

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 483 (Delegate Murray, *et al.*)
 Health and Government Operations Education, Health, and Environmental Affairs

Minority Business Enterprise Program - Personal Net Worth

This bill increases the personal net worth limit for eligibility in the State’s Minority Business Enterprise (MBE) Program from \$750,000 to \$1.5 million.

Fiscal Summary

State Effect: Special fund expenditures in the Maryland Department of Transportation (MDOT) would increase by \$64,100 in FY 2005 to hire two full-time 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	64,100	87,900	93,400	99,200	105,500
Net Effect	(\$64,100)	(\$87,900)	(\$93,400)	(\$99,200)	(\$105,500)

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

Local Effect: None.

Small Business Effect: Significant increase in the number of small businesses that qualify for participation in the State’s MBE program. The direct impact on those businesses cannot be reliably estimated.

Analysis

Bill Summary: This bill creates a separate definition of an economically disadvantaged individual from the federal definition of a socially or economically disadvantaged individual used to certify businesses as Disadvantaged and Women-owned Business

Enterprises (DBEs). It requires the Board of Public Works (BPW), through MDOT as the MBE certifying agency, to maintain separate records for certification and reporting of MBE participation data.

Current Law: BPW has delegated responsibility for certifying MBEs to MDOT. 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.

Once an MBE exceeds the federal definition of a small business, it is no longer eligible to be counted toward an agency's MBE participation goals. If the MBE regains small business status within three years of decertification, it is reinstated as an MBE. Only after three consecutive years in which an MBE does not meet the federal definition of a small business, is it formally decertified.

Background: The U.S. Department of Transportation's (USDOT) 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 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.

The Governor's Commission for Minority Business Reform has completed its work and is currently editing its final report. The commission reviewed issues of access for MBEs throughout the 2003 interim. The Task Force to Study Efficiency in Procurement did not specifically address the issue of MBE participation in its final recommendations. The

task force's information technology subcommittee did discuss the impact of liability and contract clauses on MBE participation rates.

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.

Special fund expenditures would increase by an estimated \$64,076 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one MBE Agent I and one administrative assistant to certify MBEs with owners who have a personal net worth between \$750,000 and \$1.5 million and assist in the calculation of participation rates for various agencies. The additional duties would likely include cleaning data to insure that the additional businesses 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	\$63,881
Operating Expenses	<u>195</u>
Total FY 2005 State Expenditures	\$64,076

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 Comments: Chapter 339 of 2001 established the current overall goal 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. To the extent the provisions of this bill expand the pool of MBE candidates for State contracts, agencies may have greater success in meeting participation goals.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 18, 2004
ncs/hlb

Analysis by: Daniel P. Tompkins

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