

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 859

(Senator Hettleman)(By Request - Joint Audit and
Evaluation Committee)

Budget and Taxation

Government, Labor, and Elections

**State Procurement and Personnel - Liquidated Damages Documentation
Requirements and State Fiscal Leadership Capacity**

This bill authorizes the Secretary of Budget and Management to set the pay scale for chief financial officer (CFO) and chief information officer (CIO) positions in order to assist with recruitment and retention for specified units of the Executive Branch of State government. The Secretary of Budget and Management must establish, and the Department of Budget and Management (DBM) must incorporate into regulations by November 1, 2026, minimum qualifications for CFO positions. For applicable units, appointing authorities must appoint a CFO that meets those qualifications, who must in turn provide the Comptroller's Office with specified information. Additionally, the bill expands documentation and approval requirements for a unit of the Executive Branch of State government that decides not to pursue liquidated damages when a specified breach has occurred. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: State expenditures (general and special funds) may increase to the extent that CFOs and CIOs of specified units of the Executive Branch receive higher wages beginning in FY 2027. The FY 2027 budget as passed by the General Assembly includes \$4.0 million in the Dedicated Purpose Account (DPA) to strengthen the State's fiscal leadership capacity, so that funding may be used for this purpose. Provisions related to liquidated damages are procedural in nature and have no direct effect on governmental finances. Revenues are not materially affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines a CFO as the highest-ranking executive who, for a period of at least six months, is responsible for directing all financial operations, including specified duties, or a position with equivalent duties. The Secretary of Budget and Management may set the pay scale for CFO positions to assist with recruitment and retention for a unit of the Executive Branch of State government (excluding the University System of Maryland(USM)) that receives at least \$1.75 billion annually in State and federal funding and employs a CFO.

For preparation of the Annual Comprehensive Financial Report (CFR), a CFO subject to the bill must provide the Comptroller's Office at the close of the fiscal year:

- all necessary entries of the unit's financial information;
- information necessary to prepare the schedule of expenditures of federal awards; and
- a letter attesting to the accuracy and completeness of the above information.

The bill defines CIO as an individual acting as the senior executive officer responsible for strategic planning, management, and oversight of an agency's information technology and computer systems and supporting its mission and goals or a position with equivalent duties. The Secretary of Budget and Management may set the pay scale for CIO positions in order to assist with recruitment and retention for a unit of the Executive Branch of State government (excluding USM) that employs a CIO.

The bill requires for all procurements, instead of just procurements valued at \$5.0 million or more under current law, that if a unit decides not to pursue liquidated damages when a specified breach associated with a liquidated damages provision has occurred, the unit must obtain the head of the unit's approval and maintain documentation on the reasoning for not pursuing liquidated damages. The unit must also provide documentation to the Board of Public Works (BPW) and the Joint Audit and Evaluation Committee (JAEC) on the rationale for not pursuing liquidated damages.

Current Law: Within the State Personnel Management System (SPMS), there are two pay plans: the Standard Pay Plan and the Executive Pay Plan. The purpose of the pay plans is to provide employees in positions that involve comparable effort, knowledge, responsibilities, skills, and working conditions with comparable pay according to the relative value of services performed. The Standard Pay Plan includes all positions in SPMS and all other positions for which the Secretary of Budget and Management has authority to administer pay. The Executive Pay Plan includes each permanent position in the Executive Branch, including each permanent position in the Governor's Office, that is not

included in the Standard Pay Plan and has a pay rate equal to or exceeding the lowest pay rate in the Executive Pay Plan.

Pay rates in the Standard Pay Plan or Executive Pay Plan may be set by a series of pay grades (or executive pay grades) and steps within each grade, fixed rates, or minimum and maximum amounts. When setting or amending a pay rate, the Secretary of Budget and Management must consider the prevailing pay rates for comparable services in private and public employment, experience, living costs, benefits, and the financial condition and policies of the State. A pay rate is subject to any limitations included in the State budget.

The Secretary of Budget and Management may increase pay rates for a specific class under the Standard Pay Plan with the approval of the Governor in order to recruit or retain competent personnel or to ensure that pay rates adequately compensate for the effort, knowledge, responsibility, skills, and working conditions of employees in that class. If an amendment to the pay plan affects a position in the Executive Branch that is listed in the budget bill, the amendment is contingent on the approval of BPW. An amendment to the Standard Pay Plan may not take effect unless sufficient money is available in the budget to cover the resulting pay rates.

Each budget bill must contain a separate section that includes the proposed salary schedule for the Executive Pay Plan and a listing of the job classification and title of each position in the Executive Pay Plan, including the proposed salary grade for each position, and is subject to the General Assembly's approval.

Liquidated Damages

Each State procurement contract must include a clause or clauses covering liquidated damages, as appropriate. A unit must obtain the approval of the head of the unit if it elects not to include a liquidated damages clause in a contract. DGS advises that (1) for construction contracts, liquidated damages are required unless the agency head determines otherwise and (2) determinations for other contracts are made on a contract-by-contract basis by a procurement officer in consultation with the Office of the Attorney General.

In addition, with respect to State procurement, liquidated damages may be collected for specified violations of:

- the Minority Business Enterprise program;
- the State's prevailing wage requirements; and
- the State's Living Wage law.

For procurements valued at \$5.0 million or more, if a unit decides not to pursue liquidated damages when a specified breach associated with a liquidated damages provision has

occurred, the unit must obtain the head of the unit's approval and maintain documentation on the reasoning for not pursuing liquidated damages.

State Expenditures: DBM can establish minimum qualifications for CFOs and adopt regulations with existing resources. A unit of the Executive Branch of State government (excluding USM) that receives at least \$1.75 billion in State and federal funding and employs a CFO can likely meet the bill's reporting requirements with existing resources. However, State expenditures may increase to the extent that the Secretary of Budget and Management sets higher pay scales for CFO and CIO positions of those units of the Executive Branch beginning in fiscal 2027. The fiscal 2027 budget as passed by the General Assembly includes \$4.0 million in DPA to strengthen the State's fiscal leadership capacity that may be used for this purpose. Based on the fiscal 2027 operating and capital budgets as introduced, affected agencies may include, but are not necessarily limited to, the Maryland Department of Health, the Maryland State Department of Education, the Maryland Department of Transportation, the Department of Human Services, and the Department of Public Safety and Correctional Services.

BPW and JAEC can receive documentation supporting decisions not to pursue liquidated damages in the event of a breach for procurement contracts with existing resources. To the extent that the head of a unit does not approve a decision to forego liquidated damages for procurements valued at below \$5.0 million, revenues (all funds) may increase from the collection of damages, but any such effect is speculative and not reflected in this analysis.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1422 (Delegate Solomon)(By Request - Joint Audit and Evaluation Committee) - Government, Labor, and Elections.

Information Source(s): Board of Public Works; Maryland State Department of Education; University System of Maryland; Department of Budget and Management; Maryland Department of Health; Office of the Comptroller; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History:
jg/mcr

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