**HB 788**

# Department of Legislative Services

Maryland General Assembly
2013 Session

## FISCAL AND POLICY NOTE

House Bill 788 (Delegate Hucker, *et al.*)
Economic Matters

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**Living Wage Law - Application and Enforcement**

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This bill repeals the exemptions in the State's living wage law for State service contracts with nonprofit organizations and for individuals who work fewer than 13 consecutive weeks on any State service contract. Any employer with a State service contract subject to the living wage who is late in submitting payroll records or other required reports to the Commissioner of Labor and Industry is liable to the State for liquidated damages of $25 for each calendar day that the records or reports are late.

## Fiscal Summary

**State Effect:** General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by $44,900 in FY 2014 to enforce compliance with the living wage requirement. Out-year expenditures reflect annualization, inflation, and employee turnover. State expenditures on affected service contracts are estimated to increase by between 7% and 19% for contracts that are subject to the living wage requirement under the bill. These costs cannot be determined at this time and are not shown in the box below. General fund revenues increase by $20,300 from liquidated damages collected under the bill; those revenues decline over time due to increased compliance with payroll reporting requirements.

| (in dollars) | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|---|---|---|---|---|---|
| GF Revenue | $20,300 | $19,300 | $11,600 | $3,900 | $1,900 |
| GF Expenditure | $44,900 | $56,100 | $58,700 | $61,400 | $64,200 |
| Net Effect | ($24,700) | ($36,800) | ($47,100) | ($57,500) | ($62,300) |

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

**Local Effect:** None.

**Small Business Effect:** Minimal. It is assumed that nonprofit organizations and other employers who have to pay a living wage under the bill pass all or most of the additional cost on to the State. Small nonprofits and other businesses newly subject to the living wage requirement may experience administrative burdens complying with the biweekly submission of payroll records.

## Analysis

**Current Law:** Chapter 284 of 2007 (HB 430) 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 within DLLR. The commissioner approved inflation-based increases to both the Tier 1 and Tier 2 living wage rates for fiscal 2013. Effective September 28, 2012, the Tier 1 living wage is $12.91, and the Tier 2 wage is $9.70. Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

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 $100,000 or more 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 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 prevailing/living wage unit within DLLR's Division of Labor and Industry is responsible for monitoring compliance with the living wage requirement for all State contracts. Under current practice, State agencies notify DLLR of any new service contract, whether it is exempt or not. DLLR advises that, of the 855 living wage contracts that it currently oversees, 44% (373) have claimed an exemption under existing law. Of those, 200 were nonprofit organizations and 90 have employees who work for fewer than 13 consecutive weeks; the remaining contracts claim exemptions under other provisions of existing law. Therefore, there are 482 contracts currently subject to active monitoring by DLLR; of those, at least some are for professional services (*e.g.*, legal or accounting services) for which employers likely pay more than the living wage and, therefore, require minimal oversight. In fiscal 2012, DLLR recovered $13,054 in restitution of unpaid wages on behalf of 13 workers.

DLLR's primary enforcement tool for living wage contracts is a biweekly review of payroll records submitted by contractors. By reviewing payroll records, DLLR can verify that employers are paying employees the proper wage. DLLR is transitioning to an automated payroll submission process, which facilitates the review process by requiring the submission of records in a standard format. However, investigators must still review records to ensure compliance. DLLR uses unpaid volunteers from the U.S. Department of Labor's Senior Community Service Employment Program to assist in sorting and screening payroll records.

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. The study found that the types of service contracts most likely affected by the living wage requirement are those that provide unskilled or semi-skilled labor, such as landscaping, janitorial, clerical, and security guard services. Contracts for other types of services typically pay their employees more than the living wage. Based on the limited number of case studies, DLS estimated 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 projected an increase in total contract costs of between 7% and 19% for affected contracts. These figures were consistent with research on the effects of living wages on costs for labor-intensive service contracts in other jurisdictions and with the experience of the Department of General Services and Maryland Port Administration in rebidding service contracts subject to the living wage.

A substantial portion of State contracts with nonprofit organizations occurs through the Employment Works Program, a preferred provider under State procurement law. As specified in statute, the Employment Works Program is managed by Maryland Works, Inc., which coordinates the award of State contracts for goods and services to nonprofit organizations and community service providers. For instance, the Maryland Port Administration advises that its contract for janitorial services is performed by a community service provider through Employment Works. Before holding a competitive procurement, State agencies must offer contracts for goods and services to Employment Works only if Blind Industries and Services of Maryland or Maryland Correctional Enterprises cannot provide the goods or services. Only if those three entities or a business owned by an individual with a disability cannot provide the goods or services may a State agency hold a competitive procurement.

**State Revenues:** DLLR advises that approximately 28% of contractors do not submit their payroll records in a timely fashion. With only two investigators assigned to living wage enforcement duties, the agency does not have the resources to conduct extensive on-site enforcement. Based on current compliance levels, the additional authority to collect liquidated damages yields an estimated $20,265 in general fund revenue, which accounts for the bill’s October 1, 2013 effective date. It is assumed that compliance improves over time, resulting in a commensurate decline in the collection of liquidated damages.

**State Expenditures:**

*Administrative Costs*

Based on the current number of living wage contracts subject to monitoring, repealing the two exemptions adds approximately 290 contracts to DLLR’s enforcement case load.

This represents a 40% increase in the number of contracts subject to monitoring, a potential increase of 14,500 payroll records that must be reviewed each year on a biweekly basis. With just two full-time wage and hour investigators assigned to living wage enforcement, this represents a significant increase in work load. Although DLLR advises that, with the help of the automated payroll system, it can absorb the additional work load by adding another unpaid senior citizen volunteer, DLS believes that adequate enforcement requires the addition of one wage and hour investigator.

Therefore, general fund expenditures increase by $44,936 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost of hiring one wage and hour investigator to monitor the additional number of service contracts subject to living wage monitoring. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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|---|---|
| Position | 1 |
| Salary and Fringe Benefits | $38,090 |
| Operating Expenses | 6,846 |
| **Total FY 2014 State Expenditures** | **$44,936** |

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

*Contract Costs*

Based on the research cited above, DLS estimates that State expenditures increase by between 7% and 19% on the additional service contracts subject to the living wage. The value of those contracts cannot be reliably estimated, but given the number of contracts affected, the overall effect may be substantial.

## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 756 (Senator Ramirez) - Finance.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Public School Construction Program; University System of Maryland; Department of Budget and Management; Department of General Services; U.S. Department of Labor; Department of Legislative Services

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