

SENATE BILL 644

P2

2lr2232

By: **Senator Salling**

Introduced and read first time: February 3, 2022

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 2022

CHAPTER _____

1 AN ACT concerning

2 ~~State Procurement Preferences~~ **Department of General Services – Study on**
3 **Procurement Preferences for Businesses in Historically Underutilized Business**
4 **Zone Businesses Zones**

5 FOR the purpose of requiring ~~a unit to structure procurement procedures to try to achieve~~
6 ~~or exceed a certain overall percentage goal of the unit's total dollar value of~~
7 ~~procurement contracts to be made directly or indirectly with historically~~
8 ~~underutilized business zone businesses certified by the U.S. Small Business~~
9 ~~Administration; providing for the determination of expected historically~~
10 ~~underutilized business zone business participation for individual solicitations;~~
11 ~~establishing certain methods for the award of contracts that meet or make a good~~
12 ~~faith effort to meet the percentage goal for historically underutilized business zone~~
13 ~~businesses; establishing certain penalties; including certain historically~~
14 ~~underutilized business zone businesses in the Small Business Reserve Program the~~
15 Department of General Services, in consultation with the Governor's Office of Small,
16 Minority, and Women Business Affairs to study the feasibility and impacts of
17 establishing a State procurement preference for businesses located in historically
18 underutilized business zones; and generally relating to a study on procurement
19 preferences for historically underutilized business zone businesses.

20 ~~BY repealing and reenacting, with amendments,~~
21 ~~Article – State Finance and Procurement~~
22 ~~Section 14-501~~
23 ~~Annotated Code of Maryland~~
24 ~~(2021 Replacement Volume)~~

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.



1 ~~BY adding to~~

2 ~~Article State Finance and Procurement~~

3 ~~Section 14-801 through 14-806 to be under the new subtitle “Subtitle 8. Historically~~
 4 ~~Underutilized Business Zone Business Participation”~~

5 ~~Annotated Code of Maryland~~

6 ~~(2021 Replacement Volume)~~

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

8 ~~That the Laws of Maryland read as follows:~~

9 ~~Article State Finance and Procurement~~

10 ~~14-501.~~

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

12 ~~(b) “Small business” means:~~

13 ~~(1) a certified minority business enterprise, as defined in § 14-301 of this~~
 14 ~~title, that meets the criteria specified under item ~~[(3)] (4)~~ of this subsection;~~

15 ~~(2) a veteran owned small business enterprise, as defined in § 14-601 of~~
 16 ~~this title, that meets the criteria specified under item ~~[(3)] (4)~~ of this subsection; [or]~~

17 ~~**(3) A HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESS, AS**~~
 18 ~~**DEFINED IN § 14-801 OF THIS TITLE, THAT MEETS THE CRITERIA SPECIFIED UNDER**~~
 19 ~~**ITEM (4) OF THIS SUBSECTION; OR**~~

20 ~~**[(3)] (4)** a business, other than a broker, that meets the following criteria:~~

21 ~~(i) the business is independently owned and operated;~~

22 ~~(ii) the business is not a subsidiary of another business;~~

23 ~~(iii) the business is not dominant in its field of operation; and~~

24 ~~(iv) 1. A. the wholesale operations of the business did not~~
 25 ~~employ more than 50 persons in its most recently completed 3 fiscal years;~~

26 ~~B. the retail operations of the business did not employ more~~
 27 ~~than 25 persons in its most recently completed 3 fiscal years;~~

28 ~~C. the manufacturing operations of the business did not~~
 29 ~~employ more than 100 persons in its most recently completed 3 fiscal years;~~

~~D. the service operations of the business did not employ more than 100 persons in its most recently completed 3 fiscal years;~~

~~E. the construction operations of the business did not employ more than 50 persons in its most recently completed 3 fiscal years; and~~

~~F. the architectural and engineering services of the business did not employ more than 100 persons in its most recently completed 3 fiscal years; or~~

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

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

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

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

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

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

~~(e) "Small business reserve" means those procurements that are limited to responses from small businesses under § 14-502(b) of this subtitle.~~

~~**SUBTITLE 8. HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESS PARTICIPATION.**~~

~~**14-801.**~~

~~**IN THIS SUBTITLE, "HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESS" MEANS A BUSINESS THAT MEETS THE STANDARDS ADOPTED BY THE U.S. SMALL BUSINESS ADMINISTRATION IN 13 C.F.R. 126, SUBPART B AND ANY SUBSEQUENT REVISION OF THAT REGULATION.**~~

~~**14-802.**~~

~~(A) (1) A UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES, CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE, TO TRY TO ACHIEVE OR EXCEED AN OVERALL PERCENTAGE GOAL OF THE UNIT'S TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS TO BE MADE DIRECTLY OR INDIRECTLY WITH HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES.~~

~~(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL ADOPT REGULATIONS THAT ESTABLISH THE OVERALL PERCENTAGE GOAL.~~

~~(II) THE OVERALL PERCENTAGE GOAL SHALL BE AT LEAST 10%.~~

~~(B) SOLICITATION DOCUMENTS SHALL STATE THE EXPECTED PERCENTAGE OF HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESS PARTICIPATION BASED, IN PART, ON:~~

~~(1) THE POTENTIAL CONTRACTING OPPORTUNITIES AVAILABLE IN THE PROCUREMENT CONTRACT, INCLUDING BOTH PRIME CONTRACTING AND SUBCONTRACTING OPPORTUNITIES, AS DETERMINED THROUGH ANALYSIS OF THE SCOPE OF THE WORK PRESENTED IN THE SOLICITATION DOCUMENTS; AND~~

~~(2) THE AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES TO RESPOND COMPETITIVELY TO THE POTENTIAL CONTRACTING OPPORTUNITIES.~~

~~(C) THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO A UNIT'S PROCUREMENT PROCEDURES TO THE EXTENT THAT ANY UNIT DETERMINES THAT THOSE PROVISIONS ARE IN CONFLICT WITH AN APPLICABLE FEDERAL PROGRAM.~~

~~14-803.~~

~~(A) FOR PROCUREMENTS CONDUCTED BY COMPETITIVE SEALED BIDDING, A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER THAT SUBMITS THE RESPONSIVE BID THAT:~~

~~(1) (I) HAS THE LOWEST BID PRICE;~~

~~(II) HAS THE LOWEST EVALUATED BID PRICE; OR~~

~~(III) FOR PROCUREMENTS SUBJECT TO § 11-202(3) OF THIS ARTICLE, IS THE BID MOST FAVORABLE TO THE STATE; AND~~

~~(2) MEETS OR MAKES A GOOD FAITH EFFORT TO MEET ANY APPLICABLE OVERALL PERCENTAGE GOAL ESTABLISHED UNDER THIS SUBTITLE.~~

1 ~~(B) FOR PROCUREMENTS CONDUCTED BY COMPETITIVE SEALED~~
2 ~~PROPOSALS, A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE OFFEROR:~~

3 ~~(1) PROPOSING THE MOST ADVANTAGEOUS OFFER; AND~~

4 ~~(2) THAT MEETS OR MAKES A GOOD FAITH EFFORT TO MEET ANY~~
5 ~~APPLICABLE OVERALL PERCENTAGE GOAL ESTABLISHED UNDER THIS SUBTITLE.~~

6 ~~14-804.~~

7 ~~THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS~~
8 ~~AFFAIRS SHALL:~~

9 ~~(1) ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;~~

10 ~~(2) ESTABLISH PROCEDURES FOR TRACKING AND REPORTING~~
11 ~~PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES~~
12 ~~UNDER THIS SUBTITLE; AND~~

13 ~~(3) ON OR BEFORE DECEMBER 1 EACH YEAR, REPORT TO THE~~
14 ~~LEGISLATIVE POLICY COMMITTEE ON:~~

15 ~~(I) THE NUMBER AND DOLLAR VALUE OF CONTRACTS~~
16 ~~AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES UNDER~~
17 ~~THIS SUBTITLE, INCLUDING THE TOTAL DOLLAR VALUE OF PAYMENTS MADE TO~~
18 ~~HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES UNDER EXISTING~~
19 ~~CONTRACTS; AND~~

20 ~~(II) AN EVALUATION OF THE EFFECTIVENESS OF THE PROGRAM~~
21 ~~UNDER THIS SUBTITLE.~~

22 ~~14-805.~~

23 ~~(A) A PERSON MAY NOT:~~

24 ~~(1) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY~~
25 ~~OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN FRAUDULENTLY~~
26 ~~OBTAINING OR ATTEMPTING TO OBTAIN, PUBLIC MONEY, PROCUREMENT~~
27 ~~CONTRACTS, OR FUNDS EXPENDED UNDER A PROCUREMENT CONTRACT TO WHICH~~
28 ~~THE PERSON IS NOT ENTITLED UNDER THIS ARTICLE;~~

29 ~~(2) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY~~
30 ~~REPRESENT PARTICIPATION OF A HISTORICALLY UNDERUTILIZED BUSINESS ZONE~~

~~BUSINESS IN ORDER TO OBTAIN OR RETAIN A BID PREFERENCE OR A PROCUREMENT CONTRACT;~~

~~(3) WILLFULLY AND KNOWINGLY MAKE OR SUBSCRIBE TO ANY STATEMENT, DECLARATION, OR OTHER DOCUMENT THAT IS FRAUDULENT OR FALSE AS TO ANY MATERIAL MATTER, WHETHER OR NOT THAT FALSITY OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR DOCUMENT;~~

~~(4) WILLFULLY AND KNOWINGLY AID, ASSIST IN, PROCURE, COUNSEL, OR ADVISE THE PREPARATION OR PRESENTATION OF A DECLARATION, STATEMENT, OR OTHER DOCUMENT THAT IS FRAUDULENT OR FALSE AS TO ANY MATERIAL MATTER, REGARDLESS OF WHETHER THAT FALSITY OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR DOCUMENT;~~

~~(5) WILLFULLY AND KNOWINGLY FAIL TO FILE ANY DECLARATION OR NOTICE WITH THE UNIT THAT IS REQUIRED BY THIS SUBTITLE; OR~~

~~(6) ESTABLISH, KNOWINGLY AID IN THE ESTABLISHMENT OF, OR EXERCISE CONTROL OVER A BUSINESS FOUND TO HAVE VIOLATED A PROVISION OF ITEMS (1) THROUGH (5) OF THIS SUBSECTION.~~

~~(B) (1) A PERSON WHO VIOLATES ANY PROVISION OF SUBSECTION (A) OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.~~

~~(2) IN ADDITION TO THE PENALTIES UNDER PARAGRAPH (1) OF THIS SUBSECTION, A PERSON WHO VIOLATES ANY PROVISION OF SUBSECTION (A) OF THIS SECTION SHALL BE:~~

~~(I) FOR THE FIRST OFFENSE, LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND NOT EXCEEDING \$30,000; AND~~

~~(II) FOR A SUBSEQUENT OFFENSE, LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN \$30,000 AND NOT EXCEEDING \$50,000.~~

~~(3) A PERSON WHO VIOLATES ANY PROVISION OF SUBSECTION (A) OF THIS SECTION SHALL PAY ALL COSTS AND ATTORNEY'S FEES INCURRED BY THE PLAINTIFF IN A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE.~~

~~(C) THE BOARD SHALL PROHIBIT A BUSINESS OR PERSON WHO FAILS TO SATISFY THE PENALTIES, COSTS, AND ATTORNEY'S FEES IMPOSED UNDER~~

~~SUBSECTION (B) OF THIS SECTION FROM FURTHER CONTRACTING WITH THE STATE UNTIL THE PENALTIES ARE SATISFIED.~~

~~(D) (1) A UNIT SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS SECTION TO THE BOARD.~~

~~(2) THE BOARD SUBSEQUENTLY SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS SECTION TO THE OFFICE OF THE ATTORNEY GENERAL, WHICH SHALL DETERMINE WHETHER TO BRING A CIVIL ACTION AGAINST A PERSON OR BUSINESS FOR A VIOLATION OF THIS SECTION.~~

~~14-806.~~

~~IN ADDITION TO THE PENALTIES UNDER § 14-805(B) OF THIS SUBTITLE, A PERSON THAT WILLFULLY MISREPRESENTS A BUSINESS AS A HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESS FOR PURPOSES OF OBTAINING OR RETAINING A CONTRACT OR SUBCONTRACT MAY BE SUBJECT TO:~~

~~(1) SUSPENSION OR DEBARMENT UNDER TITLE 16 OF THIS ARTICLE;~~
~~OR~~

~~(2) CIVIL PENALTIES UNDER THE MARYLAND FALSE CLAIMS ACT UNDER TITLE 8 OF THE GENERAL PROVISIONS ARTICLE.~~

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

That:

(a) The Department of General Services, in consultation with the Governor's Office of Small, Minority, and Women Business Affairs, shall study the feasibility and impacts of establishing a State procurement percentage preference for businesses located in historically underutilized business zones, including:

(1) the potential benefits to businesses in historically underutilized business zones;

(2) the costs of establishing and administering the preference;

(3) how to best track and report participation of historically underutilized business zone business; and

(4) any other issue relating to the establishment of a State procurement preference for businesses located in historically underutilized business zones.

(b) On or before December 1, 2022, the Department shall report its findings and recommendations to the General Assembly, in accordance with § 2-1257 of the State Government Article.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 ~~October 1, 2022~~ June 1, 2022. It shall remain effective for a period of 1 year and, at the
3 end of May 31, 2023, this Act, with no further action required by the General Assembly,
4 shall be abrogated and of no further force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.