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Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1416 (Delegates J. Long and Woods)
Government, Labor, and Elections

**State Procurement and Recipients of State Funding - Electric Vehicle Charging
Equipment - Minority Business Enterprise Participation**

This bill requires that, for State contracts involving the procurement and installation of electric vehicle (EV) charging equipment, agencies establish an expected level of minority business enterprise (MBE) participation for that portion of the contract equal to the MBE goal for the unit's overall procurements. Furthermore, the bill requires, to the extent practicable and permitted by the U.S. Constitution, that a person receiving a State grant or loan of \$100,000 or more for the purchase or installation of EV charging equipment comply with the State's MBE program as a condition of receiving funding. The Office of Small, Minority, and Women Business Affairs (OSBA) within the Department of Social and Economic Mobility, in consultation with the Office of the Attorney General (OAG), must also establish a clear plan for setting reasonable and appropriate MBE participation goals and procedures for the purchase and installation of EV charging equipment funded by the State. These goals and procedures must be based on laws and regulations governing the MBE program, and the recipient must submit a report to OSBA on compliance within 12 months after receiving State funding.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures increase by between \$75,000 and \$500,000 in FY 2027 for a disparity study, as discussed below. OSBA, in consultation with OAG, can handle the bill's requirements with existing resources. No effect on revenues.

Local Effect: None. The bill's requirements only apply to State contracts, grants, and loans.

Small Business Effect: Meaningful.

Analysis

Current Law: For a detailed overview of the State’s MBE program, please see the **Appendix – Minority Business Enterprise Program**. MBE program requirements currently apply only to State contracts or other specified contracts for goods or services, and not to any grants or loans made by the State.

Procurement solicitation documents (*i.e.*, requests for proposals or invitations for bids) issued by State agencies must include the expected degree of MBE participation for each solicitation. MBE participation goals for each contract must be based on:

- the potential subcontract opportunities available in the contract;
- the availability of certified MBEs to respond competitively to the potential subcontract opportunities;
- the contract goal and subgoal guidelines developed by OSBA; and
- other factors that contribute to constitutional goal setting.

An agency may, in some cases, determine that an MBE goal is not appropriate for a specific contract if it determines that the contract does not have subcontracting opportunities or that MBEs are not available to perform any portion of the contract. Agencies are barred from using quotas or any goal-setting process that relies only on the statewide goal or that fails to consider the factors outlined above.

State Expenditures:

Disparity Study for EV Charging Stations Supplies and Services

As discussed in the Appendix, the Supreme Court’s 1989 *Croson* decision held State or local MBE programs using race-based classifications to strict scrutiny under the equal protection clause of the fourteenth amendment to the U.S. Constitution. The ruling also required an MBE program to demonstrate clear evidence that the program is narrowly tailored to address actual disparities in the marketplace for the jurisdiction that operates the program. As a result, prior to each reauthorization of the State’s MBE program, the State conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

While a disparity study was recently concluded in 2025 and supports the State’s continued implementation of the MBE program, the disparity study did not specifically analyze the market for the supply and installation of EV charging equipment. Moreover, as noted above, current law forbids the setting of a contract MBE goal using only the statewide MBE goal and without considering additional specified factors. The absence of a disparity

analysis and the requirements outlined in current law likely render the bill's goal-setting requirements legally indefensible.

As a result, prior to the application of the MBE program to supplies and services related to EV charging stations, a disparity analysis must be conducted to demonstrate that there is an actual disparity that needs to be addressed. Prior analyses related to wind turbine installation and licensing of medical cannabis growers, processors, and dispensaries have concluded that a reanalysis of existing disparity data from the most recent study will cost between \$75,000 and \$100,000. If data on services related to EV charging stations is not available and a separate study must be conducted, the cost may be as much as \$500,000.

Assuming any supplemental disparity study completed for EV charging stations supplies and services indicates disparity within the market, OSBA and OAG should be able to handle requirements to set MBE goals for contracts with existing resources.

State Grants for Electric Vehicle Charging Stations with Federal Funds

The Infrastructure Investment and Jobs Act, signed into federal law in November 2021, established new programs to address climate change, including the National Electric Vehicle Infrastructure (NEVI) Program to provide formula funding that the Federal Highway Administration was required to distribute among states to strategically deploy EV charging infrastructure. Maryland has been apportioned about \$63 million in federal fiscal years 2022-2026 NEVI Program funding.

The Maryland Department of Transportation (MDOT) uses this federal funding to issue grants for the installation of and operation of EV charging infrastructure. Grant awards provide funding for up to 80% of eligible costs to install, operate, and maintain the chargers for five years, with the requirement that recipients must provide approximately \$2.5 million in private matching funds and must ensure the chargers are operational 97% of the time.

MDOT advises that any grants that the State distributes that are funded in whole or in part with funding from the U.S. Department of Transportation are expected to be subject to the federal Disadvantaged Business Enterprise (DBE) program, not the State MBE program. Traditionally, MDOT has not applied the DBE program and the MBE program goals on the same contracts, and it is unclear whether federal guidelines allow the State to place MBE requirements on grants that use federal funding. Therefore, it is unclear how the application of MBE requirements may affect much of the State's grant funding for EV charging stations. The Department of Legislative Services notes that MDOT has already awarded approximately one-third of the NEVI grants in two rounds of grant awards. A third round is scheduled for March 2026, before the bill takes effect.

Small Business Effect: Small businesses that provide supplies and services related to EV charging stations and that are also certified MBEs may benefit from expanded opportunities for participating in State contracts (or contracts using State funds). However, prime contractors that are small businesses fulfilling State contracts for the supply or installation of EV charging will need to make sure the EV charging portion of a contract meets MBE participation requirements, which may create administrative burdens.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Social and Economic Mobility; Department of General Services; Maryland Department of Transportation; Department of Legislative Services

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Appendix – Minority Business Enterprise Program

The State’s Minority Business Enterprise (MBE) program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Office of Small, Minority, and Women Business Affairs (OSBA, now housed within the Department of Social and Economic Mobility or DoSEM), in consultation with the Secretary of Transportation, the Chief Procurement Officer, and the Office of the Attorney General (OAG). In a year in which there is a delay in establishing the overall goal, the previous year’s goal applies. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the guidelines, the previous year’s guidelines apply.

In August 2013, OSBA announced a new statewide goal of 29% MBE participation that applied to fiscal 2014 and 2015; as no new goal has been established, the 29% goal remains in effect for fiscal 2026. OSBA issued subgoal guidelines in July 2011 and then updated them effective August 2020, as summarized in **Exhibit 1**. The guidelines state that subgoals may be used only when the overall MBE goal for a contract is greater than or equal to the sum of all recommended subgoals for the appropriate industry, plus two. MBE prime contractors may count their own work for up to 50% of a contract’s MBE goal and up to 100% of any contract subgoal. Their full participation counts toward the State’s 29% goal.

Exhibit 1 Subgoal Guidelines for Minority Business Enterprise Participation

	<u>Construction</u>	<u>Architectural/ Engineering</u>	<u>Maintenance</u>	<u>Information Technology</u>	<u>Services</u>	<u>Supplies/ Equipment</u>
African American	8%	7%	9%	10%	-	6%
Hispanic	-	-	3%	-	2%	2%
Asian	-	-	2%	-	3%	-
Women	11%	10%	-	10%	10%	8%
Total	19%	17%	14%	20%	15%	16%
Total + 2	21%	19%	16%	22%	17%	18%

Source: Office of Small, Minority, and Women Business Affairs

There are no penalties for agencies that fail to reach the statewide target. However, Chapters 155 and 156 of 2022 require OSBA to refer prime contractors that persistently fail to meet MBE participation goals on their contracts to OAG for debarment for up to three years.

History and Rationale of the Minority Business Enterprise Program

In 1989, the U.S. Supreme Court held in the *City of Richmond v. J.A. Croson Co.* that state or local MBE programs using race-based classifications are subject to strict scrutiny under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. In addition, the ruling held that an MBE program must demonstrate clear evidence that the program is narrowly tailored to address actual disparities in the marketplace for the jurisdiction that operates the program. As a result, the State periodically conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The most recent disparity study, completed in September 2025, identified continued and ongoing disparities in annual wages, business earnings, and business ownership rates for minority- and women-owned businesses when compared to nonminority and male-owned businesses. The study found that minority-owned businesses in the Maryland Marketplace made up 47.4% of all businesses but captured only 17.6% of total sales, while nonminority male-owned businesses accounted for 29.9% of businesses and 66.7% of total sales. The study likewise identified disparities in the State's contracting with minority- and women-owned businesses, finding that these firms were consistently underutilized relative to their availability to perform State contracts. For instance, minority-owned businesses overall had an availability rate of 26.1% but were awarded contracts valued at only 15.2% of the total contract value awarded by the State. Nonminority women-owned businesses had an availability rate of 13.7% but were awarded contracts valued at only 7.1% of the total contract value awarded by the State. According to the analysis, these differences are large and statistically significant.

The MBE program is scheduled to terminate July 1, 2026; Chapters 620 and 621 of 2025, which reauthorized the program, also extended the due date for the new disparity study to September 2025 to inform the subsequent reauthorization process. As previously noted, this study was completed and published by the due date and is expected to serve as the empirical basis for the program's reauthorization. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2023 and 2024, the most recent data available; as the exhibit shows, rates can vary considerably from year to year.

Exhibit 2
Minority Business Enterprise Participation Rates, by Agency
Fiscal 2023 and 2024

<u>Cabinet Agency</u>	<u>% MBE Participation</u>	
	<u>FY 2023</u>	<u>FY 2024</u>
Aging	1.2%	11.2%
Agriculture	3.2%	6.2%
Budget and Management	32.9%	3.0%
Commerce	53.8%	77.5%
Education	11.5%	21.9%
Environment	37.9%	17.5%
Executive Department	4.6%	2.2%
General Services	19.5%	21.4%
Health	8.4%	12.8%
Higher Education Commission	3.0%	20.9%
Housing and Community Development	48.5%	40.4%
Human Services	10.5%	38.9%
Information Technology	14.4%	23.7%
Juvenile Services	6.5%	15.5%
Labor	18.6%	3.7%
Military	22.3%	27.5%
Natural Resources	10.2%	5.9%
Planning	0.0%	3.9%
State Police	20.9%	12.7%
Public Safety and Correctional Services	6.2%	28.5%
Transportation – Aviation Administration	22.1%	20.4%
Transportation – Motor Vehicle Administration	20.2%	25.1%
Transportation – Office of the Secretary	48.5%	21.0%
Transportation – Port Administration	13.1%	16.4%
Transportation – State Highway Administration	21.7%	27.0%
Transportation – Transit Administration	12.0%	n/a
Transportation – Transportation Authority	19.4%	19.8%
Statewide Total¹	17.9%	22.0%

MBE: Minority Business Enterprise
n/a: not available

¹ Includes the University System of Maryland, Morgan State University, St. Mary’s College of Maryland, and non-Cabinet agencies.

Source: Office of Small, Minority, and Women Business Affairs

Requirements for Minority Business Enterprise Certification

An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged. An MBE owned by a woman who is also a member of an ethnic or racial minority group may be certified as being owned by both a woman and by a member of a racial or ethnic minority, but for the purpose of participating on a contract as an MBE, it can only be counted as one or the other.

A "socially disadvantaged individual" is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of his or her membership in a group and without regard to individual qualities. An "economically disadvantaged individual" is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged. An individual with a personal net worth in excess of \$1.5 million, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for calendar 2026 is \$2,192,035.

The Office of Minority Business Enterprise (OMBE) handles MBE certification for the State. Chapter 605 of 2025 transferred OMBE from the Maryland Department of Transportation (MDOT), which had been the State's certification agency, to the new DoSEM. However, as procurement regulations have not been updated to reflect this transfer, MDOT is still designated as the MBE certification agency in regulations.