SB 53

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 53 (Chair, Finance Committee)(By Request - Departmental - Maryland Energy Administration)

Finance Health and Government Operations

State Finance and Procurement - Energy Performance Contracts

This departmental bill makes the Department of General Services (DGS) rather than the Maryland Energy Administration (MEA) responsible for reviewing requests for proposals (RFPs) for energy performance contracts (EPCs) prior to their issuance and for reviewing the proposed EPCs prior to their approval by the Board of Public Works (BPW). It makes corresponding changes in statute, substituting all relevant references to MEA with references to DGS. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: Special fund expenditures by MEA decrease by, on average, $650,000 annually beginning in FY 2020, with a corresponding decrease in DGS reimbursable revenues and expenditures. Absent another source of funding (discussed below), DGS general fund expenditures increase by $650,000 annually.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
ReimB. Rev.	($650,000)	($650,000)	($650,000)	($650,000)	($650,000)
GF Expenditure	$650,000	$650,000	$650,000	$650,000	$650,000
SF Expenditure	($650,000)	($650,000)	($650,000)	($650,000)	($650,000)
ReimB. Exp.	($650,000)	($650,000)	($650,000)	($650,000)	($650,000)
Net Effect	$0	$0	$0	$0	$0

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

Local Effect: None.

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

Analysis

Current Law: State law defines an EPC as an agreement for the provision of energy services, including electricity, heating, ventilation, cooling, steam, or hot water, in which a person agrees to design, install, finance, maintain, or manage energy systems or equipment to improve the energy efficiency of a building or facility in exchange for a portion of the energy savings.

Primary procurement units in the State are authorized to enter into EPCs with a duration of no more than 15 years, subject to the approval and control of BPW. Prior to issuing an RFP for an EPC, a primary procurement unit must consult with MEA, which must review the RFP to ensure that it meets State energy standards and satisfies other specified conditions. The Treasurer is authorized to enter into a capital lease consistent with current law to finance an EPC.

Before approving an EPC, BPW must ensure that projected annual energy savings under the contract will exceed the projected annual payments under the contract. It must also determine, based on a review by MEA, whether the proposed energy technology is appropriate for the time period covered by the contract.

Section 1 of Chapter 590 of 2017, which takes effect October 1, 2019, requires primary procurement units to consult with the chief procurement officer established by the Act, in addition to MEA. It also requires the chief procurement officer (and MEA) to review an EPC prior to its approval by BPW. Although this bill substitutes DGS for MEA as the agency responsible for reviewing proposals and pending contracts, it also retains the role of the chief procurement officer with respect to EPCs once Chapter 590 takes effect.

Current law establishes the following State agencies as primary procurement units:

- State Treasurer’s Office;
- DGS;
- Department of Budget and Management (DBM);
- Department of Information Technology (DoIT);
- Department of Public Safety and Correctional Services (DPSCS);
- Maryland Department of Transportation;
- University System of Maryland;
- Maryland Port Commission;
- Morgan State University; and
- St. Mary’s College of Maryland.

However, Chapter 590 repeals primary procurement unit status for DBM, DoIT, and DPSCS, effective October 1, 2019.

Background: When EPCs were first authorized, MEA did not have the staff of engineers with the expertise necessary to review EPC proposals and contracts. Therefore, it entered into a memorandum of understanding (MOU) with DGS in 2005, in which MEA provided funding to support DGS's Office of Energy Performance and Conservation in exchange for DGS taking the lead role in performing the mandated reviews. Under this arrangement, MEA advises that DGS exclusively manages, monitors, and procures EPCs for the State.

State Fiscal Effect: Under the terms of the MOU between MEA and DGS, MEA has paid DGS an average of almost $650,000 in special funds annually to carry out its monitoring role related to EPCs. Both MEA and DGS indicate that those payments will no longer be made, resulting in a savings of $650,000 in special fund expenditures for MEA and a corresponding decrease in reimbursable revenues and expenditures for DGS. Thus, DGS requires another funding source to carry out its statutory responsibilities with respect to managing EPCs. This analysis assumes general funds will be used to cover those costs.

DGS advises that, working with DBM, it has identified alternative sources of funding to make up for the lost revenue from MEA. Specifically, it expects to assess a per kilowatt administrative fee to be paid by agencies served by an EPC. The administrative fee would increase those agencies' general, special, and federal fund expenditures. Revenues (likely special funds) raised by the administrative fee will exceed current payments by MEA (roughly $1.0 million in fiscal 2020 and $2.0 million in succeeding years), with the excess amount used to expand staffing and energy conservation projects within DGS's Office of Energy Performance and Conservation. However, those revenues (and other agency expenditures for the administrative fee) are not reflected in this analysis because they are not required by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Information Technology; Maryland State Treasurer's Office; University System of Maryland; Department of General Services; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; Maryland Energy Administration; Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2019
mm/ljm Third Reader - March 8, 2019

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Finance and Procurement – Energy Performance Contracts

BILL NUMBER: SB 53

PREPARED BY: Landon Fahrig, Policy Manager

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_X_ 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