

SENATE BILL 990

P2

8lr3455

By: **Senators Jones, Lenett, and Pugh**

Introduced and read first time: March 3, 2008

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, March 10, 2008

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 29, 2008

CHAPTER _____

1 AN ACT concerning

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

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

11 BY repealing and reenacting, without amendments,
12 Article – State Finance and Procurement
13 Section 11–101(e) and (m)
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2007 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – State Finance and Procurement
18 Section 14–301(i) and 14–302(a)
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2007 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 **Article – State Finance and Procurement**

2 11–101.

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

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

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

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

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

13 (ii) buying or otherwise obtaining supplies, services,
14 construction, construction related services, architectural services, engineering
15 services, or services provided under an energy performance contract.

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

18 14–301.

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

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

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

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

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

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

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

12 6. women – a woman, regardless of race or ethnicity[,
13 unless she is also a member of an ethnic or racial minority group and elects that
14 category in lieu of the gender category], **BUT IF SHE IS ALSO A MEMBER OF AN**
15 **ETHNIC OR RACIAL MINORITY GROUP, A WOMAN MAY BE CERTIFIED IN THAT**
16 **CATEGORY IN ADDITION TO THE GENDER CATEGORY**; or

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

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

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

24 14–302.

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

29 (i) a minimum of 7% of the unit's total dollar value of
30 procurement contracts is to be made directly or indirectly from certified minority
31 business enterprises classified by the certification agency as African American–owned
32 businesses;

33 (ii) a minimum of 10% of the unit's total dollar value of
34 procurement contracts is to be made directly or indirectly from certified minority
35 business enterprises classified by the certification agency as women–owned
36 businesses; and

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

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

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

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

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

18 (ii) The unit shall:

19 1. consider the practical severability of the construction
20 projects; and

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

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

26 **(4) (I) FOR PURPOSES OF ACHIEVING THE GOALS IN THIS**
27 **SUBSECTION, A CERTIFIED MINORITY BUSINESS ENTERPRISE MAY PARTICIPATE**
28 **IN A PROCUREMENT CONTRACT AND BE COUNTED AS A WOMAN-OWNED**
29 **BUSINESS, OR AS A BUSINESS OWNED BY A MEMBER OF AN ETHNIC OR RACIAL**
30 **GROUP, BUT NOT BOTH, IF THE BUSINESS HAS BEEN CERTIFIED IN BOTH**
31 **CATEGORIES.**

32 **(II) THE SPECIFIC CATEGORY USED FOR PARTICIPATION AS**
33 **A CERTIFIED MINORITY BUSINESS ENTERPRISE UNDER SUBPARAGRAPH (I) OF**
34 **THIS PARAGRAPH MUST BE IDENTIFIED AT THE TIME THE BID OR PROPOSAL IS**
35 **SUBMITTED TO THE PROCURING AGENCY.**

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

4 ~~(5)~~ **(6)** To achieve the result specified in paragraph (1) or (2) of this
5 subsection, a contractor, including a contractor that is a certified minority business
6 enterprise, shall:

7 (i) identify specific work categories appropriate for
8 subcontracting;

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

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

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

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

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

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

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

25 ~~(6)~~ **(7)** (i) The unit shall make a finding whether the contractor
26 complied, in good faith, with paragraph ~~(5)~~ **(6)** of this subsection.

27 (ii) If the unit finds the contractor complied with paragraph ~~(5)~~
28 **(6)** of this subsection, the unit may not require the contractor to renegotiate any
29 subcontract in order to achieve a different result.

30 ~~(7)~~ **(8)** If, during the performance of a contract, a certified minority
31 business enterprise contractor or subcontractor becomes ineligible to participate in the
32 Minority Business Enterprise Program because one or more of its owners has a
33 personal net worth that exceeds the amount specified in § 14-301(i)(3) of this subtitle:

1 (i) that ineligibility alone may not cause the termination of the
2 certified minority business enterprise’s contractual relationship for the remainder of
3 the term of the contract; and

4 (ii) the certified minority business enterprise’s participation
5 under the contract shall continue to be counted toward the program and contract
6 goals.

7 ~~(8) TO FACILITATE THE NEEDS OF A CONTRACTOR IN ACHIEVING~~
8 ~~THE GOALS IN THIS SUBSECTION, AN AFRICAN AMERICAN WOMAN OWNED~~
9 ~~BUSINESS, REGARDLESS OF THE RACIAL OR GENDER CERTIFICATION, MAY~~
10 ~~PARTICIPATE IN INDIVIDUAL PROCUREMENT CONTRACTS AS EITHER A~~
11 ~~WOMAN OWNED BUSINESS OR AN AFRICAN AMERICAN OWNED BUSINESS.~~

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.