exemptions were for nonprofit entities, including those providing services under contract with the Department of Health and Mental Hygiene and the Developmental Disabilities Administration, and for small firms with 10 or fewer employees. As a result, DLS estimates that about $427.2 million worth of service contracts would be subject to the living wage. Overwhelmingly, these contracts are for services requiring unskilled labor such as janitorial, maintenance, security, and landscaping services.

Based on the limited number of case studies, DLS estimates that the living wage increases labor costs for affected service contracts by between 13% and 26%. With labor costs representing between 50% and 75% of total contract costs for affected contracts, DLS projects an increase in total contract costs of between 7% and 19% for affected contracts. These figures are consistent with research on the effects of living wages on costs for labor-intensive service contracts in other jurisdictions and with DGS's experience rebidding service contracts subject to living wage. Based on the dollar value of affected contracts given above, contract costs may increase by between $29.9 million and $81.2 million. Put in context, those potential increases represent between 0.5% and 1.5% of total State procurement costs.

However, the State's procurement experience with living wages to date has not generated cost increases of that magnitude. DLS is aware of only two agency requests for additional funding due to the living wage. The fiscal 2009 State budget includes $760,000 in additional contract costs for the Comptroller's Office to hire temporary labor to process tax returns at the higher living wage rates. The Comptroller's temporary labor contract was not included in the DLS study because it was procured after the study identified its case studies and began collecting data for them. In addition, DGS has requested a fiscal 2009 deficiency appropriation of $597,477 due to increased costs from the living wage for janitorial and other service contracts. The Governor's proposed fiscal 2010 budget contains no increase in contractual costs due to the living wage. However, the $760,000 appropriations to the Comptroller's Office remains in the fiscal 2010 base. The absence of additional requests seems to indicate either that State agencies, with the exception of DGS, are absorbing the increased costs or that competition for State procurement contracts is helping to contain upward pressure on contract costs.

State Fiscal Effect: A repeal of the living wage may reduce the cost of temporary labor for the Comptroller's Office and janitorial and other services procured by DGS when current living wage contracts are rebid in about three years. Alternatively, a living wage repeal may prompt those agencies to cancel the existing contracts and rebid them to realize more immediate savings. DLS assumes that the agencies will take the latter approach and rebid the contracts in fiscal 2010. Therefore, general fund expenditures by the Comptroller's Office decline by approximately $760,000, and general fund expenditures by DGS decline by $597,477. It is assumed that savings for DGS are spread out over the remaining two years of the current contract terms.

Based on the DLS study results, the State may realize additional savings from the repeal of the living wage in the form of future foregone expenditures, especially as the number of contract expirations increase, requiring more contractors to comply with the living wage mandate. Those savings may be between 7% and 19% of the value of affected contracts, or about 0.5% to 1.5% of total procurement spending. However, Maryland's experience to date suggests the actual savings may be much smaller. Based on experience to date, approximately 300 additional service contracts may become subject to the living wage when they expire over the next one to two years.

DLLR's prevailing wage unit enforces compliance with the living wage. The unit carries out its enforcement duties by reassigning existing wage and hour investigators from prevailing wage enforcement. No additional staff has been provided to enforce the living wage. Therefore, no administrative savings result from the repeal of the living wage.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works; Department of Budget and Management; Department of General Services; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Public School Construction Program; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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