HB 840

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE

House Bill 840 (Delegate Stifler, *et al.*)
Economic Matters

Procurement - Living Wage - Repeal

This bill repeals the State's living wage law for State service contracts.

Fiscal Summary

State Effect: State expenditures (all funds) for service contracts decrease by between $679,000 and $1.8 million over several years beginning in FY 2013, based on a retrospective analysis of living wage contracts to date. The distribution of those savings to general, special, and federal funds cannot be determined. Due to the multi-year and retrospective nature of the analysis, these potential savings are not quantified in the table below. General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) decrease by $36,600 in FY 2013 due to the cessation of enforcement of the living wage law. Out-year savings reflect full-year salaries and employee turnover. No effect on revenues.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	$0	$0	$0	$0	$0
GF Expenditure	(36,600)	(42,900)	(45,900)	(47,900)	(49,900)
Net Effect	$36,600	$42,900	$45,900	$47,900	$49,900

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 commissioner approved inflation-based increases to both the Tier 1 and Tier 2 living wage rates for fiscal 2012. Effective September 27, 2011, the Tier 1 living wage is $12.49, and the Tier 2 wage is $9.39. Montgomery and Prince George's counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

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 prevailing/living 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, more than 1,000 service contracts have been referred to DLLR for living wage monitoring. This figure includes a large number of exempted contracts as well as contracts for professional services that clearly pay more than a living wage (*e.g.*, legal, medical, and information technology services). On the basis of the number of contracts, at least 25% have been exempt under the law, although data on exempted contracts for fiscal 2009 are not available, which means the actual percentage is likely higher (DLLR has previously estimated that 40% have been exempted). After accounting for exemptions and terminated contracts, DLLR reports that, as of December 2011, 363 contracts with a total value of $7.1 billion are under active review for compliance. In fiscal 2011, DLLR recovered $97,900 in restitution of unpaid wages on behalf of 296 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 provided DLS with a list of all service contracts referred to it for monitoring since the enactment of the living wage law, totaling 1,028. The list included the contract values and brief descriptions of services provided under the contracts. DLS identified 287 contracts on the list that were likely affected by the living wage requirement because they involved unskilled or semi-skilled services that probably would not otherwise pay a living wage (including roadside mowing and maintenance, trash removal, janitorial services, unarmed security services, and other similar services). Of those, 12 were below the $100,000 threshold and therefore are not subject to the living wage requirement, leaving 275 total service contracts with a total value of $9.7 million that are likely affected by the living wage requirement (*i.e.*, they are required to pay higher wages under the law than they otherwise would pay in the absence of the law). Based on the DLS analysis, none of those contractors is a nonprofit organization that would be exempt from the living wage requirement.

Assuming that employees on these contracts meet the requirements of the living wage law (*i.e.*, are at least age 18 and work 13 consecutive weeks on the contract), contract costs for those contracts are estimated to be between 7% and 19% higher under the living wage law than they would be in the absence of the law, or between $679,000 and $1.8 million higher. 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 fact that this represents all affected contracts since the inception of the living wage.

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. Until fiscal 2012, the unit assigned one wage and hour investigator to carry out its enforcement duties related to the living wage law. In fiscal 2012, however, the unit reassigned one additional investigator from prevailing wage enforcement to living wage enforcement, for a total of two living wage investigators. Legislative Service assumes that following the repeal of the living wage law, one living wage investigator is reassigned back to prevailing wage enforcement, and one investigator position is eliminated. Repeal of the living wage law therefore reduces expenditures by DLLR by $36,621 in fiscal 2013 due to the elimination of one wage and hour position and associated direct costs. This estimate reflects the bill's October 1, 2012 effective date. Future year expenditure reductions reflect a full year salary and employee turnover.

Additional Information

Prior Introductions: SB 222 of 2011 received a hearing by the Senate Finance Committee, but no further action was taken on the bill. 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: SB 713 (Senator Kittleman, *et al.*) - Finance.

Information Source(s): Montgomery and Prince George's counties; 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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mc/rhh

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