

SENATE BILL 130

P2

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By: **Senators Pugh, Currie, Harrington, Jones, King, Lenett, Madaleno, and Muse**

Introduced and read first time: January 15, 2010

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Reciprocal Certification**

3 FOR the purpose of requiring the Board of Public Works to adopt regulations to
4 recognize and accommodate, for the purpose of certification under the State
5 minority business enterprise program, minority business enterprises that
6 receive certification from a certain federal agency or from a county government
7 in the State; requiring the Board to keep certain records and submit a certain
8 annual report to the General Assembly about the certification of certain
9 minority business enterprises; and generally relating to a reciprocal
10 certification process for certain minority business enterprises.

11 BY repealing and reenacting, with amendments,
12 Article – State Finance and Procurement
13 Section 14–303
14 Annotated Code of Maryland
15 (2009 Replacement Volume)

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

18 **Article – State Finance and Procurement**

19 14–303.

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

23 (ii) The Board shall keep a record of the number of waivers
24 requested and the number of waivers granted each year under subsection (b)(8) of this

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **(III) THE BOARD SHALL KEEP A RECORD OF THE**
4 **AGGREGATE NUMBER AND THE IDENTITY OF MINORITY BUSINESS ENTERPRISES**
5 **THAT RECEIVE CERTIFICATION UNDER THE RECIPROCAL PROCESS**
6 **ESTABLISHED BY THE BOARD UNDER SUBSECTION (B)(1) OF THIS SECTION AND**
7 **SUBMIT A COPY OF THE RECORD TO THE GENERAL ASSEMBLY ON OR BEFORE**
8 **OCTOBER 1 OF EACH YEAR, IN ACCORDANCE WITH § 2–1246 OF THE STATE**
9 **GOVERNMENT ARTICLE.**

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

14 (b) These regulations shall include:

15 (1) **(I)** provisions designating one **STATE** agency to certify and
16 decertify minority business enterprises for all units through a single process that
17 meets applicable federal requirements; **AND**

18 **(II) FOR THE PURPOSE OF CERTIFICATION UNDER THIS**
19 **SUBTITLE, PROVISIONS THAT RECOGNIZE AND ACCOMMODATE MINORITY**
20 **BUSINESS ENTERPRISES THAT RECEIVE CERTIFICATION FROM THE U.S. SMALL**
21 **BUSINESS ADMINISTRATION OR A COUNTY GOVERNMENT IN THIS STATE;**

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

25 (i) the potential subcontract opportunities available in the
26 prime procurement contract; and

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

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

31 (4) provisions to ensure the uniformity of requests for bids on
32 subcontracts;

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

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

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

7 (8) consistent with § 14–302(a)(6) of this subtitle, provisions relating
8 to any circumstances under which a unit may waive obligations of the contractor
9 relating to minority business enterprise participation;

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

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

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

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

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

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

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

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

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 2010.