

# HOUSE BILL 1279

L5, P2

9lr0621

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By: **Montgomery County Delegation and Prince George's County Delegation**

Introduced and read first time: February 8, 2019

Assigned to: Health and Government Operations

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Committee Report: Favorable

House action: Adopted

Read second time: March 13, 2019

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

1 AN ACT concerning

2 **Maryland–National Capital Park and Planning Commission – Procurement –**  
3 **Source Selection**

4 **MC/PG 112–19**

5 FOR the purpose of requiring the Maryland–National Capital Park and Planning  
6 Commission to adopt certain procurement regulations relating to source selection;  
7 authorizing the Commission to adopt certain regulations establishing a minority  
8 business enterprise program under certain circumstances; authorizing the  
9 Commission to adopt certain regulations establishing a local small business  
10 enterprise program; requiring the Commission to report each year to certain persons  
11 on the effectiveness of certain programs; repealing certain provisions relating to a  
12 minority business enterprise program in the Commission on a certain date; requiring  
13 the Special Secretary for the Office of Small, Minority, and Women Business Affairs  
14 and the Secretary of Transportation to ensure that the Commission is provided with  
15 certain technical assistance to implement this Act; authorizing the governing bodies  
16 of Montgomery County and Prince George's County to provide certain funding for  
17 the implementation of this Act in a certain manner; defining certain terms; providing  
18 for a delayed effective date for certain provisions of this Act; and generally relating  
19 to procurement activities of the Maryland–National Capital Park and Planning  
20 Commission.

21 BY adding to

22 Article – Land Use

23 Section 15–201 through 15–205 to be under the new subtitle “Subtitle 2.

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**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 Procurement”  
2 Annotated Code of Maryland  
3 (2012 Volume and 2018 Supplement)

4 BY repealing and reenacting, with amendments,  
5 Article – Land Use  
6 Section 15–201 and 15–205  
7 Annotated Code of Maryland  
8 (2012 Volume and 2018 Supplement)  
9 (As enacted by Section 1 of this Act)

10 BY repealing and reenacting, without amendments,  
11 Article – Land Use  
12 Section 15–202 and 15–204  
13 Annotated Code of Maryland  
14 (2012 Volume and 2018 Supplement)  
15 (As enacted by Section 1 of this Act)

16 BY repealing  
17 Article – Land Use  
18 Section 15–203  
19 Annotated Code of Maryland  
20 (2012 Volume and 2018 Supplement)  
21 (As enacted by Section 1 of this Act)

22 Preamble

23 WHEREAS, As provided by Chapter 340 of the Acts of the General Assembly of 2017,  
24 the General Assembly has received and reviewed the disparity study entitled “Business  
25 Disparities in the Maryland Market Area”, published February 8, 2017; and

26 WHEREAS, Based on a review of the disparity study, the General Assembly found  
27 that there are substantial adverse disparities that are consistent with discrimination  
28 against businesses owned by minorities and women; and

29 WHEREAS, The General Assembly finds that the elimination of discrimination  
30 against businesses owned by minorities and women is of paramount importance to the  
31 future welfare of the State; and

32 WHEREAS, The State of Maryland wishes to provide all of its citizens with equal  
33 access to business formation and growth opportunities; and

34 WHEREAS, The Maryland–National Capital Park and Planning Commission is an  
35 independent bicounty agency of the State that procures goods and services within a  
36 geographical marketplace of particular interest to the State; and

37 WHEREAS, The Commission has reported that utilization of businesses owned by

1 minorities and women declined after it ceased operating a minority business enterprise  
2 program on the abrogation of the authority provided under Chapter 256 of the Acts of the  
3 General Assembly of 1995; and

4 WHEREAS, The General Assembly desires for the Commission to assess, based on  
5 the disparity study and other legally relevant data, whether the Commission has  
6 underutilized minority business enterprises relative to their availability to perform work  
7 in the procurement categories in which the State does business; and

8 WHEREAS, Subject to the Commission's determination that such a legally  
9 significant disparity or underutilization exists, the General Assembly desires to authorize  
10 the Commission to adopt and implement a minority business enterprise procurement  
11 program to augment the efforts of the State under Chapter 340 of the Acts of the General  
12 Assembly of 2017; and

13 WHEREAS, The General Assembly further desires to authorize the Commission to  
14 implement a local small business enterprise program as a method of enhancing the  
15 participation of employers that are based locally within Montgomery County and Prince  
16 George's County; now, therefore,

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

19 **Article – Land Use**

20 **SUBTITLE 2. PROCUREMENT.**

21 **15-201.**

22 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
23 **INDICATED.**

24 **(B) “CERTIFICATION” MEANS THE DETERMINATION THAT A LEGAL ENTITY**  
25 **IS A MINORITY BUSINESS ENTERPRISE UNDER TITLE 14, SUBTITLE 3 OF THE STATE**  
26 **FINANCE AND PROCUREMENT ARTICLE.**

27 **(C) “CERTIFICATION AGENCY” MEANS THE AGENCY DESIGNATED BY THE**  
28 **BOARD OF PUBLIC WORKS UNDER § 14-303(B) OF THE STATE FINANCE AND**  
29 **PROCUREMENT ARTICLE TO CERTIFY AND DECERTIFY MINORITY BUSINESS**  
30 **ENTERPRISES.**

31 **(D) “CERTIFIED MINORITY BUSINESS ENTERPRISE” MEANS A MINORITY**  
32 **BUSINESS ENTERPRISE THAT HOLDS A VALID CERTIFICATION ISSUED BY THE**  
33 **CERTIFICATION AGENCY.**

1 (E) "LOCAL SMALL BUSINESS ENTERPRISE" MEANS A BUSINESS  
2 ENTERPRISE THAT:

3 (1) HAS ITS PRINCIPAL PLACE OF OPERATION IN MONTGOMERY  
4 COUNTY OR PRINCE GEORGE'S COUNTY; AND

5 (2) HAS BEEN CERTIFIED AS A SMALL BUSINESS ENTERPRISE BY A  
6 UNIT OF COUNTY GOVERNMENT THAT HAS JURISDICTION OVER PROCUREMENT IN  
7 MONTGOMERY COUNTY OR PRINCE GEORGE'S COUNTY.

8 (F) "MINORITY BUSINESS ENTERPRISE" HAS THE SAME MEANING AS  
9 PROVIDED IN § 14-301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

10 (G) "STUDY" MEANS THE DISPARITY STUDY COMMISSIONED BY THE  
11 GENERAL ASSEMBLY OF MARYLAND ENTITLED "BUSINESS DISPARITIES IN THE  
12 MARYLAND MARKET AREA" PUBLISHED ON FEBRUARY 8, 2017.

13 15-202.

14 THE COMMISSION SHALL ADOPT PROCUREMENT REGULATIONS CONSISTENT  
15 WITH THE STANDARDS AND METHODS FOR SOURCE SELECTION PROVIDED IN TITLE  
16 13, SUBTITLE 1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

17 15-203.

18 (A) THE PROCUREMENT REGULATIONS ADOPTED IN ACCORDANCE WITH §  
19 15-202 OF THIS SUBTITLE MAY INCLUDE A MINORITY BUSINESS ENTERPRISE  
20 PROGRAM IF THE COMMISSION DETERMINES, BASED ON THE STUDY AND OTHER  
21 LEGALLY RELEVANT DATA, THAT THE COMMISSION HAS UNDERUTILIZED MINORITY  
22 BUSINESS ENTERPRISES RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN  
23 THE PROCUREMENT CATEGORIES IN WHICH THE STATE DOES BUSINESS, INCLUDING  
24 GOODS, SERVICES, AND CONSTRUCTION.

25 (B) THE REGULATIONS TO ESTABLISH A MINORITY BUSINESS ENTERPRISE  
26 PROGRAM MAY INCLUDE:

27 (1) PROCEDURES TO BE FOLLOWED BY STAFF, PROSPECTIVE  
28 CONTRACTORS, AND SUCCESSFUL BIDDERS OR OFFERORS TO MAXIMIZE NOTICE TO,  
29 AND THE OPPORTUNITY TO PARTICIPATE IN THE PROCUREMENT PROCESS BY, A  
30 BROAD RANGE OF MINORITY BUSINESS ENTERPRISES;

31 (2) PROVISIONS TO EXTEND REASONABLE COMPETITIVE  
32 PREFERENCES FOR CERTIFIED MINORITY BUSINESS ENTERPRISES OR GOALS FOR

1 UTILIZATION OF CERTIFIED MINORITY BUSINESS ENTERPRISES IN PARTICULAR  
2 PROCUREMENT ACTIVITIES UNDER APPROPRIATE CIRCUMSTANCES; AND

3 (3) TO THE EXTENT APPLICABLE TO COMMISSION PROCUREMENT  
4 ACTIVITIES, PROVISIONS COMPARABLE IN PURPOSE AND EFFECT TO ANY  
5 REGULATIONS ADOPTED BY THE STATE IN ACCORDANCE WITH § 14-303 OF THE  
6 STATE FINANCE AND PROCUREMENT ARTICLE.

7 15-204.

8 (A) THE COMMISSION'S PROCUREMENT REGULATIONS MAY ESTABLISH A  
9 LOCAL SMALL BUSINESS ENTERPRISE PROGRAM TO ENCOURAGE LOCAL SMALL  
10 BUSINESS ENTERPRISE PARTICIPATION IN APPROPRIATE PROCUREMENT  
11 ACTIVITIES.

12 (B) THE REGULATIONS ADOPTED IN ACCORDANCE WITH THIS SECTION MAY  
13 INCLUDE:

14 (1) PROCEDURES FOR RELIABLE DOCUMENTATION OF A BUSINESS  
15 ENTITY'S OFFICIAL DESIGNATION BY MONTGOMERY COUNTY OR PRINCE GEORGE'S  
16 COUNTY AS A LOCAL SMALL BUSINESS ENTERPRISE;

17 (2) PROCEDURES TO BE FOLLOWED BY STAFF, PROSPECTIVE  
18 CONTRACTORS, AND SUCCESSFUL BIDDERS OR OFFERORS TO MAXIMIZE NOTICE TO,  
19 AND THE OPPORTUNITY TO PARTICIPATE IN THE PROCUREMENT PROCESS BY, A  
20 BROAD RANGE OF LOCAL SMALL BUSINESS ENTERPRISES; AND

21 (3) PROVISIONS TO:

22 (I) EXTEND REASONABLE COMPETITIVE PREFERENCES FOR  
23 LOCAL SMALL BUSINESS ENTERPRISES;

24 (II) ESTABLISH PROCUREMENT GOALS OF UTILIZATION OF  
25 LOCAL SMALL BUSINESS ENTERPRISES; AND

26 (III) RESERVE PARTICULAR PROCUREMENT ACTIVITIES FOR  
27 LOCAL SMALL BUSINESS ENTERPRISES UNDER APPROPRIATE CIRCUMSTANCES.

28 15-205.

29 ON OR BEFORE OCTOBER 31 EACH YEAR, THE COMMISSION SHALL REPORT  
30 TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY DELEGATIONS TO  
31 THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE

1 **GOVERNMENT ARTICLE, ON THE EFFECTIVENESS OF ANY MINORITY BUSINESS**  
2 **ENTERPRISE PROGRAM OR LOCAL SMALL BUSINESS ENTERPRISE PROGRAM**  
3 **ESTABLISHED UNDER THIS SUBTITLE.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
5 as follows:

6 **Article – Land Use**

7 15–201.

8 [(a)] In this [subtitle the following words have the meanings indicated.

9 (b) “Certification” means the determination that a legal entity is a minority  
10 business enterprise under Title 14, Subtitle 3 of the State Finance and Procurement Article.

11 (c) “Certification agency” means the agency designated by the Board of Public  
12 Works under § 14–303(b) of the State Finance and Procurement Article to certify and  
13 decertify minority business enterprises.

14 (d) “Certified minority business enterprise” means a minority business enterprise  
15 that holds a valid certification issued by the certification agency.

16 (e) “Local] SUBTITLE, “LOCAL small business enterprise” means a business  
17 enterprise that:

18 (1) has its principal place of operation in Montgomery County or Prince  
19 George’s County; and

20 (2) has been certified as a small business enterprise by a unit of county  
21 government that has jurisdiction over procurement in Montgomery County or Prince  
22 George’s County.

23 [(f) “Minority business enterprise” has the same meaning as provided in § 14–301  
24 of the State Finance and Procurement Article.

25 (g) “Study” means the disparity study commissioned by the General Assembly of  
26 Maryland entitled “Business Disparities in the Maryland Market Area” published on  
27 February 8, 2017.]

28 15–202.

29 The Commission shall adopt procurement regulations consistent with the standards  
30 and methods for source selection provided in Title 13, Subtitle 1 of the State Finance and  
31 Procurement Article.

1 [15–203.

2 (a) The procurement regulations adopted in accordance with § 15–202 of this  
3 subtitle may include a minority business enterprise program if the Commission determines,  
4 based on the study and other legally relevant data, that the Commission has underutilized  
5 minority business enterprises relative to their availability to perform work in the  
6 procurement categories in which the State does business, including goods, services, and  
7 construction.

8 (b) The regulations to establish a minority business enterprise program may  
9 include:

10 (1) procedures to be followed by staff, prospective contractors, and  
11 successful bidders or offerors to maximize notice to, and the opportunity to participate in  
12 the procurement process by, a broad range of minority business enterprises;

13 (2) provisions to extend reasonable competitive preferences for certified  
14 minority business enterprises or goals for utilization of certified minority business  
15 enterprises in particular procurement activities under appropriate circumstances; and

16 (3) to the extent applicable to Commission procurement activities,  
17 provisions comparable in purpose and effect to any regulations adopted by the State in  
18 accordance with § 14–303 of the State Finance and Procurement Article.]

19 15–204.

20 (a) The Commission’s procurement regulations may establish a local small  
21 business enterprise program to encourage local small business enterprise participation in  
22 appropriate procurement activities.

23 (b) The regulations adopted in accordance with this section may include:

24 (1) procedures for reliable documentation of a business entity’s official  
25 designation by Montgomery County or Prince George’s County as a local small business  
26 enterprise;

27 (2) procedures to be followed by staff, prospective contractors, and  
28 successful bidders or offerors to maximize notice to, and the opportunity to participate in  
29 the procurement process by, a broad range of local small business enterprises; and

30 (3) provisions to:

31 (i) extend reasonable competitive preferences for local small  
32 business enterprises;

33 (ii) establish procurement goals of utilization of local small business  
34 enterprises; and

1 (iii) reserve particular procurement activities for local small business  
2 enterprises under appropriate circumstances.

3 15–205.

4 On or before October 31 each year, the Commission shall report to the Montgomery  
5 County and Prince George’s County Delegations to the General Assembly, in accordance  
6 with § 2–1246 of the State Government Article, on the effectiveness of any [minority  
7 business enterprise program or] local small business enterprise program established under  
8 this subtitle.

9 SECTION 3. AND BE IT FURTHER ENACTED, That the Special Secretary for the  
10 Office of Small, Minority, and Women Business Affairs and the Secretary of Transportation  
11 shall ensure that the Commission is provided with appropriate technical assistance to  
12 implement this Act, including providing any information relating to the disparity study  
13 entitled “Business Disparities in the Maryland Market Area” published on February 8,  
14 2017, that may be necessary or appropriate for the Commission to evaluate whether or the  
15 extent to which minority business enterprises may have been underutilized.

16 SECTION 4. AND BE IT FURTHER ENACTED, That the governing bodies of  
17 Montgomery County and Prince George’s County may provide for the funding necessary to  
18 implement this Act, including funding required for the Commission to conduct any study  
19 or analysis required to determine whether minority business enterprises or local small  
20 business enterprises have been underutilized, through the operating budget of the  
21 Commission.

22 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take  
23 effect October 1, 2022.

24 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section  
25 5 of this Act, this Act shall take effect June 1, 2019.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.