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**SENATE BILL 6611**

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**State of Washington****54th Legislature****1996 Regular Session**

**By** Senators Fairley, McAuliffe, Fraser, Smith, Prentice, Snyder, Loveland, Wood, Franklin, Pelz, Hale, Bauer, Hargrove and Heavey

Read first time 01/19/96. Referred to Committee on Labor, Commerce & Trade.

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; and providing an effective date.

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

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

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

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

5       **Sec. 2.** RCW 39.19.020 and 1987 c 328 s 2 are each amended to read  
6   as follows:

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

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

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

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

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

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

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

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

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

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

36      (9) "Public works" means all work, construction, highway and ferry  
37   construction, alteration, repair, or improvement other than ordinary

1 maintenance, which a state agency or educational institution is  
2 authorized or required by law to undertake.

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

6 **Sec. 3.** RCW 39.19.030 and 1989 c 175 s 85 are each amended to read  
7 as follows:

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

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

18 The office shall:

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

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

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

34 (4) Establish annual overall goals for participation by qualified  
35 ((minority and women-owned and controlled)) businesses owned and  
36 controlled by minorities, women, and disabled persons for each state  
37 agency and educational institution to be administered on a contract-by-  
38 contract basis or on a class-of-contracts basis and implement goals for

1   businesses owned and controlled by disabled persons in conformance with  
2   this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19       (g) Knowingly make false statements that any entity is or is not  
20 certified as a minority ((or))women's, or disabled persons' business  
21 enterprise for purposes of obtaining a contract governed by this  
22 chapter.

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

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

30       The office shall be the sole authority to perform certification of  
31 ((minority business enterprises, socially and economically  
32 disadvantaged business enterprises, and women's)) business enterprises  
33 owned and controlled by minorities, socially and economically  
34 disadvantaged, women, or disabled persons throughout the state of  
35 Washington. Certification by the state office will allow these firms  
36 to participate in programs for these enterprises administered by the

1 state of Washington, any city, town, county, special purpose district,  
2 public corporation created by the state, municipal corporation, or  
3 quasi-municipal corporation within the state of Washington.

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

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

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

17 (a) The office's rules or regulations were improperly applied; or  
18 (b) Material facts relating to the minority ((and)), women's, or  
19 disabled persons' business enterprise's certification application to  
20 the office are untrue.

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

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

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

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

35 (1) State agencies shall not require a performance bond for any  
36 public works project that does not exceed twenty-five thousand dollars  
37 awarded to a prequalified and certified ((minority or woman owned))

1 business owned and controlled by minorities, women, and disabled  
2 persons that has been prequalified as provided under subsection (2) of  
3 this section.

4 (2) A limited prequalification questionnaire shall be required  
5 assuring:

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

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

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

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

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

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

23 NEW SECTION. **Sec. 11.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 12.** If any part of this act is found to be in  
28 conflict with federal requirements that are a prescribed condition to  
29 the allocation of federal funds to the state, the conflicting part of  
30 this act is inoperative solely to the extent of the conflict and with  
31 respect to the agencies directly affected, and this finding does not  
32 affect the operation of the remainder of this act in its application to  
33 the agencies concerned. The rules under this act shall meet federal  
34 requirements that are a necessary condition to the receipt of federal  
35 funds by the state.

1        NEW SECTION. **Sec. 13.** Contracts entered into before September 1,  
2 1996, are not subject to this act.

3        NEW SECTION. **Sec. 14.** This act shall take effect July 1, 1996.

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