
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**

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Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 13, 2001

CHAPTER _____

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
12 offeror to provide certain information; requiring the Board of Public Works to
13 adopt regulations under certain circumstances; altering certain reporting
14 requirements; requiring ~~a certain study~~ studies and the issuance of ~~a certain~~
15 ~~report reports~~ by a certain date dates; making provisions of this Act severable;
16 and generally relating to minority business participation in State procurement.

17 BY repealing and reenacting, with amendments,
18 Article - State Finance and Procurement
19 Section 14-301, 14-302, 14-303, 14-305, and 14-309
20 Annotated Code of Maryland

1 (1995 Replacement Volume and 2000 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article - State Finance and Procurement
4 Section 14-304, 14-307, and 14-308
5 Annotated Code of Maryland
6 (1995 Replacement Volume and 2000 Supplement)

7 BY repealing and reenacting, with amendments,
8 Chapter 116 of the Acts of the General Assembly of 1995, as amended by
9 Chapters 495 and 496 of the Acts of the General Assembly of 2000
10 Section 2

11 Preamble

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

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

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

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

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

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

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

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

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

10 **Article - State Finance and Procurement**

11 14-301.

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

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

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

18 (d) "Certified minority business enterprise" means a minority business
19 enterprise that holds a certification.

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

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

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

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

31 1. African Americans;

32 2. American Indians;

33 3. Asians;

34 4. Hispanics;

1 5. women; or

2 6. physically or mentally disabled individuals]; AND

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

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

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

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

14 ~~(2)~~ (3) "PERSONAL NET WORTH" DOES NOT INCLUDE:

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

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

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

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

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

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

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

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

31 2. AMERICAN INDIAN/NATIVE AMERICAN - AN INDIVIDUAL
32 HAVING ORIGINS IN ANY OF THE ORIGINAL PEOPLES OF NORTH AMERICA AND WHO
33 IS A DOCUMENTED MEMBER OF A NORTH AMERICAN TRIBE, BAND, OR OTHERWISE
34 HAS A SPECIAL RELATIONSHIP WITH THE UNITED STATES OR A STATE THROUGH
35 TREATY, AGREEMENT, OR SOME OTHER FORM OF RECOGNITION. THIS INCLUDES AN
36 INDIVIDUAL WHO CLAIMS TO BE AN AMERICAN INDIAN/NATIVE AMERICAN AND WHO

1 IS REGARDED AS SUCH BY THE AMERICAN INDIAN/NATIVE AMERICAN COMMUNITY
 2 OF WHICH THE INDIVIDUAL CLAIMS TO BE A PART, BUT DOES NOT INCLUDE AN
 3 INDIVIDUAL OF ESKIMO OR ALEUTIAN ORIGIN;

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

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

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

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

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

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

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

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

31 14-302.

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

38 (I) A MINIMUM OF 7% OF THE UNIT'S TOTAL DOLLAR VALUE OF
 39 PROCUREMENT CONTRACTS IS TO BE MADE DIRECTLY OR INDIRECTLY FROM

1 CERTIFIED MINORITY BUSINESS ENTERPRISES CLASSIFIED BY THE CERTIFICATION
2 AGENCY AS AFRICAN AMERICAN-OWNED BUSINESSES;

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

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

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

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

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

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

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

27 (ii) THE UNIT SHALL:

28 1. consider the practical severability of the construction
29 projects; AND

30 2. IMPLEMENT A PROGRAM THAT WILL ENABLE THE UNIT
31 TO EVALUATE EACH CONTRACT TO DETERMINE THE APPROPRIATENESS OF THE
32 GOAL.

33 (3) With respect to the Maryland Department of Transportation, the
34 provisions of paragraph (2)(i) of this subsection shall apply only to construction
35 contracts in excess of \$50,000.

36 (4) EACH UNIT SHALL MEET THE MAXIMUM FEASIBLE PORTION OF THE
37 GOALS STATED IN PARAGRAPHS (1), (2), AND (3) OF THIS SUBSECTION BY USING

1 RACE-NEUTRAL MEASURES TO FACILITATE MINORITY BUSINESS ENTERPRISE
2 PARTICIPATION IN THE PROCUREMENT PROCESS.

3 (5) To achieve the result specified in paragraph (1) or (2) of this
4 subsection, a contractor, INCLUDING A CONTRACTOR THAT IS A CERTIFIED MINORITY
5 BUSINESS ENTERPRISE, shall:

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

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

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

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

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

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

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

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

23 [(5)] (6) (i) The unit shall make a finding whether the contractor
24 complied, in good faith, with paragraph [(4)] (5) of this subsection.

25 (ii) If the unit finds the contractor complied with paragraph [(4)]
26 (5) of this subsection, the unit may not require the contractor to renegotiate any
27 subcontract in order to achieve a different result.

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

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

1 14-303.

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

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

9 (b) These regulations shall include:

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

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

16 (i) the potential subcontract opportunities available in the prime
17 procurement contract; and

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

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

22 (4) provisions to ensure the uniformity of requests for bids on
23 subcontracts;

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

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

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

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

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

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

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

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

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

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

21 14-304.

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

25 (1) subpoena witnesses;

26 (2) administer oaths; and

27 (3) compel the production of records, books, papers, and other
28 documents.

29 (b) If a person fails to comply with a subpoena issued under subsection (a) of
30 this section, or fails to produce documents or other evidence, on petition of the
31 certification agency, a court of competent jurisdiction may pass an order directing
32 compliance with the subpoena or compelling the production of documents or other
33 evidence.

34 14-305.

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

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

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

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

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

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

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

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

20 14-307.

21 The Legislative Policy Committee shall direct at least 1 standing committee of
22 the House of Delegates and at least 1 standing committee of the State Senate to
23 review annually the performance of units as reported under § 14-305 of this subtitle.
24 14-308.

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

26 (i) fraudulently obtain, hold, or attempt to obtain or hold
27 certification;

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

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

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

1 (v) in any minority business enterprise matter administered under
2 this subtitle:

- 3 1. willfully falsify, conceal, or cover up a material fact by any
4 scheme or device;
- 5 2. make a false or fraudulent statement or representation; or
- 6 3. use a false writing or document that the person knows to
7 contain a false or fraudulent statement or entry.

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

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

13 (2) A person who violates this subsection is guilty of a misdemeanor and
14 on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding
15 1 year or both.

16 14-309.

17 The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations
18 adopted under those sections, shall be of no effect and may not be enforced after July
19 1, [2002] 2006.

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
23 in consultation with the General Assembly and the Office of the Attorney General,
24 shall initiate a study of the Minority Business Enterprise Program to evaluate the
25 Program's continued compliance with the requirements of the Croson decision and
26 any subsequent federal or constitutional requirements. IN PREPARATION FOR THE
27 STUDY, THE ~~CERTIFICATION AGENCY~~ BOARD OF PUBLIC WORKS MAY ADOPT
28 REGULATIONS AUTHORIZING A UNIT OF STATE GOVERNMENT TO REQUIRE BIDDERS
29 AND OFFERORS TO SUBMIT INFORMATION NECESSARY FOR THE CONDUCT OF THE
30 STUDY. THE REGULATIONS MAY NOT REQUIRE A BIDDER OR OFFEROR TO PROVIDE
31 INFORMATION WHICH THE BIDDER OR OFFEROR REASONABLY BELIEVES TO BE A
32 TRADE SECRET, A PRIVACY RIGHT, OR A CONFIDENTIAL MARKETING OR PRICING
33 POLICY. The study shall also evaluate race neutral programs and other methods that
34 can be used to address the needs of minority businesses. [An executive summary of
35 the study shall be submitted to the Legislative Policy Committee of the General
36 Assembly by December 1, 2000.] The final report on the study shall be submitted to
37 the Legislative Policy Committee of the General Assembly prior to [January 10,
38 2001] SEPTEMBER 30, 2005 so that the General Assembly may review the report
39 [during] PRIOR TO the [2001] 2006 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 if any provision of this
8 Act is held invalid for any reason in a court of competent jurisdiction, and any
9 remaining valid portions of this Act are held to be incomplete and incapable of being
10 executed in accordance with legislative intent, the Board of Public Works shall adopt
11 regulations governing the administration of this Act, to be applied in a manner that is
12 consistent with the court's opinion.

13 SECTION 4. AND BE IT FURTHER ENACTED, That, based on a
14 recommendation of the National Economic Research Associates, which conducted a
15 study on the Utilization of Minority Business Enterprises in Maryland, the Board of
16 Public Works shall study conditions for certifying nonminority males who own a
17 business located in a qualified distressed county, as defined under Article 83A, §
18 5-701 of the Code, under the Minority Business Enterprise Program. The Board of
19 Public Works shall submit a report on the study, including its findings and
20 recommendations, to the House Commerce and Government Matters Committee and
21 the Senate Economic and Environmental Affairs Committee of the General Assembly,
22 in accordance with § 2-1246 of the State Government Article, prior to December 1,
23 2001, so that the respective committees may review the report and recommendations
24 before the 2002 Session of the General Assembly.

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