

# HOUSE BILL 1279

L5, P2

(9lr0621)

## ENROLLED BILL

— *Health and Government Operations/Education, Health, and Environmental Affairs*

Introduced by **Montgomery County Delegation and Prince George’s County Delegation**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o’clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### 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~~ *if the Commission makes*  
9 *a certain determination*; authorizing the Commission to adopt certain regulations  
10 establishing a local small business enterprise program; requiring the Commission to  
11 report each year to certain persons on the effectiveness of certain programs;  
12 repealing certain provisions relating to a minority business enterprise program in

---

#### 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.

*Italics indicate opposite chamber/conference committee amendments.*



1 the Commission on a certain date; ~~requiring the Special Secretary for the Office of~~  
 2 ~~Small, Minority, and Women Business Affairs and the Secretary of Transportation~~  
 3 ~~to ensure that the Commission is provided with certain technical assistance to~~  
 4 ~~implement this Act~~ requiring the Commission, in consultation with a certain  
 5 certification agency, to complete a study to evaluate whether there is a compelling  
 6 interest to implement certain remedial measures to assist minorities and women in  
 7 participating in Commission procurement contracts; requiring a certain certification  
 8 agency to consult with the Commission to identify information necessary to make a  
 9 certain determination; requiring the Commission to obtain and provide certain  
 10 information to the certification agency; requiring the Commission to make certain  
 11 evaluations; requiring the Commission to report the findings of a certain study to  
 12 certain persons on or before a certain date; authorizing the governing bodies of  
 13 Montgomery County and Prince George's County to provide certain funding for the  
 14 implementation of this Act in a certain manner; defining certain terms; providing for  
 15 a delayed effective date for certain provisions of this Act; and generally relating to  
 16 procurement activities of the Maryland–National Capital Park and Planning  
 17 Commission.

18 BY adding to

19 Article – Land Use

20 Section 15–201 through 15–205 to be under the new subtitle “Subtitle 2.  
 21 Procurement”

22 Annotated Code of Maryland

23 (2012 Volume and 2018 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Land Use

26 Section 15–201 and 15–205

27 Annotated Code of Maryland

28 (2012 Volume and 2018 Supplement)

29 (As enacted by Section 1 of this Act)

30 BY repealing and reenacting, without amendments,

31 Article – Land Use

32 Section 15–202 and 15–204

33 Annotated Code of Maryland

34 (2012 Volume and 2018 Supplement)

35 (As enacted by Section 1 of this Act)

36 BY repealing

37 Article – Land Use

38 Section 15–203

39 Annotated Code of Maryland

40 (2012 Volume and 2018 Supplement)

41 (As enacted by Section 1 of this Act)

42 Preamble

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

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

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

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

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

15 WHEREAS, The Commission has reported that utilization of businesses owned by  
16 minorities and women declined after it ceased operating a minority business enterprise  
17 program on the abrogation of the authority provided under Chapter 256 of the Acts of the  
18 General Assembly of 1995; and

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

23 ~~WHEREAS, Subject to the Commission’s determination that such a legally~~  
24 ~~significant disparity or underutilization exists, the General Assembly desires to authorize~~

25 WHEREAS, The General Assembly desires for the Commission to assess whether  
26 there is a basis for the Commission to implement remedial measures for minority– and  
27 women–owned businesses; and

28 WHEREAS, Subject to the Commission’s determination that there is a basis for the  
29 Commission to implement remedial measures for minority– and women–owned firms that  
30 seek to do business with the Commission, the General Assembly desires to authorize the  
31 Commission to adopt and implement a minority business enterprise procurement program  
32 to augment the efforts of the State under Chapter 340 of the Acts of the General Assembly  
33 of 2017; and

34 WHEREAS, The General Assembly further desires to authorize the Commission to  
35 implement a local small business enterprise program as a method of enhancing the

1 participation of employers that are based locally within Montgomery County and Prince  
2 George's County; now, therefore,

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

5 Article – Land Use

6 SUBTITLE 2. PROCUREMENT.

7 15-201.

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
9 INDICATED.

10 (B) "CERTIFICATION" MEANS THE DETERMINATION THAT A LEGAL ENTITY  
11 IS A MINORITY BUSINESS ENTERPRISE UNDER TITLE 14, SUBTITLE 3 OF THE STATE  
12 FINANCE AND PROCUREMENT ARTICLE.

13 (C) "CERTIFICATION AGENCY" MEANS THE AGENCY DESIGNATED BY THE  
14 BOARD OF PUBLIC WORKS UNDER § 14-303(B) OF THE STATE FINANCE AND  
15 PROCUREMENT ARTICLE TO CERTIFY AND DECERTIFY MINORITY BUSINESS  
16 ENTERPRISES.

17 (D) "CERTIFIED MINORITY BUSINESS ENTERPRISE" MEANS A MINORITY  
18 BUSINESS ENTERPRISE THAT HOLDS A VALID CERTIFICATION ISSUED BY THE  
19 CERTIFICATION AGENCY.

20 (E) "LOCAL SMALL BUSINESS ENTERPRISE" MEANS A BUSINESS  
21 ENTERPRISE THAT:

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

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

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

29 ~~(G) "STUDY" MEANS THE DISPARITY STUDY COMMISSIONED BY THE~~  
30 ~~GENERAL ASSEMBLY OF MARYLAND ENTITLED "BUSINESS DISPARITIES IN THE~~  
31 ~~MARYLAND MARKET AREA" PUBLISHED ON FEBRUARY 8, 2017.~~

1 15-202.

2 THE COMMISSION SHALL ADOPT PROCUREMENT REGULATIONS CONSISTENT  
3 WITH THE STANDARDS AND METHODS FOR SOURCE SELECTION PROVIDED IN TITLE  
4 13, SUBTITLE 1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

5 15-203.

6 (A) THE PROCUREMENT REGULATIONS ADOPTED IN ACCORDANCE WITH §  
7 15-202 OF THIS SUBTITLE MAY INCLUDE A MINORITY BUSINESS ENTERPRISE  
8 ~~PROGRAM IF THE COMMISSION DETERMINES, BASED ON THE STUDY AND OTHER~~  
9 ~~LEGALLY RELEVANT DATA, THAT THE COMMISSION HAS UNDERUTILIZED MINORITY~~  
10 ~~BUSINESS ENTERPRISES RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN~~  
11 ~~THE PROCUREMENT CATEGORIES IN WHICH THE STATE DOES BUSINESS, INCLUDING~~  
12 ~~GOODS, SERVICES, AND CONSTRUCTION.~~ PROGRAM IF THE COMMISSION  
13 DETERMINES THAT THERE IS A COMPELLING INTEREST TO IMPLEMENT REMEDIAL  
14 MEASURES TO ASSIST MINORITY- AND WOMEN-OWNED BUSINESSES WHO WISH TO  
15 PARTICIPATE IN COMMISSION PROCUREMENT CONTRACTS.

16 (B) THE REGULATIONS TO ESTABLISH A MINORITY BUSINESS ENTERPRISE  
17 PROGRAM MAY INCLUDE:

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

22 ~~(2) PROVISIONS TO EXTEND REASONABLE COMPETITIVE~~  
23 ~~PREFERENCES FOR CERTIFIED MINORITY BUSINESS ENTERPRISES OR GOALS FOR~~  
24 ~~UTILIZATION OF CERTIFIED MINORITY BUSINESS ENTERPRISES IN PARTICULAR~~  
25 ~~PROCUREMENT ACTIVITIES UNDER APPROPRIATE CIRCUMSTANCES; AND~~

26 (2) TO THE EXTENT AUTHORIZED BY STATE AND FEDERAL LAW BASED  
27 ON THE FINDINGS OF AN APPROPRIATE STUDY OR ANALYSIS, PROVISIONS TO  
28 EXTEND REASONABLE COMPETITIVE PREFERENCES FOR CERTIFIED MINORITY  
29 BUSINESS ENTERPRISES OR GOALS FOR UTILIZATION OF CERTIFIED MINORITY  
30 BUSINESS ENTERPRISES IN PARTICULAR PROCUREMENT ACTIVITIES UNDER  
31 APPROPRIATE CIRCUMSTANCES; AND

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

1 **15-204.**

2 (A) THE COMMISSION'S PROCUREMENT REGULATIONS MAY ESTABLISH A  
3 LOCAL SMALL BUSINESS ENTERPRISE PROGRAM TO ENCOURAGE LOCAL SMALL  
4 BUSINESS ENTERPRISE PARTICIPATION IN APPROPRIATE PROCUREMENT  
5 ACTIVITIES.

6 (B) THE REGULATIONS ADOPTED IN ACCORDANCE WITH THIS SECTION MAY  
7 INCLUDE:

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

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

15 (3) PROVISIONS TO:

16 (I) EXTEND REASONABLE COMPETITIVE PREFERENCES FOR  
17 LOCAL SMALL BUSINESS ENTERPRISES;

18 (II) ESTABLISH PROCUREMENT GOALS OF UTILIZATION OF  
19 LOCAL SMALL BUSINESS ENTERPRISES; AND

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

22 **15-205.**

23 ON OR BEFORE OCTOBER 31 EACH YEAR, THE COMMISSION SHALL REPORT  
24 TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY DELEGATIONS TO  
25 THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE  
26 GOVERNMENT ARTICLE, ON THE EFFECTIVENESS OF ANY MINORITY BUSINESS  
27 ENTERPRISE PROGRAM OR LOCAL SMALL BUSINESS ENTERPRISE PROGRAM  
28 ESTABLISHED UNDER THIS SUBTITLE.

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

31 Article – Land Use

1 15-201.

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

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

5 (c) "Certification agency" means the agency designated by the Board of Public  
6 Works under § 14-303(b) of the State Finance and Procurement Article to certify and  
7 decertify minority business enterprises.

8 (d) "Certified minority business enterprise" means a minority business enterprise  
9 that holds a valid certification issued by the certification agency.

10 (e) "Local] SUBTITLE, "LOCAL small business enterprise" means a business  
11 enterprise that:

12 (1) has its principal place of operation in Montgomery County or Prince  
13 George's County; and

14 (2) has been certified as a small business enterprise by a unit of county  
15 government that has jurisdiction over procurement in Montgomery County or Prince  
16 George's County.

17 ~~[(f) "Minority business enterprise" has the same meaning as provided in § 14-301~~  
18 ~~of the State Finance and Procurement Article.~~

19 ~~(g) "Study" means the disparity study commissioned by the General Assembly of~~  
20 ~~Maryland entitled "Business Disparities in the Maryland Market Area" published on~~  
21 ~~February 8, 2017.]~~

22 15-202.

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

26 [15-203.

27 (a) The procurement regulations adopted in accordance with § 15-202 of this  
28 subtitle may include a minority business enterprise program if the Commission determines,  
29 ~~based on the study and other legally relevant data, that the Commission has underutilized~~  
30 ~~minority business enterprises relative to their availability to perform work in the~~  
31 ~~procurement categories in which the State does business, including goods, services, and~~  
32 ~~construction~~ *that there is a compelling interest to implement remedial measures to assist*

1 minority- and women-owned businesses who wish to participate in Commission  
 2 procurement contracts.

3 (b) The regulations to establish a minority business enterprise program may  
 4 include:

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

8 ~~(2) provisions to extend reasonable competitive preferences for certified~~  
 9 ~~minority business enterprises or goals for utilization of certified minority business~~  
 10 ~~enterprises in particular procurement activities under appropriate circumstances; and~~

11 (2) to the extent permitted by State and federal law based on the findings of  
 12 an appropriate study or analysis, provisions to extend reasonable competitive preferences for  
 13 certified minority business enterprises or goals for utilization of certified minority business  
 14 enterprises in particular procurement activities under appropriate circumstances; and

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

18 15-204.

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

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

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

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

29 (3) provisions to:

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

32 (ii) establish procurement goals of utilization of local small business  
 33 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 3. AND BE IT FURTHER ENACTED, That:

17 (a) The Commission, in consultation with the certification agency designated by  
18 the Board of Public Works under § 14–303(b) of the State Finance and Procurement Article  
19 and the Office of the Attorney General, shall complete a study, which may include an  
20 analysis of the disparity study as set forth in subsection (b) of this section, to evaluate  
21 whether there is a compelling interest to implement remedial measures, including a program  
22 comparable to the State Minority Business Enterprise Program under Title 14, Subtitle 3 of  
23 the State Finance and Procurement Article, to assist minorities and women in participating  
24 in Commission procurement contracts.

25 (b) (1) The certification agency shall consult with the Commission to identify  
26 the information necessary to determine whether the disparity study entitled “Business  
27 Disparities in the Maryland Market Area”, published on February 8, 2017, applies to the  
28 types of goods and services procured by the Commission.

29 (2) The Commission shall obtain and provide information to the  
30 certification agency that the certification agency requires to make the determination under  
31 paragraph (1) of this subsection.

32 (c) In performing the study required under subsection (a) of this section, the  
33 Commission shall evaluate race-neutral programs or other methods that may be used to  
34 address the needs of minority- and women-owned businesses seeking to participate in  
35 Commission procurement contracts.

36 (d) On or before January 1, 2020, the Commission shall report to the Montgomery  
37 County and Prince George’s County delegations to the General Assembly and the Legislative

1 Policy Committee, in accordance with § 2-1246 of the State Government Article, on the  
2 findings of the study required under subsection (a) of this section.

3 SECTION 4. AND BE IT FURTHER ENACTED, That the governing bodies of  
4 Montgomery County and Prince George's County may provide for the funding necessary to  
5 implement this Act, including funding required for the Commission to conduct any study  
6 or analysis required to determine whether there is discrimination against minority  
7 business enterprises or whether local small business enterprises have been underutilized,  
8 through the operating budget of the Commission.

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

11 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section  
12 5 of this Act, this Act shall take effect June 1, 2019.

Approved:

---

Governor.

---

Speaker of the House of Delegates.

---

President of the Senate.