

HOUSE BILL 1279

L5, P2

9lr0621

By: **Montgomery County Delegation and Prince George's County Delegation**

Introduced and read first time: February 8, 2019

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland–National Capital Park and Planning Commission – Procurement –**
3 **Source Selection**

4 **MC/PG 112–19**

5 FOR the purpose of requiring the Maryland–National Capital Park and Planning
6 Commission to adopt certain procurement regulations relating to source selection;
7 authorizing the Commission to adopt certain regulations establishing a minority
8 business enterprise program under certain circumstances; authorizing the
9 Commission to adopt certain regulations establishing a local small business
10 enterprise program; requiring the Commission to report each year to certain persons
11 on the effectiveness of certain programs; repealing certain provisions relating to a
12 minority business enterprise program in the Commission on a certain date; requiring
13 the Special Secretary for the Office of Small, Minority, and Women Business Affairs
14 and the Secretary of Transportation to ensure that the Commission is provided with
15 certain technical assistance to implement this Act; authorizing the governing bodies
16 of Montgomery County and Prince George's County to provide certain funding for
17 the implementation of this Act in a certain manner; defining certain terms; providing
18 for a delayed effective date for certain provisions of this Act; and generally relating
19 to procurement activities of the Maryland–National Capital Park and Planning
20 Commission.

21 BY adding to

22 Article – Land Use

23 Section 15–201 through 15–205 to be under the new subtitle “Subtitle 2.
24 Procurement”

25 Annotated Code of Maryland

26 (2012 Volume and 2018 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article – Land Use

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15–201 and 15–205
2 Annotated Code of Maryland
3 (2012 Volume and 2018 Supplement)
4 (As enacted by Section 1 of this Act)

5 BY repealing and reenacting, without amendments,
6 Article – Land Use
7 Section 15–202 and 15–204
8 Annotated Code of Maryland
9 (2012 Volume and 2018 Supplement)
10 (As enacted by Section 1 of this Act)

11 BY repealing
12 Article – Land Use
13 Section 15–203
14 Annotated Code of Maryland
15 (2012 Volume and 2018 Supplement)
16 (As enacted by Section 1 of this Act)

17 Preamble

18 WHEREAS, As provided by Chapter 340 of the Acts of the General Assembly of 2017,
19 the General Assembly has received and reviewed the disparity study entitled “Business
20 Disparities in the Maryland Market Area”, published February 8, 2017; and

21 WHEREAS, Based on a review of the disparity study, the General Assembly found
22 that there are substantial adverse disparities that are consistent with discrimination
23 against businesses owned by minorities and women; and

24 WHEREAS, The General Assembly finds that the elimination of discrimination
25 against businesses owned by minorities and women is of paramount importance to the
26 future welfare of the State; and

27 WHEREAS, The State of Maryland wishes to provide all of its citizens with equal
28 access to business formation and growth opportunities; and

29 WHEREAS, The Maryland–National Capital Park and Planning Commission is an
30 independent bicounty agency of the State that procures goods and services within a
31 geographical marketplace of particular interest to the State; and

32 WHEREAS, The Commission has reported that utilization of businesses owned by
33 minorities and women declined after it ceased operating a minority business enterprise
34 program on the abrogation of the authority provided under Chapter 256 of the Acts of the
35 General Assembly of 1995; and

36 WHEREAS, The General Assembly desires for the Commission to assess, based on
37 the disparity study and other legally relevant data, whether the Commission has

1 underutilized minority business enterprises relative to their availability to perform work
2 in the procurement categories in which the State does business; and

3 WHEREAS, Subject to the Commission's determination that such a legally
4 significant disparity or underutilization exists, the General Assembly desires to authorize
5 the Commission to adopt and implement a minority business enterprise procurement
6 program to augment the efforts of the State under Chapter 340 of the Acts of the General
7 Assembly of 2017; and

8 WHEREAS, The General Assembly further desires to authorize the Commission to
9 implement a local small business enterprise program as a method of enhancing the
10 participation of employers that are based locally within Montgomery County and Prince
11 George's County; now, therefore,

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

14 **Article – Land Use**

15 **SUBTITLE 2. PROCUREMENT.**

16 **15–201.**

17 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
18 **INDICATED.**

19 **(B) “CERTIFICATION” MEANS THE DETERMINATION THAT A LEGAL ENTITY**
20 **IS A MINORITY BUSINESS ENTERPRISE UNDER TITLE 14, SUBTITLE 3 OF THE STATE**
21 **FINANCE AND PROCUREMENT ARTICLE.**

22 **(C) “CERTIFICATION AGENCY” MEANS THE AGENCY DESIGNATED BY THE**
23 **BOARD OF PUBLIC WORKS UNDER § 14–303(B) OF THE STATE FINANCE AND**
24 **PROCUREMENT ARTICLE TO CERTIFY AND DECERTIFY MINORITY BUSINESS**
25 **ENTERPRISES.**

26 **(D) “CERTIFIED MINORITY BUSINESS ENTERPRISE” MEANS A MINORITY**
27 **BUSINESS ENTERPRISE THAT HOLDS A VALID CERTIFICATION ISSUED BY THE**
28 **CERTIFICATION AGENCY.**

29 **(E) “LOCAL SMALL BUSINESS ENTERPRISE” MEANS A BUSINESS**
30 **ENTERPRISE THAT:**

31 **(1) HAS ITS PRINCIPAL PLACE OF OPERATION IN MONTGOMERY**
32 **COUNTY OR PRINCE GEORGE’S COUNTY; AND**

1 **(2) HAS BEEN CERTIFIED AS A SMALL BUSINESS ENTERPRISE BY A**
2 **UNIT OF COUNTY GOVERNMENT THAT HAS JURISDICTION OVER PROCUREMENT IN**
3 **MONTGOMERY COUNTY OR PRINCE GEORGE’S COUNTY.**

4 **(F) “MINORITY BUSINESS ENTERPRISE” HAS THE SAME MEANING AS**
5 **PROVIDED IN § 14-301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

6 **(G) “STUDY” MEANS THE DISPARITY STUDY COMMISSIONED BY THE**
7 **GENERAL ASSEMBLY OF MARYLAND ENTITLED “BUSINESS DISPARITIES IN THE**
8 **MARYLAND MARKET AREA” PUBLISHED ON FEBRUARY 8, 2017.**

9 **15-202.**

10 **THE COMMISSION SHALL ADOPT PROCUREMENT REGULATIONS CONSISTENT**
11 **WITH THE STANDARDS AND METHODS FOR SOURCE SELECTION PROVIDED IN TITLE**
12 **13, SUBTITLE 1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

13 **15-203.**

14 **(A) THE PROCUREMENT REGULATIONS ADOPTED IN ACCORDANCE WITH §**
15 **15-202 OF THIS SUBTITLE MAY INCLUDE A MINORITY BUSINESS ENTERPRISE**
16 **PROGRAM IF THE COMMISSION DETERMINES, BASED ON THE STUDY AND OTHER**
17 **LEGALLY RELEVANT DATA, THAT THE COMMISSION HAS UNDERUTILIZED MINORITY**
18 **BUSINESS ENTERPRISES RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN**
19 **THE PROCUREMENT CATEGORIES IN WHICH THE STATE DOES BUSINESS, INCLUDING**
20 **GOODS, SERVICES, AND CONSTRUCTION.**

21 **(B) THE REGULATIONS TO ESTABLISH A MINORITY BUSINESS ENTERPRISE**
22 **PROGRAM MAY INCLUDE:**

23 **(1) PROCEDURES TO BE FOLLOWED BY STAFF, PROSPECTIVE**
24 **CONTRACTORS, AND SUCCESSFUL BIDDERS OR OFFERORS TO MAXIMIZE NOTICE TO,**
25 **AND THE OPPORTUNITY TO PARTICIPATE IN THE PROCUREMENT PROCESS BY, A**
26 **BROAD RANGE OF MINORITY BUSINESS ENTERPRISES;**

27 **(2) PROVISIONS TO EXTEND REASONABLE COMPETITIVE**
28 **PREFERENCES FOR CERTIFIED MINORITY BUSINESS ENTERPRISES OR GOALS FOR**
29 **UTILIZATION OF CERTIFIED MINORITY BUSINESS ENTERPRISES IN PARTICULAR**
30 **PROCUREMENT ACTIVITIES UNDER APPROPRIATE CIRCUMSTANCES; AND**

31 **(3) TO THE EXTENT APPLICABLE TO COMMISSION PROCUREMENT**
32 **ACTIVITIES, PROVISIONS COMPARABLE IN PURPOSE AND EFFECT TO ANY**
33 **REGULATIONS ADOPTED BY THE STATE IN ACCORDANCE WITH § 14-303 OF THE**

1 STATE FINANCE AND PROCUREMENT ARTICLE.

2 15-204.

3 (A) THE COMMISSION'S PROCUREMENT REGULATIONS MAY ESTABLISH A
4 LOCAL SMALL BUSINESS ENTERPRISE PROGRAM TO ENCOURAGE LOCAL SMALL
5 BUSINESS ENTERPRISE PARTICIPATION IN APPROPRIATE PROCUREMENT
6 ACTIVITIES.

7 (B) THE REGULATIONS ADOPTED IN ACCORDANCE WITH THIS SECTION MAY
8 INCLUDE:

9 (1) PROCEDURES FOR RELIABLE DOCUMENTATION OF A BUSINESS
10 ENTITY'S OFFICIAL DESIGNATION BY MONTGOMERY COUNTY OR PRINCE GEORGE'S
11 COUNTY AS A LOCAL SMALL BUSINESS ENTERPRISE;

12 (2) PROCEDURES TO BE FOLLOWED BY STAFF, PROSPECTIVE
13 CONTRACTORS, AND SUCCESSFUL BIDDERS OR OFFERORS TO MAXIMIZE NOTICE TO,
14 AND THE OPPORTUNITY TO PARTICIPATE IN THE PROCUREMENT PROCESS BY, A
15 BROAD RANGE OF LOCAL SMALL BUSINESS ENTERPRISES; AND

16 (3) PROVISIONS TO:

17 (I) EXTEND REASONABLE COMPETITIVE PREFERENCES FOR
18 LOCAL SMALL BUSINESS ENTERPRISES;

19 (II) ESTABLISH PROCUREMENT GOALS OF UTILIZATION OF
20 LOCAL SMALL BUSINESS ENTERPRISES; AND

21 (III) RESERVE PARTICULAR PROCUREMENT ACTIVITIES FOR
22 LOCAL SMALL BUSINESS ENTERPRISES UNDER APPROPRIATE CIRCUMSTANCES.

23 15-205.

24 ON OR BEFORE OCTOBER 31 EACH YEAR, THE COMMISSION SHALL REPORT
25 TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY DELEGATIONS TO
26 THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE
27 GOVERNMENT ARTICLE, ON THE EFFECTIVENESS OF ANY MINORITY BUSINESS
28 ENTERPRISE PROGRAM OR LOCAL SMALL BUSINESS ENTERPRISE PROGRAM
29 ESTABLISHED UNDER THIS SUBTITLE.

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

1

Article – Land Use

2 15–201.

3 [(a)] In this [subtitle the following words have the meanings indicated.

4 (b) “Certification” means the determination that a legal entity is a minority
5 business enterprise under Title 14, Subtitle 3 of the State Finance and Procurement Article.6 (c) “Certification agency” means the agency designated by the Board of Public
7 Works under § 14–303(b) of the State Finance and Procurement Article to certify and
8 decertify minority business enterprises.9 (d) “Certified minority business enterprise” means a minority business enterprise
10 that holds a valid certification issued by the certification agency.11 (e) “Local] **SUBTITLE, “LOCAL** small business enterprise” means a business
12 enterprise that:13 (1) has its principal place of operation in Montgomery County or Prince
14 George’s County; and15 (2) has been certified as a small business enterprise by a unit of county
16 government that has jurisdiction over procurement in Montgomery County or Prince
17 George’s County.18 [(f) “Minority business enterprise” has the same meaning as provided in § 14–301
19 of the State Finance and Procurement Article.20 (g) “Study” means the disparity study commissioned by the General Assembly of
21 Maryland entitled “Business Disparities in the Maryland Market Area” published on
22 February 8, 2017.]

23 15–202.

24 The Commission shall adopt procurement regulations consistent with the standards
25 and methods for source selection provided in Title 13, Subtitle 1 of the State Finance and
26 Procurement Article.

27 [15–203.

28 (a) The procurement regulations adopted in accordance with § 15–202 of this
29 subtitle may include a minority business enterprise program if the Commission determines,
30 based on the study and other legally relevant data, that the Commission has underutilized
31 minority business enterprises relative to their availability to perform work in the
32 procurement categories in which the State does business, including goods, services, and
33 construction.

1 (b) The regulations to establish a minority business enterprise program may
2 include:

3 (1) procedures to be followed by staff, prospective contractors, and
4 successful bidders or offerors to maximize notice to, and the opportunity to participate in
5 the procurement process by, a broad range of minority business enterprises;

6 (2) provisions to extend reasonable competitive preferences for certified
7 minority business enterprises or goals for utilization of certified minority business
8 enterprises in particular procurement activities under appropriate circumstances; and

9 (3) to the extent applicable to Commission procurement activities,
10 provisions comparable in purpose and effect to any regulations adopted by the State in
11 accordance with § 14-303 of the State Finance and Procurement Article.]

12 15-204.

13 (a) The Commission's procurement regulations may establish a local small
14 business enterprise program to encourage local small business enterprise participation in
15 appropriate procurement activities.

16 (b) The regulations adopted in accordance with this section may include:

17 (1) procedures for reliable documentation of a business entity's official
18 designation by Montgomery County or Prince George's County as a local small business
19 enterprise;

20 (2) procedures to be followed by staff, prospective contractors, and
21 successful bidders or offerors to maximize notice to, and the opportunity to participate in
22 the procurement process by, a broad range of local small business enterprises; and

23 (3) provisions to:

24 (i) extend reasonable competitive preferences for local small
25 business enterprises;

26 (ii) establish procurement goals of utilization of local small business
27 enterprises; and

28 (iii) reserve particular procurement activities for local small business
29 enterprises under appropriate circumstances.

30 15-205.

31 On or before October 31 each year, the Commission shall report to the Montgomery
32 County and Prince George's County Delegations to the General Assembly, in accordance

1 with § 2–1246 of the State Government Article, on the effectiveness of any [minority
2 business enterprise program or] local small business enterprise program established under
3 this subtitle.

4 SECTION 3. AND BE IT FURTHER ENACTED, That the Special Secretary for the
5 Office of Small, Minority, and Women Business Affairs and the Secretary of Transportation
6 shall ensure that the Commission is provided with appropriate technical assistance to
7 implement this Act, including providing any information relating to the disparity study
8 entitled “Business Disparities in the Maryland Market Area” published on February 8,
9 2017, that may be necessary or appropriate for the Commission to evaluate whether or the
10 extent to which minority business enterprises may have been underutilized.

11 SECTION 4. AND BE IT FURTHER ENACTED, That the governing bodies of
12 Montgomery County and Prince George’s County may provide for the funding necessary to
13 implement this Act, including funding required for the Commission to conduct any study
14 or analysis required to determine whether minority business enterprises or local small
15 business enterprises have been underutilized, through the operating budget of the
16 Commission.

17 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
18 effect October 1, 2022.

19 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section
20 5 of this Act, this Act shall take effect June 1, 2019.