

# SENATE BILL 154

P2

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(PRE-FILED)

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By: **Senator Salling**

Requested: September 27, 2023

Introduced and read first time: January 10, 2024

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Preferences – Historically Underutilized Business Zone**  
3 **Businesses**

4 FOR the purpose of requiring a unit to structure procurement procedures to meet federal  
5 procurement standards and to try to achieve or exceed a certain overall percentage  
6 goal of the unit's total dollar value of procurement contracts to be made directly or  
7 indirectly with historically underutilized business zone businesses certified by the  
8 U.S. Small Business Administration; establishing a certain percentage price  
9 preference consistent with a certain federal procurement program; and generally  
10 relating to procurement preferences for historically underutilized business zone  
11 businesses.

12 BY repealing and reenacting, with amendments,  
13 Article – State Finance and Procurement  
14 Section 14–501  
15 Annotated Code of Maryland  
16 (2021 Replacement Volume and 2023 Supplement)

17 BY adding to  
18 Article – State Finance and Procurement  
19 Section 14–801 through 14–805 to be under the new subtitle “Subtitle 8. Historically  
20 Underutilized Business Zone Business Participation”  
21 Annotated Code of Maryland  
22 (2021 Replacement Volume and 2023 Supplement)

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

25 **Article – State Finance and Procurement**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14–501.

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

3 (b) “Small business” means:

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

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

8 **(3) A HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESS, AS**  
9 **DEFINED IN § 14–801 OF THIS TITLE, THAT MEETS THE CRITERIA SPECIFIED UNDER**  
10 **ITEM (4) OF THIS SUBSECTION; OR**

11 ~~[(3)] (4)~~ a business, other than a broker, that meets the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14          (c)    “Small business reserve” means those procurements that are limited to  
15 responses from small businesses under § 14–502(b) of this subtitle.

16                   **SUBTITLE 8. HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESS**  
17   **PARTICIPATION.**

18   **14–801.**

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

23   **14–802.**

24           **(A) (1) A UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES TO**  
25 **MEET THE STANDARDS ADOPTED BY THE U.S. SMALL BUSINESS ADMINISTRATION**  
26 **IN SUBPART 19.13 OF THE FEDERAL ACQUISITION REGULATION, AS PROVIDED IN**  
27 **48 C.F.R. CHAPTER 1.**

28           **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE**  
29 **GOVERNOR’S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS**  
30 **SHALL ADOPT REGULATIONS THAT ESTABLISH, CONSISTENT WITH SUBPART 19.13**  
31 **OF THE FEDERAL ACQUISITION REGULATION, AS PROVIDED IN 48 C.F.R. CHAPTER**  
32 **1:**

1                   1.    AN OVERALL PERCENTAGE GOAL OF THE UNIT'S  
2 TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS TO BE MADE DIRECTLY OR  
3 INDIRECTLY WITH HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES;  
4 AND

5                   2.    A PERCENTAGE PRICE PREFERENCE FOR  
6 PROCUREMENT CONTRACTS MADE DIRECTLY OR INDIRECTLY WITH HISTORICALLY  
7 UNDERUTILIZED BUSINESS ZONE BUSINESSES.

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

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

12 14-803.

13                   THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS  
14 AFFAIRS SHALL:

15                   (1)    ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;

16                   (2)    ESTABLISH PROCEDURES FOR TRACKING AND REPORTING  
17 PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES  
18 UNDER THIS SUBTITLE; AND

19                   (3)    ON OR BEFORE DECEMBER 1 EACH YEAR, REPORT TO THE  
20 LEGISLATIVE POLICY COMMITTEE ON:

21                   (I)    THE NUMBER AND DOLLAR VALUE OF CONTRACTS  
22 AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES UNDER  
23 THIS SUBTITLE, INCLUDING THE TOTAL DOLLAR VALUE OF PAYMENTS MADE TO  
24 HISTORICALLY UNDERUTILIZED BUSINESS ZONE BUSINESSES UNDER EXISTING  
25 CONTRACTS; AND

26                   (II) AN EVALUATION OF THE EFFECTIVENESS OF  
27 PARTICIPATION AMONG HISTORICALLY UNDERUTILIZED BUSINESS ZONE  
28 BUSINESSES UNDER THIS SUBTITLE.

29 14-804.

30                   (A) A PERSON MAY NOT:

1           **(1) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY**  
2 **OBTAIN OR ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN FRAUDULENTLY**  
3 **OBTAINING OR ATTEMPTING TO OBTAIN, PUBLIC MONEY, PROCUREMENT**  
4 **CONTRACTS, OR FUNDS EXPENDED UNDER A PROCUREMENT CONTRACT TO WHICH**  
5 **THE PERSON IS NOT ENTITLED UNDER THIS ARTICLE;**

6           **(2) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY**  
7 **REPRESENT PARTICIPATION OF A HISTORICALLY UNDERUTILIZED BUSINESS ZONE**  
8 **BUSINESS IN ORDER TO OBTAIN OR RETAIN A BID PREFERENCE OR A PROCUREMENT**  
9 **CONTRACT;**

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

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

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

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

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

30           **(2) IN ADDITION TO THE PENALTIES UNDER PARAGRAPH (1) OF THIS**  
31 **SUBSECTION, A PERSON WHO VIOLATES ANY PROVISION OF SUBSECTION (A) OF THIS**  
32 **SECTION IS:**

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

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

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

6                   **(C) THE BOARD SHALL PROHIBIT A BUSINESS OR PERSON WHO FAILS TO**  
7 **SATISFY THE PENALTIES, COSTS, AND ATTORNEY'S FEES IMPOSED UNDER**  
8 **SUBSECTION (B) OF THIS SECTION FROM FURTHER CONTRACTING WITH THE STATE**  
9 **UNTIL THE PENALTIES ARE SATISFIED.**

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

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

16 **14-805.**

17                   **IN ADDITION TO THE PENALTIES UNDER § 14-804(B) OF THIS SUBTITLE, A**  
18 **PERSON THAT WILLFULLY MISREPRESENTS A BUSINESS AS A HISTORICALLY**  
19 **UNDERUTILIZED BUSINESS ZONE BUSINESS FOR PURPOSES OF OBTAINING OR**  
20 **RETAINING A CONTRACT OR SUBCONTRACT MAY BE SUBJECT TO:**

21                   **(1) SUSPENSION OR DEBARMENT UNDER TITLE 16 OF THIS ARTICLE;**  
22 **OR**

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

25                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
26 **October 1, 2024.**