

**Department of Legislative Services**  
 Maryland General Assembly  
 2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 549 (Senator Montgomery, *et al.*)  
 Education, Health, and Environmental Affairs Health and Government Operations

**Small Business Reserve Program - Definition of Small Business - Revision**

This bill allows a business to qualify as a small business under the Small Business Reserve Program (SBR) if it does not exceed specified limits for the number of employees *or* average gross sales, instead of qualifying only if it does not exceed both limits. By October 1, 2013, the Department of General Services (DGS), in consultation with the Governor’s Office of Minority Affairs and the Maryland Department of Transportation, must submit an evaluation report to designated committees of the General Assembly on the program’s structure, composition, requirements for participation, and impact. The report must include recommendations concerning the bill’s provisions with respect to eligibility criteria and any additional legislation to implement the recommended changes.

The bill terminates September 30, 2014.

**Fiscal Summary**

**State Effect:** General fund expenditures by DGS increase by \$125,000 in FY 2013 and \$25,000 in FY 2014 to conduct the mandated study. Potential decrease in State procurement expenditures (all funds) for SBR procurements, to the extent that more businesses qualify as small businesses and increase competition for SBR procurements. Legislative Services cannot reliably estimate how many more businesses qualify or the magnitude of the potential effect on SBR procurement costs, but the net effect is likely negligible. As SBR certification is automated, there is no other increase in workload for DGS.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	125,000	25,000	0	0	0
Net Effect	(\$125,000)	(\$25,000)	\$0	\$0	\$0

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

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** For the purpose of qualifying 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.

**Current Law:** 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, a business must meet *both* of the following criteria to qualify for small business certification by the State:

- 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; *and*
- average gross sales over the last three fiscal years did not exceed \$2.0 million for manufacturing firms, \$3.0 million for retail firms, \$4.0 million for wholesale distributors, \$4.5 million for architectural and engineering firms, \$7.0 million for construction firms, and \$10.0 million for service firms.

DGS is responsible for certifying small businesses. Small businesses self-report their small business status, which DGS does not independently verify. The program's termination date has been extended twice since its inception, and it is currently scheduled to terminate on September 30, 2016.

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.

The most recent expansions of SBR occurred in 2008, when Chapter 9 substituted the Department of Information Technology for the Department of Budget and Management, and Chapters 388 and 389 added the Maryland Transportation Authority to the list of State agencies subject to SBR, bringing the total number to 23.

**Background:** Currently, more than 6,000 certified small businesses in Maryland are eligible to participate in SBR. **Exhibit 1** shows the program's results for the 23 agencies subject to SBR in fiscal 2010, the most recent data available. Based on these figures, 13 of the 23 agencies achieved the program's target of 10% of procurement dollars being awarded to certified small businesses (three transportation-related agencies achieved the goal as one reporting entity). Procurement expenditures under SBR totaled \$188.0 million in fiscal 2010, which is 6.2% of total State procurement expenditures. This represents an increase from 5.6% in fiscal 2009.

**State Fiscal Effect:** The mandated study by DGS is projected to take more than a year to complete and requires specialized expertise in analyzing participation rates among small businesses in the State and the program's impact on participating businesses. Thus, DGS advises that it must contract with a consultant to conduct the study because it does not have the necessary expertise in-house and the amount of time allotted to complete the work. Given the study's October 1, 2013 due date, it is anticipated that the bulk of the work is completed in fiscal 2013, with a small portion performed in fiscal 2014 to finalize the report for publication and distribution. Therefore, general fund expenditures by DGS increase by \$125,000 in fiscal 2013 and by \$25,000 in fiscal 2014 for contractual services to complete the mandated study.

**Small Business Effect:** More businesses likely qualify as small businesses under SBR. Existing certified small businesses will face increased competition for SBR procurements.

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**Exhibit 1**  
**Percentage of Procurement Dollars Going to Certified Small Businesses**  
**Fiscal 2010**

<u>Agency</u>	<u>% of Procurement Dollars</u>
Business and Economic Development	24.3
Treasurer's Office	22.2
Housing and Community Development	21.0
Natural Resources	15.8
Information Technology	14.9
General Services	14.0
Insurance Administration	11.9
Labor, Licensing, and Regulation	11.7
Stadium Authority	11.0
Transportation/Port Commission/ Transportation Authority	10.8
Environment	10.1
Morgan State University	8.9
State Police	7.3
University System of Maryland	5.3
Education	4.9
Health and Mental Hygiene	4.5
Retirement	4.3
Public Safety and Correctional Services	3.5
Human Resources	2.3
Juvenile Services	1.6
Lottery	1.2
<b>Program Total</b>	<b>6.2</b>

Source: Governor's Office of Minority Affairs

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**Additional Comments:** Although the bill likely increases the number of certified small businesses under SBR, it does not necessarily increase the likelihood of an agency or the State achieving the 10% goal for SBR procurement. Achievement of the goal depends on the size and number of agency procurements reserved for SBR procurement.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** Although designated as a cross file, HB 456 (Delegate Reznik, *et al.* – Health and Government Operations) is not identical.

**Information Source(s):** Board of Public Works; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Governor's Office of Minority Affairs; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2012  
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