

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1336
Economic Matters

(Delegates McDonough and Impallaria)

Day Laborer Regulation Act of 2006

This bill prohibits a day labor agency from operating without a day labor agency license issued by the Secretary of Labor, Licensing, and Regulation.

Fiscal Summary

State Effect: General fund expenditures would increase, although it cannot be accurately determined by how much. Depending on staffing needs within the Department of Labor, Licensing, and Regulation, expenditures could increase between \$90,000 and \$223,000 in FY 2007. General fund revenues would increase minimally due to collection of licensing fees in FY 2007 and would reflect additional licensing in future years with increased compliance.

Local Effect: The bill's requirements could affect the continued operation of local government-funded day labor worker centers.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A "day labor agency" is defined as a person who obtains, offers to obtain, or attempts to obtain employment for a day laborer or participates directly or indirectly in securing employment for day laborers. "Day labor agency" does not include specified employment and nurse referral agencies that are otherwise regulated by the State, nor a lawyer who directly obtains an immigrant visa for an individual. The bill does not apply to labor organizations obtaining or attempting to obtain employment for a

member or organizations of employers obtaining or attempting to obtain help for a member of the organization.

A “day laborer” is defined as a person that performs temporary or irregular work in which the person is employed for only the amount of time necessary to complete the assignment for which the day laborer is hired. A “day laborer” does not include a professional or clerical worker.

An applicant for a day labor agency license must submit to the Secretary an application and a license fee set by regulation. A license expires after one year but may be renewed prior to expiration. The license must be displayed conspicuously in the day labor agency.

An agency may not: • knowingly refer a day laborer to a job if any condition of the employment violates State or federal law; • refer a day laborer to an establishment where a labor dispute exists; • establish or set wage rates or benefits for day laborers; • refer employment to a day laborer who is not authorized to reside or work in the United States; or • otherwise violate the bill’s requirements.

An agency must keep detailed records of each job order from an employer, each employer or person that receives services from a day laborer through the agency (including employment address and federal employer identification number), and the name and address of each day laborer using the agency. An agency must also require a day laborer to produce documentation of legal U.S. residency status and must certify under penalty of perjury that the day laborer referred by the agency for employment is a legal U.S. resident.

The Secretary must adopt regulations to carry out the bill’s requirements.

Current Law: Employment agencies are regulated by the Commissioner of Labor and Industry and are subject to requirements relating to recordkeeping, advertisements, client contracts, and fee collection. Agencies must also post a bond with the commissioner conditioned on the agency complying with the law and paying damages to any person for specified wrongful acts by the agency or its agent or employee.

The commissioner also administers the licensing and regulation of farm labor contractors, defined as “a person, other than an agricultural operation or an employee of an agricultural operation, who performs a farm labor contracting service for consideration.” The commissioner is required to investigate applicants, as appropriate, to determine where an applicant is entitled to be licensed. Licensees are issued photo identification cards and are subject to license suspension or revocation on specified grounds after being given an opportunity for a hearing.

Background: According to *On the Corner: Day Labor in the United States* (a report on the National Day Labor Study of 2004), approximately 117,600 day laborers are working or looking for jobs on any given day in the United States and roughly 23% of day laborers are located in the eastern part of the United States. A quarter of the day labor workforce is made up of legal U.S. residents, though about 11% of the undocumented day labor population have a pending application for adjustment of their immigration status.

The majority of day laborers, according to the report, are hired at informal hiring sites such as gas stations and home improvement stores and are employed by homeowners/renters or construction contractors. One in five day laborers, however, look for work at “worker centers,” which the study found were emerging as a response to the challenges associated with the growth of day labor. Worker centers were created by community and faith-based organizations, municipal governments, and other local stakeholders to address competing community concerns over day labor and reduce workers’ rights violations. At the time of the study, there were 63 worker centers in 17 states and another 15 community organizations serving or acting on behalf of day laborers.

A number of States including Illinois, Florida, Texas, Georgia, and Arizona have laws addressing day labor issues, and some, specifically day labor agencies. The laws vary in the issues they address from worker safety and fair payment to restrictions on day labor centers and employers who assist or employ unauthorized workers.

Regulation of Farm Labor Contractors

A farm labor contractor is generally a single individual that acts as a broker and organizes migrant agricultural workers to work on farms and other agricultural operations in the State. The division currently licenses roughly half a dozen farm labor contractors.

State Expenditures: The Division of Labor and Industry estimates there could be in excess of 25,000 day laborers in Maryland, which may translate, in accordance with the National Day Labor Study’s finding of 25% of day laborers being documented, into 6,250 documented workers desiring the services of a day labor agency. Assuming each day labor agency is one person that handles 50 clients and that all documented day laborers would find work through a day labor agency, the division anticipates needing to license 125 day labor agencies.

The division anticipates the majority of its efforts in implementing the bill involving investigation of unlicensed activity and advises it would require five additional staff

positions including one-half of an administrator position, one-half of an Assistant Attorney General position, three wage and hour investigator positions, and one office processing clerk. The division anticipates establishing enforcement procedures and penalties by regulation, which would make up the majority of the workload involved in implementing the bill.

Because the bill does not contain enforcement or penalty provisions, it appears there would be a limited role for an Assistant Attorney General in implementing the bill; however, an Assistant Attorney General would need to handle issues regarding interpretation of the law and, potentially, any suspensions or revocations of licenses. The division advises that the Assistant Attorneys General representing the division are overloaded with work and that the needs of the program could not be handled with existing resources.

The division advises the program would be administered within the Employment Standards Unit for budget purposes. The proposed fiscal 2007 budget includes an allowance of \$315,000 for the unit and six authorized positions.

Legislative Services agrees that additional staff may be needed for the program, but advises that the number of staff needed to implement the bill's requirements cannot be accurately determined because it is unclear how many individuals or entities would be subject to the bill's requirements and the bill does not contain specific investigation or enforcement requirements or authority.

For illustrative purposes only, in the event the number of positions, as advised by the division, are needed to implement the bill, general fund expenditures would increase by \$223,000 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. A smaller staff including one-half of one administrator position, one-half of one Assistant Attorney General position, and one-half of one office processing clerk position (in the event investigation activity is not undertaken) would result in an increase in general fund expenditures of \$90,000, which also accounts for the bill's October 1, 2006 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Future year expenditures would reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

State Revenues: The division anticipates 25 licenses being issued in the first year of the program and compliance and license issuance increasing in future years, offset to an extent by day labor agencies failing to renew licenses. The division anticipates the

license fee being \$50. *For illustrative purposes only*, assuming 25 licenses are issued in the first year, general fund revenues would increase by \$1,250. Future years could reflect 25 additional licenses issued per year and a 20% failure to renew rate.

Local Fiscal Effect: The bill's requirements could affect the continuing operation of local government-funded worker centers in Montgomery County and Baltimore City. The centers are operated by CASA of Maryland, a nonprofit organization that provides social, educational, and advocacy services for low-income members of the Latino community. CASA of Maryland has indicated it would not continue to operate the worker centers if subject to the bill's requirements. It is unclear how this would affect the continued funding of worker centers by local governments.

Small Business Effect: To the extent small businesses currently are conducting business as a day labor agency (as defined in the bill), the bill's requirements could have a meaningful effect on business operations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of Administrative Hearings; Department of Labor, Licensing, and Regulation; CASA of Maryland; Montgomery County; Baltimore City; Office of the Attorney General; Valenzuela, Sr., A., Theodore, N., Melendez, E., Gonzalez, A. 2006, *On the Corner: Day Labor in the United States*; Department of Legislative Services

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