

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 301 (Senator Sydnor)
 Education, Health, and Environmental Affairs

Corporations – Board Members and Executive Officers Diversity – Procurement Preference and Reporting

This bill requires the Board of Public Works (BPW) to adopt regulations that establish a corporate diversity price preference of no more than 5% on State procurements for corporations that meet a specified threshold for board and executive diversity. A procurement officer must apply the diversity price preference to a responsive bid if the responsible bidder meets the diversity threshold established by BPW. The bill also requires publicly held domestic or foreign corporations with assets exceeding \$100.0 million that already file a specified annual report with the State Department of Assessments and Taxation (SDAT) to include in their reports descriptions of the diversity of their board members and of various diversity-related policies. By January 1 of each year, SDAT must report to BPW and the General Assembly on the contents of those reports.

Fiscal Summary

State Effect: General fund expenditures increase by \$295,800 in FY 2022 to implement the bill’s reporting requirements; out-year expenditures reflect annualization and the elimination of one-time costs. Also, State procurement expenditures increase by up to 5% on contracts for which the price preference applies. As the number and value of contracts affected cannot be known in advance, a reliable estimate is not feasible. BPW can develop regulations and receive annual reports with existing resources. No effect on revenues.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	295,800	79,500	81,900	84,800	87,800
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$295,800)	(\$79,500)	(\$81,900)	(\$84,800)	(\$87,800)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Diversity Threshold and Price Preference

The BPW regulations must establish a threshold at which the demographics of corporate board members and executive officers are substantially similar to the State's demographics. The regulations must also establish a process for determining, based on data reported by SDAT, the demographics of corporate board members and executive officers. The diversity price preference may not exceed 5%, but it will be based on the official demographic percentages recognized by the Maryland Department of Planning.

Reporting Requirements

Annual reports submitted to SDAT by publicly held domestic or foreign corporations with assets exceeding \$100.0 million must include, among other items:

- the number of board members who self-identify as a racial or ethnic minority, and the race or ethnicity of each member;
- a description of the corporation's process for identifying and evaluating nominees for the board of directors and for executive officers, including if demographic diversity is considered; and
- a description of the corporation's policies and practices for promoting diversity, equity, and inclusion among its board of directors and executive officers.

SDAT's annual report to BPW and the General Assembly must include (1) the percentage of racial and ethnic diversity on the board for each corporation that files a report and (2) identified strategies for promoting diversity and inclusion among boards of directors and executive officers. The report must be publicly available on SDAT's website.

Current Law:

Procurement Preferences

A “responsive bid” is a bid that is submitted in accordance with relevant procurement law and conforms in all material respects to the invitation for bids. A “responsible bidder or offeror” is a person who (1) has the capability in all respects to perform fully the requirements for a procurement contract and (2) possesses the integrity and reliability that will ensure good faith performance.

State procurement law includes various purchasing price preferences, including for locally grown foods, small businesses, resident bidders, environmentally preferable products, and mercury-free products. In general, purchase price preferences do not exceed 5% of the lowest responsive bid price.

Corporate Reporting to the State Department of Assessments and Taxation

In Maryland, there is a tax on business-owned personal property that is imposed and collected by local governments. Personal property generally includes business property including furniture, fixtures, office and industrial equipment, machinery, tools, supplies, inventory, and any other property not classified as real property. To provide for uniform assessments, SDAT is responsible for assessing all personal property. Each county or municipal government is responsible for issuing the tax bills and collecting the tax. The tax year begins on July 1 and ends on June 30. The personal property tax has been a local tax exclusively since 1984 when the State tax rate on personal property was set at zero.

At the beginning of each calendar year, SDAT notifies business entities on record that a personal property tax return must be filed by April 15. This tax return must include personal property located in Maryland as of January 1, the date of finality. The “date of finality” is the date used to determine ownership, location, value, and liability for tax purposes. An annual report fee is required to be paid to SDAT with the personal property tax return. The annual report fee is for the privilege of maintaining the legal entity’s existence in the State.

State Expenditures: SDAT advises that it does not collect information on the ownership status of business filers (*i.e.*, privately or publicly owned) or on their assets, which it needs to know to enforce the bill’s requirements. Moreover, it does not have expertise on best practices associated with promoting diversity, equity, and inclusion with respect to corporate boards. As the reporting requirement is limited to corporations with at least \$100.0 million in assets, a large number of submissions is not anticipated, but the reporting requirements are sufficiently complex that SDAT requires additional staff to synthesize the content of the reports.

Therefore, general fund expenditures increase by \$295,788 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring one analyst to gather, synthesize, and verify (to the extent possible) the information provided in the reports. It includes a salary, fringe benefits, one-time programming and other start-up costs, and ongoing operating expenses. Specifically, SDAT expenditures increase by \$228,240 only in fiscal 2022 to add fields to its reporting database to verify and enforce the reporting requirements.

Position	1.0
Salaries and Fringe Benefits	\$61,967
One-time Programming Costs	228,240
Other Operating Expenses	<u>5,581</u>
Total FY 2022 State Expenditures	\$295,788

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Small Business Effect: Small businesses that are not corporations or that do not have boards of directors are not eligible for the diversity price preference established by the bill and, therefore, are likely disadvantaged in competing for contracts with the State. Similarly, the price preference is not limited to Maryland-based bidders. Thus, Maryland-based small businesses will similarly be at a disadvantage in competing with out-of-state corporations with diverse governance that bid on State contracts.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of General Services; Maryland Department of Planning; Board of Public Works; State Department of Assessments and Taxation; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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