

SENATE BILL 1066

P2
SB 156/12 – EHE

3lr3433
CF HB 48

By: **Senator Pugh**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 16, 2013

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprises – Not-for-Profit Entities**

3 FOR the purpose of excluding a not-for-profit entity organized to promote the
4 interests of physically or mentally disabled individuals from a certain definition
5 of minority business enterprise; prohibiting certain contracts from being
6 counted as part of a unit of State government's total dollar value of procurement
7 contracts; authorizing a certain not-for-profit entity participating as a minority
8 business enterprise on a certain procurement contract awarded by a unit before
9 a certain date to continue to participate in that contract until the contract
10 terminates; providing that the not-for-profit entity's participation may not be
11 counted toward achieving certain minority business enterprise participation
12 goals and the unit may not require that a certified minority business enterprise
13 be substituted for the not-for-profit entity in order to meet certain minority
14 business enterprise goals; requiring the Department of Disabilities, in
15 consultation with certain entities, to undertake certain studies and submit to
16 the Legislative Policy Committee a final report on the studies on or before a
17 certain date; providing for the application of this Act; defining a certain term;
18 and generally relating to minority business enterprise participation in State
19 procurement.

20 BY repealing and reenacting, with amendments,
21 Article – State Finance and Procurement
22 Section 14-301 and 14-302(a)(1) and (11)
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2012 Supplement)

25 BY adding to
26 Article – State Finance and Procurement
27 Section 14-302(a)(12)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2012 Supplement)

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

5 **Article – State Finance and Procurement**

6 14–301.

7 (a) In this subtitle the following words have the meanings indicated.

8 (b) “Certification” means the determination that a legal entity is a minority
9 business enterprise for the purposes of this subtitle.

10 (c) “Certification agency” means the agency designated by the Board of
11 Public Works under § 14–303(b) of this subtitle to certify and decertify minority
12 business enterprises.

13 (d) “Certified minority business enterprise” means a minority business
14 enterprise that holds a certification.

15 (e) “Economically disadvantaged individual” means a socially disadvantaged
16 individual whose ability to compete in the free enterprise system has been impaired
17 due to diminished capital and credit opportunities as compared to others in the same
18 or similar line of business who are not socially disadvantaged.

19 (f) **[(1)]** “Minority business enterprise” means any legal entity, except a
20 joint venture, that is:

21 **[(i)] (1)** organized to engage in commercial transactions;

22 **[(ii)] (2)** at least 51% owned and controlled by 1 or more
23 individuals who are socially and economically disadvantaged; and

24 **[(iii)] (3)** managed by, and the daily business operations of
25 which are controlled by, one or more of the socially and economically disadvantaged
26 individuals who own it.

27 **[(2)]** “Minority business enterprise” includes a not for profit entity
28 organized to promote the interests of physically or mentally disabled individuals.]

29 (g) “Minority business enterprise participation schedule” means a schedule
30 included in the submission of a bid or offer that identifies:

1 (1) the certified minority business enterprises that a bidder or offeror
2 agrees to use in the performance of the contract; and

3 (2) the percentage of contract value attributed to each certified
4 minority business enterprise.

5 **(H) “NOT-FOR-PROFIT ENTITY” MEANS A LEGAL ENTITY ORGANIZED TO**
6 **PROMOTE THE INTERESTS OF PHYSICALLY OR MENTALLY DISABLED**
7 **INDIVIDUALS.**

8 **[(h)] (I)** (1) Subject to paragraphs (2) and (3) of this subsection,
9 “personal net worth” means the net value of the assets of an individual remaining
10 after total liabilities are deducted.

11 (2) “Personal net worth” includes the individual’s share of assets held
12 jointly or as community property with the individual’s spouse.

13 (3) “Personal net worth” does not include:

14 (i) the individual’s ownership interest in the applicant or a
15 certified minority business enterprise;

16 (ii) the individual’s equity in his or her primary place of
17 residence; or

18 (iii) up to \$500,000 of the cash value of any qualified retirement
19 savings plans or individual retirement accounts.

20 **[(i)] (J)** “Race-neutral measure” means a method that is or can be used to
21 assist all small businesses.

22 **[(j)] (K)** (1) Subject to paragraphs (2) and (3) of this subsection, and in
23 accordance with the State’s most recent disparity study, “socially and economically
24 disadvantaged individual” means a citizen or lawfully admitted permanent resident of
25 the United States who is:

26 (i) in any of the following minority groups:

27 1. African American – an individual having origins in
28 any of the black racial groups of Africa;

29 2. American Indian/Native American – an individual
30 having origins in any of the original peoples of North America and who is a
31 documented member of a North American tribe, band, or otherwise has a special
32 relationship with the United States or a state through treaty, agreement, or some
33 other form of recognition. This includes an individual who claims to be an American

1 Indian/Native American and who is regarded as such by the American Indian/Native
2 American community of which the individual claims to be a part, but does not include
3 an individual of Eskimo or Aleutian origin;

4 3. Asian – an individual having origins in the Far East,
5 Southeast Asia, or the Indian subcontinent, and who is regarded as such by the
6 community of which the person claims to be a part;

7 4. Hispanic – an individual of Mexican, Puerto Rican,
8 Cuban, Central or South American, or other Spanish culture or origin, regardless of
9 race, and who is regarded as such by the community of which the person claims to be a
10 part;

11 5. physically or mentally disabled – notwithstanding the
12 State’s most recent disparity study, an individual who has an impairment that
13 substantially limits one or more major life activities, who is regarded generally by the
14 community as having such a disability, and whose disability has substantially limited
15 his or her ability to engage in competitive business; or

16 6. women – a woman, regardless of race or ethnicity; or

17 (ii) otherwise found by the certification agency to be a socially
18 and economically disadvantaged individual.

19 (2) There is a rebuttable presumption that an individual who is a
20 member of a minority group under paragraph (1)(i) of this subsection is socially and
21 economically disadvantaged.

22 (3) An individual whose personal net worth exceeds \$1,500,000, as
23 adjusted annually for inflation according to the Consumer Price Index, may not be
24 found to be economically disadvantaged.

25 **[(k)] (L)** “Socially disadvantaged individual” means an individual who has
26 been subjected to racial or ethnic prejudice or cultural bias within American society
27 because of membership in a group and without regard to individual qualities. Social
28 disadvantage must stem from circumstances beyond the control of the individual.

29 14–302.

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

34 2. **NOTWITHSTANDING SUBSUBPARAGRAPH 1 OF**
35 **THIS SUBPARAGRAPH, THE FOLLOWING CONTRACTS MAY NOT BE COUNTED AS**
36 **PART OF A UNIT’S TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS:**

1 A. A PROCUREMENT CONTRACT AWARDED IN
2 ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE; AND

3 B. A PROCUREMENT CONTRACT AWARDED TO A
4 NOT-FOR-PROFIT ENTITY IN ACCORDANCE WITH REQUIREMENTS MANDATED BY
5 STATE OR FEDERAL LAW.

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

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

11 (iii) 1. In consultation with the Secretary of Transportation
12 and the Attorney General, the Special Secretary of Minority Affairs shall establish
13 guidelines on a biennial basis for each unit to consider while determining whether to
14 set subgoals for the minority groups listed in § [14-301(j)(1)(i)1, 2, 3, 4, and 6]
15 **14-301(K)(1)(I)1, 2, 3, 4, AND 6** of this subtitle.

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

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

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

28 A. the availability of minority- and women-owned
29 businesses;

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

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

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

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

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

8 3. other factors that contribute to constitutional goal
9 setting.

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

13 (11) If, during the performance of a contract, a certified minority
14 business enterprise contractor or subcontractor becomes ineligible to participate in the
15 Minority Business Enterprise Program because one or more of its owners has a
16 personal net worth that exceeds the amount specified in § [14-301(j)(3)]
17 **14-301(K)(3)** of this subtitle:

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

21 (ii) the certified minority business enterprise's participation
22 under the contract shall continue to be counted toward the program and contract
23 goals.

24 **(12) A NOT-FOR-PROFIT ENTITY PARTICIPATING AS A MINORITY**
25 **BUSINESS ENTERPRISE ON A PROCUREMENT CONTRACT AWARDED BY A UNIT**
26 **BEFORE JULY 1, 2013, MAY CONTINUE TO PARTICIPATE IN THE CONTRACT**
27 **UNTIL THE CONTRACT EXPIRES OR OTHERWISE TERMINATES, HOWEVER:**

28 **(I) THE NOT-FOR-PROFIT ENTITY'S PARTICIPATION MAY**
29 **NOT BE COUNTED TOWARD ACHIEVING THE MINORITY BUSINESS ENTERPRISE**
30 **PARTICIPATION GOALS IN THIS SUBSECTION; AND**

31 **(II) THE UNIT MAY NOT REQUIRE THAT A CERTIFIED**
32 **MINORITY BUSINESS ENTERPRISE BE SUBSTITUTED FOR THE NOT-FOR-PROFIT**
33 **ENTITY IN ORDER TO MEET THE MINORITY BUSINESS ENTERPRISE GOALS FOR**
34 **THE PROCUREMENT CONTRACT.**

35 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) The Department of Disabilities, in consultation with the Governor's
2 Office of Minority Affairs and the Office of the Attorney General, shall evaluate the
3 impact of Section 1 of this Act on the participation of not-for-profit entities organized
4 to promote the interests of individuals with physical or mental disabilities on State
5 procurement and on employment and business opportunities for persons with
6 disabilities by collecting the following data:

7 (1) the dollar amount awarded to each not-for-profit entity;

8 (2) the contract number and type of procurement or contracting
9 activity through which the unit awarded such dollars to that entity; and

10 (3) any other data the Department of Disabilities considers relevant to
11 its evaluation.

12 (b) In preparing for the evaluation required under subsection (a) of this
13 section, the Department of Disabilities may issue a directive requiring units of State
14 government to collect and submit the necessary information.

15 (c) On or before December 1, 2013, the Department of Disabilities shall
16 submit a final report on the evaluation to the Legislative Policy Committee of the
17 General Assembly in accordance with § 2-1246 of the State Government Article.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
19 construed to apply only prospectively and may not be applied or interpreted to have
20 any effect on or application to any contract awarded before the effective date of this
21 Act.

22 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 2013.