

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 805 (Chair, Health and Government Operations Committee)
(By Request – Departmental – Governor’s Office of Minority Affairs
and Transportation)
Health and Government Operations

Procurement - Minority Business Enterprise Participation

This departmental bill extends the State’s Minority Business Enterprise (MBE) program for five years, until July 1, 2011. It also extends the deadline for the Maryland Department of Transportation (MDOT) to report to the Legislative Policy Committee on the program’s compliance with the U.S. Supreme Court’s *Croson* decision and subsequent federal or constitutional requirements until September 30, 2010.

Fiscal Summary

State Effect: None. State agencies, including MDOT, can implement the bill’s requirements with existing resources.

Local Effect: None.

Small Business Effect: MDOT has determined that this bill has a meaningful impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: The MBE program terminates July 1, 2006.

The MBE program establishes a goal that at least 25% of the total dollar value of each agency’s procurement contracts be awarded to MBEs, including 7% to African-American owned businesses and 10% to women-owned businesses. There are no penalties for

agencies that fail to reach these targets. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

A contractor is required to make an effort to meet the MBE program goals by recruiting MBEs as subcontractors on State contracts, including:

- soliciting MBE participation through written notices;
- providing information on the type of work being solicited and instructions on how to submit a bid; and
- contacting MBEs who may be qualified to perform the work and assisting MBEs in securing necessary bonds or waivers.

Background: The State's 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, the Board of Public Works (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 for the program, which has been extended by laws passed in 1995, 2000, and 2001. MDOT reports that the report due on September 30, 2005 is currently in draft form and will not be completed until March 2006 at the earliest.

State Fiscal Effect: MDOT reports that the compliance report required by this bill is an ongoing project and is fully funded. The bill will have no effect on State procurement processes because the MBE program is well established.

Small Business Effect: Minority-owned small businesses will benefit from the extension of the MBE program's goals for their participation in State procurements. However, the value of the extension of the MBE program in terms of increased revenue for small businesses cannot be reliably estimated. According to the Governor's Office of Minority Affairs, MBEs were awarded State contracts and subcontracts valued at \$513 million in fiscal 2004.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Maryland Department of Transportation, Department of Legislative Services

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ncs/rhh

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