

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1296
Economic Matters

(Delegate Robinson, *et al.*)

Living Wage - Nonprofit Organizations - Applicability

This bill repeals the exemption from the State's living wage law for nonprofit organizations that have service contracts with the State.

Fiscal Summary

State Effect: Potential minimal increase in State procurement costs to the extent that nonprofit organizations that contract with the State do not pay their employees a living wage. However, DLS anticipates that most nonprofit organizations already pay living wages. Potential general fund expenditure increase by the Department of Labor, Licensing, and Regulation (DLLR) for enforcement, but it is anticipated that DLLR can handle any additional enforcement needs with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential minimal for some small nonprofit organizations that contract with the State, to the extent they do not already pay their employees a 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 DLLR's 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; one wage and hour investigator monitors those contracts. DLLR also reports that there are 344 active contracts with nonprofit organizations that are exempt from the living wage law.

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 the study, DLS interviewed senior staff with Maryland Works, a nonprofit organization serving disabled citizens. State procurement law gives Maryland Works an exclusive preference in bidding on services that it provides, so it receives many of the service contracts awarded to nonprofit organizations under State law. Among other contracts, it currently provides janitorial services for Baltimore/Washington International Thurgood Marshall Airport, both M&T Bank Stadium and Oriole Park at Camden Yards, and the Treasury Building in Annapolis. At the time of the study, Maryland Works advised DLS that it already paid wages at or above the living wage for the contracts it has with the State. In 2007, when Chapter 284 was enacted, DLS also determined that reimbursement rates for nonprofit entities providing services for the Developmental Disabilities Administration were higher than the living wage.

State Fiscal Effect: DLS cannot determine the extent to which nonprofit organizations with State contracts do not pay at least the living wage rates established by law. Because those contracts are currently exempt, DLLR does not monitor their wages. However, based on recent research cited above, DLS and the Department of General Services both expect that a significant majority of those contracts already pay employees a living wage. Therefore, any expected increase in State procurement costs from requiring nonprofit organizations to pay the living wage is expected to be minimal.

The bill may also increase DLLR's enforcement workload because of the significant number of new contracts subject to enforcement. However, assuming that most of those contracts already pay the living wage, DLS expects that the level of enforcement needed is fairly minimal. To the extent that a significant number of those contracts do not pay a living wage, DLLR may require one additional wage and hour investigator, but the likelihood of DLLR needing that position is fairly low.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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