

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE
 Revised

Senate Bill 323
 Finance

(Senator Jones, *et al.*)

Economic Matters

Economic Development Financial Assistance – Minority Business Enterprise
 Procurement Goals

This bill specifies that certain procurements by local jurisdictions or private entities using financial assistance from specified economic development funds must attempt to meet the goals of the State Minority Business Enterprise (MBE) Program.

The bill is effective January 1, 2005.

Fiscal Summary

State Effect: General fund expenditures could increase by \$33,100 in FY 2005 due to monitoring, auditing, and verification of MBE participation rates by the Department of Business and Economic Development (DBED). 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
GF Expenditure	33,100	63,600	66,900	70,500	74,300
Net Effect	(\$33,100)	(\$63,600)	(\$66,900)	(\$70,500)	(\$74,300)

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

Local Effect: Significant effect on local jurisdictions that receive financial assistance from the Sunny Day Fund and Maryland Economic Development Assistance Authority and Fund (MEDAAF).

Small Business Effect: Potential significant.

Analysis

Bill Summary: The bill applies to financial assistance from the Economic Development Opportunities Program Fund (Sunny Day Fund) and MEDAAF. DBED would be required to determine if local jurisdiction MBE programs are acceptable. This bill does not define criteria that would identify an acceptable program. If a program is acceptable to DBED, the department must require the local jurisdiction to apply the requirements of its MBE program to any financial assistance received from the Sunny Day Fund and MEDAAF.

If the local jurisdiction does not have an MBE program in place, it must agree to include a provision in the agreement providing financial assistance from the Sunny Day Fund and MEDAAF that would encourage procurement of goods and services from MBEs. DBED is required to take into account the intended use of the proceeds of the financial assistance and the feasibility of obtaining the required goods or services from MBEs. Recipients of financial assistance may be required by DBED to submit a list or an updated list of the MBEs from which goods or services were procured and the nature and dollar amount of those goods and services.

DBED is required to report to the Legislative Policy Committee by September 1 each year on the bill's implementation.

Current Law: 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.

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.

Procurement units must annually report to the certification agency (currently the Maryland Department of Transportation) and the Governor's 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.

State Fiscal Effect: This bill requires DBED to monitor MBE programs of all political subdivisions, their agencies or instrumentalities, as the programs relate to the procurement of goods and services from financial assistance from the Sunny Day Fund. DBED would have to do the same for local government MBE programs for assistance from MEDAAF. There are 23 counties and 157 municipalities (including Baltimore City) in Maryland. To comply with the bill, DBED would have to collect information regarding current MBE programs and any future changes to those programs. Contracts for financial assistance would have to be altered on a case-by-case basis.

In fiscal 2003 three projects totaling \$6.8 million were closed or funded and five projects for \$15.3 million were approved from the Sunny Day Fund. This included three projects for \$9.8 million that will assist the University System of Maryland, which currently participates in the State's MBE program. There were 50 approved projects totaling \$26.1 million from MEDAAF and 50 closed or funded projects totaling \$21.9 million in fiscal 2003. DBED would have been required to review the MBE participation for projects closed in fiscal 2003, with at least 50 more approved (plus those funded but not closed) and requiring review in future years. In fiscal 2002, 73 projects totaling \$35.5 million were approved and 66 totaling \$26.4 million were closed or funded.

DBED indicates the initial requirements of the bill can be handled with existing resources, and that future expenditure requirements for monitoring and verification cannot be reliably estimated.

The Department of Legislative Services (DLS) does not concur with that estimate. DBED estimated the need for two part-time regular positions to handle the responsibilities of an identical bill in the 2003 session. DBED's fiscal 2005 operating allowance, excluding PAYGO and general obligation bond funds for financing programs, is only 0.8% higher than its fiscal 2004 legislative appropriation. DLS advises that the agency does not have the capacity to begin implementation of a new oversight and reporting function with existing resources.

Fiscal 2005 general fund administrative expenditures would increase by \$33,102. This cost reflects the hiring of one-half administrative officer III to monitor and analyze

changes to local MBE programs and complete the required annual report, and one-third legal counsel to monitor and maintain legal agreements with recipients of financial assistance. It includes salaries, fringe benefits, one-time start-up costs and ongoing operating expenses.

Salaries and Fringe Benefits	\$29,025
Other Operating Expenses	<u>4,077</u>
Total FY 2005 State Expenditures	\$33,102

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.

Local Fiscal Effect: All local jurisdictions that receive financial assistance from the Sunny Day Fund and MEDAAF would be required to maintain a list of certified MBEs utilized in the procurement of goods and services.

Small Business Effect: Meaningful effect on all small businesses that receive financial assistance from the Sunny Day Fund and MEDAAF, and on MBEs that could provide goods and services to local jurisdictions or private entities that receive financial assistance from the Sunny Day Fund and MEDAAF.

Additional Information

Prior Introductions: In 2003, SB 526, a similar bill, passed the Senate with amendments and was referred to the House Economic Matters Committee.

Cross File: HB 806 (Delegate Kirk, *et al.*) – Economic Matters.

Information Source(s): Governor’s Office, Department of Business and Economic Development, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2004
mam/hlb Revised - Senate Third Reader - March 25, 2004

Analysis by: Daniel P. Tompkins

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