

SENATE BILL 858

P2, E4

0lr2850
CF 0lr1414

By: **Senator Sydnor**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings and Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement and Correctional Facilities – Employment Opportunities for**
3 **Formerly Incarcerated Individuals**

4 FOR the purpose of requiring, beginning on a certain date, certain invitations to bid and
5 certain requests for proposals to require bidders and offerors to provide certain
6 documentation; requiring the Department of Public Safety and Correctional Services
7 and county departments of corrections to give a preference to certain bidders and
8 offerors based on the number of formerly incarcerated individuals the bidder or
9 offeror employs; requiring certain contractors to hire certain applicants that are
10 formerly incarcerated for certain jobs under certain circumstances; allowing for
11 exceptions to certain requirements under certain conditions; requiring certain
12 procurement contracts to include a formerly incarcerated employment clause;
13 stating the required contents of the clause; requiring a certain unit to declare a
14 certain contract to be void if a certain clause is omitted; providing that a contractor
15 is entitled to the certain value of work performed and materials provided under
16 certain circumstances; requiring the Department of Public Safety and Correctional
17 Services and the Maryland Department of Labor to jointly modify the Maryland
18 Workforce Exchange website in a certain manner; prohibiting a contractor from
19 sharing access to a certain secure area of a certain website and certain information
20 under certain circumstances; requiring certain contractors to submit a certain
21 annual report to certain persons at a certain time; specifying the contents of a certain
22 report; requiring certain contractors to adopt a certain policy; requiring the
23 Department of Public Safety and Correctional Services to provide certain
24 information to certain contractors; requiring the Department of Public Safety and
25 Correctional Services to provide a list of certain job centers to certain persons;
26 requiring the Department of Public Safety and Correctional Services to report to
27 certain committees of the General Assembly on or before a certain date; providing
28 for the application of this Act; establishing the intent of the General Assembly;
29 prohibiting certain implementation costs from exceeding a certain amount; defining
30 certain terms; and generally relating to employment for formerly incarcerated
31 individuals and procurement contracts.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Correctional Services
3 Section 8–7A–01 through 8–7A–03 to be under the new subtitle “Subtitle 7A.
4 Miscellaneous”
5 Annotated Code of Maryland
6 (2017 Replacement Volume and 2019 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
8 That the Laws of Maryland read as follows:

9 **Article – Correctional Services**

10 **SUBTITLE 7A. MISCELLANEOUS.**

11 **8–7A–01.**

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

14 (B) “COVERED CONTRACTOR” MEANS A CONTRACTOR WHO HAS ENTERED
15 INTO A CONTRACT THAT IS SUBJECT TO THIS SUBTITLE.

16 (C) “FORMERLY INCARCERATED” MEANS AN INDIVIDUAL WHO HAS BEEN
17 CONFINED IN A CORRECTIONAL FACILITY.

18 (D) “REASONABLE ACCOMMODATION” MEANS MODIFICATIONS OR
19 ADJUSTMENTS:

20 (1) TO A JOB APPLICATION PROCESS THAT ENABLES A FORMERLY
21 INCARCERATED APPLICANT TO BE CONSIDERED FOR A JOB FOR WHICH THE
22 APPLICANT IS QUALIFIED;

23 (2) TO THE WORK ENVIRONMENT, OR LOCATION WHERE JOB DUTIES
24 ARE PERFORMED, OR TO THE MANNER, CIRCUMSTANCES, OR SCHEDULE UNDER
25 WHICH A JOB IS CUSTOMARILY PERFORMED, THAT ENABLE A FORMERLY
26 INCARCERATED INDIVIDUAL TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB;
27 AND

28 (3) THAT PROVIDE TO AN EMPLOYEE OF A COVERED CONTRACTOR
29 EQUAL BENEFITS AND PRIVILEGES OF EMPLOYMENT THAT ARE PROVIDED TO
30 OTHER SIMILARLY SITUATED EMPLOYEES WHO ARE NOT FORMERLY
31 INCARCERATED.

(E) "UNIT" MEANS THE DEPARTMENT OR A COUNTY DEPARTMENT OF CORRECTIONS.

8-7A-02.

(A) THIS SECTION APPLIES ONLY TO PROCUREMENTS ENTERED INTO AFTER JANUARY 1, 2021, BY A UNIT FOR GOODS OR SERVICES AT A STATE OR LOCAL CORRECTIONAL FACILITY, INCLUDING PROCUREMENTS THROUGH MASTER, STATEWIDE, OR COUNTYWIDE PROCUREMENT AGREEMENTS.

(B) (1) EACH INVITATION TO BID OR REQUEST FOR PROPOSALS SHALL REQUIRE EACH BIDDER OR OFFEROR TO PROVIDE DOCUMENTATION SHOWING THE NUMBER OF ITS EMPLOYEES WHO ARE FORMERLY INCARCERATED AT THE TIME THE BID OR PROPOSAL IS SUBMITTED.

(2) A UNIT SHALL GIVE A PREFERENCE TO BIDDERS AND OFFERORS BASED ON THE NUMBER OF FORMERLY INCARCERATED INDIVIDUALS THE BIDDER OR OFFEROR EMPLOYS.

(3) THE UNIT SHALL DETERMINE THE PREFERENCE GIVEN TO BIDDERS AND OFFERORS, IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION, THAT SHALL BE AT LEAST EQUIVALENT TO OTHER PREFERENCE PROGRAMS IN THE STATE.

(C) (1) EACH PROCUREMENT CONTRACT, INCLUDING ALL AMENDED OR RENEWED CONTRACTS, SHALL INCLUDE A FORMERLY INCARCERATED EMPLOYMENT CLAUSE AS PROVIDED IN THIS SUBSECTION.

(2) THE FORMERLY INCARCERATED EMPLOYMENT CLAUSE SHALL REQUIRE EACH CONTRACTOR TO:

(I) LIST ON THE MARYLAND WORKFORCE EXCHANGE WEBSITE ALL JOB VACANCIES, INCLUDING A LIST OF ESSENTIAL FUNCTIONS FOR EACH JOB;

(II) REVIEW ALL JOB APPLICATIONS SUBMITTED BY FORMERLY INCARCERATED INDIVIDUALS NOT LESS THAN 45 DAYS AFTER POSTING THE JOB; AND

(III) HIRE FOR A JOB AN INDIVIDUAL FROM THE POOL OF FORMERLY INCARCERATED APPLICANTS, UNLESS:

1 1. THE JOB IS EXEMPT IN ACCORDANCE WITH
2 SUBSECTION (G) OF THIS SECTION AND A REASONABLE ACCOMMODATION CANNOT
3 BE FEASIBLY PROVIDED TO ELIMINATE THE EXEMPTION; OR

4 2. IT WOULD NOT BE POSSIBLE, WITHIN 90 DAYS AFTER
5 A JOB START DATE, TO TRAIN ANY OF THE FORMERLY INCARCERATED APPLICANTS
6 TO PERFORM THE JOB'S ESSENTIAL FUNCTIONS, AS LISTED IN THE JOB POSTING.

7 (3) (I) IF THE FORMERLY INCARCERATED EMPLOYMENT CLAUSE
8 IS OMITTED FROM A CONTRACT SUBJECT TO THIS SECTION, THE UNIT SHALL
9 DECLARE THE CONTRACT TO BE VOID.

10 (II) IF THE CONTRACT IS DECLARED VOID UNDER
11 SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE CONTRACTOR IS ENTITLED TO THE
12 REASONABLE VALUE OF WORK THAT HAS BEEN PERFORMED AND MATERIALS THAT
13 HAVE BEEN PROVIDED.

14 (D) (1) THE DEPARTMENT AND THE MARYLAND DEPARTMENT OF
15 LABOR JOINTLY SHALL MODIFY THE MARYLAND WORKFORCE EXCHANGE WEBSITE
16 TO:

17 (I) ENABLE CONTRACTORS TO POST ALL JOB LISTINGS;

18 (II) PROVIDE A SECURE AREA OF THE WEBSITE WHERE
19 FORMERLY INCARCERATED INDIVIDUALS MAY POST A PROFILE AND RESUME IN A
20 SECTION OF THE WEBSITE THAT MAY ONLY BE VIEWED BY COVERED CONTRACTORS;

21 (III) ENABLE COVERED CONTRACTORS TO:

22 1. SEPARATELY SEARCH AND SORT THE PROFILES AND
23 RESUMES OF THE FORMERLY INCARCERATED APPLICANTS;

24 2. EXTRACT REPORTS TO COMPLY WITH THE REPORTING
25 REQUIREMENTS SET FORTH IN SUBSECTION (E) OF THIS SECTION; AND

26 3. DETERMINE WHICH FORMERLY INCARCERATED
27 APPLICANTS HAVE COMPLETED A PRERELEASE EMPLOYMENT PROGRAM OR A JOB
28 READINESS PROGRAM; AND

29 (IV) PROVIDE FORMERLY INCARCERATED APPLICANTS THE
30 OPTION TO RECEIVE, WITHIN 8 HOURS OF A JOB POSTING, ELECTRONIC NOTICES OF
31 EACH NEW JOB POSTED BY A COVERED CONTRACTOR.

1 **(2) A COVERED CONTRACTOR THAT HAS ACCESS TO THE SECURE**
2 **AREA OF THE WEBSITE IN ACCORDANCE WITH PARAGRAPH (1)(II) OF THIS**
3 **SUBSECTION MAY NOT PROVIDE ACCESS TO THE SECURE AREA OF THE WEBSITE TO**
4 **A THIRD PARTY.**

5 **(E) ON OR BEFORE DECEMBER 15 EACH YEAR, EACH COVERED**
6 **CONTRACTOR SHALL SUBMIT TO THE CONTRACTING UNIT A REPORT THAT**
7 **INCLUDES:**

8 **(1) THE NUMBER AND PERCENTAGE OF THE CONTRACTOR'S**
9 **EMPLOYEES WHO ARE FORMERLY INCARCERATED;**

10 **(2) A DESCRIPTION FOR EACH TYPE OF JOB AND RATE OF**
11 **COMPENSATION FOR EACH TYPE OF JOB IN THE CONTRACTOR'S ORGANIZATION;**

12 **(3) THE NUMBER OF APPLICATIONS RECEIVED THROUGH THE**
13 **MARYLAND WORKFORCE EXCHANGE WEBSITE FOR EACH JOB POSTED BY THE**
14 **CONTRACTOR, INCLUDING THE ETHNICITY, AGE, GENDER, AND ZIP CODE OF EACH**
15 **APPLICANT; AND**

16 **(4) THE NUMBER OF APPLICANTS HIRED THROUGH THE MARYLAND**
17 **WORKFORCE EXCHANGE WEBSITE, INCLUDING THE JOB TITLE, START DATE,**
18 **STARTING SALARY, ETHNICITY, AGE, GENDER, AND ZIP CODE OF EACH APPLICANT**
19 **HIRED; AND**

20 **(5) A LIST AND DETAILED DESCRIPTION OF JOBS DECLARED EXEMPT**
21 **IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION, INCLUDING, FOR EACH**
22 **JOB, THE REASON THAT A REASONABLE ACCOMMODATION COULD NOT BE**
23 **PROVIDED.**

24 **(F) EACH COVERED CONTRACTOR SHALL DEVELOP A WRITTEN POLICY:**

25 **(1) REGARDING THE PROVISION OF REASONABLE ACCOMMODATIONS**
26 **FOR REQUIREMENTS IMPOSED ON A FORMERLY INCARCERATED EMPLOYEE OF THE**
27 **CONTRACTOR AS A CONDITION OF PAROLE, PROBATION, OR OTHER TYPE OF**
28 **RELEASE FROM IMPRISONMENT SO THAT A QUALIFIED FORMERLY INCARCERATED**
29 **INDIVIDUAL CAN BE CONSIDERED FOR A JOB POSITION; AND**

30 **(2) PREVENTING THE DISCLOSURE OF FORMERLY INCARCERATED**
31 **INDIVIDUALS' RESUMES AND APPLICATIONS TO THIRD PARTIES.**

32 **(G) THE REQUIREMENTS OF THE FORMERLY INCARCERATED EMPLOYMENT**
33 **CLAUSE DO NOT APPLY TO A JOB IF 65% OR MORE OF THE ESSENTIAL FUNCTIONS OF**

1 THE JOB WOULD CAUSE A FORMERLY INCARCERATED EMPLOYEE TO VIOLATE A
2 CONDITION OF PAROLE, PROBATION, OR OTHER RELEASE REQUIREMENT.

3 (H) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE
4 DEPARTMENT SHALL PROVIDE TO ALL CONTRACTORS WITH APPLICABLE
5 CONTRACTS ENTERED INTO PRIOR TO JANUARY 1, 2021, INFORMATION ABOUT THE
6 REQUIREMENTS SET FORTH IN THIS SECTION, AND ENCOURAGE THE CONTRACTORS
7 ON THOSE CONTRACTS TO VOLUNTARILY COMPLY WITH THE REQUIREMENTS.

8 **8-7A-03.**

9 THE DEPARTMENT SHALL PROVIDE A LIST OF AMERICAN JOB CENTERS IN
10 THE STATE TO ALL PAROLEES AND INDIVIDUALS IN PRERELEASE PROGRAMS.

11 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1, 2021,
12 the Department of Public Safety and Correctional Services shall report to the Senate
13 Judicial Proceedings Committee and the House Judiciary Committee, in accordance with §
14 2-1257 of the State Government Article, on the implementation of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General
16 Assembly that the Department of Public Safety and Correctional Services and the
17 Maryland Department of Labor use existing resources to carry out § 8-7A-02(d) of the
18 Correctional Services Article, as enacted by Section 1 of this Act, and if any additional costs
19 may be needed for implementation, the costs may not exceed \$20,000.

20 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2020.