

House Appropriations Committee

Senate Bill 909 (Smith) Capital Projects – Minority Business Enterprise Goals

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On behalf of Maryland's 13 state-aided private nonprofit colleges and universities and the students we serve, I thank you for the opportunity to provide this letter of **favorable with amendments** for *Senate Bill 909 (Smith) Capital Projects – Minority Business Enterprise Goals*. As amended by the Senate, this bill requires specified capital projects that are awarded at least \$3 million (raised from \$500,000) in State funds in a single fiscal year to be reviewed by the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) prior to the release of funds. The review must address subcontracting opportunities under the State Minority Business Enterprise (MBE) program and, if practicable, establish MBE subgoals for the project. If subgoals are established, the grant recipient must certify that the recipient expects to achieve the subgoals, or request a waiver. The amended bill also requires a report by December 1, 2022, regarding whether the requirements of the bill were practicable (an unusual method of evaluating a law after it has already gone into effect).

We applaud the efforts of the Senate Workgroup on Equity and Inclusion, and we were pleased to have been asked to contribute to some of its study, specifically on issues of environmental justice. Regarding the Workgroup's recommendations relating to the MBE program and capital projects, we agree that more needs to be done to ensure that women and minority-owned businesses and firms are nurtured and fostered in a way that enables them to grow and thrive. All of our member institutions include MBE, Women Business Enterprise (WBE), and Local Business Enterprise (LBE) goals in their projects. We also agree that the implementation of the State's MBE program should be as accountable and transparent as possible. However, while we are interested in participating in initiatives that will increase diversity and opportunity in this regard, **we believe that there are several vague provisions and logistical details of implementation in the bill that may disrupt this intent and inadvertently cause harm.**

Vague Provisions Could Cause a Project to Stall

The bill requires a capital project as described above to be reviewed for subcontracting opportunities in accordance with State laws relating to the MBE program, regardless of whether the grantee is a public, private nonprofit, or other entity. Both public and private entities already encounter challenges in identifying sufficient competitive industry-specific contractors with the requisite experience. However, the public grantee has the full force and effect of government support and answers to the same governing authority. Without this support, or the resources or depth of expertise afforded to public grantees, private grantees may be practically challenged to comply with the legislation. In the worst-case scenario, **these requirements could stall private capital projects and frustrate the leveraging of millions of dollars in external and out-of-state private resources that bring much-needed construction jobs to Maryland.**

Unclear Timeline and Metrics for Implementation Could Cause Harm

The bill does not include a timeline or outline a specific process that will govern the review of subcontracting opportunities and the establishment of subgoals. Without a clear timeline, other aspects of the project such as seeking and acquiring permits, prioritizing contemporaneous or competing capital demands, and hiring the contractors and subcontractors who will actually do the work will become fraught with uncertainty. Moreover, the bill does not include information on an appeal or review process, or a remedy, if any, in the event that the regulator decides to deny a particular contractor or subcontractor. Further, there are no metrics described against which a certification will be measured. Specific timelines and a clear, prompt appeal/review process would help to avoid any project delays and respective expense increases.

Proposed Amendments

The MICUA institutions are engaged, invested, and working to increase diversity in our student bodies, faculty, staff, and administrations. These goals include efforts to promote and increase minority, women, and local-owned business involvement in our procurements and capital projects. However, we know that there is room to improve, and still much more work to be done.

We respectfully request the attached amendments to SB 909 in order to address these concerns. Instead of requiring GOSBA to review our projects, we propose that the Legislature require us to establish overall goals for contracting opportunities for MBE, WBE, and, to the extent practicable, LBE participation. Within these goals, require us to promote the engagement of these minority, women, and local-owned businesses. Authorize us to consult with the Department of General Services and GASBA in the setting of the goals if that would help satisfy the requirements of the bill. Then require us to report annually for each year until the completion of the project regarding whether we have met the goals, if not, the progress toward or reason for not achieving them, and any programs in place to increase capacity and develop partnerships with minority and women businesses. We then suggest that the Department of General Services compile these reports and submit to the Governor and the Legislature annually. Finally, we ask for a delayed effective date for the bill in order to facilitate outreach and cultivate relationships that will ensure a fruitful impact of the legislation.

For all of these reasons, MICUA requests a FWA report on SB 909.

AMENDMENTS TO SENATE BILL 909

Offered by: the Maryland Independent College and University Association (MICUA)

- (A) IN THIS SECTION, “DEPARTMENT” MEANS THE DEPARTMENT OF GENERAL SERVICES.

- (B) THIS SECTION APPLIES TO A CAPITAL PROJECT THAT RECEIVES AT LEAST \$500,000 IN STATE FUNDS IN A SINGLE FISCAL YEAR AND IS FUNDED IN THE ANNUAL STATE CAPITAL BUDGET AS:
 - (1) A MISCELLANEOUS GRANT PROGRAM;
 - (2) A LOCAL HOUSE OF DELEGATES INITIATIVE; OR
 - (3) A LOCAL SENATE INITIATIVE.

- (C) A RECIPIENT OF STATE FUNDS DESCRIBED UNDER SUBSECTION (B) OF THIS SECTION SHALL:
 - (1) ESTABLISH OVERALL GOALS FOR CONTRACTING OPPORTUNITIES FOR MINORITY, WOMEN, AND TO THE EXTENT PRACTICABLE, LOCAL-OWNED BUSINESSES TO PARTICIPATE IN THE PROJECT; AND
 - (2) WITHIN THE OVERALL GOALS ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION, PROMOTE THE ENGAGEMENT OF MINORITY, WOMEN, AND LOCAL BUSINESS ENTERPRISE CONTRACTING FOR THE PROJECT.

- (D) A RECIPIENT MAY CONSULT WITH THE DEPARTMENT AND THE GOVERNOR’S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS AND LOCAL JURISDICTIONS IN ORDER TO SATISFY THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.

- (E) (1) ON OR BEFORE JUNE 1 OF EACH YEAR UNTIL THE COMPLETION OF THE PROJECT, A RECIPIENT SHALL SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT:
 - (I) WHETHER THE GOALS ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION HAVE BEEN MET DURING THE REPORTING PERIOD;
 - (II) IF THE GOALS HAVE NOT BEEN MET DURING THE REPORTING PERIOD, THE PROGRESS TOWARD, OR REASON FOR NOT ACHIEVING THE GOALS; AND

(III) ANY PROGRAMS IN PLACE IN THE PRIVATE SECTOR TO INCREASE CAPACITY AND DEVELOP PARTNERSHIPS WITH MINORITY AND WOMEN BUSINESS ENTERPRISES.

(2) ON OR BEFORE JULY 1 OF EACH YEAR, THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH SECTION 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON ANY REPORTS RECEIVED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect on June 1, 2023.