

SENATE No. 2937

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE · BOSTON, MA 02133
(617) 725-4000

KARYN POLITO
LIEUTENANT GOVERNOR

November 2, 2020

To the Honorable Senate and House of Representatives,

To the Honorable Senate and House of Representatives,

As provided in Article LXXXVII of the Amendments to the Constitution, I submit for your consideration, “An Act to Elevate the Supplier Diversity Office to Ensure Equal Opportunity in State Contracting.”

This legislation transfers the Supplier Diversity Office (“SDO”) from the Operational Services Division and establishes the SDO as an independent agency within the Executive Office for Administration and Finance. This transfer will empower the SDO to be more responsive to the needs of minority, women, veteran, service-disabled veteran, lesbian, gay, bisexual and transgender, and disability--owned businesses as well as small Massachusetts businesses, and increase opportunities for these types of businesses to seek certification, information about supplier diversity programs, training, technical assistance, and capacity--building services.

This proposal will improve upon the organizational structure of the Executive Branch and the delivery of services to diverse businesses while maximizing efficiencies and cost effectiveness. I urge your prompt and favorable consideration of this legislation.

Respectfully submitted,

Charles D. Baker,

Governor

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to Elevate the Supplier Diversity Office to Ensure Equal Opportunity in State Contracting.

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. Chapter 7 of the General Laws is hereby amended by striking out sections
2 57 to 59, inclusive, and inserting in place thereof the following 4 sections:-

3 Section 57. It is the policy of the commonwealth to promote and facilitate the fullest
4 possible participation by all citizens in the affairs of the commonwealth and to foster an inclusive
5 marketplace that offers competitive opportunity for businesses as diverse as the people of the
6 commonwealth. Minority, women, veteran-owned, service-disabled veteran-owned, disability
7 and lesbian, gay, bisexual and transgender business enterprises frequently face systemic
8 obstacles to achieving viable economic status. Various public and private programs have been
9 initiated to assist these business enterprises, where applicable, to achieve economic viability,
10 though many businesses have not been adequately informed of these programs because of
11 inadequate coordination and communication efforts, with the result that many services available
12 are never adequately delivered to those who need them. The state government has a special
13 responsibility to see that all available services and programs are put to the best use. These steps

14 are necessary to guarantee the fullest participation by all citizens of the commonwealth in the
15 economy of the state and to guarantee the fullest benefits to citizens of programs and services
16 available for assistance.

17 Section 58. As used in sections 57 to 61, inclusive, of this chapter, the following words
18 shall have the following meanings, unless a contrary intent is clearly indicated:-

19 “Affirmative marketing program”, the program focused on increasing minority and
20 women owned business participation in construction and design projects created pursuant to
21 section 6 of chapter 7C with additional obligations set forth in section 61 of this chapter.

22 “Agency” or “state agency”, a legal entity of state government established by the general
23 court or by executive order as an agency, board, bureau, commission, council, department, office
24 or division within the executive branch of the commonwealth with a specific mission and which
25 is subject to the control of the governor.

26 “Certified business enterprise” and “certified business”, a business certified pursuant to
27 section 61.

28 “Disability-owned business enterprise” or “DOBE”, for the purpose of receipt of services
29 from SDO means a business enterprise that is both owned and controlled by one or more
30 individuals with disabilities who have invested in an ongoing business free of conversion rights.

31 “Disadvantaged business enterprise”, a disadvantaged business enterprise as defined by
32 the United States Department of Transportation in 49 C.F.R. § 26 et seq. and as certified by the
33 Massachusetts Department of Transportation.

34 “Diverse business”, a minority business enterprise, women business enterprise, veteran
35 business enterprise, service-disabled veteran-owned business enterprise, disability-owned
36 business enterprise or lesbian, gay, bisexual and transgender business enterprise, and any other
37 certification category as established by statute or executive order.

38 “Diversity program” or “Diversity programs”, state diverse procurement programs as
39 defined herein, including the supplier diversity program, the affirmative marketing program and
40 the MassDOT M/WBE program.

41 “Executive director”, the head of the supplier diversity office.

42 “Lesbian, gay, bisexual and transgender business enterprise” or “LGBTBE”, for the
43 purpose of receipt of services from SDO means a business enterprise that is both owned and
44 controlled by one or more LGBT individuals who have invested in an ongoing business free of
45 conversion rights.

46 “MassDOT M/WBE Program”, the Massachusetts Department of Transportation contract
47 award process for horizontal construction projects using only state funding.

48 “Minority business enterprise” or “MBE”, for the purpose of receipt of services from
49 SDO, means a business enterprise that is owned and controlled by one or more socially or
50 economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic
51 economic circumstances or background or other similar cause. Such persons include, but are not
52 limited to, African Americans, Cape Verdeans, Western Hemisphere Hispanics, Asians,
53 American Indians, Eskimos, and Aleuts.

54 “SDO”, “Office”, or “Supplier diversity office”, the commonwealth’s supplier diversity
55 office as designated by section 58A and section 61. The office is the successor to the state office
56 of minority and women business assistance.

57 “Secretariat”, an executive office established pursuant to section 2 of chapter 6A and the
58 agencies organized therein.

59 “Secretary”, the secretary of administration and finance.

60 “Service-disabled veteran-owned business enterprise” or “SDVOBE”, a business that is
61 verified by the federal government’s Department of Veterans Affairs pursuant to the Veterans
62 Benefits, Health Care, and Information Technology Act of 2006, Pub. L. 109–461, and
63 determined to be a service-disabled veteran-owned small business concern in accordance with 38
64 CFR Part 74 and Pub. L. 111–275.

65 “Small business purchasing program”, the program in section 22O and established by
66 executive order to support the existence and growth of small businesses by providing them with
67 special consideration within the commonwealth’s procurement process for goods and services
68 required by state agencies.

69 “Supplier diversity program”, a program to promote equality in, and to encourage the
70 participation of, diverse businesses in procurements and contracts for goods and services as
71 further defined by executive order.

72 “Veteran business enterprise” or “VBE”, for the purpose of receipt of services from SDO
73 means a business enterprise that is both owned and controlled by one or more veterans, as

74 defined in section 7 of chapter 4, who has invested in an ongoing business free of conversion
75 rights.

76 “Women business enterprise” or “WBE”, for the purpose of receipt of services from SDO
77 means a business enterprise that is both owned and controlled, by one or more women who have
78 invested in an ongoing business free of conversion rights.

79 Section 58A. There shall be a supplier diversity office which shall be an office within the
80 executive office for administration and finance.

81 Section 59. SDO shall have an executive director and such other specialists as may be
82 authorized. The executive director shall have all necessary authority, subject to the direction,
83 control and supervision of the secretary of the executive office for administration and finance, to
84 appoint and utilize existing staff within the SDO and to direct the supplier diversity activities
85 within state agencies to effect the purposes of sections 57 to 61, inclusive, and shall have the
86 authority to seek such funds, public or private, as may be available and needed to carry out the
87 intent of those sections.

88 SECTION 2. Section 60 of chapter 7 of the General Laws is hereby repealed.

89 SECTION 3. Chapter 7 of the General Laws, as appearing in the 2018 Official Edition, is
90 hereby further amended by striking out section 61 and inserting in place thereof the following
91 section:-

92 Section 61. (a) SDO shall adopt regulations and policies for the establishment and
93 management of the office’s diverse business certification process, including regulations and

94 policies governing the streamlining, approval, denial or revocation of any such certification and
95 for cross-certification by other recognized certification organizations of diverse businesses.

96 SDO shall develop and manage a small business certification process consistent with
97 section 22O.

98 The SDO may also provide other procurement-related business certification services for
99 certification categories and programs managed by other agencies if it would result in greater
100 efficiencies to the commonwealth and the businesses applying for certification.

101 (b) SDO shall maintain a directory of certified diverse and small businesses within the
102 commonwealth, and shall, from time to time, notify such businesses of the programs and services
103 available to them, whether from public or private sources, or from local, state or federal
104 agencies. SDO may develop a platform for diverse and small businesses listed in the SDO
105 directory to connect with prime contractors and private and public procurement organizations
106 about available business opportunities.

107 (c) SDO may establish its own programs and policies and seek from any agency
108 information and assistance necessary to carry out its functions and duties, including, but not
109 limited to, mandating that each agency submit to SDO an annual agency spending plan, inclusive
110 of planned procurements, and any requested data or periodic contractor reports; and all agencies
111 shall supply such information or assistance. SDO shall promote upcoming procurement
112 schedules and plans to diverse and small businesses.

113 Each secretariat and agency shall appoint a liaison to the SDO, which shall serve as their
114 agency's supplier diversity officer. Each secretariat and agency supplier diversity officer shall
115 directly report to an appropriate level of authority within their respective secretariat or agency

116 and shall be responsible for carrying out the functions and duties of their respective secretariat or
117 agency as provided in this section.

118 The SDO shall, in coordination with the operational services division, manage the
119 supplier diversity program. The SDO, through the supplier diversity program, shall encourage
120 the participation of diverse businesses in procurements and contracts for goods and services by
121 establishing annual agency spending benchmarks for purchases from diverse businesses and by
122 requiring businesses that bid on state contracts for goods and services above a certain threshold,
123 as such threshold shall be determined by the operational services division, to submit supplier
124 diversity program plans making measurable financial commitments to contract with one or more
125 diverse businesses. The executive director shall consult with the assistant secretary for
126 operational services of the operational services division by March 15 of each year on the SDO's
127 annual determination of whether to make recommendations to the secretary to change agency
128 spending benchmarks for the supplier diversity program in the next fiscal year. The SDO shall be
129 responsible for issuing policies and procedures consistent with the supplier diversity program
130 benchmarks and thresholds.

131 The executive director shall also make recommendations by March 15 of each year to the
132 assistant secretary for operational services of the operational services division, based on
133 demographic data for small and diverse businesses and the SDO's prior year annual report, for
134 the small business purchasing program. The SDO shall be responsible for issuing policies and
135 procedures consistent with the small business purchasing program benchmarks and thresholds.

136 (d) SDO shall receive assistance from agencies including, where consistent with existing
137 law, commitments that such agencies contract and subcontract with diverse businesses. SDO

138 shall assist diverse businesses in making use of any special programs which may be operated by
139 the state or by various departments and agencies of the federal government.

140 (e) SDO, through the secretary, shall coordinate its activities with those of other agencies,
141 and shall assist diverse businesses in their dealings with federal agencies and with state agencies.
142 SDO shall coordinate its certification and diverse and small business programming activities
143 with the operational services division, division of capital asset management and maintenance,
144 Massachusetts Department of Transportation and other agencies that manage diversity programs.
145 SDO shall also provide assistance to all secretariats and agencies, in evaluating economic
146 activities of the secretariat to determine how the secretariat may be of assistance in providing fair
147 opportunities for diverse businesses. SDO may coordinate any economic activities with the
148 executive office for housing and economic development and may coordinate activities and events
149 with local chambers of commerce, municipal economic development offices and organizations
150 that represent diverse businesses. SDO may also perform outreach to private businesses and
151 public entities, including political subdivisions and municipalities of the commonwealth, to assist
152 in their development and promotion of their own diversity programs.

153 (f) SDO may work with state authorities, as defined in section 1 of chapter 29, that
154 perform lending functions, lending institutions, insurance companies and other private businesses
155 in the commonwealth to encourage financing the funding and expansion of diverse businesses.
156 SDO may provide assistance to diverse businesses in their efforts to obtain loan money and
157 operating capital from private and public lenders.

158 (g) SDO may seek to increase the amount of financial assistance available to diverse
159 businesses from private financial institutions; and may, from time to time, sponsor conferences,
160 workshops or other informational programs.

161 (h) SDO shall seek to encourage voluntary assistance programs by which nondiverse
162 business employees are loaned to diverse businesses or by which diverse business persons are
163 taken into viable business ventures to acquire training and experience in managing business
164 affairs.

165 (i) SDO may encourage state contract awarding authorities to seek to increase the
166 incidence of joint ventures between nondiverse state contractors and diverse contractors, by
167 specifically pointing out that such arrangements would constitute one method of partially
168 meeting diversity requirements imposed upon both nondiverse state contractors and the state.
169 SDO shall follow advertisements for construction work by public bodies in the commonwealth,
170 shall notify minority and women and veteran general contractors and subcontractors of the bid
171 opening dates for the approximate amount of the contract and subcontract work being bid, may
172 assist them in securing bonds and in bidding for that construction work and shall initiate a
173 program to help qualified minority persons and women to get started as small business firms in
174 the construction field by helping to arrange joint ventures with qualified general contractors and
175 subcontractors and by arranging for administrative and accounting assistance to help them carry
176 out their subcontract and general contract obligations during the period of contract performance.

177 (j) SDO shall promulgate regulations to encourage and facilitate participation on public
178 projects for service-disabled veteran-owned businesses and veteran-owned businesses interested

179 in and capable of providing construction and design services on public construction and design
180 projects.

181 (k) SDO shall, every 3 years and in consultation with the department of veterans'
182 services, establish goals for participation of service-disabled veteran-owned businesses and
183 veteran-owned businesses in all areas of state procurement contracting, including contracts for
184 public construction, design services and commodities and service. In calculating such goals, the
185 SDO shall base the determination on an understanding of the pool of service-disabled veteran-
186 owned businesses and veteran-owned businesses available for participation.

187 (l) SDO shall submit by March 15 of each year an annual report to the governor,
188 lieutenant governor, secretariats, and the general court on the prior year performance of all
189 commonwealth supplier diversity and small business programs, including but not limited to the
190 supplier diversity program, the MassDOT M/WBE program, the small business purchasing
191 program and the affirmative marketing program, the SDO's certification efforts, the diverse
192 businesses which it assists, the type of services which it renders and the difficulties it encounters.
193 The report may include recommendations for legislative or executive action. All agencies shall
194 cooperate with the SDO in the preparation of this report, including providing any requested data
195 or contractor reports to be included in the final SDO report. Said report shall include data and
196 information for construction and goods and services diversity programs, including, but not
197 limited to, data provided by the division of capital asset management and maintenance and the
198 Massachusetts Department of Transportation. All officials, agencies and political subdivisions of
199 the commonwealth shall supply such data, information or assistance as requested by the SDO not
200 later than December 15 of each year.

201 (m) The SDO shall establish and maintain a compliance unit for the purposes of ensuring
202 certification, contract and program compliance. SDO shall, after notice and an opportunity to be
203 heard, impose administrative penalties on an applicant for certification or recertification that
204 knowingly provides false or misleading information on its application or in support of its
205 application for certification or recertification as a diverse business, or on a person who fails to
206 comply with any provision of any regulation or approval issued or adopted by the agency or of
207 any law which the agency has the authority or responsibility to enforce.

208 The SDO shall also, after notice and an opportunity to be heard, impose administrative
209 penalties on contractors for knowingly misreporting spending with or the identity of diverse
210 business partners. For agency contracts that are determined by the SDO to be non-compliant with
211 the applicable diversity program, the SDO shall make a recommendation to the agency to take
212 corrective action against the contractor. The agency shall make the determination as to whether
213 to suspend or terminate the contract or take other corrective actions in order to bring the
214 contractor into compliance.

215 The SDO shall provide assistance to agencies in achieving diversity program goals and
216 benchmarks. The SDO may refer an agency that fails to meet applicable program spending goals
217 or benchmarks or to provide data, information or assistance as requested by the SDO on or
218 before December 15 of each year to the operational services division, the division of capital asset
219 management and maintenance or the appropriate oversight agency for consideration of whether
220 to suspend or limit the procurement authority delegated to such agency or take other appropriate
221 corrective actions.

222 (n) The executive director shall consult with the commissioner of capital asset
223 management and maintenance on the establishment of the affirmative marketing program. The
224 affirmative marketing program shall be established for the purpose of ensuring the fair
225 participation of minority-owned and women-owned businesses on capital facility projects and
226 state assisted building projects. The commissioner of capital asset management and maintenance,
227 in consultation with the executive director, shall establish participation goals for minority-owned
228 and women-owned business on capital facility projects and state assisted building projects.
229 Participation goals for minority-owned business and women-owned business shall be based upon
230 the broadest and most inclusive pool of available minority-owned businesses and women-owned
231 businesses interested in and capable of performing construction work and design services on
232 such capital facility projects and state assisted building projects. The executive director and the
233 commissioner of capital asset management and maintenance shall meet on a quarterly basis to
234 determine the status of implementation of the affirmative marketing program and what further
235 steps both agencies deem necessary to achieve the purposes of section 6 of chapter 7C and this
236 subsection. For purposes of this section, the terms “capital facility project”, “state assisted
237 building project”, “minority-owned business” and “women-owned business” shall have the same
238 meanings as found in section 6 of chapter 7C.

239 (o) In connection with the affirmative marketing program, SDO shall regularly review
240 and, where necessary, modify its certification process to ensure that it operates effectively, and
241 shall report annually to the secretary regarding these matters.

242 (p) SDO shall be responsible for the overall management, monitoring, and enforcement
243 of the affirmative marketing program as it relates to minority-owned businesses and women-
244 owned businesses participation on state assisted building projects. The executive director may

245 appoint a program director to assist in program development, coordination of program operations
246 and compliance with program goals and objectives. The program director shall also have
247 responsibility for monitoring compliance regarding minority-owned businesses and women-
248 owned businesses participation on state assisted building projects, addressing program violations
249 and coordinating enforcement activities.

250 (q) The executive director shall develop written procedures by which participation goals,
251 for an individual state assisted building project, may be adjusted for minority-owned businesses,
252 women-owned businesses or both; but, the adjustment shall be based upon the actual availability
253 of minority-owned businesses and women-owned businesses, the geographic location of the
254 project, the scope of work of the capital facility project or other relevant factors.

255 (r) The executive director shall develop a written waiver procedure by which, at any time
256 before the award of a contract, it may be determined that compliance with the participation goals
257 is not feasible and by which the participation goals on a state assisted building project may be
258 reduced or waived. Waiver shall be granted only upon a showing that good faith efforts have
259 been made to comply with the participation goals.

260 (s) The executive director and the commissioner of capital asset management and
261 maintenance shall by March 15 of each year submit to the joint committee on state
262 administration and regulatory oversight, the house and senate committees on ways and means,
263 the clerks of the house and senate, a report on the performance of the affirmative marketing
264 program for the preceding year. The report shall, at a minimum, show the name and address of
265 each such minority-owned business and women-owned business, its designation as a minority-
266 owned or women-owned business, the contract or subcontract price, a description of the work

267 performed on the contract by class of work, and project type, and shall show separately the total
268 number of contracts awarded to minority-owned and women-owned businesses as a percentage
269 of the total number of contracts awarded and as a percentage of the total contract price.

270 (t) The executive director shall adopt regulations necessary to implement this section.

271 (u) The SDO shall, every 2 years and in consultation with the Massachusetts Office on
272 Disability, establish goals for participation of individuals with disabilities in all areas of state
273 procurement contracting. Participation goals may be met by contracting or subcontracting with
274 businesses that are owned by persons with disabilities or that hire, or identify and recruit with the
275 intent to hire, qualified applicants with disabilities. SDO shall provide assistance to the
276 secretariats in determining opportunities for contracting with businesses that hire persons with
277 disabilities to meet the participation goal set forth in this subsection, including contractors and
278 subcontractors providing goods and services under multi-year contracts or grants funded by
279 agencies within the executive offices.

280 SDO shall include in the annual report set forth subsection (l) an update concerning the
281 progress made toward meeting the participation goals set forth in this subsection.

282 SECTION 4. (a) Notwithstanding any general or special law to the contrary, this section
283 shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property
284 and legal obligations of the functions of state government from the supplier diversity office of
285 the operational services division as the transferor agency, to the supplier diversity office as the
286 transferee agency and as its own agency within the executive office for administration and
287 finance.

288 (b) To the extent that employees of the transferor agency, including those who were
289 appointed before the effective date of this act and who hold permanent appointment in positions
290 classified under chapter 31 of the General Laws or have tenure in their positions as provided by
291 section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential
292 positions, are transferred to the respective transferee agency, such transfers shall be effected
293 without interruption of service within the meaning of said section 9A of said chapter 30, without
294 impairment of seniority, retirement or other rights of the employee, and without reduction in
295 compensation or salary grade, notwithstanding any change in title or duties resulting from such
296 reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits,
297 and without change in union representation or certified collective bargaining unit as certified by
298 the state division of labor relations or in local union representation or affiliation. Any collective
299 bargaining agreement in effect immediately before the transfer date shall continue in effect and
300 the terms and conditions of employment therein shall continue as if the employees had not been
301 so transferred. The reorganization shall not impair the civil service status of any such reassigned
302 employee who immediately before the effective date of this act either holds a permanent
303 appointment in a position classified under chapter 31 of the General Laws or has tenure in a
304 position by reason of section 9A of chapter 30 of the General Laws. Notwithstanding any general
305 or special law to the contrary, all such employees shall continue to retain their right to
306 collectively bargain pursuant to chapter 150E of the General Laws and shall be considered
307 employees for the purposes of said chapter 150E. Nothing in this section shall be construed to
308 confer upon any employee any right not held immediately before the date of said transfer, or to
309 prohibit any reduction of salary grade, transfer, reassignment, suspension, discharge, layoff, or
310 abolition of position not prohibited before such date.

311 (c) All petitions, filings, requests, investigations and other proceedings related to the
312 supplier diversity office and appropriately and duly brought before the transferor agency or duly
313 begun by the transferor agency and pending before the transferor agency before the effective date
314 of this act, shall continue unabated and remain in force, but shall be assumed and completed by
315 the transferee agency.

316 (d) All duly made orders, rules and regulations related to the supplier diversity office and
317 all approvals duly granted by the transferor agency, which are in force immediately before the
318 effective date of this act, shall continue in force and shall thereafter be enforced, until
319 superseded, revised, rescinded or canceled, in accordance with law, by the transferee agency.

320 (e) All books, papers, records, documents, equipment, buildings, facilities, cash and other
321 property, both personal and real, including all such property held in trust, related to the supplier
322 diversity office and which immediately before the effective date of this act are in the custody of
323 the transferor agency shall be transferred to the transferee agency.

324 (f) All duly existing contracts, leases and obligations of the transferor agency related to
325 the supplier diversity office shall continue in effect but shall be assumed by the transferee
326 agency. No existing right or remedy of any character shall be lost, impaired or affected by this
327 act.

328 SECTION 5. This act shall take effect as soon as it has the force of law under subsection
329 (c) of section 2 of Article LXXXVII of the Amendments to the Constitution.