

**HB0389/713920/1**

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 389

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “authorizing” in line 6 down through “circumstances;” in line 12, inclusive; in line 13, after the second “the” insert “Governor’s”; in lines 13 and 24, in each instance, after “Office” insert “of Small, Minority, and Women Business Affairs”; strike beginning with “Office” in line 15 down through “assessments,” in line 17 and substitute “Governor’s Office of Small, Minority, and Women Business Affairs and the Office of State Procurement, in consultation with the Office of the Attorney General and Board of Public Works, to adopt by regulation criteria used to determine that a prime contractor has”; in line 17, strike “fail” and substitute “failed”; in the same line, after “goals” insert “; requiring the results of certain compliance assessments to be included in certain criteria; requiring the Governor’s Office of Small, Minority, and Women Business Affairs to refer certain prime contractors to the Office of the Attorney General for debarment; authorizing the Board of Public Works to debar a person for a certain period of time under certain circumstances”; in line 19, after “circumstances;” insert “requiring certain standards and guidelines relating to participation in the small business reserve program to allow for the registration of certain businesses without the need to file certain paperwork”; in line 24, after “the” insert “Governor’s”; and strike beginning with “altering” in line 25 down through “assessments” in line 27 and substitute “requiring the Ombudsman, Governor’s Office of Small, Women, and Minority Business Affairs, and the Department of Legislative Services to submit certain reports on or before certain dates”.

On pages 1 and 2, strike the lines beginning with line 29 on page 1 down through line 3 on page 2, inclusive.

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On page 2, in line 6, strike “11-101(s),”; in the same line, strike “14-301(f), 14-302(a)(1), 14-303, and” and substitute “14-303(b)(2)”; in line 7, strike “14-305;” and substitute “14-305, and 14-502(f)”; in the same line, strike “and”; in line 8, after “Subcontractors”, insert “; and 16-203(d)”; in line 13, after “Section” insert “14-301(e-1) and”; and strike in their entirety lines 21 through 25, inclusive.

**AMENDMENT NO. 2**

On pages 2 and 3, strike the lines beginning with line 29 on page 2 down through line 4 on page 3, inclusive.

On page 4, strike in their entirety lines 15 through 28, inclusive and substitute:

**“(E-1) “INDUSTRY TYPE” MEANS THE FOLLOWING PROCUREMENT CATEGORIES:**

**(1) CONSTRUCTION;**

**(2) ARCHITECTURAL AND ENGINEERING SERVICES AND OTHER CONSTRUCTION-RELATED PROFESSIONAL SERVICES;**

**(3) MAINTENANCE;**

**(4) INFORMATION TECHNOLOGY;**

**(5) SERVICES; AND**

**(6) GOODS, SUPPLIES, AND EQUIPMENT.”.**

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On pages 4 through 6, strike in their entirety the lines beginning with line 29 on page 4 through line 32 on page 6, inclusive.

On page 7, strike in their entirety lines 1 through 11, inclusive; and strike in their entirety lines 13 through 34, inclusive.

On pages 8 through 10, strike in their entirety the lines beginning with line 10 on page 8 through line 16 on page 10, inclusive.

On page 11, in line 4, before “**THE**” insert “**PROVIDE**”; in line 5, strike “**(B)(14)**” and substitute “**(B)(15)**”; and in line 8, strike “**MINORITY BUSINESS**” and substitute “**SUBCONTRACTOR**”.

On page 12, after line 12, insert:

**“(2) IF APPLICABLE, THE REPORT SUBMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE MINORITY BUSINESS ENTERPRISE PARTICIPATION DATA FOR EACH UNIT BY INDUSTRY TYPE.”;**

in line 13, strike “(2)” and substitute “**(3)**”; strike beginning with “**SHALL**” in line 19 down through “**FAIL**” in line 22 and substitute “**AND THE OFFICE OF STATE PROCUREMENT IN THE DEPARTMENT OF GENERAL SERVICES, IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY GENERAL AND THE BOARD OF PUBLIC WORKS, SHALL ADOPT BY REGULATION CRITERIA USED TO DETERMINE THAT A PRIME CONTRACTOR HAS PERSISTENTLY FAILED**”;

and strike in their entirety lines 24 through 26, inclusive, and substitute:

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“(3) THE CRITERIA ADOPTED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL INCLUDE THE RESULTS OF THE COMPLIANCE ASSESSMENTS MADE UNDER SUBSECTION (A)(2)(V) OF THIS SECTION.

(4) THE GOVERNOR’S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL REFER PRIME CONTRACTORS IDENTIFIED UNDER THE CRITERIA ADOPTED UNDER PARAGRAPH (2) OF THIS SUBSECTION TO THE OFFICE OF THE ATTORNEY GENERAL FOR DEBARMENT UNDER § 16-203(D)(4) OF THIS ARTICLE.

14-502.

(f) (1) The Special Secretary for the Office of Small, Minority, and Women Business Affairs, in consultation with the Attorney General, shall establish standards and guidelines for participation in the Small Business Reserve Program every 5 years.

(2) THE STANDARDS AND GUIDELINES ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL ALLOW FOR THE REGISTRATION OF BUSINESSES FOR PARTICIPATION IN THE SMALL BUSINESS RESERVE PROGRAM WITHOUT THE NEED TO FILE ANY ADDITIONAL PAPERWORK OTHER THAN EVIDENCE THAT THE BUSINESS:

(I) IS A SMALL BUSINESS UNDER THIS SUBTITLE; AND

(II) 1. IS CERTIFIED AS A MINORITY BUSINESS ENTERPRISE UNDER SUBTITLE 3 OF THIS TITLE;

**2. IS CERTIFIED UNDER THE FEDERAL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; OR**

**3. IS QUALIFIED AS A SMALL BUSINESS UNDER SUBTITLE 2 OF THIS TITLE.**”.

On page 16, after line 28, insert:

“16-203.

(d) A person may be debarred from entering into a contract with the State:

(1) if the Board finds that the person was established or operates in a manner designed to evade the application of this title or to defeat the purpose of this title;

(2) if the person is a successor, assignee, subsidiary, or affiliate of a person who is debarred or suspended;

(3) **EXCEPT AS PROVIDED UNDER ITEM (4) OF THIS SUBSECTION,** for one of the following violations of a contract provision if the Board believes it to be serious enough to justify debarment:

(i) the deliberate failure, without good cause, to perform in accordance with the specifications, or within the time limit, provided in a contract; or

(ii) within the preceding 5 years, the failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, unless the failure to perform or unsatisfactory performance was caused by acts beyond the control of the person;

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(4) FOR A PERIOD NOT EXCEEDING 3 YEARS IF THE PERSON PERSISTENTLY FAILS TO MEET CONTRACT GOALS IN THE ABSENCE OF MITIGATING FACTORS UNDER THE CRITERIA ESTABLISHED UNDER § 14-305(C)(2) OF THIS ARTICLE;

[(4)] (5) if the person is a competing contractor, or any officer, employee, representative, agent, or consultant of any competing contractor who violates § 13-211 of this article; or

[(5)] (6) for any other cause that the Board determines to be so serious as to affect the integrity of the procurement process.”.

On page 17, in line 9, strike “MAKE REASONABLE” and substitute “ASSIST THE PROCUREMENT OFFICER MANAGING THE CONTRACT IN”; in line 11, strike the second “AND”; in line 12, after “TO” insert “MINORITY BUSINESS ENTERPRISE LIAISONS, PROCUREMENT OFFICERS IN”; in line 15, strike the period and substitute “; AND”

(3) CONDUCT TRAININGS FOR PROCUREMENT OFFICERS IN UNITS OF STATE GOVERNMENT ON ENFORCEMENT OF THE REQUIREMENTS OF TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, INCLUDING THE ASSESSMENT OF LIQUIDATED DAMAGES UNDER § 14-303(B)(6) OF THE STATE FINANCE AND PROCUREMENT ARTICLE.”;

and in line 21, strike “ORDER” and substitute “ASSIST THE PROCUREMENT OFFICER MANAGING THE CONTRACT IN ORDERING”.

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On pages 17 and 18, strike in their entirety the lines beginning with line 32 on page 17 through line 17 on page 18 and substitute:

“SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2023, the Minority Business Enterprise Ombudsman established under Section 1 of this Act shall report to the Senate Budget and Taxation Committee and the House Health and Government Operations Committee, in accordance with § 2-1257 of the State Government Article, on the activities of the Ombudsman, including whether the number of staff allocated to the Ombudsman is adequate to accomplish the requirements of § 9–303.3 of the State Government Article, as enacted under Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before June 1, 2024, the Governor’s Office of Small, Minority, and Women Business Affairs shall study the use of liquidated damages by procurement officers under § 14–303(b)(6) of the State Finance and Procurement Article to enforce the requirements of Title 14, Subtitle 3 of the State Finance and Procurement Article and report to the Senate Budget and Taxation Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on:

(1) the number of instances in which a procurement officer could have applied a liquidated damages penalty for failure of a contractor to comply in good faith with the provisions of Title 14, Subtitle 3 of the State Finance and Procurement Article;

(2) the number of instances in which liquidated damages were actually assessed;

(3) the amount of liquidated damages collected, if any;

(4) the reasons for any failure to assess liquidated damages; and

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(5) recommendations for effective enforcement of the requirements of Title 14, Subtitle 3 of the State Finance and Procurement Article, including any suggested statutory changes.

SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December 1, 2024, the Department of Legislative Services shall report to the Senate Budget and Taxation Committee and the House Health and Government Operations Committee, in accordance with § 2-1257 of the State Government Article, on:

(1) the status of the recommendations included in the Department's 2021 report "Evaluation of the Minority Business Enterprise Program", including an assessment of:

(i) the effectiveness of changes implemented in response to the recommendations; and

(ii) for any recommendations that were not implemented or only partially implemented, whether the Department reaffirms its 2021 recommendation; and

(2) any updated findings and recommendations related to the Minority Business Enterprise Program.”;

and in line 18, strike “2.” and substitute “5.”.