

SB578 testimony.docx.pdf

Uploaded by: Antonio Hayes

Position: FAV

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Hayes in Support of Senate Bill 578:
Small Business Protection Act of Maryland**

March 1, 2023

Chairman Guzzone and members of the Budget and Taxation Committee,

Senate Bill 578 seeks to require units to publish an annual forecast on known and anticipated procurements to be made by them in the upcoming fiscal year. This would include an estimate for the anticipated minority business enterprise participation goals for each procurement. It would also require a unit to determine eligibility for a merit increase or promotion. It would consider the efforts of a procurement officer in assisting the unit in meeting a minority business enterprise goal.

This bill would also require the Office of Small, Minority, and Women Business Affairs to consult with procurement units to identify potential contracting opportunities for small businesses and assist them with complying with procurement procedures as they bid for a contract.

I urge you to vote favorably on SB578.

Respectfully,

A handwritten signature in blue ink, appearing to read "Antonio L. Hayes".

Senator Antonio L. Hayes
40th Legislative District – MD

LBCMD Support Letter - SB 578- Priority Bill.pdf

Uploaded by: Ufuoma Agarin

Position: FAV



February 28, 2023

Chairman Guy Guzzone,
Budget and Taxation Committee
Miller Senate Office Building, 3 West Wing
11 Bladen St., Annapolis, MD 21401

Dear Chairman Guzzone and Members of the Committee:

The Legislative Black Caucus of Maryland offers **favorable** support for Senate Bill 578 State Procurement - Minority Business Enterprises and Small Business Enterprises - Procurement Forecast, Employee Performance, and Outreach (Small Business Protection Act of Maryland). **This bill is on the 2023 legislative priority agenda of the Black Caucus.**

This legislation aims to support minority and small business enterprises by requiring units to publish annual procurement forecasts, as well as implement considerations for merit increase eligibility. Senate Bill 578 will also establish performance-based promotions and consequences for procurement officers and employees that do not meet participation goals. This bill also seeks to establish requirements for the Governor's Office of Small, Minority, and Women Business Affairs to identify contracting opportunities for small businesses and develop a program to do so.

Implementing the changes put forth by this legislation is critical to supporting the growth and success of Maryland's small and minority business. This bill is a step we can take to further push this State in the right direction of meeting set goals and ensuring MBEs have an equal opportunity at securing procurement. For these reasons, the Legislative Black Caucus of Maryland supports Senate Bill 578.

Legislative Black Caucus of Maryland

UNFAV SB578.pdf

Uploaded by: vince mcavoy

Position: UNF

Hello Committee~

I have pressing bills in the House this day but, it goes without saying, any on the Committee or its principles, are just a click away from getting more information from me.

Here's short and timely notes expressing concerns about this bill, not the least of which being this is an UNconstitutional color-test (formerly known as "The Paper Bag Test") ::

Anti-White "Equity" Initiative

"...goal of the
opposition to our own population...
every single person in the U.S. will qualify for...
protected categories except straight White men...
It's illegal...it's about punishing people..."

Tucker Carlson

<https://twitter.com/ColumbiaBugle/status/1626758560641064960>

End Wokeness

@EndWokeness

Feb 17

"East Palestine is 95% White
FEMA is refusing to help them"

<https://twitter.com/ColumbiaBugle/status/1627129248493326336>

I urge the sponsor to withdraw this bill and note how we - at Constellation Energy's Baltimore, Gas & Electric in Baltimore in 2009 - achieved a 30% MWBE rating without such obvious anti-Whitism. This is not the type of legislation I would expect from this Senate sponsor.

vmcavoy

Baltimore MD

SB0578 - TSO - Small Business Protection Act - LOI

Uploaded by: Patricia Westervelt

Position: INFO

March 1, 2023

The Honorable Guy Guzzone
Chair, Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis MD 21401

RE: Letter of Information – Senate Bill 578 - State Procurement – Minority Business Enterprises and Small Business Enterprises – Procurement Forecast, Employee Performance, and Outreach (Small Business Protection Act of Maryland)

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 578 but offers the following information for the Committee's consideration.

When determining eligibility for a merit increase or performance-based promotion for a procurement officer, Senate Bill 578 requires the unit to consider the efforts of the procurement officer in meeting MBE goals. If a unit does not meet its MBE goals, then the procurement officer may not receive a merit increase or promotion, and may be terminated or reassigned if the unit fails to meet its MBE goals over three consecutive fiscal years. This would present issues of personnel management and could bring into question the defensibility of termination. Procurement officers are Career Service employees that are represented by the Maryland Professional Employees Council, which provides certain protections of employment.

Senate Bill 578 would punish procurement officers for the failures of contract administrators to enforce contract requirements regarding MBE participation. Pursuant to COMAR 21.11.03.13, certain actions must be taken by agency personnel responsible for contract administration before the procurement officer can take meaningful enforcement action. If the personnel responsible for contract administration failed to follow the requirements of COMAR, the procurement officer would be powerless to act, yet the procurement officer would be punished, nonetheless. Across the MDOT, there are currently 14 vacant procurement officer positions, for a vacancy rate of 17%, and 6 vacant procurement manager positions, for a vacancy rate of 15% vacancy. The punitive measures in this bill would make recruitment and retention even more difficult.

Further, the bill does not appear to consider circumstances that prevent the contractor from meeting MBE commitments through no fault of the contractor or the agency, such as the MBE subcontractor's loss of a license or failure to file required paperwork. In the case of indefinite quantity, work-order based contracts, the contractor could be unable to meet the MBE goal because the agency has not issued the kind of work that is to be performed by MBE subcontractors.

Senate Bill 578 may compromise constitutionally required aspects of the MBE program, which require some level of flexibility in administration. MBE goals cannot act as quotas and penalizing Procurement Officers or MBE Liaisons for the failure of a prime contractor to achieve an MBE goal may encourage treating the aspirational goals as harsh quotas, thereby undermining the constitutionality of the program.

Regarding the provision on procurement forecasts, the MDOT already provides an annual procurement forecast to the Governor's Office of Small & Minority, & Women-Owned Business (GOSBA) as part of the statutory requirements for the MBE and SBR Programs. However, Senate Bill 578 would require the MDOT to also include an estimate of the MBE goals for each procurement. This would require the Procurement Review Group to meet twice to set goals: first when the Procurement Forecast is completed and again when the agency decides to move forward with the procurement. Depending upon the length of time between the completed forecast and the published solicitation, in order to comply with the constitutional requirements of "narrow-tailoring," the goals will need to be recalculated. The impact may mean an increase or decrease in the originally forecasted MBE goal.

The MDOT would like to note that it is not opposed to the provisions for the GOSBA, in consultation with primary procurement units including the MDOT, to identify potential contracting opportunities, increase outreach efforts to small businesses, and assist small businesses with complying with procedures. MDOT's Office of Small Minority Business Policy has the primary responsibility for the department's outreach efforts to small and minority business stakeholders, and historically reaches more than 2,000 stakeholders on an annual basis. This office also supports outreach through activities such as The Annual Business Opportunities and Entrepreneurial Training Summit

The MDOT looks forward to continued collaboration to ensure that our efforts to provide safe transportation infrastructure are also leveraged to support broader goals of economic development and equity in the State.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 578.

Respectfully submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090