

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 629

(Chair, Environmental Matters Committee)

(By Request – Departmental – Transportation)

Environmental Matters

Education, Health, and  
Environmental Affairs

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**State Ethics Law - Architectural and Engineering Services - Procurement**

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This departmental bill repeals termination provisions in current law that allow specified individuals or firms that provide architectural and engineering (A&E) services during the design phase of a construction project to bid or assist another person in submitting a bid on the construction contract for that project.

The bill takes effect July 1, 2008.

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**Fiscal Summary**

**State Effect:** None. The bill does not affect the value of State procurements. However, the bill could restrict competition for State construction projects by giving an advantage to A&E firms that help prepare preliminary designs for construction contracts.

**Local Effect:** None.

**Small Business Effect:** The Maryland Department of Transportation has determined that this bill has a meaningful impact on small business (attached). Legislative Services concurs with this assessment as discussed below.

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**Analysis**

**Current Law:** In general, individuals or firms that assist in designing a procurement may not submit a bid or proposal for that procurement, subject to certain exemptions.

Chapter 549 of 2006 allowed A&E firms to bid on the construction contract if the design services did not involve lead or prime design responsibilities or construction phase responsibilities on behalf of the State and (1) the construction contract was valued at not less than \$2.5 million or not more than \$100 million; *or* (2) their payment for the A&E services was \$500,000 or less, regardless of the amount of the procurement contract. These provisions of Chapter 549 are scheduled to terminate on June 30, 2008.

Chapter 482 of 2002 first exempted individuals providing specifications for an unsolicited proposal from the general prohibitions on A&E firms bidding on construction contracts. Chapter 482 will terminate September 30, 2008. Chapter 84 of 2004 first established the exemption for certain A&E services under current law. The maximum value of a construction project subject to the exemption began at \$40 million, increasing to \$100 million on July 1, 2006. Chapter 84 also required the Maryland Department of Transportation to issue annual reports on the implementation of the bill's provisions, including their impact on small businesses and minority business enterprises. Chapter 84 is also scheduled to terminate June 30, 2008.

**Background:** The State's Minority Business Enterprise (MBE) program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including 7% to African American-owned businesses and 10% to women-owned businesses. The program does not establish penalties for agencies that fail to reach those targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

**State Fiscal Effect:** In response to SB 971 of 2006, which was enacted as Chapter 549, the Department of General Services (DGS) noted that the bill could restrict competition for State construction projects by giving an advantage to A&E firms that assisted in the preparation of preliminary designs for construction contracts. Those firms could team with construction firms to bid on the projects they helped design, giving those teams an edge with respect to experience and inside knowledge of the proposed project. DGS did not respond to a request for information on this bill, but the Department of Legislative Services (DLS) continues to concur with the prior DGS assessment. However, DLS notes that any potential increase in costs could be offset by the avoidance of other costs incurred when different A&E firms are involved in the design and construction phases.

The Maryland Department of Transportation (MDOT) advises that repealing the termination dates of Chapter 84 and Chapter 549 would better enable State agencies to meet their MBE goals. MDOT notes in a September 2007 report that, to date, the exceptions provided for in Chapters 84 and 549 have had little or no effect in attracting MBE firms as prime A&E consultants on design-build contracts. Nevertheless, MDOT believes that by allowing small and minority-owned businesses that participate in the

design component of State construction projects to also bid on the construction phase of the project, the bill would enhance MBE participation in State procurement.

**Small Business Effect:** Small businesses, including MBEs, that provide A&E services for the design of construction projects valued at less than \$2.5 million or more than \$100 million, or that are paid less than \$500,000 for their services, would continue to be permitted to submit bids or proposals for the construction of those projects.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 19, 2008  
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