
By: **Prince George's County and Montgomery County Delegations**

Introduced and read first time: February 12, 1998

Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 7, 1998

CHAPTER _____

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission - Nondiscrimination Policy**
3 **PG/MC 11-98**

4 FOR the purpose of requiring a nondiscrimination policy for ~~contracts entered into by~~
5 the Washington Suburban Sanitary Commission (WSSC); prohibiting certain
6 discrimination against contractors by the WSSC; and generally relating to
7 WSSC nondiscrimination policies.

8 BY repealing and reenacting, with amendments,
9 Article 29 - Washington Suburban Sanitary District
10 Section 3-102(f)
11 Annotated Code of Maryland
12 (1997 Replacement Volume and 1997 Supplement)

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

15 **Article 29 - Washington Suburban Sanitary District**

16 3-102.

17 (f) (1) In this subsection "minority business enterprise" has the meaning
18 stated in § 14-301 of the State Finance and Procurement Article.

19 (2) By resolution and by implementing rules and regulations, the WSSC
20 shall establish a mandatory minority business utilization program to facilitate the

1 participation of responsible certified minority business enterprises in contracts
 2 awarded by the WSSC in accordance with competitive bidding or proposal procedures.

3 (3) The rules and regulations that establish the program under
 4 paragraph (2) of this subsection shall include, but not be limited to, provisions that:

5 (i) Recognize the certification of minority business enterprises by
 6 the State certification agency designated under § 14-303(b) of the State Finance and
 7 Procurement Article;

8 (ii) Recognize any other certification program that in the judgment
 9 of the WSSC substantially duplicates the requirements of the State certification
 10 agency;

11 (iii) Provide for minority business participation through
 12 subcontracting;

13 (iv) Permit the waiver of all or part of the provisions of the program
 14 for a specific contract if the WSSC determines that the application of the program to
 15 the contract conflicts with the WSSC's overall objectives and responsibilities AS LONG
 16 AS THE WAIVER DOES NOT CONFLICT WITH THE PROVISIONS OF PARAGRAPH (4) OF
 17 THIS SUBSECTION; and

18 (v) Provide for the graduation of a minority business enterprise
 19 from the program if the WSSC determines that the minority business enterprise no
 20 longer requires the assistance or benefits offered by the program.

21 (4) (I) ~~EXCEPT AS PROVIDED UNDER § 14-303(B) OF THE STATE~~
 22 ~~FINANCE AND PROCUREMENT ARTICLE REGARDING MINORITY BUSINESS~~
 23 ~~ENTERPRISES, THE WSSC MAY NOT DISCRIMINATE AGAINST ANY CONTRACTOR~~
 24 ~~PERSON ON THE BASIS OF SEX, RACE, CREED, COLOR, AGE, MENTAL OR PHYSICAL~~
 25 ~~HANDICAP, SEXUAL ORIENTATION, OR NATIONAL ORIGIN.~~

26 (II) THE WSSC MAY NOT AWARD A CONTRACT TO ANY CONTRACTOR
 27 UNLESS THE CONTRACT CONTAINS PROVISIONS OBLIGATING THE CONTRACTOR:

28 1. NOT TO DISCRIMINATE IN ANY MANNER AGAINST ANY
 29 EMPLOYEE OR APPLICANT FOR EMPLOYMENT ON THE BASIS OF SEX, RACE, CREED,
 30 COLOR, AGE, MENTAL OR PHYSICAL HANDICAP, SEXUAL ORIENTATION, OR NATIONAL
 31 ORIGIN; AND

32 2. TO INCLUDE A SIMILAR NONDISCRIMINATION CLAUSE IN
 33 ALL SUBCONTRACTS.

34 (III) IF THE NONDISCRIMINATION CLAUSE IS OMITTED FROM A
 35 CONTRACT OR SUBCONTRACT SUBJECT TO THE PROVISIONS OF THIS SECTION:

36 1. WSSC ~~SHALL~~ MAY DECLARE THE CONTRACT TO BE VOID;
 37 AND

1 guardian for a minor, shall be considered as held by minorities in determining the
2 ownership or control of a corporation.

3 (vi) The contributions of capital or expertise by the minority owners
4 to acquire their interests in the business shall be real and substantial. Insufficient
5 contributions include a promise to contribute capital, a note payable to the business
6 or its owners who are not socially and economically disadvantaged, or the mere
7 participation as an employee, rather than as a manager.

8 (vii) The certifying agency shall give special consideration to the
9 following additional circumstances in determining eligibility:

10 1. Newly formed businesses and businesses whose ownership
11 or control has changed since the date of the advertisement of the contract are closely
12 scrutinized to determine the reasons for the timing of the formation of or change in
13 the businesses;

14 2. A previous or continuing employer-employee relationship
15 between or among present owners is carefully reviewed to ensure that the
16 employee-owner has management responsibilities and capabilities discussed in this
17 section; and

18 3. Any relationship between a minority business enterprise
19 and a business which is not a minority business enterprise which has an interest in
20 the minority business enterprise is carefully reviewed to determine if the interest of
21 the nonminority business conflicts with the ownership and control requirements of
22 this section.

23 [(5)] (6) (i) The WSSC may conduct any impartial fact-finding study
24 in connection with a minority business enterprise program for consistency with
25 applicable law.

26 (ii) The WSSC shall report the findings of any review completed
27 under this paragraph to the Montgomery County and Prince George's County
28 Delegations to the General Assembly.

29 [(6)] (7) By September 15, 1998, the WSSC shall issue a report
30 concerning the implementation and administration of the minority business
31 enterprise program through June 30, 1998, and appropriate recommendations
32 concerning the program, to the Montgomery County and Prince George's County
33 Senate and House Delegations to the Maryland General Assembly.

34 [(7)] (8) [The] EXCEPT FOR PARAGRAPH (4) OF THIS SUBSECTION, THE
35 provisions of this subsection shall be [null and] void and may not be enforced after
36 July 1, 1999.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 1998.

