

SENATE BILL No. 140

By Committee on Commerce

2-8

1 AN ACT enacting the Kansas small and disadvantaged business
2 development program act.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 13, and amendments thereto, shall be
6 known and may be cited as the Kansas small and disadvantaged business
7 development program act.

8 Sec. 2. As used in this act, unless the context requires otherwise, the
9 following terms shall have the meanings ascribed to them in this section:

10 (a) “Broker” means a person that provides a bona fide service, such
11 as professional, technical, consultant, brokerage or managerial services
12 and assistance in the procurement of essential personnel, facilities,
13 equipment, materials or supplies required for performance of a contract.

14 (b) “Committee” means the advisory committee on minority and
15 women’s business enterprises.

16 (c) “Director” means the assistant director for the office of minority
17 and women business development enterprises established pursuant to
18 K.S.A. 74-5011, and amendments thereto.

19 (d) “Goals” means annual overall agency goals, expressed as a
20 percentage of dollar volume, for participation by minority and women-
21 owned and controlled businesses and shall not be construed as a
22 minimum goal for any particular contract or for any particular
23 geographical area. It is the intent of this act that such overall agency goals
24 shall be achievable and shall be met on a contract-by-contract or class-of-
25 contract basis.

26 (e) “Goods or services” includes professional services and all other
27 goods and services.

28 (f) “Office” means the office of minority and women business
29 development established pursuant to K.S.A. 74-5010a, and amendments
30 thereto.

31 (g) “Person” includes one or more individuals, partnerships,
32 associations, organizations, corporations, cooperatives, legal
33 representatives, trustees and receivers or any group of persons.

34 (h) “Post-secondary educational institution” shall have the meaning
35 ascribed to it in K.S.A. 74-3201b, and amendments thereto.

36 (i) “Procurement” means the purchase, lease or rental of any goods

1 or services.

2 (j) "Public works" means all work, construction, highway
3 construction, alteration, repair or improvement other than ordinary
4 maintenance, which a state agency or post-secondary educational
5 institution is authorized or required by law to undertake.

6 (k) "State agency" shall have the meaning ascribed to it in K.S.A.
7 75-3044, and amendments thereto.

8 Sec. 3. There is hereby created within the department of commerce a
9 Kansas small and disadvantaged business development program. The
10 director shall administer the provisions of the Kansas small and
11 disadvantaged business development program. In administering the
12 provisions of the Kansas small and disadvantaged business development
13 program act, the director shall be authorized to:

14 (a) Employ a deputy director and a confidential secretary, both of
15 which shall be in the unclassified service, and such staff as are necessary
16 to carry out the purposes of this act.

17 (b) Develop, plan and implement, in consultation with the
18 committee, one or more programs to provide an opportunity for
19 participation by qualified minority and disadvantaged businesses in
20 public works and the process by which goods and services are procured
21 by state agencies and post-secondary educational institutions from the
22 private sector.

23 (c) Develop, in consultation with the committee, a comprehensive
24 plan insuring that qualified minority and disadvantaged businesses are
25 provided an opportunity to participate in public contracts for public
26 works and goods and services.

27 (d) Identify, in consultation with the minority and women's business
28 enterprises advisory committee, any barrier to equal participation by
29 qualified minority and disadvantaged businesses in all state agency and
30 post-secondary educational institution contracts.

31 (e) Establish annual overall goals for participation by qualified
32 minority and women-owned and controlled businesses for each state
33 agency and post-secondary educational institution to be administered on a
34 contract-by-contract basis or on a class-of-contracts basis.

35 (f) Develop and maintain a central minority and disadvantaged
36 business certification list for all state agencies and post-secondary
37 educational institutions. No business shall be entitled to certification
38 under this act unless it meets the definition of small and disadvantaged
39 business as established by the office.

40 (g) Develop, implement and operate a system of monitoring
41 compliance with this act.

42 (h) Adopt rules and regulations in accordance with the rules and
43 regulations filing act, governing:

- 1 (A) Establishment of agency goals;
- 2 (B) development and maintenance of a central minority and
3 disadvantaged business certification program, including a definition of
4 “small and disadvantaged business” which shall be consistent with the
5 small business requirements defined under section 3 of the small business
6 act, 15 U.S.C. § 632, and the regulations promulgated thereunder;
- 7 (C) procedures for monitoring and enforcing compliance with goals,
8 regulations, contract provisions and this act;
- 9 (D) utilization of standard clauses by state agencies and post-
10 secondary educational institutions; and
- 11 (E) determination of an agency’s or post-secondary educational
12 institution’s goal attainment consistent with the limitations of section 7,
13 and amendments thereto. The rules and regulations adopted by the
14 director shall be consistent with section 8(a) of the small business act,
15 public law 85-536, as amended on the effective date of this act.
- 16 (i) Submit an annual report to the governor and the legislature
17 outlining the progress in implementing this chapter.
- 18 (j) Investigate complaints of violations of this chapter with the
19 assistance of the involved agency or post-secondary educational
20 institution.
- 21 (k) Cooperate and act jointly with the United States or other states,
22 and with political subdivisions of the state of Kansas and their respective
23 minority, socially and economically disadvantaged and women business
24 enterprise programs to carry out the purposes of this act. However, the
25 power which may be exercised by the office under this subsection permits
26 investigation and imposition of sanctions only if the investigation relates
27 to a possible violation of this act, including any rule and regulation
28 adopted thereunder, and not to a violation of any local ordinance, rule,
29 regulation, or resolution, however denominated, adopted by a political
30 subdivision of the state.
- 31 (l) Establish ad hoc advisory committees, as necessary, to assist in
32 the development of policies to carry out the purposes of this act.
- 33 (m) Enter into contracts necessary to carry out the provisions of this
34 act.
- 35 Sec. 4. The rules and regulations adopted under subsection (h) of
36 section 3, and amendments thereto, shall include requirements for
37 standard clauses in requests for proposals, advertisements, bids, or calls
38 for bids, necessary to carry out the purposes of this act, which shall
39 include notice of the statutory penalties under sections 8 and 9, and
40 amendments thereto, for noncompliance.
- 41 Sec. 5. Each state agency and post-secondary educational institution
42 shall comply with the annual goals established for that agency or
43 institution under this act for public works and procuring goods or

1 services. This act applies to all public works and procurement by state
2 agencies and post-secondary educational institutions, including all
3 contracts and other procurement under chapter 75 of the Kansas Statutes
4 Annotated, and amendments thereto. Each state agency shall adopt a plan,
5 developed in consultation with the director and the advisory committee,
6 to insure that minority and women-owned businesses are afforded the
7 maximum practicable opportunity to directly and meaningfully
8 participate in the execution of public contracts for public works and
9 goods and services. The plan shall include specific measures the agency
10 will undertake to increase the participation of certified minority and
11 women-owned businesses. The office shall annually notify the governor,
12 the state auditor, and the joint legislative audit and review committee of
13 all agencies and post-secondary educational institutions not in compliance
14 with this act.

15 Sec. 6. It is the intent of this act that the goals established under this
16 act for participation by minority and women-owned and controlled
17 businesses be achievable. Notwithstanding any other law to the contrary,
18 if necessary to accomplish this intent, any contract may be awarded to the
19 next lowest responsible bidder in turn, or all bids may be rejected and
20 new bids obtained, if the lowest responsible bidder does not meet the
21 goals established for a particular contract under this act. The dollar value
22 of the total contract used for the calculation of the specific contract goal
23 may be increased or decreased to reflect executed change orders. An
24 apparent low-bidder must be in compliance with the contract provisions
25 required under this act as a condition precedent to the granting of a notice
26 of award by any state agency or post-secondary educational institution.

27 Sec. 7. For the purpose of measuring a state agency's or post-
28 secondary educational institution's goal attainment, any rules and
29 regulations adopted under subsection (h) of section 3, and amendments
30 thereto, shall provide that if a certified minority and disadvantaged
31 business is a broker of goods or materials required under a contract, the
32 contracting agency or post-secondary educational institution may count
33 only the dollar value of the fee or commission charged and not the value
34 of goods or materials provided. The contracting agency or post-secondary
35 educational institution may, at its discretion, fix the dollar value of the fee
36 or commission charged at either the actual dollar value of the fee or
37 commission charged or at a standard percentage of the total value of the
38 brokered goods, which percentage must reflect the fees or commissions
39 generally paid to brokers for providing such services.

40 Sec. 8. (a) No person, firm, corporation, business, union or other
41 organization shall:

42 (1) Prevent or interfere with a contractor's or subcontractor's
43 compliance with this act or any rule and regulation adopted thereunder;

1 (2) submit any false or fraudulent information to the director
2 concerning compliance with this act or any rule and regulation adopted
3 thereunder;

4 (3) fraudulently obtain, retain, attempt to obtain or retain, or aid
5 another in fraudulently obtaining or retaining or attempting to obtain or
6 retain certification as a minority or disadvantaged business for the
7 purpose of this act;

8 (4) knowingly make a false statement, whether by affidavit, verified
9 statement, report, or other representation, to any state official or
10 employee for the purpose of influencing the certification or denial of
11 certification of any entity as a minority or disadvantaged business
12 enterprise;

13 (5) knowingly obstruct, impede, or attempt to obstruct or impede
14 any state official or employee who is investigating the qualification of a
15 business entity that has requested certification as a minority or a
16 disadvantaged business;

17 (6) fraudulently obtain, attempt to obtain, or aid another person in
18 fraudulently obtaining or attempting to obtain public moneys to which the
19 person is not entitled under this act or any rule and regulation adopted
20 thereunder; or

21 (7) knowingly make any false statement or representation that any
22 entity is or is not certified as a minority or disadvantaged business for
23 purposes of obtaining a contract governed by this act or any rule and
24 regulation adopted thereunder.

25 (b) Any person or entity violating this act or any rule and regulation
26 adopted thereunder shall be subject to the penalties in section 9, and
27 amendments thereto. No provision of this section shall prevent the state
28 agency or post-secondary educational institution from pursuing any such
29 procedure or sanction as is otherwise provided by statute, rule and
30 regulation, or contract provision.

31 Sec. 9. (a) If the director determines after notice and an opportunity
32 for a hearing in accordance with the Kansas administrative procedure act
33 that a person, firm, corporation or business has engaged in or is engaging
34 in any act or practice constituting a violation of any provision of this act,
35 any rule and regulation adopted thereunder or with a contract requirement
36 established under this act, the director, in consultation with the
37 appropriate state official, may withhold payment, debar the contractor,
38 suspend, or terminate the contract and subject the contractor to civil
39 penalties of up to 10% of the amount of the contract or up to \$5,000,
40 whichever is greater, for each violation. No civil penalty shall be
41 assessed. The director shall adopt, by rule and regulation, criteria for the
42 imposition of penalties under this section.

43 (b) Any willful repeated violation, exceeding a single violation, may

1 disqualify the contractor from further participation in state contracts for a
2 period of up to three years. An apparent low-bidder must be in
3 compliance with the contract provisions required under this act as a
4 condition precedent to the granting of a notice of award by any state
5 agency or post-secondary educational institution.

6 (c) The procedures and sanctions provided in this section shall be in
7 addition to all other remedies provided by law. No provision of this
8 section shall prevent any state agency or post-secondary educational
9 institution administering the contract from pursuing such other
10 procedures or sanctions as are otherwise provided by statute, rule and
11 regulation or contract provision.

12 Sec. 10. The attorney general may bring an action in the name of the
13 state against any person to restrain and prevent the doing of any act
14 prohibited or declared to be unlawful in this act. The attorney general
15 may, in the discretion of the court, recover the costs of the action
16 including reasonable attorney fees and the costs of investigation.

17 Sec. 11. The office shall be the sole authority to perform
18 certification of minority business enterprises, socially and economically
19 disadvantaged business enterprises, and disadvantaged business
20 enterprises throughout the state of Kansas. Certification by the state
21 office will allow these firms to participate in programs for these
22 enterprises administered by the state of Kansas, any city, town, county,
23 special purpose district, public corporation created by the state, municipal
24 corporation, or quasi-municipal corporation within the state of Kansas.

25 Sec. 12. Each city, county and unified school district is hereby
26 authorized to adopt a minority and disadvantaged and business set-a-side
27 procurement program similar to the program established under this act.

28 Sec. 13. If any provision of this act or its application to any person
29 or circumstance is held invalid, the remainder of the act or the application
30 of the provision to other persons or circumstances shall not be affected.

31 Sec. 14. This act shall take effect and be in force from and after its
32 publication in the statute book.

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