

HOUSE BILL 783

L5

3lr0554

By: **Montgomery County Delegation and Prince George's County Delegation**

Introduced and read first time: February 8, 2023

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2023

CHAPTER _____

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission – Minority Business Enterprise**
3 **Utilization Program – Revisions and Extension**

4 **MC/PG 101–23**

5 FOR the purpose of revising the minority business enterprise utilization program within
6 the Washington Suburban Sanitary Commission, including altering the definition of
7 “minority business enterprise”, altering the duties of the Office of Supplier Diversity
8 and Inclusion, merging the program for design/build and construction contracts with
9 the program for the procurement of goods and services, altering requirements for
10 prime contractors in relation to minority business enterprise participation, and
11 altering certification requirements for businesses to participate in contract-specific
12 minority business enterprise goals and preferences authorized by the Commission;
13 extending until a certain date provisions relating to procurement from minority
14 business enterprises by the Commission; and generally relating to the Washington
15 Suburban Sanitary Commission and procurements from minority business
16 enterprises.

17 BY repealing and reenacting, with amendments,
18 Article – Public Utilities
19 Section 20–201, 20–202, 20–204, 20–206, 20–208, and 20–302
20 Annotated Code of Maryland
21 (2020 Replacement Volume and 2022 Supplement)

22 BY adding to

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 Article – Public Utilities
2 Section 20–202 and 20–205
3 Annotated Code of Maryland
4 (2020 Replacement Volume and 2022 Supplement)

5 BY repealing
6 Article – Public Utilities
7 Section 20–203 and 20–205
8 Annotated Code of Maryland
9 (2020 Replacement Volume and 2022 Supplement)

10 BY repealing and reenacting, without amendments,
11 Article – Public Utilities
12 Section 20–207
13 Annotated Code of Maryland
14 (2020 Replacement Volume and 2022 Supplement)

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

17 **Article – Public Utilities**

18 20–201.

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

20 (b) [Except as provided in § 20–203 of this subtitle, “minority] **“MINORITY**
21 **business enterprise”** [means a legal entity that is:

22 (1) organized to engage in commercial transactions; and

23 (2) at least 51% owned and controlled by one or more individuals who are
24 members of a group that is:

25 (i) disadvantaged socially or economically by the effects of past
26 discrimination, including discrimination as to certification; and

27 (ii) identified by a study conducted in accordance with this subtitle
28 or a similar, previously conducted study] **HAS THE MEANING STATED IN § 14–301 OF**
29 **THE STATE FINANCE AND PROCUREMENT ARTICLE.**

30 (c) “Office” means the Office of Supplier Diversity and Inclusion established
31 under [§ 20–202] **§ 20–203** of this subtitle.

32 **20–202.**

1 **THE GENERAL ASSEMBLY FINDS THE FOLLOWING:**

2 **(1) THE GENERAL ASSEMBLY WISHES TO PROVIDE ALL CITIZENS OF**
3 **MARYLAND WITH EQUAL ACCESS TO BUSINESS FORMATION AND BUSINESS GROWTH**
4 **OPPORTUNITIES;**

5 **(2) THE ELIMINATION OF DISCRIMINATION AGAINST MINORITY- AND**
6 **WOMEN-OWNED BUSINESSES IS OF PARAMOUNT IMPORTANCE TO THE FUTURE**
7 **WELFARE OF THE COMMUNITY SERVED BY THE COMMISSION;**

8 **(3) THE COMMISSION HAS PROCURED, RECEIVED, ACCEPTED, AND**
9 **CAREFULLY REVIEWED A DISPARITY STUDY COMMISSIONED BY THE COMMISSION**
10 **AND FINDS THAT THE DISPARITY STUDY PROVIDES A STRONG BASIS IN EVIDENCE**
11 **DEMONSTRATING PERSISTENT DISCRIMINATION AGAINST MINORITY- AND**
12 **WOMEN-OWNED BUSINESSES;**

13 **(4) BASED ON ITS REVIEW OF THE DISPARITY STUDY:**

14 **(I) THERE ARE SUBSTANTIAL AND STATISTICALLY**
15 **SIGNIFICANT ADVERSE DISPARITIES THAT ARE STRONG EVIDENCE OF**
16 **DISCRIMINATION AGAINST MINORITIES AND NONMINORITY WOMEN IN WAGES,**
17 **BUSINESS FORMATION, BUSINESS OWNER EARNINGS, AND ACCESS TO CAPITAL IN**
18 **THE SAME GEOGRAPHIC MARKETS AND INDUSTRY CATEGORIES IN WHICH THE**
19 **COMMISSION DOES BUSINESS;**

20 **(II) THE COMMISSION WOULD BECOME A PASSIVE PARTICIPANT**
21 **IN PRIVATE SECTOR RACIAL AND GENDER DISCRIMINATION IF IT ELIMINATED ITS**
22 **REMEDIAL EFFORTS, INCLUDING THE OPERATION OF THE MINORITY BUSINESS**
23 **ENTERPRISE UTILIZATION PROGRAM ESTABLISHED UNDER § 20-204 OF THIS**
24 **SUBTITLE;**

25 **(III) THERE REMAIN SUBSTANTIAL AND STATISTICALLY**
26 **SIGNIFICANT ADVERSE DISPARITIES THAT ARE CONSISTENT WITH DISCRIMINATION**
27 **AGAINST MINORITIES AND NONMINORITY WOMEN IN THE COMMISSION'S OWN**
28 **PROCUREMENT DESPITE THE COMMISSION'S ASSERTIVE EFFORTS TO CURTAIL**
29 **THAT DISCRIMINATION;**

30 **(IV) THERE ARE SUBSTANTIAL AND STATISTICALLY**
31 **SIGNIFICANT ADVERSE DISPARITIES THAT ARE CONSISTENT WITH DISCRIMINATION**
32 **AGAINST BUSINESSES OWNED BY MINORITIES AND NONMINORITY WOMEN IN ALL**
33 **MAJOR INDUSTRY CATEGORIES IN WHICH THE COMMISSION PROCURES GOODS AND**
34 **SERVICES;**

1 **(V) THERE IS AMPLE EVIDENCE THAT DISCRIMINATION IN THE**
2 **PRIVATE SECTOR HAS DEPRESSED BUSINESS FORMATION AND BUSINESS GROWTH**
3 **AMONG MINORITY AND NONMINORITY WOMEN ENTREPRENEURS IN THE**
4 **GEOGRAPHIC MARKETS AND INDUSTRY CATEGORIES IN WHICH THE COMMISSION**
5 **DOES BUSINESS; AND**

6 **(VI) THERE IS POWERFUL AND PERSUASIVE QUALITATIVE**
7 **EVIDENCE, BOTH STATISTICAL AND ANECDOTAL, OF DISCRIMINATION AGAINST**
8 **MINORITY AND NONMINORITY WOMEN BUSINESS OWNERS IN BOTH THE PUBLIC AND**
9 **PRIVATE SECTORS IN THE GEOGRAPHIC MARKETS AND INDUSTRY CATEGORIES IN**
10 **WHICH THE COMMISSION DOES BUSINESS;**

11 **(5) AS A RESULT OF ONGOING DISCRIMINATION AND THE PRESENT**
12 **DAY EFFECTS OF PAST DISCRIMINATION, MINORITY- AND WOMEN-OWNED**
13 **BUSINESSES COMBINED CONTINUE TO BE SIGNIFICANTLY UNDERUTILIZED**
14 **RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN ALL OF THE**
15 **PROCUREMENT CATEGORIES IN WHICH THE COMMISSION DOES BUSINESS;**

16 **(6) MINORITY PRIME CONTRACTORS ALSO ARE SUBJECT TO**
17 **DISCRIMINATION AND CONFRONT ESPECIALLY DAUNTING BARRIERS IN**
18 **ATTEMPTING TO COMPETE WITH VERY LARGE AND LONG-ESTABLISHED**
19 **NONMINORITY COMPANIES;**

20 **(7) DESPITE THE FACT THAT THE COMMISSION HAS EMPLOYED, AND**
21 **CONTINUES TO EMPLOY, NUMEROUS AND ROBUST RACE-NEUTRAL REMEDIES,**
22 **INCLUDING AGGRESSIVE OUTREACH AND ADVERTISING, TRAINING AND EDUCATION,**
23 **A SMALL LOCAL BUSINESS PROGRAM, AND OTHER EFFORTS, THERE IS A STRONG**
24 **BASIS IN EVIDENCE THAT DISCRIMINATION PERSISTS EVEN IN PUBLIC SECTOR**
25 **PROCUREMENT WHERE THESE EFFORTS HAVE BEEN EMPLOYED;**

26 **(8) THIS SUBTITLE ENSURES THAT RACE-NEUTRAL EFFORTS WILL BE**
27 **USED TO THE MAXIMUM EXTENT FEASIBLE AND THAT RACE-CONSCIOUS MEASURES**
28 **WILL BE USED ONLY WHERE NECESSARY TO ELIMINATE DISCRIMINATION THAT WAS**
29 **NOT ALLEVIATED BY RACE-NEUTRAL EFFORTS;**

30 **(9) THIS SUBTITLE CONTINUES AND ENHANCES EFFORTS TO ENSURE**
31 **THAT THE COMMISSION LIMITS THE BURDEN ON NONMINORITY BUSINESSES AS**
32 **MUCH AS POSSIBLE BY ENSURING THAT ALL GOALS ARE DEVELOPED USING THE**
33 **BEST AVAILABLE DATA AND THAT WAIVERS ARE AVAILABLE WHEN CONTRACTORS**
34 **MAKE GOOD FAITH EFFORTS;**

35 **(10) THIS SUBTITLE ENSURES THAT THE OPERATION OF THE MINORITY**
36 **BUSINESS ENTERPRISE UTILIZATION PROGRAM ESTABLISHED UNDER § 20-204 OF**

1 THIS SUBTITLE IS CONSISTENT WITH THE DISPARITY STUDY DATA AND IS NARROWLY
2 TAILORED TO THE COMPELLING INTERESTS OF THE STATE; AND

3 (11) COMMISSION EFFORTS TO SUPPORT THE DEVELOPMENT OF
4 COMPETITIVELY VIABLE BUSINESSES OWNED BY WOMEN AND MINORITIES WILL
5 ASSIST IN REDUCING DISCRIMINATION AND CREATING JOBS FOR ALL CITIZENS OF
6 MARYLAND.

7 [20–202.] **20–203.**

8 (a) There is an Office of Supplier Diversity and Inclusion in the Commission.

9 (b) The head of the Office is the Director of the Office of Supplier Diversity and
10 Inclusion.

11 (c) The Office shall:

12 (1) administer each Commission program that is created to [promote the
13 growth of or participation by] **REMEDY DISCRIMINATION AGAINST** minority [or]
14 **BUSINESS ENTERPRISES AND PROMOTE THE PARTICIPATION OF** local small business
15 enterprises, including:

16 (i) [the minority business enterprise utilization program for
17 design/build and construction contracts under § 20–203 of this subtitle;

18 (ii)] the minority business enterprise utilization program [for the
19 procurement of other goods and services] under § 20–204 of this subtitle; and

20 [(iii)] **(II)** the local small business enterprise program under
21 Subtitle 3 of this title;

22 (2) promote and coordinate the plans, programs, and operations of the
23 Commission [that promote or affect the establishment, preservation, and strengthening of
24 minority business enterprises] **TO REMEDY DISCRIMINATION AGAINST MINORITY**
25 **BUSINESS ENTERPRISES AND THE EFFECTS OF DISCRIMINATION;**

26 (3) promote activities and the use of the resources of the Commission, local
27 governments, and private entities [for the growth of] **TO REMEDY DISCRIMINATION**
28 **AGAINST** minority business enterprises **AND THE EFFECTS OF DISCRIMINATION; AND**

29 (4) [provide technical and managerial assistance to minority business
30 enterprises;

31 (5) schedule seminars and workshops to educate minority businesses on
32 how the Commission conducts business; and

1 (6)] ensure compliance with certified minority business enterprise
2 subcontract participation goals under § 20–206 of this subtitle.

3 [20–203.

4 (a) In this section, “minority business enterprise” has the meaning stated in §
5 14–301 of the State Finance and Procurement Article.

6 (b) (1) By resolution and adopting regulations, the Commission shall establish
7 a mandatory minority business enterprise utilization program to facilitate the participation
8 of responsible certified minority business enterprises in contracts awarded by the
9 Commission in accordance with its competitive bidding or proposal procedures under
10 Subtitle 1 of this title.

11 (2) The Office shall administer the program established under this
12 subsection.

13 (c) Regulations that establish the program under subsection (b) of this section
14 shall include provisions that:

15 (1) recognize the certification of minority business enterprises by the State
16 certification agency designated under § 14–303(b) of the State Finance and Procurement
17 Article;

18 (2) recognize any other certification program that the Commission
19 determines substantially duplicates the requirements of the State certification agency;

20 (3) provide for the graduation of a minority business enterprise from the
21 program if the Commission determines that the minority business enterprise no longer
22 requires the assistance or benefits offered by the program;

23 (4) at the time of submission, require a bid or proposal based on a
24 solicitation with an expected degree of minority business enterprise participation to include
25 proof of a certified minority business enterprise commitment by stating:

26 (i) the potential subcontract opportunities available in the prime
27 procurement contract; and

28 (ii) the number of minority business enterprises that have certified,
29 under the penalties for perjury, that the minority business enterprise has entered into an
30 agreement with the bidder or offeror to provide goods or services under specific terms
31 outlined in the certification;

32 (5) require each general contractor to submit to the Commission monthly
33 reports of the number of minority business enterprises employed by the general contractor;

1 (6) require each general contractor to provide prompt notification to the
2 Commission if a contract with a minority business enterprise is terminated;

3 (7) require each general contractor to:

4 (i) maintain a participation level from minority business
5 enterprises that is consistent with the participation level referenced under item (4)(ii) of
6 this subsection; or

7 (ii) provide justification for the inability of the general contractor to
8 maintain the participation level;

9 (8) provide for an increase in minority business enterprise participation as
10 general contractors and subcontractors; and

11 (9) authorize the waiver of all or part of the program for a specific contract
12 if the Commission determines that applying the program to the contract would conflict with
13 the overall objectives and responsibilities of the Commission.

14 (d) Before accepting an alternative certification program under subsection (c)(2)
15 of this section, the Commission shall examine the alternative program to ensure that the
16 alternative program complies with the guidelines established under § 20–205 of this
17 subtitle.]

18 20–204.

19 (a) (1) By resolution and adopting regulations, the Commission shall establish
20 a minority business enterprise utilization program to [facilitate the participation of
21 responsible certified] **REMEDY DISCRIMINATION AGAINST** minority business enterprises
22 in contracts awarded by the Commission [for goods and services that are not covered under
23 § 20–203 of this subtitle,] if the Commission determines that:

24 (i) [minority business enterprises are underrepresented in the
25 award of these contracts due to the effects of past discrimination] **THERE IS A STRONG**
26 **BASIS IN EVIDENCE THAT MINORITY BUSINESS ENTERPRISES ARE SUBJECT TO**
27 **DISCRIMINATION;** and

28 (ii) a program is necessary to remedy the effects of this [past]
29 discrimination.

30 (2) The Office shall administer the program established under this
31 subsection.

32 (b) Regulations that establish the program under subsection (a) of this section
33 shall include provisions that:

1 (1) recognize the certification of minority business enterprises by the State
 2 certification agency designated under § 14-303(b) of the State Finance and Procurement
 3 Article **AND THE REGULATIONS ADOPTED UNDER TITLE 14, SUBTITLE 3 OF THE**
 4 **STATE FINANCE AND PROCUREMENT ARTICLE;**

5 (2) recognize any other certification program that the Commission
 6 determines, **UNDER § 20-205 OF THIS SUBTITLE**, substantially duplicates the
 7 requirements of the State certification agency;

8 ~~(3)~~ provide for the graduation of a minority business enterprise from the
 9 program if the Commission determines that the minority business enterprise no longer
 10 requires the assistance or benefits offered by the program;

11 (4) at the time of submission, require a bid or proposal based on a
 12 solicitation with an expected degree of minority business enterprise participation to include
 13 proof of a certified minority business enterprise commitment by stating:

14 (i) the potential subcontract opportunities available in the prime
 15 procurement contract; and

16 (ii) the number of minority business enterprises that have certified,
 17 under the penalties for perjury, that the minority business enterprise has entered into an
 18 agreement with the bidder or offeror to provide goods or services under specific terms
 19 outlined in the certification; ~~;~~

20 ~~(3) ESTABLISH A RANGE OF RACE NEUTRAL PROGRAMS AND~~
 21 ~~POLICIES AIMED AT REMEDYING DISCRIMINATION, INCLUDING EFFORTS TO ASSIST~~
 22 ~~SMALL AND UNDERUTILIZED BUSINESSES WITH:~~

23 ~~(I) GROWING THE BUSINESS AND BEING COMPETITIVE;~~

24 ~~(II) UNDERSTANDING AND NAVIGATING THE COMMISSION'S~~
 25 ~~PROCUREMENT PROCESS AND REQUIREMENTS; AND~~

26 ~~(III) THRIVING AS BOTH SUBCONTRACTORS AND PRIME~~
 27 ~~CONTRACTORS;~~

28 ~~(4) AT THE TIME OF SUBMISSION, REQUIRE A BID OR PROPOSAL~~
 29 ~~BASED ON A SOLICITATION THAT INCLUDES A MINORITY BUSINESS ENTERPRISE~~
 30 ~~PARTICIPATION GOAL TO INCLUDE, UNDER PENALTIES OF PERJURY,~~
 31 ~~DOCUMENTATION:~~

32 ~~(I) ABOUT EACH MINORITY BUSINESS THAT HAS CERTIFIED~~
 33 ~~THAT THE MINORITY BUSINESS AGREES TO PROVIDE SPECIFIC GOODS AND~~
 34 ~~SERVICES UNDER SPECIFIC TERMS OUTLINED IN THE CERTIFICATION; AND~~

~~(H) OF GOOD FAITH EFFORTS TO MEET ANY PART OF A GOAL NOT MET BY THE DOCUMENTATION REQUIRED UNDER ITEM (I) OF THIS ITEM;~~

(5) require each [general] PRIME contractor to submit to the Commission monthly reports [of the number of minority business enterprises employed by the general contractor] **CONTAINING INFORMATION REQUIRED BY THE OFFICE;**

(6) require each [general] PRIME contractor, ~~WHEN FEASIBLE,~~ to provide prompt notification to the Commission [if a contract] **BEFORE THE TERMINATION OF A CONTRACT** with a minority business enterprise [is terminated];

(7) require each [general] PRIME contractor to:

(i) maintain [a] participation [level] from minority business enterprises that is consistent with the participation [level] referenced under item ~~{(4)(ii)}~~ ~~(4)~~ of this subsection; or

(ii) provide ~~{~~justification for the inability of the ~~general PRIME contractor}~~ ~~DOCUMENTATION OF GOOD FAITH EFFORTS~~ to maintain the participation [level] ~~REFERENCED UNDER ITEM (4) OF THIS SUBSECTION;~~

(8) provide for minority business enterprise participation through [subcontracting] **CONTRACT-SPECIFIC GOALS;**

(9) ~~{(i)}~~ authorize the waiver of all or part of the program for a specific contract if the Commission determines that applying the program to the contract would conflict with **THE LAW OR** the overall objectives and responsibilities of the Commission; ~~{and~~

(ii) require the Commission to report annually to the Montgomery County and Prince George's County Senate and House Delegations to the Maryland General Assembly on any waivers granted under this subsection; ~~}~~

(10) ~~{except as provided in item (11) of this subsection, provide}~~ **ALLOW** for a system of granting a **PRICE** preference ~~{of up to the lesser of 5% or \$50,000}~~ to minority business enterprises in evaluating bids or proposals, **INCLUDING THE AVAILABILITY OF A GOOD FAITH WAIVER PROVISION FOR A PREFERENCE;**

(11) ~~{subject to subsection (d) of this section, establish a sheltered market program in which bidding on procurement contracts designated by the Commission as appropriate is restricted to certified minority business enterprises}~~ ~~AUTHORIZE THE ESTABLISHMENT OF A RACE NEUTRAL PROGRAM TO ENCOURAGE FIRMS TO DEVELOP PRIME CONTRACTING EXPERIENCE AND EXPERTISE;~~

1 (12) require the solicitation document accompanying each solicitation to set
2 forth the regulations that establish the program; ~~AND~~

3 (13) ~~¶~~require the geographic location and the principal place of business of
4 the minority business enterprise to be a consideration for participation in the program,
5 including requiring Montgomery County businesses and Prince George's County businesses
6 to each have a targeted percentage of at least 40% of any contracts; and

7 (14)~~¶~~ authorize the Commission to:

8 (i) refuse to recognize the certification of a business found to be in
9 violation of the purposes of the program; and

10 (ii) permanently bar an active principal of a violating business from
11 future participation in the program.

12 ~~¶~~(c) Before accepting an alternative certification program under subsection (b)(2)
13 of this section, the Commission shall examine the alternative program to ensure that:

14 (1) the alternative program complies with the guidelines established under
15 § 20–205 of this subtitle; and

16 (2) the principal owner of an eligible minority business enterprise is in not
17 more than one certified business that is participating in the Commission minority business
18 enterprise utilization program under this section.

19 (d) (1) The sheltered market program established in subsection (b)(11) of this
20 section may not be used until all less restrictive remedies under subsection (b) of this
21 section and race–neutral remedies, including assistance with bonding requirements,
22 financing, or bidding procedures for small firms, have been used and determined to be
23 ineffective.

24 (2) If at least three certified minority business enterprises bid on a contract
25 under the sheltered market program, the Commission shall award the contract to the
26 lowest bidder.

27 (3) If fewer than three certified minority business enterprises bid on a
28 contract under the sheltered market program, the contract shall be awarded under
29 subsection (b)(10) of this section.~~¶~~

30 [20–205.

31 (a) (1) A certifying agency shall determine bona fide minority group
32 membership based on an individual's claim that the individual is:

33 (i) a member of a minority group; and

1 (ii) regarded as a member by that minority community.

2 (2) A certifying agency may determine that an individual's claim under this
3 subsection is invalid.

4 (b) (1) To be eligible for certification as a minority business enterprise and
5 participation in a minority business enterprise utilization program under § 20–203 or §
6 20–204 of this subtitle, a business shall meet the standards under this subsection.

7 (2) (i) A minority business enterprise shall be an independent business.

8 (ii) A certifying agency shall determine whether a business is
9 independent by considering:

10 1. the date the business was established;

11 2. the adequacy of the resources of the business for the work
12 required under the contract;

13 3. the degree to which financial, equipment leasing, and
14 other relationships with nonminority businesses vary from industry practice; and

15 4. any other relevant factor.

16 (3) A minority owner shall have real, substantial, and continuing
17 ownership and control of the business that goes beyond the pro forma ownership of the
18 business as reflected in the ownership documents.

19 (4) A minority owner shall have the customary incidents of ownership and
20 share in the risks and profits commensurate with the ownership interests in the business
21 as demonstrated by an examination of the substance rather than the form of the
22 arrangements.

23 (5) Recognition of the business as a separate entity for tax or corporate
24 purposes is not necessarily sufficient for certification as a minority business enterprise.

25 (6) (i) A minority owner shall have the power to:

26 1. direct or cause the direction of the management and
27 policies of the business; and

28 2. make the day-to-day and major decisions on matters of
29 management, policy, and operations for the business.

30 (ii) The business may not be subject to a formal or informal
31 restriction, including a bylaw, partnership agreement, or charter requirement for

1 cumulative voting rights, that prevents a minority owner from making a business decision
2 without the cooperation or vote of an owner who is not a minority.

3 (7) (i) The business may not be operated disproportionately by the
4 owners of the business who are not minorities.

5 (ii) If the management of the business is contracted out to an
6 individual other than the owner, the individual who has the ultimate power to hire and fire
7 the managers may be considered as controlling the business.

8 (8) (i) Minorities shall directly hold all securities that constitute
9 ownership or control of a corporation for the purpose of establishing the corporation as a
10 minority business enterprise.

11 (ii) Securities held in trust or by a guardian for a minor may not be
12 considered held by minorities in determining the ownership or control of a corporation.

13 (9) A contribution of capital or expertise by a minority owner to acquire an
14 interest in a business shall be real and substantial and may not include:

15 (i) a promise to contribute capital;

16 (ii) a note payable to the business or owners of the business who are
17 not socially and economically disadvantaged; or

18 (iii) participation as an employee and not as a manager.

19 (c) In determining eligibility as a minority business enterprise, a certifying
20 agency shall:

21 (1) closely scrutinize a newly formed business, or a business for which the
22 ownership or control has changed since the date of the advertisement of the contract, to
23 determine the reason for the timing of the formation or change;

24 (2) carefully review a previous or continuing employer–employee
25 relationship among present owners to ensure that an employee–owner has the
26 management responsibilities and capabilities required under this section; and

27 (3) carefully review a relationship between a minority business enterprise
28 and a business that is not a minority business enterprise that has an interest in the
29 minority business enterprise to determine if the interest of the nonminority business
30 conflicts with the ownership and control requirements of this section.]

31 **20–205.**

32 **(A) TO PARTICIPATE IN THE CONTRACT–SPECIFIC GOALS AND**
33 **PREFERENCES AUTHORIZED UNDER THIS SUBTITLE, A BUSINESS MUST:**

1 **(1) BE CERTIFIED BY A CERTIFICATION AGENCY IN ACCORDANCE**
2 **WITH TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE**
3 **AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE;**

4 **(2) (I) BE CERTIFIED BY ANY CERTIFICATION AGENCY; AND**

5 **(II) SUBMIT ALL ADDITIONAL DOCUMENTATION NECESSARY**
6 **FOR THE OFFICE TO DETERMINE THAT THE BUSINESS MEETS THE REQUIREMENTS**
7 **OF TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE**
8 **AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE; OR**

9 **(3) BE CERTIFIED UNDER A CERTIFICATION PROGRAM THAT THE**
10 **COMMISSION DETERMINES SUBSTANTIALLY DUPLICATES THE REQUIREMENTS FOR**
11 **A STATE CERTIFICATION AGENCY UNDER TITLE 14, SUBTITLE 3 OF THE STATE**
12 **FINANCE AND PROCUREMENT ARTICLE AND THE REGULATIONS ADOPTED UNDER**
13 **THAT SUBTITLE.**

14 **(B) TO SUBSTANTIALLY DUPLICATE THE REQUIREMENTS FOR A STATE**
15 **CERTIFICATION AGENCY UNDER TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND**
16 **PROCUREMENT ARTICLE AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE,**
17 **A CERTIFICATION PROGRAM SHALL, AT A MINIMUM, HAVE CERTIFICATION**
18 **REQUIREMENTS THAT ARE AT LEAST AS NARROWLY TAILORED AS THE STATE'S**
19 **REQUIREMENTS IN TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND**
20 **PROCUREMENT ARTICLE AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE**
21 **WITH RESPECT TO:**

22 **(1) BUSINESS OWNERSHIP AND CONTROL;**

23 **(2) BUSINESS SIZE STANDARDS;**

24 **(3) BUSINESS OWNER PERSONAL NET WORTH; AND**

25 **(4) BUSINESS OWNER SOCIAL AND ECONOMIC DISADVANTAGE.**

26 **(C) IF THE OFFICE DETERMINES THAT A BUSINESS SEEKING TO**
27 **PARTICIPATE IN THE MINORITY BUSINESS ENTERPRISE UTILIZATION PROGRAM**
28 **ESTABLISHED UNDER § 20–204 OF THIS SUBTITLE HAS A CERTIFICATION THAT DOES**
29 **NOT SUBSTANTIALLY DUPLICATE THE REQUIREMENTS IN TITLE 14, SUBTITLE 3 OF**
30 **THE STATE FINANCE AND PROCUREMENT ARTICLE AND THE REGULATIONS**
31 **ADOPTED UNDER THAT SUBTITLE, THE OFFICE MAY:**

1 **(1) REQUEST AND EVALUATE DOCUMENTATION AND EVIDENCE**
2 **NECESSARY TO DETERMINE WHETHER THE BUSINESS MAY BE AUTHORIZED TO**
3 **PARTICIPATE IN PROGRAMS UNDER THIS SUBTITLE; AND**

4 **(2) FOLLOWING THE EVALUATION UNDER ITEM (1) OF THIS**
5 **SUBSECTION, AUTHORIZE A BUSINESS TO PARTICIPATE IN PROGRAMS UNDER THIS**
6 **SUBTITLE.**

7 20–206.

8 (a) The Office shall verify that a certified minority business enterprise listed in a
9 schedule of participation is actually performing work and receiving compensation as
10 established in the schedule.

11 (b) To facilitate the Office completing its duties under subsection (a) of this
12 section, a contractor shall:

13 (1) allow the Office to inspect any relevant matter, including records and
14 the job site;

15 (2) allow the Office to interview subcontractors and employees of the
16 contractor;

17 (3) [if performing a construction contract,] ensure that subcontractors[:

18 (i) are paid any undisputed amount to which the subcontractor is
19 entitled as provided under § 15–226 of the State Finance and Procurement Article; and

20 (ii)] comply with Commission regulations;

21 (4) include in the agreement with the certified minority business
22 enterprise subcontractor a requirement that the subcontractor submit a monthly report to
23 the Commission that:

24 (i) identifies the prime contract; and

25 (ii) lists payments received from the contractor in the previous
26 month and invoices sent to the contractor that have not been paid; and

27 (5) submit a monthly report to the Commission that lists:

28 (i) unpaid invoices that are more than 30 days old received from
29 certified minority business enterprise subcontractors; and

30 (ii) the reason payments have not been made.

1 (c) (1) (i) On completion of a contract or before final payment or release of
2 retainage, the Commission may require a [general] **PRIME** contractor on a contract having
3 a minority business enterprise subcontracting goal to submit to the Commission a final
4 report of all payments made to or withheld from minority business enterprise
5 subcontractors.

6 (ii) The final report shall be in affidavit form and under the penalties
7 for perjury.

8 (2) Each solicitation shall contain notice of the requirements of this
9 subsection.

10 (d) (1) On a finding that a contractor is noncompliant, the Commission shall
11 notify the contractor in writing of the findings and state the required corrective action.

12 (2) A noncompliant contractor shall:

13 (i) initiate the corrective action within 10 days after receiving the
14 written notice; and

15 (ii) complete the corrective action within the time specified by the
16 Commission.

17 (e) If the Commission finds that a [general] **PRIME** contractor is in material
18 noncompliance with minority business enterprise contract provisions and the [general]
19 **PRIME** contractor fails to take the corrective action required by the Commission, the
20 Commission may:

21 (1) terminate the contract;

22 (2) refer the [general] **PRIME** contractor to the [general manager of the
23 Commission or the full Commission] **RELEVANT PERSON** for appropriate action; or

24 (3) initiate any other specific remedy identified in the contract.

25 20–207.

26 (a) By October 31 of each year, the Commission shall issue a report to the
27 Montgomery County and Prince George’s County Senate and House Delegations to the
28 Maryland General Assembly concerning:

29 (1) the implementation and administration of the minority business
30 enterprise programs under this subtitle for the fiscal year ending on the preceding June 30;
31 and

32 (2) appropriate recommendations concerning the programs.

1 (b) (1) The Commission may conduct an impartial fact-finding study in
 2 connection with a minority business enterprise program for consistency with applicable
 3 law.

4 (2) The Commission shall report the findings of a study completed under
 5 this subsection to the Montgomery County and Prince George's County Senate and House
 6 Delegations to the Maryland General Assembly.

7 20-208.

8 This subtitle shall be of no effect and may not be enforced after July 1, [2023] **2028**.

9 20-302.

10 (a) By resolution or adopting regulations, the Commission may establish a local
 11 small business enterprise program.

12 (b) The Office of Supplier Diversity and Inclusion, established under [§ 20-202]
 13 **§ 20-203** of this title, shall administer the program.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
 15 1, 2023.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.