

HOUSE BILL 1304

P2

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By: **Delegates Vaughn, Branch, Carter, Griffith, Jameson, Krysiak, Lee, Manno, Oaks, and Valderrama**

Introduced and read first time: February 8, 2008

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Recipients of State Incentives or Financial Assistance – Diversity Initiatives**

3 FOR the purpose of requiring certain units of State government to ensure that an
4 entity that receives a certain State incentive or financial assistance has adopted
5 and implemented a certain diversity initiative and embraces minority business
6 enterprise participation in its activities; requiring certain entities to submit an
7 annual report to the Governor’s Office of Minority Affairs; providing for the
8 application of this Act; and generally relating to the utilization of minority
9 business enterprises by entities receiving certain State incentives or financial
10 assistance.

11 BY repealing and reenacting, without amendments,
12 Article – State Finance and Procurement
13 Section 11–204(a)
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2007 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – State Finance and Procurement
18 Section 14–302
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2007 Supplement)

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

23 **Article – State Finance and Procurement**

24 11–204.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) A unit may not enter into a procurement contract except as allowed
2 under this Division II.

3 14-302.

4 (a) (1) Except for leases of real property and except as provided in
5 paragraphs (2) and (3) of this subsection, each unit shall structure procurement
6 procedures, consistent with the purposes of this subtitle, to try to achieve the following
7 results:

8 (i) a minimum of 7% of the unit's total dollar value of
9 procurement contracts is to be made directly or indirectly from certified minority
10 business enterprises classified by the certification agency as African American-owned
11 businesses;

12 (ii) a minimum of 10% of the unit's total dollar value of
13 procurement contracts is to be made directly or indirectly from certified minority
14 business enterprises classified by the certification agency as women-owned
15 businesses; and

16 (iii) an overall minimum of 25% of the unit's total dollar value of
17 procurement contracts is to be made directly or indirectly from all certified minority
18 business enterprises.

19 (2) (i) Except as provided in paragraph (3) of this subsection, in
20 procurement for construction, each unit shall structure procurement procedures,
21 consistent with the purposes of this subtitle, to try to achieve the following results:

22 1. a minimum of 7% of the unit's total dollar value of
23 construction contracts is to be made directly or indirectly from certified minority
24 business enterprises classified by the certification agency as African American-owned
25 businesses;

26 2. a minimum of 10% of the unit's total dollar value of
27 construction contracts is to be made directly or indirectly from certified minority
28 business enterprises classified by the certification agency as women-owned
29 businesses; and

30 3. an overall minimum of 25% of the unit's total dollar
31 value of construction contracts is to be made directly or indirectly from all certified
32 minority business enterprises.

33 (ii) The unit shall:

34 1. consider the practical severability of the construction
35 projects; and

1 2. implement a program that will enable the unit to
2 evaluate each contract to determine the appropriateness of the goal.

3 (3) With respect to the Maryland Department of Transportation, the
4 provisions of paragraph (2)(i) of this subsection shall apply only to construction
5 contracts in excess of \$50,000.

6 (4) Each unit shall meet the maximum feasible portion of the goals
7 stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral measures
8 to facilitate minority business enterprise participation in the procurement process.

9 (5) To achieve the result specified in paragraph (1) or (2) of this
10 subsection, a contractor, including a contractor that is a certified minority business
11 enterprise, shall:

12 (i) identify specific work categories appropriate for
13 subcontracting;

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

16 1. describes the categories of work under item (i) of this
17 subparagraph; and

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

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

22 (iv) assist minority business enterprises to fulfill bonding
23 requirements or to obtain a waiver of those requirements;

24 (v) in order to publicize contracting opportunities to minority
25 business enterprises, attend prebid meetings or other meetings scheduled by the unit;
26 and

27 (vi) upon acceptance of a bid, provide the unit with a list of
28 minority businesses with whom the contractor negotiated, including price quotes from
29 minority and nonminority firms.

30 (6) (i) The unit shall make a finding whether the contractor
31 complied, in good faith, with paragraph (5) of this subsection.

32 (ii) If the unit finds the contractor complied with paragraph (5)
33 of this subsection, the unit may not require the contractor to renegotiate any
34 subcontract in order to achieve a different result.

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

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

8 (ii) the certified minority business enterprise’s participation
 9 under the contract shall continue to be counted toward the program and contract
 10 goals.

11 **(B) (1) THIS SUBSECTION APPLIES TO EACH CONTRACTOR OR**
 12 **SUBCONTRACTOR OR OTHER ENTITY THAT RECEIVES A GRANT, LOAN,**
 13 **INVESTMENT, TAX EXEMPTION, OR OTHER INCENTIVE OR FINANCIAL**
 14 **ASSISTANCE OF \$100,000 OR MORE FROM A UNIT.**

15 **(2) TO THE EXTENT NOT IN CONFLICT WITH OTHER STATE OR**
 16 **FEDERAL LAW, EACH UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES,**
 17 **CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE, TO ENSURE THAT AN**
 18 **ENTITY SUBJECT TO THIS SUBSECTION:**

19 **(I) HAS ADOPTED AND IMPLEMENTED DIVERSITY**
 20 **INITIATIVES THAT ARE CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE;**
 21 **AND**

22 **(II) EMBRACES MINORITY BUSINESS PARTICIPATION IN ITS**
 23 **CONTRACTING AND VENDING ACTIVITIES.**

24 **(3) (I) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL**
 25 **YEAR, AN ENTITY SUBJECT TO THIS SUBSECTION SHALL SUBMIT A REPORT TO**
 26 **THE GOVERNOR’S OFFICE OF MINORITY AFFAIRS.**

27 **(II) A REPORT UNDER THIS PARAGRAPH, SHALL FOR THE**
 28 **PRECEDING FISCAL YEAR, STATE THE TOTAL NUMBER AND VALUE OF**
 29 **CONTRACTS BETWEEN THE ENTITY AND CERTIFIED MINORITY BUSINESS**
 30 **ENTERPRISES.**

31 **[(b)] (C) (1) The provisions of §§ 14–301(f) and 14–303 of this subtitle**
 32 **and subsection (a) of this section are inapplicable to the extent that any unit**
 33 **determines the provisions to be in conflict with any applicable federal program**
 34 **requirement.**

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

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2008.