

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 976  
Economic Matters

(Delegate Hucker, *et al.*)

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Displaced Building Service Workers Protection Act

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This bill establishes specified worker protections when a contract for building services is awarded to a successor contractor in the State.

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Fiscal Summary

**State Effect:** Potential increase in expenditures and operational inefficiencies related to hiring contractors or vendors to provide services in State-owned facilities. Revenues are not affected. Any increase in the workload of the District Court cannot be estimated but is expected to be minimal and absorbable within existing resources.

**Local Effect:** Potential increase in expenditures and operational inefficiencies related to hiring contractors or vendors to provide services in certain facilities owned by local governments. Any increase in the workload of the circuit courts cannot be estimated but is expected to be minimal and absorbable within existing resources.

**Small Business Effect:** Meaningful for any small business that is a covered employer, particularly successor employers.

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Analysis

**Bill Summary:** The bill applies to a “covered employer” who hires an individual to perform work in connection with the care, maintenance, security, or providing of services at an existing (1) school; (2) hospital or nursing care facility; (3) institution, including a museum, convention center, arena, or airport; or (4) another similar establishment.

A “successor employer” is defined as a covered employer that (1) has been awarded a contract to perform similar services as those performed within the previous 90 days; (2) has acquired or purchased a property that employed service employees within the previous 90 days; or (3) cancels or terminates a service contract and hires service employees as its own employees.

A successor employer must retain for a 90-day transition employment period all employees who worked at the site for the terminated employer. If the successor employer determines that fewer employees are required to perform the services than were required under prior management, the successor employer must retain employees by seniority within each job classification. During the 90-day transition period, the successor employer must maintain a preferential hiring list of those employees not retained; the successor employer must hire additional employees from this list in order of seniority. The successor employer may not discharge an employee during the 90-day transition period without just cause.

The successor employer must perform a written performance evaluation at the end of the 90-day transition period. If an employee’s performance is at least satisfactory, the employee must be offered continued employment at the site. An employee who was not retained or who was discharged in violation of the bill may pursue a private right of action against the employer and may be awarded (1) back pay; (2) reinstatement to the prior position at the work site; (3) reasonable attorney’s fees and costs; and (4) access to information, as specified by the bill. The bill may not be construed to limit an employee’s right to sue an employer for wrongful termination.

The bill does not apply to (1) residential buildings with fewer than 30 units; (2) any employer who employs fewer than 15 individuals; or (3) a commercial building or an office park occupying less than 75,000 square feet. The bill does not diminish the right of a property owner or awarding authority to terminate a building service contract or replace a contractor with another contractor. The bill specifies that a terminated employer must give to the successor employer a list of all the employees who worked for the terminated employer. A terminated employer’s failure to provide such a list does not excuse a successor employer from complying with the bill’s provisions.

**Current Law:** There are no similar provisions of State law governing the employment of workers at locations covered by the bill. In general, employers, employment agencies, and labor organizations are prohibited from discrimination in various aspects of public- and private-sector employment because of an individual’s race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

Individuals alleging employment discrimination may file a complaint with the Maryland Commission on Human Relations (MCHR). A complaint must be filed within six months from the date the alleged violation occurred. On a finding of an unlawful employment practice, administrative remedies may include enjoining the respondent from engaging in the discriminatory act, the reinstatement or hiring of employees with or without back pay, compensatory damages, and any other appropriate equitable relief.

**State/Local Fiscal Effect:** Units of government that contract for services at the locations covered by the bill may be impacted fiscally and operationally as the bill creates additional requirements for successor employers that may increase operating expenses. The extent of any such impacts cannot be reliably estimated. Multiple State and local entities affected by the bill – including the Maryland Stadium Authority, the University System of Maryland, Baltimore City, and Montgomery County – advise that the bill’s requirements may make it more difficult and expensive to negotiate contracts for services provided at specified facilities.

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### **Additional Information**

**Prior Introductions:** None; however, similar legislation applicable to only Montgomery County was introduced in 2005. HB 475 of 2005 was heard by the House Economic Matters Committee; no further action was taken on the bill.

**Cross File:** SB 781 (Senator Muse, *et al.*) - Finance.

**Information Source(s):** City of Baltimore; Montgomery, Washington, and Worcester counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Stadium Authority; University System of Maryland; Maryland State Department of Education; Department of Health and Mental Hygiene; Maryland Department of Transportation; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Business and Economic Development; Department of Legislative Services

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Analysis by: Michael T. Vorgetts

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