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SENATE BILL 6327

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State of Washington                      55th Legislature                      1998 Regular Session

By Senators Schow, Fairley, Roach, Finkbeiner, Heavey and Franklin

Read first time 01/15/98. Referred to Committee on Commerce & Labor.

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, 39.19.080, 39.19.120, 39.19.150, 39.19.170, and 39.19.200;  
4 adding new sections to chapter 43.131 RCW; creating a new section; and  
5 providing an effective 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 and controlled by minorities, women, and disabled persons are  
11 significantly under-represented and have been denied equitable  
12 competitive opportunities in contracting. It is the intent of this  
13 chapter to mitigate societal discrimination and other factors in  
14 participating in public works and in providing goods and services and  
15 to delineate a policy that an increased level of participation by  
16 (~~minority and women-owned and controlled~~) businesses owned and  
17 controlled by minorities, women, and disabled persons is desirable at  
18 all levels of state government. The purpose and intent of this chapter  
19 are to provide the maximum practicable opportunity for increased

1 participation by (~~minority and women owned and controlled~~) businesses  
2 owned and controlled by minorities, women, and disabled persons in  
3 participating in public works and the process by which goods and  
4 services are procured by state agencies and educational institutions  
5 from the private sector. The legislature further finds that no court  
6 has held that a program which promotes contracting opportunities for  
7 businesses owned and controlled by disabled persons must be subjected  
8 to the strict-scrutiny standard or must be justified by a disparity  
9 study. If a court of proper jurisdiction determines that the program  
10 for disabled persons is subject to the strict-scrutiny standard or must  
11 be justified by a disparity study, the program may be suspended until  
12 the legislature determines a proper course of action.

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

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

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

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

24 ((~~3~~)) (2) "Director" means the director of the office of minority  
25 (~~and~~), women's, and disabled persons' business enterprises.

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

33 (4) "Educational institutions" means the state universities, the  
34 regional universities, The Evergreen State College, and the community  
35 colleges.

36 (5) "Goals" means annual overall agency goals, expressed as a  
37 percentage of dollar volume, for participation by minority and women-  
38 owned and controlled businesses and shall not be construed as a minimum

1 goal for any particular contract or for any particular geographical  
2 area. It is the intent of this chapter that such overall agency goals  
3 shall be achievable and shall be met on a contract-by-contract or  
4 class-of-contract basis.

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

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

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

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

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

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

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

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

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

33 The office shall:

34 (1) Develop, plan, and implement programs to provide an opportunity  
35 for participation by qualified ~~((minority and women owned and~~  
36 ~~controlled))~~ businesses owned and controlled by minorities, women, and  
37 disabled persons in public works and the process by which goods and

1 services are procured by state agencies and educational institutions  
2 from the private sector;

3 (2) Develop a comprehensive plan insuring that qualified (~~minority~~  
4 ~~and women-owned and controlled~~) businesses owned and controlled by  
5 minorities, women, and disabled persons are provided an opportunity to  
6 participate in public contracts for public works and goods and  
7 services;

8 (3) Identify barriers to equal participation by qualified  
9 (~~minority and women-owned and controlled~~) businesses owned and  
10 controlled by minorities, women, and disabled persons in all state  
11 agency and educational institution contracts;

12 (4) Establish annual overall goals for participation by qualified  
13 minority and women-owned and controlled businesses for each state  
14 agency and educational institution to be administered on a contract-by-  
15 contract basis or on a class-of-contracts basis;

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

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

24 (7) Adopt rules under chapter 34.05 RCW, the Administrative  
25 Procedure Act, governing: (a) Establishment of agency goals for  
26 participation by qualified businesses owned and controlled by  
27 minorities and women; (b) development and maintenance of a central  
28 minority (~~and~~), women's, and disabled persons' business enterprise  
29 certification program, including a definition of "small business  
30 concern" which shall be consistent with the small business requirements  
31 defined under section 3 of the Small Business Act, 15 U.S.C. Sec. 632,  
32 and its implementing regulations as guidance; (c) procedures for  
33 monitoring and enforcing compliance with goals, regulations, contract  
34 provisions, and this chapter; (d) utilization of standard clauses by  
35 state agencies and educational institutions, as specified in RCW  
36 39.19.050; and (e) determination of an agency's or educational  
37 institution's goal attainment consistent with the limitations of RCW  
38 39.19.075;

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

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

5 (10) Cooperate and act jointly or by division of labor with the  
6 United States or other states, and with political subdivisions of the  
7 state of Washington and their respective minority, socially and  
8 economically disadvantaged ~~((and))~~, women, and disabled persons  
9 business enterprise programs to carry out the purposes of this chapter.  
10 However, the power which may be exercised by the office under this  
11 subsection permits investigation and imposition of sanctions only if  
12 the investigation relates to a possible violation of this chapter  
13 ~~((39.19—RCW))~~, and not to violation of local ordinances, rules,  
14 regulations, however denominated, adopted by political subdivisions of  
15 the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 The office shall be the sole authority to perform certification of  
35 ((~~minority business enterprises, socially and economically~~  
36 ~~disadvantaged business enterprises, and women's~~)) business enterprises  
37 owned and controlled by minorities, socially and economically  
38 disadvantaged, women, or disabled persons throughout the state of

1 Washington. Certification by the state office will allow these firms  
2 to participate in programs for these enterprises administered by the  
3 state of Washington, any city, town, county, special purpose district,  
4 public corporation created by the state, municipal corporation, or  
5 quasi-municipal corporation within the state of Washington.

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

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

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

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

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

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

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

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

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

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

7 (2) A limited prequalification questionnaire shall be required  
8 assuring:

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

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

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

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

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

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

26 NEW SECTION. **Sec. 10.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 11.** If any part of this act is found to be in  
31 conflict with federal requirements that are a prescribed condition to  
32 the allocation of federal funds to the state, the conflicting part of  
33 this act is inoperative solely to the extent of the conflict and with  
34 respect to the agencies directly affected, and this finding does not  
35 affect the operation of the remainder of this act in its application to  
36 the agencies concerned. The rules under this act shall meet federal



1 requirements that are a necessary condition to the receipt of federal  
2 funds by the state.

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

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

6 Chapter . . ., Laws of 1998 (this act) shall be terminated on June  
7 30, 2001, as provided in section 14 of this act.

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

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

- 12 (1) Section 1 of this act;
- 13 (2) Section 2 of this act;
- 14 (3) Section 3 of this act;
- 15 (4) Section 4 of this act;
- 16 (5) Section 5 of this act;
- 17 (6) Section 6 of this act;
- 18 (7) Section 7 of this act;
- 19 (8) Section 8 of this act; and
- 20 (9) Section 9 of this act.

--- END ---