

HOUSE BILL 783

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By: **Montgomery County Delegation and Prince George’s County Delegation**
Introduced and read first time: February 8, 2023
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission – Minority Business Enterprise**
3 **Utilization Program – Revisions and Extension**

4 **MC/PG 101–23**

5 FOR the purpose of revising the minority business enterprise utilization program within
6 the Washington Suburban Sanitary Commission, including altering the definition of
7 “minority business enterprise”, altering the duties of the Office of Supplier Diversity
8 and Inclusion, merging the program for design/build and construction contracts with
9 the program for the procurement of goods and services, altering requirements for
10 prime contractors in relation to minority business enterprise participation, and
11 altering certification requirements for businesses to participate in contract-specific
12 minority business enterprise goals and preferences authorized by the Commission;
13 extending until a certain date provisions relating to procurement from minority
14 business enterprises by the Commission; and generally relating to the Washington
15 Suburban Sanitary Commission and procurements from minority business
16 enterprises.

17 BY repealing and reenacting, with amendments,
18 Article – Public Utilities
19 Section 20–201, 20–202, 20–204, 20–206, 20–208, and 20–302
20 Annotated Code of Maryland
21 (2020 Replacement Volume and 2022 Supplement)

22 BY adding to
23 Article – Public Utilities
24 Section 20–202 and 20–205
25 Annotated Code of Maryland
26 (2020 Replacement Volume and 2022 Supplement)

27 BY repealing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Article – Public Utilities
2 Section 20–203 and 20–205
3 Annotated Code of Maryland
4 (2020 Replacement Volume and 2022 Supplement)

5 BY repealing and reenacting, without amendments,
6 Article – Public Utilities
7 Section 20–207
8 Annotated Code of Maryland
9 (2020 Replacement Volume and 2022 Supplement)

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

12 **Article – Public Utilities**

13 20–201.

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

15 (b) [Except as provided in § 20–203 of this subtitle, “minority] **“MINORITY**
16 **business enterprise” [means a legal entity that is:**

17 (1) organized to engage in commercial transactions; and

18 (2) at least 51% owned and controlled by one or more individuals who are
19 members of a group that is:

20 (i) disadvantaged socially or economically by the effects of past
21 discrimination, including discrimination as to certification; and

22 (ii) identified by a study conducted in accordance with this subtitle
23 or a similar, previously conducted study] **HAS THE MEANING STATED IN § 14–301 OF**
24 **THE STATE FINANCE AND PROCUREMENT ARTICLE.**

25 (c) “Office” means the Office of Supplier Diversity and Inclusion established
26 under [§ 20–202] **§ 20–203** of this subtitle.

27 **20–202.**

28 **THE GENERAL ASSEMBLY FINDS THE FOLLOWING:**

29 **(1) THE GENERAL ASSEMBLY WISHES TO PROVIDE ALL CITIZENS OF**
30 **MARYLAND WITH EQUAL ACCESS TO BUSINESS FORMATION AND BUSINESS GROWTH**
31 **OPPORTUNITIES;**

1 **(2) THE ELIMINATION OF DISCRIMINATION AGAINST MINORITY- AND**
2 **WOMEN-OWNED BUSINESSES IS OF PARAMOUNT IMPORTANCE TO THE FUTURE**
3 **WELFARE OF THE COMMUNITY SERVED BY THE COMMISSION;**

4 **(3) THE COMMISSION HAS PROCURED, RECEIVED, ACCEPTED, AND**
5 **CAREFULLY REVIEWED A DISPARITY STUDY COMMISSIONED BY THE COMMISSION**
6 **AND FINDS THAT THE DISPARITY STUDY PROVIDES A STRONG BASIS IN EVIDENCE**
7 **DEMONSTRATING PERSISTENT DISCRIMINATION AGAINST MINORITY- AND**
8 **WOMEN-OWNED BUSINESSES;**

9 **(4) BASED ON ITS REVIEW OF THE DISPARITY STUDY:**

10 **(I) THERE ARE SUBSTANTIAL AND STATISTICALLY**
11 **SIGNIFICANT ADVERSE DISPARITIES THAT ARE STRONG EVIDENCE OF**
12 **DISCRIMINATION AGAINST MINORITIES AND NONMINORITY WOMEN IN WAGES,**
13 **BUSINESS FORMATION, BUSINESS OWNER EARNINGS, AND ACCESS TO CAPITAL IN**
14 **THE SAME GEOGRAPHIC MARKETS AND INDUSTRY CATEGORIES IN WHICH THE**
15 **COMMISSION DOES BUSINESS;**

16 **(II) THE COMMISSION WOULD BECOME A PASSIVE PARTICIPANT**
17 **IN PRIVATE SECTOR RACIAL AND GENDER DISCRIMINATION IF IT ELIMINATED ITS**
18 **REMEDIAL EFFORTS, INCLUDING THE OPERATION OF THE MINORITY BUSINESS**
19 **ENTERPRISE UTILIZATION PROGRAM ESTABLISHED UNDER § 20-204 OF THIS**
20 **SUBTITLE;**

21 **(III) THERE REMAIN SUBSTANTIAL AND STATISTICALLY**
22 **SIGNIFICANT ADVERSE DISPARITIES THAT ARE CONSISTENT WITH DISCRIMINATION**
23 **AGAINST MINORITIES AND NONMINORITY WOMEN IN THE COMMISSION'S OWN**
24 **PROCUREMENT DESPITE THE COMMISSION'S ASSERTIVE EFFORTS TO CURTAIL**
25 **THAT DISCRIMINATION;**

26 **(IV) THERE ARE SUBSTANTIAL AND STATISTICALLY**
27 **SIGNIFICANT ADVERSE DISPARITIES THAT ARE CONSISTENT WITH DISCRIMINATION**
28 **AGAINST BUSINESSES OWNED BY MINORITIES AND NONMINORITY WOMEN IN ALL**
29 **MAJOR INDUSTRY CATEGORIES IN WHICH THE COMMISSION PROCURES GOODS AND**
30 **SERVICES;**

31 **(V) THERE IS AMPLE EVIDENCE THAT DISCRIMINATION IN THE**
32 **PRIVATE SECTOR HAS DEPRESSED BUSINESS FORMATION AND BUSINESS GROWTH**
33 **AMONG MINORITY AND NONMINORITY WOMEN ENTREPRENEURS IN THE**
34 **GEOGRAPHIC MARKETS AND INDUSTRY CATEGORIES IN WHICH THE COMMISSION**
35 **DOES BUSINESS; AND**

1 **(VI) THERE IS POWERFUL AND PERSUASIVE QUALITATIVE**
2 **EVIDENCE, BOTH STATISTICAL AND ANECDOTAL, OF DISCRIMINATION AGAINST**
3 **MINORITY AND NONMINORITY WOMEN BUSINESS OWNERS IN BOTH THE PUBLIC AND**
4 **PRIVATE SECTORS IN THE GEOGRAPHIC MARKETS AND INDUSTRY CATEGORIES IN**
5 **WHICH THE COMMISSION DOES BUSINESS;**

6 **(5) AS A RESULT OF ONGOING DISCRIMINATION AND THE PRESENT**
7 **DAY EFFECTS OF PAST DISCRIMINATION, MINORITY- AND WOMEN-OWNED**
8 **BUSINESSES COMBINED CONTINUE TO BE SIGNIFICANTLY UNDERUTILIZED**
9 **RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN ALL OF THE**
10 **PROCUREMENT CATEGORIES IN WHICH THE COMMISSION DOES BUSINESS;**

11 **(6) MINORITY PRIME CONTRACTORS ALSO ARE SUBJECT TO**
12 **DISCRIMINATION AND CONFRONT ESPECIALLY DAUNTING BARRIERS IN**
13 **ATTEMPTING TO COMPETE WITH VERY LARGE AND LONG-ESTABLISHED**
14 **NONMINORITY COMPANIES;**

15 **(7) DESPITE THE FACT THAT THE COMMISSION HAS EMPLOYED, AND**
16 **CONTINUES TO EMPLOY, NUMEROUS AND ROBUST RACE-NEUTRAL REMEDIES,**
17 **INCLUDING AGGRESSIVE OUTREACH AND ADVERTISING, TRAINING AND EDUCATION,**
18 **A SMALL LOCAL BUSINESS PROGRAM, AND OTHER EFFORTS, THERE IS A STRONG**
19 **BASIS IN EVIDENCE THAT DISCRIMINATION PERSISTS EVEN IN PUBLIC SECTOR**
20 **PROCUREMENT WHERE THESE EFFORTS HAVE BEEN EMPLOYED;**

21 **(8) THIS SUBTITLE ENSURES THAT RACE-NEUTRAL EFFORTS WILL BE**
22 **USED TO THE MAXIMUM EXTENT FEASIBLE AND THAT RACE-CONSCIOUS MEASURES**
23 **WILL BE USED ONLY WHERE NECESSARY TO ELIMINATE DISCRIMINATION THAT WAS**
24 **NOT ALLEVIATED BY RACE-NEUTRAL EFFORTS;**

25 **(9) THIS SUBTITLE CONTINUES AND ENHANCES EFFORTS TO ENSURE**
26 **THAT THE COMMISSION LIMITS THE BURDEN ON NONMINORITY BUSINESSES AS**
27 **MUCH AS POSSIBLE BY ENSURING THAT ALL GOALS ARE DEVELOPED USING THE**
28 **BEST AVAILABLE DATA AND THAT WAIVERS ARE AVAILABLE WHEN CONTRACTORS**
29 **MAKE GOOD FAITH EFFORTS;**

30 **(10) THIS SUBTITLE ENSURES THAT THE OPERATION OF THE MINORITY**
31 **BUSINESS ENTERPRISE UTILIZATION PROGRAM ESTABLISHED UNDER § 20-204 OF**
32 **THIS SUBTITLE IS CONSISTENT WITH THE DISPARITY STUDY DATA AND IS NARROWLY**
33 **TAILORED TO THE COMPELLING INTERESTS OF THE STATE; AND**

34 **(11) COMMISSION EFFORTS TO SUPPORT THE DEVELOPMENT OF**
35 **COMPETITIVELY VIABLE BUSINESSES OWNED BY WOMEN AND MINORITIES WILL**

1 ASSIST IN REDUCING DISCRIMINATION AND CREATING JOBS FOR ALL CITIZENS OF
2 MARYLAND.

3 [20–202.] **20–203.**

4 (a) There is an Office of Supplier Diversity and Inclusion in the Commission.

5 (b) The head of the Office is the Director of the Office of Supplier Diversity and
6 Inclusion.

7 (c) The Office shall:

8 (1) administer each Commission program that is created to [promote the
9 growth of or participation by] **REMEDY DISCRIMINATION AGAINST** minority [or]
10 **BUSINESS ENTERPRISES AND PROMOTE THE PARTICIPATION OF** local small business
11 enterprises, including:

12 (i) [the minority business enterprise utilization program for
13 design/build and construction contracts under § 20–203 of this subtitle;

14 (ii) the minority business enterprise utilization program [for the
15 procurement of other goods and services] under § 20–204 of this subtitle; and

16 [(iii)] **(II)** the local small business enterprise program under
17 Subtitle 3 of this title;

18 (2) promote and coordinate the plans, programs, and operations of the
19 Commission [that promote or affect the establishment, preservation, and strengthening of
20 minority business enterprises] **TO REMEDY DISCRIMINATION AGAINST MINORITY**
21 **BUSINESS ENTERPRISES AND THE EFFECTS OF DISCRIMINATION;**

22 (3) promote activities and the use of the resources of the Commission, local
23 governments, and private entities [for the growth of] **TO REMEDY DISCRIMINATION**
24 **AGAINST** minority business enterprises **AND THE EFFECTS OF DISCRIMINATION; AND**

25 (4) [provide technical and managerial assistance to minority business
26 enterprises;

27 (5) schedule seminars and workshops to educate minority businesses on
28 how the Commission conducts business; and

29 (6) ensure compliance with certified minority business enterprise
30 subcontract participation goals under § 20–206 of this subtitle.

31 [20–203.

1 (a) In this section, “minority business enterprise” has the meaning stated in §
2 14–301 of the State Finance and Procurement Article.

3 (b) (1) By resolution and adopting regulations, the Commission shall establish
4 a mandatory minority business enterprise utilization program to facilitate the participation
5 of responsible certified minority business enterprises in contracts awarded by the
6 Commission in accordance with its competitive bidding or proposal procedures under
7 Subtitle 1 of this title.

8 (2) The Office shall administer the program established under this
9 subsection.

10 (c) Regulations that establish the program under subsection (b) of this section
11 shall include provisions that:

12 (1) recognize the certification of minority business enterprises by the State
13 certification agency designated under § 14–303(b) of the State Finance and Procurement
14 Article;

15 (2) recognize any other certification program that the Commission
16 determines substantially duplicates the requirements of the State certification agency;

17 (3) provide for the graduation of a minority business enterprise from the
18 program if the Commission determines that the minority business enterprise no longer
19 requires the assistance or benefits offered by the program;

20 (4) at the time of submission, require a bid or proposal based on a
21 solicitation with an expected degree of minority business enterprise participation to include
22 proof of a certified minority business enterprise commitment by stating:

23 (i) the potential subcontract opportunities available in the prime
24 procurement contract; and

25 (ii) the number of minority business enterprises that have certified,
26 under the penalties for perjury, that the minority business enterprise has entered into an
27 agreement with the bidder or offeror to provide goods or services under specific terms
28 outlined in the certification;

29 (5) require each general contractor to submit to the Commission monthly
30 reports of the number of minority business enterprises employed by the general contractor;

31 (6) require each general contractor to provide prompt notification to the
32 Commission if a contract with a minority business enterprise is terminated;

33 (7) require each general contractor to:

1 (i) maintain a participation level from minority business
2 enterprises that is consistent with the participation level referenced under item (4)(ii) of
3 this subsection; or

4 (ii) provide justification for the inability of the general contractor to
5 maintain the participation level;

6 (8) provide for an increase in minority business enterprise participation as
7 general contractors and subcontractors; and

8 (9) authorize the waiver of all or part of the program for a specific contract
9 if the Commission determines that applying the program to the contract would conflict with
10 the overall objectives and responsibilities of the Commission.

11 (d) Before accepting an alternative certification program under subsection (c)(2)
12 of this section, the Commission shall examine the alternative program to ensure that the
13 alternative program complies with the guidelines established under § 20–205 of this
14 subtitle.]

15 20–204.

16 (a) (1) By resolution and adopting regulations, the Commission shall establish
17 a minority business enterprise utilization program to [facilitate the participation of
18 responsible certified] **REMEDY DISCRIMINATION AGAINST** minority business enterprises
19 in contracts awarded by the Commission [for goods and services that are not covered under
20 § 20–203 of this subtitle,] if the Commission determines that:

21 (i) [minority business enterprises are underrepresented in the
22 award of these contracts due to the effects of past discrimination] **THERE IS A STRONG**
23 **BASIS IN EVIDENCE THAT MINORITY BUSINESS ENTERPRISES ARE SUBJECT TO**
24 **DISCRIMINATION;** and

25 (ii) a program is necessary to remedy the effects of this [past]
26 discrimination.

27 (2) The Office shall administer the program established under this
28 subsection.

29 (b) Regulations that establish the program under subsection (a) of this section
30 shall include provisions that:

31 (1) recognize the certification of minority business enterprises by the State
32 certification agency designated under § 14–303(b) of the State Finance and Procurement
33 Article **AND THE REGULATIONS ADOPTED UNDER TITLE 14, SUBTITLE 3 OF THE**
34 **STATE FINANCE AND PROCUREMENT ARTICLE;**

1 (2) recognize any other certification program that the Commission
2 determines, **UNDER § 20-205 OF THIS SUBTITLE**, substantially duplicates the
3 requirements of the State certification agency;

4 [(3) provide for the graduation of a minority business enterprise from the
5 program if the Commission determines that the minority business enterprise no longer
6 requires the assistance or benefits offered by the program;

7 (4) at the time of submission, require a bid or proposal based on a
8 solicitation with an expected degree of minority business enterprise participation to include
9 proof of a certified minority business enterprise commitment by stating:

10 (i) the potential subcontract opportunities available in the prime
11 procurement contract; and

12 (ii) the number of minority business enterprises that have certified,
13 under the penalties for perjury, that the minority business enterprise has entered into an
14 agreement with the bidder or offeror to provide goods or services under specific terms
15 outlined in the certification;]

16 **(3) ESTABLISH A RANGE OF RACE-NEUTRAL PROGRAMS AND**
17 **POLICIES AIMED AT REMEDYING DISCRIMINATION, INCLUDING EFFORTS TO ASSIST**
18 **SMALL AND UNDERUTILIZED BUSINESSES WITH:**

19 **(I) GROWING THE BUSINESS AND BEING COMPETITIVE;**

20 **(II) UNDERSTANDING AND NAVIGATING THE COMMISSION'S**
21 **PROCUREMENT PROCESS AND REQUIREMENTS; AND**

22 **(III) THRIVING AS BOTH SUBCONTRACTORS AND PRIME**
23 **CONTRACTORS;**

24 **(4) AT THE TIME OF SUBMISSION, REQUIRE A BID OR PROPOSAL**
25 **BASED ON A SOLICITATION THAT INCLUDES A MINORITY BUSINESS ENTERPRISE**
26 **PARTICIPATION GOAL TO INCLUDE, UNDER PENALTIES OF PERJURY,**
27 **DOCUMENTATION:**

28 **(I) ABOUT EACH MINORITY BUSINESS THAT HAS CERTIFIED**
29 **THAT THE MINORITY BUSINESS AGREES TO PROVIDE SPECIFIC GOODS AND**
30 **SERVICES UNDER SPECIFIC TERMS OUTLINED IN THE CERTIFICATION; AND**

31 **(II) OF GOOD FAITH EFFORTS TO MEET ANY PART OF A GOAL**
32 **NOT MET BY THE DOCUMENTATION REQUIRED UNDER ITEM (I) OF THIS ITEM;**

1 (5) require each [general] **PRIME** contractor to submit to the Commission
2 monthly reports [of the number of minority business enterprises employed by the general
3 contractor] **CONTAINING INFORMATION REQUIRED BY THE OFFICE**;

4 (6) require each [general] **PRIME** contractor, **WHEN FEASIBLE**, to provide
5 prompt notification to the Commission [if a contract] **BEFORE THE TERMINATION OF A**
6 **CONTRACT** with a minority business enterprise [is terminated];

7 (7) require each [general] **PRIME** contractor to:

8 (i) maintain [a] participation [level] from minority business
9 enterprises that is consistent with the participation [level] referenced under item [(4)(ii)]
10 **(4)** of this subsection; or

11 (ii) provide [justification for the inability of the general contractor]
12 **DOCUMENTATION OF GOOD FAITH EFFORTS** to maintain the participation [level]
13 **REFERENCED UNDER ITEM (4) OF THIS SUBSECTION**;

14 (8) provide for minority business enterprise participation through
15 [subcontracting] **CONTRACT-SPECIFIC GOALS**;

16 (9) [(i)] authorize the waiver of all or part of the program for a specific
17 contract if the Commission determines that applying the program to the contract would
18 conflict with **THE LAW OR** the overall objectives and responsibilities of the Commission;
19 [and

20 (ii) require the Commission to report annually to the Montgomery
21 County and Prince George's County Senate and House Delegations to the Maryland
22 General Assembly on any waivers granted under this subsection;]

23 (10) [except as provided in item (11) of this subsection, provide] **ALLOW** for
24 a system of granting a **PRICE** preference [of up to the lesser of 5% or \$50,000] to minority
25 business enterprises in evaluating bids or proposals, **INCLUDING THE AVAILABILITY OF**
26 **A GOOD FAITH WAIVER PROVISION FOR A PREFERENCE**;

27 (11) [subject to subsection (d) of this section, establish a sheltered market
28 program in which bidding on procurement contracts designated by the Commission as
29 appropriate is restricted to certified minority business enterprises] **AUTHORIZE THE**
30 **ESTABLISHMENT OF A RACE-NEUTRAL PROGRAM TO ENCOURAGE FIRMS TO**
31 **DEVELOP PRIME CONTRACTING EXPERIENCE AND EXPERTISE**;

32 (12) require the solicitation document accompanying each solicitation to set
33 forth the regulations that establish the program; **AND**

1 (13) [require the geographic location and the principal place of business of
2 the minority business enterprise to be a consideration for participation in the program,
3 including requiring Montgomery County businesses and Prince George's County businesses
4 to each have a targeted percentage of at least 40% of any contracts; and

5 (14)] authorize the Commission to:

6 (i) refuse to recognize the certification of a business found to be in
7 violation of the purposes of the program; and

8 (ii) permanently bar an active principal of a violating business from
9 future participation in the program.

10 [(c) Before accepting an alternative certification program under subsection (b)(2)
11 of this section, the Commission shall examine the alternative program to ensure that:

12 (1) the alternative program complies with the guidelines established under
13 § 20–205 of this subtitle; and

14 (2) the principal owner of an eligible minority business enterprise is in not
15 more than one certified business that is participating in the Commission minority business
16 enterprise utilization program under this section.

17 (d) (1) The sheltered market program established in subsection (b)(11) of this
18 section may not be used until all less restrictive remedies under subsection (b) of this
19 section and race–neutral remedies, including assistance with bonding requirements,
20 financing, or bidding procedures for small firms, have been used and determined to be
21 ineffective.

22 (2) If at least three certified minority business enterprises bid on a contract
23 under the sheltered market program, the Commission shall award the contract to the
24 lowest bidder.

25 (3) If fewer than three certified minority business enterprises bid on a
26 contract under the sheltered market program, the contract shall be awarded under
27 subsection (b)(10) of this section.]

28 [20–205.

29 (a) (1) A certifying agency shall determine bona fide minority group
30 membership based on an individual's claim that the individual is:

31 (i) a member of a minority group; and

32 (ii) regarded as a member by that minority community.

1 (2) A certifying agency may determine that an individual's claim under this
2 subsection is invalid.

3 (b) (1) To be eligible for certification as a minority business enterprise and
4 participation in a minority business enterprise utilization program under § 20–203 or §
5 20–204 of this subtitle, a business shall meet the standards under this subsection.

6 (2) (i) A minority business enterprise shall be an independent business.

7 (ii) A certifying agency shall determine whether a business is
8 independent by considering:

9 1. the date the business was established;

10 2. the adequacy of the resources of the business for the work
11 required under the contract;

12 3. the degree to which financial, equipment leasing, and
13 other relationships with nonminority businesses vary from industry practice; and

14 4. any other relevant factor.

15 (3) A minority owner shall have real, substantial, and continuing
16 ownership and control of the business that goes beyond the pro forma ownership of the
17 business as reflected in the ownership documents.

18 (4) A minority owner shall have the customary incidents of ownership and
19 share in the risks and profits commensurate with the ownership interests in the business
20 as demonstrated by an examination of the substance rather than the form of the
21 arrangements.

22 (5) Recognition of the business as a separate entity for tax or corporate
23 purposes is not necessarily sufficient for certification as a minority business enterprise.

24 (6) (i) A minority owner shall have the power to:

25 1. direct or cause the direction of the management and
26 policies of the business; and

27 2. make the day-to-day and major decisions on matters of
28 management, policy, and operations for the business.

29 (ii) The business may not be subject to a formal or informal
30 restriction, including a bylaw, partnership agreement, or charter requirement for
31 cumulative voting rights, that prevents a minority owner from making a business decision
32 without the cooperation or vote of an owner who is not a minority.

1 (7) (i) The business may not be operated disproportionately by the
2 owners of the business who are not minorities.

3 (ii) If the management of the business is contracted out to an
4 individual other than the owner, the individual who has the ultimate power to hire and fire
5 the managers may be considered as controlling the business.

6 (8) (i) Minorities shall directly hold all securities that constitute
7 ownership or control of a corporation for the purpose of establishing the corporation as a
8 minority business enterprise.

9 (ii) Securities held in trust or by a guardian for a minor may not be
10 considered held by minorities in determining the ownership or control of a corporation.

11 (9) A contribution of capital or expertise by a minority owner to acquire an
12 interest in a business shall be real and substantial and may not include:

13 (i) a promise to contribute capital;

14 (ii) a note payable to the business or owners of the business who are
15 not socially and economically disadvantaged; or

16 (iii) participation as an employee and not as a manager.

17 (c) In determining eligibility as a minority business enterprise, a certifying
18 agency shall:

19 (1) closely scrutinize a newly formed business, or a business for which the
20 ownership or control has changed since the date of the advertisement of the contract, to
21 determine the reason for the timing of the formation or change;

22 (2) carefully review a previous or continuing employer–employee
23 relationship among present owners to ensure that an employee–owner has the
24 management responsibilities and capabilities required under this section; and

25 (3) carefully review a relationship between a minority business enterprise
26 and a business that is not a minority business enterprise that has an interest in the
27 minority business enterprise to determine if the interest of the nonminority business
28 conflicts with the ownership and control requirements of this section.]

29 **20–205.**

30 **(A) TO PARTICIPATE IN THE CONTRACT–SPECIFIC GOALS AND**
31 **PREFERENCES AUTHORIZED UNDER THIS SUBTITLE, A BUSINESS MUST:**

1 **(1) BE CERTIFIED BY A CERTIFICATION AGENCY IN ACCORDANCE**
2 **WITH TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE**
3 **AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE;**

4 **(2) (I) BE CERTIFIED BY ANY CERTIFICATION AGENCY; AND**

5 **(II) SUBMIT ALL ADDITIONAL DOCUMENTATION NECESSARY**
6 **FOR THE OFFICE TO DETERMINE THAT THE BUSINESS MEETS THE REQUIREMENTS**
7 **OF TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE**
8 **AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE; OR**

9 **(3) BE CERTIFIED UNDER A CERTIFICATION PROGRAM THAT THE**
10 **COMMISSION DETERMINES SUBSTANTIALLY DUPLICATES THE REQUIREMENTS FOR**
11 **A STATE CERTIFICATION AGENCY UNDER TITLE 14, SUBTITLE 3 OF THE STATE**
12 **FINANCE AND PROCUREMENT ARTICLE AND THE REGULATIONS ADOPTED UNDER**
13 **THAT SUBTITLE.**

14 **(B) TO SUBSTANTIALLY DUPLICATE THE REQUIREMENTS FOR A STATE**
15 **CERTIFICATION AGENCY UNDER TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND**
16 **PROCUREMENT ARTICLE AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE,**
17 **A CERTIFICATION PROGRAM SHALL, AT A MINIMUM, HAVE CERTIFICATION**
18 **REQUIREMENTS THAT ARE AT LEAST AS NARROWLY TAILORED AS THE STATE'S**
19 **REQUIREMENTS IN TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND**
20 **PROCUREMENT ARTICLE AND THE REGULATIONS ADOPTED UNDER THAT SUBTITLE**
21 **WITH RESPECT TO:**

22 **(1) BUSINESS OWNERSHIP AND CONTROL;**

23 **(2) BUSINESS SIZE STANDARDS;**

24 **(3) BUSINESS OWNER PERSONAL NET WORTH; AND**

25 **(4) BUSINESS OWNER SOCIAL AND ECONOMIC DISADVANTAGE.**

26 **(C) IF THE OFFICE DETERMINES THAT A BUSINESS SEEKING TO**
27 **PARTICIPATE IN THE MINORITY BUSINESS ENTERPRISE UTILIZATION PROGRAM**
28 **ESTABLISHED UNDER § 20-204 OF THIS SUBTITLE HAS A CERTIFICATION THAT DOES**
29 **NOT SUBSTANTIALLY DUPLICATE THE REQUIREMENTS IN TITLE 14, SUBTITLE 3 OF**
30 **THE STATE FINANCE AND PROCUREMENT ARTICLE AND THE REGULATIONS**
31 **ADOPTED UNDER THAT SUBTITLE, THE OFFICE MAY:**

1 **(1) REQUEST AND EVALUATE DOCUMENTATION AND EVIDENCE**
2 **NECESSARY TO DETERMINE WHETHER THE BUSINESS MAY BE AUTHORIZED TO**
3 **PARTICIPATE IN PROGRAMS UNDER THIS SUBTITLE; AND**

4 **(2) FOLLOWING THE EVALUATION UNDER ITEM (1) OF THIS**
5 **SUBSECTION, AUTHORIZE A BUSINESS TO PARTICIPATE IN PROGRAMS UNDER THIS**
6 **SUBTITLE.**

7 20–206.

8 (a) The Office shall verify that a certified minority business enterprise listed in a
9 schedule of participation is actually performing work and receiving compensation as
10 established in the schedule.

11 (b) To facilitate the Office completing its duties under subsection (a) of this
12 section, a contractor shall:

13 (1) allow the Office to inspect any relevant matter, including records and
14 the job site;

15 (2) allow the Office to interview subcontractors and employees of the
16 contractor;

17 (3) [if performing a construction contract,] ensure that subcontractors[:

18 (i) are paid any undisputed amount to which the subcontractor is
19 entitled as provided under § 15–226 of the State Finance and Procurement Article; and

20 (ii)] comply with Commission regulations;

21 (4) include in the agreement with the certified minority business
22 enterprise subcontractor a requirement that the subcontractor submit a monthly report to
23 the Commission that:

24 (i) identifies the prime contract; and

25 (ii) lists payments received from the contractor in the previous
26 month and invoices sent to the contractor that have not been paid; and

27 (5) submit a monthly report to the Commission that lists:

28 (i) unpaid invoices that are more than 30 days old received from
29 certified minority business enterprise subcontractors; and

30 (ii) the reason payments have not been made.

1 (c) (1) (i) On completion of a contract or before final payment or release of
2 retainage, the Commission may require a [general] **PRIME** contractor on a contract having
3 a minority business enterprise subcontracting goal to submit to the Commission a final
4 report of all payments made to or withheld from minority business enterprise
5 subcontractors.

6 (ii) The final report shall be in affidavit form and under the penalties
7 for perjury.

8 (2) Each solicitation shall contain notice of the requirements of this
9 subsection.

10 (d) (1) On a finding that a contractor is noncompliant, the Commission shall
11 notify the contractor in writing of the findings and state the required corrective action.

12 (2) A noncompliant contractor shall:

13 (i) initiate the corrective action within 10 days after receiving the
14 written notice; and

15 (ii) complete the corrective action within the time specified by the
16 Commission.

17 (e) If the Commission finds that a [general] **PRIME** contractor is in material
18 noncompliance with minority business enterprise contract provisions and the [general]
19 **PRIME** contractor fails to take the corrective action required by the Commission, the
20 Commission may:

21 (1) terminate the contract;

22 (2) refer the [general] **PRIME** contractor to the [general manager of the
23 Commission or the full Commission] **RELEVANT PERSON** for appropriate action; or

24 (3) initiate any other specific remedy identified in the contract.

25 20–207.

26 (a) By October 31 of each year, the Commission shall issue a report to the
27 Montgomery County and Prince George’s County Senate and House Delegations to the
28 Maryland General Assembly concerning:

29 (1) the implementation and administration of the minority business
30 enterprise programs under this subtitle for the fiscal year ending on the preceding June 30;
31 and

32 (2) appropriate recommendations concerning the programs.

1 (b) (1) The Commission may conduct an impartial fact-finding study in
2 connection with a minority business enterprise program for consistency with applicable
3 law.

4 (2) The Commission shall report the findings of a study completed under
5 this subsection to the Montgomery County and Prince George's County Senate and House
6 Delegations to the Maryland General Assembly.

7 20-208.

8 This subtitle shall be of no effect and may not be enforced after July 1, [2023] **2028**.

9 20-302.

10 (a) By resolution or adopting regulations, the Commission may establish a local
11 small business enterprise program.

12 (b) The Office of Supplier Diversity and Inclusion, established under [§ 20-202]
13 **§ 20-203** of this title, shall administer the program.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
15 1, 2023.