SB 765

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 765 (Senator Hayes)
Finance Ways and Means

Economic Development - Business Diversity Incubator Program and Fund - Established

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This bill establishes the Business Diversity Incubator Program and Fund (BDIF) in the Department of Commerce for the purpose of providing grants to qualified incubators to establish diverse and effective business incubators in the State. Subject to a competitive application process, a required allocation, preferences, and limitations on the use of funds for operating expenses, a qualified incubator may receive a grant of $100,000 to $400,000. Grants automatically renew each fiscal year, on a competitive basis, if the qualified incubator complies with the terms of the grant. The bill does not mandate a level of funding for the program but does specify that the Governor may include in the annual budget bill an appropriation of $5.0 million to BDIF from fiscal 2026 through 2031. Commerce must report specified programmatic information to the General Assembly each year beginning in 2025. **The bill takes effect July 1, 2024, and terminates June 30, 2031.**

Fiscal Summary

State Effect: General fund expenditures for Commerce increase by $5.0 million annually from FY 2025 through 2029 (as shown below but actually through FY 2031) under the assumptions discussed below. Special fund revenues and expenditures for BDIF increase correspondingly as funds are received and used by Commerce for authorized purposes. All funding is discretionary.

($ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	$5.0	$5.0	$5.0	$5.0	$5.0
GF Expenditure	$5.0	$5.0	$5.0	$5.0	$5.0
SF Expenditure	$5.0	$5.0	$5.0	$5.0	$5.0
Net Effect	($5.0)	($5.0)	($5.0)	($5.0)	($5.0)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful, as discussed below.

Analysis

Bill Summary:

Qualified Incubators

"Qualified incubator" means a for-profit organization, nonprofit organization, B Corporation, public-private partnership (P3), or social enterprise in the State that was established on or after January 1, 2012, and:

- primarily serves or will primarily serve businesses in the State;
- requires or will require participating businesses to engage in a formal incubator program designed to advance early-stage businesses;
- is staffed or will be staffed by at least one individual dedicated to mentoring businesses and guiding them through the incubator program; and
- is directed by an individual who has completed a training program focused on operating a business incubator targeting socially and economically disadvantaged entrepreneurs, or helping those entrepreneurs secure investment, and that included specified topics.

Business Diversity Incubator Program

Commerce must administer the program and must hire at least one full-time coordinator to do so. The department must establish a competitive application process for grants made under the program and must award at least half of the money appropriated to the program to organizations that participate in the State Minority Business Enterprise (MBE) program. The department must also give preference to qualified incubators that (1) have a program managed by socially or economically disadvantaged individuals; (2) are located in a federally recognized hub zone, a State qualified opportunity zone, or an underserved community; (3) have experience supporting companies in the start-up stage; (4) serve companies led by socially or economically disadvantaged individuals and have an economic impact on underserved communities; or (5) have established a presence in an underserved community.

Commerce may award a grant under the program for (1) planning the establishment of a qualified incubator or planning for a qualified incubator's long-term sustainability; (2) capital improvements, securing real estate, renovations, and the purchase of capital equipment to establish or grow a qualified incubator; or (3) operating and program expenses associated with supporting programs.

Generally, grants awarded under the program must renew and be awarded to a qualified incubator each fiscal year of the program without further application; however, the renewal, which is subject to the recipient's compliance with the grant terms, is still on a competitive basis with other qualified incubators applying for funding. For any fiscal year, an organization may not receive a grant of less than $100,000 or more than $400,000. Grants awarded under the program may not be used to support more than 25% of the operating expenses of a qualified incubator except in the first year a grant.

A grant recipient must enter into a program agreement with Commerce; any violation of the agreement is subject to specified remedies. By September 1, 2025, and annually thereafter, a grant recipient must report to Commerce documenting how the grant money was used in the immediately preceding fiscal year, as specified. Commerce must annually report related programmatic information to the General Assembly by December 31 each year.

The bill may not be construed to prohibit an organization from receiving funds from a government source other than the program.

Business Diversity Incubator Fund

BDIF is established in Commerce as a special, nonlapsing fund that is not subject to reversion. BDIF consists of money appropriated in the State budget to the fund and any other money from any other source accepted for the benefit of the fund. Commerce must administer BDIF. The fund may only be used to provide grants under the program and pay for the department's administrative expenses (up to 15% of the annual appropriation).

The bill does not mandate a level of funding for the program but does specify that the Governor may include in the annual budget bill an appropriation of $5.0 million to BDIF from fiscal 2026 through 2031.

Current Law:

Small, Minority, and Women-Owned Businesses Account

The Small, Minority, and Women-Owned Businesses Account (SMWOBA) in Commerce is used to provide investment capital and loans to small, minority, and women-owned businesses in the State. A small percentage of gross video lottery terminal proceeds is distributed to SMWOBA each fiscal year. Commerce then provides grants from SMWOBA to eligible fund managers – in practice, mostly a mixture of county development corporations and private firms. The fund managers then provide investment capital and loans to small, minority, and women-owned businesses in the State.

Chapter 116 of 2021 expanded the eligible uses of SMWOBA to include grants in areas declared to be federal disaster areas or subject to a federal or State declaration of emergency. In those circumstances, eligible fund managers may provide financial assistance in the form of a grant or by converting a prior loan to a grant – with a $50,000 limit on either form of assistance to a single business and an aggregate limit of $10.0 million in a fiscal year.

Technology Incubator Program

The Maryland Technology Incubator Program was established by legislation in 2001 to promote entrepreneurship and the creation of jobs in technology-related industry by establishing and operating effective incubators throughout the State that provide adequate physical space designed, and programs intended, to increase or accelerate business success in the field of technology. The Maryland Technology Development Corporation (TEDCO) administers the program.

Financial assistance may be used to (1) support the development and use of best practices in the incubation process; (2) provide strategic planning, needs assessment, and feasibility studies; and (3) assist in the acquisition and construction of new or expanded space or the renovation of existing space for an incubator. Eligible recipients are (1) local governments; (2) agencies, instrumentalities, and nonprofits designated by local governments; (3) public or private colleges or universities; (4) the Maryland Economic Development Corporation; and (5) nonprofit entities acting as incubators in the State.

A recipient must provide matching funds or an in-kind contribution that equals the amount of the financial assistance unless the TEDCO board waives the requirement in whole or part for good cause.

Minority Business Enterprise Program

The Maryland Department of Transportation is designated in State regulations as the State's MBE certification agency. See the **Appendix– Minority Business Enterprise Program** for additional information.

State Fiscal Effect: The bill does not mandate a level of funding for the program, but it does specify that the Governor may include in the annual budget bill an appropriation of $5.0 million to BDIF from fiscal 2026 through 2031. This analysis assumes $5.0 million in discretionary funding is provided annually from fiscal 2025 through 2031. Actual expenditures will vary to the extent that the timing and/or amount of discretionary funding is different from this estimate. The bill requires Commerce to hire at least one full-time staff to administer the program; Commerce advises that one staff is sufficient at the assumed funding level.

Accordingly, general fund expenditures for Commerce increase by $5.0 million in fiscal 2025, which accounts for the bill's July 1, 2024 effective date and assumes funding in that year as the initial reporting requirement implies grants are awarded in fiscal 2025. This estimate reflects the cost of hiring one program manager to administer the program, with support from other Commerce programmatic staff as necessary. It includes a salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and grants to qualified incubators.

Position	1.0
Salary and Fringe Benefits	$94,082
Operating Expenses	7,526
Grants to Qualified Incubators	4,898,392
Total FY 2025 State Expenditures	**$5,000,000**

Future year expenditures reflect a salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses, with remaining funds used for grants (or additional administrative expenses, should the need arise). Under the bill, total administrative expenses for Commerce cannot exceed 15% of the annual appropriation to BDIF.

Special fund revenues and expenditures for BDIF increase correspondingly as funds are received and Commerce provides grants to eligible recipients under the bill and pays for its administrative expenses. For purposes of this estimate, grants are assumed to be made in the fiscal year that general funds are appropriated (even though grants could be made in subsequent years with retained fund balance).

P3s are eligible recipients of grant funding under the bill, which may positively affect the viability and financing of associated P3 projects.

Small Business Effect: Some eligible grant recipients may be small businesses and directly benefit from grant funding made available under the bill. Nonprofits, which are also eligible grant recipients, are not considered small businesses for purposes of fiscal and policy notes. In either case, the use of grant funds under the bill by grant recipients to establish or grow business incubators may benefit small for-profit businesses located in those incubators.

Additional Comments: The bill's June 30, 2031, termination date precludes a statutory requirement for grant recipients and TEDCO to report on the use of any funding provided in fiscal 2031.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 125 and HB 75 of 2023.

Designated Cross File: HB 1490 (Delegate Wells) - Ways and Means.

Information Source(s): Department of Commerce; Department of Budget and Management; Maryland Technology Development Corporation; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2024
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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 Small, Minority, and Women Business Affairs (GOSBA), in consultation with the Secretary of Transportation and the Office of the Attorney General (OAG). 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. The Maryland Department of Transportation is the State's MBE certification agency.

In August 2013, GOSBA 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 2024. GOSBA issued subgoal guidelines in July 2011 and then updated them effective August 2020, as summarized in **Exhibit 1.** 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. MBE prime contractors may count their own work for up to 50% of a contract's MBE goal and up to 100% of any contract subgoal. Their full participation counts toward the State's 29% goal.

Exhibit 1
Subgoal Guidelines for Minority Business Enterprise Participation

	Construction	Architectural/ Engineering	Maintenance	Information Technology	Services	Supplies/ Equipment
African American	8%	7%	9%	10%	-	6%
Hispanic	-	-	3%	-	2%	2%
Asian	-	-	2%	-	3%	-
Women	11%	10%	-	10%	10%	8%
Total	**19%**	**17%**	**14%**	**20%**	**15%**	**16%**
Total +2	**21%**	**19%**	**16%**	**22%**	**17%**	**18%**

Source: Governor's Office of Small, Minority, and Women Business Affairs

There are no penalties for agencies that fail to reach the statewide target. However, Chapters 155 and 156 of 2022 require GOSBA to refer prime contractors that persistently fail to meet MBE participation goals on their contracts to OAG for debarment for up to three years.

History and Rationale of the Minority Business Enterprise 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 disparity study completed in 2017 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) were 37% lower than for comparable nonminority males; average annual wages for nonminority women were 33% lower than for comparable nonminority males. It also found continued disparities in the use of MBEs by the State compared to their availability in the marketplace to perform work in designated categories of work. For instance, African American-owned construction businesses were paid 5.1% of State construction contract dollars, but they made up 10.3% of the construction sector in the relevant State marketplace. Nonminority women-owned construction businesses were paid 7.5% of State construction contract dollars but made up 13.7% of the construction sector. According to the analysis, these differences were large and statistically significant.

The MBE program is scheduled to terminate July 1, 2025; Chapters 137 and 138 of 2023, which reauthorized the program for the tenth time since its inception, also extended the due date for the new disparity study to September 2024 to inform the subsequent reauthorization process. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2022 and 2023.

Exhibit 2
Minority Business Enterprise Participation Rates, by Agency
Fiscal 2022 and 2023

	% MBE Participation	
Cabinet Agency	**FY 2022**	**FY 2023**
Aging	4.2%	1.2%
Agriculture	4.4%	3.2%
Budget and Management	7.4%	32.9%
Commerce	1.8%	53.8%
Education	23.0%	11.5%
Environment	18.9%	37.9%
Executive Department	6.6%	4.6%
General Services	20.1%	19.5%
Health	5.5%	8.4%
Higher Education Commission	2.1%	3.0%
Housing and Community Development	36.7%	48.5%
Human Services	15.0%	10.5%
Information Technology	1.6%	14.4%
Juvenile Services	6.0%	6.5%
Labor	1.4%	18.6%
Military	0.7%	22.3%
Natural Resources	0.6%	10.2%
Planning	0.3%	0.0%
State Police	13.3%	20.9%
Public Safety and Correctional Services	41.0%	6.2%
Transportation – Aviation Administration	22.6%	22.1%
Transportation – Motor Vehicle Administration	61.8%	20.2%
Transportation – Office of the Secretary	26.9%	48.5%
Transportation – Port Administration	9.7%	13.1%
Transportation – State Highway Administration	20.9%	21.7%
Transportation – Transit Administration	24.8%	12.0%
Transportation – Transportation Authority	18.8%	19.4%
Statewide Total[1]	**17.3%**	**17.9%**

[1] Includes the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and non-Cabinet agencies.

Source: Governor's Office of Small, Minority, and Women Business Affairs

Requirements for Minority Business Enterprise 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 may be certified as being owned by both a woman and by a member of a racial or ethnic minority, but for the purpose of participating on a contract as an MBE, it can only be counted as one or the other.

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 2024 is $2,073,412.