

permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in section 12 of this act nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 56, 57, or 87 RCW, nor is the authority conferred by these titles affected.

NEW SECTION. Sec. 18. Sections 1, 2, and 4 through 16 of this act shall constitute a new chapter in Title 36 RCW. Section 3 of this act shall be added to chapter 35.21 RCW.

Passed the House April 21, 1987.

Passed the Senate April 16, 1987.

Approved by the Governor May 12, 1987.

Filed in Office of Secretary of State May 12, 1987.

CHAPTER 328

[Engrossed Senate Bill No. 5529]

MINORITY AND WOMEN-OWNED AND CONTROLLED BUSINESSES

AN ACT Relating to certification of minority and women business enterprises; amending RCW 39.19.010, 39.19.020, 39.19.030, 39.19.070, 39.19.080, and 39.19.090; adding new sections to chapter 39.19 RCW; adding new sections to chapter 43.131 RCW; repealing RCW 39.19.900, 39.19.010, 39.19.020, 39.19.030, 39.19.040, 39.19.050, 39.19.060, 39.19.070, 39.19.080, and 39.19.090; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 120, Laws of 1983 and RCW 39.19.010 are each amended to read as follows:

The legislature finds that minority and women-owned businesses are significantly under-represented and have been denied equitable competitive

opportunities in contracting. It is the intent of this chapter to mitigate societal discrimination and other factors in participating in public works and in providing goods and services and to delineate a policy that an increased level of participation by minority and women-owned and controlled businesses is desirable at all levels of state government. The purpose and intent of this chapter are to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses in participating in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector.

Sec. 2. Section 2, chapter 120, Laws of 1983 and RCW 39.19.020 are each amended to read as follows:

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

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

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

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

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

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

(6) "Office" means the office of minority and women's business enterprises.

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

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

~~((9))~~ (9) "Public works" means all work, construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

~~((9))~~ (10) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions.

Sec. 3. Section 3, chapter 120, Laws of 1983 and RCW 39.19.030 are each amended to read as follows:

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

~~((The office, with the advice and counsel of the advisory committee on minority and women's business enterprises, shall))~~ The office shall consult with the minority and women's business enterprises advisory committee to:

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

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

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

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

(5) Develop and maintain a central minority and women's business enterprise certification list for all state agencies and educational institutions. ~~((Size of business or length of time in business shall not be considered a prerequisite for the certification list))~~ No business is entitled to certification under this chapter unless it meets the definition of small business concern as established by the office. All applications for certification under this chapter shall be sworn under oath;

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

(7) Adopt rules under chapter 34.04 or 28B.19 RCW, as appropriate, governing: (a) Establishment of agency goals; (b) development and maintenance of a central minority and women's business enterprise certification program, including a definition of "small business concern" which shall be consistent with the small business requirements defined under section 3 of the small business act, 15 U.S.C. Sec. 632, and its implementing regulations as guidance; (c) procedures for monitoring and enforcing compliance with goals, regulations, contract provisions, and this chapter; and (d) utilization of standard clauses by state agencies and educational institutions, as specified in RCW 39.19.050; ~~((and))~~

(8) Submit an annual report to the governor and the legislature outlining the progress ~~((and economic impact on the public and private sectors of))~~ in implementing this chapter;

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

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

Sec. 4. Section 7, chapter 120, Laws of 1983 and RCW 39.19.070 are each amended to read as follows:

It is the intent of this chapter that the goals established under this chapter for participation by minority and women-owned and controlled businesses be achievable. If necessary to accomplish this intent, contracts shall be awarded to the next lowest bidder, or all bids may be rejected and new bids obtained, if the lowest bidder does not meet the goals established for a particular contract under this chapter. The dollar value of the total contract used for the calculation of the specific contract goal may be increased or decreased to reflect executed change orders. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution.

Sec. 5. Section 8, chapter 120, Laws of 1983 and RCW 39.19.080 are each amended to read as follows:

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

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

(b) Submit((s)) false or fraudulent information to the state concerning compliance with this chapter or any such rule((, or violates this chapter or any rule adopted under this chapter, the person or entity shall be subject to a fine not to exceed one thousand dollars, in addition to any other penalty or sanction prescribed by law:

~~After an administrative hearing and findings of fact by the state agency or educational institution and after the exhaustion of administrative remedies, any adverse decision under this section may be appealed to Thurston county superior court or to any superior court in any county where the alleged violation occurred:));~~

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

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

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

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

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

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

Sec. 6. Section 9, chapter 120, Laws of 1983 and RCW 39.19.090 are each amended to read as follows:

If a person, firm, corporation, or business does not comply with any provision of this chapter or with a contract ((required)) requirement established under this chapter, the state may withhold payment, debar the contractor, suspend, or terminate the contract and subject the contractor to civil penalties of up to ten percent of the amount of the contract or up to five thousand dollars((, whichever is less)) for each violation. The office shall adopt, by rule, criteria for the imposition of penalties under this section. Wilful repeated violations, exceeding a single violation, may disqualify the contractor from further participation in state contracts for a period of ((one year)) up to three years. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution.

~~((After an administrative hearing and findings of fact by the state agency or educational institution and after the exhaustion of administrative remedies, any adverse decision under this section may be appealed to Thurston county superior court or to any superior court in any county where the alleged violation occurred:))~~

The office shall follow administrative procedures under chapter 34.04 RCW in determining a violation and imposing penalties under this chapter.

The procedures and sanctions in this section are not exclusive; nothing in this section prevents the state agency or educational institution administering the contracts from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

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

The office shall be the sole authority to perform certification of minority business enterprises, socially and economically disadvantaged business enterprises, and women's business enterprises throughout the state of Washington. Certification by the state office will allow these firms to participate in programs for these enterprises administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington.

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

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

There is created an organization to be known as the council of minority and women's business enterprises.

(1) The members of the council shall consist of one representative of each of the following entities:

(a) The municipality of metropolitan Seattle contract compliance office;

(b) The King County affirmative action program;

(c) The city of Seattle human rights department;

(d) The port of Seattle equal employment opportunity office;

(e) The city of Spokane affirmative action office; and

(f) The state office of minority and women's business enterprises.

(2) Any program performing certification functions prior to January 1, 1988, which are similar in purpose to the certification program of the office and which are operated by any state agency, public corporation created by the state, city, county, town, special purpose district, municipal corporation, or quasi-municipal corporation may petition the office for participation on the council and for the acceptance of its list of certified businesses.

(3) The role of the council shall be:

(a) To assist the office in the development of certification procedures;

(b) To provide the office with information on certification issues relating to their jurisdiction;

(c) To ensure that requirements relative to the needs of minority and women's business enterprises are considered in the certification process; and

(d) To ensure that requirements relative to the needs of local programs are considered in the certification process.

(4) Members of the council have the right:

(a) To submit petitions for reconsideration of certification decisions made by the office; and

(b) To make recommendations with regards to the certification process.

(5) The council shall conduct regularly scheduled meetings. The number of council members participating in such meetings shall not exceed fifteen. If the number of entities represented on the council exceeds fifteen in number, the council shall elect from its members a maximum of fifteen persons to act as representatives at council meetings. Council members shall not be entitled to compensation beyond the customary reimbursement or allowance for expenses for attendance at meetings of such groups, in accordance with RCW 43.03.220.

This section shall expire June 30, 1991.

NEW SECTION. Sec. 9. A new section is added to chapter 39.19 RCW to read as follows:

Implementation of state-wide certification shall be effective January 1, 1988, following consultation by the office with appropriate state and local officials who currently administer similar certification programs. Any business having been certified under any of the programs identified pursuant to section 8 of this act as a minority and women's business enterprise shall be deemed certified by the office as of January 1, 1988.

NEW SECTION. Sec. 10. A new section is added to chapter 39.19 RCW to read as follows:

(1) Any city, county, town, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation having reason to believe that a particular minority and women's business enterprise should not have been certified under section 9 of this act may petition the office for reconsideration. The basis for the petition may be one or more of the following:

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

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

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

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

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

NEW SECTION. Sec. 11. A new section is added to chapter 39.19 RCW to read as follows:

Any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington utilizing the certification by the office retains the responsibility for monitoring compliance with the programs under its jurisdiction. The office shall not be responsible for enforcement of local ordinances, rules, or regulations, however titled.

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

The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act prohibited or declared to be unlawful in this chapter. The attorney general may, in the discretion of the court, recover the costs of the action including reasonable attorneys' fees and the costs of investigation.

NEW SECTION. Sec. 13. A new section is added to chapter 39.19 RCW to read as follows:

(1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, that the attorney general believes to be relevant to the subject matter of an investigation, the attorney general may require such person to answer written interrogatories or give oral testimony regarding a possible violation of this chapter, or of any provision of a contract as required by this chapter, or (b) may have knowledge of any information that the attorney general believes relevant to the subject matter of such an investigation, the attorney general may, before instituting a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of demands pertaining to the documentary material or information. Documents and information obtained under this section shall not be admissible in criminal prosecutions.

(2) Each such demand shall:

(a) State the statute, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) State with reasonable specificity what documentary material is required, if the demand is for the production of documentary material;

(c) Prescribe a return date governed by the court rules within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand may:

(a) Contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a notice of deposition upon oral examination issued under the court rules of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if that person is not a natural person, to any officer or managing agent of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if that person has no place of business in this state, to the person's principal office or place of business.

(5)(a) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken from the place where the examination is held;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, may, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed to, anyone other than an authorized employee or agent of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony: **PROVIDED**, That under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced the material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of that person. The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary to enforce this chapter, including presentation before any court: **PROVIDED FURTHER**, That any such material, answers to written interrogatories, or transcripts of oral testimony that contain material designated by the declarant to be trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material, answers to written interrogatories, or oral testimony.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in any other county where the parties reside or are found. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon that person under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender such material, the attorney general may

file, in the trial court of general jurisdiction in the county in which the person resides, is found, or transacts business, and serve upon that person a petition for an order of the court for the enforcement of this section, except that if such person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to the petition. Whenever any petition is filed under this section in the trial court of general jurisdiction in any county, the court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

NEW SECTION. Sec. 14. Section 19, chapter 120, Laws of 1983 and RCW 39.19.900 are each repealed.

NEW SECTION. Sec. 15. A new section is added to chapter 43.131 RCW to read as follows:

The powers and duties of the office of minority and women's business enterprises shall be terminated on June 30, 1995, as provided in section 16 of this act.

NEW SECTION. Sec. 16. A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1996:

- (1) Section 1, chapter 120, Laws of 1983, section 1 of this 1987 act and RCW 39.19.010;
- (2) Section 2, chapter 120, Laws of 1983, section 2 of this 1987 act and RCW 39.19.020;
- (3) Section 3, chapter 120, Laws of 1983, section 3 of this 1987 act and RCW 39.19.030;
- (4) Section 4, chapter 120, Laws of 1983, section 45, chapter 466, Laws of 1985 and RCW 39.19.040;
- (5) Section 5, chapter 120, Laws of 1983 and RCW 39.19.050;
- (6) Section 6, chapter 120, Laws of 1983 and RCW 39.19.060;
- (7) Section 7, chapter 120, Laws of 1983, section 4 of this 1987 act and RCW 39.19.070;
- (8) Section 8, chapter 120, Laws of 1983, section 5 of this 1987 act and RCW 39.19.080;
- (9) Section 9, chapter 120, Laws of 1983, section 6 of this 1987 act and RCW 39.19.090;
- (10) Section 7 of this 1987 act;
- (11) Section 8 of this 1987 act;
- (12) Section 9 of this 1987 act;
- (13) Section 10 of this 1987 act;

- (14) Section 11 of this 1987 act;
- (15) Section 12 of this 1987 act; and
- (16) Section 13 of this 1987 act.

NEW SECTION. Sec. 17. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 18. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 21, 1987.

Passed the House April 13, 1987.

Approved by the Governor May 12, 1987.

Filed in Office of Secretary of State May 12, 1987.

CHAPTER 329

[Engrossed Substitute Senate Bill No. 6013]

CHILD CARE RESOURCE COORDINATOR WITHIN SOCIAL AND HEALTH SERVICES DEPARTMENT

AN ACT Relating to child care; creating a new section; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The secretary of social and health services shall appoint a child care resource coordinator who shall within appropriated funds:

(1) Actively seek public or private moneys and administer funding of available grants to local governments, private industry, and community-based nonprofit corporations for the purpose of:

(a) Creating and operating child care information and referral systems; and

(b) Creating and conducting a business outreach program to assess and fulfill the child care needs of businesses and families.

(2) Create a state-wide child care referral data bank and provide information to local information and referral systems about all licensed child care providers in the state. The data bank shall include information about the existence of providers by locality and the status of the providers' licenses, including whether the license has been issued, denied, revoked, or suspended or whether a letter of intent to deny, suspend, or revoke has been issued by the department of social and health services. The licensing division of the department shall make such information readily available to the child care resource coordinator.