

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1578

(Chair, Government, Labor, and Elections
Committee)(By Request - Departmental - Maryland
Department of Social and Economic Mobility)

Government, Labor, and Elections

Budget and Taxation

State Procurement - Procurement Preferences - Reauthorization and Revisions

This departmental bill (1) extends the termination date for the Minority Business Enterprise (MBE) program by five years to July 1, 2031; (2) repeals existing legislative findings on disparity in State contracting and establishes new findings; (3) establishes quarterly reporting requirements for specified procurement programs and alters reporting deadlines for annual reporting by the Office of Small, Minority, and Women Business Affairs (OSBA); (4) requires OSBA to develop regulations to review small business certification; (5) amends the definition of small business to include joint ventures; and (6) makes corresponding adjustments to the termination and due dates for MBE contracting requirements and related disparity analyses under current law. **The bill takes effect June 1, 2026.**

Fiscal Summary

State Effect: None. Agencies can handle additional reporting requirements with existing resources. The bill is otherwise technical and procedural in nature and has no effect on State government finances.

Local Effect: None.

Small Business Effect: The Department of Social and Economic Mobility (DoSEM) has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment as discussed below.

Analysis

Bill Summary/Current Law:

Minority Business Enterprise Program

For a detailed description of the State's MBE program, please see the **Appendix – Minority Business Enterprise Program**. As the appendix notes, the MBE program is scheduled to terminate July 1, 2026.

Legislative Findings

The bill repeals existing legislative findings used to support the MBE program and establishes new findings. These findings generally affirm Maryland's commitment to providing equal access to business formation and growth and address the disadvantages that minority- and women-owned businesses face. Specific findings, among others, include:

- the elimination of discrimination against minority- and women-owned businesses is of paramount importance to the future welfare of all Marylanders and the State;
- the General Assembly has accepted and carefully reviewed the 2025 disparity study and finds that the study provides a strong basis in evidence demonstrating persistent intentional discrimination against minority- and women-owned businesses;
- as a result of ongoing discrimination and the present-day effects of past discrimination, minority- and women-owned businesses combined continue to be significantly underutilized relative to the availability of minority- and women-owned firms to perform work in the overwhelming majority of the procurement categories in which the State does business;
- despite the fact that the State has employed, and continues to employ, numerous and robust race-neutral remedies, including aggressive outreach and advertising, training and education, small business programs, efforts to improve capital, and other efforts, there is a strong basis in evidence that discrimination persists even in public sector procurement in which these efforts have been employed;
- race-neutral efforts will be used to the maximum extent feasible and race-conscious measures will be used only where necessary to eliminate discrimination that was not alleviated by race-neutral efforts; and
- these findings ensure that the operation of the MBE program is consistent with the disparity study data and narrowly tailored to the compelling interests of the State.

Annual Reporting of Minority Business Participation

Under current law, within 90 days after the end of the fiscal year, each procurement unit must report specified data on minority business participation in State contracts to OSBA

and the Office of Minority Business Enterprises in DoSEM. By December 31 of each year, OSBA must submit a report summarizing the information the office receives to the Board of Public Works (BPW), the Legislative Policy Committee (LPC), and the Joint Committee on Fair Practices and State Personnel Oversight.

The bill requires agencies to report their participation data within 60 days after the end of the fiscal year. It also changes the deadline for OSBA to submit its report to the fifth day of the regular legislative session. Furthermore, except for the quarter in which a unit is submitting an annual report, each unit must report quarterly to OSBA (1) MBE participation data; (2) MBE program compliance assessments; and (3) any other information requested by OSBA related to affected contracts. The report that OSBA submits to BPW, LPC, and the Joint Committee on Fair Practices and State Personnel Oversight may be prepared in conjunction with the annual report OSBA must submit to the Governor and General Assembly under the State Government article.

Small Business Certification and Reporting

Under current law, OSBA has established regulations and procedures for compiling and maintaining a comprehensive bidder's list of qualified small businesses that must be posted online, but small businesses are generally responsible for self-certifying as a small business.

The bill requires OSBA to adopt regulations to establish a certification review process.

As with MBE data, current law requires each procurement unit to submit a report to OSBA within 60 days after the enactment of the budget bill that complies with regulations for the small business reserve (SBR) program. The regulations require that each unit shall at a minimum report on (1) the total number and dollar value of awards the unit made to small businesses under designated SBR contracts; (2) the total number and dollar value of awards the unit made to small businesses under nondesignated SBR contracts, including purchase card procurements; (3) the total dollar value of awards the unit made under procurement contracts; and (4) any other such information as required by OSBA. Furthermore, within 90 days after the end of each fiscal year, each unit must submit a report containing the same information to OSBA. By December 31 of each year, OSBA must submit a report summarizing the information the Office receives to BPW and LPC.

The bill shortens the number of days after the end of the fiscal year in which each unit must report to OSBA to 60 days. It requires units to submit quarterly reports to OSBA, except for the quarter in which a unit is submitting an annual report. The quarterly reports must report on (1) SBR annual designated and nondesignated achievement awards made and (2) any other information requested by OSBA related to SBR contracts. The bill also changes the deadline for OSBA to submit its report to BPW and LPC to the fifth day of the regular legislative session.

Veteran Owned Small Business Reporting

By December 1 of each year, OSBA must report to LPC on (1) the number and dollar value of contracts awarded to veteran-owned small business enterprises (VSBEs) under existing contracts and (2) an evaluation of the effectiveness of the VSBE program.

The bill changes the deadline for OSBA to submit its report on VSBEs to the 5th day of the regular legislative session and allows the report to be prepared in conjunction with the annual report OSBA must submit to the Governor and General Assembly under the State Government article. Furthermore, it requires each procurement unit to submit a report to OSBA within 60 days after the end of the fiscal year and each quarter thereafter. The report must include the number and dollar value of contracts awarded to VSBEs under existing contracts and any other information requested by OSBA.

Cannabis Licenses

To the extent practicable and authorized by the U.S. Constitution, a cannabis licensee must comply with the State's MBE program, and the State must review the 2025 disparity study to evaluate whether application of the MBE program to cannabis licenses would comply with federal or constitutional requirements. Within six months after the issuance of a cannabis license, OSBA, the Office of the Attorney General (OAG), and the Office of Social Equity must work with the licensee to establish a clear plan for setting reasonable and appropriate MBE participation goals and procedures for the procurement of goods and services related to cannabis, including the cultivation, manufacturing, and dispensing of cannabis. To the extent practicable, these goals and procedures must be based on current MBE laws and regulations.

The bill incorporates the findings and evidence relied on by the General Assembly for the continuation of the MBE program with respect to cannabis licenses. It clarifies that in evaluating the program for conformity with federal and constitutional requirements, the State must use the 2025 disparity study as well as any future disparity studies or related analyses. The bill also establishes a July 1, 2031 termination date for the authorization to use MBE participation goals and procedures in cannabis licensing.

Offshore Wind Projects

To the extent practicable and authorized by the U.S. Constitution, approved applicants for a proposed offshore wind project must comply with the State's MBE program. Within six months of the approval of an offshore wind renewable energy credit (OREC) by the Public Service Commission (PSC), OSBA, in consultation with OAG and an approved applicant, must establish a clear plan for setting reasonable and appropriate MBE participation goals and procedures for each phase of the qualified offshore wind project.

To the extent practicable, the goals and procedures for offshore wind projects must be based on the requirements of the State's MBE program. Every six months following the approval of an OREC application, an approved applicant must submit a report to PSC on its progress in establishing and implementing MBE participation goals and procedures. These requirements terminate July 1, 2026.

The bill extends the termination date for the authorization to use MBE participation goals and procedures in offshore wind projects to July 1, 2031. The bill also extends the deadline for the analysis of the disparity study to September 30, 2030.

Public-private Partnerships

To the extent practicable and permitted by the U.S. Constitution, the provisions of the MBE program apply to public-private partnerships (P3s). BPW cannot approve a P3 agreement until a reporting agency, in consultation with OSBA, OAG, and the private entity, if permissible, establishes reasonable and appropriate MBE participation goals and procedures for the project, as specified. To the extent practicable, these goals and procedures must be based on current MBE laws and regulations.

The bill establishes the termination date for the authorization to use MBE participation goals and procedures in P3s to July 1, 2031. The bill also extends the deadline for the analysis of the disparity study to September 30, 2030.

Video Lottery Terminals

A video lottery operation applicant or a licensee is subject to the minority business participation goal established under current law for any construction related to video lottery terminals (VLTs) and for any procurement, including the procurement of equipment and ongoing services, related to the operation of VLTs. If a county in which a video lottery facility will be located has a higher MBE participation goal than the State, an applicant must meet the county's higher standard to the extent possible. A county in which a video lottery facility will be located may impose local business, local minority business participation, and local hiring requirements to the extent authorized by local law and allowed by the United States Constitution. These requirements terminate July 1, 2026.

The bill incorporates the findings and evidence relied on by the General Assembly for the continuation of the MBE program with respect to video lottery terminals (VLTs) and requires that to the extent practicable and authorized by the U.S. Constitution, a VLT licensee must comply with the State's MBE program. The bill also extends MBE requirements to July 1, 2031, to align with the new termination date of the MBE program, and requires an applicant or licensee to put forth a good faith effort to meet minority business participation goals.

Sports Wagering Licensees

To the extent practicable and permitted by the U.S. Constitution, a sports wagering licensee must comply with the State's MBE program. Within six months after the issuance of a sports wagering license, OSBA, in consultation with OAG and the sports wagering licensee, must establish a clear plan for setting reasonable and appropriate MBE participation goals and procedures for the procurement of goods and services related to sports wagering, including construction, equipment, and ongoing services. These provisions will terminate on July 1, 2026.

The bill extends these requirements to July 1, 2031, to align with the new termination date of the MBE program.

Capital Projects

Chapter 728 of 2021, as previously amended, requires OSBA, by July 1, 2026, to establish policies and guidelines for the development of MBE contract goals for capital projects that receive State capital grants of \$3.0 million or more from a miscellaneous grant program, a House of Delegates initiative, or a Senate initiative. Following the issuance of policies and guidelines, OSBA must – prior to the release of funds to an eligible grant recipient – review each project for subcontracting opportunities under the State's MBE program and, if practicable, establish MBE subgoals for the project. Finally, it requires OSBA to report to the General Assembly by December 31, 2026, on the establishment of MBE subgoals in accordance with the Act.

The bill extends the deadline for OSBA to establish policies and guidelines to July 1, 2031. It also extends the deadline for OSBA's report to the General Assembly to December 31, 2031.

State Retirement and Pension System Brokerage and Investment Management

Chapter 641 of 2022, as previously amended, requires MDOT and OSBA, in consultation with specified entities, to conduct a study regarding brokerage and investment management services used by the State Retirement and Pension System (SRPS) to evaluate whether remedial measures to assist minority- and women-owned businesses in those sectors are consistent with specified federal or constitutional requirements. For the next disparity study, SRPS must provide to OMBE any information deemed necessary to assess the need for remedial measures to assist minority- and women-owned businesses in the brokerage and investment management services industry and market.

Other Provisions

The bill expands the definition of small business to include a joint venture of two or more persons associated to carry out a single business activity for a limited purpose or time that meets existing criteria for small businesses.

The bill adds the Secretary of Labor or designee to the Governor's Subcabinet on Socioeconomic Procurement Participation, and replaces the Special Secretary of OSBA on the Subcabinet with the Secretary of DoSEM.

Background: Since its enactment in 1978, Maryland's MBE law has been updated and periodically renewed to remain effective and constitutionally defensible. Following the landmark Supreme Court ruling in *City of Richmond v. J.A. Croson Co.* in 1989 and the strict scrutiny required in the use of race-based classifications, the State has had to conduct periodic disparity studies to analyze whether the MBE program aligns with the basis in evidence for discrimination in State contracting. The State's MBE program now includes multiple design features that support narrow tailoring under strict scrutiny, with the disparity study acting as the evidentiary basis for the program. Before the 2025 disparity study was completed, the State had previously used a disparity study completed in 2017 as the basis for the MBE program.

Small Business Effect: DoSEM determined that extending the applicability of the MBE program to additional procurement-related activities may create additional procurement and contracting opportunities to small businesses that are certified as MBEs. However, the bill primarily extends the MBE program expiration date for procurement-related activities that are well-established) under current law, and does not extend the program to any new procurement-related activities. Therefore, DLS disagrees with DoSEM's assessment and concludes that the bill has a minimal impact on small businesses.

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; Office of the Attorney General; Department of General Services; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2026
jg/mcr Third Reader - March 31, 2026
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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.

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Procurement - Procurement Preferences - Reauthorization and Revisions

BILL NUMBER: HB 1578

PREPARED BY: Davon Gardner

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Small businesses, particularly firms that are cross certified in the State's socioeconomic procurement programs, may experience a moderate positive impact due to the reauthorization of the MBE Program. By extending the applicability of the MBE Program to additional procurement-related activities, existing or prospective certified firms may see increased contracting and subcontracting opportunities throughout Maryland's twenty-four jurisdictions. This would help spur economic development on the local level.