

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

Senate Bill 133 (Senator Mooney)  
Education, Health, and Environmental Affairs

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**Procurement - Minority Business Participation - Hispanic-Owned Businesses**

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This bill establishes a 2% minimum as the goal for the total value of procurement contracts to be awarded to Hispanic-owned businesses.

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**Fiscal Summary**

**State Effect:** Administrative expenditures for procurements would not be directly affected. Potential increase in general, special, or federal fund expenditures associated with project costs.

**Local Effect:** None.

**Small Business Effect:** Meaningful. According to the 1997 Economic Census by the U.S. Department of the Census, in Maryland 2.8% of all firms and 1.8% of all firms with employees are Hispanic-owned. The Survey of U.S. Businesses for 1998 showed that 92.9% of all firms with employees in Maryland had 50 or fewer employees. The establishment of a procurement goal could provide a significant increase in opportunities for Hispanic-owned small businesses.

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**Analysis**

**Current Law:** Chapter 339 of 2001 established the current overall goal of 25% for the total value of contracts being awarded to certified minority business enterprises, separate goals of 7% for African-American businesses, and 10% for women-owned businesses.

**Background:** The State's Minority Business Enterprise (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 (BPW) 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 the BPW to designate a single agency for the certification of MBEs. The Maryland Department of Transportation 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.

In accordance with the 1990 law a study was conducted prior to the 1995 session. In response to the study, the General Assembly amended the program to establish a 14% MBE participation goal for all units in State government subject to the State's procurement law. There was an exception for the Maryland Department of Transportation (MDOT) contracts of less than \$100,000. The program enacted in 1995 was scheduled to sunset on July 1, 2000. The 1995 law required that an additional study of the MBE program be completed by September 30, 1999; in September 1999, however, MDOT requested a 45-day extension of the report's due date. However, questions were raised about the methodology used in the study before it was completed, and absent a completed study, there was no basis upon which to project recommended goals for the MBE program.

As a result, Chapters 495 and 496 of the Acts of 2000 made the following changes: (1) extended the sunset date of the MBE program to July 1, 2002; (2) required submission of the executive summary of the third study to the Legislative Policy Committee by December 1, 2000; (3) required submission of the final report by January 10, 2001; and (4) reduced the level for the MDOT exemption from \$100,000 to \$50,000.

National Economic Research Associates (NERA) conducted the study for the report submitted on January 8, 2001. One of the NERA's findings was that MBEs are underutilized. In other words, on a percentage basis, MBEs are utilized less than their availability. In general, availability is a measure of the number or percentage of businesses that are MBEs, and utilization is a measure of the number or percentage of contract awards (value) to MBEs. Although the utilization and availability percentages varied by type of procurement, the study found the overall percentages as shown in **Exhibit 1:**

**Exhibit 1**  
**Availability and Utilization Percentages by MBE Classification**

<u>Classification</u>	<u>Availability %</u>	<u>Utilization %</u>
African American	7.90	4.49
Hispanic	2.13	1.79
Asian	4.27	3.07
Native American	.66	.07
White Female	12.74	7.66
All MBEs	26.90	17.08

Source: Utilization of Minority Business Enterprises by the State of Maryland, National Economic Research Associates, January 8, 2001

Although NERA in its report did not make a recommendation for specific goals for the MBE program, the overall availability percentages found in their research are reflected in the current goals established by Chapter 339 of 2001.

**State Fiscal Effect:** All the State agencies responding to a request for information advised that the bill would have no fiscal impact on their administrative expenditures for procurements.

The Department of Budget and Management advised that because the establishment of a new goal increases the potential number of required subcontractors for a given contract, any increased costs for the contractor would be passed onto the State. This would result in a small increase in State contract costs.

MDOT advises that the establishment of a new goal would result in an increase in the current procurement contracting development, processing, and award time frames. MDOT further advises that the 2001 NERA study does not support an individual goal of 2% for Hispanic-owned businesses, and that adding the goal could open up the study to further scrutiny and jeopardize the legality of the MBE program.

The Department of Legislative Services advises that for a few types of procurement, the availability percentages for Hispanic MBEs in the NERA study are less than the goals set in the bill. In addition, the availability of MBEs for some procurement categories may vary by region of the State. To the extent not enough MBEs are available, a procurement unit may not be able to meet the goals or will have to “bid” for the available MBEs. This could increase expenditures due to the increase in MBE associated project costs. If this encourages MBEs to enter the procurement process, it may be easier for procurement units to reach the goals; and project costs may decline due to the increased MBE

competition. An increase in project costs could be in general, special, or federal funds, depending on the procurement unit and the nature of the contract.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of General Services, Department of Health and Mental Hygiene, University System of Maryland, Department of Transportation, Office of Minority Affairs, Department of Budget and Management, Department of Public Safety and Correctional Services, Department of Legislative Services

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