

HOUSE BILL 29

P2

2lr0900

(PRE-FILED)

By: **Delegate B. Robinson**

Requested: November 9, 2011

Introduced and read first time: January 11, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprises – Not for Profit Entities and Termination**
3 **Extension**

4 FOR the purpose of providing that a not for profit entity organized to promote the
5 interests of physically or mentally disabled individuals is included in a certain
6 definition of minority business enterprise only if the annual operating budget of
7 the not for profit entity does not exceed a certain amount and the majority of
8 the individuals on the board of directors or other governing body of the not for
9 profit entity are socially and economically disadvantaged individuals;
10 continuing until a certain date certain provisions of the State procurement law
11 relating to procurement from minority businesses; requiring a certain study and
12 a final report on the study by a certain date; providing for the effective dates of
13 this Act; and generally relating to minority business enterprise participation in
14 State procurement.

15 BY repealing and reenacting, with amendments,
16 Article – State Finance and Procurement
17 Section 14–301 and 14–309
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2011 Supplement)

20 BY repealing and reenacting, with amendments,
21 Chapter 116 of the Acts of the General Assembly of 1995, as amended by
22 Chapters 495 and 496 of the Acts of the General Assembly of 2000,
23 Chapter 339 of the Acts of the General Assembly of 2001, and Chapter
24 359 of the Acts of the General Assembly of 2006
25 Section 2

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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
7 Public Works under § 14–303(b) of this subtitle to certify and decertify minority
8 business 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
16 joint venture, that is:

17 (i) organized to engage in commercial transactions;

18 (ii) at least 51% owned and controlled by 1 or more individuals
19 who 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 **IF:**

25 **(I) THE ANNUAL OPERATING BUDGET OF THE NOT FOR**
26 **PROFIT ENTITY DOES NOT EXCEED \$1,500,000; AND**

27 **(II) A MAJORITY OF THE INDIVIDUALS ON THE BOARD OF**
28 **DIRECTORS OR OTHER GOVERNING BODY OF THE NOT FOR PROFIT ENTITY ARE**
29 **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.**

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

4 (2) “Personal net worth” includes the individual’s share of assets held
5 jointly or as community property with the individual’s spouse.

6 (3) “Personal net worth” does not include:

7 (i) the individual’s ownership interest in the applicant or a
8 certified minority business enterprise;

9 (ii) the individual’s equity in his or her primary place of
10 residence; or

11 (iii) up to \$500,000 of the cash value of any qualified retirement
12 savings plans or individual retirement accounts.

13 (h) “Race-neutral measure” means a method that is or can be used to assist
14 all small businesses.

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 activities, 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; or

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

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

11 (3) An individual whose personal net worth exceeds \$1,500,000, as
12 adjusted annually for inflation according to the Consumer Price Index, may not be
13 found to be economically disadvantaged.

14 (j) “Socially disadvantaged individual” means an individual who has been
15 subjected to racial or ethnic prejudice or cultural bias within American society because
16 of membership in a group and without regard to individual qualities. Social
17 disadvantage must stem from circumstances beyond the control of the individual.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
19 read as follows:

20 **Article – State Finance and Procurement**

21 14–309.

22 The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations
23 adopted under those sections, shall be of no effect and may not be enforced after July
24 1, [2012] **2013**.

25 **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**
26 **Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of**
27 **2006**

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
29 in consultation with the General Assembly and the Office of the Attorney General,
30 shall initiate a study of the Minority Business Enterprise Program to evaluate the
31 Program’s continued compliance with the requirements of the Croson decision and any
32 subsequent federal or constitutional requirements. In preparation for the study, the
33 Board of Public Works may adopt regulations authorizing a unit of State government
34 to require bidders and offerors to submit information necessary for the conduct of the
35 study. The Board of Public Works may designate that certain information received in

1 accordance with regulations adopted under this section shall be confidential.
2 Notwithstanding that certain information may be designated by the Board of Public
3 Works as confidential, the certification agency may provide the information to any
4 person that is under contract with the certification agency to assist in conducting the
5 study. The study shall also evaluate race neutral programs and other methods that
6 can be used to address the needs of minority businesses. The final report on the study
7 shall be submitted to the Legislative Policy Committee of the General Assembly prior
8 to September 30, [2010] **2012**, so that the General Assembly may review the report
9 prior to the [2011] **2013** Session.

10 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
11 take effect October 1, 2012.

12 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
13 Section 3 of this Act, this Act shall take effect July 1, 2012.