

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**  
**Enrolled - Revised**

Senate Bill 4

(Senator Zucker, *et al.*)

Budget and Taxation

Ways and Means

**Expansion of Commercial Gaming - Sports and Event Wagering Referendum  
and Minority Business Enterprise Disparity Study**

This bill establishes that, subject to voter referendum, the General Assembly may authorize, by law, that the State Lottery and Gaming Control Commission (SLGCC) may issue a license to offer sports wagering and event wagering in the State. Sports and event wagering legislation must include the criteria for eligible applications for a licensee and specifications of the permissible forms, means of conduct, and premises of wagering. The bill also provides the General Assembly's intent that, if the voter referendum is approved, State revenues generated by sports and event wagering be used primarily for public education. The Maryland Department of Transportation (MDOT) and SLGCC must contract with an appropriate expert to review the 2017 minority business enterprise disparity study to evaluate, by October 1, 2020, whether there is a compelling interest to implement remedial measures to assist minorities and women in the sports and event wagering industry and market. **The bill takes effect July 1, 2020, with provisions of the bill contingent on passage of a referendum by voters in the November 2020 general election.**

**Fiscal Summary**

**State Effect:** Transportation Trust Fund (TTF) expenditures increase by up to \$120,000 in FY 2021 to conduct the required analyses. If approved at referendum, legislation would still be needed to implement sports wagering.

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** If it is determined that the 2017 disparity study does not appropriately apply to the sports and event wagering industry, MDOT (the certification agency designated by the Board of Public Works), in consultation with the General Assembly and the Office of the Attorney General, must initiate a disparity study to evaluate whether there is a compelling interest to implement remedial measures to assist minorities and women in the sports and event wagering industry and market. SLGCC must provide MDOT any information necessary to perform the study, and MDOT must report to SLGCC and the Legislative Policy Committee on its findings.

**Current Law:** Chapter 5 of the 2007 special session amended the Maryland Constitution so that after November 15, 2008, the General Assembly may only authorize additional forms or expansion of commercial gaming if approved through a referendum by a majority of the voters in a general election.

Wagering on a contest, event, game, or match between individuals or teams sponsored by a professional league or association or hosted by a college or university is illegal in Maryland.

Chapter 346 of 2012 exempts a specified “fantasy competition” from prohibitions against betting, wagering, and gambling in State law. The law defines “fantasy competition” as any online fantasy or simulated game or contest such as fantasy sports in which (1) participants own, manage, or coach imaginary teams; (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest; and (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals.

Chapter 338 of 2019 authorizes an organization conducting an “eSports competition” to offer prize money or merchandise to winning participants in the eSports competition. An eSports competition is a competition involving video games, including first-person shooters, real-time strategy games, and multiplayer online battle arenas in which players compete against each other and the players’ skills generally determine the results.

### *Education Trust Fund*

Established during the 2007 special session, the ETF is a nonlapsing, special fund supported by gaming revenues that has been used to provide funding for formulas and programs under the Bridge to Excellence in Public Schools Act. Chapter 357 of 2018, a constitutional amendment approved by the voters at the 2018 general election, requires the Governor to provide supplemental State funding for public education through the use of commercial gaming revenues that are dedicated to public education in the State budget

beginning in fiscal 2020. Supplemental funding must total at least \$250 million in fiscal 2021, growing to 100% of all gaming revenues dedicated to ETF by fiscal 2023. This funding must be dedicated to public education as supplemental education or school construction funding, in addition to the State funding provided through the Bridge to Excellence in Public Schools Act.

### *Minority Business Enterprise Program*

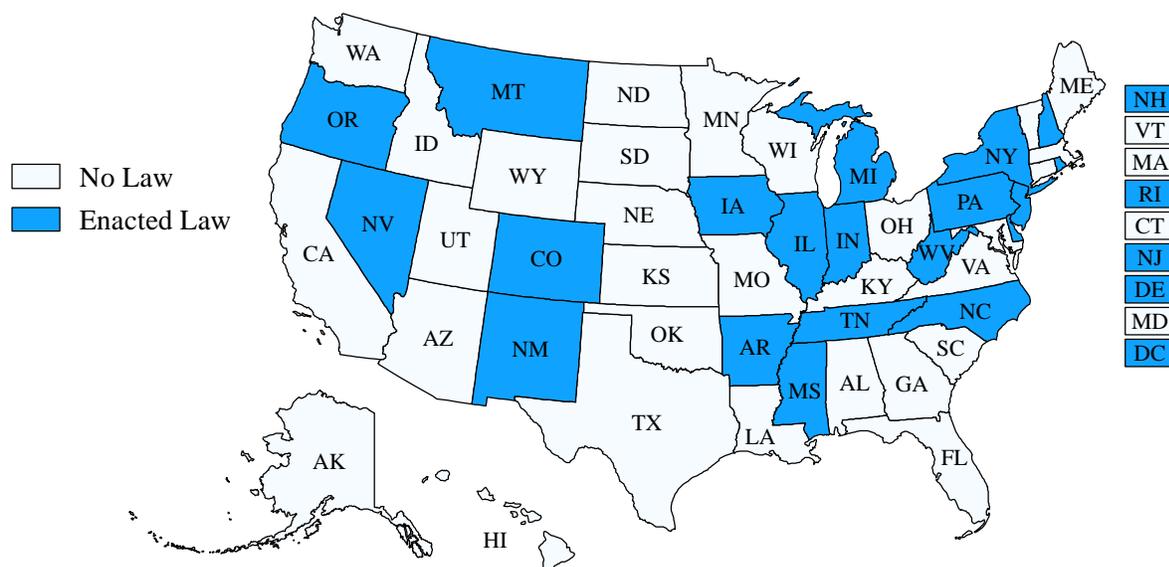
MDOT is the State's Minority Business Enterprise (MBE) certification agency; in that capacity, MDOT conducts the statewide MBE disparity studies roughly every five years. The last one was completed in February 2017. For an overview of the State's Minority Business Enterprise (MBE) program, please see the **Appendix – Minority Business Enterprise Program**.

**Background:** The federal Professional Amateur Sports Protection Act of 1992 (PASPA) made betting on sports in most states illegal under federal law. New Jersey challenged the PASPA in the U.S. Supreme Court, arguing in *Murphy v. National Collegiate Athletic Association* that the federal ban violated the U.S. Constitution by commandeering the states into enforcing federal law. In May 2018, the U.S. Supreme Court ruled in *Murphy* that the PASPA was unconstitutional, leaving states free to authorize sports betting.

On June 5, 2018, less than one month after the PASPA was struck down by the U.S. Supreme Court, Delaware became the first state outside of Nevada to offer single-game sports betting. New Jersey launched single-game sports betting just nine days later. Since then, there has been a rush of legislative activity in states hoping to capture a new source of gaming revenue. **Exhibit 1** shows the states that have enacted sports betting laws as of January 2020.

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## Exhibit 1 States with Enacted Sports Betting Laws



Source: Department of Legislative Services

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Along with Nevada, sports betting operations are now underway in 13 of those states as of January 2020. **Exhibit 2** shows how the states recent to sports betting have structured their operations and the revenues generated since going live. Additionally, six other states (Colorado, Illinois, Michigan, Montana, North Carolina, and Tennessee) and the District of Columbia are expected to launch sports betting operations in 2020. The majority of states with sports betting laws authorize online sports betting.

**Exhibit 2**  
**Post-PASPA Sports Betting Active States and Revenues**

<b>State</b>	<b>First Bet Placed</b>	<b>Tax Rate</b>	<b>Fees</b>	<b>Retail Sportsbooks Type / #</b>	<b>Mobile Betting</b>	<b>Sportsbook Data (Launch Date through December 2019)</b>
<b>DE</b>	6/5/18	59.8% (includes a 9.8% share for race purses)	No separate sportsbook licensing fee required	Racetracks (3)	No	Handle – \$189,620,117 Revenue <sup>1</sup> – \$21,407,621 State Share – \$10,703,827
<b>NJ</b>	6/14/18	8.5% onsite betting  13% online betting	\$100,000 application fee	Casinos and racetracks (10)	Yes	Handle – \$5,837,241,986 Revenue – \$393,503,018 State Share – \$46,802,942
<b>MS</b>	8/1/18	12% (includes a 4% local share)	Not specified	Landbased and riverboat casinos (23)	No	Handle – \$477,236,811 Revenue – \$56,148,121 State Share – \$6,737,774
<b>WV</b>	8/30/18	10%	\$100,000 application fee	Racetracks (4) and the private club at Greenbriar	Yes	Handle – \$282,110,247 Revenue – \$26,265,588 State Share – \$2,626,559
<b>NM<sup>2</sup></b>	10/16/18	Not specified	Not specified	Tribal casinos (2)	No	Not currently available
<b>PA</b>	11/17/18	36% (includes a 2% local share)	\$10,000,000 application fee	Casinos and racetracks (12)	Yes	Handle – \$1,506,982,035 Revenue – \$86,664,503 State Share – \$31,199,221
<b>RI</b>	11/26/18	51%	No separate sportsbook licensing fee required	Casinos (2)	Yes	Handle – \$221,911,697 Revenue – \$16,265,850 State Share – \$8,749,801
<b>AR</b>	7/1/19	First \$150,000,000 at 13%, any additional revenues at 20%	Application fee not to exceed \$250,000	Racetracks (2) and proposed casinos (2)	No	Not currently available
<b>NY</b>	7/6/19	10%	No separate sportsbook licensing fee required	Casinos (4)	No	Handle – Not currently available Revenue – \$7,783,424 State Share – \$778,342

<u>State</u>	<u>First Bet Placed</u>	<u>Tax Rate</u>	<u>Fees</u>	<u>Retail Sportsbooks Type / #</u>	<u>Mobile Betting</u>	<u>Sportsbook Data (Launch Date through December 2019)</u>
<b>IA</b>	8/15/19	6.75%	\$45,000 application fee	Casinos and racetracks (18)	Yes	Handle – \$212,225,573 Revenue – \$19,283,573 State Share – \$1,301,641
<b>OR</b>	8/27/19	Not available	Not specified	Tribal casinos <sup>3</sup>	Yes	Not currently available
<b>IN</b>	9/1/19	9.5%	\$100,000 application fee	Casinos and racetracks (16)	Yes	Handle – \$435,998,649 Revenue – \$41,385,968 State Share – \$3,931,665
<b>NH</b>	12/30/19	Negotiable	Not specified	Lottery (5)	Yes	Not currently available

AR: Arkansas

DE: Delaware

IA: Iowa

IN: Indiana

MS: Mississippi

NH: New Hampshire

NJ: New Jersey

NM: New Mexico

NY: New York

OR: Oregon

PA: Pennsylvania

PASPA: Professional Amateur Sports Protection Act

RI: Rhode Island

WV: West Virginia

<sup>1</sup> Vendor fees are subtracted from the handle before the distribution of the revenue.

<sup>2</sup> In New Mexico, two of that state’s nine tribal casinos offer sports betting under the existing tribal gaming compact, although the activity remains unsanctioned under state law.

<sup>3</sup> Currently, only 1 of Oregon’s 10 tribal casinos offers sports betting. Oregon has a lottery-operated online app.

Note: Handle is the total amount of all wagers. Revenue (or gross gaming revenue) is the handle minus total win.

Source: Department of Legislative Services

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The Department of Legislative Services (DLS) notes that retail sports betting revenues in Delaware, New Jersey, Pennsylvania, and West Virginia average approximately 2% of those states’ total gaming revenues from video lottery terminals and table games. Thus, if sports betting revenues in Maryland total 2% of Maryland’s gaming revenues, gross revenues after payouts to bettors could increase by \$36.5 million in fiscal 2022. Assuming that the current table games tax rate of 20% is applied, the State share of gross revenues in fiscal 2022 would be \$7.3 million. However, authorizing mobile sports betting could significantly increase revenues. Based on mobile sports betting revenues in surrounding states, DLS estimates that gross revenues could increase by \$91.1 million in fiscal 2022, totaling 5% of Maryland’s gaming revenues, if sports betting is authorized both online and

at Maryland casinos and racetracks. Assuming a 20% tax rate, the State share of revenues in fiscal 2022 would be \$18.2 million.

**State Fiscal Effect:** MDOT and SLGCC must contract with an expert to determine if the 2017 disparity study is applicable to the sports and event wagering industry, which MDOT advises could cost up to \$50,000. If the 2017 disparity study is not applicable, MDOT, as the State's certification agency, is responsible for carrying out the study specified in the bill. MDOT estimates that a reanalysis of the 2017 study will cost approximately \$70,000. Thus, TTF expenditures may increase by up to \$120,000 in fiscal 2021 for MDOT to contract with an expert and complete the disparity study if necessary. If the disparity study is not necessary, TTF expenditures only increase by up to \$50,000.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Comptroller's Office; Maryland State Lottery and Gaming Control Agency; Maryland Department of Transportation; Department of Legislative Services

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## Appendix – Minority Business Enterprise Program

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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 Attorney General. 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.

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 2020. GOSBA issued subgoal guidelines in July 2011, summarized in **Exhibit 1**, which are also still in effect. 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. In June 2014, new regulations took effect allowing MBE prime contractors to count their own work for up to 50% of a contract’s MBE goal and up to 100% of any contract subgoal. Previously, certified MBE prime contractors could not count their own participation toward any goal or subgoal on an individual contract, but their participation was counted toward the State’s MBE goal.

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### Exhibit 1 Subgoal Guidelines for MBE Participation

	<u>Construction</u>	<u>Architectural/ Engineering</u>	<u>Maintenance</u>	<u>Information Technology</u>	<u>Services</u>	<u>Supplies/ Equipment</u>
African American	7%	6%	8%	7%	7%	6%
Hispanic	-	2%	3%	2%	-	-
Asian	4%	-	3%	-	4%	5%
Women	-	9%	-	8%	12%	10%
<b>Total</b>	<b>11%</b>	<b>17%</b>	<b>14%</b>	<b>17%</b>	<b>23%</b>	<b>21%</b>
<b>Total +2</b>	<b>13%</b>	<b>19%</b>	<b>16%</b>	<b>19%</b>	<b>25%</b>	<b>23%</b>

MBE: Minority Business Enterprise

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

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There are no penalties for agencies that fail to reach the statewide target. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

### *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 most recent disparity study was completed in 2017 and 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, 2022; it has been reauthorized eight times since 1990, the latest by Chapter 340 of 2017. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2018, the most recent year for which data is available.

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**Exhibit 2**  
**Minority Business Enterprise Participation Rates, by Agency**  
**Fiscal 2018**

<u>Cabinet Agency</u>	<u>% Participation</u>
Aging	6.3%
Agriculture	4.6%
Budget and Management	3.8%
Commerce	5.0%
Education	9.1%
Environment	25.5%
Executive Department	8.7%
General Services	15.5%
Health	3.5%
Higher Education Commission	0.9%
Housing and Community Development	30.0%
Human Services	6.0%
Information Technology	28.4%
Juvenile Services	23.3%
Labor, Licensing, and Regulation <sup>1</sup>	21.2
Military	13.1%
Natural Resources	6.0%
Planning	4.0%
State Police	16.1%
Public Safety and Correctional Services	16.0%
Transportation – Aviation Administration	20.4%
Transportation – Motor Vehicle Administration	21.1%
Transportation – Office of the Secretary	36.1%
Transportation – Port Administration	19.5%
Transportation – State Highway Administration	17.8%
Transportation – Transit Administration	12.0%
Transportation – Transportation Authority	14.6%
<b>Statewide Total<sup>2</sup></b>	<b>15.1%</b>

<sup>1</sup>Has since been renamed the Maryland Department of Labor.

<sup>2</sup>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

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## *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 is certified as either owned by a woman or owned by a racial or ethnic minority but not both. The Maryland Department of Transportation is the State's MBE certification agency.

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 2020 is \$1,771,564.