

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

Revised

Senate Bill 131

(Senator Pugh, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

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State Procurement - Minority Business Enterprises - Electronic Certification  
Process

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This bill requires the Board of Public Works to include in regulations governing the State's Minority Business Enterprise (MBE) program provisions that promote and facilitate the electronic submission of some or all of an application seeking certification as an MBE.

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Fiscal Summary

**State Effect:** Transportation Trust Fund expenditures by the Maryland Department of Transportation (MDOT) may increase beginning in FY 2011 to plan, develop, and implement an electronic submission system for MBE certification. The amount of the increase depends on the extent to which the electronic submission system developed by MDOT requires a secure server and related programming to create and maintain a secure system.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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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 woman-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. MDOT is the State's MBE certification agency.

An 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. A woman-owned MBE that is also a member of an ethnic or racial minority group is certified as either owned by a woman or owned by a racial or ethnic minority, but not both.

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, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for fiscal 2010 is \$1,504,585.

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

**Background:** Only businesses that have been certified by MDOT as MBEs may participate in the State's MBE program. MBE certification must be renewed annually and requires submission of extensive documentation that the firm qualifies for MBE certification in accordance with the program's governing laws, regulations, and guidelines.

Businesses may complete a certification application online, but the application cannot be submitted electronically. Instead, applicants must print out a copy of the completed form and mail it together with the documentation requested. Among the documents that must be submitted by a corporation, partnership, or limited liability company seeking certification are:

- a current financial statement;
- complete federal tax returns for the most recent three years;
- proof of minority status (birth certificate, driver's license, passport or naturalization papers);
- general business insurance information;
- resumes of key personnel;
- a statement of net worth; and
- a statement of disadvantage (notarized affidavit required).

**State Fiscal Effect:** As noted above, the MDOT certification process involves the submission of sensitive financial and personal information about each applicant. To the extent that the electronic submission system developed by MDOT allows for the electronic submission of confidential financial and personal information about an applicant, the system requires a secure server and related programming that allow the applicant to submit that information in a secure fashion. MDOT advises that it does not currently have the hardware or software necessary to institute a secure system and that it would need to contract with an information technology consulting firm to develop and maintain a secure system at an estimated one-time cost of \$170,000 over two years. However, the bill gives MDOT flexibility to determine which components of the MBE certification application are submitted electronically. To the extent that those components do not include confidential information, MDOT may be able to implement a submission system with existing budgeted resources.

Development of a secure electronic submission system requires the purchase of application development and security software, a new server to handle the online system, and information technology (IT) consultants to develop and assist in maintaining the new system. The estimated costs of those components are \$50,000 for the software, \$20,000 for the server, and \$100,000 for the contractual IT assistance over the first two years (\$100 per hour for 1,000 hours).

**Small Business Effect:** The bill may streamline the process of applying for MBE certification for small, minority-owned businesses.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 251 (Delegate Morhaim, *et al.*) – Health and Government Operations.

**Information Source(s):** Board of Public Works, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2010  
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Analysis by: Michael C. Rubenstein

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510