

# SENATE BILL 546

P2

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CF HB 923

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By: **Senators Peters, Muse, Conway, Currie, Exum, Harrington, Jones, King, Klausmeier, Kramer, Pinsky, Pugh, Robey, and Rosapepe**

Introduced and read first time: February 4, 2010

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 23, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Review of Application for**  
3 **Certification and Notice to Applicant**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations that  
5 require the agency designated to certify minority business enterprises to  
6 complete its review and provide notice of its decision to the applicant, ~~absent~~  
7 ~~extenuating circumstances,~~ within a certain period of time and that authorize  
8 the agency, after giving certain notice and explanation to a certain applicant, to  
9 extend the time period once for completion of the agency's review of, and  
10 decision on, a certain application for a certain time period; and generally  
11 relating to review and notice concerning an application for certification as a  
12 minority business enterprise.

13 BY repealing and reenacting, with amendments,  
14 Article – State Finance and Procurement  
15 Section 14–303  
16 Annotated Code of Maryland  
17 (2009 Replacement Volume)

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**

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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 14-303.

2 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State  
3 Government Article, the Board shall adopt regulations consistent with the purposes of  
4 this Division II to carry out the requirements of this subtitle.

5 (ii) The Board shall keep a record of the number of waivers  
6 requested and the number of waivers granted each year under subsection (b)(8) of this  
7 section and submit a copy of the record to the General Assembly on or before October 1  
8 of each year, in accordance with § 2-1246 of the State Government Article.

9 (2) The regulations shall establish procedures to be followed by units,  
10 prospective contractors, and successful bidders or offerors to maximize notice to, and  
11 the opportunity to participate in the procurement process by, a broad range of  
12 minority business enterprises.

13 (b) These regulations shall include:

14 (1) provisions:

15 (I) designating one agency to certify and decertify minority  
16 business enterprises for all units through a single process that meets applicable  
17 federal requirements; ~~AND~~

18 (II) **REQUIRING THE AGENCY DESIGNATED TO CERTIFY**  
19 **MINORITY BUSINESS ENTERPRISES, ~~ABSENT EXTENUATING CIRCUMSTANCES,~~**  
20 **TO COMPLETE THE AGENCY'S REVIEW OF AN APPLICATION FOR CERTIFICATION**  
21 **AND NOTIFY THE APPLICANT OF THE AGENCY'S DECISION WITHIN ~~120~~ 90 DAYS**  
22 **OF RECEIPT OF THE COMPLETE APPLICATION; AND**

23 (III) **AUTHORIZING THE AGENCY, AFTER GIVING WRITTEN**  
24 **NOTICE AND EXPLANATION TO THE APPLICANT, TO EXTEND THE TIME PERIOD**  
25 **ONCE FOR COMPLETION OF THE AGENCY'S REVIEW OF, AND DECISION ON AN**  
26 **APPLICATION FOR CERTIFICATION FOR A PERIOD OF NOT MORE THAN 60 DAYS;**

27 (2) a requirement that the solicitation document accompanying each  
28 solicitation set forth the expected degree of minority business enterprise participation  
29 based, in part, on:

30 (i) the potential subcontract opportunities available in the  
31 prime procurement contract; and

32 (ii) the availability of certified minority business enterprises to  
33 respond competitively to the potential subcontract opportunities;

1           (3) a requirement that the unit provide a current list of certified  
2 minority business enterprises to each prospective contractor;

3           (4) provisions to ensure the uniformity of requests for bids on  
4 subcontracts;

5           (5) provisions relating to the timing of requests for bids on  
6 subcontracts and of submission of bids on subcontracts;

7           (6) provisions designed to ensure that a fiscal disadvantage to the  
8 State does not result from an inadequate response by minority business enterprises to  
9 a request for bids;

10          (7) provisions relating to joint ventures, under which a bidder may  
11 count toward meeting its minority business enterprise participation goal, the minority  
12 business enterprise portion of the joint venture;

13          (8) consistent with § 14–302(a)(6) of this subtitle, provisions relating  
14 to any circumstances under which a unit may waive obligations of the contractor  
15 relating to minority business enterprise participation;

16          (9) provisions requiring a monthly submission to the unit by minority  
17 business enterprises acknowledging all payments received in the preceding 30 days  
18 under a contract governed by this subtitle;

19          (10) a requirement that a unit shall verify and maintain data  
20 concerning payments received by minority business enterprises, including a  
21 requirement that, upon completion of a project, the unit shall compare the total dollar  
22 value actually received by minority business enterprises with the amount of contract  
23 dollars initially awarded, and an explanation of any discrepancies therein;

24          (11) a requirement that a unit verify that minority business enterprises  
25 listed in a successful bid are actually participating to the extent listed in the project  
26 for which the bid was submitted;

27          (12) provisions establishing a graduation program based on the  
28 financial viability of the minority business enterprise, using annual gross receipts or  
29 other economic indicators as may be determined by the Board;

30          (13) a requirement that a bid or proposal based on a solicitation with an  
31 expected degree of minority business enterprise participation identify the specific  
32 commitment of certified minority business enterprises at the time of submission;

33          (14) provisions promoting and providing for the counting and reporting  
34 of certified minority business enterprises as prime contractors; and

1 (15) other provisions that the Board considers necessary or appropriate  
2 to encourage participation by minority business enterprises and to protect the  
3 integrity of the procurement process.

4 (c) The regulations adopted under this section shall specify that a unit may  
5 not allow a business to participate as if it were a certified minority business enterprise  
6 if the business’s certification is pending.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2010.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.