

SENATE BILL 309

P2

EMERGENCY BILL
ENROLLED BILL

(71r0183)

— *Education, Health, and Environmental Affairs/Health and Government Operations* —
Introduced by **The President (By Request – Administration) and Senators Hershey, Norman, and Salling**

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 **State Finance and Procurement – Small and Minority Business Participation**

3 FOR the purpose of *incorporating certain findings and evidence associated with a certain*
4 *Minority Business Enterprise Program; requiring that approved applicants for*
5 *certain wind projects comply with the Minority Business Enterprise Program to a*
6 *certain extent; requiring the Governor's Office of Minority Affairs, in consultation*
7 *with the Office of the Attorney General and a certain approved applicant, to establish*
8 *a certain plan; requiring a certain approved applicant to submit a certain progress*
9 *report to the Public Service Commission under certain circumstances; clarifying what*
10 *constitutes good cause for the purpose of removal of a certified minority business*
11 *enterprise after the execution of a contract; prohibiting the failure of a certified*
12 *minority business to provide a certain bond from being considered nonperformance;*
13 *authorizing a certain unit to apply a certain percentage of certain costs toward*
14 *achieving certain goals under certain circumstances; authorizing a certain unit to*

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 apply the total amount of certain fees or commissions toward certain goals under
 2 certain circumstances; prohibiting a certain unit from applying any portion of certain
 3 costs toward certain goals; repealing the definition of “designated procurement unit”
 4 in the Small Business Reserve Program; altering a requirement that certain units
 5 structure certain procurement procedures to achieve a certain minimum percentage
 6 of the unit’s total dollar value of certain contracts to be made directly to small
 7 businesses; providing that a certain unit may apply only certain payments toward
 8 its overall annual Small Business Reserve payment; requiring the Special Secretary
 9 of Minority Affairs, in consultation with the Attorney General, to establish certain
 10 standards and guidelines at a certain regular interval; defining a certain term;
 11 making conforming changes; requiring a certain certification agency to initiate a
 12 certain analysis and report to a certain committee of the General Assembly on or
 13 before a certain date; making this Act an emergency measure; providing for the
 14 effective date of certain provisions of this Act; providing for the termination of certain
 15 provisions of this Act; and generally relating to small and minority business
 16 participation in State procurement.

17 BY adding to

18 Article – Public Utilities

19 Section 7–704.1(e)(3)

20 Annotated Code of Maryland

21 (2010 Replacement Volume and 2016 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article – State Finance and Procurement

24 Section 14–302 and 14–502 through 14–505

25 Annotated Code of Maryland

26 (2015 Replacement Volume and 2016 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article – State Finance and Procurement

29 Section 14–501

30 Annotated Code of Maryland

31 (2015 Replacement Volume and 2016 Supplement)

32 (As enacted by Chapter 8 of the Acts of the General Assembly of 2016)

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

34 That the Laws of Maryland read as follows:

35 Article – Public Utilities

36 7–704.1.

37 (e) (3) (1) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL
 38 ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE

1 PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND
 2 PROCUREMENT ARTICLE ARE INCORPORATED IN THIS PARAGRAPH.

3 (II) TO THE EXTENT PRACTICABLE AND AUTHORIZED BY THE
 4 UNITED STATES CONSTITUTION, APPROVED APPLICANTS FOR A PROPOSED
 5 OFFSHORE WIND PROJECT SHALL COMPLY WITH THE STATE'S MINORITY BUSINESS
 6 ENTERPRISE PROGRAM.

7 (III) 1. ON OR BEFORE 6 MONTHS AFTER THE ISSUANCE OF
 8 AN ORDER APPROVING AN OREC APPLICATION, THE GOVERNOR'S OFFICE OF
 9 MINORITY AFFAIRS, IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY
 10 GENERAL AND AN APPROVED APPLICANT, SHALL ESTABLISH A CLEAR PLAN FOR
 11 SETTING REASONABLE AND APPROPRIATE MINORITY BUSINESS ENTERPRISE
 12 PARTICIPATION GOALS AND PROCEDURES FOR EACH PHASE OF THE QUALIFIED
 13 OFFSHORE WIND PROJECT.

14 2. TO THE EXTENT PRACTICABLE, THE GOALS AND
 15 PROCEDURES SPECIFIED IN SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH SHALL
 16 BE BASED ON THE REQUIREMENTS OF TITLE 14, SUBTITLE 3 OF THE STATE FINANCE
 17 AND PROCUREMENT ARTICLE AND THE REGULATIONS IMPLEMENTING THAT
 18 SUBTITLE.

19 3. EVERY 6 MONTHS FOLLOWING THE ISSUANCE OF AN
 20 ORDER APPROVING AN OREC APPLICATION, AN APPROVED APPLICANT SHALL
 21 SUBMIT A REPORT ON ITS PROGRESS ESTABLISHING AND IMPLEMENTING MINORITY
 22 BUSINESS ENTERPRISE PARTICIPATION GOALS AND PROCEDURES TO THE
 23 COMMISSION.

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
 25 as follows:

26 Article – State Finance and Procurement

27 14–302.

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

32 2. Notwithstanding subsubparagraph 1 of this
 33 subparagraph, the following contracts may not be counted as part of a unit's total dollar
 34 value of procurement contracts:

- 1 A. a procurement contract awarded in accordance with
2 Subtitle 1 of this title;
- 3 B. a procurement contract awarded to a not-for-profit entity
4 in accordance with requirements mandated by State or federal law; and
- 5 C. a procurement by the Maryland Developmental
6 Disabilities Administration of the Department of Health and Mental Hygiene for family
7 and individual support services, community residential services, resource coordination
8 services, behavioral support services, vocational and day services, and respite services, as
9 those terms are defined in regulations adopted by the Department of Health and Mental
10 Hygiene.
- 11 (ii) 1. The overall percentage goal shall be established on a
12 biennial basis by the Special Secretary of Minority Affairs, in consultation with the
13 Secretary of Transportation and the Attorney General.
- 14 2. During any year in which there is a delay in establishing
15 the overall goal, the previous year's goal will apply.
- 16 (iii) 1. In consultation with the Secretary of Transportation and
17 the Attorney General, the Special Secretary of Minority Affairs shall establish guidelines
18 on a biennial basis for each unit to consider while determining whether to set subgoals for
19 the minority groups listed in § 14-301(k)(1)(i)1, 2, 3, 4, and 6 of this subtitle.
- 20 2. During any year in which there is a delay in establishing
21 the subgoal guidelines, the previous year's subgoal guidelines will apply.
- 22 (iv) 1. The Special Secretary of Minority Affairs, in consultation
23 with the Secretary of Transportation and the Attorney General, shall establish goals and
24 subgoal guidelines that, to the maximum extent feasible, approximate the level of minority
25 business enterprise participation that would be expected in the absence of discrimination.
- 26 2. In establishing overall goals and subgoal guidelines, the
27 Special Secretary of Minority Affairs shall provide for public participation by consulting
28 with minority, women's, and general contractor groups, community organizations, and
29 other officials or organizations that could be expected to have information concerning:
- 30 A. the availability of minority- and women-owned
31 businesses;
- 32 B. the effects of discrimination on opportunities for
33 minority- and women-owned businesses; and
- 34 C. the State's operation of the Minority Business Enterprise
35 Program.

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

3 1. the relative availability of minority– and women–owned
4 businesses to participate in State procurement as demonstrated by the State’s most recent
5 disparity study;

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

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

9 (vi) Notwithstanding § 12–101 of this article, the Special Secretary
10 of Minority Affairs shall adopt regulations in accordance with Title 10, Subtitle 1 of the
11 State Government Article setting forth the State’s overall goal.

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

17 (3) Each unit shall:

18 (i) consider the practical severability of all contracts and, in
19 accordance with § 11–201 of this article, may not bundle contracts;

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

23 1. the potential subcontract opportunities available in the
24 prime procurement contract;

25 2. the availability of certified minority business enterprises
26 to respond competitively to the potential subcontract opportunities;

27 3. the contract goal guidelines established under paragraph
28 (2) of this subsection;

29 4. the subgoal guidelines established under paragraph (1)(iii)
30 of this subsection; and

31 5. other factors that contribute to constitutional goal setting;

32 (iii) monitor and collect data with respect to prime contractor
33 compliance with contract goals; and

1 (iv) institute corrective action when prime contractors do not make
2 good-faith efforts to comply with contract goals.

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

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

6 (ii) fails to incorporate the analysis outlined in paragraph (3)(ii) of
7 this subsection.

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

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

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

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

20 (i) identify specific work categories appropriate for subcontracting;

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

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

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

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

29 (iv) offer to provide reasonable assistance to minority business
30 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 scheduled
3 by the unit; and

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

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

18 2. A waiver of any part of the minority business enterprise
19 goals for a contract shall be granted if a contractor provides a reasonable demonstration of
20 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 contractor
23 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 this
25 subsection relating to the establishment, use, and waiver of contract goals for a sole source,
26 expedited, or emergency procurement in which the public interest cannot reasonably
27 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 shall
30 issue the determination in writing.

31 2. The head of the unit shall:

32 A. keep one copy of the waiver determination and the reasons
33 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 directly
2 to the Board of Public Works and the Governor's Office of Minority Affairs an annual report
3 of waivers requested and waivers granted under this paragraph.

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

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

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

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

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

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

28 (iii) A minority business enterprise participation schedule may not
29 be amended unless:

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

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

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

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

5 (iii) 1. A. ~~FOR~~ EXCEPT AS PROVIDED IN
6 SUBSUBSUBPARAGRAPH B OF THIS SUBSUBPARAGRAPH, FOR PURPOSES OF THIS
7 SUBPARAGRAPH, GOOD CAUSE FOR REMOVAL OF A CERTIFIED MINORITY BUSINESS
8 ENTERPRISE AFTER CONTRACT EXECUTION INCLUDES DOCUMENTED
9 NONPERFORMANCE BY THE MINORITY BUSINESS ENTERPRISE OR ELECTION BY THE
10 CERTIFIED MINORITY BUSINESS ENTERPRISE TO CEASE WORK ON THE CONTRACT.

11 B. FAILURE OF A CERTIFIED MINORITY BUSINESS
12 ENTERPRISE TO PROVIDE A BOND REQUESTED BY A CONTRACTOR IN VIOLATION OF
13 § 13-227 OF THIS ARTICLE MAY NOT BE CONSIDERED NONPERFORMANCE BY THE
14 MINORITY BUSINESS ENTERPRISE.

15 [1.] 2. A contractor may not terminate or otherwise cancel
16 the contract of a certified minority business enterprise subcontractor listed in the minority
17 business enterprise participation schedule without showing good cause and obtaining the
18 prior written consent of the minority business enterprise liaison and approval of the head
19 of the unit.

20 [2.] 3. The unit shall send a copy of the written consent
21 obtained under subparagraph [1] 2 of this subparagraph to the Governor's Office of
22 Minority Affairs.

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

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

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

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

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

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

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

12 (14) (I) FOR PURPOSES OF THIS PARAGRAPH AND PARAGRAPH (15)
13 OF THIS SUBSECTION, "REGULAR DEALER":

14 1. MEANS A FIRM THAT OWNS, OPERATES, OR MAINTAINS
15 A STORE, A WAREHOUSE, OR ANY OTHER ESTABLISHMENT IN WHICH THE
16 MATERIALS, SUPPLIES, ARTICLES, OR EQUIPMENT ARE OF THE GENERAL
17 CHARACTER DESCRIBED BY THE SPECIFICATIONS REQUIRED UNDER THE CONTRACT
18 AND ARE BOUGHT, KEPT IN STOCK, OR REGULARLY SOLD OR LEASED TO THE PUBLIC
19 IN THE USUAL COURSE OF BUSINESS; AND

20 2. DOES NOT INCLUDE A PACKAGER, A BROKER, A
21 MANUFACTURER'S REPRESENTATIVE, OR ANY OTHER PERSON THAT ARRANGES OR
22 EXPEDITES TRANSACTIONS.

23 (II) A UNIT MAY APPLY ONLY 60% OF THE COSTS OF THE
24 MATERIALS AND SUPPLIES PROVIDED BY THE CERTIFIED MINORITY BUSINESS
25 ENTERPRISE IF THE CERTIFIED MINORITY BUSINESS ENTERPRISE IS A REGULAR
26 DEALER FOR PURPOSES OF ACHIEVING THE MINORITY BUSINESS ENTERPRISE
27 CONTRACT GOAL.

28 (15) (I) WITH RESPECT TO MATERIALS OR SUPPLIES PURCHASED
29 FROM A CERTIFIED MINORITY BUSINESS ENTERPRISE THAT IS NEITHER A
30 MANUFACTURER NOR A REGULAR DEALER, A UNIT MAY APPLY THE ENTIRE AMOUNT
31 OF FEES OR COMMISSIONS CHARGED FOR ASSISTANCE IN THE PROCUREMENT OF
32 THE MATERIALS AND SUPPLIES, FEES, OR TRANSPORTATION CHARGES FOR THE
33 DELIVERY OF MATERIALS AND SUPPLIES REQUIRED ON A PROCUREMENT TOWARD
34 MINORITY BUSINESS ENTERPRISE CONTRACT GOALS, PROVIDED A UNIT
35 DETERMINES THE FEES TO BE REASONABLE AND NOT EXCESSIVE AS COMPARED
36 WITH FEES CUSTOMARILY ALLOWED FOR SIMILAR SERVICES.

1 **(II) A UNIT MAY NOT APPLY ANY PORTION OF THE COSTS OF THE**
2 **MATERIALS AND SUPPLIES TOWARD MINORITY BUSINESS ENTERPRISE GOALS.**

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

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

8 14–501.

9 (a) In this subtitle the following words have the meanings indicated.

10 (b) [“Designated procurement unit” means:

11 (1) the State Treasurer;

12 (2) the Department of Information Technology;

13 (3) the Department of Commerce;

14 (4) the Department of the Environment;

15 (5) the Department of General Services;

16 (6) the Department of Health and Mental Hygiene;

17 (7) the Department of Housing and Community Development;

18 (8) the Department of Human Resources;

19 (9) the Department of Juvenile Services;

20 (10) the Department of Labor, Licensing, and Regulation;

21 (11) the Department of Natural Resources;

22 (12) the State Department of Education;

23 (13) the Department of State Police;

24 (14) the Department of Public Safety and Correctional Services;

25 (15) the Department of Transportation;

- 1 (16) the University System of Maryland;
- 2 (17) the Maryland Port Commission;
- 3 (18) the State Retirement Agency;
- 4 (19) the Maryland Insurance Administration;
- 5 (20) the Maryland Stadium Authority;
- 6 (21) the State Lottery and Gaming Control Agency;
- 7 (22) the Morgan State University; and
- 8 (23) the Maryland Transportation Authority.

9 (c)] “Small business” means:

- 10 (1) a certified minority business enterprise, as defined in § 14–301 of this
11 title, that meets the criteria specified under item (2) of this subsection; or
- 12 (2) a business, other than a broker, that meets the following criteria:
- 13 (i) the business is independently owned and operated;
- 14 (ii) the business is not a subsidiary of another business;
- 15 (iii) the business is not dominant in its field of operation; and
- 16 (iv) 1. A. the wholesale operations of the business did not
17 employ more than 50 persons in its most recently completed 3 fiscal years;
- 18 B. the retail operations of the business did not employ more
19 than 25 persons in its most recently completed 3 fiscal years;
- 20 C. the manufacturing operations of the business did not
21 employ more than 100 persons in its most recently completed 3 fiscal years;
- 22 D. the service operations of the business did not employ more
23 than 100 persons in its most recently completed 3 fiscal years;
- 24 E. the construction operations of the business did not employ
25 more than 50 persons in its most recently completed 3 fiscal years; and
- 26 F. the architectural and engineering services of the business
27 did not employ more than 100 persons in its most recently completed 3 fiscal years; or

1 2. A. the gross sales of the wholesale operations of the
2 business did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal
3 years;

4 B. the gross sales of the retail operations of the business did
5 not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;

6 C. the gross sales of the manufacturing operations of the
7 business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal
8 years;

9 D. the gross sales of the service operations of the business did
10 not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;

11 E. the gross sales of the construction operations of the
12 business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal
13 years; and

14 F. the gross sales of the architectural and engineering
15 services of the business did not exceed an average of \$4,500,000 in its most recently
16 completed 3 fiscal years.

17 [(d)] (C) “Small business reserve” means those procurements that are limited to
18 responses from small businesses under § 14–502(b) of this subtitle.

19 14–502.

20 (a) Except as provided in subsection (d) of this section, this subtitle applies to all
21 procurements by a [designated procurement] unit.

22 (b) This subsection does not apply to procurements subject to Subtitle 1 of this
23 title.

24 (c) [A designated procurement] **TO THE EXTENT PRACTICABLE, A** unit shall
25 structure its procurement procedures to achieve a minimum of [10%] **15%** of the unit’s
26 total dollar value of goods, supplies, services, maintenance, construction,
27 construction–related services, and architectural and engineering service contracts to be
28 made directly to small businesses.

29 (d) The total dollar value of procurements by a [designated procurement] unit
30 does not include the value of contracts to which this section does not apply because of a
31 conflict with federal law.

32 **(E) A UNIT MAY APPLY TOWARD THE UNIT’S OVERALL ANNUAL SMALL**
33 **BUSINESS RESERVE PAYMENT ACHIEVEMENT ONLY THOSE PAYMENTS RESULTING**

1 FROM A PROCUREMENT THAT IS DESIGNATED A SMALL BUSINESS RESERVE
2 PROCUREMENT.

3 (F) THE SPECIAL SECRETARY OF MINORITY AFFAIRS, IN CONSULTATION
4 WITH THE ATTORNEY GENERAL, SHALL ESTABLISH STANDARDS AND GUIDELINES
5 FOR PARTICIPATION IN THE SMALL BUSINESS RESERVE PROGRAM EVERY 5 YEARS.

6 14–503.

7 (a) The Governor’s Office of Minority Affairs shall adopt regulations to establish
8 procedures for compiling and maintaining a comprehensive bidder’s list of qualified small
9 businesses that shall be posted on the Internet.

10 (b) The Governor’s Office of Minority Affairs shall:

11 (1) establish guidelines for Small Business Reserve Program
12 administration;

13 (2) ensure agency compliance with the Small Business Reserve Program;

14 (3) provide training and technical assistance to agency personnel; and

15 (4) collect data regarding the State’s utilization of small business reserve
16 vendors.

17 (c) Each [designated procurement] unit shall ensure compliance with the
18 regulations set forth in subsection (a) of this section.

19 14–504.

20 (a) Any procurement by a [designated procurement] unit of goods, supplies,
21 services, maintenance, construction, construction–related services, architectural services,
22 and engineering services shall be eligible for designation for the small business reserve.

23 (b) A solicitation for procurement that has been designated for a small business
24 reserve shall be published in the same manner as required for an invitation for bids as set
25 forth in § 13–103(c) of this article.

26 (c) The procurement officer of a [designated procurement] unit shall award a
27 procurement contract designated for a small business reserve to the small business that
28 submits a responsive bid that:

29 (1) is the lowest bid price;

30 (2) if the invitation for bids so provides, is the lowest evaluated bid price;

31 or

1 (3) is the bid or proposal most favorable to the State within the small
2 business reserve.

3 14-505.

4 (a) Within 60 days after the enactment of the budget bill by the General
5 Assembly, each [designated procurement] unit shall submit a report to the Governor's
6 Office of Minority Affairs that complies with the reporting requirements set forth in
7 COMAR 21.11.01.06.

8 (b) (1) Within 90 days after the end of each fiscal year, each unit shall submit
9 a report to the Governor's Office of Minority Affairs that complies with the requirements of
10 paragraph (2) of this subsection.

11 (2) For the preceding fiscal year, the report shall:

12 (i) state the total number and the dollar value of payments the unit
13 made to small businesses under designated small business reserve contracts;

14 (ii) state the total number and the dollar value of payments the unit
15 made to small businesses under nondesignated small business reserve contracts, including
16 purchase card procurements;

17 (iii) state the total dollar value of payments the unit made under
18 procurement contracts; and

19 (iv) contain other such information as required by the Governor's
20 Office of Minority Affairs.

21 (c) On or before December 31 of each year, the Governor's Office of Minority
22 Affairs shall submit to the Board of Public Works and, subject to § 2-1246 of the State
23 Government Article, to the Legislative Policy Committee a report summarizing the
24 information the Office receives under subsection (b) of this section.

25 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
26 ~~October 1, 2017.~~

27 SECTION 3. AND BE IT FURTHER ENACTED, That the Certification Agency
28 designated by the Board of Public Works under § 14-303(b) of the State Finance and
29 Procurement Article to certify and decertify minority business enterprises, in consultation
30 with the Office of the Attorney General and the Maryland Public Service Commission, shall
31 initiate an analysis of the disparity study entitled "Business Disparities in the Maryland
32 Market Area" published on February 8, 2017, to determine if it applies to the type of work
33 that will likely be performed by an approved applicant with respect to an offshore wind
34 project under § 7-704.1 of the Public Utilities Article and submit a report on the analysis to

1 the Legislative Policy Committee of the General Assembly, in accordance with § 2-1246 of
2 the State Government Article, before December 1, 2017.

3 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
4 effect October 1, 2017.

5 SECTION 5. AND BE IT FURTHER ENACTED, That this Act is an emergency
6 measure, is necessary for the immediate preservation of the public health or safety, has been
7 passed by a yea and nay vote supported by three-fifths of all the members elected to each of
8 the two Houses of the General Assembly, and, except as provided in Section 4 of this Act,
9 shall take effect from the date it is enacted. Sections 1 and 3 of this Act shall remain effective
10 through June 30, 2018, and, at the end of June 30, 2018, with no further action required by
11 the General Assembly, Sections 1 and 3 of this Act shall be abrogated and of no further force
12 and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.