SB 222

Department of Legislative Services

2011 Session

FISCAL AND POLICY NOTE

Senate Bill 222 (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: Contract costs (all funds) for service contracts may decrease by between $945,000 and $2.6 million over several years beginning in FY 2012. The distribution of those savings to general, special, and federal funds cannot be determined. Contract cost savings may be less to the extent that some employees do not meet the criteria for payment of the living wage under current law, but they may be higher to the extent that additional contracts not identified by this analysis also provide the same types of services. Due to this uncertainty, these potential savings are not quantified in the table below. Out-year savings are expected to be of the same magnitude. General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) decrease by $33,500 in FY 2012 due to the cessation of enforcement of the living wage law. Out-year savings reflect annualization and inflation. No effect on revenues.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	$0	$0	$0	$0	$0
GF Expenditure	(33,500)	(45,200)	(47,000)	(49,000)	(51,100)
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	$33,500	$45,200	$47,000	$49,000	$51,100

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 payment of 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 DLLR 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 commissioner 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 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 2011. Effective September 27, 2010, the Tier 1 living wage is $12.28, and the Tier 2 wage is $9.23. Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

The prevailing wage unit within DLLR's Division of Labor and Industry is responsible for monitoring compliance with the living wage requirement for all State contracts. Since the inception of the living wage requirement, DLLR has examined 756 contracts. On the basis of number of contracts, 40% have been exempt under the law; but on the basis of contract value, 74% have been exempt from the living wage law. After accounting for exemptions and terminated contracts, DLLR reports that 382 contracts with a total value of $2.5 billion are under active review for compliance. Data on exemptions are not available dating to the program's inception, but for the current fiscal year, the nonprofit exemption is invoked the most frequently (39%), followed by employees not working for 13 consecutive weeks on a contract (18%). In fiscal 2010, DLLR recovered $1,884 in restitution of unpaid wages on behalf of workers.

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. The study found that the types of service contracts most likely affected by the living wage requirement are those that provide unskilled or semi-skilled labor, such as landscaping, janitorial, clerical, and security guard services. Contracts for other types of services typically pay their employees more than the living wage. 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 the experience of the

Department of General Services (DGS) and Maryland Port Administration in rebidding service contracts subject to the living wage.

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: DLLR does not keep track of the services provided under the contracts it monitors. Based on a review of contractor names for those contracts that are under review, DLS was able to identify 38 contracts that appear to provide the types of services that are most likely to be affected by a living wage requirement (landscaping, janitorial, etc.). Combined, the 38 contracts identified, many of which are for multiple years, have a total value of $13.5 million. Assuming that employees on these contracts would be paid less than the living wage in the absence of the law and that they meet the requirements of the living wage law (*i.e.*, work 13 consecutive weeks on the contract), contract costs for those contracts may decrease by between 7% and 19%, or between $945,000 and $2.6 million. The distribution of those savings to general, special, and federal funds cannot be determined and would be spread out over several years to reflect the large number of multi-year contracts. Contract savings may be lower to the extent that employees do not meet the criteria, but they may be higher to the extent that additional contracts not identified by this analysis also provide the same types of services.

Data from specific agencies are limited but seem to support the overall finding that about 10% of service contracts are for unskilled labor. The Maryland Transit Administration reports that only $420,000 of its total service contract value of $3.9 million was for unskilled labor (*e.g.*, landscaping and snow removal). A summary of service contracts submitted to the Board of Public Works by the Department of Budget and Management, which oversees State procurement of services for most agencies except the University System of Maryland, the Maryland Department of Transportation, and DGS, shows that the vast majority of those contracts are for professional services such as information technology support, medical care, and management consulting. Service contracts procured by DGS may be more likely to be for unskilled services because of its lead role in procuring such services for State facilities, but specific data were not provided by the agency. Nevertheless, their contracts are reflected in the total number of contracts reviewed by DLLR for compliance. Additional contracts beyond the 38 identified by DLS may provide the same types of unskilled services, but that could not be discerned from the contractor names.

The Maryland Stadium Authority may also realize some savings if it were to choose to stop paying living wages to stadium maintenance workers in the absence of a State law.

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 $33,456 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, 2011 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 Information

Prior Introductions: SB 694 of 2009 and SB 845 of 2010 each received an unfavorable report from the Senate Finance Committee. HB 746 of 2010 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Montgomery and Harford counties; Baltimore City; Board of Public Works; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Public School Construction Program; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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