

(10) Section 10, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.100;

(11) Section 11, chapter 140, Laws of 1974 ex. sess. and RCW 43.117-.900; and

(12) Section 14, chapter 140, Laws of 1974 ex. sess., section 1, chapter 297, Laws of 1977 ex. sess., section 2 of this 1983 act and RCW 43.117.910.

NEW SECTION. Sec. 5. 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 June 30, 1983.

Passed the House March 27, 1983.

Passed the Senate April 15, 1983.

Approved by the Governor April 23, 1983.

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CHAPTER 120

[Engrossed Second Substitute Senate Bill No. 3230]

MINORITY AND WOMEN'S BUSINESS ENTERPRISE OFFICE CREATED

AN ACT Relating to minority and women's business enterprises; amending section 47.28.030, chapter 13, Laws of 1961 as last amended by section 3, chapter 225, Laws of 1977 ex. sess. and RCW 47.28.030; amending section 47.28.050, chapter 13, Laws of 1961 as last amended by section 1, chapter 69, Laws of 1979 ex. sess. and RCW 47.28.050; amending section 47.28.090, chapter 13, Laws of 1961 as amended by section 2, chapter 21, Laws of 1971 ex. sess. and RCW 47.28.090; adding a new chapter to Title 39 RCW; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 39.04 RCW; adding a new section to chapter 39.29 RCW; adding a new section to chapter 41.06 RCW; adding a new section to chapter 43.19 RCW; creating a new section; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. 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 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 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.

NEW SECTION. Sec. 2. 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 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) "Procurement" means the purchase, lease, or rental of any goods or services.

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

NEW SECTION. Sec. 3. 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:

(1) Develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned 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 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 businesses in all state agency and educational institution contracts;

(4) Establish annual overall goals for participation by qualified minority and women-owned 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;

(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; (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 section 5 of this act; 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 implementing this chapter.

NEW SECTION. Sec. 4. (1) There is hereby created an advisory committee on minority and women's business enterprises to assist the director with the development of policies to carry out this chapter, consisting of the director of the office of financial management as a voting member and the following nonvoting members: The executive director of the human rights commission, a representative of the council of state college and university presidents, the commissioner of employment security, the secretary of social and health services, the secretary of transportation, the director of general administration, and the director of commerce and economic development. The president of the senate and the speaker of the house shall appoint two members each, one from the majority, and one from the minority party of each body. The governor shall appoint nine voting members from the private sector who shall be representative of both sexes and who shall also be ethnically and geographically diverse. Six of the private sector members shall represent minority and women-owned businesses; three members shall be from the business community.

(2) The initial terms of the private sector members shall commence on July 1, 1983. Five private sector members shall be appointed for an initial term of two years; four private sector members shall be appointed for an initial term of four years. Thereafter, all private sector members shall be appointed for four years or until their respective successors are appointed. Appointments to fill vacancies shall be for the balance of any unexpired term, and shall be filled in the same manner as the original appointments.

(3) Private sector members shall serve without pay, but all committee members shall be entitled to reimbursement for travel expenses incurred in performance of their duties as members of the committee under RCW 43.03.050 and 43.03.060, except that legislative members shall be entitled to reimbursement under RCW 44.04.120.

(4) Six voting members constitute a quorum for the conduct of official business. The advisory committee shall elect a chairperson from among the private sector members.

NEW SECTION. Sec. 5. The rules adopted under section 3 of this act shall include requirements for standard clauses in requests for proposals, advertisements, bids, or calls for bids, necessary to carry out the purposes of this chapter, which shall include notice of the statutory penalties under sections 8 and 9 of this act for noncompliance.

NEW SECTION. Sec. 6. Each state agency and educational institution shall comply with the annual goals established for that agency or institution under this chapter for public works and procuring goods or services. This chapter applies to all public works and procurement by state agencies and educational institutions, including all contracts and other procurement under chapters 28B.10, 39.04, 39.29, 43.19, and 47.28 RCW.

NEW SECTION. Sec. 7. It is the intent of this chapter that the goals established under this chapter for participation by minority and women-owned 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.

NEW SECTION. Sec. 8. If a person, firm, corporation, business, union, or other organization prevents or interferes with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter, or submits 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.

NEW SECTION. Sec. 9. If a person, firm, corporation, or business does not comply with any provision of a contract required under this chapter, the state may withhold payment, debar, suspend, or terminate the contract and subject the contractor to civil penalties of ten percent of the amount of the contract or five thousand dollars, whichever is less. Wilful repeated violations, exceeding a single violation, may disqualify the contractor from further participation in state contracts for a period of one year. 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.

NEW SECTION. Sec. 10. There is added to chapter 28B.10 RCW a new section to read as follows:

All contracts entered into under this chapter by institutions of higher education on or after September 1, 1983, are subject to the requirements established under chapter 39.... RCW (sections 1 through 9 of this act).

NEW SECTION. Sec. 11. There is added to chapter 39.04 RCW a new section to read as follows:

All contracts entered into under this chapter by the state on or after September 1, 1983, are subject to the requirements established under chapter 39.... RCW (sections 1 through 9 of this act).

NEW SECTION. Sec. 12. There is added to chapter 39.29 RCW a new section to read as follows:

All contracts entered into under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.... RCW (sections 1 through 9 of this act).

NEW SECTION. Sec. 13. There is added to chapter 43.19 RCW a new section to read as follows:

All contracts entered into and purchases made, including leasing or renting, under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.... RCW (sections 1 through 9 of this act).

NEW SECTION. Sec. 14. There is added to chapter 41.06 RCW a new section to read as follows:

In addition to the exemptions set forth in RCW 41.06.070, this chapter shall not apply in the office of minority and women's business enterprises to the director, the director's confidential secretary, and the deputy director.

Sec. 15. Section 47.28.030, chapter 13, Laws of 1961 as last amended by section 3, chapter 225, Laws of 1977 ex. sess. and RCW 47.28.030 are each amended to read as follows:

A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right of way purposes may be repaired or renovated pending the use of such right of way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof is less than fifteen thousand dollars: PROVIDED, When delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than twenty-five thousand dollars. When the ~~((state highway commission))~~ department of transportation determines to do the work by state forces, it shall enter a ~~((resolution))~~ statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to effectively compete for highway department contracts, the ~~((state highway commission))~~ department may adopt rules and regulations providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed fifty thousand dollars. The rules and regulations adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but in the event such a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, materialmen, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39... RCW (sections 1 through 9 of this 1983 act) with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39... RCW (sections 1 through 9 of this 1983 act).

Sec. 16. Section 47.28.050, chapter 13, Laws of 1961 as last amended by section 1, chapter 69, Laws of 1979 ex. sess. and RCW 47.28.050 are each amended to read as follows:

Except as may be provided by rules and regulations adopted under RCW 47.28.030 as now or hereafter amended the department of transportation shall publish a call for bids for the construction of the highway according to the maps, plans, and specifications, once a week for at least two consecutive weeks, next preceding the day set for receiving and opening the bids, in not less than one trade paper of general circulation in the state. The call shall state the time, place, and date for receiving and opening the bids, give a brief description of the location and extent of the work, and contain such special provisions or specifications as the department deems necessary. When necessary to implement chapter 39... RCW (sections 1 through 9 of this 1983 act) and the rules adopted to implement that chapter, the department shall include in its call for bids provisions or specifications requiring bidders to comply with chapter 39... RCW (sections 1 through 9 of this 1983 act) and the rules adopted to implement it: PROVIDED, That when the estimated cost of any contract to be awarded is less than fifty thousand dollars, the call for bids need only be published in at least one paper of general circulation in the county where the major part of the work is to be performed: PROVIDED FURTHER, That when the estimated cost of a contract to be awarded is seven thousand five hundred dollars or less, including the cost of materials, supplies, engineering, and equipment, the department of transportation need not publish a call for bids: PROVIDED FURTHER, That after a bid call has been advertised for two consecutive weeks it may be postponed and the bids opened one week later.

Sec. 17. Section 47.28.090, chapter 13, Laws of 1961 as amended by section 2, chapter 21, Laws of 1971 ex. sess. and RCW 47.28.090 are each amended to read as follows:

At the time and place named in the call for bids the ~~((Washington state highway commission))~~ department of transportation shall publicly open and read the final figure in each of the bid proposals properly filed and read only the bid items on the three lowest bids, and shall award the contract to the lowest responsible bidder unless the ~~((commission))~~ department has, for good cause, continued the date of opening bids to a day certain, or rejected said bid: PROVIDED, That any bid may be rejected if the bidder has previously defaulted in the performance of and failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract ~~((: AND PROVIDED FURTHER, That notwithstanding any other provision of law, the highway commission, in awarding contracts for which bids have been accepted prior to July 1, 1971, for construction of ferries for the Washington state ferry system, may consider the bid of the lowest responsible bidder operating shipbuilding facilities and proposing to build such ferries in the state of Washington by evaluating and including the projected direct and indirect tax revenues generated by construction of~~

~~the ferries within the state. Moneys expended to meet the added cost incurred as a consequence of the award of a contract authorized by this proviso shall come from such funds as may be available)). If the lowest responsible bidder fails to meet the provisions or specifications requiring compliance with chapter 39... RCW (sections 1 through 9 of this 1983 act) and the rules adopted to implement that chapter, the department may award the contract to the next lowest responsible bidder which does meet the provisions or specifications or may reject all bids and readvertise. All bids shall be undersealed cover and accompanied by deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the bid and no bid shall be considered unless the deposit is enclosed therewith.~~

NEW SECTION. Sec. 18. (1) 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.

(2) If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 19. (1) The legislative budget committee shall cause to be conducted an initial program and fiscal review of the minority and women's business enterprise program under this chapter. Such program and fiscal review shall be completed and a report prepared by June 30, 1986. Upon completion of the report, the legislative budget committee shall transmit copies of the report to the office of minority and women's business enterprises and to the office of financial management. Each office shall transmit its comments to the legislative budget committee within thirty days. The legislative budget committee shall prepare a final report, including the offices' comments, and transmit copies of such report to both offices, to the governor, and to all members of the legislature.

(2) The select joint committee on sunset, as defined in RCW 43.131-.120, shall conduct a preliminary sunset program and fiscal review of the minority and women's business enterprise program under this chapter to determine if such program shall be scheduled for termination and full sunset review under chapter 43.131 RCW. Such preliminary sunset program and fiscal review shall be completed and a report prepared by June 30, 1990.

NEW SECTION. Sec. 20. Sections 1 through 9 of this act constitute a new chapter in Title 39 RCW.

NEW SECTION. Sec. 21. (1) 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 July 1, 1983.

(2) Contracts entered into before September 1, 1983, are not subject to this act.

Passed the Senate March 25, 1983.

Passed the House April 18, 1983.

Approved by the Governor April 23, 1983.

Filed in Office of Secretary of State April 23, 1983.

CHAPTER 121

[Senate Bill No. 3018]

PRELIMINARY PLATS—FILING PERIODS—LOCAL AUTHORITY—
REVIEW OF DECISION

AN ACT Relating to the division of land; amending and reenacting section 2, chapter 271, Laws of 1969 ex. sess. as amended by section 1, chapter 292, Laws of 1981 and by section 2, chapter 293, Laws of 1981 and RCW 58.17.020; amending and reenacting section 4, chapter 271, Laws of 1969 ex. sess. as last amended by section 2, chapter 292, Laws of 1981 and by section 3, chapter 293, Laws of 1981 and RCW 58.17.040; amending section 14, chapter 271, Laws of 1969 ex. sess. as last amended by section 7, chapter 293, Laws of 1981 and RCW 58.17.140; amending section 15, chapter 271, Laws of 1969 ex. sess. as amended by section 8, chapter 293, Laws of 1981 and RCW 58.17.150; and amending section 18, chapter 271, Laws of 1969 ex. sess. and RCW 58.17.180.

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

Sec. 1. Section 2, chapter 271, Laws of 1969 ex. sess. as amended by section 1, chapter 292, Laws of 1981 and by section 2, chapter 293, Laws of 1981 and RCW 58.17.020 are each amended and reenacted to read as follows:

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

(3) "Dedication" is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to