

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1320
Economic Matters

(Delegate Rosenberg, *et al.*)

Procurement - Service Contracts - Employee Compensation Standards

This bill requires some State service contracts to provide employee compensation that is at least equivalent to compensation that would be provided to State employees for performing the same or similar work. State employees who have been adversely affected by a violation of this requirement are entitled to sue in any State circuit court.

Fiscal Summary

State Effect: By requiring nonexempt contracts to pay equivalent compensation and maintaining a \$200,000 or 20% threshold for savings, the bill would likely preclude the State from reducing expenditures on nonexempt services that are currently contracted out to firms that provide lower compensation packages to their employees. Potentially minimal State expenditures for lost compensation and attorney's fees to any employee who prevails in a lawsuit alleging State violations of the bill's provisions.

Local Effect: The bill could have operational effects on circuit courts responsible for hearing cases of alleged violations of the bill's provisions.

Small Business Effect: Potentially meaningful to the extent that the State decreases the number of service contracts with small businesses that do not provide comparable compensation to their employees.

Analysis

Bill Summary: The bill applies to service contracts that are not exempt from a codified preference that State employees perform all State functions in State-operated facilities. Service contracts that are exempt from that preference are those in which:

- the General Assembly has required or authorized the contract;
- State employees are not available to perform the necessary services;
- a conflict of interest would result if a State employee performed the services;
- the services require emergency appointments;
- the services are incidental to the purchase or lease of personal or real property; or
- a clear need exists to obtain an unbiased finding or opinion.

Contracts that are not exempt from that preference must provide employee compensation for each position that is at least equivalent to the employee compensation provided to a State employee who performs similar duties. The contractor must also give preference to qualified State employees who have been displaced by the State's decision to contract out the services they provide. "Employee compensation" is defined as the combined monetary value of wages and benefits including health insurance, retirement, and leave benefits.

State agencies planning to solicit a nonexempt contract must notify employees who will be affected by the contract of the nature of the work to be performed and of their rights as State employees at least 60 days before they issue a solicitation for a service contract. They must also submit to the Department of Budget and Management (DBM) a comparison of the cost of the service contract with the cost of using State employees to perform the same work, based on providing equivalent compensation to contracted employees and State employees. The comparison must show that the service contract will save the State at least \$200,000 or 20% of the value of the contract, whichever is less, over the life of the contract.

At least 15 days before certifying a service contract as nonexempt to the Board of Public Works, DBM must notify affected employees of its intention to certify the contract as nonexempt. Employees may then review and comment on the contract. After certifying the contract as nonexempt, DBM must notify affected employees of their rights to:

- receive, without charge, a copy of the certification and the contract;
- comment on the certification and the contract; and
- seek judicial review of the certification.

State employees who believe they have been affected by a violation of the provisions of this bill may bring an original action in any circuit court of the State. If the employee prevails, the court may issue declaratory and injunctive relief, award attorney's fees to the plaintiff, and reimburse any lost compensation resulting from the violation.

DBM and the Department of General Services are authorized to issue regulations to carry out the bill's provisions.

Current Law: Using State employees to perform all State functions in State-operated facilities is deemed preferable to contracting with the private sector to perform the same functions. Certain contracts are exempt from that preference, under the terms specified above. Agencies that seeks to enter into a nonexempt service contract must show that it will save the State at least \$200,000 or 20% of the value of the contract, whichever is less, over the life of the contract.

There is no requirement that nonexempt contracts provide employee compensation that is equivalent to compensation provided to State employees for the same or similar services. There is also no requirement that affected State employees be notified in advance and be given an opportunity to review and comment on the contract.

Background: This bill is a legislative priority for the American Federation of State, County, and Municipal Employees, which is pursuing similar legislation in state legislatures nationwide, according to its 2006 State Legislative Agenda.

State Fiscal Effect: This bill will make it more difficult for agencies to contract out services currently performed by State employees. To the extent that State agencies are currently able to save at least \$200,000 by contracting out services to employers that provide lower compensation levels to their employees, agencies would no longer be able to realize those savings by entering into those contracts. Thus, while the bill would not have any direct effect on State expenditures, it could preclude opportunities for future savings. It is assumed that State agencies could implement the bill's employee notification provisions with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of General Services, Board of Public Works, Office of Administrative Hearings, Department of Budget and Management, Department of Legislative Services

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