

SENATE BILL 789

P2

3lr2026

By: **Senators Pipkin, Colburn, and Jacobs**

Introduced and read first time: February 1, 2013

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Preferences – Rural County Business Enterprise**
3 **Participation**

4 FOR the purpose of establishing a certain participation goal for certain rural county
5 business enterprises for certain procurement contracts; requiring certain
6 solicitation documents to establish the degree of participation based on certain
7 information; providing that certain provisions of this Act do not apply in certain
8 circumstances; requiring a unit to award certain procurement contracts to
9 certain bidders or offerors under certain circumstances; requiring the Board of
10 Public Works to adopt certain regulations to implement this Act; requiring the
11 Board to establish certain tracking and reporting procedures; requiring the
12 Board to report annually on a certain program to the Legislative Policy
13 Committee; establishing certain prohibited acts and certain penalties for certain
14 violations; defining a certain term; and generally relating to procurement
15 participation by rural county business enterprises.

16 BY adding to

17 Article – State Finance and Procurement
18 Section 14–701 through 14–705 to be under the new subtitle “Subtitle 7. Rural
19 County Business Enterprise Participation”
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2012 Supplement)

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

24 **Article – State Finance and Procurement**

25 **SUBTITLE 7. RURAL COUNTY BUSINESS ENTERPRISE PARTICIPATION.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **14-701.**

2 **IN THIS SUBTITLE, "RURAL COUNTY BUSINESS ENTERPRISE" MEANS A**
3 **BUSINESS THAT IS LOCATED IN:**

4 **(1) ALLEGANY COUNTY;**

5 **(2) CALVERT COUNTY;**

6 **(3) CAROLINE COUNTY;**

7 **(4) CARROLL COUNTY;**

8 **(5) CECIL COUNTY;**

9 **(6) CHARLES COUNTY;**

10 **(7) DORCHESTER COUNTY;**

11 **(8) FREDERICK COUNTY;**

12 **(9) GARRETT COUNTY;**

13 **(10) HARFORD COUNTY;**

14 **(11) KENT COUNTY;**

15 **(12) QUEEN ANNE'S COUNTY;**

16 **(13) ST. MARY'S COUNTY;**

17 **(14) SOMERSET COUNTY;**

18 **(15) TALBOT COUNTY;**

19 **(16) WASHINGTON COUNTY;**

20 **(17) WICOMICO COUNTY; OR**

21 **(18) WORCESTER COUNTY.**

22 **14-702.**

1 **(A) BEGINNING JULY 1, 2014, A UNIT SHALL STRUCTURE**
2 **PROCUREMENT PROCEDURES, CONSISTENT WITH THE PURPOSES OF THIS**
3 **SUBTITLE, TO TRY TO ACHIEVE AN OVERALL MINIMUM OF 1% OF THE UNIT'S**
4 **TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS TO BE MADE DIRECTLY**
5 **OR INDIRECTLY WITH RURAL COUNTY BUSINESS ENTERPRISES.**

6 **(B) SOLICITATION DOCUMENTS SHALL ESTABLISH THE EXPECTED**
7 **DEGREE OF RURAL COUNTY BUSINESS ENTERPRISE PARTICIPATION BASED, IN**
8 **PART, ON:**

9 **(1) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE**
10 **IN THE PROCUREMENT CONTRACT; AND**

11 **(2) THE AVAILABILITY OF RURAL COUNTY BUSINESS**
12 **ENTERPRISES TO RESPOND COMPETITIVELY TO THE POTENTIAL SUBCONTRACT**
13 **OPPORTUNITIES.**

14 **(C) THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO A UNIT'S**
15 **PROCUREMENT PROCEDURES TO THE EXTENT THAT ANY UNIT DETERMINES**
16 **THAT THOSE PROVISIONS ARE IN CONFLICT WITH AN APPLICABLE FEDERAL**
17 **PROGRAM.**

18 **14-703.**

19 **A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER**
20 **THAT SUBMITS THE LOWEST RESPONSIVE BID, OR THE RESPONSIBLE OFFEROR**
21 **PROPOSING THE MOST ADVANTAGEOUS OFFER, THAT MEETS, OR MAKES A GOOD**
22 **FAITH EFFORT TO MEET, ANY APPLICABLE GOAL ESTABLISHED UNDER THIS**
23 **SUBTITLE.**

24 **14-704.**

25 **THE BOARD SHALL:**

26 **(1) ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;**

27 **(2) ESTABLISH PROCEDURES FOR TRACKING AND REPORTING**
28 **THE PARTICIPATION OF RURAL COUNTY BUSINESS ENTERPRISES UNDER THIS**
29 **SUBTITLE; AND**

30 **(3) ON OR BEFORE DECEMBER 1 OF EACH YEAR, REPORT TO THE**
31 **LEGISLATIVE POLICY COMMITTEE ON:**

1 **(I) THE NUMBER AND AMOUNT OF CONTRACTS AWARDED**
2 **TO RURAL COUNTY BUSINESS ENTERPRISES UNDER THIS SUBTITLE; AND**

3 **(II) THE EFFECTIVENESS OF THE PROGRAM UNDER THIS**
4 **SUBTITLE.**

5 **14-705.**

6 **(A) A PERSON MAY NOT:**

7 **(1) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY**
8 **OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN FRAUDULENTLY**
9 **OBTAINING OR ATTEMPTING TO OBTAIN, PUBLIC MONEY, PROCUREMENT**
10 **CONTRACTS, OR FUNDS EXPENDED UNDER A PROCUREMENT CONTRACT TO**
11 **WHICH THE PERSON IS NOT ENTITLED UNDER THIS SUBTITLE;**

12 **(2) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY**
13 **REPRESENT PARTICIPATION OF A RURAL COUNTY BUSINESS ENTERPRISE IN**
14 **ORDER TO OBTAIN OR RETAIN A BID PREFERENCE OR A PROCUREMENT**
15 **CONTRACT;**

16 **(3) WILLFULLY AND KNOWINGLY MAKE OR SUBSCRIBE TO ANY**
17 **STATEMENT, DECLARATION, OR OTHER DOCUMENT THAT IS FRAUDULENT OR**
18 **FALSE AS TO ANY MATERIAL MATTER, WHETHER OR NOT THAT FALSITY OR**
19 **FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON**
20 **AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR**
21 **DOCUMENT;**

22 **(4) WILLFULLY AND KNOWINGLY AID, ASSIST IN, PROCURE,**
23 **COUNSEL, OR ADVISE THE PREPARATION OR PRESENTATION OF A**
24 **DECLARATION, STATEMENT, OR OTHER DOCUMENT THAT IS FRAUDULENT OR**
25 **FALSE AS TO ANY MATERIAL MATTER, REGARDLESS OF WHETHER THAT FALSITY**
26 **OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON**
27 **AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR**
28 **DOCUMENT;**

29 **(5) WILLFULLY AND KNOWINGLY FAIL TO FILE ANY DECLARATION**
30 **OR NOTICE WITH THE UNIT THAT IS REQUIRED BY THIS SUBTITLE; OR**

31 **(6) ESTABLISH, KNOWINGLY AID IN THE ESTABLISHMENT OF, OR**
32 **EXERCISE CONTROL OVER A BUSINESS FOUND TO HAVE VIOLATED A PROVISION**
33 **OF ITEMS (1) THROUGH (5) OF THIS SUBSECTION.**

1 **(B) (1) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF**
2 **SUBSECTION (A) OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND**
3 **ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR**
4 **IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.**

5 **(2) IN ADDITION TO THE PENALTIES UNDER PARAGRAPH (1) OF**
6 **THIS SUBSECTION, A PERSON THAT VIOLATES ANY OF THE PROVISIONS OF**
7 **SUBSECTION (A) OF THIS SECTION SHALL BE:**

8 **(I) FOR THE FIRST OFFENSE, LIABLE FOR A CIVIL PENALTY**
9 **OF NOT LESS THAN \$10,000 AND NOT EXCEEDING \$30,000; AND**

10 **(II) FOR A SUBSEQUENT OFFENSE, LIABLE FOR A CIVIL**
11 **PENALTY OF NOT LESS THAN \$30,000 AND NOT EXCEEDING \$50,000.**

12 **(3) A PERSON THAT VIOLATES ANY OF THE PROVISIONS OF**
13 **SUBSECTION (A) OF THIS SECTION SHALL PAY ALL COSTS AND ATTORNEY'S FEES**
14 **INCURRED BY THE PLAINTIFF IN A CIVIL ACTION BROUGHT UNDER THIS**
15 **SUBTITLE.**

16 **(C) THE BOARD SHALL PROHIBIT A PERSON THAT FAILS TO SATISFY**
17 **THE PENALTIES, COSTS, AND ATTORNEY'S FEES IMPOSED UNDER SUBSECTION**
18 **(B) OF THIS SECTION FROM FURTHER CONTRACTING WITH THE STATE UNTIL**
19 **THE PENALTIES ARE SATISFIED.**

20 **(D) (1) A UNIT SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS**
21 **SECTION TO THE BOARD.**

22 **(2) THE BOARD SUBSEQUENTLY SHALL REPORT ALL ALLEGED**
23 **VIOLATIONS OF THIS SECTION TO THE OFFICE OF THE ATTORNEY GENERAL,**
24 **WHICH SHALL DETERMINE WHETHER TO BRING A CIVIL ACTION AGAINST A**
25 **PERSON FOR A VIOLATION OF THIS SECTION.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2013.