

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 235 (Chair, Health and Government Operations
Committee)(By Request - Departmental - Natural
Resources)

Health and Government Operations

Budget and Taxation

Department of Natural Resources - Pay-For-Success Contracts - Procurement
Exemption

This departmental bill exempts the negotiation and execution of “pay-for-success” contracts by the Department of Natural Resources (DNR) from most provisions of State procurement law.

Fiscal Summary

State Effect: None. The bill is procedural in nature and does not directly affect governmental finances.

Local Effect: None.

Small Business Effect: DNR 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:

Pay-for-success Contracting

Chapters 237 and 238 of 2022 establish a framework for “pay-for-success contracting,” which is defined as a performance-based procurement method through which an agency

contracts with an organization to deliver services or commodities in exchange for payment based on the achievement of outcomes. It establishes pay-for-success contracting as an allowable procurement method in State law and authorizes the Maryland Department of Agriculture (MDA), the Maryland Department of the Environment (MDE), DNR, the Maryland Department of Transportation (MDOT), the Maryland Environmental Service (MES), and the Department of General Services (DGS) to enter into a pay-for-success contract for (1) delivery of an environmental outcomes project or (2) already certified environmental outcomes. Other State and local entities may participate in a pay-for-success contract in accordance with an intergovernmental cooperative purchasing agreement. The authorization to enter into pay-for-success contracting does not apply to the purchase of nitrogen load reductions with funds from the Clean Water Commerce Account of the Bay Restoration Fund.

A pay-for-success contract entered into by an authorized State agency must include:

- a quantification plan approved by the agency;
- a statement of the environmental outcomes to be procured and how defined performance measures will demonstrate progress in achieving the outcomes;
- requirements regarding the content and frequency of progress reports;
- a methodology for calculating the amount and timing of outcome payments when the designated evaluator determines that performance measures have been achieved;
- a statement that the basis of payment is the determination of achievement of environmental outcomes by the evaluator; and
- terms addressing the application of specified State laws and related contract requirements.

A pay-for-success contract may also include provisions regarding (1) long-term maintenance and monitoring of environmental services; (2) a requirement that a State agency hold contract funds in a reserve account for payments; (3) for agriculture services, payment for achievement of baseline water quality requirements; or (4) termination prior to the first payment.

Procurement Exemptions

The University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College 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:

- Blind Industries and Services of Maryland;
- Maryland State Arts Council;

- Maryland Health and Higher Educational Facilities Authority;
- Department of Commerce;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery and Gaming Control Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- DGS, for historic preservation;
- DNR, for conservation service opportunities;
- Maryland State Archives;
- Maryland Stadium Authority;
- State Retirement and Pension System, for specified investment-related services;
- College Savings Plan of Maryland;
- Chesapeake Bay Trust;
- Department of Service and Civic Engagement, for the Maryland Corps Program;
and
- Maryland Thoroughbred Racetrack Operating Authority.

Background: DNR advises that provisions of State procurement law unnecessarily delay the procurement of pay-for-success contracts, and thereby delay potential benefits to the State in the form of positive environmental outcomes. For instance, current procurement processes require a fund certification for the fiscal year in which a procurement is conducted, but payments under pay-for-success contracts typically begin many years after the procurement is conducted (once outcomes have been achieved).

Additional Comments: The bill does not address pay-for-success contracts by MDA, MDE, MDOT, MES, and DGS, which are authorized under current law.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 253 (Chair, Budget and Taxation Committee)(By Request - Departmental - Natural Resources) - Budget and Taxation.

Information Source(s): Department of General Services; Department of Natural Resources; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - January 12, 2024
js/lgc Third Reader - February 9, 2024

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: DEPARTMENT OF NATURAL RESOURCES - PAY-FOR-SUCCESS CONTRACTS -
PROCUREMENT EXEMPTION

BILL NUMBER: HB 0235

PREPARED BY: Sarah Lane

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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

This bill would exempt pay for success contracts from procurement procedures, such as soliciting projects through eMaryland Marketplace, thus eliminating a burdensome step for small businesses. Instead of issuing contracts through procurement procedures, pay for success projects can be issued under current grant agreement procedures that small businesses are already familiar with.