

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 277

(Delegate Walker, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs  
and Budget and Taxation

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State Government - Brokerage and Investment Management Services - Use of  
Minority Business Enterprises - Application

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This bill requires the Department of Business and Economic (DBED), the Maryland Higher Education Commission (MHEC), the Department of Housing and Community Development (DHCD), and the Maryland Teachers' and State Employees' Supplemental Retirement Plans (MSRP) to attempt to use minority business enterprises (MBEs) to the greatest extent feasible to provide brokerage and investment management services. It also clarifies a reporting requirement related to similar requirements that already apply to the State Treasurer, Maryland Automobile Insurance Fund (MAIF), Injured Workers' Insurance Fund (IWIF), and the State Retirement and Pension System (SRPS).

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Fiscal Summary

**State Effect:** No likely effect on revenues for DBED, DHCD, MHEC, or MSRP, which either do not use brokerage or investment management services, or invest their funds through the Treasurer's Office, which is already subject to the bill's requirements from prior legislation. No effect on expenditures.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful for minority- and women-owned investment management and brokerage firms.

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Analysis

**Bill Summary:** The use of MBEs by the affected units must be consistent with MBE purchasing standards in current law and with their respective fiduciary responsibilities. The bill also requires the units to work with the Governor's Office of Minority Affairs (GOMA) to develop guidelines to implement the bill's provisions. They must submit

annual reports to GOMA and the General Assembly on their use of MBE brokerage and investment firms in each allocated asset class and their efforts to encourage greater use of MBE firms. Those efforts must include the use of a wide variety of media, including their websites, to publicize the brokerage and investment management services they use.

**Current Law:** Chapters 600 and 601 of 2008 required the State Treasurer, MAIF, IWIF, and SRPS to attempt to use MBE brokerage and investment management services to the extent feasible, consistent with MBE standards and their respective fiduciary duties. Identical to the requirements in this bill, Chapters 600 and 601 also required the four units to work with GOMA to develop guidelines to implement the bill's provisions and to report annually to GOMA on their use of MBE investment management and brokerage services.

### *Minority Business Enterprise 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; long-standing subgoals of 7% for African American-owned businesses and 10% for woman-owned businesses were repealed by Chapters 252 and 253 of 2011. Instead, Chapters 252 and 253 authorize GOMA, in consultation with the Maryland Department of Transportation (MDOT) and the Office of the Attorney General, to establish guidelines for each unit to consider while determining whether to set subgoals for individual procurements based on existing categories for minority groups. There are no penalties for agencies that fail to reach the 25% target. 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. There are no restrictions on the size or management structure of not-for-profit entities that can be considered MBEs.

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 and is responsible for conducting the mandated disparity study.

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 calendar 2012 is \$1,577,377.

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

**Background:** Exhibit 1 shows the extent to which the State Treasurer, MAIF, IWIF, and SRPS used MBE investment managers and brokers in fiscal 2010, the most recent data available from GOMA.

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**Exhibit 1**  
**Use of MBE Investment Management and Brokerage Services**  
**Fiscal 2010**  
**(\$ in Millions)**

	<b>Investment Management</b>			<b>Brokerage Services</b>		
	<b><u>Total Assets</u></b>	<b><u>MBE Assets</u></b>	<b><u>%</u></b>	<b><u>Total</u></b>	<b><u>MBE</u></b>	<b><u>%</u></b>
SRPS	\$31,840.9	\$2,905.4	9.1%	\$14.0	\$1.6	11.4%
MAIF	299.0	42.0	14.0	NA	NA	NA
IWIF	1,643.7	92.4	5.6	NA	NA	NA
Treasurer	NA	NA	NA	37	14	37.8

Note: Brokerage service data for the State Treasurer is expressed in number of brokers used; brokerage service data for SRPS is expressed as commissions paid to brokers.

Source: Governor's Office of Minority Affairs

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The State Treasurer's Office manages all assets in-house, and therefore does not use external investment managers. Neither MAIF nor IWIF uses brokerage services; all brokerage services are handled by their investment managers.

**State Fiscal Effect:** DHCD and MHEC advise that the Treasurer invests all of their funds, and the Treasurer's use of MBE brokerage and investment management services is

already subject to the requirements of Chapters 600 and 601. DBED advises that it does not use brokerage or investment management services. MSRP advises that it, too, does not use brokerage services. It contracts with investment managers that are already subject to MBE requirements under procurement law, so it does not anticipate that this bill will have any additional effects on its operations.

GOMA's advisory role under the bill is consistent with its mission and current role as provider of technical assistance to State agencies regarding efforts to achieve the MBE program goals. Its experience providing guidance to the four units subject to Chapters 600 and 601 should enable it to provide similar services to the units subject to this bill with existing resources.

**Small Business Effect:** Most MBEs are small businesses. By requiring additional State entities to make an effort to employ more minority- and women-owned brokerage and investment firms, the bill may directly benefit small businesses that meet the MBE definition and provide brokerage or investment management services.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 343 (Senator Pugh, *et al.*) - Education, Health, and Environmental Affairs and Budget and Taxation.

**Information Source(s):** Department of Business and Economic Development, Board of Public Works, Department of Budget and Management, Governor's Office, Department of General Services, Department of Housing and Community Development, Maryland Higher Education Commission, Maryland Insurance Administration, Injured Workers' Insurance Fund, Maryland State Retirement Agency, Maryland Department of Transportation, Maryland State Treasurer's Office, Department of Legislative Services

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