

Chapter 553

(Senate Bill 442)

AN ACT concerning

~~Public-Private Partnership Agreements – Minority Business Enterprise Program~~Minority Business Enterprise Program – Public-Private Partnerships, Offshore Wind Projects, and Video Lottery Terminals

FOR the purpose of providing, under certain circumstances, that the provisions of the Minority Business Enterprise Program apply to public-private partnerships; prohibiting the Board of Public Works from approving a public-private partnership agreement until the reporting agency, in consultation with certain entities, establishes certain minority business enterprise goals and procedures; requiring that certain goals and procedures be based on the requirements of certain provisions of law; incorporating certain findings and evidence associated with a certain Minority Business Enterprise Program; requiring that approved applicants for certain wind projects comply with the Minority Business Enterprise Program to a certain extent; requiring the Governor's Office of Small, Minority, and Women Business Affairs, in consultation with the Office of the Attorney General and a certain approved applicant, to establish a certain plan; requiring a certain approved applicant to submit a certain progress report to the Public Service Commission under certain circumstances; altering the date by which certain provisions of law relating to minority business participation goals for certain applicants or licensees are of no effect and may not be enforced; requiring a certain certification agency, in consultation with the Office of the Attorney General and the Governor's Office of Small, Minority, and Women Business Affairs, to initiate certain analyses; requiring a certain certification agency to submit certain reports to the Legislative Policy Committee on or before certain dates; providing for the termination of certain provisions of this Act; and generally relating to public-private partnerships, offshore wind projects, video lottery terminals, and minority business enterprises.

BY adding to

Article – State Finance and Procurement
 Section 10A-404
 Annotated Code of Maryland
 (2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement
 Section 11-203(h)
 Annotated Code of Maryland
 (2015 Replacement Volume and 2019 Supplement)

BY adding to

Article – Public UtilitiesSection 7–704.1(i)Annotated Code of Maryland(2010 Replacement Volume and 2019 Supplement)BY repealing and reenacting, with amendments,Article – State GovernmentSection 9–1A–10Annotated Code of Maryland(2014 Replacement Volume and 2019 Supplement)

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

Article – State Finance and Procurement

10A–404.

(A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE ARE HEREBY INCORPORATED.

(B) TO THE EXTENT PRACTICABLE AND PERMITTED BY THE UNITED STATES CONSTITUTION, THE PROVISIONS OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE SHALL APPLY TO PUBLIC–PRIVATE PARTNERSHIPS ESTABLISHED UNDER THIS TITLE.

(C) (1) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A PUBLIC–PRIVATE PARTNERSHIP AGREEMENT UNDER § 10A–203 OF THIS TITLE UNTIL THE REPORTING AGENCY, IN CONSULTATION WITH THE GOVERNOR’S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS, THE OFFICE OF THE ATTORNEY GENERAL, AND THE PRIVATE ENTITY, IF PERMISSIBLE, ESTABLISHES REASONABLE AND APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS AND PROCEDURES FOR THE PROJECT.

(2) TO THE EXTENT PRACTICABLE, GOALS AND PROCEDURES ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE BASED ON THE REQUIREMENTS OF:

(+) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING THE IMPLEMENTATION OF REGULATIONS ADOPTED UNDER §§ 14–302 AND 14–303 OF THIS ARTICLE;~~AND~~

~~(H) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT THIS SECTION.~~

11-203.

(h) (1) Except as provided in paragraph (2) of this subsection, this division does not apply to a public-private partnership under Title 10A of this article.

(2) To the extent otherwise required by law, the following provisions of this division apply to a public-private partnership under Title 10A of this article:

(i) § 11-205 of this subtitle (“Collusion”);

(ii) § 11-205.1 of this subtitle (“Falsification, concealment, etc. of material facts”);

(iii) Title 12, Subtitle 4 of this article (“Policies and Procedures for Exempt Units”);

(iv) § 13-219 of this article (“Required clauses – Nondiscrimination clause”);

(v) TITLE 14, SUBTITLE 3 OF THIS ARTICLE (“MINORITY BUSINESS PARTICIPATION”);

[(v)] (VI) Title 17, Subtitle 1 of this article (“Security for Construction Contracts”);

[(vi)] (VII) Title 17, Subtitle 2 of this article (“Prevailing Wage Rates – Public Work Contracts”); and

[(vii)] (VIII) Title 18 of this article (“Living Wage”).

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

Article – Public Utilities

7-704.1.

(I) (1) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE ARE INCORPORATED IN THIS SUBSECTION.

(2) TO THE EXTENT PRACTICABLE AND AUTHORIZED BY THE UNITED STATES CONSTITUTION, APPROVED APPLICANTS FOR A PROPOSED OFFSHORE WIND PROJECT SHALL COMPLY WITH THE STATE'S MINORITY BUSINESS ENTERPRISE PROGRAM.

(3) (I) ON OR BEFORE 6 MONTHS AFTER THE ISSUANCE OF AN ORDER APPROVING AN OREC APPLICATION, THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS, IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY GENERAL AND AN APPROVED APPLICANT, SHALL ESTABLISH A CLEAR PLAN FOR SETTING REASONABLE AND APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS AND PROCEDURES FOR EACH PHASE OF THE QUALIFIED OFFSHORE WIND PROJECT.

(II) TO THE EXTENT PRACTICABLE, THE GOALS AND PROCEDURES SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE BASED ON THE REQUIREMENTS OF TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE AND THE REGULATIONS IMPLEMENTING THAT SUBTITLE.

(III) EVERY 6 MONTHS FOLLOWING THE ISSUANCE OF AN ORDER APPROVING AN OREC APPLICATION, AN APPROVED APPLICANT SHALL SUBMIT A REPORT ON ITS PROGRESS ESTABLISHING AND IMPLEMENTING MINORITY BUSINESS ENTERPRISE GOALS AND PROCEDURES TO THE COMMISSION.

(4) ON AND AFTER JULY 1, 2023, THE PROVISIONS OF THIS SUBSECTION AND ANY REGULATIONS ADOPTED IN ACCORDANCE WITH THIS SUBSECTION SHALL BE OF NO EFFECT AND MAY NOT BE ENFORCED.

Article – State Government

9-1A-10.

(a) (1) (i) An applicant or a licensee is subject to:

1. the minority business participation goal established for a unit by the Special Secretary for the Office of Small, Minority, and Women Business Affairs under § 14-302(a)(1)(ii) of the State Finance and Procurement Article; and

2. any other corresponding provisions of law under Title 14, Subtitle 3 of the State Finance and Procurement Article.

(ii) The minority business participation goal shall apply to:

1. construction related to video lottery terminals; and

2. procurement related to the operation of video lottery terminals, including procurement of equipment and ongoing services.

(2) If the county in which a video lottery facility will be located has higher minority business participation requirements than the State as described in paragraph (1) of this subsection, the applicant shall meet the county's minority business participation requirements to the extent possible.

(3) A county in which a video lottery facility will be located may impose local business, local minority business participation, and local hiring requirements to the extent authorized by local law and permitted by the United States Constitution.

(4) Any collective bargaining agreement or agreements, including a project labor agreement or a neutrality agreement, entered into by an applicant or licensee may not negate the requirements of this subsection.

(5) If an applicant for employment at a video lottery facility believes that the applicant has been discriminated against in the employment process, the applicant may appeal the employment decision to the local human relations board in the county where the facility is located.

(6) Notwithstanding any collective bargaining agreement or agreements, a licensee shall:

(i) provide health insurance coverage for its employees; and

(ii) give a preference to hiring qualified employees from the communities within 10 miles of the video lottery facility.

(7) A licensee shall:

(i) provide retirement benefits for its employees; and

(ii) if the licensee is a racetrack licensee, provide retirement benefits to its video lottery operation employees that are equivalent to the level of benefits provided to the racetrack employees who are eligible under the Maryland Racetrack Employees Pension Fund.

(8) Notwithstanding any collective bargaining agreement or agreements, if the licensee is a racetrack location, the licensee shall provide health insurance coverage to all employees of the racetrack, including the employees of the racetrack on the backstretch of the racetrack.

(b) (1) The Commission shall ensure that a video lottery operation licensee complies with the requirements of subsection (a)(1) and (2) of this section as a condition of holding the video lottery operation license.

(2) The Governor's Office of Small, Minority, and Women Business Affairs shall monitor a licensee's compliance with subsection (a)(1) and (2) of this section.

(3) The Governor's Office of Small, Minority, and Women Business Affairs shall report to the Commission at least every 6 months on the compliance of licensees with subsection (a)(1) and (2) of this section.

(4) If the Governor's Office of Small, Minority, and Women Business Affairs reports that a licensee is not in compliance with subsection (a)(1) and (2) of this section, the Commission may take immediate action to ensure the compliance of the licensee.

(c) On or after July 1, [2020] 2023, the provisions of subsections (a)(1) and (2) and (b) of this section and any regulations adopted under subsections (a)(1) and (2) and (b) of this section shall be of no effect and may not be enforced.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.~~

SECTION 3. AND BE IT FURTHER ENACTED, That the certification agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article to certify and decertify minority business enterprises, in consultation with the Office of the Attorney General and the Governor's Office of Small, Minority, and Women Business Affairs, shall initiate an analysis of the Minority Business Enterprise Program requirements of § 10A-404 of the State Finance and Procurement Article, as enacted by Section 1 of this Act, and the disparity study entitled "Business Disparities in the Maryland Market Area" published on February 8, 2017, to evaluate compliance with the requirements of any federal and constitutional requirements and submit a report on the analysis to the Legislative Policy Committee of the General Assembly in accordance with § 2-1257 of the State Government Article, on or before September 30, 2020.

SECTION 4. AND BE IT FURTHER ENACTED, That the certification agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article to certify and decertify minority business enterprises, in consultation with the Office of the Attorney General and the Governor's Office of Small, Minority, and Women Business Affairs, shall initiate an analysis of the Minority Business Enterprise Program requirements of § 10A-404 of the State Finance and Procurement Article, as enacted by Section 1 of this Act, and the disparity study submitted pursuant to in accordance with Chapter 340 of the Acts of the General Assembly of 2017 to evaluate compliance with the requirements of any federal and constitutional requirements and submit a report on the analysis to the Legislative Policy Committee of the General Assembly, in accordance with § 2-1257 of the State Government Article, on or before December 1, 2022.

SECTION 5. AND BE IT FURTHER ENACTED, That the certification agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article to certify and decertify minority business enterprises, in consultation with the Office of the Attorney General and the Governor's Office of Small, Minority, and Women Business Affairs, shall initiate an analysis of the disparity study submitted in accordance with Chapter 340 of the Acts of the General Assembly of 2017 to determine if it applies to the type of work that will be likely to be performed by an approved applicant with respect to an offshore wind project under § 7-704.1(i) of the Public Utilities Article as enacted by Section 2 of this Act and submit a report on the analysis to the Legislative Policy Committee of the General Assembly, in accordance with § 2-1257 of the State Government Article, on or before December 1, 2022.

SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020. Section 1 of this Act shall remain effective for a period of 3 years and, at the end of June 30, 2023, Section 1 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.