HB 500

Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 500 (The Speaker, *et al.*) (By Request - Administration)
Health and Government Operations

Procurement Reform Act of 2025

This Administration bill makes changes to State procurement law related to, among other things, governance and oversight, small and minority business preference programs, payment practices, and master contracting. It also establishes new procurement programs or requirements for vendors related to good labor practices, use of interns and registered apprentices, and diversity plans. Finally, it makes clarifying, conforming, and technical changes to State procurement law.

Fiscal Summary

State Effect: General fund expenditures increase by $276,200 in FY 2026 for legal and compliance staffing, out-year expenditures reflect annualization and inflation. State procurement costs (all funds) may further increase due to increased legal liabilities, adjudication expenses, and reduced competition for State contracts, as discussed below. The bill's penalty provisions are not expected to materially affect special fund revenues.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Revenues	$0	$0	$0	$0	$0
GF Expenditure	276,200	330,100	344,700	360,100	375,500
Net Effect	($276,200)	($330,100)	($344,700)	($360,100)	($375,500)

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

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law: Broadly, the bill does the following:

- expands the responsibilities of the Chief Procurement Officer (CPO) and the Special Secretary for the Office of Small, Minority, and Women Business Affairs;
- delegates authority over transportation-related services and supplies to the Maryland Department of Transportation (MDOT);
- requires that all contracts valued at $1.0 million or less (instead of those valued between $50,000 and $500,000) be reserved for small businesses under the Small Business Reserve (SBR) program;
- requires specified contracts that are not public work contracts to use interns and registered apprentices;
- establishes a Good Labor Practices certification and preference for vendors;
- requires specified bidders and offerors to submit workforce diversity plans and/or supplier diversity plans before they are awarded a contract;
- repeals (1) a requirement that bidders or offerors submit a minority business enterprise (MBE) participation schedule at the time of bid/proposal submission and (2) notification requirements when a bidder or offeror becomes aware that an MBE included in the schedule is no longer available;
- authorizes procurement units to add or increase the MBE participation goal on a contract before or after contract execution, as specified;
- alters the circumstances under which a bidder or offeror may correct a deficiency in their MBE participation schedule, and the procedures for making the correction, and adds conforming provisions for contracts with a Veteran-owned Small Business Enterprise (VSBE) goal;
- requires the State to pay vendors awarded a contract under the SBR program within 15 days (instead of 30 days), and requires a working group to study prompt payment features for the 21st Century Financial Systems Enterprise;
- creates a VSBE Preference Program for procurements by the Department of Veterans and Military Families (DVMF) and the Military Department;
- revises requirements and procedures for task orders issued under master contracts;
- authorizes primary procurement units to limit or revoke a unit's ability to conduct small procurements if the unit does not adhere to small procurement regulations;
- requires bidders or offerors to give oral presentations for specified procurements;
- establishes the conditions under which a procurement officer may approve contract modifications;
- adjusts and standardizes various contract value thresholds under State procurement law to conform to the small procurement threshold;

- allows mandated nondiscrimination clauses in State contracts to be "substantially similar" to language specified in statute;
- clarifies that a pay-for-success procurement is a contract type but not a source selection method; and
- makes additional clarifying and conforming changes to State procurement law.

As appropriate, these changes are discussed in greater detail below.

Delegation and Reorganization of Procurement Responsibilities

Chapter 590 of 2017 created the CPO position within the Department of General Services (DGS) and designated CPO as the head of all procurement activity for the Executive Branch (except for procurement activity by other primary procurement units).

The bill explicitly authorizes the Secretary of General Services to delegate any power or duty in State procurement law to CPO, and expands CPO's responsibilities to include (1) approving the use of expedited procurements (instead of the Board of Public Works (BPW) and in addition to the head of a unit); (2) approving a unit's use of intergovernmental cooperative purchasing agreements; (3) approving the cancellation of procurement solicitations (instead of BPW); (4) serving on the Pricing and Selection Committee for Preferred Providers (instead of the Secretary of General Services); (5) approving the use of noncompetitive negotiations for specified procurements (instead of the Department of Budget and Management); (6) establishing guidelines for the use of additional methods of source selection not explicitly outlined in State procurement law; and (7) participating in the setting of the statewide MBE participation goal and related activities. With respect to expedited contracts, the bill requires that units report the award of expedited contracts to BPW.

Under current law, there is an Employment Works Program in DGS. The Secretary of General Services must designate Maryland Works, Inc., or another appropriate coordinating entity, to facilitate the distribution of procurement contracts for supplies and services among community service providers and individuals with disability owned businesses. *The bill* moves this program to the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA), and requires the Special Secretary to designate Maryland Works, Inc. or another appropriate entity to facilitate distribution of the procurement contracts.

Current law requires BPW to establish various regulations and procedures, including:

- specifying criteria that a business must meet to qualify as a small business;
- establishing various procedures related to supporting small businesses and MBEs; and

- establishing procedures, in coordination with the Department of Commerce, to compile and maintain a comprehensive bidder's list of small businesses and to locate potential MBE sources for construction related services, supplies, and services.

The bill transfers these responsibilities from BPW to the Special Secretary for the Office of Small, Minority, and Women Business Affairs.

Under current law, MDOT and the Maryland Transportation Authority may, without the approval of any other primary procurement unit, engage in the procurement of (1) construction and construction-related services related to transportation; (2) architectural or engineering services related to transportation; (3) supplies and services for aeronautics related activities but excluding insurance and supplies funded by general obligation bonds; and (4) rolling stock and other property specific to transit system operations. *The bill* further authorizes these two agencies to engage in the procurement of supplies and services for transportation-related activities, excluding insurance, supplies funded by State general obligation bonds, and banking and financial services under the authority of the State Treasurer.

Small Business Reserve Program

Under current law, there is a statewide goal for units to award at least 15% of the total value of their contracts to small businesses. A procurement with a total dollar value between $50,000 and $500,000 must be designated only for small businesses under SBR. This requirement does not apply to (1) procurements with preferred providers; (2) procurements involving federal funds (to the extent the inclusion conflicts with federal law or grant provisions); (3) the procurement of human, social, cultural, or educational services; or (4) term and master contracts that are granted an exemption. A procurement can be exempt from these provisions if GOSBA certifies that it is not practicable to do so, along with any waiver for MBE participation goals. *The bill* requires that all procurements valued at $1,000,000 or less must be designated for SBR, subject to the same exceptions.

If a primary procurement unit determines that a unit does not adhere to the established small procurement regulations, the primary procurement unit may limit or revoke the unit's ability to conduct small procurements.

Internship and Registered Apprenticeship Program

The bill establishes a new requirement that specified contractors use interns and registered apprentices. It defines a "covered procurement" as a procurement contract that meets criteria required to be established in regulations by CPO, in consultation with the Secretary of Labor, and is not a public work contract. Contractors awarded a covered procurement must use a registered apprenticeship program, and those awarded a contract with a value of at least $1,000,000 must use an eligible internship program. CPO may adopt regulations to implement these requirements, in consultation with the Secretary of Labor.

A contractor that submits a bid or proposal for a covered procurement must provide a unit with written verification of (1) the number of apprentices or interns that will be used throughout the contract term, including potential renewal options; (2) the work to be performed by apprentices or interns in their respective programs; and (3) the duration of the apprenticeship or internship. This verification must be provided before a contractor can be awarded a contract for a covered procurement. The Secretary of Labor is responsible for compliance with these requirements, must establish criteria to help units ensure compliance by their contractors, and may file suit to enforce these requirements.

A contractor that fails to use apprentices or interns under a covered procurement is subject to a fine to be determined according to criteria established by the Secretary of Labor. Penalties collected are payable to the State Apprenticeship Training Fund.

Good Labor Practices Preference

The bill establishes a good labor practices certification program and corresponding procurement preference for certified businesses. To obtain initial certification as a good labor practices certified business, a business must attest that, on any contract on which it performs work, the business will, among other requirements (1) directly employ all employees as W-2 employees; (2) pay all employees by check or electronic means, as specified, (3) comply with specified statutory wage and payment requirements; (4) successfully complete a comprehensive consultation visit by the Maryland Occupational Safety and Health Program, within a reasonable time, following the start of work under the contract; (5) be jointly and severally liable as an employer for any violation of a subcontractor of State laws in connection with the subcontractor's performance or work under the contract; and (6) provide proof that the business has secured a payment bond sufficient to ensure payment of wages to all employees performing work under the contract.

A business that submits an application that meets all the criteria may be issued a good labor practices certification, which remains valid for 12 months, providing that the business maintains their eligibility. The Commissioner of Labor and Industry must maintain an active list of businesses with the certification, post that list on the Maryland Department of Labor's (MD Labor) website, and send it to all procurement authorities at least once every 3 months and upon request. Businesses can renew their certification for an additional 12-month period, as specified. CPO, in consultation with the Commissioner, is authorized to adopt regulations. The bill includes penalties for businesses that knowingly and intentionally misrepresent a business, submit fraudulent materials for certification, or do anything to secure or maintain certification that is fraudulent or false.

CPO must, in consultation with the Secretary of General Services, establish a percentage price preference of at least 5% for a certified good labor practices business that submits a bid or offer on a State procurement.

Diversity Plans

Under the bill, awardees on contracts valued at more than $250,000 may be required to submit a *supplier* diversity plan to the procurement officer, while awardees with contracts greater than $500,000 may be required to submit a *workforce* diversity plan. GOSBA, in consultation with the Office of State Procurement (OSP), must adopt regulations to implement these provisions that include guidance for units as well as suggested content for the plans.

Minority Business Enterprise Program

For an overview of the State's MBE program, please see the **Appendix – Minority Business Enterprise Program**. The bill makes numerous changes related to MBE participation goals established for individual contracts and the MBE participation schedules, which include the names of MBEs that will participate in the contract and their expected level of participation.

Under current law, units establish an MBE participation goal for each contract based on numerous factors, including the availability of MBEs to perform the work. *The bill* allows a unit to consider adding or increasing the minority business participation goal on a contract (1) at any time prior to contract execution; (2) after contract execution, when determined to be in the best interest of the State; or (3) when the MBE participation schedule has been created or amended.

Under current law, bidders or offerors must submit an MBE participation schedule with their bid or offer; if they are awarded the contract, the participation schedule becomes part of the contract. If, following contract award but before the execution of a contract with an expected degree of MBE participation, an MBE identified in the MBE participation schedule becomes or will become unavailable to perform the work required under the contract, the bidder must notify the unit within 72 hours of making that determination and must also submit a written request with the unit to amend the MBE participation schedule. The request to amend the MBE schedule must indicate the bidder or offeror's efforts to substitute another certified MBE to perform the work that the unavailable or ineligible MBE would have performed. The schedule cannot be amended unless the bidder or offeror provides a satisfactory explanation of the reason for inclusion of the unavailable or ineligible firm on the schedule and the amendment is approved by the unit's procurement officer after consulting with the unit's MBE liaison.

The bill repeals the provisions described above (including the requirement to submit the MBE participation schedule with a bid or proposal). Instead, it requires that if a unit's procurement officer, in consultation with the unit's MBE liaison, identifies a deficiency in the MBE participation schedule after bid or proposal submission but before contract execution, the officer must notify the bidder or offeror and allow them a reasonable period of time to submit an amended schedule that corrects the deficiency.

Current law states that after execution of a contract with an expected degree of MBE participation, an MBE schedule cannot be amended unless the request is approved by the head of the unit and the contract is amended. *The bill* allows an MBE participation schedule to be amended after execution of the contract *to add or increase MBE participation* if (1) it is in the best interest of the State; (2) it is approved by the head of the unit; and (3) the contract is amended.

Prompt Payments

Current law establishes that it is the policy of the State to make a payment under a procurement contract within 30 days (1) of the day on which a payment becomes due under a contract or (2) if later, after the day on which the agency receives an invoice. *The bill* requires the State to make a payment within 30 days after the day on which the payment becomes due and the unit receives a *proper* invoice. Moreover, for contracts awarded under SBR, the bill requires the State to pay vendors within *15* days after the day on which the payment becomes due and the unit receives a proper invoice.

Current law tasks multiple departments with overseeing the development of a 21st Century Financial Systems Enterprise to upgrade and replace the State's outdated legacy financial management system. The agencies must establish working groups as needed. *The bill* requires the agencies to establish a working group to study whether immediate or prompt payment features can be added to the 21st Century Financial Systems Enterprise so that both prime contractors and subcontractors on a State procurement can be paid by the State at the same time.

Veteran-owned Small Business Enterprise Program

Under current law, GOSBA must adopt regulations that establish an overall percentage goal for the value of contract awards to VSBEs. Each State agency must structure its procurement procedures to try to achieve the percentage goal of the total dollar value of procurement contracts to be made to VSBEs established by GOSBA. GOSBA has set the current goal at 3% in regulation.

The bill creates a Veteran-owned Small Business Reserve Program modeled after SBR. Procurements in the reserve program are limited to responses from businesses that qualify as VSBEs. The bill further requires any procurement by DVMF, the Military Department, or units acting on their behalf of goods, supplies, services, maintenance, construction, construction related services, architectural services, and engineering services must be eligible for designation for the VSBE Reserve Program. GOSBA must establish standards and guidelines for participation in the veteran-owned small business reserve program every five years, as specified. These provisions do not apply to procurements to benefit disadvantaged individuals or procurements involving expenditures of federal dollars, to the extent that requirements conflict with federal law or grant provisions. The bill also establishes conditions for the amendment of VSBE participation schedules that mirror those described for the MBE program above.

Master Contracting

Under current law, designated procurement units may adopt master contracting, a streamlined procurement method that provides for the qualification of bidders and offerors for the procurement of services, supplies, or commodities. To become a master contractor, vendors must first respond to an agency's solicitation for qualified contractors. Once the vendor has been approved as a qualified vendor, agencies may then issue competitive task orders to which only qualified vendors may respond. The agency selects the qualified vendor that best meets the criteria established in the task order.

If the unit expects that the total costs of services, supplies, or commodities will be $100,000 or less, the unit must issue a solicitation for a task order to at least six qualified master contractors or all contractors, whichever is less, in the appropriate category. If the unit expects the total cost will exceed $100,000, the unit must issue a solicitation to all master contractors in the appropriate category.

The bill amends these requirements so that task orders expected to be $100,000 or less must be issue to three qualified master contractors (or all contractors if there are only two) in the appropriate category, those between $100,000 and $500,000 must be issued to six qualified master contractors (or less, as specified), and those above $500,000 must be issued to all master contractors. However, none of these requirements apply to a task order designated as SBR.

Oral Presentations

The bill adds that for competitive sealed proposals and task orders solicited under a master contract, an oral presentation by the offeror is required prior to contract award when (1) a contract for architectural and engineering services is expected to exceed $2,000,000; (2) a contract for construction and construction related services is expected to exceed

$10,000,000; or (3) a contract for any other procurement, including information technology and professional services, is expected to exceed $5,000,000. An oral presentation is not required if the procurement officer makes a written determination that oral presentations are unlikely to aid in the evaluation process.

Contract Modifications

Under current law, a contract modification is defined as a written alteration that (1) affects specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of a procurement contract and (2) is accomplished by mutual action of all parties to a procurement contract. *The bill* specifies that a procurement officer may approve a contract modification if the modification does not materially change the scope of the work and does not increase the total value of the contract to an amount that is greater than the small procurement amount. A contract modification of up to $1.0 million that does not materially change the scope of work for a contract may be approved by the primary procurement unit, CPO, or their designee. A procurement officer must document any contract modification, and CPO must establish guidelines for the contract modification process.

Background: The last significant reform of the State procurement system in recent years was enacted through Chapters 438, 588, 589, and 590 of 2017. Chapter 590 restructured procurement governance to increase centralization of procurement activities and enhance efficiency. It established OSP within DGS and created the position of CPO to oversee a more unified procurement system in the Executive Branch.

Chapter 438 clarified conditions under which an MBE may be removed from a contract and altered the calculation of MBE participation in State procurement for selected MBEs. The legislation also expanded SBR to apply to all State agencies, raised the program's goal from 10% to 15% of the value of agency procurements, and altered the method of measuring whether agencies reached the goal. Chapters 582 and 583 of 2024 later raised the SBR goal from 15% to 20%.

Chapters 588 and 589 altered the process for the procurement of architectural and engineering contracts valued at more than $200,000, allowed for expanded use of competitive proposals in State procurement, expanded authority for master contracting, and raised the small procurement threshold (from $25,000 to $50,000 for nonconstruction contracts).

State Expenditures: Most agencies, including DGS and MD Labor, advise that they can implement the bill's requirements with existing resources. However, the Office of the Attorney General (OAG) and GOSBA both advise that they require additional staff to manage increased workloads due to the bill.

Office of the Attorney General

The bill includes provisions that may require further input from OAG to advise agencies on implementing the bill's requirements. Also, the new programs supporting internship and registered apprenticeships, as well as certification of good labor practice businesses, contain enforcement and penalty provisions that may increase OAG's workload. Finally, adding flexibility to change MBE goals and participation schedules during all stages of contract procurement and execution may increase bid protests and/or contract claims, adding further to OAG's procurement-related caseload.

Therefore, general fund expenditures increase by $112,629 in fiscal 2026, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost for OAG to hire one assistant Attorney General to manage the increased workload resulting from the bill and to enforce new contract requirements. The costs include a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salaries and Fringe Benefits	$105,260
Operating Expenses	7,369
Total FY 2026 OAG Expenditures	**$112,629**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Governor's Office of Small, Minority, and Women Business Affairs

The bill transfers duties of the Employment Works Program to GOSBA and creates the new VSBE Reserve Program, which is also administered by GOSBA. As a result, GOSBA requires additional staff to carry out its new duties.

Therefore, general fund expenditures increase by $163,535 in fiscal 2026, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost of GOSBA hiring two compliance managers to administer the Employment Works Program and the new VSBE Reserve Program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$148,797
Operating Expenses	14,738
Total FY 2026 GOSBA Expenditures	**$163,535**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Operational and Other Effects

The bill creates some operational efficiencies by streamlining and centralizing procurement processes, but other provisions may create challenges for State agencies. By gaining the ability to procure transportation-related services and supplies without DGS oversight, MDOT advises that the length of such procurements may decrease by as many as three months. Conversely, the bill's shorter timeline for payments to small businesses likely is challenging for agencies, as current payment processes are labor intensive. Additionally, the bill's provisions allowing a bidder or offeror to take corrective actions for any MBE or VSBE participation schedule deficiency may lengthen the time of procurement and allow bidders or offerors to submit deficient bids or proposals.

Other provisions may increase the State's legal liability. As noted above, adding flexibility to change MBE contract goals and participation schedules may increase the number of bid protests and contract claims from vendors objecting to the timing or the amount of any changes (and the effects on the competitiveness of their bids or proposals).

Finally, other provisions may disrupt the procurement process and/or limit the number of vendors willing to participate in State procurement. Added requirements for diversity plans and a preference for certified good labor practice businesses may discourage some vendors from submitting bids or proposals. A requirement to use registered apprentices on nonpublic work contracts may further limit participation and disrupt contract performance. The recent interim report of the State's Apprenticeship 2030 Commission notes that more than 60% of the State's approximately 11,000 registered apprentices are in the construction industry (which is not affected by the requirement), and that there are only about 400 registered apprenticeship sponsors in the State. To the extent that registered apprentices are not available for "covered procurements," participation in State procurement may further suffer, especially since the program does not allow for waivers. Research has shown that reduced competition for contracts increases contract costs.

A reliable estimate of any increase in expenditures from these factors is not feasible for multiple reasons. For instance, until CPO specifies what constitutes a "covered procurement," any assessment of the availability of apprentices for those contracts is not feasible. Until GOSBA determines what must be included in diversity plans, an assessment of their effect on procurement participation is also not feasible. Finally, the extent to which the bill discourages participation in State procurement, and any resulting increase in contract costs, cannot be reliably estimated.

Additional Comments: Following multiple requests for information to inform this analysis, DGS provided its response the night before this fiscal and policy note was finalized and three days after the original deadline for submission. As a result, this analysis was unable to fully incorporate DGS's input. A revised fiscal note may be published as needed.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 426 (The President, *et al.*) (By Request - Administration) - Budget and Taxation.

Information Source(s): Department of Information Technology; Governor's Office of Small, Minority, and Women Business Affairs; Department of Commerce; Maryland Department of Aging; Contract Appeals, State Board of; Maryland Association of Counties; Maryland Department of Emergency Management; Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Maryland State Treasurer's Office; Maryland State Department of Education; Baltimore City Community College; Maryland State Library Agency; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of Agriculture; Maryland Department of Disabilities; Maryland Department of the Environment; Department of General Services; Department of Budget and Management; Department of Housing and Community Development; Department of Human Services; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Department of Veterans and Military Families; Maryland State Board of Elections; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2025
js/mcr

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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 (MDOT) 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 2025. 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

	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. 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, 2025; Chapters 137 and 138 of 2023, which reauthorized the program for the tenth time since its inception, also extended the due date for the new disparity study to September 2024 to inform the subsequent reauthorization process. However, the study was not completed, and MDOT advises that it will request another extension. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2023 and 2024; as the exhibit shows, rates can vary considerably from year to year.

Exhibit 2
Minority Business Enterprise Participation Rates, by Agency
Fiscal 2023 and 2024

	% MBE Participation	
Cabinet Agency	**FY 2023**	**FY 2024**
Aging	1.2%	11.2%
Agriculture	3.2%	6.2%
Budget and Management	32.9%	3.0%
Commerce	53.8%	77.5%
Education	11.5%	21.9%
Environment	37.9%	17.5%
Executive Department	4.6%	2.2%
General Services	19.5%	21.4%
Health	8.4%	12.8%
Higher Education Commission	3.0%	20.9%
Housing and Community Development	48.5%	40.4%
Human Services	10.5%	38.9%
Information Technology	14.4%	23.7%
Juvenile Services	6.5%	15.5%
Labor	18.6%	3.7%
Military	22.3%	27.5%
Natural Resources	10.2%	5.9%
Planning	0.0%	3.9%
State Police	20.9%	12.7%
Public Safety and Correctional Services	6.2%	28.5%
Transportation – Aviation Administration	22.1%	20.4%
Transportation – Motor Vehicle Administration	20.2%	25.1%
Transportation – Office of the Secretary	48.5%	21.0%
Transportation – Port Administration	13.1%	16.4%
Transportation – State Highway Administration	21.7%	27.0%
Transportation – Transit Administration	12.0%	n/a
Transportation – Transportation Authority	19.4%	19.8%
Statewide Total[1]	**17.9%**	**22.0%**

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

MBE: Minority Business Enterprise
n/a: not available

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 2025 is $2,136,382.

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Procurement Reform Act of 2025

BILL NUMBER: HB0500

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

___ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

__**X**__ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS