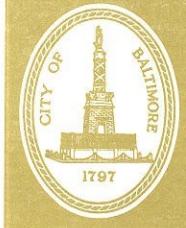


CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

June 22, 2011

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



Re: City Council Bill 11-0287R – Investigative Hearing -
Local Hiring Preference Programs

Dear President and City Council Members:

You requested that the Law Department review for form and legal sufficiency City Council Bill 11-0287R. The bill is for the purpose of investigating the efficacy of adopting a policy that would require resident preference hiring by certain entities contracting to supply goods and/or services to Baltimore City government; examining the impact to date of similar programs nationwide; forecasting the employment benefits for City residents; and analyzing the legal restrictions limiting local hiring programs and the likely impact on the economic development of Baltimore City if a local hiring program put in place was crafted to successfully withstand a legal challenge.

Council Bill 11-0287R is an appropriate expression of the Council's decision to consider and determine issues related to local hiring preference programs. *See Inlet Assocs. v. Assateague House Condominium Assoc.*, 545 A.2d 1296, 1303 (Md. 1988) (explaining that a resolution is “an expression of opinion or mind concerning some particular item of business coming within the legislative body’s official cognizance....”) (quoting *McQuillin Mun. Corp.* § 15:2 (3rd Ed.)).

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, e.g. *Utility Contractors Ass’n v. City of Worcester*, 236 F. Supp. 2d 113 (D. Mass. 2002) (City of Worcester enacts a “Residency Requirement Ordinance” requiring all private contractors on public works projects to have at



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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." 236 F. Supp. 2d at 115 see also *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) (The preference of the Virginia state bar for lawyers who are permanent Virginia residents was struck down. "one of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State." *Friedman*, 487 U.S. at 65) and see, e.g. *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).

The publication regarding "First Source Hiring Agreements" cited in the Resolution contains some legally defensible strategies designed to stimulate local employment. These include the creation of job linkage and training programs which are organized and run through a partnership with developers, community groups and the City. Another possible strategy would be focusing the hiring preference on income level rather than residence. While the Law Department could explore the legal parameters of these possibilities, many of "First Source Hiring" methods described in the publication would likely not pass constitutional muster. 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).

The Law Department approves Council Bill 11-0287R for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Assistant Solicitor

cc: Angela Gibson, City Council Liaison, Mayor's Office
 George Nilson , City Solicitor
 Elena R. DiPietro, Chief Solicitor
 Hilary Ruley, Assistant Solicitor
 Victor Tervala, Assistant Solicitor