

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 333  
Economic Matters

(Delegate B. Robinson, *et al.*)

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Commission to Study the Employment of Ethnic Minorities and Women Under  
Procurement Contracts at Baltimore-Washington International Thurgood  
Marshall Airport

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This bill establishes the Commission to Study the Employment of Ethnic Minorities and Women Under Procurement Contracts at Baltimore-Washington International (BWI) Thurgood Marshall Airport. The Governor designates the commission's chair, and the Maryland Department of Transportation (MDOT) and the Department of General Services (DGS) jointly provide staff for the commission. The commission must report its findings and recommendations to the Governor and General Assembly by December 31, 2016.

The bill takes effect June 1, 2016, and terminates June 30, 2017.

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**Fiscal Summary**

**State Effect:** None. MDOT and DGS can staff the commission with existing budgeted resources. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The commission is charged with:

- examining the working conditions and employment opportunities for employees of contractors at BWI;

- examining and assessing the distribution by work category of ethnic minorities and women employed by contractors at BWI;
- reviewing the level of compensation and other benefits paid to ethnic minorities and women with regard to the solicitation and award of procurement contracts at BWI;
- reviewing and evaluating matters concerning the participation of ethnic minorities and women with regard to solicitation and award of procurement contracts at BWI; and
- examining other matters relating to the employment of employees by contractors under procurement contracts at BWI.

**Current Law/Background:** For a complete description of the State’s Minority Business Enterprise (MBE) program, please see the **Appendix – Minority Business Enterprise Program**.

The Maryland Aviation Administration (MAA) is a modal unit of MDOT. MAA has responsibility for fostering, developing, and regulating aviation activity throughout the State. MAA is responsible for operating, maintaining, and developing BWI (a State-owned airport) as a major center of commercial air carrier service in the State and Martin State Airport as a general aviation facility and as a support facility for the Maryland Air National Guard and the Maryland State Police.

In fiscal 2014, the most recent data available, MAA awarded \$335.4 million in contracts, of which \$62.6 million (18.7%) went to MBEs. It cannot be determined what percentage of these contracts were for goods and services at BWI.

AirMall Maryland, Inc. entered into a retail management lease contract with MAA in 2004, and the lease’s termination date is March 31, 2022. The lease agreement allows for an early termination without cause after April 1, 2017, with six months’ notice. AirMall leases space in BWI from MAA and then subleases these spaces to food service, retail, and certain service concession operators. AirMall encompasses 120,000 square feet of concessions space within BWI and subleases to the 46 business entities that run 95 establishments within BWI.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Governor's Office of Minority Affairs, Office of the Attorney General, Department of Budget and Management, Department of General Services, Maryland Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 10, 2016  
md/ljm

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## Appendix – Minority Business Enterprise Program

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The State's Minority Business Enterprise (MBE) program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Governor's Office of Minority Affairs (GOMA), in consultation with the Secretary of Transportation and the Attorney General. In a year in which there is a delay in establishing the overall goal, the previous year's goal applies. Likewise, the Special Secretary (in consultation with the Secretary of Transportation and the Attorney General) is required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the guidelines, the previous year's guidelines apply.

Prior to the enactment of Chapters 252 and 253 of 2011 and Chapter 154 of 2012, State law established a goal that at least 25% of the total dollar value of each agency's procurement contracts be awarded to MBEs, including subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses. In August 2013, GOMA announced a new statewide goal of 29% MBE participation that applied to fiscal 2014 and 2015; as no new goal has been established, the 29% goal remains in effect for fiscal 2016. GOMA issued subgoal guidelines in July 2011, summarized in **Exhibit 1**, which are also still in effect. The guidelines state that subgoals may be used only when the overall MBE goal for a contract is greater than or equal to the sum of all recommended subgoals for the appropriate industry, plus two. In June 2014, new regulations took effect, allowing MBE prime contractors to count their own work for up to 50% of a contract's MBE goal and up to 100% of any contract subgoal. Previously, certified MBE prime contractors could not count their own participation toward any goal or subgoal on an individual contract, but their participation was counted toward the State's MBE goal.

There are no penalties for agencies that fail to reach the statewide target. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

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**Exhibit 1**  
**Subgoal Guidelines for MBE Participation**

	<u>Construction</u>	<u>Architectural/ Engineering</u>	<u>Maintenance</u>	<u>Information Technology</u>	<u>Services</u>	<u>Supplies/ Equipment</u>
African American	7%	6%	8%	7%	7%	6%
Hispanic	-	2%	3%	2%	-	-
Asian	4%	-	3%	-	4%	5%
Women	-	9%	-	8%	12%	10%
<b>Total</b>	<b>11%</b>	<b>17%</b>	<b>14%</b>	<b>17%</b>	<b>23%</b>	<b>21%</b>
<b>Total +2</b>	<b>13%</b>	<b>19%</b>	<b>16%</b>	<b>19%</b>	<b>25%</b>	<b>23%</b>

Source: Governor's Office of Minority Affairs

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*History and Rationale of the MBE Program*

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. As a result, prior to each reauthorization of the State's MBE program, the State typically conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The most recent disparity study was published in February 2011 and serves as the basis for the two most recent reauthorizations of the MBE program. It found continued and ongoing disparities in the overall annual wages, business earnings, and rates of business formation between nonminority males and minorities and women in Maryland. For instance, average annual wages for African Americans (both men and women) and nonminority women were 33% lower than for comparable nonminority males. It also found continued disparities in the use of MBEs compared to their availability in the marketplace to perform work in designated categories of work. For instance, African American-owned businesses were paid 4.5% of State construction contract dollars, but they made up 9.7% of the construction sector in the State. Woman-owned businesses were paid 8.5% of maintenance contract dollars, despite making up 18.0% of the maintenance contract sector. Similar disparities were found in other contracting sectors and for other MBE categories. The next disparity study is due by September 30, 2016.

The MBE program is scheduled to terminate July 1, 2017; it has been reauthorized seven times since 1990, the latest by Chapters 200 and 201 of 2013. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies for fiscal 2014, the most recent year for which data is available.

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**Exhibit 2**  
**MBE Participation Rates, by Agency**  
**Fiscal 2014**

<u>Cabinet Agency</u>	<u>% MBE Participation</u>
Aging	26.1%
Agriculture	4.9%
Budget and Management	8.1%
Business and Economic Development <sup>1</sup>	23.0%
Education	13.6%
Environment	32.8%
Executive Department	27.5%
General Services	27.2%
Health and Mental Hygiene	51.0%
Higher Education Commission	8.7%
Housing and Community Development	43.5%
Human Resources	17.9%
Information Technology	52.1%
Juvenile Services	2.6%
Labor, Licensing, and Regulation	26.0%
Military	23.0%
Natural Resources	9.3%
Planning	4.6%
State Police	26.3%
Public Safety and Correctional Services	54.5%
Transportation – Aviation Administration	18.7%
Transportation – Motor Vehicle Administration	55.2%
Transportation – Office of the Secretary	33.4%
Transportation – Port Administration	20.1%
Transportation – State Highway Administration	19.9%
Transportation – Transit Administration	18.1%
Transportation – Transportation Authority	27.1%
<b>Statewide Total<sup>2</sup></b>	<b>27.3%</b>

<sup>1</sup>The Department of Business and Economic Development has since been reorganized and renamed.

<sup>2</sup>Includes University System of Maryland, Morgan State University, St. Mary's College of Maryland, Baltimore City Community College, and nonCabinet agencies.

Source: Governor's Office of Minority Affairs

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### *Requirements for MBE Certification*

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.

A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African American, American Indian/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 is the State's MBE certification agency.

A socially disadvantaged individual is someone who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her 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 in the same or similar line of business 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 calendar 2016 is \$1,674,928.