
Sunset Review: Evaluation of the Division of Labor and Industry

**Presentation to the
Senate Finance Committee**

**Department of Legislative Services
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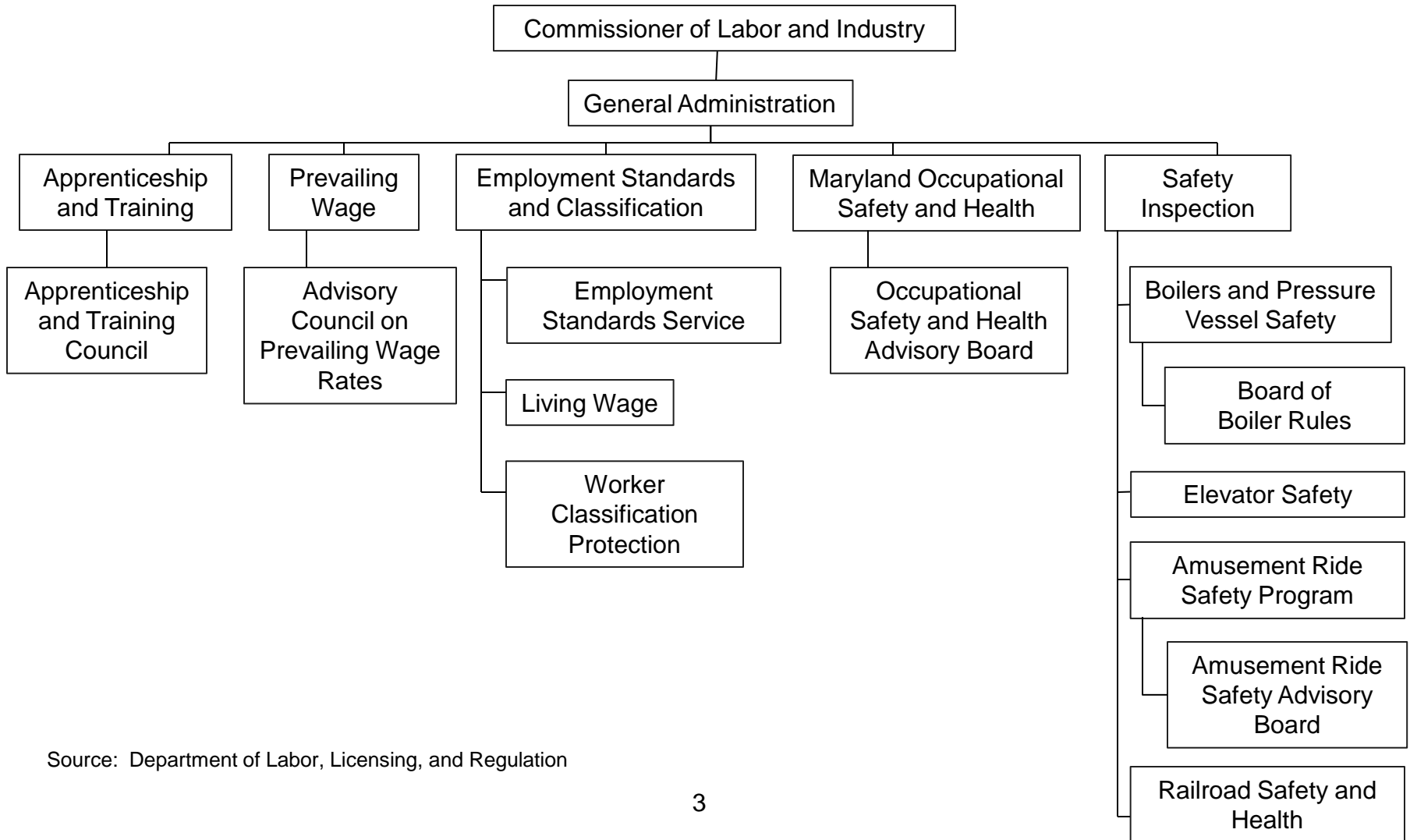
Presentation Outline

- Overview of Division of Labor and Industry (DLI)
- Key recommendations from preliminary evaluation
- Employment Standards and Classification (ESC) unit
- Worker Classification Protection unit (formerly the Workplace Fraud unit)
- Miscellaneous recommendations

Overview of DLI

- Within the Department of Labor, Licensing, and Regulation
- Charged with protecting and promoting the health, safety, and employment rights of Maryland residents
- Eight budgeted programs, including some that are subunits of other programs

Organizational Structure



Source: Department of Labor, Licensing, and Regulation

Scope Set by Preliminary Evaluation

- Full evaluation recommended for ESC program and Advisory Council on Prevailing Wage Rates
- Waiver from full evaluation recommended for Apprenticeship and Training, Occupational Health and Safety, and Safety Inspection programs, as well as their associated boards and councils, with follow-up reports required in most cases
- Final recommendation on Board of Boiler Rules deferred, pending submission of follow-up report

Reasons for Full Evaluation

- ESC program
 - Lack of enforcement of certain labor laws
 - Staffing and funding shortages
 - Effectiveness of existing enforcement mechanisms, including wage orders
 - Effectiveness of initial implementation of workplace fraud enforcement
- Advisory Council on Prevailing Wage Rates
 - Persistent inactivity
 - Perceived lack of need

Employment Standards and Classification Program

- The program has responsibility for enforcing the State's various labor laws as well as the State's Living Wage Law and Workplace Fraud Act
 - Many new laws have been enacted
 - Most State labor laws are not actively enforced
- Several State labor laws have federal equivalents, with federal enforcement

Employment Agency Deregulation Should Be Completed

- 10 years ago employment agencies were largely deregulated
 - Employment agencies must submit a penal bond to the commissioner
 - Although largely deregulated, limited consumer protections have been and should continue to be maintained

Recommendation 1 (pg. 18): Deregulating the State's role regarding employment agencies should be completed by eliminating the penal bond requirement

Specific Enforcement Authority May Be Needed

- The commissioner or ESC unit is specifically authorized to enforce 8 labor laws
- Several other labor laws are silent as to whether the commissioner has any authority to enforce compliance
- Most labor laws specifically authorize employees to bring an action if they believe their employer has violated the law

Recommendations 2 and 3 (pg. 19): The commissioner should have authorization to investigate all labor laws enacted in Title 3 of the Labor and Employment Article; or Section 3-103 of the Labor and Employment Article should be amended to reflect that the commissioner was given the authority to investigate complaints under the Job Applicant Fairness Act

Resource Allocation Could Be Improved with More Information

- Unit's phone system cannot record the subject of all calls received, limiting ability to appropriately allocate resources

Recommendation 4 (pg. 19): The commissioner should alter DLI's phone tally system to determine the subject of all calls received

Wage Payment and Collection Has Benefitted from Strategic Enforcement

- Backlog of wage payment and collection cases has been reduced by two-thirds since fiscal 2010
 - More careful screening of incoming cases
 - New authority to issue wage orders (Chapter 151 of 2010)
- Unit finances and staffing levels have stabilized, but employee turnover remains an ongoing concern

Recommendation 5 (pg. 22): DLI should submit a follow-up report to the appropriate committees of the General Assembly on the continued use and effectiveness of wage orders

Worker Classification Protection Unit

- Unit is one of several entities responsible for enforcing the Workplace Fraud Act of 2009
 - Unit was not fully staffed until February 2011
 - Early implementation revealed need for revised enforcement strategy and statutory changes
- Legislative and administrative changes were made in 2012; it is too early to assess their effectiveness
- Even so, additional changes could be made now

New Implementation Strategy

- Is focused on site visits and worker interviews based on complaints received, instead of systematic review of payroll records
- Investigates cases, defined as “snapshots” of particular jobs, not the entirety of business practice
- Incorporates an outreach program and has a revised website

Annual Reporting Requirement Not Met

- Unit has been providing annual data to the Joint Enforcement Task Force on Workplace Fraud, but it has not been completing an independent annual report, as required by statute

Recommendation 6 (pg. 30): The commissioner should comply with statute and prepare an independent annual report for the Secretary. Statute should be amended to align reporting requirements with enforcement provisions and to include the General Assembly as a recipient of the report, in addition to the Secretary

Software to Track Unit Activity Incomplete and Unreliable

- For cost containment reasons, data management system originally developed in-house instead of by contractor; employee who developed the system has since retired
 - Software contains bugs, flaws, and is incomplete
 - Cannot search effectively, cannot generate form letters
- Unit has begun work to improve the data management system

Recommendation 7 (pg. 35): The unit should continue ongoing efforts to develop and implement an interim data-management system to track relevant data. By December 31, 2013, the unit should report to the General Assembly on the progress in its development of a long-term data management system. By December 31, 2014, the unit should have a fully developed and implemented data-management system

Staff Resources May Not Align With Needs

- Enforcement focuses on site visits, but the unit has only 3 fraud investigators out of 11 positions
- Investigators often encounter a language barrier when interviewing workers

Recommendation 8 (pg. 35): DLI should assess the current complement of staff for the unit in light of the unit's new implementation strategy and experience in enforcement of the Act and address unmet needs when filling any vacancies that occur

Additional Enforcement Authority May Be Needed

- Workplace Fraud Act requires an employer to provide notice to independent contractors and exempt persons
- Statute allows the unit to assess penalties for misclassification but not for noncompliance with other provisions

Recommendation 9 (pg. 36): Amend statute to authorize the commissioner to assess a penalty for noncompliance with the Act's notification requirements to workers who are exempt persons or independent contractors

Unit Should Update Progress In Two Years

- With an effective date of July 1, 2012, for both legislative and administrative changes, unit has made a “hard reset”
- Unit should update Governor and General Assembly on its progress after sufficient time has passed to allow a reasonable attempt at implementation

Recommendation 10 (pg. 36): By December 31, 2014, the commissioner should report to the Governor and General Assembly on the status of the unit as required by the uncodified language in Chapter 188 of 2009

Advisory Council on Prevailing Wage Rates Seldom Meets

- Established in 1969 to advise the commissioner on issues related to establishing and enforcing prevailing wage rates
- Five meetings held in the last 20 years; only one meeting had a quorum
- Informal input and advice from labor and industry available through other means

Recommendation 11 (pg. 38): Repeal the Advisory Council on Prevailing Wage Rates and delegate its duties to the Prevailing Wage unit

Board of Boiler Rules Should Be Retained

- Board recommends regulations affecting boiler and pressure vessel safety
- Preliminary evaluation highlighted infrequent meetings, board vacancies, and limited coordination with the State Board of Stationary Engineers
- Coordination efforts between the two boards have improved
- Merging both boards into one board not advised by two DLLR divisions that oversee them; DLS concurs

Recommendation 12 (pg. 40): Amend statute to require the Board of Boiler Rules to meet at least twice annually with the State Board of Stationary Engineers to coordinate activities

Repeal Termination Dates for DLI

- DLI performs core functions of State government; the need for those functions is not expected to diminish
- Termination of DLI's functions would endanger the public
- Continued oversight and evaluation of DLI by the General Assembly remains in the best interest of the public
- Four associated boards and councils should remain subject to termination *and* evaluation

Recommendation 13 (pg. 40): Amend statute to repeal termination dates for DLI but not for associated boards and councils; DLI should remain subject to evaluation. Termination dates for four boards and councils should be extended by 10 years to July 1, 2024