

ARKANSAS SENATE
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of Senate Bill No. 1005

"TO AMEND ARKANSAS LAW CONCERNING ECONOMIC DEVELOPMENT FOR
MINORITY BUSINESSES."

Amendment No. 1 to Senate Bill No. 1005.

Amend Senate Bill No. 1005 as originally introduced:

Delete everything following the enacting clause and substitute the following:

“SECTION 1. Arkansas Code § 15-4-301 is amended to read as follows:
15-4-301. ~~Definitions~~ Title.

~~As used in this subchapter:~~

- ~~(1) “Division” means the Division of Minority Business Enterprise of the Department of Economic Development; and~~
- ~~(2) “Minority business enterprise” means a business enterprise that is owned or controlled solely by one (1) or more socially or economically disadvantaged persons. The disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cause.~~

This subchapter shall be known and may be cited as the "Minority Business Economic Development Act".

SECTION 2. Arkansas Code § 15-4-302 is amended to read as follows:
15-4-302. ~~Creation Purpose~~.

~~The Division of Minority Business Enterprise of the Department of Economic Development:~~

- ~~(1) Is established and confirmed within the Department of Economic Development under the jurisdiction of the Arkansas Economic Development Commission;~~
- ~~(2) Shall be operated as a division within the department; and~~
- ~~(3) Shall perform the functions and duties as provided in this subchapter.~~

(a) The General Assembly finds that it is the policy of the State of Arkansas to support equal opportunity as well as economic development in every sector.

(b) The General Assembly recognizes that it is the purpose of this subchapter to support to the fullest all possible participation of firms owned and controlled by minority persons in state-funded and state-directed public construction programs and in the purchase of goods and services for the state.

(c) All state agencies shall attempt to ensure that ten percent (10%)



of the total amount expended in state-funded and state-directed public construction programs and in the purchase of goods and services for the state each fiscal year is paid to minority businesses.

SECTION 3. Arkansas Code § 15-4-303 is amended to read as follows:
15-4-303. Advisory council Definitions.

~~(a) The Division of Minority Business Enterprise of the Department of Economic Development shall be represented by a statewide Minority Business Advisory Council and shall report to that council.~~

~~(b)(1) The council shall consist of seven (7) members.~~

~~(2) The council shall:~~

~~(A) Monitor progress, make recommendations, and develop strategic plans for performance improvement; and~~

~~(B) Report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.~~

~~(c)(1) The Governor shall appoint three (3) members of the council with the advice and consent of the Senate.~~

~~(2) The President Pro Tempore of the Senate shall appoint two (2) members of the council.~~

~~(3) The Speaker of the House of Representatives shall appoint two (2) members of the council.~~

~~(4) Appointments shall be representative of the minority business community, resource organizations, entrepreneurs, corporations, and other minority business advocates.~~

~~(d) Except as otherwise provided by law, members of the council shall serve without compensation.~~

~~(e) The term of office of the council shall be at the pleasure of the appointing officer.~~

As used in this subchapter:

(1)(A) "Exempt" means goods and services classified as exempt for the purpose of administering this subchapter.

(B) The classification shall be determined by the Office of State Procurement of the Department of Finance and Administration and the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and submitted to the Arkansas Economic Development Council for its review and consideration for the purposes of this subchapter;

(2) "Minority" means a lawful permanent resident of this state who is:

(A) African American;

(B) Hispanic American;

(C) American Indian;

(D) Asian American; or

(E) Pacific Islander American;

(3) "Minority business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons as defined in this section;

(4) "Minority business officer" means the individual within each state agency with the responsibility for carrying out the intended purposes of this subchapter;

(5)(A) "Nonexempt" means goods and services classified as nonexempt for the purpose of administering this subchapter,

(B) The classification shall be determined by the office

and the division and submitted to the council for its review and consideration for the purposes of this subchapter;

(6) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services;

(7) "State agency" means a department, an office, a board, a commission, or an institution of this state, including a state-supported institution of higher education; and

(8) "State contract" means a state agreement regardless of what it may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.

SECTION 4. Arkansas Code § 15-4-304 is amended to read as follows:
15-4-304. Administrator Creation.

~~The head of the Division of Minority Business Enterprise of the Department of Economic Development is the Administrator of the Division of Minority Business Enterprise of the Department of Economic Development and shall be appointed by the Governor.~~

The Division of Minority Business Enterprise of the Arkansas Economic Development Commission:

(1) Is established and confirmed within the Arkansas Economic Development Commission under the jurisdiction of the Arkansas Economic Development Council;

(2) Shall be operated as a division within the department; and

(3) Shall perform the functions and duties as provided in this subchapter.

SECTION 5. Arkansas Code § 15-4-305 is amended to read as follows:
15-4-305. Duties Administrator.

~~The Division of Minority Business Enterprise of the Department of Economic Development shall:~~

~~(1) Provide technical, managerial, and counseling services and assistance to minority business enterprises;~~

~~(2) With the participation of other state departments and agencies as appropriate:~~

~~(A) Develop comprehensive plans and specific program goals for a minority business enterprise program;~~

~~(B) Establish regular performance monitoring and reporting systems to assure that goals are being achieved; and~~

~~(C) Evaluate the impact of federal and state support in achieving the objectives established by the Department of Economic Development;~~

~~(3) Implement state policy in support of minority business enterprise development and may coordinate the plans, programs, and operations of state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprises;~~

~~(4) Coordinate, make application for, and administer federal funding grants from the United States Office of Minority Business Enterprise and other federal agencies where applicable;~~

~~(5) Promote the mobilization of activities and resources of state agencies and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer and other groups toward the growth of minority business enterprises, and~~

~~facilitate the coordination of the efforts of these groups with those of other state departments and agencies;~~

~~(6) Establish a center for the development, collection, and dissemination of information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of minority business enterprises;~~

~~(7) Conduct coordinated reviews of all proposed state training and technical assistance activities in direct support of the minority business enterprise program to ensure consistency with program goals and to preclude duplication of effort of other state agencies with overlapping jurisdictions;~~

~~(8) Recommend appropriate legislative or executive actions to enhance minority business opportunities in this state;~~

~~(9) Assist minority businesses in obtaining governmental or commercial financing for business expansion, establishment of new businesses, or industrial development projects;~~

~~(10) Provide services to promote the organization of local development corporations for rural development and assist minority businessmen in agrarian endeavors;~~

~~(11) Assist minority businesses to promote reciprocal foreign trade and investment;~~

~~(12) Assist minority businessmen in business contract procurement from governmental and private commercial sources; and~~

~~(13) Provide a program effort to ensure participation of veterans in Arkansas, minority business enterprise activities.~~

The head of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission is the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and shall be appointed by the Governor.

SECTION 6. Arkansas Code Title 14, Chapter 4, Subchapter 3 is amended to add additional sections to read as follows:

15-4-306. Duties.

The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall:

(1) Provide technical, managerial, and counseling services and assistance to minority business enterprises;

(2) With the participation of other state departments and agencies as appropriate:

(A) Develop comprehensive plans and specific program goals for a minority business enterprise program;

(B) Establish regular performance monitoring and reporting systems to assure that goals are being achieved; and

(C) Evaluate the impact of federal and state support in achieving the objectives established by the Arkansas Economic Development Commission;

(3) Implement state policy in support of minority business enterprise development and coordinate the plans, programs, and operations of state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprises;

(4) Coordinate, make application for, and administer federal funding grants from the Minority Business Development Agency of the United

States Department of Commerce and other federal agencies where applicable;

(5) Promote the mobilization of activities and resources of state agencies and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer and other groups toward the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of other state departments and agencies;

(6) Establish a center for the development, collection, and dissemination of information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of minority business enterprises;

(7) Conduct coordinated reviews of all proposed state training and technical assistance activities in direct support of the minority business enterprise program to ensure consistency with program goals and to preclude duplication of effort of other state agencies with overlapping jurisdictions;

(8) Recommend appropriate legislative or executive actions to enhance minority business opportunities in this state;

(9) Assist minority businesses in obtaining governmental or commercial financing for business expansion, establishment of new businesses, or industrial development projects;

(10) Provide services to promote the organization of local development corporations for rural development and assist minority businessmen in agrarian endeavors;

(11) Assist minority businesses to promote reciprocal foreign trade and investment;

(12) Assist minority businessmen in business contract procurement from governmental and private commercial sources; and

(13) Provide a program effort to ensure participation of veterans in Arkansas minority business enterprise activities.

15-4-307 Minority Business Advisory Council.

(a) The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall be represented by a statewide Minority Business Advisory Council and shall report to that council.

(b)(1) The council shall consist of seven (7) members.

(2) The council shall:

(A) Monitor progress, make recommendations, and develop strategic plans for performance improvement; and

(B) Report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c)(1) The Governor shall appoint three (3) members of the council with the advice and consent of the Senate.

(2) The President Pro Tempore of the Senate shall appoint two (2) members of the council.

(3) The Speaker of the House of Representatives shall appoint two (2) members of the council.

(4) Appointments shall reflect and be representative of the minority business community, resource organizations, entrepreneurs, corporations, and other minority business advocates.

(d) Except as otherwise provided by law, members of the council shall serve without compensation.

(e) The term of office of the council shall be at the pleasure of the appointing officer.

(f) There is established a formal relationship between the council and the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission.

(g)(1) The administrator and the small disadvantaged business officer shall be the liaison to the council and shall be responsible for submitting to the council any reports and documents under the provisions of this section.

(2) Their duties in relation to this section shall be considered official duty in the conduct of state business.

(h) The council's duties and responsibilities shall be to:

(1) Review reports and interpret each agency's achievement of its goals;

(2) Advise the Governor when an agency has not reached its goals;

(3) Make annual reports to the Governor;

(4) Recommend to the state agency, the division, and the Office of State Procurement of the Department of Finance and Administration corrective actions to strengthen minority business opportunities in the state; and

(5) Conduct public hearings when necessary to obtain public input and support for the purpose of carrying out the provisions of this subchapter.

(i) Each state agency, through its minority business officer, shall submit to the division, the council, and the office outline the agency's plan to reach its goals for the coming fiscal year and shall:

(1) Be submitted to the division by June 30 of each year;

(2) Contain the name of the state agency submitting the plan;

(3) Contain a policy statement signed by the agency head expressing a commitment to use minority businesses in all aspects of contracting to the maximum extent feasible;

(4) Identify the name of the minority business officer in the agency who is responsible for developing and administering the compliance plan;

(5) Establish a time table for the agency to reach its goals under the plan and the manner in which the agency intends to reach its goals; and

(6) Contain any other procedures the division deems necessary to comply with the goals and the compliance plan.

15-4-308. Administration.

(a) The Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall serve as the principal coordinators of the initiative to ensure the successful implementation of this subchapter.

(b) The division and the office shall provide assistance to minority businesses seeking contract opportunities with various state agencies.

(c) The division and the office shall maintain a directory of all minority business officers for each state agency.

(d) The division and the office shall provide management and technical

assistance to any state agency that experiences difficulty in complying with the provisions of this subchapter.

(e) The division and the office shall maintain a current directory of minority businesses and shall make the directory available to each state agency and minority business officer.

(f) The division shall serve as a central clearinghouse for information on state contracts, including a record of all pending state contracts upon which minority businesses may participate.

15-4-309. Exempt contracts.

Upon the approval of the Minority Business Advisory Council, the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall determine the classifications of contracts to be exempted from the goals established by this subchapter whenever there exists an insufficient number of minority businesses to ensure adequate competition.

15-4-310. Minority business officer.

(a) Each state agency shall designate an individual as its minority business officer.

(b) The minority business officer shall be the person within the agency with whom the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Minority Business Advisory Council shall work in its efforts to accomplish the goals of this subchapter.

(c) Upon the appointment of the minority business officer in each state agency, the agency shall notify the division and the Office of State Procurement of the Department of Finance and Administration.

SECTION 7. Arkansas Code § 15-4-311 is amended to read as follows:

15-4-311. Title Annual minority purchasing plan.

~~This section and §§ 15-4-312 — 15-4-320 shall be known and may be cited as the “Minority Business Economic Development Act”.~~

(a) Prior to June 30 each year, each state agency shall submit to the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration a minority purchasing plan that shall outline the agency’s plan to reach its goals for the coming fiscal year.

(b) The minority purchasing plan shall include without limitation:

(1) The name of the state agency;

(2) A policy statement signed by the agency head expressing a commitment to use minority business in all aspects of contracting to the maximum extent feasible;

(3) The name of the minority business officer in the agency who is responsible for developing and administering the compliance plan;

(4) The time table for the agency to reach its goals under the plan and the manner in which the agency intends to reach its goals; and

(5) Any other procedures the agency deems necessary to comply with the goals and the compliance plan.

SECTION 8. Arkansas Code § 15-4-312 is amended to read as follows:

15-4-312. ~~Purpose~~ State agencies to submit reports.

~~The General Assembly finds it is the policy of the State of Arkansas to~~

~~support equal opportunity as well as economic development in every sector. The General Assembly recognizes as the purpose of this section and §§ 15-4-311 and 15-4-313 — 15-4-319, to support to the fullest all possible participation of firms owned and controlled by minority persons in state-funded and directed public construction programs and in the purchase of goods and services for the state. The annual procurement goal of ten percent (10%) for state agencies with minority businesses each year is established.~~

~~The Minority Business Advisory Council shall require each state agency to produce within fifteen (15) days of the close of each three-month period a report summing up total procurement for all contracts, except exempt contracts of the agency, and the dollar value and the percentage of the contracts of the agency awarded to minority businesses.~~

SECTION 9. Arkansas Code § 15-4-313 is amended to read as follows:

15-4-313. ~~Definitions~~ Accelerated payments.

~~As used in this section and §§ 15-4-311, 15-4-312, and 15-4-314 — 15-4-319:~~

~~(1) “Advisory Council” or “council” means the Minority Business Advisory Council;~~

~~(2) “Director” means the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission;~~

~~(3) “Division” means the Division of Minority Business Enterprise of the Arkansas Economic Development Commission;~~

~~(4)(A) “Exempt” and “nonexempt” mean goods and services classified as either exempt or nonexempt for the purpose of administering this section and §§ 15-4-311, 15-4-312, and 15-4-314 — 15-4-319.~~

~~(B) The classification shall be determined by the Office of State Procurement and the division and submitted to the council for its review and consideration for the purposes of this section and §§ 15-4-311, 15-4-312, and 15-4-314 — 15-4-319;~~

~~(5) “Minority” means a lawful permanent resident of this state who is:~~

~~(A) An African American;~~

~~(B) An Hispanic American;~~

~~(C) An American Indian; or~~

~~(D) An Asian a Pacific Islander;~~

~~(6) “Minority business enterprise” means a business that is at least fifty one percent (51%) owned by one (1) or more minority persons as defined in this section;~~

~~(7) “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services;~~

~~(8) “State agency” means all departments, offices, boards, commissions, and institutions of the state, including the state-supported institutions of higher education; and~~

~~(9) “State contract” means all types of state agreements, regardless of what they may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.~~

To ensure that minority businesses are not financially hindered due to delays in payment by state agencies entering into contracts with minority businesses under this subchapter, state agencies shall accelerate payment to minority vendors to preclude accounts receivable problems of minority

businesses caused by the State of Arkansas.

SECTION 10. Arkansas Code § 15-4-314 is amended to read as follows:

15-4-314. Minority Business Advisory Council Minority business enterprises certification process.

~~(a) There is established a formal relationship between the Minority Business Advisory Council and the minority business officer.~~

~~(b)(1) The minority business officer and the small disadvantaged business officer shall be the liaison to the council and shall be responsible for submitting to the council any reports and documents under the provisions of this section and §§ 15 4 311 — 15 4 313 and 15 4 315 — 15 4 319.~~

~~(2) Their duties in relation to this section and §§ 15 4 311 — 15 4 313 and 15 4 315 — 15 4 319 shall be considered official duty in the conduct of state business.~~

~~(c) The council's duties and responsibilities shall be to:~~

~~(1) Review reports and interpret each agency's achievement of its goals;~~

~~(2) Advise the Governor when an agency has not reached its goals;~~

~~(3) Make annual reports to the Governor;~~

~~(4) Recommend to the state agency, the Division of Minority Business Enterprise of the Arkansas Economic Development Commission, and the Office of State Procurement corrective actions to strengthen minority business opportunities in the state; and~~

~~(5) Conduct public hearings when necessary to obtain public input and support for the purpose of carrying out the provisions of this section and §§ 15 4 311 — 15 4 313 and 15 4 315 — 15 4 319.~~

(a) The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall promulgate rules to create a certification process for minority business enterprises.

(b) The certification process shall include without limitation:

(1) Criteria for certification that shall include without limitation:

(A) A determination that the business is structured as a minority business enterprise;

(B) Verification of minority ownership and control of the business; and

(C) Annual updates indicating continuing minority ownership and control;

(2) A formal application process;

(3) An education program to assist minority business enterprises in achieving certification; and

(4) An outreach to ensure the broadest possible participation of minority business enterprises and persons proposing new minority business enterprises.

(c) The Office of State Procurement of the Department of Finance and Administration shall cooperate with the division to the fullest extent possible in sharing information concerning certification and registration of minority business enterprises carrying out the purposes of this section.

SECTION 11. Arkansas Code §§ 15-4-315 - 15-4-320 are repealed.

~~15-4-315. Administration.~~

~~(a) The Division of Minority Business Enterprise of the Department of Economic Development and the Office of State Procurement of the Department of Finance and Administration shall serve as the principal coordinators of the initiative to ensure the successful implementation of this section and §§ 15-4-311, 15-4-314 and 15-4-316, 15-4-319.~~

~~(b) The division and the office shall provide assistance to minority businesses seeking contract opportunities with various state agencies.~~

~~(c) The division and the office shall maintain a directory of all minority business officers for each state agency.~~

~~(d) The division and the office shall provide management and technical assistance to any state agency who is experiencing difficulties in complying with the provisions of this section and §§ 15-4-311, 15-4-314 and 15-4-316, 15-4-319.~~

~~(e) The division and the office shall maintain a current directory of minority businesses and shall make the directory available to each state agency and minority business officer.~~

~~(f) The division shall serve as a central clearinghouse for information on state contracts, including a record of all pending state contracts upon which minority businesses may participate.~~

~~15-4-316. Exempt contracts.~~

~~Upon the approval of the Minority Business Advisory Council, the Division of Minority Business Enterprise of the Arkansas Economic Development Commission, and the Office of State Procurement shall determine the classifications of contracts to be exempted from the goals established by this section and §§ 15-4-311, 15-4-315 and 15-4-317, 15-4-319 whenever there exists an insufficient number of minority businesses to ensure adequate competition.~~

~~15-4-317. Minority business officer.~~

~~(a) Each state agency shall designate an individual as its minority business officer.~~

~~(b) The minority business officer shall be the person within the agency with whom the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Minority Business Advisory Council shall work in its efforts to accomplish the goals of this section and §§ 15-4-311, 15-4-316, 15-4-318, and 15-4-319.~~

~~(c) Upon the appointment of the minority business officer in each state agency, the agency shall notify the division and the Office of State Procurement.~~

~~15-4-318. State agencies to submit reports.~~

~~The Minority Business Advisory Council shall require each state agency to produce within fifteen (15) days of the close of each six month period a report summing up total procurement for all contracts, except exempt contracts of the agency, and the dollar value and the percentage of the contracts of the agency awarded to small businesses and small disadvantaged businesses.~~

~~15-4-319. Accelerated payments.~~

~~To ensure that minority businesses are not financially hindered due to delays in payment by state agencies entering into contracts with minority~~

~~businesses under the provisions of this section and §§ 15-4-311—15-4-318, state agencies shall accelerate payment to minority vendors to preclude accounts receivable problems of minority businesses caused by the State of Arkansas.~~

~~15-4-320. Minority business enterprises certification process.~~

~~(a) The Division of Minority Business Enterprise of the Department of Economic Development shall promulgate rules to create a certification process for minority business enterprises.~~

~~(b) The certification process shall include, but not be limited to:~~

~~(1) Criteria for certification that shall include, but not be limited to:~~

~~(A) A determination that the business is structured as a minority business enterprise;~~

~~(B) Verification of minority ownership and control of the business; and~~

~~(C) Annual updates indicating continuing minority ownership and control;~~

~~(2) A formal application process;~~

~~(3) An education program to assist minority business enterprises in achieving certification; and~~

~~(4) An outreach to ensure the broadest possible participation of minority business enterprises and persons proposing new minority business enterprises.~~

~~(c) The Office of State Procurement of the Department of Finance and Administration shall cooperate with the division to the fullest extent possible in sharing information concerning certification and registration of minority business enterprises carrying out the purposes of this section.”~~

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Steele

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Secretary