

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 742 (Senator Lee)
 Finance

Labor and Employment - Fair Recruitment and Transparency Act

This bill requires a foreign labor contractor (FLC) to be licensed by the Commissioner of Labor and Industry before the individual may perform foreign labor contracting services in Maryland for consideration. A person may not use an FLC to perform a foreign labor contracting service unless the person ascertains that the FLC is licensed. Each employer that uses an FLC must file with the commissioner the name and contact information for the FLC, and an employer that uses an FLC is generally jointly and severally liable for specified violations committed by the FLC. The commissioner must keep a central public registry of all licensed FLCs beginning July 1, 2020. The bill applies many existing licensing requirements and provisions of a farm labor contracting service to the FLC license. Additionally, the bill creates the Workgroup to Study the International Exchange Visitor Workers in Maryland. **The bill takes effect July 1, 2020, and the workgroup terminates June 30, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$531,500 in FY 2021 for the Maryland Department of Labor (MDL) to implement and enforce the bill; out-year expenditures reflect elimination of contractual staff and one-time start-up costs. General fund revenues increase from penalties and licensing fees beginning in FY 2021.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	-	-	-	-	-
GF Expenditure	\$531,500	\$384,400	\$391,800	\$403,200	\$415,000
Net Effect	(\$531,500)	(\$384,400)	(\$391,800)	(\$403,200)	(\$415,000)

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

Local Effect: The circuit courts can likely handle any increase in litigation with existing resources. Revenues may increase minimally due to higher misdemeanor penalties.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

The bill defines an FLC as a person that performs a foreign labor contracting service, including a person who performs the service wholly outside the United States, among others specified in the bill. To “perform a foreign labor contracting service” means to recruit, employ, hire, contract with; purport to employ, hire, or contract with; or provide, solicit, transport, or provide housing for a foreign migrant worker directly or through an agent regardless of whether the service is performed in the United States, and the bill specifies what that includes. “Foreign migrant worker” means an individual who (1) is seeking employment (including cultural exchanges, training activities, or business activities for which a foreign migrant worker receives any form of compensation); (2) is not a U.S. citizen or a permanent resident; and (3) is authorized by the federal government to work in the United States under a specified nonimmigrant visa classification or status. “Foreign migrant worker” does not include an individual who received a green card on admission to the United States.

The bill alters the definition of “migrant agricultural worker” to no longer exclude a nonimmigrant alien who is authorized under federal law to work in agricultural employment in the United States.

Licensing Requirements

An FLC or an employer that uses an FLC may not assess to a foreign migrant worker any costs, fees, or expenses related to the performance of an FLC service. If an FLC or employer violates this provision before the foreign migrant worker begins working, the FLC must immediately repay the foreign migrant worker and provide the exact or comparable employment for the foreign migrant worker.

The bill specifies the information that must be included in the FLC application and the terms and requirements of an FLC license. The Commissioner of Labor and Industry may deny, suspend, or revoke a license if the applicant or licensee charges a foreign migrant worker any costs, fees, or expenses related to the performance of an FLC service, along with the reasons specified in current law. The commissioner must require an FLC to post a surety bond or other security if the FLC has committed specified violations.

Responsibility of Foreign Labor Contractors

An FLC must provide each foreign migrant worker with an employment contract signed by the FLC and the foreign migrant worker that includes employment and protection information as specified in the bill. On request, the Commissioner of Labor and Industry must make a standard employment contract available to an FLC. An FLC must provide the employment contract to the foreign migrant worker at the time the recruitment process begins and in the foreign migrant worker's primary language. Changes to the employment contract may not be made unless the foreign migrant worker is provided the changes in writing, given 48 hours to review and consider the changes, and voluntarily consents to the changes. An FLC must file with the commissioner each employment contract provided to a foreign migrant worker.

An FLC who provides housing for a foreign migrant worker must ensure that all of the conditions of occupancy are posted conspicuously while the foreign migrant worker stays in the housing.

The commissioner must require, by regulation, an FLC to keep records of specified wage records of foreign migrant workers, which must be included in the pay stub of a foreign migrant worker, and an FLC must keep all these records even if the FLC is not responsible for paying a foreign migrant worker.

An FLC is jointly and severally liable for specified violations committed by the FLC's agents in relation to the FLC activity to the same extent as if the FLC had committed the violation.

Employer Responsibilities

An employer that uses an FLC must provide an orientation and training to any foreign migrant worker recruited by the FLC to ensure that the foreign migrant worker understands rights and obligations regarding laws on combating human trafficking. An employer that uses an FLC may not interfere with an individual conducting outreach to a foreign migrant worker.

Prohibited Acts

An FLC may not discriminate against a foreign worker to the same extent an employer is prohibited from discriminating under current law. An FLC may not take any adverse action against a foreign worker because the foreign worker exercised any rights granted under the bill.

A person may not represent to the public that the person is authorized to perform a foreign labor contracting service in the State for consideration unless the person is licensed to perform a foreign labor contracting service for consideration.

Enforcement and Penalties

If a foreign migrant worker believes that an FLC has violated provisions under the bill, the foreign migrant worker may bring an action in court to recover any damages sustained by the foreign migrant worker due to the violation.

On the Attorney General's own initiative, the Attorney General may investigate an alleged violation and proceed in court to enforce requirements for farm labor contractors and FLC licenses, and the bill applies existing penalty provisions to FLCs and increases the civil penalty and misdemeanor maximum fines for specified violations. The bill increases the civil penalty that the commissioner may assess against a person who willfully or repeatedly violates provisions of FLC or farm labor contractor licenses to \$50,000 for each violation, instead of \$5,000. A farm labor contractor or FLC who willfully violates specified provisions or regulations is also guilty of a misdemeanor and on conviction for a first offense is subject to a fine of up to \$50,000 and/or imprisonment for up to one year and for a subsequent offense is subject to a fine of up to \$100,000 and/or imprisonment for up to three years.

The bill may not be construed to preempt or alter any rights or remedies available under federal or State law.

Workgroup

The Workgroup to Study the International Exchange Visitor Workers in Maryland, chaired by the Secretary of Labor or the Secretary's designee, must study specified items relating to J-1 visa holders and temporary worker visa holders and make recommendations regarding any changes or improvements to State law. MDL must provide staff for the workgroup. Members of the workgroup may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. By December 1, 2020, the workgroup must report its findings and recommendations to the Governor and the General Assembly.

Current Law: The federal Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors to register with the U.S. Department of Labor (DOL). Before performing any farm labor contracting activity, a farm labor contractor must register with DOL and obtain a certificate of registration. A farm labor contractor must be specifically authorized to provide housing or transportation to migrant or seasonal

agricultural workers prior to doing so. Persons employed by farm labor contractors to perform farm labor contracting activities also must register with DOL.

As noted above, the bill incorporates licensing requirements for FLCs into existing statute requiring licensure for farm labor contractors, enforcement of which is largely dormant due to limited resources in MDL as well as the federal requirement for registration. In Maryland, generally, an individual must also be licensed by the Commissioner of Labor and Industry before the individual may perform farm labor contracting services in the State for consideration. To “perform farm labor contracting services” means to recruit, employ, hire, provide, solicit, transport, or provide housing for a migrant agricultural worker. A “migrant agricultural worker” is an individual who is employed to do agricultural work of a seasonal or temporary nature. In the course of employment, a migrant agricultural worker must be absent overnight from a permanent residence or, as part of a day-haul operation, be transported by a farm labor contractor or agent to or from the place of employment. “Migrant agricultural worker” does not include an immediate family member of specified individuals or a nonimmigrant alien who is authorized under federal law to work in agricultural employment in the United States.

A farm labor contractor applicant must submit an application and photographs of the applicant as well as pay a \$25 application fee. If information provided on the application changes, the licensee must notify the commissioner of the change(s) within 10 days. The commissioner must determine whether the applicant is entitled to be licensed and, if so, issue a license. While a license is in effect, it authorizes the licensee to perform farm labor contracting services for consideration, and a license expires on the first March 1 after its effective date. The commissioner must keep a central public registry of all licensed farm labor contractors.

The commissioner may deny, suspend, or revoke a license for specified reasons, but the commissioner generally must give the licensee or applicant an opportunity for a hearing before the commissioner. The commissioner may pass an order that requires a person to immediately cease a farm labor contracting service if the commissioner investigates and has reason to believe the person is performing a farm labor contracting service for consideration in the State without a license. The person has seven days to request a hearing. Any person aggrieved by a final decision in a contested case may appeal. On request of the commissioner, the Attorney General may proceed in a court or before a federal unit to enforce farm labor contracting licensing provisions.

The commissioner may require a farm labor contractor to post a surety bond or other security under specified conditions or to ensure compliance with State laws.

Generally, a person may not use a farm labor contractor to perform a farm labor contracting service unless the person ascertains that the farm labor contractor is licensed.

Background: Federal law prohibits fraud in foreign labor contracting. A person who knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations, or promises regarding that employment is subject to a fine and/or imprisonment for up to five years.

California requires FLCs to register with the California Labor Commissioner. A person is prohibited from knowingly entering into an agreement for services of an FLC that is not registered with the California Labor Commissioner.

The J-1 visa program allows foreign visitors to visit and work in the United States for limited periods, including as camp counselors and au pairs. There are different categories under the J-1 visa program, most of which include privately funded programs, such as professors, research scholars, short-term scholars, trainees, interns, college and university students, teachers, secondary school students, specialists, alien physicians, camp counselors, au pairs, and summer work travel programs. Exchange visitors in private-sector programs may study, teach, do research, share their specialized skills, or receive on-the-job training for periods ranging from a few weeks to several years. Other visa categories, including H-1B and L-1, allow foreign nationals with specialized skills or experience to work in the United States, but those individuals are typically hired or transferred directly by employers rather than recruited by FLCs.

In Maryland, the U.S. State Department reports there were 10,784 J-1 visa participants in 2018 and as of February 2020, there are currently 254 sponsors. The State Department-designated sponsors are responsible for all aspects of the exchange program, including screening of and selecting foreign national participants and monitoring the participants throughout their exchange visitor program in the United States.

State Revenues: General fund revenues increase by \$25 annually for each FLC license issued by MDL; licenses must be renewed annually. The Department of Legislative Services assumes the number of licenses issued by MDL is similar to the number of J-1 visa sponsors known to be operating in Maryland (254 sponsors). Although a reliable estimate of the number of licensees is not feasible, assuming 254 licenses are issued annually, general fund revenues increase by \$6,350 annually beginning in fiscal 2021. Additionally, general fund revenues increase from penalties imposed on employers violating the bill.

State Expenditures: The Office of the Attorney General can likely process cases with existing resources, and the criminal penalty provisions are not expected to materially affect State expenditures. However, the bill creates additional responsibilities for MDL's Division of Labor and Industry by requiring FLCs to be licensed by MDL to perform foreign labor contracting services in the State for consideration. MDL must establish a

license application, develop a sample contract, promulgate regulations, establish a central public registry of all licensed FLCs, and investigate violations. MDL cannot absorb the additional workload within existing resources and requires additional staff to implement the bill.

General fund expenditures increase by \$531,518 in fiscal 2021, which accounts for the bill’s July 1, 2020 effective date. This estimate reflects the cost of hiring an assistant Attorney General, an administrator, two wage and hour investigators, and one office secretary to respond to inquiries, process licenses, maintain the central public registry, investigate complaints, and enforce the bill. Additionally, two contractual research statisticians are needed to staff the workgroup and collect data for half of the year in fiscal 2021. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	5
Contractual Positions	2
Regular Salaries and Fringe Benefits	\$329,676
Contractual Salaries and Fringe Benefits	42,632
One-time Start-up Costs	131,230
Operating Expenses	<u>27,980</u>
Total FY 2021 MDL Expenditures	\$531,518

Future year expenditures reflect the elimination of contractual positions, full salaries with annual increases and employee turnover, and ongoing operating expenses.

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.

Local Revenues: Revenues increase minimally as a result of the bill’s higher monetary penalty provisions from cases heard in the circuit courts.

Small Business Effect: Small businesses that are FLCs must be licensed by the Commissioner of Labor and Industry and pay the \$25 application fee. Providing the information required under the bill to MDL and employees may be administratively burdensome for FLCs. Small businesses that use an FLC must provide MDL with information on the FLC and are jointly and severally liable for violations committed by the FLC.

Additional Information

Prior Introductions: Similar bills, SB 526 of 2018 and SB 1016 of 2017, received a hearing in the Senate Finance Committee, but no further action was taken. The cross file of SB 526, HB 1493, received a hearing in the House Economic Matters Committee, but no further action was taken. The cross file of SB 1016, HB 1307, received a hearing in the House Economic Matters Committee and was subsequently withdrawn.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of Labor; U.S. State Department; California Department of Industrial Relations; Department of Legislative Services

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