

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 641

(Delegate Pena-Melnyk, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Minority Business Enterprise Program - Participation by Race or Gender

This bill allows a woman-owned business that is owned by a member of a racial or ethnic minority group to be certified as both a woman-owned business and as a business owned by a member of a recognized racial or ethnic minority group under the State's minority business enterprise (MBE) program. It also allows firms with dual certification to participate in an individual procurement contract as either a woman-owned business or as a business owned by a member of a racial or ethnic minority group, but not both.

Fiscal Summary

State Effect: The bill's provisions are procedural in nature and can be handled with existing resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: 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 woman-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.

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 U.S. 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 woman-owned MBE that is also a member of an ethnic or racial minority group is certified as either owned by a woman or owned by a racial or ethnic minority, but not both. MDOT is the State's MBE certification agency.

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.

The MBE program is scheduled to terminate July 1, 2012.

Background: In fiscal 2007, 5.7% of all procurement awards were made to woman-owned firms, 3.6% were made to African American-owned firms, and 20% were made to all MBEs. Each of these results fell short of the MBE program goals established in statute.

State Fiscal Effect: MDOT indicates that it can adjust its MBE certification process to allow a business to be certified as both an African American or other racial or ethnic minority-owned business and a woman-owned business with existing resources.

Small Business Effect: Woman-owned businesses that are also owned by a member of a racial or ethnic minority group may have greater flexibility in pursuing subcontracting opportunities on State procurement contracts.

Additional Information

Prior Introductions: SB 990 of 2008 passed the Senate with amendments but did not receive a hearing in the House.

Cross File: SB 211 (Senator Pugh, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Board of Public Works, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

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