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

Introduced and read first time: February 1, 1996

Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission - Minority Business Enterprise Program -**  
3 **Sheltered Market**  
4 **PG/MC 42-96**

5 FOR the purpose of establishing a sheltered market for minority business enterprises for  
6 certain construction projects of the Washington Suburban Sanitary Commission  
7 under certain circumstances; establishing certain criteria to govern the minority  
8 business enterprise sheltered market for certain construction projects under the  
9 WSSC; and generally relating to the establishment of a sheltered market for the  
10 award of certain construction contracts to minority business enterprises by the  
11 WSSC.

12 BY repealing and reenacting, with amendments,  
13 Article 29 - Washington Suburban Sanitary District  
14 Section 3-102  
15 Annotated Code of Maryland  
16 (1993 Replacement Volume and 1995 Supplement)

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

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

20 3-102.

21 (a) When the plans and specifications for water supply or sanitary sewerage  
22 systems for any district have been completed and the WSSC has decided, after an  
23 opportunity for a hearing has been given, to proceed with the construction, the WSSC  
24 shall advertise, by notice in newspapers and technical press as the WSSC considers  
25 proper, for bids for the construction of the system, in parts or as a whole, as the WSSC  
26 considers advisable.

27 (b) (1) The WSSC:

28 (i) Shall let the bid to the lowest responsible bidder; or

29 (ii) May reject any or all bids.

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1 (2) The WSSC:

2 (i) May readvertise the work or any part of the work if the WSSC  
3 considers that the prices quoted are unreasonable; and

4 (ii) Subject to the provisions of subsection (c) of this section, may do  
5 any part or all of the work by day labor.

6 (c) At any time the WSSC may expend \$15,000 or less by day labor for  
7 construction work without advertising or receiving bids.

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

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

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

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

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

21 (iii) Provide for minority business participation through subcontracting;

22 (iv) Permit the waiver of all or part of the provisions of the program for  
23 a specific contract if the WSSC determines that the application of the program to the  
24 contract conflicts with the WSSC's overall objectives and responsibilities; and

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

28 (4) Before accepting a certification program under paragraph (3)(ii) of this  
29 subsection, the WSSC shall examine the program to ensure that it adheres to the  
30 following guidelines:

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

35 (ii) An eligible minority business enterprise shall be an independent  
36 business. The ownership and control by minorities shall be real, substantial, and  
37 continuing and shall go beyond the pro forma ownership of the business as reflected in its  
38 ownership documents. The minority owners shall enjoy the customary incidents of  
39 ownership and shall share in the risks and profits commensurate with their ownership

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1 interests as demonstrated by an examination of the substance rather than form of  
2 arrangements. Recognition of the business as a separate entity for tax or corporate  
3 purposes is not necessarily sufficient for recognition as a minority business enterprise. In  
4 determining whether a potential minority business enterprise is an independent business,  
5 the certifying agency shall consider all relevant factors, including the date the business  
6 was established, the adequacy of its resources for the work of the contract, and the degree  
7 to which financial, equipment leasing, and other relationships with nonminority  
8 businesses vary from industry practice.

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

16 (iv) If the owners of the business who are not minorities are  
17 disproportionately responsible for the operation of the firm, the firm is not controlled by  
18 minorities and may not be considered a minority business enterprise within the meaning  
19 of this section. Where the actual management of the business is contracted out to  
20 individuals other than the owner, those persons who have the ultimate power to hire and  
21 fire the managers may, for the purposes of this section, be considered as controlling the  
22 business.

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

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

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

35 1. Newly formed businesses and businesses whose ownership or  
36 control has changed since the date of the advertisement of the contract are closely  
37 scrutinized to determine the reasons for the timing of the formation or change in the  
38 businesses;

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

1                                   3. Any relationship between a minority business enterprise and  
2 a business which is not a minority business enterprise which has an interest in the  
3 minority business enterprise is carefully reviewed to determine if the interest of the  
4 nonminority business conflicts with the ownership and control requirements of this  
5 section.

6                                   (5)(I) SUBJECT TO THE OTHER PROVISIONS OF THIS PARAGRAPH, THE  
7 WSSC SHALL ESTABLISH A SHELTERED MARKET PROGRAM IN WHICH BIDDING ON  
8 CONSTRUCTION CONTRACTS DESIGNATED BY THE WSSC AS APPROPRIATE FOR THE  
9 PROGRAM IS RESTRICTED TO CERTIFIED MINORITY BUSINESS ENTERPRISES.

10                                  (II) THE SHELTERED WORKSHOP PROGRAM UNDER THIS  
11 PARAGRAPH MAY NOT BE UTILIZED UNTIL ALL LESS RESTRICTIVE REMEDIES  
12 UNDER THIS SUBSECTION AND RACE-NEUTRAL REMEDIES SUCH AS ASSISTANCE  
13 WITH BONDING REQUIREMENTS, FINANCING, OR BIDDING PRODUCERS FOR SMALL  
14 FIRMS HAVE BEEN USED AND FOUND TO BE INEFFECTIVE.

15                                  (III) UPON THE BID OF AT LEAST THREE CERTIFIED MINORITY  
16 BUSINESS CONTRACTORS, A CONTRACT SHALL BE AWARDED UNDER THIS  
17 PARAGRAPH TO THE LOWEST OF THOSE BIDDERS. IF FEWER THAN THREE  
18 CERTIFIED MINORITY BUSINESS ENTERPRISES BID ON A CONTRACT UNDER THIS  
19 PARAGRAPH, THE PROVISIONS OF THIS PARAGRAPH DO NOT APPLY.

20                                  [(5)] (6) (i) The WSSC may conduct any impartial fact-finding study in  
21 connection with a minority business enterprise program for consistency with applicable  
22 law.

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

26                                  [(6)] (7) By September 15, 1996, the WSSC shall issue an interim report  
27 concerning the progress of the minority business enterprise program to the Montgomery  
28 County and Prince George's County Senate and House Delegations.

29                                  [(7)] (8) The provisions of this subsection shall be null and void and may  
30 not be enforced after July 1, 1997.

31                                  (e) All contracts may be protected by bonds, penalties, and conditions required by  
32 the WSSC, all of which are enforceable in any court that has jurisdiction.

33                                  SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 October 1, 1996.