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By: **Delegates Glassman and Edwards**  
Introduced and read first time: February 8, 2002  
Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Procurement - Minority Business Preference - Socially and Economically**  
3                                   **Disadvantaged Individuals**

4 FOR the purpose of altering the criteria for certification as a minority business  
5 enterprise by including certain individuals in a certain definition; requiring the  
6 Board of Public Works to adopt certain regulations that include certain  
7 provisions for determining that an individual is socially and economically  
8 disadvantaged; and generally relating to the certification of socially and  
9 economically disadvantaged individuals.

10 BY repealing and reenacting, with amendments,  
11 Article - State Finance and Procurement  
12 Section 14-301 and 14-303  
13 Annotated Code of Maryland  
14 (2001 Replacement Volume)

15 BY repealing and reenacting, without amendments,  
16 Article - State Finance and Procurement  
17 Section 14-302  
18 Annotated Code of Maryland  
19 (2001 Replacement Volume)

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

22                                   **Article - State Finance and Procurement**

23 14-301.

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

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

1 (c) "Certification agency" means the agency designated by the Board of Public  
2 Works under § 14-303(b) of this subtitle to certify and decertify minority business  
3 enterprises AND TO DETERMINE SOCIALLY AND ECONOMICALLY DISADVANTAGED  
4 INDIVIDUALS.

5 (d) "Certified minority business enterprise" means a minority business  
6 enterprise that holds a certification.

7 (e) "Economically disadvantaged individual" means a socially disadvantaged  
8 individual whose ability to compete in the free enterprise system has been impaired  
9 due to diminished capital and credit opportunities as compared to others in the same  
10 or similar line of business who are not socially disadvantaged.

11 (f) (1) "Minority business enterprise" means any legal entity, except a joint  
12 venture, that is:

13 (i) organized to engage in commercial transactions;

14 (ii) at least 51% owned and controlled by 1 or more individuals who  
15 are socially and economically disadvantaged; and

16 (iii) managed by, and the daily business operations of which are  
17 controlled by, one or more of the socially and economically disadvantaged individuals  
18 who own it.

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

21 (g) (1) Subject to paragraphs (2) and (3) of this subsection, "personal net  
22 worth" means the net value of the assets of an individual remaining after total  
23 liabilities are deducted.

24 (2) "Personal net worth" includes the individual's share of assets held  
25 jointly or as community property with the individual's spouse.

26 (3) "Personal net worth" does not include:

27 (i) the individual's ownership interest in the applicant or a  
28 certified minority business enterprise; or

29 (ii) the individual's equity in his or her primary place of residence.

30 (h) "Race-neutral measure" means a method that is or can be used to assist all  
31 small businesses.

32 (i) (1) Subject to paragraphs (2) and (3) of this subsection, "socially and  
33 economically disadvantaged individual" means a citizen or lawfully admitted  
34 permanent resident of the United States who is:

35 (i) in any of the following minority groups:



1 (3) AN INDIVIDUAL WHO HAS SUFFERED SOCIAL DISADVANTAGE DUE  
2 TO CAUSES NOT COMMON TO INDIVIDUALS WHO ARE NOT SOCIALLY  
3 DISADVANTAGED.

4 14-302.

5 (a) (1) Except for leases of real property and except as provided in  
6 paragraphs (2) and (3) of this subsection, each unit shall structure procurement  
7 procedures, consistent with the purposes of this subtitle, to try to achieve the  
8 following results:

9 (i) a minimum of 7% of the unit's total dollar value of procurement  
10 contracts is to be made directly or indirectly from certified minority business  
11 enterprises classified by the certification agency as African American-owned  
12 businesses;

13 (ii) a minimum of 10% of the unit's total dollar value of  
14 procurement contracts is to be made directly or indirectly from certified minority  
15 business enterprises classified by the certification agency as women-owned  
16 businesses; and

17 (iii) an overall minimum of 25% of the unit's total dollar value of  
18 procurement contracts is to be made directly or indirectly from all certified minority  
19 business enterprises.

20 (2) (i) Except as provided in paragraph (3) of this subsection, in  
21 procurement for construction, each unit shall structure procurement procedures,  
22 consistent with the purposes of this subtitle, to try to achieve the following results:

23 1. a minimum of 7% of the unit's total dollar value of  
24 construction contracts is to be made directly or indirectly from certified minority  
25 business enterprises classified by the certification agency as African  
26 American-owned businesses;

27 2. a minimum of 10% of the unit's total dollar value of  
28 construction contracts is to be made directly or indirectly from certified minority  
29 business enterprises classified by the certification agency as women-owned  
30 businesses; and

31 3. an overall minimum of 25% of the unit's total dollar value  
32 of construction contracts is to be made directly or indirectly from all certified minority  
33 business enterprises.

34 (ii) The unit shall:

35 1. consider the practical severability of the construction  
36 projects; and

37 2. implement a program that will enable the unit to evaluate  
38 each contract to determine the appropriateness of the goal.

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

4           (4)     Each unit shall meet the maximum feasible portion of the goals  
5 stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral  
6 measures to facilitate minority business enterprise participation in the procurement  
7 process.

8           (5)     To achieve the result specified in paragraph (1) or (2) of this  
9 subsection, a contractor, including a contractor that is a certified minority business  
10 enterprise, shall:

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

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

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

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

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

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

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

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

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

30                   (ii)    If the unit finds the contractor complied with paragraph (5) of  
31 this subsection, the unit may not require the contractor to renegotiate any  
32 subcontract in order to achieve a different result.

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

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

3 14-303.

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

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

11 (b) These regulations shall include:

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

15 (2) PROVISIONS ESTABLISHING THE ELEMENTS NEEDED FOR A  
16 DETERMINATION THAT AN INDIVIDUAL, NOT PRESUMED UNDER § 14-301 OF THIS  
17 ARTICLE TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED, IS SOCIALLY AND  
18 ECONOMICALLY DISADVANTAGED, INCLUDING THE FOLLOWING:

19 (I) 1. LONG-TERM RESIDENCE IN AN ENVIRONMENT ISOLATED  
20 FROM THE MAINSTREAM OF AMERICAN SOCIETY; OR

21 2. OTHER SIMILAR CAUSE NOT COMMON TO INDIVIDUALS  
22 WHO ARE NOT SOCIALLY DISADVANTAGED;

23 (II) PERSONAL EXPERIENCES OF SUBSTANTIAL AND CHRONIC  
24 SOCIAL DISADVANTAGE IN AMERICAN SOCIETY; AND

25 (III) NEGATIVE IMPACT ON ENTRY OR ADVANCEMENT IN THE  
26 BUSINESS WORLD BECAUSE OF THE DISADVANTAGE, INCLUDING:

27 1. DENIAL OF EQUAL ACCESS TO INSTITUTIONS OF HIGHER  
28 EDUCATION AND VOCATIONAL TRAINING;

29 2. UNEQUAL TREATMENT IN HIRING, PROMOTIONS, AND  
30 OTHER ASPECTS OF PROFESSIONAL ADVANCEMENT; AND

31 3. UNEQUAL ACCESS TO CREDIT OR CAPITAL;

32 (3) ESTABLISHING THE ELEMENTS NEEDED FOR A DETERMINATION  
33 THAT AN INDIVIDUAL IS ECONOMICALLY DISADVANTAGED INCLUDING  
34 REQUIREMENTS THAT INDIVIDUALS CLAIMING ECONOMIC DISADVANTAGE SUBMIT  
35 PERSONAL STATEMENTS OF NET WORTH;

1            [(2)]    (4)    a requirement that the solicitation document accompanying  
2 each solicitation set forth the expected degree of minority business enterprise  
3 participation based, in part, on:

4                    (i)        the potential subcontract opportunities available in the prime  
5 procurement contract; and

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

8            [(3)]    (5)    a requirement that the unit provide a current list of certified  
9 minority business enterprises to each prospective contractor;

10           [(4)]    (6)    provisions to ensure the uniformity of requests for bids on  
11 subcontracts;

12           [(5)]    (7)    provisions relating to the timing of requests for bids on  
13 subcontracts and of submission of bids on subcontracts;

14           [(6)]    (8)    provisions designed to ensure that a fiscal disadvantage to the  
15 State does not result from an inadequate response by minority business enterprises to  
16 a request for bids;

17           [(7)]    (9)    provisions relating to joint ventures, under which a bidder may  
18 count toward meeting its minority business enterprise participation goal, the  
19 minority business enterprise portion of the joint venture;

20           [(8)]    (10)   consistent with § 14-302(a)(5) of this subtitle, provisions  
21 relating to any circumstances under which a unit may waive obligations of the  
22 contractor relating to minority business enterprise participation;

23           [(9)]    (11)   provisions requiring a monthly submission to the unit by  
24 minority business enterprises acknowledging all payments received in the preceding  
25 30 days under a contract governed by this subtitle;

26           [(10)]   (12)   a requirement that a unit shall verify and maintain data  
27 concerning payments received by minority business enterprises, including a  
28 requirement that, upon completion of a project, the unit shall compare the total dollar  
29 value actually received by minority business enterprises with the amount of contract  
30 dollars initially awarded, and an explanation of any discrepancies therein;

31           [(11)]   (13)   a requirement that a unit verify that minority business  
32 enterprises listed in a successful bid are actually participating to the extent listed in  
33 the project for which the bid was submitted;

34           [(12)]   (14)   provisions establishing a graduation program based on the  
35 financial viability of the minority business enterprise, using annual gross receipts or  
36 other economic indicators as may be determined by the Board; and

1            [(13)]    (15)    other provisions that the Board considers necessary or  
2 appropriate to encourage participation by minority business enterprises and to  
3 protect the integrity of the procurement process.

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

7            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2002.