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Baltimore County Senate Delegation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony Regarding SB 479
Department of Small, Minority and Women
Business Enterprises – Establishment and Duties
Before the Finance Committee
March 7, 2023

*“The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy. **Executive Order 11625--Prescribing additional arrangements for developing and coordinating a national program for minority business enterprise**”¹*

Good afternoon Chair Griffith, and Committee Members,

The purpose of Senate Bill 479 is to make real in Maryland the national goals that were established by President Nixon’s Executive Order 11625. In 1978 Maryland was the first State in the nation see the possibilities of the federal minority business enterprise program and passed its first Minority Business Enterprise Program (“MBE”). The 1978 MBE program set a 10% goal and included education, general services, University of Maryland, Interagency Committee on Public School Construction and Maryland Department of Transportation (“MDOT”) construction contracts over \$100,000. The goal of SB 479 is to bring into existence the vision of many in the General Assembly and in Maryland that after nearly 50 years we have an agency whose mandate is to ensure economic justice and opportunity for entrepreneurs.

¹ The provisions of Executive Order 11625 of Oct. 13, 1971, appear at 36 FR 19967, 3 CFR, 1971-1975 Comp., p. 616, unless otherwise noted.

When I was first elected to the House of Delegates, one of the issues I sought to address was the lack of minorities or disadvantaged Marylanders with State contracts. I held an MBE certification workshop with Baltimore County Government, Baltimore County Public Schools and the Governor's Office of Small, Minority, and Women Business Affairs ("GOSBA") all making presentations although attendance was low. I later talked with associates who managed MBE programs and was told that certification was one thing and obtaining a State contract was quite another.

I looked for MBE oversight studies last year as I contemplated this legislation and found out that Maryland's Minority Business Enterprise Program had been evaluated by our Department of Legislative Services ("DLS"), Office of Program Evaluation and Government Accountability ("OPEGA"), and that it issued a report in January 2022.² I encourage each of you to read and reflect on its findings and recommendations. The report analyzed MBE payment data from more than 3,000 completed State contracts as of June 2020, and survey responses from more than 2,700 MBE and non-MBE vendors. The study team also interviewed senior staff from the Governor's Office of Small, Minority, and Women Business Affairs, the Maryland Department of Transportation, the Department of General Services, and the Board of Public Works.

Senate Bill 479 is an actionable response to the findings and recommendations detailed in the OPEGA study and is in part a reaction to that study..³ Senate Bill 479 creates a cabinet level department because it has far more authority by which to conduct its mandate. The Department can be held accountable for equity, funding, and economic justice that has been decades in the making.

² Evaluation of the Minority Business Enterprise Program, Department of Legislative Services, Office of Program Evaluation and Government Accountability, Annapolis, Maryland, January 2022

³ Id. Pg. xii-xiii: Select Department of Legislative Services recommendations (1) require the GOSBA to publish a summary of contract compliance assessments; (2) require GOSBA to publish a list of prime contractors that repeatedly are at fault for failing to fulfill contractual MBE obligations; (3) prime contractor past performance regarding MBE payments should be a factor in determining eligibility for future awards; (4) codify the executive order that generally requires procurements between \$50,000 and \$500,000 be set aside for small businesses; (5) create an MBE Ombudsman within GOSBA to advocate on behalf of MBEs in disputes with prime contractors; (6) require GOSBA to establish statewide MBE goals by industry type; (7) consider breaking up large contracts into smaller components to expand bidding opportunities for MBEs; (8) study the value of merging the MBE and Small Business Reserve programs; and (9) give agencies expanded authority to withhold payments to prime contractors who have not paid subcontractors timely

In Section 9-303.4 Senate Bill 479 establishes a **State Board of Contract Preference Appeals** which will consist of six full-time state compensated members appointed by the Secretary. Appeals would be heard by a panel of no more than three designated board members by the chair. The Board would have jurisdiction to hear and decide all appeals.

In Section 9-303.5 Senate Bill 479 establishes a **Development Office** in the Department which would conduct outreach and training, manage the mentorship program, collect and analyze contractor performance data, advise the Secretary on strategy and implementation of programs, and make recommendations to the Secretary on methods to increase participation in the preference programs. The Development office would also manage the mentorship program, which would identify minority-owned and small businesses with the skill and abilities to become successful contractors and subcontractors with the state. Additionally, the Development Office would have the responsibility to recommend whether contracts should be divided into smaller components to expand bidding opportunities, and whether a mentorship requirement for a prime contractor should be part of the State contract agreement.

In Section 9-303.6 Senate Bill 479 establishes a small and minority business development fund. The purpose of the program is to help develop, redevelop, or expand small and minority businesses by providing financial assistance to small and minority businesses that have been previously rejected by another lender on at least two occasions; stimulate investment by the private sector; invest in revitalization projects; and stimulate political subdivisions to participate in developing and expanding small and minority businesses. Financial assistance under the program may be provided as a grant, or a loan.

In Section 9-304 Senate Bill 479, the secretary would employ and assign minority business enterprise liaisons to each department of the executive branch of state government to ensure compliance with the requirements established by the department for each state agency.

In summary, Senate Bill 479 does four critical things: (1) establishes a State Board of Contract Preference Appeals, (2) Establishes a Development Office, (3) Creates a small and minority business development fund, and (4) Adds a requirement that prime contractors, as part of their State contract agreement, mentor their MBE subcontractors.

For these reasons, I ask you to vote favorably in support of SB 479.