

SENATE BILL 210

Unofficial Copy
P2

2001 Regular Session
(11r0186)

ENROLLED BILL

-- Economic and Environmental Affairs/Commerce and Government Matters --

Introduced by **The President (Administration) and Senators Blount, Conway,
Currie, Exum, Hollinger, Kelley, Lawlah, Mitchell, and Teitelbaum**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

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; authorizing the Board of Public Works to designate that
12 certain information is confidential under certain circumstances; authorizing the
13 certification agency to provide certain information to certain persons for certain
14 purposes; requiring the Board of Public Works to adopt regulations under
15 certain circumstances; altering certain reporting requirements; requiring a
16 certain ~~study~~ studies and the issuance of a certain ~~report~~ reports by a certain

1 ~~date *dates*; requiring the Board of Public Works to study and report on the~~
2 ~~establishment of a certain process for creating certain incentives for achieving~~
3 ~~greater minority business participation in private sector contracts; making~~
4 provisions of this Act severable; and generally relating to minority business
5 participation in State procurement.

6 BY repealing and reenacting, with amendments,
7 Article - State Finance and Procurement
8 Section 14-301, 14-302, 14-303, 14-305, and 14-309
9 Annotated Code of Maryland
10 (1995 Replacement Volume and 2000 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article - State Finance and Procurement
13 Section 14-304, 14-307, and 14-308
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 2000 Supplement)

16 BY repealing and reenacting, with amendments,
17 Chapter 116 of the Acts of the General Assembly of 1995, as amended by
18 Chapters 495 and 496 of the Acts of the General Assembly of 2000
19 Section 2

20 Preamble

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

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

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

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

37 WHEREAS, The General Assembly finds that in the State marketplace,
38 businesses owned and controlled by African Americans, Hispanics, Asians, American

1 Indians, and women are underutilized, and this disparity taken with other evidence
2 demonstrates that this underutilization is the product of current, continuing
3 discrimination against such persons in the State marketplace;

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

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

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

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

18 **Article - State Finance and Procurement**

19 14-301.

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

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

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

26 (d) "Certified minority business enterprise" means a minority business
27 enterprise that holds a certification.

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

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

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

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

- 4 1. African Americans;
- 5 2. American Indians;
- 6 3. Asians;
- 7 4. Hispanics;
- 8 5. women; or
- 9 6. physically or mentally disabled individuals]; AND

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

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

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

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

21 ~~(2)~~ (3) "PERSONAL NET WORTH" DOES NOT INCLUDE:

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

24 (II) THE INDIVIDUAL'S EQUITY IN HIS OR HER PRIMARY PLACE OF
 25 RESIDENCE; ~~OR.~~

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

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

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

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

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

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

4 2. AMERICAN INDIAN/NATIVE AMERICAN - AN INDIVIDUAL
5 HAVING ORIGINS IN ANY OF THE ORIGINAL PEOPLES OF NORTH AMERICA AND WHO
6 IS A DOCUMENTED MEMBER OF A NORTH AMERICAN TRIBE, BAND, OR OTHERWISE
7 HAS A SPECIAL RELATIONSHIP WITH THE UNITED STATES OR A STATE THROUGH
8 TREATY, AGREEMENT, OR SOME OTHER FORM OF RECOGNITION. THIS INCLUDES AN
9 INDIVIDUAL WHO CLAIMS TO BE AN AMERICAN INDIAN/NATIVE AMERICAN AND WHO
10 IS REGARDED AS SUCH BY THE AMERICAN INDIAN/NATIVE AMERICAN COMMUNITY
11 OF WHICH THE INDIVIDUAL CLAIMS TO BE A PART, BUT DOES NOT INCLUDE AN
12 INDIVIDUAL OF ESKIMO OR ALEUTIAN ORIGIN;

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

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

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

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

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

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

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

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

1 14-302.

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

8 (I) A MINIMUM OF 7% OF THE UNIT'S TOTAL DOLLAR VALUE OF
9 PROCUREMENT CONTRACTS IS TO BE MADE DIRECTLY OR INDIRECTLY FROM
10 CERTIFIED MINORITY BUSINESS ENTERPRISES CLASSIFIED BY THE CERTIFICATION
11 AGENCY AS AFRICAN AMERICAN-OWNED BUSINESSES;

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

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

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

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

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

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

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

36 (ii) THE UNIT SHALL:

37 1. consider the practical severability of the construction
38 projects; AND

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

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

7 14-303.

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

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

15 (b) These regulations shall include:

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

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

22 (i) the potential subcontract opportunities available in the prime
23 procurement contract; and

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

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

28 (4) provisions to ensure the uniformity of requests for bids on
29 subcontracts;

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

32 (6) provisions designed to ensure that a fiscal disadvantage to the State
33 does not result from an inadequate response by minority business enterprises to a
34 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)] § 14-302(A)(5) of this subtitle,
5 provisions relating to any circumstances under which a unit may waive obligations of
6 the contractor 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 AND THE CERTIFICATION AGENCY.

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 THE CERTIFICATION AGENCY and approved by the
15 Board.

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

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

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

25 14-307.

26 The Legislative Policy Committee shall direct at least 1 standing committee of
27 the House of Delegates and at least 1 standing committee of the State Senate to
28 review annually the performance of units as reported under § 14-305 of this subtitle.
29 14-308.

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

31 (i) fraudulently obtain, hold, or attempt to obtain or hold
32 certification;

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

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

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

7 (v) in any minority business enterprise matter administered under
 8 this subtitle:

9 1. willfully falsify, conceal, or cover up a material fact by any
 10 scheme or device;

11 2. make a false or fraudulent statement or representation; or

12 3. use a false writing or document that the person knows to
 13 contain a false or fraudulent statement or entry.

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

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

19 (2) A person who violates this subsection is guilty of a misdemeanor and
 20 on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding
 21 1 year or both.

22 14-309.

23 The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations
 24 adopted under those sections, shall be of no effect and may not be enforced after July
 25 1, [2002] 2006.

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

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
 29 in consultation with the General Assembly and the Office of the Attorney General,
 30 shall initiate a study of the Minority Business Enterprise Program to evaluate the
 31 Program's continued compliance with the requirements of the Croson decision and
 32 any subsequent federal or constitutional requirements. IN PREPARATION FOR THE
 33 STUDY, THE ~~CERTIFICATION AGENCY~~ BOARD OF PUBLIC WORKS MAY ADOPT
 34 REGULATIONS AUTHORIZING A UNIT OF STATE GOVERNMENT TO REQUIRE BIDDERS
 35 AND OFFERORS TO SUBMIT INFORMATION NECESSARY FOR THE CONDUCT OF THE
 36 STUDY. THE BOARD OF PUBLIC WORKS MAY DESIGNATE THAT CERTAIN
 37 INFORMATION RECEIVED IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER
 38 THIS SECTION SHALL BE CONFIDENTIAL. NOTWITHSTANDING THAT CERTAIN

1 INFORMATION MAY BE DESIGNATED BY THE BOARD OF PUBLIC WORKS AS
2 CONFIDENTIAL, THE CERTIFICATION AGENCY MAY PROVIDE THE INFORMATION TO
3 ANY PERSON THAT IS UNDER CONTRACT WITH THE CERTIFICATION AGENCY TO
4 ASSIST IN CONDUCTING THE STUDY. The study shall also evaluate race neutral
5 programs and other methods that can be used to address the needs of minority
6 businesses. [An executive summary of the study shall be submitted to the Legislative
7 Policy Committee of the General Assembly by December 1, 2000.] The final report on
8 the study shall be submitted to the Legislative Policy Committee of the General
9 Assembly prior to [January 10, 2001] SEPTEMBER 30, 2005 so that the General
10 Assembly may review the report [during] PRIOR TO the [2001] 2006 Session.

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

17 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
18 Act is held invalid for any reason in a court of competent jurisdiction, and any
19 remaining valid portions of this Act are held to be incomplete and incapable of being
20 executed in accordance with legislative intent, the Board of Public Works shall adopt
21 regulations governing the administration of this Act, to be applied in a manner that is
22 consistent with the court's opinion.

23 SECTION 4. AND BE IT FURTHER ENACTED, That, based on a
24 recommendation of the National Economic Research Associates, which conducted a
25 study on the Utilization of Minority Business Enterprises in Maryland, the Board of
26 Public Works shall study conditions for certifying nonminority males who own a
27 business located in a qualified distressed county, as defined under Article 83A, § 5-701
28 of the Code, under the Minority Business Enterprise Program. The Board of Public
29 Works shall submit a report on the study, including its findings and recommendations,
30 to the House Commerce and Government Matters Committee and the Senate Economic
31 and Environmental Affairs Committee of the General Assembly, in accordance with §
32 2-1246 of the State Government Article, prior to December 1, 2001, so that the
33 respective committees may review the report and recommendations before the 2002
34 Session of the General Assembly.

35 ~~SECTION 4.~~ 5. AND BE IT FURTHER ENACTED, That for the purpose of
36 creating incentives for achieving greater minority business participation in
37 private-sector contracts, the Board of Public Works shall study establishing a process
38 for awarding credits or points in the award of State procurement contracts for the
39 achievement of minority business participation in a prime contractor's private-sector
40 projects that do not have minority business goals or requirements. The Board of
41 Public Works shall submit a report on the study, including its findings and
42 recommendations, to the Legislative Policy Committee prior to December 1, 2001 so
43 that the General Assembly may review the report and recommendations before the
44 2002 Session.

1 SECTION 4. ~~5. 6.~~ AND BE IT FURTHER ENACTED, That this Act shall take
2 effect July 1, 2001.