

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 197

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.228-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

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

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

(d) "Contract" means any contract awarded by a state agency for construction projects or the procurement of goods or services, including professional services. **For purposes of this subsection, "goods or services" may not include the following when determining the total value of contracts for state agencies:**

- (1) Utilities.
- (2) Health care services (as defined in IC 27-8-11-1(c)).
- (3) Rent paid for real property or payments constituting the price of an interest in real property as a result of a real estate transaction.

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

(f) "Minority business enterprise" or "minority business" means an

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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 or a qualified minority 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 or women; 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.

(h) "Owned and controlled" means:

- (1) if the business is a qualified minority nonprofit corporation, a majority of the board of directors are minority;
- (2) if the business is a qualified women's nonprofit corporation, a majority of the board of ~~defectors~~ **directors** are women; or
- (3) 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.

(i) "Minority group" means:

- (1) Blacks;
- (2) American Indians;
- (3) Hispanics; **and**
- (4) Asian Americans. ~~and~~
- ~~(5) other similar minority groups.~~

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

(k) "State agency" refers to any authority, board, branch,

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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.228-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: 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, **or the economic opportunity director of the Indiana department of transportation if the commissioner of the Indiana department of transportation so designates.**
- (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

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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.
- (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

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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.

(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.

(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 4-35-11-3, AS ADDED BY P.L.233-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. As used in this chapter, "minority" means a person who is one (1) of the following:

(1) Black;

(2) Hispanic;

(3) Asian American;

(4) Native American or Alaskan native;

member of a minority group (as defined in IC 4-13-16.5-1).

SECTION 4. IC 4-35-11-4, AS ADDED BY P.L.233-2007,

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SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. As used in this chapter, "minority business enterprise" means a business that is one (1) of the following:

- (1) A sole proprietorship owned and controlled by a minority.
- (2) A partnership or joint venture owned and controlled by minorities and in which:
 - (A) at least fifty-one percent (51%) of the ownership interest is held by at least one (1) minority; and
 - (B) the management and daily business operations are controlled by at least one (1) minority who also holds an ownership interest.

- (3) A corporation or other entity in which:
 - (A) at least fifty-one percent (51%) of:
 - (i) the ownership interest; or
 - (ii) the stock, if stock is issued;
 is held by at least one (1) minority; and
 - (B) the management and daily business operations are controlled by at least one (1) minority who also holds an ownership interest or stock.

has the meaning set forth in IC 4-13-16.5-1.

SECTION 5. IC 4-35-11-5, AS ADDED BY P.L.233-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. As used in this chapter, "women's business enterprise" means a business that is one (1) of the following:

- (1) A sole proprietorship owned and controlled by a woman.
- (2) A partnership or joint venture owned and controlled by women and in which:
 - (A) at least fifty-one percent (51%) of the ownership interest is held by at least one (1) woman; and
 - (B) the management and daily business operations are controlled by at least one (1) woman who also holds an ownership interest.

- (3) A corporation or other entity in which:
 - (A) at least fifty-one percent (51%) of:
 - (i) the ownership interest; or
 - (ii) the stock, if stock is issued;
 is held by at least one (1) woman; and
 - (B) the management and daily business operations are controlled by at least one (1) woman who also holds an ownership interest or stock.

has the meaning set forth in IC 4-13-16.5-1.3.

SECTION 6. IC 4-35-11-8, AS ADDED BY P.L.233-2007,

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SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **The commission shall use the certifications made under IC 4-13-16.5 for minority and women's business enterprises that do business with horse track operations on contracts for goods or services or contracts for business.**

The commission shall establish and administer a unified certification procedure for minority and women's business enterprises that do business with permit holders on contracts for goods and services or contracts for business:

SECTION 7. IC 4-35-11-9, AS ADDED BY P.L.233-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. The commission shall supply permit holders with a list of minority and women's business enterprises the commission has certified under section 8 of this chapter. The commission shall review the list at least annually to determine the minority and women's business enterprises that should continue to be certified. The commission shall establish procedures for challenging the designation of a certified minority and women's business enterprise. The procedure must include proper notice and a hearing for all concerned parties:

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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