

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 975

(Senator Montgomery, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Small Business Reserve Program - Definition of Small Business - Repeal of Sunset Provision

This bill repeals the termination date of Chapter 539 of 2012, which allows a business to qualify as a small business under the Small Business Reserve Program (SBR) if it does not exceed specified limits for the number of employees *or* average gross sales, instead of qualifying only if it does not exceed both limits. Chapter 539 is scheduled to terminate September 30, 2014.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Potential decrease in State procurement costs (all funds) beyond FY 2015 to the extent that the higher number of registered small businesses increases competition for SBR contracts and reduces their cost. A reliable estimate of that effect cannot be determined. No effect on revenues.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: Chapter 75 of 2004 established SBR and defined a small business as either a certified minority-owned business 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. In addition, a business has had to meet *both* of the following criteria to qualify for small business certification by the State:

- the firm did 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, manufacturing, or architectural and engineering operations; *and*
- average gross sales over the last three fiscal years did not exceed \$2.0 million for manufacturing firms, \$3.0 million for retail firms, \$4.0 million for wholesale distributors, \$4.5 million for architectural and engineering firms, \$7.0 million for construction firms, and \$10.0 million for service firms.

However, Chapters 538 and 539 of 2012 removed the need – for a two-year period – to meet both the employment and gross sales criteria, instead requiring that a business meet *either* criteria in its most recently completed three fiscal years.

The Department of General Services (DGS) is responsible for certifying small businesses. Small businesses self-report their small business status; DGS conducts periodic audits to verify eligibility, but its audit activity is hampered by staffing shortages. The SBR program’s termination date has been extended twice since its inception, and it is currently scheduled to terminate on September 30, 2016.

SBR 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 DGS, 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.

Background: In accordance with an uncodified requirement in Chapter 538, DGS conducted an evaluation of the effects of the changes to SBR eligibility criteria enacted by both Chapters 538 and 539. It found that the total number of SBR registrations increased by 28% (1,249 businesses) after the new criteria took effect. Of those, it determined that 1,009 businesses would not have qualified for small business status under the prior criteria, with the service sector accounting for more than half of the new registrations. During the eight-month study period, vendors that otherwise would not have qualified for small business status accounted for 30% of SBR contracts awarded. DGS also found that the new criteria resulted in somewhat larger firms (particularly in terms of gross revenue) qualifying for SBR status; this finding was most pronounced in the manufacturing sector.

Currently, more than 6,000 certified small businesses in Maryland are eligible to participate in SBR. Since its inception, the program has never achieved its target of 10%

of procurement dollars being awarded to certified small businesses. **Exhibit 1** shows the program's results for the 23 agencies subject to SBR in fiscal 2012, the most recent data available. Based on these figures, 8 of the 23 agencies achieved the program's 10% target (three transportation-related agencies did not achieve the goal as one reporting entity). Procurement expenditures under SBR totaled \$218.6 million in fiscal 2012, which is 6.15% of total State procurement expenditures. This represents a modest increase from 6.10% in fiscal 2011.

Exhibit 1
Percentage of Procurement Dollars Going to Certified Small Businesses
Fiscal 2012

<u>Agency</u>	<u>% of Procurement Dollars</u>
Environment	31.5
Stadium Authority	25.3
Housing and Community Development	21.0
General Services	16.9
State Police	12.9
Natural Resources	11.4
Business and Economic Development	10.2
Morgan State University	10.0
Education	8.9
Information Technology	8.8
Labor, Licensing, and Regulation	8.0
Transportation/Port Commission/Transportation Authority	7.4
Insurance Administration	7.3
University System of Maryland	7.1
Public Safety and Correctional Services	4.2
Juvenile Services	3.5
Health and Mental Hygiene	3.1
Retirement	2.9
Lottery	2.9
Human Resources	2.3
Treasurer's Office	1.2
Program Total	6.2

Source: Governor's Office of Minority Affairs

Small Business Effect: The higher number of businesses qualifying as small businesses and, therefore, eligible for SBR procurements is sustained beyond fiscal 2015. Small businesses that qualified under the previous criteria face increased competition for SBR procurements from some larger firms that qualify under the new criteria.

Additional Comments: Chapter 538 of 2012 enacted the same SBR eligibility changes as Chapter 539 and included the same termination date; however, this bill repeals the termination date only of Chapter 539. The requirement that DGS evaluate the changes was included only in Chapter 538.

Additional Information

Prior Introductions: None.

Cross File: HB 487 (Delegate Reznik) - Health and Government Operations.

Information Source(s): Board of Public Works, Department of General Services, Governor's Office of Minority Affairs, Department of Budget and Management, Maryland Department of Transportation, Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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