

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 556 (Chairman, Health and Government Operations)
(By Request – Departmental – Public Safety and Correctional Services)

Health and Government Operations

Finance

Correctional Services - Maryland Correctional Enterprises - Open Market Sales
- Food Service

This departmental bill allows Maryland Correctional Enterprises (MCE) to establish a food service program for inmate labor at the minimum, prerelease, and work release security levels under provisions authorizing goods and services of MCE to be sold on the open market. Specifically, the bill expands a current law authorization for the open market sale of goods and services if they are related to the preparation or distribution of food or services related to agriculture or seafood processing when the State labor pools are diminished and it has been determined that inmate labor is the available source.

The Secretary of Public Safety and Correctional Services and the Secretary of Labor, Licensing, and Regulation must adopt regulations that specify how to determine the need for inmate labor. Wages paid to inmates under this program may not be less than wages paid for similar work in the private sector of the same locality as determined by the Secretary of Labor, Licensing, and Regulation.

Fiscal Summary

State Effect: Although this bill could result in annual increases of MCE revolving fund revenues and expenditures of varying amounts, such increases would depend on the terms of each project and cannot be reliably predicted. Each project, as well as the actual number of inmates that would be used, would be based on demand and the ability of MCE to meet that demand. The regulatory requirements of the bill could be handled with the existing budgeted resources of the Department of Public Safety and Correctional Services (DPSCS) and the Department of Labor, Licensing, and Regulation (DLLR).

Local Effect: None.

Small Business Effect: DPSCS has determined that this bill has minimal or no impact on small business (attached). Legislative Services disagrees with this assessment as discussed below.

Analysis

Current Law: MCE (formerly State Use Industries) is an organization in the Division of Correction (DOC) that:

- provides meaningful work experiences for inmates;
- seeks to develop industries that provide full-time work experience or rehabilitation programs for all eligible inmates;
- operates correctional industries in an environment that resembles as closely as possible the environment of private-sector business operations; and
- is financially self-supporting, generates revenue for its operations and capital investments, and reimburses DOC at a reasonable rate for services exchanged between DOC and MCE.

DOC is responsible for and accountable to the Secretary of Public Safety and Correctional Services and the Governor for the MCE program. In addition, DOC must annually submit a complete financial and operational report of MCE and its revolving fund to the Governor, the Secretary of Public Safety and Correctional Services, and the Secretary of Budget and Management.

Background: MCE provides work and job training for inmates incarcerated in DOC facilities funded by the sales revenue from the goods it produces and the services it supplies to local, State, and federal agencies. These goods and services are also available for purchase by charitable, civic, educational, fraternal, or religious organizations. MCE's cost is at or below the prevailing average market price.

As of December 31, 2006, MCE's revolving fund had an unencumbered balance of \$4,751,604. MCE also notes a \$1 million special fund obligation to the Maryland State Department of Education in fiscal 2007, 2008, and 2009, as required by the 2005 Budget Reconciliation and Financing Act.

Under federal Foreign Labor Certification (FLC) funding, U.S. employers may hire foreign workers who are permitted on a temporary or permanent basis to fill jobs essential to the U.S. economy. Certification may be obtained when there are insufficient qualified U.S. workers available and willing to perform the work at wages that meet or exceed the prevailing wage paid for that occupation in the area of intended employment. The program is designed to assure that the admission of foreign workers into the U.S. on

a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.

Under FLC, the H-2A temporary agricultural program was established to provide a means for agricultural employers in the nation to bring nonimmigrant foreign workers into the U.S. to perform agricultural labor or services that are of a temporary or seasonal nature. Employers must file an application with the U.S. Department of Labor stating that there is an insufficient labor pool to draw upon to perform a labor function that is temporary or seasonal in nature. They must prove that the influx of these temporary foreign workers will not adversely affect the wages and working conditions of similarly employed domestic workers.

The Department of Labor established the following guidelines:

- Recruitment – the employer must agree to attempt to recruit U.S. workers.
- Wages – the wage or rate of pay must be the same for U.S. workers and H-2A workers – the hourly rate must be as high as the applicable Adverse Effect Wage Rate (AEWR), which for Maryland is currently \$8.40/hour and will be raised to \$8.95/hour.
- The employer must also provide housing, transportation, tools and supplies, and workers' compensation insurance (for each state where it is required – but not in Maryland).
- Employers must file the request 45 days prior to their need and must furnish an accurate start and stop date that cannot exceed 10 months.

This system is believed to have been an effective tool for Maryland's agricultural community as the total number of migrant laborers requested each year continues to grow. However, some farming employers have expressed dissatisfaction over the required \$8.40/hour, saying that it is too high. DPSCS believes that the agricultural community would be receptive to the use of inmate labor if the skill and timeframe of the individual farmer's needs could be matched and the labor could be offered at a price below the AEWR.

The H-2B nonimmigrant program is similar to the H-2A program with the exception that it pertains to nonagricultural employment. The criteria pertaining to this group of migrant employees is as follow:

- the job and the employer's need must be one time, seasonal, peak load, or intermittent;
- the job must be for less than one year;
- there must be no qualified and willing U.S. workers available; and

- employers must make the request to the State Workforce Agency at least 60 days, but no more than 120 days, prior to their need for employment.

It was this program that received some attention in the news media in 2005 throughout Maryland. This was, in part, due to the fact that the original cap for the total number of immigrant workers allowed to enter the U.S. under this program was limited to 33,000. As the popularity and ease of use continued to grow throughout the nonagricultural labor groups across the country – seafood, landscaping, sports/recreation, tourism, horse racing, construction, cannery, forestry – the cap was reached earlier each year. Requests under this program may begin in October, but are only open to those states needing labor within 120 days of their seasonal needs. This past year, the western and southern states depleted the 33,000 cap prior to March, which is when many eastern states can begin making their requests. Emergency federal action was taken and the cap was extended to 66,000 – the first 33,000 used during the first part of the year and the rest during the second part. It is expected that the 66,000 mark will easily be met by the end of the year and the federal government is considering ways to expand the H-2B cap.

According to the Governor’s draft Statewide Plan for Agriculture and Resource Management (February 1, 2006), “the shortage of farm labor has been a problem nationwide and adds significant risk and costs to the farm operation. The steady decline in the number of American workers in agricultural jobs has led to increasing dependency on foreign labor. However, burdensome federal regulations in the H-2A and H-2B guest worker programs, including application requirements, wage rates, transportation and housing costs, and caps, make foreign labor a less than reliable supply. Because of all these problems, many farmers say they cannot afford to participate in these programs and remain competitive in the market.”

The draft plan also states that “[a]griculture and other industries have put tremendous pressure on the federal government to make substantial changes to the H2A and H2B programs. [The Governor’s] Federal Office is organizing interested Maryland businesses to participate in Congressional debates on H2A/H2B reform, which are expected to begin in February 2006.”

H.R. 3333 of 2005 (often referred to as the REAL GUEST Act of 2005), would amend the Immigration and Nationality Act and establish a new guest worker program to replace the current federal programs with a single H-visa covering all aliens coming to the U.S. temporarily to perform skilled or unskilled work, where U.S. workers are not available or could not be trained in less than one year. The last action on that bill (August 10, 2005) was a referral to the House Subcommittee on Employer-Employee Relations.

According to the Maryland Department of Agriculture (MDA), there are 74 seafood processing plants in the State employing 1,391 people and over 6,600 watermen who

work the Chesapeake Bay. In 2003, 49.3 million pounds of seafood were landed at a dockside value of over \$49 million.

According to MDA, the total estimated value of the Maryland seafood industry is \$700 million annually. MDA advises that the amount of landings and the number of plants and employment have been steadily decreasing, while consumer demand for seafood has been increasing.

Small Business Effect: Potential meaningful. Based on recent experience in these two industries, seasonal labor shortages (or the prospect of such shortages) may continue to be a problem unless successfully addressed. The extent to which this bill would do so cannot be predicted until regulations are in place and determinations relating to need and wages are made. In any event, successfully providing a new cost effective labor source to those industries would provide a measurable benefit to the affected businesses in those industries.

Additional Comments: DLLR is concerned that this bill may have a negative impact on Maryland's overall federal revenues under FLC funding, if a federal determination is made that there are conflicting requirements between the provisions of this bill and federal law. According to DLLR, and based on information supplied by DPSCS, only approximately 30 inmate workers may be available to the seafood industry. DLLR believes that this bill could delay or restrict the seafood industry's ability to hire foreign workers for processing jobs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2006
mll/jr Revised - Enrolled Bill - April 24, 2006

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510