

HOUSE BILL 1353

P2

3lr2451
CF SB 188

By: ~~Delegates Oaks, Branch, Carter, and Vaughn~~ Vaughn, Tarrant, V. Turner, Nathan-Pulliam, Pendergrass, Pena-Melnyk, and Morhaim

Introduced and read first time: February 11, 2013

Assigned to: Rules and Executive Nominations

Re-referred to: Health and Government Operations, February 26, 2013

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 27, 2013

CHAPTER _____

1 AN ACT concerning

2 **Minority Business Enterprises – Participation and Goals and Subgoals**

3 FOR the purpose of requiring the ~~Procurement Advisor to conduct an examination~~
4 ~~concerning the process by which the heads of units and their procurement~~
5 ~~officers, in consultation with the Special Secretary of Minority Affairs, the~~
6 ~~Secretary of Transportation, and the Attorney General, sets certain goals and~~
7 ~~subgoals for participation of certain minority groups in State procurement;~~
8 ~~specifying certain factors to be considered during the examination; requiring the~~
9 ~~Procurement Advisor to report certain findings on or before a certain date; and~~
10 ~~generally relating to the setting of goals and subgoals for participation of~~
11 ~~certain minority groups in State procurement~~ Special Secretary of Minority
12 Affairs, in consultation with the Secretary of Transportation and the Attorney
13 General, to establish guidelines for certain units of State government to
14 consider when determining the appropriate minority business enterprise
15 participation percentage goal for certain procurements; making certain
16 conforming changes; altering the termination date for certain provisions of law
17 concerning the minority business enterprise program; altering the dates by
18 which the certification agency designated by the Board of Public Works for the
19 minority business enterprise program, in consultation with the General
20 Assembly and the Office of the Attorney General, is required to conduct a
21 certain study of the minority business program and submit a certain report to
22 the Legislative Policy Committee of the General Assembly; and generally

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 relating to minority business enterprise participation and percentage goals and
 2 subgoals for certain procurements.

3 BY repealing and reenacting, without amendments,
 4 Article – State Finance and Procurement
 5 Section 12–102
 6 Annotated Code of Maryland
 7 (2009 Replacement Volume and 2012 Supplement)

8 ~~BY repealing and reenacting, without amendments,~~
 9 ~~Article – State Finance and Procurement~~
 10 ~~Section 14–302(a)(1)~~
 11 ~~Annotated Code of Maryland~~
 12 ~~(2009 Replacement Volume and 2012 Supplement)~~

13 BY repealing and reenacting, with amendments,
 14 Article – State Finance and Procurement
 15 Section 14–302, 14–303, and 14–309
 16 Annotated Code of Maryland
 17 (2009 Replacement Volume and 2012 Supplement)

18 BY repealing and reenacting, with amendments,
 19 Chapter 154 of the Acts of the General Assembly of 2012
 20 Section 2

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 12–102.

25 (a) (1) The Board shall appoint a Procurement Advisor, who serves at the
 26 pleasure of the Board.

27 (2) The Procurement Advisor shall:

28 (i) ensure that the State’s procurement system is utilizing the
 29 most advanced procurement methods and management techniques;

30 (ii) effect and enhance communication between State units on
 31 procurement matters, with an emphasis on disseminating information on current
 32 developments and advances in the management of the State procurement system;

33 (iii) examine all procurements that are subject to review by the
 34 Board and make recommendations to the Board as to the appropriateness of each
 35 procurement, with an emphasis on whether the proposed procurement:

- 1 1. has been competitively conducted; and
- 2 2. conforms to provisions of procurement law,
3 procurement regulations, and best management practices;
- 4 (iv) prevent and detect fraud, waste, and abuse and foster
5 competition in the expenditure of State funds in the procurement of supplies, services,
6 or construction;
- 7 (v) conduct investigations into procurement policies, practices,
8 and procedures, as appropriate;
- 9 (vi) investigate complaints made by State employees concerning
10 fraud, waste, and abuse in the procurement process and any alleged violation of the
11 procurement law or regulations;
- 12 (vii) investigate complaints, other than formal bid protests filed
13 under Title 15, Subtitle 2 of this article, made by contractors and other interested
14 parties concerning fraud, waste, and abuse in the procurement process and any
15 alleged violation of the procurement law or regulations;
- 16 (viii) if apparent criminal violations are found in the course of an
17 investigation, report findings to the Board of Public Works, Office of the Attorney
18 General, United States Attorney, and State or local prosecutors, as appropriate;
- 19 (ix) if other apparent violations of law or regulation are found in
20 the course of an investigation, report findings to the Board of Public Works, the
21 appropriate agency head, and any other appropriate body for administrative action;
- 22 (x) produce and submit to the Board of Public Works and the
23 General Assembly, in accordance with § 2–1246 of the State Government Article, an
24 annual report of the activities of the Procurement Advisor, including:
- 25 1. all findings and recommendations for improvements
26 to the procurement system; and
- 27 2. the identification of barriers to effective broad-based
28 competition in State procurement and recommendations for the elimination of these
29 barriers;
- 30 (xi) assist agencies and the public with questions regarding
31 procurement policy;
- 32 (xii) establish policies for the effective training of State
33 procurement officials to ensure that the State’s procurement system is utilizing the
34 most advanced procurement methods and management techniques;

1 (xiii) coordinate activities with other entities performing similar
2 functions;

3 (xiv) review internal audit reports and comment as appropriate;

4 (xv) be the principal staff to the Procurement Advisory Council;
5 and

6 (xvi) notify the Legislative Auditor when the Procurement
7 Advisor undertakes an investigation under item (vi) or (vii) of this paragraph.

8 (3) The Procurement Advisor shall:

9 (i) have access to all books, accounts, records, reports, any
10 material related to contracts and procurement, and all other papers and equipment
11 necessary to carry out its responsibilities; and

12 (ii) have direct and prompt access to all heads of agencies
13 involved in the expenditure of public funds.

14 (b) (1) (i) The Board shall appoint a General Counsel, who serves at
15 the pleasure of the Board.

16 (ii) The General Counsel shall be an attorney in this State.

17 (2) The General Counsel shall:

18 (i) provide independent legal advice to the Board;

19 (ii) examine all procurements that are subject to review by the
20 Board and make recommendations to the Board as to the legal sufficiency of the
21 procurements, with an emphasis on whether the proposed procurement has been
22 competitively conducted;

23 (iii) assist the Procurement Advisor in investigations undertaken
24 by the Procurement Advisor;

25 (iv) assist the Procurement Advisor in responding to complaints
26 made by State employees, contractors, and other interested parties concerning fraud,
27 waste, and abuse in the procurement process or any alleged violation of the
28 procurement law and regulations;

29 (v) compile information for distribution to State procurement
30 officials relating to recent decisions of the Maryland State Board of Contract Appeals
31 and State and federal courts concerning procurement, including any policy or legal
32 guidance to the procurement officials based on these decisions; and

1 (vi) review regulations proposed by the Board for legality and
2 approve them for proposal and adoption.

3 (3) The General Counsel shall:

4 (i) have access to all books, accounts, records, any material
5 related to contracts and procurement, and all other papers and equipment necessary
6 to carry out its responsibilities; and

7 (ii) have direct and prompt access to all heads of agencies
8 involved in the expenditure of public funds.

9 (c) In accordance with the State budget, the Board may appoint any
10 additional staff necessary to carry out its responsibilities under this Division II.

11 ~~14-302.~~

12 ~~(a) (1) (i) Except for leases of real property, each unit shall structure~~
13 ~~procurement procedures, consistent with the purposes of this subtitle, to try to achieve~~
14 ~~an overall percentage goal of the unit's total dollar value of procurement contracts~~
15 ~~being made directly or indirectly to certified minority business enterprises.~~

16 ~~(ii) 1. The overall percentage goal shall be established on a~~
17 ~~biennial basis by the Special Secretary of Minority Affairs, in consultation with the~~
18 ~~Secretary of Transportation and the Attorney General.~~

19 ~~2. During any year in which there is a delay in~~
20 ~~establishing the overall goal, the previous year's goal will apply.~~

21 ~~(iii) 1. In consultation with the Secretary of Transportation~~
22 ~~and the Attorney General, the Special Secretary of Minority Affairs shall establish~~
23 ~~guidelines on a biennial basis for each unit to consider while determining whether to~~
24 ~~set subgoals for the minority groups listed in § 14-301(j)(1)(i)1, 2, 3, 4, and 6 of this~~
25 ~~subtitle.~~

26 ~~2. During any year in which there is a delay in~~
27 ~~establishing the subgoal guidelines, the previous year's subgoal guidelines will apply.~~

28 ~~(iv) 1. The Special Secretary of Minority Affairs, in~~
29 ~~consultation with the Secretary of Transportation and the Attorney General, shall~~
30 ~~establish goals and subgoal guidelines that, to the maximum extent feasible,~~
31 ~~approximate the level of minority business enterprise participation that would be~~
32 ~~expected in the absence of discrimination.~~

33 ~~2. In establishing overall goals and subgoal guidelines,~~
34 ~~the Special Secretary of Minority Affairs shall provide for public participation by~~

~~consulting with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning:~~

~~A. the availability of minority and women owned businesses;~~

~~B. the effects of discrimination on opportunities for minority and women owned businesses; and~~

~~C. the State's operation of the Minority Business Enterprise Program.~~

~~(v) In establishing overall goals, the factors to be considered shall include:~~

~~1. the relative availability of minority and women owned businesses to participate in State procurement as demonstrated by the State's most recent disparity study;~~

~~2. past participation of minority business enterprises in State procurement, except for procurement related to leases of real property; and~~

~~3. other factors that contribute to constitutional goal setting.~~

~~(vi) Notwithstanding § 12-101 of this article, the Special Secretary of Minority Affairs shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article setting forth the State's overall goal.~~

~~14-302.~~

(a) (1) (i) Except for leases of real property, each unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve an overall percentage goal of the unit's total dollar value of procurement contracts being made directly or indirectly to certified minority business enterprises.

(ii) 1. The overall percentage goal shall be established on a biennial basis by the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General.

2. During any year in which there is a delay in establishing the overall goal, the previous year's goal will apply.

(iii) 1. In consultation with the Secretary of Transportation and the Attorney General, the Special Secretary of Minority Affairs shall establish guidelines on a biennial basis for each unit to consider while determining whether to

1 set subgoals for the minority groups listed in § 14-301(j)(1)(i)1, 2, 3, 4, and 6 of this
2 subtitle.

3 2. During any year in which there is a delay in
4 establishing the subgoal guidelines, the previous year's subgoal guidelines will apply.

5 (iv) 1. The Special Secretary of Minority Affairs, in
6 consultation with the Secretary of Transportation and the Attorney General, shall
7 establish goals and subgoal guidelines that, to the maximum extent feasible,
8 approximate the level of minority business enterprise participation that would be
9 expected in the absence of discrimination.

10 2. In establishing overall goals and subgoal guidelines,
11 the Special Secretary of Minority Affairs shall provide for public participation by
12 consulting with minority, women's, and general contractor groups, community
13 organizations, and other officials or organizations that could be expected to have
14 information concerning:

15 A. the availability of minority- and women-owned
16 businesses;

17 B. the effects of discrimination on opportunities for
18 minority- and women-owned businesses; and

19 C. the State's operation of the Minority Business
20 Enterprise Program.

21 (v) In establishing overall goals, the factors to be considered
22 shall include:

23 1. the relative availability of minority- and
24 women-owned businesses to participate in State procurement as demonstrated by the
25 State's most recent disparity study;

26 2. past participation of minority business enterprises in
27 State procurement, except for procurement related to leases of real property; and

28 3. other factors that contribute to constitutional goal
29 setting.

30 (vi) Notwithstanding § 12-101 of this article, the Special
31 Secretary of Minority Affairs shall adopt regulations in accordance with Title 10,
32 Subtitle 1 of the State Government Article setting forth the State's overall goal.

33 **(2) THE SPECIAL SECRETARY OF MINORITY AFFAIRS, IN**
34 **CONSULTATION WITH THE SECRETARY OF TRANSPORTATION AND THE**
35 **ATTORNEY GENERAL, SHALL ESTABLISH GUIDELINES FOR EACH UNIT TO**

1 CONSIDER WHEN DETERMINING THE APPROPRIATE MINORITY BUSINESS
 2 ENTERPRISE PARTICIPATION PERCENTAGE GOAL FOR A PROCUREMENT
 3 CONTRACT IN ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION.

4 ~~[(2)]~~ **(3)** Each unit shall:

5 (i) consider the practical severability of all contracts and, in
 6 accordance with § 11–201 of this article, may not bundle contracts;

7 (ii) implement a program that will enable the unit to evaluate
 8 each contract to determine the appropriate minority business enterprise participation
 9 goals, if any, for the contract based on:

10 1. the potential subcontract opportunities available in
 11 the prime procurement contract;

12 2. the availability of certified minority business
 13 enterprises to respond competitively to the potential subcontract opportunities;

14 **3. THE CONTRACT GOAL GUIDELINES**
 15 **ESTABLISHED UNDER PARAGRAPH (2) OF THIS SUBSECTION;**

16 ~~[3.]~~ **4.** the SUBGOAL guidelines established under
 17 paragraph [(1)(ii)] (1)(III) of this subsection; and

18 ~~[4.]~~ **5.** other factors that contribute to constitutional goal
 19 setting;

20 (iii) monitor and collect data with respect to prime contractor
 21 compliance with contract goals; and

22 (iv) institute corrective action when prime contractors do not
 23 make good–faith efforts to comply with contract goals.

24 ~~[(3)]~~ **(4)** Units may not use quotas or any project goal–setting process
 25 that:

26 (i) solely relies on the State’s overall numerical goal, or any
 27 other jurisdiction’s overall numerical goal; or

28 (ii) fails to incorporate the analysis outlined in paragraph (2)(ii)
 29 of this subsection.

30 ~~[(4)]~~ **(5)** (i) A woman who is also a member of an ethnic or racial
 31 minority group may be certified in that category in addition to the gender category.

1 (ii) For purposes of achieving the goals in this subsection, a
2 certified minority business enterprise may participate in a procurement contract and
3 be counted as a woman-owned business, or as a business owned by a member of an
4 ethnic or racial group, but not both, if the business has been certified in both
5 categories.

6 **[(5)] (6)** Each unit shall meet the maximum feasible portion of the
7 State's overall goal established in accordance with this subsection by using
8 race-neutral measures to facilitate minority business enterprise participation in the
9 procurement process.

10 **[(6)] (7)** If a unit establishes minority business enterprise
11 participation goals for a contract, a contractor, including a contractor that is a certified
12 minority business 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) offer to provide reasonable assistance to minority business
24 enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

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

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

31 **[(7)] (8)** The Special Secretary of Minority Affairs shall:

32 (i) in consultation with the Secretary of Transportation and the
33 Attorney General, establish procedures governing how the participation of minority
34 business enterprise prime contractors is counted toward contract goals; and

1 (ii) notwithstanding § 12-101 of this article, adopt regulations
2 setting forth the procedures established in accordance with this paragraph.

3 **[(8) (9) (i) 1.** If a contractor, including a certified minority
4 business enterprise, does not achieve all or a part of the minority business enterprise
5 participation goals on a contract, the unit shall make a finding of whether the
6 contractor has demonstrated that the contractor took all necessary and reasonable
7 steps to achieve the goals, including compliance with paragraph (6) of this subsection.

8 2. A waiver of any part of the minority business
9 enterprise goals for a contract shall be granted if a contractor provides a reasonable
10 demonstration of good-faith efforts to achieve the goals.

11 (ii) If the unit determines that a waiver should be granted in
12 accordance with subparagraph (i) of this paragraph, the unit may not require the
13 contractor to renegotiate any subcontract in order to achieve a different result.

14 (iii) The head of the unit may waive any of the requirements of
15 this subsection relating to the establishment, use, and waiver of contract goals for a
16 sole source, expedited, or emergency procurement in which the public interest cannot
17 reasonably accommodate use of those requirements.

18 (iv) 1. Except for waivers granted in accordance with
19 subparagraph (iii) of this paragraph, when a waiver determination is made, the unit
20 shall issue the determination in writing.

21 2. The head of the unit shall:

22 A. keep one copy of the waiver determination and the
23 reasons for the determination; and

24 B. forward one copy of the waiver determination to the
25 Governor's Office of Minority Affairs.

26 (v) On or before July 31 of each year, each unit shall submit
27 directly to the Board of Public Works and the Governor's Office of Minority Affairs an
28 annual report of waivers requested and waivers granted under this paragraph.

29 (vi) The report required under subparagraph (v) of this
30 paragraph shall contain the following information on those contracts where the unit
31 considered a contractor's request for waiver of all or a portion of the minority business
32 enterprise goals:

33 1. the contract titles, numbers, and dates;

34 2. the number of waiver requests received;

- 1 3. the number of waiver requests granted; and
2 4. any other information specifically requested by the
3 Board.

4 **[(9)] (10)** (i) 1. This paragraph applies to a bidder or offeror
5 after submission of a bid or proposal and before the execution of a contract with an
6 expected degree of minority business enterprise participation.

7 2. If the bidder or offeror determines that a minority
8 business enterprise identified in the minority business enterprise participation
9 schedule has become or will become unavailable or ineligible to perform the work
10 required under the contract, the bidder or offeror shall notify the unit within 72 hours
11 of making the determination.

12 (ii) 1. If a minority business enterprise identified in the
13 minority business enterprise participation schedule submitted with a bid or offer has
14 become or will become unavailable or ineligible to perform the work required under
15 the contract, the bidder or offeror may submit a written request with the unit to
16 amend the minority business enterprise participation schedule.

17 2. The request to amend the minority business
18 enterprise participation schedule shall indicate the bidder's or offeror's efforts to
19 substitute another certified minority business enterprise to perform the work that the
20 unavailable or ineligible minority business enterprise would have performed.

21 (iii) A minority business enterprise participation schedule may
22 not be amended unless:

23 1. the bidder or offeror provides a satisfactory
24 explanation of the reason for inclusion of the unavailable or ineligible firm on the
25 minority business enterprise participation schedule; and

26 2. the amendment is approved by the unit's procurement
27 officer after consulting with the unit's minority business enterprise liaison.

28 **[(10)] (11)** (i) This paragraph applies after execution of a contract
29 with an expected degree of minority business enterprise participation.

30 (ii) The minority business enterprise participation schedule,
31 including any amendment, shall be attached to and made a part of the executed
32 contract.

33 (iii) 1. A contractor may not terminate or otherwise cancel
34 the contract of a certified minority business enterprise subcontractor listed in the
35 minority business enterprise participation schedule without showing good cause and

1 obtaining the prior written consent of the minority business enterprise liaison and
2 approval of the head of the unit.

3 2. The unit shall send a copy of the written consent
4 obtained under subparagraph 1 of this subparagraph to the Governor's Office of
5 Minority Affairs.

6 (iv) A minority business enterprise participation schedule may
7 not be amended after the date of contract execution unless the request is approved by
8 the head of the unit and the contract is amended.

9 [(11)] (12) If, during the performance of a contract, a certified minority
10 business enterprise contractor or subcontractor becomes ineligible to participate in the
11 Minority Business Enterprise Program because one or more of its owners has a
12 personal net worth that exceeds the amount specified in § 14-301(j)(3) of this subtitle:

13 (i) that ineligibility alone may not cause the termination of the
14 certified minority business enterprise's contractual relationship for the remainder of
15 the term of the contract; and

16 (ii) the certified minority business enterprise's participation
17 under the contract shall continue to be counted toward the program and contract
18 goals.

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

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

24 14-303.

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

28 (ii) The Board shall keep a record of information regarding any
29 waivers requested in accordance with § [14-302(a)(8)(i)] 14-302(A)(9)(I) of this
30 subtitle and subsection (b)(11) of this section and submit a copy of the record to the
31 General Assembly on or before October 1 of each year, in accordance with § 2-1246 of
32 the State Government Article.

33 (iii) The Board shall keep a record of the aggregate number and
34 the identity of minority business enterprises that receive certification under the
35 process established by the Board under subsection (b)(1) of this section and submit a

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

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

7 (b) These regulations shall include:

8 (1) provisions:

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

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

18 (iii) requiring the agency designated to certify minority business
19 enterprises to complete the agency's review of an application for certification and
20 notify the applicant of the agency's decision within 90 days of receipt of a complete
21 application that includes all of the information necessary for the agency to make a
22 decision; and

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

27 (2) a requirement that the solicitation document accompanying each
28 solicitation set forth the expected degree of minority business enterprise participation
29 based, in part, on the factors set forth in § [14–302(a)(2)(ii)] 14–302(A)(3)(II) of this
30 subtitle;

31 (3) a requirement that bidders or offerors complete a document setting
32 forth the percentage of the total dollar amount of the contract that the bidder or
33 offeror agrees will be performed by certified minority business enterprises;

34 (4) a requirement that the solicitation documents completed and
35 submitted by the bidder or offeror in connection with its minority business enterprise
36 participation commitment must be attached to and made a part of the contract;

1 (5) a requirement that all contracts containing minority business
2 enterprise participation goals shall contain a liquidated damages provision that
3 applies in the event that the contractor fails to comply in good faith with the
4 provisions of this subtitle or the pertinent terms of the applicable contract;

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

7 (7) provisions to ensure the uniformity of requests for bids on
8 subcontracts;

9 (8) provisions relating to the timing of requests for bids on
10 subcontracts and of submission of bids on subcontracts;

11 (9) provisions designed to ensure that a fiscal disadvantage to the
12 State does not result from an inadequate response by minority business enterprises to
13 a request for bids;

14 (10) provisions relating to joint ventures, under which a bidder may
15 count toward meeting its minority business enterprise participation goal, the minority
16 business enterprise portion of the joint venture;

17 (11) consistent with § [14-302(a)(8)] **14-302(A)(9)** of this subtitle,
18 provisions relating to any circumstances under which a unit may waive obligations of
19 the contractor relating to minority business enterprise participation;

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

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

28 (14) a requirement that a unit verify that minority business enterprises
29 listed in a successful bid are actually participating to the extent listed in the project
30 for which the bid was submitted;

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

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

1 (17) provisions promoting and providing for the counting and reporting
2 of certified minority business enterprises as prime contractors;

3 (18) provisions establishing standards to require a minority business
4 enterprise to perform a commercially useful function on a contract;

5 (19) a requirement that each unit work with the Governor's Office of
6 Minority Affairs to designate certain procurements as being excluded from the
7 requirements of § 14-302(a) of this subtitle; and

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

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

14 14-309.

15 The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations
16 adopted under those sections, shall be of no effect and may not be enforced after July
17 1, [2016] 2017.

18 Chapter 154 of the Acts of 2012

19 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
20 in consultation with the General Assembly and the Office of the Attorney General,
21 shall initiate a study of the Minority Business Enterprise Program to evaluate the
22 Program's continued compliance with the requirements of the Croson decision and any
23 subsequent federal or constitutional requirements. In preparation for the study, the
24 Board of Public Works may adopt regulations authorizing a unit of State government
25 to require bidders and offerors to submit information necessary for the conduct of the
26 study. The Board of Public Works may designate that certain information received in
27 accordance with regulations adopted under this section shall be confidential.
28 Notwithstanding that certain information may be designated by the Board of Public
29 Works as confidential, the Certification Agency may provide the information to any
30 person that is under contract with the Certification Agency to assist in conducting the
31 study. The study shall also evaluate race-neutral programs and other methods that
32 can be used to address the needs of minority businesses. The final report on the study
33 shall be submitted to the Legislative Policy Committee of the General Assembly, in
34 accordance with § 2-1246 of the State Government Article, before September 30,
35 [2015] 2016, so that the General Assembly may review the report before the [2016]
36 2017 Session.

1 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Procurement Advisor~~
 2 ~~shall:~~

3 ~~(1) examine the process used by the heads of units of State~~
 4 ~~government and their procurement officers, in consultation with the Special Secretary~~
 5 ~~of Minority Affairs, the Secretary of Transportation, and the Attorney General under §~~
 6 ~~14-302(a)(1) of the State Finance and Procurement Article, to set overall percentage~~
 7 ~~goals and subgoals for minority groups for each unit's total dollar value of~~
 8 ~~procurement contracts being made directly or indirectly to minority business~~
 9 ~~enterprises, including:~~

10 ~~(i) the process used by the units and their procurement officers~~
 11 ~~to set a lower percentage goal or subgoal for a minority group; and~~

12 ~~(ii) whether the lower percentage goal or subgoal is reflective of~~
 13 ~~or consistent with census data regarding changes in the minority population or the~~
 14 ~~number of minority business enterprises in the State; and~~

15 ~~(2) on or before December 31, 2013, report findings concerning the~~
 16 ~~process utilized to set overall percentage goals and subgoals for minority groups for~~
 17 ~~each unit's total dollar value of procurement contracts being made directly or~~
 18 ~~indirectly to minority business enterprises to the Governor and, subject to § 2-1246 of~~
 19 ~~the State Government Article, the General Assembly.~~

20 SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
 21 effect October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.