

# HOUSE BILL 1212

P2

11r2247

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By: **Delegate Washington**

Introduced and read first time: February 8, 2021

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of requiring each unit of State government to apply a certain percentage  
5 preference for bidders and offerors on a procurement contract who agree to the  
6 inclusion in the contract of a certain clause requiring that at least a certain  
7 percentage of workers on the contract shall be socially and economically  
8 disadvantaged individuals under certain circumstances and the inclusion of a similar  
9 clause into certain subcontracts under certain circumstances; providing that the  
10 inclusion and compliance with a certain clause may not be considered to be a  
11 violation of or willful failure to comply with a certain nondiscrimination clause;  
12 requiring the Board of Public Works to adopt certain regulations; defining certain  
13 terms; and generally relating to State procurement preferences.

14 BY repealing and reenacting, without amendments,  
15 Article – State Finance and Procurement  
16 Section 14–301(e), (k), and (l)  
17 Annotated Code of Maryland  
18 (2015 Replacement Volume and 2020 Supplement)

19 BY adding to  
20 Article – State Finance and Procurement  
21 Section 14–701 to be under the new subtitle “Subtitle 7. Socially and Economically  
22 Disadvantaged Workers’ Protection Preference”  
23 Annotated Code of Maryland  
24 (2015 Replacement Volume and 2020 Supplement)

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

27 **Article – State Finance and Procurement**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14–301.

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

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

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

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

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

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

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

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

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

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

35 (2) There is a rebuttable presumption that an individual who is a member

1 of a minority group under paragraph (1)(i) of this subsection is socially and economically  
2 disadvantaged.

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

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

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

12 **14-701.**

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

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

17 (3) "PERCENTAGE PREFERENCE" MEANS THE PERCENT OF THE  
18 LOWEST RESPONSIVE BID OR OFFER SUBMITTED BY A RESPONSIBLE BIDDER OR  
19 OFFEROR WHO DOES NOT AGREE TO THE INCLUSION OF A SOCIALLY AND  
20 ECONOMICALLY DISADVANTAGED WORKERS' PROTECTION CLAUSE BY WHICH A  
21 RESPONSIVE BID BY A BIDDER WHO DOES AGREE TO THE INCLUSION OF A SOCIALLY  
22 AND ECONOMICALLY DISADVANTAGED WORKERS' PROTECTION CLAUSE MAY:

23 (I) EXCEED THE LOWEST BID; AND

24 (II) BE AWARDED A PROCUREMENT CONTRACT UNDER THIS  
25 SUBTITLE.

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

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

30 (B) EACH UNIT SHALL APPLY A PERCENTAGE PREFERENCE OF 10% FOR ALL  
31 BIDDERS OR OFFERORS WHO AGREE TO THE INCLUSION IN A PROCUREMENT  
32 CONTRACT OF A SOCIALLY AND ECONOMICALLY DISADVANTAGED WORKERS'

1 PROTECTION CLAUSE THAT REQUIRES THE CONTRACTOR TO:

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

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

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

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

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

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

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