

Department of Legislative Services  
 Maryland General Assembly  
 2013 Session

FISCAL AND POLICY NOTE

House Bill 1317 (Delegate Hucker)  
 Appropriations

Labor and Employment - Division of Labor and Industry - Appropriations

This bill requires the Governor, beginning in fiscal 2015, to include in the annual budget bill an appropriation of *at least \$750,000* to fund *at least 10 positions* within the Employment Standards Service (ESS) Unit and *at least \$1 million* to fund *at least 15 positions* within the Prevailing Wage Unit.

The bill takes effect July 1, 2013.

Fiscal Summary

**State Effect:** No effect in FY 2014. General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by \$565,400 beginning in FY 2015 for nine additional positions in DLLR. Future year expenditures reflect elimination of the one-time-only costs and annual increases. Revenues are not directly affected; however, additional enforcement may result in a minimal increase in general fund revenues from liquidated damages of \$20 per day for each employee not paid the prevailing wage rate. **This bill increases a mandated appropriation beginning in FY 2015.**

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	\$0	-	-	-	-
GF Expenditure	\$0	\$565,400	\$509,600	\$533,000	\$557,600
Net Effect	\$0	(\$565,400)	(\$509,600)	(\$533,000)	(\$557,600)

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

**Local Effect:** Potential minimal increase in revenue from liquidated damages as a result of enhanced prevailing wage enforcement beginning in FY 2015.

**Small Business Effect:** None.

## Analysis

**Current Law:** The Governor must include in the annual budget bill an appropriation to the Division of Labor and Industry (DLI) equal to at least \$315,000 for ESS and \$385,000 for the Prevailing Wage Unit. Staffing levels for the two units are not addressed in statute.

**Background:** DLI consists of eight budgeted programs: (1) General Administration; (2) Apprenticeship and Training; (3) Employment Standards and Classification; (4) the Worker Classification Protection Unit; (5) the Prevailing Wage and Living Wage Unit; (6) Maryland Occupational Safety and Health; (7) Safety Inspection; and (8) Railroad Safety and Health.

### *Employment Standards Service Unit*

ESS, which is housed within the Employment Standards and Classification program, was created in 1965 to enforce the State's Minimum Wage Law. Over the years, the unit was tasked with enforcing various other State labor laws, and its staffing expanded accordingly. By fiscal 1991, it had a regular staff of 34 positions, but funding for the unit was eliminated as a cost-containment measure in response to a statewide fiscal crisis. The unit was reestablished in fiscal 1994, but only with six positions. Although the commissioner and, by delegation, ESS were still tasked with enforcing many labor laws, in reality the unit's limited staffing enabled it to actively focus enforcement efforts on the State's Wage Payment and Collection Law. Because many State labor laws have federal counterparts, the State's policy has been to refer most inquiries to the federal government except for those having to do with the Wage Payment and Collection Law, which has no federal counterpart. DLI staff advises that, if ESS receives a written complaint regarding a wage and hour violation, staff conducts an investigation to recover any wages due to an employee. In addition, ESS staff counsels complainants that other rights may be available under federal law. **Exhibit 1** displays the laws enforced or overseen by the unit.

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**Exhibit 1**  
**Jurisdiction of the Employment Standards Service Unit**

**Labor and Employment Article**

Employment of Minors	Title 3, Subtitle 2
Equal Pay for Equal Work	Title 3, Subtitle 3
Wages and Hours	Title 3, Subtitle 4
Wage Payment and Collection	Title 3, Subtitle 5
Medical Questions	Title 3, § 3-701
Lie Detector Tests	Title 3, § 3-702
Healthy Retail Employees Act	Title 3, § 3-710
Job Applicant Fairness Act	Title 3, § 3-711
Farm Labor Contractors	Title 7

**Business Regulation Article**

Employment Agencies	Title 9
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Source: Laws of Maryland

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The unit's funding and staffing levels remained relatively constant for about 12 years after it was restored in 1994. The unit's funding was again eliminated for fiscal 2006. However, Chapter 444 of 2005 (the Budget Reconciliation and Financing Act – HB 147) mandated an annual appropriation of at least \$315,000 for the unit beginning in fiscal 2007. **Exhibit 2** displays the unit's fiscal history from fiscal 2008 through 2013.

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**Exhibit 2**  
**Fiscal Summary for the Employment Standards Service Unit**  
**Fiscal 2008-2013**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013*</u>
Expenditures	\$417,921	\$301,350	\$322,424	\$371,052	\$442,480	\$636,560
Authorized Positions	6.0	6.0	5.0	5.0	6.0	5.0

\*Appropriated in the fiscal 2013 budget; prior year figures are actual expenditures and authorized positions.

Source: Department of Budget and Management; Department of Labor, Licensing, and Regulation

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Although an annual appropriation of \$315,000 is required by Chapter 444, the unit's actual expenditures were below that level in fiscal 2007 and 2009; this was due primarily to staff vacancies. Although the unit's budget has authorized five or six positions in each year, one or more of those positions has frequently been vacant, resulting in reduced expenditures for staff. For instance, the increase in expenditures from fiscal 2011 to 2012 reflects the filling of two vacant investigator positions in the middle of fiscal 2011, with those employees working a full year in fiscal 2012. For fiscal 2013, the unit has five positions authorized, but two of those positions are currently vacant.

*Prevailing Wage Unit*

The Prevailing Wage Unit, established in 1969, is the administrative entity responsible for determining wage rates and fringe benefits prevailing in the locality (county) for construction workers employed on public works projects. The Prevailing Wage Unit also enforces the prevailing wage law, which regulates the hours of labor, rates of pay, conditions of employment, obligations of employers, and the powers and duties of certain public officials under contracts and subcontracts for public works in Maryland. Coverage extends to any contract for a public work in excess of \$500,000 when State funds are used to provide 50% or more of the funds for the construction of any project, including construction of a public elementary or secondary school.

Between fiscal 2005 and 2008, there were between 5 and 8 positions staffed in the unit; however, with the enactment of the living wage law in 2007, this number has been expanded to its current level of 11 positions. The total budget of the Prevailing Wage Unit has likewise grown from \$354,339 in fiscal 2005 to \$796,892 in fiscal 2010 before dropping to \$699,285 in fiscal 2011. In fiscal 2011, costs of the unit were defrayed due to a sharing of resources with the Workplace Fraud Unit. Chapter 444 requires the Governor to include an appropriation of at least \$385,000 for the unit in the budget submitted to the General Assembly. **Exhibit 3** displays the unit's fiscal history from fiscal 2008 through 2013.

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**Exhibit 3**  
**Fiscal Summary for the Prevailing Wage Unit**  
**Fiscal 2008-2013**

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013*</u>
Expenditures	\$506,341	\$700,812	\$796,892	\$699,285	\$619,969	\$650,617
Authorized Positions	9.0	12.0	11.0	10.0	9.0	11.0

\*Appropriated in the fiscal 2013 budget; prior year figures are actual expenditures and authorized positions.

Source: Department of Budget and Management

**State Expenditures:** In recent years, appropriations for ESS have been above the mandated appropriation of \$315,000. The fiscal 2013 budget, as enacted, included \$636,560 of general fund expenditures and five authorized positions for the unit. The Department of Legislative Services (DLS) assumes future appropriations to ESS would, in the absence of the bill, equal the Governor’s fiscal 2013 appropriation and not the lower mandated appropriation required by Chapter 444. Thus, requiring the Governor to include at least \$750,000 in the annual budget bill to fund at least 10 positions for ESS increases general fund expenditures annually by at least \$113,440 beginning in fiscal 2015 and adds five authorized positions.

Appropriations to the Prevailing Wage Unit have consistently been well above the mandated appropriation of \$385,000 for the past several years. For the Prevailing Wage Unit, the fiscal 2013 budget, as enacted, included \$650,617 of general fund expenditures and 11 authorized positions. DLS assumes future appropriations to the Prevailing Wage Unit would, in the absence of the bill, equal the Governor’s fiscal 2013 appropriation and not the lower mandated appropriation required by Chapter 444. To fund at least \$1 million for at least 15 positions within the Prevailing Wage Unit, general fund expenditures increase annually by at least \$349,383 beginning in fiscal 2015, and four positions are added.

The bill requires general fund appropriations for DLLR to increase by at least \$462,800, to meet the mandated floor for funding the two units at a combined total of at least \$1.75 million. However, because the bill also specifies a mandated floor for positions in the two units, DLS advises that the estimated annual general fund expenditures necessary to fund the additional nine positions required by the bill within DLLR likely exceeds that amount. DLS assumes that DLLR hires nine wage and hour investigators to enhance its investigative and enforcement capacity. Thus, general fund expenditures increase by \$565,397 in fiscal 2015, which reflects the cost of hiring nine wage and hour investigators to investigate complaints received by ESS and the Prevailing Wage Unit. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	9
Salaries and Fringe Benefits	\$457,087
Automobile for Prevailing Wage Site Visits	16,000
Operating Expenses	<u>92,310</u>
<b>Total FY 2015 State Expenditures</b>	<b>\$565,397</b>

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:** None.

**Information Source(s):** Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 13, 2013

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