

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 514

(Senator Lam, *et al.*)

Budget and Taxation

Health and Government Operations

Local Procurements - Minority Business Enterprise Utilization Programs -
Certification

This bill requires a county or municipality that operates a minority business enterprise (MBE) program for county or municipal procurements and that has a process for certifying MBEs for the program to accept as certified for the county or municipal program any person that has been certified by the Maryland Department of Transportation (MDOT) for the State's MBE program.

Fiscal Summary

State Effect: Potential increase in certification requests for MDOT, but any such increase is expected to be minimal and absorbable with existing budgeted resources. To the extent the volume of certification requests increases significantly, special fund expenditures increase accordingly for more staff to handle the volume. No effect on revenues.

Local Effect: No material effect on local government finances or operations. Local governments already have the ability to recognize MDOT certification for their programs and some do. To the extent that the bill prompts local governments to stop operating their own certification programs, they may realize savings and administrative efficiencies. Any such effect cannot be reliably predicted or estimated.

Small Business Effect: Potential meaningful.

Analysis

Current Law: MDOT is designated in State regulations as the State's MBE certification agency.

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.

The Department of Legislative Services (DLS) is aware of local MBE programs in Baltimore City and Anne Arundel, Baltimore, Charles, Montgomery, and Prince George's counties. The Washington Suburban Sanitary Commission also operates an MBE program. Montgomery and Charles counties accept MDOT certification for their programs, and Baltimore County does not require certification. Although DLS is not aware of any municipal MBE programs, some may exist.

Small Business Effect: To the extent the bill requires a county, municipality, or Baltimore City to expand the scope of their program by accepting as certified a person that would not otherwise be certified for the local program, that entity benefits and other entities may be disadvantaged.

Additional Information

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

Designated Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2023
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