

Department of Legislative Services  
 Maryland General Assembly  
 2024 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 894

(Delegate Chisholm, *et al.*)

Health and Government Operations

Budget and Taxation

Procurement - Scrutinized Entities - Prohibition

This bill prohibits any entity that is owned, operated, or controlled by specified governments from bidding on, submitting a proposal for, or entering into or renewing a contract with a “public body” in the State. To that end, by December 31, 2024, the Board of Public Works (BPW) must use credible information available to the public to create a list of entities barred from participating in procurement with a public body. The bill includes procedures for adding entities to and removing entities from the list maintained by BPW. It also includes penalties for making a false certification under the bill.

Fiscal Summary

**State Effect:** General fund expenditures increase annually by *at least* \$25,000 beginning in FY 2025 for contract costs. The bill otherwise is not expected to have a material effect on State operations or finances.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	25,000	25,000	25,000	25,000	25,000
Net Effect	(\$25,000)	(\$25,000)	(\$25,000)	(\$25,000)	(\$25,000)

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

**Local Effect:** The bill is not expected to have a material effect on local operations or finances.

**Small Business Effect:** Minimal.

## Analysis

**Bill Summary:** A “public body” is defined as (1) the State; (2) a county, municipal corporation, or other political subdivision; (3) a public instrumentality; or (4) any governmental unit authorized to award a contract.

A “scrutinized entity” is any entity owned, operated, or controlled by the government of a country subject to an embargo under the International Traffic in Arms Regulations and listed in the Code of Federal Regulations (CFR), as specified.

BPW must update the list of prohibited entities at least every 180 days. Before BPW includes a person on the list, it must provide the person with 90 days’ written notice that it intends to add the person to the list and that inclusion on the list makes the person ineligible to participate in public procurement in the State. BPW must give a person an opportunity to comment in writing to the board that the person should not be added to the list. If the person demonstrates to BPW that it should not be included on the list, BPW may not include the person on the list.

BPW must remove a person from the list if the person demonstrates that it should no longer be on the list. BPW must make every reasonable effort to avoid erroneously including a person on the list, which must be published on the Internet.

Beginning January 1, 2025, a person submitting a bid or proposal to a public body must certify that the person is not on the list published by BPW. The bill includes procedures for confirming whether a person has made a false certification and penalties in cases where a person has been found to have made a false certification, including a civil penalty up to \$250,000 or twice the amount of a contract for which false certification was submitted.

An unsuccessful bidder or any other person may not protest the award of a contract or contract renewal based on a false certification, but a public body may file a protest on the basis of a false certification. The bill does not create or authorize a private right of action. The bill preempts any related local procurement law, ordinance, rule, or regulation.

### **Current Law:**

#### *Federal Arms Embargoes*

Under 22 CFR 126.1, it is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating from certain countries. Eight countries are subject to a total embargo (Belarus, Burma, China, Cuba, Iran, North Korea, Syria, and Venezuela) and 16 additional countries (including Russia) are subject to a partial embargo.

### *Iran/Sudan Divestment*

Chapter 342 of 2008 requires the Board of Trustees of the State Retirement and Pension System (SRPS) to notify any company whose shares are held in an actively traded separate account in its portfolio that is doing business in either Iran or Sudan that the board will divest all holdings in the company unless the company releases a plan to cease its business with Iran or Sudan within one year. Chapter 342 exempts from the divestment requirement any company that is excluded from U.S. government sanctions against Iran or Sudan and whose divestment cannot be executed for fair market value or greater. It requires the board to act in good faith and in a manner consistent with its fiduciary responsibilities in carrying out the divestment requirement.

### *Russia Divestment*

Chapter 343 of 2022 requires the SRPS board to (1) review its investment holdings in specified accounts to determine the extent to which those funds are invested in specified Russian businesses and (2) take divestment action with respect to investments in specified Russian businesses, subject to specified conditions and exceptions.

### *Office of Foreign Assets Control*

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

**State/Local Expenditures:** BPW lacks the expertise and staffing to develop a reliable list of entities owned, operated, or controlled by 24 different countries. Although OFAC maintains a list of 12,000 “specially designated nationals” that are subject to U.S. sanctions, the list is much more extensive than entities subject only to the International Traffic in Arms regulations specified in the bill. Therefore, a list of scrutinized entities, as required by the bill, is not readily available.

The State Retirement Agency (SRA) contracts with a private entity to assist it in identifying companies doing business with Iran, and BPW anticipates using a similar contractual arrangement to identify scrutinized entities, as defined by the bill. SRA’s contract costs

\$12,500 annually, and BPW estimates that a similar contract involving entities owned, operated, or controlled by 24 countries costs at least twice that amount. Given the substantial number of countries (and companies from those countries) that must be tracked continuously, the Department of Legislative Services believes that the annual cost may be substantially more, but a more precise estimate is not feasible absent experience under the bill. Therefore, general fund expenditures increase by *at least* \$25,000 for BPW to develop and maintain the list of entities owned, operated, or controlled by the 24 listed countries.

Overall, State agencies do not anticipate a meaningful effect on procurement operations or costs from the procurement ban affecting scrutinized entities because agencies are not aware of any recent procurement activity involving such entities. The same is likely true for local governments.

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### **Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Anne Arundel, Baltimore, Frederick, and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Department of Information Technology; Governor’s Office of Small, Minority, and Women Business Affairs; Office of the Attorney General; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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