

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 961 (Prince George's County Delegation)
Health and Government Operations

**Prince George's County - Developers Receiving State Funding - Compliance with
Minority Business Enterprise Goals
PG 410-09**

This bill requires any person in Prince George's County who receives indirect or direct funding from the State including bonds for a development project in the county to comply with the State's minority business enterprise (MBE) goals. It also requires Prince George's County to conduct an MBE disparity study by October 1, 2010, and report the results to the county's House and Senate delegations by December 31, 2010.

The bill takes effect October 1, 2009, although the provisions requiring compliance with State MBE goals take effect January 1, 2011.

Fiscal Summary

State Effect: None.

Local Effect: Prince George's County expenditures increase by an estimated \$400,000 in FY 2010 and/or 2011 to conduct the mandated disparity study. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful for a developer who receives State funds for a development project in Prince George's County after January 1, 2011.

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 procurement. The statute further defines what constitutes an MBE. The Maryland Department of Transportation certifies MBEs on behalf of the State.

Prince George's County operates its own MBE program, which requires that 30% of total procurement spending be given to certified MBEs.

Background: 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 addition, the ruling held that MBE programs must demonstrate clear evidence that the program is narrowly tailored to address actual disparities in the marketplace. In response, Maryland conducts disparity studies every five years to gauge the extent of the gap between the State's use of MBEs and their availability in the marketplace. The most recent study was completed in 2006 at a cost of \$2.3 million. It found continuing statewide disparities across all racial and ethnic groups and business sectors.

Prince George's County last conducted a disparity study in 2005, which covered the period of fiscal 1994 to 2004. The study revealed underutilization of MBEs in all sectors and racial/ethnic groups except that Hispanic-owned construction firms were overutilized. Since 2005, Prince George's County has met or exceeded its MBE goal in every fiscal year.

Local Fiscal Effect: The 2005 disparity study conducted by Prince George's County cost about \$375,000. Prince George's County does not anticipate conducting another disparity study until at least 2014. Assuming that the cost of a disparity study has increased in the last five years, Prince George's county expenditures increase by approximately \$400,000 in fiscal 2010 and/or 2011 to conduct the mandated study by October 2010.

Small Business Effect: Beginning January 1, 2011, developers in Prince George's County that receive State funds will have to make good faith efforts to meet the State's MBE goals.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Prince George's County, Board of Public Works, Department of Budget and Management, Governor's Office, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

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mcp/rhh

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