

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1470 (Delegate Fraser-Hidalgo, *et al.*)
Environment and Transportation

State Finance and Procurement - Chesapeake Bay Watershed States - Expenses
and Contracts (Quit Polluting My Bay Act of 2022)

This bill establishes that, if the U.S. Environmental Protection Agency (EPA) identifies two or more pollution source sectors as requiring “backstop actions level” of oversight for a state, (1) the Board of Public Works (BPW) must, in the standard State travel regulations it adopts, prohibit reimbursement for travel expenses to a State official or employee for travel to that state and (2) a “public body” is prohibited from awarding a procurement contract for goods or services to a business from that state that meets specified conditions.

Fiscal Summary

State Effect: Any fiscal effect is contingent on a state being identified by EPA, as discussed below. If a state is identified, State expenditures (all funds) increase due to reduced competition for State procurement contracts. State expenditures (all funds) may also decrease, likely minimally, due to the bill’s prohibition on travel reimbursement for State officials and employees to affected states. The net effect of these offsetting effects cannot be reliably predicted. State agency operations may be significantly disrupted, as discussed below. Revenues are not directly affected.

Local Effect: Local government expenditures increase due to reduced competition for procurement contracts. Local revenues are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Backstop actions level” means a level of oversight for a pollution source sector in a state identified by EPA after identifying substantial concerns with a state’s strategy to implement goals under the Chesapeake Bay Total Maximum Daily Load (TMDL).

Current Law:

Relevant Procurement Law and the Standard State Travel Regulations

State agencies may give a preference to a bidder or offeror from the State only if (1) the resident bidder or offeror is a responsible bidder; (2) the lowest bid is by a bidder or offeror from another state; and (3) the state in which the nonresident bidder or offeror is located gives a preference to its residents. Several surrounding states, including Pennsylvania, have similar reciprocal preference language in their statutes, so any preference given by a State agency to a resident bidder over an out-of-state bidder would likely trigger reciprocal preferences in neighboring states.

A “responsive bid” is a bid that is submitted in accordance with relevant procurement law and conforms in all material respects to the invitation for bids; “responsive offer” is not a defined term in State law. A “responsible bidder or offeror” is a person who (1) has the capability in all respects to perform fully the requirements for a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

BPW, on recommendation of the Comptroller, is required to adopt regulations covering matters of business administration in the units of the State government, which may include regulations establishing uniform rates of mileage allowance.

A “public body” includes the State; a county, municipal corporation, or other political subdivision; a public instrumentality; or any governmental unit authorized to award a contract.

Chesapeake Bay Total Maximum Daily Load

In December 2010, EPA established a Chesapeake Bay TMDL, as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The Chesapeake Bay TMDL identifies the necessary pollution reductions of nitrogen, phosphorus, and sediment across Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia, and sets pollution limits necessary to meet applicable water quality standards in the bay and its tidal rivers and embayments.

All reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017.

The Chesapeake Bay TMDL is implemented using an accountability framework that guides restoration efforts using four elements: watershed implementation plans; two-year milestones; EPA's tracking and assessment of restoration progress; and, as necessary, specific federal actions if bay jurisdictions do not meet their commitments. EPA evaluates the milestone commitments for each jurisdiction every two years to identify necessary levels of EPA oversight for each pollution sector in each jurisdiction. The four pollution sectors are agriculture, urban/suburban, wastewater, and trading/offsets. Based on EPA's [2018 evaluation \(for the 2016-2017 milestones\)](#), Pennsylvania was the only bay jurisdiction that had backstop actions level status for two pollution sectors (the agriculture sector and the urban/suburban sector). However, the Maryland Department of the Environment (MDE) advises that EPA did not assign oversight levels in its [2020 evaluation](#) of two-year milestones, so there are currently no states that meet the bill's criteria. MDE further advises that EPA may resume assigning oversight levels in 2022, so the bill's effect is contingent on one or more states being assigned backstop level status in two or more pollution sectors in the upcoming assessment.

State Expenditures: There is no effect if EPA does not assign a backstop actions level in two or more pollution sectors for any state in the upcoming assessment of TMDL two-year milestones. However, if one or more states do meet that criteria, State expenditures (all funds) for procurement increase to the extent that the bill (1) results in the State awarding contracts to vendors who do not submit the lowest bid or proposal price because of the bill's prohibition or (2) prevents or dissuades nonresident bidders and offerors from participating in State procurement. Reduced competition for State contracts has been shown to increase costs. However, the magnitude of any such impact is unknown.

To the extent that State officials and employees are unable or unwilling to travel to any state that meets the bill's criteria due to the bill's prohibition on travel reimbursement, State expenditures (all funds) decrease, likely minimally.

In addition to the potential fiscal effects, agencies may experience significant operational disruptions. For an identical prior bill, the University of Maryland, Baltimore Campus advised that the prohibition may affect recruiting activities and presentations at national conferences. The Department of Budget and Management noted that State employees travel to other states for the purposes of transporting foster children and prisoners. MDE noted that, particularly in Western Maryland, it is occasionally unable to find a Maryland-based firm to fulfill water supply requirements and to conduct mine reclamation work and that it has hired Pennsylvania firms in the past. Further, MDE is engaged in multi-state environmental initiatives, and Pennsylvania is part of EPA Region 3, the local

region for the purposes of federal environmental laws. Thus, MDE employees travel regularly to Pennsylvania for meetings.

Local Expenditures: Local government expenditures for procurement increase to the extent the bill (1) results in the local governments awarding contracts to vendors who do not submit the lowest bid or proposal price because of the bill's prohibition or (2) dissuades nonresident bidders and offerors from participating in local procurement; reduced competition has been shown to increase costs.

Small Business Effect: If one or more states meet the bill's criteria in the upcoming biennial assessment, Maryland-based firms may be given an advantage in being awarded procurement contracts from State agencies that would otherwise be awarded to firms in other states. However, they are likely severely disadvantaged from being awarded contracts in those other states, as all of Maryland's neighboring states have reciprocal preference provisions in statute that are likely triggered by the bill.

Additional Comments: The bill's provisions could result in a prohibition against the State awarding contracts to Maryland businesses for goods and services if Maryland ever meets the bill's qualifications.

Additional Information

Prior Introductions: HB 1055 of 2018 received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Department of Budget and Management; University System of Maryland; Maryland Department of the Environment; Department of General Services; Board of Public Works; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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