

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 845

(Senator Kittleman, *et al.*)

Finance

Procurement - Living Wage - Repeal

This bill repeals the State's living wage for employees of State service contractors.

Fiscal Summary

State Effect: General fund expenditures by the Department of General Services (DGS) decrease by approximately \$337,500 in FY 2011, which reflects the bill's October 1, 2010 effective date. General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) decrease by \$32,900 in FY 2011 for enforcement of the living wage law. Out-year savings reflect annualization and inflation. Procurement costs for the University System of Maryland (USM) and the Maryland Department of Transportation (MDOT) also decrease somewhat; USM did not provide a specific estimate and *MDOT did not respond to repeated requests for information about this bill.*

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	(370,400)	(494,500)	(496,300)	(498,200)	(500,300)
SF Expenditure	-	-	-	-	-
Higher Ed Exp.	-	-	-	-	-
Net Effect	\$370,400	\$494,500	\$496,300	\$498,200	\$500,300

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

Local Effect: None.

Small Business Effect: Minimal. Small businesses that have service contracts with the State generally pass along to the State any additional cost stemming from paying the living wage.

Analysis

Current Law: Chapter 284 of 2007 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.

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 DLLR Commissioner of Labor and Industry 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 DLLR 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 commissioner approved inflation-based increases to both the Tier 1 and Tier 2 living wage rates for fiscal 2010. The Tier 1 living wage is currently \$12.25, and the Tier 2 wage is \$9.21. Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

According to DLLR, approximately 644 service contracts are currently subject to the State's living wage, roughly double the number of contracts in fiscal 2009.

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. For reasons delineated in the report, DLS was not able to determine definitively by how much State procurement costs have increased as a result of the living wage. Although DLS extracted data from about 80 service contracts subject to the living wage and from prior contracts for similar services, the contracts did not contain sufficient data to allow a calculation of the difference in labor costs attributable to the living wage. Moreover, the timing of the mandated report did not provide enough time to analyze contractor invoices and State payments, which might have provided adequate wage and hour data to allow for a more rigorous analysis. Instead, the report conducted eight case studies of service contracts that were subject to the living wage.

In fiscal 2007, the most recent aggregate data available at the time of the study, Maryland awarded \$5.67 billion in procurement contracts. Of that, \$854.3 million, or 15%, was for service contracts. The DLS study found that 50% of the dollar value of service contracts awarded during the law's first year was exempt from the living wage mandate, as permitted by Chapter 284. The most frequent exemptions were for nonprofit entities, including those providing services under contract with the Department of Health and Mental Hygiene and the Developmental Disabilities Administration, and for small firms with 10 or fewer employees. As a result, DLS estimates that about \$427.2 million worth of service contracts would be subject to the living wage. Overwhelmingly, these

contracts are for services requiring unskilled labor such as janitorial, maintenance, security, and landscaping services. Most of those contracts are procured by DGS on behalf of other State agencies, except for MDOT and USM, which are responsible for procuring their own service contracts. Service contracts for skilled labor or professional services typically pay employees more than the living wage and therefore are not affected.

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 DGS's experience rebidding service contracts subject to living wage. Based on the dollar value of affected contracts given above, contract costs could increase by between \$29.9 million and \$81.2 million. Put in context, those potential increases represent between 0.5% and 1.5% of total State procurement costs. The State's experience with living wages to date has not generated cost increases of the magnitude projected by the DLS study.

Although exempt from the living wage statute, the Maryland Stadium Authority has elected to follow it with respect to cleaning crews for Oriole Park at Camden Yards and M&T Bank Stadium.

State Fiscal Effect: DGS estimates that repeal of the living wage reduces the aggregate cost of its service contracts by between \$400,000 and \$500,000 annually. It reports that substantially more than half of its service contracts continue to be exempt from the living wage requirement for various reasons, including the nonprofit status of the contractor, size of the contract (less than \$500,000), or the size of the firms involved (fewer than 10 employees). USM reports that its contract costs also decrease under the bill, but did not provide a specific cost savings. MDOT did not respond to requests for information on this bill.

DLLR's prevailing wage unit enforces compliance with the living wage. The unit has assigned one wage and hour investigator to carry out its enforcement duties related to the living wage law. Repeal of the living wage law therefore reduces expenditures by DLLR by \$32,937 in fiscal 2011 due to the elimination of one wage and hour position and associated direct costs. This estimate reflects the bill's October 1, 2010 effective date. Future year expenditure reductions reflect a full year salary, annual salary increases of 4.4%, 3% employee turnover, and 1% annual increases in ongoing operating expenses if the position were retained.

Additional Comments: DGS indicates that it exempts many of its contracts for security and facility maintenance services at State buildings from the living wage requirement based on a specific interpretation of the law. According to DGS, it exempts contracts if 10 or fewer employees work at a given site under a State contract. The law states that a contract is exempt if an employer employs 10 or fewer employees but makes no mention of whether those employees must work under the contract or at a given site. To the extent that DGS's interpretation of the law results in more contracts being exempt than should be exempt, the savings to the State from the repeal of the living wage law may be greater.

Additional Information

Prior Introductions: Senate Bill 694 of 2009 received an unfavorable report from the Senate Finance Committee.

Cross File: HB 746 (Delegate Bates, *et al.*) - Economic Matters.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Board of Public Works; Department of Budget and Management; Department of General Services; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Public School Construction Program; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2010
ncs/rhh

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510