

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 796

(Delegate V. Turner, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Debarment - Violations of Law

This bill expands the reasons for which a person may be debarred from entering into a contract with the State.

Fiscal Summary

State Effect: Any increase in workload for the Office of Attorney General (OAG) or Board of Public Works (BPW) to investigate and adjudicate potential debarments is expected to be minimal and absorbable within existing budgeted resources. No effect on revenues.

Local Effect: The bill addresses only debarment from State contracts.

Small Business Effect: Minimal.

Analysis

Bill Summary: A person may be debarred from entering into a contract with the State if the person:

- is convicted of violating specified sections of the federal Internal Revenue Code related to tax evasion, failure to file a tax return, providing false information regarding withholdings, committing fraud, and making false statements;
- is convicted of violating specified sections of federal law related to conspiracy to defraud the federal government or making false, fictitious, or fraudulent claims to a federal agency;

- is convicted of violating specified sections of State tax law regarding the payment of State taxes and filing of State tax returns;
- is found to have willfully or knowingly violated specified sections of State procurement law related to payment of prevailing and living wage rates on public contracts if the finding is made either (1) by a court and the decision of the court is made final or (2) in a contested case under the Administrative Procedure Act (APA) and is not overturned on judicial review; or
- is found to have willfully or knowingly violated the Maryland Wage and Hour Law, the Maryland Wage Payment and Collection Law, the Maryland Occupational Safety and Health Act, or provisions requiring equal pay for equal work, if the finding is made either (1) by a court and the decision of the court is made final or (2) in a contested case under APA and is not overturned on judicial review

Current Law: A person is subject to *automatic* debarment from procurement with *any public body* in the State if the person has been convicted under the laws of the State for bribery, attempted bribery, or conspiracy to bribe committed in the furtherance of obtaining a contract with a public body. In all other cases, generally involving criminal convictions, failing to perform according to contract provisions, or having been debarred by the federal government, debarment from entering into procurement contracts *with the State* is subject to the determination of BPW, based on evidence provided by OAG following an investigation. Except for automatic debarments described above, a person has a right to a hearing before BPW prior to being debarred. A person who is automatically debarred also has an opportunity for a hearing on whether the basis for debarment exists, but only after being notified that automatic debarment has been instituted.

A debarment imposed due to a criminal conviction terminates if the conviction that is the basis for the debarment is reversed or overturned on appeal. A debarred person may petition to BPW for termination of the debarment after five years have passed or, if the debarment is for a specified period of time, after half of the debarment period has passed.

Background: Currently, 31 persons are debarred from doing business with any public body in the State, and 35 persons are debarred from doing business just with the State. All the debarments are for indefinite periods.

Additional Information

Prior Introductions: None.

Cross File: SB 669 (Senator Ramirez, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Board of Public Works, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2014
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