



Maryland Department of Transportation
The Secretary's Office

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Beverley K. Swaim-Staley
Secretary

Darrell B. Mobley
Deputy Secretary

August 9, 2011

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
H-7 State House
Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker of the House
H-101 State House
Annapolis, MD 21401

Dear Chairmen:

This letter was prepared in response to requirements set forth in Senate Bill 3, Chapter 4, Acts of 2007, concerning video lottery operations – race-neutral programs to address minority investors. Specifically, this section directs that:

“the agency designated by the Board of Public works under § 14-303(b) of the State Finance and Procurement Article, in consultation with the General Assembly and the Office of the Attorney General, shall initiate two studies of the requirements of § 9-1A-10 of the State Government Article, as enacted by Section 1 of this Act, that evaluate the continued compliance of the requirement with any federal and constitutional requirements. In preparation for the studies, the State Lottery Commission shall require video lottery operation license applicants and licensees to provide any information necessary to perform this study. The studies shall also evaluate race-neutral programs or other methods that can be used to address the needs of minority investors and minority businesses. A final report of the first study shall be submitted to the Legislative Policy Committee on or before December 15, 2010, so that the General Assembly may review the report prior to the 2011 Session. A final report of the second study shall be submitted to the Legislative Policy Committee on or before September 30, 2013, so that the General Assembly may review the report in conjunction with the report of the study of the Minority Business Enterprise program prior to the 2014 Session.”

Attached to this letter, please find the following: a letter from Dr. Jon Wainwright of NERA containing a summary analysis of work performed by certain VLT awardees and licensees in Maryland; a copy of *The State of Minority- and Women-Owned Business Enterprise: Evidence from Maryland*, issued February 17, 2011 (the 2011 Disparity Study); and a copy of the letter originally transmitting the 2011 Disparity Study to you, as Co-Chairmen of the Legislative Policy Committee, for distribution to the General Assembly.

The Honorable Thomas V. "Mike" Miller, Jr.
The Honorable Michael E. Busch
Page Two

As you can see from the attached letter, Dr. Wainwright has concluded that the 2011 Disparity Study fulfills the obligations for the study outlined in Senate Bill 3. In addition, Dr. Wainwright concludes that there is a strong basis in evidence to conclude that there is discrimination against minority- and women-owned businesses working in the industries in which VLT awardees and licensees work. Page four of Dr. Wainwright's letter states:

After reviewing and analyzing the data received from the State, I conclude that an additional study is neither required nor would it be useful because the 2011 Disparity Study provides a strong basis in evidence, consisting of both quantitative and qualitative evidence, that would support race- and gender-based programs to correct for discrimination against minority- and women-owned businesses in the types of industries in which VLT awardees are currently contracting for construction and other goods and services. The study also contains evidence suggesting that minority- and women-owned businesses are even more disadvantaged in the context of competing for prime contracts. Moreover, the report details a range of race- and gender-neutral activities that the State has already undertaken to address existing disparities. The 2011 Disparity Study found that, notwithstanding these race- and gender-neutral activities, many of which have been in place for a number of years, disparities continue to exist in both public and private contracting in the same geographic and industry markets in which VLT awardees are currently operating. These disparities are for the most part large, adverse and statistically significant. In addition, our report contains both qualitative and quantitative evidence to suggest that economy-wide contracting disparities in the relevant markets are even greater than disparities in the public sector. This difference may be due to the fact that the State has, for a number of years, operated an assertive MBE program in an attempt to remedy discrimination which would tend to reduce, though it has not yet eliminated, the effects of discrimination in public procurement. Absent such affirmative remedial efforts by the State, I would expect to see evidence in the relevant markets in which the State's VLT awardees operate that is consistent with the continued presence of business discrimination.

Based on their review of the 2011 Disparity Study and Dr. Wainwright's analysis, counsel informs me that they believe there is a legal basis for implementing the MBE provisions of the state's VLT program so long as that program is implemented consistent with the applicable constitutional requirements. Indeed, I have been advised that if the State does not make affirmative efforts to remedy the discrimination in the industries in which VLT awardees and licensees are operating, the State would likely become a passive participant in marketplace discrimination.

The Honorable Thomas V. "Mike" Miller, Jr.
The Honorable Michael E. Busch
Page Three

As you can see from the attached letter of transmittal, the 2011 Disparity Study was originally transmitted to the General Assembly on February 22, 2011. The date of the original transmittal was two months later than the due date for the study contemplated in Senate Bill 3. Unfortunately our completion of the 2011 Disparity Study was delayed due to a bid protest. Senate Bill 3 also required an additional study, presumably an updated study, to be submitted by September of 2013. I would respectfully recommend that this deadline be changed to harmonize it with the schedule of deadlines for our regular disparity study updates. At this point we anticipate finalizing a new disparity study in early 2016. We will ensure that VLT related activities continue to be included in our studies.

If you have additional questions or concerns, please do not hesitate to contact Ms. Zenita Hurley, Director, MDOT's Office of Minority Business Enterprise at 410-865-1240. Of course, you should always feel free to contact me directly.

Sincerely,



Beverley K. Swaim-Staley

Attachments

cc: Members of the Legislative Policy Committee
Mr. Donald C. Fry, Chair, Maryland State Video Lottery Facilities Location Commission
Mr. Kirby Fowler, Chair, Maryland Lottery Commission
Ms. Luwanda Jenkins, Special Secretary of Minority Affairs
Mr. Stephen Martino, Director, Maryland State Lottery Agency
Mr. Douglas Gansler, Maryland Attorney General
Ms. Zenita Hurley, Director, MDOT Office of Minority Business Enterprise

The Honorable Thomas V. "Mike" Miller, Jr.

The Honorable Michael E. Busch

Page 3 of 3

bcc: Ms. Sarah Albert, Library Associate, Mandated State Agency Reports, Library & Information Services Division, Department of Legislative Services
(5 copies) (MSAR #7158)
Mr. Joe Bryce, Senior Policy and Legislative Advisor, Governor's Office
Mr. Jack Cahalan, Director, Office of Public Affairs, Maryland Department of Transportation
Ms. Denise Ferguson, Chief Assistant Attorney General, Maryland Department of Transportation
Ms. Jaclyn Hartman, Legislative Analyst, Office of Policy Analysis, Department of Legislative Services
Mr. John Favazza, Chief of Staff, Speaker's Office, Maryland General Assembly
Mr. Bruce W. Gartner, Director, Office of Policy & Governmental Affairs, Maryland Department of Transportation
Ms. Vickie Gruber, Legislative Assistant to the President, Maryland General Assembly
Mr. Martin L. Harris, State Legislative Officer, Office of Policy & Governmental Affairs, Maryland Department of Transportation
Ms. Jaclyn Hartman, Legislative Analyst, Department of Legislative Services
Mr. Kevin Hughes, Deputy Legislative Officer, Governor's Office
Mr. Billy Hwang, Senior Policy Analyst and Program Manager, Maryland Department of Transportation
Ms. Kristen Jones, Chief of Staff, Speaker's Office, Maryland General Assembly
Ms. Diane Lucas, Budget Analyst, Department of Budget and Management
Mr. Jon Martin, Legislative Analyst, Department of Legislative Services
Ms. Veronica McBeth, Office of Minority Business Enterprise, Maryland Department of Transportation
Mr. Darrell B. Mobley, Deputy Secretary, Maryland Department of Transportation
Mr. David Smulski, Committee Staff, Senate Budget and Taxation Committee
Ms. Wonza Spann-Nicholas, Deputy Director, Office of Finance, Maryland Department of Transportation
Mr. Kurt Stolzenbach, Assistant Director, Office of Budget Analysis, Department of Budget and Management
Mr. Joshua A. Watters, Committee Staff, House Appropriations Committee