

SENATE BILL 188

P2

(3lr1383)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Health and Government Operations* —

Introduced by **Senators Pugh, Benson, Conway, Currie, Ferguson, Forehand, Gladden, Jones-Rodwell, Kelley, McFadden, Middleton, Montgomery, Muse, and Ramirez**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Minority Business Enterprises – *Participation and* 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~~ Special Secretary of Minority
12 Affairs, in consultation with the Secretary of Transportation and the Attorney

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.

Italics indicate opposite chamber/conference committee amendments.



1 General, to establish guidelines for certain units of State government to
 2 consider when determining the appropriate minority business enterprise
 3 participation percentage goal for certain procurements; making certain
 4 conforming changes; *altering the termination date for certain provisions of law*
 5 *concerning the minority business enterprise program; altering the dates by which*
 6 *the certification agency designated by the Board of Public Works for the minority*
 7 *business enterprise program, in consultation with the General Assembly and the*
 8 *Office of the Attorney General, to conduct a certain evaluation of the minority*
 9 *business program; and generally relating to minority business enterprise*
 10 participation *and* percentage goals and subgoals for certain procurements.

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

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

21 BY repealing and reenacting, with amendments,
 22 Article – State Finance and Procurement
 23 Section 14–302 ~~and 14–303~~, 14–303, and 14–309
 24 Annotated Code of Maryland
 25 (2009 Replacement Volume and 2012 Supplement)

26 BY repealing and reenacting, with amendments,
 27 Chapter 154 of the Acts of the General Assembly of 2012
 28 Section 2

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

31 **Article – State Finance and Procurement**

32 12–102.

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

35 (2) The Procurement Advisor shall:

36 (i) ensure that the State’s procurement system is utilizing the
 37 most advanced procurement methods and management techniques;

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

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

7 1. has been competitively conducted; and

8 2. conforms to provisions of procurement law,
9 procurement regulations, and best management practices;

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

13 (v) conduct investigations into procurement policies, practices,
14 and procedures, as appropriate;

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

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

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

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

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

31 1. all findings and recommendations for improvements
32 to the procurement system; and

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

4 (xi) assist agencies and the public with questions regarding
5 procurement policy;

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

9 (xiii) coordinate activities with other entities performing similar
10 functions;

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

12 (xv) be the principal staff to the Procurement Advisory Council;
13 and

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

16 (3) The Procurement Advisor shall:

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

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

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

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

25 (2) The General Counsel shall:

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

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

31 (iii) assist the Procurement Advisor in investigations undertaken
32 by the Procurement Advisor;

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

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

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

11 (3) The General Counsel shall:

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

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

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

19 ~~14-302.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~3. other factors that contribute to constitutional goal setting.~~

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

~~14-302.~~

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

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

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

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

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

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

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

23 A. the availability of minority- and women-owned
24 businesses;

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

27 C. the State's operation of the Minority Business
28 Enterprise Program.

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

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

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

1 ~~[(3)] (4)~~ Units may not use quotas or any project goal–setting process
2 that:

3 (i) solely relies on the State’s overall numerical goal, or any
4 other jurisdiction’s overall numerical goal; or

5 (ii) fails to incorporate the analysis outlined in paragraph (2)(ii)
6 of this subsection.

7 ~~[(4)] (5)~~ (i) A woman who is also a member of an ethnic or racial
8 minority group may be certified in that category in addition to the gender category.

9 (ii) For purposes of achieving the goals in this subsection, a
10 certified minority business enterprise may participate in a procurement contract and
11 be counted as a woman–owned business, or as a business owned by a member of an
12 ethnic or racial group, but not both, if the business has been certified in both
13 categories.

14 ~~[(5)] (6)~~ Each unit shall meet the maximum feasible portion of the
15 State’s overall goal established in accordance with this subsection by using
16 race–neutral measures to facilitate minority business enterprise participation in the
17 procurement process.

18 ~~[(6)] (7)~~ If a unit establishes minority business enterprise
19 participation goals for a contract, a contractor, including a contractor that is a certified
20 minority business enterprise, shall:

21 (i) identify specific work categories appropriate for
22 subcontracting;

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

25 1. describes the categories of work under item (i) of this
26 paragraph; and

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

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

31 (iv) offer to provide reasonable assistance to minority business
32 enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

1 (v) in order to publicize contracting opportunities to minority
2 business enterprises, attend prebid or preproposal meetings or other meetings
3 scheduled by the unit; and

4 (vi) upon acceptance of a bid or proposal, provide the unit with a
5 list of minority businesses with whom the contractor negotiated, including price quotes
6 from minority and nonminority firms.

7 **[(7)] (8)** The Special Secretary of Minority Affairs shall:

8 (i) in consultation with the Secretary of Transportation and the
9 Attorney General, establish procedures governing how the participation of minority
10 business enterprise prime contractors is counted toward contract goals; and

11 (ii) notwithstanding § 12–101 of this article, adopt regulations
12 setting forth the procedures established in accordance with this paragraph.

13 **[(8)] (9)** (i) 1. If a contractor, including a certified minority
14 business enterprise, does not achieve all or a part of the minority business enterprise
15 participation goals on a contract, the unit shall make a finding of whether the
16 contractor has demonstrated that the contractor took all necessary and reasonable
17 steps to achieve the goals, including compliance with paragraph (6) of this subsection.

18 2. A waiver of any part of the minority business
19 enterprise goals for a contract shall be granted if a contractor provides a reasonable
20 demonstration of good–faith efforts to achieve the goals.

21 (ii) If the unit determines that a waiver should be granted in
22 accordance with subparagraph (i) of this paragraph, the unit may not require the
23 contractor to renegotiate any subcontract in order to achieve a different result.

24 (iii) The head of the unit may waive any of the requirements of
25 this subsection relating to the establishment, use, and waiver of contract goals for a
26 sole source, expedited, or emergency procurement in which the public interest cannot
27 reasonably accommodate use of those requirements.

28 (iv) 1. Except for waivers granted in accordance with
29 subparagraph (iii) of this paragraph, when a waiver determination is made, the unit
30 shall issue the determination in writing.

31 2. The head of the unit shall:

32 A. keep one copy of the waiver determination and the
33 reasons for the determination; and

34 B. forward one copy of the waiver determination to the
35 Governor’s Office of Minority Affairs.

1 (v) On or before July 31 of each year, each unit shall submit
2 directly to the Board of Public Works and the Governor's Office of Minority Affairs an
3 annual report of waivers requested and waivers granted under this paragraph.

4 (vi) The report required under subparagraph (v) of this
5 paragraph shall contain the following information on those contracts where the unit
6 considered a contractor's request for waiver of all or a portion of the minority business
7 enterprise goals:

- 8 1. the contract titles, numbers, and dates;
9 2. the number of waiver requests received;
10 3. the number of waiver requests granted; and
11 4. any other information specifically requested by the
12 Board.

13 **[(9)] (10)** (i) 1. This paragraph applies to a bidder or offeror
14 after submission of a bid or proposal and before the execution of a contract with an
15 expected degree of minority business enterprise participation.

16 2. If the bidder or offeror determines that a minority
17 business enterprise identified in the minority business enterprise participation
18 schedule has become or will become unavailable or ineligible to perform the work
19 required under the contract, the bidder or offeror shall notify the unit within 72 hours
20 of making the determination.

21 (ii) 1. If a minority business enterprise identified in the
22 minority business enterprise participation schedule submitted with a bid or offer has
23 become or will become unavailable or ineligible to perform the work required under
24 the contract, the bidder or offeror may submit a written request with the unit to
25 amend the minority business enterprise participation schedule.

26 2. The request to amend the minority business
27 enterprise participation schedule shall indicate the bidder's or offeror's efforts to
28 substitute another certified minority business enterprise to perform the work that the
29 unavailable or ineligible minority business enterprise would have performed.

30 (iii) A minority business enterprise participation schedule may
31 not be amended unless:

32 1. the bidder or offeror provides a satisfactory
33 explanation of the reason for inclusion of the unavailable or ineligible firm on the
34 minority business enterprise participation schedule; and

1 2. the amendment is approved by the unit's procurement
2 officer after consulting with the unit's minority business enterprise liaison.

3 [(10)] (11) (i) This paragraph applies after execution of a contract
4 with an expected degree of minority business enterprise participation.

5 (ii) The minority business enterprise participation schedule,
6 including any amendment, shall be attached to and made a part of the executed
7 contract.

8 (iii) 1. A contractor may not terminate or otherwise cancel
9 the contract of a certified minority business enterprise subcontractor listed in the
10 minority business enterprise participation schedule without showing good cause and
11 obtaining the prior written consent of the minority business enterprise liaison and
12 approval of the head of the unit.

13 2. The unit shall send a copy of the written consent
14 obtained under subparagraph 1 of this subparagraph to the Governor's Office of
15 Minority Affairs.

16 (iv) A minority business enterprise participation schedule may
17 not be amended after the date of contract execution unless the request is approved by
18 the head of the unit and the contract is amended.

19 [(11)] (12) If, during the performance of a contract, a certified minority
20 business enterprise contractor or subcontractor becomes ineligible to participate in the
21 Minority Business Enterprise Program because one or more of its owners has a
22 personal net worth that exceeds the amount specified in § 14-301(j)(3) of this subtitle:

23 (i) that ineligibility alone may not cause the termination of the
24 certified minority business enterprise's contractual relationship for the remainder of
25 the term of the contract; and

26 (ii) the certified minority business enterprise's participation
27 under the contract shall continue to be counted toward the program and contract
28 goals.

29 (b) (1) The provisions of §§ 14-301(f) and 14-303 of this subtitle and
30 subsection (a) of this section are inapplicable to the extent that any unit determines
31 the provisions to be in conflict with any applicable federal program requirement.

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

34 14-303.

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

4 (ii) The Board shall keep a record of information regarding any
5 waivers requested in accordance with § [14-302(a)(8)(i)] 14-302(A)(9)(I) of this
6 subtitle and subsection (b)(11) of this section and submit a copy of the record to the
7 General Assembly on or before October 1 of each year, in accordance with § 2-1246 of
8 the State Government Article.

9 (iii) The Board shall keep a record of the aggregate number and
10 the identity of minority business enterprises that receive certification under the
11 process established by the Board under subsection (b)(1) of this section and submit a
12 copy of the record to the General Assembly on or before October 1 of each year, in
13 accordance with § 2-1246 of the State Government Article.

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

18 (b) These regulations shall include:

19 (1) provisions:

20 (i) designating one State agency to certify and decertify
21 minority business enterprises for all units through a single process that meets
22 applicable federal requirements, including provisions that promote and facilitate the
23 submission of some or all of the certification application through an electronic process;

24 (ii) for the purpose of certification under this subtitle, that
25 promote and facilitate certification of minority business enterprises that have received
26 certification from the U.S. Small Business Administration or a county that uses a
27 certification process substantially similar to the process established in accordance
28 with item (i) of this item;

29 (iii) requiring the agency designated to certify minority business
30 enterprises to complete the agency's review of an application for certification and
31 notify the applicant of the agency's decision within 90 days of receipt of a complete
32 application that includes all of the information necessary for the agency to make a
33 decision; and

34 (iv) authorizing the agency designated to certify minority
35 business enterprises to extend the notification requirement established under item (iii)
36 of this item once, for no more than an additional 60 days, if the agency provides the
37 applicant with a written notice and explanation;

1 (2) a requirement that the solicitation document accompanying each
2 solicitation set forth the expected degree of minority business enterprise participation
3 based, in part, on the factors set forth in § [14-302(a)(2)(ii)] 14-302(A)(3)(II) of this
4 subtitle;

5 (3) a requirement that bidders or offerors complete a document setting
6 forth the percentage of the total dollar amount of the contract that the bidder or
7 offeror agrees will be performed by certified minority business enterprises;

8 (4) a requirement that the solicitation documents completed and
9 submitted by the bidder or offeror in connection with its minority business enterprise
10 participation commitment must be attached to and made a part of the contract;

11 (5) a requirement that all contracts containing minority business
12 enterprise participation goals shall contain a liquidated damages provision that
13 applies in the event that the contractor fails to comply in good faith with the
14 provisions of this subtitle or the pertinent terms of the applicable contract;

15 (6) a requirement that the unit provide a current list of certified
16 minority business enterprises to each prospective contractor;

17 (7) provisions to ensure the uniformity of requests for bids on
18 subcontracts;

19 (8) provisions relating to the timing of requests for bids on
20 subcontracts and of submission of bids on subcontracts;

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

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

27 (11) consistent with § [14-302(a)(8)] 14-302(A)(9) of this subtitle,
28 provisions relating to any circumstances under which a unit may waive obligations of
29 the contractor relating to minority business enterprise participation;

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

33 (13) a requirement that a unit shall verify and maintain data
34 concerning payments received by minority business enterprises, including a
35 requirement that, upon completion of a project, the unit shall compare the total dollar

1 value actually received by minority business enterprises with the amount of contract
2 dollars initially awarded, and an explanation of any discrepancies therein;

3 (14) a requirement that a unit verify that minority business enterprises
4 listed in a successful bid are actually participating to the extent listed in the project
5 for which the bid was submitted;

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

9 (16) a requirement that a bid or proposal based on a solicitation with an
10 expected degree of minority business enterprise participation identify the specific
11 commitment of certified minority business enterprises at the time of submission;

12 (17) provisions promoting and providing for the counting and reporting
13 of certified minority business enterprises as prime contractors;

14 (18) provisions establishing standards to require a minority business
15 enterprise to perform a commercially useful function on a contract;

16 (19) a requirement that each unit work with the Governor's Office of
17 Minority Affairs to designate certain procurements as being excluded from the
18 requirements of § 14-302(a) of this subtitle; and

19 (20) other provisions that the Board considers necessary or appropriate
20 to encourage participation by minority business enterprises and to protect the
21 integrity of the procurement process.

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

25 14-309.

26 *The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations*
27 *adopted under those sections, shall be of no effect and may not be enforced after July 1,*
28 *[2016] 2017.*

29 **Chapter 154 of the Acts of 2012**

30 **SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,**
31 **in consultation with the General Assembly and the Office of the Attorney General, shall**
32 **initiate a study of the Minority Business Enterprise Program to evaluate the Program's**
33 **continued compliance with the requirements of the Croson decision and any subsequent**
34 **federal or constitutional requirements. In preparation for the study, the Board of Public**
35 **Works may adopt regulations authorizing a unit of State government to require bidders**

1 and offerors to submit information necessary for the conduct of the study. The Board of
 2 Public Works may designate that certain information received in accordance with
 3 regulations adopted under this section shall be confidential. Notwithstanding that
 4 certain information may be designated by the Board of Public Works as confidential,
 5 the Certification Agency may provide the information to any person that is under
 6 contract with the Certification Agency to assist in conducting the study. The study shall
 7 also evaluate race-neutral programs and other methods that can be used to address the
 8 needs of minority businesses. The final report on the study shall be submitted to the
 9 Legislative Policy Committee of the General Assembly, in accordance with § 2-1246 of
 10 the State Government Article, before September 30, [2015] 2016, so that the General
 11 Assembly may review the report before the [2016] 2017 Session.

12 SECTION 2. ~~AND BE IT FURTHER ENACTED, That the Procurement Advisor~~
 13 ~~shall:~~

14 ~~(1) examine the process used by the heads of units of State~~
 15 ~~government and their procurement officers, in consultation with the Special Secretary~~
 16 ~~of Minority Affairs, the Secretary of Transportation, and the Attorney General under §~~
 17 ~~14-302(a)(1) of the State Finance and Procurement Article, to set overall percentage~~
 18 ~~goals and subgoals for minority groups for each unit's total dollar value of~~
 19 ~~procurement contracts being made directly or indirectly to minority business~~
 20 ~~enterprises, including:~~

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

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

26 ~~(2) on or before December 31, 2013, report findings concerning the~~
 27 ~~process utilized to set overall percentage goals and subgoals for minority groups for~~
 28 ~~each unit's total dollar value of procurement contracts being made directly or~~
 29 ~~indirectly to minority business enterprises to the Governor and, subject to § 2-1246 of~~
 30 ~~the State Government Article, the General Assembly.~~

31 ~~SECTION 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take effect
 32 October 1, 2013.