



MARYLAND STATE TREASURER
Nancy K. Kopp

Written Testimony of State Treasurer Nancy K. Kopp

SB 442 – Public-Private Partnership Agreements – Minority Business Enterprise Program

**Before the
Senate Budget and Taxation Committee**

February 12, 2020

Thank you for the invitation to comment on SB 442, a proposal to explicitly apply the provisions of the Minority Business Enterprise (MBE) Program, to the extent constitutionally permissible, to Public-Private Partnerships (P3). Given my role as your representative on the Board of Public Works, and as a former member of the Joint Legislative & Executive Commission on Oversight of Public-Private Partnerships, I appreciate the opportunity to focus attention on our MBE program, and support SB 442 and HB 313.

As you know, the State's MBE Program was established within Title 14 of the State Finance & Procurement Article in 1988 to combat past racial discrimination in state contracts and help expand the number of minority contractors. Subsequently, in 2010 the General Assembly enacted in Title 10A of the same Article, the State's first comprehensive Public-Private Partnership statute, and in 2013, based on the subsequent Report of the Joint Legislative and Executive Commission on Oversight of Public-Private Partnerships, essentially recrafted and strengthened that Public-Private Partnership statutory framework. Among the new provisions in the 2013 law was explicit, rather than implicit, establishment of aspirational MBE goals as part of P3 solicitations. This language was carefully crafted to meet the Constitutional constraints set out by the Supreme Court in the *City of Richmond v. J.A. Croson Company* decision.

Unfortunately, the 2013 language regarding MBE participation in P3's was allowed to "sunset" in 2016 and, therefore, intent regarding MBE participation in a specific P3 type of solicitation reverted to implicit inclusion via Title 14 coverage of state procurements in general. A law enacted in 2018 reinstated the provisions specifically for any P3 regarding the State Center Project, but not for all P3's.

It is my understanding that SB 442 incorporates the same carefully crafted language incorporated in Title 10A prior to its 2016 expiration, and seeks to rectify what I believe was an unintended consequence of the provision's sunset. The bill will once again explicitly encourage compliance with the MBE Program, a goal surely we all can agree is unchanged since the language was originally added.

I respectfully and strongly urge a favorable report on SB 442.