

# SENATE BILL 442

P2

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CF HB 313

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By: Senators Hayes, Augustine, Benson, Carter, Ellis, Griffith, Hester, Lam, Patterson, Smith, Sydnor, ~~and Washington~~ Washington, Guzzone, McCray, Peters, King, Elfreth, and Zucker

Introduced and read first time: January 27, 2020

Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 28, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Public-Private Partnership Agreements – Minority Business Enterprise~~  
3 ~~Program~~

4 Minority Business Enterprise Program – Public-Private Partnerships and Video  
5 Lottery Terminals

6 FOR the purpose of providing, under certain circumstances, that the provisions of the  
7 Minority Business Enterprise Program apply to public-private partnerships;  
8 prohibiting the Board of Public Works from approving a public-private partnership  
9 agreement until the reporting agency, in consultation with certain entities,  
10 establishes certain minority business enterprise goals and procedures; requiring  
11 that certain goals and procedures be based on the requirements of certain provisions  
12 of law; altering the date by which certain provisions of law relating to minority  
13 business participation goals for certain applicants or licensees are of no effect and  
14 may not be enforced; requiring a certain certification agency, in consultation with  
15 the Office of the Attorney General and the Governor's Office of Small, Minority, and  
16 Women Business Affairs, to initiate certain analyses; requiring a certain certification  
17 agency to submit certain reports to the Legislative Policy Committee on or before  
18 certain dates; providing for the termination of certain provisions of this Act; and  
19 generally relating to public-private partnerships, video lottery terminals, and  
20 minority business enterprises.

21 BY adding to  
22 Article – State Finance and Procurement

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Section 10A–404  
Annotated Code of Maryland  
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,  
Article – State Finance and Procurement  
Section 11–203(h)  
Annotated Code of Maryland  
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,  
Article – State Government  
Section 9–1A–10  
Annotated Code of Maryland  
(2014 Replacement Volume and 2019 Supplement)

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

**Article – State Finance and Procurement**

**10A–404.**

(A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL ASSEMBLY  
FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM  
UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE ARE HEREBY INCORPORATED.

(B) TO THE EXTENT PRACTICABLE AND PERMITTED BY THE UNITED STATES  
CONSTITUTION, THE PROVISIONS OF THE MINORITY BUSINESS ENTERPRISE  
PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE SHALL APPLY TO  
PUBLIC–PRIVATE PARTNERSHIPS ESTABLISHED UNDER THIS TITLE.

(C) (1) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A  
PUBLIC–PRIVATE PARTNERSHIP AGREEMENT UNDER § 10A–203 OF THIS TITLE  
UNTIL THE REPORTING AGENCY, IN CONSULTATION WITH THE GOVERNOR’S OFFICE  
OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS, THE OFFICE OF THE  
ATTORNEY GENERAL, AND THE PRIVATE ENTITY, IF PERMISSIBLE, ESTABLISHES  
REASONABLE AND APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION  
GOALS AND PROCEDURES FOR THE PROJECT.

(2) TO THE EXTENT PRACTICABLE, GOALS AND PROCEDURES  
ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE BASED ON  
THE REQUIREMENTS OF:

~~(I) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING THE  
IMPLEMENTATION OF REGULATIONS ADOPTED UNDER §§ 14-302 AND  
14-303 OF THIS ARTICLE; AND~~

~~(II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT  
THIS SECTION.~~

11-203.

(h) (1) Except as provided in paragraph (2) of this subsection, this division does not apply to a public-private partnership under Title 10A of this article.

(2) To the extent otherwise required by law, the following provisions of this division apply to a public-private partnership under Title 10A of this article:

(i) § 11-205 of this subtitle ("Collusion");

(ii) § 11-205.1 of this subtitle ("Falsification, concealment, etc. of material facts");

(iii) Title 12, Subtitle 4 of this article ("Policies and Procedures for Exempt Units");

(iv) § 13-219 of this article ("Required clauses – Nondiscrimination clause");

**(V) TITLE 14, SUBTITLE 3 OF THIS ARTICLE ("MINORITY BUSINESS PARTICIPATION");**

**[(v)] (VI)** Title 17, Subtitle 1 of this article ("Security for Construction Contracts");

**[(vi)] (VII)** Title 17, Subtitle 2 of this article ("Prevailing Wage Rates – Public Work Contracts"); and

**[(vii)] (VIII)** Title 18 of this article ("Living Wage").

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

### Article – State Government

9-1A-10.

(a) (1) (i) An applicant or a licensee is subject to:

1                               1.     the minority business participation goal established for a  
2 unit by the Special Secretary for the Office of Small, Minority, and Women Business Affairs  
3 under § 14–302(a)(1)(ii) of the State Finance and Procurement Article; and

4                               2.     any other corresponding provisions of law under Title 14,  
5 Subtitle 3 of the State Finance and Procurement Article.

6                               (ii)   The minority business participation goal shall apply to:

7                               1.     construction related to video lottery terminals; and

8                               2.     procurement related to the operation of video lottery  
9 terminals, including procurement of equipment and ongoing services.

10                           (2)   If the county in which a video lottery facility will be located has higher  
11 minority business participation requirements than the State as described in paragraph (1)  
12 of this subsection, the applicant shall meet the county's minority business participation  
13 requirements to the extent possible.

14                           (3)   A county in which a video lottery facility will be located may impose  
15 local business, local minority business participation, and local hiring requirements to the  
16 extent authorized by local law and permitted by the United States Constitution.

17                           (4)   Any collective bargaining agreement or agreements, including a project  
18 labor agreement or a neutrality agreement, entered into by an applicant or licensee may  
19 not negate the requirements of this subsection.

20                           (5)   If an applicant for employment at a video lottery facility believes that  
21 the applicant has been discriminated against in the employment process, the applicant may  
22 appeal the employment decision to the local human relations board in the county where the  
23 facility is located.

24                           (6)   Notwithstanding any collective bargaining agreement or agreements, a  
25 licensee shall:

26                           (i)    provide health insurance coverage for its employees; and

27                           (ii)   give a preference to hiring qualified employees from the  
28 communities within 10 miles of the video lottery facility.

29                           (7)   A licensee shall:

30                           (i)    provide retirement benefits for its employees; and

31                           (ii)   if the licensee is a racetrack licensee, provide retirement benefits  
32 to its video lottery operation employees that are equivalent to the level of benefits provided

1 to the racetrack employees who are eligible under the Maryland Racetrack Employees  
2 Pension Fund.

3 (8) Notwithstanding any collective bargaining agreement or agreements, if  
4 the licensee is a racetrack location, the licensee shall provide health insurance coverage to  
5 all employees of the racetrack, including the employees of the racetrack on the backstretch  
6 of the racetrack.

7 (b) (1) The Commission shall ensure that a video lottery operation licensee  
8 complies with the requirements of subsection (a)(1) and (2) of this section as a condition of  
9 holding the video lottery operation license.

10 (2) The Governor's Office of Small, Minority, and Women Business Affairs  
11 shall monitor a licensee's compliance with subsection (a)(1) and (2) of this section.

12 (3) The Governor's Office of Small, Minority, and Women Business Affairs  
13 shall report to the Commission at least every 6 months on the compliance of licensees with  
14 subsection (a)(1) and (2) of this section.

15 (4) If the Governor's Office of Small, Minority, and Women Business Affairs  
16 reports that a licensee is not in compliance with subsection (a)(1) and (2) of this section, the  
17 Commission may take immediate action to ensure the compliance of the licensee.

18 (c) On or after July 1, [2020] 2023, the provisions of subsections (a)(1) and (2)  
19 and (b) of this section and any regulations adopted under subsections (a)(1) and (2) and (b)  
20 of this section shall be of no effect and may not be enforced.

21 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~  
22 ~~October 1, 2020.~~

23 SECTION 3. AND BE IT FURTHER ENACTED, That the certification agency  
24 designated by the Board of Public Works under § 14-303(b) of the State Finance and  
25 Procurement Article to certify and decertify minority business enterprises, in consultation  
26 with the Office of the Attorney General and the Governor's Office of Small, Minority, and  
27 Women Business Affairs, shall initiate an analysis of the Minority Business Enterprise  
28 Program requirements of § 10A-404 of the State Finance and Procurement Article, as  
29 enacted by Section 1 of this Act, and the disparity study entitled "Business Disparities in  
30 the Maryland Market Area" published on February 8, 2017, to evaluate compliance with  
31 the requirements of any federal and constitutional requirements and submit a report on  
32 the analysis to the Legislative Policy Committee of the General Assembly in accordance  
33 with § 2-1257 of the State Government Article, on or before September 30, 2020.

34 SECTION 4. AND BE IT FURTHER ENACTED, That the certification agency  
35 designated by the Board of Public Works under § 14-303(b) of the State Finance and  
36 Procurement Article to certify and decertify minority business enterprises, in consultation  
37 with the Office of the Attorney General and the Governor's Office of Small, Minority, and  
38 Women Business Affairs, shall initiate an analysis of the Minority Business Enterprise

Program requirements of § 10A-404 of the State Finance and Procurement Article, as enacted by Section 1 of this Act, and the disparity study submitted pursuant to Chapter 340 of the Acts of the General Assembly of 2017 to evaluate compliance with the requirements of any federal and constitutional requirements and submit a report on the analysis to the Legislative Policy Committee of the General Assembly, in accordance with § 2-1257 of the State Government Article, on or before December 1, 2022.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020. Section 1 of this Act shall remain effective for a period of 3 years and, at the end of June 30, 2023, Section 1 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.