

SENATE BILL 188

P2

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CF HB 1353

By: **Senators Pugh, Benson, Conway, Currie, Ferguson, Forehand, Gladden, Jones-Rodwell, Kelley, McFadden, Middleton, Montgomery, Muse, and Ramirez**

Introduced and read first time: January 18, 2013

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 12, 2013

CHAPTER _____

1 AN ACT concerning

2 **Minority Business Enterprises – Goals and Subgoals**

3 FOR the purpose of requiring the ~~Procurement Advisor to conduct an examination~~
4 ~~concerning the process by which the heads of units and their procurement~~
5 ~~officers, in consultation with the Special Secretary of Minority Affairs, the~~
6 ~~Secretary of Transportation, and the Attorney General, sets certain goals and~~
7 ~~subgoals for participation of certain minority groups in State procurement;~~
8 ~~specifying certain factors to be considered during the examination; requiring the~~
9 ~~Procurement Advisor to report certain findings on or before a certain date; and~~
10 ~~generally relating to the setting of goals and subgoals for participation of~~
11 ~~certain minority groups in State procurement~~ Special Secretary of Minority
12 Affairs, in consultation with the Secretary of Transportation and the Attorney
13 General, to establish guidelines for certain units of State government to
14 consider when determining the appropriate minority business enterprise
15 participation percentage goal for certain procurements; making certain
16 conforming changes; and generally relating to minority business enterprise
17 participation percentage goals and subgoals for certain procurements.

18 BY repealing and reenacting, without amendments,
19 Article – State Finance and Procurement
20 Section 12–102
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2012 Supplement)

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 ~~BY repealing and reenacting, without amendments,~~
 2 ~~Article – State Finance and Procurement~~
 3 ~~Section 14–302(a)(1)~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2009 Replacement Volume and 2012 Supplement)~~

6 BY repealing and reenacting, with amendments,
 7 Article – State Finance and Procurement
 8 Section 14–302 and 14–303
 9 Annotated Code of Maryland
 10 (2009 Replacement Volume and 2012 Supplement)

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

13 **Article – State Finance and Procurement**

14 12–102.

15 (a) (1) The Board shall appoint a Procurement Advisor, who serves at the
 16 pleasure of the Board.

17 (2) The Procurement Advisor shall:

18 (i) ensure that the State’s procurement system is utilizing the
 19 most advanced procurement methods and management techniques;

20 (ii) effect and enhance communication between State units on
 21 procurement matters, with an emphasis on disseminating information on current
 22 developments and advances in the management of the State procurement system;

23 (iii) examine all procurements that are subject to review by the
 24 Board and make recommendations to the Board as to the appropriateness of each
 25 procurement, with an emphasis on whether the proposed procurement:

26 1. has been competitively conducted; and

27 2. conforms to provisions of procurement law,
 28 procurement regulations, and best management practices;

29 (iv) prevent and detect fraud, waste, and abuse and foster
 30 competition in the expenditure of State funds in the procurement of supplies, services,
 31 or construction;

32 (v) conduct investigations into procurement policies, practices,
 33 and procedures, as appropriate;

1 (vi) investigate complaints made by State employees concerning
2 fraud, waste, and abuse in the procurement process and any alleged violation of the
3 procurement law or regulations;

4 (vii) investigate complaints, other than formal bid protests filed
5 under Title 15, Subtitle 2 of this article, made by contractors and other interested
6 parties concerning fraud, waste, and abuse in the procurement process and any
7 alleged violation of the procurement law or regulations;

8 (viii) if apparent criminal violations are found in the course of an
9 investigation, report findings to the Board of Public Works, Office of the Attorney
10 General, United States Attorney, and State or local prosecutors, as appropriate;

11 (ix) if other apparent violations of law or regulation are found in
12 the course of an investigation, report findings to the Board of Public Works, the
13 appropriate agency head, and any other appropriate body for administrative action;

14 (x) produce and submit to the Board of Public Works and the
15 General Assembly, in accordance with § 2-1246 of the State Government Article, an
16 annual report of the activities of the Procurement Advisor, including:

17 1. all findings and recommendations for improvements
18 to the procurement system; and

19 2. the identification of barriers to effective broad-based
20 competition in State procurement and recommendations for the elimination of these
21 barriers;

22 (xi) assist agencies and the public with questions regarding
23 procurement policy;

24 (xii) establish policies for the effective training of State
25 procurement officials to ensure that the State's procurement system is utilizing the
26 most advanced procurement methods and management techniques;

27 (xiii) coordinate activities with other entities performing similar
28 functions;

29 (xiv) review internal audit reports and comment as appropriate;

30 (xv) be the principal staff to the Procurement Advisory Council;
31 and

32 (xvi) notify the Legislative Auditor when the Procurement
33 Advisor undertakes an investigation under item (vi) or (vii) of this paragraph.

1 (3) The Procurement Advisor shall:

2 (i) have access to all books, accounts, records, reports, any
3 material related to contracts and procurement, and all other papers and equipment
4 necessary to carry out its responsibilities; and

5 (ii) have direct and prompt access to all heads of agencies
6 involved in the expenditure of public funds.

7 (b) (1) (i) The Board shall appoint a General Counsel, who serves at
8 the pleasure of the Board.

9 (ii) The General Counsel shall be an attorney in this State.

10 (2) The General Counsel shall:

11 (i) provide independent legal advice to the Board;

12 (ii) examine all procurements that are subject to review by the
13 Board and make recommendations to the Board as to the legal sufficiency of the
14 procurements, with an emphasis on whether the proposed procurement has been
15 competitively conducted;

16 (iii) assist the Procurement Advisor in investigations undertaken
17 by the Procurement Advisor;

18 (iv) assist the Procurement Advisor in responding to complaints
19 made by State employees, contractors, and other interested parties concerning fraud,
20 waste, and abuse in the procurement process or any alleged violation of the
21 procurement law and regulations;

22 (v) compile information for distribution to State procurement
23 officials relating to recent decisions of the Maryland State Board of Contract Appeals
24 and State and federal courts concerning procurement, including any policy or legal
25 guidance to the procurement officials based on these decisions; and

26 (vi) review regulations proposed by the Board for legality and
27 approve them for proposal and adoption.

28 (3) The General Counsel shall:

29 (i) have access to all books, accounts, records, any material
30 related to contracts and procurement, and all other papers and equipment necessary
31 to carry out its responsibilities; and

32 (ii) have direct and prompt access to all heads of agencies
33 involved in the expenditure of public funds.

1 (c) In accordance with the State budget, the Board may appoint any
2 additional staff necessary to carry out its responsibilities under this Division II.

3 ~~14-302.~~

4 (a) (1) (i) ~~Except for leases of real property, each unit shall structure~~
5 ~~procurement procedures, consistent with the purposes of this subtitle, to try to achieve~~
6 ~~an overall percentage goal of the unit's total dollar value of procurement contracts~~
7 ~~being made directly or indirectly to certified minority business enterprises.~~

8 (ii) 1. ~~The overall percentage goal shall be established on a~~
9 ~~biennial basis by the Special Secretary of Minority Affairs, in consultation with the~~
10 ~~Secretary of Transportation and the Attorney General.~~

11 2. ~~During any year in which there is a delay in~~
12 ~~establishing the overall goal, the previous year's goal will apply.~~

13 (iii) 1. ~~In consultation with the Secretary of Transportation~~
14 ~~and the Attorney General, the Special Secretary of Minority Affairs shall establish~~
15 ~~guidelines on a biennial basis for each unit to consider while determining whether to~~
16 ~~set subgoals for the minority groups listed in § 14-301(j)(1)(i)1, 2, 3, 4, and 6 of this~~
17 ~~subtitle.~~

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

20 (iv) 1. ~~The Special Secretary of Minority Affairs, in~~
21 ~~consultation with the Secretary of Transportation and the Attorney General, shall~~
22 ~~establish goals and subgoal guidelines that, to the maximum extent feasible,~~
23 ~~approximate the level of minority business enterprise participation that would be~~
24 ~~expected in the absence of discrimination.~~

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

30 A. ~~the availability of minority and women-owned~~
31 ~~businesses;~~

32 B. ~~the effects of discrimination on opportunities for~~
33 ~~minority and women-owned businesses; and~~

34 C. ~~the State's operation of the Minority Business~~
35 ~~Enterprise Program.~~

1 (v) ~~In establishing overall goals, the factors to be considered~~
2 ~~shall include:~~

3 ~~1. the relative availability of minority and~~
4 ~~women-owned businesses to participate in State procurement as demonstrated by the~~
5 ~~State's most recent disparity study;~~

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

8 ~~3. other factors that contribute to constitutional goal~~
9 ~~setting.~~

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

13 14-302.

14 (a) (1) (i) Except for leases of real property, each unit shall structure
15 procurement procedures, consistent with the purposes of this subtitle, to try to achieve
16 an overall percentage goal of the unit's total dollar value of procurement contracts
17 being made directly or indirectly to certified minority business enterprises.

18 (ii) 1. The overall percentage goal shall be established on a
19 biennial basis by the Special Secretary of Minority Affairs, in consultation with the
20 Secretary of Transportation and the Attorney General.

21 2. During any year in which there is a delay in
22 establishing the overall goal, the previous year's goal will apply.

23 (iii) 1. In consultation with the Secretary of Transportation
24 and the Attorney General, the Special Secretary of Minority Affairs shall establish
25 guidelines on a biennial basis for each unit to consider while determining whether to
26 set subgoals for the minority groups listed in § 14-301(j)(1)(i)1, 2, 3, 4, and 6 of this
27 subtitle.

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

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

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

6 A. the availability of minority- and women-owned
7 businesses;

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

10 C. the State's operation of the Minority Business
11 Enterprise Program.

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

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

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

19 3. other factors that contribute to constitutional goal
20 setting.

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

24 **(2) THE SPECIAL SECRETARY OF MINORITY AFFAIRS, IN**
25 **CONSULTATION WITH THE SECRETARY OF TRANSPORTATION AND THE**
26 **ATTORNEY GENERAL, SHALL ESTABLISH GUIDELINES FOR EACH UNIT TO**
27 **CONSIDER WHEN DETERMINING THE APPROPRIATE MINORITY BUSINESS**
28 **ENTERPRISE PARTICIPATION PERCENTAGE GOAL FOR A PROCUREMENT**
29 **CONTRACT IN ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION.**

30 **[(2)] (3) Each unit shall:**

31 (i) consider the practical severability of all contracts and, in
32 accordance with § 11-201 of this article, may not bundle contracts;

1 (ii) implement a program that will enable the unit to evaluate
 2 each contract to determine the appropriate minority business enterprise participation
 3 goals, if any, for the contract based on:

4 1. the potential subcontract opportunities available in
 5 the prime procurement contract;

6 2. the availability of certified minority business
 7 enterprises to respond competitively to the potential subcontract opportunities;

8 3. THE CONTRACT GOAL GUIDELINES ESTABLISHED
 9 UNDER PARAGRAPH (2) OF THIS SUBSECTION;

10 [3.] 4. the SUBGOAL guidelines established under
 11 paragraph (1)(ii) of this subsection; and

12 [4.] 5. other factors that contribute to constitutional
 13 goal setting;

14 (iii) monitor and collect data with respect to prime contractor
 15 compliance with contract goals; and

16 (iv) institute corrective action when prime contractors do not
 17 make good-faith efforts to comply with contract goals.

18 [(3)] (4) Units may not use quotas or any project goal-setting process
 19 that:

20 (i) solely relies on the State's overall numerical goal, or any
 21 other jurisdiction's overall numerical goal; or

22 (ii) fails to incorporate the analysis outlined in paragraph (2)(ii)
 23 of this subsection.

24 [(4)] (5) (i) A woman who is also a member of an ethnic or racial
 25 minority group may be certified in that category in addition to the gender category.

26 (ii) For purposes of achieving the goals in this subsection, a
 27 certified minority business enterprise may participate in a procurement contract and
 28 be counted as a woman-owned business, or as a business owned by a member of an
 29 ethnic or racial group, but not both, if the business has been certified in both
 30 categories.

31 [(5)] (6) Each unit shall meet the maximum feasible portion of the
 32 State's overall goal established in accordance with this subsection by using

1 race-neutral measures to facilitate minority business enterprise participation in the
2 procurement process.

3 ~~[(6)]~~ **(7)** If a unit establishes minority business enterprise
4 participation goals for a contract, a contractor, including a contractor that is a certified
5 minority business enterprise, shall:

6 (i) identify specific work categories appropriate for
7 subcontracting;

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

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

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

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

16 (iv) offer to provide reasonable assistance to minority business
17 enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

18 (v) in order to publicize contracting opportunities to minority
19 business enterprises, attend prebid or preproposal meetings or other meetings
20 scheduled by the unit; and

21 (vi) upon acceptance of a bid or proposal, provide the unit with a
22 list of minority businesses with whom the contractor negotiated, including price quotes
23 from minority and nonminority firms.

24 ~~[(7)]~~ **(8)** The Special Secretary of Minority Affairs shall:

25 (i) in consultation with the Secretary of Transportation and the
26 Attorney General, establish procedures governing how the participation of minority
27 business enterprise prime contractors is counted toward contract goals; and

28 (ii) notwithstanding § 12-101 of this article, adopt regulations
29 setting forth the procedures established in accordance with this paragraph.

30 ~~[(8)]~~ **(9)** (i) 1. If a contractor, including a certified minority
31 business enterprise, does not achieve all or a part of the minority business enterprise
32 participation goals on a contract, the unit shall make a finding of whether the
33 contractor has demonstrated that the contractor took all necessary and reasonable
34 steps to achieve the goals, including compliance with paragraph (6) of this subsection.

1 2. A waiver of any part of the minority business
2 enterprise goals for a contract shall be granted if a contractor provides a reasonable
3 demonstration of good-faith efforts to achieve the goals.

4 (ii) If the unit determines that a waiver should be granted in
5 accordance with subparagraph (i) of this paragraph, the unit may not require the
6 contractor to renegotiate any subcontract in order to achieve a different result.

7 (iii) The head of the unit may waive any of the requirements of
8 this subsection relating to the establishment, use, and waiver of contract goals for a
9 sole source, expedited, or emergency procurement in which the public interest cannot
10 reasonably accommodate use of those requirements.

11 (iv) 1. Except for waivers granted in accordance with
12 subparagraph (iii) of this paragraph, when a waiver determination is made, the unit
13 shall issue the determination in writing.

14 2. The head of the unit shall:

15 A. keep one copy of the waiver determination and the
16 reasons for the determination; and

17 B. forward one copy of the waiver determination to the
18 Governor's Office of Minority Affairs.

19 (v) On or before July 31 of each year, each unit shall submit
20 directly to the Board of Public Works and the Governor's Office of Minority Affairs an
21 annual report of waivers requested and waivers granted under this paragraph.

22 (vi) The report required under subparagraph (v) of this
23 paragraph shall contain the following information on those contracts where the unit
24 considered a contractor's request for waiver of all or a portion of the minority business
25 enterprise goals:

26 1. the contract titles, numbers, and dates;

27 2. the number of waiver requests received;

28 3. the number of waiver requests granted; and

29 4. any other information specifically requested by the
30 Board.

31 **[(9)] (10)** (i) 1. This paragraph applies to a bidder or offeror
32 after submission of a bid or proposal and before the execution of a contract with an
33 expected degree of minority business enterprise participation.

1 2. If the bidder or offeror determines that a minority
2 business enterprise identified in the minority business enterprise participation
3 schedule has become or will become unavailable or ineligible to perform the work
4 required under the contract, the bidder or offeror shall notify the unit within 72 hours
5 of making the determination.

6 (ii) 1. If a minority business enterprise identified in the
7 minority business enterprise participation schedule submitted with a bid or offer has
8 become or will become unavailable or ineligible to perform the work required under
9 the contract, the bidder or offeror may submit a written request with the unit to
10 amend the minority business enterprise participation schedule.

11 2. The request to amend the minority business
12 enterprise participation schedule shall indicate the bidder's or offeror's efforts to
13 substitute another certified minority business enterprise to perform the work that the
14 unavailable or ineligible minority business enterprise would have performed.

15 (iii) A minority business enterprise participation schedule may
16 not be amended unless:

17 1. the bidder or offeror provides a satisfactory
18 explanation of the reason for inclusion of the unavailable or ineligible firm on the
19 minority business enterprise participation schedule; and

20 2. the amendment is approved by the unit's procurement
21 officer after consulting with the unit's minority business enterprise liaison.

22 **[(10)] (11)** (i) This paragraph applies after execution of a contract
23 with an expected degree of minority business enterprise participation.

24 (ii) The minority business enterprise participation schedule,
25 including any amendment, shall be attached to and made a part of the executed
26 contract.

27 (iii) 1. A contractor may not terminate or otherwise cancel
28 the contract of a certified minority business enterprise subcontractor listed in the
29 minority business enterprise participation schedule without showing good cause and
30 obtaining the prior written consent of the minority business enterprise liaison and
31 approval of the head of the unit.

32 2. The unit shall send a copy of the written consent
33 obtained under subsubparagraph 1 of this subparagraph to the Governor's Office of
34 Minority Affairs.

1 (iv) A minority business enterprise participation schedule may
2 not be amended after the date of contract execution unless the request is approved by
3 the head of the unit and the contract is amended.

4 [(11)] (12) If, during the performance of a contract, a certified minority
5 business enterprise contractor or subcontractor becomes ineligible to participate in the
6 Minority Business Enterprise Program because one or more of its owners has a
7 personal net worth that exceeds the amount specified in § 14–301(j)(3) of this subtitle:

8 (i) that ineligibility alone may not cause the termination of the
9 certified minority business enterprise’s contractual relationship for the remainder of
10 the term of the contract; and

11 (ii) the certified minority business enterprise’s participation
12 under the contract shall continue to be counted toward the program and contract
13 goals.

14 (b) (1) The provisions of §§ 14–301(f) and 14–303 of this subtitle and
15 subsection (a) of this section are inapplicable to the extent that any unit determines
16 the provisions to be in conflict with any applicable federal program requirement.

17 (2) The determination under this subsection shall be included with the
18 report required under § 14–305 of this subtitle.

19 14–303.

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

23 (ii) The Board shall keep a record of information regarding any
24 waivers requested in accordance with § [14–302(a)(8)(i)] 14–302(A)(9)(I) of this
25 subtitle and subsection (b)(11) of this section and submit a copy of the record to the
26 General Assembly on or before October 1 of each year, in accordance with § 2–1246 of
27 the State Government Article.

28 (iii) The Board shall keep a record of the aggregate number and
29 the identity of minority business enterprises that receive certification under the
30 process established by the Board under subsection (b)(1) of this section and submit a
31 copy of the record to the General Assembly on or before October 1 of each year, in
32 accordance with § 2–1246 of the State Government Article.

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

1 **(b) These regulations shall include:**

2 **(1) provisions:**

3 **(i) designating one State agency to certify and decertify**
4 **minority business enterprises for all units through a single process that meets**
5 **applicable federal requirements, including provisions that promote and facilitate the**
6 **submission of some or all of the certification application through an electronic process;**

7 **(ii) for the purpose of certification under this subtitle, that**
8 **promote and facilitate certification of minority business enterprises that have received**
9 **certification from the U.S. Small Business Administration or a county that uses a**
10 **certification process substantially similar to the process established in accordance**
11 **with item (i) of this item;**

12 **(iii) requiring the agency designated to certify minority business**
13 **enterprises to complete the agency's review of an application for certification and**
14 **notify the applicant of the agency's decision within 90 days of receipt of a complete**
15 **application that includes all of the information necessary for the agency to make a**
16 **decision; and**

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

21 **(2) a requirement that the solicitation document accompanying each**
22 **solicitation set forth the expected degree of minority business enterprise participation**
23 **based, in part, on the factors set forth in § [14-302(a)(2)(ii)] 14-302(A)(3)(II) of this**
24 **subtitle;**

25 **(3) a requirement that bidders or offerors complete a document setting**
26 **forth the percentage of the total dollar amount of the contract that the bidder or**
27 **offeror agrees will be performed by certified minority business enterprises;**

28 **(4) a requirement that the solicitation documents completed and**
29 **submitted by the bidder or offeror in connection with its minority business enterprise**
30 **participation commitment must be attached to and made a part of the contract;**

31 **(5) a requirement that all contracts containing minority business**
32 **enterprise participation goals shall contain a liquidated damages provision that**
33 **applies in the event that the contractor fails to comply in good faith with the**
34 **provisions of this subtitle or the pertinent terms of the applicable contract;**

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

1 (7) provisions to ensure the uniformity of requests for bids on
2 subcontracts;

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

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

8 (10) provisions relating to joint ventures, under which a bidder may
9 count toward meeting its minority business enterprise participation goal, the minority
10 business enterprise portion of the joint venture;

11 (11) consistent with § [14-302(a)(8)] 14-302(A)(9) of this subtitle,
12 provisions relating to any circumstances under which a unit may waive obligations of
13 the contractor relating to minority business enterprise participation;

14 (12) provisions requiring a monthly submission to the unit by minority
15 business enterprises acknowledging all payments received in the preceding 30 days
16 under a contract governed by this subtitle;

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

22 (14) a requirement that a unit verify that minority business enterprises
23 listed in a successful bid are actually participating to the extent listed in the project
24 for which the bid was submitted;

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

28 (16) a requirement that a bid or proposal based on a solicitation with an
29 expected degree of minority business enterprise participation identify the specific
30 commitment of certified minority business enterprises at the time of submission;

31 (17) provisions promoting and providing for the counting and reporting
32 of certified minority business enterprises as prime contractors;

33 (18) provisions establishing standards to require a minority business
34 enterprise to perform a commercially useful function on a contract;

1 (19) a requirement that each unit work with the Governor's Office of
2 Minority Affairs to designate certain procurements as being excluded from the
3 requirements of § 14-302(a) of this subtitle; and

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

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

10 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Procurement Advisor~~
11 ~~shall:~~

12 ~~(1) examine the process used by the heads of units of State~~
13 ~~government and their procurement officers, in consultation with the Special Secretary~~
14 ~~of Minority Affairs, the Secretary of Transportation, and the Attorney General under §~~
15 ~~14-302(a)(1) of the State Finance and Procurement Article, to set overall percentage~~
16 ~~goals and subgoals for minority groups for each unit's total dollar value of~~
17 ~~procurement contracts being made directly or indirectly to minority business~~
18 ~~enterprises, including:~~

19 ~~(i) the process used by the units and their procurement officers~~
20 ~~to set a lower percentage goal or subgoal for a minority group; and~~

21 ~~(ii) whether the lower percentage goal or subgoal is reflective of~~
22 ~~or consistent with census data regarding changes in the minority population or the~~
23 ~~number of minority business enterprises in the State; and~~

24 ~~(2) on or before December 31, 2013, report findings concerning the~~
25 ~~process utilized to set overall percentage goals and subgoals for minority groups for~~
26 ~~each unit's total dollar value of procurement contracts being made directly or~~
27 ~~indirectly to minority business enterprises to the Governor and, subject to § 2-1246 of~~
28 ~~the State Government Article, the General Assembly.~~

29 ~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
30 ~~October 1, 2013.~~