

# HOUSE BILL 389

P2

9lr1290  
CF 9lr2798

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By: **Delegates Taylor, Boteler, Carr, Carter, Feldman, Haynes, Hixson, Holmes, Hucker, Manno, Rice, Robinson, Ross, Shewell, Tarrant, and V. Turner**

Introduced and read first time: February 2, 2009  
Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Program – Prohibitions and Penalties for**  
3 **Contractors**

4 FOR the purpose of prohibiting certain contractors from engaging in certain acts when  
5 submitting a bid or proposal or performing a contract under certain  
6 circumstances; requiring the Board of Public Works to impose certain penalties  
7 against certain contractors; requiring the Board to consider certain factors when  
8 determining certain penalties; requiring the Governor's Office of Minority  
9 Affairs to make available a certain hotline for the use of certain minority  
10 business enterprises to report a certain violation by a contractor; and generally  
11 relating to prohibitions and penalties for contractors under the Minority  
12 Business Enterprise Program.

13 BY repealing and reenacting, with amendments,  
14 Article – State Finance and Procurement  
15 Section 14–308  
16 Annotated Code of Maryland  
17 (2006 Replacement Volume and 2008 Supplement)

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

20 **Article – State Finance and Procurement**

21 14–308.

22 (a) (1) A person may not:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) fraudulently obtain, hold, or attempt to obtain or hold  
2 certification;

3 (ii) aid another person in performing an act prohibited under  
4 item (i) of this paragraph;

5 (iii) willfully obstruct, impede, or attempt to obstruct or impede  
6 a State official or employee investigating the qualifications of a business entity that  
7 has requested certification;

8 (iv) fraudulently obtain, attempt to obtain, or aid another person  
9 in fraudulently obtaining or attempting to obtain, public moneys to which the person  
10 is not entitled under this subtitle; or

11 (v) in any minority business enterprise matter administered  
12 under this subtitle:

13 1. willfully falsify, conceal, or cover up a material fact by  
14 any scheme or device;

15 2. make a false or fraudulent statement or  
16 representation; or

17 3. use a false writing or document that the person knows  
18 to contain a false or fraudulent statement or entry.

19 (2) A person who violates any provision of this subsection is guilty of a  
20 felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not  
21 exceeding 5 years or both.

22 (b) (1) A person may not make a false statement about whether an entity  
23 has certification.

24 (2) A person who violates this subsection is guilty of a misdemeanor  
25 and on conviction is subject to a fine not exceeding \$2,500 or imprisonment not  
26 exceeding 1 year or both.

27 (c) (1) **UNLESS A WAIVER HAS BEEN GRANTED OR AN AMENDMENT**  
28 **TO A BID OR PROPOSAL HAS BEEN AUTHORIZED, A CONTRACTOR MAY NOT**  
29 **IDENTIFY A CERTIFIED MINORITY BUSINESS ENTERPRISE IN A BID OR**  
30 **PROPOSAL AND:**

31 (I) **FAIL TO NOTIFY THE CERTIFIED MINORITY BUSINESS**  
32 **ENTERPRISE OF ITS INCLUSION IN THE BID OR PROPOSAL;**

33 (II) **FAIL TO REQUEST A QUOTE FROM THE CERTIFIED**  
34 **MINORITY BUSINESS ENTERPRISE;**

1                   **(III) FAIL TO UTILIZE THE CERTIFIED MINORITY BUSINESS**  
2 **ENTERPRISE IN THE PERFORMANCE OF THE CONTRACT; OR**

3                   **(IV) PAY THE CERTIFIED MINORITY BUSINESS ENTERPRISE**  
4 **SOLELY FOR THE USE OF ITS NAME IN THE BID OR PROPOSAL.**

5                   **(2) THE BOARD SHALL IMPOSE ONE OF THE FOLLOWING**  
6 **PENALTIES AGAINST A CONTRACTOR WHO VIOLATES PARAGRAPH (1) OF THIS**  
7 **SUBSECTION:**

8                   **(I) SUSPENSION FROM BIDDING AND WORKING ON STATE**  
9 **CONTRACTS FOR AT LEAST 6 MONTHS; OR**

10                   **(II) DEBARMENT FROM BIDDING OR PERFORMING ON STATE**  
11 **CONTRACTS.**

12                   **(3) IN DETERMINING THE PENALTY TO BE IMPOSED UNDER**  
13 **PARAGRAPH (2) OF THIS SUBSECTION, THE BOARD SHALL CONSIDER:**

14                   **(I) THE GOOD FAITH OF THE CONTRACTOR; AND**

15                   **(II) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE**  
16 **CONTRACTOR.**

17                   **(4) THE GOVERNOR'S OFFICE OF MINORITY AFFAIRS SHALL**  
18 **MAKE AVAILABLE A FRAUD HOTLINE TO BE USED BY CERTIFIED MINORITY**  
19 **BUSINESS ENTERPRISES TO REPORT A VIOLATION OF THIS SUBSECTION BY A**  
20 **CONTRACTOR.**

21                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
22 **October 1, 2009.**