

SENATE BILL 808

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P2

2000 Regular Session  
0lr2742

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By: **Senators Conway, Lawlah, Blount, Mitchell, Exum, Hughes, McFadden,  
Currie, and Kelley**

Introduced and read first time: February 14, 2000

Assigned to: Rules

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A BILL ENTITLED

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; requiring a unit of State government to try to ensure  
9 that a certain percentage of a certain minority business enterprise goal is made  
10 by specified categories of minority business enterprises; requiring a unit of State  
11 government to structure certain procurement procedures; requiring a unit of  
12 State government to divide a certain percentage goal that is not met by a  
13 specified category of minority business enterprise by the number of certain  
14 remaining categories of minority business enterprise for addition to the goals of  
15 certain remaining categories of minority business enterprise; continuing until a  
16 certain date certain provisions of the State Procurement Law relating to  
17 procurement from minority businesses; requiring a certain study and the  
18 issuance of a certain report by a certain date; and generally relating to minority  
19 business participation in State procurement.

20 BY repealing and reenacting, with amendments,  
21 Article - State Finance and Procurement  
22 Section 13-304(b), 13-310(d), 14-302, and 14-309  
23 Annotated Code of Maryland  
24 (1995 Replacement Volume and 1999 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Chapter 116 of the Acts of the General Assembly of 1995  
27 Section 2

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

1 **Article - State Finance and Procurement**

2 13-304.

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

9 13-310.

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

13 14-302.

14 (a) (1) Except for leases of real property and except as provided in  
15 paragraphs (2) and (3) of this subsection, each unit shall structure procurement  
16 procedures, consistent with the purposes of this subtitle, to try to achieve the result  
17 that a minimum of [14%] 30% of the unit's total dollar value of procurement contracts  
18 is made directly or indirectly from certified minority business enterprises IN  
19 ACCORDANCE WITH THIS SECTION.

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

22 (i) structure procurement procedures, consistent with the purposes  
23 of this subtitle, to try to achieve the result that a minimum of [14%] 30% of the unit's  
24 total dollar value of construction contracts is made directly or indirectly from certified  
25 minority business enterprises; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                          (I)      AFRICAN AMERICANS;

26                          (II)     AMERICAN INDIANS;

27                          (III)    ASIANS;

28                          (IV)    HISPANICS;

29                          (V)     WOMEN; OR

30                          (VI)    PHYSICALLY OR MENTALLY DISABLED INDIVIDUALS.

31                          (2)     EACH UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES TO  
32 ACHIEVE THE RESULTS IN THIS SUBSECTION AND SHALL INCLUDE A MEANS FOR A  
33 CERTIFIED MINORITY BUSINESS ENTERPRISE TO WAIVE PARTICIPATION IN A  
34 PROCUREMENT CONTRACT AND FOR A CONTRACTOR TO DEMONSTRATE THAT NO  
35 CERTIFIED MINORITY BUSINESS ENTERPRISES IN ONE OF THE CATEGORIES LISTED

1 IN PARAGRAPH (1) OF THIS SUBSECTION ARE AVAILABLE OR ABLE TO MEET  
2 REQUIREMENTS OF A CONTRACT.

3 (3) IF A UNIT DETERMINES NO CERTIFIED MINORITY BUSINESS  
4 ENTERPRISE IN ONE OF THE CATEGORIES LISTED IN PARAGRAPH (1) OF THIS  
5 SUBSECTION IS AVAILABLE OR ABLE TO PARTICIPATE IN A PROCUREMENT  
6 CONTRACT, THE 5% GOAL ESTABLISHED UNDER THIS SUBSECTION FOR THAT  
7 CATEGORY OF CERTIFIED MINORITY BUSINESS ENTERPRISE SHALL BE DIVIDED BY  
8 THE NUMBER OF REMAINING CATEGORIES OF CERTIFIED MINORITY BUSINESS  
9 ENTERPRISE LISTED IN PARAGRAPH (1) OF THIS SUBSECTION AND SHALL BE ADDED  
10 TO THE GOAL FOR EACH REMAINING CATEGORY OF CERTIFIED MINORITY BUSINESS  
11 ENTERPRISE.

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

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

17 14-309.

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

21

#### **Chapter 116 of the Acts of 1995**

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,  
23 in consultation with the General Assembly, shall initiate a study of the Minority  
24 Business Enterprise Program to evaluate the Program's continued compliance with  
25 the requirements of the Croson decision and any subsequent federal or constitutional  
26 requirements. The study shall also evaluate race neutral programs and other  
27 methods that can be used to address the needs of minority businesses. The final  
28 report on the study shall be submitted to the Legislative Policy Committee of the  
29 General Assembly prior to September 30, [1999] 2000 so that the General Assembly  
30 may review the report prior to the [2000] 2001 Session.

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