

HOUSE BILL No. 1252

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-13-16.5.

Synopsis: Veterans business set-aside. Service disabled veterans' businesses. Changes the name of the governor's commission on minority and women's business enterprises to the governor's commission on minority, women's, and service disabled veterans' business enterprises. Expands the membership of the commission, and makes the director of the Indiana department of veterans' affairs a member of the commission. Specifies qualifications that a business must meet to be a service disabled veterans' business enterprise. Requires the commission to establish annual goals for the use of service disabled veteran owned businesses in state contracts.

Effective: July 1, 2013.

Kirchhofer, Thompson

January 14, 2013, read first time and referred to Committee on Veterans Affairs and Public Safety.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1252



A BILL FOR AN ACT to amend the Indiana Code concerning military and veterans.

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

1 SECTION 1. IC 4-13-16.5-1, AS AMENDED BY P.L.114-2010,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 1. (a) The definitions in this section apply
4 throughout this chapter.

5 (b) "Commission" refers to the governor's commission on minority,
6 **and women's, and service disabled veterans'** business enterprises
7 established under section 2 of this chapter.

8 (c) "Commissioner" refers to the deputy commissioner for minority,
9 **and women's, and service disabled veterans'** business enterprises of
10 the department.

11 (d) "Contract" means any contract awarded by a state agency or, as
12 set forth in section 2(f)(11) of this chapter, awarded by a recipient of
13 state grant funds, for construction projects or the procurement of goods
14 or services, including professional services. For purposes of this
15 subsection, "goods or services" may not include the following when
16 determining the total value of contracts for state agencies:

17 (1) Utilities.



- 1 (2) Health care services (as defined in IC 27-8-11-1(c)).
 2 (3) Rent paid for real property or payments constituting the price
 3 of an interest in real property as a result of a real estate
 4 transaction.
- 5 (e) "Contractor" means a person or entity that:
 6 (1) contracts with a state agency; or
 7 (2) as set forth in section 2(f)(11) of this chapter:
 8 (A) is a recipient of state grant funds; and
 9 (B) enters into a contract:
 10 (i) with a person or entity other than a state agency; and
 11 (ii) that is paid for in whole or in part with the state grant
 12 funds.
- 13 (f) "Department" refers to the Indiana department of administration
 14 established by IC 4-13-1-2.
- 15 (g) "Minority business enterprise" or "minority business" means an
 16 individual, partnership, corporation, limited liability company, or joint
 17 venture of any kind that is owned and controlled by one (1) or more
 18 persons who are:
 19 (1) United States citizens; and
 20 (2) members of a minority group or a qualified minority nonprofit
 21 corporation.
- 22 (h) "Qualified minority **nonprofit corporation**", "**qualified service**
 23 **disabled veterans' nonprofit business**", or "**qualified women's**
 24 **nonprofit corporation**" means a corporation (**or, in the case of a**
 25 **qualified service disabled veterans' nonprofit business, an**
 26 **individual, partnership, corporation, limited liability company, or**
 27 **joint venture of any kind**) that:
 28 (1) is exempt from federal income taxation under Section
 29 501(c)(3) of the Internal Revenue Code;
 30 (2) is headquartered in Indiana;
 31 (3) has been in continuous existence for at least five (5) years;
 32 (4) has a board of directors that has been in compliance with all
 33 other requirements of this chapter for at least five (5) years;
 34 (5) is chartered (**or, in the case of a service disabled veterans'**
 35 **nonprofit business, established**) for the benefit of the minority
 36 community, **the service disabled veterans' community**, or
 37 women; and
 38 (6) provides a service that will not impede competition among
 39 minority business enterprises, **or women's business enterprises, or**
 40 **service disabled veterans' business enterprises** at the time a **the**
 41 nonprofit applies for certification as a minority business
 42 enterprise, **or a service disabled veterans' business enterprise,**

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1 **or** a women's business enterprise.

2 (i) "Owned and controlled" means:

3 (1) if the business is a qualified minority nonprofit corporation, a
4 majority of the board of directors are minority;

5 (2) if the business is a qualified women's nonprofit corporation,
6 a majority of the members of the board of directors are women; **or**

7 **(3) if the business is a qualified service disabled veterans'**
8 **nonprofit business that has a board of directors, a majority of**
9 **the board of directors are service disabled veterans; or**

10 **(4) if the business is a business other than a qualified minority**
11 **nonprofit corporation, a qualified service disabled veterans'**
12 **nonprofit business, or a qualified** women's nonprofit
13 corporation, having:

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

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

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

20 (j) "Minority group" means:

21 (1) Blacks;

22 (2) American Indians;

23 (3) Hispanics; and

24 (4) Asian Americans.

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

27 (l) "State agency" refers to any authority, board, branch,
28 commission, committee, department, division, or other instrumentality
29 of the executive, including the administrative, department of state
30 government.

31 **(m) "Service disabled veteran" has the meaning set forth in 15**
32 **U.S.C. 632(q)(1), as in effect January 1, 2013.**

33 **(n) "Service disabled veterans' business" or "service disabled**
34 **veterans' business enterprise" means an individual, partnership,**
35 **corporation, limited liability company, or joint venture of any kind**
36 **that:**

37 **(1) is owned and controlled by one (1) or more persons who**
38 **are:**

39 **(A) service disabled veterans; and**

40 **(B) citizens of the United States; and**

41 **(2) has a current verification as a service disabled veteran**
42 **owned business under 38 CFR 74 et seq. by the Center of**

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1 **Veterans Enterprise of the United States Department of**
 2 **Veterans Affairs.**

3 SECTION 2. IC 4-13-16.5-1.1 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.1. **Except for the**
 5 **reference in section 1(m) of this chapter**, a reference to a federal
 6 statute or regulation in this chapter is a reference to the statute or
 7 regulation as in effect January 1, 2001.

8 SECTION 3. IC 4-13-16.5-2, AS AMENDED BY P.L.114-2010,
 9 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2013]: Sec. 2. (a) There is established a governor's
 11 commission on minority, ~~and~~ women's, **and service disabled veterans'**
 12 **business enterprises**. The commission shall consist of the following
 13 members:

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

16 (2) The commissioner of the Indiana department of transportation,
 17 or the economic opportunity director of the Indiana department of
 18 transportation if the commissioner of the Indiana department of
 19 transportation so designates.

20 (3) The chairperson of the board of the Indiana economic
 21 development corporation or the chairperson's designee.

22 (4) The commissioner of the department.

23 (5) ~~Nine (9)~~ **Twelve (12)** individuals with demonstrated
 24 capabilities in business and industry, especially minority, **service**
 25 **disabled veterans' business enterprises**, and women's business
 26 enterprises, appointed by the governor from the following
 27 geographical areas of the state:

28 (A) ~~Three (3)~~ **Four (4)** from the northern one-third (1/3) of the
 29 state.

30 (B) ~~Three (3)~~ **Four (4)** from the central one-third (1/3) of the
 31 state.

32 (C) ~~Three (3)~~ **Four (4)** from the southern one-third (1/3) of the
 33 state.

34 (6) Two (2) members of the house of representatives, no more
 35 than one (1) from the same political party, appointed by the
 36 speaker of the house of representatives to serve in a nonvoting
 37 advisory capacity.

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

41 **(8) The director of the Indiana department of veterans' affairs**
 42 **established by IC 10-17-1-2.**

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1 Not more than ~~six (6)~~ **seven (7)** of the ~~ten (10)~~ **twelve (12)** members
 2 appointed or ~~designated~~ by the governor **under subdivision (5)** may be
 3 of the same political party. Appointed members of the commission
 4 shall serve four (4) year terms. A vacancy occurs if a legislative
 5 member leaves office for any reason. Any vacancy on the commission
 6 shall be filled in the same manner as the original appointment.

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

- 9 (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
 10 (2) Reimbursement for traveling expenses and other expenses
 11 actually incurred in connection with the member's duties as
 12 provided under IC 4-13-1-4 and in the state travel policies and
 13 procedures established by the Indiana department of
 14 administration and approved by the budget agency.

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

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

- 24 (1) The minimum salary per diem provided by IC 4-10-11-2.1(b).
 25 (2) Reimbursement for traveling expenses as provided under
 26 IC 4-13-1-4.
 27 (3) Other expenses actually incurred in connection with the
 28 member's duties.

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

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

- 33 (1) Identify minority, ~~and~~ women's, **and service disabled**
 34 **veterans'** business enterprises in the state.
 35 (2) Assess the needs of minority, ~~and~~ women's, **and service**
 36 **disabled veterans'** business enterprises.
 37 (3) Initiate aggressive programs to assist minority, ~~and~~ women's,
 38 **and service disabled veterans'** business enterprises in obtaining
 39 state contracts.
 40 (4) Give special publicity to procurement, bidding, and qualifying
 41 procedures.
 42 (5) Include minority, ~~and~~ women's, **and service disabled**

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1 **veterans'** business enterprises on solicitation mailing lists.

2 (6) Evaluate the competitive differences between:

3 (A) qualified minority or women's nonprofit corporations **and**
 4 **qualified service disabled veterans' nonprofit businesses;**
 5 and

6 (B) **business enterprises** other than qualified minority or
 7 women's nonprofit corporations **and qualified service**
 8 **disabled veterans' nonprofit businesses** that offer similar
 9 services;

10 and make recommendation to the department on policy changes
 11 necessary to ensure fair competition among minority, ~~and~~
 12 women's, **and service disabled veterans'** business enterprises.

13 (7) Define the duties, goals, and objectives of the deputy
 14 commissioner of the department as created under this chapter to
 15 assure compliance by all state agencies, separate bodies corporate
 16 and politic, and state educational institutions with state and
 17 federal legislation and policy concerning the awarding of
 18 contracts (including, notwithstanding section 1(d) of this chapter
 19 or any other law, contracts of state educational institutions) to
 20 minority **business enterprises, service disabled veterans'**
 21 **business enterprises,** and women's business enterprises.

22 (8) Establish annual goals:

23 (A) for the use of minority **business enterprises, service**
 24 **disabled veterans' business enterprises,** and women's
 25 business enterprises; and

26 (B) derived from a statistical analysis of utilization study of
 27 state contracts (including, notwithstanding section 1(d) of this
 28 chapter or any other law, contracts of state educational
 29 institutions) that are required to be updated every five (5)
 30 years.

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

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

37 (A) is based on goals for participation of minority business
 38 enterprises established in *Richmond v. Croson*, 488 U.S. 469
 39 (1989);

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

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- 1 institutions); and
 2 (C) uses data on the combined capacity of minority **business**
 3 **enterprises, service disabled veterans' business enterprises,**
 4 and women's businesses enterprises in Indiana and not just
 5 regional data.
 6 (11) Establish annual goals for the use of minority **business**
 7 **enterprises, service disabled veterans' business enterprises,**
 8 and women's business enterprises for any contract that:
 9 (A) will be paid for in whole or in part with state grant funds;
 10 and
 11 (B) involves the use of real property of a unit (as defined in
 12 IC 4-4-32.2-9).
 13 (g) The department shall direct contractors to demonstrate a good
 14 faith effort to meet the annual participation goals established under
 15 subsection (f)(11). The good faith effort shall be demonstrated by
 16 contractors using the repository of certified firms created under section
 17 3 of this chapter or a similar repository maintained by a unit (as defined
 18 in IC 4-4-32.2-9).
 19 (h) The department shall adopt rules of ethics under IC 4-22-2 for
 20 commission members other than commission members appointed
 21 under subsection (a)(6) or (a)(7).
 22 (i) The department shall furnish administrative support and staff as
 23 is necessary for the effective operation of the commission.
 24 (j) The commission shall advise the department on developing a
 25 statement, to be included in all applications for and agreements
 26 governing grants made with state funds, stating the importance of the
 27 use of minority **business enterprises, service disabled veterans'**
 28 **business enterprises,** and women's business enterprises in fulfilling
 29 the purposes of the grant.
 30 SECTION 4. IC 4-13-16.5-3, AS AMENDED BY P.L.114-2010,
 31 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2013]: Sec. 3. (a) There is created in the department a deputy
 33 commissioner for minority, ~~and~~ women's, **and service disabled**
 34 **veterans'** business enterprise development. Upon consultation with the
 35 commission, the commissioner of the department, with the approval of
 36 the governor, shall appoint an individual who possesses demonstrated
 37 capability in business or industry, especially in minority, **service**
 38 **disabled veterans',** or women's business enterprises, to serve as deputy
 39 commissioner to work with the commission in the implementation of
 40 this chapter.
 41 (b) The deputy commissioner shall do the following:
 42 (1) Identify and certify minority, ~~and~~ women's, **and service**

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1 **disabled veterans'** business enterprises for state projects.

2 (2) Establish a central certification file.

3 (3) Periodically update the certification status of each minority, ~~or~~
4 women's, **or service disabled veterans'** business enterprise.

5 (4) Monitor the progress in achieving the goals established under
6 section 2(f)(8) and 2(f)(11) of this chapter.

7 (5) Require all state agencies, separate bodies corporate and
8 politic, and state educational institutions to report on planned and
9 actual participation of minority, ~~and~~ women's, **and service**
10 **disabled veterans'** business enterprises in contracts awarded by
11 state agencies. The commissioner may exclude from the reports
12 uncertified minority, **service disabled veterans'**, and women's
13 business enterprises.

14 (6) Determine and define opportunities for minority, **service**
15 **disabled veterans'**, and women's business ~~participation~~
16 **enterprises to participate** in contracts awarded by all state
17 agencies, separate bodies corporate and politic, and state
18 educational institutions.

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

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

23 SECTION 5. IC 4-13-16.5-4, AS AMENDED BY P.L.3-2008,
24 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2013]: Sec. 4. (a) Before January 1 of even-numbered years,
26 the department shall determine whether, during the most recently
27 completed two (2) year period ending the previous July 1, the goals set
28 under section 2(f)(8) of this chapter have been met.

29 (b) The department shall adopt rules under IC 4-22-2 to ensure that
30 the goals set under section 2(f)(8) of this chapter **for:**

31 **(1) minority business enterprises;**

32 **(2) service related disabled veterans' business enterprises; and**

33 **(3) women's business enterprises;**

34 are met. Expenditures with business enterprises that qualify as **both a**
35 **minority business enterprise and a women's business enterprise any**
36 **two (2) of the types of business enterprises set forth in subdivisions**
37 **(1) through (3)** may be counted toward the attainment of the goal for
38 **either:**

39 **(1) minority business enterprises; or**

40 **(2) women's business enterprises;**

41 **one (1) of the types of business enterprises,** at the election made by
42 the procurer of goods, services, or goods and services, but not both.

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1 SECTION 6. IC 4-13-16.5-6 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Notwithstanding
 3 any other law, the standards developed under this chapter apply to the
 4 determination and certification of a business as a minority business
 5 enterprise, **a service disabled veterans' business enterprise**, or a
 6 women's business enterprise under any Indiana law.

7 (b) Notwithstanding any other law, a certification of a business as
 8 a minority business enterprise, **a service disabled veterans' business**
 9 **enterprise**, or a women's business enterprise under this chapter
 10 satisfies any Indiana law providing for or requiring the certification of
 11 a business as a minority business enterprise, **a service disabled**
 12 **veterans' business enterprise**, or a women's business enterprise.

13 SECTION 7. IC 4-13-16.5-7 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. For purposes of
 15 IC 5-14-3, materials containing:

16 (1) personal financial information; or
 17 (2) confidential business information;
 18 submitted by an applicant for certification as a minority business
 19 enterprise, **a service disabled veterans' business enterprise**, or a
 20 women's business enterprise are confidential.

21 SECTION 8. IC 4-13-16.5-8, AS ADDED BY P.L.228-2007,
 22 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2013]: Sec. 8. (a) This section applies to a contractor whose
 24 offer designated minority ~~businesses~~ **business enterprises**, **service**
 25 **disabled veterans' business enterprises**, or women's business
 26 enterprises to furnish any supplies or perform any work under the
 27 contract awarded to the contractor.

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

- 29 (1) A contract for the purchase of supplies by a state agency.
 30 (2) A contract for the performance of services for a state agency.
 31 (3) A public works contract (as defined in IC 4-13.6-1-14).
 32 (4) A contract to perform professional services (as defined in
 33 IC 4-13.6-1-11) in connection with a public works contract.

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

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

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

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

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- 1 following:
- 2 (1) Notify in writing each minority business **enterprise, service**
- 3 **disabled veterans' business enterprise**, and women's business
- 4 enterprise designated in the contractor's offer that the contractor
- 5 has been awarded the contract.
- 6 (2) Give copies of each notification to the state agency that
- 7 awarded the contract.
- 8 (g) If a contractor fails to comply with subsection (f), the awarding
- 9 state agency may consider the failure a breach of contract and do any
- 10 of the following:
- 11 (1) Cancel the contract.
- 12 (2) Collect from the contractor all funds paid to the contractor
- 13 under the contract.
- 14 (3) Exercise any of the state's rights set out in the contract.
- 15 (4) Use the failure as a basis for finding the contractor not
- 16 responsible when awarding other contracts.

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