

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 508
Finance

(Senator Robinson)

**Task Force to Study the Feasibility of and Impact on Small and Minority
Businesses in Maryland Conducting Business Internationally**

This bill establishes the Task Force to Study the Feasibility of and Impact on Small and Minority Businesses in Maryland Conducting Business Internationally, staffed by the Governor's Office of Minority Affairs (GOMA). A member of the task force may not receive compensation but is entitled to reimbursement for expenses. The task force must (1) study the challenges facing, and opportunities for, small and minority businesses in Maryland engaging in business in international settings and (2) investigate the feasibility of partnerships between small and minority businesses in Maryland and businesses in other countries. The task force must report its findings and recommendations to the Governor and General Assembly by December 31, 2018.

The bill takes effect June 1, 2017, and terminates June 30, 2018.

Fiscal Summary

State Effect: Although GOMA advises that it needs contractual staff for two years, the Department of Legislative Services (DLS) believes GOMA can staff the task force and provide expense reimbursements with existing budgeted resources. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

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

There are no provisions in current law related to MBEs doing business internationally.

Additional Comments: DLS notes that the bill terminates before the report is due. This analysis assumes that the task force concludes its work and submits the report concurrent with the bill's termination date – on June 30, 2018.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office of Minority Affairs; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2017
mm/ljm

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Appendix – Minority Business Enterprise Program

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. The Special Secretary is also 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.

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 2017. 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.

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%
Total	11%	17%	14%	17%	23%	21%
Total +2	13%	19%	16%	19%	25%	23%

MBE: Minority Business Enterprise

Source: Governor’s Office of Minority Affairs

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.

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 conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The most recent disparity study was completed in February 2011 and serves as the basis for the most recent reauthorization 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. A new disparity study is in process; by statute it was required to be completed by September 2016, but it was not completed by that date.

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 based on contract awards made during fiscal 2015, the most recent year for which data is available.

Exhibit 2
MBE Participation Rates, by Agency
Fiscal 2015

<u>Cabinet Agency</u>	<u>% MBE Participation</u>
Aging	30.0%
Agriculture	3.4%
Budget and Management	2.4%
Commerce	8.8%
Education	17.0%
Environment	10.1%
Executive Department	17.2%
General Services	21.5%
Health and Mental Hygiene	66.3%
Higher Education Commission	59.5%
Housing and Community Development	32.0%
Human Resources	9.8%
Information Technology	6.8%
Juvenile Services	10.0%
Labor, Licensing, and Regulation	30.7%
Military	24.5%
Natural Resources	12.5%
Planning	7.8%
State Police	21.9%
Public Safety and Correctional Services	53.9%
Transportation – Aviation Administration	24.1%
Transportation – Motor Vehicle Administration	38.9%
Transportation – Office of the Secretary	39.0%
Transportation – Port Administration	9.5%
Transportation – State Highway Administration	24.1%
Transportation – Transit Administration	15.6%
Transportation – Transportation Authority	25.8%
Statewide Total¹	26.2%

MBE: Minority Business Enterprise

¹Includes University System of Maryland and non-Cabinet agencies.

Source: Governor’s Office of Minority Affairs

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, 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 subject 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 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 2017 is \$1,692,682.