

HOUSE BILL 962

P2

4lr2688
CF SB 673

By: **Delegates Phillips, Boafo, Harris, J. Long, McCaskill, Pasteur, Roberson, Roberts, White Holland, Wilkins, Williams, and Woods**

Introduced and read first time: February 2, 2024

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Small and Minority Business Reserve Program**
3 **(Parren J. Mitchell MBE Prime Contracting Act)**

4 FOR the purpose of altering the Small Business Reserve Program to be the Small and
5 Minority Business Reserve Program; requiring a unit of State government, to the
6 extent practicable, to structure its procurement procedures to achieve a certain
7 minimum percentage of the unit’s total dollar value of certain contracts to be made
8 directly to certified minority business enterprises; requiring a certain study to
9 include the Small and Minority Business Reserve Program; and generally relating
10 to the Small and Minority Business Reserve Program.

11 BY repealing and reenacting, without amendments,
12 Article – State Finance and Procurement
13 Section 14–301(a), (b), and (d)
14 Annotated Code of Maryland
15 (2021 Replacement Volume and 2023 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – State Finance and Procurement
18 Section 14–501, 14–502, 14–502.1, and 14–503 through 14–505 to be under the
19 amended subtitle “Subtitle 5. Small and Minority Business Reserve Program”
20 Annotated Code of Maryland
21 (2021 Replacement Volume and 2023 Supplement)

22 BY repealing and reenacting, with amendments,
23 Chapter 154 of the Acts of the General Assembly of 2012, as amended by Chapters
24 200 and 201 of the Acts of the General Assembly of 2013, Chapter 340 of the
25 Acts of the General Assembly of 2017, Chapter 117 of the Acts of the General
26 Assembly of 2022, and Chapters 137 and 138 of the Acts of the General
27 Assembly of 2023

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2

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

4 **Article – State Finance and Procurement**

5 14–301.

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

7 (b) “Certification” means the determination that a legal entity is a minority
8 business enterprise for the purposes of this subtitle.9 (d) “Certified minority business enterprise” means a minority business enterprise
10 that holds a certification.11 Subtitle 5. Small AND **MINORITY** Business Reserve Program.

12 14–501.

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

14 **(B) “CERTIFIED MINORITY BUSINESS ENTERPRISE” HAS THE MEANING**
15 **STATED UNDER § 14–301 OF THIS TITLE.**16 **[(b)] (C)** “Small business” means:17 (1) a certified minority business enterprise[, as defined in § 14–301 of this
18 title,] that meets the criteria specified under item (3) of this subsection;19 (2) a veteran–owned small business enterprise, as defined in § 14–601 of
20 this title, that meets the criteria specified under item (3) of this subsection; or

21 (3) a business, other than a broker, that meets the following criteria:

22 (i) the business is independently owned and operated;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 [(c)] (D) "Small AND MINORITY business reserve" means those procurements
28 that are limited to responses from small businesses OR CERTIFIED MINORITY BUSINESS
29 ENTERPRISES under [§ 14-502(b)] § 14-502(C) of this subtitle.

30 14-502.

31 (a) Except as provided in subsection (d) of this section, this subtitle applies to all
32 procurements by a unit.

33 (b) This section does not apply to procurements subject to Subtitle 1 of this title.

1 (c) To the extent practicable, a unit shall structure its procurement procedures to
2 achieve a minimum of:

3 (1) 15% of the unit's total dollar value of goods, supplies, services,
4 maintenance, construction, construction-related services, and architectural and
5 engineering service contracts to be made directly to small businesses; **AND**

6 (2) **10% OF THE UNIT'S TOTAL DOLLAR VALUE OF GOODS, SUPPLIES,**
7 **SERVICES, MAINTENANCE, CONSTRUCTION, CONSTRUCTION-RELATED SERVICES,**
8 **AND ARCHITECTURAL AND ENGINEERING SERVICE CONTRACTS TO BE MADE**
9 **DIRECTLY TO CERTIFIED MINORITY BUSINESS ENTERPRISES.**

10 (d) The total dollar value of procurements by a unit does not include the value of
11 contracts to which this section does not apply because of a conflict with federal law.

12 (e) A unit may apply toward the unit's overall annual Small **AND MINORITY**
13 Business Reserve payment achievement only those payments resulting from a procurement
14 that is designated a Small **AND MINORITY** Business Reserve procurement.

15 (f) (1) The Special Secretary for the Office of Small, Minority, and Women
16 Business Affairs, in consultation with the Attorney General, shall establish standards and
17 guidelines for participation in the Small **AND MINORITY** Business Reserve Program every
18 5 years.

19 (2) The standards and guidelines established under paragraph (1) of this
20 subsection shall allow for the registration of businesses for participation in the Small **AND**
21 **MINORITY** Business Reserve Program without the need to file any additional paperwork
22 other than evidence that the business:

23 (i) is a small business under this subtitle; and

24 (ii) 1. is certified as a minority business enterprise under
25 Subtitle 3 of this title;

26 2. is certified under the federal Disadvantaged Business
27 Enterprise Program; or

28 3. is qualified as a small business under Subtitle 2 of this
29 title.

30 14-502.1.

31 (a) (1) This section applies to a procurement by any unit or agency of the
32 Executive Branch of State government for goods, supplies, services, maintenance,
33 construction, construction-related services, architectural services, or engineering services.

1 (2) This section does not apply to:

2 (i) procurements made under Subtitle 1 of this title;

3 (ii) procurements involving expenditures of federal dollars, to the
4 extent that inclusion in the small business reserve program conflicts with federal law or
5 grant provisions;

6 (iii) procurements with a total dollar value under \$50,000;

7 (iv) the procurement of human, social, cultural, or educational
8 services; or

9 (v) term and master contracts exempted under subsection (c) of this
10 section.

11 (b) (1) A procurement with a total dollar value between \$50,000 and \$500,000
12 shall be designated for the small **AND MINORITY** business reserve.

13 (2) Each unit or agency shall implement this subsection in a manner
14 consistent with all applicable statutes, including the requirements of Subtitle 3 of this title.

15 (c) (1) A procurement may be exempt from designation under subsection (b) of
16 this section if the Governor's Office of Small, Minority, and Women Business Affairs
17 certifies, concurrently with review of any waiver determinations for certified minority
18 business enterprise participation contract goals, that it is not practicable to do so.

19 (2) The Office of State Procurement in the Department of General Services
20 shall assist the Governor's Office of Small, Minority, and Women Business Affairs in
21 establishing procedures and guidelines for the exemption of procurements under paragraph
22 (1) of this subsection.

23 14-503.

24 (a) The Governor's Office of Small, Minority, and Women Business Affairs shall
25 adopt regulations to establish procedures for compiling and maintaining a comprehensive
26 bidder's list of qualified small businesses **AND CERTIFIED MINORITY BUSINESS**
27 **ENTERPRISES** that shall be posted on the Internet.

28 (b) The Governor's Office of Small, Minority, and Women Business Affairs shall:

29 (1) establish guidelines for Small **AND MINORITY** Business Reserve
30 Program administration;

31 (2) ensure agency compliance with the Small **AND MINORITY** Business
32 Reserve Program;

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

2 (4) collect data regarding the State's utilization of small **AND MINORITY**
3 business reserve vendors.

4 (c) Each unit shall ensure compliance with the regulations set forth in subsection
5 (a) of this section.

6 14-504.

7 (a) Any procurement by a unit of goods, supplies, services, maintenance,
8 construction, construction-related services, architectural services, and engineering
9 services shall be eligible for designation for the small **AND MINORITY** business reserve.

10 (b) A solicitation for procurement that has been designated for a small **AND**
11 **MINORITY** business reserve shall be published in the same manner as required for an
12 invitation for bids as set forth in § 13-103(c) of this article.

13 (c) The procurement officer of a unit shall award a procurement contract
14 designated for a small **AND MINORITY** business reserve to the small business **OR**
15 **CERTIFIED MINORITY BUSINESS ENTERPRISE** that submits a responsive bid that:

16 (1) is the lowest bid price;

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

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

21 14-505.

22 (a) Within 60 days after the enactment of the budget bill by the General
23 Assembly, each unit shall submit a report to the Governor's Office of Small, Minority, and
24 Women Business Affairs that complies with the reporting requirements set forth in
25 COMAR 21.11.01.06.

26 (b) (1) Within 90 days after the end of each fiscal year, each unit shall submit
27 a report to the Governor's Office of Small, Minority, and Women Business Affairs that
28 complies with the requirements of paragraph (2) of this subsection.

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

1 (i) state the total number and the dollar value of payments the unit
2 made [to small businesses] under designated small AND MINORITY business reserve
3 contracts TO:

4 1. SMALL BUSINESSES; AND

5 2. CERTIFIED MINORITY BUSINESS ENTERPRISES;

6 (ii) state the total number and the dollar value of payments the unit
7 made [to small businesses] under nondesignated small AND MINORITY business reserve
8 contracts, including purchase card procurements, TO:

9 1. SMALL BUSINESSES; AND

10 2. CERTIFIED MINORITY BUSINESS ENTERPRISES;

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

13 (iv) contain other such information as required by the Governor's
14 Office of Small, Minority, and Women Business Affairs.

15 (c) On or before December 31 of each year, the Governor's Office of Small,
16 Minority, and Women Business Affairs shall submit to the Board of Public Works and,
17 subject to § 2–1257 of the State Government Article, to the Legislative Policy Committee a
18 report summarizing the information the Office receives under subsection (b) of this section.

19 **Chapter 154 of the Acts of 2012, as amended by Chapters 200 and 201 of the Acts**
20 **of 2013, Chapter 340 of the Acts of 2017, Chapter 117 of the Acts of 2022, and**
21 **Chapters 137 and 138 of the Acts of 2023**

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency, in
23 consultation with the General Assembly and the Office of the Attorney General, shall
24 initiate a study of the Minority Business Enterprise Program AND THE SMALL AND
25 MINORITY BUSINESS RESERVE PROGRAM to evaluate the [Program's] PROGRAMS'
26 continued compliance with the requirements of the Croson decision and any subsequent
27 federal or constitutional requirements. In preparation for the study, the Board of Public
28 Works may adopt regulations authorizing a unit of State government to require bidders
29 and offerors to submit information necessary for the conduct of the study. The Board of
30 Public Works may designate that certain information received in accordance with
31 regulations adopted under this section shall be confidential. Notwithstanding that certain
32 information may be designated by the Board of Public Works as confidential, the
33 Certification Agency may provide the information to any person that is under contract with
34 the Certification Agency to assist in conducting the study. The study shall also evaluate
35 race-neutral programs and other methods that can be used to address the needs of minority
36 businesses. The final report on the study shall be submitted to the Legislative Policy

1 Committee of the General Assembly, in accordance with § 2–1257 of the State Government
2 Article, on or before September 30, 2024, so that the General Assembly may review the
3 report before the 2025 Session.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
5 1, 2024. It shall remain effective for a period of 1 year and, at the end of June 30, 2025, this
6 Act, with no further action required by the General Assembly, shall be abrogated and of no
7 further force and effect.