

SENATE BILL 555

P2

11r1681

By: **Senators Pugh, Kelley, Muse, and Rosapepe**
Introduced and read first time: February 4, 2011
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Participation – Disclosure and Termination**
3 **Extension**

4 FOR the purpose of requiring certain regulations adopted by the Board of Public
5 Works to provide for a written public explanation of a determination by a unit of
6 the availability for certain purposes of certified minority business enterprises;
7 altering the methodology to determine the expected degree of minority business
8 participation in a prime procurement contract by requiring certain
9 considerations with respect to the prime procurement contract; requiring the
10 regulations to provide for the disclosure of each waiver of obligations under the
11 Minority Business Enterprise Program and the reason for each waiver; altering
12 the record keeping and reporting requirements of the Board with respect to a
13 waiver of Program obligations; continuing until a certain date certain provisions
14 of the State Procurement Law relating to procurement from minority
15 businesses; requiring a certain study and a final report on the study by a
16 certain date; providing for the effective dates of this Act; and generally relating
17 to minority business participation in State procurement.

18 BY repealing and reenacting, without amendments,
19 Article – State Finance and Procurement
20 Section 14–302(a)(6)
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2010 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – State Finance and Procurement
25 Section 14–303 and 14–309
26 Annotated Code of Maryland
27 (2009 Replacement Volume and 2010 Supplement)

28 BY repealing and reenacting, with amendments,

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



1 Chapter 116 of the Acts of the General Assembly of 1995, as amended by
2 Chapters 495 and 496 of the Acts of the General Assembly of 2000,
3 Chapter 339 of the Acts of the General Assembly of 2001, and Chapter
4 359 of the Acts of the General Assembly of 2006
5 Section 2

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

8 **Article – State Finance and Procurement**

9 14–302.

10 (a) (6) To achieve the result specified in paragraph (1) or (2) of this
11 subsection, a contractor, including a contractor that is a certified minority business
12 enterprise, shall:

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

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

17 1. describes the categories of work under item (i) of this
18 paragraph; and

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

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

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

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

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

31 14–303.

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

1 (ii) The Board shall keep a record of [the number of waivers
2 requested and the number of waivers] **EACH WAIVER REQUESTED AND** granted each
3 year under subsection (b)(8) of this section, **AND THE REASON EACH WAIVER WAS**
4 **GRANTED**, and submit a copy of the record to the General Assembly on or before
5 October 1 of each year, in accordance with § 2–1246 of the State Government Article.

6 (iii) The Board shall keep a record of the aggregate number and
7 the identity of minority business enterprises that receive certification under the
8 process established by the Board under subsection (b)(1) of this section and submit a
9 copy of the record to the General Assembly on or before October 1 of each year, in
10 accordance with § 2–1246 of the State Government Article.

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

15 (b) These regulations shall include:

16 (1) provisions:

17 (i) designating one State agency to certify and decertify
18 minority business enterprises for all units through a single process that meets
19 applicable federal requirements, including provisions that promote and facilitate the
20 submission of some or all of the certification application through an electronic process;

21 (ii) for the purpose of certification under this subtitle, that
22 promote and facilitate certification of minority business enterprises that have received
23 certification from the U.S. Small Business Administration or a county that uses a
24 certification process substantially similar to the process established in accordance
25 with item (i) of this item;

26 (iii) requiring the agency designated to certify minority business
27 enterprises to complete the agency's review of an application for certification and
28 notify the applicant of the agency's decision within 90 days of receipt of a complete
29 application that includes all of the information necessary for the agency to make a
30 decision; and

31 (iv) authorizing the agency designated to certify minority
32 business enterprises to extend the notification requirement established under item (iii)
33 of this item once, for no more than an additional 60 days, if the agency provides the
34 applicant with a written notice and explanation;

35 (2) **(I)** a requirement that the solicitation document accompanying
36 each solicitation set forth the expected degree of minority business enterprise
37 participation based, in part, on:

1 [(i)] 1. the PRIME PROCUREMENT CONTRACT AND
2 potential subcontract opportunities available in the prime procurement contract; and

3 [(ii)] 2. the availability of certified minority business
4 enterprises to respond competitively to the PRIME PROCUREMENT CONTRACT AND
5 potential subcontract opportunities; AND

6 (II) PROVISIONS THAT REQUIRE A UNIT TO PROVIDE A
7 WRITTEN PUBLIC EXPLANATION OF ITS DETERMINATION OF THE AVAILABILITY
8 OF CERTIFIED MINORITY BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY
9 TO THE PRIME PROCUREMENT CONTRACT AND POTENTIAL SUBCONTRACT
10 OPPORTUNITIES;

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

13 (4) provisions to ensure the uniformity of requests for bids on
14 subcontracts;

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

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

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

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

26 (II) PROVISIONS THAT REQUIRE A UNIT TO PROVIDE
27 WRITTEN PUBLIC NOTICE OF:

28 1. ANY WAIVER OF MINORITY BUSINESS ENTERPRISE
29 OBLIGATIONS; AND

30 2. THE REASON THE WAIVER IS NECESSARY;

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

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

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

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

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

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
24 read as follows:

25 **Article – State Finance and Procurement**

26 14–309.

27 The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations
28 adopted under those sections, shall be of no effect and may not be enforced after July
29 1, [2011] **2013**.

30 **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**
31 **Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of**
32 **2006**

33 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,

1 in consultation with the General Assembly and the Office of the Attorney General,
2 shall initiate a study of the Minority Business Enterprise Program to evaluate the
3 Program's continued compliance with the requirements of the Croson decision and any
4 subsequent federal or constitutional requirements. In preparation for the study, the
5 Board of Public Works may adopt regulations authorizing a unit of State government
6 to require bidders and offerors to submit information necessary for the conduct of the
7 study. The Board of Public Works may designate that certain information received in
8 accordance with regulations adopted under this section shall be confidential.
9 Notwithstanding that certain information may be designated by the Board of Public
10 Works as confidential, the certification agency may provide the information to any
11 person that is under contract with the certification agency to assist in conducting the
12 study. The study shall also evaluate race neutral programs and other methods that
13 can be used to address the needs of minority businesses. The final report on the study
14 shall be submitted to the Legislative Policy Committee of the General Assembly prior
15 to September 30, [2010] **2012**, so that the General Assembly may review the report
16 prior to the [2011] **2013** Session.

17 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
18 take effect October 1, 2011.

19 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
20 Section 3 of this Act, this Act shall take effect July 1, 2011.