

HOUSE BILL 1212

P2

11r2247

By: **Delegate Washington**

Introduced and read first time: February 8, 2021

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2021

CHAPTER _____

1 AN ACT concerning

2 ~~Procurement – Socially and Economically Disadvantaged Workers’ Protection~~
3 ~~Preference~~

4 Workgroup to Study Enhanced Opportunities for Socially and Economically
5 Disadvantaged Individuals in the State

6 FOR the purpose of ~~requiring each unit of State government to apply a certain percentage~~
7 ~~preference for bidders and offerors on a procurement contract who agree to the~~
8 ~~inclusion in the contract of a certain clause requiring that at least a certain~~
9 ~~percentage of workers on the contract shall be socially and economically~~
10 ~~disadvantaged individuals under certain circumstances and the inclusion of a similar~~
11 ~~clause into certain subcontracts under certain circumstances; providing that the~~
12 ~~inclusion and compliance with a certain clause may not be considered to be a~~
13 ~~violation of or willful failure to comply with a certain nondiscrimination clause;~~
14 ~~requiring the Board of Public Works to adopt certain regulations; defining certain~~
15 ~~terms; and generally relating to State procurement preferences~~ establishing the
16 Workgroup to Study Enhanced Opportunities for Socially and Economically
17 Disadvantaged Individuals in the State; providing for the composition, chair, and
18 staffing of the Workgroup; prohibiting a member of the Workgroup from receiving
19 certain compensation, but authorizing the reimbursement of certain expenses;
20 requiring the Workgroup to study certain procurement preference programs,
21 enhanced job opportunities for certain individuals, certain existing methods for
22 enhancing opportunities for certain individuals in other states and governmental
23 entities, certain existing research, the effect of certain additional or enhanced
24 programs on existing State law, and certain other matters; requiring the Workgroup
25 to report its findings and recommendations to certain persons by a certain date;

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 providing for the termination of this Act; and generally relating to the Workgroup to
 2 Study Enhanced Opportunities for Socially and Economically Disadvantaged
 3 Individuals in the State.

4 ~~BY repealing and reenacting, without amendments,~~
 5 ~~Article — State Finance and Procurement~~
 6 ~~Section 14-301(c), (k), and (l)~~
 7 ~~Annotated Code of Maryland~~
 8 ~~(2015 Replacement Volume and 2020 Supplement)~~

9 ~~BY adding to~~
 10 ~~Article — State Finance and Procurement~~
 11 ~~Section 14-701 to be under the new subtitle “Subtitle 7. Socially and Economically~~
 12 ~~Disadvantaged Workers’ Protection Preference”~~
 13 ~~Annotated Code of Maryland~~
 14 ~~(2015 Replacement Volume and 2020 Supplement)~~

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

17 ~~**Article — State Finance and Procurement**~~

18 ~~14-301.~~

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

23 ~~(k) (1) Subject to paragraphs (2) and (3) of this subsection, and in accordance~~
 24 ~~with the State’s most recent disparity study, “socially and economically disadvantaged~~
 25 ~~individual” means a citizen or lawfully admitted permanent resident of the United States~~
 26 ~~who is:~~

27 ~~(i) in any of the following minority groups:~~

28 ~~1. African American — an individual having origins in any of~~
 29 ~~the black racial groups of Africa;~~

30 ~~2. American Indian/Native American — an individual having~~
 31 ~~origins in any of the original peoples of North America and who is a documented member~~
 32 ~~of a North American tribe, band, or otherwise has a special relationship with the United~~
 33 ~~States or a state through treaty, agreement, or some other form of recognition. This~~
 34 ~~includes an individual who claims to be an American Indian/Native American and who is~~
 35 ~~regarded as such by the American Indian/Native American community of which the~~
 36 ~~individual claims to be a part, but does not include an individual of Eskimo or Aleutian~~
 37 ~~origin;~~

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

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

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

~~6. women — a woman, regardless of race or ethnicity; or~~

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

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

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

~~(4) "Socially disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the control of the individual.~~

~~**SUBTITLE 7. SOCIALLY AND ECONOMICALLY DISADVANTAGED WORKERS'
PROTECTION PREFERENCE.**~~

~~**14-701.**~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "ECONOMICALLY DISADVANTAGED INDIVIDUAL" HAS THE SAME MEANING AS PROVIDED IN § 14-301 OF THIS TITLE.~~

~~(3) "PERCENTAGE PREFERENCE" MEANS THE PERCENT OF THE LOWEST RESPONSIVE BID OR OFFER SUBMITTED BY A RESPONSIBLE BIDDER OR~~

~~OFFEROR WHO DOES NOT AGREE TO THE INCLUSION OF A SOCIALLY AND ECONOMICALLY DISADVANTAGED WORKERS' PROTECTION CLAUSE BY WHICH A RESPONSIVE BID BY A BIDDER WHO DOES AGREE TO THE INCLUSION OF A SOCIALLY AND ECONOMICALLY DISADVANTAGED WORKERS' PROTECTION CLAUSE MAY:~~

~~(I) EXCEED THE LOWEST BID; AND~~

~~(H) BE AWARDED A PROCUREMENT CONTRACT UNDER THIS SUBTITLE.~~

~~(4) "SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL" HAS THE SAME MEANING AS PROVIDED IN § 14-301 OF THIS TITLE.~~

~~(5) "SOCIALLY DISADVANTAGED INDIVIDUAL" HAS THE SAME MEANING AS PROVIDED IN § 14-301 OF THIS TITLE.~~

~~(B) EACH UNIT SHALL APPLY A PERCENTAGE PREFERENCE OF 10% FOR ALL BIDDERS OR OFFERORS WHO AGREE TO THE INCLUSION IN A PROCUREMENT CONTRACT OF A SOCIALLY AND ECONOMICALLY DISADVANTAGED WORKERS' PROTECTION CLAUSE THAT REQUIRES THE CONTRACTOR TO:~~

~~(1) CERTIFY UNDER PENALTY OF PERJURY THAT AT LEAST 50% OF THE WORKERS ON THE CONTRACT SHALL BE SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS; AND~~

~~(2) INCLUDE A SIMILAR CLAUSE IN EVERY SUBCONTRACT EXCEPT A SUBCONTRACT FOR STANDARD COMMERCIAL SUPPLIES OR RAW MATERIALS.~~

~~(C) THE INCLUSION OF AND COMPLIANCE WITH A SOCIALLY AND ECONOMICALLY DISADVANTAGED WORKERS' PROTECTION CLAUSE AS PROVIDED IN THIS SECTION MAY NOT BE CONSIDERED TO BE A VIOLATION OF OR WILLFUL FAILURE TO COMPLY WITH:~~

~~(1) A NONDISCRIMINATION CLAUSE REQUIRED UNDER § 13-219 OF THIS ARTICLE; OR~~

~~(2) A NONDISCRIMINATION CLAUSE REQUIRED UNDER § 19-114 OF THIS ARTICLE.~~

~~(D) THE BOARD SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.~~

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

2 That:

3 (a) There is a Workgroup to Study Enhanced Opportunities for Socially and
4 Economically Disadvantaged Individuals in the State.

5 (b) The Workgroup consists of the following members:

6 (1) one member of the Senate of Maryland, appointed by the President of
7 the Senate;

8 (2) one member of the House of Delegates, appointed by the Speaker of the
9 House;

10 (3) the Secretary of General Services, or the Secretary's designee;

11 (4) the Secretary of Labor, or the Secretary's designee;

12 (5) the Secretary of Transportation, or the Secretary's designee; and

13 (6) the following appointed members, each of whom shall have experience
14 with business or State contracting, and, to the extent practicable, reflect the racial, gender,
15 and geographic diversity of the State, including:

16 (i) two members appointed by the President of the Senate;

17 (ii) two members appointed by the Speaker of the House; and

18 (iii) two members appointed by the Governor.

19 (c) The Governor shall designate the chair of the Workgroup.

20 (d) The Department of Legislative Services shall provide staff for the Workgroup.

21 (e) A member of the Workgroup:

22 (1) may not receive compensation as a member of the Workgroup; but

23 (2) is entitled to reimbursement for expenses under the Standard State
24 Travel Regulations, as provided in the State budget.

25 (f) The Workgroup shall study:

26 (1) the expansion of the Minority Business Enterprise program for prime
27 contractors and subcontractors;

1 (2) the establishment of a program that provides a procurement preference
 2 to entities that hire employees from economically depressed areas in the State;

3 (3) enhancing job opportunities for socially and economically
 4 disadvantaged individuals;

5 (4) what other states and governmental entities have done to enhance
 6 opportunities for socially and economically disadvantaged individuals;

7 (5) existing research on ways to enhance opportunities for socially and
 8 economically disadvantaged individuals;

9 (6) the effect that additional State programs or the enhancement of
 10 existing programs would have on existing State law;

11 (7) the use of the definition of “economically disadvantaged individual” in
 12 State law and its effect on State programs, including whether a new definition should be
 13 enacted; and

14 (8) anything else the Workgroup considers relevant.

15 (g) On or before December 31, 2021, the Workgroup shall report its findings and
 16 recommendations to the Governor and, in accordance with § 2-1257 of the State
 17 Government Article, the General Assembly.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
 19 1, 2021. It shall remain effective for a period of 1 year and 1 month and, at the end of June
 20 30, 2022, this Act, with no further action required by the General Assembly, shall be
 21 abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.