

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 722

(Delegate Charkoudian, *et al.*)

Economic Matters

Finance

Labor and Employment - Occupational Safety and Health - Heat Stress Standards

This bill requires the Commissioner of Labor and Industry, in consultation with the Maryland Occupational Safety and Health Advisory Board, to develop and adopt regulations by October 1, 2022, that require employers to protect employees from heat-related illness caused by heat stress. Before the commissioner begins the process for developing and adopting the regulations, Maryland Occupational Safety and Health (MOSH) must hold informational hearings in four different geographical areas of the State to obtain input from interested parties. In developing the regulations, the commissioner must consider specified national standards. By January 1, 2022, the commissioner must report to specified committees of the General Assembly on the implementation of the bill.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Department of Labor (MDL) increase by \$145,600 in FY 2021; out-year expenditures reflect annualization and ongoing costs, including additional staff for enforcement in FY 2023. Special fund and general fund expenditures may increase beginning in FY 2023 for State agencies depending on adopted regulations. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	145,600	174,500	238,200	259,800	268,400
GF/SF Exp.	0	0	-	-	-
Net Effect	(\$145,600)	(\$174,500)	(\$238,200)	(\$259,800)	(\$268,400)

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

Local Effect: The bill may have an operational and potential fiscal impact on local governments beginning in FY 2023. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Heat stress” means the net load to which a worker is exposed from the combined contributions of metabolic heat, environmental factors, and clothing worn that results in the body storing more heat, causing body temperatures to rise to sometimes dangerous levels. “Heat-related illness” means a medical condition resulting from the body’s inability to rid itself of excess heat.

Current Law: The Division of Labor and Industry within MDL administers the MOSH program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards. OSHA does not have a specific standard that covers working in hot environments. Nonetheless, under the Occupational Safety and Health Act, employers have a duty to protect workers from recognized serious hazards in the workplace, including heat-related hazards.

Employers must provide each employee with employment and a place of employment that are safe and healthful and free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee. MDL reports that MOSH utilizes this standard for instances of heat stress-related hazards when necessary. MOSH also evaluates heat stress during inspections when warranted.

Employers must keep their employees informed of their protections and duties under the MOSH program by posting notice where notices to employees normally are posted or using other appropriate means. The commissioner may require an employer to keep records of work-related deaths, illness, and injury (other than minor injuries). An employer must report to the commissioner an employment accident within eight hours after it occurs if the accident results in an employee’s death or the hospitalization of at least three employees.

An employer or other person may not discharge or discriminate against an employee because the employee filed a complaint, brings an action or causes an action to be brought, testifies, or exercises a right relating to the MOSH program. An employee who believes that an employer or other person has retaliated against the employee may submit a complaint to the commissioner, and the commissioner may investigate it.

Background: In 2019, MOSH logged 35 phone calls related to excessive heat, responded to 31 complaints filed that resulted in no inspection, and conducted at least 15 inspections where heat stress was evaluated.

When the U.S. Congress passed the Occupational Safety and Health Act of 1970 (Public Law 91-596), it established the National Institute for Occupational Safety and Health (NIOSH) and charged NIOSH with recommending occupational safety and health standards and describing exposure levels that are safe for various periods of employment.

Occupational exposure to heat can result in injuries, disease, reduced productivity, and death. To address this hazard, NIOSH has evaluated the scientific data on heat stress and hot environments in the [Criteria for a Recommended Standard: Occupational Exposure to Hot Environments](#). NIOSH recommends that worker exposure to heat stress in the workplace be controlled by complying with all sections of the recommended standards found in this criteria document.

Since 2011, OSHA has raised awareness of the dangers associated with working in extreme temperatures through its [Heat Illness Prevention Campaign](#). Through training sessions, outreach events, informational sessions, publications, social media messaging, and media appearances, OSHA has taught workers and employers how to protect workers from heat.

OSHA was petitioned in 2011 to promulgate an emergency temporary standard for a heat stress threshold and a subsequent permanent heat stress standard, but OSHA denied the [request](#) in 2012 on the basis that heat stress did not pose a grave danger. However, OSHA has increased its focus on heat as a hazard during its inspections.

State Expenditures: The bill creates additional responsibilities for MDL by requiring MDL to hold informational hearings and implement regulations. It is assumed that the regulations will require MDL/MOSH to enforce stricter employer requirements to protect employees from heat-related illnesses. MOSH cannot carry out enhanced enforcement with existing staff and resources. The cost of administering the MOSH program is covered through an appropriation from the Workers' Compensation Commission (WCC). Thus, special fund expenditures for MDL increase by \$145,644 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one assistant Attorney General and one compliance officer to hold hearings and implement regulations. Once the regulations are developed by October 1, 2022, another compliance officer is needed to assist with enforcement of the regulations. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$130,611
Operating Expenses	<u>15,033</u>
Total FY 2021 MDL Expenditures	\$145,644

Future year expenditures reflect full salaries with annual increases and employee turnover, and ongoing operating expenses, along with an additional compliance officer in fiscal 2023.

Special fund and general fund expenditures may increase beginning in fiscal 2023 for State agencies to protect employees from heat-related illness. The actual costs will depend on regulations adopted by MDL. To the extent that regulations are developed prior to October 1, 2022, the compliance officer may be needed sooner and State agencies may incur costs prior to fiscal 2023.

Local Expenditures: The bill may have an operational and potential fiscal impact on local governments beginning in fiscal 2023. The actual effect will depend on regulations adopted by MDL.

Additional Comments: To the extent that current revenues for WCC are insufficient to cover the administrative costs described above, WCC may need to increase employer assessments to cover the costs, resulting in a special fund revenue increase for WCC and additional expenditures for the State, local governments, and small businesses as employers. As it is unclear whether additional assessments are needed, this analysis does not include any potential revenue or expenditure increases, but it is assumed that any such increases approximate the cost of MDL implementing the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 434 (Senator McCray, *et al.*) - Finance.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Maryland-National Capital Park and Planning Commission; cities of Frederick and Havre de Grace; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of the Environment; Department of General Services; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; Workers' Compensation Commission; U.S. Department of Labor; Centers for Disease Control and Prevention; Department of Legislative Services

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