# Department of Legislative Services

Maryland General Assembly
2012 Session

## FISCAL AND POLICY NOTE

Senate Bill 881 (Senator Jones-Rodwell)
Education, Health, and Environmental Affairs

### Receipt of State Funds - Local Employee Requirement

This bill requires the Board of Public Works (BPW) to adopt regulations that require that (1) at least 50% of the employees of any recipient of State funds are residents of the State; and (2) at least 50% of the employees who work on a State contract at a particular location reside within a 10-mile radius of that location. For procurements that use competitive sealed bidding, procurement units must give preference to the resident bidder who submits the lowest responsive bid if at least 50% of that bidder's employees are State residents.

## Fiscal Summary

**State Effect:** Significant negative fiscal and administrative effects on State contracting, grantmaking, and other financial transactions requiring significant additions of personnel in all State agencies to monitor vendor compliance and impose sanctions for noncompliance. Procurement costs likely increase due to the bill's procurement preference for vendors that meet its residency requirements. The total increase in State expenditures cannot be quantified but is likely in the millions of dollars. No effect on revenues.

**Local Effect:** Local governments that provide subgrants or award contracts using State funds, including school construction projects, will have to monitor the compliance of their contractors and grantees who receive State funds and sanction any contractor or grantee that violates the bill's provisions. The total increase in local expenditures cannot be quantified but is likely in the millions of dollars. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

## Analysis

**Current Law:** For procurements that use competitive sealed bidding, State procurement law requires that contracts be awarded to the responsible bidder who submits the lowest responsive bid. For competitive sealed proposals, contracts are awarded to the responsible offeror who submits the proposal or best and final offer that is most advantageous to the State. Preference can be given to resident bidders or offerors only if a nonresident bidder or offeror with the lowest responsive bid or most advantageous proposal is from a state that gives preference to resident bidders.

There are no residency requirements in State law for recipients of State funds.

**Background:** The bill applies to "any recipient of State funds," which means that it applies to:

- all State contract awards, valued at approximately $6.0 billion annually;
- all direct State grants and subgrants made by local governments, valued at approximately $13.0 billion annually;
- all school construction contracts and other local capital projects that receive State funds;
- all State property lease payments, whose total value is not known.

Given the regional nature of the Maryland economy, nonresident firms often work on Maryland projects, and Maryland firms often work on projects in neighboring states. For instance, a recent analysis of the Dulles Metro Rail project in Virginia conducted by the Metropolitan Washington Airports Authority found that half of the workers on the project were Maryland residents, outnumbering Virginia residents on the project.

**State Fiscal Effect:** The bill's requirements impose significant administrative burdens on State procurement units to verify the residency of at least 50% of each State contractor's employees prior to awarding a contract and during the performance of each contract. This has the potential to delay and disrupt the contract award process, and it likely requires the addition of procurement staff for every Executive Branch agency. Legislative Services cannot reliably estimate the additional personnel that would be necessary to carry out the monitoring and verification requirements imposed by the bill but advises that it is likely significant.

The bill's requirements also greatly reduce the pool of available vendors for State procurement contracts by requiring that at least 50% of employees of every State contractor reside in the State (and meet more strict residency requirements for contracts performed at a specific location). To the extent that the requirement reduces competition for State contracts, the cost of those contracts likely increases. Legislative Services cannot reliably estimate the magnitude of the increase in costs, which will likely vary by procurement type, but it is also likely significant.

The bill also increases the likelihood that some contracts may not be awarded if a contractor whose employees meet the bill's residency requirements is not available. This may be especially true of health and financial services contracts, but other services and supplies may be affected. The fiscal implications of foregone contracts cannot be reliably estimated, but to the extent that vendors cannot be found to provide key services to the State, the availability and quality of services to State employees and residents may be compromised.

**Local Fiscal Effect:** As noted above, the bill affects all recipients of State funds, which includes any entity or individual who receives a grant or contract from a local government that includes State funds. Given that State grants to local governments support significant portions of local services, including education, school construction, parks and recreation, and health and social services, the bill imposes a significant administrative burden on local governments to verify that any recipient of pass-through funds from the State meets the bill's residency requirements. Local governments will likely have to add significant personnel to their procurement operations to verify the residency of at least 50% of the employees of recipients of local contracts and grants that include State funds. Local governments likely also experience the same procurement cost increases and service disruptions described in the State effect section above.

**Small Business Effect:** Small businesses that meet the bill's residency requirements will benefit from the bill's requirements and procurement preferences when bidding for Maryland contracts. However, to the extent that neighboring states invoke reciprocal preferences for resident businesses, Maryland small businesses will be at a disadvantage in bidding for contracts in those neighboring states.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Board of Public Works, Department of Budget and Management, Department of Health and Mental Hygiene, Public School Construction Program, Maryland Department of Transportation, University System of Maryland, *Washington Examiner*, Department of Legislative Services

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