

# SENATE BILL 131

P2

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

Introduced and read first time: January 15, 2010

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Minority Business Enterprises – Electronic**  
3 **Certification Process**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations that  
5 include provisions that allow a business seeking certification as a minority  
6 business enterprise to complete the application through an electronic process;  
7 and generally relating to an electronic certification process for minority  
8 business enterprises.

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

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

16 **Article – State Finance and Procurement**

17 14–303.

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

21 (ii) The Board shall keep a record of the number of waivers  
22 requested and the number of waivers granted each year under subsection (b)(8) of this  
23 section and submit a copy of the record to the General Assembly on or before October 1  
24 of each year, in accordance with § 2–1246 of the State Government Article.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

5           (b) These regulations shall include:

6           (1) provisions designating one agency to certify and decertify minority  
7 business enterprises for all units through a single process that meets applicable  
8 federal requirements, **INCLUDING PROVISIONS THAT ALLOW A BUSINESS SEEKING**  
9 **CERTIFICATION TO COMPLETE THE APPLICATION THROUGH AN ELECTRONIC**  
10 **PROCESS;**

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

14                   (i) the potential subcontract opportunities available in the  
15 prime procurement contract; and

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

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

20           (4) provisions to ensure the uniformity of requests for bids on  
21 subcontracts;

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

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

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

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

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

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

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

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

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

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

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

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

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