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**SUBSTITUTE HOUSE BILL 2872**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** House Committee on Government Administration (originally sponsored by Representatives Honeyford, Carlson, Skinner, Cairnes, Cody, Wood, Boldt, Van Luven, Mitchell, Lambert, Dyer and Thompson)

Read first time 02/06/98. Referred to Committee on .

1 AN ACT Relating to providing entrepreneurial opportunities for  
2 disabled persons; amending RCW 39.19.010, 39.19.020, 39.19.030,  
3 39.19.080, 39.19.120, 39.19.150, 39.19.170, and 39.19.200; adding a new  
4 section to chapter 39.19 RCW; adding new sections to chapter 43.131  
5 RCW; creating a new section; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.19 RCW  
8 to read as follows:

9 (1) The legislature recognizes that disabled persons contracting  
10 independently or as owners of small businesses may initially lack  
11 capital to start a business, may initially have increased costs for  
12 personal care attendants and assistive technology, and may initially  
13 have difficulty competing economically because of a disability. The  
14 legislature further recognizes that these disadvantages diminish as the  
15 business grows in size and as employees become available for support.  
16 Therefore, it is the intent of this chapter to limit participation in  
17 the program established for disabled persons' business enterprises  
18 under this chapter to newly established businesses of small size.

1 (2) This chapter shall not apply to disabled persons' business  
2 enterprises that:

3 (a) Have more than seven employees; or

4 (b) Have been certified under this chapter for more than nine  
5 years. However, a business that would be ineligible to participate  
6 under this subsection (2)(b) may, no later than one year after becoming  
7 ineligible, petition the office for one additional period of  
8 eligibility not exceeding nine years from the date the additional  
9 period of eligibility is granted. Before extending eligibility, the  
10 office must find that the business continues to experience significant  
11 competitive disadvantages in contracting.

12 **Sec. 2.** RCW 39.19.010 and 1987 c 328 s 1 are each amended to read  
13 as follows:

14 The legislature finds that (~~minority and women-owned~~) businesses  
15 owned and controlled by minorities, women, or disabled persons are  
16 significantly under-represented and have been denied equitable  
17 competitive opportunities in contracting. It is the intent of this  
18 chapter to mitigate societal discrimination and other factors in  
19 participating in public works and in providing goods and services and  
20 to delineate a policy that an increased level of participation by  
21 (~~minority and women-owned and controlled~~) businesses owned and  
22 controlled by minorities, women, or disabled persons is desirable at  
23 all levels of state government. The purpose and intent of this chapter  
24 are to provide the maximum practicable opportunity for increased  
25 participation by (~~minority and women-owned and controlled~~) businesses  
26 owned and controlled by minorities, women, and disabled persons in  
27 participating in public works and the process by which goods and  
28 services are procured by state agencies and educational institutions  
29 from the private sector. The legislature further finds that no court  
30 has held that a program which promotes contracting opportunities for  
31 businesses owned and controlled by disabled persons must be subjected  
32 to the strict-scrutiny standard or must be justified by a disparity  
33 study. If a court of proper jurisdiction determines that the program  
34 for disabled persons is subject to the strict-scrutiny standard or must  
35 be justified by a disparity study, the program may be suspended until  
36 the legislature determines a proper course of action.

1       **Sec. 3.** RCW 39.19.020 and 1996 c 69 s 4 are each amended to read  
2 as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

5       (1) (~~("Advisory committee" means the advisory committee on minority  
6 and women's business enterprises.~~)

7       (2)) "Broker" means a person that provides a bona fide service,  
8 such as professional, technical, consultant, brokerage, or managerial  
9 services and assistance in the procurement of essential personnel,  
10 facilities, equipment, materials, or supplies required for performance  
11 of a contract.

12       (~~(3))~~) (2) "Director" means the director of the office of minority  
13 (~~and~~), women's, and disabled persons' business enterprises.

14       (3) "Disabled person" means a person with a physical or mental  
15 impairment that substantially limits a major life activity. The  
16 impairment must be material and medically cognizable or diagnosable.  
17 The impairment must also be permanent in that it is seldom  
18 significantly corrected by medical replacement, therapy, or surgical  
19 means. Impairment does not include drug or alcohol addiction or any  
20 negative effects brought on by the use of drugs or alcohol.

21       (4) "Educational institutions" means the state universities, the  
22 regional universities, The Evergreen State College, and the community  
23 colleges.

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

31       (6) "Goods and/or services" includes professional services and all  
32 other goods and services.

33       (7) "Office" means the office of minority (~~and~~), women's, and  
34 disabled persons' business enterprises.

35       (8) "Person" includes one or more individuals, partnerships,  
36 associations, organizations, corporations, cooperatives, legal  
37 representatives, trustees and receivers, or any group of persons.

38       (9) "Procurement" means the purchase, lease, or rental of any goods  
39 or services.

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

5 (11) "State agency" includes the state of Washington and all  
6 agencies, departments, offices, divisions, boards, commissions, and  
7 correctional and other types of institutions.

8 **Sec. 4.** RCW 39.19.030 and 1996 c 69 s 5 are each amended to read  
9 as follows:

10 There is hereby created the office of minority ~~((and))~~, women's,  
11 and disabled persons' business enterprises. The governor shall appoint  
12 a director for the office, subject to confirmation by the senate. The  
13 director may employ a deputy director and a confidential secretary,  
14 both of which shall be exempt under chapter 41.06 RCW, and such staff  
15 as are necessary to carry out the purposes of this chapter.

16 The office ~~((shall))~~ may consult with ~~((the))~~ a minority ~~((and))~~,  
17 women's, and disabled persons' business enterprises ad hoc advisory  
18 committee, established under RCW 39.19.041, to accomplish the purpose  
19 stated in this section.

20 The office shall:

21 (1) Develop, plan, and implement programs to provide an opportunity  
22 for participation by qualified ~~((minority and women-owned and~~  
23 ~~controlled))~~ businesses owned and controlled by minorities, women, or  
24 disabled persons in public works and the process by which goods and  
25 services are procured by state agencies and educational institutions  
26 from the private sector;

27 (2) Develop a comprehensive plan insuring that qualified ~~((minority~~  
28 ~~and women-owned and controlled))~~ businesses owned and controlled by  
29 minorities, women, or disabled persons are provided an opportunity to  
30 participate in public contracts for public works and goods and  
31 services;

32 (3) Identify barriers to equal participation by qualified  
33 ~~((minority and women-owned and controlled))~~ businesses owned and  
34 controlled by minorities, women, or disabled persons in all state  
35 agency and educational institution contracts;

36 (4) Establish annual overall goals for participation by qualified  
37 minority and women-owned and controlled businesses for each state

1 agency and educational institution to be administered on a contract-by-  
2 contract basis or on a class-of-contracts basis;

3 (5) Develop and maintain a central minority ((and)), women's, and  
4 disabled persons' business enterprise certification list for all state  
5 agencies and educational institutions. No business is entitled to  
6 certification under this chapter unless it meets the definition of  
7 small business concern as established by the office. All applications  
8 for certification under this chapter shall be sworn under oath;

9 (6) Develop, implement, and operate a system of monitoring  
10 compliance with this chapter;

11 (7) Adopt rules under chapter 34.05 RCW, the Administrative  
12 Procedure Act, governing: (a) Establishment of agency goals for  
13 participation by qualified businesses owned and controlled by  
14 minorities and women; (b) development and maintenance of a central  
15 minority ((and)), women's, and disabled persons' business enterprise  
16 certification program, including a definition of "small business  
17 concern" which shall be consistent with the small business requirements  
18 defined under section 3 of the Small Business Act, 15 U.S.C. Sec. 632,  
19 and its implementing regulations as guidance; (c) procedures for  
20 monitoring and enforcing compliance with goals, regulations, contract  
21 provisions, and this chapter; (d) utilization of standard clauses by  
22 state agencies and educational institutions, as specified in RCW  
23 39.19.050; and (e) determination of an agency's or educational  
24 institution's goal attainment consistent with the limitations of RCW  
25 39.19.075;

26 (8) Submit an annual report to the governor and the legislature  
27 outlining the progress in implementing this chapter;

28 (9) Investigate complaints of violations of this chapter with the  
29 assistance of the involved agency or educational institution; and

30 (10) Cooperate and act jointly or by division of labor with the  
31 United States or other states, and with political subdivisions of the  
32 state of Washington and their respective minority, socially and  
33 economically disadvantaged ((and)), women, and disabled persons  
34 business enterprise programs to carry out the purposes of this chapter.  
35 However, the power which may be exercised by the office under this  
36 subsection permits investigation and imposition of sanctions only if  
37 the investigation relates to a possible violation of this chapter  
38 ((39.19—RCW)), and not to violation of local ordinances, rules,

1 regulations, however denominated, adopted by political subdivisions of  
2 the state.

3 **Sec. 5.** RCW 39.19.080 and 1987 c 328 s 5 are each amended to read  
4 as follows:

5 (1) A person, firm, corporation, business, union, or other  
6 organization shall not:

7 (a) Prevent or interfere with a contractor's or subcontractor's  
8 compliance with this chapter, or any rule adopted under this chapter;

9 (b) Submit false or fraudulent information to the state concerning  
10 compliance with this chapter or any such rule;

11 (c) Fraudulently obtain, retain, attempt to obtain or retain, or  
12 aid another in fraudulently obtaining or retaining or attempting to  
13 obtain or retain certification as a minority ~~((or))~~, women's, or  
14 disabled persons' business enterprise for the purpose of this chapter;

15 (d) Knowingly make a false statement, whether by affidavit,  
16 verified statement, report, or other representation, to a state  
17 official or employee for the purpose of influencing the certification  
18 or denial of certification of any entity as a minority ~~((or))~~, women's,  
19 or disabled persons' business enterprise;

20 (e) Knowingly obstruct, impede, or attempt to obstruct or impede  
21 any state official or employee who is investigating the qualification  
22 of a business entity that has requested certification as a minority  
23 ~~((or))~~, women's, or disabled persons' business enterprise;

24 (f) Fraudulently obtain, attempt to obtain, or aid another person  
25 in fraudulently obtaining or attempting to obtain public moneys to  
26 which the person is not entitled under this chapter; or

27 (g) Knowingly make false statements that any entity is or is not  
28 certified as a minority ~~((or))~~, women's, or disabled persons' business  
29 enterprise for purposes of obtaining a contract governed by this  
30 chapter.

31 (2) Any person or entity violating this chapter or any rule adopted  
32 under this chapter shall be subject to the penalties in RCW 39.19.090.  
33 Nothing in this section prevents the state agency or educational  
34 institution from pursuing such procedures or sanctions as are otherwise  
35 provided by statute, rule, or contract provision.

36 **Sec. 6.** RCW 39.19.120 and 1987 c 328 s 7 are each amended to read  
37 as follows:

1       The office shall be the sole authority to perform certification of  
2 (~~minority business enterprises, socially and economically~~  
3 ~~disadvantaged business enterprises, and women's~~) business enterprises  
4 owned and controlled by minorities, socially and economically  
5 disadvantaged, women, or disabled persons throughout the state of  
6 Washington. Certification by the state office will allow these firms  
7 to participate in programs for these enterprises administered by the  
8 state of Washington, any city, town, county, special purpose district,  
9 public corporation created by the state, municipal corporation, or  
10 quasi-municipal corporation within the state of Washington. The  
11 certification process for businesses owned and controlled by disabled  
12 persons will be limited to eighty applicants per year.

13       This state-wide certification process will prevent duplication of  
14 effort, achieve efficiency, and permit local jurisdictions to further  
15 develop, implement, and/or enhance comprehensive systems of monitoring  
16 and compliance for contracts issued by their agencies.

17       **Sec. 7.** RCW 39.19.150 and 1987 c 328 s 10 are each amended to read  
18 as follows:

19       (1) Any city, county, town, special purpose district, public  
20 corporation created by the state, municipal corporation, or quasi-  
21 municipal corporation having reason to believe that a particular  
22 minority (~~and~~), women's, or disabled persons' business enterprise  
23 should not have been certified under RCW 39.19.140 may petition the  
24 office for reconsideration. The basis for the petition may be one or  
25 more of the following:

26       (a) The office's rules or regulations were improperly applied; or

27       (b) Material facts relating to the minority (~~and~~), women's, or  
28 disabled persons' business enterprise's certification application to  
29 the office are untrue.

30       (2) The petitioner shall carry the burden of persuasion. The  
31 affected minority (~~or~~), women's, or disabled persons' business  
32 enterprise shall receive notice of the petition and an opportunity to  
33 respond.

34       (3) After reviewing the information presented in support of and in  
35 opposition to the petition, the office shall issue a written decision,  
36 granting or denying the petition. If the office grants the petition,  
37 it may revoke, suspend, or refuse to renew the certification or impose  
38 sanctions under this chapter as appropriate.

1 (4) The office's decision on a petition is administratively final  
2 and the rights of appeal set out in the office regulations shall apply.  
3 A certification shall remain in effect while a petition is pending.

4 **Sec. 8.** RCW 39.19.170 and 1993 c 512 s 10 are each amended to read  
5 as follows:

6 (1) State agencies shall not require a performance bond for any  
7 public works project that does not exceed twenty-five thousand dollars  
8 awarded to a prequalified and certified (~~(minority or woman-owned)~~)  
9 business owned and controlled by minorities, women, or disabled persons  
10 that has been prequalified as provided under subsection (2) of this  
11 section.

12 (2) A limited prequalification questionnaire shall be required  
13 assuring:

14 (a) That the bidder has adequate financial resources or the ability  
15 to secure such resources;

16 (b) That the bidder can meet the performance schedule;

17 (c) That the bidder is experienced in the type of work to be  
18 performed; and

19 (d) That all equipment to be used is adequate and functioning and  
20 that all equipment operators are qualified to operate such equipment.

21 **Sec. 9.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to read  
22 as follows:

23 The minority (~~(and)~~), women's, and disabled persons' business  
24 enterprises account is created in the custody of the state treasurer.  
25 All receipts from RCW 39.19.210, 39.19.220, and 39.19.230 shall be  
26 deposited in the account. Expenditures from the account may be used  
27 only for the purposes defraying all or part of the costs of the office  
28 in administering this chapter. Only the director or the director's  
29 designee may authorize expenditures from the account. Moneys in the  
30 account may be spent only after appropriation.

31 NEW SECTION. **Sec. 10.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 11.**    If any part of this act is found to be in  
2 conflict with federal requirements that are a prescribed condition to  
3 the allocation of federal funds to the state, the conflicting part of  
4 this act is inoperative solely to the extent of the conflict and with  
5 respect to the agencies directly affected, and this finding does not  
6 affect the operation of the remainder of this act in its application to  
7 the agencies concerned.    The rules under this act shall meet federal  
8 requirements that are a necessary condition to the receipt of federal  
9 funds by the state.

10        NEW SECTION.    **Sec. 12.**    This act takes effect July 1, 1998.

11        NEW SECTION.    **Sec. 13.**    A new section is added to chapter 43.131  
12 RCW to read as follows:

13        Chapter . . . , Laws of 1998 (this act) shall be terminated on June  
14 30, 2001, as provided in section 14 of this act.

15        NEW SECTION.    **Sec. 14.**    A new section is added to chapter 43.131  
16 RCW to read as follows:

17        The following acts or parts of acts, as now existing or hereafter  
18 amended, are each repealed, effective June 30, 2002:

- 19        (1) Section 1 of this act;
- 20        (2) Section 2 of this act;
- 21        (3) Section 3 of this act;
- 22        (4) Section 4 of this act;
- 23        (5) Section 5 of this act;
- 24        (6) Section 6 of this act;
- 25        (7) Section 7 of this act;
- 26        (8) Section 8 of this act; and
- 27        (9) Section 9 of this act.

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