

**Letter of Information****Senate Budget and Taxation Committee**  
***Senate Bill 909 (Smith) Capital Projects – Minority Business Enterprise Goals*****Sara C. Fidler, President**[sfidler@micua.org](mailto:sfidler@micua.org)**March 9, 2021**

On behalf of Maryland's 13 state-aided private nonprofit colleges and universities and the 65,600 students we serve, I thank you for the opportunity to provide this letter of information in reference to ***Senate Bill 909 (Smith) Capital Projects – Minority Business Enterprise Goals***. This bill requires specified capital projects that are awarded at least \$500,000 in State funds in a single fiscal year to be reviewed by the Governor's Office of Small, Minority, and Women Business Affairs prior to the release of funds. The review must address subcontracting opportunities under the State Minority Business Enterprise (MBE) program and, if practicable, establish MBE subgoals for the project. If subgoals are established, the grant recipient must certify that the recipient expects to achieve the subgoals, or request a waiver.

We applaud the efforts of the Senate Workgroup on Equity and Inclusion, and we were pleased to have been asked to contribute to some of its study, specifically on issues of environmental justice. Regarding the Workgroup's recommendations relating to the MBE program and capital projects, we agree that more needs to be done to ensure that women and minority-owned businesses and firms are nurtured and fostered in a way that enables them to grow and thrive. All of our member institutions include MBE, Women Business Enterprise (WBE), and Local Business Enterprise (LBE) goals in their projects. We also agree that the implementation of the State's MBE program should be as accountable and transparent as possible. However, while we are interested in participating in initiatives that will increase diversity and opportunity in this regard, **we believe that there are several vague provisions and logistical details of implementation in the bill that may disrupt this intent.**

**Subjecting Private Entities to the State MBE Program may not be a Level Playing Field**

The bill requires a capital project as described above to be reviewed for subcontracting opportunities in accordance with State laws relating to the MBE program, regardless of whether the grantee is a public, private nonprofit, or other entity. Both public and private entities already encounter challenges in identifying sufficient competitive industry-specific contractors with the requisite experience. However, the public grantee has the full force and effect of government support from its colleague State agency and answers to the same governing authority. In addition, although overall MBE and WBE goals are practices with which many institutions are familiar and choose to follow for their own privately-funded projects, smaller grantees may not have the resources and infrastructure available to State agencies and larger institutions to fulfill various aspects of mandated MBE subgoals. Without the full support of the government, or the resources or depth of expertise afforded to public grantees, private grantees may not be on a level playing field and may be practically challenged to comply with the legislation. In the

worst case scenario, these requirements could stall private capital projects and frustrate the leveraging of millions of dollars in external and out-of-state private resources that bring much-needed construction jobs to Maryland.

### **Timeline for Implementation and Metrics for Determination are Unclear**

The bill does not include a timeline or outline a specific process that will govern the review of subcontracting opportunities and the establishment of subgoals. Without a clear timeline, other aspects of the project such as seeking and acquiring permits, prioritizing contemporaneous or competing capital demands, and hiring the contractors and subcontractors who will actually do the work will become fraught with uncertainty. Moreover, the bill does not include information on an appeal or review process, or a remedy, if any, in the event that the regulator decides to deny a particular contractor or subcontractor. Further, there are no metrics described against which a certification will be measured. Specific timelines and a clear, prompt appeal/review process would help to avoid any project delays and respective expense increases.

### **Further Study**

The MICUA institutions are engaged, invested, and working to increase diversity in our student bodies, faculty, staff, and administrations. These goals include efforts to promote and increase minority, women, and local-owned business involvement in our procurements and capital projects. As an example of data collected detailing our efforts in Baltimore City in 2018, please see: [“Collectively We Rise: The Business Case for Economic Inclusion in Baltimore.”](#) However, we know that there is room to improve, and still much more work to be done.

We welcome the opportunity to participate in an Interim Study that would explore ways to ensure that the intent of this bill is accomplished. We hope that the information in this letter has been helpful to you as you deliberate, and we would be happy to provide any further information that you may require.