

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 102 (Delegates Hill and Feldmark)
 Judiciary

Correctional Services - Inmates - Labor, Job Training, and Educational Courses

This bill prohibits the compensation rate for inmate labor in Maryland Correctional Enterprises (MCE) from being less than the State minimum wage. The bill prohibits the Department of Public Safety and Correctional Services (DPSCS) from deducting the cost of food, lodging, or clothing from an inmate’s earnings. The Division of Correction (DOC) must offer job training and educational courses to all inmates who wish to participate, as specified. Annually, by March 1, DPSCS must report to the Governor and the General Assembly on the job training and educational courses offered by DOC, including (1) a listing and description of each training module and educational course offered along with the number of students participating in each and (2) the number of inmates who received diplomas, certificates, or other program completions, by category.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$18.4 million in FY 2022 due to the minimum wage provision; future years reflect annualization and statutory increases in the minimum wage. Additional costs are likely incurred to offer job training and educational courses, but cannot be reliably estimated. Special fund revenues decrease by \$750,000 in FY 2022 and by \$1.0 million annually thereafter due to the prohibition on deducting specified costs from inmate earnings.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	(\$750,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)
GF Expenditure	\$18,397,400	\$26,837,000	\$28,645,500	\$30,453,900	\$32,563,800
Net Effect	(\$19,147,400)	(\$27,837,000)	(\$29,645,500)	(\$31,453,900)	(\$33,563,800)

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

Local Effect: None. The bill does not affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Maryland Correctional Enterprises

MCE (formerly State Use Industries) provides work and job training for inmates incarcerated in State correctional facilities. 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. These goods are also available for use by charitable, civic, educational, fraternal, or religious organizations.

The Commissioner of Correction and the Chief Executive Officer of Maryland Correctional Enterprises must establish the compensation rate for inmate labor in MCE, taking into consideration other wage payments and incentives in other programs. Inmate wages are standard throughout State correctional facilities. The starting pay scale is based on skill category, with wages ranging from \$0.17 per hour for unskilled positions up to \$10.10 per hour for MCE work release positions.

Management of Inmate Earnings, Generally

DPSCS must collect an inmate's earnings and (1) if required, reimburse the county or State for the cost of providing food, lodging, and clothing to the inmate; (2) pay court-ordered payments for support of dependents; (3) pay court-ordered payments for restitution; and (4) pay compensation for victims of crime, as specified. For an inmate participating in the Private Sector/Prison Industry Enhancement Certification Program of the U.S. Department of Justice (Bureau of Justice Assistance), DPSCS must withhold 20% of the inmate's earnings for compensation to victims of crime, in accordance with the requirements of the program. DPSCS must withhold 25% of an inmate's earnings for compensation to victims of crime until the judgment is satisfied, if the inmate is subject to an unsatisfied judgment of restitution but not a participant in the certification program.

Maryland Wage and Hour Law, Generally

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act, which specifies minimum wage and overtime requirements for employers and employees in the State. Chapters 10 and 11 of 2019 increased the State minimum wage rate for employers with 15 or more employees in six increments until the full phase-in of \$15.00 per hour on January 1, 2025. The Acts specify that, unless the federal minimum wage is set at a higher rate, the State minimum wage for employers with 15 or more employees is as follows:

- \$11.00 per hour as of January 1, 2020;
- \$11.75 per hour as of January 1, 2021;
- \$12.50 per hour as of January 1, 2022;
- \$13.25 per hour as of January 1, 2023;
- \$14.00 per hour as of January 1, 2024; and
- \$15.00 per hour as of January 1, 2025.

State Fiscal Effect: As a result of COVID-19, DPSCS advises that MCE operations have been reduced in order to mitigate the spread of the virus within its facilities. As such, this analysis uses data from fiscal 2019, prior to the effects of COVID-19 on DPSCS operations and finances.

Inmate Wages

DPSCS advises that, based on the average daily working hours throughout the 26 business units within MCE at the close of fiscal 2019, the workforce accumulated approximately 2.4 million hours of training and employment in fiscal 2019. Assuming the number of hours remains constant over time, general fund expenditures for inmate wages increase by approximately \$18.4 million in fiscal 2022 (due to the bill's October 1, 2021 effective date); by \$26.8 million in fiscal 2023; and by \$32.6 million in fiscal 2026 and annually thereafter. This assumes that, in the absence of the bill, DPSCS would otherwise incur \$2.4 million annually in costs for inmate wages.

Prohibition on Deducting Specified Costs from Inmate Earnings

DPSCS advises that deductions from inmate earnings related to room and board are only collected from inmates with outside employment via work release and who are housed in a department facility. DPSCS advises that deductions vary due to several factors but that it deducts approximately \$1.0 million annually from inmate earnings that could not be deducted under the bill. Therefore, special fund revenues decrease by an estimated \$1.0 million annually; due to the bill's effective date, the decrease in fiscal 2022 is \$750,000.

Job Training and Educational Programs for All Inmates

DOC advises that additional space and correctional officer staff are needed in order to meet the bill's requirement to offer job training and educational courses to *all* inmates who wish to participate in such programming. While this requirement likely results in increased costs for DPSCS, the Department of Legislative Services (DLS) does not have sufficient information at this time to reliably estimate any increase in general fund expenditures.

DPSCS can complete the required annual report on job training and educational programming with existing resources.

Additional Comment: DLS advises that while the bill appears to intend to prohibit the reimbursement to the State or counties for specified costs generally relating to inmate housing, the bill does not amend references in Title 11 of the Correctional Services Article, which also contains similar provisions specifically applicable to individual counties. In the bill's current form, an inmate must be under DPSCS supervision and in a DPSCS work program in order for the prohibition to apply. It is unclear if the bill is also intended to apply to inmates who would otherwise be under State supervision but who are currently housed in county facilities.

Additional Information

Prior Introductions: HB 1265 of 2019, a similar bill, received an unfavorable report by the House Economic Matters Committee.

Cross File: SB 194 (Senator Benson) - Finance and Budget and Taxation.

Information Source(s): Harford, Montgomery, and Wicomico counties; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

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