

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 38 (Senator Ellis)
 Finance

Minority Business Enterprise Procurement Contract Financing

This bill establishes the Minority Business Enterprise Procurement Contract Financing Program and Fund (MBEPCFF) in the Maryland Small Business Development Financing Authority (MSBDF). If the General Assembly passes legislation implementing sports and event 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: Special fund revenues are redistributed from the Blueprint for Maryland’s Future Fund (BMFF) to MBEPCFF (\$3.6 million in FY 2024 and at least \$5.0 million annually thereafter). Special fund expenditures for MBEPCFF increase correspondingly; special fund revenues and expenditures for MBEPCFF further increase to the extent loans are provided and repaid (not reflected below). BMFF expenditures are unchanged due to use of fund balance through FY 2027. Beginning in FY 2028, special funds that would have been available to BMFF must be replaced by general fund expenditures – \$25.0 million in that year.

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$0	\$0	\$0	\$0	\$0
GF Expenditure	\$0	\$0	\$0	\$0	\$25.0
SF Expenditure	\$3.6	\$5.0	\$5.2	\$5.5	(\$19.3)
Net Effect	(\$3.6)	(\$5.0)	(\$5.2)	(\$5.5)	(\$5.7)

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, assuming that general funds replace BMFF expenditures beginning in FY 2028.

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 MBEPCHF;
- 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.

MBEPCHF 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 passes legislation implementing sports and event 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.

Any investment earnings of MBEPCHF must be credited to the general fund.

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 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. Generally, MSBDFA is not authorized to provide grants, although Chapter 39 of 2021 (the RELIEF Act) allowed for some pandemic-related financial assistance to be converted to grants.

Under the Contract Financing Program, MSBDFA may provide or guarantee a loan of up to \$2.0 million for working capital or 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. MSBDFA may also make an equity investment of up to 10% or \$250,000 under the program under similar conditions.

Minority Business Enterprises

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

Sports and Event Wagering

Chapter 492 of 2020, a constitutional amendment approved by the voters at the November 2020 general election, authorized sports and event wagering, contingent upon implementation legislation passed by the General Assembly. Chapter 356 of 2021 implemented sports wagering in the State and provides for regulation of sports wagering and fantasy gaming competitions. Licensees receive 85% of proceeds from sports wagering and fantasy gaming and the State receives 15%, as well as license fee revenues. Proceeds primarily accrue to BMFF, although 5% of certain license and renewal fees are transferred to the Small, Minority-Owned, and Women-Owned Business Sports Wagering Assistance Fund (SMWOBSWAF). For additional information on sports and event wagering, including projected revenues and their distribution from fiscal 2024 through 2028, see the **Appendix – Maryland Gaming**.

State Fiscal Effect: Overall State sports and event wagering revenues are not affected; however, 10% of such revenues are reallocated to MBEPCCFF instead of BMFF each year beginning in fiscal 2024, as shown in **Exhibit 1** below. It is unclear exactly which revenues are subject to the 10% distribution under the bill. For purposes of this estimate, only sports and event wagering revenues are assumed to be affected, while revenues from related licenses and fantasy sports are not; however, the estimate would not vary significantly until fiscal 2027 (when licenses begin to be renewed) if those amounts were included. Including license fee revenue would also reduce available revenues for SMWOBSWAF – although the revenues would still accrue to the same agency, Commerce.

Exhibit 1
Distribution of Certain Estimated State Sports and Event Wagering Revenues
(\$ in Millions)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
Sports and Event Wagering Revenues ¹	\$35.9	\$50.1	\$52.3	\$54.6	\$57.0
Distribution – Current Law					
BMFF ²	\$35.9	\$50.1	\$52.3	\$54.6	\$57.0
Distribution – The Bill					
BMFF	\$32.3	\$45.1	\$47.1	\$49.1	\$51.3
MBEPCFF	\$3.6	\$5.0	\$5.2	\$5.5	\$5.7

BMFF: Blueprint for Maryland’s Future Fund

MBEPCFF: Minority Business Enterprise Procurement Contract Financing Fund

¹ Revenues in fiscal 2024 reflect the bill’s October 1, 2023 effective date.

² BMFF is intended to assist in providing adequate funding for early childhood education and primary and secondary education to provide a world-class education to students in Maryland.

Source: Board of Revenue Estimates; Department of Legislative Services

Minority Business Enterprise Procurement Contract Financing Fund

As shown in Exhibit 1 above, special fund revenues for MBEPCFF increase by \$3.6 million in fiscal 2024 and by at least \$5.0 million annually thereafter from the required distributions. Special fund expenditures for MBEPCFF are assumed to increase correspondingly each year to provide financial assistance and pay for Commerce’s administrative expenses.

Currently, Commerce does not have a dedicated staff for MSBDFA; various staff allocate part of their time as needed. MSBDFA is also partly administered by a third-party contractor. The addition of the program requires a dedicated Commerce staff and will likely require additional administrative fees to be paid to the contractor. The current MSBDFA contract has an annual minimum of \$1.3 million to administer a comparable amount of annual funding.

Therefore, special fund expenditures for Commerce increase by \$3,592,257 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring one accounting specialist to provide direct support to MSBDFA and the program established under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes \$1.0 million in additional MSBDFA contractor fees, which again reflects the partial first fiscal year, and \$2.5 million in available programmatic funding.

Position	1.0
Salary and Fringe Benefits	\$75,416
Other Operating Expenses	7,409
Contractor Fees	1,000,000
Remaining Available Funds	<u>2,509,432</u>
Total FY 2024 MBECFF Expenditures	\$3,592,257

Future year expenditures reflect a full salary with annual increases and employee turnover, annual increases in ongoing operating expenses, ongoing full-year contractor fees of \$1.3 million, and ongoing sports and event wagering revenue transfers. Available programmatic funding will largely depend on wagering revenues and contractor fees in any year.

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 2025, special fund revenues and expenditures for MBECFF further increase to the extent that revenue-generating financial assistance is provided under the program.

Blueprint for Maryland’s Future Fund

Special fund revenues for BMFF decrease by \$3.6 million in fiscal 2024 and by at least \$5.0 million annually thereafter, totaling \$25.0 million through fiscal 2028, due to the required transfers. Special fund expenditures do not decrease correspondingly as long as sufficient fund balance remains to maintain ongoing spending. However, general funds will eventually be required to backfill these amounts. This estimate assumes that general fund expenditures increase by \$25.0 million in fiscal 2028 to make up the accumulated difference of transfers through that year and maintain total education spending. General fund expenditures subsequently increase by the amount of the annual transfer each year thereafter. Special fund expenditures for BMFF decrease correspondingly with the increase in general fund expenditures in the out-years.

Local Fiscal Effect: Local school systems receive significant funding from the State each year for primary and secondary education, a portion of which flows through BMFF.

However, assuming that general funds are provided to replace BMFF expenditures beginning in fiscal 2028, the bill does not materially affect local government finances or operations.

Small Business Effect: Eligible small businesses benefit from additional funds available for financial assistance under the program.

Additional Comments: The Department of Legislative Services notes the following:

- 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; and
- the exact sports and event wagering revenue distribution is unclear because the bill does not alter the existing distributions in § 9-1E-12 of the State Government Article.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 252 of 2021.

Designated Cross File: None.

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

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km/lgc

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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 2023. 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

	<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. 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, 2024; Chapter 117 of 2022, which reauthorized the program for the ninth time since its inception, required a new disparity study to be completed by September 2023 to inform the subsequent reauthorization process. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2021, the most recent year for which data is available.

Exhibit 2
Minority Business Enterprise Participation Rates, by Agency
Fiscal 2021

<u>Cabinet Agency</u>	<u>% Participation</u>
Aging	0.1%
Agriculture	5.0%
Budget and Management	1.0%
Commerce	2.2%
Education	4.4%
Environment	33.4%
Executive Department	2.2%
General Services	15.3%
Health	3.6%
Higher Education Commission	0.7%
Housing and Community Development	22.6%
Human Services	NA
Information Technology	6.0%
Juvenile Services	12.6%
Labor	3.3%
Military	1.4%
Natural Resources	1.2%
Planning	1.2%
State Police	8.2%
Public Safety and Correctional Services	33.3%
Transportation – Aviation Administration	21.5%
Transportation – Motor Vehicle Administration	32.8%
Transportation – Office of the Secretary	28.20%
Transportation – Port Administration	17.8%
Transportation – State Highway Administration	24.5%
Transportation – Transit Administration	23.9%
Transportation – Transportation Authority	19.3%
Statewide Total¹	17.2%

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

NA: Not Available/Did Not Report

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 2023 is \$1,995,008.

Appendix – Maryland Gaming

The State of Maryland has authorized and awarded six video lottery operation licenses in Baltimore City and Allegany, Anne Arundel, Cecil, Prince George’s, and Worcester counties with a maximum number of 16,500 video lottery terminals (VLT) allotted in the State. The opening date and the number of VLTs and table games in operation for each facility as of December 2022 are shown in **Exhibit 1**.

Exhibit 1 Number of VLTs and Table Games in Maryland

<u>Casino</u>	<u>County</u>	<u>Opening Date</u>	<u>VLTs</u>	<u>Table Games</u>
Hollywood Casino	Cecil	September 2010	699	19
Ocean Downs	Worcester	January 2011	842	19
Maryland Live!	Anne Arundel	June 2012	3,855	179
Rocky Gap Casino	Allegany	May 2013	614	16
Horseshoe Casino	Baltimore City	August 2014	1,466	130
MGM National Harbor	Prince George’s	December 2016	2,130	209

VLT: video lottery terminal

Source: State Lottery and Gaming Control Agency; Department of Legislative Services

VLT and Table Game Revenues

The estimated revenues from VLTs and table games in fiscal 2024 through 2028 are shown in **Exhibit 2**. A total of \$2.1 billion in gross gaming revenues is projected in fiscal 2024, including \$616.4 million to be distributed to the Education Trust Fund.

Exhibit 2
Distribution of Estimated VLT and Table Game Revenues in Maryland
Current Law
(\$ in Millions)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
VLTs Distribution					
Education Trust Fund	\$509.8	\$516.4	\$523.2	\$531.7	\$538.6
Lottery Operations	13.5	13.7	13.9	14.0	14.2
Purse Dedication Account	81.0	82.0	83.1	84.2	85.3
Racetrack Renewal Account	13.5	13.7	13.9	12.3	12.5
Local Impact Grants	74.2	75.2	76.2	77.2	78.2
Business Investment	20.2	20.5	20.8	21.0	21.3
Licensees	637.4	645.7	654.1	662.6	671.2
Total VLTs	\$1,349.7	\$1,367.2	\$1,385.0	\$1,403.0	\$1,421.4
Table Games Distribution					
Education Trust Fund	\$106.6	\$108.1	\$109.5	\$111.0	\$112.4
Local Impact Grants	35.5	36.0	36.5	37.0	37.5
Licensees	568.7	576.3	584.0	591.8	599.7
Total Table Games	\$710.9	\$720.4	\$730.0	\$739.7	\$749.6
Total VLTs and Table Games	\$2,060.6	\$2,087.6	\$2,115.0	\$2,142.7	\$2,170.9
Total Education Trust Fund	\$616.4	\$624.5	\$632.7	\$642.6	\$651.1

VLT: video lottery terminal

Source: Board of Revenue Estimates; Department of Budget and Management; Department of Legislative Services

Chapter 492 of 2020, a constitutional amendment approved by the voters at the November 2020 general election, authorized sports and event wagering, contingent upon implementation legislation passed by the General Assembly. Chapter 356 of 2021 implemented sports wagering in the State and provides for regulation of sports wagering and fantasy gaming competitions. Licensees receive 85% of proceeds from sports wagering and fantasy gaming and the State receives 15%, as well as license fee revenues. State revenues from sports wagering and fantasy gaming and their distributions are shown in **Exhibit 3**.

Exhibit 3
Distribution of Estimated State Sports Wagering and
Fantasy Competition Revenues
Current Law
(\$ in Millions)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
State Revenues					
Sports Wagering – Retail	\$7.8	\$8.0	\$8.1	\$8.2	\$8.3
Sports Wagering – Mobile	40.1	42.1	44.2	46.4	48.7
Sports Wagering License Fees	0.0	0.0	0.0	4.5	27.7
Fantasy Competition	1.0	1.0	1.0	1.1	1.1
Total	\$48.9	\$51.0	\$53.3	\$60.1	\$85.8
Distribution					
Blueprint for Maryland’s Future Fund ¹	\$48.9	\$51.0	\$53.3	\$60.0	\$84.5
SMWOBSWA Fund ²	0.0	0.0	0.0	0.1	1.3
Problem Gambling Fund ³	5.8	5.9	6.0	6.1	6.2

SMWOBSWA: Small, Minority-Owned, and Women-Owned Business Sports Wagering Assistance

¹ The Blueprint for Maryland’s Future Fund is intended to assist in providing adequate funding for early childhood education and primary and secondary education to provide a world-class education to students in Maryland.

² Five percent of the class A-1 license fees (\$2.0 million each) and of the class A-2 license fees (\$1.0 million each) are paid into the SMWOBSWA Fund. Five percent of renewal fees are transferred to the SMWOBSWA Fund.

³ Player winnings not claimed within 182 days are distributed to the Problem Gambling Fund.

Source: Board of Revenue Estimates; Department of Legislative Services
