

# **SB 909- Capital Projects - Minority Business Enter**

Uploaded by: Witten, Jennifer

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Maryland  
Hospital Association

March 9, 2021

To: The Honorable Guy Guzzone, Chair, Senate Budget & Taxation Committee

Re: Letter of Concern - Senate Bill 909 - Capital Projects - Minority Business Enterprise Goals

Dear Chair Guzzone:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 909. Maryland hospitals constantly keep pace with advancements in medicine and technology. We witnessed just how dynamic and adaptable hospitals must be during the COVID-19 pandemic. In a matter of days, weeks, and months, hospitals transformed their physical infrastructure to meet the needs of their communities, adding capacity for roughly 6,000, transforming entire floors to COVID units, and much more. Although these examples were unique and fast-tracked to respond to the pandemic, hospitals must update their facilities on an ongoing basis. Whether to comply with new national standards for operating rooms, for example, or to modify procedure rooms so patients do not need to be transferred to receive a higher level of care, hospitals carefully consider the infrastructure changes they need to promote the health and safety of their communities.

Despite the importance of capital funding, hospitals' access to it declined over the years.<sup>i</sup> Maryland hospitals utilize state funding to assist with capital projects—sponsored by their local Delegation or through the Private Hospital Grant Program (PHGP). MHA has been a dedicated steward of the PHGP since its inception in 1994. On average, seven to eight projects are recommended annually. This year, eight projects totaling \$6 million were included in the Governor's capital budget, with awards averaging \$750,000 for hospitals across the state.

Senate Bill 909 would add a new requirement for projects receiving at least \$500,000 in state funding in a single fiscal year. The bill requires the Governor's Office of Small, Minority, & Women Business Affairs (GOSBA), prior to the release of state funds, to review the project for subcontracting opportunities under the state's Minority Business Enterprise (MBE) Program. If practicable, GOSBA would establish MBE subgoals for the project. If goals are identified, then the grant recipient would certify that they expect to achieve the goal or request a waiver.

**Conflict with Existing Processes, MBE Goals Established by Hospitals**

We appreciate the intent of this legislation and support utilizing women and minority-owned businesses, as is recommended in our program criteria when applying for the PHGP. However, we are concerned with the lack of details in the bill regarding the process to determine subgoals. Through their own contracting, many hospitals have robust programs to increase the diversity of their contractors through MBE subgoals, recruitment in the community, and by including goals in their request for proposals with their general contractors. These goals and subgoals are monitored and evaluated on an ongoing basis. For example, the University of Maryland Medical System and Johns Hopkins Health System establish MBE goals for *every* construction

program—striving to ensure robust diversification of contractors. Since they have met or exceeded their overall goals for major construction projects for years, they are beginning to drill down to more specificity and inclusion for these MBE goals. Adding another layer of state oversight would slow projects down, resulting in delays that could increase costs and potentially deter MBE contractors from wanting to do business with hospitals.

Capital projects receiving funding through the PHGP must work with three state agencies: the Maryland Historical Trust to determine if their project impacts a historical property; The Department of General Services to determine if every contract meets state requirements; and the Comptroller's office to submit proof of expenditures and receive reimbursement from the state. Generally, projects funded through the PHGP are completed within the seven-year term. However, there are circumstances when extensions are needed due to unforeseen construction issues and even delays from the state agency tasked with reviewing the contracts. We are concerned that adding steps in this multi-agency process could increase extension requests and delay projects and disbursement of funding.

### **Lack of Detail in Guidelines, Concerns with Implementation**

We are also concerned with the lack of detail regarding the guidelines that would be established to determine if a subgoal is practical, what would be permitted for a waiver, and what reporting requirements would be established. The state excels at setting goals for state procurement projects through the Minority Business Enterprise Program. However, there has not been an equivalent, data-driven framework developed for monitoring expenditures for grant awards to non-state entities.<sup>1</sup> Additionally, if a grantee has a pre-established subcontracting plan that is deemed unacceptable by GOSBA's review, as required by SB 909, it is unclear what the remedy would be. It is also unclear what the MBE certifications would be measured against, the Maryland Department of Transportation (MDOT) or, will city and county certifications be accepted? The MDOT certification process is structurally limited so that larger minority-owned businesses do not appear on the list. Many hospitals have good working relationships with contractors with local certifications. Jeopardizing these contracts could be detrimental to the businesses SB 909 seeks to assist. The bill delegates the development of guidelines to the Special Secretary for the Office of Small, Minority, and Women Business Affairs, in consultation with the Secretary of Transportation and the Attorney General to inform this process. We recommend further study and engaging grant recipients to help develop the guidelines. These steps would make the components of SB 909 feasible.

Maryland hospitals appreciate and support the intent of this bill and the recommendations from the [Senate President Advisory Workgroup on Equity & Inclusion](#) to address this topic. Incorporating racially equitable and inclusive approaches to purchasing and investment decisions is one of the components of MHA and Maryland hospitals' [Commitment to Racial Equity](#). It is critical that any state-developed process complements the work hospitals are already undertaking to ensure diversity in their contracting opportunities.

For more information, please contact:  
Jennifer Witten, Vice President, Government Affairs  
Jwitten@mhaonline.org

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<sup>1</sup> Maryland Department of General Services. "[Innovations in Procurement: How to Achieve Real Diversity in State Contracting](#)".

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<sup>i</sup> Since 2014, as a condition of the Total Cost of Care Model, hospitals have operated under the Health Services Cost Review Commission's (HSCRC) set Global Budget Revenue. This change alters the financial incentives hospitals have, focusing on value over volume. This change is good for the Maryland Model, but limits access to capital funding since historically, hospitals financed capital projects using the revenue they received from increasing their patient volume combined with HSCRC rate increases. This combination of funding created an "inherent tension between the incentives of the Maryland Model and the ability to generate sufficient revenue to replace aging facilities." HSCRC developed a new capital policy in 2019 to provide predictable rate updates for new large scale capital projects. <https://hscrc.maryland.gov/Pages/gbr-adjustments.aspx>

**SB909\_MICUA\_LOI.pdf**

Uploaded by: Fidler, Sara

Position: INFO

**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.

**2021 SB 909 CGL-MBE Joint GOSBA-DGS LOI B&T 3-9-21**

Uploaded by: Robertson, Ellen

Position: INFO





GOVERNOR'S OFFICE OF SMALL, MINORITY & WOMEN BUSINESS AFFAIRS  
MARYLAND DEPARTMENT OF GENERAL SERVICES

**BILL TITLE:** Senate Bill 909-Capital Projects-Minority Business Enterprise Goals  
**DATE:** March 9, 2021  
**COMMITTEE:** Budget & Taxation  
**POSITION:** Letter of Information

The Governor's Office of Small Minority & Women Business Affairs (GOSBA) and the Department of General Services (DGS) provide these comments for your consideration.

**Bill Summary**

This bill would require the Governor's Office of Small, Minority, and Women Business Affairs, prior to the release of State funds for a capital project that receives at least \$500,000 in a single fiscal year, to review the project for subcontracting opportunities under the State's Minority Business Enterprise Program and, if practicable, establish minority business enterprise goals and subgoals for the project. The bill also would require the recipient of the State funds to certify to the Department of General Services their intention to achieve the goals or to request a waiver from the requirements.

**Considerations**

The Governor's Office of Small, Minority & Women Business Affairs (GOSBA) is charged with connecting Maryland's small business community to greater economic opportunities in both the public and private sectors, while implementing and monitoring small, minority, women, and veteran procurement programs across 70 state agencies. As such we welcome additional opportunities for inclusion.

In its capacity as an oversight agency, however, GOSBA does not function as a procurement unit. Thereby, respective State agencies are tasked with implementing Minority Business Enterprise (MBE) procurement law in day-to-day operations such as MBE goal setting determinations for their respective projects/solicitations. Under the proposed legislation, GOSBA's function would significantly expand to encompass an independent pre-disbursement review of capital grants over \$500,000 for the purposes of establishing MBE goals.

Performing this role would necessitate a team of Procurement Specialists or MBE Compliance officers to review scopes of work, make goal determinations; and review and recommend agency action on waiver requests. Given the volume of capital grant projects and the fact that this is not a function GOSBA is currently directly engaged in, these tasks cannot be absorbed by current staff. Additionally, since grantees are often entities not under the jurisdiction of State Procurement law, a process for gathering and vetting project information would need to be established.

*It should also be noted that an analysis of disparity within capital grant spend would likely be required either separately or under the forthcoming disparity study managed by the Maryland Department of Transportation. The outcome of such an analysis would be*

***required to serve as the evidentiary basis for the application of MBE goals to capital grant projects.***

During the 2010 Legislative Session, a similar iteration of the currently proposed legislation, ***House Bill 209 General Obligation Bonds for Capital Projects – Required Reports***, was passed and subsequently signed into law as Chapter 398 (abrogated without further action in 2013). More limited in scope, the law required hospitals and independent colleges, receiving Maryland General Obligation Funds of \$500,000 or more, for capital projects, to report to the Governor’s Office of Small, Minority & Women Business Affairs on the extent to which the organization had, or would, use any part of the funds for contracts with MBEs as well as any MBE outreach efforts. To accomplish this, GOSBA provided grantee training on processes and best practices for MBE goal setting and developed a reporting framework for gathering and tracking achievement from grantees. GOSBA did not, however, independently establish the goals for grantees.

DGS’s Office of Capital Grants and Loans (CGL) manages over 1,400 active capital grant projects valued at over \$1 billion. In addition, the Maryland General Assembly historically approves approximately 250 to 300 additional bond bills each year. If it is determined that MBE goals can be applied to capital grants over \$500,000, the expanded compliance monitoring, tracking, and reporting duties under Senate Bill 909 would realize a significant fiscal and operational impact on CGL. CGL would require one (1) Full-time Compliance Officer to ensure and track MBE compliance and provide annual reporting. An additional contractual MBE Compliance Officer would also be required to assist with reporting, waiver determinations and tracking of MBE compliance. ***The total cost of the above full-time positions would be \$119,731 in FY 2022 and rise to \$150,880 in FY 2026.***

Chantal Kai-Lewis, GOSBA, 410-697-9609, Chantal.Kai-Lewis@maryland.gov  
Ellen Robertson, DGS, 410-260-2908, Ellen.Robertson@maryland.gov

**SB 909 CGL - MBE Joint GOSBA-DGS LOI EHEA 3-9-21.p**

Uploaded by: Small, Minority & Women Business Affairs, Governor's Office

Position: INFO



GOVERNOR'S OFFICE OF SMALL, MINORITY & WOMEN BUSINESS AFFAIRS  
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