

SENATE BILL 130

P2

0lr0944
CF HB 250

By: **Senators Pugh, Currie, Harrington, Jones, King, Lenett, Madaleno, and ~~Muse~~ Muse, and Peters**

Introduced and read first time: January 15, 2010

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 26, 2010

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's minority business
8 enterprise program of minority business enterprises that have received
9 certification from a certain federal agency or from a county government in the
10 State that uses a qualification process substantially similar to the State's
11 certification process; requiring the Board to keep certain records and submit a
12 certain annual report to the General Assembly about the certification of certain
13 minority business enterprises; and generally relating to a ~~reciprocal~~
14 certification process for certain minority business enterprises.

15 BY repealing and reenacting, with amendments,
16 Article – State Finance and Procurement
17 Section 14–303
18 Annotated Code of Maryland
19 (2009 Replacement Volume)

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

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 **Article – State Finance and Procurement**

2 14–303.

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

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

10 **(III) THE BOARD SHALL KEEP A RECORD OF THE**
11 **AGGREGATE NUMBER AND THE IDENTITY OF MINORITY BUSINESS ENTERPRISES**
12 **THAT RECEIVE CERTIFICATION UNDER THE ~~RECIPROCAL~~ PROCESS**
13 **ESTABLISHED BY THE BOARD UNDER SUBSECTION (B)(1) OF THIS SECTION AND**
14 **SUBMIT A COPY OF THE RECORD TO THE GENERAL ASSEMBLY ON OR BEFORE**
15 **OCTOBER 1 OF EACH YEAR, IN ACCORDANCE WITH § 2–1246 OF THE STATE**
16 **GOVERNMENT ARTICLE.**

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

21 (b) These regulations shall include:

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

25 **(II) FOR THE PURPOSE OF CERTIFICATION UNDER THIS**
26 **SUBTITLE, PROVISIONS THAT ~~RECOGNIZE AND ACCOMMODATE MINORITY~~**
27 **~~BUSINESS ENTERPRISES THAT RECEIVE~~ PROMOTE AND FACILITATE**
28 **CERTIFICATION OF MINORITY BUSINESS ENTERPRISES THAT HAVE RECEIVED**
29 **CERTIFICATION FROM THE U.S. SMALL BUSINESS ADMINISTRATION OR A**
30 **COUNTY GOVERNMENT IN THIS STATE THAT USES A CERTIFICATION PROCESS**
31 **SUBSTANTIALLY SIMILAR TO THE PROCESS ESTABLISHED IN ACCORDANCE WITH**
32 **ITEM (I) OF THIS ITEM;**

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

1 (i) the potential subcontract opportunities available in the
2 prime procurement contract; and

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

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

7 (4) provisions to ensure the uniformity of requests for bids on
8 subcontracts;

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.