

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 959 (Delegate Carter, *et al.*)
 Health and Government Operations

Procurement - Single Minority Business Enterprise Certification Agency for Local Government Procurement

This bill requires the Board of Public Works (BPW) to develop regulations that establish one State agency with sole authority to certify minority business enterprises (MBEs) for all State and local procurements.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures by the Maryland Department of Transportation (MDOT) increase by at least \$56,300 in FY 2011 to process an increased number of certification applications. Future year expenditures reflect annualization and inflation. BPW can handle the bill’s requirements with existing budgeted resources. No effect on revenues.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	56,300	70,500	73,900	77,400	81,100
Net Effect	(\$56,300)	(\$70,500)	(\$73,900)	(\$77,400)	(\$81,100)

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

Local Effect: Potential reduction in expenditures by Baltimore City and other jurisdictions that operate their own MBE programs, to the extent that they no longer operate a certification program for local procurements.

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. MDOT is the State's MBE certification agency.

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.

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: 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 an MBE program must demonstrate clear evidence that the program is narrowly tailored to address actual disparities in the marketplace for the jurisdiction that operates the program.

Several local jurisdictions, most notably Prince George's County, Montgomery County, and Baltimore City, operate local MBE programs for their own procurement processes. MBE certification in Montgomery County and Prince George's County each require State certification as a precondition to local certification, but Baltimore City operates its own certification program, which uses the same general criteria in establishing whether a firm is owned and controlled by a woman or member of a minority population. However, State certification generally requires the submission of more financial information than the city process because of the personal net worth cap, which the city does not have. Among local jurisdictions, therefore, Baltimore City's program will have the greatest effect on implementation of this bill's requirements.

MDOT has more than 4,000 certified MBEs, and Baltimore City has approximately 1,200 certified MBEs under its program. MDOT processes an average of 1,260 new certification applications and 3,300 renewal applications each year. Baltimore City processes a combined total of about 650 new and renewal applications each year. Neither MDOT nor Baltimore City tracks how much overlap exists between the two certification processes.

State Fiscal Effect: New MBE certification applications require firms to submit extensive documentation to MDOT's Office of Minority Business Enterprise (OMBE), including:

- a current financial statement;
- complete federal tax returns for the most recent three years;
- proof of minority status (birth certificate, driver's license, passport, or naturalization papers);
- general business insurance information;
- resumes of key personnel;
- a statement of net worth; and
- a statement of disadvantage (notarized affidavit required).

MDOT employs eight investigators to process new certification applications, roughly 160 applications per investigator. In addition, MDOT employs four investigators to review and process renewal applications, roughly 825 applications per investigator.

Applying the State ratio of renewal to new applications (almost 3 to 1) to the total number of applications received by Baltimore City annually yields roughly 165 new applications per year and 485 renewal applications. Assuming that half of those firms seeking Baltimore City certification do not already have MDOT certification, MDOT must review approximately 82 additional new applications and 242 renewal applications. Based on current workloads for MDOT investigators, one additional investigator is needed to handle the increased workload within the same timeframe. MDOT currently processes applications within 140 days of receipt on average. To the extent that more than half of Baltimore City firms do not have MDOT certification, or that other jurisdictions have large numbers of certified firms that do not already have MDOT certification, one additional investigator may be necessary (for a total of two investigators).

Therefore, TTF expenditures by MDOT increase by at least \$56,331 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring one MBE officer to handle the increase in new and renewal certification applications created by this bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$49,888
Start-up Costs	4,335
Ongoing Operating Expenses	<u>2,108</u>
Total FY 2011 State Expenditures	\$56,331

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

Additional Comments: This bill may violate *Croson's* requirement that minority preference programs be narrowly tailored to address disparities in affected jurisdictions. To the extent that the State's certification program is more broadly tailored than Baltimore City's program or programs used by other local jurisdictions (because it applies to disparities found statewide instead of only in that local jurisdiction), the bill might be subject to legal challenge. BPW regulations may eliminate this concern by requiring MDOT to adopt regional certification requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Harford, Montgomery, and St. Mary's counties; Town of Bel Air; Baltimore City; City of Salisbury; Board of Public Works; Department of Budget and Management; Governor's Office; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2010
mpc/rhh

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510