

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 438 (Senator Pinsky)  
Education, Health, and Environmental Affairs

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State Procurement - Contracting for Services Outside the United States

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This bill expands – to *all* services – a prohibition against a public employer, including the State and local governments, from knowingly entering into a service contract with an estimated value of at least \$2.0 million unless the services are to be provided in the United States, subject to specified exemptions.

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Fiscal Summary

**State Effect:** Potential substantial increase in State expenditures (all funds) for service contracts, to the extent that contracts are awarded to bidders that provide services in the United States at higher costs than services can be provided in other countries. No effect on revenues.

**Local Effect:** Local expenditures on service contracts increase, to the extent that local contracts are awarded to bidders that provide services in the United States at higher costs than services can be provided in other countries. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful for small businesses that provide services in the United States.

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Analysis

**Bill Summary/Current Law:** Chapters 559 and 560 of 2012 (SB 659/HB 865) prohibit a public employer, including the State and local governments, from knowingly entering into a contract for architectural, construction, engineering, or energy performance contract services with an estimated value of at least \$2.0 million unless the services are to

be provided in the United States, subject to specified exemptions. Chapters 559 and 560 also require bidders on any procurement contract with an estimated value of at least \$2.0 million to disclose whether the bidder or a subcontractor has plans, at the time the bid is submitted, to perform any services outside the United States and, if so, where they will be performed and the reasons they are being performed outside the United States.

Under Chapters 559 and 560, a public employer may knowingly contract for the four specified services to be provided outside the United States if (1) the services are not available in the United States; (2) the price of services in the United States exceeds the price of services provided outside the country by an “unreasonable amount”; or (3) the quality of the services in the United States is “substantially less” than the quality of comparably priced services provided outside the United States. Regulations promulgated by the Board of Public Works (BPW) must define “unreasonable amount” and “substantially less.” These same exemptions are applied to all service contracts under this bill. BPW advises that it has not yet promulgated the regulations required by Chapters 559 and 560.

The University System of Maryland, Morgan State University, and St. Mary’s College of Maryland are exempt from most provisions of State procurement law. In addition, the following agencies are exempted in whole or in part from most State procurement law. Any of their procurements that are subject to the exemption from State procurement law would not be subject to the bill’s requirements.

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery and Gaming Control Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Department of Natural Resources, for conservation service opportunities;
- Maryland Stadium Authority;
- Department of General Services, for the renovation of historic structures;

- State Retirement and Pension System;
- College Savings Plans of Maryland; and
- Chesapeake Bay Trust.

**Background:** In fiscal 2011, the most recent data available, service contracts entered into by the State not covered by Chapters 559 and 560 had a total value of \$912.9 million. The four services already covered by Chapters 559 and 560 had a total value of at least \$2.4 billion. As the disclosure requirements of Chapters 559 and 560 have been in effect for only four months, information on the amount of State-contracted services that have been provided outside of the United States has not been compiled.

**State/Local Expenditures:** The bill allows the State to award service contracts of at least \$2.0 million to a bidder whose bid price is not necessarily the lowest, if the bidder will provide the service in the country and the bidder with the lowest bid price will not. The exemption specifies only that the difference in price between the lowest bid price and the bid that is actually awarded the contract cannot be an “unreasonable amount,” as defined by BPW. To the extent that the bill requires the State to award contracts to bidders whose bid prices are not the lowest, State procurement costs (all funds) increase. Given the level of State spending on service contracts, the overall effect may be substantial.

Local government expenditures are likewise affected.

**Small Business Effect:** Small businesses that provide services outside the United States may be excluded from State service contracts with a value of at least \$2.0 million. The extent to which they are excluded depends on whether the difference between the cost of their services and the cost of similar services in the United States is an “unreasonable amount,” as defined by BPW. Conversely, businesses that provide those services in the United States benefit from a procurement preference.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 534 (Delegate Pena-Melnyk, *et al.*) - Health and Government Operations.

**Information Source(s):** Baltimore, Charles, Frederick, and Montgomery counties; Towns of Bel Air and Leonardtown; City of Salisbury; Board of Public Works; Department of Budget and Management; Maryland State Department of Education; Department of General Services; Maryland Association of Counties; Public School  
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Construction Program; University System of Maryland; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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