

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H3/14/17 H3/23/17 S3/29/17*

2 91st General Assembly

# A Bill

3 Regular Session, 2017

HOUSE BILL 2218

4

5 By: Representatives M. Gray, V. Flowers, M. Hodges, *Vaught, Davis*

6 By: Senators Irvin, D. Wallace, Elliott

7

8

## For An Act To Be Entitled

9

AN ACT TO AMEND THE MINORITY BUSINESS ECONOMIC

10

DEVELOPMENT ACT; TO REPEAL CERTAIN CONTRACTING GOALS;

11

AND FOR OTHER PURPOSES.

12

13

14

## Subtitle

15

TO AMEND THE MINORITY BUSINESS ECONOMIC

16

DEVELOPMENT ACT; AND TO REPEAL CERTAIN

17

CONTRACTING GOALS.

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19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21

22 *SECTION 1. Arkansas Code Title 15, Chapter 4, Subchapter 3, is amended*

23 *to read as follows:*

24 *Subchapter 3 – Minority and Women-Owned Business Economic Development Act*

25

26 *15-4-301. Title.*

27 *This subchapter shall be known and may be cited as the “Minority and*

28 *Women-Owned Business Economic Development Act”.*

29

30 *15-4-302. Purpose – Goals – Notice.*

31 *(a) The General Assembly finds that it is the policy of the State of*

32 *Arkansas to support equal opportunity as well as economic development in*

33 *every sector.*

34 *(b) The General Assembly recognizes that it is the purpose of this*

35 *subchapter to support to the fullest all possible participation of firms*

36 *owned and controlled by minority persons and women in state-funded and state-*



1 directed public construction programs and in the purchase of goods and  
2 services for the state.

3 (c) All state agencies shall attempt to ensure that ~~ten percent (10%)~~  
4 the following percentages of the total amount expended in state-funded and  
5 state-directed public construction programs and in the purchase of goods and  
6 services for the state each fiscal year ~~is~~ are paid to minority business  
7 enterprises and women-owned business enterprises:

8 (1)(A) For minority business enterprises, ten percent (10%).

9 (B) The ten-percent goal under subdivision (c)(1)(A) of  
10 this section shall be allocated as follows:

11 (i) Two percent (2%) for service-disabled veteran-  
12 owned minority business enterprises; and

13 (ii) Eight percent (8%) for all other minority  
14 business enterprises; and

15 (2) For women-owned business enterprises, five percent (5%).

16 (d) To facilitate notification of potential respondents to procurement  
17 solicitations, a state agency shall publish all state contract solicitations  
18 on the website for the Office of State Procurement of the Department of  
19 Finance and Administration.

20  
21 15-4-303. Definitions.

22 As used in this subchapter:

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

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

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

33 (A) African American;

34 (B) Hispanic American;

35 (C) American Indian;

36 (D) Asian American; or

- 1 (E) Pacific Islander American; ~~or~~
- 2 (F) A service-disabled veteran as designated by the United
- 3 States Department of Veterans Affairs;
- 4 (3) "Minority business enterprise" means a business that is at
- 5 least fifty-one percent (51%) owned by one (1) or more minority persons as
- 6 defined in this section;
- 7 (4) "Minority and women-owned business officer" means the
- 8 individual within each state agency with the responsibility for carrying out
- 9 the intended purposes of this subchapter;
- 10 (5)(A) "Nonexempt" means goods and services classified as
- 11 nonexempt for the purpose of administering this subchapter.
- 12 (B) The classification shall be determined by the office
- 13 and the division and submitted to the council for its review and
- 14 consideration for the purposes of this subchapter;
- 15 (6) "Procurement" means buying, purchasing, renting, leasing, or
- 16 otherwise acquiring any goods or services;
- 17 (7) "State agency" means a department, an office, a board, a
- 18 commission, or an institution of this state, including a state-supported
- 19 institution of higher education; ~~and~~
- 20 (8) "State contract" means a state agreement, regardless of what
- 21 it may be called, for the purchase of commodities and services and for the
- 22 disposal of surplus commodities and services not otherwise exempt; and
- 23 (9) "Women-owned business enterprise" means a business that is
- 24 at least fifty-one percent (51%) owned by one (1) or more women who are
- 25 lawful permanent residents of this state.

26

27 15-4-304. Creation.

28 The Division of Minority and Women-owned Business Enterprise of the

29 Arkansas Economic Development Commission:

- 30 (1) Is established and confirmed within the Arkansas Economic
- 31 Development Commission ~~under the jurisdiction of the Arkansas Economic~~
- 32 ~~Development Council;~~
- 33 (2) Shall be operated as a division within the commission; and
- 34 (3) Shall perform the functions and duties as provided in this
- 35 subchapter.

36

1           15-4-305. Administrator.

2           The head of the Division of Minority and Women-owned Business  
3 Enterprise of the Arkansas Economic Development Commission is the  
4 Administrator of the Division of Minority and Women-owned Business Enterprise  
5 of the Arkansas Economic Development Commission and shall be appointed by the  
6 Governor.

7  
8           15-4-306. Duties.

9           The Division of Minority and Women-owned Business Enterprise of the  
10 Arkansas Economic Development Commission shall:

11           (1) Provide technical, managerial, and counseling services and  
12 assistance to minority business enterprises and women-owned business  
13 enterprises;

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

16           (A) Develop comprehensive plans and specific program goals  
17 for a minority business enterprise and women-owned business enterprise  
18 program;

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

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

24           (3) Implement state policy in support of minority business  
25 enterprise and development and women-owned business enterprise and  
26 development and coordinate the plans, programs, and operations of state  
27 government that affect or may contribute to the establishment, preservation,  
28 and strengthening of minority business enterprises and women-owned business  
29 enterprises;

30           (4) Coordinate, make application for, and administer federal  
31 funding grants from the United States Minority Business Development Agency ~~of~~  
32 ~~the United States Department of Commerce, the United States Small Business~~  
33 Administration, the United States Department of Veterans Affairs, and other  
34 federal agencies ~~where~~ when applicable;

35           (5) Promote the mobilization of activities and resources of  
36 state agencies and local governments, business and trade associations,

1 universities, foundations, professional organizations, and volunteer and  
2 other groups toward the growth of minority business enterprises and women-  
3 owned business enterprises, and facilitate the coordination of the efforts of  
4 these groups with those of other state departments and state agencies;

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

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

15 (8) Recommend appropriate legislative or executive actions to  
16 enhance minority business enterprise and women-owned business enterprise  
17 opportunities in this state;

18 (9) Assist minority business enterprises and women-owned  
19 business enterprises in obtaining governmental or commercial financing for  
20 business expansion, establishment of new businesses, or industrial  
21 development projects;

22 (10) Provide services to promote the organization of local  
23 development corporations for rural development and assist minority business  
24 enterprise and women-owned business enterprise persons in agrarian endeavors;

25 (11) Assist minority business enterprises and women-owned  
26 business enterprises to promote reciprocal foreign trade and investment;

27 (12) Assist minority and women-owned business persons in  
28 business contract procurement from governmental and private commercial  
29 sources; and

30 (13) Provide a program effort to ensure participation of  
31 veterans and women in Arkansas minority business enterprise activities and  
32 women-owned business enterprise activities.

33  
34 15-4-307. Minority and Women-owned Business Advisory Council.

35 (a) The Division of Minority and Women-owned Business Enterprise of  
36 the Arkansas Economic Development Commission shall be represented by a

1 statewide Minority and Women-owned Business Advisory Council and shall report  
2 to that council.

3 (b)(1) The council shall consist of ~~seven (7)~~ nine (9) members.

4 (2) The council shall:

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

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

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

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

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

15 (4) The Executive Director of the Arkansas Economic Development  
16 Commission shall appoint two (2) members of the council.

17 ~~(4)(5)~~ Appointments shall reflect and be representative of the  
18 minority and women-owned business ~~community~~ communities, resource  
19 organizations, entrepreneurs, corporations, and other minority and women-  
20 owned business advocates.

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

23 (e) The term of office of the council shall ~~be:~~

24 (1) Be at the pleasure of the appointing officer; and

25 (2) Not exceed five (5) years.

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

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

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

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

36 (1) Review reports and interpret each state agency's achievement

1 of its goals under § 15-4-302(c);

2 (2) Advise the Governor when a state agency has not reached its  
3 goals under § 15-4-302(c);

4 (3) Make annual reports to the Governor, including without  
5 limitation:

6 (A) A summary of the state's performance in relation to  
7 the goals stated in § 15-4-302(c); and

8 (B) Any recommendations for modifications to the  
9 division's or other state agency's plans for improving statewide performance  
10 in relation to the goals stated in § 15-4-302(c);

11 (4) Recommend to the state agency, the division, and the Office  
12 of State Procurement of the Department of Finance and Administration  
13 corrective actions to strengthen minority and women-owned business  
14 opportunities in the state; and

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

18 (i) Each state agency, through its minority and women-owned business  
19 officer, shall submit to the division, ~~the council~~, and the office the state  
20 agency's plan to reach its goals for the coming fiscal year and shall:

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

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

23 (3) Contain a policy statement signed by the state agency head  
24 expressing a commitment to ~~use~~ strengthen minority business enterprises and  
25 women-owned business enterprises in all aspects of contracting to the maximum  
26 extent feasible;

27 (4) Identify the name of the minority and women-owned business  
28 officer in the state agency who is responsible for developing and  
29 administering the compliance plan;

30 (5) Establish a timetable for the state agency to reach its  
31 goals under the plan and the manner in which the state agency intends to  
32 reach its goals; and

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

35  
36 15-4-308. Administration.

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

6 (b) The division and the office shall provide assistance to minority  
7 business enterprises and women-owned business enterprises seeking state  
8 contract opportunities with various state agencies.

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

11 (d) The division and the office shall provide management and technical  
12 assistance to any state agency that experiences difficulty in complying with  
13 the provisions of this subchapter.

14 (e) The division and the office shall maintain a current directory of  
15 minority business enterprises and women-owned business enterprises and shall  
16 make the directory available to each state agency and minority and women-  
17 owned business officer.

18 (f) The division shall serve as a central clearinghouse for  
19 information on state contracts, including a record of all pending state  
20 contracts upon which minority business enterprises and women-owned business  
21 enterprises may participate.

22  
23 15-4-309. Exempt contracts.

24 Upon the approval of the Minority and Women-owned Business Advisory  
25 Council, the Division of Minority and Women-owned Business Enterprise of the  
26 Arkansas Economic Development Commission and the Office of State Procurement  
27 of the Department of Finance and Administration shall determine the  
28 classifications of state contracts to be exempted from the goals established  
29 by this subchapter whenever there exists an insufficient number of minority  
30 business enterprises or women-owned business enterprises to ensure adequate  
31 competition.

32  
33 15-4-310. Minority and women-owned business officer.

34 (a) Each state agency shall designate an individual as its minority  
35 and women-owned business officer.

36 (b) The minority and women-owned business officer shall be the person

1 within the state agency with whom the Division of Minority and Women-owned  
2 Business Enterprise of the Arkansas Economic Development Commission and the  
3 Minority and Women-owned Business Advisory Council shall work in their  
4 efforts to accomplish the goals of this subchapter.

5 (c) Upon the appointment of the minority and women-owned business  
6 officer in each state agency, the state agency shall notify the division and  
7 the Office of State Procurement of the Department of Finance and  
8 Administration.

9  
10 15-4-311. Annual minority and women-owned purchasing plan.

11 (a) Prior to June 30 each year, each state agency shall submit to the  
12 Division of Minority and Women-owned Business Enterprise of the Arkansas  
13 Economic Development Commission and the Office of State Procurement of the  
14 Department of Finance and Administration a minority and women-owned  
15 purchasing plan that shall outline the state agency's plan to reach its goals  
16 for the coming fiscal year.

17 (b) The minority and women-owned purchasing plan shall include without  
18 limitation:

19 (1) The name of the state agency;

20 (2) A policy statement signed by the state agency head  
21 expressing a commitment to use minority business enterprises and women-owned  
22 business enterprises in all aspects of contracting to the maximum extent  
23 feasible;

24 (3) The name of the minority and women-owned business officer in  
25 the state agency who is responsible for developing and administering the  
26 compliance purchasing plan;

27 (4) The time table for the state agency to reach its goals under  
28 the purchasing plan and the manner in which the state agency intends to reach  
29 its goals, including without limitation the manner in which the state agency  
30 intends to include minority business enterprises and women-owned business  
31 enterprises in reaching its goals; and

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

34 (c) The minority and women-owned business officer shall determine the  
35 category to which a purchase shall be assigned for purposes of the minority  
36 and women-owned purchasing plan required under this section.

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

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

15-4-313. Accelerated payments.

To ensure that minority business enterprises and women-owned business enterprises are not financially hindered due to delays in payment by state agencies entering into state contracts with minority business enterprises and women-owned business enterprises under this subchapter, state agencies shall accelerate payment to minority vendors and women-owned vendors to preclude accounts receivable problems of minority business enterprises and women-owned business enterprises caused by the State of Arkansas.

15-4-314. Minority business enterprises and women-owned business enterprises certification process.

(a) The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission shall promulgate rules to create a certification process for minority business enterprises and women-owned 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 or a women-owned business enterprise;

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

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

(2) A formal application process;

1 (3) *An education program to assist minority business enterprises*  
 2 *and women-owned business enterprises in achieving certification; and*

3 (4) *An outreach to ensure the broadest possible participation of*  
 4 *minority business enterprises and women-owned business enterprises and*  
 5 *persons proposing new minority business enterprises or women-owned business*  
 6 *enterprises.*

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

12  
 13 *SECTION 2. Arkansas Code Title 15, Chapter 4, Subchapter 3, is amended*  
 14 *to add an additional section to read as follows:*

15 *15-4-315. Small procurements.*

16 *To assist the state in ensuring that the percentages of the total*  
 17 *amount expended in state-funded and state-directed public construction*  
 18 *programs and procurement of commodities and services for the state each*  
 19 *fiscal year under § 15-4-302 are paid to minority business enterprises and*  
 20 *women-owned business enterprises under this subchapter, a procurement that*  
 21 *does not exceed two (2) times the amount stated in § 19-11-204(13) may be*  
 22 *procured without seeking competitive bids or competitive sealed bids if the*  
 23 *procurement is with a certified minority business enterprise or certified*  
 24 *women-owned business enterprise*

25  
 26 *SECTION 3. Arkansas Code § 19-11-106 is repealed.*

27 ~~*19-11-106. Contracting goals for service-disabled veterans—*~~  
 28 ~~*Definitions.*~~

29 ~~*(a) As used in this section:*~~

30 ~~*(1) “Service-disabled veteran” means any individual who:*~~

31 ~~*(A) Is at least thirty percent (30%) disabled as a result*~~  
 32 ~~*of military service and is designated as such by the United States Department*~~  
 33 ~~*of Veterans Affairs; and*~~

34 ~~*(B) Has been a resident of the State of Arkansas for at*~~  
 35 ~~*least two (2) years; and*~~

36 ~~*(2) “Business of a service-disabled veteran” means a business*~~

1 ~~that:~~

2 ~~(A) Not less than fifty-one percent (51%) of which is~~  
3 ~~owned by one (1) or more service-disabled veterans;~~

4 ~~(B) The management and daily business operations of which~~  
5 ~~are controlled by one (1) or more service-disabled veterans; and~~

6 ~~(C) Has been certified as a business of a service-disabled~~  
7 ~~veteran by the Division of Minority Business Enterprise of the Arkansas~~  
8 ~~Economic Development Commission under the Minority Business Economic~~  
9 ~~Development Act, § 15-4-301 et seq.~~

10 ~~(b)(1) All state agencies shall attempt to ensure that five percent~~  
11 ~~(5%) of the total amount expended in state-funded and state-directed public~~  
12 ~~construction programs and in the purchase of goods and services for the state~~  
13 ~~each fiscal year is paid to businesses of service-disabled veterans.~~

14 ~~(2) This subsection shall not be construed as establishing a~~  
15 ~~preference in contracting with businesses of service-disabled veterans.~~

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17 ~~/s/M. Gray~~

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