

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

**Revised**

House Bill 638

(Prince George's County Delegation and Montgomery  
County Delegation)

Health and Government Operations

Education, Health, and Environmental Affairs

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**Washington Suburban Sanitary Commission - Procurement and Minority  
Business Enterprises - WSSC Procurement Oversight Committee  
PG/MC 109-10**

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This bill establishes the Washington Suburban Sanitary Commission (WSSC) Procurement Oversight Committee to review any procurement made by WSSC for compliance with the minority business utilization program. If the committee determines that WSSC has not achieved compliance with minority business enterprise preferences, the committee must immediately report to the General Assembly on the findings and recommendations of the committee regarding the commission's noncompliance. WSSC must submit a written report to the committee demonstrating compliance with the minority business enterprise preferences. The committee must submit a report to the Montgomery County and Prince George's County legislative delegations on the status of minority business enterprise participation in procurements for WSSC by January 1, 2012.

The bill takes effect June 1, 2010, and terminates May 31, 2014.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** Potential significant increase in WSSC expenditures relating to expense reimbursements for committee members and staffing costs.

**Small Business Effect:** Meaningful. WSSC's minority business utilization programs foster minority business enterprise (MBE) participation in WSSC procurements.

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## Analysis

**Current Law:** Chapter 621 of 2007 reauthorized WSSC's minority business utilization program until July 2012 and codified the existence of the Office of Small, Local, and Minority Business Enterprise (OSLMBE).

The minority business utilization program within WSSC helps facilitate the participation of responsible certified MBEs for design/build construction contracts. Solicitations for design/build contracts must include the expected degree of participation by MBEs in the contract. Regulations establishing the minority business utilization program for design/build contracts must:

- recognize MBEs certified by the State and any other certification program that duplicates the requirements of State certification as an MBE;
- provide for an increase in MBE participation as prime contractors and subcontractors;
- allow some contracts to waive the program's requirements if they conflict with WSSC's overall objectives and responsibilities;
- allow for the graduation from the program of MBEs that no longer require special assistance;
- for solicitations that have an expected degree of MBE participation, require bids and proposals to include proof of involvement by an MBE;
- require contractors to adhere to certain reporting requirements.

WSSC is also authorized to operate a minority business utilization program for goods and services procurements if it determines that MBEs are underrepresented in those contracts and that such a program is necessary to remedy past discrimination against MBEs. In addition to including most of the requirements for the design/build MBE program, regulations for this program must:

- authorize MBE participation only through subcontracting;
- grant bidding preferences for MBEs of up to the lesser of 5% of the contract value or \$50,000;
- create a sheltered market program that restricts bidding on certain contracts only to MBEs; and
- establish targets that 40% of contracts be awarded to both Montgomery County-based and Prince George's County-based businesses.

OSLMBE is charged with:

- promoting and coordinating WSSC's plans, programs, and operations that promote or otherwise affect the establishment, preservation, and strengthening of MBEs;
- promoting activities and use of resources by WSSC, local governments, and private entities for the growth of MBEs;
- providing technical and managerial assistance to MBEs;
- scheduling seminars and workshops to educate MBEs about the how WSSC conducts business; and
- ensuring compliance with MBE subcontract participation goals.

OSLMBE is charged with confirming that prime contractors honor their commitments to their MBEs and maintain the promised level of participation by MBE contractors, subject to corrective actions, contract termination, or other remedy identified in the contract. By September 15 of each year, WSSC is required to submit annual reports to the Montgomery County and Prince George's County legislative delegations regarding the implementation and administration of its MBE programs. OSLMBE also administers WSSC's optional Local Small Business Enterprise Program.

**Background:** On December 1, 2009, WSSC announced the extension of its interim MBE program until April 30, 2011. While this interim MBE program is in effect, WSSC will conduct a disparity study to establish a basis for a long-term MBE program.

#### *MBE Performance Measures*

In fiscal 2009, WSSC awarded total contracts of \$389.1 million in four contracting areas – architecture and engineering (A/E); construction; professional services; and goods and services. Of this amount, \$92.5 million or 23.8% was awarded to certified MBE firms. In fiscal 2009, WSSC's total contract payments were \$252.5 million, including \$72.2 million (28.6%) to MBE firms, which was in excess of the payment goal of 25%, as shown in **Exhibit 1**. WSSC indicates that SLMBE Program initiatives have resulted in 278 contracts being awarded to certified MBE firms and 17 contracts being awarded to approved SLBE firms.

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**Exhibit 1**  
**WSSC MBE Performance Measures**  
**Fiscal 2009**

<u>Contracting Area</u>	<u>Goal</u>	<u>M/WBE<sup>1</sup></u>	<u>M/WBE<sup>1</sup> %</u>	<u>MBE</u>	<u>WBE</u>
A/E Services	24%	\$10,364,801	31%	\$8,287,634	\$2,077,167
Construction Services	20%	13,261,575	16%	13,019,857	241,718
Goods and Services	28%	46,274,968	40%	32,426,799	13,848,169
Professional Services	20%	2,266,415	41%	2,210,249	56,166
<b>Total</b>	<b>25%</b>	<b>\$72,167,759</b>	<b>30%</b>	<b>\$55,944,539</b>	<b>\$16,223,220</b>

<sup>1</sup>Minority/Women Business Enterprise  
Source: Washington Suburban Sanitary Commission

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*MBE Criteria*

Under State procurement law, 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 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.

## *WSSC Service Area*

WSSC is the eighth largest water and wastewater utilities in the country, providing water and sewer services to 1.8 million residents in Montgomery and Prince George's counties. It has over 460,000 customer accounts, serves an area of around 1,000 square miles, and currently employs more than 1,500 people. The agency operates four reservoirs, two water filtration plants, and six wastewater treatment plants. Additionally, the Blue Plains Water Pollution Control Plant handles as much as 169 million gallons per day under a cost sharing agreement with WSSC. The agency maintains nearly 5,500 miles of water main lines and over 5,300 miles of sewer main lines.

**State Fiscal Effect:** The bill does not designate an entity to provide staff support for the committee, nor does it indicate how the members of the committee appointed by the Speaker of the House and the President of the Senate are to be reimbursed. For purposes of this fiscal and policy note, it is assumed that expense reimbursements for committee members and staffing costs will be paid by WSSC.

**Local Fiscal Effect:** Potential administrative expenditures for the oversight committee may include expense reimbursements for members, staffing costs for at least two positions (an attorney and secretarial support), and miscellaneous office expenses. These costs may total approximately \$240,400 in fiscal 2011. Salaries and fringe benefits for the two positions may total \$195,400 in fiscal 2011, which reflects a salary of \$90,000 for the attorney position and \$50,000 for the secretarial position. Expense reimbursements for committee members and miscellaneous office expenses may total \$45,000 in fiscal 2011. This estimate reflects current salary levels for comparable WSSC positions and commission member expenses. Actual administrative expenditures under the bill may vary depending on how the oversight committee is created and staffed.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Prince George's County, Montgomery County, Washington Suburban Sanitary Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - March 19, 2010  
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