

HOUSE BILL 1348

P2

11r3041
CF SB 649

By: **Delegate Sample-Hughes**

Introduced and read first time: February 12, 2021

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Department of General Services – MBE Program Compliance**
3 **Officer**

4 FOR the purpose of requiring the Secretary of General Services, in consultation with the
5 Chief Procurement Officer in the Department of General Services, to appoint an
6 MBE Program Compliance Officer in the Office of State Procurement to ensure
7 compliance by certain procurement units with the participation goals of the State
8 Minority Business Enterprise Program; requiring the Officer to report on certain
9 matters to the Board of Public Works and the Legislative Policy Committee of the
10 General Assembly on or before a certain date each year; requiring certain
11 procurement units to submit certain periodic and annual reports to the Officer; and
12 generally relating to the MBE Program Compliance Officer in the Department of
13 General Services.

14 BY repealing and reenacting, without amendments,
15 Article – State Finance and Procurement
16 Section 11–101(a) and (d) and 14–302(a)(1)(i)1.
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – State Finance and Procurement
21 Section 14–302(a)(9)
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2020 Supplement)

24 BY adding to
25 Article – State Finance and Procurement
26 Section 14–306
27 Annotated Code of Maryland
28 (2015 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – State Finance and Procurement**

4 11–101.

5 (a) In this Division II the following words have the meanings indicated unless:

6 (1) the context clearly requires a different meaning; or

7 (2) a different definition is provided for a particular title or provision.

8 (d) “Board” means the Board of Public Works.

9 14–302.

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

14 (9) (i) 1. If a contractor, including a certified minority business
15 enterprise, does not achieve all or a part of the minority business enterprise participation
16 goals on a contract, the unit shall make a finding of whether the contractor has
17 demonstrated that the contractor took all necessary and reasonable steps to achieve the
18 goals, including compliance with paragraph (7) of this subsection.

19 2. A waiver of any part of the minority business enterprise
20 goals for a contract shall be granted if a contractor provides a reasonable demonstration of
21 good–faith efforts to achieve the goals.

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

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

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

32 2. The head of the unit shall:

1 A. keep one copy of the waiver determination and the reasons
2 for the determination; and

3 B. forward one copy of the waiver determination to the
4 Governor's Office of Small, Minority, and Women Business Affairs **AND THE MBE**
5 **PROGRAM COMPLIANCE OFFICER IN THE DEPARTMENT OF GENERAL SERVICES.**

6 (v) On or before July 31 of each year, each unit shall submit directly
7 to the Board of Public Works [and], the Governor's Office of Small, Minority, and Women
8 Business Affairs, **AND THE MBE PROGRAM COMPLIANCE OFFICER IN THE**
9 **DEPARTMENT OF GENERAL SERVICES** an annual report of waivers requested and
10 waivers granted under this paragraph.

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

- 14 1. the contract titles, numbers, and dates;
- 15 2. the number of waiver requests received;
- 16 3. the number of waiver requests granted; and
- 17 4. any other information specifically requested by the Board.

18 **14-306.**

19 **(A) THE SECRETARY OF GENERAL SERVICES, IN CONSULTATION WITH THE**
20 **CHIEF PROCUREMENT OFFICER, SHALL APPOINT AN MBE PROGRAM COMPLIANCE**
21 **OFFICER IN THE OFFICE OF STATE PROCUREMENT TO ENSURE UNIT COMPLIANCE**
22 **WITH THE PARTICIPATION GOALS OF THE MINORITY BUSINESS ENTERPRISE**
23 **PROGRAM UNDER THIS SUBTITLE.**

24 **(B) ON OR BEFORE SEPTEMBER 1 EACH YEAR, THE MBE PROGRAM**
25 **COMPLIANCE OFFICER SHALL REPORT TO THE BOARD AND, SUBJECT TO § 2-1257**
26 **OF THE STATE GOVERNMENT ARTICLE, THE LEGISLATIVE POLICY COMMITTEE FOR**
27 **THE PRECEDING FISCAL YEAR:**

28 **(1) A DETAILED SUMMARY OF THE REASONS PROVIDED BY THE HEAD**
29 **OF A UNIT FOR GRANTING A WAIVER OF THE MINORITY BUSINESS ENTERPRISE**
30 **GOALS UNDER § 14-302 OF THIS SUBTITLE;**

31 **(2) A DETAILED COMPARISON OF:**

1 **(I) THE MINORITY BUSINESS ENTERPRISE PARTICIPATION**
2 **GOAL SET BY A UNIT FOR ITS PROCUREMENT CONTRACTS; AND**

3 **(II) THE ACTUAL PARTICIPATION OF MINORITY BUSINESS**
4 **ENTERPRISES IN THAT UNIT'S PROCUREMENT CONTRACTS AT THE END OF THE**
5 **FISCAL YEAR; AND**

6 **(3) ANY OTHER RELEVANT INFORMATION AS REQUIRED BY THE**
7 **BOARD.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2021.