**HB 996**

# Department of Legislative Services

Maryland General Assembly
2021 Session

## FISCAL AND POLICY NOTE
## First Reader

House Bill 996 (Delegate Qi)
Economic Matters

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**Alcoholic Beverages – Class A Licenses – Retail Grocery Establishments (Healthy Food Accountability Act of 2021)**

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This bill authorizes and requires local alcoholic beverages licensing boards in the State to issue Class A beer or Class A beer and wine licenses for use in conjunction with or on the premises of a retail establishment under specified conditions. The bill also requires the Alcohol and Tobacco Commission (ATC) to contract with an appropriate expert to review and evaluate the most recent disparity study prepared through the Minority Business Enterprise (MBE) program to determine whether the study demonstrates a compelling interest to implement remedial measures, as specified, to assist minorities and women in the retail off-sale alcoholic beverages industry and market. If the data is found to not apply to the retail off-sale alcoholic beverages industry, the MBE certification agency (currently the Maryland Department of Transportation (MDOT)) must initiate a disparity study related to the issue, as specified. **The bill takes effect July 1, 2021.**

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## Fiscal Summary

**State Effect:** General fund expenditures increase by an estimated $150,000 in FY 2022 for ATC to complete the study review and evaluation. To the extent that an additional disparity study is needed, Transportation Trust Fund expenditures increase by between $200,000 and $300,000 for MDOT to complete the disparity study (this potential cost is not shown below). Special fund revenues for the Department of Housing and Community Development (DHCD) increase, potentially significantly, as additional fees are collected under the bill.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|---|---|---|---|---|---|
| SF Revenue | - | - | - | - | - |
| GF Expenditure | $150,000 | $0 | $0 | $0 | $0 |
| Net Effect | - | - | - | - | - |

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

**Local Effect:** Local expenditures and revenues increase, likely minimally and correspondingly, as additional licenses are issued under the bill and the local licensing boards increase enforcement activities for the new licensees.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:**

*Class A Licenses Issued to Retail Establishments*

A local alcoholic beverages licensing board is authorized to issue a Class A beer or Class A beer and wine license to an applicant for use in conjunction with or on the premises of a retail establishment that:

- offers for sale a full line of certain food products (such as fruits and vegetables and fresh and uncooked meat) and meets other specified requirements related to how the square footage of the retail establishment is utilized; or
- is a convenience and food product delivery company (1) that directly sells and delivers certain food and nonfood products (such as dairy products, frozen meats, and household items); (2) that is located in a priority funding area; and (3) for which the premises do not exceed 15,000 square feet.

Additionally, a local licensing board *must* issue a Class A beer or Class A beer and wine license to an applicant for use in conjunction with or on the premises of a self-service or delivery-based retail establishment that is (1) located in a priority funding area and (2) independently owned or part of a corporation operating a chain of retail establishments under the same trade name.

In addition to any license or annual renewal fee required for a Class A license under the bill, an applicant for a license or license renewal must pay an annual State license or renewal fee of $2,500. ATC must collect this fee and distribute the proceeds to the Community Legacy Financial Assistance Fund.

The prohibitions against one person or entity being issued or using more than one alcoholic beverages license does not apply to a Class A license issued under the bill. A local licensing board may not transfer a Class A license issued under the bill. A delivery-based Class A license holder is not required to obtain a letter of authorization from the local licensing board to make alcoholic beverages deliveries under the bill. Any alcoholic beverages license requirements related to residency, voter registration, or taxpayer status do not apply to a license issued under the bill.

*Study Requirements*

By October 1, 2021, ATC must, in consultation with the Office of the Attorney General, contract with an appropriate expert to review the "Business Disparities in the Maryland Market Area," study completed on February 8, 2017. The review must evaluate whether the data in the study demonstrates a compelling interest to implement remedial measures, as specified, to assist minorities and women in the retail off-sale alcoholic beverages industry and market.

If a determination is made that the data does not appropriately apply to the retail off-sale alcoholic beverages industry, the certification agency designated by the Board of Public Works to certify minority business enterprises (currently MDOT) must initiate a disparity study of the retail off-sale alcoholic beverages industry to evaluate whether there is a compelling interest to implement remedial measures, as specified, to assist minorities and women in the retail off-sale alcoholic beverages industry and market. ATC and all local licensing boards must provide MDOT with any information necessary to perform the study. MDOT must report its findings to the Legislative Policy Committee, as specified.

**Current Law:**

*Minority Business Enterprise Program*

For information on the MBE program, and the disparity study completed in February 2017, please see **Appendix – Minority Business Enterprise Program**.

*Issuance of Retail Alcoholic Beverages Licenses*

Maryland's 23 counties, Baltimore City, and the City of Annapolis all have boards of license commissioners that issue and enforce retail alcoholic beverages licenses in their jurisdictions. Within each jurisdiction, the most common types of retail licenses are Class A, Class B, Class C, and Class D licenses. Each license authorizes the sale of alcoholic beverages in a different manner and may authorize the sale of alcohol for on-premises consumption. For example, Class A licenses generally only allow the sale of alcoholic beverages for off-premises consumption, and Class B licenses are generally issued to restaurants and allow the sale of alcoholic beverages with food.

Each local jurisdiction has its own regulatory processes and requirements in place for who can apply for and obtain a license and how many licenses, in total, may be issued for use in the jurisdiction. In general, retail establishments like grocery stores and convenience stores are not permitted to obtain alcoholic beverages licenses in most of the State.

*Priority Funding Areas*

Chapter 759 of 1997 established that State spending on certain growth-related activities must be directed to priority funding areas (PFAs). Growth-related projects include most State programs that encourage or support growth and development, such as highways, sewer and water construction, economic development assistance, and State leases or construction of new office facilities. PFAs include all municipalities that existed in the State in 1997; areas inside the Washington Beltway and the Baltimore Beltway; and areas designated as enterprise zones, neighborhood revitalization areas, heritage areas, and certain industrial areas. Areas that were annexed by a municipality after 1997 may also be designated PFAs, as long as the areas satisfy specified requirements in statute generally related to density, water and sewer access, and other related factors.

A map of the State's PFAs can be found on the Maryland Department of Planning's website.

*Community Legacy Financial Assistance Fund*

The Community Legacy Financial Assistance Fund in DHCD must be used to finance the Community Legacy Program. Through the program, DHCD must preserve existing communities as desirable places to live and conduct business to reduce outward pressure for sprawl development and provide financial assistance to sponsors or their designees to develop sustainable community plans or community legacy projects.

**State Expenditures:** General fund expenditures increase by an estimated $150,000 in fiscal 2022 for ATC to contract with an expert to review and evaluate the "Business Disparities in the Maryland Market Area" study in the manner required by the bill. This estimate is based on similar studies procured by MDOT for the MBE program in recent years. Moreover, MDOT advises that ATC is unlikely to be able to complete its evaluation and review by the October 1, 2021 deadline established by the bill; the full procurement, study, and evaluation are likely to take between 8 and 10 months to complete.

Depending on the outcome of ATC's review and evaluation, MDOT must initiate a new disparity study. Any such outcome cannot be reliably predicted; however, MDOT advises, based on its prior experience conducting disparity studies, that doing so would cost between $200,000 and $300,000 and take approximately one year to complete.

**State Revenues:** Special fund revenues for DHCD increase as Class A licenses are issued and the additional $2,500 fees are collected. However, the precise impact depends on how many licenses are issued under the bill, which cannot be reliably estimated at this time. Given the potential increase in sales for retail establishments that obtain a license and the requirement that a local licensing board must issue a license for an eligible retail establishment in a PFA, the total impact could be significant.

**Small Business Effect:** Small business grocery stores and convenience stores are likely to benefit meaningfully from the authority to sell alcoholic beverages under the bill. Conversely, small businesses that are licensed to sell alcoholic beverages under current law are likely to lose business as grocery stores and convenience stores begin to sell alcoholic beverages as well.

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## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 763 (Senator McCray) - Education, Health, and Environmental Affairs.

**Information Source(s):** Charles, Frederick, Harford, and Montgomery counties; Department of Housing and Community Development; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 17, 2021
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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

# 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**

| | 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. 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**

| Cabinet Agency | % Participation |
|---|---|
| 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 Total[2]** | **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.