

HOUSE BILL 962

P2

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CF SB 673

By: Delegates Phillips, Boaf, Harris, J. Long, McCaskill, Pasteur, Roberson, Roberts, White Holland, Wilkins, Williams, ~~and Woods~~ Woods, Alston, Bagnall, Bhandari, Chisholm, Cullison, Guzzone, Hill, Hutchinson, S. Johnson, Kaiser, Kerr, Kipke, R. Lewis, Lopez, Martinez, M. Morgan, Pena-Melnyk, Reilly, Rosenberg, Szeliga, and Taveras

Introduced and read first time: February 2, 2024

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 3, 2024

CHAPTER _____

1 AN ACT concerning

2 State Procurement – Small ~~and Minority~~ Business Reserve Program – Goals and
3 Outreach Program
4 (~~Parren J. Mitchell MBE Prime Contracting Act~~)

5 FOR the purpose of ~~altering the Small Business Reserve Program to be the Small and~~
6 ~~Minority Business Reserve Program; requiring a unit of State government, to the~~
7 ~~extent practicable, to structure its procurement procedures to achieve a certain~~
8 ~~minimum percentage of the unit's total dollar value of certain contracts to be made~~
9 ~~directly to certified minority business enterprises; requiring a certain study to~~
10 ~~include the Small and Minority Business Reserve Program~~ altering a certain
11 participation goal for certain small businesses for certain procurement contracts;
12 requiring the certification agency, in consultation with the Governor's Office of
13 Small, Minority, and Women Business Affairs to develop a certain outreach program;
14 altering the content of certain unit reports; and generally relating to the Small ~~and~~
15 Minority Business Reserve Program.

16 BY repealing and reenacting, without amendments,
17 Article – State Finance and Procurement
18 Section 14–301(a), (b), ~~and (d)~~ (c), (d), and (e)
19 Annotated Code of Maryland
20 (2021 Replacement Volume and 2023 Supplement)

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 BY repealing and reenacting, with amendments,
 2 Article – State Finance and Procurement
 3 Section 14–501, 14–502, and 14–505
 4 Annotated Code of Maryland
 5 (2021 Replacement Volume and 2023 Supplement)

6 BY adding to
 7 Article – State Finance and Procurement
 8 Section 14–504.1
 9 Annotated Code of Maryland
 10 (2021 Replacement Volume and 2023 Supplement)

11 ~~BY repealing and reenacting, with amendments,~~
 12 ~~Article – State Finance and Procurement~~
 13 ~~Section 14–501, 14–502, 14–502.1, and 14–503 through 14–505 to be under the~~
 14 ~~amended subtitle “Subtitle 5. Small and Minority Business Reserve Program”~~
 15 ~~Annotated Code of Maryland~~
 16 ~~(2021 Replacement Volume and 2023 Supplement)~~

17 ~~BY repealing and reenacting, with amendments,~~
 18 ~~Chapter 154 of the Acts of the General Assembly of 2012, as amended by Chapters~~
 19 ~~200 and 201 of the Acts of the General Assembly of 2013, Chapter 340 of the~~
 20 ~~Acts of the General Assembly of 2017, Chapter 117 of the Acts of the General~~
 21 ~~Assembly of 2022, and Chapters 137 and 138 of the Acts of the General~~
 22 ~~Assembly of 2023~~
 23 ~~Section 2~~

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

26 **Article – State Finance and Procurement**

27 14–301.

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

29 (b) “Certification” means the determination that a legal entity is a minority
 30 business enterprise for the purposes of this subtitle.

31 (c) “Certification agency” means the agency designated by the Board of Public
 32 Works under § 14–303(b) of this subtitle to certify and decertify minority business
 33 enterprises.

34 (d) “Certified minority business enterprise” means a minority business enterprise
 35 that holds a certification.

1 (e) “Economically disadvantaged individual” means a socially disadvantaged
 2 individual whose ability to compete in the free enterprise system has been impaired due to
 3 diminished capital and credit opportunities as compared to others in the same or similar
 4 line of business who are not socially disadvantaged.

5 ~~Subtitle 5. Small AND MINORITY Business Reserve Program.~~

6 14–501.

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

8 ~~(B) “CERTIFIED MINORITY BUSINESS ENTERPRISE” HAS THE MEANING~~
 9 ~~STATED UNDER § 14–301 OF THIS TITLE.~~

10 (B) “CERTIFICATION AGENCY” HAS THE MEANING STATED IN § 14–301 OF
 11 THIS TITLE.

12 (C) “ECONOMICALLY DISADVANTAGED INDIVIDUAL” HAS THE MEANING
 13 STATED IN § 14–301 OF THIS TITLE.

14 [(b)] ~~(C)~~ (D) “Small business” means:

15 (1) a certified minority business enterprise~~],~~ as defined in § 14–301 of this
 16 title,~~]~~ that meets the criteria specified under item (3) of this subsection;

17 (2) a veteran–owned small business enterprise, as defined in § 14–601 of
 18 this title, that meets the criteria specified under item (3) of this subsection; or

19 (3) a business, other than a broker, that meets the following criteria:

20 (i) the business is independently owned and operated;

21 (ii) the business is not a subsidiary of another business;

22 (iii) the business is not dominant in its field of operation; and

23 (iv) 1. A. the wholesale operations of the business did not
 24 employ more than 50 persons in its most recently completed 3 fiscal years;

25 B. the retail operations of the business did not employ more
 26 than 25 persons in its most recently completed 3 fiscal years;

27 C. the manufacturing operations of the business did not
 28 employ more than 100 persons in its most recently completed 3 fiscal years;

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1 D. the service operations of the business did not employ more
2 than 100 persons in its most recently completed 3 fiscal years;

3 E. the construction operations of the business did not employ
4 more than 50 persons in its most recently completed 3 fiscal years; and

5 F. the architectural and engineering services of the business
6 did not employ more than 100 persons in its most recently completed 3 fiscal years; or

7 2. A. the gross sales of the wholesale operations of the
8 business did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal
9 years;

10 B. the gross sales of the retail operations of the business did
11 not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;

12 C. the gross sales of the manufacturing operations of the
13 business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal
14 years;

15 D. the gross sales of the service operations of the business did
16 not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;

17 E. the gross sales of the construction operations of the
18 business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal
19 years; and

20 F. the gross sales of the architectural and engineering
21 services of the business did not exceed an average of \$4,500,000 in its most recently
22 completed 3 fiscal years.

23 [(c)] ~~(D)~~ ~~(E)~~ "Small ~~AND-MINORITY~~ business reserve" means those procurements
24 that are limited to responses from small businesses ~~OR-CERTIFIED-MINORITY-BUSINESS~~
25 ~~ENTERPRISES~~ under [§ 14-502(b)] **§ 14-502(C)** of this subtitle.

26 14-502.

27 (a) Except as provided in subsection (d) of this section, this subtitle applies to all
28 procurements by a unit.

29 (b) This section does not apply to procurements subject to Subtitle 1 of this title.

30 (c) To the extent practicable, a unit shall structure its procurement procedures to
31 achieve a minimum of

1 ~~(1)~~ 20% of the unit's total dollar value of goods, supplies, services,
2 maintenance, construction, construction-related services, and architectural and
3 engineering service contracts to be made directly to small businesses;~~AND~~

4 ~~(2) 10% OF THE UNIT'S TOTAL DOLLAR VALUE OF GOODS, SUPPLIES,~~
5 ~~SERVICES, MAINTENANCE, CONSTRUCTION, CONSTRUCTION RELATED SERVICES,~~
6 ~~AND ARCHITECTURAL AND ENGINEERING SERVICE CONTRACTS TO BE MADE~~
7 ~~DIRECTLY TO CERTIFIED MINORITY BUSINESS ENTERPRISES.~~

8 (d) The total dollar value of procurements by a unit does not include the value of
9 contracts to which this section does not apply because of a conflict with federal law.

10 (e) A unit may apply toward the unit's overall annual Small ~~AND MINORITY~~
11 Business Reserve ~~payment achievement only those payments resulting from a procurement~~
12 ~~that is designated a Small AND MINORITY Business Reserve procurement~~ ACHIEVEMENT
13 AWARDS MADE TO A SMALL BUSINESS UNDER DESIGNATED SMALL BUSINESS
14 RESERVE CONTRACTS AS WELL AS AWARDS MADE TO A SMALL BUSINESS UNDER
15 NONDESIGNATED SMALL BUSINESS RESERVE CONTRACTS.

16 (f) (1) The Special Secretary for the Office of Small, Minority, and Women
17 Business Affairs, in consultation with the Attorney General, shall establish standards and
18 guidelines for participation in the Small ~~AND MINORITY~~ Business Reserve Program every
19 5 years.

20 (2) The standards and guidelines established under paragraph (1) of this
21 subsection shall allow for the registration of businesses for participation in the Small ~~AND~~
22 ~~MINORITY~~ Business Reserve Program without the need to file any additional paperwork
23 other than evidence that the business:

- 24 (i) is a small business under this subtitle; and
- 25 (ii) 1. is certified as a minority business enterprise under
26 Subtitle 3 of this title;
- 27 2. is certified under the federal Disadvantaged Business
28 Enterprise Program; or
- 29 3. is qualified as a small business under Subtitle 2 of this
30 title.

31 ~~14-502.1.~~

32 ~~(a) (1) This section applies to a procurement by any unit or agency of the~~
33 ~~Executive Branch of State government for goods, supplies, services, maintenance,~~
34 ~~construction, construction-related services, architectural services, or engineering services.~~

~~(2) This section does not apply to:~~

~~(i) procurements made under Subtitle 1 of this title;~~

~~(ii) procurements involving expenditures of federal dollars, to the extent that inclusion in the small business reserve program conflicts with federal law or grant provisions;~~

~~(iii) procurements with a total dollar value under \$50,000;~~

~~(iv) the procurement of human, social, cultural, or educational services; or~~

~~(v) term and master contracts exempted under subsection (c) of this section.~~

~~(b) (1) A procurement with a total dollar value between \$50,000 and \$500,000 shall be designated for the small AND MINORITY business reserve.~~

~~(2) Each unit or agency shall implement this subsection in a manner consistent with all applicable statutes, including the requirements of Subtitle 3 of this title.~~

~~(e) (1) A procurement may be exempt from designation under subsection (b) of this section if the Governor's Office of Small, Minority, and Women Business Affairs certifies, concurrently with review of any waiver determinations for certified minority business enterprise participation contract goals, that it is not practicable to do so.~~

~~(2) The Office of State Procurement in the Department of General Services shall assist the Governor's Office of Small, Minority, and Women Business Affairs in establishing procedures and guidelines for the exemption of procurements under paragraph (1) of this subsection.~~

~~14-503.~~

~~(a) The Governor's Office of Small, Minority, and Women Business Affairs shall adopt regulations to establish procedures for compiling and maintaining a comprehensive bidder's list of qualified small businesses AND CERTIFIED MINORITY BUSINESS ENTERPRISES that shall be posted on the Internet.~~

~~(b) The Governor's Office of Small, Minority, and Women Business Affairs shall:~~

~~(1) establish guidelines for Small AND MINORITY Business Reserve Program administration;~~

~~(2) ensure agency compliance with the Small AND MINORITY Business Reserve Program;~~

1 ~~(3) provide training and technical assistance to agency personnel; and~~

2 ~~(4) collect data regarding the State's utilization of small AND MINORITY~~
3 ~~business reserve vendors.~~

4 ~~(e) Each unit shall ensure compliance with the regulations set forth in subsection~~
5 ~~(a) of this section.~~

6 ~~14-504.~~

7 ~~(a) Any procurement by a unit of goods, supplies, services, maintenance,~~
8 ~~construction, construction related services, architectural services, and engineering~~
9 ~~services shall be eligible for designation for the small AND MINORITY business reserve.~~

10 ~~(b) A solicitation for procurement that has been designated for a small AND~~
11 ~~MINORITY business reserve shall be published in the same manner as required for an~~
12 ~~invitation for bids as set forth in § 13-103(c) of this article.~~

13 ~~(e) The procurement officer of a unit shall award a procurement contract~~
14 ~~designated for a small AND MINORITY business reserve to the small business OR~~
15 ~~CERTIFIED MINORITY BUSINESS ENTERPRISE that submits a responsive bid that:~~

16 ~~(1) is the lowest bid price;~~

17 ~~(2) if the invitation for bids so provides, is the lowest evaluated bid price;~~
18 ~~or~~

19 ~~(3) is the bid or proposal most favorable to the State within the small~~
20 ~~business reserve.~~

21 ~~14-505.~~

22 ~~(a) Within 60 days after the enactment of the budget bill by the General~~
23 ~~Assembly, each unit shall submit a report to the Governor's Office of Small, Minority, and~~
24 ~~Women Business Affairs that complies with the reporting requirements set forth in~~
25 ~~COMAR 21.11.01.06.~~

26 ~~(b) (1) Within 90 days after the end of each fiscal year, each unit shall submit~~
27 ~~a report to the Governor's Office of Small, Minority, and Women Business Affairs that~~
28 ~~complies with the requirements of paragraph (2) of this subsection.~~

29 ~~(2) For the preceding fiscal year, the report shall:~~

30 ~~(i) state the total number and the dollar value of payments the unit~~
31 ~~made [to small businesses] under designated small AND MINORITY business reserve~~
32 ~~contracts TO;~~

1 ~~1. SMALL BUSINESSES; AND~~

2 ~~2. CERTIFIED MINORITY BUSINESS ENTERPRISES;~~

3 (ii) ~~state the total number and the dollar value of payments the unit~~
 4 ~~made [to small businesses] under nondesignated small AND MINORITY business reserve~~
 5 ~~contracts, including purchase card procurements, TO:~~

6 ~~1. SMALL BUSINESSES; AND~~

7 ~~2. CERTIFIED MINORITY BUSINESS ENTERPRISES;~~

8 (iii) ~~state the total dollar value of payments the unit made under~~
 9 ~~procurement contracts; and~~

10 (iv) ~~contain other such information as required by the Governor's~~
 11 ~~Office of Small, Minority, and Women Business Affairs.~~

12 (e) ~~On or before December 31 of each year, the Governor's Office of Small,~~
 13 ~~Minority, and Women Business Affairs shall submit to the Board of Public Works and,~~
 14 ~~subject to § 2-1257 of the State Government Article, to the Legislative Policy Committee a~~
 15 ~~report summarizing the information the Office receives under subsection (b) of this section.~~

16 14-504.1.

17 (A) THE CERTIFICATION AGENCY, IN CONSULTATION WITH THE
 18 GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS,
 19 SHALL DEVELOP AN OUTREACH PROGRAM TO INCREASE THE PARTICIPATION OF
 20 SMALL BUSINESSES THAT ARE OWNED BY ECONOMICALLY DISADVANTAGED
 21 INDIVIDUALS PARTICIPATING IN THE SMALL BUSINESS RESERVE PROGRAM.

22 (B) ON OR BEFORE DECEMBER 1 EACH YEAR, THE CERTIFICATION AGENCY
 23 SHALL SUBMIT TO THE BOARD OF PUBLIC WORKS AND, SUBJECT TO § 2-1257 OF
 24 THE STATE GOVERNMENT ARTICLE, TO THE LEGISLATIVE POLICY COMMITTEE A
 25 REPORT ON:

26 (1) THE STATUS OF THE OUTREACH PROGRAM REQUIRED UNDER
 27 SUBSECTION (A) OF THIS SECTION; AND

28 (2) THE TOTAL NUMBER AND DOLLAR VALUE OF AWARDS MADE TO
 29 SMALL BUSINESSES OWNED BY ECONOMICALLY DISADVANTAGED INDIVIDUALS
 30 UNDER DESIGNATED SMALL BUSINESS RESERVE CONTRACTS.

31 14-505.

1 (a) Within 60 days after the enactment of the budget bill by the General
2 Assembly, each unit shall submit a report to the Governor's Office of Small, Minority, and
3 Women Business Affairs that complies with the reporting requirements set forth in
4 COMAR 21.11.01.06.

5 (b) (1) Within 90 days after the end of each fiscal year, each unit shall submit
6 a report to the Governor's Office of Small, Minority, and Women Business Affairs that
7 complies with the requirements of paragraph (2) of this subsection.

8 (2) For the preceding fiscal year, the report shall:

9 (i) state the total number and the dollar value of [payments]
10 AWARDS the unit made to small businesses under designated small business reserve
11 contracts;

12 (ii) state the total number and the dollar value of [payments]
13 AWARDS the unit made to small businesses under nondesignated small business reserve
14 contracts, including purchase card procurements;

15 (iii) state the total dollar value of [payments] AWARDS the unit made
16 under procurement contracts; and

17 (iv) contain other such information as required by the Governor's
18 Office of Small, Minority, and Women Business Affairs.

19 (c) On or before December 31 of each year, the Governor's Office of Small,
20 Minority, and Women Business Affairs shall submit to the Board of Public Works and,
21 subject to § 2-1257 of the State Government Article, to the Legislative Policy Committee a
22 report summarizing the information the Office receives under subsection (b) of this section.

23 ~~Chapter 154 of the Acts of 2012, as amended by Chapters 200 and 201 of the Acts~~
24 ~~of 2013, Chapter 340 of the Acts of 2017, Chapter 117 of the Acts of 2022, and~~
25 ~~Chapters 137 and 138 of the Acts of 2023~~

26 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency, in~~
27 ~~consultation with the General Assembly and the Office of the Attorney General, shall~~
28 ~~initiate a study of the Minority Business Enterprise Program AND THE SMALL AND~~
29 ~~MINORITY BUSINESS RESERVE PROGRAM to evaluate the [Program's] PROGRAMS'~~
30 ~~continued compliance with the requirements of the Croson decision and any subsequent~~
31 ~~federal or constitutional requirements. In preparation for the study, the Board of Public~~
32 ~~Works may adopt regulations authorizing a unit of State government to require bidders~~
33 ~~and offerors to submit information necessary for the conduct of the study. The Board of~~
34 ~~Public Works may designate that certain information received in accordance with~~
35 ~~regulations adopted under this section shall be confidential. Notwithstanding that certain~~
36 ~~information may be designated by the Board of Public Works as confidential, the~~

1 ~~Certification Agency may provide the information to any person that is under contract with~~
 2 ~~the Certification Agency to assist in conducting the study. The study shall also evaluate~~
 3 ~~race neutral programs and other methods that can be used to address the needs of minority~~
 4 ~~businesses. The final report on the study shall be submitted to the Legislative Policy~~
 5 ~~Committee of the General Assembly, in accordance with § 2-1257 of the State Government~~
 6 ~~Article, on or before September 30, 2024, so that the General Assembly may review the~~
 7 ~~report before the 2025 Session.~~

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July~~
 9 ~~1, 2024. It shall remain effective for a period of 1 year and, at the end of June 30, 2025, this~~
 10 ~~Act, with no further action required by the General Assembly, shall be abrogated and of no~~
 11 ~~further force and effect~~ October 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.