

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 577 (Delegate Stewart)  
 Economic Matters

Health and Welfare of H-2 Visa and Migrant Workers – COVID-19 Pandemic –  
 Regulations (Healthy Farmworkers Act)

This bill requires the Secretary of Labor to adopt regulations, by October 1, 2021, that apply to each employer of H-2A and H-2B visa and migrant workers during the COVID-19 pandemic. Generally, the regulations must ensure safe and sanitary housing for those workers in relation to the COVID-19 pandemic. **The bill takes effect July 1, 2021.**

Fiscal Summary

**State Effect:** General fund expenditures for the Maryland Department of Labor (MDL) increase by \$762,600 in FY 2022 and \$722,700 in FY 2023 for related enforcement. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	762,600	722,700	0	0	0
Net Effect	(\$762,600)	(\$722,700)	\$0	\$0	\$0

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

**Local Effect:** Local health departments are assumed to be able to provide assistance in arranging housing space when an employer does not have sufficient space to accommodate separate and isolated facilities for workers. Otherwise, the bill does directly affect local government operations or finances.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** The bill enumerates the various safeguards and other requirements that must be in the regulations, including that each employer of H-2A and H-2B visa and migrant workers must, among other things:

- provide a separate and isolated living space for workers who have tested positive for COVID-19, have reason to believe they were exposed to COVID-19, or are exhibiting symptoms of COVID-19;
- provide separate living facilities for workers with underlying health conditions and workers older than 60, as specified;
- ensure that housing for all workers is thoroughly ventilated and meets basic standards of habitability;
- inform the affected workers of their rights to protection from eviction, COVID-19 prevention protocols, and other specified information;
- ensure that worker housing is inspected by MDL at least once prior to being inhabited and at least one more time annually; and
- establish (1) enhanced whistleblower protections for workers who make complaints related to COVID-19 guidelines and (2) an enhanced enforcement and penalty structure for violations of the COVID-19 housing regulations.

**Current Law:** The hiring and sanctioning of temporary migrant workers in the nation is controlled primarily by federal law and various federal agencies, including the U.S. Department of Labor (DOL) and the U.S. Citizenship and Immigration Service. There are many procedures, processes, and requirements enumerated in federal law when an entity seeks to use temporary migrant workers. For example, a farm labor contractor must be specifically authorized to provide housing or transportation to migrant or seasonal agricultural workers prior to doing so, and persons employed by farm labor contractors to perform farm labor contracting activities also must register with DOL.

Section 218 of the Immigration and Nationality Act authorizes the lawful admission into the United States of nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. Similarly, the H-2B nonimmigrant program permits employers to hire nonimmigrants to perform temporary nonagricultural labor or services in the United States.

**Background:** For information on the COVID-19 pandemic, please see the **Appendix – COVID-19**.

**State Expenditures:** The bill creates additional responsibilities for MDL by requiring the development and implementation of regulations that apply to employers of H-2A and H-2B

visa and migrant workers during the COVID-19 pandemic. MDL cannot carry out the necessary enforcement activities using its existing staff and resources.

Under its current practices, MDL's Division of Workforce Development and Adult Learning inspects the housing of H-2A workers once per year; it does not inspect housing of H-2B workers. The bill requires at least one additional inspection annually for H-2A housing, as well as initial and at least annual inspections of H-2B housing. Moreover, MDL advises that inspection staff are paid almost entirely using federal funds and, thus, are barred from carrying out State duties in the absence of State funding for their time. As such, general funds are needed to supplant or supplement the federal funds as existing or new staff perform activities under the bill.

Thus, general fund expenditures increase by \$762,608 in fiscal 2022. This estimate is based on current housing inspection workloads and reflects the cost of hiring 14 contractual employees (12 bilingual inspectors and 2 administrative assistants) who begin working on October 1, 2021, to conduct the required inspections and enforce the bill's other requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes (1) the purchase of six sedans for use by the inspectors at a cost of \$16,000 per sedan and (2) \$29,000 in general funds to offset the federal funds used to pay existing employees.

Contractual Positions	14.0
Salaries and Fringe Benefits	\$557,220
Vehicles	96,000
Staff Time Supplanting Federal Funds	29,000
Operating Expenses	<u>80,388</u>
<b>Total FY 2022 State Expenditures</b>	<b>\$762,608</b>

Costs are assumed to continue in fiscal 2023 as well, with full salaries with annual increases and employee turnover and ongoing operating expenses. However, as the bill requires the regulations to apply only during the COVID-19 pandemic, it is assumed for purposes of this analysis that the additional staff, and the associated costs, are no longer necessary beginning in fiscal 2024. The estimate also assumes that existing staff can develop the required regulations.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

**Small Business Effect:** Small businesses that employ H-2A and H-2B visa holders may incur additional costs to enhance the housing conditions for their employees in accordance with the new regulatory requirements.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of Labor; U.S. Department of Labor; Department of Legislative Services

**Fiscal Note History:** First Reader - January 29, 2021  
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## Appendix – COVID-19

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In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization declared COVID-19 a pandemic.

### *Testing, Cases, and Deaths in Maryland*

Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring March 16, 2020. As of January 27, 2021, Maryland reported a total of 346,559 confirmed cases, 31,468 individuals ever hospitalized, and 6,821 confirmed deaths. The jurisdictions with the highest number of cases have been Prince George's, Montgomery, and Baltimore counties and Baltimore City. Statewide, 8.4% of cases (28,954) and 45.9% of COVID-19 deaths (3,130) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes). Updated data on COVID-19 in Maryland is available on the Maryland Department of Health (MDH) dashboard: <https://coronavirus.maryland.gov>.

### *Vaccines*

In December 2020, the U.S. Food and Drug Administration approved both Pfizer-BioNTech and Moderna's COVID-19 vaccines for emergency use. Due to limited quantities, distribution began with priority groups as determined by states. Maryland began distribution in January 2021 with Phase 1A, which includes health care workers, residents and staff of nursing homes, first responders, public safety, corrections staff, and front-line Judiciary staff. Phase 1B began January 18, 2021, and includes residents of assisted living facilities and other congregate settings, adults age 75 and older, staff of K-12 schools and child care facilities, high-risk incarcerated individuals, and those involved in continuity of government. As of January 27, 2021, the State is in Phase 1C, which includes adults aged 65 and older, additional public safety and public health workers, and essential workers in food/agriculture, manufacturing, public transit, and the postal service. Phase 2 will include individuals aged 16 to 64 at increased risk of severe illness, incarcerated adults, and remaining essential workers. Phase 3 will include the general public. As of January 27, 2021, 852,625 doses of the vaccine have been distributed, and 419,579 doses have been administered (363,282 first doses and 56,297 second doses). Updated data is available on the MDH dashboard: [coronavirus.maryland.gov/#Vaccine](https://coronavirus.maryland.gov/#Vaccine).

### *Declaration of a State of Emergency and Initial Executive Orders*

On March 5, 2020, Governor Lawrence J. Hogan, Jr. declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently January 21, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools. The Governor then ordered the closure of in-house dining at bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

### *Emergency Legislation*

Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency. The Acts also authorize the Secretary of Labor to determine certain individuals eligible for unemployment insurance (UI) benefits due to COVID-19. The Acts terminate April 30, 2021.

### *Subsequent Executive Orders and Advisories*

Since March 2020, the Governor has issued numerous executive orders relating to COVID-19, including (1) closing Maryland ports and harbors to passenger vessels; (2) expanding child care access; (3) expanding the scope of practice for health care practitioners, activating the Maryland Responds Medical Reserve Corps, controlling and restricting elective medical procedures, closing adult day care centers, and providing additional health care regulatory flexibility; (4) augmenting emergency medical services; (5) prohibiting price gouging; (6) fast tracking lab testing processes; (7) authorizing expanded telehealth services; (8) delegating authority to local health officials to control and close unsafe facilities; (9) extending certain licenses, permits, and registrations; (10) authorizing remote notarizations; (11) prohibiting evictions of tenants suffering substantial loss of income due to COVID-19, additionally prohibiting certain repossessions, restricting initiation of residential mortgage foreclosures, and prohibiting commercial evictions; (12) regulating certain businesses and facilities and generally requiring the use of face coverings; (13) establishing alternate health care sites and authorizing regulation of patient care space in health care facilities; and (14) implementing alternative correctional detention and supervision.

## *Federal Legislation Regarding COVID-19*

Five federal emergency bills have been enacted to address the COVID-19 pandemic:

- the **Coronavirus Preparedness and Response Supplemental Appropriations Act**, which provided \$8.3 billion in emergency funds for federal agencies (including \$950 million through the U.S. Centers for Disease Control and Prevention for state and local response);
- the **Families First Coronavirus Response Act**, which addressed emergency family and medical leave and paid sick leave, specified insurance coverage of COVID-19 testing, and provided additional funding for nutrition assistance programs and unemployment benefits;
- the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, which included a Coronavirus Relief Fund for state and local governments; an Education Stabilization Fund for states, school districts, and institutions of higher education; a Disaster Relief Fund for state and local governments; additional funding for public health agencies to prevent, prepare for, and respond to COVID-19; funding for transit systems; an expansion and extension of eligibility for UI benefits, and additional temporary unemployment compensation of \$600 per week; \$349 billion for the establishment of the Paycheck Protection Program (PPP); a \$500 billion lending fund for businesses, cities, and states; and Economic Impact Payments to American households of up to \$1,200 per adult and \$500 per child;
- the **Paycheck Protection Program and Health Care Enhancement Act**, which provided an additional \$310 billion to PPP, \$75 billion for health care providers, \$60 billion for small business disaster loans, and \$25 billion for increased testing capacity; and
- the **Consolidated Appropriations Act, 2021, and Other Extensions Act**, which included \$908 billion in relief, including another \$284 billion for PPP, \$82 billion for schools, \$45 billion for transportation, \$25 billion in emergency assistance to renters, \$20 billion for vaccine distribution, \$13 billion for a major expansion in Supplemental Nutrition Assistance benefits, \$13 billion for agriculture and rural programs, \$10 billion for child care assistance, extended federal unemployment benefits of up to \$300 per week, extended the federal moratorium on evictions through January 31, 2021, and provided a second stimulus payment of up to \$600 per person.

### *Federal Funding for Maryland to Address COVID-19*

The CARES Act and the Families First Coronavirus Response Act provided Maryland with a significant amount of federal aid. More than \$6 billion in assistance has been made available to the State and local governments, including an enhanced federal matching rate for Medicaid. More than \$900 million was directly provided to local governments. The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals \$2.3 billion, \$691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

CARES Act funding also included \$800 million for the Disaster Recovery Fund; \$696 million for transit grants; \$575 million in enhanced Medicaid matching funds (through December 2020); \$239 million in CDC grants; \$108 million for airports; \$74 million for community development block grants; \$50 million for homelessness assistance; \$46 million for grants for local education agencies and higher education institutions; \$46 million for child care and development block grants; \$36 million for public housing and rental assistance grants; \$24 million for community health centers; \$20 million for senior nutrition; \$19 million for energy assistance; \$18 million for justice assistance grants; \$17 million for administration of the UI program; \$14 million for community service block grants; \$13 million for emergency food assistance; \$8 million for Head Start; \$8 million for the Women, Infants, and Children program; and \$7 million for election security.

The Consolidated Appropriations Act is estimated to provide Maryland with \$1.2 billion for education (including \$869 million for K-12 education, \$306 million for higher education, and \$57.7 million for the Governor's Fund); \$1.1 billion for transportation (including \$830.3 million for transit in the Washington, DC area, \$149.3 million for highways, \$76.2 million for transit in Baltimore, \$22.5 million for airports, and \$9.1 million for rural area grants); more than \$475 million for health (including \$335.6 million for testing, \$75.3 million for vaccines, \$32.6 million for mental health assistance, and \$31.9 million for substance use assistance); \$402.4 million for rental assistance; and \$140.6 million for human services (including \$130.4 million for child care).