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

Introduced and read first time: February 10, 2000  
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**  
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.

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

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

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

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

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

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

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

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

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

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

36 (iii) The minority owners shall also possess the power to direct or  
37 cause the direction of the management and policies of the business and to make the  
38 day-to-day as well as major decisions on matters of management, policy, and  
39 operations. The business may not be subject to any formal or informal restrictions,  
40 through bylaw provisions, partnership agreements, or charter requirements for  
41 cumulative voting rights or otherwise that prevent the minority owners, without the

1 cooperation or vote of any owner who is not a minority, from making a business  
2 decision of the business.

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

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

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

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

22 1. Newly formed businesses and businesses whose ownership  
23 or control has changed since the date of the advertisement of the contract are closely  
24 scrutinized to determine the reasons for the timing of the formation of or change in  
25 the businesses;

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

30 3. Any relationship between a minority business enterprise  
31 and a business which is not a minority business enterprise which has an interest in  
32 the minority business enterprise is carefully reviewed to determine if the interest of  
33 the nonminority business conflicts with the ownership and control requirements of  
34 this section.

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

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

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

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

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