Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1447 (Delegate B. Robinson)
Rules and Executive Nominations

State Aid Reporting Requirement - Nonprofit Entities - Minority Business Participation

This bill requires a nonprofit entity that receives at least $750,000 in State aid, as defined by the bill, to submit a report to the Governor's Office of Minority Affairs (GOMA) with specified information.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: The bill requires GOMA to design the form and format of the required reports and then receive them from nonprofit entities. GOMA can carry out these responsibilities with existing budgeted resources. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: "State aid" is defined as a contribution, grant, or subsidy of at least $750,000 that is provided through the State operating or capital budget or by any other action of a unit of State government from State funds appropriated to that unit.

The report by the nonprofit entity must be in a form and format determined by GOMA and be submitted by September 1 after the close of each fiscal year in which the entity received State aid. It must include:

- the name, address, and zip code of each nonprofit entity that received State aid during the previous fiscal year;
- the amount of State aid provided to the nonprofit entity;
- a description of the State aid provided to the nonprofit entity;
- the total number and value of contracts between the nonprofit entity and certified minority business enterprises (MBEs) relating to projects for which the nonprofit entity received State aid;
- a description of minority business outreach efforts by the nonprofit entity; and
- any other information required by GOMA.

Current Law: For a complete description of the State's MBE program, please see the **Appendix – Minority Business Enterprise Program**.

Additional Information

Prior Introductions: None.

Cross File: SB 934 (Senator Jones-Rodwell, *et al.*) - Budget and Taxation.

Information Source(s): Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2014
mc/ljm

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Appendix – Minority Business Enterprise Program

The State's Minority Business Enterprise (MBE) program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Governor's Office of Minority Affairs (GOMA), in consultation with the Secretary of Transportation and the Attorney General. In a year in which there is a delay in establishing the overall goal, the previous year's goal applies. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the guidelines, the previous year's guidelines apply.

Prior to the enactment of Chapters 252 and 253 of 2011 and Chapter 154 of 2012, State law established a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses. In spring 2013, GOMA announced that it was raising the State's MBE goal to 29%, which is in effect for fiscal 2014 and 2015. GOMA issued subgoal guidelines in July 2011, summarized in **Exhibit 1**, which are still in effect. The guidelines state that subgoals may be used only when the overall MBE goal for a contract is greater than or equal to the sum of all recommended subgoals for the appropriate industry, plus two.

Exhibit 1
MBE Subgoals

	Construction	Architectural/ Engineering	Maintenance	Information Technology	Services	Supplies/ Equipment
African American	7%	6%	8%	7%	7%	6%
Hispanic	--	2%	3%	2%	--	--
Asian	4%	--	3%	--	4%	5%
Women	--	9%	--	8%	12%	10%
Total	**11%**	**17%**	**14%**	**17%**	**23%**	**21%**
Total +2	**13%**	**19%**	**19%**	**19%**	**25%**	**23%**

There are no penalties for agencies that fail to reach the statewide target. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

History and Rationale of the MBE Program

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 addition, the ruling held that an MBE program must demonstrate clear evidence that the program is narrowly tailored to address actual disparities in the marketplace for the jurisdiction that operates the program. As a result, prior to each reauthorization of the State's MBE program, the State conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The most recent disparity study was completed in February 2011 and serves as the basis for the most recent reauthorization of the MBE program. It found continued and ongoing disparities in the overall annual wages, business earnings, and rates of business formation between nonminority males and minorities and women in Maryland. For instance, average annual wages for African Americans (both men and women) and nonminority women were 33% lower than for comparable nonminority males. It also found continued disparities in the use of MBEs compared to their availability in the market place to perform work in designated categories of work. For instance, African American-owned businesses were paid 4.5% of State construction contract dollars, but they make up 9.7% of the construction sector in the State. Woman-owned businesses were paid 8.5% of maintenance contract dollars, despite making up 18.0% of the maintenance contract sector. Similar disparities were found in other contracting sectors and for other MBE categories.

The MBE program is scheduled to terminate July 1, 2017; it has been reauthorized seven times since 1990, the latest by Chapters 200 and 201 of 2013. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies for fiscal 2012, the most recent year for which data is available.

Requirements for MBE Certification

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.

Until July 1, 2015, MBEs include not-for-profit entities organized to promote the interests of physically or mentally disabled individuals. However, Chapters 243 and 605 of 2013 remove not-for-profit entities from the definition of MBE and exempt specified contracts entered into with them on or after that date from the calculation of MBE participation rates. There are no restrictions on the size or management structure of not-for-profit entities that can be considered MBEs.

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. An MBE owned by a woman who 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. 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, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for calendar 2014 is $1,641,652.

Exhibit 2
MBE Participation Rates, by Agency
Fiscal 2012

Cabinet Agency	% MBE Participation
Aging	34.8%
Agriculture	10.5%
Budget and Management	6.0%
Business and Economic Development	33.4%
Education	33.9%
Environment	37.3%
Executive Department	3.3%
General Services	15.8%
Health and Mental Hygiene	54.9%
Higher Education Commission	3.1%
Housing and Community Development	35.0%
Human Resources	14.6%
Information Technology	12.0%
Juvenile Services	11.0%
Labor, Licensing, and Regulation	23.6%
Natural Resources	7.4%
Planning	7.6%
State Police	20.1%
Public Safety and Correctional Services	23.0%
Transportation – Aviation Administration	35.0%
Transportation – Motor Vehicle Administration	40.3%
Transportation – Office of the Secretary	17.6%
Transportation – Port Administration	15.2%
Transportation – State Highway Administration	20.9%
Transportation – Transit Administration	11.6%
Transportation – Transportation Authority	22.1%
Veterans Affairs	23.0%
Statewide Total[1]	**25.2%**

[1]Includes University System of Maryland and non-Cabinet agencies

Source: Governor's Office of Minority Affairs