

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1044
Appropriations

(Delegates Rosenberg and Weldon)

Education, Health, and Environmental Affairs

Procurement - State Contractor Employees - Whistleblower Protection

This bill prohibits employers that enter into contracts with a unit of State government under the State Finance and Procurement Article from taking or refusing to take personnel actions against an employee as a reprisal for whistleblowing.

The bill is effective July 1, 2004 and applies retroactively to any personnel action taken as reprisal on or after February 17, 2003.

Fiscal Summary

State Effect: Potential minimal increase in State procurement costs based on increased labor costs.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Employers are prohibited from taking personnel action as a reprisal against an employee who discloses information regarding: (1) an abuse of authority, gross mismanagement, or waste of money; (2) a substantial specific danger to public health or safety; or (3) a violation of law. Employers are prohibited from taking personnel action as a reprisal against an employee who objects to or refuses to participate in an activity, policy, or practice in violation of law. An employee must file a suit within one year after the date that the employee was aware of the violation. This bill does not apply to the Executive or Judicial Branch as an employer.

The courts are permitted to (1) issue injunctions to restrain continued violations; (2) reinstate the employee in the same or an equivalent position held before the violation; (3) remove adverse personnel record entries based on or related to the violation; (4) reinstate full fringe benefits and seniority rights; (5) require compensation for lost wages, benefits, and other remuneration; (6) award costs of litigation and reasonable attorney's fees to the prevailing employee; and (7) award any other appropriate damages and relief.

Current Law: The Maryland Whistleblower Act of 1980 protects Executive Branch employees from retaliation for reporting violations of State law. The law applies only to an employee in the Executive Branch, including units with independent personnel systems. The Act does not apply to State contractors.

Background: The Task Force to Study Efficiency in Procurement (created by Chapter 386 of 2003) recommended that the State provide a financial incentive program for State employees to report fraud in procurement. The task force further recommended that any program developed should include protections against false accusations and that State employees with responsibilities for paying bills should be encouraged to report instances of fraud. This bill relates to similar issues that confront employees of private sector vendors performing under State contract.

State Fiscal Effect: The Department of Budget and Management and the Department of General Services advise that the bill could have an indirect impact on State procurements if labor costs rise due to any increase in claims filed and litigation; however, both agencies expect this impact to be minimal.

Additional Comments: The retroactive provision ties the applicability of this bill to the Governor's Waste, Fraud, and Abuse Hotline.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2004
ncs/mdr

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