SB 232

Department of Legislative Services

Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 232 (Senator Salling)
Budget and Taxation

State Procurement - Preferences - Historically Underutilized Business Zone Businesses

This bill establishes a price preference for State procurement contracts made directly or indirectly with historically underutilized business zone (HUBzone) businesses, as defined by the bill; it also requires each State agency to structure its procurement procedures to try to achieve a goal of at least 1% of the total dollar value of its procurement contracts being made directly or indirectly with HUBzone businesses in 2026 and 2027, 2% in 2028, and 3% in 2029 and each year thereafter. The bill establishes penalties for persons who violate specified provisions.

Fiscal Summary

State Effect: General fund expenditures for the Department of Social and Economic Mobility (DoSEM) increase by $85,600 beginning in FY 2027 to administer the HUBzone program. Additional general and/or special fund expenditures are likely necessary for implementation and staffing, but a reliable estimate is not feasible, as discussed below. The addition of another preference program likely reduces competition for State contracts, resulting in higher prices for many of those contracts, but a reliable estimate of any such effect is also not feasible. The bill's penalty provisions are not expected to materially affect State revenues.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Revenues	$0	$0	$0	$0	$0
GF Expenditure	(85,600)	(100,500)	(105,200)	(110,000)	(114,800)
Net Effect	$85,600	$100,500	$105,200	$110,000	$114,800

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

Local Effect: The bill is not expected to materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

HUBzone Businesses

A HUBzone business is a business that meets the standards adopted by the U.S. Small Business Administration (SBA) in federal regulations (13 CFR 126, Subpart B) and any subsequent revision of that regulation, and that maintains a principal place of business in the State that is in a historically underutilized business zone. The definition of "small business" within the State's Small Business Reserve (SBR) Program is expanded to include HUBzone businesses that also meet State criteria for small business certification.

HUBzone Preference Program

The Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) must adopt regulations to implement the bill, including (1) establishing a process for the certification of HUBzone businesses, including the verification of eligibility through the Federal Systems for Award Management; (2) establishing the percentage price preference (3) establishing procedures for tracking and reporting participation of HUBzone businesses in State procurement; and (4) reporting annually, by December 1, to the Legislative Policy Committee on specified information and an evaluation of the program's effectiveness. The provisions of the HUBzone preference program do not apply to an agency to the extent that those provisions conflict with an applicable federal program.

Penalty Provisions

A person may not:

- knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds spent under a procurement contract to which the person is not entitled;
- knowingly and with intent to defraud, fraudulently represent participation of a HUBzone business in order to obtain or retain a bid preference or a procurement contract;
- willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false, as specified;

- willfully and knowingly aid, assist in, procure, counsel, or advise the preparation of a declaration, statement, or other document that is fraudulent or false, as specified;
- willfully and knowingly fail to file any declaration or notice with a State agency that is required by the bill; or
- establish, knowingly aid in the establishment of, or exercise control over a business found to have violated the above provisions.

Agencies must report any of these violations to the Board of Public Works (BPW). BPW must report the violations to the Office of the Attorney General, which must determine whether to bring a civil action against the person or business in violation of these provisions.

A person who violates any of the above provisions:

- is guilty of a misdemeanor and on conviction is subject to a fine up to $1,000 or imprisonment up to six months, or both;
- is liable for a civil penalty of (1) at least $10,000 but not more than $30,000 for a first offense and (2) between $30,000 and $50,000 for each subsequent offense; and
- pays all costs and attorney's fees imposed and incurred by the plaintiff in a civil action or must be prohibited from participating in State contracts until the penalties are satisfied.

A person who willfully misrepresents a business as a HUBzone business for purposes of obtaining or retaining a contract or subcontract may be subject to suspension or debarment and civil penalties under the Maryland False Claims Act.

Current Law: For an overview of the State's Minority Business Enterprise (MBE) program, please see the **Appendix – Minority Business Enterprise Program**.

Small Business Reserve Program

SBR requires most State agencies to structure their procurements so that at least 20% of the total dollar value of their procurements is made directly to small businesses; Chapter 582 of 2024 raised the goal from 15% to 20%. Under regulations governing the program, each agency must prepare an annual forecast of its total procurement spending. The agency must then develop a plan to allocate at least 20% of its forecasted spending to contracts for small businesses serving as prime contractors. Under Chapter 582, an agency can apply toward its total SBR participation goal awards made under a contract that is *designated* as an SBR procurement as well as awards not designated as an SBR procurement. The Special Secretary of Small, Minority, and Women Business Affairs must, in consultation with the Attorney General, establish standards and guidelines for participation in SBR every five years.

The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law, including SBR.

Chapter 75 of 2004 established SBR and defined a "small business" as either a certified minority-owned business or a business other than a broker that is independently owned and operated, not a subsidiary of another firm, and not dominant in its field of operation. In addition, Chapters 538 and 539 of 2012 (as amended by Chapter 76 of 2014) established that, to qualify as a small business under SBR, a business must meet *either* of the following criteria in its most recently completed three fiscal years:

- the firm did not employ more than 25 people in its retail operations; 50 people in either its wholesale or construction operations; or 100 people in either its service, manufacturing, or architectural and engineering operations; *or*
- average gross sales did not exceed \$2.0 million for manufacturing operations, \$3.0 million for retail operations, \$4.0 million for wholesale operations, \$4.5 million for architectural and engineering services, \$7.0 million for construction operations, and \$10.0 million for service operations.

Small businesses self-report their small business status by registering on eMaryland Marketplace Advantage, the State's online procurement portal. Chapter 119 of 2016 transferred responsibility for administering SBR from the Department of General Services (DGS) to GOSBA and repealed its termination date, making the program permanent. In 2025, GOSBA was transferred to the Department of Social and Economic Mobility and renamed the Office of Small, Minority, and Women Business Affairs.

Chapters 155 and 156 of 2022 (as amended by Chapter 601 of 2025) required that any procurement by an Executive Branch agency for goods, supplies, services, maintenance, construction, construction-related services, architectural services, and engineering services with a total dollar value of \$1,000,000 or less be designated for SBR, except for:

- procurements made in accordance with preferences made to benefit disadvantaged individuals;
- procurement involving expenditures of federal dollars, if inclusion in SBR conflicts with federal law or grant requirements;
- procurements of human, social, cultural, or educational services; and
- certain term or master contracts, as determined by GOSBA and the Office of State Procurement (OSP).

A procurement is exempt from designation for SBR if GOSBA certifies, concurrently with the review of any waiver determinations for certified MBE contract goals, that it is not practicable to do so. OSP must assist GOSBA in establishing procedures and guidelines for the efficient exemption of procurements from SBR.

Federal HUBzone Program and Eligibility

The purpose of the federal program is to provide federal contracting assistance for qualified small businesses located in HUBzones in an effort to increase employment opportunities, investment, and economic development in those areas.

To be eligible for HUBzone certification by SBA, the business must:

- meet federal small business size standards;
- have a principal office in a HUBzone;
- have at least 35% of its employees reside in a HUBzone; and
- be owned and controlled by a U.S. citizen.

Under Federal Acquisition Regulations, for open procurements, contracting officers must apply a price preference of 10% to all offers from HUBzone businesses.

Department of General Services Study

Chapter 518 of 2022 required DGS, in consultation with GOSBA, to study the feasibility and impacts of establishing a State procurement percentage preference for businesses located in HUBzones. DGS submitted its report on December 1, 2022, which included a finding that GOSBA would require at least one additional position to manage the program. However, the report concluded that it found "no evidence to support any direct benefit to Maryland small businesses by creating a HUBzone preference within the SBR program." Instead, it found that the greatest benefit to Maryland small businesses would result from their greater utilization of the existing federal HUBzone program.

State Expenditures: The bill establishes a new procurement preference program for HUBzone businesses, but its overall fiscal effect is ultimately unclear because it is not known whether the program is intended to operate as part of SBR or as a stand-alone preference program. The program is drafted in a section of procurement law that is separate from both the MBE and SBR programs; however, the definition of a HUBzone business is incorporated into the definition of a small business under SBR.

If the HUBzone program is intended to operate within SBR (with the specified 1-3% goals being a subset of the overall 20% goal), given the expansion of the definition of "small business" in the bill, the bill likely will have a minimal effect on State agencies and procurement costs when compared to a separate program. However, this is unlikely because the program is established in a separate section of procurement law. More likely, it operates parallel to the SBR and MBE programs and adds another participation goal to State procurement, in addition to MBE' s 29% goal and SBR's 20% goal (there is also a veteran-owned small business goal of 3%). As a result, it likely has a meaningful effect on State agencies and procurement costs.

The bill requires the Office of Small, Minority, and Women Business Affairs (OSBA) within the DoSEM to adopt regulations for HUBzone business certification and to establish procedures for monitoring, tracking, and reporting HUBzone business participation. Accordingly, DoSEM advises that OSBA likely requires at least one additional staff position to administer the program. General fund expenditures increase by $85,616 in fiscal 2027, which accounts for the bill's October 1, 2026 effective date. This estimate reflects the cost of hiring a Compliance Manager to oversee and report on the HUBzone program. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	$76,475
Operating Expenses	9,141
Total FY 2027 State Expenditures	**$85,616**

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

Furthermore, DoSEM advises that the program requires funds to integrate HUBzone-certified businesses into existing State certification databases and monitor the program, or to develop a new database if necessary. State agencies also likely require additional procurement staff to set HUBzone goals for each procurement, monitor vendor compliance with those goals, and track and report HUBzone business participation to OSBA. The Department of Legislative Services (DLS) concurs that some agencies, particularly those with substantial procurement activity, may require additional staff for these purposes. However, without more specificity about the program, many program features and procedures are likely to be established in the required regulations. As a result, these costs cannot be reliably estimated.

Finally, establishing another preference program in addition to the three existing programs further limits competition for State contracts. It also likely creates confusion among vendors and overlapping priorities in State contracts, which may have the effect of further limiting vendor participation in State procurement. Reduced competition for procurement contracts has been shown to increase the costs of procurement contracts, but a reliable estimate of any such effect is not feasible.

Small Business Effect: Small businesses in HUBzones benefit from increased opportunities to participate in State contracting. However, benefits may be limited as it is likely that only a small percentage of small businesses in the State are eligible to be certified as a HUBzone business.

Additional Comments: The bill includes definitions of HUBzone businesses that potentially conflict with each other. It defines a HUBzone business as a business that meets specified federal standards established by SBA. Those federal standards include industry-specific size standards. However, the bill also specifies that HUBzone businesses must meet industry-specific size standards established for SBR in State law. To the extent that these two sets of business size standards conflict, certification/designation of HUBzone businesses may be affected.

Furthermore, the bill creates a set-aside program (with a goal of awarding 1-3% of the total value of contracts awarded to HUBzone businesses, as specified) and a percentage price preference program for HUBzone businesses. It authorizes OSBA to adopt regulations, consistent with the Federal Acquisition Regulation, to implement this percentage price preference for procurement contracts made directly or indirectly with HUBzone businesses to be applied during procurements open to all vendors. As stated above, the Federal Acquisition Regulation requires contracting officers to apply a percentage price preference of 10% to all offers from HUBzone businesses. As the bill requires OSBA regulations to be consistent with the Federal Acquisition Regulation, it is likely that the price preference set by OSBA will need to match the federal requirement of 10%. It is unclear how agencies can apply a price preference for procurements set aside only for HUBzone businesses when there are not any HUBzone businesses competing for those contracts. DLS notes that federal law and regulations do not establish a goal for HUBzone awards from federal agencies.

Finally, the bill references the Governor's Office of Small, Minority, and Women Business Affairs, which was transferred to the Department of Social and Economic Mobility in 2025, and renamed the Office of Small, Minority, and Women Business Affairs.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 154 and HB 1184 of 2024 and SB 908 of 2023.

Designated Cross File: None.

Information Source(s): Department of Information Technology; Governor's Office of Small, Minority, and Women Business Affairs; Department of Social and Economic Mobility; Judiciary (Administrative Office of the Courts); Office of the Attorney General; University System of Maryland; Department of General Services; Department of Public Safety and Correctional Services; Board of Public Works; Department of Legislative Services

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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 Office of Small, Minority, and Women Business Affairs (OSBA, now housed within the Department of Social and Economic Mobility or DoSEM), in consultation with the Secretary of Transportation, the Chief Procurement Officer, 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.

In August 2013, OSBA 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 2026. OSBA 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: 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 OSBA 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, the State periodically conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The most recent disparity study, completed in September 2025, identified continued and ongoing disparities in annual wages, business earnings, and business ownership rates for minority- and women-owned businesses when compared to nonminority and male-owned businesses. The study found that minority-owned businesses in the Maryland Marketplace made up 47.4% of all businesses but captured only 17.6% of total sales, while nonminority male-owned businesses accounted for 29.9% of businesses and 66.7% of total sales. The study likewise identified disparities in the State's contracting with minority- and women-owned businesses, finding that these firms were consistently underutilized relative to their availability to perform State contracts. For instance, minority-owned businesses overall had an availability rate of 26.1% but were awarded contracts valued at only 15.2% of the total contract value awarded by the State. Nonminority women-owned businesses had an availability rate of 13.7% but were awarded contracts valued at only 7.1% of the total contract value awarded by the State. According to the analysis, these differences are large and statistically significant.

The MBE program is scheduled to terminate July 1, 2026; Chapters 620 and 621 of 2025, which reauthorized the program, also extended the due date for the new disparity study to September 2025 to inform the subsequent reauthorization process. As previously noted, this study was completed and published by the due date and is expected to serve as the empirical basis for the program's reauthorization. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2023 and 2024, the most recent data available; 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%**

MBE: Minority Business Enterprise
n/a: not available

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

Source: 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 2026 is $2,192,035.

The Office of Minority Business Enterprise (OMBE) handles MBE certification for the State. Chapter 605 of 2025 transferred OMBE from the Maryland Department of Transportation (MDOT), which had been the State's certification agency, to the new DoSEM. However, as procurement regulations have not been updated to reflect this transfer, MDOT is still designated as the MBE certification agency in regulations.