

HOUSE BILL 1109

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P2

2003 Regular Session
(31r2549)

ENROLLED BILL

-- Health and Government Operations/Education, Health, and
Environmental Affairs --

Introduced by Delegates Patterson, Murray, Taylor, Benson, Bobo, Branch,
Burns, C. Davis, D. Davis, Fulton, Griffith, Healey, Heller, Hixson,
Holmes, Howard, Hubbard, Jones, Marriott, Menes, ~~Murray~~, Niemann,
Oaks, Proctor, Ramirez, Rawlings, Ross, F. Turner, ~~and Vaughn Vaughn~~,
Hurson, Hammen, Bates, Boutin, Bromwell, Costa, Donoghue, Elliott,
Goldwater, Haynes, Mandel, McDonough, Morhaim, Nathan-Pulliam,
Pendergrass, Redmer, Rosenberg, Rudolph, Smigiel, V. Turner, and
Weldon

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.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Procurement - Minority Business Enterprises - Effect of Personal Net Worth**
3 **Requirements on Eligibility**

4 FOR the purpose of prohibiting, ~~under certain circumstances, the decertification of a~~
5 ~~minority business enterprise that is controlled to a certain extent by an~~
6 ~~individual whose personal net worth exceeds a certain dollar amount; requiring~~
7 ~~certain regulations adopted by the Board of Public Works establishing a~~
8 ~~graduation program for minority business enterprises to take into account a~~
9 ~~certain prohibition on decertification under certain circumstances~~ providing for

1 ~~the continued participation, in certain program and contract goals, under~~
 2 ~~certain contracts of certain minority business enterprises that are controlled~~
 3 ~~owned by individuals whose personal net worth exceeds a certain dollar amount~~
 4 ~~and counting that continued participation toward certain program and contract~~
 5 ~~goals; requiring the certification agency to conduct a certain study and to submit~~
 6 ~~a certain report on or before a certain date; providing for the application of this~~
 7 ~~Act; and generally relating to minority business enterprises.~~

8 BY repealing and reenacting, ~~with~~ without amendments,
 9 Article - State Finance and Procurement
 10 Section 14-301(i) and 14-303(b)(12)
 11 Annotated Code of Maryland
 12 (2001 Replacement Volume and 2002 Supplement)

13 BY adding to
 14 Article - State Finance and Procurement
 15 Section 14-302(a)(7)
 16 Annotated Code of Maryland
 17 (2001 Replacement Volume and 2002 Supplement)

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

20 **Article - State Finance and Procurement**

21 14-301.

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

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

26 1. African American - an individual having origins in any of
 27 the black racial groups of Africa;

28 2. American Indian/Native American - an individual having
 29 origins in any of the original peoples of North America and who is a documented
 30 member of a North American tribe, band, or otherwise has a special relationship with
 31 the United States or a state through treaty, agreement, or some other form of
 32 recognition. This includes an individual who claims to be an American Indian/Native
 33 American and who is regarded as such by the American Indian/Native American
 34 community of which the individual claims to be a part, but does not include an
 35 individual of Eskimo or Aleutian origin;

36 3. Asian - an individual having origins in the Far East,
 37 Southeast Asia, or the Indian subcontinent, and who is regarded as such by the
 38 community of which the person claims to be a part;

1 4. Hispanic - an individual of Mexican, Puerto Rican, Cuban,
2 Central or South American, or other Spanish culture or origin, regardless of race, and
3 who is regarded as such by the community of which the person claims to be a part;

4 5. physically or mentally disabled - an individual who has an
5 impairment that substantially limits one or more major life activity, who is regarded
6 generally by the community as having such a disability, and whose disability has
7 substantially limited his or her ability to engage in competitive business; or

8 6. women - a woman, regardless of race or ethnicity, unless
9 she is also a member of an ethnic or racial minority group and elects that category in
10 lieu of the gender category; or

11 (ii) otherwise found by the certification agency to be a socially and
12 economically disadvantaged individual.

13 (2) There is a rebuttable presumption that an individual who is a
14 member of a minority group under paragraph (1)(i) of this subsection is socially and
15 economically disadvantaged.

16 (3) ~~(F) [An] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS~~
17 ~~PARAGRAPH, AN~~ An individual whose personal net worth exceeds \$750,000 may not
18 be found to be economically disadvantaged.

19 ~~(H) IF SUBSEQUENT TO CERTIFICATION OF AN ENTITY AS A~~
20 ~~MINORITY BUSINESS ENTERPRISE, AN INDIVIDUAL WHO CONTROLS AT LEAST 51% OF~~
21 ~~THE ENTITY ACCRUES A PERSONAL NET WORTH THAT EXCEEDS \$750,000, THE~~
22 ~~MINORITY BUSINESS ENTERPRISE MAY NOT BE DECERTIFIED UNTIL:~~

23 1. ~~3 YEARS AFTER THE INDIVIDUAL ACCRUES A PERSONAL~~
24 ~~NET WORTH THAT EXCEEDS \$750,000; OR~~

25 2. ~~THE EXPIRATION OF THE TERM AND ANY RENEWAL~~
26 ~~PERIOD OF ANY CONTRACT TO WHICH THE MINORITY BUSINESS ENTERPRISE IS A~~
27 ~~PARTY.~~

28 14-302.

29 (a) (7) IF, DURING THE PERFORMANCE OF A CONTRACT BY A CONTRACTOR
30 OR SUBCONTRACTOR THAT IS A CERTIFIED MINORITY BUSINESS ENTERPRISE, THE
31 CERTIFIED MINORITY BUSINESS ENTERPRISE BECOMES INELIGIBLE TO
32 PARTICIPATE IN THE MINORITY BUSINESS ENTERPRISE PROGRAM BECAUSE THE
33 OWNER OF THE MINORITY BUSINESS ENTERPRISE EXCEEDS THE PERSONAL NET
34 WORTH LIMIT SET FORTH IN § 14-301(d)(3) OF THIS SUBTITLE, THE PARTICIPATION OF
35 THAT MINORITY BUSINESS ENTERPRISE ON THAT CONTRACT SHALL CONTINUE TO
36 BE COUNTED TOWARD THE GOALS OF THE CONTRACT AND THE UNIT IF, DURING THE
37 PERFORMANCE OF A CONTRACT, A CERTIFIED MINORITY BUSINESS ENTERPRISE
38 CONTRACTOR OR SUBCONTRACTOR BECOMES INELIGIBLE TO PARTICIPATE IN THE
39 MINORITY BUSINESS ENTERPRISE PROGRAM BECAUSE ONE OR MORE OF ITS

1 OWNERS HAS A PERSONAL NET WORTH THAT EXCEEDS THE AMOUNT SPECIFIED IN §
2 14-301(I)(3) OF THIS SUBTITLE:

3 (I) THAT INELIGIBILITY ALONE MAY NOT CAUSE THE
4 TERMINATION OF THE CERTIFIED MINORITY BUSINESS ENTERPRISE'S
5 CONTRACTUAL RELATIONSHIP FOR THE REMAINDER OF THE TERM OF THE
6 CONTRACT; AND

7 (II) THE CERTIFIED MINORITY BUSINESS ENTERPRISE'S
8 PARTICIPATION UNDER THE CONTRACT SHALL CONTINUE TO BE COUNTED TOWARD
9 THE PROGRAM AND CONTRACT GOALS.

10 14-303.

11 (b) These regulations shall include:

12 (12) ~~SUBJECT TO THE REQUIREMENTS OF § 14-301(I)(3)(II) OF THIS~~
13 ~~SUBTITLE~~, provisions establishing a graduation program based on the financial
14 viability of the minority business enterprise, using annual gross receipts or other
15 economic indicators as may be determined by the Board; and

16 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be~~
17 ~~construed to apply retroactively and shall be applied to and interpreted to affect any~~
18 ~~individual or minority business enterprise of which the individual controls at least~~
19 ~~51% that would be subject to the provisions of § 14-301(i)(3) on or after July 1, 2001.~~

20 SECTION 2. AND BE IT FURTHER ENACTED, That the certification agency
21 shall:

22 (a) Conduct a study to determine whether:

23 (1) Under current economic conditions, it continues to be appropriate to
24 prohibit a finding that an individual whose personal net worth exceeds \$750,000 is
25 economically disadvantaged; and

26 (2) It is appropriate to establish a transition period of a specific duration
27 between the date on which an individual's personal net worth exceeds \$750,000 and
28 the date on which decertification occurs under the State Finance and Procurement
29 Article; and

30 (b) On or before January 1, 2004, in accordance with § 2-1246 of the State
31 Government Article, report its findings to the House Health and Government
32 Operations Committee and the Senate Education, Health, and Environmental Affairs
33 Committee.

34 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2003.

