

SENATE BILL 211

P2
SB 990/08 – EHE

9lr1496

By: **Senators Pugh, Currie, Exum, Forehand, Lenett, McFadden, Muse, and Peters**

Introduced and read first time: January 23, 2009

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of authorizing a woman–owned business to participate in certain
4 procurement contracts as either a woman–owned business or a business owned
5 by a member of an ethnic or racial minority group for certain purposes within
6 the 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 2008 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 2008 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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (e) (1) "Construction" means the process of building, altering, improving,
2 or demolishing an improvement to real property.

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

6 (3) "Construction" does not include the maintenance or routine
7 operation of an existing improvement to real property, or activities related to an
8 energy performance contract.

9 (m) (1) "Procurement" means the process of:

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

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

14 (2) "Procurement" includes the solicitation and award of procurement
15 contracts and all phases of procurement contract administration.

16 14-301.

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

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

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

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

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

34 4. Hispanic – an individual of Mexican, Puerto Rican,
35 Cuban, Central or South American, or other Spanish culture or origin, regardless of

1 race, and who is regarded as such by the community of which the person claims to be a
2 part;

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

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

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

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

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

19 14–302.

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

24 (i) a minimum of 7% 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 African American–owned
27 businesses;

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

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

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

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

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

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

15 (ii) The unit shall:

16 1. consider the practical severability of the construction
17 projects; and

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

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

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

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

33 **[(4)] (5)** Each unit shall meet the maximum feasible portion of the
34 goals stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral
35 measures to facilitate minority business enterprise participation in the procurement
36 process.

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

4 (i) identify specific work categories appropriate for
5 subcontracting;

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

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

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

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

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

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

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

22 **[(6)] (7)** (i) The unit shall make a finding whether the contractor
23 complied, in good faith, with paragraph **[(5)] (6)** of this subsection.

24 (ii) If the unit finds the contractor complied with paragraph
25 **[(5)] (6)** of this subsection, the unit may not require the contractor to renegotiate any
26 subcontract in order to achieve a different result.

27 **[(7)] (8)** If, during the performance of a contract, a certified minority
28 business enterprise contractor or subcontractor becomes ineligible to participate in the
29 Minority Business Enterprise Program because one or more of its owners has a
30 personal net worth that exceeds the amount specified in § 14–301(i)(3) of this subtitle:

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

1 (ii) the certified minority business enterprise's participation
2 under the contract shall continue to be counted toward the program and contract
3 goals.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2009.