

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 1432 (Delegates Rosenberg and Nathan-Pulliam)
 Health and Government Operations

Minority Business Enterprise Program - Not for Profit Entities

This bill includes not-for-profit entities controlled by members of a group that is socially or economically disadvantaged in the definition of entities that qualify as a Minority Business Enterprise (MBE). Control is defined as at least 51% of either the board of directors or full-time employees of a not-for-profit entity being members of a group that is considered socially or economically disadvantaged.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures could increase by \$120,400 in FY 2005 for three positions to certify and monitor participation by additional MBEs. Future year expenditures reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	120,400	141,800	150,200	159,100	168,800
Net Effect	(\$120,400)	(\$141,800)	(\$150,200)	(\$159,100)	(\$168,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential significant negative impact on small businesses due to an increase in the number of not-for-profit entities that qualify for participation in the State's MBE program. The impact of not-for-profit entities on the ability MBE small businesses to receive State contracts cannot be reliably estimated.

Analysis

Current Law: MBEs are any legal entity, except joint ventures, that is: (1) organized to engage in commercial transactions; (2) at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and (3) 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 also include a not-for-profit entity organized to promote the interests of physically or mentally disabled individuals.

Background: The U.S. Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) program is carried out by state and local transportation agencies under the rules and guidelines in the Code of Federal Regulations Title 49, Part 26. Maryland's State MBE program is required to establish narrowly-tailored DBE goals. In order for businesses to participate in federally funded transportation projects with the Maryland Department of Transportation (MDOT), they must apply for and receive certification as a DBE. The federal program requires a firm to be a small business owned and controlled by socially and economically disadvantaged individuals.

Chapter 339 of 2001 established the current overall goal for State agencies of 25% for the total value of contracts being awarded to certified MBEs 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.

Certification as an MBE requires that the person, or majority owner of a business, be socially and economically disadvantaged. 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. 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 an MBE or the applicant for MBE certification; and (2) equity in his/her primary place of residence.

State Expenditures: MDOT indicates that the provisions of this bill would require the creation of a separate certification and reporting structure for State MBE participation in addition to responsibilities for the State portion of the Federal-State DBE program run through USDOT. MDOT advises that the number of certified entities could double as a result of this bill. There are currently 3,385 certified MBEs.

The Department of General Services (DGS) estimates the need for two additional positions to monitor the certification of not-for-profit MBEs and to apply the MBE program to the DGS Grants Administration Office. The Department of Legislative Services does not concur with that estimate. The Board of Public Works has designated MDOT, not DGS, as the certification agency for the State's MBE program. The provisions of the bill affect only the certification of new MBEs. DGS and other agencies would simply have a larger pool of potential vendors from which to award contracts. There is no additional DGS oversight required by this bill.

Special fund expenditures would increase by an estimated \$120,373 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring two MBE agents and one administrative assistant to certify not-for-profit MBEs and assist in the calculation of participation rates for various agencies. These positions would likely be required to develop a parallel set of certification guidelines for not-for-profits to become certified MBEs. The additional duties would likely include cleaning data to insure that the additional not-for-profits included in the State program are not included in reports MDOT is required to produce for the USDOT DBE program. It includes salaries, fringe benefits, and ongoing operating expenses.

Salaries and Fringe Benefits	\$97,630
Operating Expenses	<u>22,743</u>
Total FY 2005 State Expenditures	\$120,373

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mh/hlb

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