CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1566

Citations Affected: IC 4-13-16.5.

Synopsis: Minority and women's business enterprises. Conference committee report for EHB 1566. Expands the definition of "minority business enterprise" to include nonprofit qualified minority or women's nonprofit corporations. Requires that the statistical analysis required of the governor's commission on minority and women's business enterprises must: (1) use criteria for participation of minority business enterprises established in Richmond v. Croson; (2) include information on both contracts and subcontracts; and (3) use data based on the combined capacity of minority businesses in Indiana and not just regional data. Requires the commission to conduct an analysis during the 2007-2008 fiscal year. Requires the commission to evaluate the competitive differences between qualified minority or women's nonprofit corporations and other than qualified minority or women's nonprofit corporations that offer similar services. Specifies that the goals and objectives concerning the awarding of contracts to minority and women's business enterprises applies to contracts of state educational institutions. Specifies that the statistical analysis used to establish the goals applies to contracts and subcontracts of state educational institutions. Requires a contractor whose offer designated minority or women's business enterprises to furnish any supplies or perform any work under the contract awarded by a state agency to the contractor to: (1) notify in writing each minority and women's owned business enterprise designated in the contractor's offer that the contractor has been awarded the contract; and (2) give copies of each notification to the state agency that awarded the contract. Provides for remedies if the contractor fails to satisfy these requirements. Requires the department of administration to adopt rules to resolve grievances arising under the minority and women's owned business enterprise statute. **(This conference committee report expands the definition of "minority business enterprise" to include nonprofit qualified minority or women's nonprofit corporations. Requires the commission to evaluate the competitive differences between qualified minority or women's nonprofit corporations and other than qualified minority or women's nonprofit corporations that offer similar services. Makes conforming changes.)**

Effective: July 1, 2007.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1566 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-13-16.5-1, AS AMENDED BY SEA 526-2007, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. **(a)** The ~~following~~ definitions **in this section** apply throughout this chapter.

~~(1)~~ **(b)** "Commission" refers to the governor's commission on minority and women's business enterprises established under section 2 of this chapter.

~~(2)~~ **(c)** "Commissioner" refers to the deputy commissioner for minority and women's business enterprises of the department.

~~(3)~~ **(d)** "Contract" means any contract awarded by a state agency for construction projects or the procurement of goods or services, including professional services.

~~(4)~~ **(e)** "Department" refers to the Indiana department of administration established by IC 4-13-1-2.

~~(5)~~ **(f)** "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:

~~(A)~~ **(1)** United States citizens; and

~~(B)~~ **(2)** members of a minority group **or a qualified minority or women's nonprofit corporation.**

(g) "Qualified minority or women's nonprofit corporation" means a corporation that:

(1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
(2) is headquartered in Indiana;
(3) has been in continuous existence for at least five (5) years;
(4) has a board of directors that has been in compliance with all other requirements of this chapter for at least five (5) years;
(5) is chartered for the benefit of the minority community; and
(6) provides a service that will not impede competition among minority business enterprises or women's business enterprises at the time a nonprofit applies for certification as a minority business enterprise or a women's business enterprise.

~~(6)~~ **(h)** "Owned and controlled" means: ~~having:~~

(1) if the business is a qualified minority or women's nonprofit corporation, a majority of the board of directors; or
(2) if the business is a business other than a qualified minority or women's nonprofit corporation, having:

(A) ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation;
(B) control over the management and active in the day-to-day operations of the business; and
(C) an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership.

~~(7)~~ **(i)** "Minority group" means:

~~(A)~~ **(1)** Blacks;
~~(B)~~ **(2)** American Indians;
~~(C)~~ **(3)** Hispanics;
~~(D)~~ **(4)** Asian Americans; and
~~(E)~~ **(5)** other similar minority groups. ~~as defined by 13 CFR 124.103.~~

~~(8)~~ **(j)** "Separate body corporate and politic" refers to an entity established by the general assembly as a body corporate and politic.

~~(9)~~ **(k)** "State agency" refers to any authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government

SECTION 2. IC 4-13-16.5-2, AS AMENDED BY P.L.4-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: 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 chairperson of the board of the Indiana economic development corporation or the chairperson's designee.
(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 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 considers 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.

(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) Evaluate the competitive differences between qualified minority or women's nonprofit corporations and other than qualified minority or women's nonprofit corporations that offer similar services and make recommendation to the department on policy changes necessary to ensure fair competition among minority and women's business enterprises.

~~(6)~~ **(7)** 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 **(including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions)** to minority and women's business enterprises.

~~(7)~~ **(8)** 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 **(including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions)** that are required to be updated every five (5) years.

~~(8)~~ **(9)** 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.

(10) Ensure that the statistical analysis required under this section:

(A) is based on goals for participation of minority business enterprises established in Richmond v. Croson, 488 U.S. 469 (1989);

(B) includes information on both contracts and subcontracts (including, notwithstanding section 1(d) of this chapter or any other law, contracts and subcontracts of state educational institutions); and

(C) uses data on the combined capacity of minority and women's businesses enterprises in Indiana and not just regional data.

(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 4-13-16.5-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8. (a) This section applies to a contractor whose offer designated minority businesses or women's business enterprises to**

furnish any supplies or perform any work under the contract awarded to the contractor.

(b) As used in this section, "contract" refers to any of the following:

(1) A contract for the purchase of supplies by a state agency.

(2) A contract for the performance of services for a state agency.

(3) A public works contract (as defined in IC 4-13.6-1-14).

(4) A contract to perform professional services (as defined in IC 4-13.6-1-11) in connection with a public works contract.

(c) As used in this section, "contractor" refers to a person awarded a contract by a state agency.

(d) As used in this section, "offer" means a response to a solicitation. The term includes a bid, proposal, and quote.

(e) As used in this section, "solicitation" means the procedure by which a state agency invites persons to submit an offer to enter into a contract with the state agency. The term includes an invitation for bids, a request for proposals, and a request for quotes.

(f) Before beginning work on a contract, a contractor shall do the following:

(1) Notify in writing each minority business and women's business enterprise designated in the contractor's offer that the contractor has been awarded the contract.

(2) Give copies of each notification to the state agency that awarded the contract.

(g) If a contractor fails to comply with subsection (f), the awarding state agency may consider the failure a breach of contract and do any of the following:

(1) Cancel the contract.

(2) Collect from the contractor all funds paid to the contractor under the contract.

(3) Exercise any of the state's rights set out in the contract.

(4) Use the failure as a basis for finding the contractor not responsible when awarding other contracts.

SECTION 4. IC 4-13-16.5-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9. (a) The department shall adopt rules under IC 4-22-2 to establish procedures to resolve grievances arising under this chapter.**

(b) The rules may include informal procedures to resolve grievances.

(c) The procedures established under the rules must provide for final resolution of grievances before either of the following:

(1) A panel of three (3) commission members. A panel formed under this subdivision must consist of at least two (2) commission members described in section 2(a)(5) of this chapter.

(2) The commission. However, if the commission acts to resolve a grievance under this subdivision, members of the commission described in section 2(a)(6) or 2(a)(7) may not

participate in the proceeding.

(d) Final resolution of grievances arising under this chapter are subject to IC 4-21.5.

SECTION 5. [EFFECTIVE JULY 1, 2007] **(a) Notwithstanding the provisions in IC 4-13-16.5-2, as amended by this act, requiring that statistical analysis of the use of minority and women's business enterprises must be updated every five (5) years, the commission on minority and women's business enterprises shall:**

(1) conduct; or

(2) enter into a contract for;

the statistical analysis of the use of minority and women's business enterprises during the fiscal year beginning July 1, 2007, and ending June 30, 2008.

(b) The criteria for the analysis in IC 4-13-16.5-2, as amended by this act, must be used for the statistical analysis required under this SECTION.

(c) This SECTION expires December 31, 2008.

(Reference is to EHB 1566 as reprinted April 11. 2007.

Conference Committee Report
on
Engrossed House Bill 1566

Signed by:

_____	_____
Representative Crawford Chairperson	Senator Ford
_____	_____
Representative Duncan	Senator Simpson
House Conferees	**Senate Conferees**