

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1031

(Senator Benson, *et al.*)

Finance

Payroll Recovery Act

This bill requires the Central Payroll Bureau (CPB) to establish regular pay periods and pay each employee as specified. If an appointing authority does not report payroll information as specified, the employee or the employee’s exclusive representative may initiate a grievance under the State’s grievance procedure within 20 days after the failure to pay occurred. If the failure to pay is not known to, or discovered by, the employee within 20 days after the failure to pay occurs, a grievance may be initiated no later than six months after the date on which the failure to pay occurred. An employee is entitled to wages and damages if a grievance is initiated, unless the wage is withheld due to a bona fide dispute. The bill specifies the damages that may be awarded if a grievance is filed. A decision maker at step two or three of the grievance procedure must order the payment of damages in accordance with the bill on a finding that wages were withheld in violation of the bill. An employee who is eligible to file a grievance under the bill for an action that occurred from March 16, 2016, through June 30, 2017, may do so without regard to any statutory time limitation if the grievance is initiated by July 31, 2017.

The bill takes effect July 1, 2017, and terminates June 30, 2019.

Fiscal Summary

State Effect: Although not shown below, general fund expenditures increase, potentially significantly, in FY 2018 and 2019 due to the Office of Administrative Hearings (OAH) awarding damages to employees; other funds may be similarly affected. General fund expenditures increase by \$159,800 in FY 2018 to expand OAH’s capacity to hear grievance-related cases; these costs likely continue beyond FY 2019, as discussed below. State revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	159,800	140,900	118,900	123,800	129,000
Net Effect	(\$159,800)	(\$140,900)	(\$118,900)	(\$123,800)	(\$129,000)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: CPB must establish regular pay periods and pay each employee at least once every two weeks or twice each month, except an administrative, executive, or professional employee may be paid less frequently. Each appointing authority must accurately and timely calculate and report to CPB the payroll information for each employee. Each appointing authority must provide each employee – at the time of hiring – notice of the employee’s rate of pay, regular pay periods, and the employee’s leave benefits; for each pay period, CPB must provide a statement of the employee’s gross earnings and any deductions. “Wage” means all compensation that is due to an employee; it includes a bonus, commission, fringe benefit, overtime wages, premium pay, or any other remuneration promised for service.

Current Law: CPB must pay wages to each officer and employee of the State who is paid from funds appropriated by the General Assembly, and CPB must pay each officer and employee of the University System of Maryland, Morgan State University, St. Mary’s College of Maryland, and Baltimore City Community College, regardless of whether funds have been appropriated by the General Assembly. CPB must maintain all supporting payroll records for the payment of wages.

Maryland Wage Payment and Collection Law

In general, the provisions of the Maryland Wage Payment and Collection Law do not apply to units of government. The Wage Payment and Collection Law specifies that employers must inform employees of their rate of pay, the regular pay schedule, and leave benefits. For each pay period, the employer must issue a statement of the employee’s gross earnings and authorized deductions. Employees must be notified at least one pay period in advance of any changes in pay schedule or wages.

Fair Labor Standards Act

Units of government are considered covered employers under the Fair Labor Standards Act (FLSA). With some exceptions, FLSA requires that a worker be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. FLSA does not provide wage payment or collection procedures for an employee’s usual or promised wages or for commissions in excess of those required by

FLSA. When employees covered under FLSA are not paid the minimum wage or overtime compensation on a timely basis, the U.S. Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages or for interest on the back wages, or the Secretary may bring suit for an injunction against the failure to pay wages when due.

Grievance Procedure for State Employees

Subject to specified exemptions, any employee in the State Personnel Management System may file a grievance. A grievance is a dispute between an employee and the employee's employer about the interpretation of and application to the employee of (1) a personnel policy or regulation adopted by the Secretary of Budget and Management or (2) any other policy or regulation over which management has control. Grievances are not disputes about pay grades, the timing or amount of statewide pay increases, or other specified items.

Resolution of a grievance is a three-step process consisting of (1) initiation of the grievance; (2) an appeal to the head of the principal unit; and (3) an appeal to the Secretary of Budget and Management. If the Secretary does not resolve the grievance, it is referred to OAH for a final administrative decision.

Background: The Department of Budget and Management (DBM) has been working to replace the State's legacy personnel system since January 2008. The first phase of the project included recruiting, compensation, and performance management. Since the rollout of components of the new personnel system, there have been issues involving employee payroll. In spring 2016, DBM reported that an issue with overtime calculations had been found. Initial reports also expressed concern that the State's legacy system had been miscalculating overtime costs for years. DBM investigated these issues and set up a hotline for employees to report if they felt they were paid incorrectly. According to DBM auditors, the error seems to be specific to the Department of State Police. Overtime payment concerns were also raised in fall 2016, which appeared to be specific to the Department of Public Safety and Correctional Services, though other 24/7 facilities throughout the State may be affected too. In response to a number of grievances and issues with implementing the new personnel system, the President of the Senate and the Speaker of the House of Delegates established a Paycheck Recovery Commission, which met on January 23, 2017.

State Expenditures: CPB already establishes regular pay periods and generally pays most employees' wages at least once every two weeks. CPB also already provides a statement of gross earnings and any deductions to employees, which employees can access through CPB's Payroll Online Service Center. Thus, there is no fiscal effect for CPB because the bill codifies existing practice.

However, general fund expenditures increase, potentially significantly, in fiscal 2018 and 2019 as a result of OAH likely awarding damages as specified in the bill to a significant number of employees that will likely file grievances with OAH. To the extent that awards are paid from the funding source of the unpaid wages, expenditures from other funding sources may also increase. DBM advises that approximately 200 payroll-related grievances have been filed in response to the payroll errors that have occurred. Due to the anticipated volume of grievances, OAH needs an additional regular administrative law judge (ALJ) and a contractual office clerk to handle the increased caseload through fiscal 2019. OAH advises that it is not feasible to hire a contractual ALJ due to the high skill level and extensive training associated with the position, so this analysis assumes that the ALJ position continues after the bill terminates. The Department of Legislative Services notes, however, that the need for an ALJ is pressing given the volume of grievances that have already been filed. OAH advises that the process of hiring and training a new ALJ can take more than a year, so it may not be prudent for OAH to use the normal hiring process to hire and train a new ALJ. To the extent that OAH can use alternative hiring practices (for instance, hiring a retired ALJ on a contractual basis), expenditures beyond fiscal 2019 may not be required.

Thus, in addition to costs of damages awarded to employees, general fund expenditures increase by \$159,770 in fiscal 2018, which assumes that new employees are hired as of the bill's July 1, 2017 effective date. To process the anticipated increase in grievances, this estimate reflects the cost of hiring one regular ALJ and a contractual office clerk within OAH. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Position	1.0
Contractual Position	1.0
Regular Salary and Fringe Benefits	\$110,870
Contractual Salary and Fringe Benefits	27,881
One-time Start-up Costs	18,356
Operating Expenses	<u>2,663</u>
Total FY 2018 Administrative Expenditures	\$159,770

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. The contractual position terminates June 30, 2019.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Prior Introductions: None.

Cross File: HB 1144 (Delegate Jones, *et al.*) - Appropriations.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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