

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1236 (Delegate Queen, *et al.*)
 Economic Matters

State Contracts - Certification of Pay Equity Compliance - Requirement

This bill requires specified State contractors or subcontractors to either (1) have a certificate of pay equity compliance issued by the Commissioner of Labor and Industry or (2) demonstrate that they are making a good faith effort to achieve compliance with specified equitable compensation relationship standards. It establishes a fee of \$75 for each certificate issued by the commissioner, with fee revenues deposited into an unspecified special fund to be used only to administer the bill. The bill applies only prospectively and does not apply to any contract in effect before the bill’s effective date.

Fiscal Summary

State Effect: Special fund revenues increase by \$326,500 in FY 2020 from fee payments; special fund expenditures increase correspondingly to implement the bill’s certification requirements. General fund expenditures increase by \$156,700 in FY 2020 to cover the gap between fee revenues available in the special fund and operating expenditures. Out-year revenues reflect a biennial certification cycle; out-year expenditures reflect annualization and elimination of one-time-only costs and account for revenues available to cover ongoing costs.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$326,500	\$15,000	\$341,500	\$30,000	\$356,500
GF Expenditure	\$156,700	\$461,000	\$148,800	\$475,600	\$164,900
SF Expenditure	\$236,500	\$15,000	\$341,500	\$30,000	\$356,500
Net Effect	(\$66,700)	(\$461,000)	(\$148,800)	(\$475,600)	(\$164,900)

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

Local Effect: None.

Analysis

Bill Summary:

Definitions

“Comparable work value” means the value of work measured by the skill, effort, responsibility, and working conditions normally required in the performance of work. “Equitable compensation relationship” means that the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value, as determined by the commissioner. “Female-dominated class” means any class of positions in which 70% or more of members are female; “male-dominated class” means any class of positions in which 80% or more of the members are male.

Application of the Bill

The bill applies to any contractor or subcontractor that has a State contract with a value of at least \$500,000, unless the contractor employs 40 or fewer workers.

The bill does not apply to contracts between State agencies or between a State agency and a county or Baltimore City. It also does not apply if a State agency determines that the bill’s requirements conflict with any applicable federal program requirement.

Certificate of Pay Equity Compliance

The commissioner must issue a certificate of pay equity compliance to an employer that demonstrates that it is in compliance with equitable compensation relationship standards or is making a good faith effort to achieve compliance with those standards. An employer can demonstrate good faith by submitting a plan to the commissioner for achieving compliance, including the employer’s proposed actions and responses to the commissioner’s recommendations. The plan must also include a proposed date for achieving compliance with the standards.

A certificate of pay equity compliance is valid for two years. Any data submitted to the commissioner related to certificates of pay equity compliance are not subject to disclosure under Maryland’s Public Information Act (PIA). The bill specifies the conditions under which a certificate can be suspended or revoked, and it specifies that contracts may be terminated, voided, or abridged in the event that a certificate is suspended or revoked.

The commissioner (1) must establish regulations to implement the bill and (2) may require employers to keep and submit specified records.

By July 1, 2020, the commissioner must submit a report to the General Assembly with specified information about the implementation of certificates of pay equity compliance.

Current Law: State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. The State and local governments are considered employers.

Regardless of employer size, under the State's Equal Pay for Equal Work law, an employer may not discriminate among employees in any occupation by (1) paying a wage to employees of one sex or gender identity at a rate less than the rate paid to employees of another sex or gender identity if both employees work in the same establishment and perform work of comparable character or work on the same operation, in the same business, or of the same type or (2) providing less favorable employment opportunities based on sex or gender identity. However, a variation in a wage based on specified systems or factors is generally not prohibited.

When the Commissioner of Labor and Industry has determined that the State's Equal Pay for Equal Work law has been violated, the commissioner must (1) try to resolve any issue informally by mediation or (2) ask the Attorney General to bring an action on behalf of the employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

If an employer knew or reasonably should have known that the employer's action violates Equal Pay for Equal Work provisions, an affected employee may bring an action against the employer for injunctive relief and to recover the difference between the wages paid to employees of one sex or gender identity who do the same type work and an additional equal amount as liquidated damages. If an employer knew or reasonably should have known that the employer's action violates specified wage disclosure provisions, an affected employee may bring an action against the employer for injunctive relief and to recover actual damages and an additional equal amount as liquidated damages.

An employee may bring an action on behalf of the employee and other employees similarly affected; that action must be filed within three years after the employee receives from the employer the wages paid on the termination of employment.

If a court determines that an employee is entitled to judgment in an action, the court must allow against the employer reasonable counsel fees and other costs of the action, as well as prejudgment interest in accordance with the Maryland Rules.

An employer who violates certain provisions of the Equal Pay for Equal Work law is guilty of a misdemeanor and subject to a fine of up to \$300.

Maryland Public Information Act

Maryland's PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated. Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

A custodian must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA also requires denial of inspection for personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

State Revenues: Special fund revenues increase from the payment of the \$75 fee from each contractor that is issued a certificate of pay equity compliance. The bill requires that revenues from the certification fee be distributed to a special fund to be used only to administer the provisions of the bill. However, no special fund is mentioned or established by the bill, so it is unclear into which fund the money is deposited.

Eligibility for the certificate is limited to firms with at least 40 employees that work on State contracts valued at \$500,000 or more. The Department of General Services advises that more than 53,700 vendors are registered on eMaryland Marketplace (eMM), the State's online procurement portal. These vendors represent businesses that either have existing contracts with the State or that may wish to do business with the State. Data on Maryland businesses from the U.S. Census Bureau shows that 91% of businesses have fewer than 40 employees, so this analysis assumes that 9% of eMM registrants have more than 40 employees. It further assumes that 10% of registrants are no longer in business or otherwise are no longer engaged in State procurement.

Based on the above assumptions, 4,353 businesses are issued a certificate of pay equity compliance in the first year and are assumed to renew their certificates every two years. In addition, it is assumed that 200 new businesses are issued a certificate in each succeeding year. Therefore, special fund revenues increase by \$326,475 in fiscal 2020 from the certification fees; as the certificates are valid for two years, revenues are just \$15,000 in fiscal 2021, reflecting only the 200 new applicants. In each biennial cycle, special fund revenues are higher in even-numbered years and lower in odd-numbered years. The bill's October 1, 2019 effective date has no effect on revenues as it is assumed that all eligible businesses must be issued a certificate in the shortened fiscal year.

To the extent that the actual number of firms issued certificates differs from these assumptions, special fund revenues vary accordingly.

State Expenditures: The bill requires the Commissioner of Labor and Industry to establish a new certification program for more than 4,000 contractors and subcontractors who may do business with the State and requires substantial verification of compensation information and “good faith” plans provided by those businesses. It also requires extensive enforcement to determine if certificate holders fall out of compliance and must have their certificates suspended or revoked. The Division of Labor and Industry within DLLR does not have the staff needed to carry out these tasks.

Therefore, State expenditures increase by \$483,163 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring a supervisor, three civil rights investigators, an assistant Attorney General, and an administrative officer to process certificates of pay equity compliance and otherwise enforce the bill's provisions. It includes salaries, fringe benefits, one-time start-up costs (including an upgrade to the division's computer system for tracking purposes), and ongoing operating expenses.

Positions	6.0
Salaries and Fringe Benefits	\$320,374
Information Technology Upgrade	96,961
Operating Expenses	<u>65,828</u>
Total FY 2020 State Expenditures	\$483,163

Future year expenditures reflect full salaries with annual increases and employee turnover, termination of one-time costs, and ongoing operating expenses.

As shown in **Exhibit 1**, revenues from the \$75 certification fee are not sufficient to cover the costs of operating the program. Therefore, this analysis assumes that general fund expenditures increase each year by the amounts shown in Exhibit 1 to close the funding gap, which varies by year due to the biennial certification cycle.

Exhibit 1
Revenues and Expenditures Associated with Certificates of Pay Equity Compliance

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
New Certificates	4,353	200	200	200	200
Renewal Certificates			4,353	200	4,553
Total Certificates	4,353	200	4,553	400	4,753
Fee Revenues	\$326,475	\$15,000	\$341,475	\$30,000	\$356,475
Operating Costs	\$483,163	\$475,962	\$490,304	\$505,578	\$521,381
General Funds Needed	\$156,688	\$460,962	\$148,829	\$475,578	\$164,906

Source: Department of Legislative Services

Small Business Effect: Most small businesses are not affected by the bill because it does not apply to businesses with 40 or fewer employees. However, businesses with between 41 and 50 employees, which still qualify as small businesses, must be certified before participating in State procurement. This may create an administrative burden for most such firms and, in some cases, may require them to adjust their compensation policies in order to qualify for a certificate.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): University System of Maryland; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

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