

SENATE BILL 808

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P2

2000 Regular Session
(01r2742)

ENROLLED BILL

-- Economic and Environmental Affairs/Commerce and Government Matters --

Introduced by ~~Senators~~ Senator Conway, the President (Administration), and
Senators Lawlah, Blount, Mitchell, Exum, Hughes, McFadden, Currie,
and Kelley

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Minority Business Enterprise Participation**

3 FOR the purpose of ~~increasing the minimum percentage of the total dollar value of~~
4 ~~procurement contracts made directly or indirectly from minority businesses that~~
5 ~~a unit of State government is to try to achieve; decreasing the amount of a~~
6 ~~Maryland Department of Transportation construction contract that is~~
7 ~~negotiated competitively and not subject to provisions of law regarding minority~~
8 ~~business enterprise goals *modifying the threshold governing the application of*~~
9 ~~*the State's minority business enterprise program to Maryland Department of*~~
10 ~~*Transportation construction contracts*; requiring a unit of State government to~~
11 ~~try to ensure that a certain percentage of a certain minority business enterprise~~
12 ~~goal is made by specified categories of minority business enterprises; requiring a~~
13 ~~unit of State government to structure certain procurement procedures; requiring~~
14 ~~a unit of State government to divide a certain percentage goal that is not met by~~
15 ~~a specified category of minority business enterprise by the number of certain~~

1 remaining categories of minority business enterprise for addition to the goals of
 2 certain remaining categories of minority business enterprise; continuing until a
 3 certain date certain provisions of the State Procurement Law relating to
 4 procurement from minority businesses; requiring an executive summary of a
 5 certain study and the issuance of a certain report by a certain date certain
 6 reports by certain dates the executive summary to the Legislative Policy
 7 Committee by a certain date; extending the date by which a certain report must be
 8 submitted to the General Assembly for review; requiring that the initiation of a
 9 certain study be done in consultation with the Office of the Attorney General; and
 10 generally relating to minority business participation in State procurement.

11 BY repealing and reenacting, with amendments,
 12 Article - State Finance and Procurement
 13 Section ~~13-304(b)~~, ~~13-310(d)~~, ~~14-302~~, 14-302 and 14-309
 14 Annotated Code of Maryland
 15 (1995 Replacement Volume and 1999 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Chapter 116 of the Acts of the General Assembly of 1995
 18 Section 2

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

21 **Article - State Finance and Procurement**

22 ~~13-304.~~

23 (b) ~~The procedures of each selection board shall ensure that a~~
 24 ~~recommendation to the Board of Public Works for the award of a procurement~~
 25 ~~contract for architectural or engineering services costing over \$100,000 AS TO THE~~
 26 ~~GENERAL SELECTION BOARD AND OVER \$50,000 AS TO THE TRANSPORTATION~~
 27 ~~SELECTION BOARD is made on a competitive basis and includes an evaluation of the~~
 28 ~~technical proposals and qualifications of at least 2 persons.~~

29 ~~13-310.~~

30 (d) ~~A transportation unit shall negotiate competitively each procurement~~
 31 ~~contract for architectural or engineering services costing [\$100,000] \$50,000 or less at~~
 32 ~~a price that the transportation unit determines to be fair and reasonable.~~

33 14-302.

34 (a) (1) Except for leases of real property and except as provided in
 35 paragraphs (2) and (3) of this subsection, each unit shall structure procurement
 36 procedures, consistent with the purposes of this subtitle, to try to achieve the result
 37 that a minimum of {14%} 30% of the unit's total dollar value of procurement contracts

1 is made directly or indirectly from certified minority business enterprises IN
2 ACCORDANCE WITH THIS SECTION.

3 (2) Except as provided in paragraph (3) of this subsection, in
4 procurement for construction, each unit shall:

5 (i) structure procurement procedures, consistent with the purposes
6 of this subtitle, to try to achieve the result that a minimum of ~~{14%}~~ 30% of the unit's
7 total dollar value of construction contracts is made directly or indirectly from certified
8 minority business enterprises; and

9 (ii) consider the practical severability of the construction projects.

10 (3) With respect to the Maryland Department of Transportation, the
11 provisions of paragraph (2)(i) of this subsection shall apply only to construction
12 contracts in excess of [\$100,000] \$50,000.

13 (4) To achieve the result specified in paragraph (1) or (2) of this
14 subsection, a contractor shall:

15 (i) identify specific work categories appropriate for subcontracting;

16 (ii) at least 10 days before bid opening, solicit minority business
17 enterprises, through written notice that:

18 1. describes the categories of work under item (i) of this
19 subparagraph; and

20 2. provides information regarding the type of work being
21 solicited and specific instructions on how to submit a bid;

22 (iii) attempt to make personal contact with the firms in item (ii) of
23 this paragraph;

24 (iv) assist minority business enterprises to fulfill bonding
25 requirements or to obtain a waiver of those requirements;

26 (v) in order to publicize contracting opportunities to minority
27 business enterprises, attend prebid meetings or other meetings scheduled by the unit;
28 and

29 (vi) upon acceptance of a bid, provide the unit with a list of minority
30 businesses with whom the contractor negotiated, including price quotes from
31 minority and nonminority firms.

32 (5) (i) The unit shall make a finding whether the contractor complied,
33 in good faith, with paragraph (4) of this subsection.

34 (ii) If the unit finds the contractor complied with paragraph (4) of
35 this subsection, the unit may not require the contractor to renegotiate any
36 subcontract in order to achieve a different result.

1 (b) ~~(1) IN SEEKING TO ACHIEVE THE GOALS DESCRIBED IN SUBSECTION (A)~~
 2 ~~OF THIS SECTION, EACH UNIT SHALL TRY TO ENSURE THAT A MINIMUM OF 5% OF~~
 3 ~~THE 30% TOTAL DOLLAR VALUE OF A PROCUREMENT CONTRACT GOAL IS MADE~~
 4 ~~DIRECTLY OR INDIRECTLY FROM CERTIFIED MINORITY BUSINESS ENTERPRISES~~
 5 ~~THAT ARE AT LEAST 51% OWNED AND CONTROLLED BY ONE OR MORE INDIVIDUALS~~
 6 ~~WHO ARE MEMBERS OF EACH OF THE FOLLOWING DISADVANTAGED SOCIAL OR~~
 7 ~~ECONOMIC GROUPS:~~

8 ~~(I) AFRICAN AMERICANS;~~

9 ~~(II) AMERICAN INDIANS;~~

10 ~~(III) ASIANS;~~

11 ~~(IV) HISPANICS;~~

12 ~~(V) WOMEN; OR~~

13 ~~(VI) PHYSICALLY OR MENTALLY DISABLED INDIVIDUALS.~~

14 ~~(2) EACH UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES TO~~
 15 ~~ACHIEVE THE RESULTS IN THIS SUBSECTION AND SHALL INCLUDE A MEANS FOR A~~
 16 ~~CERTIFIED MINORITY BUSINESS ENTERPRISE TO WAIVE PARTICIPATION IN A~~
 17 ~~PROCUREMENT CONTRACT AND FOR A CONTRACTOR TO DEMONSTRATE THAT NO~~
 18 ~~CERTIFIED MINORITY BUSINESS ENTERPRISES IN ONE OF THE CATEGORIES LISTED~~
 19 ~~IN PARAGRAPH (1) OF THIS SUBSECTION ARE AVAILABLE OR ABLE TO MEET~~
 20 ~~REQUIREMENTS OF A CONTRACT.~~

21 ~~(3) IF A UNIT DETERMINES NO CERTIFIED MINORITY BUSINESS~~
 22 ~~ENTERPRISE IN ONE OF THE CATEGORIES LISTED IN PARAGRAPH (1) OF THIS~~
 23 ~~SUBSECTION IS AVAILABLE OR ABLE TO PARTICIPATE IN A PROCUREMENT~~
 24 ~~CONTRACT, THE 5% GOAL ESTABLISHED UNDER THIS SUBSECTION FOR THAT~~
 25 ~~CATEGORY OF CERTIFIED MINORITY BUSINESS ENTERPRISE SHALL BE DIVIDED BY~~
 26 ~~THE NUMBER OF REMAINING CATEGORIES OF CERTIFIED MINORITY BUSINESS~~
 27 ~~ENTERPRISE LISTED IN PARAGRAPH (1) OF THIS SUBSECTION AND SHALL BE ADDED~~
 28 ~~TO THE GOAL FOR EACH REMAINING CATEGORY OF CERTIFIED MINORITY BUSINESS~~
 29 ~~ENTERPRISE.~~

30 ~~(C)~~ (1) The provisions of §§ 14-301(e) and 14-303 of this subtitle and
 31 subsection (a) of this section are inapplicable to the extent that any unit determines
 32 the provisions to be in conflict with any applicable federal program requirement.

33 (2) The determination under this subsection shall be included with the
 34 report required under § 14-305 of this subtitle.

35 14-309.

36 The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations
 37 adopted under those sections, shall be of no effect ~~AFTER JULY 1, 2002~~ 2001 and may
 38 not be enforced after July 1, [2000] ~~2002~~ 2001 2002.

1

Chapter 116 of the Acts of 1995

2 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
3 in consultation with the General Assembly AND THE OFFICE OF THE ATTORNEY
4 GENERAL, shall initiate a study of the Minority Business Enterprise Program to
5 evaluate the Program's continued compliance with the requirements of the Croson
6 decision and any subsequent federal or constitutional requirements. The study shall
7 also evaluate race neutral programs and other methods that can be used to address
8 the needs of minority businesses. ~~An executive summary of the study shall be~~
9 ~~submitted to the Legislative Policy Committee of the General Assembly by December~~
10 ~~1, 2000. AN EXECUTIVE SUMMARY OF THE STUDY SHALL BE SUBMITTED TO THE~~
11 ~~LEGISLATIVE POLICY COMMITTEE OF THE GENERAL ASSEMBLY BY DECEMBER 1,~~
12 ~~2000.~~ The final report on the study shall be submitted to the Legislative Policy
13 Committee of the General Assembly prior to ~~September 30, [1999] 2000 January 3~~
14 ~~JANUARY 10, 2001~~ so that the General Assembly may review the report ~~prior to~~
15 DURING the [2000] 2001 Session.

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