
By: **Delegate Montague**

Introduced and read first time: February 11, 2000

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise**

3 FOR the purpose of extending the termination date for certain provisions of State
4 procurement law relating to minority business enterprises; defining a minority
5 business enterprise, for purposes of the State procurement laws, to include a
6 nonprofit entity that is organized to provide services to individuals who, because
7 they have income levels at, near, or below the federal poverty level, qualify for
8 certain State assistance or benefit programs; providing for the severability of
9 this Act; requiring the continuation of a certain study of the State Minority
10 Business Enterprise Program; requiring a certain report on a certain date; and
11 generally relating to minority business enterprises and State procurement law.

12 BY repealing and reenacting, with amendments,
13 Article - State Finance and Procurement
14 Section 14-301 and 14-309
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1999 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - State Finance and Procurement
19 Section 14-302 through 14-305
20 Annotated Code of Maryland
21 (1995 Replacement Volume and 1999 Supplement)

22 BY repealing and reenacting, with amendments,
23 Chapter 116 of the Acts of the General Assembly of 1995
24 Section 2

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

1 **Article - State Finance and Procurement**

2 14-301.

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

4 (b) "Certification" means the determination that a legal entity is a minority
5 business enterprise for the purposes of this subtitle.6 (c) "Certification agency" means the agency designated by the Board of Public
7 Works under § 14-303(b) of this subtitle to certify and decertify minority business
8 enterprises.9 (d) "Certified minority business enterprise" means a minority business
10 enterprise that holds a certification.11 (e) (1) "Minority business enterprise" means any legal entity, except a joint
12 venture, that is:

13 (i) organized to engage in commercial transactions; and

14 (ii) at least 51% owned and controlled by 1 or more individuals who
15 are members of a group that is disadvantaged socially or economically, including:

16 1. African Americans;

17 2. American Indians;

18 3. Asians;

19 4. Hispanics;

20 5. women; or

21 6. physically or mentally disabled individuals.

22 (2) "Minority business enterprise" includes a not for profit entity THAT IS
23 organized to:24 (I) promote the interests of physically or mentally disabled
25 individuals; OR26 (II) PROVIDE SERVICES TO INDIVIDUALS WHO, BECAUSE THEY
27 HAVE INCOME LEVELS AT, NEAR, OR BELOW THE FEDERAL POVERTY LEVEL,
28 QUALIFY FOR ASSISTANCE OR BENEFITS UNDER ARTICLES 83B OR 88A OF THE CODE
29 OR TITLE 15, SUBTITLE 1 OF THE HEALTH - GENERAL ARTICLE.

30 14-302.

31 (a) (1) Except for leases of real property and except as provided in
32 paragraphs (2) and (3) of this subsection, each unit shall structure procurement

1 procedures, consistent with the purposes of this subtitle, to try to achieve the result
2 that a minimum of 14% of the unit's total dollar value of procurement contracts is
3 made directly or indirectly from certified minority business enterprises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 14-303.

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

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

17 (b) These regulations shall include:

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

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

24 (i) the potential subcontract opportunities available in the prime
25 procurement contract; and

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

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

30 (4) provisions to ensure the uniformity of requests for bids on
31 subcontracts;

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

34 (6) provisions designed to ensure that a fiscal disadvantage to the State
35 does not result from an inadequate response by minority business enterprises to a
36 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) of this subtitle, provisions relating to
5 any circumstances under which a unit may waive obligations of the contractor
6 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.

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 approved by the Board.

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

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

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

23 14-309.

24 The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations
25 adopted under those sections, shall be of no effect and may not be enforced after July
26 1, [2000] 2005.

27

Chapter 116 of the Acts of 1995

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
29 in consultation with the General Assembly, shall [initiate a] CONTINUE TO study
30 [of] the Minority Business Enterprise Program to evaluate the Program's continued
31 compliance with the Croson decision and any subsequent federal or constitutional
32 requirements. The study shall also evaluate race neutral programs and other
33 methods that can be used to address the needs of minority businesses. The [final]
34 NEXT report on the study shall be submitted to the Legislative Policy Committee of
35 the General Assembly prior to September 30, [1999] 2004, so that the General
36 Assembly may review the report prior to the [2000] 2005 Session.

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

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 July 1, 2000. It shall remain effective for a period of 5 years and, at the end of June
9 30, 2005, with no further action required by the General Assembly, this Act shall be
10 abrogated and of no further force and effect.