

# HOUSE BILL 1353

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CF SB 188

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By: **Delegates Oaks, Branch, Carter, and Vaughn**

Introduced and read first time: February 11, 2013

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprises – Goals and Subgoals**

3 FOR the purpose of requiring the Procurement Advisor to conduct an examination  
4 concerning the process by which the heads of units and their procurement  
5 officers, in consultation with the Special Secretary of Minority Affairs, the  
6 Secretary of Transportation, and the Attorney General, sets certain goals and  
7 subgoals for participation of certain minority groups in State procurement;  
8 specifying certain factors to be considered during the examination; requiring the  
9 Procurement Advisor to report certain findings on or before a certain date; and  
10 generally relating to the setting of goals and subgoals for participation of  
11 certain minority groups in State procurement.

12 BY repealing and reenacting, without amendments,  
13 Article – State Finance and Procurement  
14 Section 12–102  
15 Annotated Code of Maryland  
16 (2009 Replacement Volume and 2012 Supplement)

17 BY repealing and reenacting, without amendments,  
18 Article – State Finance and Procurement  
19 Section 14–302(a)(1)  
20 Annotated Code of Maryland  
21 (2009 Replacement Volume and 2012 Supplement)

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

24 **Article – State Finance and Procurement**

25 12–102.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) The Board shall appoint a Procurement Advisor, who serves at the  
2 pleasure of the Board.

3 (2) The Procurement Advisor shall:

4 (i) ensure that the State's procurement system is utilizing the  
5 most advanced procurement methods and management techniques;

6 (ii) effect and enhance communication between State units on  
7 procurement matters, with an emphasis on disseminating information on current  
8 developments and advances in the management of the State procurement system;

9 (iii) examine all procurements that are subject to review by the  
10 Board and make recommendations to the Board as to the appropriateness of each  
11 procurement, with an emphasis on whether the proposed procurement:

12 1. has been competitively conducted; and

13 2. conforms to provisions of procurement law,  
14 procurement regulations, and best management practices;

15 (iv) prevent and detect fraud, waste, and abuse and foster  
16 competition in the expenditure of State funds in the procurement of supplies, services,  
17 or construction;

18 (v) conduct investigations into procurement policies, practices,  
19 and procedures, as appropriate;

20 (vi) investigate complaints made by State employees concerning  
21 fraud, waste, and abuse in the procurement process and any alleged violation of the  
22 procurement law or regulations;

23 (vii) investigate complaints, other than formal bid protests filed  
24 under Title 15, Subtitle 2 of this article, made by contractors and other interested  
25 parties concerning fraud, waste, and abuse in the procurement process and any  
26 alleged violation of the procurement law or regulations;

27 (viii) if apparent criminal violations are found in the course of an  
28 investigation, report findings to the Board of Public Works, Office of the Attorney  
29 General, United States Attorney, and State or local prosecutors, as appropriate;

30 (ix) if other apparent violations of law or regulation are found in  
31 the course of an investigation, report findings to the Board of Public Works, the  
32 appropriate agency head, and any other appropriate body for administrative action;

1 (x) produce and submit to the Board of Public Works and the  
2 General Assembly, in accordance with § 2-1246 of the State Government Article, an  
3 annual report of the activities of the Procurement Advisor, including:

4 1. all findings and recommendations for improvements  
5 to the procurement system; and

6 2. the identification of barriers to effective broad-based  
7 competition in State procurement and recommendations for the elimination of these  
8 barriers;

9 (xi) assist agencies and the public with questions regarding  
10 procurement policy;

11 (xii) establish policies for the effective training of State  
12 procurement officials to ensure that the State's procurement system is utilizing the  
13 most advanced procurement methods and management techniques;

14 (xiii) coordinate activities with other entities performing similar  
15 functions;

16 (xiv) review internal audit reports and comment as appropriate;

17 (xv) be the principal staff to the Procurement Advisory Council;  
18 and

19 (xvi) notify the Legislative Auditor when the Procurement  
20 Advisor undertakes an investigation under item (vi) or (vii) of this paragraph.

21 (3) The Procurement Advisor shall:

22 (i) have access to all books, accounts, records, reports, any  
23 material related to contracts and procurement, and all other papers and equipment  
24 necessary to carry out its responsibilities; and

25 (ii) have direct and prompt access to all heads of agencies  
26 involved in the expenditure of public funds.

27 (b) (1) (i) The Board shall appoint a General Counsel, who serves at  
28 the pleasure of the Board.

29 (ii) The General Counsel shall be an attorney in this State.

30 (2) The General Counsel shall:

31 (i) provide independent legal advice to the Board;

1 (ii) examine all procurements that are subject to review by the  
2 Board and make recommendations to the Board as to the legal sufficiency of the  
3 procurements, with an emphasis on whether the proposed procurement has been  
4 competitively conducted;

5 (iii) assist the Procurement Advisor in investigations undertaken  
6 by the Procurement Advisor;

7 (iv) assist the Procurement Advisor in responding to complaints  
8 made by State employees, contractors, and other interested parties concerning fraud,  
9 waste, and abuse in the procurement process or any alleged violation of the  
10 procurement law and regulations;

11 (v) compile information for distribution to State procurement  
12 officials relating to recent decisions of the Maryland State Board of Contract Appeals  
13 and State and federal courts concerning procurement, including any policy or legal  
14 guidance to the procurement officials based on these decisions; and

15 (vi) review regulations proposed by the Board for legality and  
16 approve them for proposal and adoption.

17 (3) The General Counsel shall:

18 (i) have access to all books, accounts, records, any material  
19 related to contracts and procurement, and all other papers and equipment necessary  
20 to carry out its responsibilities; and

21 (ii) have direct and prompt access to all heads of agencies  
22 involved in the expenditure of public funds.

23 (c) In accordance with the State budget, the Board may appoint any  
24 additional staff necessary to carry out its responsibilities under this Division II.

25 14–302.

26 (a) (1) (i) Except for leases of real property, each unit shall structure  
27 procurement procedures, consistent with the purposes of this subtitle, to try to achieve  
28 an overall percentage goal of the unit's total dollar value of procurement contracts  
29 being made directly or indirectly to certified minority business enterprises.

30 (ii) 1. The overall percentage goal shall be established on a  
31 biennial basis by the Special Secretary of Minority Affairs, in consultation with the  
32 Secretary of Transportation and the Attorney General.

33 2. During any year in which there is a delay in  
34 establishing the overall goal, the previous year's goal will apply.

1 (iii) 1. In consultation with the Secretary of Transportation  
2 and the Attorney General, the Special Secretary of Minority Affairs shall establish  
3 guidelines on a biennial basis for each unit to consider while determining whether to  
4 set subgoals for the minority groups listed in § 14-301(j)(1)(i)1, 2, 3, 4, and 6 of this  
5 subtitle.

6 2. During any year in which there is a delay in  
7 establishing the subgoal guidelines, the previous year's subgoal guidelines will apply.

8 (iv) 1. The Special Secretary of Minority Affairs, in  
9 consultation with the Secretary of Transportation and the Attorney General, shall  
10 establish goals and subgoal guidelines that, to the maximum extent feasible,  
11 approximate the level of minority business enterprise participation that would be  
12 expected in the absence of discrimination.

13 2. In establishing overall goals and subgoal guidelines,  
14 the Special Secretary of Minority Affairs shall provide for public participation by  
15 consulting with minority, women's, and general contractor groups, community  
16 organizations, and other officials or organizations that could be expected to have  
17 information concerning:

18 A. the availability of minority- and women-owned  
19 businesses;

20 B. the effects of discrimination on opportunities for  
21 minority- and women-owned businesses; and

22 C. the State's operation of the Minority Business  
23 Enterprise Program.

24 (v) In establishing overall goals, the factors to be considered  
25 shall include:

26 1. the relative availability of minority- and  
27 women-owned businesses to participate in State procurement as demonstrated by the  
28 State's most recent disparity study;

29 2. past participation of minority business enterprises in  
30 State procurement, except for procurement related to leases of real property; and

31 3. other factors that contribute to constitutional goal  
32 setting.

33 (vi) Notwithstanding § 12-101 of this article, the Special  
34 Secretary of Minority Affairs shall adopt regulations in accordance with Title 10,  
35 Subtitle 1 of the State Government Article setting forth the State's overall goal.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Procurement Advisor  
2 shall:

3 (1) examine the process used by the heads of units of State  
4 government and their procurement officers, in consultation with the Special Secretary  
5 of Minority Affairs, the Secretary of Transportation, and the Attorney General under §  
6 14–302(a)(1) of the State Finance and Procurement Article, to set overall percentage  
7 goals and subgoals for minority groups for each unit’s total dollar value of  
8 procurement contracts being made directly or indirectly to minority business  
9 enterprises, including:

10 (i) the process used by the units and their procurement officers  
11 to set a lower percentage goal or subgoal for a minority group; and

12 (ii) whether the lower percentage goal or subgoal is reflective of  
13 or consistent with census data regarding changes in the minority population or the  
14 number of minority business enterprises in the State; and

15 (2) on or before December 31, 2013, report findings concerning the  
16 process utilized to set overall percentage goals and subgoals for minority groups for  
17 each unit’s total dollar value of procurement contracts being made directly or  
18 indirectly to minority business enterprises to the Governor and, subject to § 2–1246 of  
19 the State Government Article, the General Assembly.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2013.