

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1043 (Senator Gile)  
Education, Energy, and the Environment

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Education - Public School Employers and Employees - Subcontracting for  
Services

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This bill prohibits a public school employer from entering into a subcontracting agreement that replaces or supplements any work performed by bargaining unit employees or following the expiration of an existing collective bargaining agreement, except under specified circumstances. The bill establishes a process that must be followed for a local school system to hire subcontractors. Public school employee or exclusive representative affected by a violation of a local school system following the process may file an unfair labor practice with the Public Employee Relations Board (PERB) and may be entitled to a remedy that may include reinstatement, back pay and benefits, tenure and seniority credit, attorney's fees, expert witness fees and related costs, and any other relief PERB deems appropriate. The bill does not apply to publicly funded full-day prekindergarten program or the delivery of coordinated community supports, as specified.

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Fiscal Summary

**State Effect:** PERB general fund expenditures may increase, potentially materially, due to increased casework; however, the magnitude of any impact depends on the number of cases submitted and thus cannot be reliably estimated. Revenues are not affected.

**Local Effect:** Local school system expenditures for services, and fees related to violations, likely increase, potentially significantly, if subcontracting is currently allowed under current collective bargaining. The number of circuit court cases are likely not materially affected; thus, circuit court finances are likely not materially affected. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential significant.

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## Analysis

**Bill Summary:** The bill establishes that it is the public policy of the State that public school employers use public school employees to perform instructional and noninstructional human service functions in public schools rather than subcontracting with the private sector to perform the same functions.

The bill may not be construed to supersede any protection or rights of a public school employee or an exclusive representative under federal or State law.

The bill's requirements apply to the renewal of an existing subcontracting agreement that expires on or after October 1, 2024.

### *Subcontracting Requirements*

A public school employer may not enter into a subcontracting agreement that, except as specified, replaces or supplements any work performed by bargaining unit employees. A public school employer may also not enter into a subcontracting agreement that follows the expiration of an existing collective bargaining agreement unless the public school employer (1) provides written notice as specified; (2) has offered the exclusive representative in each bargaining agreement unit affected by the subcontracting agreement the opportunity to discuss the decision and the opportunity to engage in negotiations over the effects of the subcontracting agreement; and (3) the subcontracting agreement satisfies all other requirements of the bill.

A subcontracting agreement must contain provisions requiring the subcontractor to (1) offer employment with the subcontractor to public school employees whose employment is terminated as a result of the subcontract and (2) comply with a policy of nondiscrimination and take affirmative steps to provide an equal employment opportunity for all individuals.

A public school employer may enter into a subcontracting agreement for work that replaces or supplements work performed by bargaining unit employees if the services are no longer available from the public school employer or cannot be performed by existing public school employees.

A subcontractor bidding for a subcontracting agreement must provide the following to a public school employer:

- evidence of comprehensive liability insurance equivalent to the minimum required for county boards;

- evidence of providing employees with wages and benefits equivalent to those of the public school employer's employees;
- a list of employees including their classifications, qualifications, wages, and benefits;
- a cost projection for each expenditure category under the agreement; and
- a notarized affidavit from the subcontractor's president or CEO attesting to compliance with specified legal requirements.

A public school employer entering a subcontracting agreement must document and notify the exclusive representative why the service could not be provided by hiring new or existing public school employees and publish this notice prominently, including on the employer's website.

A subcontracting agreement under this section is valid for one school year and must meet all other requirements in the bill. Before entering a new agreement, the public school employer must either take affirmative step to hire public school employees for the work or notify the exclusive representative.

### *Employee Protections*

Each public school employee displaced as a result of the subcontracting agreement must (1) retain all previously acquired seniority or tenure during the public school employee's period of employment with the public school employer and (2) have recall rights as specified in any applicable collective bargaining agreement when the subcontracting agreement expires.

A subcontracting agreement must include a provision prohibiting the subcontractor or its agents from supporting negative campaigns against employee recognition efforts under labor laws. Violations result in termination of the agreement, and the subcontractor becomes ineligible for new agreements for two years.

A subcontracting agreement cannot be approved by a public school employer based solely on anticipated cost savings from lower wages or benefits for subcontractor employees compared to public school employees. However, such an agreement must only be entered into if the employer can demonstrate both actual cost savings and that the economic benefit outweighs the public interest in having the work performed by school employees.

A subcontracting agreement may be approved if the subcontractor's employees receive wages and benefits equivalent to those offered by the public school employer. The agreement must (1) include provisions on employee qualifications; (2) define the scope of

work; (3) assign responsibilities; (4) ensure employee familiarity with emergency protocols; and (5) specify roles during emergencies to ensure safety.

### *Notifications and Enforcement*

A public school employer must inform students, public school employees, employees of the subcontractor, and the public the availability of the public point of contact and make the contact information of the public point contact available.

A public school employer or subcontractor may not retaliate against a student, a public school employee, an employee of a subcontractor, or a member of the public for making a good faith complaint regarding alleged wrongdoing or concerns related to the quality of services provided by a subcontractor.

A public school employer must notify the public and the appropriate exclusive representative as soon as practicable that the public school employer is considering or exploring subcontracting. The notice must be (1) published in conspicuous places, including the website of the public school employer and (2) provided in writing to the appropriate exclusive representative.

A public school employer must award subcontracting agreements through a competitive procurement process, subject to the following, as further specified in the bill:

- review and consideration of all subcontractor proposals in an open session meeting;
- discussion of the subcontracting request and public comment; and
- providing notice of the first public hearing on the proposed agreement, published prominently including on the employer's website.

A public school employer must provide and publish a cost comparison of projected expenditures for services performed by its employees versus subcontractor employees, excluding indirect overhead costs unless directly attributable to subcontracted services and would not exist if the services were performed by individuals other than the public school employer's employees. The comparison must include continuing costs associated with subcontracted services, such as inspection and supervision.

A public school employer must establish procedures to ensure proper documentation and accounting of expenses incurred during the term of a subcontracting agreement.

A cost projection provided in a bid may not be increased if the subcontractor's bid is accepted by the public school employer.

A public school employer that receives all the required information from a subcontract must (1) provide the information as soon as practicable to the exclusive representative of the public school employees impacted by the subcontracting agreement and (2) publish the information in conspicuous places, including the website of the public school employer.

A public school employee, an exclusive representative, a subcontractor, or a State residents can file a violation action under this bill. A public school employer violating the requirements for hiring subcontractors established by the bill in §6-804 is considered to commit an unfair labor practice. Affected public school employees or exclusive representatives can file a charge with PERB. Successful charges may result in remedies including reinstatement, back pay, tenure, attorney's fees, and other relief deemed appropriate by the board. Noncompliance may lead to the board petitioning the circuit court. Awards to public school employees cannot be reduced based on interim earnings.

A public employer and its officers, employees, agents, or representatives are prohibited from engaging in any unfair labor practice, including violating the requirements relating to hiring a subcontractor.

Certificated and noncertificated public school employees, public school employers, and exclusive representatives are subject to the requirements relating to public school employer subcontracting agreements.

### **Current Law:**

#### *Public Employee Relations Board*

The Public Employee Relations Act of 2023 established PERB, which oversees collective bargaining activities for certain public employees in Maryland. The Act repealed the State Labor Relations Board, the State Higher Education Labor Relations Board, and the Public School Labor Relations Board, consolidating their duties under PERB. PERB is a five-member independent unit of State government responsible for administering and enforcing the State's collective bargaining law (the Maryland Public Employee Relations Act). PERB may investigate and take appropriate action in response to complaints of unfair labor practices, including strikes and lockouts. The State and its officers, employees, agents, or representatives are prohibited from engaging in unfair labor practices.

#### *Collective Bargaining*

Certificated public school employees have collective bargaining rights established under Title 6, Subtitle 4 of the Education Article. For noncertificated individuals, the process is established in Title 6, Subtitle 5 of the Education Article.

## *State Service Contracts*

It is the policy of the State to use State employees to perform all State functions in State-operated facilities in preference to contracting with the private sector to perform those functions. Service contracts with a value of at least \$100,000 are exempt from this statutory preference when:

- State employees are not available to perform the necessary services;
- a conflict of interest would result if a State employee performed the services;
- the services require emergency appointments;
- the services are incidental to the purchase or lease of personal or real property;
- a clear need exists to obtain an unbiased finding or opinion; or
- the General Assembly authorizes or requires that certain services be performed by an independent contractor.

**State Expenditures:** The bill expands PERB's jurisdiction to include an additional Unfair Labor Practice related to subcontracting with regards to local school systems. Further, PERB advises that due to the complexity of subcontracting alongside a unionized workforce, exclusive representatives may intensify scrutiny on bargaining activities and proposals, potentially leading to an increase in impasse requests submitted to PERB.

Therefore, PERB anticipates an increase in two types of cases filed with PERB, stemming from each county and multiple public employee units in each. To the extent that additional staff or resources are necessary to carry out the requirements of PERB, general fund expenditures may increase, potentially materially. As any such increase depends on the number of unfair labor practice cases submitted to PERB, a reliable estimate is not feasible.

**Local Expenditures:** For local school systems that currently allow subcontractors to do any of the work currently performed by bargaining unit employees, as specified, local school system expenditures likely increase, potentially significantly. However, any impact cannot be reliably estimated. In addition to the direct impact of potentially increasing the costs of services, local school system expenditures may increase if they are found in violation of an unfair labor practice due to not following the subcontracting hiring process established by the bill. Under the bill, a public school employee or exclusive representative is entitled to a remedy that may include reinstatement, back pay and benefits, tenure and seniority credit, attorney's fees, expert witness fees and related costs, and any other relief PERB deems appropriate.

Baltimore City Public Schools (BCPS) anticipates significant financial implications. The bill requires that public school employers use their own employees for instructional and noninstructional human service functions rather than subcontracting with private sector entities. Notably, the bill's broad language extends beyond positions like virtual substitutes

and tutors, encompassing a wide range of noninstructional services. This could have far-reaching effects on various aspects of school operations, including facilities, capital projects, community schools, academic programming, and legal support. BCPS contracts out substantial amounts for services annually. Additionally, under the bill, local school systems must negotiate with relevant unions about the impact of any proposed contracts on their members and can only approve contracts demonstrating clear evidence of cost savings, which cannot be achieved by paying service providers less than district employees. However, it is unclear how significant savings could be achieved in human services contracts without reducing labor costs.

Montgomery County Public School teachers' contract includes provisions that restrict subcontracting, allowing the Board of Education to do so only if there is a substantial business or professional reason. Specifically outlined in Article 1, the contract states that work typically performed by union members cannot be subcontracted to organizations or workers not covered by the agreement without valid justification. Additionally, the contract mandates that the Montgomery County Education Association be given advance notice of any plans for subcontracting, providing an opportunity for discussion before a decision is implemented.

**Small Business Effect:** Under the bill, local school systems may hire fewer subcontractors than they do currently. Subcontractors that are hired may have higher costs due to the wage and benefit requirements of the bill.

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### Additional Information

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

**Designated Cross File:** HB 1175 (Delegate Feldmark) - Ways and Means and Appropriations.

**Information Source(s):** Maryland State Department of Education; Public Employee Relations Board; Baltimore City Public Schools; Montgomery County Public Schools; Department of Legislative Services

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