

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 291

(Chair, Education, Energy, and the Environment
Committee)(By Request - Departmental - Secretary of
State)

Education, Energy, and the Environment

Ways and Means

Persons Doing Public Business - Disclosure Requirements

This departmental bill repeals provisions under the State Finance and Procurement Article that require a business that enters into contracts, leases, or other agreements with the State totaling \$200,000 or more in a calendar year to disclose to the Secretary of State specified information, including, if known, each person who has beneficial ownership of the business. Correspondingly, the bill makes changes to Title 14 of the Election Law Article (“Disclosure by Persons Doing Public Business”), including requiring a person that does public business with the State or a local government to file a registration statement with the State Board of Elections (SBE) that includes, if known, each person who has beneficial ownership of the business entity. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: The affected agencies can handle any administrative changes within existing budgeted resources. Special fund revenues may increase minimally beginning in FY 2025 due to any late fees or civil penalties imposed under the bill.

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: The Office of the Secretary of State has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Analysis

Bill Summary:

Disclosure of Beneficial Ownership

The bill repeals provisions under the State Finance and Procurement Article (described in more detail under Current Law) that require a business that enters into contracts, leases, or other agreements with the State under which the business receives a total of \$200,000 or more in a calendar year, to disclose to the Secretary of State specified information, including, if known, each person who has beneficial ownership of the business. Correspondingly, under Title 14 of the Election Law Article, the bill requires a person that does public business with the State or a local government (defined as making or having a single contract with a State or local governmental entity involving cumulative consideration of at least \$200,000) to file a registration statement with SBE that includes, if known, each person who has beneficial ownership of the business entity.

Under Title 14, the bill defines “beneficial ownership” as (1) any ownership interest of 5% or more in a business; (2) any ownership interest of 5% or more in one or more entities in a chain of parent and subsidiary entities, any one of which participates in at least 5% of the capital or profits of a business; or (3) possession of an interest that exists under a contract, a relationship, an understanding, or any other arrangement and entitles a person to benefits substantially equivalent to an ownership interest of 5% or more of a business.

Registration Statement

A person must file the registration statement with SBE within 15 business days after the award of a contract that causes the person to be doing public business. The registration statement must include (1) the person’s name and address; (2) any resident agent of the business located in the State; (3) if known, each person who has beneficial ownership of the business entity; and (4) any other information required by SBE. If a registration statement does not include all the information required, SBE must notify the person in writing of the particular deficiencies and the person must file an amended statement within 30 days after service of the notice.

A person doing public business must update the information on beneficial ownership included in the registration statement in accordance with regulations adopted by SBE.

The bill authorizes SBE to impose fees for late filing of registration statements or amended registration statements in the same amounts and in the same manner as authorized under Title 13 (“Campaign Finance”) of the Election Law Article for late filing of campaign finance reports (fees of \$20 to \$50 per day, up to a maximum of \$1,000 total). The bill also

authorizes SBE to impose a civil penalty of up to \$1,000 for a failure to report current information on beneficial ownership as required by the bill. Late filing fees and civil penalties collected under Title 14 are distributed to the Fair Campaign Financing Fund, which holds funds for public campaign financing of gubernatorial tickets under the Public Financing Act.

Initial Statement of Contributions

The bill establishes that an initial statement of contributions (covering the preceding 24 months), that a person doing public business must file under Title 14 under current law, must be filed within 15 business days after filing the registration statement.

Also, in addition to existing requirements applicable to a governmental entity that has awarded a contract that causes a person to be doing public business, the bill establishes that the governmental entity must also, if the contract is subject to approval by the Board of Public Works (BPW), require the person to certify to BPW that the person has filed the initial statement of contributions.

Current Law:

Persons Doing Public Business

Under Title 14 of the Election Law Article, persons who do public business (defined as making or having a single contract with a State or local governmental entity involving cumulative consideration of at least \$200,000) are required to file statements with SBE regarding any applicable contributions of a cumulative amount of \$500 or more to a candidate during a reporting period. An initial statement of contributions is filed when a contract is awarded that causes the person to be doing public business and semi-annually thereafter as long as performance on the contract remains uncompleted.

Filing of Registration Statements and Initial Statements of Contributions

SBE regulations require a person doing public business to file a registration statement containing specified information with SBE within 15 business days after the award of a contract by a governmental entity. The regulations require a person doing public business to file the initial statement of contributions required under Title 14 within 15 business days of filing the registration statement.

Requirements of Governmental Entities

A governmental entity that has awarded a person a contract that causes the person to be doing public business must require the person to certify that the person has filed an initial

statement of contributions. The governmental entity must also provide SBE with the person's name, address, and any other contact information required by SBE; however, a governmental entity may comply with this requirement by sending SBE quarterly reports.

Late Fees and Penalties

SBE is authorized to impose fees for late filing of a statement of contributions or an amended statement in the same amounts and manner as late filing fees imposed on campaign finance entities under Title 13 of the Election Law Article for late filing of campaign finance reports. SBE may impose a civil penalty of up to \$1,000 for (1) failure to report all applicable contributions made and (2) failure to maintain detailed and accurate records and reports.

The State Prosecutor may also impose a civil penalty of up to \$5,000, for an unknowing violation of Title 14, and a person is who knowingly and willfully violates Title 14 is guilty of a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment for up to one year.

Disclosures to the Secretary of State

Under the State Finance and Procurement Article, if, during a calendar year, a business enters into contracts, leases, or other agreements with the State or its units or both under which the business is to receive a total of \$200,000 or more, the business must file with the Secretary of State, within a specified timeframe, a list that discloses the name and address of (1) any resident agent of the business; (2) each officer of the business; and (3) if known, each person who has beneficial ownership of the business.

“Unit” means an officer or other entity in the Executive Branch of State government that is authorized by law to enter into a procurement contract. “Unit” does not include a political subdivision or a bistate, multistate, bicounty, or multicounty governmental agency.

“Beneficial ownership” is defined in a similar manner as it is defined in the bill under Title 14; however, in addition, unless there are special circumstances, an individual is deemed to hold an ownership interest that is held by the individual's spouse, the individual's child, or other relative of the individual who lives in the individual's home.

If a person who has beneficial ownership is unknown to a business, it is sufficient for the business to disclose the legal ownership or the identity of the nominee who holds title for the unknown person. A business or officer of a business who violates the disclosure provisions is guilty of a misdemeanor and on conviction is subject to a fine up to \$10,000.

Background: The Office of the Secretary of State indicates that the disclosures filed with the office under current law, containing beneficial ownership and other information, are not reviewed frequently, except by SBE to cross-reference in its administration of Title 14. The office indicates that the bill will streamline the process for reporting by businesses engaging in business with the State by moving the disclosures into the Title 14 disclosure process administered by SBE. DLS notes that, by shifting the beneficial ownership disclosure requirement to Title 14, the bill also makes that requirement applicable to businesses engaging in business with local governments.

Additional Information

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

Designated Cross File: HB 112 (Chair, Ways and Means Committee)(By Request - Departmental - Secretary of State) - Ways and Means.

Information Source(s): Secretary of State; Judiciary (Administrative Office of the Courts); Board of Public Works; Maryland State Board of Elections; Department of Legislative Services

Fiscal Note History: First Reader - January 24, 2024
js/sdk Third Reader - February 16, 2024

Analysis by: Thomas S. Elder

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Persons Doing Public Business – Disclosure Requirements

BILL NUMBER: SB 291

PREPARED BY: Michael Lore

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

Some businesses that have large contracts with local government may have an additional reporting requirement with the State Board of Elections.