

HOUSE BILL 251

P2

(0lr1958)

ENROLLED BILL

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

Introduced by **Delegates Morhaim, Bobo, Cane, Cardin, Conaway, Glenn, Hecht, Heller, Hixson, Hubbard, Kaiser, Lafferty, Lee, Levi, Montgomery, Nathan-Pulliam, Oaks, Reznik, Robinson, Shewell, Stocksdale, Tarrant, V. Turner, ~~and Walker~~ Walker, Kramer, Pendergrass, Benson, Kullen, and Pena-Melnyk**

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 **State Procurement – Minority Business Enterprises – Electronic**
3 **Certification Process**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations that
5 include provisions that ~~allow a business seeking certification as a minority~~
6 ~~business enterprise to complete the application~~ promote and facilitate the
7 submission of *all or part of* certain applications for certification as a minority
8 business enterprise through an electronic process; and generally relating to an
9 electronic certification process for minority business enterprises.

10 BY repealing and reenacting, with amendments,

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 Article – State Finance and Procurement
 2 Section 14–303
 3 Annotated Code of Maryland
 4 (2009 Replacement Volume)

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

7 **Article – State Finance and Procurement**

8 14–303.

9 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State
 10 Government Article, the Board shall adopt regulations consistent with the purposes of
 11 this Division II to carry out the requirements of this subtitle.

12 (ii) The Board shall keep a record of the number of waivers
 13 requested and the number of waivers granted each year under subsection (b)(8) of this
 14 section and submit a copy of the record to the General Assembly on or before October 1
 15 of each year, in accordance with § 2–1246 of the State Government Article.

16 (2) The regulations shall establish procedures to be followed by units,
 17 prospective contractors, and successful bidders or offerors to maximize notice to, and
 18 the opportunity to participate in the procurement process by, a broad range of
 19 minority business enterprises.

20 (b) These regulations shall include:

21 (1) provisions designating one agency to certify and decertify minority
 22 business enterprises for all units through a single process that meets applicable
 23 federal requirements, ~~INCLUDING PROVISIONS THAT ALLOW A BUSINESS SEEKING~~
 24 ~~CERTIFICATION TO COMPLETE THE~~ PROMOTE AND FACILITATE THE
 25 SUBMISSION OF SOME OR ALL OF THE CERTIFICATION APPLICATION THROUGH
 26 AN ELECTRONIC PROCESS;

27 (2) a requirement that the solicitation document accompanying each
 28 solicitation set forth the expected degree of minority business enterprise participation
 29 based, in part, on:

30 (i) the potential subcontract opportunities available in the
 31 prime procurement contract; and

32 (ii) the availability of certified minority business enterprises to
 33 respond competitively to the potential subcontract opportunities;

1 (3) a requirement that the unit provide a current list of certified
2 minority business enterprises to each prospective contractor;

3 (4) provisions to ensure the uniformity of requests for bids on
4 subcontracts;

5 (5) provisions relating to the timing of requests for bids on
6 subcontracts and of submission of bids on subcontracts;

7 (6) provisions designed to ensure that a fiscal disadvantage to the
8 State does not result from an inadequate response by minority business enterprises to
9 a request for bids;

10 (7) provisions relating to joint ventures, under which a bidder may
11 count toward meeting its minority business enterprise participation goal, the minority
12 business enterprise portion of the joint venture;

13 (8) consistent with § 14-302(a)(6) of this subtitle, provisions relating
14 to any circumstances under which a unit may waive obligations of the contractor
15 relating to minority business enterprise participation;

16 (9) provisions requiring a monthly submission to the unit by minority
17 business enterprises acknowledging all payments received in the preceding 30 days
18 under a contract governed by this subtitle;

19 (10) a requirement that a unit shall verify and maintain data
20 concerning payments received by minority business enterprises, including a
21 requirement that, upon completion of a project, the unit shall compare the total dollar
22 value actually received by minority business enterprises with the amount of contract
23 dollars initially awarded, and an explanation of any discrepancies therein;

24 (11) a requirement that a unit verify that minority business enterprises
25 listed in a successful bid are actually participating to the extent listed in the project
26 for which the bid was submitted;

27 (12) provisions establishing a graduation program based on the
28 financial viability of the minority business enterprise, using annual gross receipts or
29 other economic indicators as may be determined by the Board;

30 (13) a requirement that a bid or proposal based on a solicitation with an
31 expected degree of minority business enterprise participation identify the specific
32 commitment of certified minority business enterprises at the time of submission;

33 (14) provisions promoting and providing for the counting and reporting
34 of certified minority business enterprises as prime contractors; and

1 (15) other provisions that the Board considers necessary or appropriate
2 to encourage participation by minority business enterprises and to protect the
3 integrity of the procurement process.

4 (c) The regulations adopted under this section shall specify that a unit may
5 not allow a business to participate as if it were a certified minority business enterprise
6 if the business's certification is pending.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.