

Department of Legislative Services

Maryland General Assembly

2021 Session

FISCAL AND POLICY NOTE

First Reader

Senate Bill 274

(Senator Kramer)

Education, Health, and Environmental Affairs

**State Finance and Procurement - Chesapeake Bay Watershed States - Expenses
and Contracts (Quit Polluting My Bay Act of 2021)**

This bill establishes that, if the U.S. Environmental Protection Agency (EPA) identifies two or more pollution source sectors as requiring “backstop actions level” of oversight for a state, (1) the Board of Public Works (BPW) must, in the standard State travel regulations adopted by BPW, prohibit reimbursement for travel expenses to a State official or employee for travel to that state and (2) a “public body” is prohibited from awarding a procurement contract for goods or services to a business from that state that meets specified conditions.

Fiscal Summary

State Effect: State expenditures (all funds) increase due to reduced competition for State procurement contracts. State expenditures (all funds) decrease, likely minimally, due to the bill’s prohibition on travel reimbursement for State officials and employees to affected states. Revenues are not directly affected.

Local Effect: Local government expenditures increase due to reduced competition for procurement contracts. Local revenues are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Backstop actions level means a level of oversight for a pollution source sector in a state identified by EPA after identifying substantial concerns with a state’s

strategy to implement goals under the Chesapeake Bay Total Maximum Daily Load (TMDL).

Current Law:

Relevant Procurement Law and the Standard State Travel Regulations

State agencies may give a preference to a bidder or offeror from the State only if (1) the resident bidder or offeror is a responsible bidder; (2) the lowest bid is by a bidder or offeror from another state; (3) the state in which the nonresident bidder or offeror is located gives a preference to its residents; and (4) the preference does not conflict with a federal law or grant affecting the contract. Several surrounding states, including Pennsylvania, have similar reciprocal preference language in their statutes, so any preference given by a State agency to a resident bidder over an out-of-state bidder would likely trigger reciprocal preferences in neighboring states.

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; “responsive offer” is not a defined term in State law. 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.

BPW, on recommendation of the Comptroller, is required to adopt regulations covering matters of business administration in the units of the State government, which may include regulations establishing uniform rates of mileage allowance.

A public body includes the State; a county, municipal corporation, or other political subdivision; a public instrumentality; or any governmental unit authorized to award a contract.

Chesapeake Bay Total Maximum Daily Load

In December 2010, EPA established a Chesapeake Bay TMDL, as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The Chesapeake Bay TMDL identifies the necessary pollution reductions of nitrogen, phosphorus, and sediment across Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia, and sets pollution limits necessary to meet applicable water quality standards in the bay and its tidal rivers and embayments. All reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. In its 2018 midpoint assessment, EPA concluded that the 60% reduction goals for reducing phosphorus and sediment were exceeded, but the goal for reducing nitrogen was not met.

The Chesapeake Bay TMDL is implemented using an accountability framework that guides restoration efforts using four elements: watershed implementation plans; two-year milestones; EPA's tracking and assessment of restoration progress; and as necessary, specific federal actions if bay jurisdictions do not meet their commitments. EPA evaluates the milestone commitments for each jurisdiction every two years to identify necessary levels of EPA oversight for each pollution sector in each jurisdiction. The four pollution sectors are agriculture, urban/suburban, wastewater, and trading/offsets.

State Expenditures: Based on EPA's [2018 evaluation](#), Pennsylvania is the only bay jurisdiction that currently has backstop actions level status for two pollution sectors (the agriculture sector and the urban/suburban sector). A more recent evaluation of other bay jurisdiction backstop actions level status is not available. Thus, this analysis assumes that Pennsylvania is the only bay jurisdiction that currently triggers the bill's travel and procurement restrictions.

State expenditures (all funds) for procurement likely increase to the extent the bill prevents or dissuades nonresident bidders and offerors from participating in State procurement; reduced competition for State contracts has been shown to increase costs. However, the magnitude of any such impact is unknown.

To the extent that State officials and employees are unable to travel to Pennsylvania (or any other state that may be affected in the future) due to the bill's prohibition on travel reimbursement, State expenditures (all funds) decrease, likely minimally.

In addition to the potential fiscal effects, the bill also has significant operational effects on various State agencies. For example:

- the University of Maryland, College Park Campus, notes that the process for making travel arrangements is decentralized at the University of Maryland, and incorporating the bill's restrictions creates a significant administrative burden;
- the Department of Natural Resources (DNR) advises that its staff frequently travels to Pennsylvania for meetings, trainings, workshops, and joint enforcement operations, among other things. DNR also advises that for the past 10 years, the only bidder for a specific fish food procurement contract for State hatcheries has been a Pennsylvania company;
- the Maryland Department of the Environment (MDE) notes that, particularly in Western Maryland, MDE is occasionally unable to find a Maryland-based firm to fulfill water supply requirements and to conduct mine reclamation work and that it has hired Pennsylvania firms in the past. Further, MDE is engaged in multistate environmental initiatives, and Pennsylvania is part of EPA Region 3, the local

region for the purposes of federal environmental laws. Thus, MDE employees travel regularly to Pennsylvania for meetings;

- the Department of Budget and Management notes that the bill could limit training and educational opportunities for State employees; and
- the State Highway Administration notes that it has often awarded contracts to Pennsylvania vendors in cases where there was a small number of contractors bidding (in some cases even a sole bidder).

Thus, the bill's impact on the State's procurement activities and travel could be substantial.

Local Expenditures: Local government expenditures for procurement increase to the extent the bill dissuades nonresident bidders and offerors from participating in local procurement; reduced competition has been shown to increase costs.

Small Business Effect: Maryland-based firms may be given an advantage in being awarded procurement contracts from State agencies that would otherwise be awarded to Pennsylvania firms. However, they are likely severely disadvantaged from being awarded contracts in Pennsylvania. As Pennsylvania has a reciprocal preference provision similar to Maryland's, the prohibition against awarding State contracts to Pennsylvania businesses for contracts for goods and services likely triggers Pennsylvania's reciprocal ban, which would seriously hamper the ability of Maryland-based firms to do business within the Commonwealth of Pennsylvania. Similar reciprocal preferences may be triggered in other neighboring states if other bay states meet the bill's qualifications in the future.

Additional Comments: BPW notes that it is possible that the bill's provisions could result in a prohibition against the State awarding contracts to Maryland businesses for goods and services if Maryland ever meets the bill's qualifications.

Additional Information

Prior Introductions: SB 414 of 2020 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. SB 332 of 2019 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Similar legislation was also introduced during the 2018 session.

Designated Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Comptroller's Office; University System of Maryland; Public School Construction Program; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Department of Human Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; U.S. Environmental Protection Agency; Department of Legislative Services

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