

HOUSE BILL 250

P2

(0lr1957)

ENROLLED BILL

— *Health and Government Operations/Education, Health, and Environmental Affairs* —

Introduced by **Delegates Morhaim, Bobo, Cane, Glenn, Hecht, Heller, Hixson, Hubbard, Lafferty, Lee, Levi, Montgomery, Nathan-Pulliam, Oaks, Reznik, Shewell, Stocksdale, Tarrant, V. Turner, ~~and Walker~~ Walker, and Kramer**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – ~~Reciprocal~~ Certification**
3 **Process**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations to
5 ~~recognize and accommodate, for the purpose of certification under the State~~
6 ~~minority business enterprise program, minority business enterprises that~~
7 ~~receive~~ promote and facilitate certification under the State State's minority
8 business enterprise program of minority business enterprises that have received
9 certification from a certain federal agency or from a a county government in the
10 State that uses a certification qualification process substantially similar to the
11 State's certification process; requiring the Board to keep certain records and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 submit a certain annual report to the General Assembly about the certification
 2 of certain minority business enterprises; and generally relating to a ~~reciprocal~~
 3 certification process for certain minority business enterprises.

4 BY repealing and reenacting, with amendments,
 5 Article – State Finance and Procurement
 6 Section 14–303
 7 Annotated Code of Maryland
 8 (2009 Replacement Volume)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – State Finance and Procurement**

12 14–303.

13 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State
 14 Government Article, the Board shall adopt regulations consistent with the purposes of
 15 this Division II to carry out the requirements of this subtitle.

16 (ii) The Board shall keep a record of the number of waivers
 17 requested and the number of waivers granted each year under subsection (b)(8) of this
 18 section and submit a copy of the record to the General Assembly on or before October 1
 19 of each year, in accordance with § 2–1246 of the State Government Article.

20 **(III) THE BOARD SHALL KEEP A RECORD OF THE**
 21 **AGGREGATE NUMBER AND THE IDENTITY OF MINORITY BUSINESS ENTERPRISES**
 22 **THAT RECEIVE CERTIFICATION UNDER THE ~~RECIPROCAL~~ PROCESS**
 23 **ESTABLISHED BY THE BOARD UNDER SUBSECTION (B)(1) OF THIS SECTION AND**
 24 **SUBMIT A COPY OF THE RECORD TO THE GENERAL ASSEMBLY ON OR BEFORE**
 25 **OCTOBER 1 OF EACH YEAR, IN ACCORDANCE WITH § 2–1246 OF THE STATE**
 26 **GOVERNMENT ARTICLE.**

27 (2) The regulations shall establish procedures to be followed by units,
 28 prospective contractors, and successful bidders or offerors to maximize notice to, and
 29 the opportunity to participate in the procurement process by, a broad range of
 30 minority business enterprises.

31 (b) These regulations shall include:

32 (1) **(I)** provisions designating one **STATE** agency to certify and
 33 decertify minority business enterprises for all units through a single process that
 34 meets applicable federal requirements; **AND**

1 (ii) FOR THE PURPOSE OF CERTIFICATION UNDER THIS
2 SUBTITLE, PROVISIONS THAT ~~RECOGNIZE AND ACCOMMODATE MINORITY~~
3 ~~BUSINESS ENTERPRISES THAT RECEIVE~~ PROMOTE AND FACILITATE
4 CERTIFICATION OF MINORITY BUSINESS ENTERPRISES THAT HAVE RECEIVED
5 CERTIFICATION FROM THE U.S. SMALL BUSINESS ADMINISTRATION OR A
6 COUNTY GOVERNMENT IN THIS STATE THAT USES A CERTIFICATION PROCESS
7 SUBSTANTIALLY SIMILAR TO THE PROCESS ESTABLISHED IN ACCORDANCE WITH
8 ITEM (I) OF THIS ITEM;

9 (2) a requirement that the solicitation document accompanying each
10 solicitation set forth the expected degree of minority business enterprise participation
11 based, in part, on:

12 (i) the potential subcontract opportunities available in the
13 prime procurement contract; and

14 (ii) the availability of certified minority business enterprises to
15 respond competitively to the potential subcontract opportunities;

16 (3) a requirement that the unit provide a current list of certified
17 minority business enterprises to each prospective contractor;

18 (4) provisions to ensure the uniformity of requests for bids on
19 subcontracts;

20 (5) provisions relating to the timing of requests for bids on
21 subcontracts and of submission of bids on subcontracts;

22 (6) provisions designed to ensure that a fiscal disadvantage to the
23 State does not result from an inadequate response by minority business enterprises to
24 a request for bids;

25 (7) provisions relating to joint ventures, under which a bidder may
26 count toward meeting its minority business enterprise participation goal, the minority
27 business enterprise portion of the joint venture;

28 (8) consistent with § 14-302(a)(6) of this subtitle, provisions relating
29 to any circumstances under which a unit may waive obligations of the contractor
30 relating to minority business enterprise participation;

31 (9) provisions requiring a monthly submission to the unit by minority
32 business enterprises acknowledging all payments received in the preceding 30 days
33 under a contract governed by this subtitle;

34 (10) a requirement that a unit shall verify and maintain data
35 concerning payments received by minority business enterprises, including a

1 requirement that, upon completion of a project, the unit shall compare the total dollar
2 value actually received by minority business enterprises with the amount of contract
3 dollars initially awarded, and an explanation of any discrepancies therein;

4 (11) a requirement that a unit verify that minority business enterprises
5 listed in a successful bid are actually participating to the extent listed in the project
6 for which the bid was submitted;

7 (12) provisions establishing a graduation program based on the
8 financial viability of the minority business enterprise, using annual gross receipts or
9 other economic indicators as may be determined by the Board;

10 (13) a requirement that a bid or proposal based on a solicitation with an
11 expected degree of minority business enterprise participation identify the specific
12 commitment of certified minority business enterprises at the time of submission;

13 (14) provisions promoting and providing for the counting and reporting
14 of certified minority business enterprises as prime contractors; and

15 (15) other provisions that the Board considers necessary or appropriate
16 to encourage participation by minority business enterprises and to protect the
17 integrity of the procurement process.

18 (c) The regulations adopted under this section shall specify that a unit may
19 not allow a business to participate as if it were a certified minority business enterprise
20 if the business's certification is pending.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.