

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 533 (Senator Jones, *et al.*)
Budget and Taxation

State Debt - Enabling Acts - Goal for Minority Business Enterprise Participation

This bill requires enabling acts for general obligation bonds for grants over \$50,000 to include language that the grantee should attempt to use minority business enterprises (MBE) to provide services or goods for the project equivalent to at least 25% of the State's investment in the project.

Fiscal Summary

State Effect: Potential minimal increase in general and special fund expenditures for additional monitoring requirements of recipients of general obligation bond grants.

Local Effect: Potential minimal.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Enabling Acts

State Finance and Procurement Article § 8-117 specifies the language required in enabling legislation for local bond bills. Provisions include specifying the amount of the grant, that the grants may be issued as separate or consolidated bond issuances, that the Treasurer shall pay the costs of the issuance before disbursing the funds, and that the grantee must provide the matching funds before disbursement occurs.

MBE Program

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

Each procurement unit must: (1) implement a program enabling the unit to evaluate each contract to determine the appropriateness of the goal; and (2) meet the maximum feasible portion of the goals by using race neutral measures to facilitate MBE participation in the procurement process.

Socially and economically disadvantaged individuals are defined as citizens or lawfully admitted permanent residents of the U.S. who are: (1) African American; (2) American Indian/Native American; (3) Asian; (4) Hispanic; (5) physically or mentally disabled; (6) women; or (7) otherwise found by the certification agency to be a socially and economically disadvantaged individual.

Socially disadvantaged individual is defined as an individual who has been subject to racial or ethnic prejudice or cultural bias within American society because of his/her membership in a group without regard to the individual's qualities. Also, the social disadvantage must stem from circumstances beyond the control of the individual.

Economically disadvantaged individual is defined as a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished credit and capital opportunities compared to other individuals in the same or similar line of business who are not socially disadvantaged.

An individual with a personal net worth of more than \$750,000 is not an economically disadvantaged individual. Personal net worth is defined as the net value of assets after total liabilities are deducted, and includes the individual's share of assets held jointly or as community property with the individual's spouse. Net worth does not include the individual's: (1) ownership interest in a minority business enterprise or the applicant for MBE certification; and (2) equity in his/her primary place of residence.

Procurement units must annually report to the certification agency (currently the Maryland Department of Transportation) and the Office of Minority Affairs. The Board of Public Works (BPW) may adopt regulations requiring a unit of State government to require bidders and offerors to submit information necessary for a study of the program. Data collected in this manner will be the basis for a report due to BPW on September 30, 2005. BPW may designate certain information received under the regulations as confidential. However, the certification agency may provide the information to any person under contract with the certification agency to assist in the study.

Maryland Department of Transportation (MDOT) construction contracts less than \$50,000 are exempt from participation in the MBE program and procurement units may consider the practical severability of construction projects.

Background: The 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, 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 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.

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 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 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 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: This bill would place additional monitoring responsibilities with the Department of General Services. However, since the bill does not require grantees to meet MBE goals, the extent to which monitoring duties will increase is difficult to forecast. Additionally, the State may incur minimal increases in administrative expenditures for the Board of Public Works for contract review, the State Treasurer's Office for contract alterations, and MDOT as the MBE certifying agency.

The State Treasurer's Office did not respond to a request for information.

Local Fiscal Effect: To the extent that local jurisdictions are grantees, expenditures related to monitoring the use of funds may increase due to possible reporting requirements regarding MBEs.

Small Business Effect: Small business MBEs could benefit from increased business opportunities. To the extent that small businesses are grantees, expenditures related to monitoring use of funds may increase due to possible reporting requirements regarding MBEs. For fiscal 2002, the General Assembly authorized \$24.5 million in local bond bills. For fiscal 2001, \$22.6 million were authorized. Additionally, there were \$10.7 million for private higher education grants and Maryland Hospital Association grants in fiscal 2001.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 10, 2003
mld/jr

Analysis by: Daniel P. Tompkins

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