

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2022 Legislative Session

Bill No. CB-51-2022

Chapter No. _____

Proposed and Presented by Council Members Franklin, Hawkins, Burroughs,
Harrison, Glaros, Ivey, Medlock, Streeter, and Taveras

Introduced by _____

Co-Sponsors _____

Date of Introduction _____

BILL

1 AN ACT concerning

2 Diversity and Equity Policy in Publicly Subsidized Development Projects

3 For the purpose of establishing a diversity and equity policy for publicly subsidized development
4 projects under certain circumstances.

5 BY adding:

6 **SUBTITLE 10. FINANCE AND TAXATION.**

7 Section 10-335

8 The Prince George's County Code

9 (2019 Edition; 2021 Supplement).

10 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
11 Maryland, that Section 10-335 of the Prince George's County Code be and the same is hereby
12 added:

SUBTITLE 10. FINANCE AND TAXATION.

**DIVISION 28. DIVERSITY AND EQUITY POLICY FOR PUBLICLY SUBSIDIZED
DEVELOPMENT PROJECTS.**

**Sec. 10-335. Supplier Diversity and Equity Policy for Publicly Subsidized Development
Projects Established.**

18 (a) Definitions. The words defined in this Section shall have the meanings set forth below:

19 (1) **County resident** means a citizen or legal resident whose primary residence and
20 domicile is within Prince George's County, MD.

1 (2) **County subsidy** means funds, grants, conditional loans, contracts, loans, tax
 2 abatements (including payments in lieu of taxes, known as PILOTs), tax credits, land transfers
 3 (if sold or transferred for consideration below fair market value), exemptions in-whole or in-part
 4 from fees or surcharges, and tax increment financing awards, received from or administered by a
 5 County agency or the County government (also including quasi-public entities established or
 6 regulated by the County Code, including, but not limited to, the Housing Authority,
 7 Redevelopment Authority, and the Revenue Authority). Net present value shall be used in
 8 calculating the value of a county subsidy.

9 (3) **County-subsidized project** means any real estate or property development or
 10 redevelopment in the County that receives a county subsidy and is developed, in whole or in part,
 11 by an entity that is not a unit of the Prince George’s County Government. The application of this
 12 definition is subject to the restrictions of federal and state law. Public-private-partnerships (P3s)
 13 that receive a county subsidy are County-subsidized projects for the purposes of this Section.

14 (4) **Locally-owned and Operated Business** is a County-based business that is also a
 15 County resident-owned business as defined in Subtitle 10A of the Code.

16 (5) **Nondilutable County-based Business Equity Interest** means an ownership interest
 17 enforced by executed contract, in the entity receiving the county subsidy for a County-subsidized
 18 project or in the County-subsidized project itself, that is owned by (i) County-based small
 19 businesses and/or (ii) individuals who are County residents, and who have been County residents
 20 for at least the immediate past thirty-six (36) consecutive months, that cannot be reduced prior to
 21 the entity’s receipt of the full proceeds of the county subsidy unless in accordance with the
 22 financial terms of an agreement with a lending institution as a requirement of receiving project
 23 financing. Such an ownership interest must be treated as an equity investment in the project,
 24 afforded the same return on investment as other equity investments in the project. An ownership
 25 interest conditioned on the repayment of any debt obligation or any other condition, including,
 26 but not limited to, any condition that requires dilution or reduction of this ownership interest, is
 27 not eligible to be a Nondilutable County-based Business Equity Interest.

28 (b) Supplier Diversity and Equity Plan Required.

29 (1) For County-subsidized projects receiving a county subsidy of \$1,000,000 or greater in
 30 value, but less than \$5,000,000 in value, as a condition of being awarded a county subsidy, and
 31 prior to the receipt of any county subsidy, any developer of a County-subsidized project to which

1 this Subsection applies shall submit documentation in a Supplier Diversity and Equity Plan for
 2 the county subsidized project, approved by the County MBE Compliance Manager, in
 3 consultation with the Supplier Development and Diversity Division (SDDD), demonstrating
 4 compliance with the requirements of a Supplier Diversity and Equity Plan, which shall include
 5 specific requirements for each of the following:

6 (A) Minimum percentage requirements, determined by the County MBE Compliance
 7 Manager, in consultation with SDDD, for utilizing County-based small businesses in the
 8 construction (including the design, demolition/site work, and building stages) of the project;

9 (B) Minimum goals, determined by the County MBE Compliance Manager, in
 10 consultation with SDDD, for utilizing County-based minority business enterprises in the
 11 construction (including the design, demolition/site work, and building stages) of the project; and

12 (C) Minimum percentage requirements, determined by the County MBE Compliance
 13 Manager, in consultation with SDDD, of total annual work hours in the construction (including
 14 the design, demolition/site work, and building stages) of the project to be worked by county
 15 residents.

16 (2) For County-subsidized projects receiving a county subsidy of \$5,000,000 or greater in
 17 value, as a condition of being awarded a county subsidy, and prior to the receipt of any county
 18 subsidy, any developer of a County-subsidized project to which this Subsection applies shall
 19 submit documentation in a Supplier Diversity and Equity Plan for the county subsidized project,
 20 approved by the County MBE Compliance Manager, in consultation with SDDD, demonstrating
 21 compliance with the requirements of a Supplier Diversity and Equity Plan, which shall include
 22 each of the following requirements:

23 (i) At least thirty percent (30%) of the development costs for construction (including
 24 the design, demolition/site work, and building stages) of the County-subsidized project shall be
 25 paid to County-based small businesses and/or Locally-owned and Operated Businesses,
 26 including at least twenty percent (20%) of the design costs (in this Section, “design” includes
 27 architectural, engineering, and design work, excluding in-house design costs);

28 (ii) Best efforts, as defined by the County MBE Compliance Manager, in consultation
 29 with SDDD, that at least twenty-five percent (25%) of the development costs for construction
 30 (including the design, demolition/site work, and building stages) of the County-subsidized
 31 project shall be paid to County-based minority business enterprises;

1 (iii) The project prime or general contractor team for the County-subsidized project
 2 shall include one or more businesses that are County-based minority business enterprises and/or
 3 Locally-owned and Operated Businesses.

4 (iv) For the construction (including the design, demolition/site work, and building
 5 stages) of a County-subsidized project, at least twenty-five percent (25%) of the total work hours
 6 on the project shall be worked by County residents, including at least twenty percent (20%) of
 7 the total work hours of workers in the specialty trades (defined as “specialty trade contractors” in
 8 the North American Industry Classification System (NAICS)) being worked by County residents.

9 (v) If the County-subsidized project includes residential ownership units and utilizes
 10 real estate listing agents, real estate appraisers, closing agents, settlement and/or title companies
 11 for the sale of one or more of the units, the primary place of business for these agents and
 12 companies shall be in Prince George’s County.

13 (3) County-subsidized projects receiving an upfront county subsidy of \$10 million or
 14 more in value, including, but not limited to, grants (including conditional loans eligible to
 15 convert to grants), tax increment financing awards, and/or land transfers (if sold or transferred
 16 for consideration below fair market value), shall comply with Paragraph (2), above, and the
 17 following:

18 (A) The entity receiving the county subsidy and/or the County-subsidized project shall
 19 have a Nondilutable County-based Business Equity Interest of at least ten percent (10%); or

20 (B) At least ten percent (10%) of the building gross square footage of the project
 21 receiving the county subsidy shall be developed by real estate developers that are County-based
 22 small businesses, County-based minority business enterprises, Locally-owned and Operated
 23 Businesses, and/or individuals who are County resident(s); or

24 (C) The County-subsidized project utilizes an investment program solely available to
 25 County residents and approved in advance by the County MBE Compliance Manager, in
 26 consultation with SDDD.

27 (4) The business entities referenced in this Subsection (Subsection b) shall have the
 28 definitions set forth in Subtitle 10A of the Code unless otherwise specified.

29 (c) Compliance and Enforcement.

30 (1) A Supplier Diversity and Equity Plan shall include a Compliance and Reporting Plan
 31 prescribing reporting and compliance requirements for projects subject to this Paragraph. At a

1 minimum, the Compliance and Reporting Plan shall require quarterly written public reports to
2 the County MBE Compliance Manager and SDDD on the progress of the project in meeting the
3 requirements of this Section for the previous quarter and project-to-date and enable timely access
4 to information determined to be necessary by the County MBE Compliance Manager, the
5 Supplier Development and Diversity Division, and/or the County Auditor to verify compliance.
6 The County MBE Compliance Manager, in consultation with the Supplier Development and
7 Diversity Division, shall specify the standard required components of a Supplier Diversity and
8 Equity Plan, including a Compliance and Reporting Plan, and any related processes to implement
9 consideration of a Supplier Diversity and Local Equity Plan consistent with this Section. The
10 Compliance and Reporting Plan shall also include identifying the individual certified firms paid
11 and dollars paid to them and other relevant information as required by the County MBE
12 Compliance Manager, in consultation with SDDD. The Supplier Diversity and Equity Plan is an
13 enforceable agreement that shall be signed by the entity receiving the county subsidy and the
14 County Government (or quasi-public entity, if applicable) as a condition of receiving a county
15 subsidy and prior to approval of the Supplier Diversity and Equity Plan.

16 (2) Failure to comply with an approved Supplier Diversity and Equity Plan or any other
17 provision of this Section may result in a restoration, or clawback, or withholding of the county
18 subsidy from the receiving entity of an amount up to the equivalent value of the county subsidy,
19 as determined by resolution of the County Council and concurrence of the County Executive, in
20 consultation with the County MBE Compliance Manager and SDDD. This provision shall be a
21 written condition of the Supplier Diversity and Equity Plan.

22 (d) At least seven (7) calendar days prior to issuing an approval of a Supplier Diversity and
23 Equity Plan in accordance with this Section, the County MBE Compliance Manager shall
24 provide electronic notice and copy of the proposed approval and Supplier Diversity and Equity
25 Plan to (i) the Clerk of the Council, for distribution to the members of the County Council, and
26 (ii) the County Executive. Such documents shall be publicly available documents.

27 (e) On a project by project basis, the County Council, with concurrence of the County
28 Executive, after consultation with the County MBE Compliance Manager and SDDD, may, by
29 resolution, waive or modify the requirements of this Section for a specific project if such a
30 resolution is approved by at least a 2/3s majority of the Council.

1 (f) The County MBE Compliance Manager, in consultation with SDDD, shall approve a
2 submitted Supplier Diversity and Equity Plan if and only if the plan fully complies with this
3 Section. A Supplier Diversity and Equity Plan may contain limited categories of exclusions
4 from its requirements if they represent areas of highly technical or advanced capabilities, if
5 approved by the County MBE Compliance Manager, in consultation with SDDD.
6

7 * * * * *

8 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
9 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
10 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
11 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
12 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
13 Act, since the same would have been enacted without the incorporation in this Act of any such
14 invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection,
15 or section.

16 SECTION 3. BE IT FURTHER ENACTED that this Act only applies prospectively and
17 does not apply to county subsidies awarded before this Act’s effective date. County subsidies
18 awarded pursuant to master agreements shall be deemed approved on the date of the agreement’s
19 execution.

20 SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
21 calendar days after it becomes law.

Adopted this _____ day of _____, 2022.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Calvin S. Hawkins, II
Chair

ATTEST:

Donna J. Brown
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Angela D. Alsobrooks
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.

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