

**Department of Legislative Services**  
 Maryland General Assembly  
 2020 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 782 (Senator Zucker)  
 Education, Health, and Environmental Affairs

**State Procurement - Payment of Employee Health Care Expenses - Revisions**

This bill applies an existing requirement that all bidders, contractors, and subcontractors on State-funded construction projects pay employee health care expenses to construction projects funded by the Maryland Stadium Authority (MSA) and the University System of Maryland (USM). It also (1) applies the requirement to minority business enterprises (MBEs) by repealing an existing exemption; (2) broadens an exemption for small businesses by redefining them; (3) exempts an employee working on or at the site of a State-funded construction project valued at less than \$500,000; (4) clarifies which subcontractors are subject to the requirement; and (5) extends by one year less stringent compliance requirements under current law. **The bill takes effect July 1, 2020.**

**Fiscal Summary**

**State Effect:** MSA nonbudgeted expenditures increase by \$145,800 in FY 2021, and higher education expenditures likely increase to hire several staff to implement the bill across all USM campuses. Out-year costs reflect ongoing implementation costs. No effect on *total* expenditures for MSA and USM construction projects. Potential reductions in project costs for other agencies. No material effect on revenues from application of existing penalty provisions.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
NonBud Exp.	145,800	174,600	178,800	184,900	191,300
Higher Ed Exp.	-	-	-	-	0
Net Effect	(\$145,800)	(\$174,600)	(\$178,800)	(\$184,900)	(\$191,300)

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

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** MSA and USM must establish procedures for bidders, contractors, and subcontractors to certify that they pay employee health care expenses.

“Subcontractor,” for purposes of the bill, includes a person added to a contract with the State after the contract is awarded in order to provide goods or services under a portion of the contract.

The bill redefines “small business” so that its provisions, as well as those under current law, do not apply to a small business that employs 50 or fewer individuals in its most recently completed three fiscal years and that had average gross sales that did not exceed \$7 million in its most recently completed three fiscal years. A business that has been in existence for less than three years must base its calculations on each fiscal year it has existed.

**Current Law:** Chapters 686 and 687 of 2019 require the Board of Public Works (BPW) to adopt regulations that require all bidders, contractors, and subcontractors on State-funded construction projects to pay employee health care expenses. This requirement does not apply to MBEs or businesses with 30 or fewer employees. The Department of General Services (DGS) and the Maryland Department of Transportation (MDOT) must establish procedures for bidders, contractors, and subcontractors to certify that they pay employee health care expenses. BPW must collect and report on specified information for three years.

MSA and USM are exempt from most provisions of State procurement law, including the provisions of Chapters 686 and 687 and the State’s prevailing wage requirements.

### *Health Care Expenses Defined*

“Employee health care expenses” are any costs for health care services paid by a responsible bidder or subcontractor to an employee, unless the employee has coverage under another plan, including:

- contributions made on behalf of an employee to provide specified credible health care coverage that arranges or provides medical, hospital, and surgical coverage that is not designated to supplement other private or governmental plans;
- contributions made on behalf of an employee to a health savings account, as defined under the federal Internal Revenue Code, or any other similar account;
- reimbursements to an employee for health care expenses;
- payments to a third party to provide health care services to an employee;

- payments under a collective bargaining agreement to provide health care services to an employee; and
- costs incurred in the direct delivery of health care services to an employee.

### *Certification Requirements*

A bidder, contractor, or subcontractor on a State-funded construction contract must demonstrate the payment of employee health care expenses by submitting certification or a valid contract to DGS or MDOT that shows that, for employees who will work on the construction project:

- the employer pays aggregate employee health care expenses of at least 5% of the wages paid by the employer; or
- the employer pays 50% or more of the required premium necessary to obtain coverage by a credible health insurance plan.

However, there are less stringent certification requirements in effect until July 1, 2020; the bill extends the less stringent requirements for one year, to July 1, 2021. A procurement officer may require a responsible bidder or subcontractor to submit records that are sufficient to support the required certification. DGS, MDOT, and the Maryland Department of Labor must collaborate on the development of a certification form.

### *Enforcement*

If a contract awardee fails to provide the required documentation in a reasonable period of time, the procurement officer may void the contract. A person who provides false information is subject to a civil penalty of between \$2,500 and \$25,000 for each violation. An action for the civil penalty may be brought by the agency that awarded the contract, the Attorney General, or the State's Attorney.

### *Board of Public Works Study*

For three years following the enactment of Chapters 686 and 687, BPW must collect the following information for all construction-related, competitive sealed bids:

- whether the bidding company and any subcontractor provides employee or family health care coverage on projects that require a prevailing wage;
- for the year preceding the bid, the percentage of total wages and the total amount spent on employee health care;

- the percentage of total health insurance costs paid by the insurance company (instead of the employee), the type and scope of coverage provided, and the average percentage of the monthly premium paid by the bidder or subcontractor; and
- the average percentage of monthly premium paid by the employee and the average per employee deductible for each health care plan offered.

BPW must direct any relevant agency to incorporate the necessary data in requests for competitive sealed bids, and BPW must report the information it collects to specified committees of the General Assembly by August 1 of each of three years (2020 through 2022).

### *Prevailing Wages*

Contractors and subcontractors working on eligible public works projects in Maryland must pay their employees the prevailing wage rate. “Public works” are structures or works, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that are constructed for public use or benefit or paid for entirely or in part by public money.

Eligible public works projects are:

- those carried out by the State;
- an elementary or secondary school for which at least 25% of the money used for construction is State money;
- any other public work for which at least 50% of the money used for construction is State money; and
- specified projects in tax increment financing districts if the local governing body approves of the application of prevailing wages.

Any public works contract valued at less than \$500,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to (1) any part of a public works contract funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government or (2) specified construction projects carried out by public service companies under order of the Public Service Commission.

The calculation of the prevailing wage rate is required to include a fringe benefit component (which is in addition to the base hourly rate) that reflects the cost of providing medical coverage, retirement benefits, and other fringe benefits. The contractor must pay the fringe benefit rate either to a third party to provide fringe benefits to the employee, or as additional wages directly to the employee.

**Background:** The Attorney General concluded in his analysis of Chapters 686 and 687 of 2019 that the exemption for MBEs in those Acts might be found to be an unconstitutional racial preference. This bill repeals that exemption.

Chapter 468 of 2018 required BPW to collect the information listed below for all construction-related contracts awarded by competitive sealed bids in the three months following the enactment of the bill and submit a report on its findings to specified committees of the General Assembly by November 1, 2018:

- whether the bidder and any subcontractor provide employee health care coverage on projects that require payment of prevailing wages;
- for the year preceding the bid, what the percentage of total Social Security wages was as well as the total amount spent on employee health care;
- the percentage of total health insurance coverage costs paid by an insurance company compared with the percentage paid by an employee;
- the type and scope of coverage as well as the average percentage of monthly premiums paid by the bidder or subcontractor; and
- the average percentage of monthly premium paid by the bidder's or subcontractor's employees and the average deductible in each health care plan offered.

The report included information from more than 300 contractors and subcontractors involved with 48 different procurements. It found that 75% of respondents provided employee health insurance coverage on prevailing wage projects. Coverage levels among those that provided health insurance varied tremendously, but most employers paid at least 50% of plan premiums, and most deductibles were at or below \$2,500.

### **State Expenditures:**

#### *Construction Costs*

The fiscal analysis for Chapters 686 and 687 of 2019 concluded that they would not have a meaningful effect on the project costs for most State-funded construction projects because most of those projects (*i.e.*, those valued at \$500,000 or more) require payment of prevailing wages, which already include a fringe benefit component that could be applied to providing health insurance for workers (instead of being paid directly to workers in the form of higher wages). The fiscal analysis, however, did conclude that projects that fell below the \$500,000 threshold might see an increase in project costs because they are not required to pay prevailing wages.

Neither MSA nor USM is required to pay prevailing wages for their construction projects, but both indicate that they voluntarily comply with prevailing wage requirements for

projects at or above the \$500,000 threshold. Therefore, most contractors on their projects should be able to comply with the bill’s requirements without substantially increasing the cost of MSA and USM construction projects.

The bill repeals the application of Chapters 686 and 687 of 2019 to employees who work on projects valued at less than \$500,000, and it exempts MSA and USM projects below that same level. As projects valued below \$500,000 were previously subject to the requirements of Chapter 686 and 687 and likely experienced an increase in costs to provide health coverage to employees, contractors working on those projects (and sponsoring State agencies) may experience a savings from no longer having to provide health coverage to employees working on those projects.

Even so, the bill has no effect on total spending for capital construction projects. With regard to MSA and USM, both have fixed resources available for capital projects, as determined by their debt capacity and/or legislative authorizations for projects (*e.g.*, the 21st Century Schools initiative to build new schools in Baltimore City, managed by MSA, is statutorily capped at \$1.2 billion). To the extent that the costs of individual projects increase due to the bill, MSA and USM likely can fund fewer projects with available resources in a given year.

Likewise, State agencies that recognize a reduction in the cost of projects valued at less than \$500,000 may be able to fund more projects in a given year with available capital resources.

*Administrative Costs*

MSA advises that it likely needs to hire two project managers to implement and ensure compliance with the bill’s requirements among its contractors. Therefore, nonbudgeted expenditures by MSA increase by \$145,777 in fiscal 2021, which accounts for a 90-day start-up delay from the bill’s July 1, 2020 effective date. This estimate reflects the cost of MSA hiring a two project managers to ensure compliance by bidders, contractors, and subcontractors during the procurement process. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$134,294
Operating Expenses	<u>11,483</u>
<b>Total FY 2021 MSA Expenditures</b>	<b>\$145,777</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

USM did not provide a detailed estimate of the cost on implementing and enforcing the bill's requirements, but the Department of Legislative Services believes that USM likely needs to hire two or three additional staff to manage the program across all of USM's campuses. Therefore, higher education expenditures likely increase beginning in fiscal 2021.

**Small Business Effect:** The bill expands the exemption to additional small businesses, such that those with 50 or fewer employees that meet the gross sales criteria do not have to pay certain employee health care expenses; also, any that do not meet the gross sales criteria but work on State-funded projects below the \$500,000 threshold are no longer subject to the requirement to pay employee health care expenses.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 583 (Delegate Cullison) - Health and Government Operations..

**Information Source(s):** University System of Maryland; Department of General Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Maryland Stadium Authority; Department of Legislative Services

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