

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 551 (Senators Montgomery and King)
Education, Health, and Environmental Affairs Health and Government Operations

**Procurement - Required Disclosure - Conflict Minerals Originated in the
Democratic Republic of the Congo**

This bill bars a State procurement unit from knowingly procuring supplies or services from a person that does not comply with federal law related to disclosing the use of “conflict minerals” that originated in the Democratic Republic of the Congo (DRC) or its neighboring countries. Procurement units must include notice of this requirement in any solicitation for supplies or services.

Fiscal Summary

State Effect: Potential increase in State procurement costs (all funds) to the extent that the bill decreases competition for State contracts. Primary procurement units can develop an affidavit with the necessary certifications by bidders and offerors with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful for small businesses that manufacture goods that use conflict minerals and seek to participate in State procurement.

Analysis

Bill Summary: “Conflict minerals” are minerals or mineral derivatives determined under federal law to be financing human conflict. The definition includes columbite-tantalite (coltan), cassiterite, gold, wolframite, or derivatives of these minerals.

A noncompliant person is one that does not file the necessary federal disclosure, is considered under federal law to have provided an unreliable determination, or includes false information in the disclosure.

Current Law: There are no provisions in State law governing procurement from individuals who have purchased conflict minerals from the Congo.

The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in whole or in part from most State procurement law. Any of their procurements that are subject to the exemption from State procurement law would not be subject to the bill's disclosure requirements.

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Department of Natural Resources, for conservation service opportunities;
- Maryland Stadium Authority;
- Department of General Services, for the renovation of historic structures;
- State Retirement and Pension System;
- College Savings Plan of Maryland; and
- Chesapeake Bay Trust.

Background: DRC, formerly Zaire, has vast mineral wealth in the form of diamonds, copper, gold, and zinc as well as coltan (used in cell phones) and cassiterite (used in food packaging). A five-year civil war that killed about 5 million people began in the late 1990s, involving several neighboring countries. The war officially ended in 2003, but fighting continues in the mineral-rich eastern region among government forces and

several armed militias, most notably the Democratic Forces for the Liberation of Rwanda (FDLR). FDLR has used the trading of minerals from the region to finance its operations.

The 2010 federal Dodd-Frank Wall Street Reform and Consumer Protection Act required the Securities and Exchange Commission (SEC) to develop regulations that require regulated persons to disclose annually if conflict minerals necessary for the production of their goods originated in DRC or a neighboring country. If a disclosure is made, the person must describe (1) the measures taken to exercise due diligence on the source and chain of custody of the minerals, including private audits; and (2) the products manufactured that are found not to be free of conflict minerals. If a certification relies on an audit or other due diligence processes that previously have been found to be unreliable, the person is considered not to be in compliance with the disclosure requirement.

SEC issued a proposed rule in December 2010 in response to the Dodd-Frank mandate, but a final rule has not been adopted. In October 2011, California became the first state to make persons who do not comply with the Dodd-Frank disclosure requirements ineligible for state contracts.

Small Business Effect: Small businesses that manufacture goods with conflict minerals may still participate in State procurement as long as they comply with federal disclosure requirements. Only if they do not comply with those requirements are they barred from participating in State procurement.

Additional Information

Prior Introductions: None.

Cross File: HB 425 (Delegate S. Robinson, *et al.*) - Health and Government Operations.

Information Source(s): BBC News, Department of General Services, University System of Maryland, Department of Legislative Services

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