

HOUSE BILL 313

P2

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CF SB 442

By: **Delegates D. Barnes, Acevero, Barron, Branch, Brooks, Crutchfield, D.M. Davis, Fennell, Haynes, Ivey, Lehman, Pena-Melnyk, Proctor, Smith, Valderrama, Valentino-Smith, ~~and Wells~~ Wells, Holmes, Lierman, and Love**

Introduced and read first time: January 20, 2020

Assigned to: Environment and Transportation and Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2020

CHAPTER _____

1 AN ACT concerning

2 ~~Public-Private Partnership Agreements – Minority Business Enterprise~~
3 ~~Program~~

4 **Minority Business Enterprise Program – Public-Private Partnerships, Offshore**
5 **Wind Projects, and Video Lottery Terminals**

6 FOR the purpose of providing, under certain circumstances, that the provisions of the
7 Minority Business Enterprise Program apply to public-private partnerships;
8 prohibiting the Board of Public Works from approving a public-private partnership
9 agreement until the reporting agency, in consultation with certain entities,
10 establishes certain minority business enterprise goals and procedures; requiring
11 that certain goals and procedures be based on the requirements of certain provisions
12 of law; incorporating certain findings and evidence associated with a certain
13 Minority Business Enterprise Program; requiring that approved applicants for
14 certain wind projects comply with the Minority Business Enterprise Program to a
15 certain extent; requiring the Governor's Office of Small, Minority, and Women
16 Business Affairs, in consultation with the Office of the Attorney General and a
17 certain approved applicant, to establish a certain plan; requiring a certain approved
18 applicant to submit a certain progress report to the Public Service Commission under
19 certain circumstances; altering the date by which certain provisions of law relating
20 to minority business participation goals for certain applicants or licensees are of no
21 effect and may not be enforced; requiring a certain certification agency, in
22 consultation with the Office of the Attorney General and the Governor's Office of
23 Small, Minority, and Women Business Affairs, to initiate certain analyses; requiring

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.



a certain certification agency to submit certain reports to the Legislative Policy Committee on or before certain dates; providing for the termination of certain provisions of this Act; and generally relating to public-private partnerships, offshore wind projects, video lottery terminals, and minority business enterprises.

BY adding to
 Article – State Finance and Procurement
 Section 10A-404
 Annotated Code of Maryland
 (2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 11-203(h)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – Public Utilities
Section 7-704.1(i)
Annotated Code of Maryland
(2010 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 9-1A-10
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

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

Article – State Finance and Procurement

10A-404.

(A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE ARE HEREBY INCORPORATED.

(B) TO THE EXTENT PRACTICABLE AND PERMITTED BY THE UNITED STATES CONSTITUTION, THE PROVISIONS OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE SHALL APPLY TO PUBLIC-PRIVATE PARTNERSHIPS ESTABLISHED UNDER THIS TITLE.

1 **(C) (1) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**
 2 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER § 10A-203 OF THIS TITLE**
 3 **UNTIL THE REPORTING AGENCY, IN CONSULTATION WITH THE GOVERNOR'S OFFICE**
 4 **OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS, THE OFFICE OF THE**
 5 **ATTORNEY GENERAL, AND THE PRIVATE ENTITY, IF PERMISSIBLE, ESTABLISHES**
 6 **REASONABLE AND APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION**
 7 **GOALS AND PROCEDURES FOR THE PROJECT.**

8 **(2) TO THE EXTENT PRACTICABLE, GOALS AND PROCEDURES**
 9 **ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE BASED ON**
 10 **THE REQUIREMENTS OF:**

11 ~~**(F) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING THE**~~
 12 ~~**IMPLEMENTATION OF REGULATIONS ADOPTED UNDER §§ 14-302 AND**~~
 13 ~~**14-303 OF THIS ARTICLE; AND**~~

14 ~~**(H) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT**~~
 15 ~~**THIS SECTION.**~~

16 11-203.

17 (h) (1) Except as provided in paragraph (2) of this subsection, this division does
 18 not apply to a public-private partnership under Title 10A of this article.

19 (2) To the extent otherwise required by law, the following provisions of this
 20 division apply to a public-private partnership under Title 10A of this article:

21 (i) § 11-205 of this subtitle ("Collusion");

22 (ii) § 11-205.1 of this subtitle ("Falsification, concealment, etc. of
 23 material facts");

24 (iii) Title 12, Subtitle 4 of this article ("Policies and Procedures for
 25 Exempt Units");

26 (iv) § 13-219 of this article ("Required clauses – Nondiscrimination
 27 clause");

28 **(V) TITLE 14, SUBTITLE 3 OF THIS ARTICLE ("MINORITY**
 29 **BUSINESS PARTICIPATION");**

30 **[(v)] (VI) Title 17, Subtitle 1 of this article ("Security for**
 31 **Construction Contracts");**

1 [(vi)] (VII) Title 17, Subtitle 2 of this article (“Prevailing Wage Rates
2 – Public Work Contracts”); and

3 [(vii)] (VIII) Title 18 of this article (“Living Wage”).

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

6 Article – Public Utilities

7 7-704.1.

8 (I) (1) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL
9 ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE
10 PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND
11 PROCUREMENT ARTICLE ARE INCORPORATED IN THIS SUBSECTION.

12 (2) TO THE EXTENT PRACTICABLE AND AUTHORIZED BY THE UNITED
13 STATES CONSTITUTION, APPROVED APPLICANTS FOR A PROPOSED OFFSHORE WIND
14 PROJECT SHALL COMPLY WITH THE STATE’S MINORITY BUSINESS ENTERPRISE
15 PROGRAM.

16 (3) (I) ON OR BEFORE 6 MONTHS AFTER THE ISSUANCE OF AN
17 ORDER APPROVING AN OREC APPLICATION, THE GOVERNOR’S OFFICE OF SMALL,
18 MINORITY, AND WOMEN BUSINESS AFFAIRS, IN CONSULTATION WITH THE OFFICE
19 OF THE ATTORNEY GENERAL AND AN APPROVED APPLICANT, SHALL ESTABLISH A
20 CLEAR PLAN FOR SETTING REASONABLE AND APPROPRIATE MINORITY BUSINESS
21 ENTERPRISE PARTICIPATION GOALS AND PROCEDURES FOR EACH PHASE OF THE
22 QUALIFIED OFFSHORE WIND PROJECT.

23 (II) TO THE EXTENT PRACTICABLE, THE GOALS AND
24 PROCEDURES SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE
25 BASED ON THE REQUIREMENTS OF TITLE 14, SUBTITLE 3 OF THE STATE FINANCE
26 AND PROCUREMENT ARTICLE AND THE REGULATIONS IMPLEMENTING THAT
27 SUBTITLE.

28 (III) EVERY 6 MONTHS FOLLOWING THE ISSUANCE OF AN ORDER
29 APPROVING AN OREC APPLICATION, AN APPROVED APPLICANT SHALL SUBMIT A
30 REPORT ON ITS PROGRESS ESTABLISHING AND IMPLEMENTING MINORITY BUSINESS
31 ENTERPRISE GOALS AND PROCEDURES TO THE COMMISSION.

32 (4) ON AND AFTER JULY 1, 2023, THE PROVISIONS OF THIS
33 SUBSECTION AND ANY REGULATIONS ADOPTED IN ACCORDANCE WITH THIS
34 SUBSECTION SHALL BE OF NO EFFECT AND MAY NOT BE ENFORCED.

1 Article – State Government

2 9–1A–10.

3 (a) (1) (i) An applicant or a licensee is subject to:

4 1. the minority business participation goal established for a
5 unit by the Special Secretary for the Office of Small, Minority, and Women Business Affairs
6 under § 14–302(a)(1)(ii) of the State Finance and Procurement Article; and

7 2. any other corresponding provisions of law under Title 14,
8 Subtitle 3 of the State Finance and Procurement Article.

9 (ii) The minority business participation goal shall apply to:

10 1. construction related to video lottery terminals; and

11 2. procurement related to the operation of video lottery
12 terminals, including procurement of equipment and ongoing services.

13 (2) If the county in which a video lottery facility will be located has higher
14 minority business participation requirements than the State as described in paragraph (1)
15 of this subsection, the applicant shall meet the county's minority business participation
16 requirements to the extent possible.

17 (3) A county in which a video lottery facility will be located may impose
18 local business, local minority business participation, and local hiring requirements to the
19 extent authorized by local law and permitted by the United States Constitution.

20 (4) Any collective bargaining agreement or agreements, including a project
21 labor agreement or a neutrality agreement, entered into by an applicant or licensee may
22 not negate the requirements of this subsection.

23 (5) If an applicant for employment at a video lottery facility believes that
24 the applicant has been discriminated against in the employment process, the applicant may
25 appeal the employment decision to the local human relations board in the county where the
26 facility is located.

27 (6) Notwithstanding any collective bargaining agreement or agreements, a
28 licensee shall:

29 (i) provide health insurance coverage for its employees; and

30 (ii) give a preference to hiring qualified employees from the
31 communities within 10 miles of the video lottery facility.

32 (7) A licensee shall:

1 (i) provide retirement benefits for its employees; and

2 (ii) if the licensee is a racetrack licensee, provide retirement benefits
3 to its video lottery operation employees that are equivalent to the level of benefits provided
4 to the racetrack employees who are eligible under the Maryland Racetrack Employees
5 Pension Fund.

6 (8) Notwithstanding any collective bargaining agreement or agreements, if
7 the licensee is a racetrack location, the licensee shall provide health insurance coverage to
8 all employees of the racetrack, including the employees of the racetrack on the backstretch
9 of the racetrack.

10 (b) (1) The Commission shall ensure that a video lottery operation licensee
11 complies with the requirements of subsection (a)(1) and (2) of this section as a condition of
12 holding the video lottery operation license.

13 (2) The Governor's Office of Small, Minority, and Women Business Affairs
14 shall monitor a licensee's compliance with subsection (a)(1) and (2) of this section.

15 (3) The Governor's Office of Small, Minority, and Women Business Affairs
16 shall report to the Commission at least every 6 months on the compliance of licensees with
17 subsection (a)(1) and (2) of this section.

18 (4) If the Governor's Office of Small, Minority, and Women Business Affairs
19 reports that a licensee is not in compliance with subsection (a)(1) and (2) of this section, the
20 Commission may take immediate action to ensure the compliance of the licensee.

21 (c) On or after July 1, [2020] 2023, the provisions of subsections (a)(1) and (2)
22 and (b) of this section and any regulations adopted under subsections (a)(1) and (2) and (b)
23 of this section shall be of no effect and may not be enforced.

24 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
25 ~~October 1, 2020.~~

26 SECTION 3. AND BE IT FURTHER ENACTED, That the certification agency
27 designated by the Board of Public Works under § 14-303(b) of the State Finance and
28 Procurement Article to certify and decertify minority business enterprises, in consultation
29 with the Office of the Attorney General and the Governor's Office of Small, Minority, and
30 Women Business Affairs, shall initiate an analysis of the Minority Business Enterprise
31 Program requirements of § 10A-404 of the State Finance and Procurement Article, as
32 enacted by Section 1 of this Act, and the disparity study entitled "Business Disparities in
33 the Maryland Market Area" published on February 8, 2017, to evaluate compliance with
34 the requirements of any federal and constitutional requirements and submit a report on
35 the analysis to the Legislative Policy Committee of the General Assembly in accordance
36 with § 2-1257 of the State Government Article, on or before September 30, 2020.

1 SECTION 4. AND BE IT FURTHER ENACTED, That the certification agency
2 designated by the Board of Public Works under § 14–303(b) of the State Finance and
3 Procurement Article to certify and decertify minority business enterprises, in consultation
4 with the Office of the Attorney General and the Governor’s Office of Small, Minority, and
5 Women Business Affairs, shall initiate an analysis of the Minority Business Enterprise
6 Program requirements of § 10A–404 of the State Finance and Procurement Article, as
7 enacted by Section 1 of this Act, and the disparity study submitted in accordance with
8 Chapter 340 of the Acts of the General Assembly of 2017 to evaluate compliance with the
9 requirements of any federal and constitutional requirements and submit a report on the
10 analysis to the Legislative Policy Committee of the General Assembly, in accordance with
11 § 2–1257 of the State Government Article, on or before December 1, 2022.

12 SECTION 5. AND BE IT FURTHER ENACTED, That the certification agency
13 designated by the Board of Public Works under § 14–303(b) of the State Finance and
14 Procurement Article to certify and decertify minority business enterprises, in consultation
15 with the Office of the Attorney General and the Governor’s Office of Small, Minority, and
16 Women Business Affairs, shall initiate an analysis of the disparity study submitted in
17 accordance with Chapter 340 of the Acts of the General Assembly of 2017 to determine if it
18 applies to the type of work that will be likely to be performed by an approved applicant with
19 respect to an offshore wind project under § 7–704.1(i) of the Public Utilities Article as
20 enacted by Section 2 of this Act and submit a report on the analysis to the Legislative Policy
21 Committee of the General Assembly, in accordance with § 2–1257 of the State Government
22 Article, on or before December 1, 2022.

23 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect July
24 1, 2020. Section 1 of this Act shall remain effective for a period of 3 years and, at the end of
25 June 30, 2023, Section 1 of this Act, with no further action required by the General
26 Assembly, shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.