

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~~ Valderrama, and Braveboy**

Introduced and read first time: February 9, 2009
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: April 4, 2009

CHAPTER _____

1 AN ACT concerning

2 ~~Recipients of State Incentives or Financial Assistance – Diversity Initiatives~~
3 General Obligation Bonds for Capital Projects – Required Reports

4 FOR the purpose of requiring ~~certain units of State government to ensure that an~~
5 ~~entity that receives a certain State incentive or financial assistance has adopted~~
6 ~~and implemented a certain diversity initiative and embraces minority business~~
7 ~~enterprise participation in its activities; requiring certain entities to submit an~~
8 ~~annual report to the Governor’s Office of Minority Affairs; providing for the~~
9 ~~application of this Act; making a stylistic change; and generally relating to the~~
10 ~~utilization of minority business enterprises by entities receiving certain State~~
11 ~~incentives or financial assistance.~~ an enabling act authorizing the creation of a
12 State debt, that is for at least a certain amount to be used by certain entities to
13 complete certain projects, to contain a provision that requires the grantee to
14 submit certain reports to the Governor’s Office of Minority Affairs by certain
15 dates regarding the extent to which the entity has used, or will use, certain
16 funds for contracts with minority-owned businesses; requiring that the
17 Governor’s Office of Minority Affairs determine a certain form and annually
18 report to certain committees of the General Assembly on or before a certain
19 date; providing for the termination of this Act; and generally relating to the
20 provisions of an enabling act authorizing the creation of a State debt.

21 ~~BY repealing and reenacting, without amendments,~~
22 ~~Article – State Finance and Procurement~~
23 ~~Section 11-204(a)~~

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 ~~Annotated Code of Maryland~~
2 ~~(2006 Replacement Volume and 2008 Supplement)~~

3 ~~BY repealing and reenacting, with amendments,~~
4 ~~Article – State Finance and Procurement~~
5 ~~Section 14-302~~
6 ~~Annotated Code of Maryland~~
7 ~~(2006 Replacement Volume and 2008 Supplement)~~

8 BY repealing and reenacting, with amendments,
9 Article – State Finance and Procurement
10 Section 8-117
11 Annotated Code of Maryland
12 (2006 Replacement Volume and 2008 Supplement)

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

15 ~~**Article – State Finance and Procurement**~~

16 ~~11-204.~~

17 ~~(a) A unit may not enter into a procurement contract except as allowed~~
18 ~~under this Division II.~~

19 ~~14-302.~~

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

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

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

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

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

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

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

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

15 ~~(ii) The unit shall:~~

16 ~~1. consider the practical severability of the construction~~
17 ~~projects; and~~

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

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

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

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

29 ~~(i) identify specific work categories appropriate for~~
30 ~~subcontracting;~~

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

33 ~~1. describes the categories of work under item (i) of this~~
34 ~~[subparagraph] PARAGRAPH; and~~

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

3 ~~(iii) attempt to make personal contact with the firms in item (ii)~~
4 ~~of this paragraph;~~

5 ~~(iv) assist minority business enterprises to fulfill bonding~~
6 ~~requirements or to obtain a waiver of those requirements;~~

7 ~~(v) in order to publicize contracting opportunities to minority~~
8 ~~business enterprises, attend prebid meetings or other meetings scheduled by the unit;~~
9 ~~and~~

10 ~~(vi) upon acceptance of a bid, provide the unit with a list of~~
11 ~~minority businesses with whom the contractor negotiated, including price quotes from~~
12 ~~minority and nonminority firms.~~

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

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

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

22 ~~(i) that ineligibility alone may not cause the termination of the~~
23 ~~certified minority business enterprise's contractual relationship for the remainder of~~
24 ~~the term of the contract; and~~

25 ~~(ii) the certified minority business enterprise's participation~~
26 ~~under the contract shall continue to be counted toward the program and contract~~
27 ~~goals.~~

28 ~~(B) (1) THIS SUBSECTION APPLIES TO EACH CONTRACTOR OR~~
29 ~~SUBCONTRACTOR OR OTHER ENTITY THAT RECEIVES A GRANT, LOAN,~~
30 ~~INVESTMENT, TAX EXEMPTION, OR OTHER INCENTIVE OR FINANCIAL~~
31 ~~ASSISTANCE OF \$100,000 OR MORE FROM A UNIT.~~

32 ~~(2) TO THE EXTENT NOT IN CONFLICT WITH OTHER STATE OR~~
33 ~~FEDERAL LAW, EACH UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES,~~
34 ~~CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE, TO ENSURE THAT AN~~
35 ~~ENTITY SUBJECT TO THIS SUBSECTION;~~

~~(I) HAS ADOPTED AND IMPLEMENTED DIVERSITY INITIATIVES THAT ARE CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE; AND~~

~~(H) EMBRACES MINORITY BUSINESS PARTICIPATION IN ITS CONTRACTING AND VENDING ACTIVITIES.~~

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

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

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

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

Article - State Finance and Procurement

8-117.

(a) The General Assembly may authorize the Board to:

(1) borrow money for any public purpose; and

(2) issue State bonds to evidence the debt.

(b) An enabling act shall specify the total principal amount of the debt authorized by the enabling act.

(c) An enabling act may take substantially the following form:

“A BILL ENTITLED

AN ACT concerning

Creation of a State Debt – (Name of Project)

1 FOR the purpose of authorizing the creation of a State debt not to exceed \$....., (for an
 2 enabling act that requires an equal matching fund)/ in the amount of \$....., (for
 3 an enabling act that requires no matching fund or a lesser matching fund) the
 4 proceeds to be used as a grant to (name of grantee) for certain development
 5 or improvement purposes; providing for disbursement of the loan proceeds,
 6 subject to the requirement that the grantee provide and expend a matching
 7 fund (if the enabling act requires a matching fund); and providing generally for
 8 the issuance and sale of bonds evidencing the loan.

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 10 MARYLAND, That:

11 (1) The Board of Public Works may borrow money and incur indebtedness on
 12 behalf of the State of Maryland through a State loan to be known as the ... (name of
 13 project) Loan of ... (year) equal to the lesser of (i) \$... or (ii) the amount of the
 14 matching fund provided in accordance with Section 1(5) below. (For an enabling act
 15 that requires an equal matching fund)/ in the total principal amount of \$..... (for an
 16 enabling act that requires no matching fund or a lesser matching fund). This loan
 17 shall be evidenced by the issuance, sale, and delivery of State general obligation bonds
 18 authorized by a resolution of the Board of Public Works and issued, sold, and
 19 delivered in accordance with §§ 8–117 through 8–124 of the State Finance and
 20 Procurement Article and Article 31, § 22 of the Code.

21 (2) The bonds to evidence this loan or installments of this loan may be sold
 22 as a single issue or may be consolidated and sold as part of a single issue of bonds
 23 under § 8–122 of the State Finance and Procurement Article.

24 (3) The cash proceeds of the sale of the bonds shall be paid to the Treasurer
 25 and first shall be applied to the payment of the expenses of issuing, selling, and
 26 delivering the bonds, unless funds for this purpose are otherwise provided, and then
 27 shall be credited on the books of the Comptroller and expended, on approval by the
 28 Board of Public Works, for the following public purposes, including any applicable
 29 architects' and engineers' fees: as a grant to (name of grantee) (referred to
 30 hereafter in this Act as “the grantee”) (for an enabling act that requires a matching
 31 fund) for (here state the purpose or purposes to which the proceeds of the bonds are to
 32 be applied).

33 (4) An annual State tax is imposed on all assessable property in the State in
 34 rate and amount sufficient to pay the principal of and interest on the bonds, as and
 35 when due and until paid in full. The principal shall be discharged within 15 years
 36 after the date of issue of the bonds.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 38 June 1, (year)”.

39 (d) (1) If an enabling act requires an equal matching fund, the fifth
 40 paragraph is as follows:

1 “(5) Prior to the payment of any funds under the provisions of this Act for the
2 purposes set forth in Section 1(3) above, the grantee shall provide and expend a
3 matching fund. No part of the grantee’s matching fund may be provided, either
4 directly or indirectly, from funds of the State, whether appropriated or
5 unappropriated. No part of the fund may consist of real property, in kind
6 contributions, or funds expended prior to the effective date of this Act. In case of any
7 dispute as to the amount of the matching fund or what money or assets may qualify
8 as matching funds, the Board of Public Works shall determine the matter and the
9 Board’s decision is final. The grantee has until June 1, ... (2 years from the effective
10 date of the Act), to present evidence satisfactory to the Board of Public Works that a
11 matching fund will be provided. If satisfactory evidence is presented, the Board shall
12 certify this fact and the amount of the matching fund to the State Treasurer, and the
13 proceeds of the loan equal to the amount of the matching fund shall be expended for
14 the purposes provided in this Act. Any amount of the loan in excess of the amount of
15 the matching fund certified by the Board of Public Works shall be canceled and be of
16 no further effect.”.

17 (2) If an enabling act requires a lesser matching fund, the fifth
18 paragraph is as follows:

19 “(5) Prior to the payment of any funds under the provisions of this Act for the
20 purposes set forth in Section 1(3) above, the grantee shall provide and expend a
21 matching fund of \$..., (amount of the matching fund to be provided by the grantee).
22 No part of the grantee’s matching fund may be provided, either directly or indirectly,
23 from funds of the State, whether appropriated or unappropriated. No part of the fund
24 may consist of real property, in kind contributions, or funds expended prior to the
25 effective date of this Act. In case of any dispute as to the amount of the matching fund
26 or what money or assets may qualify as matching funds, the Board of Public Works
27 shall determine the matter and the Board’s decision is final. The grantee has until
28 June 1, ... (2 years from the effective date of the Act), to present evidence satisfactory
29 to the Board of Public Works that a matching fund will be provided. If satisfactory
30 evidence is presented, the Board shall certify this fact to the State Treasurer, and the
31 proceeds of the loan shall be expended for the purposes provided in this Act.”.

32 (e) An enabling act may also contain the following paragraph:

33 “The proceeds of the loan must be expended or encumbered by the Board of
34 Public Works for the purposes provided in this Act no later than June 1, (7 years
35 from the effective date of the Act). If any funds authorized by this Act remain
36 unexpended or unencumbered after June 1, (7 years from the effective date of the
37 Act), the amount of the unencumbered or unexpended authorization shall be canceled
38 and be of no further effect. If bonds have been issued for the loan, the amount of
39 unexpended or unencumbered bond proceeds shall be disposed of as provided in §
40 8–129 of the State Finance and Procurement Article.”.

41 (f) An enabling act under this section may contain:

1 (1) an additional provision for all or part of the principal of and
2 interest on the State bonds issued under the enabling act to be paid primarily from
3 sources of funds other than a State tax on assessable property; and

4 (2) any other additional provision that is appropriate to the purpose of
5 the enabling act and the nature of State bonds.

6 **(G) (1) AN ENABLING ACT SHALL CONTAIN THE FOLLOWING**
7 **PARAGRAPH IF THE ACT AUTHORIZES THE CREATION OF A STATE DEBT OF AT**
8 **LEAST \$500,000 FOR A HOSPITAL OR INSTITUTION OF HIGHER EDUCATION THAT**
9 **IS NOT INCLUDED UNDER § 14-305 OF THIS TITLE TO COMPLETE A CAPITAL**
10 **PROJECT:**

11 **“ON OR BEFORE DECEMBER 31 OF ANY YEAR IN WHICH THE PAYMENT OF**
12 **ANY FUNDS UNDER THE PROVISIONS OF THIS ACT FOR THE PURPOSES OF A**
13 **CAPITAL PROJECT AS SET FORTH IN SECTION 1(3) ABOVE IS MADE AND ON OR**
14 **BEFORE DECEMBER 31 OF THE YEAR FOLLOWING A YEAR IN WHICH THE**
15 **PAYMENT OF ANY FUNDS UNDER THE PROVISIONS OF THIS ACT FOR THE**
16 **PURPOSES SET FORTH IN SECTION 1(3) ABOVE IS MADE, THE GRANTEE SHALL**
17 **SUBMIT A REPORT TO THE GOVERNOR’S OFFICE OF MINORITY AFFAIRS ON THE**
18 **EXTENT TO WHICH THE GRANTEE HAS USED, OR WILL USE, ANY PART OF THE**
19 **FUNDS RECEIVED UNDER THE PROVISIONS OF THIS ACT FOR CONTRACTS WITH**
20 **MINORITY-OWNED BUSINESSES AND ANY MINORITY BUSINESS OUTREACH**
21 **EFFORTS.”**

22 **(2) THE GOVERNOR’S OFFICE OF MINORITY AFFAIRS SHALL**
23 **DETERMINE A SINGLE FORM FOR ALL REPORTS SUBMITTED UNDER THIS**
24 **SUBSECTION.**

25 **(3) ON OR BEFORE DECEMBER 1 OF EACH YEAR, THE**
26 **GOVERNOR’S OFFICE OF MINORITY AFFAIRS SHALL REPORT TO THE SENATE**
27 **EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE AND THE**
28 **HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, IN**
29 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE**
30 **INFORMATION SUBMITTED TO THE GOVERNOR’S OFFICE OF MINORITY AFFAIRS**
31 **UNDER THIS SECTION.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2009. It shall remain effective for a period of 3 years and, at the end of
34 September 30, 2012, with no further action required by the General Assembly, this Act
35 shall be abrogated and of no further force and effect.