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HOUSE BILL 2653

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Jacobsen, Valle, Poulsen, Romero, Chopp, Cody, Dickerson and Costa

Read first time 01/16/96. Referred to Committee on Trade & Economic Development.

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; adding new sections to chapter 39.19 RCW; creating new  
5 sections; and 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 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 1987 c 328 s 2 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~~)) "Director" means the director of the office of minority  
13 (~~and~~), women's, and disabled persons' business enterprises.

14 (2) "Disabled person" means a person that has a determinable  
15 physical or mental impairment that substantially limits a major life  
16 activity.

17 (3) "Educational institutions" means the state universities, the  
18 regional universities, The Evergreen State College, and the community  
19 colleges.

20 (4) "Goals" means annual overall agency goals, expressed as a  
21 percentage of dollar volume, for participation by (~~minority and women-~~  
22 ~~owned and controlled~~) businesses owned and controlled by minorities,  
23 women, and disabled persons and shall not be construed as a minimum  
24 goal for any particular contract or for any particular geographical  
25 area. It is the intent of this chapter that such overall agency goals  
26 shall be achievable and shall be met on a contract-by-contract or  
27 class-of-contract basis. The goal for disabled persons' businesses  
28 shall be three percent.

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

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

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

36 (8) "Procurement" means the purchase, lease, or rental of any goods  
37 or services.

1 (9) "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 (10) "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. 3.** RCW 39.19.030 and 1989 c 175 s 85 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 pursuant to RCW 39.19.041, to~~((+))~~ accomplish  
19 the purpose 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, and  
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, and 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, and 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 owned and  
38 controlled by minorities, women, and disabled persons 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 and implement goals for  
3 businesses owned and controlled by disabled persons in conformance with  
4 this act;

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

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

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

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

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

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

1       **Sec. 4.** RCW 39.19.060 and 1993 c 512 s 9 are each amended to read  
2 as follows:

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

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

23       It is the intent of this chapter that the goals established under  
24 this chapter for participation by (~~minority and women-owned and~~  
25 ~~controlled~~) businesses owned and controlled by minorities, women, and  
26 disabled persons be achievable. If necessary to accomplish this  
27 intent, contracts may be awarded to the next lowest responsible bidder  
28 in turn, or all bids may be rejected and new bids obtained, if the  
29 lowest responsible bidder does not meet the goals established for a  
30 particular contract under this chapter. The dollar value of the total  
31 contract used for the calculation of the specific contract goal may be  
32 increased or decreased to reflect executed change orders. An apparent  
33 low-bidder must be in compliance with the contract provisions required  
34 under this chapter as a condition precedent to the granting of a notice  
35 of award by any state agency or educational institution.

36       **Sec. 6.** 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. 7.** 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. 8.** 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. 9.** 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. 10.** 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. 11.** A new section is added to chapter 39.19 RCW  
27 to read as follows:

28 (1) At five-year intervals from the effective date of this act, the  
29 office shall review the progress of the departments in meeting the  
30 three percent goal with input from the business community, including  
31 disabled persons' businesses, and shall make recommendations to the  
32 legislature regarding continuation, increases, or decreases in the  
33 percentage goal. The recommendations shall be based upon the number of  
34 businesses which are owned by disabled persons and on the continued  
35 need to encourage and promote disabled person's entrepreneurial  
36 activities.

1 (2) It shall be the goal of each department or agency which does  
2 not meet the established goal to award each year to disabled persons'  
3 business enterprises not less than one hundred fifty percent of the  
4 actual expenditures it awarded to disabled persons' business  
5 enterprises in the preceding year until not less than three percent of  
6 the total expenditures is achieved.

7 NEW SECTION. **Sec. 12.** A new section is added to chapter 39.19 RCW  
8 to read as follows:

9 (1) A capital "revolving" loan fund program for small loans under  
10 one hundred thousand dollars and microloans under ten thousand dollars  
11 shall be established by the office to provide reduced interest rate  
12 loans to qualified disabled persons for capital assistance. These  
13 loans shall emphasize providing funds for business start-up and  
14 purchase of accommodations and adaptive equipment. The legislature may  
15 authorize the issuance of bonds on behalf of the state of Washington to  
16 provide funds for this program.

17 (2) Disabled persons shall also be provided full access to small  
18 business development centers, training seminars, and other assistance  
19 programs as other types of minority, disadvantaged, and women's  
20 businesses.

21 NEW SECTION. **Sec. 13.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 14.** If any part of this act is found to be in  
26 conflict with federal requirements that are a prescribed condition to  
27 the allocation of federal funds to the state, the conflicting part of  
28 this act is inoperative solely to the extent of the conflict and with  
29 respect to the agencies directly affected, and this finding does not  
30 affect the operation of the remainder of this act in its application to  
31 the agencies concerned. The rules under this act shall meet federal  
32 requirements that are a necessary condition to the receipt of federal  
33 funds by the state.

34 NEW SECTION. **Sec. 15.** Contracts entered into before September 1,  
35 1996, are not subject to this act.

1        NEW SECTION.    **Sec. 16.**    This act shall take effect July 1, 1996.

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