

---

By: **Senators Jones, Britt, Currie, Exum, Lawlah, and McFadden**  
Introduced and read first time: January 31, 2003  
Assigned to: Finance and Education, Health, and Environmental Affairs

---

A BILL ENTITLED

1 AN ACT concerning

2                                   **Economic Development Loans or Grants - Minority Business Enterprise**  
3                                   **Procurement Goals**

4 FOR the purpose of requiring that a recipient of certain economic development loans  
5 or grants awarded by a public or quasi-public State agency comply with certain  
6 minority business enterprise procurement goals; requiring that certain minority  
7 business enterprise procurement goals be included in certain loan or grant  
8 agreements; expanding an existing termination provision to include certain  
9 provisions of this Act; defining a certain term; and generally relating to applying  
10 minority business enterprise procurement goals to economic development loans  
11 or grants awarded by public or quasi-public State agencies.

12 BY repealing and reenacting, without amendments,  
13 Article - State Finance and Procurement  
14 Section 14-301 through 14-305, 14-307, and 14-308  
15 Annotated Code of Maryland  
16 (2001 Replacement Volume and 2002 Supplement)

17 BY adding to  
18 Article - State Finance and Procurement  
19 Section 14-306  
20 Annotated Code of Maryland  
21 (2001 Replacement Volume and 2002 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article - State Finance and Procurement  
24 Section 14-309  
25 Annotated Code of Maryland  
26 (2001 Replacement Volume and 2002 Supplement)

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

1 **Article - State Finance and Procurement**

2 14-301.

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

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

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

9 (d) "Certified minority business enterprise" means a minority business  
10 enterprise that holds a certification.

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

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

17 (i) organized to engage in commercial transactions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (3) An individual whose personal net worth exceeds \$750,000 may not be  
36 found to be economically disadvantaged.

37 (j) "Socially disadvantaged individual" means an individual who has been  
38 subjected to racial or ethnic prejudice or cultural bias within American society

1 because of membership in a group and without regard to individual qualities. Social  
2 disadvantage must stem from circumstances beyond the control of the individual.

3 14-302.

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

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

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

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

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

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

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

33 (ii) The unit shall:

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

36 2. implement a program that will enable the unit to evaluate  
37 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)     a requirement that the solicitation document accompanying each  
16 solicitation set forth the expected degree of minority business enterprise participation  
17 based, in part, on:

18                 (i)     the potential subcontract opportunities available in the prime  
19 procurement contract; and

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

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

24           (4)     provisions to ensure the uniformity of requests for bids on  
25 subcontracts;

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

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

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

34           (8)     consistent with § 14-302(a)(5) of this subtitle, provisions relating to  
35 any circumstances under which a unit may waive obligations of the contractor  
36 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 Board.

10 (3) A report under this subsection shall be in a form prescribed by the  
11 Governor's Office of Minority Affairs and the certification agency and approved by the  
12 Board.

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

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

19 14-306.

20 (A) (1) IN THIS SECTION, "ECONOMIC DEVELOPMENT LOAN OR GRANT"  
21 MEANS A LOAN OR GRANT FOR WORKING CAPITAL, DIRECT INVESTMENT,  
22 WORKFORCE TRAINING, OR EQUITY ISSUED BY A PUBLIC OR QUASI-PUBLIC STATE  
23 AGENCY TO A BUSINESS OR NOT-FOR-PROFIT ORGANIZATION FOR THE PURPOSE OF  
24 EXPANDING OR RETAINING BUSINESS OR EMPLOYMENT OPPORTUNITIES IN THE  
25 STATE.

26 (2) "ECONOMIC DEVELOPMENT LOAN OR GRANT" INCLUDES A LOAN OR  
27 GRANT ISSUED BY OR USING FUNDING FROM:

28 (I) THE MARYLAND ECONOMIC DEVELOPMENT ASSISTANCE  
29 AUTHORITY AND FUND;

30 (II) THE ECONOMIC DEVELOPMENT OPPORTUNITIES PROGRAM  
31 FUND;

32 (III) THE MARYLAND COMPETITIVE ADVANTAGE FINANCING FUND;  
33 AND

34 (IV) THE MARYLAND SMALL BUSINESS DEVELOPMENT FINANCING  
35 AUTHORITY.

1 (B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A  
2 RECIPIENT OF AN ECONOMIC DEVELOPMENT LOAN OR GRANT AWARDED BY A  
3 PUBLIC OR QUASI-PUBLIC STATE AGENCY SHALL COMPLY WITH THE PROCUREMENT  
4 GOALS AND REQUIREMENTS FOR MINORITY BUSINESS ENTERPRISES UNDER § 14-302  
5 OF THIS SUBTITLE.

6 (2) THE PROCUREMENT GOALS AND REQUIREMENTS DESCRIBED  
7 UNDER § 14-302 OF THIS SUBTITLE SHALL BE CONTAINED IN THE AGREEMENT  
8 BETWEEN THE LOAN OR GRANT RECIPIENT AND THE PUBLIC OR QUASI-PUBLIC  
9 STATE AGENCY THAT IS AWARDED THE LOAN OR GRANT.

10 (C) AN ECONOMIC DEVELOPMENT LOAN OR GRANT THAT IS AWARDED FOR  
11 THE PURPOSE OF ACQUISITION OF LAND OR A BUILDING IS EXEMPT FROM THE  
12 REQUIREMENTS OF THIS SECTION.

13 14-307.

14 The Legislative Policy Committee shall direct at least 1 standing committee of  
15 the House of Delegates and at least 1 standing committee of the State Senate to  
16 review annually the performance of units as reported under § 14-305 of this subtitle.  
17 14-308.

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

19 (i) fraudulently obtain, hold, or attempt to obtain or hold  
20 certification;

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

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

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

29 (v) in any minority business enterprise matter administered under  
30 this subtitle:

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

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

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

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

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

6           (2)     A person who violates this subsection is guilty of a misdemeanor and  
7 on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding  
8 1 year or both.

9 14-309.

10     The provisions of §§ 14-301 through [14-305] 14-306 of this subtitle, and any  
11 regulations adopted under those sections, shall be of no effect and may not be  
12 enforced after July 1, 2006.

13     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2003.