

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Carter

Typed by: David

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By: **Montgomery County Delegation and Prince George’s County Delegation**

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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Land Use
3 Section 15–201 through 15–205 to be under the new subtitle “Subtitle 2.
4 Procurement”
5 Annotated Code of Maryland
6 (2012 Volume and 2018 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Land Use
9 Section 15–201 and 15–205
10 Annotated Code of Maryland
11 (2012 Volume and 2018 Supplement)
12 (As enacted by Section 1 of this Act)

13 BY repealing and reenacting, without amendments,
14 Article – Land Use
15 Section 15–202 and 15–204
16 Annotated Code of Maryland
17 (2012 Volume and 2018 Supplement)
18 (As enacted by Section 1 of this Act)

19 BY repealing
20 Article – Land Use
21 Section 15–203
22 Annotated Code of Maryland
23 (2012 Volume and 2018 Supplement)
24 (As enacted by Section 1 of this Act)

25 Preamble

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

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

1 15-201.

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

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

7 (C) "CERTIFICATION AGENCY" MEANS THE AGENCY DESIGNATED BY THE
8 BOARD OF PUBLIC WORKS UNDER § 14-303(B) OF THE STATE FINANCE AND
9 PROCUREMENT ARTICLE TO CERTIFY AND DECERTIFY MINORITY BUSINESS
10 ENTERPRISES.

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

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

16 (1) HAS ITS PRINCIPAL PLACE OF OPERATION IN MONTGOMERY
17 COUNTY OR PRINCE GEORGE'S COUNTY; AND

18 (2) HAS BEEN CERTIFIED AS A SMALL BUSINESS ENTERPRISE BY A
19 UNIT OF COUNTY GOVERNMENT THAT HAS JURISDICTION OVER PROCUREMENT IN
20 MONTGOMERY COUNTY OR PRINCE GEORGE'S COUNTY.

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

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

26 15-202.

1 **THE COMMISSION SHALL ADOPT PROCUREMENT REGULATIONS CONSISTENT**
2 **WITH THE STANDARDS AND METHODS FOR SOURCE SELECTION PROVIDED IN TITLE**
3 **13, SUBTITLE 1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

4 **15-203.**

5 **(A) THE PROCUREMENT REGULATIONS ADOPTED IN ACCORDANCE WITH §**
6 **15-202 OF THIS SUBTITLE MAY INCLUDE A MINORITY BUSINESS ENTERPRISE**
7 **PROGRAM IF THE COMMISSION DETERMINES, BASED ON THE STUDY AND OTHER**
8 **LEGALLY RELEVANT DATA, THAT THE COMMISSION HAS UNDERUTILIZED MINORITY**
9 **BUSINESS ENTERPRISES RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN**
10 **THE PROCUREMENT CATEGORIES IN WHICH THE STATE DOES BUSINESS, INCLUDING**
11 **GOODS, SERVICES, AND CONSTRUCTION.**

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

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

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

22 **(3) TO THE EXTENT APPLICABLE TO COMMISSION PROCUREMENT**
23 **ACTIVITIES, PROVISIONS COMPARABLE IN PURPOSE AND EFFECT TO ANY**
24 **REGULATIONS ADOPTED BY THE STATE IN ACCORDANCE WITH § 14-303 OF THE**
25 **STATE FINANCE AND PROCUREMENT ARTICLE.**

26 **15-204.**

27 **(A) THE COMMISSION'S PROCUREMENT REGULATIONS MAY ESTABLISH A**
28 **LOCAL SMALL BUSINESS ENTERPRISE PROGRAM TO ENCOURAGE LOCAL SMALL**
29 **BUSINESS ENTERPRISE PARTICIPATION IN APPROPRIATE PROCUREMENT**
30 **ACTIVITIES.**

1 15–201.

2 [(a)] In this [subtitle the following words have the meanings indicated.

3 (b) “Certification” means the determination that a legal entity is a minority
4 business enterprise under Title 14, Subtitle 3 of the State Finance and Procurement Article.

5 (c) “Certification agency” means the agency designated by the Board of Public
6 Works under § 14–303(b) of the State Finance and Procurement Article to certify and
7 decertify minority business enterprises.

8 (d) “Certified minority business enterprise” means a minority business enterprise
9 that holds a valid certification issued by the certification agency.

10 (e) “Local] SUBTITLE, “LOCAL small business enterprise” means a business
11 enterprise that:

12 (1) has its principal place of operation in Montgomery County or Prince
13 George’s County; and

14 (2) has been certified as a small business enterprise by a unit of county
15 government that has jurisdiction over procurement in Montgomery County or Prince
16 George’s County.

17 [(f) “Minority business enterprise” has the same meaning as provided in § 14–301
18 of the State Finance and Procurement Article.

19 (g) “Study” means the disparity study commissioned by the General Assembly of
20 Maryland entitled “Business Disparities in the Maryland Market Area” published on
21 February 8, 2017.]

22 15–202.

23 The Commission shall adopt procurement regulations consistent with the standards
24 and methods for source selection provided in Title 13, Subtitle 1 of the State Finance and
25 Procurement Article.

1 [15–203.

2 (a) The procurement regulations adopted in accordance with § 15–202 of this
3 subtitle may include a minority business enterprise program if the Commission determines,
4 based on the study and other legally relevant data, that the Commission has underutilized
5 minority business enterprises relative to their availability to perform work in the
6 procurement categories in which the State does business, including goods, services, and
7 construction.

8 (b) The regulations to establish a minority business enterprise program may
9 include:

10 (1) procedures to be followed by staff, prospective contractors, and
11 successful bidders or offerors to maximize notice to, and the opportunity to participate in
12 the procurement process by, a broad range of minority business enterprises;

13 (2) provisions to extend reasonable competitive preferences for certified
14 minority business enterprises or goals for utilization of certified minority business
15 enterprises in particular procurement activities under appropriate circumstances; and

16 (3) to the extent applicable to Commission procurement activities,
17 provisions comparable in purpose and effect to any regulations adopted by the State in
18 accordance with § 14–303 of the State Finance and Procurement Article.]

19 15–204.

20 (a) The Commission’s procurement regulations may establish a local small
21 business enterprise program to encourage local small business enterprise participation in
22 appropriate procurement activities.

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

24 (1) procedures for reliable documentation of a business entity’s official
25 designation by Montgomery County or Prince George’s County as a local small business
26 enterprise;

27 (2) procedures to be followed by staff, prospective contractors, and
28 successful bidders or offerors to maximize notice to, and the opportunity to participate in

1 the procurement process by, a broad range of local small business enterprises; and

2 (3) provisions to:

3 (i) extend reasonable competitive preferences for local small
4 business enterprises;

5 (ii) establish procurement goals of utilization of local small business
6 enterprises; and

7 (iii) reserve particular procurement activities for local small business
8 enterprises under appropriate circumstances.

9 15–205.

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

15 SECTION 3. AND BE IT FURTHER ENACTED, That the Special Secretary for the
16 Office of Small, Minority, and Women Business Affairs and the Secretary of Transportation
17 shall ensure that the Commission is provided with appropriate technical assistance to
18 implement this Act, including providing any information relating to the disparity study
19 entitled “Business Disparities in the Maryland Market Area” published on February 8,
20 2017, that may be necessary or appropriate for the Commission to evaluate whether or the
21 extent to which minority business enterprises may have been underutilized.

22 SECTION 4. AND BE IT FURTHER ENACTED, That the governing bodies of
23 Montgomery County and Prince George’s County may provide for the funding necessary to
24 implement this Act, including funding required for the Commission to conduct any study
25 or analysis required to determine whether minority business enterprises or local small
26 business enterprises have been underutilized, through the operating budget of the
27 Commission.

28 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
29 effect October 1, 2022.

1 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section
2 5 of this Act, this Act shall take effect June 1, 2019.

DRAFT