Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1436

AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-13-16.5-1, AS AMENDED BY P.L.195-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. As used in this chapter:

"Commission" refers to the governor's commission on minority and women's business enterprises established under section 2 of this chapter.

"Commissioner" refers to the deputy commissioner for minority and women's business enterprises of the department.

"Contract" means any contract awarded by a state agency for construction projects or the procurement of goods or services, including professional services.

"Department" refers to the Indiana department of administration established by IC 4-13-1-2.

"Minority business enterprise" or "minority business" means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one (1) or more persons who are:

(1) United States citizens; and

(2) members of a minority group.

"Owned and controlled" means having:

(1) ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation;

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(2) control over the management and active in the day-to-day operations of the business; and

(3) an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership.

"Minority group" means:

(1) Blacks;

(2) American Indians;

(3) Hispanics;

(4) Asian Americans; and

(5) other similar minority groups, as defined by 13 CFR 124.103.

"Separate body corporate and politic" refers to an entity established by the general assembly as a body corporate and politic.

"State agency" refers to any ~~of the following:~~

~~(1) An~~ authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government.

~~(2) An entity established by the general assembly as a body corporate and politic.~~

~~(3) A~~ "State educational institution" **has the meaning set forth in IC 20-12-0.5-1.**

~~The term does not include the state lottery commission or the Indiana gaming commission with respect to setting and enforcing goals for awarding contracts to minority and women's business enterprises.~~

SECTION 2. IC 4-13-16.5-2, AS AMENDED BY P.L.41-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) There is established a governor's commission on minority and women's business enterprises. The commission shall consist of the following members:

(1) A governor's designee, who shall serve as chairman of the commission.

(2) The commissioner of the Indiana department of transportation.

(3) The director of the department of commerce.

(4) The commissioner of the department.

(5) Nine (9) individuals with demonstrated capabilities in business and industry, especially minority and women's business enterprises, appointed by the governor from the following geographical areas of the state:

(A) Three (3) from the northern one-third (1/3) of the state.

(B) Three (3) from the central one-third (1/3) of the state.

(C) Three (3) from the southern one-third (1/3) of the state.

(6) Two (2) members of the house of representatives, no more

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than one (1) from the same political party, appointed by the speaker of the house of representatives to serve in a nonvoting advisory capacity.

(7) Two (2) members of the senate, no more than one (1) from the same political party, appointed by the president pro tempore of the senate to serve in a nonvoting advisory capacity.

Not more than six (6) of the ten (10) members appointed or designated by the governor may be of the same political party. Appointed members of the commission shall serve four (4) year terms. A vacancy occurs if a legislative member leaves office for any reason. Any vacancy on the commission shall be filled in the same manner as the original appointment.

(b) Each member of the commission who is not a state employee is entitled to the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided under IC 4-13-1-4 and in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each legislative member of the commission is entitled to receive the same per diem, mileage, and travel allowances established by the legislative council and paid to members of the general assembly serving on interim study committees. The allowances specified in this subsection shall be paid by the legislative services agency from the amounts appropriated for that purpose.

(d) A member of the commission who is a state employee but who is not a member of the general assembly is not entitled to any of the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.

(3) Other expenses actually incurred in connection with the member's duties.

(e) The commission shall meet at least four (4) times each year and at other times as the chairman deems necessary.

(f) The duties of the commission shall include but not be limited to the following:

(1) Identify minority and women's business enterprises in the state.

(2) Assess the needs of minority and women's business enterprises.

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(3) Initiate aggressive programs to assist minority and women's business enterprises in obtaining state contracts.

(4) Give special publicity to procurement, bidding, and qualifying procedures.

(5) Include minority and women's business enterprises on solicitation mailing lists.

(6) Define the duties, goals, and objectives of the deputy commissioner of the department as created under this chapter to assure compliance by all state agencies, **separate bodies corporate and politic, and state educational institutions** with state and federal legislation and policy concerning the awarding of contracts to minority and women's business enterprises.

(7) Establish annual goals:

(A) for the use of minority and women's business enterprises; and

(B) derived from a statistical analysis of utilization study of state contracts that are required to be updated every five (5) years.

(8) Prepare a review of the commission and the various affected departments of government to be submitted to the governor and the legislative council on March 1 and October 1 of each year, evaluating progress made in the areas defined in this subsection.

(g) The department shall adopt rules of ethics under IC 4-22-2 for commission members other than commission members appointed under subsection (a)(6) or (a)(7).

(h) The department shall furnish administrative support and staff as is necessary for the effective operation of the commission.

SECTION 3. IC 4-13-16.5-3, AS AMENDED BY P.L.195-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) There is created in the department a deputy commissioner for minority and women's business enterprise development. Upon consultation with the commission, the commissioner of the department, with the approval of the governor, shall appoint an individual who possesses demonstrated capability in business or industry, especially in minority or women's business enterprises, to serve as deputy commissioner to work with the commission in the implementation of this chapter.

(b) The deputy commissioner shall do the following:

(1) Identify and certify minority and women's business enterprises for state projects.

(2) Establish a central certification file.

(3) Periodically update the certification status of each minority or

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women's business enterprise.

(4) Monitor the progress in achieving the goals established under section 2(f)(7) of this chapter.

(5) Require **all** state agencies, **separate bodies corporate and politic, and state educational institutions** to report on planned and actual participation of minority and women's business enterprises in contracts awarded by state agencies. The commissioner may exclude from the reports uncertified minority and women's business enterprises.

(6) Determine and define opportunities for minority and women's business participation in contracts awarded by **all** state agencies, **separate bodies corporate and politic, and state educational institutions.**

(7) Implement programs initiated by the commission under section 2 of this chapter.

(8) Perform other duties as defined by the commission or by the commissioner of the department.

SECTION 4. IC 4-13-16.5-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 6. (a) Notwithstanding any other law, the standards developed under this chapter apply to the determination and certification of a business as a minority business enterprise or a women's business enterprise under any Indiana law.**

(b) Notwithstanding any other law, a certification of a business as a minority business enterprise or a women's business enterprise under this chapter satisfies any Indiana law providing for or requiring the certification of a business as a minority business enterprise or a women's business enterprise.

SECTION 5. IC 4-13-16.5-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 7. For purposes of IC 5-14-3, materials containing:**

(1) personal financial information; or

(2) confidential business information;

submitted by an applicant for certification as a minority business enterprise or a women's business enterprise are confidential.

SECTION 6. IC 4-33-14-5, AS AMENDED BY P.L.92-2003, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) As used in this section, "goods and services" does not include the following:

(1) Utilities and taxes.

(2) Financing costs, mortgages, loans, or other debt.

(3) Medical insurance.

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(4) Fees and payments to a parent or an affiliated company of an operating agent or the person holding an owner's license, other than fees and payments for goods and services supplied by nonaffiliated persons through an affiliated company for the use or benefit of the operating agent or the person holding the owner's license.

(5) Rents paid for real property or payments constituting the price of an interest in real property as a result of a real estate transaction.

(b) Notwithstanding any law or rule to the contrary, the commission shall establish annual goals for an operating agent or a person issued an owner's license:

(1) for the use of minority and women's business enterprises; and

(2) derived from a statistical analysis of utilization study of licensee and operating agent contracts for goods and services that are required to be updated every five (5) years.

(c) An operating agent or a person holding an owner's license shall submit annually to the commission a report that includes the **following information:**

(1) The total dollar value of contracts awarded for goods or services and the percentage awarded to minority and women's business enterprises.

(2) The following information relating to each minority business enterprise or women's business enterprise awarded a contract for goods or services:

(A) The name.

(B) The address.

(C) The total dollar amount of the contract.

A record containing information described in this subsection is not exempt from the disclosure requirements of IC 5-14-3-3 under IC 5-14-3-4.

~~(c)~~ **(d)** An operating agent or a person holding an owner's license shall make a good faith effort to meet the requirements of this section and shall annually demonstrate to the commission that an effort was made to meet the requirements.

~~(d)~~ **(e)** An operating agent or a person holding an owner's license may fulfill not more than seventy percent (70%) of an obligation under this chapter by requiring a vendor to set aside a part of a contract for minority or women's business enterprises. Upon request, the licensee or operating agent shall provide the commission with proof of the amount of the set aside.

SECTION 7. IC 4-33-14-7 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. The commission shall ~~establish and administer a unified certification procedure~~ **use the certifications made under IC 4-13-16.5** for minority and women's business enterprises that do business with riverboat operations on contracts for goods and services or contracts for business.

SECTION 8. IC 4-33-14-8, AS AMENDED BY P.L.92-2003, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. The commission shall supply persons holding owner's licenses and the operating agent with a list of the **certified** minority and women's business enterprises. ~~the commission has certified under section 7 of this chapter. The commission shall review the list annually to determine the minority and women's business enterprises that should continue to be certified. The commission shall establish a procedure for challenging the designation of a certified minority and women's business enterprise. The procedure must include proper notice and a hearing for all parties concerned.~~

SECTION 9. [EFFECTIVE JULY 1, 2004] **(a) The definitions in IC 4-13-16.5, as amended by this act, apply throughout this SECTION.**

(b) As used in this SECTION, "reporting period" refers to the period:

(1) beginning January 1, 1999; and

(2) ending December 31, 2003.

(c) As used in this SECTION, "small business enterprise" has the meaning set forth in 25 IAC 1.5-1-9.

(d) As used in this SECTION, "special business enterprise" refers to any of the following:

(1) A minority business enterprise.

(2) A small business enterprise.

(3) A women's business enterprise.

(e) Each state agency, separate body corporate and politic, and state educational institution shall analyze the use of special business enterprises in the agency's, body's, or institution's purchasing, construction, and contracting practices.

(f) The analysis required by subsection (e) must include the following information, specified for each special business enterprise type described in subsection (d), for each calendar year in the reporting period, and for a state educational institution, for each campus of the state educational institution:

(1) Number of contracts awarded.

(2) Total dollar amount of contracts awarded.

(3) A classification of different contract types awarded by the

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agency, body, or institution and the number of contracts awarded in each classification.

(4) A description of efforts made by the agency, body, or institution to encourage each business enterprise type to do business with the agency, body, or institution during the reporting period.

(g) The analysis required by subsection (f) must include the same information required for the reporting period by subsection (f) for businesses that are not special business enterprises.

(h) Each agency, body, and institution shall file a written report in electronic format under IC 5-14-6 of the results of the analysis required by this SECTION with the legislative council not later than November 1, 2004.

(i) This SECTION expires January 1, 2006.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved:

Governor of the State of Indiana

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