

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 First Reader

House Bill 124 (Delegate Valderrama)
 Economic Matters

Occupational Safety and Health Standards to Protect Employees - Aerosol Transmissible Diseases and COVID-19

This emergency bill requires the Secretary of Labor, in consultation with the Commissioner of Labor and Industry and the Maryland Department of Health (MDH), to develop and make available, by March 1, 2021, an Emergency Temporary Occupational Safety and Health Standard to Protect Employees from COVID-19, for use by employers. The bill also requires the commissioner to adopt regulations by October 1, 2021, to establish a permanent Occupational Safety and Health Standard to Protect Employees from Occupational Exposure to Aerosol Transmissible Diseases. **Provisions related to the emergency temporary standards and COVID-19 information reporting terminate six months after the date the state of emergency declared by the Governor due to the COVID-19 pandemic ends.**

Fiscal Summary

State Effect: State expenditures (all funds) increase, potentially significantly, for State agencies to implement the standards established by the Maryland Department of Labor (MDL). Assuming the bill takes effect March 1, 2021, special fund expenditures for MDL increase by \$139,600 in FY 2021 to develop the standards and begin enforcement of the bill; out-year expenditures reflect annualization, additional staffing, and the elimination of temporary and one-time costs. Revenues are not directly affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	139,600	830,300	753,200	775,000	801,700
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

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

Local Effect: Local government expenditures increase, potentially significantly, for local governments to implement the standards established by MDL. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Emergency Temporary Standard and COVID-19 Data

The emergency temporary standard must be made available in English, Spanish, and Haitian Creole on the main page of the MDL website. Among other things, the emergency temporary standard must:

- include a definition and gradient for exposure risk level and factors to aid employers in determining the risk level associated with individual jobs and persons in a workplace or industry;
- establish minimum safety standards based on each exposure risk level, including, among other things, (1) respiratory protection and personal protective equipment (PPE) standards requiring that employers provide the protection and PPE when necessary and at no cost to an employee; (2) physical distancing standards, as specified; (3) sanitation standards, as specified; (4) requirements for ventilation; and (5) training and safety protocols;
- prohibit an employer from taking discriminatory or retaliatory action against an employee that takes specified actions related to the standards, a workplace infectious disease hazard, or COVID-19 exposure;
- require each employer to take specified precautions and actions that generally (1) protect employees from COVID-19; (2) notify employees and the appropriate government agencies after the confirmation of a positive case of COVID-19; and (3) inform employees about COVID-19 symptoms, the emergency temporary safety standard, and the process for submitting a complaint to Maryland Occupational Safety and Health (MOSH).

The Secretary of Labor and Commissioner of Labor and Industry must also make information reported by employers related to COVID-19 available on the MDL website in a manner that does not reveal the personally identifiable information of any individual employee.

Permanent Standard

By October 1 2021, the Commissioner of Labor and Industry must adopt regulations that establish a permanent Occupational Safety and Health Standard to protect employees from occupational exposure to aerosol transmissible diseases. The regulations must:

- contain industry-appropriate standards of protection for employees from occupational exposure to infectious pathogens;
- require employers to develop and implement a comprehensive infectious disease exposure control plan; and
- prohibit an employer from taking discriminatory or retaliatory action against an employee who (1) reports a violation of a standard adopted in the regulations or reports a good faith concern about a workplace infectious disease hazard, as specified; (2) seeks assistance or intervention with respect to such a report, as specified; (3) voluntarily uses PPE with a higher level of protection than is provided by the employer; or (4) exercises any right protected in the adopted regulations.

Current Law: The Division of Labor and Industry within MDL administers the MOSH program. The requirements of the MOSH program are codified by the MOSH Act and generally require employers to provide each employee with employment and a place of employment that are safe and healthful and free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.

Additionally, the MOSH requirements generally parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards.

State Expenditures:

Maryland Department of Labor – Development and Enforcement Costs

The bill creates additional responsibilities for MDL and MOSH by requiring MOSH to develop and implement a temporary workplace safety standard related to COVID-19 and a permanent workplace safety standard related to all aerosol transmissible diseases. MOSH cannot develop the standards and regulations and carry out enforcement activities with its existing staff and resources.

MDL advises that President Joseph R. Biden, Jr., has issued an executive order instructing the U.S. Secretary of Labor to (1) issue, within two weeks, revised guidance for employers

on workplace safety during the pandemic and (2) consider whether temporary emergency workplace standards related to COVID-19 are needed. As the bill likely cannot take effect before March 1, 2021, it is not possible for MOSH to develop and implement the emergency COVID standard by that date. Therefore, this analysis assumes that MOSH adopts the federal guidance, and if promulgated, emergency workplace standards issues by OSHA at no cost to the State.

However, MOSH requires additional staff to enforce the temporary COVID standard, develop the permanent regulations, and then enforce those regulations. For purposes of this analysis, it is assumed that:

- the bill takes effect on March 1, 2021, but initial hiring is delayed by 30 days;
- five new positions, including an assistant Attorney General, begin working on April 1, 2021, to develop the permanent regulations and enforce the emergency standard; and
- four additional staff begin working on October 1, 2021, to enforce the permanent regulations.

The cost of administering the MOSH program is covered through an appropriation from the Workers’ Compensation Commission (WCC). Thus, special fund expenditures for MDL increase by \$139,632 in fiscal 2021 and \$830,341 in fiscal 2022. The estimate includes \$150,000 in fiscal 2022 for contractual assistance to help develop the new regulations; it also reflects the cost of hiring a total of nine regular employees (including occupational safety and health hygienists, administrative staff, and legal staff) to implement the bill, as described above. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2021</u>	<u>FY 2022</u>
New Positions	5.0	4.0
Salaries and Fringe Benefits	\$105,604	\$623,707
Temporary Environmental Consulting Costs		150,000
Operating Expenses	<u>34,028</u>	<u>56,634</u>
Total MDL Expenditures	<u>\$139,632</u>	<u>\$830,341</u>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. MDH can confer with MDL to develop the standards using existing resources.

State Agencies – Standard Implementation Costs

State expenditures for many State agencies increase, potentially significantly, to implement the standards developed by MDL. However, a precise estimate depends on the ultimate

disposition of the standards and how they compare to each agency's current safety practices and activities and, therefore, cannot be projected at this time.

For example, many State agencies are likely to experience minimal costs to purchase and provide PPE and other protective equipment for employees, while some State agencies may experience significant capital costs (likely millions of dollars) if the standards adopted by MDL require any modification to building ventilation systems. Additionally, agencies with large properties, such as the University System of Maryland, anticipate additional staff being necessary to implement and maintain the standards.

Local Expenditures: Similar to the effect discussed above for State agencies, local governments may experience a variety of new costs under the bill, ranging from minimal costs to purchase and provide PPE to employees to significant costs if any buildings require ventilation system modifications.

Small Business Effect: All employers, including small businesses, must follow the standards adopted by MDL, subject to enforcement by MOSH. Similar to the effect discussed above for State agencies, small businesses may experience a variety of new costs under the bill, ranging from minimal costs to purchase and provide PPE to employees to significant costs if, for example, buildings require ventilation system modifications.

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

To the extent that current revenues for WCC are insufficient to cover the administrative costs described above, WCC may need to increase employer assessments to cover the costs, resulting in a special fund revenue increase for WCC and additional expenditures for the State, local governments, and small businesses as employers. As it is unclear whether additional assessments are needed, this analysis does not include any potential revenue or expenditure increases, but it is assumed that any such increases approximate the cost of MDL implementing the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Maryland Association of Counties; University System of Maryland; Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

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rh/mcr

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Appendix – COVID-19

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.

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).