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March 25, 2025

The Honorable Joseline Pena-Melnyk  
Chair, House Health & Government Operations Committee  
241 Taylor House Office Building  
Annapolis, MD 21401

***RE: Letter of Support – Senate Bill 829 – State Procurement – Minority Business Enterprise Program – Extensions and Reports***

Dear Chair Pena-Melnyk and Committee Members:

The Maryland Department of Transportation (MDOT) supports Senate Bill 829, as it would allow for the continuation of the State's Minority Business Enterprise (MBE) Program past its current sunset date of July 2025 and extends the application of the Program to several unique industries. In addition, the bill extends the due dates by which certain reports, studies, and guidelines related to the Program must be submitted, including the due date for the Statewide Disparity Study that provides the legal foundation to implement the Program.

Every aspect of the of the MBE Program, including State statutory and regulatory requirements, is controlled by the United States Constitution and Supreme Court precedent. The 1989 Supreme Court decision in *Croson* established that government programs that use race-based classifications are subject to strict scrutiny as they could, on their face, violate the Equal Protection Clause of the 14th Amendment. A rigorous and defensible Disparity Study is how the State satisfies this constitutional test.

Maryland's Disparity Study examines whether and to what extent there is racial or gender business discrimination in the markets in which the State conducts business. If the resulting analysis determines that statistically significant disparities exist, that finding serves as the evidentiary basis for the State's use of race-conscious remedies to mitigate said disparities. The process of completing the Statewide study involves collecting and analyzing extensive data regarding the availability and utilization of firms and other market indicators such as access to capital or business loans and business formation rates.

As the Certifying Agency of the State's MBE Program, MDOT initiated a Statewide availability and utilization study. Ultimately, the State will deliver the completed report to the General Assembly's Legislative Policy Committee. The Statewide study is of unprecedented size and scope. This, coupled with a temporary pause on work to accommodate an expedited, standalone Adult-Use Cannabis Disparity Study, resulted in a series of delays. In addition, the data collection effort and analysis has taken longer than anticipated, mostly due to the collection of subcontractor data from prime vendors who are more skeptical of email and virtual data collection efforts post-COVID. A final draft of the study and the report is now anticipated to be delivered by September 30, 2025. MDOT is confident that the study and corresponding report

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can be delivered by the requested September 30, 2025 extension date, at no additional cost or resources to the State.

In the interim, the extension of the due date outlined in SB 829 for the report on the study, as well as concurrent extensions of the sunset dates for the MBE Program and various related industries and fringe analyses, will allow the MBE Program to remain operational. This represents a benefit to the Maryland business community and the State's economy at large.

In addition to the industries and project types covered by the Program, MDOT notes that, until 2024, procurements issued by sports wagering licensees were subject to the requirements of the MBE Program. This language<sup>1</sup> has abrogated; however, the Committee may wish to amend SB 829 to reapply the provisions of the Program to these licensees, consistent with the actions taken to reapply the provisions of the MBE Program to public-private partnerships.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant Senate Bill 829 a favorable report.

Respectfully Submitted,

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<sup>1</sup> The language in question was codified in Article – State Government, § 9-1E-07.