

SENATE BILL 990

P2

8lr3455

By: **Senators Jones, Lenett, and Pugh**
Introduced and read first time: March 3, 2008
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Program – Participation by Race or Gender**

3 FOR the purpose of authorizing an African American woman-owned business to
4 participate in certain procurement contracts as either a woman-owned business
5 or an African American-owned business for certain purposes within the
6 Minority Business Enterprise Program; altering a provision relating to the
7 Department of Transportation and the application of certain requirements to
8 certain of its procurement contracts; altering a certain definition; and generally
9 relating to participation in the Minority Business Enterprise Program.

10 BY repealing and reenacting, without amendments,
11 Article – State Finance and Procurement
12 Section 11–101(e) and (m)
13 Annotated Code of Maryland
14 (2006 Replacement Volume and 2007 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – State Finance and Procurement
17 Section 14–301(i) and 14–302(a)
18 Annotated Code of Maryland
19 (2006 Replacement Volume and 2007 Supplement)

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 11–101.

24 (e) (1) “Construction” means the process of building, altering, improving,
25 or demolishing an improvement to real property.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 (2) “Construction” includes any major work necessary to repair,
2 prevent damage to, or sustain existing components of an improvement to real
3 property.

4 (3) “Construction” does not include the maintenance or routine
5 operation of an existing improvement to real property, or activities related to an
6 energy performance contract.

7 (m) (1) “Procurement” means the process of:

8 (i) leasing real or personal property as lessee; or

9 (ii) buying or otherwise obtaining supplies, services,
10 construction, construction related services, architectural services, engineering
11 services, or services provided under an energy performance contract.

12 (2) “Procurement” includes the solicitation and award of procurement
13 contracts and all phases of procurement contract administration.

14 14–301.

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

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

19 1. African American – an individual having origins in
20 any of the black racial groups of Africa;

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

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

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

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

5 6. women – a woman, regardless of race or ethnicity[,
6 unless she is also a member of an ethnic or racial minority group and elects that
7 category in lieu of the gender category]; or

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

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

13 (3) An individual whose personal net worth exceeds \$1,500,000 may
14 not be found to be economically disadvantaged.

15 14–302.

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

20 (i) a minimum of 7% of the unit’s total dollar value of
21 procurement contracts is to be made directly or indirectly from certified minority
22 business enterprises classified by the certification agency as African American–owned
23 businesses;

24 (ii) a minimum of 10% of the unit’s total dollar value of
25 procurement contracts is to be made directly or indirectly from certified minority
26 business enterprises classified by the certification agency as women–owned
27 businesses; and

28 (iii) an overall minimum of 25% of the unit’s total dollar value of
29 procurement contracts is to be made directly or indirectly from all certified minority
30 business enterprises.

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

34 1. a minimum of 7% of the unit’s total dollar value of
35 construction contracts is to be made directly or indirectly from certified minority

1 business enterprises classified by the certification agency as African American-owned
2 businesses;

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

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

10 (ii) The unit shall:

11 1. consider the practical severability of the construction
12 projects; and

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

15 (3) With respect to the Maryland Department of Transportation, the
16 provisions of paragraph (2)(i) of this subsection shall apply only to [construction]
17 **PROCUREMENT** contracts in excess of \$50,000.

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

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

24 (i) identify specific work categories appropriate for
25 subcontracting;

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

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

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

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

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

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

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

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

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

14 (7) If, during the performance of a contract, a certified minority
15 business enterprise contractor or subcontractor becomes ineligible to participate in the
16 Minority Business Enterprise Program because one or more of its owners has a
17 personal net worth that exceeds the amount specified in § 14-301(i)(3) of this subtitle:

18 (i) that ineligibility alone may not cause the termination of the
19 certified minority business enterprise's contractual relationship for the remainder of
20 the term of the contract; and

21 (ii) the certified minority business enterprise's participation
22 under the contract shall continue to be counted toward the program and contract
23 goals.

24 **(8) TO FACILITATE THE NEEDS OF A CONTRACTOR IN ACHIEVING**
25 **THE GOALS IN THIS SUBSECTION, AN AFRICAN AMERICAN WOMAN-OWNED**
26 **BUSINESS, REGARDLESS OF THE RACIAL OR GENDER CERTIFICATION, MAY**
27 **PARTICIPATE IN INDIVIDUAL PROCUREMENT CONTRACTS AS EITHER A**
28 **WOMAN-OWNED BUSINESS OR AN AFRICAN AMERICAN-OWNED BUSINESS.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2008.