
SUBSTITUTE HOUSE BILL 3175

State of Washington 61st Legislature 2010 Regular Session

By House General Government Appropriations (originally sponsored by Representative Darneille)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to transferring the office of minority and women's
2 business enterprises into the department of commerce; amending RCW
3 39.19.020, 39.19.030, 39.19.041, 39.19.060, 39.19.250, 39.19.150,
4 39.19.200, 39.19.210, 39.19.220, 39.19.230, 42.17.2401, and 43.63A.690;
5 creating a new section; repealing RCW 41.06.082; and providing an
6 effective date.

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

8 **Sec. 1.** RCW 39.19.020 and 1996 c 69 s 4 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

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

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

19 (3) "Department" means the department of commerce.

1 ~~(4)~~ (4) "Director" means the director of the ~~((office of minority and~~
2 ~~women's business enterprises))~~ department.

3 ~~((+4))~~ (5) "Educational institutions" means the state
4 universities, the regional universities, The Evergreen State College,
5 and the community colleges.

6 ~~((+5))~~ (6) "Goals" means annual overall agency goals, expressed as
7 a percentage of dollar volume, for participation by minority and women-
8 owned and controlled businesses and shall not be construed as a minimum
9 goal for any particular contract or for any particular geographical
10 area. It is the intent of this chapter that such overall agency goals
11 shall be achievable and shall be met on a contract-by-contract or
12 class-of-contract basis.

13 ~~((+6))~~ (7) "Goods and/or services" includes professional services
14 and all other goods and services.

15 ~~((+7))~~ (8) "Office" means the office of minority and women's
16 business enterprises within the department.

17 ~~((+8))~~ (9) "Person" includes one or more individuals,
18 partnerships, associations, organizations, corporations, cooperatives,
19 legal representatives, trustees and receivers, or any group of persons.

20 ~~((+9))~~ (10) "Procurement" means the purchase, lease, or rental of
21 any goods or services.

22 ~~((+10))~~ (11) "Public works" means all work, construction, highway
23 and ferry construction, alteration, repair, or improvement other than
24 ordinary maintenance, which a state agency or educational institution
25 is authorized or required by law to undertake.

26 ~~((+11))~~ (12) "State agency" includes the state of Washington and
27 all agencies, departments, offices, divisions, boards, commissions, and
28 correctional and other types of institutions.

29 **Sec. 2.** RCW 39.19.030 and 1996 c 69 s 5 are each amended to read
30 as follows:

31 (1) There is hereby created the office of minority and women's
32 business enterprises within the department. ~~((The governor shall~~
33 ~~appoint a director for the office, subject to confirmation by the~~
34 ~~senate. The director may employ a deputy director and a confidential~~
35 ~~secretary, both of which shall be exempt under chapter 41.06 RCW, and~~
36 ~~such staff as are necessary to carry out the purposes of this~~
37 ~~chapter.))~~

1 (2) The office shall consult with the minority and women's business
2 enterprises advisory committee to:

3 ~~((1))~~ (a) Develop, plan, and implement programs to provide an
4 opportunity for participation by qualified minority and women-owned and
5 controlled businesses in public works and the process by which goods
6 and services are procured by state agencies and educational
7 institutions from the private sector;

8 ~~((2))~~ (b) Develop a comprehensive plan insuring that qualified
9 minority and women-owned and controlled businesses are provided an
10 opportunity to participate in public contracts for public works and
11 goods and services;

12 ~~((3))~~ (c) Identify barriers to equal participation by qualified
13 minority and women-owned and controlled businesses in all state agency
14 and educational institution contracts;

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

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

25 ~~((6))~~ (f) Develop, implement, and operate a system of monitoring
26 compliance with this chapter(~~(7)~~

27 ~~(7))~~ .

28 (3) The director shall:

29 (a) Adopt rules under chapter 34.05 RCW, the administrative
30 procedure act, governing: ~~((a))~~ (i) Establishment of agency goals;

31 ~~((b))~~ (ii) development and maintenance of a central minority and
32 women's business enterprise certification program, including a
33 definition of "small business concern" which shall be consistent with
34 the small business requirements defined under section 3 of the small
35 business act, 15 U.S.C. Sec. 632, and its implementing regulations as
36 guidance; ~~((c))~~ (iii) procedures for monitoring and enforcing

37 compliance with goals, regulations, contract provisions, and this
38 chapter; ~~((d))~~ (iv) utilization of standard clauses by state agencies

1 and educational institutions, as specified in RCW 39.19.050; and
2 ~~((+e))~~ (v) determination of an agency's or educational institution's
3 goal attainment consistent with the limitations of RCW 39.19.075;

4 ~~((+8))~~ (b) Submit an annual report to the governor and the
5 legislature outlining the progress in implementing this chapter;

6 ~~((+9))~~ (c) Investigate complaints of violations of this chapter
7 with the assistance of the involved agency or educational institution;
8 and

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

19 **Sec. 3.** RCW 39.19.041 and 1995 c 269 s 1302 are each amended to
20 read as follows:

21 The director or the director's designee may establish ad hoc
22 advisory committees, as necessary, to assist in the development of
23 policies to carry out the purposes of this chapter.

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

26 Each state agency and educational institution shall comply with the
27 annual goals established for that agency or institution under this
28 chapter for public works and procuring goods or services. This chapter
29 applies to all public works and procurement by state agencies and
30 educational institutions, including all contracts and other procurement
31 under chapters 28B.10, 39.04, 39.29, 43.19, and 47.28 RCW. Each state
32 agency shall adopt a plan, developed in consultation with the director
33 or the director's designee and the advisory committee, to insure that
34 minority and women-owned businesses are afforded the maximum
35 practicable opportunity to directly and meaningfully participate in the
36 execution of public contracts for public works and goods and services.

1 The plan shall include specific measures the agency will undertake to
2 increase the participation of certified minority and women-owned
3 businesses. The ~~((office))~~ director shall annually notify the
4 governor, the state auditor, and the joint legislative audit and review
5 committee of all agencies and educational institutions not in
6 compliance with this chapter.

7 **Sec. 5.** RCW 39.19.250 and 2009 c 348 s 2 are each amended to read
8 as follows:

9 (1) For the purpose of annual reporting on progress required by
10 section 1 of this act, each state agency and educational institution
11 shall submit data to the office and the office of minority and women's
12 business enterprises on the participation by qualified minority and
13 women-owned and controlled businesses in the agency's or institution's
14 contracts and other related information requested by the director or
15 the director's designee. The director ~~((of the office of minority and~~
16 ~~women's business enterprises))~~ or the director's designee shall
17 determine the content and format of the data and the reporting
18 schedule, which must be at least annually.

19 (2) The office must develop and maintain a list of contact people
20 at each state agency and educational institution ~~((that is))~~ who are
21 able to present to hearings of the appropriate committees of the
22 legislature its progress in carrying out the purposes of chapter 39.19
23 RCW.

24 (3) The ~~((office))~~ director must submit a report aggregating the
25 data received from each state agency and educational institution to the
26 legislature and the governor.

27 **Sec. 6.** RCW 39.19.150 and 1987 c 328 s 10 are each amended to read
28 as follows:

29 (1) Any city, county, town, special purpose district, public
30 corporation created by the state, municipal corporation, or quasi-
31 municipal corporation having reason to believe that a particular
32 minority and women's business enterprise should not have been certified
33 under RCW 39.19.140 may petition the office for reconsideration. The
34 basis for the petition may be one or more of the following:

35 (a) The ~~((office's))~~ department's rules ~~((or regulations))~~ were
36 improperly applied; or

1 (b) Material facts relating to the minority and women's business
2 enterprise's certification application to the office are untrue.

3 (2) The petitioner shall carry the burden of persuasion. The
4 affected minority or women's business enterprise shall receive notice
5 of the petition and an opportunity to respond.

6 (3) After reviewing the information presented in support of and in
7 opposition to the petition, the ~~((office))~~ director shall issue a
8 written decision, granting or denying the petition. If the ~~((office))~~
9 director grants the petition, ~~((it))~~ the director may revoke, suspend,
10 or refuse to renew the certification or impose sanctions under this
11 chapter as appropriate.

12 (4) The ~~((office's))~~ director's decision on a petition is
13 administratively final and the rights of appeal set out in the ~~((office~~
14 ~~regulations))~~ department rules shall apply. A certification shall
15 remain in effect while a petition is pending.

16 **Sec. 7.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to read
17 as follows:

18 The minority and women's business enterprises account is created in
19 the custody of the state treasurer. All receipts from RCW 39.19.210,
20 39.19.220, and 39.19.230 shall be deposited in the account.
21 Expenditures from the account may be used only for the purposes
22 defraying all or part of the costs of the ~~((office))~~ department in
23 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 **Sec. 8.** RCW 39.19.210 and 1993 c 195 s 2 are each amended to read
27 as follows:

28 The ~~((office))~~ department may charge a reasonable fee or other
29 appropriate charge, to be set by rule adopted by the ~~((office))~~
30 department under chapter 34.05 RCW, to a business using the services of
31 the ~~((office))~~ department under this chapter.

32 **Sec. 9.** RCW 39.19.220 and 1993 c 195 s 3 are each amended to read
33 as follows:

34 The ~~((office))~~ department may charge to a political subdivision in
35 this state a reasonable fee or other appropriate charge, to be set by

1 rule adopted by the ((office)) department under chapter 34.05 RCW,
2 prorated on the relative benefit to the political subdivision, for the
3 certification under this chapter of a business.

4 **Sec. 10.** RCW 39.19.230 and 1993 c 195 s 4 are each amended to read
5 as follows:

6 The ((office)) department may charge to a state agency and
7 educational institutions, as both are defined in RCW 39.19.020, a
8 reasonable fee or other appropriate charge, to be set by rule adopted
9 by the ((office)) department under chapter 34.05 RCW, based upon the
10 state agency's or educational institution's expenditure level of funds
11 subject to the ((office)) department.

12 **Sec. 11.** RCW 42.17.2401 and 2009 c 565 s 24 are each amended to
13 read as follows:

14 For the purposes of RCW 42.17.240, the term "executive state
15 officer" includes:

16 (1) The chief administrative law judge, the director of
17 agriculture, the administrator of the Washington basic health plan, the
18 director of the department of services for the blind, the director of
19 the state system of community and technical colleges, the director of
20 commerce, the secretary of corrections, the director of early learning,
21 the director of ecology, the commissioner of employment security, the
22 chair of the energy facility site evaluation council, the secretary of
23 the state finance committee, the director of financial management, the
24 director of fish and wildlife, the executive secretary of the forest
25 practices appeals board, the director of the gambling commission, the
26 director of general administration, the secretary of health, the
27 administrator of the Washington state health care authority, the
28 executive secretary of the health care facilities authority, the
29 executive secretary of the higher education facilities authority, the
30 executive secretary of the horse racing commission, the executive
31 secretary of the human rights commission, the executive secretary of
32 the indeterminate sentence review board, the director of the department
33 of information services, the executive director of the state investment
34 board, the director of labor and industries, the director of licensing,
35 the director of the lottery commission, (~~the director of the office of
36 minority and women's business enterprises,~~) the director of parks and

1 recreation, the director of personnel, the executive director of the
2 public disclosure commission, the executive director of the Puget Sound
3 partnership, the director of the recreation and conservation office,
4 the director of retirement systems, the director of revenue, the
5 secretary of social and health services, the chief of the Washington
6 state patrol, the executive secretary of the board of tax appeals, the
7 secretary of transportation, the secretary of the utilities and
8 transportation commission, the director of veterans affairs, the
9 president of each of the regional and state universities and the
10 president of The Evergreen State College, and each district and each
11 campus president of each state community college;

12 (2) Each professional staff member of the office of the governor;

13 (3) Each professional staff member of the legislature; and

14 (4) Central Washington University board of trustees, the boards of
15 trustees of each community college and each technical college, each
16 member of the state board for community and technical colleges, state
17 convention and trade center board of directors, committee for deferred
18 compensation, Eastern Washington University board of trustees,
19 Washington economic development finance authority, The Evergreen State
20 College board of trustees, executive ethics board, forest practices
21 appeals board, forest practices board, gambling commission, life
22 sciences discovery fund authority board of trustees, Washington health
23 care facilities authority, each member of the Washington health
24 services commission, higher education coordinating board, higher
25 education facilities authority, horse racing commission, state housing
26 finance commission, human rights commission, indeterminate sentence
27 review board, board of industrial insurance appeals, information
28 services board, recreation and conservation funding board, state
29 investment board, commission on judicial conduct, legislative ethics
30 board, liquor control board, lottery commission, marine oversight
31 board, Pacific Northwest electric power and conservation planning
32 council, parks and recreation commission, board of pilotage
33 commissioners, pollution control hearings board, public disclosure
34 commission, public pension commission, shorelines hearings board,
35 public employees' benefits board, salmon recovery funding board, board
36 of tax appeals, transportation commission, University of Washington
37 board of regents, utilities and transportation commission, Washington
38 state maritime commission, Washington personnel resources board,

1 Washington public power supply system executive board, Washington State
2 University board of regents, Western Washington University board of
3 trustees, and fish and wildlife commission.

4 **Sec. 12.** RCW 43.63A.690 and 2005 c 302 s 6 are each amended to
5 read as follows:

6 (1) The department shall provide technical assistance and loan
7 packaging services that enable minority and women-owned business
8 enterprises to obtain financing under the linked deposit program
9 created under RCW 43.86A.060.

10 (2) The department(~~(, in consultation with the office of minority~~
11 ~~and women's business enterprises,)) shall develop indicators to measure
12 the performance of the linked deposit program in the areas of job
13 creation or retention and providing access to capital to minority or
14 women's business enterprises.~~

15 NEW SECTION. **Sec. 13.** RCW 41.06.082 (Office of minority and
16 women's business enterprises--Certain personnel exempted from chapter)
17 and 1983 c 120 s 14 are each repealed.

18 NEW SECTION. **Sec. 14.** (1) The office of minority and women's
19 business enterprises is transferred to the department of commerce to be
20 an office within the department of commerce.

21 (2)(a) All reports, documents, surveys, books, records, files,
22 papers, or written material in the possession of the office of minority
23 and women's business enterprises shall be delivered to the custody of
24 the department of commerce. All cabinets, furniture, office equipment,
25 motor vehicles, and other tangible property employed by the office of
26 minority and women's business enterprises shall be made available to
27 the department of commerce. All funds, credits, or other assets held
28 by the office of minority and women's business enterprises shall be
29 assigned to the department of commerce.

30 (b) Any appropriations made to the office of minority and women's
31 business enterprises shall, on the effective date of this section, be
32 transferred and credited to the department of commerce.

33 (c) If any question arises as to the transfer of any personnel,
34 funds, books, documents, records, papers, files, equipment, or other
35 tangible property used or held in the exercise of the powers and the

1 performance of the duties and functions transferred, the director of
2 financial management shall make a determination as to the proper
3 allocation and certify the same to the state agencies concerned.

4 (3) All employees of the office of minority and women's business
5 enterprises classified under chapter 41.06 RCW, the state civil service
6 law, are transferred and assigned to the department of commerce to
7 perform their usual duties upon the same terms as formerly, without any
8 loss of rights, subject to any action that may be appropriate
9 thereafter in accordance with the laws and rules governing state civil
10 service.

11 (4) All rules and all pending business before the office of
12 minority and women's business enterprises shall be continued and acted
13 upon by the department of commerce. All existing contracts and
14 obligations shall remain in full force and shall be performed by the
15 department of commerce.

16 (5) The transfer of the powers, duties, functions, and personnel of
17 the office of minority and women's business enterprises shall not
18 affect the validity of any act performed before the effective date of
19 this section.

20 (6) If apportionments of budgeted funds are required because of the
21 transfers directed by this section, the director of financial
22 management shall certify the apportionments to the agencies affected,
23 the state auditor, and the state treasurer. Each of these shall make
24 the appropriate transfer and adjustments in funds and appropriation
25 accounts and equipment records in accordance with the certification.

26 (7) All classified employees of the office of minority and women's
27 business enterprises assigned to the department of commerce under this
28 section whose positions are within an existing bargaining unit
29 description at the department of commerce shall become a part of the
30 existing bargaining unit at the department of commerce and shall be
31 considered an appropriate inclusion or modification of the existing
32 bargaining unit under the provisions of chapter 41.80 RCW.

33 NEW SECTION. **Sec. 15.** This act takes effect July 1, 2010.

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