

House Bill 128 (AS PASSED HOUSE AND SENATE)

By: Representatives Hong of the 103rd, Sainz of the 180th, Bonner of the 73rd, Martinez of the 111th, Williams of the 168th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 48 and 50 of the Official Code of Georgia Annotated, relating to revenue
2 and taxation and state government, respectively, so as to provide for representation of
3 minority business enterprises, women owned businesses, and veteran owned businesses in
4 the area of procurement of state contracts for construction, services, equipment, and goods;
5 to provide for definitions; to provide tax deductions for payments to certain small business
6 subcontractors that are minority business enterprises, women owned businesses, and veteran
7 owned businesses and meet certain qualifications; to permit disclosure of certain tax returns
8 to the commissioner of administrative services; to provide a list of classified subcontractors
9 to the Department of Administrative Services; to provide for eligibility and procedures for
10 certification as a minority business enterprise, women owned business, or veteran owned
11 business; to change certain provisions relating to fraud in the certification process; to provide
12 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
13 purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
 17 amended by revising paragraph (11) of subsection (b) of Code Section 48-7-21, relating to
 18 taxation of corporations, as follows:

19 "(11) There shall be subtracted from taxable income a portion of qualified payments to
 20 minority classified subcontractors, as provided in Code Section 48-7-38."

21 **SECTION 2.**

22 Said title is further amended by revising paragraph (6) of subsection (a) of Code
 23 Section 48-7-27, relating to computation of taxable net income, as follows:

24 "(6) A portion of the qualified payments to minority classified subcontractors, as
 25 provided in Code Section 48-7-38;"

26 **SECTION 3.**

27 Said title is further amended by revising Code Section 48-7-38, relating to deduction for
 28 payments to minority subcontractors and certification as minority contractor, as follows:

29 "48-7-38.

30 (a) As used in this Code section, the term:

31 ~~(1) 'Member of a minority' means an individual who is:~~

32 ~~(A) Black;~~

33 ~~(B) Hispanic;~~

34 ~~(C) Asian-Pacific American;~~

35 ~~(D) Native American; or~~

36 ~~(E) Asian-Indian American.~~

37 ~~(2) 'Minority subcontractor' means any business which is owned by:~~

38 ~~(A) An individual who is a member of a minority who reports as his or her personal~~
 39 ~~income for Georgia income tax purposes the income of such business;~~

40 ~~(B) A partnership in which a majority of the ownership interest is owned by one or~~
41 ~~more members of a minority who report as their personal income for Georgia income~~
42 ~~tax purposes more than 50 percent of the income of the partnership; or~~

43 ~~(C) A corporation organized under the laws of this state in which a majority of the~~
44 ~~common stock is owned by one or more members of a minority who report as their~~
45 ~~personal income for Georgia income tax purposes more than 50 percent of the~~
46 ~~distributed earnings of the corporation.~~

47 (1) 'Classified subcontractor' means a small business certified as a minority business
48 enterprise, women owned business, or veteran owned business under Code
49 Section 50-5-132.

50 (2) 'Small business' shall have the same meaning as provided in Code Section 50-5-121.

51 (3) 'State contract' means a contract for the purchase by the state of goods, property, or
52 services or for the construction of any building or structure for the state, which contract
53 is executed by any department, board, bureau, commission, or agency of state
54 government, by any state authority, or by any officer, official, employee, or agent of any
55 of the foregoing.

56 (b) In computing Georgia taxable net income of a corporation, partnership, or individual,
57 there shall be subtracted from federal taxable income or federal adjusted gross
58 income 10 percent of the amount of qualified payments to minority classified
59 subcontractors. A payment to a minority classified subcontractor shall be a qualified
60 payment if:

61 (1) The payment is for goods, personal property, or services furnished by the minority
62 classified subcontractor to the taxpayer and delivered by the taxpayer to the state in
63 furtherance of a state contract to which the taxpayer is a party; and the payment does not
64 exceed the value of the goods, property, or services to the taxpayer;

65 (2) The payment is made during the taxable year for which the subtraction from federal
66 taxable income or federal adjusted gross income is claimed; and

67 (3) The payment is made to a ~~subcontractor who~~ small business which, at the time of the
68 payment, is certified as a minority ~~subcontractor pursuant to subsection (d) of this Code~~
69 ~~section~~ business enterprise, women owned business, or veteran owned business under
70 Code Section 50-5-132.

71 (c) The total amount which may be subtracted under this Code section from federal taxable
72 income or federal adjusted gross income of any taxpayer shall be limited to \$100,000.00
73 per taxable year.

74 (d) ~~The commissioner of administrative services shall certify individuals, partnerships, and~~
75 ~~corporations which are within the definition of the term 'minority subcontractor' specified~~
76 ~~in subsection (a) of this Code section.~~ The department may disclose to the commissioner
77 of administrative services the income tax returns of taxpayers applying for certification as
78 minority ~~subcontractors~~ business enterprises, women owned businesses, and veteran owned
79 businesses under Code Section 50-5-132. The commissioner of administrative services
80 shall maintain and periodically revise a list of ~~certified minority~~ classified subcontractors
81 and shall make such list available to the department no later than December 31 of each year
82 and to the general public.

83 (e) ~~Any individual, partnership, or corporation certified pursuant to subsection (d) of this~~
84 ~~Code section and any small business concern which is at least 51 percent owned by one or~~
85 ~~more minorities, or, in the case of a publicly owned business, at least 51 percent of all~~
86 ~~classes or types of the stock of which is owned by one or more minorities, whose~~
87 ~~management and daily business operations are controlled by one or more minorities, and~~
88 ~~which is authorized to do and is doing business under the laws of this state paying all taxes~~
89 ~~duly assessed and domiciled within this state shall be eligible for certification as a minority~~
90 ~~business enterprise under Code Section 50-5-132; and, for purposes of such certification~~
91 ~~pursuant to this subsection, 'minority' shall be defined as a member of a minority. Such~~
92 ~~certification shall be subject to the provisions of Code Section 50-5-133."~~

116 (2) 'Minority business enterprise' means a ~~small business concern~~ which is owned and
117 controlled by one or more minorities; ~~and~~ authorized to do and is doing business under
118 the laws of this state; ~~;~~ paying all taxes duly assessed; ~~;~~ and domiciled within this state.

119 (3) 'Owned and controlled' means a business:

120 (A) Which is at least 51 percent owned by one or more minorities, women, or veterans
121 or, in the case of a publicly owned business, at least 51 percent of all classes or types
122 of the stock is owned by one or more minorities, women, or veterans; and

123 (B) Whose management and daily business operations are controlled by one or more
124 minorities, women, or veterans.

125 (4) 'Veteran' means an individual who:

126 (A) Served on active duty with the Army, Air Force, Navy, Marine Corps, Space
127 Force, or Coast Guard for any length of time and did not receive a dishonorable
128 discharge; or

129 (B) Was a reservist or member of the National Guard who was called to federal active
130 duty.

131 (5) 'Veteran owned business' means a business which is owned and controlled by one or
132 more veterans; authorized to do and is doing business under the laws of this state; paying
133 all taxes duly assessed; and domiciled within this state.

134 (6) 'Women owned business' means a business which is owned and controlled by one or
135 more women; authorized to do and is doing business under the laws of this state; paying
136 all taxes duly assessed; and domiciled within this state.

137 50-5-132.

138 (a) Any minority business enterprise, women owned business, or veteran owned business
139 that desires to claim such status under any law of this state or any regulation promulgated
140 pursuant thereto shall first apply for certification, ~~in addition to any other certification~~
141 ~~required by the provisions of 49 C.F.R. 23,~~ to the Department of Administrative Services.

- 142 (b) The Department of Administrative Services shall certify a business which meets the
 143 eligibility requirement of this part and any other such eligibility requirements as
 144 determined by the Department of Administrative Services to qualify as a minority business
 145 enterprise, women owned business, or veteran owned business. To qualify as a minority
 146 business enterprise, women owned business, or veteran owned business, the business shall:
- 147 (1) Be a minority business enterprise, women owned business, or veteran owned
 148 business;
 - 149 (2) Submit any documentary evidence to support its status as a minority business
 150 enterprise, women owned business, or veteran owned business; and
 - 151 ~~(3) Sign an affidavit stating that it is a minority business enterprise;~~
 - 152 ~~(4)~~(3) Be qualified to bid pursuant to the provisions of the Department of Administrative
 153 Services and other state agencies, ~~and~~
 - 154 ~~(5) Present:~~
 - 155 ~~(A) An application, including the entire business history of the operation;~~
 - 156 ~~(B) Birth certificates for all minority principals;~~
 - 157 ~~(C) If Native American, a tribal registration card or certificate;~~
 - 158 ~~(D) Current resumes on all principals, key managers, and other key personnel;~~
 - 159 ~~(E) A current financial statement;~~
 - 160 ~~(F) Proof of investment by principals;~~
 - 161 ~~(G) Loan agreements;~~
 - 162 ~~(H) Lease or rental agreement for space and equipment;~~
 - 163 ~~(I) Evidence of latest bond;~~
 - 164 ~~(J) If the applicant is a sole proprietor, a copy of a blank signature card;~~
 - 165 ~~(K) If the applicant is a partnership, a copy of the partnership agreement; and~~
 - 166 ~~(L) If the applicant is a corporation, articles of organization, corporation bylaws, copies~~
 167 ~~of all stock certificates, minutes of the first corporate organizational meeting, bank~~

168 ~~resolution on all company accounts, and a copy of the latest United States corporate tax~~
169 ~~return.~~

170 (c) The Department of Administrative Services shall prepare and maintain a list of
171 certified minority business enterprises, women owned businesses, and veteran owned
172 businesses.

173 (d) The Department of Administrative Services may deny certification to any minority
174 business enterprise, women owned business, or veteran owned business which does not
175 qualify as such under the provisions of this part. Any person adversely affected by an order
176 of the Department of Administrative Services denying certification as a minority business
177 enterprise, women owned business, or veteran owned business may appeal as provided in
178 the regulations of the Department of Administrative Services.

179 50-5-133.

180 (a) It shall be unlawful for a person to:

181 (1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain
182 or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or
183 retain certification as a minority business enterprise, women owned business, or veteran
184 owned business for the purposes of this part;

185 (2) Knowingly and willfully make a false statement with the intent to defraud, whether
186 by affidavit, report, or other representation, to a state official or employee for the purpose
187 of influencing the certification or denial of any certification of any entity as a minority
188 business enterprise, women owned business, or veteran owned business;

189 (3) Knowingly and willfully obstruct, impede, or attempt to obstruct or impede any state
190 official or employee who is investigating the qualifications of a business entity which has
191 requested certification as a minority business enterprise, women owned business, or
192 veteran owned business;

- 193 (4) Knowingly and willfully with intent to defraud, fraudulently obtain, attempt to
194 obtain, or aid another person in fraudulently obtaining or attempting to obtain public
195 moneys to which the person is not entitled under this part; or
- 196 (5) Knowingly and willfully assign any contract awarded pursuant to the Department of
197 Administrative Services to any other business enterprise without prior written approval
198 of the Department of Administrative Services.
- 199 (b) Any person convicted of violating any provision of this Code section shall be guilty
200 of a felony, punishable by imprisonment for not more than five years or a fine of not more
201 than \$10,000.00 or both such imprisonment and fine.
- 202 (c) If a contractor, subcontractor, supplier, subsidiary, principal, or affiliate thereof has
203 been found to have violated this Code section and that violation occurred within three years
204 of another violation of this Code section, the Department of Administrative Services shall
205 prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof from
206 entering into a state project or state contract; from further bidding to a state entity; from
207 being a subcontractor to a contractor for a state entity; and from being a supplier to a state
208 entity."

209 **SECTION 5.**

210 This Act shall become effective on January 1, 2024.

211 **SECTION 6.**

212 All laws and parts of laws in conflict with this Act are repealed.