

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 675 (Delegate Niemann)  
Health and Government Operations

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**Health - Prohibition on Individuals with Tuberculosis Working in Food Service Facilities**

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This bill prohibits an individual who has tuberculosis (TB) in a communicable stage from working, in any capacity, in a food service facility. The bill requires an employer of a food service employee to require the employee to provide a current certification that the employee is free of tuberculosis in a communicable stage when (1) the employee is first employed; and (2) at any other time that the local health department (LHD) deems necessary. The required certification must be based on the results of specific tests and the types of (and intervals between) tests must be regulated by LHDs and conform to the standards of the Department of Health and Mental Hygiene (DHMH).

A person that violates the bill is subject to existing criminal and civil penalties.

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**Fiscal Summary**

**State Effect:** Potential significant increase in general fund expenditures, as discussed below. The penalty provisions of this bill are not expected to have a material impact on State finances or operations.

**Local Effect:** Potential significant increase in expenditures for local health departments, as discussed below. The penalty provisions of this bill are not expected to have a material impact on local finances or operations.

**Small Business Effect:** Potential minimal increase in expenditures for any food service facilities that elect to cover the costs, if any, of TB testing for employees. Potential operational impact to the extent that the bill results in delays in the hiring process for food service facilities.

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## Analysis

**Current Law:** A person that violates any provision of (or any rule or regulation adopted under) Title 21, Subtitle 3 of the Health-General Article is guilty of a misdemeanor and on conviction is subject to (1) for a first offense, a fine of up to \$1,000 and/or imprisonment for up to 90 days; and (2) for a second offense, a fine of up to \$2,500 and/or imprisonment for up to one year. In addition, a person that violates any provision of (or any rule or regulation adopted under) Title 21, Subtitle 3 of the Health-General Article or any term, condition, or limitation of any license under those provisions of law is liable for a civil penalty of up to \$5,000, to be collected in a civil action in the District Court for any county, and may be enjoined from continuing the violation. Each day on which a violation occurs is a separate violation.

LHDs license and inspect food service facilities.

**Background:** TB is caused by a bacterium that, in most cases, affects the lungs (but can also affect the kidney, spine, and brain). TB is spread through the air; if an infected person coughs, sneezes, or speaks, a nearby person may breathe in the bacteria and become infected. According to the federal Centers for Disease Control and Prevention, TB is not caused by touching or by sharing food or drink.

Two TB-related conditions exist: latent TB infection and TB disease. Typically, a person who breathes in TB bacteria is able to fight off the bacteria and does not have any symptoms; in this case, the person has latent TB infection and cannot spread TB bacteria to others. However, if TB bacteria grow and multiply in the body, the person becomes sick with TB disease.

Some people develop TB disease within weeks of becoming infected. Others develop the disease years later when their immune systems become weakened due to other health problems that make it difficult for the body to fight bacteria. However, many people who have latent TB infection never develop TB disease.

Tuberculin skin testing (TST) is used to detect TB bacteria in the body; subsequent testing can determine whether a person has latent TB infection or TB disease. A person with latent TB infection can receive treatment to prevent the infection from developing TB disease, which can be fatal if not properly treated.

Currently, LHDs offer TST at no charge to the individual who seeks testing. Similarly, DHMH currently provides treatment for TB infection at no charge to the individual being treated.

**State/Local Fiscal Effect:** Expenditures increase significantly under the bill for the State as well as LHDs due to a likely significant increase in the use of their testing and treatment services. Based on 2010 data indicating that there are 185,282 food service facility employees in Maryland – and assuming 50% turnover in the industry annually-DHMH advises that 92,641 new employees must be tested for TB each year under the bill. DHMH further advises that the cost of this testing is \$35 (which includes syringes, gauze pads, and staff time) per test for LHDs and \$3.50 per test for the department, which provides the solution for TST.

Assuming that 10% of individuals will test positive for latent or active TB, DHMH advises that 9,264 individuals are likely to receive additional testing from LHDs, at a cost of \$40 per chest x-ray (for a total of \$370,560) and \$5 per blood test (for a total of \$46,320). DHMH further advises that the cost to the State of treating the 9,264 individuals who are likely to test positive for TB is almost \$1.7 million annually. Total costs of testing and treatment are shown below.

Initial Testing (Equipment and Staff Time)	\$3,242,435
Follow-up X-ray Testing	370,560
Follow-up Blood Testing	<u>46,320</u>
<b>Total Annual Cost of Testing to LHDs</b>	<b>\$3,659,315</b>
Treatment	\$1,699,056
Initial Testing (Solution)	<u>324,244</u>
<b>Total Annual Cost of Testing to State</b>	<b>\$2,023,300</b>

DHMH advises that additional LHD staff also will be needed to implement the bill. Specifically, DHMH advises that (1) each of the eight LHDs in jurisdictions with a large number of food service facilities requires two full-time registered nurses and one full-time office secretary; and (2) each of the 16 other LHDs requires one full-time nurse and one full-time office secretary. Total staffing costs to LHDs are shown below.

Positions	56
Salaries and Fringe Benefits	\$2,386,639
One-time Start-up Costs	230,880
Ongoing Operating Expenses	<u>134,820</u>
<b>Total Annual Cost of Additional Staff for LHDs</b>	<b>\$2,752,339</b>

Montgomery County anticipates its costs to be higher than those anticipated by DHMH, advising that six full-time registered nurses, one full-time registered radiology technician, and one part-time (50%) physician are needed to administer testing, read test results, and complete associated paperwork for the county's nearly 26,000 food service facility workers. The county anticipates staffing and equipment costs to total more than

\$1.2 million annually, assuming that 20% of individuals tested need follow-up testing and treatment.

Legislative Services concurs with both DHMH and Montgomery County that costs are likely to be significant under the bill, but notes several ways in which these costs may be lower than those anticipated by the department and the county. For example, some employees (particularly those who have health insurance, although it is assumed that many employees in the industry are uninsured) may elect to seek testing and/or treatment from private providers rather than LHDs. In addition, many individuals who test positive for TB will not complete follow-up testing or treatment. (DHMH has advised that the national average for completing medical treatment is between 40% and 45%.) In addition, it is unclear to what extent the additional staffing costs anticipated by DHMH are already accounted for in the department's estimate of initial testing costs (which DHMH indicates includes staff time as well as equipment). Nonetheless, Legislative advises that – given the number of food service facility employees and the high turnover and lack of insurance among such employees – costs under the bill are likely to be significant to both LHDs and to the State.

Testing and treatment for TB is currently provided at no cost in the State. Legislative Services advises that costs under the bill could be partially offset if fees are established for these services. However, any establishment of fees for these services may result in fewer individuals (who are not food service employees) seeking testing and/or treatment for TB from LHDs and DHMH.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** U.S. Centers for Disease Control and Prevention, Department of Health and Mental Hygiene, Howard and Montgomery counties, Maryland Association of Counties, Department of Legislative Services

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