

By Mr. Burke, a petition (accompanied by bill, Senate, No. 1212) of Edward L. Burke for legislation relative to minority business enterprise set-aside provisions in certain transportation construction projects. Transportation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-eight.

AN ACT RELATIVE TO MINORITY BUSINESS ENTERPRISE SET-ASIDE PROVISIONS IN CERTAIN TRANSPORTATION CONSTRUCTION CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter twenty-nine of the General Laws is
2 amended by inserting after section eight C the following sec-
3 tion:—

4 *Section 8D.* The commissioner of public works and the chair-
5 man of the boards of directors of the Massachusetts Bay Trans-
6 portation Authority jointly shall establish and from time to
7 time revise a list of pre-qualified minority contractors in a
8 manner set forth in this section to be used whenever the de-
9 partment or the authority shall require that a person propos-
10 ing to bid on any work, excepting the construction, reconstruc-
11 tion repair or alteration of buildings, to be awarded by the
12 department or the authority shall be or shall employ as a sub-
13 contractor or to enter into a joint venture with one or more
14 minority business enterprises, such requirement hereinafter
15 to be referred to as a minority set-aside provision. For pur-
16 poses of establishment of said list, the commissioner and the
17 chairman jointly shall establish forms and criteria for and
18 definitions and standards of a bona fide minority business en-
19 terprise as the commissioner and the chairman shall deem
20 necessary under rules jointly promulgated by said department
21 and authority, subject to the requirements of chapter thirty A.
22 Such rules may require such information as may be necessary
23 to implement this section. Any person proposing to perform
24 any such work to be awarded by the department or the
25 authority the award of which is subject to a minority set-aside
26 provision, for purposes of compliance or partial compliance

27 with said provision, as a minority contractor or as a minority
28 joint venturer or as a minority subcontractor, each herein-
29 after referred to as a prospective prequalified minority con-
30 tractor shall submit under penalties of perjury to the com-
31 missioner and the chairman a statement setting forth a
32 description of his status as a minority business enterprise and
33 such information as the rules jointly promulgated by the
34 department and the authority shall require. The information
35 so required, together with such other relevant available infor-
36 mation may be considered by said department and authority
37 in determining whether a prospective prequalified minority
38 contractor is a bona fide minority business enterprise for
39 purposes of any minority set-aside provision of the depart-
40 ment or of the authority. Based on information received and
41 available, the commissioner and the chairman, acting through
42 a joint prequalification committee consisting of such legal,
43 accounting and contract compliance personnel as the com-
44 missioner and the chairman shall appoint, provided that there
45 shall be equal numbers of persons from the department and
46 the authority, shall determine whether said prospective pre-
47 qualified minority contractor is a bona fide minority business
48 enterprise for purposes of any minority set-aside provision
49 of the department or of the authority. If such person is
50 determined by the commissioner and the chairman to be a
51 bona fide minority business enterprise, the name of said per-
52 son shall be added to the list of prequalified minority con-
53 tractors. Said list shall not be a representation by the depart-
54 ment or the authority that any such listed person is qualified
55 to perform any work to be awarded by the department or the
56 authority. Said list shall be the sole source of minority busi-
57 ness enterprises to be employed by the department or the
58 authority or by any contractor of the department or the
59 authority for purposes of compliance with a minority set-
60 aside provisions of the department or of the authority. For
61 purposes of compliance with such a minority set-aside pro-
62 vision, any person proposing to bid on any work to be awarded
63 by the department or the authority the award of which sub-
64 ject to a minority set-aside provision, shall be or shall employ
65 as a subcontractor or shall enter into a joint venture with
66 such persons as are on the list of prequalified minority con-
67 tractors which is effective on the first day such work is adver-

68 tised, provided that said person proposing to bid on such work
69 may also be or employ or enter into a joint venture with such
70 person or persons as are added to said list of prequalified
71 minority business enterprises at any time prior to the opening
72 of bids on such work. Any person who is stricken from the
73 list of prequalified minority contractors shall be eligible to be
74 employed for purposes of compliance with a minority set-
75 aside provision to perform work which is first advertised on
76 any day prior to the day the commissioner and the chairman
77 determine that said person is not a bona fide minority busi-
78 ness enterprise.

79 The provisions of this section shall not prevent the depart-
80 ment or the authority or the contractors of the department
81 or of the authority from contracting or subcontracting or
82 entering into a joint venture with a minority business enter-
83 prise which is not on the list of prequalified minority con-
84 tractors, provided that the participation of such non-prequali-
85 fied minority business enterprise in work the award of which
86 is subject to a minority set-aside provision may not be con-
87 sidered for purposes of determining whether a proposed bid-
88 der is in compliance with a minority set-aside provision.

89 Any statement filed with the commissioner and the chair-
90 man pursuant to the implementation of this section shall be
91 confidential, and shall be used only by the department and
92 the authority in determining whether a person is a bona fide
93 minority business enterprise. No information contained in
94 such statement shall be imparted to any other person without
95 the written consent of said bidder.

96 Any person added to or stricken from the list of prequali-
97 fied minority contractors as authorized herein shall be noti-
98 fied promptly by the commissioner and the chairman.

99 Any person who is a prospective prequalified minority con-
100 tractor who is aggrieved by any decision or determination of
101 the joint prequalification committee or of the commissioner
102 and the chairman which affects his presence on the list of
103 prequalified minority contractors may file a new application
104 at any time, or within fifteen days after receiving notice of
105 such decision the applicant may request in writing a hearing
106 before an appeal board to reconsider his application for pre-
107 qualification. The appeal board shall consist of the secretary
108 of transportation and construction, the commissioner, the

109 associate commissioner, the chairman and the directors of the
110 authority, or their designees.

111 Any person who so requests shall be granted a hearing by
112 such appeal board at which he may submit any and all addi-
113 tional information or evidence bearing upon his status as a
114 minority business enterprise. Such a hearing shall be held
115 within ten days of the receipt of the request for a hearing
116 and the board shall promptly render its decision after taking
117 into consideration all relevant information or evidence sub-
118 mitted relating to said person's status as a minority business
119 enterprise. The appeal board may sustain, modify, amend or
120 reverse any previous decision of the joint prequalification
121 committee or of the commissioner and the chairman with
122 respect to the determination of whether said applicant is a
123 bona fide minority business enterprise. Such hearing shall be
124 deemed to be an adjudicatory proceeding, and any person who
125 is a prospective prequalified minority contractor who is
126 aggrieved by the decision of the appeal board shall have right
127 to judicial review under the applicable provisions of said
128 chapter thirty A.

129 Whenever the department or the authority shall require
130 that work to be awarded by the department or by the author-
131 ity be subject to a minority set-aside provision pursuant to
132 the provisions of this section, a person proposing to bid on
133 such work may consider a prequalified contractor unavailable
134 for such proposed work under such conditions as the com-
135 missioner and the chairman shall designate, including but not
136 limited to an estimate in writing by such minority contractor
137 of the cost of the proposed subcontract which is greater than
138 ten per centum greater than the estimate of the engineer of
139 the department or the engineer of the authority.

1 SECTION 2. Section nineteen of chapter one hundred and
2 sixty-one A of the General Laws is hereby amended by
3 adding the following clause: — except that the provisions of
4 section eight D of chapter twenty-nine shall also apply to
5 contracts for construction.

1 SECTION 3. This act shall take effect upon passage. The list
2 of prequalified minority contractors required under section
3 one shall be established not more than six months from the
4 effective date of this act.