

By: Flagg

To: Ways and Means

HOUSE BILL NO. 1474

1 AN ACT TO REVISE THE MISSISSIPPI MINORITY BUSINESS ENTERPRISE
2 ACT; TO ESTABLISH THE MINORITY BUSINESS ENTERPRISE FINANCE PROGRAM
3 FOR THE PURPOSE OF MAKING LOANS TO QUALIFIED MINORITY BUSINESS
4 ENTERPRISES, IN ORDER TO ENHANCE OPPORTUNITIES FOR PARTICIPATION
5 IN PUBLIC CONTRACTS; TO SET FORTH THE REQUIREMENTS OF THE LOAN
6 PROGRAM; TO AMEND SECTION 57-69-5, MISSISSIPPI CODE OF 1972, TO
7 AUTHORIZE THE OFFICE OF MINORITY BUSINESS ENTERPRISES WITHIN THE
8 DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TO CONDUCT A
9 DISPARITY STUDY OF BARRIERS TO EQUAL PARTICIPATION BY QUALIFIED
10 MINORITY OWNED BUSINESSES IN ALL STATE AGENCY AND EDUCATIONAL
11 INSTITUTION CONTRACTS; TO ALLOW THE EXECUTIVE DIRECTOR OF THE
12 OFFICE TO AUTHORIZE THE MAKING OF LOANS TO QUALIFIED MINORITY
13 BUSINESS ENTERPRISES; TO PROVIDE THAT THE OFFICE SHALL ESTABLISH
14 FIVE REGIONAL BUREAUS THROUGHOUT THE STATE IN LOCATIONS ACCESSIBLE
15 TO RURAL COMMUNITIES, IN ORDER TO MAKE SERVICES PROVIDED BY THE
16 OFFICE AVAILABLE TO ALL RESIDENTS; TO AMEND SECTION 57-69-9,
17 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT REQUIRED ANNUAL REPORTS
18 MADE BY STATE AGENCIES AND EDUCATIONAL INSTITUTIONS, ABOUT THE
19 PARTICIPATION OF MINORITY BUSINESS ENTERPRISES IN THE PUBLIC WORKS
20 AND PROCUREMENT CONTRACTS EXECUTED BY THE AGENCIES AND
21 INSTITUTIONS, BE MADE TO THE GOVERNOR AND THE LEGISLATURE; TO
22 AMEND SECTIONS 57-69-3 AND 57-69-7, MISSISSIPPI CODE OF 1972, TO
23 MAKE NOMENCLATURE CORRECTIONS; TO AUTHORIZE THE ISSUANCE OF
24 GENERAL OBLIGATION BONDS OF THE STATE OF MISSISSIPPI IN THE AMOUNT
25 OF ONE MILLION DOLLARS, FOR THE PURPOSE OF PROVIDING FUNDS FOR THE
26 IMPLEMENTATION OF THE MINORITY BUSINESS ENTERPRISE FINANCE
27 PROGRAM; AND FOR RELATED PURPOSES.

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

29 SECTION 1. Section 57-69-3, Mississippi Code of 1972, is
30 amended as follows:

31 57-69-3. Unless the context requires otherwise, the
32 following words shall have the following meanings for the purposes
33 of this chapter:

34 (a) "Class of contract basis" means an entire group of
35 contracts having a common characteristic.

36 (b) "Commercially useful function" means being
37 responsible for execution of a contract or a distinct element of
38 the work under a contract by actually performing, managing, and

39 supervising the work involved.

40 (c) "Contract" means all types of state agreements,
41 regardless of what they may be called, for the purchase of
42 supplies or services or for construction or major repairs.

43 "Contract" includes the following:

44 (i) Awards and notices of award.

45 (ii) Contracts of a fixed price, cost,
46 cost-plus-a-fixed-fee, or incentive types.

47 (iii) Contracts providing for the issuance of job
48 or task orders.

49 (iv) Leases.

50 (v) Letter contracts.

51 (vi) Purchase orders.

52 (vii) Any supplemental agreements with respect to
53 (i) through (vi) of this subparagraph.

54 (d) "Contracting base" means the dollar amount of
55 contracts for public works and procurement of goods and services
56 awarded by a state agency or a state educational institution
57 during a fiscal year.

58 (e) "Contract by contract basis" means a single
59 contract within a specific class of contracts.

60 (f) "Contractor" means a party who enters into a
61 contract to provide a state or educational institution with goods
62 or services, including construction, or a subcontractor or
63 sublessee of such a party.

64 (g) "Director" means the Executive Director of the
65 Office of Minority Business Enterprises of the Department of
66 Economic and Community Development.

67 (h) "Educational institutions" mean the state
68 universities, vocational institutions, and any other
69 state-supported educational institutions.

70 (i) "Joint venture" means an association of two (2) or
71 more persons or businesses to carry out a single business
72 enterprise for profit for which purpose they combine their
73 property, capital, efforts, skills, and knowledge, and in which
74 they exercise control and share in profits and losses in
75 proportion to their contribution to the enterprise.

76 (j) "Minority" means a person who is a citizen or
77 lawful permanent resident of the United States and who is:

78 (i) Black: having origins in any of the black
79 racial groups of Africa.

80 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
81 Central or South American, or other Spanish or Portuguese culture
82 or origin regardless of race.

83 (iii) Asian American: having origins in any of
84 the original peoples of the Far East, Southeast Asia, the Indian
85 subcontinent, or the Pacific Islands.

86 (iv) American Indian or Alaskan Native: having
87 origins in any of the original peoples of North America.

88 (v) Female.

89 (k) "Minority business enterprise" or "minority owned
90 business" means a socially and economically disadvantaged small
91 business concern organized for profit performing a commercially
92 useful function which is owned and controlled by one or more
93 individuals or minority business enterprises certified by the
94 office, at least seventy-five percent (75%) of whom are resident
95 citizens of the State of Mississippi. For purposes of this
96 subparagraph, the term "socially and economically disadvantaged
97 small business concern" shall have the meaning ascribed to such
98 term under the Small Business Act (15 USCS, Section 637(a)). Owned
99 and controlled means a business in which one or more minorities or
100 minority business enterprises certified by the office own at least
101 fifty-one percent (51%) or in the case of a corporation at least
102 fifty-one percent (51%) of the voting stock and control at least
103 fifty-one percent (51%) of the management and daily business
104 operations of the business.

105 (l) "Office" means the Office of Minority Business
106 Enterprises of the Mississippi Department of Economic and
107 Community Development.

108 (m) "Procurement" means the purchase, lease, or rental

109 of any goods or services.

110 (n) "Commodities" mean the various items described in
111 Section 31-7-1(e).

112 (o) "Professional services" mean all personal service
113 contracts utilized by state agencies and institutions.

114 (p) "Small business" means a small business as defined
115 by the Small Business Administration of the United States
116 Government which for purposes of size eligibility or other factors
117 meets the applicable criteria set forth in Part 121 of Title 13 of
118 the Code of Federal Regulations as amended, and which has its
119 principal place of business in Mississippi.

120 (q) "State agency" includes the State of Mississippi
121 and all agencies, departments, offices, divisions, boards,
122 commissions, and correctional and other types of institutions.
123 "State agency" does not include the judicial or legislative
124 branches of government except to the extent that procurement or
125 public works for these branches is performed by a state agency.

126 SECTION 2. Section 57-69-5, Mississippi Code of 1972, is
127 amended as follows:

128 57-69-5. (1) There is hereby created the Office of Minority
129 Business Enterprises of the Department of Economic and Community
130 Development under the Department of Economic and Community
131 Development. The Executive Director of the Department of Economic
132 and Community Development shall appoint an executive director for
133 the office. The executive director may employ a staff, subject to
134 approval of the Executive Director of the Department of Economic
135 and Community Development, as necessary to carry out the purposes
136 of this office. Further, the executive director may authorize the
137 making of loans to qualified minority business enterprises in
138 accordance with Section 5 of this act.

139 (2) The office shall perform the following:

140 (a) Develop, plan and implement programs to provide an
141 opportunity for participation by qualified minority owned

142 businesses in public works and the process by which goods and
143 services are procured by state agencies and educational
144 institutions from the private sector;

145 (b) Develop a comprehensive plan encouraging that
146 qualified minority owned businesses are provided an opportunity to
147 participate in public contracts for public works and commodities
148 and services;

149 (c) Identify and research barriers to equal
150 participation by qualified minority owned businesses in all state
151 agency and educational institution contracts, and subject to
152 funding by legislative appropriation, conduct a formal disparity
153 study of those barriers to equal participation;

154 (d) Develop and maintain a central minority business
155 enterprise certification list for all state agencies and
156 educational institutions. Size of business or length of time in
157 business shall not be considered a prerequisite for inclusion on
158 the certification list;

159 (e) Adopt rules for the implementation of this chapter;

160 (f) Develop and maintain a central minority business
161 enterprise certification program;

162 (g) Submit an annual report to the Governor and the
163 Legislature outlining the progress and economic impact on the
164 public and private sectors of implementing this chapter;

165 (h) Increase efforts to inform minority businesses of
166 state government procurement procedures and policies;

167 (i) Serve as the principal advocate in the state on
168 behalf of minority business enterprises and provide advice in the
169 consideration of administrative requirements and legislation that
170 affect minority business enterprises;

171 (j) Evaluate the effectiveness of efforts of state
172 agencies and other entities to assist minority business
173 enterprises and make appropriate recommendations to assist the
174 development and strengthening of minority business enterprises;

175 (k) Determine the availability of financial and other
176 resources to minority business enterprises and recommend methods
177 for:

178 (i) Increasing the availability of equity capital
179 and other forms of financial assistance to minority business
180 enterprises;

181 (ii) Generating markets for the goods and services
182 of minority business enterprises;

183 (iii) Providing more effective education, training
184 and management and technical assistance to minority business
185 enterprises; and

186 (iv) Providing assistance to minority business
187 enterprises in complying with federal, state and local laws;

188 (l) Serve as a focal point for receiving complaints and
189 suggestions concerning state government policies and activities
190 that affect minority business enterprises;

191 (m) Develop and advocate proposals for changes in state
192 policies and activities that adversely affect minority business
193 enterprises;

194 (n) Provide to legislative committees and state
195 agencies information on the effects of proposed policies or
196 actions that affect minority business enterprises;

197 (o) Enlist the assistance of public and private
198 agencies, businesses and other organizations in disseminating
199 information about state programs and services that benefit
200 minority business enterprises and information regarding means by
201 which minority business enterprises can use those programs and
202 services;

203 (p) Identify sources of financial assistance for
204 minority business enterprises, match minority business enterprises
205 with sources of financial assistance, and assist minority business
206 enterprises with the preparation of applications for loans from
207 governmental or private sources;

208 (q) Sponsor meetings, to the extent practicable in
209 cooperation with public and private educational institutions, to
210 provide training and disseminate information beneficial to
211 minority business enterprises;

212 (r) Assist minority business enterprises in their
213 dealings with federal, state and local governmental agencies and
214 provide information regarding governmental requirements affecting
215 minority business enterprises;

216 (s) Develop and implement programs to encourage
217 governmental agencies, public sector business associations and
218 other organizations to provide useful services to minority
219 business enterprises;

220 (t) Use available resources within the state, such as
221 minority business enterprise development centers, educational
222 institutions and nonprofit associations, to coordinate the
223 provision of management and technical assistance to minority
224 business enterprises in a systematic manner;

225 (u) Publish newsletters, brochures and other documents
226 containing information useful to minority business enterprises;

227 (v) Identify successful minority business enterprise
228 assistance programs provided by other states and determine the
229 feasibility of adapting those programs for implementation in
230 Mississippi;

231 (w) Establish an outreach program to make the existence
232 of the office known to minority business enterprises and potential
233 clients throughout the state; and

234 (x) Identify potential business opportunities for
235 minority business enterprises and develop programs to maximize
236 those opportunities.

237 (3) The office shall establish five (5) regional bureaus
238 throughout the state in locations that would be easily accessible
239 to predominately rural communities, in order to make all services
240 provided by the Office of Minority Business Enterprises better

241 available to state residents. The executive director of the
242 office shall appoint the chief of each bureau, and each bureau
243 chief may employ a staff as necessary to carry out the purposes of
244 the office, subject to approval of the executive director.

245 SECTION 3. Section 57-69-7, Mississippi Code of 1972, is
246 amended as follows:

247 57-69-7. The Executive Director of the Department of
248 Economic and Community Development shall certify minority business
249 enterprises that qualify as such. The director shall establish
250 criteria by which minority business enterprises may qualify for
251 certification.

252 SECTION 4. Section 57-69-9, Mississippi Code of 1972, is
253 amended as follows:

254 57-69-9. Each state agency and educational institution shall
255 report the participation of minority business enterprises in the
256 public works and procurement contracts executed by the agency or
257 institution. The reports shall be made to the Governor and the
258 Legislature on an annual basis.

259 SECTION 5. (1) There is established, under the direction of
260 the Office of Minority Business Enterprises of the Department of
261 Economic and Community Development, a program to be known as the
262 Mississippi Minority Business Enterprise Finance Program for the
263 purpose of making loans to qualified minority business enterprises
264 in order to enhance opportunities for those enterprises to
265 participate in public contracts for public works and commodities
266 and services.

267 (2) Requisite qualifications of eligible enterprises and
268 criteria for making loans to an individual enterprise shall be
269 developed by the office and approved by the Executive Director of
270 the Department of Economic and Community Development.

271 (3) No loan made under the provisions of this section shall
272 be in an amount exceeding Fifty Thousand Dollars (\$50,000.00), and
273 the maximum loan term shall not exceed twenty (20) years.

274 (4) The interest rate on such loans shall not be less than
275 the net interest rate on the bonds issued under this section to
276 finance the loan being repaid.

277 (5) No loan shall be made under this section to finance any
278 existing debt.

279 SECTION 6. (1) As used in this section, the following words
280 shall have the meanings ascribed herein unless the context clearly
281 requires otherwise:

282 (a) "Accreted value" of any bond means, as of any date
283 of computation, an amount equal to the sum of (i) the stated
284 initial value of such bond, plus (ii) the interest accrued thereon
285 from the issue date to the date of computation at the rate,
286 compounded semiannually, that is necessary to produce the
287 approximate yield to maturity shown for bonds of the same
288 maturity.

289 (b) "State" means the State of Mississippi.

290 (c) "Commission" means the State Bond Commission.

291 (2) (a) (i) A special fund, to be designated as the "2000
292 Minority Business Enterprise Finance Fund" is created within the
293 State Treasury. The fund shall be maintained by the State
294 Treasurer as a separate and special fund, separate and apart from
295 the General Fund of the state. Unexpended amounts remaining in
296 the fund at the end of a fiscal year shall not lapse into the
297 State General Fund, and any interest earned or investment earnings
298 on amounts in the fund shall be deposited into such fund.

299 (ii) Monies deposited into the fund shall be
300 disbursed, in the discretion of the Department of Finance and
301 Administration, to the Office of Minority Business Enterprises of
302 the Department of Economic and Community Development for making
303 loans pursuant to the program established in Section 5 of this
304 act.

305 (b) Amounts deposited into such special fund shall be
306 disbursed to pay the costs of the program described in paragraph

307 (a) of this subsection. Promptly after the commission has
308 certified, by resolution duly adopted, that the program described
309 in subsection (1) shall have been terminated, abandoned, or has
310 not been utilized in a timely fashion, any amounts remaining in
311 such special fund shall be applied to pay debt service on the
312 bonds issued under this act, in accordance with the proceedings
313 authorizing the issuance of such bonds and as directed by the
314 commission.

315 (c) The Department of Finance and Administration,
316 acting through the Department of Economic and Community
317 Development, is expressly authorized and empowered to receive and
318 expend any local or other source funds in connection with the
319 expenditure of funds provided for in this subsection. The
320 expenditure of monies deposited into the special fund shall be
321 under the direction of the Department of Finance and
322 Administration, and such funds shall be paid by the State
323 Treasurer upon warrants issued by such department, which warrants
324 shall be issued upon requisitions signed by the Executive Director
325 of the Department of Finance and Administration or his designee.

326 (3) (a) The commission, at one time, or from time to time,
327 may declare by resolution the necessity for issuance of general
328 obligation bonds of the State of Mississippi to provide funds for
329 all costs incurred or to be incurred for the purposes described in
330 subsection (2) of this section. Upon the adoption of a resolution
331 by the Department of Finance and Administration, declaring the
332 necessity for the issuance of any part or all of the general
333 obligation bonds authorized by this subsection, the Department of
334 Finance and Administration shall deliver a certified copy of its
335 resolution or resolutions to the commission. Upon receipt of such
336 resolution, the commission, in its discretion, may act as the
337 issuing agent, prescribe the form of the bonds, advertise for and
338 accept bids, issue and sell the bonds so authorized to be sold and
339 do any and all other things necessary and advisable in connection

340 with the issuance and sale of such bonds. The total amount of
341 bonds issued under this section shall not exceed One Million
342 Dollars (\$1,000,000.00).

343 (b) Any investment earnings on amounts deposited into
344 the special fund created in subsection (2) of this section shall
345 be used to pay debt service on bonds issued under this section, in
346 accordance with the proceedings authorizing issuance of such
347 bonds.

348 (4) The principal of and interest on the bonds authorized
349 under this section shall be payable in the manner provided in this
350 subsection. Such bonds shall bear such date or dates, be in such
351 denomination or denominations, bear interest at such rate or rates
352 (not to exceed the limits set forth in Section 75-17-101,
353 Mississippi Code of 1972), be payable at such place or places
354 within or without the State of Mississippi, shall mature
355 absolutely at such time or times not to exceed twenty-five (25)
356 years from date of issue, be redeemable before maturity at such
357 time or times and upon such terms, with or without premium, shall
358 bear such registration privileges, and shall be substantially in
359 such form, all as shall be determined by resolution of the
360 commission.

361 (5) The bonds authorized by this section shall be signed by
362 the chairman of the commission, or by his facsimile signature, and
363 the official seal of the commission shall be affixed thereto,
364 attested by the secretary of the commission. The interest
365 coupons, if any, to be attached to such bonds may be executed by
366 the facsimile signatures of such officers. Whenever any such
367 bonds shall have been signed by the officials designated to sign
368 the bonds who were in office at the time of such signing but who
369 may have ceased to be such officers before the sale and delivery
370 of such bonds, or who may not have been in office on the date such
371 bonds may bear, the signatures of such officers upon such bonds
372 and coupons shall nevertheless be valid and sufficient for all

373 purposes and have the same effect as if the person so officially
374 signing such bonds had remained in office until their delivery to
375 the purchaser, or had been in office on the date such bonds may
376 bear. However, notwithstanding anything herein to the contrary,
377 such bonds may be issued as provided in the Registered Bond Act of
378 the State of Mississippi.

379 (6) All bonds and interest coupons issued under the
380 provisions of this section have all the qualities and incidents of
381 negotiable instruments under the provisions of the Mississippi
382 Uniform Commercial Code, and in exercising the powers granted by
383 this section, the commission shall not be required to and need not
384 comply with the provisions of the Mississippi Uniform Commercial
385 Code.

386 (7) The commission shall act as the issuing agent for the
387 bonds authorized under this section, prescribe the form of the
388 bonds, advertise for and accept bids, issue and sell the bonds so
389 authorized to be sold, pay all fees and costs incurred in such
390 issuance and sale, and do any and all other things necessary and
391 advisable in connection with the issuance and sale of such bonds.

392 The commission is authorized and empowered to pay the costs that
393 are incident to the sale, issuance and delivery of the bonds
394 authorized under this section from the proceeds derived from the
395 sale of such bonds. The commission shall sell such bonds on
396 sealed bids at public sale, and for such price as it may determine
397 to be for the best interest of the State of Mississippi, but no
398 such sale shall be made at a price less than par plus accrued
399 interest to the date of delivery of the bonds to the purchaser.
400 All interest accruing on such bonds so issued shall be payable
401 semiannually or annually; however, the first interest payment may
402 be for any period of not more than one (1) year.

403 Notice of the sale of any such bonds shall be published at
404 least one (1) time, not less than ten (10) days before the date of
405 sale, and shall be so published in one or more newspapers

406 published or having a general circulation in the City of Jackson,
407 Mississippi, and in one or more other newspapers or financial
408 journals with a national circulation, to be selected by the
409 commission.

410 The commission, when issuing any bonds under the authority of
411 this section, may provide that bonds, at the option of the State
412 of Mississippi, may be called in for payment and redemption at the
413 call price named therein and accrued interest on such date or
414 dates named therein.

415 (8) The bonds issued under the provisions of this section
416 are general obligations of the State of Mississippi, and for the
417 payment thereof the full faith and credit of the State of
418 Mississippi is irrevocably pledged. If the funds appropriated by
419 the Legislature are insufficient to pay the principal of and the
420 interest on such bonds as they become due, then the deficiency
421 shall be paid by the State Treasurer from any funds in the State
422 Treasury not otherwise appropriated. All such bonds shall contain
423 recitals on their faces substantially covering the provisions of
424 this section.

425 (9) Upon the issuance and sale of bonds under the provisions
426 of this section, the commission shall transfer the proceeds of any
427 such sale or sales to the special fund created in subsection (2)
428 of this section. The proceeds of such bonds shall be disbursed
429 solely upon the order of the Department of Finance and
430 Administration under such restrictions, if any, as may be
431 contained in the resolution providing for the issuance of the
432 bonds.

433 (10) The bonds authorized under this section may be issued
434 without any other proceedings or the happening of any other
435 conditions or things other than those proceedings, conditions and
436 things which are specified or required by this section. Any
437 resolution providing for the issuance of bonds under the
438 provisions of this section shall become effective immediately upon

439 its adoption by the commission, and any such resolution may be
440 adopted at any regular or special meeting of the commission by a
441 majority of its members.

442 (11) The bonds authorized under the authority of this
443 section may be validated in the Chancery Court of the First
444 Judicial District of Hinds County, Mississippi, in the manner and
445 with the force and effect provided by Chapter 13, Title 31,
446 Mississippi Code of 1972, for the validation of county, municipal,
447 school district and other bonds. The notice to taxpayers required
448 by such statutes shall be published in a newspaper published or
449 having a general circulation in the City of Jackson, Mississippi.

450 (12) Any holder of bonds issued under the provisions of this
451 section or of any of the interest coupons pertaining thereto may,
452 either at law or in equity, by suit, action, mandamus or other
453 proceeding, protect and enforce any and all rights granted under
454 this section, or under such resolution, and may enforce and compel
455 performance of all duties required by this section to be
456 performed, in order to provide for the payment of bonds and
457 interest thereon.

458 (13) All bonds issued under the provisions of this section
459 shall be legal investments for trustees and other fiduciaries, and
460 for savings banks, trust companies and insurance companies
461 organized under the laws of the State of Mississippi, and such
462 bonds shall be legal securities which may be deposited with and
463 shall be received by all public officers and bodies of this state
464 and all municipalities and political subdivisions for the purpose
465 of securing the deposit of public funds.

466 (14) Bonds issued under the provisions of this section and
467 income therefrom shall be exempt from all taxation in the State of
468 Mississippi.

469 (15) The proceeds of the bonds issued under this section
470 shall be used solely for the purposes herein provided, including
471 the costs incident to the issuance and sale of such bonds.

472 (16) The State Treasurer is authorized, without further
473 process of law, to certify to the Department of Finance and
474 Administration the necessity for warrants, and the Department of
475 Finance and Administration is authorized and directed to issue
476 such warrants, in such amounts as may be necessary to pay when due
477 the principal of, premium, if any, and interest on, or the
478 accreted value of, all bonds issued under this section; and the
479 State Treasurer shall forward the necessary amount to the
480 designated place or places of payment of such bonds in ample time
481 to discharge such bonds, or the interest thereon, on the due dates
482 thereof.

483 (17) This section shall be deemed to be full and complete
484 authority for the exercise of the powers herein granted, but this
485 section shall not be deemed to repeal or to be in derogation of
486 any existing law of this state.

487 SECTION 7. Section 5 of this act shall be codified as a
488 separate code section in Chapter 69, Title 57, Mississippi Code of
489 1972. Section 6 of this act shall not be codified in the
490 Mississippi Code of 1972.

491 SECTION 8. This act shall take effect and be in force from
492 and after July 1, 2000.