
January 25, 2022

The Honorable Guy Guzzone
Chairman, Senate Budget and Taxation Committee
3 West Miller Senate Office Building
Annapolis, Maryland 21401

Re: Letter of Information – Senate Bill 9 – Procurement – Minority Business Enterprises – Qualification and Certification

Dear Chairman Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 9 but offers the following information for the Committee's consideration.

Senate Bill 9 removes the provision requiring that a certified Disadvantaged Business Enterprise (DBE) from another jurisdiction must meet the eligibility requirements for the State Minority Business Enterprise (MBE) Program.

MDOT's Office of Minority Business Enterprise (OMBE) is responsible for implementing the State's Certification Program. As such, MDOT OMBE is the only office that certifies firms for participation in the State's MBE Program and the Federal Disadvantaged Business Enterprise (DBE) Program.

In order for Maryland's MBE Program to remain constitutional, MDOT can only certify firms owned by members of groups lawfully included in the Maryland statute. To be certified in the MBE Program, the individual(s) holding a 51% ownership interest in the firm must be a member of one of the presumptively disadvantaged groups as defined under Maryland law. It is critical to note that based on the underlying evidence supporting each program, the presumptively disadvantaged groups defined under federal law are different from the groups in the MBE Program. Therefore, in order for the Maryland Program to remain constitutional, MDOT can only certify firms owned by members of groups lawfully included in the Maryland statute. Should Senate Bill 9 pass, Maryland's MBE Program would be at risk.

Additionally, Senate Bill 9 provides a benefit to out-of-state firms and penalizes Maryland firms. The bill requires the State to certify non-resident DBE firms as MBEs, regardless of their ability to satisfy the MBE Program's requirements. Meanwhile, there is no benefit to resident Maryland firms seeking certification because they still must satisfy the eligibility requirements of the MBE Program. This includes the requirement that Maryland-based firms must be in good standing with the Department of Assessment and Taxation (DAT) before being certified as an MBE. With Senate Bill 9, an out-of-state DBE firm is not required to be DAT-registered at the time of certification, whereas a Maryland-based firm must be registered at the time of certification.

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The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 9.

Respectfully submitted,

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