



URGENT NAACP ACTION ALERT

Date: March 4, 2009

To: Georgia Units/Concerned Parties

From: *Dr. Charles Smith*, Chair Political Action Committee
Georgia State Conference NAACP

THE NAACP OPPOSES HOUSE BILL 291

Re: Legislative Summary
HB 291 – “Georgia’s Anti-Discrimination Act of 2009”

Introduction

House Bill 291 is entitled “Georgia’s Antidiscrimination Act of 2009.” The Act was sponsored by Republican Representatives Clay Cox, Melvin Everson, Willie Talton, Charlice Byrd, Joe Wilkinson, Matt Ramsey, David Casas, and others. The sponsors of the Act represent a diverse cross-section of Republicans, as both Everson and Talton are African American, and Casas is Hispanic-American.

HB 291 is introduced as being a remedy to discriminatory practices in Georgia by eliminating race and gender distinctions and educational preferences in the Georgia Code. However, in practice, HB 291 would in fact encourage the types of discrimination it seeks to eliminate. The bill fails to make any provisions to encourage and or promote diversity in the private and public sectors throughout the State of Georgia. HB 291 is comprehensive in its repealing and prohibition of any language in the Georgia Code which categorizes any groups as a “minority” for the purpose of corporate formation, government contracts, and business bonding and commercial tax incentives. Furthermore, HB 291 eliminates any statistical tracking or special participation consideration for minority owned business with the Georgia Lottery Commission. Finally, HB 291 seeks to eliminate any possible consideration of minority status in

the University of Georgia admissions system by adding minority status as prohibited factor of consideration.

I. Minority Business Developments

Sections 3, 4 and 14 of HB 291 seek to eliminate any and all references to small minority business development corporations under the Georgia Code. Of the three above-referenced sections, the proposal in section 4 repealing Article 12 of the financial institutions law from the Georgia Code is the most drastic and sweeping measure relating to Minority Business Development or Minority Business Enterprise (“MBE”).

Article 12 was passed in 1988 by the Georgia House in order to promote the growth and development of small and minority owned businesses in Georgia. Article 12 defines an MBE as a firm that is owned or controlled by one or more minority persons and is authorized to and is doing business under the laws of Georgia. Further, a member of a “minority” is defined as an individual, who is a member of a race which comprises less than 50 percent of the total population of Georgia. Article 12 further provides guidelines for financial institutions’ relationships and business practices with MBEs. While Article 12 is consistent with the Georgia Corporate Code, it adds further protections for MBEs from unseemly and discriminatory practices by private and public financial institutions.

Repealing Article 12 and provisions in the Georgia Code referencing Article 12 or MBEs does a grave disservice to Georgia commerce and technology. Currently there are a multitude of State programs aiding the development and growth of MBE in Georgia. Prohibiting MBE status will eliminate more State jobs and have an adverse effect to an already beleaguered economy.

According to census information, Georgia had the 6th largest minority population in the country, numbering more than 3.2 million or 38% of the state’s total population in 2002. However, when compared to their representation Georgia’s population, only Asian Americans reached parity in both their number of MBE and gross receipts. American Indians and Alaskan Natives reached parity in regards to their number MBE. No other minority group in Georgia has reached parity in the number of MBE and gross receipts. This information leads to the only logical conclusion, which is there is still a need for Georgia Code to continue it promotion and development of MBE through legislation and continued funding of support and education programs.

II. Minority Based State Tax Incentives

Sections 8, 9, and 10 of HB 291 repeal all tax deductions and incentives allowed to firms that engage minority businesses. Currently, firms that engage in business with MBEs are allowed to participate in Georgia Income Tax Incentive Program. Thus, firms may file for credits with their Georgia income tax return for all payments made on contracts awarded to minority sub-contractors. The Georgia Code does not mandate, rather it promotes, thorough tax incentives, public and private firms to include voluntary minority inclusion plans into their business practices. Removing these tax credits serves as a punitive measure for firms, who promote and embrace diversity initiatives. Furthermore, without tax credit, the loss of incentives to do business with MBEs will have a significant and dire impact on growth rate for MBE.

III. Government Contract Bids and Awards

Sections 6, 7, 11 and 12 of HB 291 specifically address the prohibiting consideration of compliance with voluntary MBE participation plan in awarding state and local construction and procurement contracts. Section 6 and 7 specifically apply to public work and government contracts by local governments in large a mid-size Georgia cities (population >800,000 and population of > 150,000 respectively). HB 291 seeks to repeal any and all preference given to MBEs.

The Georgia Code advocates that an equitable portion of State construction and procurement contracts be awarded to small and minority owned businesses. The Georgia Code mirrors the Federal Small Business Act (“SBA”). Both the Georgia Code and the SBA include provisions for government construction and procurement awards to businesses owned by socially disadvantaged individuals. The express purpose of the statutes is to further policies that small and minority business have the maximum practicable opportunity to participate in the performance of contracts let by any Federal, state or local agency.

By prohibiting consideration of compliance with voluntary minority business enterprise participation plan in awarding contracts, Georgia make a drastic and alarming break with its own proscribed policies of equity and Federal polices regarding the same. Currently the Georgia Code ensures that state and local governments will negotiate in good faith with MBEs and not reject them as unqualified without sound reasons based on their capabilities. Further more the Georgia

Code mandates that any rejection of an MBE based on lack of qualification should have the reasons documented in writing.

HB 291 will reverse the above-referenced guidelines and the policies of the State of Georgia to provide maximum practicable opportunities in its acquisitions to MBEs, small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, and women-owned small business. HB 291 criminalizes state and local government agency indicated programs which afford equitable opportunity for MBE small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, and women-owned small business to compete for all contracts that they can perform to the extent consistent with the Government's interest.

IV. Business Bonding Requirement

Section 15 of HB 291 seeks to prohibit more favorable bonding and insurance requirements for minority or disadvantaged firms. The high and stringent bonding requirements for construction contract in Georgia make it impossible for MBE small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, and women-owned small business to secure the statutory amounts of insurance in order to compete for government contracts.

V. Georgia Lottery Commission

Sections 13 and 16 of HB 291 seek to prohibit the Georgia Lottery Commission from reporting the extent of minority business participation in lottery activities and contracts. This is one of the very few indicators that the State of Georgia has on the health and development of MBE throughout the State. The only other comprehensive report MBE in Georgia will promulgated from the U.S. census which will only give its final report and synopsis every 10 years. Without State funded tracking and reporting, the Legislature will have no indicators on how to effectively promote and develop system, many MBE small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, and women-owned small business. Furthermore, the lack of reporting allows for abuses and discriminatory practices to go virtually unchecked or regulated throughout the State.

VI. University System of Georgia Admission Policies

Section 5 of HB 291 seeks to include in Georgia Code 20-3-65, a law which prohibits discrimination on the basis of religion in the University of Georgia System, a prohibition of discrimination on the basis of race and gender. However in practice, this provision will require Historically Black Colleges and Universities (“HBCU”) to admit non-minority students in greater numbers or alternatively to eliminate the HBCU all together and merge their campuses with other University System of Georgia schools. Section 5 of HB 291 is unnecessary, since both the United States and Georgia Constitutions prohibit discrimination on the basis of race and gender.

Furthermore, the Board of Regents of Georgia’s general admissions policy is based on the Supreme Court’s ruling in University of California v. Bakke and more currently Grutter v. Bollinger (2003). Both cases a ruling in which Justice Powell wrote the “interest of diversity is compelling in the context of a university’s admission program.” In a majority decision, the Supreme Court in Grutter ruled in that the United States Constitution *does not prohibit* the a college/university’s “**narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body.**” The Court indicated that sometime in the future, perhaps twenty-five years, racial affirmative action would no longer be necessary in order to promote diversity. It implied that affirmative action should not be allowed permanent status and that eventually a “colorblind” policy should be implemented.

Thus Georgia’s policies for using race and gender as a factor among several others in its admissions process is both equitable and Constitutional. Moreover, as long as Georgia’s interest remains in obtaining a “critical mass” of minority students its admission practices are legal. There is no mention of any preferential treatment given to minority students as opposed to Caucasian counterparts in any policy statement or handbook from any HBCU with the University System of Georgia. Moreover, schools with a high concentration of minority population continually maintain similar retention and graduation rates as other schools of like size within the University System of Georgia.

Please send all responses to: *Dr Charles Smith*, Chair, Georgia State Conference NAACP Political Action Committee. Email: drsmith4@earthlink.net – 706-284-0275.