

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**  
**2007 Legislative Session**

Bill No. CB-49-2007

Chapter No. \_\_\_\_\_

Proposed and Presented by The Chairman (by request – County Executive)

Introduced by Council Members Dean, Turner, Knotts, Harrington, Bland and Olson

Co-Sponsors \_\_\_\_\_

Date of Introduction October 23, 2007

**BILL**

1 AN ACT concerning

2 Minority Business Enterprise Certifications

3 For the purpose of amending provisions of the Code allowing issuance of minority business  
4 enterprise certifications to entities that exceed the State of Maryland’s minority business  
5 enterprise eligibility criteria, revising the composition of the membership of the Minority  
6 Business Opportunities Commission and for the purpose of transferring the minority business  
7 enterprise certification function to the Minority Business Development Division of the Office of  
8 Central Services.

9 BY repealing and reenacting with amendments:

10 SUBTITLE 2. ADMINISTRATION.

11 Sections 2-450, 2-452 and 2-456

12 The Prince George's County Code

13 (2003 Edition, 2006 Supplement).

14 SUBTITLE 10A. PURCHASING.

15 Sections 10A-101, 10A-136, and 10A-141,

16 The Prince George's County Code

17 (2003 Edition, 2006 Supplement).

18 BY repealing:

19 SUBTITLE 2. ADMINISTRATION.

20 Section 2-454

21 The Prince George's County Code

(2003 Edition, 2006 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 2-450, 2-452, 2-456, 10A-101, 10A-136, and 10A-141 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

**SUBTITLE 2. ADMINISTRATION.**

**DIVISION 34. MINORITY BUSINESS OPPORTUNITIES COMMISSION.**

**Sec. 2-450. Minority Business Opportunities Commission; established; membership and terms.**

\* \* \* \* \*

(b) The Commission shall consist of seven (7) members who shall be residents of Prince George's County. At least three (3) of the appointments shall be selected from a list of persons submitted by the County Council. Whenever possible, members should be selected from the business or legal community. Additionally, at least one member should be a citizen representative. The members shall be appointed by the County Executive subject to confirmation by the County Council.

\* \* \* \* \*

**Sec. 2-452. Powers and duties of the Commission.**

\* \* \* \* \*

(j) [In accordance with regulations promulgated pursuant to Section 2-453 of this Code,] [t]The Commission [shall provide certification of minority business enterprise status, as such term is set forth in Section 10A-101(a) of this Code, and] shall hear appeals of any determination made by the [Executive Director] Minority Business Development Division or its designee to deny [such] a minority business enterprise [status] certification. [Subject to the approval of the Commission and as may be set forth in the regulations of the Commission, certification of any business firm as a minority business enterprise may take into account the certification of such firm by any jurisdiction:]

[(1) That has entered into a reciprocal acceptance of minority business enterprise certification agreement with the County; or]

[(2) That administers a minority business enterprise certification program that is substantially equivalent to the program operated by the Commission.]

1 (k) The Commission shall hear the appeal of any decision by the [Executive Director]  
2 Minority Business Development Division or its designee to decertify any minority business  
3 enterprise. Such appeal shall be heard and determined by the Commission within ninety (90)  
4 days after the date on which it was filed. [upon findings by the Executive Director of any of the  
5 following conditions:]

6 [(1) The minority business enterprise is subject to debarment or suspension in  
7 accordance with Section 10A-148 of this Code;]

8 [(2) The minority business enterprise has practiced fraud or deceit for the purpose of  
9 obtaining certification;]

10 [(3) The minority business enterprise has furnished to the Commission incomplete or  
11 substantially inaccurate ownership or financial information;]

12 [(4) The minority business enterprise has failed to report any change which affects its  
13 qualification for certification; or,]

14 [(5) The minority business enterprise has willfully violated any provision of this  
15 Division or Division 6 of Subtitle 10A of this Code.]

16 (l) The Commission shall submit annual reports to the County Executive and the County  
17 Council on its activities during the reporting period. [The reports shall include a copy of the  
18 roster of certified minority business enterprises.]

19 \* \* \* \* \*

20 **Sec. 2-456. Minutes and records.**

21 [(a)]The Commission shall keep a record of its activities and minutes of all official  
22 meetings. The records and minutes shall be on file and shall be open to the public at reasonable  
23 business hours upon request.

24 [(b) The Commission shall maintain a register of all applicants for certification showing for  
25 each applicant the date of the application, name, qualifications, place of business, place of  
26 applicant's residence, and action taken on the application.]

27 **SUBTITLE 10A. PURCHASING.**

28 **DIVISION 1. ADMINISTRATIVE PROCEDURES.**

29 **Sec. 10A-101. Definitions.**

30 (a) The words defined in this Section shall have the meanings set forth below whenever  
31 they appear in this Subtitle unless the context in which they are used clearly requires a different

1 meaning or a different definition is prescribed for a particular provision.

2 \* \* \* \* \*

3 (21) **Executive Director** means the Executive Director of the [Minority Business  
4 Opportunities Commission] Minority Business Development Division.

5 \* \* \* \* \*

6 (25.1)Minority Business Development Division means the Minority Business  
7 Development Division of the Office of Central Services or its designee as determined by the  
8 Purchasing Agent.

9 (26) **Minority business enterprise** means any business enterprise:

10 (A) Which is at least fifty-one percent (51%) owned by one or more minority  
11 individuals, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of  
12 the stock of which is owned by one or more minority individuals; and

13 (B) Whose general management and daily business affairs and essential  
14 productive operations are controlled by one or more minority individuals; and

15 (C) Which has been certified by the [Commission] Minority Business  
16 Development Division as a Minority Business Enterprise pursuant to [Section 2-452(j) of this  
17 Code] Division 6 of this Subtitle.

18 \* \* \* \* \*

19 **DIVISION 6. SPECIAL PROVISIONS.**

20 **SUBDIVISION 1. MINORITY BUSINESS OPPORTUNITIES PROGRAM.**

21 **Sec. 10A-136. Assistance to minority business enterprises; certification; decertification.**

22 \* \* \* \* \*

23 (e) The Purchasing [a]Agent shall, for all contracts, consult with the [Commission or its  
24 authorized representative,] Minority Business Development Division in order to determine  
25 whether subcontracting is appropriate. If subcontracting is determined to be appropriate, the  
26 Purchasing Agent may include a mandatory minority business enterprise subcontract clause that  
27 requires the equivalent of at least twenty percent (20%) of the contract's total value be performed  
28 by one or more minority business enterprises. The Purchasing Agent may include a mandatory  
29 minority business enterprise subcontracting goal that is less than 20% of the contract's total value  
30 only:

31 (1) After consultation with the [Commission or its authorized representative]

1 Minority Business Development Division;

2 (2) Upon a determination that a twenty percent (20%) mandatory minority business  
3 enterprise subcontracting goal is not able to be obtained at a reasonable price; and

4 (3) Upon a determination that the public interest is served.

5 \* \* \* \* \*

6 (i) The Purchasing Agent may, after consultation with the [Commission or its authorized  
7 representative] Minority Business Development Division, require that the competitive bidding of  
8 contracts be restricted to minority business enterprises owned by minority individuals as defined  
9 in Section 10A-101(a), provided there are at least three (3) minority business enterprises that are  
10 providers in the trade of goods or services for which the contract is advertised. No contract shall  
11 be awarded pursuant to this provision if the resultant low bid exceeds by fifteen percent (15%)  
12 the most recent unit price for the same or most recently comparable goods or services, unless the  
13 [Commission] Minority Business Development Division determines that prices in the relevant  
14 market have increased for all vendors without regard to minority status beyond fifteen percent  
15 (15%) since the last time similar goods or services were procured.

16 \* \* \* \* \*

17 (k) The Purchasing Agent along with the [Commission] Minority Business Development  
18 Division shall actively and continually search for and identify minority-owned firms that provide  
19 commodities and services required by County Agencies and shall encourage such firms to  
20 become certified and bid on contracts advertised by the County.

21 (l) The Purchasing Agent shall require certification of a bidder's status as a County-based  
22 Minority Business Enterprise or as a Minority Business Enterprise in form and substance as  
23 determined by rules and procedures adopted by the [Commission] Purchasing Agent and  
24 approved by the County Executive or his designee. The [Commission] Minority Business  
25 Development Division shall maintain a registry of certified minority business enterprises.

26 (m) If, upon investigation by the [Commission] Minority Business Development Division,  
27 any Minority Business Enterprise which has been certified by the [Commission] Minority  
28 Business Development Division misrepresented its status either as a County-based business or as  
29 a Minority Business Enterprise and no contract with the County is existing, the following shall  
30 occur:

31 (1) The Minority Business Enterprise shall be barred from award of any County

1 contract or participation in any contract awarded by the County for a period of one year  
2 commencing upon the date written findings of such misrepresentations are made by the  
3 Executive Director, regardless of subsequent changes in the minority business enterprise's status;  
4 and

5 (2) The officers, directors, partners, or owners of the firm and any firm controlled or  
6 managed by them shall be barred from award of any County contract or participation in any  
7 contract awarded by the County for a period of one year commencing upon the date written  
8 findings of such misrepresentation are made by the Executive Director, regardless of subsequent  
9 changes in the minority business enterprise's status.

10 (n) If, upon investigation by the [Commission, or its authorized representative,] Minority  
11 Business Development Division any firm which has been certified by the [Commission]  
12 Minority Business Development Division is awarded a contract with the County as a result of the  
13 application of bonus factors pursuant to this Division is found to have misrepresented its status  
14 as either a County-based Minority Business Enterprise or a minority business enterprise, the  
15 following shall occur:

16 (1) The contract price shall be reduced to the bid price of the apparent lowest  
17 responsive bidder or the contract shall be terminated, if in the best interests of the County;

18 (2) The firm shall be barred from award of any County contract or participation in  
19 any contract awarded by the County for a period of three (3) years commencing upon the date  
20 written findings of such misrepresentations are made by the [Commission] Minority Business  
21 Development Division, regardless of subsequent changes in the Minority Business Enterprise's  
22 status; and

23 (3) The officers, directors, partners, or owners of the firm and any firm controlled or  
24 managed by them shall be barred from award of any County contract or participation in any  
25 contract awarded by the County for a period of three (3) years commencing upon the date written  
26 findings of such misrepresentation are made by the [Commission] Minority Business  
27 Development Division, regardless of subsequent changes in the Minority Business Enterprise's  
28 status.

29 (o) If the [Commission] Minority Business Development Division, after investigation,  
30 determines that any such individual or firm that has been awarded a County contract has  
31 misrepresented its status as either a Minority Business Enterprise or a County-based minority

1 business enterprise, the [Commission] Minority Business Development Division may request the  
2 County Attorney to institute proceedings pursuant to Section 10A-139.

3 (p) Any effort at brokerage or any other arrangement or agreement which attempts to, is  
4 intended to, or has the effect of causing fraudulent benefit from the provisions of this Division or  
5 is otherwise determined by the [Commission] Minority Business Development Division to be in  
6 circumvention of the requirements of this Division shall be strictly prohibited and shall be barred  
7 from award of any County contract.

8 \* \* \* \* \*

9 (s) The Minority Business Development Division shall provide certification of minority  
10 business enterprise status, as such term is set forth in Section 10A-101(a) of this Code. The  
11 Minority Business Development Division shall maintain a register of all applicants for  
12 certification showing for each applicant the date of the application, name, qualifications, place of  
13 business, place of applicant's residence, and action taken on the application. Certification of any  
14 business firm as a minority business enterprise may take into account the certification of such  
15 firm by any jurisdiction, association, organization or entity:

16 (1) That has entered into a reciprocal acceptance of minority business enterprise  
17 certification agreement with the County; or

18 (2) That administers a minority business enterprise certification program that is  
19 substantially equivalent to the program operated by the Minority Business Development  
20 Division; or

21 (3) That administers a minority business enterprise certification program utilizing  
22 eligibility criteria that is likely to further the County's goals under this Division 6 of the Code, as  
23 determined by the Purchasing Agent.

24 (t) Any person may assert charges of a violation of this Division against any applicant for  
25 certification, or certified minority business enterprise. Such charges shall be in writing and  
26 sworn to by the complainant and submitted to the Executive Director. If, after an investigation  
27 of the allegations the Executive Director believes that no violation has occurred, the charge may  
28 be dismissed. Such charge, unless dismissed by the Executive Director without a hearing, shall  
29 be heard and determined by the Executive Director within ninety (90) days after the date on  
30 which it was filed. After a hearing, the Executive Director may decertify the respondent or take  
31 such other action as deemed appropriate. Any person adversely affected by the dismissal of a

1 complaint by the Executive Director or by the decision of the Executive Director following a  
 2 hearing may appeal such dismissal or decision to the Commission within thirty (30) days after  
 3 the date of the dismissal or the decision.

4 (u) The Executive Director may decertify any minority business enterprise upon findings  
 5 by the Executive Director of any of the following conditions:

6 (1) The minority business enterprise is subject to debarment or suspension in  
 7 accordance with Section 10A-148 of this Code;

8 (2) The minority business enterprise has practiced fraud or deceit for the purpose of  
 9 obtaining certification;

10 (3) The minority business enterprise has furnished to the Minority Business  
 11 Development Division incomplete or substantially inaccurate ownership or financial  
 12 information;

13 (4) The minority business enterprise has failed to report any change which affects its  
 14 qualification for certification; or,

15 (5) The minority business enterprise has willfully violated any provision of this  
 16 Division.

17 (v) The Commission shall hear the appeal of any determination made by the Minority  
 18 Business Development Division to deny minority business enterprise status certification and  
 19 shall hear the appeal of any decision by the Executive Director to decertify any minority business  
 20 enterprise. Such appeal shall be heard and determined by the Purchasing Agent within ninety  
 21 (90) days after the date on which it was filed.

22 **SUBDIVISION 2. FACILITIES CONSTRUCTED WITH COUNTY CONTRIBUTIONS.**

23 **Sec. 10A-141. Negotiated Participation Agreements.**

24 (a) The requirements of this Subdivision shall be applicable under the following  
 25 circumstances:

26 (1) The Director of the Department of Environmental Resources makes a  
 27 determination that a regional stormwater management facility is desirable for a new development  
 28 and certifies to the County Executive, the Purchasing Agent, and the [Commission] Minority  
 29 Business Development Division that the estimated construction cost of the facility exceeds the  
 30 estimated cost of providing required on-site controls; or

31 (2) The Director of the Department of Public Works and Transportation certifies to

1 the County Executive, the Purchasing Agent, and the [Commission] Minority Business  
2 Development Division that:

3 (A) Certain public road improvements abutting or within a new development are  
4 required as a consequence of the development; and

5 (B) The estimated cost of the construction of the road improvements by the  
6 County exceeds the estimated cost of construction by the developer; or

7 (C) The developer can cause the construction to occur on an accelerated basis in  
8 advance of planned commencement and completion of the road improvements by the County and  
9 would be otherwise required to pay at least seventy-five percent (75%) of the cost of the road  
10 improvements on a special assessment or similar basis.

11 \* \* \* \* \*

12 (c) Subsection (b) shall apply provided the County and the developer have entered into a  
13 written agreement wherein the developer shall:

14 \* \* \* \* \*

15 (7) Be required to subcontract with Minority Business Enterprises for no less than  
16 thirty percent (30%) of the amount of County funds contributed with respect to such  
17 construction; provided, that if a developer is unable to achieve the Minority Business Enterprise  
18 goal set forth in Section 10A-141(c)(7), the developer may request in writing a waiver of the  
19 goal, to include the elements of justification set forth in Section 10A-136(g) of the Code. After  
20 consultation with the [Commission, or its authorized representative,] Minority Business  
21 Development Division, the Purchasing Agent shall grant such waiver only upon finding that the  
22 developers have made a good faith effort to achieve such goal and the public interest otherwise is  
23 served by granting such waiver.

24 d) Nothing in paragraph (c)(1), above, shall be deemed to preclude the developer from  
25 constructing the regional stormwater management facility or road improvements himself  
26 provided written justification is approved by the Director of the Department of Environmental  
27 Resources or the Director of Public Works and Transportation, as may be applicable, the  
28 Purchasing Agent, and the [Commission] Minority Business Development Division.

29 \* \* \* \* \*

30 SECTION 2. BE IT FURTHER ENACTED that Section 2-454 of the Prince George's  
31 County Code be and the same is hereby repealed:



Adopted this \_\_\_\_ day of \_\_\_\_\_, 2007.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY: \_\_\_\_\_  
Camille A. Exum  
Chair

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Clerk of the Council

APPROVED:

DATE: \_\_\_\_\_ BY: \_\_\_\_\_  
Jack B. Johnson  
County Executive

KEY:  
Underscoring indicates language added to existing law.  
[Brackets] indicate language deleted from existing law.  
Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.