

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 894 (Senator Pugh, *et al.*)

Education, Health, and Environmental Affairs

Rules and Executive Nominations

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Procurement Preferences - Pricing and Selection Committees

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This bill eliminates the Pricing Committee for Blind Industries and Services of Maryland (BISM) and instead merges its duties and functions into the Pricing and Selection Committee for the Employment Works Program. Thus, the bill renames that committee and modifies the membership of the merged committee. In addition to its current functions, the merged committee must ensure that supplies and services provided by BISM or a community service provider create work opportunities for individuals with mental or physical disabilities, including blindness. It must also set prices for BISM's supplies and services that reflect fair market prices. The Governor's Office of Minority Affairs (GOMA) and the Department of General Services (DGS) must submit annual reports on the effect of a statutory procurement preference for BISM's janitorial supplies on minority business enterprises (MBEs).

The bill takes effect July 1, 2015, and the reporting requirement for GOMA and DGS terminates June 30, 2018.

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Fiscal Summary

**State Effect:** None. GOMA and DGS can prepare the mandated reports with existing budgeted resources. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Under State procurement law, State agencies and State-aided or -controlled entities must procure services and supplies from Maryland Correctional Enterprises, BISM, the Employment Works Program, or a business owned by an individual with a disability, in that order of preference. Only if none of those entities produces or provides the desired supplies or services may a State agency issue a competitive procurement.

Chapters 343 and 605 of 2013 added a provision that, to the extent practicable, a State or State-aided or -controlled entity must include in a maintenance contract that requires housekeeping or janitorial services a requirement that the prime contractor purchase janitorial products from BISM when the specified products are available.

The Pricing Committee for BISM consists of four members, including the president of BISM and the Secretary of General Services, and is staffed by BISM. The committee is charged with setting prices for supplies and services provided by BISM that reflect fair market prices. Every six months, BISM must revise the list of supplies and services that it provides and send the list to the Secretary of General Services and to each person responsible for buying supplies or services for the State.

The Employment Works Program is established by statute within DGS to facilitate the distribution of procurement contracts for supplies and services among community service providers and businesses owned by individuals with disabilities. DGS must designate Maryland Works, Inc., or another appropriate coordinating entity, to administer the program. The Pricing and Selection Committee for the Employment Works Program includes six members. Statute establishes duties and responsibilities for the committee, including maintaining a list of supplies and services offered by community service providers and businesses owned by individuals with disabilities, and determining the fair market prices for those supplies and services.

**Background:** Chapters 343 and 605 removed “not-for-profit entity organized to promote the interests of physically or mentally disabled individuals” from the definition of MBE, meaning that BISM no longer qualified as an MBE under State law. However, BISM did retain its procurement preference, which was strengthened by Chapters 343 and 605. BISM advises that it rarely is able to take advantage of that preference and bid on a State maintenance contract as a prime contractor because it typically does not provide the full range of services and products required by those contracts. That gives agencies the authority to procure those contracts competitively. Prior to the enactment of Chapters 343 and 605, BISM relied on its MBE status to get subcontracts from prime contractors on State maintenance contracts. When it lost that status, the General Assembly included the procurement preference described above to maintain BISM’s preference for providing

janitorial products for State maintenance contracts for which BISM did not serve as the prime contractor.

Since Chapters 343 and 605 added the procurement preference for BISM's janitorial supplies, concern has been raised that it may disadvantage MBEs seeking to sell similar supplies to prime contractors that are awarded maintenance contracts by the State. In particular, concern has been expressed that prices for BISM's supplies exceed fair market prices. An August 2014 letter from the General Assembly's counsel incorrectly cited an audit conducted by the Office of Legislative Audits in November 2013 in concluding that the BISM Pricing Committee had not followed proper pricing procedures since 2003, but no such claim was made by the audit. Instead, the audit clearly stated that the BISM Pricing Committee had met in July 2012 to approve price increases and new items and that it had relied on pricing information provided by BISM without conducting an independent analysis of market prices.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 349 (Delegate B. Robinson) - Health and Government Operations.

**Information Source(s):** Blind Industries and Services of Maryland, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, Maryland State Department of Education, Department of Legislative Services

**Fiscal Note History:** First Reader - March 12, 2015  
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Analysis by: Michael C. Rubenstein

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