

By: Representatives Watson, Brown,
Whittington

To: Ways and Means

HOUSE BILL NO. 1349
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 57-69-3, 57-69-5, AND 57-69-7,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE CERTIFICATION OF
3 MINORITY BUSINESS ENTERPRISE SUPPLIERS UNDER THE MINORITY BUSINESS
4 ENTERPRISE ACT; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 57-69-3, Mississippi Code of 1972, is
7 amended as follows:

8 57-69-3. Unless the context requires otherwise, the
9 following words shall have the following meanings for the purposes
10 of this chapter:

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

13 (b) "Commercially useful function" means being
14 responsible for execution of a contract or a distinct element of
15 the work under a contract by actually performing, managing, and
16 supervising the work involved.

17 (c) "Contract" means all types of state agreements,
18 regardless of what they may be called, for the purchase of
19 supplies or services or for construction or major repairs.
20 "Contract" includes the following:

21 (i) Awards and notices of award.

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

24 (iii) Contracts providing for the issuance of job
25 or task orders.

26 (iv) Leases.

27 (v) Letter contracts.

28 (vi) Purchase orders.

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

31 (d) "Contracting base" means the dollar amount of
32 contracts for public works and procurement of goods and services
33 awarded by a state agency or a state educational institution
34 during a fiscal year.

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

37 (f) "Contractor" means a party who enters into a
38 contract to provide a state or educational institution with goods
39 or services, including construction, or a subcontractor or
40 sublessee of such a party.

41 (g) "Director" means the Executive Director of the
42 Office of Minority Business Enterprises of the Mississippi
43 Development Authority.

44 (h) "Educational institutions" means the state
45 universities, vocational institutions, and any other
46 state-supported educational institutions.

47 (i) "Joint venture" means an association of two (2) or
48 more persons or businesses to carry out a single business
49 enterprise for profit for which purpose they combine their
50 property, capital, efforts, skills, and knowledge, and in which
51 they exercise control and share in profits and losses in
52 proportion to their contribution to the enterprise.

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

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

57 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
58 Central or South American, or other Spanish or Portuguese culture
59 or origin regardless of race.

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

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

65 (v) Female.

66 (k) "Minority business enterprise" or "minority owned
67 business" means a socially and economically disadvantaged small
68 business concern organized for profit performing a commercially
69 useful function which is owned and controlled by one or more
70 individuals or minority business enterprises certified by the
71 office, at least seventy-five percent (75%) of whom are resident
72 citizens of the State of Mississippi. For purposes of this
73 paragraph, the term "socially and economically disadvantaged small
74 business concern" shall have the meaning ascribed to such term
75 under the Small Business Act (15 USCS, Section 637(a)). Owned and
76 controlled means a business in which one or more minorities or
77 minority business enterprises certified by the office own at least
78 fifty-one percent (51%) or in the case of a corporation at least
79 fifty-one percent (51%) of the voting stock and control at least
80 fifty-one percent (51%) of the management and daily business
81 operations of the business.

82 (l) "Minority business enterprise supplier" means a
83 socially and economically disadvantaged small business concern
84 which is owned and controlled by one or more individuals, at least
85 seventy-five percent (75%) of whom are resident citizens of the
86 State of Mississippi. For purposes of this paragraph, the term
87 "socially and economically disadvantaged small business concern"
88 shall have the meaning ascribed to such term under the Small
89 Business Act (15 USCS, Section 637(a)) except that the net worth
90 of the business may not be greater than Seven Hundred Fifty
91 Thousand Dollars (\$750,000.00). Owned and controlled means a
92 business in which one or more minorities own at least fifty-one

93 percent (51%) or in the case of a corporation at least fifty-one
94 percent (51%) of the voting stock and control at least fifty-one
95 percent (51%) of the management and daily business operations of
96 the business.

97 (m) "Office" means the Office of Minority Business
98 Enterprises of the Mississippi Development Authority.

99 (n) "Procurement" means the purchase, lease, or rental
100 of any goods or services.

101 (o) "Commodities" means the various items described in
102 Section 31-7-1(e).

103 (p) "Professional services" means all personal service
104 contracts utilized by state agencies and institutions.

105 (q) "Small business" means a small business as defined
106 by the Small Business Administration of the United States
107 government which for purposes of size eligibility or other factors
108 meets the applicable criteria set forth in Part 121 of Title 13 of
109 the Code of Federal Regulations as amended, and which has its
110 principal place of business in Mississippi.

111 (r) "State agency" includes the State of Mississippi
112 and all agencies, departments, offices, divisions, boards,
113 commissions, and correctional and other types of institutions.

114 "State agency" does not include the Mississippi Department of
115 Transportation nor the judicial or legislative branches of
116 government except to the extent that procurement or public works
117 for these branches is performed by a state agency.

118 **SECTION 2.** Section 57-69-5, Mississippi Code of 1972, is
119 amended as follows:

120 57-69-5. (1) There is hereby created the Office of Minority
121 Business Enterprises of the Mississippi Development Authority
122 under the Mississippi Development Authority. The Executive
123 Director of the Mississippi Development Authority shall appoint an
124 executive director for the office. The executive director may
125 employ a staff subject to approval of the Executive Director of

126 the Mississippi Development Authority as necessary to carry out
127 the purposes of this office.

128 (2) The office shall perform the following:

129 (a) Develop, plan and implement programs to provide an
130 opportunity for participation by qualified minority owned
131 businesses in public works and the process by which goods and
132 services are procured by state agencies and educational
133 institutions from the private sector;

134 (b) Develop a comprehensive plan encouraging that
135 qualified minority owned businesses are provided an opportunity to
136 participate in public contracts for public works and commodities
137 and services;

138 (c) Identify barriers to equal participation by
139 qualified minority owned businesses in all state agency and
140 educational institution contracts;

141 (d) Develop and maintain a central minority business
142 enterprise certification list for all state agencies and
143 educational institutions;

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

145 (f) Develop and maintain a central minority business
146 enterprise certification program;

147 (g) Develop and maintain a central minority business
148 enterprise supplier certification program;

149 (h) Submit an annual report to the Governor and the
150 Legislature outlining the progress and economic impact on the
151 public and private sectors of implementing this chapter;

152 (i) Increase efforts to inform minority businesses of
153 state government procurement procedures and policies;

154 (j) Serve as the principal advocate in the state on
155 behalf of minority business enterprises and minority business
156 enterprise suppliers and provide advice in the consideration of
157 administrative requirements and legislation that affect minority
158 business enterprises and minority business enterprise suppliers;

159 (k) Evaluate the effectiveness of efforts of state
160 agencies and other entities to assist minority business
161 enterprises and minority business enterprise suppliers and make
162 appropriate recommendations to assist the development and
163 strengthening of minority business enterprises and minority
164 business enterprise suppliers;

165 (l) Determine the availability of financial and other
166 resources to minority business enterprises and minority business
167 enterprise suppliers and recommend methods for:

168 (i) Increasing the availability of equity capital
169 and other forms of financial assistance to minority business
170 enterprises and minority business enterprise suppliers;

171 (ii) Generating markets for the goods and services
172 of minority business enterprises and minority business enterprise
173 suppliers;

174 (iii) Providing more effective education, training
175 and management and technical assistance to minority business
176 enterprises and minority business enterprise suppliers; and

177 (iv) Providing assistance to minority business
178 enterprises and minority business enterprise suppliers in
179 complying with federal, state and local laws;

180 (m) Serve as a focal point for receiving complaints and
181 suggestions concerning state government policies and activities
182 that affect minority business enterprises and minority business
183 enterprise suppliers;

184 (n) Develop and advocate proposals for changes in state
185 policies and activities that adversely affect minority business
186 enterprises and minority business enterprise suppliers;

187 (o) Provide to legislative committees and state
188 agencies information on the effects of proposed policies or
189 actions that affect minority business enterprises and minority
190 business enterprise suppliers;

191 (p) Enlist the assistance of public and private
192 agencies, businesses and other organizations in disseminating
193 information about state programs and services that benefit
194 minority business enterprises and minority business enterprise
195 suppliers and information regarding means by which minority
196 business enterprises and minority business enterprise suppliers
197 can use those programs and services;

198 (q) Identify sources of financial assistance for
199 minority business enterprises, match minority business enterprises
200 and minority business enterprise suppliers with sources of
201 financial assistance, and assist minority business enterprises and
202 minority business enterprise suppliers with the preparation of
203 applications for loans from governmental or private sources;

204 (r) Sponsor meetings, to the extent practicable in
205 cooperation with public and private educational institutions, to
206 provide training and disseminate information beneficial to
207 minority business enterprises and minority business enterprise
208 suppliers;

209 (s) Assist minority business enterprises and minority
210 business enterprise suppliers in their dealings with federal,
211 state and local governmental agencies and provide information
212 regarding governmental requirements affecting minority business
213 enterprises and minority business enterprise suppliers;

214 (t) Develop and implement programs to encourage
215 governmental agencies, public sector business associations and
216 other organizations to provide useful services to minority
217 business enterprises and minority business enterprise suppliers;

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

224 (v) Publish newsletters, brochures and other documents
225 containing information useful to minority business enterprises and
226 minority business enterprise suppliers;

227 (w) 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 (x) Establish an outreach program to make the existence
232 of the office known to minority business enterprises, minority
233 business enterprise suppliers and potential clients throughout the
234 state; and

235 (y) Identify potential business opportunities for
236 minority business enterprises and minority business enterprise
237 suppliers and develop programs to maximize those opportunities.

238 **SECTION 3.** Section 57-69-7, Mississippi Code of 1972, is
239 amended as follows:

240 57-69-7. (1) The Executive Director of the Mississippi
241 Development Authority shall certify minority business enterprises
242 that qualify as such. The director shall establish criteria by
243 which minority business enterprises may qualify for certification.

244 (2) The Executive Director of the Mississippi Development
245 Authority shall certify minority business enterprises suppliers
246 that qualify as such. The director shall establish criteria by
247 which minority business enterprise suppliers may qualify for
248 certification.

249 **SECTION 4.** This act shall take effect and be in force from
250 and after July 1, 2006.