

**HOUSE . . . . . No. 3167**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Russell E. Holmes and Bud L. Williams***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to expand opportunities for minority and women business enterprises in public construction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>2/19/2021</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>2/26/2021</i>
<i>Kip A. Diggs</i>	<i>2nd Barnstable</i>	<i>2/24/2021</i>

**HOUSE . . . . . No. 3167**

By Messrs. Holmes of Boston and Williams of Springfield, a petition (accompanied by bill, House, No. 3167) of Russell E. Holmes, Bud L. Williams and Kip A. Diggs relative to opportunities for minority and women business enterprises in public construction. State Administration and Regulatory Oversight.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act to expand opportunities for minority and women business enterprises in public construction.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to forthwith make certain changes in law relative to the participation of minority and women businesses enterprises, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 6 of chapter 7C of the General Laws, as appearing in the 2018  
2 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof  
3 the following subsection:-

4 (a) The general court finds that: (1) the Massachusetts commission against discrimination  
5 conducted hearings and investigations which documented a history of discrimination against  
6 minorities and women in the commonwealth; (2) in 1994, the executive office of transportation  
7 and construction produced a disparity study which documented a history of discrimination  
8 against minority and women owned businesses, in which the commonwealth’s agencies were

9 participants; (3) in 1996 the division of capital planning and operations produced a disparity  
10 study which documented discrimination against minority and women owned businesses in  
11 construction in Massachusetts; (4) in 2010 the division of capital asset management produced a  
12 disparity study which documented discrimination against minority and women owned businesses  
13 in construction and design in Massachusetts; (5) in 2017 the division of capital asset  
14 management and maintenance produced a disparity study which documented discrimination  
15 against minority and women owned businesses in construction and design in Massachusetts; (6)  
16 this discrimination against minorities and women currently negatively affects the availability and  
17 utilization of minority and women owned businesses in state contracting; (7) the commonwealth  
18 has a compelling interest in promoting the use of minority owned businesses and women owned  
19 businesses through the use of the available and qualified pool of minority and women owned  
20 businesses; (8) it is the policy of the commonwealth to promote equal opportunity in the market  
21 and, to that end, to encourage full participation of minority and women owned businesses in all  
22 areas of state contracting, including contracts for construction, design, goods and services; and  
23 (9) in order to advance that policy, the commonwealth shall include language in all state  
24 construction contracts and state assisted construction contracts setting forth the participation  
25 goals of minority and women workers to be employed on each such contract and the processes  
26 and procedures to ensure compliance with those workforce participation goals, including  
27 reporting and enforcement provisions.

28 SECTION 2. Subsection (b) of said section 6 of said chapter 7C, as so appearing, is  
29 hereby amended by striking out, in line 27, the word “equality” and inserting in place thereof the  
30 following words:- equal opportunity.

31 SECTION 3. Said subsection (b) of said section 6 of said chapter 7C, as so appearing, is  
32 hereby further amended by striking out, in lines 31 through 33, inclusive, the definition of  
33 “capital facility project” and inserting in place thereof the following definition:-

34 “Capital facility project”, shall have the same meaning as found in section 1 when the  
35 project is (1) under the control of the division of capital asset management and maintenance, or  
36 (2) has received a delegation of authority from the division of capital asset management and  
37 maintenance which specifies that this section shall apply;.

38 SECTION 4. The definition of “supplier diversity office” in said subsection (b) of said  
39 chapter 6 of said chapter 7C, as so appearing, is hereby amended by adding the following  
40 words:- of chapter 7.

41 SECTION 5. Subsection (c) of said section 6 of said chapter 7C, as so appearing, is  
42 hereby amended by striking out, each time it appears, in lines 88, 90, and 96 to 97, the word  
43 “participation” and inserting in place thereof the words:- annual program participation.

44 SECTION 6. Said section 6 of said chapter 7C, as so appearing, is hereby further  
45 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

46 (d) Not later than January 15 of each year, the commissioner, in consultation with the  
47 director of the supplier diversity office, shall establish annual program participation goals for  
48 minority-owned businesses and women-owned businesses. The annual program participation  
49 goals established under this section shall apply to capital facility projects and state assisted  
50 building projects. The participation goals shall be expressed as overall annual program goals  
51 which shall be applicable to the total dollar amount of contracts awarded for construction work  
52 and design services on capital facility projects and state assisted building projects for the

53 calendar year. The commissioner shall publish in the central register, established under section  
54 20A of chapter 9, the annual program participation goals for minority-owned businesses and for  
55 women-owned businesses on capital facility projects and state assisted building projects. The  
56 annual program participation goals for minority owned businesses and women owned businesses  
57 shall remain in effect until revised goals are established and published under this subsection.

58 SECTION 7. Subsection (e) of said section 6 of said chapter 7C, as so appearing, is  
59 hereby amended by striking out, in line 132, the words “may, for an individual capital facility  
60 project, adjust” and inserting in place thereof the following words:- when appropriate, shall  
61 establish for an individual capital facility project

62 SECTION 8. Subsection (f) of said section 6 of said chapter 7C, as so appearing, is  
63 hereby amended by striking out, in lines 139 to 140, the words “at any time before the award of a  
64 contract.”.

65 SECTION 9. Subsection (h) of said section 6 of said chapter 7C, as so appearing, is  
66 hereby amended by striking out, in lines 152 to 153, the words “within the office of the  
67 commissioner”.

68 SECTION 10. Said subsection (h) of said section 6 of said chapter 7C, as so appearing, is  
69 hereby further amended by adding the following sentence:- Each other state agency, or at its  
70 discretion the corresponding secretariat, shall be responsible for the overall management,  
71 monitoring and enforcement of the affirmative marketing program, as the program relates to  
72 capital facility projects under the control of the state agency or its corresponding secretariat.

73 SECTION 11. Said section 6 of said chapter 7C, as so appearing, is hereby further  
74 amended by striking out subsection (k) and inserting in place thereof the following 2  
75 subsections:-

76 (k) The provisions of this subsection shall apply only to filed sub-bids procured under  
77 section 44F of chapter 149 and trade contractor bids procured under subsection (a) of section 8 of  
78 chapter 149A. For purposes of this subsection “applicable projects” shall mean any project  
79 procured by the division of capital asset management and maintenance under sections 44A  
80 through 44J of chapter 149 or sections 1 through 12 of chapter 149A with an overall estimated  
81 cost of \$5,000,000 or more and the provisions of this subsection shall apply only to filed sub-bid  
82 or construction management at risk trade bids on such projects. On applicable projects, the  
83 awarding authority may establish minority business enterprise and women business enterprise  
84 participation goals for any of the filed sub-bid classes of work under section 44F of chapter 149  
85 and for any of the trade contractor classes of work under subsection (a) of section 8 of chapter  
86 149A which it deems reasonable after considering the size and scope of the work and sub-  
87 subcontracting availability. The total minority business enterprise and women business  
88 enterprise participation goal set by the division for a particular class of work shall not exceed 10  
89 per cent of the value of the filed sub-bid or trade contractor work for that class of work.

90 Notwithstanding any general law or contractual provisions to the contrary, on division  
91 projects filed sub-bidders and trade contractors in the classes of work listed in section 44F of  
92 chapter 149 and referenced in section 8 of chapter 149A respectively shall be permitted to meet  
93 the minority business enterprise and women business enterprise participation goals by (i)  
94 subcontracting out any portion of the trade work which the sub-bidder or trade contractor would  
95 otherwise perform with employees on its own payroll; (ii) by subcontracting out portions of the

96 trade work which is customarily performed by sub-trade subcontractors within the trade; or (iii)  
97 by utilizing other subcontractors or material suppliers. The division shall establish a good faith  
98 pre bid waiver process for filed sub-bid and trade contractors requesting a reduction or waiver of  
99 a participation goal.

100 (l) The commissioner shall promulgate regulations necessary to implement this section.

101 SECTION 12. Paragraph (a) of subsection (1) of section 44F of chapter 149 of the  
102 General Laws, as so appearing, is hereby amended by striking out, each time it appears, in lines 6  
103 and 42, the figure “\$25,000” and inserting in place thereof the following words:- \$50,000 and  
104 the cost of the project is estimated to exceed \$1,000,000.

105 SECTION 13. Said paragraph (a) of said subsection (1) of said section 44F of said  
106 chapter 149, as so appearing, is hereby further amended by inserting after the third sentence the  
107 following sentence:- Provided however, that a sub-bidder may subcontract out any portion of its  
108 work in order to meet minority business enterprise and women business enterprise goals set on  
109 division of capital asset management and maintenance projects as set forth in subsection (k) of  
110 section 6 of chapter 7C.

111 SECTION 14. Subsection (2) of said section 44F of said chapter 149, as so appearing, is  
112 hereby amended by inserting, in line 60, after the word “furnish” the following words:- or, to the  
113 extent permitted by M.G.L. c. 149, § 44F, subcontract for,.

114 SECTION 15. Paragraph (a) of section 8 of said chapter 149A, as so appearing, is hereby  
115 amended by inserting after the first sentence the following sentence:- Trade contractors may  
116 subcontract out any portion of their work in order to meet minority business enterprise and

117 women business enterprise goals set on division of capital asset management and maintenance  
118 projects as set forth in subsection (k) of section 6 of chapter 7C.

119 SECTION 16. Subsection (g) of said section 8 of said chapter 149A, as so appearing, is  
120 hereby amended by striking out subparagraphs (6) and (7) and inserting in place thereof the  
121 following 2 subparagraphs:-

122 (6) a trade contractor bid form that shall require, without limitation, a listing of price,  
123 addenda, alternates and allowances, if any, for the trade work; certification that the trade  
124 contractor will perform the complete trade work with employees on his own payroll, except for  
125 work customarily performed by sub-trade subcontractors within the trade; and the names of all  
126 sub-trade subcontractors to be used if awarded the trade contract and each sub-trade contract  
127 sum; provided, however, that a trade contractor may subcontract out any portion of its work in  
128 order to meet minority business enterprise and women business enterprise goals set on division  
129 of capital asset management and maintenance projects as set forth in subsection (k) of section 6  
130 of chapter 7C;

131 (7) an affidavit that all sub-trade subcontractors named on the bid form have been  
132 prequalified by the trade contractor using criteria similar to the criteria for the prequalification of  
133 trade contractors; provided, however, that this paragraph shall not apply to sub-trade  
134 subcontractors whose work contributes to the minority business enterprise and women business  
135 enterprise goals set on division of capital asset management and maintenance projects as set forth  
136 in section subsection (k) of section 6 of chapter 7C.



137           SECTION 17. Subsection (k) of said section 8 of said chapter 149A, as so appearing, is  
138 hereby amended by inserting, in line 247, after the word “furnish” the following words:- or, to  
139 the extent permitted by M.G.L. c. 149A, § 8, subcontract for,.

140           SECTION 18. This act shall take effect upon its passage.