

Department of Legislative Services  
 Maryland General Assembly  
 2010 Session

FISCAL AND POLICY NOTE

House Bill 1146 (Delegate Carter, *et al.*)  
 Health and Government Operations

**Procurement - Governor's Office of Minority Affairs - Office of Minority Business Enterprise Compliance**

This bill establishes a new Office of Minority Business Enterprise Compliance within the Governor’s Office of Minority Affairs (GOMA). The office is responsible for monitoring and auditing State procurement units’ compliance with the requirements of the State’s minority business enterprise (MBE) program. State procurement units must submit monthly reports to the office describing the status of each contractor’s utilization of MBE enterprises and their compliance with MBE program requirements.

**Fiscal Summary**

**State Effect:** General fund expenditures by GOMA increase by \$343,700 in FY 2011 for staff and operating expenses related to the new Office of Minority Business Enterprise Compliance. Future year costs reflect annualization and inflation. Reallocation of existing staff resources within affected procurement units may delay contract awards and affect contract monitoring.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	343,700	437,100	457,700	479,400	502,200
Net Effect	(\$343,700)	(\$437,100)	(\$457,700)	(\$479,400)	(\$502,200)

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

**Local Effect:** None.

**Small Business Effect:** Potential minimal.

## 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. An MBE owned by a woman who 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. The Maryland Department of Transportation (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, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for fiscal 2010 is \$1,504,585.

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

**Background:** Among other responsibilities, GOMA oversees the State's MBE program for approximately 60 State agencies, 14 public four-year colleges and universities,

16 community colleges, capital programs, and 24 local public school construction programs. In that capacity, GOMA issues the annual MBE compliance report, which involves collecting and verifying annual procurement data from all affected agencies. This process typically includes a contract-by-contract review to confirm MBE utilization data provided by agencies. The Governor’s proposed fiscal 2011 State budget includes \$1.4 million and 10 employees, including a special Secretary, for GOMA.

Under the Governor’s StateStat accountability program, instituted in 2007, 20 agencies, including the Department of General Services (DGS) and MDOT, must submit monthly MBE reports to GOMA for inclusion in their StateStat reports. GOMA staff audit the monthly reports.

**State Fiscal Effect:** The bill significantly expands GOMA’s oversight of the MBE program, requiring all affected agencies to submit monthly reports, not just the 20 agencies that currently participate in StateStat. This expansion affects several primary procurement units, including the Department of Budget and Management, Department of Information Technology, and the Treasurer’s Office, which are not currently subject to StateStat. It also affects the University System of Maryland, Morgan State University, and St. Mary’s College of Maryland, which are generally exempt from State procurement law and do not participate in StateStat. To receive and audit a dramatic increase in monthly MBE reports from procurement units, GOMA requires additional staff.

Therefore, general fund expenditures increase by \$343,722 in fiscal 2011, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring one office director, two MBE auditors, an information technology manager, and one administrative support staff member to review and audit monthly MBE compliance reports from approximately 40 additional State agencies. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	5.0
Salaries and Fringe Benefits	\$316,109
Start-up Costs	21,200
Ongoing Operating Expenses	<u>6,413</u>
<b>Total FY 2011 State Expenditures</b>	<b>\$343,722</b>

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

State agencies subject to the increased MBE reporting requirements may require additional staff to compile the data included in the mandated monthly reports. However, Legislative Services notes that agencies subject to StateStat reporting requirements have met those work demands largely with existing staff. Therefore, Legislative Services does

not anticipate an increase in staffing costs for those agencies. However, to the extent that the reporting requirements require reallocation of existing staff away from other procurement-related activities, contract awards may be delayed and contract monitoring may be affected.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 11, 2010  
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