

HOUSE BILL 306

Unofficial Copy  
P2

2001 Regular Session  
(11r0187)

**ENROLLED BILL**

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

Introduced by **The Speaker (Administration) and Delegates R. Baker, Benson, Bobo, Branch, Bronrott, Brown, Burns, Carlson, Clagett, Cole, C. Davis, D. Davis, DeCarlo, Dobson, Doory, Gladden, Griffith, Grosfeld, Harrison, Healey, Hecht, Hill, Hixson, Howard, Hubbard, A. Jones, V. Jones, Kirk, Marriott, McIntosh, Menes, Montague, Nathan-Pulliam, Oaks, Paige, Patterson, Petzold, Phillips, Proctor, Rawlings, Sher, Shriver, Swain, Turner, and Valderrama**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

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

\_\_\_\_\_  
Speaker.

CHAPTER 339

1 AN ACT concerning

2 **Procurement - Minority Business Participation**

3 FOR the purpose of continuing until a certain date the provisions of the State  
4 Procurement Law relating to procurement from minority businesses; altering  
5 the percentage of the total dollar value of procurement by units of State  
6 government that is made directly or indirectly from certified minority  
7 businesses which units of State government are to seek to achieve; altering  
8 certain provisions relating to the structure of procurement procedures by units  
9 of State government; defining certain terms; altering certain definitions;  
10 authorizing ~~a certain certification agency~~ the Board of Public Works to adopt  
11 certain regulations; ~~providing that the regulations may not require a bidder or~~

1 ~~offeror to provide certain information; authorizing the Board of Public Works to~~  
2 ~~designate that certain information is confidential under certain circumstances;~~  
3 ~~authorizing the certification agency to provide certain information to certain~~  
4 ~~persons for certain purposes;~~ requiring the Board of Public Works to adopt  
5 regulations under certain circumstances; altering certain reporting  
6 requirements; requiring a certain ~~study~~ studies and the issuance of a certain  
7 ~~report~~ reports by a certain ~~date~~ dates; making provisions of this Act severable;  
8 and generally relating to minority business participation in State procurement.

9 BY repealing and reenacting, with amendments,  
10 Article - State Finance and Procurement  
11 Section 14-301, 14-302, 14-303, 14-305, and 14-309  
12 Annotated Code of Maryland  
13 (1995 Replacement Volume and 2000 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article - State Finance and Procurement  
16 Section 14-304, 14-307, and 14-308  
17 Annotated Code of Maryland  
18 (1995 Replacement Volume and 2000 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Chapter 116 of the Acts of the General Assembly of 1995, as amended by  
21 Chapters 495 and 496 of the Acts of the General Assembly of 2000  
22 Section 2

23 Preamble

24 WHEREAS, In January 1989, the Supreme Court of the United States, in City  
25 of Richmond v. J. A. Croson Co., 488 U.S. 469 (1989) held that state and local minority  
26 business programs should be narrowly tailored to remedy the effects of past  
27 discrimination;

28 WHEREAS, In compliance with the requirements of Chapters 495 and 496 of  
29 the 2000 Session of the General Assembly, the Maryland Department of  
30 Transportation entered into a contract with National Economic Research Associates,  
31 Inc., to conduct a Minority Business Utilization Study;

32 WHEREAS, The report prepared by National Economic Research Associates,  
33 Inc. has come before the General Assembly of Maryland, hearings have been held, and  
34 the General Assembly has considered the report and all evidence upon which  
35 National Economic Research Associates, Inc. relied in reaching its findings and  
36 conclusions regarding the Minority Business Enterprise Program;

37 WHEREAS, The General Assembly finds that there is a history in Maryland of  
38 discrimination against African Americans, Hispanics, Asians, American Indians, and  
39 women;

1 WHEREAS, The General Assembly finds that in the State marketplace,  
2 businesses owned and controlled by African Americans, Hispanics, Asians, American  
3 Indians, and women are underutilized, and this disparity taken with other evidence  
4 demonstrates that this underutilization is the product of current, continuing  
5 discrimination against such persons in the State marketplace;

6 WHEREAS, The General Assembly finds that the Maryland Minority Business  
7 Enterprise Program has not eradicated the impact of past discrimination or precluded  
8 ongoing discrimination;

9 WHEREAS, The General Assembly finds that race-neutral and gender-neutral  
10 measures of assisting minority firms to date have been not been effective; and

11 WHEREAS, The General Assembly concludes that continuation of a narrowly  
12 tailored program, which meets the requirements of Croson and later decisions, and  
13 continuation of race-neutral and gender-neutral means of assisting minority firms  
14 are essential to the ultimate achievement of a marketplace in which minority firms  
15 will not be subject to discrimination and will be able to obtain a fair share of private  
16 and public contract expenditures without the aid of the Minority Business Enterprise  
17 Program; now, therefore,

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

20 **Article - State Finance and Procurement**

21 14-301.

22 (a) In this subtitle the following words have the meanings indicated.

23 (b) "Certification" means the determination that a legal entity is a minority  
24 business enterprise for the purposes of this subtitle.

25 (c) "Certification agency" means the agency designated by the Board of Public  
26 Works under § 14-303(b) of this subtitle to certify and decertify minority business  
27 enterprises.

28 (d) "Certified minority business enterprise" means a minority business  
29 enterprise that holds a certification.

30 (E) "ECONOMICALLY DISADVANTAGED INDIVIDUAL" MEANS A SOCIALLY  
31 DISADVANTAGED INDIVIDUAL WHOSE ABILITY TO COMPETE IN THE FREE  
32 ENTERPRISE SYSTEM HAS BEEN IMPAIRED DUE TO DIMINISHED CAPITAL AND  
33 CREDIT OPPORTUNITIES AS COMPARED TO OTHERS IN THE SAME OR SIMILAR LINE  
34 OF BUSINESS WHO ARE NOT SOCIALLY DISADVANTAGED.

35 [(e)] (F) (1) "Minority business enterprise" means any legal entity, except a  
36 joint venture, that is:

37 (i) organized to engage in commercial transactions; [and]

1 (ii) at least 51% owned and controlled by 1 or more individuals who  
 2 are [members of a group that is disadvantaged] socially [or] AND economically  
 3 DISADVANTAGED[, including:

- 4 1. African Americans;
- 5 2. American Indians;
- 6 3. Asians;
- 7 4. Hispanics;
- 8 5. women; or
- 9 6. physically or mentally disabled individuals]; AND

10 (III) MANAGED BY, AND THE DAILY BUSINESS OPERATIONS OF  
 11 WHICH ARE CONTROLLED BY, ONE OR MORE OF THE SOCIALLY AND ECONOMICALLY  
 12 DISADVANTAGED INDIVIDUALS WHO OWN IT.

13 (2) "Minority business enterprise" includes a not for profit entity  
 14 organized to promote the interests of physically or mentally disabled individuals.

15 (G) (1) ~~SUBJECT TO PARAGRAPH~~ PARAGRAPHS(2) AND (3) OF THIS  
 16 SUBSECTION, "PERSONAL NET WORTH" MEANS THE NET VALUE OF THE ASSETS OF  
 17 AN INDIVIDUAL REMAINING AFTER TOTAL LIABILITIES ARE DEDUCTED.

18 (2) "PERSONAL NET WORTH" INCLUDES THE INDIVIDUAL'S SHARE OF  
 19 ASSETS HELD JOINTLY OR AS COMMUNITY PROPERTY WITH THE INDIVIDUAL'S  
 20 SPOUSE.

21 ~~(2)~~ (3) "PERSONAL NET WORTH" DOES NOT INCLUDE:

22 (I) THE INDIVIDUAL'S OWNERSHIP INTEREST IN THE APPLICANT  
 23 OR A CERTIFIED MINORITY BUSINESS ENTERPRISE; OR

24 (II) THE INDIVIDUAL'S EQUITY IN HIS OR HER PRIMARY PLACE OF  
 25 RESIDENCE; ~~OR~~

26 (III) ~~THE INDIVIDUAL'S SHARE OF ASSETS HELD JOINTLY OR AS~~  
 27 ~~COMMUNITY PROPERTY WITH THE INDIVIDUAL'S SPOUSE.~~

28 ~~(H) "RACE-CONSCIOUS MEASURE" MEANS A METHOD THAT IS FOCUSED~~  
 29 ~~SPECIFICALLY ON ASSISTING ONLY MINORITY INDIVIDUALS.~~

30 ~~(H)~~ (H) "RACE-NEUTRAL MEASURE" MEANS A METHOD THAT IS OR CAN BE  
 31 USED TO ASSIST ALL SMALL BUSINESSES.

32 ~~(I)~~ (I) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,  
 33 "SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL" MEANS A CITIZEN  
 34 OR LAWFULLY ADMITTED PERMANENT RESIDENT OF THE UNITED STATES WHO IS:

1 (I) IN ANY OF THE FOLLOWING MINORITY GROUPS:

2 1. AFRICAN AMERICAN - AN INDIVIDUAL HAVING ORIGINS  
3 IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA;

4 2. AMERICAN INDIAN/NATIVE AMERICAN - AN INDIVIDUAL  
5 HAVING ORIGINS IN ANY OF THE ORIGINAL PEOPLES OF NORTH AMERICA AND WHO  
6 IS A DOCUMENTED MEMBER OF A NORTH AMERICAN TRIBE, BAND, OR OTHERWISE  
7 HAS A SPECIAL RELATIONSHIP WITH THE UNITED STATES OR A STATE THROUGH  
8 TREATY, AGREEMENT, OR SOME OTHER FORM OF RECOGNITION. THIS INCLUDES AN  
9 INDIVIDUAL WHO CLAIMS TO BE AN AMERICAN INDIAN/NATIVE AMERICAN AND WHO  
10 IS REGARDED AS SUCH BY THE AMERICAN INDIAN/NATIVE AMERICAN COMMUNITY  
11 OF WHICH THE INDIVIDUAL CLAIMS TO BE A PART, BUT DOES NOT INCLUDE AN  
12 INDIVIDUAL OF ESKIMO OR ALEUTIAN ORIGIN;

13 3. ASIAN - AN INDIVIDUAL HAVING ORIGINS IN THE FAR  
14 EAST, SOUTHEAST ASIA, OR THE INDIAN SUBCONTINENT, AND WHO IS REGARDED AS  
15 SUCH BY THE COMMUNITY OF WHICH THE PERSON CLAIMS TO BE A PART;

16 4. HISPANIC - AN INDIVIDUAL OF MEXICAN, PUERTO RICAN,  
17 CUBAN, CENTRAL OR SOUTH AMERICAN, OR OTHER SPANISH CULTURE OR ORIGIN,  
18 REGARDLESS OF RACE, AND WHO IS REGARDED AS SUCH BY THE COMMUNITY OF  
19 WHICH THE PERSON CLAIMS TO BE A PART;

20 5. PHYSICALLY OR MENTALLY DISABLED - AN INDIVIDUAL  
21 WHO HAS AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE  
22 ACTIVITY, WHO IS REGARDED GENERALLY BY THE COMMUNITY AS HAVING SUCH A  
23 DISABILITY, AND WHOSE DISABILITY HAS SUBSTANTIALLY LIMITED HIS OR HER  
24 ABILITY TO ENGAGE IN COMPETITIVE BUSINESS; OR

25 6. WOMEN - A WOMAN, REGARDLESS OF RACE OR  
26 ETHNICITY, UNLESS SHE IS ALSO A MEMBER OF AN ETHNIC OR RACIAL MINORITY  
27 GROUP AND ELECTS THAT CATEGORY IN LIEU OF THE GENDER CATEGORY; OR

28 (II) OTHERWISE FOUND BY THE CERTIFICATION AGENCY TO BE A  
29 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.

30 (2) THERE IS A REBUTTABLE PRESUMPTION THAT AN INDIVIDUAL WHO  
31 IS A MEMBER OF A MINORITY GROUP UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION  
32 IS SOCIALLY AND ECONOMICALLY DISADVANTAGED.

33 (3) AN INDIVIDUAL WHOSE PERSONAL NET WORTH EXCEEDS \$750,000  
34 MAY NOT BE FOUND TO BE ECONOMICALLY DISADVANTAGED.

35 ~~(K)~~ (J) "SOCIALLY DISADVANTAGED INDIVIDUAL" MEANS AN INDIVIDUAL  
36 WHO HAS BEEN SUBJECTED TO RACIAL OR ETHNIC PREJUDICE OR CULTURAL BIAS  
37 WITHIN AMERICAN SOCIETY BECAUSE OF MEMBERSHIP IN A GROUP AND WITHOUT  
38 REGARD TO INDIVIDUAL QUALITIES. SOCIAL DISADVANTAGE MUST STEM FROM  
39 CIRCUMSTANCES BEYOND THE CONTROL OF THE INDIVIDUAL.

1 14-302.

2 (a) (1) Except for leases of real property and except as provided in  
3 paragraphs (2) and (3) of this subsection, each unit shall structure procurement  
4 procedures, consistent with the purposes of this subtitle, to try to achieve the [result  
5 that a minimum of 14% of the unit's total dollar value of procurement contracts is  
6 made directly or indirectly from certified minority business enterprises in accordance  
7 with this section.] FOLLOWING RESULTS:

8 (I) A MINIMUM OF 7% OF THE UNIT'S TOTAL DOLLAR VALUE OF  
9 PROCUREMENT CONTRACTS IS TO BE MADE DIRECTLY OR INDIRECTLY FROM  
10 CERTIFIED MINORITY BUSINESS ENTERPRISES CLASSIFIED BY THE CERTIFICATION  
11 AGENCY AS AFRICAN AMERICAN-OWNED BUSINESSES;

12 (II) A MINIMUM OF 10% OF THE UNIT'S TOTAL DOLLAR VALUE OF  
13 PROCUREMENT CONTRACTS IS TO BE MADE DIRECTLY OR INDIRECTLY FROM  
14 CERTIFIED MINORITY BUSINESS ENTERPRISES CLASSIFIED BY THE CERTIFICATION  
15 AGENCY AS WOMEN-OWNED BUSINESSES; AND

16 (III) AN OVERALL MINIMUM OF 25% OF THE UNIT'S TOTAL DOLLAR  
17 VALUE OF PROCUREMENT CONTRACTS IS TO BE MADE DIRECTLY OR INDIRECTLY  
18 FROM ALL CERTIFIED MINORITY BUSINESS ENTERPRISES.

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

21 (i)] structure procurement procedures, consistent with the purposes  
22 of this subtitle, to try to achieve the [result that a minimum of 14% of the unit's total  
23 dollar value of construction contracts is made directly or indirectly from certified  
24 minority business enterprises; and] FOLLOWING RESULTS:

25 1. A MINIMUM OF 7% OF THE UNIT'S TOTAL DOLLAR VALUE  
26 OF CONSTRUCTION CONTRACTS IS TO BE MADE DIRECTLY OR INDIRECTLY FROM  
27 CERTIFIED MINORITY BUSINESS ENTERPRISES CLASSIFIED BY THE CERTIFICATION  
28 AGENCY AS AFRICAN AMERICAN-OWNED BUSINESSES;

29 2. A MINIMUM OF 10% OF THE UNIT'S TOTAL DOLLAR VALUE  
30 OF CONSTRUCTION CONTRACTS IS TO BE MADE DIRECTLY OR INDIRECTLY FROM  
31 CERTIFIED MINORITY BUSINESS ENTERPRISES CLASSIFIED BY THE CERTIFICATION  
32 AGENCY AS WOMEN-OWNED BUSINESSES; AND

33 3. AN OVERALL MINIMUM OF 25% OF THE UNIT'S TOTAL  
34 DOLLAR VALUE OF CONSTRUCTION CONTRACTS IS TO BE MADE DIRECTLY OR  
35 INDIRECTLY FROM ALL CERTIFIED MINORITY BUSINESS ENTERPRISES.

36 (ii) THE UNIT SHALL:

37 1. consider the practical severability of the construction  
38 projects; AND



1 (b) (1) The provisions of §§ [14-301(e)] 14-301(F) and 14-303 of this subtitle  
2 and subsection (a) of this section are inapplicable to the extent that any unit  
3 determines the provisions to be in conflict with any applicable federal program  
4 requirement.

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

7 14-303.

8 (a) (1) In accordance with Title 10, Subtitle 1 of the State Government  
9 Article, the Board shall adopt regulations consistent with the purposes of this  
10 Division II to carry out the requirements of this subtitle.

11 (2) The regulations shall establish procedures to be followed by units,  
12 prospective contractors, and successful bidders or offerors to maximize notice to, and  
13 the opportunity to participate in the procurement process by, a broad range of  
14 minority business enterprises.

15 (b) These regulations shall include:

16 (1) provisions designating one agency to certify and decertify minority  
17 business enterprises for all units through a single process that meets applicable  
18 federal requirements;

19 (2) a requirement that the solicitation document accompanying each  
20 solicitation set forth the expected degree of minority business enterprise participation  
21 based, in part, on:

22 (i) the potential subcontract opportunities available in the prime  
23 procurement contract; and

24 (ii) the availability of certified minority business enterprises to  
25 respond competitively to the potential subcontract opportunities;

26 (3) a requirement that the unit provide a current list of certified  
27 minority business enterprises to each prospective contractor;

28 (4) provisions to ensure the uniformity of requests for bids on  
29 subcontracts;

30 (5) provisions relating to the timing of requests for bids on subcontracts  
31 and of submission of bids on subcontracts;

32 (6) provisions designed to ensure that a fiscal disadvantage to the State  
33 does not result from an inadequate response by minority business enterprises to a  
34 request for bids;

1 (7) provisions relating to joint ventures, under which a bidder may count  
2 toward meeting its minority business enterprise participation goal, the minority  
3 business enterprise portion of the joint venture;

4 (8) consistent with [§ 14-302(a)(4)] § 14-302(A)(5) of this subtitle,  
5 provisions relating to any circumstances under which a unit may waive obligations of  
6 the contractor relating to minority business enterprise participation;

7 (9) provisions requiring a monthly submission to the unit by minority  
8 business enterprises acknowledging all payments received in the preceding 30 days  
9 under a contract governed by this subtitle;

10 (10) a requirement that a unit shall verify and maintain data concerning  
11 payments received by minority business enterprises, including a requirement that,  
12 upon completion of a project, the unit shall compare the total dollar value actually  
13 received by minority business enterprises with the amount of contract dollars initially  
14 awarded, and an explanation of any discrepancies therein;

15 (11) a requirement that a unit verify that minority business enterprises  
16 listed in a successful bid are actually participating to the extent listed in the project  
17 for which the bid was submitted;

18 (12) provisions establishing a graduation program based on the financial  
19 viability of the minority business enterprise, using annual gross receipts or other  
20 economic indicators as may be determined by the Board; and

21 (13) other provisions that the Board considers necessary or appropriate to  
22 encourage participation by minority business enterprises and to protect the integrity  
23 of the procurement process.

24 (c) The regulations adopted under this section shall specify that a unit may  
25 not allow a business to participate as if it were a certified minority business  
26 enterprise if the business's certification is pending.

27 14-304.

28 (a) In the same manner and with the same fees as provided by law in civil  
29 cases, in a matter regarding the decertification of a certified minority business  
30 enterprise, the certification agency may:

31 (1) subpoena witnesses;

32 (2) administer oaths; and

33 (3) compel the production of records, books, papers, and other  
34 documents.

35 (b) If a person fails to comply with a subpoena issued under subsection (a) of  
36 this section, or fails to produce documents or other evidence, on petition of the  
37 certification agency, a court of competent jurisdiction may pass an order directing

1 compliance with the subpoena or compelling the production of documents or other  
2 evidence.

3 14-305.

4 (a) (1) Within 90 days after the end of the fiscal year, each unit shall report  
5 to the Governor's Office of Minority Affairs AND THE CERTIFICATION AGENCY.

6 (2) A report under this subsection shall for the preceding fiscal year:

7 (i) state the total number and value of procurement contracts  
8 between the unit and certified minority business enterprises, by specific category of  
9 minority business enterprise;

10 (ii) indicate the percentage that those procurement contracts  
11 represent, by specific category of minority business enterprise, of the total number  
12 and value of procurement contracts; and

13 (iii) contain other such information as required by the Governor's  
14 Office of Minority Affairs AND THE CERTIFICATION AGENCY and approved by the  
15 Board.

16 (3) A report under this subsection shall be in a form prescribed by the  
17 Governor's Office of Minority Affairs AND THE CERTIFICATION AGENCY and approved  
18 by the Board.

19 (b) (1) On or before December 31 of each year, the Governor's Office of  
20 Minority Affairs shall submit to the Board of Public Works and, subject to § 2-1246 of  
21 the State Government Article, to the Legislative Policy Committee a report  
22 summarizing the information the Office receives under subsection (a) of this section.

23 (2) This report may be prepared in conjunction with the annual report  
24 required under § 9-306 of the State Government Article.

25 14-307.

26 The Legislative Policy Committee shall direct at least 1 standing committee of  
27 the House of Delegates and at least 1 standing committee of the State Senate to  
28 review annually the performance of units as reported under § 14-305 of this subtitle.  
29 14-308.

30 (a) (1) A person may not:

31 (i) fraudulently obtain, hold, or attempt to obtain or hold  
32 certification;

33 (ii) aid another person in performing an act prohibited under item  
34 (i) of this paragraph;

1 (iii) willfully obstruct, impede, or attempt to obstruct or impede a  
 2 State official or employee investigating the qualifications of a business entity that has  
 3 requested certification;

4 (iv) fraudulently obtain, attempt to obtain, or aid another person in  
 5 fraudulently obtaining or attempting to obtain, public moneys to which the person is  
 6 not entitled under this subtitle; or

7 (v) in any minority business enterprise matter administered under  
 8 this subtitle:

9 1. willfully falsify, conceal, or cover up a material fact by any  
 10 scheme or device;

11 2. make a false or fraudulent statement or representation; or

12 3. use a false writing or document that the person knows to  
 13 contain a false or fraudulent statement or entry.

14 (2) A person who violates any provision of this subsection is guilty of a  
 15 felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment  
 16 not exceeding 5 years or both.

17 (b) (1) A person may not make a false statement about whether an entity  
 18 has certification.

19 (2) A person who violates this subsection is guilty of a misdemeanor and  
 20 on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding  
 21 1 year or both.

22 14-309.

23 The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations  
 24 adopted under those sections, shall be of no effect and may not be enforced after July  
 25 1, [2002] 2006.

26 **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**  
 27 **Acts of 2000**

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,  
 29 in consultation with the General Assembly and the Office of the Attorney General,  
 30 shall initiate a study of the Minority Business Enterprise Program to evaluate the  
 31 Program's continued compliance with the requirements of the Croson decision and  
 32 any subsequent federal or constitutional requirements. IN PREPARATION FOR THE  
 33 STUDY, THE ~~CERTIFICATION AGENCY BOARD OF PUBLIC WORKS~~ MAY ADOPT  
 34 REGULATIONS AUTHORIZING A UNIT OF STATE GOVERNMENT TO REQUIRE BIDDERS  
 35 AND OFFERORS TO SUBMIT INFORMATION NECESSARY FOR THE CONDUCT OF THE  
 36 STUDY. ~~THE REGULATIONS MAY NOT REQUIRE A BIDDER OR OFFEROR TO PROVIDE~~  
 37 ~~INFORMATION WHICH THE BIDDER OR OFFEROR REASONABLY BELIEVES TO BE A~~  
 38 ~~TRADE SECRET, A PRIVACY RIGHT, OR A CONFIDENTIAL MARKETING OR PRICING~~

1 ~~POLICY~~ THE BOARD OF PUBLIC WORKS MAY DESIGNATE THAT CERTAIN  
 2 INFORMATION RECEIVED IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER  
 3 THIS SECTION SHALL BE CONFIDENTIAL, NOTWITHSTANDING THAT CERTAIN  
 4 INFORMATION MAY BE DESIGNATED BY THE BOARD OF PUBLIC WORKS AS  
 5 CONFIDENTIAL, THE CERTIFICATION AGENCY MAY PROVIDE THE INFORMATION TO  
 6 ANY PERSON THAT IS UNDER CONTRACT WITH THE CERTIFICATION AGENCY TO  
 7 ASSIST IN CONDUCTING THE STUDY. The study shall also evaluate race neutral  
 8 programs and other methods that can be used to address the needs of minority  
 9 businesses. [An executive summary of the study shall be submitted to the Legislative  
 10 Policy Committee of the General Assembly by December 1, 2000.] The final report on  
 11 the study shall be submitted to the Legislative Policy Committee of the General  
 12 Assembly prior to [January 10, 2001] SEPTEMBER 30, 2005 so that the General  
 13 Assembly may review the report [during] PRIOR TO the [2001] 2006 Session.

14 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this  
 15 Act or the application thereof to any person or circumstance is held invalid for any  
 16 reason in a court of competent jurisdiction, the invalidity does not affect other  
 17 provisions or any other application of this Act which can be given effect without the  
 18 invalid provision or application, and for this purpose the provisions of this Act are  
 19 declared severable.

20 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this  
 21 Act is held invalid for any reason in a court of competent jurisdiction, and any  
 22 remaining valid portions of this Act are held to be incomplete and incapable of being  
 23 executed in accordance with legislative intent, the Board of Public Works shall adopt  
 24 regulations governing the administration of this Act, to be applied in a manner that is  
 25 consistent with the court's opinion.

26 SECTION 4. AND BE IT FURTHER ENACTED, That, based on a  
 27 recommendation of the National Economic Research Associates, which conducted a  
 28 study on the Utilization of Minority Business Enterprises in Maryland, the Board of  
 29 Public Works shall study conditions for certifying nonminority males who own a  
 30 business located in a qualified distressed county, as defined under Article 83A, §  
 31 5-701 of the Code, under the Minority Business Enterprise Program. The Board of  
 32 Public Works shall submit a report on the study, including its findings and  
 33 recommendations, to the House Commerce and Government Matters Committee and  
 34 the Senate Economic and Environmental Affairs Committee of the General Assembly,  
 35 in accordance with § 2-1246 of the State Government Article, prior to December 1,  
 36 2001, so that the respective committees may review the report and recommendations  
 37 before the 2002 Session of the General Assembly.

38 SECTION 5. AND BE IT FURTHER ENACTED, *That for the purpose of*  
 39 *creating incentives for achieving greater minority business participation in*  
 40 *private-sector contracts, the Board of Public Works shall study establishing a process*  
 41 *for awarding credits or points in the award of State procurement contracts for the*  
 42 *achievement of minority business participation in a prime contractor's private-sector*  
 43 *projects that do not have minority business goals or requirements. The Board of Public*  
 44 *Works shall submit a report on the study, including its findings and recommendations,*

1 *to the Legislative Policy Committee prior to December 1, 2001 so that the General*  
2 *Assembly may review the report and recommendations before the 2002 Session.*

3 SECTION 4, ~~5.~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take  
4 effect July 1, 2001.