
SENATE BILL 5834

State of Washington 55th Legislature 1997 Regular Session

By Senators Fairley, Winsley, Kohl and McAuliffe

Read first time 02/14/97. 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, 39.19.070, 39.19.080, 39.19.120, 39.19.150, 39.19.170, and
4 39.19.200; and creating new sections.

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 1996 c 69 s 4 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))~~ "Broker" means a person that provides a bona fide service,
12 such as professional, technical, consultant, brokerage, or managerial
13 services and assistance in the procurement of essential personnel,
14 facilities, equipment, materials, or supplies required for performance
15 of a contract.

16 (~~(3))~~ (2) "Director" means the director of the office of minority
17 (~~and~~), women's, and disabled persons' business enterprises.

18 (3) "Disabled person" means a person that has a physical or mental
19 impairment that substantially limits a major life activity.

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

23 (5) "Goals" means annual overall agency goals, expressed as a
24 percentage of dollar volume, for participation by (~~minority and women-~~
25 ~~owned and controlled~~) businesses owned and controlled by minorities,
26 women, and disabled persons 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.

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

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

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

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

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

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

22 The office shall:

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

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

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

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

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

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

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

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

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

31 (10) Cooperate and act jointly or by division of labor with the
32 United States or other states, and with political subdivisions of the
33 state of Washington and their respective minority, socially and
34 economically disadvantaged (~~and~~), women, and disabled persons
35 business enterprise programs to carry out the purposes of this chapter.
36 However, the power which may be exercised by the office under this
37 subsection permits investigation and imposition of sanctions only if
38 the investigation relates to a possible violation of this chapter
39 (~~(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. 4.** RCW 39.19.060 and 1996 c 288 s 28 are each amended to read
4 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 The office shall be the sole authority to perform certification of
37 ~~((minority—business—enterprises,—socially—and—economically~~
38 ~~disadvantaged business enterprises, and women's))~~ business enterprises

1 owned and controlled by minorities, socially and economically
2 disadvantaged, women, or disabled persons throughout the state of
3 Washington. Certification by the state office will allow these firms
4 to participate in programs for these enterprises administered by the
5 state of Washington, any city, town, county, special purpose district,
6 public corporation created by the state, municipal corporation, or
7 quasi-municipal corporation within the state of Washington.

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

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

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

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

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

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

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

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

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

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

9 (2) A limited prequalification questionnaire shall be required
10 assuring:

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

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

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

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

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

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

28 NEW SECTION. **Sec. 11.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 12.** If any part of this act is found to be in
33 conflict with federal requirements that are a prescribed condition to
34 the allocation of federal funds to the state, the conflicting part of
35 this act is inoperative solely to the extent of the conflict and with
36 respect to the agencies directly affected, and this finding does not

1 affect the operation of the remainder of this act in its application to
2 the agencies concerned. The rules under this act shall meet federal
3 requirements that are a necessary condition to the receipt of federal
4 funds by the state.

5 NEW SECTION. **Sec. 13.** Contracts entered into before September 1,
6 1997, are not subject to this act.

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