# HB 725

# Department of Legislative Services

Maryland General Assembly
2014 Session

## FISCAL AND POLICY NOTE

House Bill 725 (Delegate Barnes, *et al.*)
Economic Matters

**State-Owned Airport Concessionaire Employees - Payment of Wages and Other Rights**

This bill requires employers operating a food, beverage, or retail business within the Baltimore Washington International Thurgood Marshall Airport (BWI) or any other State-owned airport to pay their employees a wage equal to the average wage of Maryland Aviation Administration (MAA) employees in the lowest paid job classification.

Some provisions of the bill apply retroactively to January 1, 2014.

## Fiscal Summary

**State Effect:** Special fund expenditures for MAA increase significantly (potentially more than $9.1 million) beginning in FY 2015 to pay specified employees a wage supplement. Special fund expenditures for MAA additionally increase $9.0 million in FY 2018 for costs associated with terminating its lease contract with AirMall. General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by $142,300 in FY 2015 due to additional staffing and information technology needs. Out-year costs reflect annualization and inflation. Revenues are not materially affected.

| (in dollars) | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|---|---|---|---|---|---|
| Revenues | $0 | $0 | $0 | $0 | $0 |
| GF Expenditure | 142,300 | 161,300 | 165,000 | 168,800 | 172,700 |
| SF Expenditure | - | - | - | - | 0 |
| Net Effect | (-) | (-) | (-) | (-) | (-) |

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

**Local Effect:** None.

**Small Business Effect:** Minimal. Most employers operating a food, beverage, or retail business within BWI are not small businesses. To the extent that a small business operates a food, beverage, or retail business within BWI, it will incur additional expenses beginning in FY 2018 if it pays employees below the specified average wage.

## Analysis

**Bill Summary:** Beginning November 1, 2014, employers operating a food, beverage, or retail business within BWI or any other State-owned airport must pay their employees a wage equal to the average wage as determined by MAA, and each subsequent November 1, the required wage must increase by the average wage increase. By October 1 of each year, MAA must determine the average wage paid by MAA to employees in the lowest paid job classification and post the average wage and supporting data on MAA's website. If during any period before termination of a lease, the employer subject to the lease fails to pay the required average wage, MAA must either pay a wage supplement to each employee to increase the employee's wage to the required average wage or require the employer to pay the wage supplements and reimburse the employer for the wage supplements. MAA must post its decision to pay wage supplements by October 1 of each year. "Wage" includes benefits, like health care and pension benefits, but it does not include bonuses, gratuities, or service charge distributions. A party may dispute the wage determination by appealing the determination to the Commissioner of Labor and Industry.

On April 1, 2017, if MAA is paying a wage supplement or reimbursing an employer for paying a wage supplement, MAA must terminate its lease with AirMall USA by October 21, 2017. Any subsequent concessions lease entered into by MAA does not require MAA to pay wage supplements or reimburse an employer.

The Commissioner of Labor and Industry must enforce the bill's provisions consistent with the requirements of the State's living wage laws and may adopt regulations for doing so. If an employee is paid less than the required average wage, the employee is entitled to sue to recover the amount of the difference.

A person may not take adverse action or discriminate against an employee because the employee exercised in good faith the rights protected under the bill or reduce an employee's total compensation or any element of the employee's compensation, including increasing the costs to employees for meals, uniforms, or parking.

The bill does not prohibit an employer from providing greater compensation or more employee protections than required under the bill, nor does it preclude the Commissioner of Labor and Industry or MAA from adopting additional employee protections at BWI or any other State-owned airport.

The bill applies retroactively and must be applied to and interpreted to affect any adverse action against an employee on or after January 1, 2014.

The provisions of the bill are severable if any are found to be invalid by a court of competent jurisdiction.

**Current Law:** The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act of 1938. State law sets minimum wage standards to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage, which is currently $7.25 per hour, or $6.15 per hour. The State and local governments are considered employers under the Wage and Hour Law.

*Living Wage*

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 2014. Effective September 27, 2013, the Tier 1 living wage is $13.19, and the Tier 2 wage is $9.91. 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 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:** AirMall Maryland, Inc. entered into a retail management lease contract with MAA in 2004, and the lease's termination date is March 31, 2022. The lease agreement allows for an early termination without cause after April 1, 2017, with six months notice. AirMall leases space in BWI from MAA and then subleases these spaces to food service, retail, and certain service concession operators. AirMall encompasses 120,000 square feet of concessions space within BWI and subleases to 46 business entities that run 95 establishments within BWI. AirMall does not directly employ the employees at the concessions, so the State's living wage provisions do not apply to BWI concession employees.

MAA is a modal unit of the Maryland Department of Transportation. MAA has responsibility for fostering, developing, and regulating aviation activity throughout the

State. MAA is responsible for operating, maintaining, and developing BWI (a State-owned airport) as a major center of commercial air carrier service in the State and Martin State Airport as a general aviation facility and as a support facility for the Maryland Air National Guard and the Maryland State Police.

**State Expenditures:**

*MAA Expenses*

**Exhibit 1** shows the wage and benefits of MAA's lowest paid job classification, which is a grade 7, step 1 aircraft service worker. Under the bill, the first-year average wage is $41,322, which equates to an hourly wage rate of $19.87.

**Exhibit 1**
**MAA's Lowest Paid Job Classification**
**Wages and Benefits**

| | |
|---|---|
| Base Salary | $25,868 |
| Employer's Share of FICA taxes | 1,979 |
| Unemployment Tax | 72 |
| Health Benefits | 8,961 |
| Retirement Benefits | 4,442 |
| **Total Annual Wages** | **$41,322** |
| Hourly Wage | $19.87 |

Source: Maryland Aviation Administration, Department of Legislative Services

MAA estimates that approximately 1,500 employees work in food, beverage, or retail businesses within BWI who are employed by concessionaires. However, the attrition rate is high for these employees, so the number of employees, along with their wages, is constantly fluctuating. Thus, it is unknown how many employees must be paid higher wages. However, MAA incurs significant costs for paying wage supplements to these employees, regardless of whether it pays the supplements directly to employees or reimburses their employers for the supplements. According to AirMall, full- and part-time workers earned an average wage of $15 per hour, including benefits, which translates to a wage supplement of $4.87 per hour. *For purposes of illustration*, if 1,500 employees are paid average wages of $15 per hour and work an average of 36 hours per week, MAA's expenditures increase $9.1 million in fiscal 2015, which reflects the November 1 effective date for payment of equivalent wages, and MAA's expenditures increase $13.7 million annually in fiscal 2016 and 2017. Assuming MMA terminates the AirMall lease effective October 21, 2017, MAA pays wage supplements of $4.2 million in fiscal 2018. However, the actual cost could be significantly higher if employees are paid less, which some anecdotal evidence suggests is the case. Additionally, MAA incurs costs for collecting, validating, auditing, and reporting data related to the bill.

MAA must ensure that none of the costs it incurs from the bill are paid from the Federal Aviation Administration (FAA) grant funds. FAA has provided MAA with grants for capital improvements and planning at BWI under the terms that all revenue generated by the airport is used for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by MAA that are directly and substantially related to the actual airport transportation of passengers and property.

If MAA terminates its lease with AirMall by October 21, 2017, MAA must reimburse AirMall for approximately $9 million of unamortized investments that AirMall has made at BWI.

*DLLR's Expenses*

The bill creates additional enforcement responsibilities for DLLR's Division of Labor and Industry. DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in complaints prompted by an average wage requirement for BWI concessionaire employees. The staff needed to respond to and manage the additional workload created by the bill includes one full-time "wage and hour" investigator beginning in fiscal 2015.

DLLR estimates that at least 450 additional inquiries would be made each year and at least 80 complaints alleging average wage violations would be filed each year. In addition to investigating and processing complaints, DLLR advises that the additional investigator will conduct outreach efforts to inform employers of the new average wage requirements. The actual number of complaints may be lower during the time that MAA pays the wage supplements. To the extent that enforcement is an issue when MAA is no longer responsible for paying the wage supplement in fiscal 2018, additional staff may be needed.

General fund expenditures increase for DLLR by $142,294 in fiscal 2015, which assumes that the DLLR investigator is in place as of October 1, 2014, concurrent with the effective date of the bill. This estimate reflects the cost of hiring one investigator to investigate complaints and enforce the average wage requirements and information technology support needed to monitor compliance. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|---|
| Position | 1 |
| Salary and Fringe Benefits | $38,936 |
| One-time Start-up Costs | 23,370 |
| Operating Expenses | 79,988 |
| **Total FY 2015 State Expenditures** | **$142,294** |

Future year expenditures reflect annual increases and employee turnover as well as annual increases in ongoing operating expenses.

## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 883 (Senator Pugh, *et al.*) - Finance.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; *Baltimore Sun*; Department of Legislative Services

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mc/mcr

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