

HOUSE BILL 923

P2

0lr3263
CF SB 546

By: Delegates Levi, Benson, Haynes, Howard, Nathan-Pulliam, Oaks, Pena-Melnyk, Ramirez, Rice, Robinson, Stukes, Tarrant, Taylor, Valderrama, ~~and Vaughn~~ Vaughn, Hubbard, Kullen, Montgomery, Morhaim, Pendergrass, Reznik, and V. Turner

Introduced and read first time: February 12, 2010

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2010

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Review of Application for**
3 **Certification and Notice to Applicant**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations that
5 require the agency designated to certify minority business enterprises to
6 complete its review and provide notice of its decision to the applicant, ~~absent~~
7 ~~extenuating circumstances~~, within a certain period of time; authorizing the
8 agency to extend a certain notification requirement for a certain period of time
9 if the agency provides the applicant with a certain notice and explanation; and
10 generally relating to review and notice concerning an application for
11 certification as a minority business enterprise.

12 BY repealing and reenacting, with amendments,
13 Article – State Finance and Procurement
14 Section 14–303
15 Annotated Code of Maryland
16 (2009 Replacement Volume)

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

19 **Article – State Finance and Procurement**

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.



1 14-303.

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

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

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

13 (b) These regulations shall include:

14 (1) provisions:

15 (I) designating one agency to certify and decertify minority
16 business enterprises for all units through a single process that meets applicable
17 federal requirements; ~~AND~~

18 (II) REQUIRING THE AGENCY DESIGNATED TO CERTIFY
19 MINORITY BUSINESS ENTERPRISES, ~~ABSENT EXTENUATING CIRCUMSTANCES,~~
20 TO COMPLETE THE AGENCY'S REVIEW OF AN APPLICATION FOR CERTIFICATION
21 AND NOTIFY THE APPLICANT OF THE AGENCY'S DECISION WITHIN ~~120~~ 90 DAYS
22 OF RECEIPT OF ~~THE APPLICATION~~ A COMPLETE APPLICATION THAT INCLUDES
23 ALL OF THE INFORMATION NECESSARY FOR THE AGENCY TO MAKE A DECISION;
24 AND

25 (III) AUTHORIZING THE AGENCY DESIGNATED TO CERTIFY
26 MINORITY BUSINESS ENTERPRISES TO EXTEND THE NOTIFICATION
27 REQUIREMENT ESTABLISHED UNDER ITEM (II) OF THIS ITEM ONCE, FOR NO
28 MORE THAN AN ADDITIONAL 60 DAYS, IF THE AGENCY PROVIDES THE
29 APPLICANT WITH A WRITTEN NOTICE AND EXPLANATION;

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

33 (i) the potential subcontract opportunities available in the
34 prime procurement contract; and

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

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

5 (4) provisions to ensure the uniformity of requests for bids on
6 subcontracts;

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

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

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

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

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

21 (10) a requirement that a unit shall verify and maintain data
22 concerning payments received by minority business enterprises, including a
23 requirement that, upon completion of a project, the unit shall compare the total dollar
24 value actually received by minority business enterprises with the amount of contract
25 dollars initially awarded, and an explanation of any discrepancies therein;

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

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

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

HOUSE BILL 923

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.