SB 248 Testimony (1).pdf
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Legislative District 40
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Finance Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 25, 2022

Senate Bill 248: Minority Business Enterprises – Calculation of Participation Rates – Exemption for Procurements From Maryland Correctional Enterprises – Repeal

Dear Chairman Pinsky and Members Guzzone and Members of the Budget and Taxation Committee:

It is my pleasure to introduce Senate Bill 248: Minority Business Enterprises – Calculation of Participation Rates – Exemption for Procurements From Maryland Correctional Enterprises – Repeal. The Minority Business Enterprise Program (MBE) was created to help provide equitable opportunities for minorities in business after decades of discrimination and marginalization.

The MBE procurement spending requirements for state agencies was instituted with the same goal in mind, but the progress has been hindered by an exemption provided to agencies when they spend with Maryland Correctional Enterprise (MCE). Senate Bill 248 seeks to repeal an exemption that allows a procurement agency to exclude from its total annual procurements the annual dollar value of its contracts with MCE when calculating compliance with the certified MBE goals. If we truly would like to create equity in opportunity and see our minority businesses thrive, it is time that we close this loophole.

In the fiscal year of 2020, MCE's total sales were over $55 million dollars. 99% of these sales were to State agencies. Additionally, inmates in Maryland make between $0.17 - $1.16 an hour while completing these contracts for MCE. Senate Bill 248 seeks to decrease the demand for this type of reprehensible labor. Moreover, this is a considerable amount of revenue that our minority businesses could have benefited from. Senate Bill 248 provides another avenue for helping minority businesses that have been hurt by the COVID-19 pandemic by creating more opportunities for them to contract with the State.

Senate Bill 248 will alter the procedure for calculating the minimum dollar amount paid to MBE organizations. Only procurement contracts from Blind Industries and Services of Maryland and the Employment Work Program will be deducted from the total dollar value of procurement contracts for the purpose of calculating the MBE minimum goal. MCE procurement contracts will instead be included in the MBE minimum goal calculations.

This bill will increase opportunities for Maryland's minority-owned businesses and will decrease our State's reliance on MCE's unjust labor practices.

Thus, I strongly urge a favorable report on Senate Bill 248.

Respectfully,

Senator Antonio L. Hayes
40th Legislative District - MD

SB 248
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January 25, 2022

Minority Business Enterprises – Calculation of Participation Rates – Exemption for Procurements From Maryland Correctional Enterprises – Repeal

Dear Chairman Guzzone and Members of the Budget and Taxation,

A minority business enterprise is a business that is owned and controlled by one or more socially and economically disadvantaged individuals. **State Fin.& Proc. § 14-301 (f).** ("Socially disadvantaged individual") means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the control of the individual. **State Fin.& Proc. § 14-301 (l).** ("Economically disadvantaged individual") means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. **State Fin.& Proc. § 14-301 (e).**

Businesses owned, controlled and operated by minority persons are eligible for a preference in subcontracting opportunities on state contracts. Disparity studies are the means by which it is determined whether minority and social and economically disadvantaged persons have actually been excluded from state procurement opportunities and how much of a preference is needed to overcome the effects of and as a remedy for that past discrimination. The individuals/groups proven through disparity studies to be eligible for the subcontracting preference are listed under **State Fin.& Proc. § 14-301 (k) (1).**

In 2013 the state enacted legislation codified at § 14-301 (k) (1) of the State Finance and Procurement Article that established a preference for businesses owned by individuals that suffer from physical or mental disabilities. Such business may deserve a preference; however, they are not minority businesses because inclusion in that group is not restricted to persons who are have historically been subjected to racial discrimination. Moreover, minority or socially disadvantaged persons, the preference for people with disabilities has never been established through a disparity study that showed them to have been the victims of racial discrimination, the requirement for

establishment of a preference. Indeed, these individuals were designated as socially and economically disadvantaged "**notwithstanding the State's most recent disparity study**".

State agencies report for annual minority business procurement to the dollar amount of contracts with certified minority business enterprises. Those goals, to be enforceable, must be derived from appropriate disparity studies that demonstrate that the individuals or groups granted a preference are the victims of past discrimination or its effects and the goals must be, to the extent that race is taken into account, narrowly tailored. In addition to the dollar amount of purchases from businesses owned by disabled persons, the state also includes in the report of minority business purchases, the purchases made pursuant to **State Fin.& Proc. § 14-103** state agencies fulfill their needs for certain supplies or services on a priority basis from Maryland Correctional Services and other listed suppliers. Clearly that mandate is not based on a finding that these other entities or Maryland Correctional Enterprises has been the victim of **"racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities**". **State Fin.& Proc. § 14-301 (l).**

Crediting the dollar amount of purchases from businesses owned by disabled individuals and the dollar value of mandated purchases mandated by **§ 14-103, neither supported by a disparity study showing discrimination,** unlawfully dilutes the goals set for minority participation. If enacted, SB 248 would negate neither the preference for businesses or the directive for purchases from 14-13 enterprises. It will ensure that the dollar amounts reported for purchases from minority business enterprises reflect only the amounts purchased from businesses owned by racial minorities and socially and economically disadvantaged individuals, as required by law and as intended when preferences were first created.

For those reasons we urge a favorable report on SB 248.

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