

CITY OF BALTIMORE

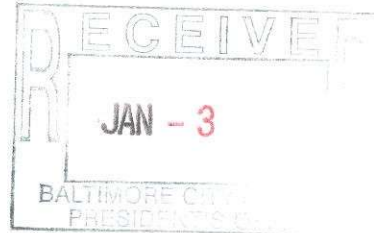
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

January 2, 2013



The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 12-0159 Finance and Procurement – Local Hiring

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0159 for form and legal sufficiency. The bill is for the purpose of requiring employers benefited by City contracts and subsidies to take measures to hire Baltimore City residents. The bill requires any person who “has a contract with the City for more than \$300,000” or “will benefit from more than \$5,000,000 in assistance for a City subsidized project” (defined as any project “for which the City or any of its agents or contractors provides funds, resources, or financial assistance”) to coordinate with MOED to ensure that “at least 51%” of the jobs required for the project are filled by Baltimore City residents. The bill also requires that the jobs required for the project be posted through MOED for 7 days before they are publically advertised and that several reports concerning hired employees be submitted to MOED.

Although local hiring programs have been implemented in various forms in some cities and states, federal courts have made it clear that any government policy, which directs or even merely encourages a preference based on residency for City funded work would violate the Privileges and Immunities Clause of the Constitution. *United Building and Const. Trades Council v. Camden*, 465 U.S. 208, 220 (1984). The opportunity to seek employment is “basic to the livelihood of the nation” and is therefore a protected privilege. A discrimination against workers based on residence would only survive scrutiny if a court found that nonresidents were the cause of the local unemployment rate that the law sought to rectify. Obviously, many factors contribute to the unemployment rate of local workers, making a hiring preference based on residence for public work legally indefensible. *See Utility Contractors Ass’n v. City of Worcester*, 236 F. Supp. 2d 113, 115 (D. Mass. 2002) (City of Worcester enacted a “Residency Requirement Ordinance” requiring all private contractors on public works projects to have at least a 50% local work force. The court held that the ordinance violated the Privileges and Immunities Clause: “While it is troubling to see this important project delayed, and to upset the expectations of Worcester residents, the law gives me no choice. The cases could not be clearer. The constitutional issues could not be more significant. . . An injunction must issue.”); *see also Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 65 (1988) (The preference of the Virginia state bar for lawyers who are permanent Virginia residents was struck down. “[O]ne of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B

unfair

on terms of substantial equality with the citizens of that State.”); *A.L. Blades & Sons, Inc. v. Yerusalim*, 121 F.3d 865 (3rd Cir. 1997) (Pennsylvania law requiring contractors to hire only Pennsylvania workers on public works projects struck down as violating Privileges and Immunities Clause).

As recently as April of 2012 the City of Quincy, Massachusetts, which is less than 10 miles outside of Boston, passed a law requiring that 33% of all contractors on public agency projects be residents of Quincy. A federal judge held that the law violated the Privileges and Immunities Clause and that Quincy had failed to “provide a constitutionally adequate justification for treating residents and nonresidents differently in connection with the construction of its public works projects.” *Merit Construction Alliance v. City of Quincy*, 2012 U.S. Dist. LEXIS 54210 *9 (D. Mass. April 18, 2012); *see also Utility Contractors Assoc. of New England v. City of Fall River*, 2011 U.S. Dist. LEXIS 114333 (D. Mass. Oct. 4, 2011) (another Massachusetts City enjoined from enforcing a local hiring preference law).

Any government policy directing preferences for private employment based on residence, even in the form of a “goal” is likely to be struck down by a federal court if challenged under the Privileges and Immunities Clause. *See, e.g., Hudson County Bld. and Constr. Trades Council v. City of Jersey City*, 960 F. Supp. 823 (D. N.J. 1996) (Jersey City First Source Hiring ordinance mandating that the recipients of certain public incentives including tax abatements, enter into First Source Hiring agreements which require them to make a “good faith effort” to hire 51% City residents for certain construction jobs struck down as violating the Privileges and Immunities Clause).

For these reasons, the Law Department cannot approve City Council Bill 12-0159 for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Hilary B. Ruley
Assistant Solicitors

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Victor Tervalá, Assistant Solicitor