

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 296  
Economic Matters

(Chair, Economic Matters Committee)

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Division of Labor and Industry and Associated Boards and Councils - Sunset  
Extension and Program Evaluation

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This bill repeals the termination date for the Division of Labor and Industry (DLI) and requires an evaluation of the division and its associated boards and councils by July 1, 2023. The bill repeals the Advisory Council on Prevailing Wage Rates and delegates its responsibilities to the Prevailing Wage Unit. It retains the termination dates for all other associated boards and the Apprenticeship and Training Council and extends them by 10 years to July 1, 2024. The bill standardizes the authority of the Commissioner of Labor and Industry to investigate existing labor laws and otherwise implements the recommendations of the 2012 sunset evaluation of DLI and its associated boards and councils. The bill also includes three related reporting requirements.

The bill takes effect July 1, 2013.

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Fiscal Summary

**State Effect:** General and special fund revenues and expenditures for DLI and its associated boards and councils continue beyond FY 2014. Minimal decrease in general fund expenditures due to the repeal of the Advisory Council on Prevailing Wage Rates. Continuation of mandated appropriations for the Employment Standards Service Unit and the Prevailing Wage Unit. Minimal increase in general fund revenues due to penalties for noncompliance with notification requirements of the Workplace Fraud law.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

### **Bill Summary/Current Law:**

#### ***Penal Bond Requirement for Employment Agencies***

*Current Law:* Ten years ago, the General Assembly largely ended DLI regulation of traditional employment agencies but maintained some consumer protections and required the remaining employment agencies to submit a penal bond to the commissioner. There are 43 registered bonds in Maryland, and according to DLI, there have been no complaints against employment agencies since DLI's regulatory role was mostly repealed 10 years ago.

*The Bill:* The bill eliminates the penal bond requirement (\$7,000) for employment agencies.

#### ***Advisory Council on Prevailing Wage Rates***

*Current Law:* The six-member Advisory Council on Prevailing Wage Rates was established in 1969 and, pursuant to the Maryland Code, is supposed to advise and submit recommendations to the Commissioner of Labor and Industry on the commissioner's functions related to prevailing wage rate calculations. The council has been largely dormant for at least 20 years; efforts to restart the council have resulted in a failure to produce a quorum at two of its three most recent meetings.

*The Bill:* The bill repeals the Advisory Council on Prevailing Wage Rates and transfers its duties to the Prevailing Wage Unit, which has been performing the functions for which the advisory council was created.

#### ***Commissioner's Authority to Investigate Labor Laws***

*Current Law:* Statute requires the Commissioner of Labor and Industry to enforce several labor laws in the Labor and Employment Article. Other labor laws contained in the article are silent as to whether the commissioner has any authority to enforce compliance with the laws. Despite the fact that the commissioner may not have authority to enforce compliance with several of these laws, most of the laws specifically authorize employees to bring an action if they believe their employer has violated any of these laws.

*The Bill:* In response to complaints received, the commissioner may investigate all labor laws enacted in Title 3 of the Labor and Employment Article.

### ***Workplace Fraud Law***

*Current Law:* The Workplace Fraud law requires an employer to provide written notice to any exempt person or independent contractor regarding their status and the impact of their status. Regulations require the notice to be posted in the employer's office and at each work site. If the notice is not posted at each work site where the employer has workers who are exempt persons or independent contractors, the employer is in violation of the Act. However, statute only allows the unit to assess penalties for worker misclassification, but not for failing to provide proper notice to contractors.

*The Bill:* The commissioner may assess a penalty of no more than \$100 a day for noncompliance with the notification requirements to workers who are exempt persons or independent contractors under the Workplace Fraud law.

### ***Board of Boiler Rules***

*Current Law:* Maryland's system of boiler regulation is split between two divisions of the Department of Labor, Licensing, and Regulation: (1) the Division of Occupational and Professional Licensing, which houses the State Board of Stationary Engineers; and (2) DLI, which houses the Boiler Inspection Unit (BIU) and the Board of Boiler Rules. The State Board of Stationary Engineers has regulatory jurisdiction over all of the State's stationary engineers, who operate and maintain steam and power generators, heating plants, boilers, pressure valves, and other systems. BIU oversees the inspection of boilers and pressure vessels and investigates any boiler and pressure vessel accidents. The Board of Boiler Rules recommends regulations for boiler and pressure vessels.

The statutory authority for the State Board of Stationary Engineers requires it to meet at least twice annually with the Board of Boiler Rules to coordinate their activities, but no corresponding requirement exists in statute for the Board of Boiler Rules.

*The Bill:* The Board of Boiler Rules must meet and consult at least twice annually with the State Board of Stationary Engineers.

### ***Termination Date of the Division***

*Current Law:* DLI and its associated boards and councils are subject to periodic evaluation and are scheduled to terminate on July 1, 2014. Most of DLI's activities involve core functions of State government: protecting public health and safety and enforcing employment standards and compensation requirements. For instance, the Maryland Occupational Safety and Health program and the Safety Inspection program both perform vital public safety functions, and the need for the services they provide shows no signs of diminishing. In the case of the Prevailing Wage Unit and the

Employment Standards Service Unit, the General Assembly has determined that the functions they perform are sufficiently important as to warrant a mandated minimum appropriation to maintain their activity.

At the same time, the Maryland Apprenticeship and Training Council, Maryland Occupational Safety and Health Advisory Board, Amusement Ride Safety Advisory Board, and Board of Boiler Rules resemble most of the other entities currently subject to termination under the Maryland Program Evaluation Act. As regulatory or advisory bodies, they each have uncompensated members who are appointed to the entities for limited periods of time.

*The Bill:* The bill repeals the termination date for DLI and its Employment of Minors and Wages and Hours units, but it maintains regular legislative review of its operation under the Maryland Program Evaluation Act, with the next evaluation date set for July 1, 2023. The termination dates for the Maryland Apprenticeship and Training Council, Maryland Occupational Safety and Health Advisory Board, Amusement Ride Safety Advisory Board, and Board of Boiler Rules are extended 10 years to July 1, 2024; they also remain subject to evaluation under the Act, with the next evaluation also scheduled for July 1, 2023.

## **Background:**

### ***Maryland Program Evaluation Act***

DLI and its associated boards and councils are among approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most agencies evaluated are also subject to termination, including DLI and its associated boards and councils, which are scheduled to terminate July 1, 2014.

The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation usually is undertaken the following year.

DLS conducted a full evaluation of the division and its associated boards and councils in 2012. This bill implements the statutory recommendations developed by DLS during the evaluation.

A copy of the DLS sunset report on DLI and its associated boards and councils can be found at <http://dls.state.md.us/Content.aspx?page=104>.

## *The Division of Labor and Industry*

The division is charged with protecting and promoting the health, safety, and employment rights of Maryland residents. Among its responsibilities, the division administers State laws addressing employment issues such as wage payment; employment of minors; occupational safety and health; worker classification; labor contractors; and safety inspection of amusement rides, boilers and pressure vessels, elevators and escalators, and railroads.

**State Fiscal Effect:** The Governor's proposed fiscal 2014 budget includes more than \$18.6 million for the division's operations. General fund revenues increase minimally from the \$100 penalty per day for employers who do not comply with the Workplace Fraud law's notification requirements to workers who are exempt persons or independent contractors. The increase is assumed to be less than \$100,000 and likely decreases over time due to increased compliance.

**Small Business Effect:** Small business employment agencies may benefit by no longer being required to submit a \$7,000 penal bond to the commissioner.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 305 (Chair, Finance Committee)(By Request - Department of Legislative Services) - Finance.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 5, 2013  
ncs/mcr

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