September 13, 2022

FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin
Senior Legislative Budget and Policy Analyst

FROM: Isabel Williams
Senior Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-063-2022, Prince George's County Surety Bond Program

CB-063-2022 (*Proposed and presented by*: Councilmembers Franklin, Hawkins, Harrison, Burroughs, Glaros, Ivey, Medlock, Streeter and Taveras)

Assigned to the Government Operations and Fiscal Policy Committee

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AN ACT CONCERNING PRINCE GEORGE'S COUNTY SURETY BONDING PROGRAM for the purpose of establishing a Prince George's County Surety Bonding Program to increase capacity and contracting opportunities for Prince George's County's small business community.

Fiscal Summary

Direct Impact:

Expenditures: Additional expenditures necessary for administration.

Revenues: None.

Indirect Impact:

Potentially positive.

Current Law/Background:

A surety bond is a promise to be liable for the debt, default, or failure of another. It is a three-party contract by which one party (the surety) guarantees the performance or obligations of a second party (the principal) to a third party (the obligee). The general categories of surety bonds are: (1) contract surety bonds; and (2) commercial surety bonds.

Contract surety bonds are typically written for construction projects. A project owner (obligee) seeks a contractor (principal) to fulfill a contract. The contractor, through a surety bond producer, obtains a surety bond from a surety company. If the contractor defaults, the surety company is obligated to find another contractor to complete the contract or compensate the project owner for the financial loss incurred.[1]

Commercial surety bonds cover a very broad range of surety bonds that guarantee performance by the principal of the obligation or undertaking described in the bond. They are required of individuals and businesses by the federal, state, and local governments; various statutes, regulations, ordinances; or by other entities.

Bonding requirements sometimes create an obstacle to small and start-up businesses in the competitive bidding process. Presently, various financial entities within the County offer a variety of bonding programs to assist small businesses in receiving financial, technical, and/or management assistance, as well as preferences for certain certified businesses during the procurement process. The County Code references the requirement of bonding for the operation in the County procurement process.

Discussion/Policy Analysis:

CB-063-2022 would *require* the County Purchasing Agent to contract with a County-based, certified surety bond producer in the State of Maryland (the Program Manager) to provide surety bonds, including but not limited to, bid, performance, or payments bonds, *solely* for County-based

[1] There are four types of contract surety bonds:
Bid Bond: Provides financial protection to the owner if a bidder is awarded a contract but fails to sign the contract or provide the required performance and payment bonds.
Performance Bond: Provides an owner with a guarantee that, in the event of a contractor's default, the surety will complete or cause to be completed the contract.
Payment Bond: Ensures that certain subcontractors and suppliers will be paid for labor and materials incorporated into a construction contract.
Warranty (or Maintenance) Bond: Guarantees the owner that any workmanship and material defects found in the original construction will be repaired during the warranty period.

Small Businesses, County-based Minority Business Enterprises, and Locally-Owned and Operated Businesses, subject to approval by County Council resolution,

- Bonds provided must be accepted by any unit of the County government.
- The Revenue Authority, using fiscal authority, provides 100% guaranty.
- Bonds provided by the Program Manager must also be approved by the County MBE Compliance Manager.
- Term of bond cannot exceed contract limit.

The Bill also provides that the applicant's reputation for financial responsibility and operational capabilities to complete project are the criteria for considerations of bonding applications, and requires the Program Manager, with the approval of the County MBE Compliance Manager to establish application procedures and processes.

The Program Manager would be required to submit written quarterly reports to the County Executive, the County Council, the County MBE Compliance Manager, and the Executive Director of the Revenue Authority. Funding for administrative services may be provided from the Small Business Capital and Growth Stimulus Program that is proposed under CB-062-2022. The Council, with the concurrence of the County Executive, after consultation with the Revenue Authority and the County MBE Compliance Manager, may by resolution establish an annual maximum in surety bonding awards and guarantees.

Disparity Study

The Prince George's County Disparity Study highlighted the underutilization of minority business enterprises and business in the County, providing a legal basis for remedial legislation. Among the recommendations in the report was a specific recommendation to assist with capacity building and professional and technical assistance for small businesses. This legislation directly addresses that recommendation. As stated above, the bonding has created an obstacle to participating in the County bidding process for some small businesses within the County.

Issue for Committee Consideration:

- What impact will the required guarantee of surety bonds under the program have on the Revenue Authority?

Fiscal Impact:

Direct Impact

Enactment of CB-063-2022 will result in additional expenditures for the fund and to cover administrative costs related to approval funding, agreements and monitoring compliance, and authorized service.

Indirect Impact

Enactment of CB-063-2022 may have a favorable indirect impact on the County by further increasing the participation of local businesses in the County procurement process. A small business bonding program may result in increased capacity of local businesses. Such expansion could result in increased revenue cycling through the local economy. As local businesses scale up, they may have additional revenue to contribute toward the County tax base.

Appropriated in the Current Fiscal Year Budget

No.

If you require additional information, or have any questions about this fiscal impact statement, please call me.