



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for HB 2199  
Sponsored by Representative Hodges**

**Subtitle** TO CLARIFY THE PURPOSE OF THE MINORITY BUSINESS ECONOMIC DEVELOPMENT ACT; AND TO AMEND THE REPORTING REQUIREMENTS AND PROVIDE FOR PENALTIES UNDER THE MINORITY BUSINESS ECONOMIC DEVELOPMENT ACT.

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from current law**<sup>2</sup> Amends Title 15, Chapter 4 of the Arkansas Code, the Minority Business Economic Development Act, to amend various provisions and create a criminal penalty.

The proposed bill amends Arkansas Code Annotated § 15-4-302 to add a new subsection requiring state agencies to send each request for proposal to the Division of Minority Business Enterprise of the Arkansas Economic Development for distribution to minority business enterprises.

The proposed bill amends A.C.A. § 15-4-312 by changing reporting requirements. Under current law, the Minority Business Advisory Council shall require each state agency to submit a report summing up total procurement for all state contracts, except exempt state contracts of the state agency. Under the proposed bill, each state agency is required to submit this report to the Minority Business Advisory Council and the Minority Business Advisory Council is required to compile the information and submit it to the Legislative Council, or the Joint Budget Committee if the General Assembly is in session.

The proposed bill also adds a new criminal penalty. Under the proposed bill, a person who purposely violates the Minority Business Development Act is guilty of a Class D felony.

**Impact Information**

This proposed bill creates a criminal penalty for individuals who violate any provision of the Minority Business Economic Development Act, not simply those amended by this legislation. Because there is no qualitative data on non-compliance with the Minority Economic Development Act as currently written and because the proposed bill creates new courses of conduct for which data does not exist, the impact of this bill cannot be determined.

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<sup>1</sup> This impact assessment was prepared 3/14/2017 (7:43 a.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

<sup>2</sup> Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

**A.C.A. § 15-4-303. Definitions.**

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;
  - (E) Pacific Islander American; or
  - (F) A service-disabled veteran as designated by the United States Department of Veterans Affairs;
  
- (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.

**HISTORY:** Acts 1977, No. 544, § 5; A.S.A. 1947, § 5-916.6; Acts 2003, No. 1814, § 2; 2009, No. 1222, § 3; 2011, No. 893, § 1.

**A.C.A. § 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 state 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 state 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 business enterprises 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 business persons in agrarian endeavors;
- (11) Assist minority business enterprises to promote reciprocal foreign trade and investment;
- (12) Assist minority business persons 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.

**HISTORY:** Acts 2009, No. 1222, § 6.

**A.C.A. § 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 state agency's achievement of its goals;  
(2) Advise the Governor when a state 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 the state 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 state agency head expressing a commitment to use minority business enterprises in all aspects of contracting to the maximum extent feasible;  
(4) Identify the name of the minority business officer in the state agency who is responsible for developing and administering the compliance plan;  
(5) Establish a timetable for the state agency to reach its goals under the plan and the manner in which the state 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.

**HISTORY:** Acts 2009, No. 1222, § 6.

**A.C.A. § 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 business enterprises seeking state 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 business enterprises 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 business enterprises may participate.

**HISTORY:** Acts 2009, No. 1222, § 6.

**A.C.A. § 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 state contracts to be exempted from the goals established by this subchapter whenever there exists an insufficient number of minority business enterprises to ensure adequate competition.

**HISTORY:** Acts 2009, No. 1222, § 6.

**A.C.A. § 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 state agency with whom the Division of Minority Business Enterprise of the Arkansas Economic Development Commission and the Minority Business Advisory Council shall work in their efforts to accomplish the goals of this subchapter.

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

**HISTORY:** Acts 2009, No. 1222, § 6.

**A.C.A. § 15-4-311. Annual minority purchasing plan.**

(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 state 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 state 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 state agency who is responsible for developing and administering the compliance plan;

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

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

**HISTORY:** Acts 1991, No. 698, § 1; 2007, No. 692, § 1; 2009, No. 1222, § 7.

**A.C.A. § 15-4-312. 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 three-month period a report 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 contracts of the state agency awarded to minority business enterprises.

**HISTORY:** Acts 1991, No. 698, § 2; 2009, No. 1222, § 8.

**A.C.A. § 15-4-313. Accelerated payments.**

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

**HISTORY:** Acts 1991, No. 698, § 3; 1995, No. 1296, § 48; 1997, No. 540, § 25; 2003, No. 487, § 12; 2007, No. 692, § 2; 2009, No. 481, § 1; 2009, No. 1222, § 9.

**A.C.A. § 15-4-314. Minority business enterprises certification process.**

(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.

**HISTORY:** Acts 1991, No. 698, § 6; 2009, No. 1222, § 10.