

House Bill 1241

By: Representatives Bruce of the 64th, Fludd of the 66th, Marin of the 96th, Williams of the 89th, and Frazier of the 123rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 50 of the Official Code of Georgia Annotated, relating to the
2 Department of Economic Development, so as to define certain terms; to create the Division
3 of Minority and Women's Business Development; to provide for appointment of a director;
4 to provide for powers and duties of the director; to create the position of minority and women
5 owned business enterprise state-wide advocate; to provide for appointment; to provide for
6 duties; to provide for provisions for state contracts; to provide for a state-wide disparity
7 study; to provide for contents; to provide for the structure of procurement contracts; to
8 provide for rules and regulations; to provide for the implementation of rules and regulations;
9 to provide for exceptions; to provide for related matters; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 SECTION 1.

13 Chapter 7 of Title 50 of the Official Code of Georgia Annotated, relating to the Department
14 of Economic Development, is amended by adding a new article to read as follows:

15 "ARTICLE 8

16 50-7-100.

17 As used in this article, the term:

18 (1) 'Certified business' means a business verified as a minority owned business enterprise
19 or women owned business enterprise pursuant to Code Section 50-7-105.

20 (2) 'Contracting agency' means a state agency which is a party or a proposed party to a
21 state contract.

22 (3) 'Contractor' means an individual; a business enterprise, including a sole
23 proprietorship, partnership, corporation, nonprofit corporation, or any other party to a

24 state contract; or a bidder in conjunction with the award of a state contract or a proposed
 25 party to a state contract.

26 (4) 'Director' means the director of the Division of Minority and Women's Business
 27 Development in the Department of Economic Development.

28 (5) 'Diversity practices' means a contractor's practices and policies with respect to:

29 (A) Utilizing certified minority owned business enterprises and women owned business
 30 enterprises in contracts awarded by a state agency or other public corporation, as
 31 subcontractors and suppliers; and

32 (B) Entering into partnerships, joint ventures, or other similar arrangements with
 33 certified minority owned business enterprises and women owned business enterprises
 34 as defined in this article or other applicable statute or regulation governing an entity's
 35 utilization of minority owned business enterprises or women owned business
 36 enterprises.

37 (6) 'Division' means the Division of Minority and Women's Business Development in
 38 the Department of Economic Development.

39 (7) 'Minority and women owned business enterprise' means both minority owned
 40 business enterprise and women owned business enterprise.

41 (8) 'Minority group member' means a United States citizen or permanent resident alien
 42 who is and can demonstrate membership in one of the following groups:

43 (A) Black persons having origins in any of the Black African racial groups;

44 (B) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, or Central or
 45 South American of either Indian or Hispanic origin, regardless of race;

46 (C) Native American or Alaskan native persons having origins in any of the original
 47 peoples of North America; or

48 (D) Asian and Pacific Islander persons having origins in any of the East Asian
 49 countries, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

50 (9) 'Minority owned business enterprise' means a business enterprise, including a sole
 51 proprietorship, partnership, or corporation that is:

52 (A) At least 51 percent owned by one or more minority group members;

53 (B) An enterprise in which such minority ownership is real, substantial, and
 54 continuing;

55 (C) An enterprise in which such minority ownership has and exercises the authority to
 56 control independently the day-to-day business decisions of the enterprise;

57 (D) An enterprise authorized to do business in this state that is independently owned
 58 and operated;

59 (E) An enterprise owned by an individual or individuals, whose ownership, control,
 60 and operation are relied upon for certification, with a personal net worth that does not

61 exceed \$3.5 million, as adjusted annually on the first day of January for inflation
62 according to the consumer price index of the previous year; and

63 (F) An enterprise that is a small business.

64 (10) 'Personal net worth' means the aggregate adjusted net value of the assets of an
65 individual remaining after total liabilities are deducted. Personal net worth includes the
66 individual's share of assets held jointly with said individual's spouse and does not include
67 the individual's ownership interest in the certified minority and women owned business
68 enterprise, the individual's equity in his or her primary residence, or up to \$500,000.00
69 of the present cash value of any qualified retirement savings plan or individual retirement
70 account held by the individual less any penalties for early withdrawal.

71 (11) 'Small business,' unless otherwise indicated, means a business which has a
72 significant business presence in this state, is independently owned and operated, and is
73 not dominant in its field and employs, based on its industry, a certain number of persons
74 as determined by the director, but not to exceed 300, taking into consideration factors
75 which include, but are not limited to, federal small business administration standards
76 pursuant to 13 C.F.R. Part 121. The director may issue regulations on the construction
77 of the terms in this definition.

78 (12) 'State agency' means a state department, or division, board, commission, or bureau
79 of any state department, or a state authority.

80 (13) 'State contract' means:

81 (A) A written agreement or purchase order instrument, providing for a total
82 expenditure in excess of \$35,000.00, whereby a contracting agency is committed to
83 expend or does expend funds in return for labor; services including but not limited to
84 legal, financial, and other professional services; supplies; equipment; materials; or any
85 combination of the foregoing, to be performed for, or rendered or furnished to, the
86 contracting agency;

87 (B) A written agreement in excess of \$100,000.00 whereby a contracting agency is
88 committed to expend or does expend funds for the acquisition, construction, demolition,
89 replacement, major repair, or renovation of real property and improvements thereon;
90 and

91 (C) A written agreement in excess of \$100,000.00 whereby the owner of a state
92 assisted housing project is committed to expend or does expend funds for the
93 acquisition, construction, demolition, replacement, major repair, or renovation of real
94 property and improvements thereon for such project.

95 (14) 'State-wide advocate' means the person appointed by the commissioner to serve in
96 the capacity of the minority and women owned business enterprise state-wide advocate.

97 (15) 'Subcontract' means an agreement providing for a total expenditure in excess of
 98 \$25,000.00 for the construction, demolition, replacement, major repair, renovation,
 99 planning, or design of real property and improvements thereon between a contractor and
 100 any individual or business enterprise, including a sole proprietorship, partnership,
 101 corporation, or nonprofit corporation, in which a portion of a contractor's obligation under
 102 a state contract is undertaken or assumed, but shall not include any construction,
 103 demolition, replacement, major repair, renovation, planning, or design of real property
 104 or improvements thereon for the beneficial use of the contractor.

105 (16) 'Utilization plan' means a plan prepared by a contractor and submitted in connection
 106 with a proposed state contract. The utilization plan shall identify certified minority or
 107 women owned business enterprises, if known, that have committed to perform work in
 108 connection with the proposed state contract as well as any such enterprises, if known,
 109 which the contractor intends to use in connection with the contractor's performance of the
 110 proposed state contract. The plan shall specifically contain a list, including the name,
 111 address, and telephone number, of each certified enterprise with which the contractor
 112 intends to subcontract.

113 (17) 'Women owned business enterprise' means a business enterprise, including a sole
 114 proprietorship, partnership, or corporation that is:

115 (A) At least 51 percent owned by one or more United States citizens or permanent
 116 resident aliens who are women;

117 (B) An enterprise in which the ownership interest of such women is real, substantial,
 118 and continuing;

119 (C) An enterprise in which such women ownership has and exercises the authority to
 120 control independently the day-to-day business decisions of the enterprise;

121 (D) An enterprise authorized to do business in this state that is independently owned
 122 and operated;

123 (E) An enterprise owned by an individual or individuals, whose ownership, control,
 124 and operation are relied upon for certification, with a personal net worth that does not
 125 exceed \$3.5 million, as adjusted annually on the first day of January for inflation
 126 according to the consumer price index of the previous year; and

127 (F) An enterprise that is a small business.

128 50-7-101.

129 (a) There is created in the Department of Economic Development the Division of Minority
 130 and Women's Business Development. The head of the division shall be the director who
 131 shall be appointed by and hold office at the pleasure of the commissioner. It shall be the

132 duty of the director to assist the Governor in the formulation and implementation of laws
133 and policies relating to minority and women owned business enterprises.

134 (b) The director may appoint such deputies, assistants, and other employees as may be
135 needed for the performance of the duties prescribed in this article. The director may
136 request and shall receive from any department, division, board, bureau, executive
137 commission, or agency of the state such assistance as may be necessary to carry out the
138 provisions of this article.

139 (c) The director shall have the following powers and duties:

140 (1) To encourage and assist contracting agencies in their efforts to increase participation
141 by minority and women owned business enterprise on state contracts and subcontracts so
142 as to facilitate the award of a fair share of such contracts to them;

143 (2) To develop standardized forms and reporting documents necessary to implement this
144 article;

145 (3) To conduct educational programs consistent with the purposes of this article;

146 (4) To review periodically the practices and procedures of each contracting agency with
147 respect to compliance with the provisions of this article, and to require them to file
148 periodic reports with the division of minority and women's business development as to
149 the level of minority and women owned business enterprises participation in the awarding
150 of agency contracts for goods and services;

151 (5) On January 1 of each year, report to the Governor and the chairpersons of the Senate
152 Finance Committee and the House Committee on Ways and Means the level of minority
153 and women owned business enterprises participating in each agency's contracts for goods
154 and services and on activities of the office and effort by each contracting agency to
155 promote employment of minority group members and women, and to promote and
156 increase participation by certified businesses with respect to state contracts and
157 subcontracts so as to facilitate the award of a fair share of state contracts to such
158 businesses. Such report may recommend new activities and programs to effectuate the
159 purposes of this article;

160 (6) To prepare and update periodically a directory of certified minority and women
161 owned business enterprises which shall, wherever practicable, be divided into categories
162 of labor, services, supplies, equipment, materials, and recognized construction trades and
163 which shall indicate areas or locations of the state where such enterprises are available
164 to perform services;

165 (7) To appoint independent hearing officers who by contract or terms of employment
166 shall preside over adjudicatory hearings pursuant to Code Section 50-7-106 for the office
167 and who are assigned no other work by the office;

168 (8) To file a complaint where the director has knowledge that a contractor may have
 169 violated the provisions of this article where such violation is unrelated, separate, or
 170 distinct from the state contract as expressed by its terms; and

171 (9) To streamline the state certification process to accept federal and municipal
 172 corporation certifications.

173 (d) The director may provide assistance to, and facilitate access to, programs serving
 174 certified businesses as well as applicants to ensure that such businesses benefit, as needed,
 175 from technical, managerial, financial, and general business assistance; training; marketing;
 176 organization and personnel skill development; project management assistance; technology
 177 assistance; bond and insurance education assistance; and other business development
 178 assistance. In addition, the director may, either independently or in conjunction with other
 179 state agencies:

180 (1) Develop a clearinghouse of information on programs and services provided by
 181 entities that may assist such businesses;

182 (2) Review bonding and paperwork requirements imposed by contracting agencies that
 183 may unnecessarily impede the ability of such businesses to compete; and

184 (3) Seek to maximize utilization by minority and women owned business enterprises of
 185 available federal resources including but not limited to federal grants, loans, loan
 186 guarantees, surety bonding guarantees, technical assistance, and programs and services
 187 of the federal small business administration.

188 50-7-102.

189 (a) There is established within the division an office of the minority and women owned
 190 business enterprise state-wide advocate. The state-wide advocate shall be appointed by the
 191 commissioner.

192 (b) The advocate shall act as a liaison for minority and women owned business enterprises
 193 to assist them in obtaining technical, managerial, financial, and other business assistance
 194 for certified businesses and applicants. The advocate shall investigate complaints brought
 195 by or on behalf of minority and women owned business enterprises concerning certification
 196 delays and instances of violations of law by state agencies. The state-wide advocate shall
 197 assist certified businesses and applicants in the certification process. Other functions of the
 198 state-wide advocate shall be directed by the commissioner. The advocate may request and
 199 the director may appoint staff and employees of the Division of Minority and Women's
 200 Business Development to support the administration of the office of the state-wide
 201 advocate.

202 (c) The state-wide advocate shall establish a toll-free number at the Department of
203 Economic Development to be used to answer questions concerning the minority and
204 women owned business enterprises certification process.

205 (d) The state-wide advocate shall report to the director and commissioner by November
206 15 of each year on all activities related to fulfilling the obligations of the office of the
207 state-wide advocate. The commissioner shall include the unedited text of the state-wide
208 advocate's report within the reports submitted by the Department of Economic
209 Development to the Governor and the chairpersons of the Senate Finance Committee and
210 the House Committee on Ways and Means.

211 50-7-103.

212 (a) As used in this code section, the term 'affirmative action' means recruitment,
213 employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or
214 termination and rates of pay or other forms of compensation.

215 (b) All state contracts and all documents soliciting bids or proposals for state contracts
216 shall contain or make reference to the following provisions:

217 (1) The contractor shall not discriminate against employees or applicants for employment
218 because of race, creed, color, national origin, sex, age, disability, or marital status and
219 will undertake or continue existing programs of affirmative action to ensure that minority
220 group members and women are afforded equal employment opportunities without
221 discrimination;

222 (2) At the request of the contracting agency, the contractor shall request each
223 employment agency or labor union, or authorized representative of workers with which
224 it has a collective bargaining or other agreement or understanding, to furnish a written
225 statement that such employment agency, labor union, or representative will not
226 discriminate on the basis of race, creed, color, national origin, sex, age, disability, or
227 marital status and that such employment agency, labor union, or representative will
228 affirmatively cooperate in the implementation of the contractor's obligations herein;

229 (3) The contractor shall state, in all solicitations or advertisements for employees, that,
230 in the performance of the state contract, all qualified applicants will be afforded equal
231 employment opportunities without discrimination because of race, creed, color, national
232 origin, sex, age, disability, or marital status;

233 (4) The contractor shall include the provisions of paragraph (1) of this subsection in
234 every subcontract, except as provided in paragraph (6) of this subsection, in such a
235 manner that the provisions will be binding upon each subcontractor as to work in
236 connection with the state contract;

237 (5) The provisions of this Code section shall not be binding upon contractors or
238 subcontractors in the performance of work or the provision of services or any other
239 activity that are unrelated, separate, or distinct from the state contract as expressed by its
240 terms;

241 (6) In the implementation of this Code section, the contracting agency shall consider
242 compliance by a contractor or subcontractor with the requirements of any federal law
243 concerning equal employment opportunity which effectuates the purpose of this Code
244 section. The contracting agency shall determine whether the imposition of the
245 requirements of this Code section duplicate or conflict with any such law, and, if such
246 duplication or conflict exists, the contracting agency shall waive the applicability of this
247 Code section to the extent of such duplication or conflict;

248 (7) The director shall promulgate rules and regulations to ensure that contractors and
249 subcontractors undertake programs of affirmative action and equal employment
250 opportunity as required by this Code section. Such rules and regulations as they pertain
251 to any particular agency shall be developed after consultation with contracting agencies.
252 Such rules and regulations may require a contractor, after notice in a bid solicitation, to
253 submit an equal employment opportunity program after bid opening and prior to the
254 award of any contract, and may require the contractor or subcontractor to submit
255 compliance reports relating to the contractor's or subcontractor's operation and
256 implementation of any equal employment opportunity program in effect as of the date the
257 contract is executed. The contracting agency may recommend to the director that the
258 director take appropriate action according to the procedures set forth in Code Section
259 50-7-108 against the contractor for noncompliance with the requirements of this Code
260 section. The contracting agency shall be responsible for monitoring compliance with this
261 Code section; and

262 (8) The requirements of this Code section shall not apply to any employment outside this
263 state or application for employment outside this state or solicitations or advertisements
264 therefor, or any existing programs of affirmative action regarding employment outside
265 this state and the effect of contract provisions required by paragraph (1) of this Code
266 section shall be so limited.

267 50-7-104.

268 (a) The director is authorized and directed to commission a state-wide disparity study
269 regarding the participation of minority and women owned business enterprises in state
270 contracts to be delivered to the Governor and the chairpersons of the Senate Finance
271 Committee and the House Committee on Ways and Means no later than February 15, 2016.

272 The study shall be prepared by an entity independent of the department and selected
 273 through a request for proposal process. The purpose of such study is:

274 (1) To determine whether there is a disparity between the number of qualified minority
 275 and women owned businesses ready, willing, and able to perform state contracts for
 276 commodities, services, and construction, and the number of such contractors actually
 277 engaged to perform such contracts, and to determine what changes, if any, should be
 278 made to state policies affecting minority and women owned business enterprises; and

279 (2) To determine whether there is a disparity between the number of qualified minorities
 280 and women ready, willing, and able with respect to labor markets, qualifications, and
 281 other relevant factors to participate in contractor employment, management level bodies
 282 including boards of directors, and as senior executive officers within contracting entities
 283 and the number of such group members actually employed or affiliated with state
 284 contractors in the aforementioned capacities, and to determine what changes, if any,
 285 should be made to state policies affecting minority and women group populations with
 286 regard to state contractors' employment and appointment practices relative to diverse
 287 group members. Such study shall include, but not be limited to, an analysis of the history
 288 of minority and women owned business enterprise programs and their effectiveness as
 289 a means of securing and ensuring participation by minorities and women, and a disparity
 290 analysis by market area and region of the state. Such study shall distinguish between
 291 minority males, minority females, and nonminority females in the statistical analysis.

292 (b) The director shall transmit the disparity study to the Governor and the chairpersons of
 293 the Senate Finance Committee and the House Committee on Ways and Means not later
 294 than February 15, 2016, and to post the study on the website of the Department of
 295 Economic Development.

296 50-7-105.

297 (a) Each agency shall structure procurement procedures for contracts made directly or
 298 indirectly to minority and women owned business enterprises, consistent with the purposes
 299 of this article, to achieve the following results with regard to total annual state-wide
 300 procurement:

301 (1) Construction industry for certified minority owned business enterprises: 14.34
 302 percent;

303 (2) Construction industry for certified women owned business enterprises: 8.41 percent;

304 (3) Construction related professional services industry for certified minority owned
 305 business enterprises: 13.21 percent;

306 (4) Construction related professional services industry for certified women owned
 307 business enterprises: 11.32 percent;

- 308 (5) Nonconstruction related services industry for certified minority owned business
309 enterprises: 19.60 percent;
- 310 (6) Nonconstruction related services industry for certified women owned business
311 enterprises: 17.44 percent;
- 312 (7) Commodities industry for certified minority owned business enterprises: 16.11
313 percent;
- 314 (8) Commodities industry for certified women owned business enterprises: 10.93
315 percent;
- 316 (9) Overall agency total dollar value of procurement for certified minority owned
317 business enterprises: 16.53 percent;
- 318 (10) Overall agency total dollar value of procurement for certified women owned
319 business enterprises: 12.39 percent; and
- 320 (11) Overall agency total dollar value of procurement for certified minority and women
321 owned business enterprises: 28.92 percent.
- 322 (b) The director shall ensure that each state agency has been provided with a copy of the
323 2016 study.
- 324 (c) Each agency shall develop and adopt agency-specific goals based on the findings of
325 the 2016 study.
- 326 (d) The director shall promulgate rules and regulations pursuant to the goals established
327 in subsection (a) of this Code section that provide measures and procedures to ensure that
328 certified minority and women owned businesses shall be given the opportunity for
329 maximum feasible participation in the performance of state contracts and to assist in the
330 agency's identification of those state contracts for which minority and women owned
331 certified businesses may best bid to actively and affirmatively promote and assist their
332 participation in the performance of state contracts so as to facilitate the agency's
333 achievement of the maximum feasible portion of the goals for state contracts to such
334 businesses.
- 335 (e) The director shall promulgate rules and regulations that will accomplish the following:
- 336 (1) Provide for the certification and decertification of minority and women owned
337 business enterprises for all agencies through a single process that meets applicable
338 requirements;
- 339 (2) Require that each contract solicitation document accompanying each solicitation set
340 forth the expected degree of minority and women owned business enterprise participation
341 based, in part, on:
- 342 (A) The potential subcontract opportunities available in the prime procurement
343 contract; and

344 (B) The availability, as contained within the study, of certified minority and women
345 owned business enterprises to respond competitively to the potential subcontract
346 opportunities;

347 (3) Require that each agency provide a current list of certified minority business
348 enterprises to each prospective contractor;

349 (4) Allow a contractor that is a certified minority owned or women owned business
350 enterprise to use the work it performs to meet requirements for use of certified minority
351 owned or women owned business enterprises as subcontractors;

352 (5) Provide for joint ventures, which a bidder may count toward meeting its minority and
353 women owned business enterprise participation;

354 (6) Consistent with subsection (i) of this Code section, provide for circumstances under
355 which an agency may waive obligations of the contractor relating to minority and women
356 owned business enterprise participation;

357 (7) Require that an agency verify that minority and women owned business enterprises
358 listed in a successful bid are actually participating to the extent listed in the project for
359 which the bid was submitted;

360 (8) Provide for the collection of statistical data by each agency concerning actual
361 minority and women owned business enterprise participation; and

362 (9) Require each agency to consult the most current disparity study when calculating
363 agency-wide and contract specific participation goals pursuant to this article.

364 (f) Solely for the purpose of providing the opportunity for meaningful participation by
365 certified businesses in the performance of state contracts as provided in this Code section,
366 state contracts shall include leases of real property by a state agency to a lessee where: the
367 terms of such leases provide for the construction, demolition, replacement, major repair,
368 or renovation of real property and improvements thereon by such lessee; and the cost of
369 such construction, demolition, replacement, major repair, or renovation of real property and
370 improvements thereon shall exceed the sum of \$100,000.00. Reports to the director
371 pursuant to Code Section 50-7-106 shall include activities with respect to all such state
372 contracts. Contracting agencies shall include or require to be included with respect to state
373 contracts for the acquisition, construction, demolition, replacement, major repair, or
374 renovation of real property and improvements thereon, such provisions as may be
375 necessary to effectuate the provisions of this Code section in every bid specification and
376 state contract, including, but not limited to:

377 (1) Provisions requiring contractors to make a good faith effort to solicit active
378 participation by enterprises identified in the directory of certified businesses provided to
379 the contracting agency by the office;

380 (2) Requiring the parties to agree, as a condition of entering into such contract, to be
381 bound by the provisions of section three hundred sixteen of this article; and
382 (3) Requiring the contractor to include the provisions set forth in paragraphs (1) and (2)
383 of this subsection in every subcontract in a manner that the provisions will be binding
384 upon each subcontractor as to work in connection with such contract; provided, however,
385 that no such provisions shall be binding upon contractors or subcontractors in the
386 performance of work or the provision of services that are unrelated, separate or distinct
387 from the state contract as expressed by its terms, and nothing in this Code section shall
388 authorize the director or any contracting agency to impose any requirement on a
389 contractor or subcontractor except with respect to a state contract.

390 (g) In the implementation of this Code section, the contracting agency shall:

391 (1) Consult the findings contained within the disparity study evidencing relevant industry
392 specific availability of certified businesses;

393 (2) Implement a program that will enable the agency to evaluate each contract to
394 determine the appropriateness of the goal pursuant to subsection (a) of this Code section;

395 (3) Consider where practicable, the severability of construction projects, and other
396 bundled contracts; and

397 (4) Consider compliance with the requirements of any federal law concerning
398 opportunities for minority and women owned business enterprises which effectuates the
399 purpose of this Code section. The contracting agency shall determine whether the
400 imposition of the requirements of any such law duplicate or conflict with the provisions
401 of this Code section, and, if such duplication or conflict exists, the contracting agency
402 shall waive the applicability of this Code section to the extent of such duplication or
403 conflict.

404 (h)(1) Contracting agencies shall administer the rules and regulations promulgated by the
405 director in a good faith effort to meet the maximum feasible portion of the agency's goals
406 adopted pursuant to this article and the regulations of the director. Such rules and
407 regulations shall require a contractor to submit a utilization plan after bids are opened and
408 when bids are required, but prior to the award of a state contract; shall require the
409 contracting agency to review the utilization plan submitted by the contractor and to post
410 the utilization plan and any waivers of compliance issued pursuant to subsection (f) of
411 this Code section on the website of the contracting agency within a reasonable period of
412 time as established by the director; shall require the contracting agency to notify the
413 contractor in writing within a period of time specified by the director as to any
414 deficiencies contained in the contractor's utilization plan; shall require remedy thereof
415 within a period of time specified by the director; shall require the contractor to submit
416 periodic compliance reports relating to the operation and implementation of any

417 utilization plan; shall not allow any automatic waivers but shall allow a contractor to
418 apply for a partial or total waiver of the minority and women owned business enterprise
419 participation requirements pursuant to subsections (f) and (g) of this Code section; shall
420 allow a contractor to file a complaint with the director pursuant to subsection (h) of this
421 Code section in the event a contracting agency has failed or refused to issue a waiver of
422 the minority and women owned business enterprise participation requirements or has
423 denied such request for a waiver; and shall allow a contracting agency to file a complaint
424 with the director pursuant to subsection (i) of this Code section in the event a contractor
425 is failing or has failed to comply with the minority and women owned business enterprise
426 participation requirements set forth in the state contract where no waiver has been
427 granted.

428 (2) The rules and regulations promulgated pursuant to this paragraph regarding a
429 utilization plan shall provide that where enterprises have been identified within a
430 utilization plan, a contractor shall attempt, in good faith, to utilize such enterprise at least
431 to the extent indicated. A contracting agency may require a contractor to indicate, within
432 a utilization plan, what measures and procedures he or she intends to take to comply with
433 the provisions of this article, but may not require, as a condition of award of, or
434 compliance with, a contract that a contractor utilize a particular enterprise in performance
435 of the contract.

436 (3) Without limiting other grounds for the disqualification of bids or proposals on the
437 basis of nonresponsibility, a contracting agency may disqualify the bid or proposal of a
438 contractor as being nonresponsible for failure to remedy notified deficiencies contained
439 in the contractor's utilization plan within a period of time specified in regulations
440 promulgated by the director after receiving notification of such deficiencies from the
441 contracting agency. Where failure to remedy any notified deficiency in the utilization
442 plan is a ground for disqualification, that issue and all other grounds for disqualification
443 shall be stated in writing by the contracting agency. Where the contracting agency states
444 that a failure to remedy any notified deficiency in the utilization plan is a ground for
445 disqualification, the contractor shall be entitled to an administrative hearing, on a record,
446 involving all grounds stated by the contracting agency. Such hearing shall be conducted
447 by the appropriate authority of the contracting agency to review the determination of
448 disqualification.

449 (i) Where it appears that a contractor cannot, after a good faith effort, comply with the
450 minority and women owned business enterprise participation requirements set forth in a
451 particular state contract, a contractor may file a written application with the contracting
452 agency requesting a partial or total waiver of such requirements setting forth the reasons
453 for such contractor's inability to meet any or all of the participation requirements together

454 with an explanation of the efforts undertaken by the contractor to obtain the required
 455 minority and women owned business enterprise participation. In implementing the
 456 provisions of this Code section, the contracting agency shall consider the number and types
 457 of minority and women owned business enterprises located in the region in which the state
 458 contract is to be performed, the total dollar value of the state contract, the scope of work
 459 to be performed and the project size and term. If, based on such considerations, the
 460 contracting agency determines there is not a reasonable availability of contractors on the
 461 list of certified business to furnish services for the project, it shall issue a waiver of
 462 compliance to the contractor. In making such determination, the contracting agency shall
 463 first consider the availability of other business enterprises located in the region and shall
 464 thereafter consider the financial ability of minority and women owned businesses located
 465 outside the region in which the contract is to be performed to perform the state contract.
 466 (j) For purposes of determining a contractor's good faith effort to comply with the
 467 requirements of this Code section or to be entitled to a waiver therefrom the contracting
 468 agency shall consider:

469 (1) Whether the contractor has advertised in general circulation media, trade association
 470 publications, and minority-focus and women-focus media and, in such event:

471 (A) Whether or not certified minority or women owned businesses which have been
 472 solicited by the contractor exhibited interest in submitting proposals for a particular
 473 project by attending a pre-bid conference; and

474 (B) Whether certified businesses which have been solicited by the contractor have
 475 responded in a timely fashion to the contractor's solicitations for timely competitive bid
 476 quotations prior to the contracting agency's bid date;

477 (2) Whether there has been written notification to appropriate certified businesses that
 478 appear in the directory of certified businesses prepared pursuant to paragraph (6) of
 479 subsection (c) of Code Section 50-7-101; and

480 (3) Whether the contractor can reasonably structure the amount of work to be performed
 481 under subcontracts in order to increase the likelihood of participation by certified
 482 businesses.

483 (k) In the event that a contracting agency fails or refuses to issue a waiver to a contractor
 484 as requested within 20 days after having made application therefor pursuant to
 485 subsection (f) of this Code section or if the contracting agency denies such application, in
 486 whole or in part, the contractor may file a complaint with the director pursuant to Code
 487 section 5-7-101 setting forth the facts and circumstances giving rise to the contractor's
 488 complaint together with a demand for relief. The contractor shall serve a copy of such
 489 complaint upon the contracting agency by personal service or by certified mail, return

490 receipt requested. The contracting agency shall be afforded an opportunity to respond to
491 such complaint in writing.

492 (l) If, after the review of a contractor's minority and women owned business utilization
493 plan or review of a periodic compliance report and after such contractor has been afforded
494 an opportunity to respond to a notice of deficiency issued by the contracting agency in
495 connection therewith, it appears that a contractor is failing or refusing to comply with the
496 minority and women owned business participation requirements as set forth in the state
497 contract and where no waiver from such requirements has been granted, the contracting
498 agency may file a written complaint with the director pursuant to Code Section 50-7-110
499 setting forth the facts and circumstances giving rise to the contracting agency's complaint
500 together with a demand for relief. The contracting agency shall serve a copy of such
501 complaint upon the contractor by personal service or by certified mail, return receipt
502 requested. The contractor shall be afforded an opportunity to respond to such complaint
503 in writing.

504 50-7-106.

505 The director shall promulgate rules and regulations setting forth measures and procedures
506 to require all contracting agencies, where practicable, feasible, and appropriate, to assess
507 the diversity practices of contractors submitting bids or proposals in connection with the
508 award of a state contract. Such rules and regulations shall take into account the nature of
509 the labor, services, supplies, equipment, or materials being procured by the state agency;
510 the method of procurement required to be used by a state agency to award the contract and
511 minority and women owned business utilization plans required to be submitted pursuant
512 to Code Sections 50-7-103 and 50-7-104; and such other factors as the director deems
513 appropriate or necessary to promote the award of state contracts to contractors having
514 sound diversity practices. Such assessment shall not in any way permit the automatic
515 rejection of a bid or procurement contract proposal based on lack of adherence to diversity
516 practices. Each bid or proposal shall be analyzed on an individual per-bid or per-proposal
517 basis with the contractor's diversity practices considered as only a part of a wider
518 consideration of several factors when deciding to award or decline to award a bid or
519 proposal.

520 50-7-107.

521 (a) The director shall promulgate rules and regulations providing for the establishment of
522 a state-wide certification program including rules and regulations governing the approval,
523 denial, or revocation of any such certification.

524 (b) For the purposes of this article, the office shall be responsible for verifying businesses
525 as being owned, operated, and controlled by minority group members or women and for
526 certifying such verified businesses. The director shall prepare a directory of certified
527 businesses for use by contracting agencies and contractors in carrying out the provisions
528 of this article. The director shall periodically update the directory.

529 (c)(1) The director shall work with all municipal corporations that have a municipal
530 minority and women owned business enterprise program to develop standards to accept
531 state certification to meet the municipal corporation minority and women owned business
532 enterprise certification standards.

533 (2) The director shall establish a procedure enabling the division to accept federal
534 certification verification for minority and women owned business enterprise applicants,
535 provided said standards comport with those required by the state minority and women
536 owned business program, in lieu of requiring the applicant to complete the state
537 certification process. The director shall promulgate rules and regulations to set forth
538 criteria for the acceptance of federal certification.

539 (d) Following application for certification pursuant to this Code section, the director shall
540 provide the applicant with written notice of the status of the application, including notice
541 of any outstanding deficiencies, within 30 days. Within 60 days of submission of a final
542 completed application, the director shall provide the applicant with written notice of a
543 determination by the office approving or denying such certification and, in the event of a
544 denial, a statement setting forth the reasons for such denial. Upon a determination denying
545 or revoking certification, the business enterprise for which certification has been so denied
546 or revoked shall, upon written request made within 30 days from receipt of notice of such
547 determination, be entitled to a hearing before an independent hearing officer designated for
548 such purpose by the director. In the event that a request for a hearing is not made within
549 such 30 day period, such determination shall be deemed to be final. The independent
550 hearing officer shall conduct a hearing and, upon the conclusion of such hearing, issue a
551 written recommendation to the director to affirm, reverse, or modify such determination
552 of the director. Such written recommendation shall be issued to the parties. The director,
553 within 30 days, by order, must accept, reject, or modify such recommendation of the
554 hearing officer and set forth in writing the reasons therefor. The director shall serve a copy
555 of such order and reasons therefor upon the business enterprise by personal service or by
556 certified mail return receipt requested.

557 (e) All certifications shall be valid for a period of three years.

558 50-7-108.

559 (a) Each contracting agency shall be responsible for monitoring state contracts under its
560 jurisdiction, and recommending matters to the office respecting noncompliance with the
561 provisions of this article so that the office may take such action as is appropriate to insure
562 compliance with the provisions of this article, the rules and regulations of the director
563 issued hereunder and the contractual provisions required pursuant to this article. All
564 contracting agencies shall comply with the rules and regulations of the office and are
565 directed to cooperate with the office and to furnish to the office such information and
566 assistance as may be required in the performance of its functions under this article.

567 (b) Each contracting agency shall provide to prospective bidders a current copy of the
568 directory of certified businesses and a copy of the regulations.

569 (c) Each contracting agency shall report to the director with respect to activities
570 undertaken to promote employment of minority group members and women and promote
571 and increase participation by certified businesses with respect to state contracts and
572 subcontracts. Such reports shall be submitted periodically, but not less frequently than
573 annually, as required by the director, and shall include such information as is necessary for
574 the director to determine whether the contracting agency and contractor have complied
575 with the purposes of this article, including, without limitation, a summary of all waivers
576 of the requirements of subsections (f) and (g) of Code Section 50-7-104 allowed by the
577 contracting agency during the period covered by the report, including a description of the
578 basis of the waiver request and the rationale for granting any such waiver. Each agency
579 shall also include in such annual report whether or not it has been required to prepare a
580 remedial plan and, if so, the plan and the extent to which the agency has complied with
581 each element of the plan.

582 (d) The division shall issue an annual report which:

583 (1) Summarizes the report submitted by each contracting agency pursuant to subsection
584 (c) of this Code section;

585 (2) Contains such comparative or other information as the director deems appropriate,
586 including but not limited to goals compared to actual participation of minority and
587 women owned business enterprises in state contracting, to evaluate the effectiveness of
588 the activities undertaken by each such contracting agency to promote increased
589 participation by certified minority or women owned businesses with respect to state
590 contracts and subcontracts;

591 (3) Contains a summary of all waivers of the requirements of subsections (f) and (g) of
592 Code Section 50-7-104 allowed by each contracting agency during the period covered by
593 the report, including a description of the basis of the waiver request and the contracting
594 agency's rationale for granting any such waiver;

595 (4) Describes any efforts to create a database or other information storage and retrieval
 596 system containing information relevant to contracting with minority and women owned
 597 business enterprises; and

598 (5) Contains a summary of:

599 (A) All determinations of violations of this article by a contractor or a contracting
 600 agency made during the period covered by the annual report pursuant to Code Section
 601 50-7-109; and

602 (B) The penalties or sanctions, if any, assessed in connection with such determinations
 603 and the rationale for such penalties or sanctions. Copies of the annual report shall be
 604 provided to the commissioner, the Governor, the President of the Senate, the Speaker
 605 of the House of Representatives, the minority leader of the Senate, and the minority
 606 leader of the House of Representatives and shall also be made widely available to the
 607 public.

608 (e) Each agency shall include in its annual report to the Governor and the chairpersons of
 609 the Senate Finance Committee and the House Committee on Ways and Means its annual
 610 goals for contracts with minority owned and women owned business enterprises, the
 611 number of actual contracts issued to minority owned and women owned business
 612 enterprises; and a summary of all waivers of the requirements of subsections (f) and (g) of
 613 Code Section 50-7-105 allowed by the reporting agency during the preceding year,
 614 including a description of the basis of the waiver request and the rationale for granting such
 615 waiver. Each agency shall also include in such annual report whether or not it has been
 616 required to prepare a remedial plan, and, if so, the plan and the extent to which the agency
 617 has complied with each element of the plan.

618 (f) Each contracting agency that substantially fails to meet the goals supported by the
 619 disparity study, as defined by regulation of the director, shall be required to submit to the
 620 director a remedial action plan to remedy such failure.

621 (g) If it is determined by the director that any agency has failed to act in good faith to
 622 implement the remedial action plan, pursuant to subsection (f) of this Code section within
 623 one year, the director shall provide written notice of such a finding, which shall be publicly
 624 available, and direct implementation of remedial actions to:

625 (1) Assure that sufficient and effective solicitation efforts to women and minority owned
 626 business enterprises are being made by said agency;

627 (2) Divide contract requirements, when economically feasible, into quantities that will
 628 expand the participation of women and minority owned business enterprises;

629 (3) Eliminate extended experience or capitalization requirements, when
 630 programmatically and economically feasible, that will expand participation by women
 631 and minority owned business enterprises;

632 (4) Identify specific proposed contracts as particularly attractive or appropriate for
633 participation by women and minority owned business enterprises with such identification
634 to result from and be coupled with the efforts of paragraphs (1), (2), and (3) of this
635 subsection; and

636 (5) Upon a finding by the director that an agency has failed to take affirmative measures
637 to implement the remedial plan and to follow any of the remedial actions set forth by the
638 director, and in the absence of any objective progress towards the agency's goals, require
639 some or all of the agency's procurement, for a specified period of time, be placed under
640 the direction and control of another agency or agencies.

641 50-7-109.

642 Upon receipt by the director of a complaint by a contracting agency that a contractor has
643 violated the provisions of a state contract which have been included to comply with the
644 provisions of this article or of a contractor that a contracting agency has violated such
645 provisions or has failed or refused to issue a waiver where one has been applied for
646 pursuant to subsection (f) of Code Section 50-7-104 or has denied such application, the
647 director shall attempt to resolve the matter giving rise to such complaint. If efforts to
648 resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer
649 the matter, within 30 days of the receipt of the complaint, to the division's hearing officers.

650 Upon conclusion of the administrative hearing, the hearing officer shall submit to the
651 director his or her decision regarding the alleged violation of the contract and
652 recommendations regarding the imposition of sanctions, fines, or penalties. The director,
653 within ten days of receipt of the decision, shall file a determination of such matter and shall
654 cause a copy of such determination along with a copy of this article to be served upon the
655 contractor by personal service or by certified mail return receipt requested. The penalties
656 imposed for any violation which is premised upon either a fraudulent or intentional
657 misrepresentation by the contractor or the contractor's willful and intentional disregard of
658 the minority and women owned participation requirement included in the contract may
659 include a determination that the contractor shall be ineligible to submit a bid to any
660 contracting agency or be awarded any such contract for a period not to exceed one year
661 following the final determination; provided, however, that if a contractor has previously
662 been determined to be ineligible to submit a bid pursuant to this section, the penalties
663 imposed for any subsequent violation, if such violation occurs within five years of the first
664 violation, may include a determination that the contractor shall be ineligible to submit a bid
665 to any contracting agency or be awarded any such contract for a period not to exceed five
666 years following the final determination. The division of minority and women's business
667 development shall maintain a website listing all contractors that have been deemed

668 ineligible to submit a bid pursuant to this Code section and the date after which each
669 contractor shall once again become eligible to submit bids.

670 50-7-110.

671 Every contracting agency shall include a provision in its state contracts expressly providing
672 that any contractor who willfully and intentionally fails to comply with the minority and
673 women owned participation requirements of this article as set forth in such state contract
674 shall be liable to the contracting agency for liquidated or other appropriate damages and
675 shall provide for other appropriate remedies on account of such breach. A contracting
676 agency that elects to proceed against a contractor for breach of contract as provided in this
677 Code section shall be precluded from seeking enforcement pursuant to Code Section
678 50-7-109; provided, however, that the contracting agency shall include a summary of all
679 enforcement actions undertaken pursuant to this Code section in its annual report submitted
680 pursuant to subsection (c) of Code Section 50-7-107."

681 **SECTION 2.**

682 All laws and parts of laws in conflict with this Act are repealed.