

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 268 (Delegate Taylor, *et al.*)  
Health and Government Operations

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Minority Business Enterprise Program and Small Business Reserve Program -  
Architectural and Engineering Services

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This bill requires the Board of Public Works (BPW) to adopt regulations requiring that architectural and engineering (A&E) firms whose financial viability exceeds \$6.0 million be graduated from the State's Minority Business Enterprise (MBE) program. It also raises the average gross sales cap from \$4.5 million to \$7.0 million for A&E firms to qualify as small businesses under the State's Small Business Reserve (SBR) program.

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Fiscal Summary

**State Effect:** None. BPW and the Maryland Department of Transportation (MDOT) can handle the bill's requirements with existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful for A&E firms.

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Analysis

**Current Law:**

*MBE Program*

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. 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.

In accordance with State regulations, MDOT decertifies an MBE if the owner's personal net worth exceeds the statutory limit or if the firm exceeds the federal definition of a small business, which varies by business sector. Under federal regulations (13 CFR 121.201), A&E firms with annual gross sales less than \$4.5 million qualify as small businesses; this bill increases the limit to \$6.0 million for A&E firms. If, during the next three years, the firm again becomes qualified for MBE status, it is eligible for recertification. However, if the firm remains decertified for three consecutive years, it graduates from the program and may no longer be certified. An MBE that is decertified by MDOT is still eligible for credit toward an MBE goal for a contract entered into when

the MBE was certified, and MBE decertification may not be the sole cause of a contract termination.

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

### *SBR Program*

Chapter 75 of 2004 established SBR and defined a small business as either a certified minority-owned business 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 do not exceed \$2.0 million for manufacturing firms, \$3.0 million for retail firms, \$4.0 million for wholesale distributors, \$4.5 million for architectural and engineering firms, \$7.0 million for construction firms, and \$10.0 million for service firms; 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, manufacturing, or architectural and engineering operations.

The Department of General Services (DGS) is responsible for certifying small businesses. Small businesses self-report their small business status, which DGS does not independently verify. SBR is scheduled to terminate September 30, 2010. Departmental legislation has been introduced to reauthorize the program.

SBR requires most State procurement units to structure their procurements so that at least 10% of the total dollar value of their procurements is made directly to small businesses. Under regulations adopted by DGS, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 10% of its forecasted spending to contracts for small businesses serving as prime contractors.

**Small Business Effect:** A&E firms with average annual gross sales of between \$4.5 million and \$7.0 million qualify for participation in SBR. Assuming that “financial viability,” an undefined term in the bill, is defined as average annual gross sales, A&E firms that participate in the MBE program and have gross sales of between \$4.5 million and \$6.0 million are no longer eligible for MBE decertification.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2010  
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