

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 68 (Chair, Environmental Matters Committee)(By Request -
Departmental - Environment)

Environmental Matters Education, Health, and Environmental Affairs

**Department of the Environment - Grants - Small Businesses and Certified
Minority Business Enterprises**

This departmental bill requires recipients of grants over \$500,000 from the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund to take steps to include small, minority-owned, and women-owned businesses in the participation of funded projects.

Fiscal Summary

State Effect: None. The bill may minimally affect operations at the Maryland Department of the Environment (MDE) and the Maryland Department of Transportation (MDOT) but can be handled with existing resources. Net finances of the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund are not affected; however, to the extent that procurement costs increase under the bill's requirements, funding may decrease minimally for individual grant recipients or fewer projects may be funded.

Local Effect: Local government expenditures may increase minimally for jurisdictions that do not currently administer procurement compliance programs pertaining to small, minority-owned, or women-owned businesses.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). Legislative Services disagrees with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Affected grant recipients must ensure that steps are taken to include small, minority-owned, and women-owned businesses in funded projects by:

- placing small, minority-owned, and women-owned businesses on solicitation lists and soliciting them whenever they are potential sources;
- dividing projects into smaller tasks whenever economically feasible to permit greater participation;
- establishing delivery schedules that encourage participation from small, minority-owned, and women-owned businesses; and
- using the assistance of the Governor's Office of Minority Affairs and MDOT in identifying and soliciting small, minority-owned, and women-owned businesses.

The bill authorizes MDE to withhold financial assistance if a grantee does not take the required steps to its satisfaction. However, in considering whether a grantee has taken steps under the bill, MDE must consider the availability of small, minority-owned, and women-owned businesses that are capable of completing all or part of the project.

Current Law/Background:

The Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund

Chapters 120 and 121 of 2008 established a Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund within MDE to provide financial assistance for urban and suburban stormwater management practices and stream/wetland restoration. Chapters 120 and 121 direct money from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to support this fund; MDE is also authorized to issue revenue bonds for the benefit of the fund.

The Chesapeake and Atlantic Coastal Bays 2010 Trust Fund, established by Chapter 6 of the 2007 special session and modified by Chapters 120 and 121 of 2008, is used to assist in the financing of nonpoint source water pollution control projects such as stormwater retrofits and stream/wetland restoration projects. The trust fund was designed to help meet the State's commitment under the Chesapeake 2000 Agreement to remove the Chesapeake Bay watershed from the U.S. Environmental Protection Agency's list of impaired waters by 2010. The trust fund is supported by a portion of revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals.

The Governor's proposed fiscal 2011 budget for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund assumes revenues of about \$42.1 million for the trust fund, but the

proposed Budget Reconciliation and Financing Act of 2010 (SB 141/HB 151) transfers \$22.1 million to the general fund. The Governor's proposed fiscal 2011 budget includes about \$1.88 million for the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund.

The State's Minority Business Enterprise (MBE) Program

The MBE program establishes a goal that at least 25% of the total dollar value of each agency's procurement contract 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. MDOT serves as the State's MBE certification agency.

An MBE must be at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged. It must also be managed 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 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 for the purpose of being eligible for MBE certification. Personal net worth includes the individual's share of assets held jointly or as community property with a spouse but does not include the individual's ownership interest in an MBE or equity in a primary place of residence.

MDE advises that this bill makes the application of existing MBE procedures consistent with all other State capital grant programs administered by MDE, including the Bay Restoration Fund.

State Fiscal Effect: Small businesses often struggle to compete for State procurements because they lack capacity to carry out large projects or because larger companies can underbid small businesses as they can perform the work more efficiently due to their large scale. To the extent that greater participation from small, minority-owned, and women-owned businesses results in higher costs for Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund projects, costs for those projects may increase, resulting in fewer projects being funded or fewer funds supporting each project. Overall finances of the fund are not affected, however.

Local Fiscal Effect: Many local governments already handle procurement compliance related to small, minority-owned, and women-owned businesses, including jurisdictions that receive either federal or State assistance for water quality infrastructure projects. However, some local governments, typically smaller jurisdictions, may not have the institutional capacity to handle the bill's requirements. Thus, for some jurisdictions seeking to qualify for assistance for a Nonpoint Source Fund project there may be a minimal increase in expenditures or operational burden in order to monitor compliance with the bill's provisions among contractors hired to complete funded projects.

Small Business Effect: The bill is anticipated to increase opportunities for small businesses to participate in Nonpoint Source Fund project development, and thus may have a meaningful impact on small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Department of Budget and Management, Maryland Department of the Environment, Department of General Services, Governor's Office of Minority Affairs, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2010
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of the Environment – Grants – Small Businesses and Certified Minority Business Enterprises

BILL NUMBER: HB 68

PREPARED BY: Maryland Department of the Environment

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.