

# HOUSE BILL 708

P2  
HB 1304/08 – HGO

9lr0673

---

By: **Delegates Vaughn, Glenn, Gutierrez, Holmes, Hucker, Jones, Lafferty, Lee, Love, Manno, Oaks, Ramirez, Robinson, and Valderrama**  
Introduced and read first time: February 9, 2009  
Assigned to: Health and Government Operations

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Recipients of State Incentives or Financial Assistance – Diversity Initiatives**

3 FOR the purpose of requiring certain units of State government to ensure that an  
4 entity that receives a certain State incentive or financial assistance has adopted  
5 and implemented a certain diversity initiative and embraces minority business  
6 enterprise participation in its activities; requiring certain entities to submit an  
7 annual report to the Governor’s Office of Minority Affairs; providing for the  
8 application of this Act; making a stylistic change; and generally relating to the  
9 utilization of minority business enterprises by entities receiving certain State  
10 incentives or financial assistance.

11 BY repealing and reenacting, without amendments,  
12 Article – State Finance and Procurement  
13 Section 11–204(a)  
14 Annotated Code of Maryland  
15 (2006 Replacement Volume and 2008 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – State Finance and Procurement  
18 Section 14–302  
19 Annotated Code of Maryland  
20 (2006 Replacement Volume and 2008 Supplement)

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

23 **Article – State Finance and Procurement**

24 11–204.

---

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



1 (a) A unit may not enter into a procurement contract except as allowed  
2 under this Division II.

3 14-302.

4 (a) (1) Except for leases of real property and except as provided in  
5 paragraphs (2) and (3) of this subsection, each unit shall structure procurement  
6 procedures, consistent with the purposes of this subtitle, to try to achieve the following  
7 results:

8 (i) a minimum of 7% of the unit's total dollar value of  
9 procurement contracts is to be made directly or indirectly from certified minority  
10 business enterprises classified by the certification agency as African American-owned  
11 businesses;

12 (ii) a minimum of 10% of the unit's total dollar value of  
13 procurement contracts is to be made directly or indirectly from certified minority  
14 business enterprises classified by the certification agency as women-owned  
15 businesses; and

16 (iii) an overall minimum of 25% of the unit's total dollar value of  
17 procurement contracts is to be made directly or indirectly from all certified minority  
18 business enterprises.

19 (2) (i) Except as provided in paragraph (3) of this subsection, in  
20 procurement for construction, each unit shall structure procurement procedures,  
21 consistent with the purposes of this subtitle, to try to achieve the following results:

22 1. a minimum of 7% of the unit's total dollar value of  
23 construction contracts is to be made directly or indirectly from certified minority  
24 business enterprises classified by the certification agency as African American-owned  
25 businesses;

26 2. a minimum of 10% of the unit's total dollar value of  
27 construction contracts is to be made directly or indirectly from certified minority  
28 business enterprises classified by the certification agency as women-owned  
29 businesses; and

30 3. an overall minimum of 25% of the unit's total dollar  
31 value of construction contracts is to be made directly or indirectly from all certified  
32 minority business enterprises.

33 (ii) The unit shall:

34 1. consider the practical severability of the construction  
35 projects; and

1                   2.     implement a program that will enable the unit to  
2 evaluate each contract to determine the appropriateness of the goal.

3                   (3)     With respect to the Maryland Department of Transportation, the  
4 provisions of paragraph (2)(i) of this subsection shall apply only to construction  
5 contracts in excess of \$50,000.

6                   (4)     Each unit shall meet the maximum feasible portion of the goals  
7 stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral measures  
8 to facilitate minority business enterprise participation in the procurement process.

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

12                   (i)     identify specific work categories appropriate for  
13 subcontracting;

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

16                   1.     describes the categories of work under item (i) of this  
17 [subparagraph] **PARAGRAPH**; and

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

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

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

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

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

30                   (6)   (i)    The unit shall make a finding whether the contractor  
31 complied, in good faith, with paragraph (5) of this subsection.

32                   (ii)  If the unit finds the contractor complied with paragraph (5)  
33 of this subsection, the unit may not require the contractor to renegotiate any  
34 subcontract in order to achieve a different result.

1 (7) If, during the performance of a contract, a certified minority  
2 business enterprise contractor or subcontractor becomes ineligible to participate in the  
3 Minority Business Enterprise Program because one or more of its owners has a  
4 personal net worth that exceeds the amount specified in § 14–301(i)(3) of this subtitle:

5 (i) that ineligibility alone may not cause the termination of the  
6 certified minority business enterprise’s contractual relationship for the remainder of  
7 the term of the contract; and

8 (ii) the certified minority business enterprise’s participation  
9 under the contract shall continue to be counted toward the program and contract  
10 goals.

11 **(B) (1) THIS SUBSECTION APPLIES TO EACH CONTRACTOR OR**  
12 **SUBCONTRACTOR OR OTHER ENTITY THAT RECEIVES A GRANT, LOAN,**  
13 **INVESTMENT, TAX EXEMPTION, OR OTHER INCENTIVE OR FINANCIAL**  
14 **ASSISTANCE OF \$100,000 OR MORE FROM A UNIT.**

15 **(2) TO THE EXTENT NOT IN CONFLICT WITH OTHER STATE OR**  
16 **FEDERAL LAW, EACH UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES,**  
17 **CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE, TO ENSURE THAT AN**  
18 **ENTITY SUBJECT TO THIS SUBSECTION:**

19 **(I) HAS ADOPTED AND IMPLEMENTED DIVERSITY**  
20 **INITIATIVES THAT ARE CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE;**  
21 **AND**

22 **(II) EMBRACES MINORITY BUSINESS PARTICIPATION IN ITS**  
23 **CONTRACTING AND VENDING ACTIVITIES.**

24 **(3) (I) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL**  
25 **YEAR, AN ENTITY SUBJECT TO THIS SUBSECTION SHALL SUBMIT A REPORT TO**  
26 **THE GOVERNOR’S OFFICE OF MINORITY AFFAIRS.**

27 **(II) THE REPORT REQUIRED UNDER THIS PARAGRAPH**  
28 **SHALL, FOR THE PRECEDING FISCAL YEAR, STATE THE TOTAL NUMBER AND**  
29 **VALUE OF CONTRACTS BETWEEN THE ENTITY AND CERTIFIED MINORITY**  
30 **BUSINESS ENTERPRISES.**

31 **[(b)] (C) (1) The provisions of §§ 14–301(f) and 14–303 of this subtitle**  
32 **and subsection (a) of this section are inapplicable to the extent that any unit**  
33 **determines the provisions to be in conflict with any applicable federal program**  
34 **requirement.**

1                   (2)     The determination under this subsection shall be included with the  
2 report required under § 14-305 of this subtitle.

3                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 2009.