

The House Committee on Governmental Affairs offers the following substitute to HB 1467:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the
2 Department of Administrative Services, so as to define certain terms; to provide for optional
3 powers of the department with regard to minority owned, women owned, veteran owned, and
4 rural business enterprises; to authorize a state-wide advocate and optional powers; to provide
5 for optional provisions for state contracts; to provide for a state-wide disparity study; to
6 provide for contents; to provide for the structure of procurement contracts in certain
7 circumstances; to provide for purposes, rules, and regulations; to provide for the
8 promulgation of rules and regulations; to provide for exceptions; to provide for waivers; to
9 provide for certification; to provide for penalties for violations; to provide for related matters;
10 to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to the Department
14 of Administrative Services, is amended by adding a new article to read as follows:

H. B. 1467 (SUB)

15 "ARTICLE 516 50-5-150.17 As used in this article, the term:18 (1) 'Certified business' means a business verified as a minority owned business
19 enterprise, a women owned business enterprise, a veteran owned business enterprise, or
20 a rural business enterprise pursuant to Code Section 50-5-157.21 (2) 'Contracting agency' means a state agency which is a party or a proposed party to a
22 state contract.23 (3) 'Contractor' means an individual or a business enterprise, including a sole
24 proprietorship, partnership, corporation, nonprofit corporation, or any other party to a
25 state contract; a bidder in conjunction with the award of a state contract; or a proposed
26 party to a state contract.27 (4) 'Department' means the Department of Administrative Services.28 (5) 'Diversity practices' means a contractor's practices and policies with respect to:29 (A) Utilizing certified businesses as subcontractors and suppliers in contracts awarded
30 by a state agency or other public corporation; and31 (B) Entering into partnerships, joint ventures, or other similar arrangements with
32 certified businesses pursuant to applicable statutes or regulations governing an entity's
33 utilization of minority owned, women owned, veteran owned, and rural business
34 enterprises.35 (6) 'Minority group member' means a United States citizen or permanent resident alien
36 who is and can demonstrate membership in at least one of the following groups:37 (A) African American persons having origins in any of the African racial groups;38 (B) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, or Central or
39 South American origin, regardless of race;

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

42 (D) Asian or Pacific Islander persons having origins in any East Asian country,
43 Southeast Asia, the Indian subcontinent, or the Pacific Islands.

44 (7) 'Minority owned business enterprise' means a business enterprise, including a sole
45 proprietorship, partnership, or corporation, that is:

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

47 (B) An enterprise in which the ownership interest of such minority group members is
48 real, substantial, and continuing;

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

51 (D) Authorized to do business in this state and is independently owned and operated.

52 (8) 'Minority owned, women owned, veteran owned, and rural business enterprise' means
53 and includes a minority owned business enterprise, a women owned business enterprise,
54 a veteran owned business enterprise, and a rural business enterprise.

55 (9) 'Rural business' or 'rural business enterprise' means a business enterprise, including
56 a sole proprietorship, partnership, or corporation, which is headquartered in a county that
57 is certified as being a tier 1 or tier 2 county pursuant to Code Section 48-7-40.

58 (10) 'State agency' means a state department; a division, board, commission, or bureau
59 of any state department; or a state authority.

60 (11) 'State contract' means:

61 (A) A written agreement or purchase order instrument providing for a total expenditure
62 in excess of \$35,000.00 whereby a contracting agency is committed to expend or does
63 expend funds for labor; services such as legal, financial, and other professional
64 services; supplies; equipment; materials; or any combination of the foregoing to be
65 performed for or rendered or furnished to the contracting agency;

66 (B) A written agreement or purchase order instrument providing for a total expenditure
67 in excess of \$100,000.00 whereby a contracting agency is committed to expend or does
68 expend funds for the acquisition, construction, demolition, replacement, major repair,
69 renovation, planning, or design of real property and improvements thereon; and

70 (C) A written agreement or purchase order instrument providing for a total expenditure
71 in excess of \$100,000.00 whereby the owner of a state assisted housing project is
72 committed to expend or does expend funds for the acquisition, construction, demolition,
73 replacement, major repair, renovation, planning, or design of real property and
74 improvements thereon for such project.

75 (12) 'Subcontract' means a written agreement or purchase order instrument providing for
76 a total expenditure in excess of \$25,000.00 for the construction, demolition, replacement,
77 major repair, renovation, planning, or design of real property and improvements thereon
78 between a contractor and any individual or business enterprise, including a sole
79 proprietorship, partnership, corporation, or nonprofit corporation, in which a portion of
80 a contractor's obligation under a state contract is undertaken or assumed, but such term
81 shall not include any construction, demolition, replacement, major repair, renovation,
82 planning, or design of real property or improvements thereon for the beneficial use of the
83 contractor.

84 (13) 'Utilization plan' means a plan prepared by a contractor and submitted in connection
85 with a proposed state contract. Such plan shall identify any certified businesses, if
86 known, that have committed to perform work in connection with the proposed state
87 contract as well as any certified businesses, if known, which the contractor intends to use
88 in connection with the proposed state contract. Such plan shall specifically contain a list,
89 including the name, address, and telephone number, of each certified business with which
90 the contractor has committed to or intends to subcontract.

91 (14) 'Veteran owned business enterprise' means a business enterprise, including a sole
92 proprietorship, partnership, or corporation, that is:

- 93 (A) At least 51 percent owned by one or more individuals who served in the armed
94 forces of the United States and received an honorable discharge from such service;
95 (B) An enterprise in which the ownership interest of such veterans is real, substantial,
96 and continuing;
97 (C) An enterprise in which such veteran ownership has and exercises the authority to
98 control independently the day-to-day business decisions of such enterprise; and
99 (D) Authorized to do business in this state and is independently owned and operated.
100 (15) 'Women owned business enterprise' means a business enterprise, including a sole
101 proprietorship, partnership, or corporation, that is:
102 (A) At least 51 percent owned by one or more United States citizens or permanent
103 resident aliens who are women;
104 (B) An enterprise in which the ownership interest of such women is real, substantial,
105 and continuing;
106 (C) An enterprise in which such women ownership has and exercises the authority to
107 control independently the day-to-day business decisions of such enterprise; and
108 (D) Authorized to do business in this state and is independently owned and operated.

109 50-5-151.

110 (a) The department shall have the power, but not the obligation:

- 111 (1) To encourage and assist contracting agencies in their efforts to increase participation
112 by minority owned, women owned, veteran owned, and rural business enterprises on state
113 contracts and subcontracts so as to facilitate the award of such state contracts and
114 subcontracts to such ready, willing, and able contractors based on the findings of the
115 latest state-wide disparity study;
116 (2) To develop standardized forms and reporting documents necessary to implement this
117 article;
118 (3) To conduct educational programs consistent with the purposes of this article;

119 (4) To periodically review the practices and procedures of each contracting agency for
120 compliance with the provisions of this article and to require such contracting agencies to
121 file periodic reports with the department as to the participation level of minority owned,
122 women owned, veteran owned, and rural business enterprises in the awarding of state
123 contracts and subcontracts;

124 (5) To report to the Governor and the chairpersons of the Senate Finance Committee and
125 the House Committee on Ways and Means on January 1 of each year the level of certified
126 businesses participating in each contracting agency's state contracts and subcontracts, the
127 activities of the department, and the efforts by each contracting agency to promote
128 employment of minority group members, women, veterans, and rural businesses and to
129 promote and increase participation by certified businesses with respect to state contracts
130 and subcontracts so as to facilitate the award of a share of state contracts and subcontracts
131 to such certified businesses. The department may recommend new activities and
132 programs to effectuate the purposes of this article;

133 (6) To prepare and periodically update a directory of certified businesses which shall,
134 wherever practicable, be divided into categories of labor, services, supplies, equipment,
135 materials, and recognized construction trades and which shall indicate areas or locations
136 of this state where such certified businesses are available to perform services;

137 (7) To appoint independent hearing officers who by contract or terms of employment
138 shall preside over adjudicatory hearings for the department;

139 (8) To file a complaint when the department has knowledge that a contractor may have
140 violated the provisions of this article and such violation is unrelated, separate, or distinct
141 from the state contract as expressed by its terms; and

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

144 (b) The department may provide assistance to, and facilitate access to, programs serving
145 certified businesses as well as applicants to ensure that such certified businesses benefit,

146 as needed, from technical, managerial, financial, and general business assistance; training;
147 marketing; organizational and personnel skill development; project management assistance;
148 technology assistance; bond and insurance education assistance; and other business
149 development assistance. In addition, the department may, either independently or in
150 conjunction with other state agencies:

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

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

155 (3) Seek to maximize utilization by certified businesses of available federal resources,
156 including, but not limited to, federal grants, loans, loan guarantees, surety bonding
157 guarantees, technical assistance, and programs and services of the federal Small Business
158 Administration.

159 50-5-152.

160 (a) The commissioner of administrative services may appoint a member of the department
161 to serve as the minority owned, women owned, veteran owned, and rural business
162 enterprises state-wide advocate.

163 (b) The state-wide advocate may act as a liaison for minority owned, women owned,
164 veteran owned, and rural business enterprises to assist certified businesses and applicants
165 in obtaining technical, managerial, financial, and other business assistance. The state-wide
166 advocate may investigate complaints brought by or on behalf of minority owned, women
167 owned, veteran owned, and rural business enterprises concerning certification delays and
168 instances of violations of law by state agencies. The state-wide advocate may assist
169 minority owned, women owned, veteran owned, and rural business enterprises in the
170 certification process. Other functions of the state-wide advocate may be directed by the
171 commissioner of administrative services.

172 (c) The state-wide advocate may establish a toll-free number at the department to be used
173 to answer questions concerning the certification process for minority owned, women
174 owned, veteran owned, and rural business enterprises.

175 (d) The state-wide advocate may report to the commissioner of administrative services by
176 November 15 of each year on all activities related to fulfilling the obligations of the office
177 of the state-wide advocate. The commissioner of administrative services may include the
178 unedited text of the state-wide advocate's report within the reports submitted by the
179 department to the Governor and the chairpersons of the Senate Finance Committee and the
180 House Committee on Ways and Means.

181 50-5-153.

182 (a) As used in this Code section, the term 'affirmative action' means recruitment,
183 employment, job assignments, promotions, upgrades, demotions, transfers, layoffs,
184 terminations, and rates of pay or other forms of compensation.

185 (b) State contracts and documents soliciting bids or proposals for state contracts may
186 contain or make reference to the following provisions:

187 (1) The contractor shall not discriminate against employees or applicants for employment
188 because of race, creed, color, national origin, sex, age, disability, marital status, or
189 location within the state and shall undertake or continue existing programs of affirmative
190 action to ensure that minority group members, women, veterans, and rural businesses are
191 afforded equal employment opportunities without discrimination;

192 (2) At the request of the contracting agency, the contractor shall request each
193 employment agency or labor union, or authorized representative of workers with which
194 it has a collective bargaining or other agreement or understanding, to furnish a written
195 statement that such employment agency, labor union, or representative will not
196 discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital
197 status, or location within the state and that such employment agency, labor union, or

198 representative will affirmatively cooperate in the implementation of the contractor's
199 obligations provided for in this Code section;

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

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

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

211 (6) In the implementation of this Code section, the contracting agency may consider
212 compliance by a contractor or subcontractor with the requirements of any federal law
213 concerning equal employment opportunity which effectuates the purpose of this Code
214 section. The contracting agency may determine whether the imposition of the
215 requirements of this Code section duplicate or conflict with any such law, and if such
216 duplication or conflict exists, the contracting agency may waive the applicability of this
217 Code section to the extent of such duplication or conflict;

218 (7) The department may promulgate rules and regulations to ensure that contractors and
219 subcontractors undertake programs of affirmative action and equal employment
220 opportunity as required by this Code section. Such rules and regulations as they pertain
221 to any particular agency shall be developed after consultation with contracting agencies.
222 Such rules and regulations may require a contractor or subcontractor, after notice in a bid
223 solicitation, to implement an equal employment opportunity program prior to the award
224 of any contract or subcontract and may require the contractor or subcontractor to submit

225 compliance reports relating to the contractor's or subcontractor's operation and
226 implementation of any equal employment opportunity program in effect as of the date the
227 contract or subcontract is executed. The contracting agency may recommend that the
228 department take appropriate action according to the procedures set forth in Code
229 Section 50-5-158 against the contractor for noncompliance with the requirements of this
230 Code section. The contracting agency shall be responsible for monitoring compliance
231 with this Code section; and

232 (8) The requirements of this Code section shall not apply to any employment outside this
233 state, application for employment outside this state, or solicitations or advertisements
234 therefor or any existing programs of affirmative action regarding employment outside this
235 state, and the effect of the contract provisions required by paragraph (1) of this subsection
236 shall be so limited.

237 50-5-154.

238 (a) The department is authorized to commission a state-wide disparity study regarding the
239 participation of minority owned, women owned, veteran owned, and rural business
240 enterprises in state contracts that may be delivered to the Governor and the chairpersons
241 of the Senate Finance Committee and the House Committee on Ways and Means no later
242 than 12 months after the effective date of this article, and any such study shall be updated
243 every two years from the date of the most current state-wide disparity study. Any such
244 study shall be prepared by an entity independent of the Department of Administrative
245 Services and selected through a request for proposal process. The purpose of such study
246 is:

247 (1) To determine whether there is a disparity between the number of qualified minority
248 owned, women owned, veteran owned, and rural business enterprises ready, willing, and
249 able to perform state contracts for commodities, services, and construction and the
250 number of such business enterprises actually engaged to perform such contracts and to

251 determine what changes, if any, should be made to state policies affecting minority
252 owned, women owned, veteran owned, and rural business enterprises; and
253 (2) To determine whether there is a disparity between the number of qualified minority
254 group members, women, veterans, and rural businesses ready, willing, and able with
255 respect to labor markets, qualifications, and other relevant factors to participate in
256 contractor employment and management level bodies, including boards of directors, and
257 as senior executive officers within contracting agencies and the number of such minority
258 group members, women, veterans, and rural businesses actually employed or affiliated
259 with state contractors in the aforementioned capacities and to determine what changes,
260 if any, should be made to state policies affecting minority group members, women,
261 veterans, and rural businesses with regard to state contractors' employment and
262 appointment practices.

263 Any such study shall include, but shall not be limited to, an analysis of the history of
264 programs for minority owned, women owned, veteran owned, and rural business
265 enterprises and their effectiveness as a means of securing and ensuring participation by
266 minority group members, women, veterans, and rural businesses and a disparity analysis
267 by market area and region of this state. The statistical analysis of such study shall
268 distinguish among male minority group members, female minority group members, and
269 nonminority females and shall consider the veteran status of each of such group members.
270 (b) The department shall transmit any such state-wide disparity study to the Governor and
271 the chairpersons of the Senate Finance Committee and the House Committee on Ways and
272 Means upon completion and shall post such study on its website.

273 50-5-155.

274 (a) Each state agency may structure procurement procedures for contracts made directly
275 or indirectly with minority owned, women owned, veteran owned, and rural business

276 enterprises, consistent with the purposes of this article, to achieve the following results with
277 regard to total annual state-wide procurement:

278 (1) It is in the national interest to expeditiously ameliorate the conditions of minority
279 owned, women owned, veteran owned, and rural business enterprises;

280 (2) Such conditions can be improved by providing the maximum practicable opportunity
281 for the development of successful minority owned, women owned, veteran owned, and
282 rural business enterprises;

283 (3) Such development can be materially advantaged through the procurement by the state
284 of articles, equipment, supplies, services, materials, and labor from such business
285 enterprises;

286 (4) Such procurements also benefit the state by encouraging the expansion of diverse
287 suppliers, thereby encouraging competition among such suppliers and promoting
288 economy; and

289 (5) It is the purpose of this article to:

290 (A) Promote the development of minority owned, women owned, veteran owned, and
291 rural business enterprises so that such business enterprises can compete on an equal
292 basis in the American economy;

293 (B) Promote the competitive viability of such business enterprises in the marketplace
294 by providing such available contract, financial, technical, and management assistance
295 as may be necessary; and

296 (C) Clarify and expand the supplier diversity program for the procurement by the state
297 of articles, equipment, supplies, services, materials, and labor from minority owned,
298 women owned, veteran owned, and rural business enterprises.

299 (b) The department shall ensure that each state agency has been provided with a copy of
300 the most current state-wide disparity study, if any such study is conducted.

301 (c) Each state agency may develop and adopt agency-specific goals based on the findings
302 of the most current state-wide disparity study.

303 (d) The department may promulgate rules and regulations pursuant to the goals established
304 in subsection (a) of this Code section that provide measures and procedures to ensure that
305 certified businesses shall be given the opportunity for maximum feasible participation in
306 the performance of state contracts and to assist in the contracting agency's identification
307 of those state contracts for which certified businesses may best bid to actively and
308 affirmatively promote and assist their participation in the performance of state contracts so
309 as to facilitate the contracting agency's achievement of the maximum feasible portion of
310 the goals for state contracts to such certified businesses.

311 (e) The department may promulgate rules and regulations that:

312 (1) Provide for the certification and decertification of minority owned, women owned,
313 veteran owned, and rural business enterprises for all state agencies through a single
314 process that meets applicable requirements;

315 (2) Require that each contract solicitation document accompanying each solicitation sets
316 forth the expected degree of participation by minority owned, women owned, veteran
317 owned, and rural business enterprises based, in part, on:

318 (A) The potential subcontract opportunities available in the prime procurement
319 contract; and

320 (B) The availability, as contained within the most current state-wide disparity study,
321 of certified businesses to respond competitively to potential subcontract opportunities;

322 (3) Require that each state agency provide a current list of certified businesses to each
323 prospective contractor;

324 (4) Allow a contractor that is a certified business to use the work it performs to meet
325 requirements for use of certified businesses as subcontractors;

326 (5) Provide for joint ventures, which a bidder may count toward meeting participation
327 by minority owned, women owned, veteran owned, and rural business enterprises;

328 (6) Consistent with subsection (i) of this Code section, provide for circumstances under
329 which a contracting agency may waive obligations of the contractor relating to

330 participation by minority owned, women owned, veteran owned, and rural business
331 enterprises;

332 (7) Require that a contracting agency verify that minority owned, women owned, veteran
333 owned, and rural business enterprises listed in a successful bid are actually participating
334 to the extent listed in the project for which the bid was submitted;

335 (8) Provide for the collection of statistical data by each contracting agency concerning
336 actual participation by minority owned, women owned, veteran owned, and rural business
337 enterprises; and

338 (9) Require each contracting agency to consult the most current state-wide disparity
339 study when calculating agency-wide and contract-specific participation goals pursuant
340 to this article.

341 (f) Solely for the purpose of providing the opportunity for meaningful participation by
342 certified businesses in the performance of state contracts as provided in this Code section,
343 state contracts may include leases of real property by a state agency to a lessee where the
344 terms of such leases provide for the construction, demolition, replacement, major repair,
345 renovation, planning, or design of real property and improvements thereon by such lessee
346 and the cost of such construction, demolition, replacement, major repair, renovation,
347 planning, or design of real property and improvements thereon exceeds the sum of
348 \$100,000.00. Reports to the department pursuant to Code Section 50-5-158 shall include
349 activities with respect to all such state contracts. Contracting agencies may include or
350 require to be included, with respect to state contracts for the acquisition, construction,
351 demolition, replacement, major repair, renovation, planning, or design of real property and
352 improvements thereon, such provisions as may be necessary to effectuate the provisions
353 of this Code section in every bid specification and state contract, including, but not limited
354 to:

355 (1) Provisions requiring contractors to make a good faith effort to solicit active
356 participation by certified businesses that appear in the directory of certified businesses
357 prepared pursuant to paragraph (6) of subsection (c) of Code Section 50-5-151;

358 (2) Provisions requiring the parties to agree, as a condition of entering into such contract,
359 to be bound by the provisions of Code Section 50-5-159; and

360 (3) Provisions requiring the contractor to include the provisions set forth in paragraphs
361 (1) and (2) of this subsection in every subcontract in a manner that the provisions will be
362 binding upon each subcontractor as to work in connection with such contract; provided,
363 however, that no such provisions shall be binding upon contractors or subcontractors in
364 the performance of work or the provision of services that are unrelated, separate, or
365 distinct from the state contract as expressed by its terms, and nothing in this Code section
366 shall authorize the department or any contracting agency to impose any requirement on
367 a contractor or subcontractor except with respect to a state contract.

368 (g) In the implementation of this Code section, the contracting agency may:

369 (1) Consult the findings contained within the most current state-wide disparity study
370 evidencing relevant industry-specific availability of certified businesses;

371 (2) Implement a program that will enable the contracting agency to evaluate each
372 contract to determine the appropriateness of the goals established pursuant to subsection
373 (a) of this Code section;

374 (3) Consider where practicable the severability of construction projects and other
375 bundled contracts; and

376 (4) Consider compliance with the requirements of any federal law concerning
377 opportunities for minority owned, women owned, veteran owned, and rural business
378 enterprises which effectuates the purpose of this Code section. The contracting agency
379 may determine whether the imposition of the requirements of this Code section duplicate
380 or conflict with any such law, and if such duplication or conflict exists, the contracting

381 agency shall waive the applicability of this Code section to the extent of such duplication
382 or conflict.

383 (h)(1) Contracting agencies may administer the rules and regulations promulgated by the
384 department in a good faith effort to meet the maximum feasible portion of the contracting
385 agency's goals adopted pursuant to this article and the rules and regulations of the
386 department. Such rules and regulations shall require a contractor to submit a utilization
387 plan after bids are opened but prior to the award of a state contract; shall require the
388 contracting agency to review the utilization plan and to post the utilization plan and any
389 waivers of compliance issued pursuant to subsection (i) of this Code section on the
390 website of the contracting agency within a reasonable period of time as established by the
391 department; shall require the contracting agency to notify the contractor in writing within
392 a period of time specified by the department as to any deficiencies contained in the
393 utilization plan; shall require remedy thereof within a period of time specified by the
394 department; shall require the contractor to submit periodic compliance reports relating
395 to the operation and implementation of any utilization plan; shall not allow any automatic
396 waivers but shall allow a contractor to apply for a partial or total waiver of the
397 requirements of participation by minority owned, women owned, veteran owned, and
398 rural business enterprises pursuant to subsections (i) and (j) of this Code section; shall
399 allow a contractor to file a complaint with the department pursuant to subsection (k) of
400 this Code section in the event a contracting agency has failed or refused to issue a waiver
401 of the requirements of participation by minority owned, women owned, veteran owned,
402 and rural business enterprises or has denied such request for a waiver; and shall allow a
403 contracting agency to file a complaint with the department pursuant to subsection (l) of
404 this Code section in the event a contractor is failing or has failed to comply with the
405 requirements of participation by minority owned, women owned, veteran owned, and
406 rural business enterprises set forth in the state contract where no waiver has been granted.

407 (2) The rules and regulations promulgated pursuant to this paragraph regarding a
408 utilization plan shall provide that when certified businesses have been identified within
409 a utilization plan, a contractor shall attempt, in good faith, to utilize such certified
410 businesses at least to the extent indicated. A contracting agency may require a contractor
411 to indicate, within a utilization plan, what measures and procedures such contractor
412 intends to take to comply with the provisions of this article but may not require, as a
413 condition of award of or compliance with a contract, that a contractor utilize a particular
414 certified business in performance of the contract.

415 (3) Without limiting other grounds for the disqualification of bids or proposals on the
416 basis of nonresponsibility, a contracting agency may disqualify the bid or proposal of a
417 contractor as being nonresponsible for failure to remedy notified deficiencies contained
418 in the utilization plan within a period of time specified in rules and regulations
419 promulgated by the department after receiving notification of such deficiencies from the
420 contracting agency. When failure to remedy any notified deficiency in the utilization
421 plan is a ground for disqualification, such failure and all other grounds for
422 disqualification shall be stated in writing by the contracting agency. When the
423 contracting agency states that a failure to remedy any notified deficiency in the utilization
424 plan is a ground for disqualification, the contractor shall be entitled to an administrative
425 hearing, on record, involving all grounds stated by the contracting agency. Such hearing
426 shall be conducted by the appropriate authority of the contracting agency to review the
427 determination of disqualification.

428 (i) When it appears that a contractor cannot, after a good faith effort, comply with the
429 requirements of participation by minority owned, women owned, veteran owned, and rural
430 business enterprises set forth in a particular state contract, a contractor may file a written
431 application with the contracting agency requesting a partial or total waiver of such
432 participation requirements, setting forth the reasons for such contractor's inability to meet
433 any or all of such participation requirements together with an explanation of the efforts

434 undertaken by the contractor to obtain the required participation by minority owned,
435 women owned, veteran owned, and rural business enterprises. In implementing the
436 provisions of this Code section, the contracting agency shall consider the number and types
437 of minority owned, women owned, veteran owned, and rural business enterprises located
438 in the region in which the state contract is to be performed, the total dollar value of the state
439 contract, the scope of work to be performed, and the project size and term. If, based on
440 such considerations, the contracting agency determines there is not a reasonable availability
441 of subcontractors in the directory of certified businesses to furnish services for the project,
442 it shall issue a waiver of compliance to the contractor. In making such determination, the
443 contracting agency shall first consider the availability of other business enterprises located
444 in the region and shall thereafter consider the financial ability of minority owned, women
445 owned, veteran owned, and rural business enterprises located outside the region in which
446 the contract is to be performed to perform the state contract.

447 (j) For purposes of determining a contractor's good faith effort to comply with the
448 requirements of this Code section or to be entitled to a waiver therefrom, the contracting
449 agency shall consider whether:

450 (1) The contractor has advertised in general circulation media, trade association
451 publications, and minority focused, women focused, veteran focused, and rural business
452 focused media and, in such event, whether or not certified businesses which have been
453 solicited by the contractor:

454 (A) Exhibited interest in submitting proposals for a particular project by attending a
455 pre-bid conference; and

456 (B) Have responded in a timely fashion to the contractor's solicitations for timely
457 competitive bid quotations prior to the contracting agency's bid date;

458 (2) There has been written notification to appropriate certified businesses that appear in
459 the directory of certified businesses prepared pursuant to paragraph (6) of subsection (c)
460 of Code Section 50-5-151; and

461 (3) The contractor can reasonably structure the amount of work to be performed under
462 subcontracts in order to increase the likelihood of participation by certified businesses.

463 (k) In the event that a contracting agency fails or refuses to issue a waiver to a contractor
464 as requested within 20 days after such contractor makes application therefor pursuant to
465 subsection (i) of this Code section or if the contracting agency denies such application, in
466 whole or in part, the contractor may file a complaint with the department setting forth the
467 facts and circumstances giving rise to the contractor's complaint together with a demand
468 for relief. The contractor shall serve a copy of such complaint upon the contracting agency
469 by personal service or by certified mail, return receipt requested. The contracting agency
470 shall be afforded an opportunity to respond to such complaint in writing.

471 (l) If, after the review of a utilization plan or periodic compliance report and after such
472 contractor has been afforded an opportunity to respond to a notice of deficiency issued by
473 the contracting agency in connection therewith, it appears that a contractor is failing or
474 refusing to comply with the requirements of participation by minority owned, women
475 owned, veteran owned, and rural business enterprises as set forth in the state contract, and
476 no waiver from such participation requirements has been granted, the contracting agency
477 may file a written complaint with the department pursuant to Code Section 50-5-159 setting
478 forth the facts and circumstances giving rise to the contracting agency's complaint together
479 with a demand for relief. The contracting agency shall serve a copy of such complaint
480 upon the contractor by personal service or by certified mail, return receipt requested. The
481 contractor shall be afforded an opportunity to respond to such complaint in writing.

482 50-5-156.

483 The department may promulgate rules and regulations setting forth measures and
484 procedures to require all contracting agencies, where practicable, feasible, and appropriate,
485 to assess the diversity practices of contractors submitting bids or proposals in connection
486 with the award of a state contract. Such rules and regulations shall take into account the

487 nature of the articles, equipment, services, supplies, materials or labor being procured by
488 the state agency; the method of procurement required to be used by a state agency to award
489 the contract and utilization plans required to be submitted pursuant to Code
490 Section 50-5-155; and such other factors as the department deems appropriate or necessary
491 to promote the award of state contracts to contractors having sound diversity practices.
492 Such assessment shall not in any way permit the automatic rejection of a bid or proposal
493 based on lack of adherence to diversity practices. Each bid or proposal shall be analyzed
494 on an individual per-bid or per-proposal basis with the contractor's diversity practices
495 considered as only a part of a wider consideration of several factors when deciding to
496 award or decline to award a bid or proposal.

497 50-5-157.

498 (a) The department may promulgate rules and regulations providing for the establishment
499 of a state-wide certification program, including rules and regulations governing the
500 approval, denial, or revocation of any such certification.

501 (b) For the purposes of this article, the state-wide advocate, if established, shall be
502 responsible for verifying businesses as being owned, operated, and controlled by minority
503 group members, women, or veterans or as being rural businesses and for certifying such
504 verified businesses.

505 (c)(1) The department may work with all municipal corporations that have a municipal
506 program for minority owned, women owned, veteran owned, and rural business
507 enterprises to develop standards to accept state certification to meet the municipal
508 corporation's certification standards for minority owned, women owned, veteran owned,
509 and rural business enterprises.

510 (2) The department may establish a procedure enabling the department to accept federal
511 certification verification for applicants that are minority owned, women owned, veteran
512 owned, and rural business enterprises, provided that such standards comport with those

513 required by the state program for minority owned, women owned, veteran owned, and
514 rural business enterprises, in lieu of requiring the applicant to complete the state
515 certification process. The department may promulgate rules and regulations to set forth
516 criteria for the acceptance of federal certification.

517 (d) Following the submission of an application for certification pursuant to this Code
518 section, the department shall provide the applicant with written notice of the status of the
519 application, including notice of any outstanding deficiencies, within 30 days. Within 60
520 days of submission of a final completed application, the department shall provide the
521 applicant with written notice of a determination by the office approving or denying such
522 certification and, in the event of a denial, a statement setting forth the reasons for such
523 denial. Upon a determination denying or revoking certification, the business enterprise for
524 which certification has been so denied or revoked shall, upon written request made within
525 30 days from receipt of notice of such determination, be entitled to a hearing before an
526 independent hearing officer designated for such purpose by the department. In the event
527 that a request for a hearing is not made within such 30 day period, such determination shall
528 be deemed to be final. The independent hearing officer shall conduct a hearing and, upon
529 the conclusion of such hearing, issue a written recommendation to the department to affirm,
530 reverse, or modify such determination of the department. Such written recommendation
531 shall be issued to the parties. Within 30 days, the department, by order, shall accept, reject,
532 or modify such recommendation of the hearing officer and set forth in writing the reasons
533 therefor. The department shall serve a copy of such order and reasons therefor upon the
534 business enterprise by personal service or by certified mail, return receipt requested.

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

536 50-5-158.

537 (a) In the even that the state-wide advocate is established, each contracting agency shall
538 be responsible for monitoring state contracts under its jurisdiction and recommending
539 matters to the state-wide advocate regarding noncompliance with the provisions of this
540 article so that the state-wide advocate may take such action as is appropriate to ensure
541 compliance with the provisions of this article, the rules and regulations of the department
542 issued pursuant to this article, and the contractual provisions required pursuant to this
543 article. All contracting agencies shall comply with the rules and regulations of the
544 department and are directed to cooperate with the state-wide advocate and to furnish to
545 such state-wide advocate such information and assistance as may be required in any
546 performance of his or her functions under this article.

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

549 (c) Each contracting agency shall report to the department the activities undertaken to
550 promote employment of minority group members, women, veterans, and rural businesses
551 and promote and increase participation by certified businesses with respect to state
552 contracts and subcontracts. Such reports shall be submitted periodically, but not less
553 frequently than annually, as required by the department, and shall include such information
554 as is necessary for the department to determine whether the contracting agency and
555 contractor have complied with the purposes of this article, including, without limitation,
556 a summary of all waivers of the requirements of subsections (i) and (j) of Code
557 Section 50-5-155 allowed by the contracting agency during the period covered by the
558 report, including a description of the basis of the waiver request and the rationale for
559 granting any such waiver. Each contracting agency shall also include in such annual report
560 whether or not it has been required to prepare a remedial action plan and, if so, such plan
561 and the extent to which the contracting agency has complied with each element of such
562 plan.

- 563 (d) The department may issue an annual report which:
- 564 (1) Summarizes the report submitted by each contracting agency pursuant to
565 subsection (c) of this Code section;
- 566 (2) Contains such comparative or other information as the department deems appropriate,
567 including, but not limited to, goals compared to actual participation of minority owned,
568 women owned, veteran owned, and rural business enterprises in state contracts and
569 subcontracts, to evaluate the effectiveness of the activities undertaken by each such
570 contracting agency to promote increased participation by certified businesses with respect
571 to state contracts and subcontracts;
- 572 (3) Contains a summary of all waivers of the requirements of subsections (i) and (j) of
573 Code Section 50-5-155 allowed by each contracting agency during the period covered by
574 the report, including a description of the basis of the waiver request and the rationale for
575 granting any such waiver;
- 576 (4) Describes any efforts to create a data base or other information storage and retrieval
577 system containing information relevant to contracting with minority owned, women
578 owned, veteran owned, and rural business enterprises; and
- 579 (5) Contains a summary of:
- 580 (A) All determinations of violations of this article by a contractor or a contracting
581 agency made during the period covered by the annual report provided for in Code
582 Section 50-5-151; and
- 583 (B) The penalties or sanctions, if any, assessed in connection with such determinations
584 and the rationale for such penalties or sanctions. Copies of any such annual report shall
585 be provided to the Governor, the President of the Senate, the Speaker of the House of
586 Representatives, the minority leader of the Senate, and the minority leader of the House
587 of Representatives and shall also be made available to the public.

588 (e) Each contracting agency that substantially fails to meet the goals supported by the most
589 current state-wide disparity study, as defined by rules and regulations of the department,
590 shall be required to submit to the department a remedial action plan to remedy such failure.

591 (f) If it is determined by the department that any contracting agency has failed to act in
592 good faith to implement the remedial action plan submitted pursuant to subsection (e) of
593 this Code section within one year of such submission, the department may provide written
594 notice of such a finding, which shall be publicly available, and direct implementation of
595 remedial actions to:

596 (1) Ensure that sufficient and effective solicitation efforts to minority owned, women
597 owned, veteran owned, and rural business enterprises are being made by such contracting
598 agency;

599 (2) Divide contract requirements, when economically feasible, into quantities that will
600 expand the participation of minority owned, women owned, veteran owned, and rural
601 business enterprises;

602 (3) Eliminate extended experience or capitalization requirements, when
603 programmatically and economically feasible, that will expand participation by minority
604 owned, women owned, veteran owned, and rural business enterprises;

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

609 (5) Upon a finding by the department that an agency has failed to take affirmative
610 measures to implement the remedial action plan and to follow any of the remedial actions
611 set forth by the department, and in the absence of any objective progress toward the
612 contracting agency's goals, require some or all of the contracting agency's procurement,
613 for a specified period of time, to be placed under the direction and control of another
614 agency or agencies.

615 50-5-159.

616 Upon receipt by the department of a complaint by a contracting agency that a contractor
617 has violated the provisions of a state contract which have been included to comply with the
618 provisions of this article or by a contractor that a contracting agency has violated such
619 provisions or has failed or refused to issue a waiver where one has been applied for
620 pursuant to subsection (i) of Code Section 50-5-155 or has denied such application, the
621 department shall attempt to resolve the matter giving rise to such complaint. If efforts to
622 resolve such matter to the satisfaction of all parties are unsuccessful, the department shall
623 refer the matter, within 30 days of the receipt of the complaint, to the department's hearing
624 officers. Upon conclusion of the administrative hearing, the hearing officer shall submit
625 to the department his or her decision regarding the alleged violation of the contract and
626 recommendations regarding the imposition of sanctions, fines, or penalties. The
627 department, within ten days of receipt of the decision, shall file a determination of such
628 matter and shall cause a copy of such determination along with a copy of this article to be
629 served upon the contractor by personal service or by certified mail, return receipt requested.
630 The penalties imposed for any violation which is premised upon either a fraudulent or
631 intentional misrepresentation by the contractor or the contractor's willful and intentional
632 disregard of the requirements of participation by minority owned, women owned, veteran
633 owned, and rural business enterprises included in the contract may include a determination
634 that the contractor shall be ineligible to submit a bid to any contracting agency or be
635 awarded any such contract for a period not to exceed one year following the final
636 determination; provided, however, that, if a contractor has previously been determined to
637 be ineligible to submit a bid pursuant to this article, the penalties imposed for any
638 subsequent violation, if such violation occurs within five years of the first violation, may
639 include a determination that the contractor shall be ineligible to submit a bid to any
640 contracting agency or be awarded any such contract for a period not to exceed five years
641 following the final determination. The department may maintain a website listing all

642 contractors that have been deemed ineligible to submit a bid pursuant to this Code section
643 and the date after which each contractor shall once again become eligible to submit bids.

644 50-5-160.

645 Each contracting agency may include a provision in its state contracts expressly providing
646 that any contractor that willfully and intentionally fails to comply with the requirements
647 of participation by minority owned, women owned, veteran owned, and rural business
648 enterprises as set forth in such state contract shall be liable to the contracting agency for
649 liquidated or other appropriate damages and shall provide for other appropriate remedies
650 on account of such breach. A contracting agency that elects to proceed against a contractor
651 for breach of contract as provided in this Code section shall be precluded from seeking
652 enforcement pursuant to Code Section 50-5-159; provided, however, that the contracting
653 agency shall include a summary of all enforcement actions undertaken pursuant to this
654 Code section in its annual report submitted pursuant to subsection (c) of Code
655 Section 50-5-158."

656 **SECTION 2.**

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