

HOUSE BILL 389

P2

9lr1290
CF SB 611

By: **Delegates Taylor, Boteler, Carr, Carter, Feldman, Haynes, Hixson, Holmes, Huckler, Manno, Rice, Robinson, Ross, Shewell, Tarrant, ~~and V. Turner~~ V. Turner, Pendergrass, Benson, Kullen, Montgomery, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, and Reznik**

Introduced and read first time: February 2, 2009

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2009

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of prohibiting certain ~~contractors~~ persons from engaging in certain
5 acts when 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~~ reporting
11 certain violations of this Act; and generally relating to prohibitions ~~and~~
12 ~~penalties for contractors~~ under the Minority 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**

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 14-308.

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

3 (i) fraudulently obtain, hold, or attempt to obtain or hold
4 certification;

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

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

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

13 (v) in any minority business enterprise matter administered
14 under this subtitle:

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

17 2. make a false or fraudulent statement or
18 representation; or

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

21 **(2) EXCEPT AS OTHERWISE PROVIDED BY LAW, A CONTRACTOR**
22 **MAY NOT IDENTIFY A CERTIFIED MINORITY BUSINESS ENTERPRISE IN A BID OR**
23 **PROPOSAL AND:**

24 **(I) FAIL TO REQUEST, RECEIVE, OR OTHERWISE OBTAIN**
25 **AUTHORIZATION FROM THE CERTIFIED MINORITY BUSINESS ENTERPRISE TO**
26 **IDENTIFY THE CERTIFIED MINORITY BUSINESS ENTERPRISE IN ITS BID OR**
27 **PROPOSAL;**

28 **(II) FAIL TO NOTIFY THE CERTIFIED MINORITY BUSINESS**
29 **ENTERPRISE BEFORE EXECUTION OF THE CONTRACT OF ITS INCLUSION OF THE**
30 **BID OR PROPOSAL;**

31 **(III) FAIL TO USE THE CERTIFIED MINORITY BUSINESS**
32 **ENTERPRISE IN THE PERFORMANCE OF THE CONTRACT; OR**

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

3 ~~(2)~~ **(3)** A person who violates any provision of this subsection is
4 guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or
5 imprisonment not exceeding 5 years or both.

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

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

11 ~~(c) (1) UNLESS A WAIVER HAS BEEN GRANTED OR AN AMENDMENT~~
12 ~~TO A BID OR PROPOSAL HAS BEEN AUTHORIZED, A CONTRACTOR MAY NOT~~
13 ~~IDENTIFY A CERTIFIED MINORITY BUSINESS ENTERPRISE IN A BID OR~~
14 ~~PROPOSAL AND:~~

15 ~~(I) FAIL TO NOTIFY THE CERTIFIED MINORITY BUSINESS~~
16 ~~ENTERPRISE OF ITS INCLUSION IN THE BID OR PROPOSAL;~~

17 ~~(II) FAIL TO REQUEST A QUOTE FROM THE CERTIFIED~~
18 ~~MINORITY BUSINESS ENTERPRISE;~~

19 ~~(III) FAIL TO UTILIZE THE CERTIFIED MINORITY BUSINESS~~
20 ~~ENTERPRISE IN THE PERFORMANCE OF THE CONTRACT; OR~~

21 ~~(IV) PAY THE CERTIFIED MINORITY BUSINESS ENTERPRISE~~
22 ~~SOLELY FOR THE USE OF ITS NAME IN THE BID OR PROPOSAL.~~

23 ~~(2) THE BOARD SHALL IMPOSE ONE OF THE FOLLOWING~~
24 ~~PENALTIES AGAINST A CONTRACTOR WHO VIOLATES PARAGRAPH (1) OF THIS~~
25 ~~SUBSECTION:~~

26 ~~(I) SUSPENSION FROM BIDDING AND WORKING ON STATE~~
27 ~~CONTRACTS FOR AT LEAST 6 MONTHS; OR~~

28 ~~(II) DEBARMENT FROM BIDDING OR PERFORMING ON STATE~~
29 ~~CONTRACTS.~~

30 ~~(3) IN DETERMINING THE PENALTY TO BE IMPOSED UNDER~~
31 ~~PARAGRAPH (2) OF THIS SUBSECTION, THE BOARD SHALL CONSIDER:~~

32 ~~(I) THE GOOD FAITH OF THE CONTRACTOR; AND~~

1 ~~(H) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE~~
2 ~~CONTRACTOR.~~

3 ~~(4) (C)~~ THE GOVERNOR'S OFFICE OF MINORITY AFFAIRS
4 SHALL MAKE AVAILABLE A FRAUD HOTLINE ~~TO BE USED BY CERTIFIED~~
5 ~~MINORITY BUSINESS ENTERPRISES TO REPORT A VIOLATION OF THIS~~
6 ~~SUBSECTION BY A CONTRACTOR~~ FOR REPORTING VIOLATIONS OF THIS SECTION.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.