

## SENATE BILL No. 511

By Committee on Commerce

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9 AN ACT concerning small and disadvantaged businesses; enacting the  
10 Kansas small and disadvantaged business development act.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. Sections 1 through 14, and amendments thereto, shall be  
14 known and may be cited as the Kansas small and disadvantaged business  
15 development program act.

16 Sec. 2. As used in this act, unless the context requires otherwise, the  
17 following terms shall have the meanings ascribed to them in this section:

18 (a) "Broker" means a person that provides a bona fide service, such  
19 as professional, technical, consultant, brokerage or managerial services  
20 and assistance in the procurement of essential personnel, facilities, equip-  
21 ment, materials or supplies required for performance of a contract.

22 (b) "Committee" means the advisory committee on minority and  
23 women's business enterprises.

24 (c) "Director" means the assistant director for the office of minority  
25 and women business development enterprises established pursuant to  
26 K.S.A. 74-5011 and amendments thereto.

27 (d) "Goals" means annual overall agency goals, expressed as a per-  
28 centage of dollar volume, for participation by minority and women-owned  
29 and controlled businesses and shall not be construed as a minimum goal  
30 for any particular contract or for any particular geographical area. It is  
31 the intent of this act that such overall agency goals shall be achievable  
32 and shall be met on a contract-by-contract or class-of-contract basis.

33 (e) "Goods or services" includes professional services and all other  
34 goods and services.

35 (f) "Office" means the office of minority and women business devel-  
36 opment established pursuant to K.S.A. 74-5010a and amendments  
37 thereto.

38 (g) "Person" includes one or more individuals, partnerships, associ-  
39 ations, organizations, corporations, cooperatives, legal representatives,  
40 trustees and receivers or any group of persons.

41 (h) "Postsecondary educational institution" shall have the meaning  
42 ascribed to it in K.S.A. 74-3201b and amendments thereto.

43 (i) "Procurement" means the purchase, lease or rental of any goods

1 or services.

2 (j) "Public works" means all work, construction, highway and ferry  
3 construction, alteration, repair or improvement other than ordinary main-  
4 tenance, which a state agency or postsecondary educational institution is  
5 authorized or required by law to undertake.

6 (k) "State agency" shall have the meaning ascribed to it in K.S.A. 75-  
7 3044 and amendments thereto.

8 Sec. 3. There is hereby created within the department of commerce  
9 a Kansas small and disadvantaged business development program. The  
10 director shall administer the provisions of the Kansas small and disadvan-  
11 taged business development program. In administering the provisions of  
12 the Kansas small and disadvantaged business development program act,  
13 the director shall be authorized to:

14 (a) Employ a deputy director and a confidential secretary, both of  
15 which shall be in the unclassified service, and such staff as are necessary  
16 to carry out the purposes of this act.

17 (b) Develop, plan and implement, in consultation with the commit-  
18 tee, one or more programs to provide an opportunity for participation by  
19 qualified minority and disadvantaged businesses in public works and the  
20 process by which goods and services are procured by state agencies and  
21 postsecondary educational institutions from the private sector.

22 (c) Develop, in consultation with the committee, a comprehensive  
23 plan insuring that qualified minority and disadvantaged businesses are  
24 provided an opportunity to participate in public contracts for public works  
25 and goods and services.

26 (d) Identify, in consultation with the minority and women's business  
27 enterprises advisory committee, any barrier to equal participation by qual-  
28 ified minority and disadvantaged businesses in all state agency and pos-  
29 tsecondary educational institution contracts.

30 (e) Establish annual overall goals for participation by qualified mi-  
31 nority and women-owned and controlled businesses for each state agency  
32 and postsecondary educational institution to be administered on a con-  
33 tract-by-contract basis or on a class-of-contracts basis.

34 (f) Develop and maintain a central minority and disadvantaged busi-  
35 ness certification list for all state agencies and postsecondary educational  
36 institutions. No business shall be entitled to certification under this act  
37 unless it meets the definition of small and disadvantaged business as es-  
38 tablished by the office.

39 (g) Develop, implement and operate a system of monitoring compli-  
40 ance with this act.

41 (h) Adopt rules and regulations in accordance with the rules and reg-  
42 ulations filing act, governing:

43 (A) Establishment of agency goals;

1 (B) development and maintenance of a central minority and disad-  
2 vantaged business certification program, including a definition of “small  
3 and disadvantaged business” which shall be consistent with the small busi-  
4 ness requirements defined under section 3 of the small business act, 15  
5 U.S.C. Sec. 632, and the regulations promulgated thereunder;

6 (C) procedures for monitoring and enforcing compliance with goals,  
7 regulations, contract provisions and this act;

8 (D) utilization of standard clauses by state agencies and postsecond-  
9 ary educational institutions; and

10 (E) determination of an agency’s or postsecondary educational insti-  
11 tution’s goal attainment consistent with the limitations of section 7 and  
12 amendments thereto.

13 The rules and regulations adopted by the director shall be consistent  
14 with section 8(a) of the small business act, public law 85-536, as amended  
15 on the effective date of this act.

16 (i) Submit an annual report to the governor and the legislature out-  
17 lining the progress in implementing this chapter.

18 (j) Investigate complaints of violations of this chapter with the assis-  
19 tance of the involved agency or postsecondary educational institution.

20 (k) Cooperate and act jointly with the United States or other states,  
21 and with political subdivisions of the state of Kansas and their respective  
22 minority, socially and economically disadvantaged and women business  
23 enterprise programs to carry out the purposes of this act. However, the  
24 power which may be exercised by the office under this subsection permits  
25 investigation and imposition of sanctions only if the investigation relates  
26 to a possible violation of this act, including any rule and regulation  
27 adopted thereunder, and not to a violation of any local ordinance, rule,  
28 regulation, or resolution, however denominated, adopted by a political  
29 subdivision of the state.

30 (l) Establish ad hoc advisory committees, as necessary, to assist in the  
31 development of policies to carry out the purposes of this act.

32 (m) Enter into contracts necessary to carry out the provisions of this  
33 act.

34 Sec. 4. The rules adopted under subsection (h) of section 3, and  
35 amendments thereto, shall include requirements for standard clauses in  
36 requests for proposals, advertisements, bids, or calls for bids, necessary  
37 to carry out the purposes of this chapter, which shall include notice of  
38 the statutory penalties under sections 8 and 9, and amendments thereto,  
39 for noncompliance.

40 Sec. 5. Each state agency and postsecondary educational institution  
41 shall comply with the annual goals established for that agency or insti-  
42 tution under this chapter for public works and procuring goods or serv-  
43 ices. This chapter applies to all public works and procurement by state

1 agencies and postsecondary educational institutions, including all con-  
2 tracts and other procurement under chapter 75 of the Kansas Statutes  
3 Annotated and amendments thereto. Each state agency shall adopt a plan,  
4 developed in consultation with the director and the advisory committee,  
5 to insure that minority and women-owned businesses are afforded the  
6 maximum practicable opportunity to directly and meaningfully participate  
7 in the execution of public contracts for public works and goods and serv-  
8 ices. The plan shall include specific measures the agency will undertake  
9 to increase the participation of certified minority and women-owned busi-  
10 nesses. The office shall annually notify the governor, the state auditor,  
11 and the joint legislative audit and review committee of all agencies and  
12 postsecondary educational institutions not in compliance with this  
13 chapter.

14 Sec. 6. It is the intent of this act that the goals established under this  
15 act for participation by minority and women-owned and controlled busi-  
16 nesses be achievable. Notwithstanding any other law to the contrary, if  
17 necessary to accomplish this intent, any contract may be awarded to the  
18 next lowest responsible bidder in turn, or all bids may be rejected and  
19 new bids obtained, if the lowest responsible bidder does not meet the  
20 goals established for a particular contract under this act. The dollar value  
21 of the total contract used for the calculation of the specific contract goal  
22 may be increased or decreased to reflect executed change orders. An  
23 apparent low-bidder must be in compliance with the contract provisions  
24 required under this chapter as a condition precedent to the granting of a  
25 notice of award by any state agency or postsecondary educational  
26 institution.

27 Sec. 7. For the purpose of measuring a state agency's or postsecon-  
28 dary educational institution's goal attainment, any regulations adopted  
29 under subsection (h) of section 5, and amendments thereto, shall provide  
30 that if a certified minority and disadvantaged business is a broker of goods  
31 or materials required under a contract, the contracting agency or postse-  
32 condary educational institution may count only the dollar value of the fee  
33 or commission charged and not the value of goods or materials provided.  
34 The contracting agency or postsecondary educational institution may, at  
35 its discretion, fix the dollar value of the fee or commission charged at  
36 either the actual dollar value of the fee or commission charged or at a  
37 standard percentage of the total value of the brokered goods, which per-  
38 centage must reflect the fees or commissions generally paid to brokers  
39 for providing such services.

40 Sec. 8. (a) No person, firm, corporation, business, union or other  
41 organization shall:

42 (1) Prevent or interfere with a contractor's or subcontractor's com-  
43 pliance with this act or any rule and regulation adopted thereunder;

- 1 (2) Submit any false or fraudulent information to the director con-  
2 cerning compliance with this act or chapter or any rule and regulation  
3 adopted thereunder;
- 4 (3) Fraudulently obtain, retain, attempt to obtain or retain, or aid  
5 another in fraudulently obtaining or retaining or attempting to obtain or  
6 retain certification as a minority or disadvantaged business for the pur-  
7 pose of this act;
- 8 (4) Knowingly make a false statement, whether by affidavit, verified  
9 statement, report, or other representation, to any state official or em-  
10 ployee for the purpose of influencing the certification or denial of certi-  
11 fication of any entity as a minority or disadvantaged business enterprise;
- 12 (5) Knowingly obstruct, impede, or attempt to obstruct or impede  
13 any state official or employee who is investigating the qualification of a  
14 business entity that has requested certification as a minority or a disad-  
15 vantaged business;
- 16 (6) Fraudulently obtain, attempt to obtain, or aid another person in  
17 fraudulently obtaining or attempting to obtain public moneys to which  
18 the person is not entitled under this act or any rule and regulation adopted  
19 thereunder; or
- 20 (7) Knowingly make any false statement or representation that any  
21 entity is or is not certified as a minority or disadvantaged business for  
22 purposes of obtaining a contract governed by this act or any rule and  
23 regulation adopted thereunder.
- 24 (b) Any person or entity violating this act or any rule adopted there-  
25 under shall be subject to the penalties in section 9 and amendments  
26 thereto. No provision of this section, and amendments thereto, shall pre-  
27 vent the state agency or postsecondary educational institution from pur-  
28 suing any such procedure or sanction as is otherwise provided by statute,  
29 rule and regulation, or contract provision.
- 30 Sec. 9. (a) If the director determines after notice and an opportunity  
31 for a hearing in accordance with the Kansas administrative procedure act  
32 that a person, firm, corporation or business has engaged in or is engaging  
33 in any act or practice constituting a violation of any provision of this act,  
34 any rule and regulation adopted thereunder or with a contract require-  
35 ment established under this act, the director, in consultation with the  
36 appropriate state official, may withhold payment, debar the contractor,  
37 suspend, or terminate the contract and subject the contractor to civil  
38 penalties of up to 10% of the amount of the contract or up to \$5,000,  
39 whichever is greater, for each violation. No civil penalty shall be assessed.  
40 The director shall adopt, by rule and regulation, criteria for the imposition  
41 of penalties under this section and amendments thereto.
- 42 (b) Any willful repeated violation, exceeding a single violation, may  
43 disqualify the contractor from further participation in state contracts for

1 a period of up to three years. An apparent low-bidder must be in com-  
2 pliance with the contract provisions required under this chapter as a con-  
3 dition precedent to the granting of a notice of award by any state agency  
4 or postsecondary educational institution.

5 (c) The procedures and sanctions provided in this section, and  
6 amendments thereto, shall be in addition to all other remedies provided  
7 by law. No provision of this section, and amendments thereto, shall pre-  
8 vent any state agency or postsecondary educational institution adminis-  
9 tering the contract from pursuing such other procedures or sanctions as  
10 are otherwise provided by statute, rule and regulation or contract  
11 provision.

12 Sec. 10. The attorney general may bring an action in the name of the  
13 state against any person to restrain and prevent the doing of any act  
14 prohibited or declared to be unlawful in this chapter. The attorney gen-  
15 eral may, in the discretion of the court, recover the costs of the action  
16 including reasonable attorneys' fees and the costs of investigation.

17 Sec. 11. The office shall be the sole authority to perform certification  
18 of minority business enterprises, socially and economically disadvantaged  
19 business enterprises, and disadvantaged business enterprises throughout  
20 the state of Kansas. Certification by the state office will allow these firms  
21 to participate in programs for these enterprises administered by the state  
22 of Kansas, any city, town, county, special purpose district, public corpo-  
23 ration created by the state, municipal corporation, or quasi-municipal  
24 corporation within the state of Kansas.

25 Sec. 12. The office shall establish and operate four regional small and  
26 disadvantaged business development centers within each congressional  
27 district of this state. Funding for such centers shall be based upon a  
28 percentage formula reflecting the disadvantaged business population of  
29 each region. Each such center shall be operated by a nonprofit organi-  
30 zation which is well experienced in serving minority and disadvantaged  
31 populations across the state of Kansas and which is exempt from income  
32 tax under section 501(c)(3) of the federal internal revenue code of 1986  
33 as in effect on December 31, 2009.

34 Sec. 13. Each city, county and unified school district is hereby au-  
35 thorized to adopt a minority and disadvantaged and business set-a-side  
36 procurement program similar to the program established under this act.

37 Sec. 14. If any provision of this act or its application to any person  
38 or circumstance is held invalid, the remainder of the act or the application  
39 of the provision to other persons or circumstances shall not be affected.

40 Sec. 15. This act shall take effect and be in force from and after its  
41 publication in the statute book.