

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 252 (Senator Ellis)
 Finance

Maryland Small Business Development Financing Authority - Minority Business Enterprise Procurement Contract Financing Program

This bill establishes the Minority Business Enterprise Procurement Contract Financing Program and Fund (MBECFF) in the Maryland Small Business Development Financing Authority (MSBDFA). If the General Assembly enacts legislation implementing sports and events wagering in the State, 10% of any proceeds received by the State from such wagering accrues to the fund. The program provides grants and loans for working capital to qualified minority business enterprises (MBEs) in order to facilitate their ability to enter into and complete performance under State procurement contracts.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$750,000 in FY 2022 and by at least \$1.0 million annually thereafter, under the assumptions discussed below. Special fund revenues and expenditures for MBECFF increase correspondingly. To the extent that the General Assembly enacts legislation implementing sports and events wagering in the State, the effect on general fund expenditures is mitigated, but those revenues are diverted from other purposes.

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	\$0.8	\$1.0	\$1.0	\$1.0	\$1.0
GF Expenditure	\$0.8	\$1.0	\$1.0	\$1.0	\$1.0
SF Expenditure	\$0.8	\$1.0	\$1.0	\$1.0	\$1.0
Net Effect	(\$0.8)	(\$1.0)	(\$1.0)	(\$1.0)	(\$1.0)

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: Meaningful.

Analysis

Bill Summary: “Qualified minority business enterprise” means an MBE that is (1) certified as an MBE under the State’s existing MBE program and (2) has a net worth up to \$2.0 million. MSBDFA must:

- manage, supervise, and administer the program and MBECFF;
- provide loans and award grants in accordance with the purpose of the program; and
- adopt regulations related to the use of program funds by recipients, application procedures, financial assistance terms, and procedures for loan repayment.

MBECFF consists of various sources of funding, specifically money appropriated in the State budget, federal funds, loan repayments, other money accepted for the benefit of the fund, and if the General Assembly enacts legislation implementing sports and events wagering in the State, an amount equal to 10% of any proceeds received by the State from such activity. The fund may be used only for loans and grants under the program and the program’s administrative expenses.

Current Law:

Maryland Small Business Development Financing Authority

MSBDFA provides financing options for small businesses that are not able to qualify for financing from private lending institutions or are owned by socially and economically disadvantaged persons. Subject to specified conditions, the Department of Commerce (Commerce) may (and does) contract for and engage the services of some or all of the MSBDFA staff to administer the authority’s programs. MSBDFA has four programs: the Contract Financing Program; the Long-term Guaranty Program; the Surety Bond Program; and the Equity Participation Investment Program. MSBDFA is not authorized to provide grants.

Under MSBDFA’s Contract Financing Program, funds may be used for working capital and the acquisition of equipment needed to perform a contract for which a majority of funds are provided by a federal, state, or local government agency or a utility regulated by the Public Service Commission.

Minority Business Enterprises

For an overview of the State’s MBE program, please see the **Appendix – Minority Business Enterprise Program**.

Sports and Events Betting

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. However, Chapter 492 of 2020 established that, subject to voter referendum, the General Assembly may authorize, by law, that the State Lottery and Gaming Control Commission may issue a license to offer sports wagering and event wagering in the State. Chapter 492 also states 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 voters approved the referendum during the November 2020 election. However, before sports betting operations can begin, the General Assembly must follow with implementation legislation, including the criteria for eligible applications for a licensee and specifications of the permissible forms, means of conduct, and premises of wagering.

For an overview of sports betting laws and related revenues in the United States, please see the **Appendix – Sports Betting**.

State Fiscal Effect: Since legislation implementing sports betting has not been enacted, this analysis assumes general funds are provided to the program beginning in fiscal 2022. To the extent that the General Assembly enacts legislation implementing sports and events wagering in the State, the effect on general fund expenditures for the program is mitigated, but those sports and events wagering revenues are diverted from other purposes.

Except for the diversion of potential sports betting revenues, the bill does not otherwise mandate or specify an intended level of funding for the program. Based on Commerce's assessment of potential demand, this estimate assumes that general fund expenditures increase by at least \$750,000 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date, and by at least \$1.0 million annually thereafter. Special fund revenues for MBECFF increase correspondingly.

Accordingly, special fund expenditures for MBECFF increase by at least \$750,000 in fiscal 2022 and by at least \$1.0 million annually thereafter as funds are received and provided through the program. This estimate reflects the cost of hiring one accounting specialist to assist existing staff with administration of MSBFDA's programs. It includes a salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and the expenditure of remaining funds.

Position	1.0
Salary and Fringe Benefits	\$69,481
Operating Expenses	5,581
Remaining Available Funds	674,938
Total FY 2022 MBECFF Expenditures	\$750,000

Future year expenditures reflect a full salary with annual increases and employee turnover, ongoing operating expenses, and the full level of programmatic funding. Expenditures each year are also likely to include compensation to the private contractor that manages MSBDFA. Ultimately, administrative expenditures will vary with the level of program funding provided, and Commerce may require additional staff.

The fund may be used to provide grants and loans for working capital. Loans can reasonably be assumed to generate revenue for the program in future years, which may then be used to provide additional financial assistance. Accordingly, beginning as early as fiscal 2023, special fund revenues and expenditures for MBECFF further increase beyond annual general fund appropriations to the extent that revenue-generating financial assistance is provided under the program.

For context only, House Bill 940 of 2021, as introduced, would implement sports and events wagering and, in that posture, is estimated to generate \$15.8 million to \$19.0 million in State revenue annually from fiscal 2022 through 2026 from a combination of wagering proceeds and license fees. State revenues net of license fees are estimated at \$5.0 million in fiscal 2022 and about \$15.1 million to \$15.7 million annually from fiscal 2023 through 2026.

Small Business Effect: To the extent that funding is provided to the program, either through general funds, sports betting revenues, or otherwise, eligible small businesses benefit from additional funds available for financial assistance from MSBDFA.

Additional Comments: It is unclear whether the program authorizes MSBDFA to provide grants – as MBECFF may be used to provide grants, but MSBDFA generally does not have the ability to provide grant funding.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Commerce; Governor's Office of Small, Minority, and Women Business Affairs; Comptroller's Office; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2021
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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 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 2021. 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. 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.

Exhibit 1 Subgoal Guidelines for Minority Business Enterprise Participation

	<u>Construction</u>	<u>Architectural/ Engineering</u>	<u>Maintenance</u>	<u>Information Technology</u>	<u>Services</u>	<u>Supplies/ Equipment</u>
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. 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 2019, the most recent year for which data is available.

Exhibit 2
Minority Business Enterprise Participation Rates, by Agency
Fiscal 2019

<u>Cabinet Agency</u>	<u>% Participation</u>
Aging	1.4%
Agriculture	4.9%
Budget and Management	7.4%
Commerce	1.2%
Education	6.0%
Environment	28.6%
Executive Department	1.8%
General Services	15.0%
Health	14.6%
Higher Education Commission	3.0%
Housing and Community Development	38.4%
Human Services	14.7%
Information Technology	15.4%
Juvenile Services	19.5%
Labor	26.1
Military	7.0%
Natural Resources	NA ¹
Planning	4.6%
State Police	15.0%
Public Safety and Correctional Services	17.5%
Transportation – Aviation Administration	27.2%
Transportation – Motor Vehicle Administration	16.0%
Transportation – Office of the Secretary	18.5%
Transportation – Port Administration	18.5%
Transportation – State Highway Administration	20.3%
Transportation – Transit Administration	15.1%
Transportation – Transportation Authority	11.6%
Statewide Total²	17.9%

¹ Data not provided.

² 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. The Maryland Department of Transportation is the State's MBE certification agency.

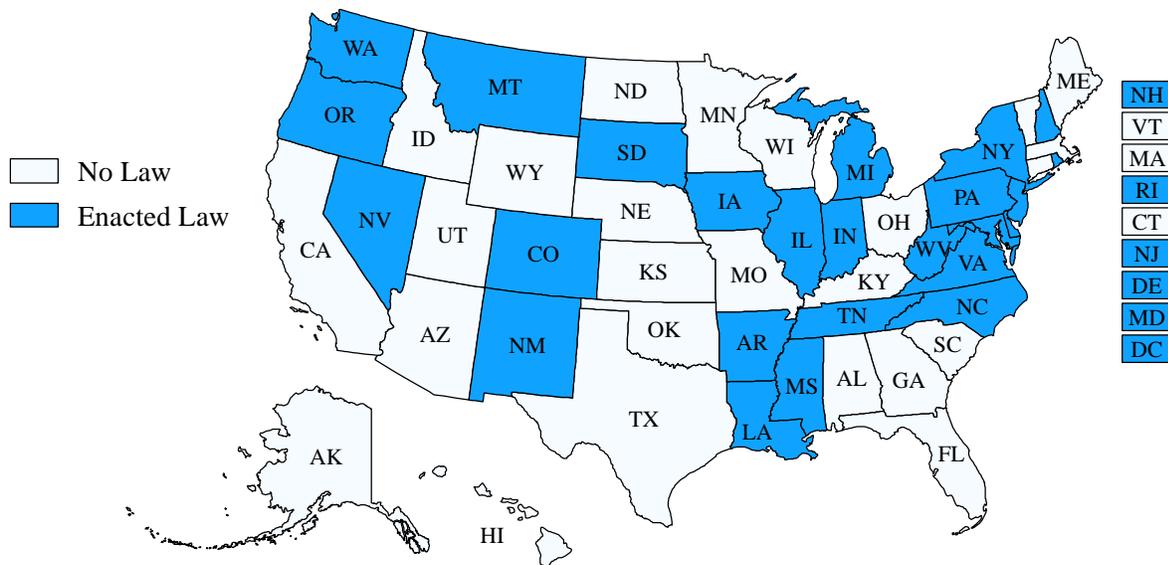
A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of his or her membership in a group and without regard to individual qualities. An economically disadvantaged individual is someone who is socially disadvantaged 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 2021 is \$1,788,677.

Appendix – Sports Betting

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 November 2020.

Exhibit 1
States with Enacted Sports Betting Laws



Note: Implementation legislation must follow before sports betting can begin in Louisiana, Maryland, and South Dakota.

Source: Department of Legislative Services

Sports betting operations are now underway in 18 of those states and the District of Columbia. **Exhibit 2** shows how the states recent to sports betting have structured their operations and the revenues generated since going live. In the coming year, North Carolina, Virginia, and Washington are expected to launch sports betting operations. Connecticut, Louisiana, and South Dakota are positioned to move forward once lawmakers and regulators make necessary implementation decisions.

Exhibit 2
Post-PASPA Sports Betting Active States and Revenues

<u>State</u>	<u>First Bet Placed</u>	<u>Tax Rate</u>	<u>Authorized Retail Betting Locations</u>	<u>Mobile Betting</u>	<u>Sportsbook Data (Launch Date through September 2020)¹</u>
Delaware	6/5/18	59.8% – 60.2% (includes % for race purses)	Racetracks	No	Handle ² – \$220,097,070 Revenue ³ – \$24,939,774 State Share – \$12,469,909
New Jersey	6/14/18	8.5% retail /13% mobile	Casinos and racetracks	Yes	Handle – \$9,123,193,004 Revenue – \$616,629,274 State Share – \$74,883,688
Mississippi	8/1/18	12% (includes a 4% local share)	Casinos	No	Handle – \$719,154,291 Revenue – \$78,728,324 State Share – \$9,454,867
West Virginia	8/30/18	10%	Racetracks and the private club at Greenbriar	Yes	Handle – \$506,021,984 Revenue – \$38,750,170 State Share – \$3,891,943
New Mexico⁴	10/16/18	Not available	Tribal casinos	No	Not available
Pennsylvania	11/17/18	36% (includes a 2% local share)	Casinos and racetracks	Yes	Handle – \$3,521,543,206 Revenue – \$169,948,997 State Share – \$61,226,621
Rhode Island	11/26/18	51%	Casinos	Yes	Handle – \$388,992,888 Revenue – \$29,985,566 State Share – \$16,180,118
Arkansas	7/1/19	13% / revenues above \$150 million @ 20%	Casinos and racetracks	No	Handle – \$24,894,268 Revenue – \$2,671,412 State Share – \$383,075
New York	7/16/19	10%	Casinos	No	Handle – Not available Revenue – \$11,050,241 State Share – \$1,122,983
Iowa	8/15/19	6.75%	Casinos and racetracks	Yes	Handle – \$513,571,354 Revenue – \$36,132,754 State Share – \$2,488,765
Oregon	8/27/19	Not available	Tribal casinos	Yes	Handle – \$182,036,055 Revenue – \$13,078,462 State Share – Not available

<u>State</u>	<u>First Bet Placed</u>	<u>Tax Rate</u>	<u>Authorized Retail Betting Locations</u>	<u>Mobile Betting</u>	<u>Sportsbook Data (Launch Date through September 2020)¹</u>
Indiana	9/1/19	9.5%	Casinos, racetracks, and OTBs	Yes	Handle – \$1,409,584,535 Revenue – \$109,274,383 State Share – \$10,381,065
New Hampshire	12/30/19	Per agreement with operator	Voter approved locations and lottery retailers	Yes	Handle – \$147,725,984 Revenue – \$10,170,385 State Share – \$4,557,372
Illinois	3/9/20	15%	Casinos, racetracks, OTBs, sports facilities, and lottery retailers	Yes	Handle – \$201,870,011 Revenue – \$11,298,024 State Share – \$2,491,376
Michigan	3/11/20	8.4%	Casinos	Yes	Handle – \$49,842,141 Revenue – \$6,459,007 State Share – \$542,556
Montana	3/12/20	Per agreement with operator	Lottery retailers w/alcohol license	No	Not available
Colorado	5/1/20	10%	Casinos	Yes	Handle – \$459,244,482 Revenue – \$7,806,098 State Share – \$812,855
Washington, D.C.	5/8/20	10%	Licensed businesses, lottery retailers, and sports facilities	Yes	Handle – \$27,694,384 Revenue – \$3,688,479 State Share – \$273,242
Tennessee	11/1/20	20%	Online only	Yes	Not available

¹ Sportsbook data for September is not currently available in Illinois.

² Handle is the total amount of all wagers.

³ Revenue is gross gaming revenue (handle minus total win) minus various payouts (*e.g.*, promotional credits, excise taxes, vendor fees) to arrive at “taxable” revenue.

⁴ In New Mexico, five of that state’s nine tribal casinos offer sports betting under the existing tribal gaming compact, although the activity remains unsanctioned under state law.

Source: Department of Legislative Services

In Maryland, legalized sports betting is considered an expansion of commercial gaming. 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 an expansion of commercial gaming if approved through a referendum by a majority of the voters in a general election. Legislation authorizing a referendum on sports betting was introduced in both houses during the 2018 and 2019 sessions, but these bills failed to pass. Chapter 492 of 2020 authorized sports and events betting generally, subject to voter referendum, and Maryland voters approved the question in the November 2020 general election. However, before sports betting operations can begin, the General Assembly must follow with implementation legislation, including the criteria for eligible applications for

a licensee and specifications of the permissible forms, means of conduct, and premises of wagering.