

Dear Chair Pendergrass, Vice-Chair Pena-Melnyk and other Members of the Committee:

State agencies report for annual minority business procurement to the dollar amount of contracts with certified minority business enterprises. Those goals, to be enforceable, must be derived from appropriate disparity studies that demonstrate that the individuals or groups granted a preference are the victims of past discrimination or its effects and the goals must be, to the extent that race is taken into account, narrowly tailored. If enacted, HB 1302 would ensure that the dollar amounts reported for purchases from minority business enterprises reflect only the amounts actually purchased from socially businesses owned by socially and economically disadvantaged individuals.

A minority business enterprise is a business that is owned and controlled by one or more socially and economically disadvantaged individuals. **State Fin.& Proc. § 14-301 (f)**. The individuals/groups shown by disparity study as permissible beneficiaries of the MBE preference are listed under **State Fin.& Proc. § 14-301 (k) (1)**.

("Socially disadvantaged individual") means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the control of the individual. **State Fin.& Proc. § 14-301 (l)**.

("Economically disadvantaged individual") means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. **State Fin.& Proc. § 14-301 (e)**.

In 2013 § 14-301 (k) (1) was amended to add individuals that suffer from physical or mental disabilities among those presumed to be victims of past discrimination or its effects. Unlike the other individuals who the disparity study confirmed to be socially and economically disadvantaged, these individuals were designated as socially and economically disadvantaged **“notwithstanding the State’s most recent disparity study”**.

Pursuant to **State Fin.& Proc. § 14-102 (a)** state agencies and certain other entities controlled by the state are required to fulfill their needs for supplies or services on a priority basis from the entities listed in **State Fin.& Proc. § 14-103**. HB 1302 would not in any way modify the state’s obligations. HB 1302 would simply preclude the inclusion of the dollar amount of purchases from § 14-103 entities in the calculation of the expenditures from socially and economically disadvantaged individuals- those individuals who have been **“subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities”**. **State Fin.& Proc. § 14-301 (l)**.

Crediting the amount of purchases from § 14-103 entities towards the agencies MBE participation goals has the unintended and potentially unlawful effect of granting a preference to § 14-103 entities over those owned and controlled by socially and economically disadvantaged individuals proven by disparity study to be victims of past discrimination or its present effects. For those reasons we urge a favorable report on HB 1302.

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