

SENATE BILL 4

P2

(71r0122)

ENROLLED BILL

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

Introduced by **Chair, Education, Health, and Environmental Affairs Committee (By Request – Departmental – Office of Minority Affairs)**

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 – Program Participation – Requirements and**
3 **Reauthorization**

4 FOR the purpose of requiring minority business enterprises serving as subcontractors on
5 certain procurement contracts to submit certain documentation to the procurement
6 officer of the unit and to the contractor; ~~clarifying what constitutes good cause for the~~
7 ~~purposes of removal of a minority business enterprise after commencement of work on~~
8 ~~a contract~~; altering the termination date for certain provisions of law concerning the
9 Minority Business Enterprise Program; altering the date by which the final report on
10 a certain study is required to be submitted to the Legislative Policy Committee;
11 altering certain findings of the General Assembly; making a conforming change; and
12 generally relating to minority business enterprise program participation.

13 BY repealing and reenacting, with amendments,

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 Article – State Finance and Procurement
 2 Section ~~14-302~~ 14-301.1, 14-303, and 14-309
 3 Annotated Code of Maryland
 4 (2015 Replacement Volume and 2016 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Chapter 154 of the Acts of the General Assembly of 2012, as amended by Chapters 200
 7 and 201 of the Acts of the General Assembly of 2013
 8 Section 2

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

11 **Article – State Finance and Procurement**

12 ~~14-302.~~

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

17 ~~2. Notwithstanding subsubparagraph 1 of this subparagraph,~~
 18 ~~the following contracts may not be counted as part of a unit's total dollar value of~~
 19 ~~procurement contracts:~~

20 ~~A. a procurement contract awarded in accordance with~~
 21 ~~Subtitle 1 of this title;~~

22 ~~B. a procurement contract awarded to a not-for-profit entity~~
 23 ~~in accordance with requirements mandated by State or federal law; and~~

24 ~~C. a procurement by the Maryland Developmental Disabilities~~
 25 ~~Administration of the Department of Health and Mental Hygiene for family and individual~~
 26 ~~support services, community residential services, resource coordination services, behavioral~~
 27 ~~support services, vocational and day services, and respite services, as those terms are defined~~
 28 ~~in regulations adopted by the Department of Health and Mental Hygiene.~~

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

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

34 ~~(iii) 1. In consultation with the Secretary of Transportation and~~
 35 ~~the Attorney General, the Special Secretary of Minority Affairs shall establish guidelines on~~

~~1 a biennial basis for each unit to consider while determining whether to set subgoals for the~~
~~2 minority groups listed in § 14-301(k)(1)(i) 1, 2, 3, 4, and 6 of this subtitle.~~

~~3 2. During any year in which there is a delay in establishing~~
~~4 the subgoal guidelines, the previous year's subgoal guidelines will apply.~~

~~5 (iv) 1. The Special Secretary of Minority Affairs, in consultation~~
~~6 with the Secretary of Transportation and the Attorney General, shall establish goals and~~
~~7 subgoal guidelines that, to the maximum extent feasible, approximate the level of minority~~
~~8 business enterprise participation that would be expected in the absence of discrimination.~~

~~9 2. In establishing overall goals and subgoal guidelines, the~~
~~10 Special Secretary of Minority Affairs shall provide for public participation by consulting with~~
~~11 minority, women's, and general contractor groups, community organizations, and other~~
~~12 officials or organizations that could be expected to have information concerning:~~

~~13 A. the availability of minority and women owned businesses;~~

~~14 B. the effects of discrimination on opportunities for~~
~~15 minority and women owned businesses; and~~

~~16 C. the State's operation of the Minority Business Enterprise~~
~~17 Program.~~

~~18 (v) In establishing overall goals, the factors to be considered shall~~
~~19 include:~~

~~20 1. the relative availability of minority and women owned~~
~~21 businesses to participate in State procurement as demonstrated by the State's most recent~~
~~22 disparity study;~~

~~23 2. past participation of minority business enterprises in State~~
~~24 procurement, except for procurement related to leases of real property; and~~

~~25 3. other factors that contribute to constitutional goal setting.~~

~~26 (vi) Notwithstanding § 12-101 of this article, the Special Secretary of~~
~~27 Minority Affairs shall adopt regulations in accordance with Title 10, Subtitle 1 of the State~~
~~28 Government Article setting forth the State's overall goal.~~

~~29 (2) The Special Secretary of Minority Affairs, in consultation with the~~
~~30 Secretary of Transportation and the Attorney General, shall establish guidelines for each~~
~~31 unit to consider when determining the appropriate minority business enterprise~~
~~32 participation percentage goal for a procurement contract in accordance with paragraph (3)~~
~~33 of this subsection.~~

~~34 (3) Each unit shall:~~

1 (i) ~~consider the practical severability of all contracts and, in~~
2 ~~accordance with § 11-201 of this article, may not bundle contracts;~~

3 (ii) ~~implement a program that will enable the unit to evaluate each~~
4 ~~contract to determine the appropriate minority business enterprise participation goals, if~~
5 ~~any, for the contract based on:~~

6 1. ~~the potential subcontract opportunities available in the~~
7 ~~prime procurement contract;~~

8 2. ~~the availability of certified minority business enterprises to~~
9 ~~respond competitively to the potential subcontract opportunities;~~

10 3. ~~the contract goal guidelines established under paragraph~~
11 ~~(2) of this subsection;~~

12 4. ~~the subgoal guidelines established under paragraph (1)(iii)~~
13 ~~of this subsection; and~~

14 5. ~~other factors that contribute to constitutional goal setting;~~

15 (iii) ~~monitor and collect data with respect to prime contractor~~
16 ~~compliance with contract goals; and~~

17 (iv) ~~institute corrective action when prime contractors do not make~~
18 ~~good faith efforts to comply with contract goals.~~

19 (4) ~~Units may not use quotas or any project goal setting process that:~~

20 (i) ~~solely relies on the State's overall numerical goal, or any other~~
21 ~~jurisdiction's overall numerical goal; or~~

22 (ii) ~~fails to incorporate the analysis outlined in paragraph (3)(ii) of this~~
23 ~~subsection.~~

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

26 (ii) ~~For purposes of achieving the goals in this subsection, a certified~~
27 ~~minority business enterprise may participate in a procurement contract and be counted as a~~
28 ~~woman owned business, or as a business owned by a member of an ethnic or racial group,~~
29 ~~but not both, if the business has been certified in both categories.~~

30 (6) ~~Each unit shall meet the maximum feasible portion of the State's overall~~
31 ~~goal established in accordance with this subsection by using race neutral measures to~~
32 ~~facilitate minority business enterprise participation in the procurement process.~~

1 ~~(7) If a unit establishes minority business enterprise participation goals for~~
2 ~~a contract, a contractor, including a contractor that is a certified minority business~~
3 ~~enterprise, shall:~~

4 ~~(i) identify specific work categories appropriate for subcontracting;~~

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

7 ~~1. describes the categories of work under item (i) of this~~
8 ~~paragraph; and~~

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

11 ~~(iii) attempt to make personal contact with the firms in item (ii) of this~~
12 ~~paragraph;~~

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

15 ~~(v) in order to publicize contracting opportunities to minority business~~
16 ~~enterprises, attend prebid or preproposal meetings or other meetings scheduled by the unit;~~
17 ~~and~~

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

21 ~~(8) The Special Secretary of Minority Affairs shall:~~

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

25 ~~(ii) notwithstanding § 12-101 of this article, adopt regulations setting~~
26 ~~forth the procedures established in accordance with this paragraph.~~

27 ~~(9) (i) 1. If a contractor, including a certified minority business~~
28 ~~enterprise, does not achieve all or a part of the minority business enterprise participation~~
29 ~~goals on a contract, the unit shall make a finding of whether the contractor has demonstrated~~
30 ~~that the contractor took all necessary and reasonable steps to achieve the goals, including~~
31 ~~compliance with paragraph (7) of this subsection.~~

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

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

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

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

~~2. The head of the unit shall:~~

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

~~B. forward one copy of the waiver determination to the Governor's Office of Minority Affairs.~~

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

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

~~1. the contract titles, numbers, and dates;~~

~~2. the number of waiver requests received;~~

~~3. the number of waiver requests granted; and~~

~~4. any other information specifically requested by the Board.~~

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

~~2. If the bidder or offeror determines that a minority business enterprise identified in the minority business enterprise participation schedule has become~~

1 ~~or will become unavailable or ineligible to perform the work required under the contract, the~~
2 ~~bidder or offeror shall notify the unit within 72 hours of making the determination.~~

3 (ii) ~~1. If a minority business enterprise identified in the minority~~
4 ~~business enterprise participation schedule submitted with a bid or offer has become or will~~
5 ~~become unavailable or ineligible to perform the work required under the contract, the bidder~~
6 ~~or offeror may submit a written request with the unit to amend the minority business~~
7 ~~enterprise participation schedule.~~

8 ~~2. The request to amend the minority business enterprise~~
9 ~~participation schedule shall indicate the bidder's or offeror's efforts to substitute another~~
10 ~~certified minority business enterprise to perform the work that the unavailable or ineligible~~
11 ~~minority business enterprise would have performed.~~

12 (iii) ~~A minority business enterprise participation schedule may not be~~
13 ~~amended unless:~~

14 ~~1. the bidder or offeror provides a satisfactory explanation of~~
15 ~~the reason for inclusion of the unavailable or ineligible firm on the minority business~~
16 ~~enterprise participation schedule; and~~

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

19 (11) (i) ~~This paragraph applies after execution of a contract with an~~
20 ~~expected degree of minority business enterprise participation.~~

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

23 (iii) ~~1. A contractor may not terminate or otherwise cancel the~~
24 ~~contract of a certified minority business enterprise subcontractor listed in the minority~~
25 ~~business enterprise participation schedule without showing good cause and obtaining the~~
26 ~~prior written consent of the minority business enterprise liaison and approval of the head of~~
27 ~~the unit.~~

28 ~~2. FOR PURPOSES OF THIS SECTION, GOOD CAUSE FOR~~
29 ~~REMOVAL OF A CERTIFIED MINORITY BUSINESS ENTERPRISE AFTER CONTRACT~~
30 ~~EXECUTION INCLUDES BUT IS NOT LIMITED TO DOCUMENTED NONPERFORMANCE BY~~
31 ~~THE MINORITY BUSINESS ENTERPRISE OR ELECTION BY THE MINORITY BUSINESS~~
32 ~~ENTERPRISE TO CEASE WORK ON THE CONTRACT.~~

33 ~~[2.] 3. The unit shall send a copy of the written consent~~
34 ~~obtained under subsubparagraph 1 of this subparagraph to the Governor's Office of Minority~~
35 ~~Affairs.~~

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

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

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

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

~~(13) (i) Except as provided in subparagraph (ii) of this paragraph, a not-for-profit entity participating as a minority business enterprise on a procurement contract awarded by a unit before July 1, 2015, may continue to participate in the contract until the contract expires or otherwise terminates, including all options, renewals, and other extensions.~~

~~(ii) 1. The not-for-profit entity's participation may not be counted toward achieving the minority business enterprise participation goals in this subsection.~~

~~2. The unit may not require that a certified minority business enterprise be substituted for the not-for-profit entity in order to meet the minority business enterprise goals for the procurement contract.~~

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

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

14-301.1.

The General Assembly finds the following:

(1) the State of Maryland wishes to provide all of its citizens with equal access to business formation and business growth opportunities;

(2) the elimination of discrimination against minority- and women-owned businesses is of paramount importance to the future welfare of the State;

1 (3) the General Assembly has received and carefully reviewed the disparity
2 study entitled [“The State of Minority– and Women–Owned Business Enterprise: Evidence
3 from Maryland” commissioned by the General Assembly and published on February 17,
4 2011] “BUSINESS DISPARITIES IN THE MARYLAND MARKET AREA” COMMISSIONED
5 BY THE GENERAL ASSEMBLY AND PUBLISHED ON FEBRUARY 8, 2017 (the Study), and
6 finds that the Study provides a strong basis in evidence demonstrating persistent
7 discrimination against minority– and women–owned businesses;

8 (4) based on its review of the Study, the General Assembly finds that:

9 (i) there are substantial and statistically significant adverse
10 disparities [between the availability and utilization of minorities and women] THAT ARE
11 CONSISTENT WITH DISCRIMINATION AGAINST MINORITIES AND NONMINORITY
12 WOMEN IN WAGES, FIRM FORMATION, ENTREPRENEURIAL EARNINGS, AND ACCESS TO
13 CAPITAL in the private sector in the same geographic markets and industry categories in
14 which the State does business;

15 (ii) the State would become a passive participant in private sector
16 racial and gender discrimination if it ceased or curtailed its remedial efforts, including the
17 operation of the Minority Business Enterprise Program;

18 (iii) there are substantial and statistically significant adverse
19 disparities [for all racial and ethnic groups and nonminority women combined in all major
20 contracting categories in State procurement] THAT ARE CONSISTENT WITH
21 DISCRIMINATION AGAINST MINORITIES AND NONMINORITY WOMEN IN STATE
22 PROCUREMENT;

23 (iv) there are substantial and statistically significant adverse
24 disparities [for all individual racial and ethnic groups and for nonminority women in most
25 major industry categories in State procurement] THAT ARE CONSISTENT WITH
26 DISCRIMINATION AGAINST ALL INDIVIDUAL MINORITY GROUPS AND FOR
27 NONMINORITY WOMEN IN MOST MAJOR INDUSTRY CATEGORIES IN STATE
28 PROCUREMENT;

29 (v) there is ample evidence that discrimination in the private sector
30 has depressed firm formation and firm growth among minority and nonminority women
31 entrepreneurs; and

32 (vi) there is powerful and persuasive qualitative [and anecdotal]
33 evidence, BOTH STATISTICAL AND ANECDOTAL, of discrimination against minority and
34 nonminority women business owners in both the public and private sectors;

35 (5) as a result of ongoing discrimination and the present day effects of past
36 discrimination, minority– and women–owned businesses combined continue to be very
37 significantly underutilized relative to their availability to perform work in the [sectors]

1 OVERWHELMING MAJORITY OF THE PROCUREMENT CATEGORIES in which the State
 2 does business;

3 (6) minority prime contractors also are subject to discrimination and
 4 confront especially daunting barriers in attempting to compete with very large and
 5 long-established nonminority companies;

6 (7) despite the fact that the State has employed, and continues to employ,
 7 numerous and robust race-neutral remedies, including aggressive outreach and advertising,
 8 training and education, small business programs, efforts to improve access to capital, and
 9 other efforts, there is a strong basis in evidence that discrimination persists even in public
 10 sector procurement where these efforts have been employed;

11 (8) NOTWITHSTANDING THE LEVELS OF PARTICIPATION ACHIEVED
 12 WHEN RACE-CONSCIOUS MEASURES ARE USED, IN THE ABSENCE OF MINORITY
 13 BUSINESS ENTERPRISE PARTICIPATION GOALS FOR STATE PROCUREMENT, THERE
 14 IS A SUBSTANTIAL DECREASE IN THE OVERALL UTILIZATION OF MINORITY- AND
 15 WOMEN-OWNED BUSINESSES;

16 [(8)] (9) this subtitle ensures that race-neutral efforts will be used to the
 17 maximum extent feasible and that race-conscious measures will be used only where
 18 necessary to eliminate discrimination that was not alleviated by race-neutral efforts;

19 [(9)] (10) this subtitle continues and enhances efforts to ensure that the
 20 State limits the burden on nonminority businesses as much as possible by ensuring that all
 21 goals are developed using the best available data and that waivers are available whenever
 22 contractors make good faith efforts; [and]

23 (11) THIS SUBTITLE ENSURES THAT THE OPERATION OF THE MINORITY
 24 BUSINESS ENTERPRISE PROGRAM IS CONSISTENT WITH THE STUDY DATA AND
 25 NARROWLY TAILORED TO THE COMPELLING INTERESTS OF THE STATE; AND

26 [(10)] (12) State efforts to support the development of competitively viable
 27 minority- and women-owned business enterprises will assist in reducing discrimination and
 28 creating jobs for all citizens of Maryland.

29 14-303.

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

33 (ii) The Board shall keep a record of information regarding any
 34 waivers requested in accordance with § 14-302(a)(9)(i) of this subtitle and subsection
 35 [(b)(11)] (B)(12) of this section and submit a copy of the record to the General Assembly on

1 or before October 1 of each year, in accordance with § 2–1246 of the State Government
2 Article.

3 (iii) The Board shall keep a record of the aggregate number and the
4 identity of minority business enterprises that receive certification under the process
5 established by the Board under subsection (b)(1) of this section and submit a copy of the
6 record to the General Assembly on or before October 1 of each year, in accordance with §
7 2–1246 of the State Government Article.

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

12 (b) These regulations shall include:

13 (1) provisions:

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

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

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

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

30 (2) a requirement that the solicitation document accompanying each
31 solicitation set forth the expected degree of minority business enterprise participation based,
32 in part, on the factors set forth in § 14–302(a)(3)(ii) of this subtitle;

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

1 **(4)** A REQUIREMENT THAT WITHIN 10 DAYS AFTER NOTICE FROM THE
2 ~~STATE OF~~ PRIME CONTRACTOR OF THE STATE'S INTENT TO AWARD A CONTRACT,
3 EACH MINORITY BUSINESS ENTERPRISE SERVING AS A SUBCONTRACTOR ON THE
4 CONTRACT COMPLETE A DOCUMENT SETTING FORTH THE PERCENTAGE AND TYPE OF
5 ~~WORK IT WILL PERFORM~~ ASSIGNED TO THE SUBCONTRACTOR UNDER THE CONTRACT
6 AND SUBMIT COPIES OF THE COMPLETED FORM TO BOTH THE PROCUREMENT
7 OFFICER AND THE CONTRACTOR;

8 **[(4)] (5)** 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)] (6)** a requirement that all contracts containing minority business
12 enterprise participation goals shall contain a liquidated damages provision that applies in
13 the event that the contractor fails to comply in good faith with the provisions of this subtitle
14 or the pertinent terms of the applicable contract;

15 **[(6)] (7)** a requirement that the unit provide a current list of certified
16 minority business enterprises to each prospective contractor;

17 **[(7)] (8)** provisions to ensure the uniformity of requests for bids on
18 subcontracts;

19 **[(8)] (9)** provisions relating to the timing of requests for bids on
20 subcontracts and of submission of bids on subcontracts;

21 **[(9)] (10)** provisions designed to ensure that a fiscal disadvantage to the
22 State does not result from an inadequate response by minority business enterprises to a
23 request for bids;

24 **[(10)] (11)** 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)] (12)** consistent with § 14-302(a)(9) of this subtitle, provisions relating
28 to any circumstances under which a unit may waive obligations of the contractor relating to
29 minority business enterprise participation;

30 **[(12)] (13)** provisions requiring a monthly submission to the unit by minority
31 business enterprises acknowledging all payments received in the preceding 30 days under a
32 contract governed by this subtitle;

33 **[(13)] (14)** a requirement that a unit shall verify and maintain data
34 concerning payments received by minority business enterprises, including a requirement
35 that, upon completion of a project, the unit shall compare the total dollar value actually

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

3 [(14)] (15) a requirement that a unit verify that minority business
4 enterprises listed in a successful bid are actually participating to the extent listed in the
5 project for which the bid was submitted;

6 [(15)] (16) provisions establishing a graduation program based on the
7 financial viability of the minority business enterprise, using annual gross receipts or other
8 economic indicators as may be determined by the Board;

9 [(16)] (17) a requirement that a bid or proposal based on a solicitation with
10 an expected degree of minority business enterprise participation identify the specific
11 commitment of certified minority business enterprises at the time of submission;

12 [(17)] (18) provisions promoting and providing for the counting and reporting
13 of certified minority business enterprises as prime contractors;

14 [(18)] (19) provisions establishing standards to require a minority business
15 enterprise to perform a commercially useful function on a contract;

16 [(19)] (20) a requirement that each unit work with the Governor's Office of
17 Minority Affairs to designate certain procurements as being excluded from the requirements
18 of § 14-302(a) of this subtitle; and

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

22 (c) The regulations adopted under this section shall specify that a unit may not
23 allow a business to participate as if it were a certified minority business enterprise if the
24 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 [2017] ~~2018~~ 2022.

29 **Chapter 154 of the Acts of 2012, as amended by Chapters 200 and 201 of the Acts**
30 **of 2013**

31 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency, in
32 consultation with the General Assembly and the Office of the Attorney General, shall initiate
33 a study of the Minority Business Enterprise Program to evaluate the Program's continued
34 compliance with the requirements of the Croson decision and any subsequent federal or

1 constitutional requirements. In preparation for the study, the Board of Public Works may
 2 adopt regulations authorizing a unit of State government to require bidders and offerors to
 3 submit information necessary for the conduct of the study. The Board of Public Works may
 4 designate that certain information received in accordance with regulations adopted under
 5 this section shall be confidential. Notwithstanding that certain information may be
 6 designated by the Board of Public Works as confidential, the Certification Agency may
 7 provide the information to any person that is under contract with the Certification Agency
 8 to assist in conducting the study. The study shall also evaluate race-neutral programs and
 9 other methods that can be used to address the needs of minority businesses. The final report
 10 on the study shall be submitted to the Legislative Policy Committee of the General Assembly,
 11 in accordance with § 2-1246 of the State Government Article, before September 30, [2016]
 12 ~~2017~~ **2021**, so that the General Assembly may review the report before the [2017] ~~2018~~
 13 **2022** Session.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
 15 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.