

February 21, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis Maryland 21401

RE: Senate Bill 433 – Letter of Information – Woman- and Minority-Owned Shellfish Aquaculture Enterprise Fund

Dear Chair Griffith and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 433 but offers the following information for the Committee’s consideration.

Senate Bill 433 establishes a Woman- and Minority-Owned Shellfish Aquaculture Enterprise Fund to assist woman- and minority-owned businesses entering or expanding in the shellfish aquaculture industry.

Every aspect of the Minority Business Enterprise (MBE) program, including State statutory and regulatory requirements, is controlled by the United States Constitution and Supreme Court precedent. The 1989 Supreme Court decision in *Croson* established that programs and policies which use racial classifications to provide a benefit to a specific class of people based on immutable characteristics like race, could, on their face violate the Equal Protection Clause of the 14th Amendment; therefore, these must pass the most rigorous judicial test of strict scrutiny. The strict scrutiny test provides that in order to implement race-conscious programs or remedies, a government entity or State must show the following prongs:

- A compelling governmental interest – i.e., the government must show the existence of and need to remedy past or present discrimination; and
- Narrow tailoring – i.e., any remedies employed must be narrowly tailored to address the specific discrimination identified in prong one.

Disparity studies are the means by which the State satisfies the aforementioned requirements. These studies collect and assess extensive data on the existence, extent, and impact of discrimination, if any, against minority and woman-owned firms with respect to contracting opportunities in the public and private sectors of Maryland’s marketplace. The ability to legally implement Senate Bill 433 will be impacted by the State’s ability to perform a precursory disparity analysis and subsequent analysis of its findings.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 433.

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Respectfully Submitted,

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