

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1317

(Delegate Taylor, *et al.*)

Economic Matters

Finance

**Business Regulation - Representation of Business Affiliations with Small
 Businesses and Certified Minority Business Enterprises**

This bill prohibits employers with 500 or more employees from falsely claiming to have a business relationship with a small business or certified minority business enterprise (MBE) in their marketing or advertising publications. It also authorizes the Governor’s Office of Minority Affairs (GOMA) to investigate any claim of false representation.

Fiscal Summary

State Effect: General fund expenditures by GOMA could increase by \$56,900 in FY 2007 for one new position to investigate any claims that arise from the prohibition contained in the bill. Out-years reflect annualization and inflation.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	56,900	55,800	59,000	62,400	66,100
Net Effect	(\$56,900)	(\$55,800)	(\$59,000)	(\$62,400)	(\$66,100)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill restricts the meaning of employer to firms that employ 500 or more employees or that facilitate interaction between small businesses or MBEs and other employers. It defines a small business as one that is independently owned and

operated but is not: (1) a broker; (2) a subsidiary of another business; or (3) dominant in its field of operation, and that meets the following criteria:

- average gross sales over the last three years did not exceed \$2.0 million in its retail operations, wholesale operations, manufacturing operations, or service operations;
- average gross sales over the last three years did not exceed \$7.0 million in construction operations; and
- the total number of employees does not exceed 25 people in its retail operations, 50 people in either its wholesale or construction operations, or 100 people in either its service or manufacturing operations.

It uses the same definition of MBE that is already codified in State law.

Any small business, certified MBE, or other person aggrieved by a violation of the prohibition against false representation contained in this bill may file a complaint with GOMA. GOMA may then investigate the claim; if it agrees that an employer has committed a violation, it must notify the Board of Public Works, the Department of Budget and Management, the Maryland Department of Transportation, and other relevant procuring agencies.

If necessary, GOMA may use the Office of Administrative Hearings to assist in the investigation.

Employers that are not aware of the small business or certified MBE status of a particular firm are exempt from the bill's prohibitions against falsely reporting a business relationship with that firm.

Current Law: An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- 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 include not-for-profit entities organized to promote the interests of physically or mentally disabled individuals.

Background: The Department of Labor, Licensing, and Regulation's *Employment and Payroll Report* indicates that there are 235 firms in Maryland with more than 500

employees that would be subject to the bill's prohibitions. The U.S. Small Business Administration estimates that there are 477,233 small businesses in the State; the MBE directory maintained by the Maryland Department of Transportation for all State agencies contains more than 3,000 certified MBEs in Maryland.

State Expenditures: The number of firms subject to the bill's prohibitions against falsely representing a business relationship with a small business or MBE is small (235). However, the number of complaints filed *could* be rather large given the number of small businesses and MBEs with which they could have business relationships.

The Governor's Office estimates that GOMA would need three new positions, including two investigators and one administrative support staff, to investigate allegations of violations of the bill's prohibition against false representation. The Department of Legislative Services (DLS) acknowledges the *potential* for a large number of complaints, as described above, but does not believe that the number of complaints will be large. Nonetheless, with a staff of just nine positions and no investigative personnel, GOMA does not have the capacity to conduct the type of investigations required by this bill. Under the terms of the bill, it could refer the complaints to the Office of Administrative Hearings (OAH), but an increase in OAH's caseload would also likely result in increased expenditures. Therefore, DLS believes that GOMA would need one investigator to carry out the investigations required by the bill.

General fund expenditures could therefore increase by an estimated \$56,889 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one investigator for GOMA to investigate allegations of violations of the bill's prohibitions against falsely representing business relationships with small businesses or certified MBEs. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$38,561
One-time Furniture, Equipment, and Vehicle Costs	16,135
Ongoing Operating Expenses	<u>2,193</u>
Total FY 2007 State Expenditures	\$56,889

Future year expenses reflect (1) a full salary with 4.6% annual increases and 3% employee turnover, and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: HB 1340 of 2005 was heard by House Economic Matters and later withdrawn.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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