

Senate Bill 421

By: Senators Jackson of the 2nd, Jones of the 10th and Tate of the 38th

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 create the Division  
3 of Supplier Diversity; to provide for appointment of a director; to provide for powers and  
4 duties of the director; to create the position of minority and women owned business  
5 enterprises state-wide advocate; to provide for appointment; to provide for duties; to provide  
6 for provisions for state contracts; to provide for a state-wide disparity study; to provide for  
7 contents; to provide for the structure of procurement contracts; to provide for rules and  
8 regulations; to provide for the implementation of rules and regulations; to provide for  
9 exceptions; to provide for penalties for violations; to provide for related matters; to repeal  
10 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:

15 "ARTICLE 5

16 50-5-150.

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 50-5-157.

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; 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 Supplier Diversity of the Department  
 27 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; and

31 (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 and women owned business enterprises.

34 (6) 'Division' means the Division of Supplier Diversity of the Department of  
 35 Administrative Services.

36 (7) 'Minority and women owned business enterprises' means both a minority owned  
 37 business enterprise and a women owned business enterprise.

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

40 (A) African American persons having origins in any of the African racial groups;

41 (B) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, or Central or  
 42 South American origin, regardless of race;

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

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

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

49 (A) At least 70 percent owned by one or more minority group members;

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

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

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

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

57 (11) 'State contract' means:

58 (A) A written agreement or purchase order instrument providing for a total expenditure  
 59 in excess of \$35,000.00 whereby a contracting agency is committed to expend or does  
 60 expend funds in return for labor, services such as legal, financial, and other professional

61 services, supplies, equipment, materials, or any combination of the foregoing to be  
62 performed for or rendered or furnished to the contracting agency;

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

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

71 (12) 'State-wide advocate' means the person appointed by the commissioner of  
72 administrative services to serve in the capacity of the minority and women owned  
73 business enterprises state-wide advocate.

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

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

89 (15) 'Women owned business enterprise' means a business enterprise, including a sole  
90 proprietorship, partnership, or corporation, that is:

91 (A) At least 70 percent owned by one or more United States citizens or permanent  
92 resident aliens who are women;

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

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

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

98 50-5-151.

99 (a) There is created within the Department of Administrative Services the Division of  
100 Supplier Diversity. The head of the division shall be the director, who shall be appointed  
101 by and hold office at the pleasure of the commissioner of administrative services. It shall  
102 be the duty of the director to assist the Governor in the formulation and implementation of  
103 laws and policies relating to minority and women owned business enterprises.

104 (b) The director may appoint such deputies, assistants, and other employees as may be  
105 needed for the performance of the duties prescribed in this article. The director may  
106 request and shall receive from any state agency such assistance as may be necessary to  
107 carry out the provisions of this article.

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

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

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

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

116 (4) To review periodically the practices and procedures of each contracting agency for  
117 compliance with the provisions of this article and to require such contracting agencies to  
118 file periodic reports with the division as to the participation level of minority and women  
119 owned business enterprises in the awarding of state contracts;

120 (5) To report to the Governor and the chairpersons of the Senate Finance Committee and  
121 the House Committee on Ways and Means on January 1 of each year the level of minority  
122 and women owned business enterprises participating in each contracting agency's state  
123 contracts, the activities of the division, and the effort by each contracting agency to  
124 promote employment of minority group members and women and to promote and  
125 increase participation by certified businesses with respect to state contracts and  
126 subcontracts so as to facilitate the award of a fair share of state contracts to such certified  
127 businesses. The director may recommend new activities and programs to effectuate the  
128 purposes of this article;

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

133 (7) To appoint independent hearing officers who by contract or terms of employment  
 134 shall preside over adjudicatory hearings for the division and who are assigned no other  
 135 work by the division;

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

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

141 (d) The director may provide assistance to, and facilitate access to, programs serving  
 142 certified businesses as well as applicants to ensure that such certified businesses benefit,  
 143 as needed, from technical, managerial, financial, and general business assistance; training;  
 144 marketing; organizational and personnel skill development; project management assistance;  
 145 technology assistance; bond and insurance education assistance; and other business  
 146 development assistance. In addition, the director may, either independently or in  
 147 conjunction with other state agencies:

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

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

152 (3) Seek to maximize utilization by minority and women owned business enterprises of  
 153 available federal resources, including but not limited to federal grants, loans, loan  
 154 guarantees, surety bonding guarantees, technical assistance, and programs and services  
 155 of the federal Small Business Administration.

156 50-5-152.

157 (a) There is established within the division the office of the minority and women owned  
 158 business enterprises state-wide advocate. The state-wide advocate shall be appointed by  
 159 the commissioner of administrative services.

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

168 appoint staff and employees of the division to support the administration of the office of  
 169 the state-wide advocate.

170 (c) The state-wide advocate shall establish a toll-free number at the Department of  
 171 Administrative Services to be used to answer questions concerning the minority and  
 172 women owned business enterprises certification process.

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

179 50-5-153.

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

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

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

190 (2) At the request of the contracting agency, the contractor shall request each  
 191 employment agency or labor union, or authorized representative of workers with which  
 192 it has a collective bargaining or other agreement or understanding, to furnish a written  
 193 statement that such employment agency, labor union, or representative will not  
 194 discriminate on the basis of race, creed, color, national origin, sex, age, disability, or  
 195 marital status and that such employment agency, labor union, or representative will  
 196 affirmatively cooperate in the implementation of the contractor's obligations provided in  
 197 this Code section;

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

202 (4) The contractor shall include the provisions of paragraph (1) of this subsection in  
 203 every subcontract, except as provided in paragraph (6) of this subsection, in such a

204 manner that the provisions will be binding upon each subcontractor as to work in  
205 connection with the state contract;

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

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

217 (7) The director shall promulgate rules and regulations to ensure that contractors and  
218 subcontractors undertake programs of affirmative action and equal employment  
219 opportunity as required by this Code section. Such rules and regulations as they pertain  
220 to any particular agency shall be developed after consultation with contracting agencies.  
221 Such rules and regulations may require a contractor, after notice in a bid solicitation, to  
222 implement an equal employment opportunity program after bid opening and prior to the  
223 award of any contract and may require the contractor or subcontractor to submit  
224 compliance reports relating to the contractor's or subcontractor's operation and  
225 implementation of any equal employment opportunity program in effect as of the date the  
226 contract is executed. The contracting agency may recommend to the director that the  
227 director take appropriate action according to the procedures set forth in Code Section  
228 50-5-158 against the contractor for noncompliance with the requirements of this Code  
229 section. The contracting agency shall be responsible for monitoring compliance with this  
230 Code section; and

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

236 50-5-154.

237 (a) The director is authorized and directed to commission a state-wide disparity study  
238 regarding the participation of minority and women owned business enterprises in state  
239 contracts to be delivered to the Governor and the chairpersons of the Senate Finance

240 Committee and the House Committee on Ways and Means no later than 12 months after  
 241 the effective date of this article, and such study shall be updated every two years from the  
 242 date of the most current study. The study shall be prepared by an entity independent of the  
 243 Department of Administrative Services and selected through a request for proposal process.

244 The purpose of such study is:

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

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

259 Such study shall include, but not be limited to, an analysis of the history of programs for  
 260 minority and women owned business enterprises and their effectiveness as a means of  
 261 securing and ensuring participation by minority group members and women and a disparity  
 262 analysis by market area and region of this state. Such study shall distinguish among male  
 263 minority group members, female minority group members, and nonminority females in the  
 264 statistical analysis.

265 (b) The director shall transmit the disparity study to the Governor and the chairpersons of  
 266 the Senate Finance Committee and the House Committee on Ways and Means upon  
 267 completion and shall post such study on the website of the Department of Administrative  
 268 Services.

269 50-5-155.

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

274 (1) Construction industry for certified minority owned business enterprises: 14.34  
 275 percent;



- 276 (2) Construction industry for certified women owned business enterprises: 8.41 percent;  
277 (3) Construction related professional services industry for certified minority owned  
278 business enterprises: 13.21 percent;  
279 (4) Construction related professional services industry for certified women owned  
280 business enterprises: 11.32 percent;  
281 (5) Nonconstruction related services industry for certified minority owned business  
282 enterprises: 19.60 percent;  
283 (6) Nonconstruction related services industry for certified women owned business  
284 enterprises: 17.44 percent;  
285 (7) Commodities industry for certified minority owned business enterprises: 16.11  
286 percent;  
287 (8) Commodities industry for certified women owned business enterprises: 10.93  
288 percent;  
289 (9) Overall state agency total dollar value of procurement for certified minority owned  
290 business enterprises: 16.53 percent;  
291 (10) Overall state agency total dollar value of procurement for certified women owned  
292 business enterprises: 12.39 percent; and  
293 (11) Overall state agency total dollar value of procurement for certified businesses: 28.92  
294 percent.
- 295 (b) The director shall ensure that each state agency has been provided with a copy of the  
296 most current study.
- 297 (c) Each state agency shall develop and adopt agency-specific goals based on the findings  
298 of the most current study.
- 299 (d) The director shall promulgate rules and regulations pursuant to the goals established  
300 in subsection (a) of this Code section that provide measures and procedures to ensure that  
301 certified businesses shall be given the opportunity for maximum feasible participation in  
302 the performance of state contracts and to assist in the contracting agency's identification  
303 of those state contracts for which certified businesses may best bid to actively and  
304 affirmatively promote and assist their participation in the performance of state contracts so  
305 as to facilitate the contracting agency's achievement of the maximum feasible portion of  
306 the goals for state contracts to such certified businesses.
- 307 (e) The director shall promulgate rules and regulations that:
- 308 (1) Provide for the certification and decertification of minority and women owned  
309 business enterprises for all state agencies through a single process that meets applicable  
310 requirements;

311 (2) Require that each contract solicitation document accompanying each solicitation sets  
312 forth the expected degree of participation by minority and women owned business  
313 enterprises based, in part, on:

314 (A) The potential subcontract opportunities available in the prime procurement  
315 contract; and

316 (B) The availability, as contained within the study, of certified businesses to respond  
317 competitively to potential subcontract opportunities;

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

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

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

324 (6) Consistent with subsection (i) of this Code section, provide for circumstances under  
325 which a contracting agency may waive obligations of the contractor relating to  
326 participation by minority and women owned business enterprises;

327 (7) Require that a contracting agency verify that minority and women owned business  
328 enterprises listed in a successful bid are actually participating to the extent listed in the  
329 project for which the bid was submitted;

330 (8) Provide for the collection of statistical data by each contracting agency concerning  
331 actual participation by minority and women owned business enterprises; and

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

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

347 (1) Provisions requiring contractors to make a good faith effort to solicit active  
 348 participation by certified businesses provided to the contracting agency by the office of  
 349 the state-wide advocate;

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

352 (3) Requiring the contractor to include the provisions set forth in paragraphs (1) and (2)  
 353 of this subsection in every subcontract in a manner that the provisions will be binding  
 354 upon each subcontractor as to work in connection with such contract; provided, however,  
 355 that no such provisions shall be binding upon contractors or subcontractors in the  
 356 performance of work or the provision of services that are unrelated, separate, or distinct  
 357 from the state contract as expressed by its terms, and nothing in this Code section shall  
 358 authorize the director or any contracting agency to impose any requirement on a  
 359 contractor or subcontractor except with respect to a state contract.

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

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

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

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

368 (4) Consider compliance with the requirements of any federal law concerning  
 369 opportunities for minority and women owned business enterprises which effectuates the  
 370 purpose of this Code section. The contracting agency shall determine whether the  
 371 imposition of the requirements of this Code section duplicate or conflict with any such  
 372 law, and if such duplication or conflict exists, the contracting agency shall waive the  
 373 applicability of this Code section to the extent of such duplication or conflict.

374 (h)(1) Contracting agencies shall administer the rules and regulations promulgated by the  
 375 director in a good faith effort to meet the maximum feasible portion of the contracting  
 376 agency's goals adopted pursuant to this article and the regulations of the director. Such  
 377 rules and regulations shall require a contractor to submit a utilization plan after bids are  
 378 opened and when bids are required but prior to the award of a state contract; shall require  
 379 the contracting agency to review the utilization plan and to post the utilization plan and  
 380 any waivers of compliance issued pursuant to subsection (i) of this Code section on the  
 381 website of the contracting agency within a reasonable period of time as established by the  
 382 director; shall require the contracting agency to notify the contractor in writing within a  
 383 period of time specified by the director as to any deficiencies contained in the utilization

384 plan; shall require remedy thereof within a period of time specified by the director; shall  
385 require the contractor to submit periodic compliance reports relating to the operation and  
386 implementation of any utilization plan; shall not allow any automatic waivers but shall  
387 allow a contractor to apply for a partial or total waiver of the requirements of  
388 participation by minority and women owned business enterprises pursuant to  
389 subsections (i) and (j) of this Code section; shall allow a contractor to file a complaint  
390 with the director pursuant to subsection (k) of this Code section in the event a contracting  
391 agency has failed or refused to issue a waiver of the requirements of participation by  
392 minority and women owned business enterprises or has denied such request for a waiver;  
393 and shall allow a contracting agency to file a complaint with the director pursuant to  
394 subsection (l) of this Code section in the event a contractor is failing or has failed to  
395 comply with the requirements of participation by minority and women owned business  
396 enterprises set forth in the state contract where no waiver has been granted.

397 (2) The rules and regulations promulgated pursuant to this paragraph regarding a  
398 utilization plan shall provide that where certified businesses have been identified within  
399 a utilization plan, a contractor shall attempt, in good faith, to utilize such certified  
400 businesses at least to the extent indicated. A contracting agency may require a contractor  
401 to indicate, within a utilization plan, what measures and procedures such contractor  
402 intends to take to comply with the provisions of this article but may not require, as a  
403 condition of, award of, or compliance with, a contract that a contractor utilize a particular  
404 certificate business in performance of the contract.

405 (3) Without limiting other grounds for the disqualification of bids or proposals on the  
406 basis of nonresponsibility, a contracting agency may disqualify the bid or proposal of a  
407 contractor as being nonresponsible for failure to remedy notified deficiencies contained  
408 in the utilization plan within a period of time specified in regulations promulgated by the  
409 director after receiving notification of such deficiencies from the contracting agency.  
410 When failure to remedy any notified deficiency in the utilization plan is a ground for  
411 disqualification, such failure and all other grounds for disqualification shall be stated in  
412 writing by the contracting agency. When the contracting agency states that a failure to  
413 remedy any notified deficiency in the utilization plan is a ground for disqualification, the  
414 contractor shall be entitled to an administrative hearing, on record, involving all grounds  
415 stated by the contracting agency. Such hearing shall be conducted by the appropriate  
416 authority of the contracting agency to review the determination of disqualification.

417 (i) When it appears that a contractor cannot, after a good faith effort, comply with the  
418 requirements of participation by minority and women owned business enterprises set forth  
419 in a particular state contract, a contractor may file a written application with the contracting  
420 agency requesting a partial or total waiver of such participation requirements, setting forth

421 the reasons for such contractor's inability to meet any or all of such participation  
 422 requirements together with an explanation of the efforts undertaken by the contractor to  
 423 obtain the required participation by minority and women owned business enterprises. In  
 424 implementing the provisions of this Code section, the contracting agency shall consider the  
 425 number and types of minority and women owned business enterprises located in the region  
 426 in which the state contract is to be performed, the total dollar value of the state contract,  
 427 the scope of work to be performed, and the project size and term. If, based on such  
 428 considerations, the contracting agency determines there is not a reasonable availability of  
 429 contractors in the directory of certified businesses to furnish services for the project, it shall  
 430 issue a waiver of compliance to the contractor. In making such determination, the  
 431 contracting agency shall first consider the availability of other business enterprises located  
 432 in the region and shall thereafter consider the financial ability of minority and women  
 433 owned business enterprises located outside the region in which the contract is to be  
 434 performed to perform the state contract.

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

438 (1) The contractor has advertised in general circulation media, trade association  
 439 publications, and minority focused and women focused media and, in such event, whether  
 440 or not certified businesses which have been solicited by the contractor:

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

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

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

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

450 (k) In the event that a contracting agency fails or refuses to issue a waiver to a contractor  
 451 as requested within 20 days after having made application therefor pursuant to subsection  
 452 (i) of this Code section or if the contracting agency denies such application, in whole or in  
 453 part, the contractor may file a complaint with the director setting forth the facts and  
 454 circumstances giving rise to the contractor's complaint together with a demand for relief.  
 455 The contractor shall serve a copy of such complaint upon the contracting agency by  
 456 personal service or by certified mail, return receipt requested. The contracting agency shall  
 457 be afforded an opportunity to respond to such complaint in writing.

458 (l) If, after the review of a utilization plan or periodic compliance report and after such  
459 contractor has been afforded an opportunity to respond to a notice of deficiency issued by  
460 the contracting agency in connection therewith, it appears that a contractor is failing or  
461 refusing to comply with the requirements of participation by minority and women owned  
462 business enterprises as set forth in the state contract, and no waiver from such participation  
463 requirements has been granted, the contracting agency may file a written complaint with  
464 the director pursuant to Code Section 50-5-159 setting forth the facts and circumstances  
465 giving rise to the contracting agency's complaint together with a demand for relief. The  
466 contracting agency shall serve a copy of such complaint upon the contractor by personal  
467 service or by certified mail, return receipt requested. The contractor shall be afforded an  
468 opportunity to respond to such complaint in writing.

469 50-5-156.

470 The director shall promulgate rules and regulations setting forth measures and procedures  
471 to require all contracting agencies, where practicable, feasible, and appropriate, to assess  
472 the diversity practices of contractors submitting bids or proposals in connection with the  
473 award of a state contract. Such rules and regulations shall take into account the nature of  
474 the labor, services, supplies, equipment, or materials being procured by the state agency;  
475 the method of procurement required to be used by a state agency to award the contract and  
476 utilization plans required to be submitted pursuant to Code Section 50-5-155; and such  
477 other factors as the director deems appropriate or necessary to promote the award of state  
478 contracts to contractors having sound diversity practices. Such assessment shall not in any  
479 way permit the automatic rejection of a bid or procurement contract proposal based on lack  
480 of adherence to diversity practices. Each bid or proposal shall be analyzed on an individual  
481 per-bid or per-proposal basis with the contractor's diversity practices considered as only  
482 a part of a wider consideration of several factors when deciding to award or decline to  
483 award a bid or proposal.

484 50-5-157.

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

488 (b) For the purposes of this article, the office of the state-wide advocate shall be  
489 responsible for verifying businesses as being owned, operated, and controlled by minority  
490 group members or women and for certifying such verified businesses.

491 (c)(1) The director shall work with all municipal corporations that have a municipal  
492 program for minority and women owned business enterprises to develop standards to

493 accept state certification to meet the municipal corporation's certification standards for  
494 minority and women owned business enterprises.

495 (2) The director shall establish a procedure enabling the division to accept federal  
496 certification verification for applicants of minority and women owned business  
497 enterprises, provided that such standards comport with those required by the state  
498 program for minority and women owned business enterprises, in lieu of requiring the  
499 applicant to complete the state certification process. The director shall promulgate rules  
500 and regulations to set forth criteria for the acceptance of federal certification.

501 (d) Following application for certification pursuant to this Code section, the director shall  
502 provide the applicant with written notice of the status of the application, including notice  
503 of any outstanding deficiencies, within 30 days. Within 60 days of submission of a final  
504 completed application, the director shall provide the applicant with written notice of a  
505 determination by the office approving or denying such certification and, in the event of a  
506 denial, a statement setting forth the reasons for such denial. Upon a determination denying  
507 or revoking certification, the business enterprise for which certification has been so denied  
508 or revoked shall, upon written request made within 30 days from receipt of notice of such  
509 determination, be entitled to a hearing before an independent hearing officer designated for  
510 such purpose by the director. In the event that a request for a hearing is not made within  
511 such 30 day period, such determination shall be deemed to be final. The independent  
512 hearing officer shall conduct a hearing and, upon the conclusion of such hearing, issue a  
513 written recommendation to the director to affirm, reverse, or modify such determination  
514 of the director. Such written recommendation shall be issued to the parties. Within 30  
515 days, the director, by order, must accept, reject, or modify such recommendation of the  
516 hearing officer and set forth in writing the reasons therefor. The director shall serve a copy  
517 of such order and reasons therefor upon the business enterprise by personal service or by  
518 certified mail, return receipt requested.

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

520 50-5-158.

521 (a) Each contracting agency shall be responsible for monitoring state contracts under its  
522 jurisdiction and recommending matters to the office of the state-wide advocate regarding  
523 noncompliance with the provisions of this article so that such office may take such action  
524 as is appropriate to ensure compliance with the provisions of this article, the rules and  
525 regulations of the director issued pursuant to this article, and the contractual provisions  
526 required pursuant to this article. All contracting agencies shall comply with the rules and  
527 regulations of the office of the state-wide advocate and are directed to cooperate with such

528 office and to furnish to such office such information and assistance as may be required in  
529 the performance of its functions under this article.

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

532 (c) Each contracting agency shall report to the director the activities undertaken to promote  
533 employment of minority group members and women and promote and increase  
534 participation by certified businesses with respect to state contracts and subcontracts. Such  
535 reports shall be submitted periodically, but not less frequently than annually, as required  
536 by the director, and shall include such information as is necessary for the director to  
537 determine whether the contracting agency and contractor have complied with the purposes  
538 of this article, including, without limitation, a summary of all waivers of the requirements  
539 of subsections (i) and (j) of Code Section 50-5-155 allowed by the contracting agency  
540 during the period covered by the report, including a description of the basis of the waiver  
541 request and the rationale for granting any such waiver. Each contracting agency shall also  
542 include in such annual report whether or not it has been required to prepare a remedial  
543 action plan and, if so, such plan and the extent to which the contracting agency has  
544 complied with each element of such plan.

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

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

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

553 (3) Contains a summary of all waivers of the requirements of subsections (i) and (j) of  
554 Code Section 50-5-155 allowed by each contracting agency during the period covered by  
555 the report, including a description of the basis of the waiver request and the rationale for  
556 granting any such waiver;

557 (4) Describes any efforts to create a data base or other information storage and retrieval  
558 system containing information relevant to contracting with minority and women owned  
559 business enterprises; and

560 (5) Contains a summary of:

561 (A) All determinations of violations of this article by a contractor or a contracting  
562 agency made during the period covered by the annual report pursuant to Code  
563 Section 50-5-151; and



564 (B) The penalties or sanctions, if any, assessed in connection with such determinations  
 565 and the rationale for such penalties or sanctions. Copies of the annual report shall be  
 566 provided to the commissioner of administrative services, the Governor, the President  
 567 of the Senate, the Speaker of the House of Representatives, the minority leader of the  
 568 Senate, and the minority leader of the House of Representatives and shall also be made  
 569 available to the public.

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

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

577 (1) Assure that sufficient and effective solicitation efforts to minority and women owned  
 578 business enterprises are being made by such contracting agency;

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

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

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

588 (5) Upon a finding by the director that an agency has failed to take affirmative measures  
 589 to implement the remedial action plan and to follow any of the remedial actions set forth  
 590 by the director, and in the absence of any objective progress toward the contracting  
 591 agency's goals, require some or all of the contracting agency's procurement, for a  
 592 specified period of time, to be placed under the direction and control of another agency  
 593 or agencies.

594 50-5-159.

595 Upon receipt by the director of a complaint by a contracting agency that a contractor has  
 596 violated the provisions of a state contract which have been included to comply with the  
 597 provisions of this article or by a contractor that a contracting agency has violated such  
 598 provisions or has failed or refused to issue a waiver where one has been applied for  
 599 pursuant to subsection (i) of Code Section 50-5-155 or has denied such application, the

600 director shall attempt to resolve the matter giving rise to such complaint. If efforts to  
601 resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer  
602 the matter, within 30 days of the receipt of the complaint, to the division's hearing officers.  
603 Upon conclusion of the administrative hearing, the hearing officer shall submit to the  
604 director his or her decision regarding the alleged violation of the contract and  
605 recommendations regarding the imposition of sanctions, fines, or penalties. The director,  
606 within ten days of receipt of the decision, shall file a determination of such matter and shall  
607 cause a copy of such determination along with a copy of this article to be served upon the  
608 contractor by personal service or by certified mail, return receipt requested. The penalties  
609 imposed for any violation which is premised upon either a fraudulent or intentional  
610 misrepresentation by the contractor or the contractor's willful and intentional disregard of  
611 the requirements of participation by minority and women owned business enterprises  
612 included in the contract may include a determination that the contractor shall be ineligible  
613 to submit a bid to any contracting agency or be awarded any such contract for a period not  
614 to exceed one year following the final determination; provided, however, that if a  
615 contractor has previously been determined to be ineligible to submit a bid pursuant to this  
616 article, the penalties imposed for any subsequent violation, if such violation occurs within  
617 five years of the first violation, may include a determination that the contractor shall be  
618 ineligible to submit a bid to any contracting agency or be awarded any such contract for a  
619 period not to exceed five years following the final determination. The division shall  
620 maintain a website listing all contractors that have been deemed ineligible to submit a bid  
621 pursuant to this Code section and the date after which each contractor shall once again  
622 become eligible to submit bids.

623 50-5-160.

624 Every contracting agency shall include a provision in its state contracts expressly providing  
625 that any contractor that willfully and intentionally fails to comply with the requirements  
626 of participation by minority and women owned business enterprises as set forth in such  
627 state contract shall be liable to the contracting agency for liquidated or other appropriate  
628 damages and shall provide for other appropriate remedies on account of such breach. A  
629 contracting agency that elects to proceed against a contractor for breach of contract as  
630 provided in this Code section shall be precluded from seeking enforcement pursuant to  
631 Code Section 50-5-159; provided, however, that the contracting agency shall include a  
632 summary of all enforcement actions undertaken pursuant to this Code section in its annual  
633 report submitted pursuant to subsection (c) of Code Section 50-5-158."

634

**SECTION 2.**

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