

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 182

(Delegate Boyce)

Health and Government Operations

Budget and Taxation

State Procurement – Certification of LGBTQ Businesses

This bill requires that the Maryland Department of Transportation (MDOT), by December 1, 2022, and annually thereafter, compile and manage a list of certified lesbian, gay, bisexual, transgender, or queer (LGBTQ) businesses in the State to identify and encourage outreach to LGBTQ businesses and to track their participation in State contracts.

Fiscal Summary

State Effect: MDOT and State procurement agencies can likely implement the bill with existing resources, as discussed below. No effect on revenues.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “LGBTQ business” as a legal entity, except a joint venture, that:

- has been formed as a legal entity in the United States to engage in commercial transactions;
- has its principal place of business in the United States;
- is at least 51% owned, operated, managed, and controlled by one or more individuals who are LGBTQ and either a U.S. citizen or a lawful permanent resident; and

- exercises independence from a business that does not meet the above criteria.

In compiling the list, MDOT may certify an LGBTQ business using existing lists compiled by the National Gay and Lesbian Chamber of Commerce or any successor organization without the need for any additional confirmation of eligibility for certification. MDOT must publish the list on its website.

Current Law: Statute requires the Board of Public Works to adopt regulations that designate a State agency to certify and decertify minority business enterprises (MBEs) through a single process that meets federal requirements. The bill requires the same agency to compile and manage the list of certified LGBTQ businesses. MDOT is the agency designated in the regulations to certify MBEs.

An MBE is a legal entity, except a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned, operated, managed, and controlled by one or more individuals who are socially 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.

The bill does not alter the definition of an MBE, nor does it include LGBTQ individuals in the definition of a socially and economically disadvantaged individual for the purpose of MBE certification.

State Expenditures: As noted above, the bill does not alter the statutory definition of an MBE, nor does it alter the statutory definition of a socially and economically disadvantaged individual for the purpose of MBE certification. Therefore, the bill has no effect on MBE certification or the MBE program.

MDOT advises that it is unclear how it would manage the certification of LGBTQ businesses in conjunction with MBE certification and estimates that it needs two additional staff to implement the bill. The Department of Legislative Services disagrees and notes that the bill allows MDOT to use existing lists of LGBTQ businesses for the purposes of certifying them for State procurement purposes, without the need for any further verification or confirmation. Thus, this analysis assumes that MDOT relies exclusively on existing lists to certify LGBTQ businesses, which it, therefore, can do with existing resources.

The bill does not establish a process for tracking contract awards to LGBTQ businesses. It does not, for instance, require the Governor's Office of Small, Minority, and Women

Business Affairs (GOSBA) to include LGBTQ awards in its annual report on the MBE and Small Business Reserve programs. Thus, it is unclear whether, or how, State agencies are expected to track awards to LGBTQ businesses, as envisioned by the bill. This analysis assumes that, for each contract award, procurement staff must determine if the awardee is an LGBTQ business. As procurement staff will be able to easily access a list of LGBTQ businesses certified by MDOT, this task can be done with existing resources. GOSBA can likely incorporate outreach to LGBTQ businesses into its existing outreach efforts to small and minority-owned businesses with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of General Services; Maryland Department of Transportation; Department of Legislative Services

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