

SENATE BILL 612

P2

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CF HB 143

By: **Senators Jones–Rodwell, Benson, and Pugh**
Introduced and read first time: February 4, 2011
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Participation – The Ray Haysbert Waiver Disclosure and**
3 **Termination Extension Act**

4 FOR the purpose of requiring certain regulations adopted by the Board of Public
5 Works to provide for the disclosure of each waiver of obligations under the
6 Minority Business Enterprise Program and the reason for each waiver; altering
7 the record keeping and reporting requirements of the Board with respect to a
8 waiver of Program obligations; continuing until a certain date certain provisions
9 of the State Procurement Law relating to procurement from minority
10 businesses; requiring a certain study and a final report on the study by a
11 certain date; providing for the effective dates of this Act; and generally relating
12 to minority business participation in State procurement.

13 BY repealing and reenacting, without amendments,
14 Article – State Finance and Procurement
15 Section 14–302(a)(6)
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2010 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – State Finance and Procurement
20 Section 14–303 and 14–309
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2010 Supplement)

23 BY repealing and reenacting, with amendments,
24 Chapter 116 of the Acts of the General Assembly of 1995, as amended by
25 Chapters 495 and 496 of the Acts of the General Assembly of 2000,
26 Chapter 339 of the Acts of the General Assembly of 2001, and Chapter
27 359 of the Acts of the General Assembly of 2006
28 Section 2

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



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

3 **Article – State Finance and Procurement**

4 14–302.

5 (a) (6) To achieve the result specified in paragraph (1) or (2) of this
6 subsection, a contractor, including a contractor that is a certified minority business
7 enterprise, shall:

8 (i) identify specific work categories appropriate for
9 subcontracting;

10 (ii) at least 10 days before bid opening, solicit minority business
11 enterprises, through written notice that:

12 1. describes the categories of work under item (i) of this
13 paragraph; and

14 2. provides information regarding the type of work being
15 solicited and specific instructions on how to submit a bid;

16 (iii) attempt to make personal contact with the firms in item (ii)
17 of this paragraph;

18 (iv) assist minority business enterprises to fulfill bonding
19 requirements or to obtain a waiver of those requirements;

20 (v) in order to publicize contracting opportunities to minority
21 business enterprises, attend prebid meetings or other meetings scheduled by the unit;
22 and

23 (vi) upon acceptance of a bid, provide the unit with a list of
24 minority businesses with whom the contractor negotiated, including price quotes from
25 minority and nonminority firms.

26 14–303.

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

30 (ii) The Board shall keep a record of [the number of waivers
31 requested and the number of waivers] **EACH WAIVER REQUESTED AND** granted each
32 year under subsection (b)(8) of this section, **AND THE REASON EACH WAIVER WAS**

1 **GRANTED**, and submit a copy of the record to the General Assembly on or before
2 October 1 of each year, in accordance with § 2–1246 of the State Government Article.

3 (iii) The Board shall keep a record of the aggregate number and
4 the identity of minority business enterprises that receive certification under the
5 process established by the Board under subsection (b)(1) of this section and submit a
6 copy of the record to the General Assembly on or before October 1 of each year, in
7 accordance with § 2–1246 of the State Government Article.

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

12 (b) These regulations shall include:

13 (1) provisions:

14 (i) designating one State agency to certify and decertify
15 minority business enterprises for all units through a single process that meets
16 applicable federal requirements, including provisions that promote and facilitate the
17 submission of some or all of the certification application through an electronic process;

18 (ii) for the purpose of certification under this subtitle, that
19 promote and facilitate certification of minority business enterprises that have received
20 certification from the U.S. Small Business Administration or a county that uses a
21 certification process substantially similar to the process established in accordance
22 with item (i) of this item;

23 (iii) requiring the agency designated to certify minority business
24 enterprises to complete the agency's review of an application for certification and
25 notify the applicant of the agency's decision within 90 days of receipt of a complete
26 application that includes all of the information necessary for the agency to make a
27 decision; and

28 (iv) authorizing the agency designated to certify minority
29 business enterprises to extend the notification requirement established under item (iii)
30 of this item once, for no more than an additional 60 days, if the agency provides the
31 applicant with a written notice and explanation;

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

35 (i) the potential subcontract opportunities available in the
36 prime procurement contract; and

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

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

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

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

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

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

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

18 (II) PROVISIONS THAT REQUIRE A UNIT TO PROVIDE
19 WRITTEN PUBLIC NOTICE OF:

20 1. ANY WAIVER OF MINORITY BUSINESS ENTERPRISE
21 OBLIGATIONS; AND

22 2. THE REASON THE WAIVER IS NECESSARY;

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

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

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

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

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

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

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

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

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

17 **Article – State Finance and Procurement**

18 14–309.

19 The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations
20 adopted under those sections, shall be of no effect and may not be enforced after July
21 1, [2011] **2013**.

22 **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**
23 **Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of**
24 **2006**

25 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
26 in consultation with the General Assembly and the Office of the Attorney General,
27 shall initiate a study of the Minority Business Enterprise Program to evaluate the
28 Program's continued compliance with the requirements of the Croson decision and any
29 subsequent federal or constitutional requirements. In preparation for the study, the
30 Board of Public Works may adopt regulations authorizing a unit of State government
31 to require bidders and offerors to submit information necessary for the conduct of the
32 study. The Board of Public Works may designate that certain information received in
33 accordance with regulations adopted under this section shall be confidential.
34 Notwithstanding that certain information may be designated by the Board of Public
35 Works as confidential, the certification agency may provide the information to any
36 person that is under contract with the certification agency to assist in conducting the
37 study. The study shall also evaluate race neutral programs and other methods that

1 can be used to address the needs of minority businesses. The final report on the study
2 shall be submitted to the Legislative Policy Committee of the General Assembly prior
3 to September 30, [2010] **2012**, so that the General Assembly may review the report
4 prior to the [2011] **2013** Session.

5 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
6 take effect October 1, 2011.

7 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
8 Section 3 of this Act, this Act shall take effect July 1, 2011.