

Senate Bill 252 Testimony EMB.pdf

Uploaded by: Edsel Brown, Jr.

Position: FAV

**TESTIMONY OF EDESEL M. BROWN JR.
SENATE FINANCE COMMITTEE
SUPPORTING SENATE BILL 252**

Tuesday, January 31, 2023
1pm

Good afternoon, Chairwoman Griffith, and members of the Finance Committee. My name is Edsel M. Brown Jr., I live in Lusby, Maryland, and I am the Chairman of the Southern Maryland Minority Chamber of Commerce.

I fully support Senate Bill 252.

I have extensive experience working with, supporting, and providing guidance to Minority Business Enterprises here in Maryland and across the country. In addition to currently serving as the Chair of the Southern Maryland Minority Chamber of Commerce, I have served as an Assistant Administrator of the U.S. Small Business Administration's 8(a) program, Chair of Economic Development for the Maryland State NAACP, as well as a DC based Attorney and Accredited Small Business Consultant. In my experiences in the public, private, and nonprofit arenas, there is one common theme, Minority Businesses are always in a "catch up mode" with majority businesses. Access to capital is the cornerstone resource needed to move a business forward and Minority Businesses lag far behind majority businesses in being able to secure it. State based procurement contracts require contractors to have a solid financial footing and the ability to stretch capital resources in the performance on a contract and the downtime in being paid for that performance. Assistance and bridges must be secured to move these businesses ever forward. We must not lose sight of the fact that small businesses are the engine of the economy and as our small businesses grow, so does the State Economy. This Minority Business Enterprise Procurement Financing Program will go a long way in increasing the ability of the State's Minority Businesses to enter into and complete performance on awards with the increased access to loans and grants.

On behalf of the Southern Maryland Minority Chamber of Commerce, I urge you to vote in favor of Senate Bill 252

Thank you, Finance Committee, for the opportunity to speak and offer to answer questions you may have.

2023 SB38 Written Testimony.pdf

Uploaded by: Deborah Brocato

Position: UNF



Opposition Statement SB38

Minority Business Enterprise Procurement Contract Financing
Deborah Brocato, Legislative Consultant
Maryland Right to Life

We Oppose SB38

On behalf of our 200,000 followers across the state, we respectfully object to SB38. We oppose the funding of abortion services and abortion providing enterprises through the state contracts described in this bill and we oppose any monies and/or investment earnings from the Minority Business Enterprise Procurement Contract Financing Fund to be used for the funding of abortion services and organizations providing abortion services.

Pregnancy is not a Disease

Abortion is not healthcare. It is violence and brutality that ends the lives of unborn children through suction, dismemberment or chemical poisoning. The fact that 85% of OB-GYNs in a representative national survey do not perform abortions on their patients is glaring evidence that abortion is not an essential part of women's healthcare. Women have better options for comprehensive health care. There are 14 federally qualifying health care centers for every Planned Parenthood in Maryland. Abortion has a disproportionate impact on Black Americans who have long been targeted by the abortion industry for eugenics purposes. As a result abortion is the leading cause of death of Black Americans, more than gun violence and all other causes combined.

No public funding for abortions

Taxpayers should not be forced to fund elective abortions, which make up the vast majority of abortions committed in Maryland. State funding for abortion on demand with taxpayer funds is in direct conflict with the will of the people. A 2023 Marist poll showed that 60% of Americans, both "pro-life" and "pro-choice" oppose the use of tax dollars to pay for a woman's abortion.

Love them both

This bill stands in conflict with the fact that 81% of Americans polled favor laws that protect both the lives of women and unborn children. Public funds instead should be prioritized to fund health and family planning services which have the objective of saving the lives of both mother and children, including programs for improving maternal health and birth and delivery outcomes, well baby care, parenting classes, foster care reform and affordable adoption programs.



Opposition Statement SB38 , page 2 of 2
Minority Business Enterprise Procurement Contract Financing
Deborah Brocato, Legislative Consultant
Maryland Right to Life

Funding restrictions are constitutional

The Supreme Court of the United States, in *Dobbs v. Jackson Women’s Health* (2022), overturned *Roe v. Wade* (1973) and held that there is no right to abortion found in the Constitution of the United States. As early as 1980 the Supreme Court affirmed in *Harris v. McRae*, that *Roe* had created a limitation on government, not a government funding entitlement. The Court ruled that the government may distinguish between abortion and other procedures in funding decisions -- noting that “*no other procedure involves the purposeful termination of a potential life*”, and held that there is “*no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds.*”

We ask for an unfavorable report given for **SB38**.

SB 38_MBE Procurement Contract Financing_LOI.pdf

Uploaded by: Jennifer LaHatte

Position: INFO



Wes Moore | Governor
Aruna Miller | Lt. Governor
Signe Pringle | Acting Secretary

DATE: January 31, 2023
BILL NO: Senate Bill 38
BILL TITLE: Minority Business Enterprise Procurement Contract Financing
COMMITTEE: Senate Finance Committee
POSITION: Statement of Information

Senate Bill 38 proposes to establish and add a new fund under the Maryland Small Business Development Financing Authority Program (MSBDFA). The proposed Minority Business Enterprise Procurement Contract Financing Program would provide financing assistance for working capital to qualified Minority Business Enterprises (MBEs) specifically seeking to obtain and perform State procurement contracts. The financing assistance would be in the form of loans and grants, and available to MBEs with net worth no greater than \$2,000,000.

The MSBDFA program was created by the Maryland General Assembly in 1978, and Contract Financing was the first program initiated under the program. MSBDFA's Contract Financing Program is currently operating and continues to be a critical financing tool for MBEs. Of the four MSBDFA funds, Contract Financing is consistently one of the most active components.

During the last five fiscal years, the MSBDFA Contract Financing Program provided loans in the total amount of \$1.8 million to nine small, minority and women owned businesses. Additionally, the Equity Participation Investment Program (EPIP) under MSBDFA has provided loans in the total amount of \$24.2 million to 201 small, minority and woman owned businesses¹. EPIP also has the capability to provide working capital to facilitate performance on contracts, both government and private-commercial.

The Department would need an increase in General Funds of approximately \$1.0 million to cover an increase in program activity and operating costs directly related to the proposed new program component. Additionally, the Department uses a private contractor, Meridian Management Group, Inc. (MMG) to manage the MSBDFA program. Operating expenses for the MSBDFA program for FY 2022 include a management fee to the contractor equal to \$1.8 million. It is probable the contractor would request additional compensation to manage the proposed new program component.

The proposed new program component is duplicative and would contribute additional expense and complexity to the program. The program is currently an effective tool to address the need for capital by the diverse racial, ethnic and gender population in our State that it serves. Additionally, the program has a substantial impact each year on Maryland's economy by helping local businesses start, expand, and create and retain employment opportunities. The MSBDFA program is an important component of the Department's strategy to assist small businesses.

¹ This number includes additional funding provided through the Rainy Day Fund for Covid-19 relief.

SB0038 - TSO - MBE Contract Financing - LOI_FINAL.

Uploaded by: Patricia Westervelt

Position: INFO

January 31, 2023

The Honorable Melony Griffith
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Letter of Information – Senate Bill 38 – Minority Business Enterprise Procurement Contract Financing

Dear Chair Griffith and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 38 but offers the following information for the Committee's consideration.

The Maryland General Assembly established the State's Minority Business Enterprise (MBE) Program in 1978. The MBE Program has been recodified, with amendments, under the State Finance and Procurement Article, Title 14, Subtitle 3. Periodically, the General Assembly has reenacted the law with amendments, but only after considering studies on disparities, Disparity Studies, in the utilization of minority and woman-owned firms in Maryland's marketplace. Findings of the Disparity Study assess data on the existence, extent, and impact of discrimination, if any, against minority and woman-owned firms on contracting opportunities within the public and private sectors within and/or in the proximity of the State.

Every aspect of the implementation of the MBE program, including State statutory and regulatory requirements, is controlled by the data that is contained in the State's Disparity Study, per the United States Constitution's 14th Amendment Equal Protection Clause. The Constitution requires that programs like the MBE Program, which use racial classifications to provide a benefit to specific classes of people based on immutable characteristics like race, must pass the judicial test of strict scrutiny by having the following two components:

- Compelling governmental interest - the existence of and need to remedy past or present discrimination (This is established through the data analysis of the State's MBE Disparity Study, which documents the existence of discrimination in Maryland's Marketplace.)
- Narrowly tailored - any remedies used to address the compelling interest must be narrowly tailored. (This component is satisfied through provisions of the MBE Program that provide flexibility in the programs operation such as requiring that contract goals and waivers be established on contract-by-contract basis and that each waiver request be evaluated and approved if deemed appropriate.)

The Honorable Melony Griffith
Page Two

Senate Bill 38 bill makes changes to the MBE Program law that may impact the constitutionality of the Program. The bill creates the MBE Procurement Contract Financing Program (within MSBDFA) to provide capital to certified MBEs (with net worth under \$2M) with an aim toward facilitating those MBE's ability to enter into and perform under State procurement contracts. Such legislation may only be implemented if the State determines that there is an evidentiary basis for implementing race- and/or gender-based remedial measures and those measures are narrowly tailored to that evidence. It is unclear in Senate Bill 38 whether there is evidence and narrow tailoring sufficient to satisfy constitutional requirements. Furthermore, Senate Bill 38 changes the eligibility requirements of the MBE Program by raising the Personal Net Worth cap for MBEs to an amount that is higher than that allowed for other participants. None of the aforementioned policies are supported by data in the Disparity Study, making the policies legally impossible to implement without further analysis.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 38.

Respectfully submitted,

Chantal Kai-Lewis, Esq.
Director, Office of Small & Minority Business Policy
Maryland Department of Transportation
410-865-1156

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090

SB0038 - TSO - MBE Contract Financing - LOI_FINAL.

Uploaded by: Pilar Helm

Position: INFO

January 31, 2023

The Honorable Melony Griffith
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Letter of Information – Senate Bill 38 – Minority Business Enterprise Procurement Contract Financing

Dear Chair Griffith and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 38 but offers the following information for the Committee's consideration.

The Maryland General Assembly established the State's Minority Business Enterprise (MBE) Program in 1978. The MBE Program has been recodified, with amendments, under the State Finance and Procurement Article, Title 14, Subtitle 3. Periodically, the General Assembly has reenacted the law with amendments, but only after considering studies on disparities, Disparity Studies, in the utilization of minority and woman-owned firms in Maryland's marketplace. Findings of the Disparity Study assess data on the existence, extent, and impact of discrimination, if any, against minority and woman-owned firms on contracting opportunities within the public and private sectors within and/or in the proximity of the State.

Every aspect of the implementation of the MBE program, including State statutory and regulatory requirements, is controlled by the data that is contained in the State's Disparity Study, per the United States Constitution's 14th Amendment Equal Protection Clause. The Constitution requires that programs like the MBE Program, which use racial classifications to provide a benefit to specific classes of people based on immutable characteristics like race, must pass the judicial test of strict scrutiny by having the following two components:

- Compelling governmental interest - the existence of and need to remedy past or present discrimination (This is established through the data analysis of the State's MBE Disparity Study, which documents the existence of discrimination in Maryland's Marketplace.)
- Narrowly tailored - any remedies used to address the compelling interest must be narrowly tailored. (This component is satisfied through provisions of the MBE Program that provide flexibility in the programs operation such as requiring that contract goals and waivers be established on contract-by-contract basis and that each waiver request be evaluated and approved if deemed appropriate.)

The Honorable Melony Griffith
Page Two

Senate Bill 38 bill makes changes to the MBE Program law that may impact the constitutionality of the Program. The bill creates the MBE Procurement Contract Financing Program (within MSBDFA) to provide capital to certified MBEs (with net worth under \$2M) with an aim toward facilitating those MBE's ability to enter into and perform under State procurement contracts. Such legislation may only be implemented if the State determines that there is an evidentiary basis for implementing race- and/or gender-based remedial measures and those measures are narrowly tailored to that evidence. It is unclear in Senate Bill 38 whether there is evidence and narrow tailoring sufficient to satisfy constitutional requirements. Furthermore, Senate Bill 38 changes the eligibility requirements of the MBE Program by raising the Personal Net Worth cap for MBEs to an amount that is higher than that allowed for other participants. None of the aforementioned policies are supported by data in the Disparity Study, making the policies legally impossible to implement without further analysis.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 38.

Respectfully submitted,

Chantal Kai-Lewis, Esq.
Director, Office of Small & Minority Business Policy
Maryland Department of Transportation
410-865-1156

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090