

HOUSE BILL 48

P2

(3lr0772)

ENROLLED BILL

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

Introduced by ~~Delegate B. Robinson~~ Delegates B. Robinson, Hammen, Donoghue, Elliott, A. Kelly, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Pendergrass, Reznik, and V. Turner

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 **Minority Business Enterprises – Not-for-Profit Entities**

3 FOR the purpose of requiring certain entities to include in certain contracts a certain
4 requirement for procuring janitorial products; excluding a not-for-profit entity
5 organized to promote the interests of physically or mentally disabled individuals
6 from a certain definition of minority business enterprise; prohibiting certain
7 contracts from being counted as part of a unit of State government’s total dollar
8 value of procurement contracts; authorizing a certain not-for-profit entity
9 participating as a minority business enterprise on a certain procurement
10 contract awarded by a unit before a certain date to continue to participate in
11 that contract until the contract terminates; providing that the not-for-profit
12 entity’s participation may not be counted toward achieving certain minority

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 business enterprise participation goals and the unit may not require that a
 2 certified minority business enterprise be substituted for the not-for-profit
 3 entity in order to meet certain minority business enterprise goals; requiring
 4 certain State or State aided or controlled entities, the University System of
 5 Maryland, St. Mary's College of Maryland, and Morgan State University to
 6 submit certain forecasts and reports to the Department of General Services on
 7 or before certain dates; requiring certain preferred providers to report to the
 8 Department of General Services on or before a certain date; requiring the
 9 Department of General Services to report to the Board of Public Works and
 10 certain committees of the General Assembly on or before a certain date;
 11 requiring the Department of General Services, on or before a certain date, to
 12 identify certain State or State aided or controlled entities required to submit
 13 certain reports; requiring the Department of Disabilities, in consultation with
 14 certain entities, to undertake certain ~~studies~~ evaluations and submit certain
 15 reports to the Legislative Policy Committee a final report on the studies certain
 16 committees on or before a certain ~~date~~ dates; providing for the application of
 17 this Act; defining a certain ~~term~~ terms; providing for a delayed effective date
 18 for certain provisions of this Act; and generally relating to minority business
 19 enterprise participation in State procurement.

20 BY repealing and reenacting, with amendments,
 21 Article – State Finance and Procurement
 22 Section 14-101 through 14-103, 14-301 and 14-302(a)(1) and (11)
 23 Annotated Code of Maryland
 24 (2009 Replacement Volume and 2012 Supplement)

25 BY adding to
 26 Article – State Finance and Procurement
 27 Section 14-110 and 14-302(a)(12)
 28 Annotated Code of Maryland
 29 (2009 Replacement Volume and 2012 Supplement)

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

32 **Article – State Finance and Procurement**

33 14-101.

34 (a) In this subtitle the following words have the meanings indicated.

35 (b) “Community service provider” means an entity that:

36 (1) is organized under the laws of the United States or this State;

37 (2) is accredited by the Division of Rehabilitation Services of the State
 38 Department of Education for participation in the Employment Works Program;

1 (3) is operated in the interest of individuals who have a mental or
2 physical disability, including blindness, that:

3 (i) constitutes a substantial barrier to employment; and

4 (ii) prevents the individual from engaging in competitive
5 employment; and

6 (4) does not inure net income wholly or partly to the benefit of any
7 shareholder or other individual.

8 (c) “Individual with disability owned business” means a business:

9 (1) that is organized under the laws of the United States or the State;

10 (2) that is majority owned by an individual or individuals determined
11 by the Division of Rehabilitation Services in the State Department of Education to
12 have a disability, as defined by Title 21, Subtitle 3 of the Education Article;

13 (3) whose majority owner or owners are directly and significantly
14 engaged in the daily operation of the business;

15 (4) whose workforce includes individuals with disabilities comprising a
16 percentage of the workforce that is at or above the minimum required under the
17 policies or guidelines established by the Pricing and Selection Committee for the
18 Employment Works Program;

19 (5) whose total gross revenues for contracts assigned under the
20 Program at the time of assignment do not exceed the maximum allowed under policies
21 or guidelines established by the Pricing and Selection Committee for the Employment
22 Works Program; and

23 (6) that continues to meet all other eligibility criteria established by
24 the Pricing and Selection Committee for the Employment Works Program.

25 **(D) “PREFERRED PROVIDER” MEANS A PROVIDER OF SUPPLIES OR**
26 **SERVICES GIVEN PREFERENCE IN § 14–103 OF THIS SUBTITLE.**

27 **[(d)](E) “State aided or controlled entity” means any public or quasi–public**
28 **institution that receives aid from the State or that is owned, controlled, or managed by**
29 **the State.**

30 14–102.

1 (a) Notwithstanding any other provision of this Division II, [the] A State OR
2 STATE AIDED OR CONTROLLED ENTITY shall buy supplies and services in
3 accordance with § 14-103 OF this subtitle.

4 (b) The procurement of services from a sheltered workshop is not subject to
5 the cost savings requirements of § 13-405 of the State Personnel and Pensions Article.
6 14-103.

7 (a) [The] A State or [a] State aided or controlled entity shall buy supplies
8 and services from:

9 (1) Maryland Correctional Enterprises, as provided in Title 3, Subtitle
10 5 of the Correctional Services Article, if State Use Industries provides the supplies or
11 services;

12 (2) Blind Industries and Services of Maryland, if:

13 (i) Blind Industries and Services of Maryland provides the
14 supplies or services; and

15 (ii) Maryland Correctional Enterprises does not provide the
16 supplies or services;

17 (3) the Employment Works Program established under § 14-108 of
18 this subtitle, if:

19 (i) a community service provider provides the supplies or
20 services;

21 (ii) neither Maryland Correctional Enterprises nor Blind
22 Industries and Services of Maryland provides the supplies or services; and

23 (iii) the State or a State aided or controlled entity is not required
24 by law to buy the supplies or services from any other unit of the State government; or

25 (4) individual with disability owned businesses if:

26 (i) an individual with disability owned business provides the
27 supplies or services;

28 (ii) neither Maryland Correctional Enterprises, Blind Industries
29 and Services of Maryland, nor a community service provider provides the supplies or
30 services; and

1 (iii) [the] A State or [a] State aided or controlled entity is not
2 required by law to buy the supplies or services from any other unit of the State
3 government.

4 (b) [The] A State or [a] State aided or controlled entity shall give preference
5 to the [entities] PROVIDERS listed under subsection (a) of this section in the order
6 that the [entities] PROVIDERS are listed.

7 (c) TO THE EXTENT PRACTICABLE, A STATE OR STATE AIDED OR
8 CONTROLLED ENTITY SHALL INCLUDE IN A MAINTENANCE CONTRACT THAT HAS
9 A COMPONENT FOR HOUSEKEEPING OR JANITORIAL SERVICES, A REQUIREMENT
10 THAT A PRIME CONTRACTOR PROCURE JANITORIAL PRODUCTS FROM BLIND
11 INDUSTRIES AND SERVICES OF MARYLAND WHEN THE SPECIFIED PRODUCTS
12 ARE AVAILABLE.

13 14-110.

14 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUBSECTIONS
15 (B) AND (C) OF THIS SECTION APPLY TO:

16 (1) A STATE OR STATE AIDED OR CONTROLLED ENTITY THAT IS:

17 (i) SUBJECT TO THE REQUIREMENTS OF § 14-103 OF THIS
18 SUBTITLE AND § 14-305 OF THIS TITLE; OR

19 (ii) IDENTIFIED BY THE DEPARTMENT OF GENERAL
20 SERVICES; AND

21 (2) THE UNIVERSITY SYSTEM OF MARYLAND, ST. MARY'S
22 COLLEGE OF MARYLAND, AND MORGAN STATE UNIVERSITY.

23 (B) (1) WITHIN 60 DAYS AFTER THE ENACTMENT OF THE BUDGET
24 BILL BY THE GENERAL ASSEMBLY, EACH STATE OR STATE AIDED OR
25 CONTROLLED ENTITY SHALL PREPARE AND SUBMIT TO THE DEPARTMENT OF
26 GENERAL SERVICES A FISCAL YEAR PROCUREMENT EXPENDITURE FORECAST
27 THAT DETAILS THE EXPECTED EXPENDITURES AND CONTRACTS TO BE
28 AWARDED UNDER § 14-103 OF THIS SUBTITLE IN THE NEXT FISCAL YEAR.

29 (2) THE FORECAST REQUIRED BY PARAGRAPH (1) OF THIS
30 SUBSECTION SHALL INCLUDE ACTIVITIES PLANNED TO INCREASE THE NUMBER
31 OF CONTRACTS AWARDED UNDER § 14-103 OF THIS SUBTITLE.

32 (C) (1) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL YEAR, A
33 STATE OR STATE AIDED OR CONTROLLED ENTITY SHALL SUBMIT A REPORT TO

1 THE DEPARTMENT OF GENERAL SERVICES THAT COMPLIES WITH THE
2 REQUIREMENTS OF PARAGRAPH (2) OF THIS SUBSECTION.

3 (2) FOR THE PRECEDING FISCAL YEAR, THE REPORT SHALL
4 INCLUDE:

5 (I) THE TOTAL NUMBER AND THE DOLLAR VALUE OF
6 CONTRACTS AWARDED BY THE STATE OR STATE AIDED OR CONTROLLED ENTITY
7 TO A PREFERRED PROVIDER;

8 (II) THE TOTAL NUMBER AND THE DOLLAR VALUE OF
9 PAYMENTS MADE BY A STATE OR STATE AIDED OR CONTROLLED ENTITY TO A
10 PREFERRED PROVIDER, INCLUDING PURCHASE CARD PROCUREMENTS;

11 (III) THE TOTAL NUMBER AND THE DOLLAR VALUE OF
12 CONTRACTS AWARDED BY THE STATE OR STATE AIDED OR CONTROLLED ENTITY
13 TO A PROVIDER OTHER THAN A PREFERRED PROVIDER;

14 (IV) THE TOTAL NUMBER AND THE DOLLAR VALUE OF
15 PAYMENTS MADE BY THE STATE OR STATE AIDED OR CONTROLLED ENTITY TO A
16 PROVIDER OTHER THAN A PREFERRED PROVIDER, INCLUDING PURCHASE CARD
17 PROCUREMENTS;

18 (V) THE PERCENTAGE THAT THE CONTRACTS TO
19 PREFERRED PROVIDERS REPRESENT OF THE TOTAL NUMBER OF
20 PROCUREMENT CONTRACTS;

21 (VI) THE PERCENTAGE THAT THE PAYMENTS TO PREFERRED
22 PROVIDERS REPRESENT OF THE TOTAL VALUE OF PAYMENTS; AND

23 (VII) ANY OTHER INFORMATION REQUIRED BY THE
24 DEPARTMENT OF GENERAL SERVICES.

25 (D) (1) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL YEAR, A
26 PREFERRED PROVIDER AWARDED A CONTRACT IN ACCORDANCE WITH § 14-103
27 OF THIS SUBTITLE SHALL REPORT TO THE DEPARTMENT OF GENERAL
28 SERVICES IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.

29 (2) FOR THE PRECEDING FISCAL YEAR, THE REPORT SHALL
30 STATE THE TOTAL NUMBER OF FULL-TIME EQUIVALENTS FOR INDIVIDUALS
31 WITH DISABILITIES WHO CONTRIBUTED TO THE WORK OF THE CONTRACTS.

32 (E) WITHIN 60 DAYS AFTER RECEIPT OF ALL OF THE REPORTS
33 REQUIRED UNDER SUBSECTIONS (C) AND (D) OF THIS SECTION, THE

1 DEPARTMENT OF GENERAL SERVICES SHALL SUBMIT A SUMMARY OF THE
 2 INFORMATION TO:

3 (1) THE BOARD OF PUBLIC WORKS; AND

4 (2) IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
 5 ARTICLE, THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS
 6 COMMITTEE, THE HOUSE HEALTH AND GOVERNMENT OPERATIONS
 7 COMMITTEE, AND THE LEGISLATIVE POLICY COMMITTEE.

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

10 Article – State Finance and Procurement

11 14–301.

12 (a) In this subtitle the following words have the meanings indicated.

13 (b) “Certification” means the determination that a legal entity is a minority
 14 business enterprise for the purposes of this subtitle.

15 (c) “Certification agency” means the agency designated by the Board of
 16 Public Works under § 14–303(b) of this subtitle to certify and decertify minority
 17 business enterprises.

18 (d) “Certified minority business enterprise” means a minority business
 19 enterprise that holds a certification.

20 (e) “Economically disadvantaged individual” means a socially disadvantaged
 21 individual whose ability to compete in the free enterprise system has been impaired
 22 due to diminished capital and credit opportunities as compared to others in the same
 23 or similar line of business who are not socially disadvantaged.

24 (f) [(1)] “Minority business enterprise” means any legal entity, except a
 25 joint venture, that is:

26 [(i)] (1) organized to engage in commercial transactions;

27 [(ii)] (2) at least 51% owned and controlled by 1 or more
 28 individuals who are socially and economically disadvantaged; and

29 [(iii)] (3) managed by, and the daily business operations of
 30 which are controlled by, one or more of the socially and economically disadvantaged
 31 individuals who own it.

1 [(2) “Minority business enterprise” includes a not for profit entity
2 organized to promote the interests of physically or mentally disabled individuals.]

3 (g) “Minority business enterprise participation schedule” means a schedule
4 included in the submission of a bid or offer that identifies:

5 (1) the certified minority business enterprises that a bidder or offeror
6 agrees to use in the performance of the contract; and

7 (2) the percentage of contract value attributed to each certified
8 minority business enterprise.

9 **(H) “NOT-FOR-PROFIT ENTITY” MEANS ~~A LEGAL ENTITY ORGANIZED TO~~
10 ~~PROMOTE THE INTERESTS OF PHYSICALLY OR MENTALLY DISABLED~~
11 ~~INDIVIDUALS~~ A CORPORATION THAT IS:**

12 **(1) IS INCORPORATED IN THE STATE, OR OTHERWISE QUALIFIED**
13 **TO DO BUSINESS IN THE STATE;**

14 **(2) ~~THAT~~ HAS BEEN DETERMINED BY THE INTERNAL REVENUE**
15 **SERVICE TO BE EXEMPT FROM TAXATION UNDER § 501(C)(3), (4), OR (6) OF THE**
16 **INTERNAL REVENUE CODE; AND**

17 **~~(2)~~ (3) IS ORGANIZED TO PROMOTE THE INTERESTS OF**
18 **PHYSICALLY OR MENTALLY DISABLED INDIVIDUALS.**

19 **[(h) (I)** (1) Subject to paragraphs (2) and (3) of this subsection,
20 “personal net worth” means the net value of the assets of an individual remaining
21 after total liabilities are deducted.

22 (2) “Personal net worth” includes the individual’s share of assets held
23 jointly or as community property with the individual’s spouse.

24 (3) “Personal net worth” does not include:

25 (i) the individual’s ownership interest in the applicant or a
26 certified minority business enterprise;

27 (ii) the individual’s equity in his or her primary place of
28 residence; or

29 (iii) up to \$500,000 of the cash value of any qualified retirement
30 savings plans or individual retirement accounts.

31 **[(i) (J)** “Race-neutral measure” means a method that is or can be used to
32 assist all small businesses.

1 **[(j)] (K)** (1) Subject to paragraphs (2) and (3) of this subsection, and in
2 accordance with the State’s most recent disparity study, “socially and economically
3 disadvantaged individual” means a citizen or lawfully admitted permanent resident of
4 the United States who is:

5 (i) in any of the following minority groups:

6 1. African American – an individual having origins in
7 any of the black racial groups of Africa;

8 2. American Indian/Native American – an individual
9 having origins in any of the original peoples of North America and who is a
10 documented member of a North American tribe, band, or otherwise has a special
11 relationship with the United States or a state through treaty, agreement, or some
12 other form of recognition. This includes an individual who claims to be an American
13 Indian/Native American and who is regarded as such by the American Indian/Native
14 American community of which the individual claims to be a part, but does not include
15 an individual of Eskimo or Aleutian origin;

16 3. Asian – an individual having origins in the Far East,
17 Southeast Asia, or the Indian subcontinent, and who is regarded as such by the
18 community of which the person claims to be a part;

19 4. Hispanic – an individual of Mexican, Puerto Rican,
20 Cuban, Central or South American, or other Spanish culture or origin, regardless of
21 race, and who is regarded as such by the community of which the person claims to be a
22 part;

23 5. physically or mentally disabled – notwithstanding the
24 State’s most recent disparity study, an individual who has an impairment that
25 substantially limits one or more major life activities, who is regarded generally by the
26 community as having such a disability, and whose disability has substantially limited
27 his or her ability to engage in competitive business; or

28 6. women – a woman, regardless of race or ethnicity; or

29 (ii) otherwise found by the certification agency to be a socially
30 and economically disadvantaged individual.

31 (2) There is a rebuttable presumption that an individual who is a
32 member of a minority group under paragraph (1)(i) of this subsection is socially and
33 economically disadvantaged.

34 (3) An individual whose personal net worth exceeds \$1,500,000, as
35 adjusted annually for inflation according to the Consumer Price Index, may not be
36 found to be economically disadvantaged.

1 2. During any year in which there is a delay in
2 establishing the subgoal guidelines, the previous year's subgoal guidelines will apply.

3 (iv) 1. The Special Secretary of Minority Affairs, in
4 consultation with the Secretary of Transportation and the Attorney General, shall
5 establish goals and subgoal guidelines that, to the maximum extent feasible,
6 approximate the level of minority business enterprise participation that would be
7 expected in the absence of discrimination.

8 2. In establishing overall goals and subgoal guidelines,
9 the Special Secretary of Minority Affairs shall provide for public participation by
10 consulting with minority, women's, and general contractor groups, community
11 organizations, and other officials or organizations that could be expected to have
12 information concerning:

13 A. the availability of minority- and women-owned
14 businesses;

15 B. the effects of discrimination on opportunities for
16 minority- and women-owned businesses; and

17 C. the State's operation of the Minority Business
18 Enterprise Program.

19 (v) In establishing overall goals, the factors to be considered
20 shall include:

21 1. the relative availability of minority- and
22 women-owned businesses to participate in State procurement as demonstrated by the
23 State's most recent disparity study;

24 2. past participation of minority business enterprises in
25 State procurement, except for procurement related to leases of real property; and

26 3. other factors that contribute to constitutional goal
27 setting.

28 (vi) Notwithstanding § 12-101 of this article, the Special
29 Secretary of Minority Affairs shall adopt regulations in accordance with Title 10,
30 Subtitle 1 of the State Government Article setting forth the State's overall goal.

31 (11) If, during the performance of a contract, a certified minority
32 business enterprise contractor or subcontractor becomes ineligible to participate in the
33 Minority Business Enterprise Program because one or more of its owners has a
34 personal net worth that exceeds the amount specified in § [14-301(j)(3)]
35 **14-301(K)(3)** of this subtitle:

1 (i) that ineligibility alone may not cause the termination of the
2 certified minority business enterprise's contractual relationship for the remainder of
3 the term of the contract; and

4 (ii) the certified minority business enterprise's participation
5 under the contract shall continue to be counted toward the program and contract
6 goals.

7 **(12) (I) ~~A~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
8 **PARAGRAPH, A NOT-FOR-PROFIT ENTITY PARTICIPATING AS A MINORITY**
9 **BUSINESS ENTERPRISE ON A PROCUREMENT CONTRACT AWARDED BY A UNIT**
10 **BEFORE JULY 1, ~~2013~~ 2015, MAY CONTINUE TO PARTICIPATE IN THE CONTRACT**
11 **UNTIL THE CONTRACT EXPIRES OR OTHERWISE TERMINATES, ~~HOWEVER,~~**
12 **INCLUDING ALL OPTIONS, RENEWALS, AND OTHER EXTENSIONS.**

13 **~~(I) THE (II) 1. THE~~ NOT-FOR-PROFIT ENTITY'S**
14 **PARTICIPATION MAY NOT BE COUNTED TOWARD ACHIEVING THE MINORITY**
15 **BUSINESS ENTERPRISE PARTICIPATION GOALS IN THIS SUBSECTION, ~~AND.~~**

16 **~~(II) THE 2. THE~~ UNIT MAY NOT REQUIRE THAT A**
17 **CERTIFIED MINORITY BUSINESS ENTERPRISE BE SUBSTITUTED FOR THE**
18 **NOT-FOR-PROFIT ENTITY IN ORDER TO MEET THE MINORITY BUSINESS**
19 **ENTERPRISE GOALS FOR THE PROCUREMENT CONTRACT.**

20 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before July 1,
21 2015, the Department of General Services shall identify the State or State aided or
22 controlled entities required to submit reports under § 14-110 as enacted by Section 1
23 of this Act.

24 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That:

25 (a) The Department of Disabilities, in consultation with the Governor's
26 Office of Minority Affairs and the ~~Office of the Attorney General~~ Department of
27 General Services, shall evaluate the impact of ~~Section 1~~ Sections 1 and 2 of this Act on
28 the participation of not-for-profit entities organized to promote the interests of
29 individuals with physical or mental disabilities ~~on~~ in State procurement and, to the
30 extent practicable, related activities. ~~and on employment and business opportunities~~
31 ~~for persons with disabilities by collecting the following data:~~

32 ~~(1) the dollar amount awarded to each not-for-profit entity;~~

33 ~~(2) the contract number and type of procurement or contracting~~
34 ~~activity through which the unit awarded such dollars to that entity; and~~

35 ~~(3) any other data the Department of Disabilities considers relevant to~~
36 ~~its evaluation.~~

1 ~~(b) In preparing for the evaluation required under subsection (a) of this section,~~
 2 ~~the Department of Disabilities may issue a directive requiring units of State~~
 3 ~~government to collect and submit the necessary information~~

4 (b) On or before December 1, 2015, the Department of Disabilities shall
 5 submit an interim report on the evaluation to the Senate Education, Health, and
 6 Environmental Affairs Committee, the House Health and Government Operations
 7 Committee, and the Legislative Policy Committee of the General Assembly in
 8 accordance with § 2-1246 of the State Government Article.

9 (c) On or before December 1, ~~2013~~ 2016, the Department of Disabilities shall
 10 submit a final report on the evaluation to the Senate Education, Health, and
 11 Environmental Affairs Committee, the House Health and Government Operations
 12 Committee, and the Legislative Policy Committee of the General Assembly in
 13 accordance with § 2-1246 of the State Government Article.

14 SECTION ~~5~~ 5. AND BE IT FURTHER ENACTED, That this Act shall be
 15 construed to apply only prospectively and may not be applied or interpreted to have
 16 any effect on or application to any contract awarded before the effective date of this
 17 Act.

18 SECTION 6. AND BE IT FURTHER ENACTED, That Sections 2 and 4 of this
 19 Act shall take effect July 1, 2015.

20 SECTION ~~7~~ 7. AND BE IT FURTHER ENACTED, That except as provided in
 21 Section 6 of this Act, this Act shall take effect July 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.