

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 858 (Senator Sydnor)

Judicial Proceedings and Education, Health,
and Environmental Affairs

**Procurement and Correctional Facilities - Employment Opportunities for
Formerly Incarcerated Individuals**

This bill requires that specified procurements for goods and services at a State or local correctional facility, including procurements through master contracts, give preference to bidders or offerors based on the number of employees who are formerly incarcerated individuals. Those same procurements must include a specified clause related to the hiring of formerly incarcerated individuals. The Maryland Department of Labor (MDL) and the Department of Public Safety and Correctional Services (DPSCS) must modify the Maryland Workforce Exchange (MWE) website to facilitate the hiring of formerly incarcerated individuals, as specified. The bill includes related reporting and notification requirements.

Fiscal Summary

State Effect: General fund expenditures increase by \$30,000 in FY 2021 only for information technology (IT) costs. Application of a percentage price preference likely increases the cost of goods and services provided to State correctional facilities, and possibly other State contracts, by up to 5%. To the extent the price preference and other requirements discourage participation in State procurement, competition for State contracts decreases, which has been shown to increase overall procurement costs. No effect on revenues.

Local Effect: Application of a percentage price preference likely increases the cost of goods and services in local detention centers by up to 5%. To the extent the price preference and other requirements discourage participation in local procurement, competition for local contracts decreases, which has been shown to increase overall procurement costs. No effect on revenues. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill applies to procurements entered into on or after January 1, 2021. The preference given based on the number of employees who are formerly incarcerated individuals must be at least equivalent to other preference programs in the State.

The formerly incarcerated employment clause in each affected procurement must require each contractor to:

- list on the MWE website all job vacancies, including a list of essential job functions for each job;
- review all job applications submitted by formerly incarcerated individuals within 45 days after posting the job; and
- hire for a job an individual from the pool of formerly incarcerated individuals unless (1) 65% of the job requirements would cause a formerly incarcerated individual to violate terms of release or (2) it would not be possible to train the individual within 90 days after a job start date.

Omission of the employment clause from a contract voids the contract.

A covered contractor must develop a written policy (1) regarding the provision of reasonable accommodations for requirements imposed on a formerly incarcerated individual as a condition of parole, probation, or type of release and (2) preventing disclosure of a formerly incarcerated individual's resume and applications to a third party.

Maryland Workforce Exchange Website

The modifications to the MWE website must:

- enable contractors to post all job listings;
- provide a secure area of the website where formerly incarcerated individuals may post a profile and resume in a section that may only be viewed by contractors;
- enable contractors to separately sort and search the profiles, subject to specified criteria; and
- provide formerly incarcerated applicants the option to receive, within eight hours of a job posting, electronic notices of each new job posted.

A contractor with access to the secure area of the website may not give access to a third-party.

Reporting and Notification Requirements

By December 15 of each year, each covered contractor must submit to a contracting agency a report with specified information regarding the employment of formerly incarcerated individuals. By January 1, 2021, DPSCS must report to specified committees of the General Assembly on implementation of the bill's provisions. Also by January 1, 2021, DPSCS must notify all contractors about the bill's requirements. DPSCS must provide a list of American Job Centers in the State to all parolees and individuals in prerelease programs.

The bill expresses legislative intent that DPSCS and MDL use existing resources to implement the bill, and that if any additional costs are needed, they may not exceed \$20,000.

Current Law/Background: There are no provisions in State procurement law related to hiring or contracting preferences for ex-offenders or firms that employ ex-offenders. However, as described below, Maryland Correctional Enterprises (MCE) is a preferred provider under State procurement law.

State procurement law defines a "preferred provider" to be a provider of supplies or services that is given preference in specified provisions of current State procurement law. Only if none of the specified preferred providers produces or provides the desired supplies or services may a State agency issue a competitive procurement. Chapter 313 of 2016 consolidated certain procurement preferences such that, currently, the State or a State-aided or -controlled entity must buy supplies and services from MCE first, then from Blind Industries and Services of Maryland (BISM), and finally the Employment Works Program. The Employment Works preference applies only if a community service provider or a business owned by an individual with a disability provides the supplies or services, neither MCE nor BISM can do so, and the State or a State-aided or -controlled entity is not required by law to buy the supplies or services from any other unit of State government.

Formerly known as State Use Industries, MCE provides work and job training for inmates incarcerated in correctional facilities. As noted in the Governor's budget books, MCE produces goods and supplies services at a cost that does not exceed the prevailing average market price. These goods and services are used by local, State, and federal agencies; they are also available for use by charitable, civic, educational, fraternal, or religious organizations.

MWE is an online job seeker/workforce services system that provides a complete set of employment tools and is administered by MDL. It is accessed as a website and was specifically designed for job seekers, students, case managers, employers, training providers, and workforce professionals. Users can, among other things, use professional

templates to create and send resumes and cover letters to employers, review and apply for available jobs online, and research labor market information.

State procurement law includes various purchasing price preferences, including for locally grown foods, small businesses, resident bidders, environmentally preferable products, and mercury-free products. In general, purchase price preferences do not exceed 5% of the lowest responsive bid price.

State procurement law authorizes the use of master contracting and intergovernmental cooperative purchasing. Under master contracting, multiple contractors are available to provide services, supplies, or commodities to any State agency through individual task order contract procurements. Under intergovernmental cooperative purchasing, State and/or local agencies can “piggy back” or otherwise purchase services, supplies, or commodities from contracts entered into by another governmental entity.

State Expenditures: The bill’s direct effect on State expenditures totals \$30,000 in fiscal 2021 for IT-related costs associated with modifying MWE to establish a secure portal, but the bill has broader effects on State procurement costs. Although the bill is tailored to apply to procurements by State and local correctional facilities, it may have a much broader effect on all State procurement contracts because of the prevalence of master contracting and the use of intergovernmental purchasing. The State uses master contracting in an increasingly large number of areas, including IT equipment and services, vehicle purchasing, and more. To the extent that DPSCS uses these master contracts to procure supplies and services, all contractors on those contracts will have to comply with the bill’s requirements and also be subject to a percentage price preference. The same may be true for contracts entered into by other governmental entities that DPSCS may use through intergovernmental purchasing.

Small Business Effect: Small businesses that sell goods or services to State and local correctional facilities are subject to a percentage price preference of up to 5% based on their hiring of ex-offenders. They are also required to give hiring preference to ex-offenders, as specified under the bill, and also make accommodations for their post-release status.

Additional Comments: The Department of Legislative Services notes that the bill’s anticipated fiscal effect exceeds the spending level specified in the bill’s legislative intent. However, that intent is nonbinding, and the estimate in this fiscal and policy note is consistent with other similar IT-related activities.

DPSCS advises that many ex-offenders may not pass background checks required for some on-site jobs performed by contractors. Thus, employers may not be able to comply with

the bill's requirements to the extent that ex-offenders cannot perform necessary job functions.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1524 (Delegate D.M. Davis, *et al.*) - Health and Government Operations.

Information Source(s): Baltimore City; Harford and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; University System of Maryland; Department of General Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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