

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 301

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Procurement - Small Business Reserve Program - Eligibility Modifications

This bill raises specified average annual gross sales thresholds for determining firms' eligibility for the Small Business Reserve Program, and includes a new threshold for architectural and engineering firms. It also adds the Maryland Transportation Authority and the Department of Information Technology to the list of agencies subject to the program. Finally, it requires the Department of General Services to submit a report to the General Assembly by October 1, 2011 regarding whether the bill has had an adverse effect on small businesses that previously qualified for SBR based on the criteria in effect under current law.

Fiscal Summary

State Effect: General fund expenditures by DGS could increase by \$52,400 in FY 2009 to process and verify the increased number of small business certification applications. Future year expenditures reflect annualization, inflation, and the scheduled termination of the SBR Program in September 2010. State spending on procurements reserved for small businesses could decrease (all funds) because of increased competition for procurements set aside under the Small Business Reserve Program.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	52,400	65,600	17,200	0	0
Net Effect	(\$52,400)	(\$65,600)	(\$17,200)	\$0	\$0

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

Local Effect: None.

Small Business Effect: Meaningful. More businesses will be eligible to bid on the 10% of State procurements set aside for small businesses. While more firms will be eligible to benefit from the Small Business Reserve Program, the increased competition could drive down the value of contracts awarded to small businesses.

Analysis

Bill Summary: The bill raises the average annual gross sales a firm can generate over the most recent three fiscal years and still qualify as a small business, in the following manner:

- for wholesale distributors, from \$2.0 million to \$4.0 million;
- for retail firms, from \$2.0 million to \$3.0 million; and
- for service firms, from \$2.0 million to \$10.0 million.

It does not change the threshold for manufacturing or construction firms, but adds a new threshold for architectural and engineering firms of \$4.5 million and 100 employees.

The addition of the Department of Information Technology to the SBR Program is contingent on the passage of legislation (SB 212/HB 362) authorizing its creation.

Current Law: Chapter 75 of 2004 established the Small Business Reserve Program and defined a small business as either a minority-owned business that meets the criteria specified below, or a business other than a broker that is independently owned and operated; not a subsidiary of another firm; and not dominant in its field of operation. The Department of General Services is responsible for certifying small businesses.

In addition, a business must meet the following criteria to qualify for small business certification by the State:

- average gross sales over the last three years did not exceed \$2.0 million in retail operations, wholesale operations, manufacturing operations, or service operations;
- average gross sales over the last three years did not exceed \$7.0 million in construction operations; and
- the firm does not employ more than 25 people in its retail operations, 50 people in either its wholesale or construction operations, or 100 people in either its service or manufacturing operations.

The Small Business Reserve Program requires most State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements is made directly to small businesses. Under regulations adopted by the Department of General Services, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 10% of its forecasted spending to contracts for small businesses serving as prime contractors.

The Small Business Reserve Program sunsets September 30, 2010.

Background: There are currently 4,158 certified small businesses in Maryland. **Exhibit 1** lists the 22 agencies currently subject to the Small Business Reserve Program, and provides preliminary results for each one from fiscal 2006, the most recent data available. Based on these figures, the exhibit shows that only 8 of the 22 agencies achieved the program's target of 10% of procurement dollars being awarded to certified small businesses. However, all three of the State's procurement control agencies (Treasurer, Department of Budget and Management, and Department of General Services) achieved the 10% target.

The Maryland Transportation Authority is responsible for the construction, financing, operation, and maintenance of Maryland toll facilities.

Exhibit 1
Percentage of Procurement Dollars Going to Certified Small Businesses
Fiscal 2006

<u>Agency</u>	<u>% of Procurement Dollars</u>
Environment	18.9%
Maryland Stadium Authority	18.0%
State Retirement Agency	12.8%
Treasurer	11.9%
Business and Economic Development	11.6%
Budget and Management	10.7%
General Services	10.0%
Housing and Community Development	10.0%
Maryland Insurance Administration	8.8%
State Police	8.6%
Public Safety and Correctional Services	7.8%
Transportation	7.5%
Natural Resources	7.5%
University System of Maryland	5.4%
Juvenile Services	5.2%
Human Resources	3.8%
Morgan State University	3.7%
Health and Mental Hygiene	3.3%
Maryland Port Administration	3.3%
Education	2.5%
Labor, Licensing, and Regulation	1.7%
State Lottery Agency	1.0%

Source: Board of Public Works

State Expenditures: State procurement spending could decrease as a result of increasing competition for procurements reserved for small businesses. Under the DGS regulations, each agency must set aside procurements that total 10% of its planned procurement spending for small businesses. However, the actual value of the small business procurements can be less than 10% of total procurement spending if the winning bids for the small business set-asides are less than anticipated. By increasing the number of firms eligible to bid on small business set-asides, the State increases competition for those procurements, which could result in lower winning bids.

Besides the bill's effect on procurement costs, DGS advises that the new criteria for certification as a small business could increase the number of certified small businesses by as many as 1,700. Legislative Services agrees that the bill could significantly increase the number of small business applications each year.

Therefore, general fund expenditures could increase by an estimated \$52,406 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of one new position in DGS to process and verify the increased volume of applications for annual small business certification. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating costs.

Salary and Fringe Benefits	\$48,123
Operating Expenses	<u>4,283</u>
Total FY 2009 State Expenditures	\$52,406

Future year expenditures reflect (1) a full salary with 4.4% annual increases and 3% employee turnover; and (2) 2% annual increases in ongoing operating expenses. The new position and personnel costs end in fiscal 2011 with the scheduled termination of the SBR Program.

Additional Information

Prior Introductions: None.

Cross File: HB 561 (Delegate Morhaim) – Health and Government Operations.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Department of Transportation, Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2008
ncs/rhh Revised - Senate Third Reader/Updated Fiscal Information -
March 25, 2008

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510