

Bill No.: _____
Requested: _____
Committee: _____

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Stored – 12/15/09
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By: **Prince George’s County Delegation and Montgomery County Delegation**

A BILL ENTITLED

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission – Minority Business Utilization**
3 **Program**

4 **PG/MC 116–10**

5 FOR the purpose of prohibiting the Washington Suburban Sanitary Commission from
6 modifying a certain minority business utilization program or adopting a new
7 minority business utilization program unless the modification or new program
8 is expressly approved by an act of the General Assembly; and generally relating
9 to minority business utilization programs of the Washington Suburban Sanitary
10 Commission.

11 BY repealing and reenacting, without amendments,
12 Article 29 – Washington Suburban Sanitary District
13 Section 3–109(a) through (c)
14 Annotated Code of Maryland
15 (2003 Replacement Volume and 2009 Supplement)

16 BY adding to
17 Article 29 – Washington Suburban Sanitary District
18 Section 3–109(c–1)
19 Annotated Code of Maryland

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



1 (2003 Replacement Volume and 2009 Supplement)

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

4 **Article 29 – Washington Suburban Sanitary District**

5 3–109.

6 (a) (1) In this section the following words have the meanings indicated.

7 (2) “Director” means the Director of the Office of Small, Local, and
8 Minority Business Enterprise established under subsection (b)(2) of this section.

9 (3) “Minority business enterprise” means any legal entity that is
10 organized to engage in commercial transactions and at least 51% owned and controlled
11 by one or more individuals who are members of a group that is:

12 (i) Disadvantaged socially or economically by the effects of past
13 discrimination, including discrimination as to certification; and

14 (ii) Identified by a study conducted in accordance with this
15 section or a similar study previously conducted.

16 (4) “Office” means the Office of Small, Local, and Minority Business
17 Enterprise established under subsection (b)(2) of this section.

18 (b) (1) By resolution and by adopting regulations, the WSSC shall
19 establish a minority business utilization program to facilitate the participation of
20 responsible certified minority business enterprises in contracts awarded by the WSSC
21 for goods and services not covered by § 3–102 of this subtitle if:

22 (i) The WSSC determines that minority business enterprises
23 are underrepresented in the award of these contracts due to the effects of past
24 discrimination; and

1 (ii) The WSSC determines that such a program is necessary to
2 remedy the effects of past discrimination against minority business enterprises in
3 contracting with the WSSC.

4 (2) (i) There is an Office of Small, Local, and Minority Business
5 Enterprise in the WSSC.

6 (ii) The Office shall administer the programs the WSSC is
7 required to establish under paragraph (1) of this subsection and §§ 3–102(f) and 3–110
8 of this subtitle.

9 (iii) There is a Director who shall be in charge of the Office.

10 (c) The regulations that establish the program under subsection (b) of this
11 section shall include provisions that:

12 (1) Recognize the certification of minority business enterprises by the
13 State certification agency designated under § 14–303(b) of the State Finance and
14 Procurement Article;

15 (2) Recognize any other certification program that in the judgment of
16 the WSSC substantially duplicates the requirements of the State certification agency;

17 (3) Provide for minority business participation through
18 subcontracting;

19 (4) Except as provided in item (5) of this subsection, provide for a
20 system of granting a preference of up to the lesser of 5% or \$50,000 to minority
21 business enterprises in evaluating bids and proposals;

22 (5) Subject to the provisions of subsection (e) of this section, establish
23 a sheltered market program in which bidding on procurement contracts designated by
24 the WSSC as appropriate is restricted to certified minority business enterprises;

25 (6) Provide for the graduation of a minority business enterprise from
26 the program if the WSSC determines that the minority business enterprise no longer
27 requires the assistance or benefits offered by the program;

1 (7) Require the solicitation document accompanying each solicitation
2 to set forth the regulations of the minority business utilization program;

3 (8) Require the geographic location and the principal place of business
4 of the minority business enterprise to be a consideration for participation in this
5 program, including requiring Montgomery County businesses and Prince George's
6 County businesses to each have a targeted percentage of at least 40% of any contracts;

7 (9) Authorize the WSSC to refuse to recognize the certification of any
8 business found to be in violation of the purposes of the program and to permanently
9 bar any active principals of a violating business from future participation in the
10 program;

11 (10) Permit the waiver of all or part of the provisions of the program for
12 a specific contract if the WSSC determines that the application of the program to the
13 contract conflicts with the WSSC's overall objectives and responsibilities, and require
14 the WSSC to report annually to the Montgomery County and Prince George's County
15 House and Senate Delegations on those waivers;

16 (11) Require at the time of submission each bid or proposal that is
17 based on a solicitation with an expected degree of minority business enterprise
18 participation to include proof of a certified minority business enterprise commitment
19 by stating:

20 (i) The potential subcontract opportunities available in the
21 prime procurement contract; and

22 (ii) The number of minority business enterprises that have
23 certified, under the penalties of perjury, that the minority business enterprise has
24 entered into an agreement with the bidder to provide goods or services under specific
25 terms outlined in the certification before the bid is accepted;

26 (12) Require each general contractor to submit monthly reports of the
27 number of minority business enterprises employed by the general contractor to the
28 WSSC;

29 (13) Require each general contractor to provide prompt notification to
30 the WSSC if a contract with a minority business enterprise is terminated; and

1 (14) Require each general contractor to maintain a participation level
2 from minority business enterprises that is consistent with the participation level
3 referenced under item (11)(ii) of this subsection or provide justification for the general
4 contractor's inability to maintain that participation level.

5 **(C-1) THE WSSC MAY NOT MODIFY AN EXISTING MINORITY BUSINESS**
6 **UTILIZATION PROGRAM OR ADOPT A NEW MINORITY BUSINESS UTILIZATION**
7 **PROGRAM UNDER THIS SECTION UNLESS THE MODIFICATION OR NEW PROGRAM**
8 **IS EXPRESSLY APPROVED BY AN ACT OF THE GENERAL ASSEMBLY.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2010.