

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 690

(Montgomery County Delegation and Prince George's  
County Delegation)

Health and Government Operations

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Washington Suburban Sanitary Commission - Minority and Local Small  
Business Enterprise Programs MC/PG 119-05

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This bill codifies the existing Small, Local, and Minority Business Enterprise (SLMBE) office in the Washington Suburban Sanitary Commission (WSSC). The bill also extends the termination date for the existing Minority Business Enterprise (MBE) program from July 1, 2005 to July 1, 2010.

The bill takes effect July 1, 2005.

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Fiscal Summary

**State Effect:** None.

**Local Effect:** WSSC expenditures of \$589,200 for SLMBE would continue beyond FY 2005. New costs of \$49,600 in FY 2006 could be required to enhance the salary of the director of SLMBE.

**Small Business Effect:** Meaningful. The bill mandates certain requirements that promote and encourage minority business participation in WSSC contracting.

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Analysis

**Bill Summary:** The bill codifies the existing SLMBE office in WSSC. The bill mandates that contract solicitations include an expected MBE participation level, and that the corresponding proposals or bids should include proof of certified MBE participation.

The bill also establishes the director's position, requiring the salary to be commensurate with that of a division head at WSSC.

The bill requires the SLMBE office to administer the MBE program and the Local Small Business Enterprise program, as well as extending the sunset date on the MBE program for five years to July 1, 2010.

The bill changes some eligibility criteria for the Local Small Business Enterprise program, including a requirement that at least 25% of the employees of a small business seeking certification must reside in Montgomery or Prince George's counties.

The bill establishes small, local, and minority business monitoring, compliance, and enforcement duties the office must undertake with respect to subcontracting. Prime contractors must submit monthly reports listing any incomplete payments made to minority business subcontractors. Additionally, prime contractors must include in subcontracting agreements a provision requiring subcontractors to submit monthly reports with any unpaid payments owed to the subcontractor. Finally, the bill sets out remedies that the office may utilize for the noncompliance of a prime contractor with respect to MBE participation.

**Current Law:** WSSC has a mandatory minority business utilization program to facilitate the participation of responsible certified minority business enterprises in WSSC contracts. WSSC also has a Local Small Business Enterprise program. The law specifies the asset-level criteria for small businesses to qualify for this program. Statute does not specifically address an office to administer the program; this bill would essentially codify current administrative practice.

**Background:** WSSC is among the 10 largest water and sewer utilities in the country, providing water and sewer services to 1.6 million residents in Montgomery and Prince George's counties. It has an operating budget of more than \$690 million, 420,000 customer accounts, serves an area of around 1,000 square miles, and currently employs more than 1,500 people. This agency operates four reservoirs, two water filtration plants, and six wastewater treatment plants.

The MBE program is designed to initiate and encourage minority and small business participation in the procurement process. The program established goals for WSSC to meet in selecting its contractors. In fiscal 2004, WSSC contracted \$27.2 million to minority business enterprises, which made up 26% of all WSSC contracting dollars.

In the landmark U. S. Supreme Court case, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), the court found that state and local minority business contract set-aside programs are permissible devices, but must be evaluated under the strict-scrutiny

standard. The analysis required a program to be narrowly tailored to meet a compelling governmental interest. The court reiterated the same strict-scrutiny standard in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) for federal contract set-asides based on race.

**Local Fiscal Effect:** Projected program costs in fiscal 2006 are \$589,242, which includes \$536,842 in wages and benefits for SLMBE. The bill also requires the director of SLMBE to receive a salary commensurate with a WSSC division head. The maximum salary for the SLMBE director is currently \$103,583 and \$136,583 for a WSSC division head. This could increase costs up to \$34,000 in salary and \$15,600 in additional fringe benefits. After the salary and fringe benefit increases, the total costs to the SLMBE office could increase to \$638,842 (with a maximum salary enhancement for the director).

One provision in the bill mandates that the office verify minority business participation on all contracts with MBE participation requirements. WSSC maintains that this could be accomplished within existing resources.

**Small Business Effect:** Meaningful. SLMBE programs foster and encourage participation of these groups in WSSC procurement contracting. WSSC contracted \$27.2 million to minority business enterprises in fiscal 2004.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Montgomery County, Prince George's County, Washington Suburban Sanitary Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2005  
ncs/hlb

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