

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 788

(Chair, Health and Government Operations
 Committee)(By Request - Departmental - Office of
 Minority Affairs)

Health and Government Operations

Education, Health, and Environmental Affairs

**Procurement - Small Business Reserve Program - Program Oversight and
 Continuation**

This departmental bill repeals the termination date of the Small Business Reserve Program (SBR), making the program permanent. It also makes the Governor’s Office of Minority Affairs (GOMA) responsible for (1) establishing program guidelines; (2) ensuring agency compliance; (3) compiling and maintaining a comprehensive, Internet-based bidder’s list of qualified small businesses; (4) providing training and technical assistance to agency staff; and (5) collecting data regarding the State’s utilization of SBR vendors.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: General fund expenditures by GOMA increase by \$176,800 in FY 2017 to carry out its expanded responsibilities; out-year expenditures reflect elimination of one-time costs and inflation. To the extent that small businesses cannot realize the same efficiencies in providing goods and services to the State that larger firms can realize due to scale, procurement costs for the 23 agencies that participate in SBR may be slightly higher than they would be if the program were not reauthorized. Staff at the Department of General Services (DGS) who currently carry out SBR oversight responsibilities are reassigned to other functions, so DGS does not experience any diminution of resources.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	176,800	169,100	175,500	182,200	189,100
Net Effect	(\$176,800)	(\$169,100)	(\$175,500)	(\$182,200)	(\$189,100)

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

Local Effect: None.

Small Business Effect: GOMA has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: 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.

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, Chapters 538 and 539 of 2012 established that, to qualify as a small business under SBR, a business must meet *either* of the following criteria in its most recently completed three fiscal years:

- 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; *or*
- average gross sales did not exceed \$2.0 million for manufacturing operations, \$3.0 million for retail operations, \$4.0 million for wholesale operations, \$4.5 million for architectural and engineering services, \$7.0 million for construction operations, and \$10.0 million for service operations.

DGS is responsible for certifying small businesses. Small businesses self-report their small business status; although DGS lacks resources to independently verify applicants' information at the time they apply for certification, it does conduct periodic audits of SBR firms to confirm their eligibility. The program's termination date has been extended twice since its inception, and it is currently scheduled to terminate on September 30, 2016.

Background: Currently, more than 6,000 certified small businesses in Maryland are eligible to participate in SBR. Fiscal 2014 is the first year since its inception that the program has 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 2014, the most recent data available. Based on these figures, 14 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 \$441.6 million in fiscal 2014, which is 11.8% of total State procurement expenditures. This represents a substantial increase from 9.0% in fiscal 2013.

Exhibit 1
Percentage of Procurement Dollars Going to Certified Small Businesses
Fiscal 2014

<u>Agency</u>	<u>% of Procurement Dollars</u>
Business and Economic Development*	50.5
Education	24.9
Environment	16.3
General Services	38.8
Health and Mental Hygiene	8.3
Housing and Community Development	21.9
Human Resources	13.7
Information Technology	15.8
Insurance Administration	12.1
Juvenile Services	6.5
Labor, Licensing, and Regulation	21.8
Lottery	4.8
Morgan State University	6.5
Natural Resources	15.4
Public Safety and Correctional Services	6.8
Retirement	14.0
Stadium Authority	29.9
State Police	19.2
Transportation	9.2
Treasurer's Office	3.1
University System of Maryland	15.7
Program Total	11.8

*Former name of the Department of Commerce

Source: Governor's Office of Minority Affairs

State Fiscal Effect: Responsibility for managing the directory of certified SBR firms currently rests with DGS, which assigns that function to its Office of Business Programs (OBP). OBP also oversees administration of eMaryland Marketplace, the minority business enterprise program, and other related programs. Staff in the office performs multiple functions; no staff is dedicated only to managing SBR. Therefore, no staff from DGS is reassigned to GOMA under the bill, but rather has more time to carry out responsibilities related to other programs managed by OBP.

In conjunction with its role in providing technical assistance to minority business enterprises, GOMA already provides substantial training and technical assistance related to SBR, and it works closely with agencies to ensure that they are taking appropriate steps to implement SBR. It also collects the necessary data and publishes the annual SBR report, as required by the bill. Under the bill, however, GOMA is responsible for developing and maintaining the directory of small businesses currently managed by DGS. This requires additional staffing resources.

SBR certification is largely a self-administered, automated process. However, DGS currently conducts both administrative and on-site audits of firms that have been certified. The administrative audits consist of reviewing tax, payroll, and legal documents to ensure that certified businesses meet the statutory criteria. On-site audits are designed to confirm that certified businesses are legitimate businesses. Since January 2014, DGS advises that it has conducted an average of 13 administrative audits and 12 on-site audits each month. However, in the current fiscal year, those averages are down substantially, to 5 administrative audits and 4 on-site audits each month.

Therefore, general fund expenditures increase by \$176,800 in fiscal 2017, which assumes that new staff is hired by the bill's July 1, 2016 effective date, given that SBR is an existing program. This estimate reflects the cost of hiring a program manager and compliance officer to manage agency compliance with the SBR program, maintain the existing database of small businesses, and conduct periodic audits of certified small businesses. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$159,470
Operating Expenses	<u>17,330</u>
Total FY 2017 State Expenditures	\$176,800

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office of Minority Affairs, University System of Maryland, Department of General Services, Department of Public Safety and Correctional Services, Board of Public Works, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2016
kb/ljm Revised - House Third Reader - March 28, 2016

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Small Business Reserve Program– Repeal of Sunset Provision - Program Oversight

BILL NUMBER: HB 788

PREPARED BY: Chantal Kai-Lewis, MBE Compliance Manager and Policy, GOMA

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

- WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS
OR
 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The bill will increase the number and value of State contracts to small businesses over time. The bill's clarifying language allows for increased accountability and enforcement at the agency level.