HB 964

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 964 (Delegate Marriott, *et al*.)
Economic Matters

State Procurement Contracts and State Employees - Investment and Accountability Act - Living Wage

This bill requires certain employers, including the State, to pay their employees a "living wage." The Commissioner of Labor and Industry is to set the living wage rate. The bill provides for investigation of complaints, hearings, and fines and penalties for non-compliance, and authorizes an employee to sue for damages when an employer fails to pay the living wage.

Fiscal Summary

State Effect: Significant general fund expenditure increase for contract costs, administrative costs, and personnel costs. According to the Department of Budget and Management (DBM), State expenditures for employee salaries would increase by $5.8 million in the first year. General fund revenues would increase from liquidated damages and penalties imposed by the Division of Labor and Industry. The following table shows only the administrative costs and revenues associated with the bill.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	$40,000	$80,000	$80,000	$80,000	$80,000
GF Expenditure	169,100	221,900	230,200	239,000	248,300
Net Effect	($129,100)	($141,900)	($150,200)	($159,000)	($168,300)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill defines the term "living wage" as the hourly wage rate, based on a 40-hour workweek, that would provide an employee with an annual income that is at least 130% of the most recent U.S. Census Bureau poverty level for a family of four. The employers required to pay a living wage are:

- the State; and
- contractors with a State contract valued greater than $100,000 and their subcontractors with a subcontract of $25,000 or more.

Nonprofit organizations are subject to the bill based on their annual gross revenues. Organizations with gross revenues of less than $10 million on or before September 1, 2003; and less than $1 million on or after October 1, 2003, are exempt from the bill's provisions. Nonprofit organizations are also exempt if they have less than 30 employees, or receive an economic hardship waiver. Nonprofit organizations may apply to the State unit responsible for the contract or program for an economic hardship waiver. After a review of the nonprofit organization's financial situation, the unit can make a determination that application of the living wage provisions would cause an undue hardship on the organization and exempt the organization from the living wage requirement.

Employers are not required to pay a living wage under certain circumstances, including if higher wages are required under other provisions (if the Maryland Prevailing Wage Law applies to a procurement contract, and the prevailing wage rate exceeds the living wage rate, the prevailing wage would apply) or if the application of the living wage would conflict with federal program requirements. If the work was previously performed by State employees, an employer is required to pay a wage rate that is not less than the step one rate within the lowest grade at which the position could be classified plus either comparable benefits or the cash equivalent of comparable benefits.

The bill requires the Commissioner of Labor and Industry to adopt regulations, investigate wage complaints, issue orders for hearings, issue determinations, serve each interested party, and determine the amount of restitution for violations. The bill requires DBM to investigate complaints for all units of State government. The bill authorizes an employee, other than a State employee, to sue for treble damages when an employer fails to pay the living wage.

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

Current Law: There is no requirement for a living wage for the State, State contractors, or recipients of State funds or tax incentives. Contracts for cleaning the World Trade Center Building in Baltimore City are subject to the living wage provisions of the city.

Background: According to the most recent U.S. Census Bureau publication, the poverty level for a family of four is $18,104. The bill's annual living wage requirement of 130% would be $23,535. Calculated based on 50 workweeks per year and 40 hours per workweek, the living wage is $11.77 per hour. Calculated based on 52 workweeks per year at 40 hours per week, the living wage is $11.32 per hour. The current federal minimum wage, which Maryland adopts as its minimum wage, is $5.15 per hour. Beginning July 1, 2002, Baltimore City's living wage will be $8.49 per hour.

State Revenues: Based on similar liquidated damages provisions in the Prevailing Wage Law, it is estimated that the division would collect approximately $40,000 in liquidated damages and penalties in fiscal 2003 and about $80,000 annually thereafter.

State Expenditures: This bill would cause an increase in general fund expenditures as a result of increased contract costs, administrative costs, and personnel costs.

Contract Costs: To the extent that employees of State contractors and subcontractors covered by the bill currently earn less than the living wage, this bill could cause payroll costs and, consequently, State procurement contract costs to increase. The total number of State contracts affected by the bill and the payroll costs for the contracts affected are not known. The fiscal 2003 budget allowance for contractual services is $6.3 billion from general and special fund sources. *For illustrative purposes only*, if 10% of the $6.3 billion is for payroll costs on contracts affected by the bill, and the payroll costs increase by 10%, there would be a total increase in contractual costs of $63 million.

Personnel Costs: DBM estimates that there would be a total increase in expenditures of $5.8 million in the first full year to increase the salaries of affected State employees. This is composed of a general fund expenditure increase of $3.4 million, and a special fund expenditure increase of $2.4 million.

Administrative Costs: General fund expenditures could increase by an estimated $169,100 in fiscal 2003, which accounts for the bill's October 1, 2002, effective date. The Division of Labor and Industry expects to handle 1,000 complaints each year resulting from the failure of employers to pay the living wage, and have 300 additional hearings before the Office of Administrative Hearings (OAH). Based on the Division of Labor and Industry's experience with the investigations conducted by the Employment Standards Service, the division would need four new positions (an administrative officer, two wage and hour investigators, and a data device operator). The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future years reflect annualization and inflation. According to the division, OAH has advised them that an additional administrative law judge would be needed to conduct the additional hearings.

Small Business Effect: Some businesses associated with State contracts will have to pay the living wage, while others will not have to pay the living wage. If demand for the services of some firms required to pay the living wage is low, they will be unable to pass all of the increased costs onto the State. Small businesses are, because of their size, often unable to take advantage of some of the economies of scale that large businesses can use to reduce costs. Often they do not have a large client base over which to spread any increase in costs. Without the ability to reduce or recover their costs, small businesses will be at a competitive disadvantage compared to large businesses and have a loss of income as a result.

Additional Comments: The Department of Business and Economic Development has a policy to require recipients of financial assistance to pay their employees at least 150% of federal minimum wage as well as benefits.

Additional Information

Prior Introductions: A similar bill, SB 414, of 2001, received an unfavorable report by the Senate Finance Committee.

Cross File: SB 685 (Senator Pinsky, *et al.)* – Finance.

Information Source(s): Department of Legislative Services

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