By: Montgomery County Delegation and Prince George's County Delegation
Introduced and read first time: February 8, 2019
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 Maryland–National Capital Park and Planning Commission – Procurement –
3 Source Selection

4 MC/PG 112-19

5 FOR the purpose of requiring the Maryland–National Capital Park and Planning
6 Commission to adopt certain procurement regulations relating to source selection;
7 authorizing the Commission to adopt certain regulations establishing a minority
8 business enterprise program under certain circumstances; authorizing the
9 Commission to adopt certain regulations establishing a local small business
10 enterprise program; requiring the Commission to report each year to certain persons
11 on the effectiveness of certain programs; repealing certain provisions relating to a
12 minority business enterprise program in the Commission on a certain date; requiring
13 the Special Secretary for the Office of Small, Minority, and Women Business Affairs
14 and the Secretary of Transportation to ensure that the Commission is provided with
15 certain technical assistance to implement this Act; authorizing the governing bodies
16 of Montgomery County and Prince George's County to provide certain funding for
17 the implementation of this Act in a certain manner; defining certain terms; providing
18 for a delayed effective date for certain provisions of this Act; and generally relating
19 to procurement activities of the Maryland–National Capital Park and Planning
20 Commission.

21 BY adding to
22 Article – Land Use
23 Section 15–201 through 15–205 to be under the new subtitle “Subtitle 2.
24 Procurement”
25 Annotated Code of Maryland
26 (2012 Volume and 2018 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Land Use

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Preamble

WHEREAS, As provided by Chapter 340 of the Acts of the General Assembly of 2017, the General Assembly has received and reviewed the disparity study entitled “Business Disparities in the Maryland Market Area”, published February 8, 2017; and

WHEREAS, Based on a review of the disparity study, the General Assembly found that there are substantial adverse disparities that are consistent with discrimination against businesses owned by minorities and women; and

WHEREAS, The General Assembly finds that the elimination of discrimination against businesses owned by minorities and women is of paramount importance to the future welfare of the State; and

WHEREAS, The State of Maryland wishes to provide all of its citizens with equal access to business formation and growth opportunities; and

WHEREAS, The Maryland–National Capital Park and Planning Commission is an independent bicounty agency of the State that procures goods and services within a geographical marketplace of particular interest to the State; and

WHEREAS, The Commission has reported that utilization of businesses owned by minorities and women declined after it ceased operating a minority business enterprise program on the abrogation of the authority provided under Chapter 256 of the Acts of the General Assembly of 1995; and

WHEREAS, The General Assembly desires for the Commission to assess, based on the disparity study and other legally relevant data, whether the Commission has
underutilized minority business enterprises relative to their availability to perform work
in the procurement categories in which the State does business; and

WHEREAS, Subject to the Commission's determination that such a legally
significant disparity or underutilization exists, the General Assembly desires to authorize
the Commission to adopt and implement a minority business enterprise procurement
program to augment the efforts of the State under Chapter 340 of the Acts of the General
Assembly of 2017; and

WHEREAS, The General Assembly further desires to authorize the Commission to
implement a local small business enterprise program as a method of enhancing the
participation of employers that are based locally within Montgomery County and Prince
George's County; now, therefore,

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

Article – Land Use

SUBTITLE 2. PROCUREMENT.

15–201.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(B) "CERTIFICATION" MEANS THE DETERMINATION THAT A LEGAL ENTITY
IS A MINORITY BUSINESS ENTERPRISE UNDER TITLE 14, SUBTITLE 3 OF THE STATE
FINANCE AND PROCUREMENT ARTICLE.

(C) "CERTIFICATION AGENCY" MEANS THE 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.

(D) "CERTIFIED MINORITY BUSINESS ENTERPRISE" MEANS A MINORITY
BUSINESS ENTERPRISE THAT HOLDS A VALID CERTIFICATION ISSUED BY THE
CERTIFICATION AGENCY.

(E) "LOCAL SMALL BUSINESS ENTERPRISE" MEANS A BUSINESS
ENTERPRISE THAT:

(1) HAS ITS PRINCIPAL PLACE OF OPERATION IN MONTGOMERY
COUNTY OR PRINCE GEORGE'S COUNTY; AND
(2) HAS BEEN CERTIFIED AS A SMALL BUSINESS ENTERPRISE BY A
UNIT OF COUNTY GOVERNMENT THAT HAS JURISDICTION OVER PROCUREMENT IN
MONTGOMERY COUNTY OR PRINCE GEORGE'S COUNTY.

(F) "MINORITY BUSINESS ENTERPRISE" HAS THE SAME MEANING AS
PROVIDED IN § 14–301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(G) "STUDY" MEANS THE DISPARITY STUDY COMMISSIONED BY THE
GENERAL ASSEMBLY OF MARYLAND ENTITLED "BUSINESS DISPARITIES IN THE
MARYLAND MARKET AREA" PUBLISHED ON FEBRUARY 8, 2017.

15–202.

THE COMMISSION SHALL ADOPT PROCUREMENT REGULATIONS CONSISTENT
WITH THE STANDARDS AND METHODS FOR SOURCE SELECTION PROVIDED IN TITLE
13, SUBTITLE 1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

15–203.

(A) THE PROCUREMENT REGULATIONS ADOPTED IN ACCORDANCE WITH §
15–202 OF THIS SUBTITLE MAY INCLUDE A MINORITY BUSINESS ENTERPRISE
PROGRAM IF THE COMMISSION DETERMINES, BASED ON THE STUDY AND OTHER
LEGALLY RELEVANT DATA, THAT THE COMMISSION HAS UNDERUTILIZED MINORITY
BUSINESS ENTERPRISES RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN
THE PROCUREMENT CATEGORIES IN WHICH THE STATE DOES BUSINESS, INCLUDING
GOODS, SERVICES, AND CONSTRUCTION.

(B) THE REGULATIONS TO ESTABLISH A MINORITY BUSINESS ENTERPRISE
PROGRAM MAY INCLUDE:

(1) PROCEDURES TO BE FOLLOWED BY STAFF, PROSPECTIVE
CONTRACTORS, AND SUCCESSFUL BIDDERS OR OFFERORS TO MAXIMIZE NOTICE TO,
AND THE OPPORTUNITY TO PARTICIPATE IN THE PROCUREMENT PROCESS BY A
BROAD RANGE OF MINORITY BUSINESS ENTERPRISES;

(2) PROVISIONS TO EXTEND REASONABLE COMPETITIVE
PREFERENCES FOR CERTIFIED MINORITY BUSINESS ENTERPRISES OR GOALS FOR
UTILIZATION OF CERTIFIED MINORITY BUSINESS ENTERPRISES IN PARTICULAR
PROCUREMENT ACTIVITIES UNDER APPROPRIATE CIRCUMSTANCES; AND

(3) TO THE EXTENT APPLICABLE TO COMMISSION PROCUREMENT
ACTIVITIES, PROVISIONS COMPARABLE IN PURPOSE AND EFFECT TO ANY
REGULATIONS ADOPTED BY THE STATE IN ACCORDANCE WITH § 14–303 OF THE
HOUSE BILL 1279

STATE FINANCE AND PROCUREMENT ARTICLE.

15–204.

(A) The Commission's procurement regulations may establish a local small business enterprise program to encourage local small business enterprise participation in appropriate procurement activities.

(B) The regulations adopted in accordance with this section may include:

(1) Procedures for reliable documentation of a business entity's official designation by Montgomery County or Prince George's County as a local small business enterprise;

(2) Procedures to be followed by staff, prospective contractors, and successful bidders or offerors to maximize notice to, and the opportunity to participate in the procurement process by, a broad range of local small business enterprises; and

(3) Provisions to:

(i) Extend reasonable competitive preferences for local small business enterprises;

(ii) Establish procurement goals of utilization of local small business enterprises; and

(iii) Reserve particular procurement activities for local small business enterprises under appropriate circumstances.

15–205.

On or before October 31 each year, the Commission shall report to the Montgomery County and Prince George's County Delegations to the General Assembly, in accordance with § 2–1246 of the State Government Article, on the effectiveness of any minority business enterprise program or local small business enterprise program established under this subtitle.

Section 2. And be it further enacted, That the Laws of Maryland read as follows: