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

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Assigned to: Commerce and Government Matters

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CHAPTER _____

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission - Minority Business Enterprise**
3 **Programs - Yearly Reports**
4 **PG/MC 4-00**

5 FOR the purpose of requiring the Washington Suburban Sanitary Commission each
6 year by a specified date to make a certain report and certain appropriate
7 recommendations to the Montgomery County and Prince George's County
8 Senate and House legislative delegations to the General Assembly, subject to
9 termination; and generally relating to the WSSC minority business enterprise
10 programs.

11 BY repealing and reenacting, with amendments,
12 Article 29 - Washington Suburban Sanitary District
13 Section 3-102(f)
14 Annotated Code of Maryland
15 (1997 Replacement Volume and 1999 Supplement)

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

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

19 3-102.

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

1 (2) By resolution and by implementing rules and regulations, the WSSC
2 shall establish a mandatory minority business utilization program to facilitate the
3 participation of responsible certified minority business enterprises in contracts
4 awarded by the WSSC in accordance with competitive bidding or proposal procedures.

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

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

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

13 (iii) Provide for an increase in minority business participation as
14 prime contractors and subcontractors;

15 (iv) Permit the waiver of all or part of the provisions of the program
16 for a specific contract if the WSSC determines that the application of the program to
17 the contract conflicts with the WSSC's overall objectives and responsibilities; 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) Before accepting a certification program under paragraph (3)(ii) of
22 this subsection, the WSSC shall examine the program to ensure that it adheres to the
23 following guidelines:

24 (i) Bona fide minority group membership shall be established on
25 the basis of the individual's claim that the individual is a member of a minority group
26 and is so regarded by that particular minority community. However, the certifying
27 agency is not required to accept this claim if it determines that the claim is invalid.

28 (ii) An eligible minority business enterprise shall be an
29 independent business. The ownership and control by minorities shall be real,
30 substantial, and continuing and shall go beyond the pro forma ownership of the
31 business as reflected in its ownership documents. The minority owners shall enjoy the
32 customary incidents of ownership and shall share in the risks and profits
33 commensurate with their ownership interests as demonstrated by an examination of
34 the substance rather than form of arrangements. Recognition of the business as a
35 separate entity for tax or corporate purposes is not necessarily sufficient for
36 recognition as a minority business enterprise. In determining whether a potential
37 minority business enterprise is an independent business, the certifying agency shall
38 consider all relevant factors, including the date the business was established, the
39 adequacy of its resources for the work of the contract, and the degree to which
40 financial, equipment leasing, and other relationships with nonminority businesses
41 vary from industry practice.

1 (iii) The minority owners shall also possess the power to direct or
2 cause the direction of the management and policies of the business and to make the
3 day-to-day as well as major decisions on matters of management, policy, and
4 operations. The business may not be subject to any formal or informal restrictions,
5 through bylaw provisions, partnership agreements, or charter requirements for
6 cumulative voting rights or otherwise that prevent the minority owners, without the
7 cooperation or vote of any owner who is not a minority, from making a business
8 decision of the business.

9 (iv) If the owners of the business who are not minorities are
10 disproportionately responsible for the operation of the firm, the firm is not controlled
11 by minorities and may not be considered a minority business enterprise within the
12 meaning of this section. Where the actual management of the business is contracted
13 out to individuals other than the owner, those persons who have the ultimate power to
14 hire and fire the managers may, for the purposes of this section, be considered as
15 controlling the business.

16 (v) All securities which constitute ownership or control of a
17 corporation for purposes of establishing it as a minority business enterprise under
18 this section shall be held directly by minorities. No securities held in trust, or by any
19 guardian for a minor, shall be considered as held by minorities in determining the
20 ownership or control of a corporation.

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

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

28 1. Newly formed businesses and businesses whose ownership
29 or control has changed since the date of the advertisement of the contract are closely
30 scrutinized to determine the reasons for the timing of the formation of or change in
31 the businesses;

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

36 3. Any relationship between a minority business enterprise
37 and a business which is not a minority business enterprise which has an interest in
38 the minority business enterprise is carefully reviewed to determine if the interest of
39 the nonminority business conflicts with the ownership and control requirements of
40 this section.

1 (5) (i) The WSSC may conduct any impartial fact-finding study in
2 connection with a minority business enterprise program for consistency with
3 applicable law.

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

7 (6) By September 15[, 2001,] OF EACH YEAR the WSSC shall issue a
8 report concerning the implementation and administration of the minority business
9 enterprise program through June 30[, 2001,] OF THAT YEAR and appropriate
10 recommendations concerning the program, to the Montgomery County and Prince
11 George's County Senate and House Delegations to the Maryland General Assembly.

12 (7) The provisions of this subsection shall be null and void and may not
13 be enforced after July 1, 2002.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2000.