

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

Senate Bill 808 (Senator Conway and The President. *et al.*)
(Administration)

Economic and Environmental Affairs

Procurement - Minority Business Enterprise Participation

This bill decreases the amount of a Maryland Department of Transportation (MDOT) architectural or engineering services contract that is negotiated competitively and not subject to provisions of law regarding minority business enterprise goals from \$100,000 to \$50,000.

The bill extends the sunset for the State minority business enterprise (MBE) participation program from July 1, 2000 to July 1, 2002. The bill also extends the date by which the MBE Office in MDOT, as certification agency, must report to the Legislative Policy Committee from September 30, 1999 to January 10, 2001, on: (1) the program's compliance with federal Constitutional and statutory standards; and (2) methods that can be used to address the needs of minority businesses.

The bill is effective July 1, 2000.

Fiscal Summary

State Effect: Extending the sunset provision will not materially affect State operations or finances. Lowering the MBE participation goal for MDOT architectural or engineering services contracts will not materially affect MDOT procurement costs.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Except for real property leases, each unit of State government is required to

structure its procurement procedures to try to achieve at least 14% direct or indirect MBE participation under Maryland's MBE participation program. For construction contracts, the goal is 14% of the unit's total dollar value. The goal applies only to contracts exceeding \$100,000 for MDOT. To qualify for participation in the procurement program, an MBE must be at least 51% owned by a socially or economically disadvantaged group and be certified by MDOT.

Background: An MBE that has reached or exceeded a certain gross revenue average or employee population may not participate in the State's MBE program, although the business will remain certified. These participation levels are specified in federal regulations and vary by industry sector. An MBE that continues to exceed the revenue and employee standards for more than three years has graduated from the program and will no longer be certified. An MBE that falls below the threshold level during this three-year period may resume participation as a certified MBE if the business goes through the recertification process.

In fiscal 1998, the latest year for which data are available, the MBE participation level for State procurement was approximately 20.4%.

Under *City of Richmond v. Croson*, 488 U.S. 469 (1989), a state's MBE program must be narrowly tailored to remedy that state's past discrimination.

State Expenditures: Funding for MDOT's MBE Office would continue at current levels. The proposed fiscal 2001 budget contains approximately \$1.17 million, including approximately \$200,000 in reimbursable funds and approximately \$970,000 in Transportation Trust Funds, for MDOT's MBE Office. The MBE Office performs certifications for both the State's MBE program and the federal Disadvantaged Business Enterprise (DBE) program. Federal Department of Transportation matching funds for many MDOT projects are contingent on meeting DBE participation goals.

Small Business Effect: MDOT estimates that it has approximately 40 to 60 construction contracts annually of at least \$50,000 and under \$100,000. It is assumed that most State contractors are small businesses. Minority owned small businesses could have an increased share of these construction contracts.

Additional Information

Prior Introductions: None.

Cross File: HB 1412 (Delegate Dobson, *et al.*) - Rules and Executive Nominations.

Information Source(s): Maryland Department of Transportation, Department of Budget and Management, Department of General Services, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510