

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 368
Appropriations

(Delegate Cullison)

Budget and Taxation

State Personnel - Executive Branch Service Contracts - Notification

This bill requires the Department of Budget and Management (DBM) to provide exclusive representatives of affected employees with a copy of a written certification that a service contract expected to cost more than \$10.0 million annually is eligible for approval by the Board of Public Works (BPW) because it either is exempt from a statutory preference to use State employees to carry out State functions or meets other criteria for nonexempt contracts under current law. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: No material effect on State governmental finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: It is the policy of the State to use State employees to perform all State functions in State-operated facilities in preference to contracting with the private sector to perform those functions.

A “service contract” is a contract for services that are (1) provided to a unit in the Executive Branch; (2) performed in a State-operated facility; and (3) expected to exceed an annual cost of \$100,000. “Services” includes legal, accounting, medical, and consulting services, but it does not include construction-related services, architectural services, engineering services, or energy performance contract services.

In general, at least 60 days before issuing a solicitation for a service contract, an Executive Branch agency must provide the exclusive representative of the employees who may be affected by the service contract with (1) a written notice with specified information and (2) a reasonable opportunity to meet and discuss alternatives to the proposed service contract. BPW may approve a service contract only if:

- the General Assembly authorizes or requires that certain services be performed by an independent contractor;
- DBM certifies that the contract is exempt from the statutory preference and notification requirements, as discussed below; or
- DBM certifies that nonexempt contracts meet specified requirements, as discussed below. *The bill requires DBM to send a copy of the certification of exempt and nonexempt contracts expected to cost more than \$10.0 million annually to the exclusive representative of the affected employees.*

A contract is exempt from the statutory preference and notification requirements if:

- State employees are not available to perform the services;
- a conflict of interest would result if a State employee performed the services;
- the nature of the services meets the standards set by DBM for emergency appointments;
- the services are incidental to the purchase or lease of personal property or real property; or
- a clear need exists to obtain an unbiased finding or opinion.

DBM may certify a nonexempt contract as being eligible for approval by BPW only if:

- the potential economic advantage of entering into the service contract is not outweighed by the statutory preference to use State employees;
- the service contract does not adversely affect the State's affirmative action efforts;
- the service contract includes adequate control mechanisms; and
- the service contract complies with State procurement law.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 9 (Senator Elfleth) - Budget and Taxation.

Information Source(s): Department of General Services; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Board of Public Works; Department of Legislative Services

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