

# HOUSE BILL 143

P2

11r1069

---

By: **Delegates B. Robinson, Braveboy, Cane, Conaway, Howard, A. Miller, Mitchell, Oaks, Stukes, Tarrant, F. Turner, and V. Turner**

Introduced and read first time: January 26, 2011

Assigned to: Health and Government Operations

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Participation – The Ray Haysbert Waiver Disclosure and**  
3 **Termination Extension Act**

4 FOR the purpose of requiring certain regulations adopted by the Board of Public  
5 Works to provide for the disclosure of each waiver of obligations under the  
6 Minority Business Enterprise Program and the reason for each waiver; altering  
7 the record keeping and reporting requirements of the Board with respect to a  
8 waiver of Program obligations; continuing until a certain date certain provisions  
9 of the State Procurement Law relating to procurement from minority  
10 businesses; requiring a certain study and a final report on the study by a  
11 certain date; providing for the effective dates of this Act; and generally relating  
12 to minority business participation in State procurement.

13 BY repealing and reenacting, without amendments,  
14 Article – State Finance and Procurement  
15 Section 14–302(a)(6)  
16 Annotated Code of Maryland  
17 (2009 Replacement Volume and 2010 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – State Finance and Procurement  
20 Section 14–303 and 14–309  
21 Annotated Code of Maryland  
22 (2009 Replacement Volume and 2010 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Chapter 116 of the Acts of the General Assembly of 1995, as amended by  
25 Chapters 495 and 496 of the Acts of the General Assembly of 2000,  
26 Chapter 339 of the Acts of the General Assembly of 2001, and Chapter  
27 359 of the Acts of the General Assembly of 2006

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2

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

4 **Article – State Finance and Procurement**

5 14–302.

6 (a) (6) To achieve the result specified in paragraph (1) or (2) of this  
7 subsection, a contractor, including a contractor that is a certified minority business  
8 enterprise, shall:

9 (i) identify specific work categories appropriate for  
10 subcontracting;

11 (ii) at least 10 days before bid opening, solicit minority business  
12 enterprises, through written notice that:

13 1. describes the categories of work under item (i) of this  
14 paragraph; and

15 2. provides information regarding the type of work being  
16 solicited and specific instructions on how to submit a bid;

17 (iii) attempt to make personal contact with the firms in item (ii)  
18 of this paragraph;

19 (iv) assist minority business enterprises to fulfill bonding  
20 requirements or to obtain a waiver of those requirements;

21 (v) in order to publicize contracting opportunities to minority  
22 business enterprises, attend prebid meetings or other meetings scheduled by the unit;  
23 and

24 (vi) upon acceptance of a bid, provide the unit with a list of  
25 minority businesses with whom the contractor negotiated, including price quotes from  
26 minority and nonminority firms.

27 14–303.

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

31 (ii) The Board shall keep a record of [the number of waivers  
32 requested and the number of waivers] **EACH WAIVER REQUESTED AND** granted each

1 year under subsection (b)(8) of this section, **AND THE REASON EACH WAIVER WAS**  
2 **GRANTED**, and submit a copy of the record to the General Assembly on or before  
3 October 1 of each year, in accordance with § 2–1246 of the State Government Article.

4 (iii) The Board shall keep a record of the aggregate number and  
5 the identity of minority business enterprises that receive certification under the  
6 process established by the Board under subsection (b)(1) of this section and submit a  
7 copy of the record to the General Assembly on or before October 1 of each year, in  
8 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 State agency to certify and decertify  
16 minority business enterprises for all units through a single process that meets  
17 applicable federal requirements, including provisions that promote and facilitate the  
18 submission of some or all of the certification application through an electronic process;

19 (ii) for the purpose of certification under this subtitle, that  
20 promote and facilitate certification of minority business enterprises that have received  
21 certification from the U.S. Small Business Administration or a county that uses a  
22 certification process substantially similar to the process established in accordance  
23 with item (i) of this item;

24 (iii) requiring the agency designated to certify minority business  
25 enterprises to complete the agency's review of an application for certification and  
26 notify the applicant of the agency's decision within 90 days of receipt of a complete  
27 application that includes all of the information necessary for the agency to make a  
28 decision; and

29 (iv) authorizing the agency designated to certify minority  
30 business enterprises to extend the notification requirement established under item (iii)  
31 of this item once, for no more than an additional 60 days, if the agency provides the  
32 applicant with a written notice and explanation;

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:

36 (i) the potential subcontract opportunities available in the  
37 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) (I) consistent with § 14-302(a)(6) of this subtitle, provisions  
16 relating to any circumstances under which a unit may waive obligations of the  
17 contractor relating to minority business enterprise participation; AND

18 (II) PROVISIONS THAT REQUIRE A UNIT TO PROVIDE  
19 WRITTEN PUBLIC NOTICE OF:

20 1. ANY WAIVER OF MINORITY BUSINESS ENTERPRISE  
21 OBLIGATIONS; AND

22 2. THE REASON THE WAIVER IS NECESSARY;

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

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

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

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

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

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

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
16 read as follows:

17 **Article – State Finance and Procurement**

18 14–309.

19 The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations  
20 adopted under those sections, shall be of no effect and may not be enforced after July  
21 1, [2011] **2013**.

22 **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**  
23 **Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of**  
24 **2006**

25 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,  
26 in consultation with the General Assembly and the Office of the Attorney General,  
27 shall initiate a study of the Minority Business Enterprise Program to evaluate the  
28 Program's continued compliance with the requirements of the Croson decision and any  
29 subsequent federal or constitutional requirements. In preparation for the study, the  
30 Board of Public Works may adopt regulations authorizing a unit of State government  
31 to require bidders and offerors to submit information necessary for the conduct of the  
32 study. The Board of Public Works may designate that certain information received in  
33 accordance with regulations adopted under this section shall be confidential.  
34 Notwithstanding that certain information may be designated by the Board of Public  
35 Works as confidential, the certification agency may provide the information to any  
36 person that is under contract with the certification agency to assist in conducting the  
37 study. The study shall also evaluate race neutral programs and other methods that

1 can be used to address the needs of minority businesses. The final report on the study  
2 shall be submitted to the Legislative Policy Committee of the General Assembly prior  
3 to September 30, [2010] **2012**, so that the General Assembly may review the report  
4 prior to the [2011] **2013** Session.

5 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
6 take effect October 1, 2011.

7 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
8 Section 3 of this Act, this Act shall take effect July 1, 2011.