

# SENATE BILL 558

P2

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By: **Senators Pugh, Jones–Rodwell, McFadden, Peters, Ramirez, and Rosapepe**

Introduced and read first time: February 4, 2011

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Program – Amendments to MBE Participation**  
3 **Schedule and Termination Extension**

4 FOR the purpose of requiring a certain bidder or offeror to notify a certain unit of  
5 State government at a certain time if, after submission of a bid or proposal and  
6 before the execution of a certain contract, the bidder or offeror determines that  
7 a certain minority business enterprise identified in a certain MBE participation  
8 schedule has become or will become unavailable; authorizing a certain bidder or  
9 offeror to submit a written request to a unit to amend a certain MBE  
10 participation schedule under certain circumstances; requiring a certain written  
11 request to include certain information; prohibiting an MBE participation  
12 schedule from being amended unless the amendment is approved by certain  
13 persons; prohibiting an MBE participation schedule from being amended after  
14 the date of contract execution unless approved by a certain person and by  
15 contract amendment; defining a certain term; continuing until a certain date  
16 certain provisions of the State Procurement Law relating to procurement from  
17 minority business enterprises; requiring a certain study and a final report on  
18 the study by a certain date; providing for the application of certain provisions of  
19 this Act; providing for the effective dates of this Act; and generally relating to  
20 minority business enterprise participation in procurement contracts.

21 BY repealing and reenacting, with amendments,  
22 Article – State Finance and Procurement  
23 Section 14–302 and 14–309  
24 Annotated Code of Maryland  
25 (2009 Replacement Volume and 2010 Supplement)

26 BY repealing and reenacting, with amendments,  
27 Chapter 116 of the Acts of the General Assembly of 1995, as amended by  
28 Chapters 495 and 496 of the Acts of the General Assembly of 2000,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Chapter 339 of the Acts of the General Assembly of 2001, and Chapter  
2 359 of the Acts of the General Assembly of 2006  
3 Section 2

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

6 **Article – State Finance and Procurement**

7 14–302.

8 (a) (1) Except for leases of real property and except as provided in  
9 paragraphs (2) and (3) of this subsection, each unit shall structure procurement  
10 procedures, consistent with the purposes of this subtitle, to try to achieve the following  
11 results:

12 (i) a minimum of 7% of the unit’s total dollar value of  
13 procurement contracts is to be made directly or indirectly from certified minority  
14 business enterprises classified by the certification agency as African American–owned  
15 businesses;

16 (ii) a minimum of 10% of the unit’s total dollar value of  
17 procurement contracts is to be made directly or indirectly from certified minority  
18 business enterprises classified by the certification agency as women–owned  
19 businesses; and

20 (iii) an overall minimum of 25% of the unit’s total dollar value of  
21 procurement contracts is to be made directly or indirectly from all certified minority  
22 business enterprises.

23 (2) (i) Except as provided in paragraph (3) of this subsection, in  
24 procurement for construction, each unit shall structure procurement procedures,  
25 consistent with the purposes of this subtitle, to try to achieve the following results:

26 1. a minimum of 7% of the unit’s total dollar value of  
27 construction contracts is to be made directly or indirectly from certified minority  
28 business enterprises classified by the certification agency as African American–owned  
29 businesses;

30 2. a minimum of 10% of the unit’s total dollar value of  
31 construction contracts is to be made directly or indirectly from certified minority  
32 business enterprises classified by the certification agency as women–owned  
33 businesses; and

34 3. an overall minimum of 25% of the unit’s total dollar  
35 value of construction contracts is to be made directly or indirectly from all certified  
36 minority business enterprises.

1 (ii) The unit shall:

2 1. consider the practical severability of the construction  
3 projects; and

4 2. implement a program that will enable the unit to  
5 evaluate each contract to determine the appropriateness of the goal.

6 (3) With respect to the Maryland Department of Transportation, the  
7 provisions of paragraph (2)(i) of this subsection shall apply only to construction  
8 contracts in excess of \$50,000.

9 (4) (i) A woman who is also a member of an ethnic or racial  
10 minority group may be certified in that category in addition to the gender category.

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

16 (5) Each unit shall meet the maximum feasible portion of the goals  
17 stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral measures  
18 to facilitate minority business enterprise participation in the procurement process.

19 (6) To achieve the result specified in paragraph (1) or (2) of this  
20 subsection, a contractor, including a contractor that is a certified minority business  
21 enterprise, shall:

22 (i) identify specific work categories appropriate for  
23 subcontracting;

24 (ii) at least 10 days before bid opening, solicit minority business  
25 enterprises, through written notice that:

26 1. describes the categories of work under item (i) of this  
27 paragraph; and

28 2. provides information regarding the type of work being  
29 solicited and specific instructions on how to submit a bid;

30 (iii) attempt to make personal contact with the firms in item (ii)  
31 of this paragraph;

32 (iv) assist minority business enterprises to fulfill bonding  
33 requirements or to obtain a waiver of those requirements;

1 (v) in order to publicize contracting opportunities to minority  
2 business enterprises, attend prebid meetings or other meetings scheduled by the unit;  
3 and

4 (vi) upon acceptance of a bid, provide the unit with a list of  
5 minority businesses with whom the contractor negotiated, including price quotes from  
6 minority and nonminority firms.

7 (7) (i) The unit shall make a finding whether the contractor  
8 complied, in good faith, with paragraph (6) of this subsection.

9 (ii) If the unit finds the contractor complied with paragraph (6)  
10 of this subsection, the unit may not require the contractor to renegotiate any  
11 subcontract in order to achieve a different result.

12 (8) (I) IN THIS PARAGRAPH, "MBE PARTICIPATION  
13 SCHEDULE" MEANS A SCHEDULE INCLUDED IN THE SUBMISSION OF A BID OR  
14 OFFER THAT:

15 1. IDENTIFIES THE CERTIFIED MINORITY BUSINESS  
16 ENTERPRISES THAT A BIDDER OR OFFEROR AGREES TO USE IN THE  
17 PERFORMANCE OF THE CONTRACT; AND

18 2. THE PERCENTAGE OF CONTRACT VALUE  
19 ATTRIBUTED TO EACH CERTIFIED MINORITY BUSINESS ENTERPRISE.

20 (II) A BIDDER OR OFFEROR SHALL IMMEDIATELY NOTIFY  
21 THE UNIT IF, AFTER SUBMISSION OF A BID OR PROPOSAL AND BEFORE THE  
22 EXECUTION OF A CONTRACT WITH AN EXPECTED DEGREE OF MINORITY  
23 BUSINESS ENTERPRISE PARTICIPATION, THE BIDDER OR OFFEROR DETERMINES  
24 THAT A MINORITY BUSINESS ENTERPRISE IDENTIFIED IN THE MBE  
25 PARTICIPATION SCHEDULE HAS BECOME OR WILL BECOME UNAVAILABLE.

26 (III) 1. IF A MINORITY BUSINESS ENTERPRISE  
27 IDENTIFIED IN THE MBE PARTICIPATION SCHEDULE SUBMITTED WITH A BID OR  
28 OFFER HAS BECOME OR WILL BECOME UNAVAILABLE, THE BIDDER OR OFFEROR  
29 MAY SUBMIT A WRITTEN REQUEST WITH THE UNIT TO AMEND THE MBE  
30 PARTICIPATION SCHEDULE.

31 2. THE REQUEST TO AMEND THE MBE  
32 PARTICIPATION SCHEDULE SHALL INDICATE THE BIDDER'S OR OFFEROR'S  
33 EFFORTS TO SUBSTITUTE ANOTHER CERTIFIED MINORITY BUSINESS  
34 ENTERPRISE TO PERFORM THE WORK THAT THE UNAVAILABLE MINORITY  
35 BUSINESS ENTERPRISE WOULD HAVE PERFORMED.

1                   **3. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 4**  
 2 **OF THIS SUBPARAGRAPH, AN MBE PARTICIPATION SCHEDULE MAY NOT BE**  
 3 **AMENDED UNLESS THE AMENDMENT IS APPROVED BY THE UNIT'S**  
 4 **PROCUREMENT OFFICER AFTER CONSULTING WITH THE UNIT'S MBE LIAISON.**

5                   **4. AN MBE PARTICIPATION SCHEDULE MAY NOT BE**  
 6 **AMENDED AFTER THE DATE OF CONTRACT EXECUTION UNLESS THE REQUEST IS**  
 7 **APPROVED BY THE HEAD OF THE UNIT AND THE CONTRACT IS AMENDED.**

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

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

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

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

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

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

### 25                   **Article – State Finance and Procurement**

26                   14-309.

27                   The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations  
 28 adopted under those sections, shall be of no effect and may not be enforced after July  
 29 1, [2011] **2013**.

30                   **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**  
 31 **Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of**  
 32 **2006**

33                   SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,  
 34 in consultation with the General Assembly and the Office of the Attorney General,  
 35 shall initiate a study of the Minority Business Enterprise Program to evaluate the

1 Program's continued compliance with the requirements of the Croson decision and any  
2 subsequent federal or constitutional requirements. In preparation for the study, the  
3 Board of Public Works may adopt regulations authorizing a unit of State government  
4 to require bidders and offerors to submit information necessary for the conduct of the  
5 study. The Board of Public Works may designate that certain information received in  
6 accordance with regulations adopted under this section shall be confidential.  
7 Notwithstanding that certain information may be designated by the Board of Public  
8 Works as confidential, the certification agency may provide the information to any  
9 person that is under contract with the certification agency to assist in conducting the  
10 study. The study shall also evaluate race neutral programs and other methods that  
11 can be used to address the needs of minority businesses. The final report on the study  
12 shall be submitted to the Legislative Policy Committee of the General Assembly prior  
13 to September 30, [2010] **2012**, so that the General Assembly may review the report  
14 prior to the [2011] **2013** Session.

15 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
16 take effect October 1, 2011.

17 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
18 Section 3 of this Act, this Act shall take effect July 1, 2011.