

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 598 (Delegate Taylor, *et al.*)
Health and Government Operations

Commission on Minority Business Enterprise

This bill establishes a Commission on Minority Business Enterprise to advise the Governor's Office on Minority Affairs (GOMA) and the Office of Minority Business Enterprises (OMBE) in the Maryland Department of Transportation on strategies for improving the State's Minority Business Enterprise program. Commission members are not compensated but are entitled to reimbursement for their expenses. GOMA and MDOT are responsible for staffing the commission, which must report annually by December 31 to the Governor and the General Assembly.

Fiscal Summary

State Effect: Staffing and reimbursement costs for the commission are presumed to be minimal and absorbable within existing budgeted resources for GOMA and OMBE.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The State's MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including 7% to African American-owned businesses and 10% to women-owned businesses. There are no penalties for agencies that fail to reach these targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

MBEs include not-for-profit entities organized to promote the interests of physically or mentally disabled individuals.

A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged. The Maryland Department of Transportation is the State's MBE certification agency.

A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of their membership in a group and without regard to individual qualities. An economically disadvantaged individual is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged. An individual with a personal net worth in excess of \$1.5 million is not considered economically disadvantaged.

The MBE program is scheduled to terminate July 1, 2012.

Background: The State's MBE program began in 1978. In 1989, the U.S. Supreme Court held in the *City of Richmond v. J. A. Croson Co.*, that state or local MBE programs using race-based classifications are subject to strict scrutiny under the equal protection clause of the Fourteenth Amendment to the U. S. Constitution. In response to the *Croson* decision, the Board of Public Works commissioned a Minority Business Utilization Study to support Maryland's MBE program. In 1990, the General Assembly altered the State's MBE program by removing Alaskan Natives and Pacific Islanders from the list of socially and economically disadvantaged individuals and authorizing BPW to designate a single agency for the certification of MBEs. MDOT was subsequently charged with this responsibility. The 1990 legislation also authorized a study to monitor the MBE program's compliance with the *Croson* and subsequent decisions, and included a June 30, 1995 sunset date for the program, which has been extended four times by laws enacted in 1995, 2000, 2001, and 2006.

The Governor's Office of Minority Affairs is responsible for managing and overseeing the State's MBE, Small Business Reserve, and Governor's Mentor Protege programs for more than 75 participating State agencies. The Governor's proposed fiscal 2009 budget includes \$1.3 million and 11 full-time equivalent positions for the office.

In 2004, Governor Ehrlich established by executive order a Governor's Council for Historically Underutilized Businesses to advise GOMA on matters relative to minority businesses. The council was chaired by the director (later special secretary) of GOMA and included six representatives of small, minority, and women-owned businesses and one member each from the House and Senate.

GOMA's fiscal 2006 MBE report, the most recent data available, found that 22% of the value of State procurement contracts had been awarded to MBEs. This represented a slight increase over the 21% of contract awards made to MBEs in fiscal 2005, but still short of the State's 25% target. African American-owned firms received 4.3% of contract awards and women-owned firms received 5.7%, which were also below the targets for those subgroups. Legislative Services notes that these figures represent contract awards rather than actual payments to MBEs, which experience has shown are often lower than promised participation levels at the time of contract awards. The 2006 MBE disparity study mandated by law and conducted by NERA Economic Consulting found continuing disparities between the availability and use of MBE firms for State contracts across all contracting categories and demographic groups.

State Fiscal Effect: GOMA advises that an additional administrator would be needed to provide staff support to the commission. However, the Department of Legislative Services notes that the commission's charge is aligned with GOMA's role and responsibilities, and therefore is not anticipated to require significant additional resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office, 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