

SENATE BILL 211

P2
SB 990/08 – EHE

9lr1496
CF HB 641

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

Introduced and read first time: January 23, 2009
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 20, 2009
Returned to second reading: March 24, 2009
Senate action: Adopted with floor amendments
Read second time: March 24, 2009

CHAPTER _____

1 AN ACT concerning

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

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

12 BY repealing and reenacting, without amendments,
13 Article – State Finance and Procurement
14 Section 11–101(e) and (m)
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2008 Supplement)

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

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 (2006 Replacement Volume and 2008 Supplement)

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

4 **Article – State Finance and Procurement**

5 11–101.

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

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

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

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

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

16 (ii) buying or otherwise obtaining supplies, services,
17 construction, construction related services, architectural services, engineering
18 services, or services provided under an energy performance contract.

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

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
27 any of the black racial groups of Africa;

28 2. American Indian/Native American – an individual
29 having origins in any of the original peoples of North America and who is a
30 documented member of a North American tribe, band, or otherwise has a special
31 relationship with the United States or a state through treaty, agreement, or some
32 other form of recognition. This includes an individual who claims to be an American
33 Indian/Native American and who is regarded as such by the American Indian/Native

1 American community of which the individual claims to be a part, but does not include
2 an individual of Eskimo or Aleutian origin;

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

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

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

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

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

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

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

26 14–302.

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

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

35 (ii) a minimum of 10% of the unit's total dollar value of
36 procurement contracts is to be made directly or indirectly from certified minority

1 business enterprises classified by the certification agency as women-owned
2 businesses; and

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

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

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

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

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

20 (ii) The unit shall:

21 1. consider the practical severability of the construction
22 projects; and

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

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

28 (4) (I) **A WOMAN WHO IS ALSO A MEMBER OF AN ETHNIC OR**
29 **RACIAL MINORITY GROUP MAY BE CERTIFIED IN THAT CATEGORY IN ADDITION**
30 **TO THE GENDER CATEGORY.**

31 (II) **FOR PURPOSES OF ACHIEVING THE GOALS IN THIS**
32 **SUBSECTION, A CERTIFIED MINORITY BUSINESS ENTERPRISE MAY PARTICIPATE**
33 **IN A PROCUREMENT CONTRACT AND BE COUNTED AS A WOMAN-OWNED**
34 **BUSINESS, OR AS A BUSINESS OWNED BY A MEMBER OF AN ETHNIC OR RACIAL**
35 **GROUP, BUT NOT BOTH, IF THE BUSINESS HAS BEEN CERTIFIED IN BOTH**
36 **CATEGORIES.**

1 ~~(H) THE SPECIFIC CATEGORY USED FOR PARTICIPATION AS~~
2 ~~A CERTIFIED MINORITY BUSINESS ENTERPRISE UNDER SUBPARAGRAPH (I) OF~~
3 ~~THIS PARAGRAPH MUST BE IDENTIFIED AT THE TIME THE BID OR PROPOSAL IS~~
4 ~~SUBMITTED TO THE PROCURING AGENCY.~~

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

9 [(5)] (6) To achieve the result specified in paragraph (1) or (2) of this
10 subsection, a contractor, including a contractor that is a certified minority business
11 enterprise, shall:

12 (i) identify specific work categories appropriate for
13 subcontracting;

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

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

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

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

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

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

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

30 [(6)] (7) (i) The unit shall make a finding whether the contractor
31 complied, in good faith, with paragraph [(5)] (6) of this subsection.

32 (ii) If the unit finds the contractor complied with paragraph
33 [(5)] (6) of this subsection, the unit may not require the contractor to renegotiate any
34 subcontract in order to achieve a different result.

1 [(7)] (8) If, during the performance of a contract, a certified minority
2 business enterprise contractor or subcontractor becomes ineligible to participate in the
3 Minority Business Enterprise Program because one or more of its owners has a
4 personal net worth that exceeds the amount specified in § 14–301(i)(3) of this subtitle:

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

8 (ii) the certified minority business enterprise’s participation
9 under the contract shall continue to be counted toward the program and contract
10 goals.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.