

# HOUSE BILL 245

P2

3lr1210

---

By: Delegates Woods, Acevero, Alston, Bagnall, D. Barnes, Bhandari, Bofo, Charles, Cullison, Guzzone, Harris, Holmes, A. Johnson, S. Johnson, Kaiser, Kelly, R. Lewis, J. Long, McCaskill, Pasteur, Phillips, Ruth, Schmidt, Simpson, Taveras, Taylor, Toles, Turner, Valderrama, White, and Williams Williams, Chisholm, Hill, Hutchinson, Kerr, Kipke, Lopez, Martinez, M. Morgan, Pena-Melnyk, Reilly, Rosenberg, and Szeliga

Introduced and read first time: January 23, 2023

Assigned to: Health and Government Operations

---

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 2023

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Minority Business Enterprise Program – Reporting – ~~List of Units~~**

3 FOR the purpose of requiring the ~~Office of State Procurement in the Department of General~~  
4 ~~Services to maintain a list of certain units of the Executive Branch of State~~  
5 ~~government required to report certain information annually to the Governor’s Office~~  
6 of Small, Minority, and Women Business Affairs to include a certain attestation in  
7 its annual report beginning on a certain date; requiring the Office to conduct a  
8 certain periodic audit to ensure the accuracy of the attestation; requiring a certain  
9 annual report to be submitted to the Joint Committee on Fair Practices and State  
10 Personnel Oversight; and generally relating to procurement and minority business  
11 enterprises.

12 BY repealing and reenacting, with amendments,

13 Article – State Finance and Procurement

14 Section 14–305

15 Annotated Code of Maryland

16 (2021 Replacement Volume and 2022 Supplement)

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

18 That the Laws of Maryland read as follows:

---

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 **Article – State Finance and Procurement**

2 14–305.

3 (a) (1) Within 90 days after the end of the fiscal year, each unit shall report to  
4 the Governor’s Office of Small, Minority, and Women Business ~~Affairs~~, **AFFAIRS AND** the  
5 certification ~~agency~~, and, ~~subject to § 2-1257 of the State Government Article, the Joint~~  
6 ~~Committee on Fair Practices and Personnel Oversight~~ **AGENCY**.

7 (2) A report under this subsection shall for the preceding fiscal year:

8 (i) state the total number and value of procurement contracts  
9 between the unit and certified minority business enterprises, by specific category of  
10 minority business enterprise and by industry type, including whether the minority  
11 business enterprise participated as a prime contractor or as a subcontractor;

12 (ii) indicate the percentage that those procurement contracts  
13 represent, by specific category of minority business enterprise and by industry type, of the  
14 total number and value of procurement contracts;

15 (iii) state the total number and the names of certified minority  
16 business enterprises that participated as prime contractors or as subcontractors on  
17 procurement contracts awarded by a unit;

18 (iv) for each minority business included in the report under item (iii)  
19 of this paragraph, list all procurement contracts awarded by a unit to the minority business  
20 enterprise, including a description of the contract and industry type;

21 (v) provide the results of each compliance assessment conducted by  
22 the unit under § 14–303(b)(15) of this subtitle, including for each contract completed during  
23 the fiscal year:

24 1. the names of each prime contractor and each  
25 subcontractor that participated in the contract;

26 2. the type of good or service provided by the contract;

27 3. the minority business enterprise participation goal for the  
28 contract;

29 4. whether a waiver was granted for the minority business  
30 enterprise participation goal;

31 5. the total dollar value of payments made to each prime  
32 contractor and by each prime contractor to each subcontractor during the contract term;

1                   6.     whether each subcontractor is a certified minority  
2 business enterprise; and

3                   7.     if applicable, a description of factors that may have  
4 contributed to failure to achieve the minority business enterprise participation goal for the  
5 contract, including documented nonperformance or unavailability of a minority business  
6 enterprise; and

7                   (vi)    contain other such information as required by the Governor's  
8 Office of Small, Minority, and Women Business Affairs and the certification agency and  
9 approved by the Board.

10                  (3)     As to procurement contracts for architectural services and engineering  
11 services reported under paragraph (2) of this subsection, the report shall identify by  
12 separate category of minority business enterprise procurements for:

13                   (i)     architectural services; and

14                   (ii)    engineering services.

15                  (4)     A report under this subsection shall be in a form prescribed by the  
16 Governor's Office of Small, Minority, and Women Business Affairs and the certification  
17 agency and approved by the Board.

18                  (5)     The Special Secretary for the Office of Small, Minority, and Women  
19 Business Affairs may waive the requirement for a unit to report minority business  
20 participation by industry type under paragraph (2) of this subsection if the spending  
21 threshold for the industry type is too low for the unit to provide sufficient data.

22                  (b)     (1)     On or before December 31 of each year, the Governor's Office of Small,  
23 Minority, and Women Business Affairs shall submit to the Board of Public Works and,  
24 subject to § 2-1257 of the State Government Article, to the Legislative Policy Committee  
25 **AND THE JOINT COMMITTEE ON FAIR PRACTICES AND STATE PERSONNEL**  
26 **OVERSIGHT** a report summarizing the information the Office receives under subsection  
27 (a) of this section.

28                  (2)     If applicable, the report submitted under paragraph (1) of this  
29 subsection shall include minority business enterprise participation data for each unit by  
30 industry type.

31                  (3)     This report may be prepared in conjunction with the annual report  
32 required under § 9-306 of the State Government Article.

33                  **(4) (I) BEGINNING WITH THE REPORT SUBMITTED UNDER**  
34 **PARAGRAPH (1) OF THIS SUBSECTION ON DECEMBER 31, 2023, AND EACH YEAR**  
35 **THEREAFTER, THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN**

1 BUSINESS AFFAIRS SHALL INCLUDE IN THE REPORT AN ATTESTATION THAT ALL  
2 UNITS REQUIRED TO REPORT UNDER SUBSECTION (A) OF THIS SECTION ARE  
3 REPRESENTED IN THE REPORT.

4 (II) TO ENSURE ACCURACY OF THE ATTESTATION MADE UNDER  
5 SUBPARAGRAPH (I) OF THIS PARAGRAPH, ON OR BEFORE DECEMBER 31, 2023, AND  
6 EVERY 3 YEARS THEREAFTER, THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND  
7 WOMEN BUSINESS AFFAIRS SHALL CONDUCT AN AUDIT OF THE EXECUTIVE  
8 BRANCH OF STATE GOVERNMENT TO DETERMINE WHAT ENTITIES ARE INCLUDED IN  
9 THE DEFINITION OF "UNIT" UNDER § 11-101 OF THIS ARTICLE.

10 (c) (1) In this subsection, "mitigating factors" includes documented  
11 nonperformance or unavailability of a minority business enterprise designated for a  
12 contract.

13 (2) The Governor's Office of Small, Minority, and Women Business Affairs  
14 and the Office of State Procurement in the Department of General Services, in consultation  
15 with the Office of the Attorney General and the Board of Public Works, shall adopt by  
16 regulation criteria used to determine that a prime contractor has persistently failed to meet  
17 contract goals in the absence of mitigating factors.

18 (3) The criteria adopted under paragraph (2) of this subsection shall  
19 include the results of the compliance assessments made under subsection (a)(2)(v) of this  
20 section.

21 (4) The Governor's Office of Small, Minority, and Women Business Affairs  
22 shall refer prime contractors identified under the criteria adopted under paragraph (2) of  
23 this subsection to the Office of the Attorney General for debarment under § 16-203(d)(4) of  
24 this article.

25 ~~(D) THE OFFICE OF STATE PROCUREMENT IN THE DEPARTMENT OF~~  
26 ~~GENERAL SERVICES SHALL MAINTAIN A LIST OF THE UNITS REQUIRED TO REPORT~~  
27 ~~UNDER SUBSECTION (A) OF THIS SECTION.~~

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2023.