



Legislation Text

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: Councilmembers Henry and Holton

A RESOLUTION ENTITLED

A RESOLUTION OF THE MAYOR AND CITY COUNCIL concerning
City Resident Hiring Preference Work Group

FOR the purpose of forming an inter-Departmental workgroup, including broad representation from stakeholders outside Baltimore City government, to draft Board of Estimates rules and/or an ordinance expanding the application of Section 3 type requirements to as broad a class of City contracts as is feasible.

Recitals

The current Baltimore City First Source Hiring resolution is aspirational but does not by itself create an enforceable obligation to hire City residents for government-funded work. This resolution lays out the framework for an enforceable hiring obligation that could reduce our unemployment rate and withstand legal challenge. It proposes that an inter-Departmental workgroup, including broad representation from stakeholders outside Baltimore City government, be formed to fashion Board of Estimates rules and/or an ordinance to achieve these objectives.

A direct preference or requirement for hiring Baltimore residents for City-funded work could run afoul of the Privileges and Immunities Clause of the United States Constitution. That Clause ensures that citizens of each state are equal to citizens of every other state. Municipalities are treated as if they were states. In long-standing court precedent, the right to be hired for work on publicly-funded contracts is protected by this Clause. *United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden*, 465 U.S. 208, 221 (1984). Infringing upon this right must be justified by a "substantial" government interest, and reducing unemployment for City residents will not suffice as a reason unless Baltimore can prove that our unemployment is caused by an influx of out-of-state or out-of-city workers, and not by our lack of education, work experience, criminal records and the like. *Toomer v. Witsell*, 334 U.S. 385, 396 (1948); *Hicklin v. Orbeck* 437 U.S. 518, 526-27 (1978).

An ordinance requiring preference in contracting for companies which employ low-income residents of the jurisdiction where the services are rendered, would likely withstand constitutional challenge, and could reduce Baltimore's unemployment rate. Such a requirement would ensure that when City funds are allocated for contracts to further the Mayor's objectives, the funds will have a multiplier effect by creating employment opportunities for low income residents.

Such an Ordinance could be modeled on Section 3 of the Housing and Urban Development Act of 1968, long standing federal legislation which already governs much HUD funding to the City. Section 3 was recently reinforced in HUD's Guidance for use of stimulus funds,

Section 3 recognizes that the normal expenditure of certain HUD funds typically results in new jobs, contracts, and other economic opportunities; and when these opportunities are created, low- and very low-income persons residing in the community in which the funds are spent," and the businesses that substantially employ them, should receive priority consideration. Section 3 is one of HUD's tools for ensuring that the expenditure of federal funds in economically distressed communities has a multiplier effect by targeting local low- and very low-income persons and qualified businesses for jobs, training, and contracting opportunities.

U.S Department of Housing and Urban Development, Guidance on ARRA and Section 3, 2009, <http://portal.hud.gov/pls/portal/url/ITEM/69F6FE0102D000A5E04400144F9D3D85> ; accord 12 U.S.C. § 1701 ("It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.")

The Act defines low-income individuals and families as: "Those families whose incomes do not exceed 80 per centum of the median income for the area?The term "very low-income families" means low-income families whose incomes do not exceed 50 per centum of the median family income for the area." 42 U.S.C. § 1437a. It defines Section 3 compliant businesses "as one of the following: 1) businesses that are 51 percent or more owned by Section 3 residents; 2) businesses whose permanent, fulltime employees include persons, at least 30 percent of whom are current Section 3 residents or were Section 3 residents within 3 years of the date of first employment with the business concern; or 3) businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in the two previous categories." 24 CFR § 135.5. The term Section 3 Resident means: "(1) A public housing resident; or (2) An individual who resides in the metropolitan area or non-metropolitan county in which the section 3 covered assistance is expended, and who is: (i) A low-income person" or "(ii) A very low-income person." 24 CFR § 135.38.

To comply with Section 3, recipients of HUD funds, like the City of Baltimore, must meet the minimum numerical goals set forth at 24 CFR Part 135.30:

- a. 30 percent of the aggregate number of new hires shall be Section 3 residents;
 - b. 10 percent of all covered construction contracts shall be awarded to Section 3 business concerns; and
 - c. 3 percent of all covered non-construction contracts shall be awarded to Section 3 business concerns.
- Id.

This model has been in place for decades, apparently without any challenges to the constitutionality of the Section 3 Program even though there are ample cases deciding whether the preferences were properly applied. See, e.g. *McQuade v. King County Housing Authority*, WL 3040060 (9th Cir. 2006) (affirming grant of summary judgment to the housing authority); *Mannarino v. Margan Township*, 2003 WL 1972491 (3d Cir. 2003).

HABC and HCD, through its Fair Housing & Equal Opportunity Office ("FHEO"), already have in place mechanisms for qualifying businesses as Section 3 businesses and for granting bidders Section 3 preferences. The Department of Health also has procedures in place to comply with Section 3 for lead abatement funds it receives from HUD. Amending City procurement law to include a similar or identical requirement for a broader class of City contracts could build on these efforts at Housing and Health.

As was the case with the City's current MBE/WBE program, it may take several years of careful research and creative lawyering and perhaps even a Charter Amendment to fashion a low-income resident preference which complies with our Charter requirements to competitively bid contracts over \$25,000 and to award to the lowest responsive and responsible bidder. The Board of Estimates could issue procurement rules to utilize the exception provided in Article VI, Section 11(g)(vi) of our Charter, to give businesses that are "neighborhood based" a bidding preference. The BOE could also promulgate rules and regulations for contracts between \$5000 and \$25,000 that are not subject to Section 11(g), that agencies could follow to award to businesses that are owned by or that employ low-income Baltimore residents. Any other programs for the award of contracts to small local businesses would likely require a Charter amendment.

SECTION 1. BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That there will be formed an interDepartmental workgroup staffed by the City Council President's office. The chair of the City Council Taxation, Finance and Economic Development Committee shall serve as the chair of this workgroup and the vice chair shall be selected by the Mayor. Membership of the workgroup which shall include broad representation from stakeholders outside Baltimore City government, will draft Board of Estimates rules and/or an ordinance expanding the application of Section 3 type requirements to as broad a class of City contracts as is feasible.

SECTION 2. AND BE IT FURTHER RESOLVED, That the interDepartmental representation will include, but not be limited to, representatives from Purchasing, the Mayor's Office of Employment Development, Health, HABC, DPW, DOT, DGS, FHEO, City Council, the Small Business Resource Center, the Baltimore Development Corporation, the Ad-Hoc Committee on Small Business, and Law.

SECTION 3. AND BE IT FURTHER RESOLVED, That the stakeholders from outside Baltimore City government will include, but not be limited to, representatives from the Baltimore Development Workgroup, the Get Baltimore Working campaign, Living Classrooms, Civic Works, Citizens Planning and Housing Association, the Urban League, the NAACP, the Job Opportunities Task Force, the Maryland Minority Contractors Association, MD. Washington Minority Contractors Association, and Casa de Maryland.

SECTION 4. AND BE IT FURTHER RESOLVED, That the chair of the workgroup shall present regular updates to the Mayor and City Council as to their progress.

SECTION 5. AND BE IT FURTHER RESOLVED, That this Resolution takes effect on the 30th day after the date it is enacted.

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