
SUBSTITUTE SENATE BILL 5834

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Commerce & Labor (originally sponsored by Senators Fairley, Winsley, Kohl and McAuliffe)

Read first time 03/05/97.

1 AN ACT Relating to providing entrepreneurial opportunities for
2 disabled persons; amending RCW 39.19.010, 39.19.020, 39.19.030,
3 39.19.060, 39.19.070, 39.19.080, 39.19.120, 39.19.150, 39.19.170, and
4 39.19.200; creating new sections; providing an effective date; and
5 providing an expiration date.

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

7 **Sec. 1.** RCW 39.19.010 and 1987 c 328 s 1 are each amended to read
8 as follows:

9 The legislature finds that (~~minority and women-owned~~) businesses
10 owned by minorities, women, and disabled persons are significantly
11 under-represented and have been denied equitable competitive
12 opportunities in contracting. It is the intent of this chapter to
13 mitigate societal discrimination and other factors in participating in
14 public works and in providing goods and services and to delineate a
15 policy that an increased level of participation by (~~minority and~~
16 ~~women-owned and controlled~~) businesses owned and controlled by
17 minorities, women, and disabled persons is desirable at all levels of
18 state government. The purpose and intent of this chapter are to
19 provide the maximum practicable opportunity for increased participation

1 by (~~minority and women owned and controlled~~) businesses owned and
2 controlled by minorities, women, and disabled persons in participating
3 in public works and the process by which goods and services are
4 procured by state agencies and educational institutions from the
5 private sector.

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

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

17 ((3)) (2) "Director" means the director of the office of minority
18 (~~and~~), women's, and disabled persons' business enterprises.

19 (3) "Disability" means a person with a physical, mental, or sensory
20 impairment that would impede that individual in obtaining and
21 maintaining opportunities for public contracts with the state. The
22 impairment must be material rather than slight, static and permanent in
23 that it is seldom fully corrected by medical replacement, therapy, or
24 surgical means.

25 (4) "Disabled person" means a person that has a physical or mental
26 impairment that substantially limits a major life activity.

27 (5) "Educational institutions" means the state universities, the
28 regional universities, The Evergreen State College, and the community
29 colleges.

30 ((5)) (6) "Goals" means annual overall agency goals, expressed as
31 a percentage of dollar volume, for participation by (~~minority and~~
32 ~~women owned and controlled~~) businesses owned and controlled by
33 minorities, women, and disabled persons and shall not be construed as
34 a minimum goal for any particular contract or for any particular
35 geographical area. It is the intent of this chapter that such overall
36 agency goals shall be achievable and shall be met on a contract-by-
37 contract or class-of-contract basis.

1 (~~(6)~~) (7) "Goods and/or services" includes professional services
2 and all other goods and services.

3 (~~(7)~~) (8) "Office" means the office of minority (~~and~~), women's,
4 and disabled persons' business enterprises.

5 (~~(8)~~) (9) "Person" includes one or more individuals,
6 partnerships, associations, organizations, corporations, cooperatives,
7 legal representatives, trustees and receivers, or any group of persons.

8 (~~(9)~~) (10) "Procurement" means the purchase, lease, or rental of
9 any goods or services.

10 (~~(10)~~) (11) "Public works" means all work, construction, highway
11 and ferry construction, alteration, repair, or improvement other than
12 ordinary maintenance, which a state agency or educational institution
13 is authorized or required by law to undertake.

14 (~~(11)~~) (12) "State agency" includes the state of Washington and
15 all agencies, departments, offices, divisions, boards, commissions, and
16 correctional and other types of institutions.

17 **Sec. 3.** RCW 39.19.030 and 1996 c 69 s 5 are each amended to read
18 as follows:

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

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

29 The office shall:

30 (1) Develop, plan, and implement programs to provide an opportunity
31 for participation by qualified (~~minority and women owned and~~
32 ~~controlled~~) businesses owned and controlled by minorities, women, and
33 disabled persons in public works and the process by which goods and
34 services are procured by state agencies and educational institutions
35 from the private sector;

36 (2) Develop a comprehensive plan insuring that qualified (~~minority~~
37 ~~and women owned and controlled~~) businesses owned and controlled by
38 minorities, women, and disabled persons are provided an opportunity to

1 participate in public contracts for public works and goods and
2 services;

3 (3) Identify barriers to equal participation by qualified
4 (~~minority and women owned and controlled~~) businesses owned and
5 controlled by minorities, women, and disabled persons in all state
6 agency and educational institution contracts;

7 (4) Establish annual overall goals for participation by qualified
8 (~~minority and women owned and controlled~~) businesses owned and
9 controlled by minorities, women, and disabled persons for each state
10 agency and educational institution to be administered on a contract-by-
11 contract basis or on a class-of-contracts basis;

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

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

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

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

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

37 (10) Cooperate and act jointly or by division of labor with the
38 United States or other states, and with political subdivisions of the
39 state of Washington and their respective minority, socially and

1 economically disadvantaged ~~((and))~~, women, and disabled persons
2 business enterprise programs to carry out the purposes of this chapter.
3 However, the power which may be exercised by the office under this
4 subsection permits investigation and imposition of sanctions only if
5 the investigation relates to a possible violation of this chapter
6 ~~((39.19—RCW))~~, and not to violation of local ordinances, rules,
7 regulations, however denominated, adopted by political subdivisions of
8 the state.

9 **Sec. 4.** RCW 39.19.060 and 1996 c 288 s 28 are each amended to read
10 as follows:

11 Each state agency and educational institution shall comply with the
12 annual goals established for that agency or institution under this
13 chapter for public works and procuring goods or services. This chapter
14 applies to all public works and procurement by state agencies and
15 educational institutions, including all contracts and other procurement
16 under chapters 28B.10, 39.04, 39.29, 43.19, and 47.28 RCW. Each state
17 agency shall adopt a plan, developed in consultation with the director
18 ~~((and the advisory committee))~~, to insure that ~~((minority and women-~~
19 ~~owned))~~ businesses owned by minorities, women, and disabled persons are
20 afforded the maximum practicable opportunity to directly and
21 meaningfully participate in the execution of public contracts for
22 public works and goods and services. The plan shall include specific
23 measures the agency will undertake to increase the participation of
24 certified ~~((minority and women-owned))~~ businesses owned by minorities,
25 women, and disabled persons. The office shall annually notify the
26 governor, the state auditor, and the joint legislative audit and review
27 committee of all agencies and educational institutions not in
28 compliance with this chapter.

29 **Sec. 5.** RCW 39.19.070 and 1994 c 15 s 1 are each amended to read
30 as follows:

31 It is the intent of this chapter that the goals established under
32 this chapter for participation by ~~((minority and women-owned and~~
33 ~~controlled))~~ businesses owned and controlled by minorities, women, and
34 disabled persons be achievable. If necessary to accomplish this
35 intent, contracts may be awarded to the next lowest responsible bidder
36 in turn, or all bids may be rejected and new bids obtained, if the
37 lowest responsible bidder does not meet the goals established for a

1 particular contract under this chapter. The dollar value of the total
2 contract used for the calculation of the specific contract goal may be
3 increased or decreased to reflect executed change orders. An apparent
4 low-bidder must be in compliance with the contract provisions required
5 under this chapter as a condition precedent to the granting of a notice
6 of award by any state agency or educational institution.

7 **Sec. 6.** RCW 39.19.080 and 1987 c 328 s 5 are each amended to read
8 as follows:

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

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

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

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

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

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

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

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

35 (2) Any person or entity violating this chapter or any rule adopted
36 under this chapter shall be subject to the penalties in RCW 39.19.090.
37 Nothing in this section prevents the state agency or educational

1 institution from pursuing such procedures or sanctions as are otherwise
2 provided by statute, rule, or contract provision.

3 **Sec. 7.** RCW 39.19.120 and 1987 c 328 s 7 are each amended to read
4 as follows:

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

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

19 **Sec. 8.** RCW 39.19.150 and 1987 c 328 s 10 are each amended to read
20 as follows:

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

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

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

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

36 (3) After reviewing the information presented in support of and in
37 opposition to the petition, the office shall issue a written decision,

1 granting or denying the petition. If the office grants the petition,
2 it may revoke, suspend, or refuse to renew the certification or impose
3 sanctions under this chapter as appropriate.

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

7 **Sec. 9.** RCW 39.19.170 and 1993 c 512 s 10 are each amended to read
8 as follows:

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

15 (2) A limited prequalification questionnaire shall be required
16 assuring:

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

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

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

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

24 **Sec. 10.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to read
25 as follows:

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

34 NEW SECTION. **Sec. 11.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 12.** If any part of this act is found to be in
4 conflict with federal requirements that are a prescribed condition to
5 the allocation of federal funds to the state, the conflicting part of
6 this act is inoperative solely to the extent of the conflict and with
7 respect to the agencies directly affected, and this finding does not
8 affect the operation of the remainder of this act in its application to
9 the agencies concerned. The rules under this act shall meet federal
10 requirements that are a necessary condition to the receipt of federal
11 funds by the state.

12 NEW SECTION. **Sec. 13.** The office of minority and women's business
13 enterprises shall conduct a study to identify the problems encountered
14 by businesses owned by disabled persons in seeking and obtaining public
15 contract opportunities, including any differences between the
16 availability and utilization of such businesses by the state. The
17 study shall prescribe resolutions and recommend to the legislature how
18 the office will serve businesses owned by disabled persons. This
19 section expires July 1, 1998.

20 NEW SECTION. **Sec. 14.** This act takes effect July 1, 1998.

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