

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**

House Bill 628

(Chair, Environmental Matters Committee)

(By Request – Departmental – Environment)

Environmental Matters

Education, Health, and Environmental  
Affairs

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**Department of the Environment - Grants and Loans - Small, Minority, and  
Women's Business Enterprises**

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This departmental bill requires recipients of grants and loans greater than \$500,000 from the Bay Restoration Fund, the Water Pollution Control Fund, and the Water Supply Facilities Financial Assistance Program administered by the Maryland Department of the Environment to take steps to include small, minority-owned, and women-owned businesses in the projects funded by those monies. It also makes technical changes to the statutory authorization of the Bay Restoration Fund.

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**Fiscal Summary**

**State Effect:** No net effect on State revenues and expenditures. To the extent that the bill's requirements increase the cost of water quality improvement projects funded by these programs, fewer projects could be funded in the future.

**Local Effect:** The bill could increase administrative burdens on local governments that receive loans or grants from these programs, as they would be required to assist in monitoring compliance by their contractors. It is assumed that those costs are minimal and could be handled with existing local resources.

**Small Business Effect:** MDE has determined that this bill has a meaningful effect on small business (attached). Legislative Services concurs with this assessment, as discussed below.

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## Analysis

**Bill Summary:** Recipients of financial assistance from the three designated funds must ensure that steps were taken to include small business enterprises (SBEs), minority-owned business enterprises (MBEs), and women-owned business enterprises (WBEs) in funded projects by:

- placing qualified SBEs, MBEs, and WBEs on solicitation lists;
- assuring that SBEs, MBEs, and WBEs are solicited whenever they are potential sources;
- dividing total requirements, when feasible, into small tasks to permit maximum participation by SBEs, MBEs, and WBEs;
- establishing delivery schedules that encourage participation by SBEs, MBEs, and WBEs; and
- using the services and assistance of the Maryland Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting SBEs, MBEs, and WBEs.

If recipients of financial assistance do not demonstrate that they have taken these steps to MDE's satisfaction, the department may withhold financial assistance.

**Current Law:** Chapter 428 of 2004 established the Bay Restoration Fund (BRF) to reduce nutrient loading into the Chesapeake Bay from point sources. The fund receives revenue from a fee imposed on users of wastewater treatment plants, septic systems, and sewage holding tanks and also from revenue bonds. The Governor's proposed fiscal 2009 budget includes \$138.0 million (\$68.0 million in special funds and \$70.0 million in revenue bonds) for grants to wastewater treatment plant owners to upgrade their facilities with enhanced nutrient removal technology; \$5.0 million in special funds for sewer rehabilitation grants; and \$6.0 million in special funds for septic system upgrades.

The Water Pollution Control Fund consists of money made available under water quality loan authorizations or by funds appropriated in the State budget. The Board of Public Works, upon the recommendations of the Secretary of the Environment, is authorized to award financial assistance for various projects, including construction of sewerage systems and practices to reduce pollution from stormwater runoff in urbanized areas.

The Water Supply Facilities Financial Assistance Program consists of monies made available under water supply loan authorizations or by funds appropriated in the State budget. The Board of Public Works, upon the recommendations of the Secretary of the

Environment, is authorized to award financial assistance to State and local governments for the acquisition, construction, equipping, rehabilitation, design, and improvement of water supply facilities. In general, State assistance may not exceed 87.5% of eligible costs for each project or part of a project.

Under State 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.

A socially and economically disadvantaged individual is defined as a citizen or legal United States resident who is African American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged.

A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of their membership in a group and without regard to individual qualities. An economically disadvantaged individual is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged. An individual with a personal net worth in excess of \$1.5 million is not considered economically disadvantaged.

Under State law, a small business is either a minority-owned business that meets the criteria specified below, or a business other than a broker that is:

- independently owned and operated;
- not a subsidiary of another firm; and
- not dominant in its field of operation.

In addition, a business must meet the following criteria to qualify for small business certification by the State:

- average gross sales over the last three years did not exceed \$2.0 million in 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 firm does not employ more than 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.

The Maryland Department of Transportation certifies MBEs on behalf of the State, and the Department of General Services certifies SBEs.

**Background:** The State's Water Quality Revolving Loan Fund and the Drinking Water Revolving Loan Fund receive federal capitalization funds from the U.S. Environmental Protection Agency (EPA). As a condition of receiving \$33.7 million in federal funds, the two revolving funds must ensure that State recipients of loans from the funds abide by federal SBE, MBE, and WBE procurement criteria. Compliance with those criteria includes recipients' providing evidence that they have taken the five steps specified in the bill. In addition, EPA sets separate goals of 11% MBE and WBE participation for construction projects; there are no federal SBE participation goals. MDE already has developed guidance for loan recipients to help them comply with federal requirements.

Maryland's Small Business Reserve Program requires 22 designated State agencies to structure their procurement procedures so that at least 10% of the total value of each agency's procurement of goods, supplies, services, maintenance, construction, construction-related services, architectural services, and engineering service contracts are made directly to small businesses.

The State's 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 procurement.

**State Fiscal Effect:** MDE advises that it can carry out the bill's compliance monitoring functions with existing resources, since it already monitors compliance for loan recipients under the two revolving loan funds it administers.

The steps required by funding recipients to increase participation by SBEs, MBEs, and WBEs could increase project costs in at least two ways. First, breaking up projects into smaller tasks could eliminate or decrease potential economies of scale in the completion of funded projects. Second, the increased administrative burden placed on potential

bidders or offerors for procurement contracts could reduce competition for those contracts. To the extent that project costs do increase as a result of these requirements, fewer projects could receive funding from the three designated programs.

**Local Fiscal Effect:** Administrative duties could increase for local governments that receive grants and loans under the three designated programs. It is assumed that the costs of monitoring compliance with the bill's provisions among contractors hired to complete funded projects can be handled with existing resources.

**Small Business Effect:** The bill could increase opportunities for small, minority-owned, and women-owned businesses to participate in water quality improvement projects funded by these programs.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Governor's Office, Maryland Department of the Environment, Department of Legislative Services

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