



Reprinted
February 13, 2009

HOUSE BILL No. 1172

DIGEST OF HB 1172 (Updated February 12, 2009 11:13 am - DI 14)

Citations Affected: IC 4-13; IC 4-23.

Synopsis: Use of minority and women's business enterprises. Expands the duties of the governor's commission on minority and women's business enterprises (commission) to include setting goals for all contracts entered into with the use of state property and the use of state funds involving the use of real property of a unit of local government. Requires the department of administration to direct contractors to demonstrate a good faith effort to meet participation goals. Requires the commission to work with the department to develop a statement for grantees stating the importance of the use of minority and women's business enterprises. Requires a unit of local government to report to the commission on the planned and actual participation of minority and women's business enterprises in a grant or contract that is subject to the goals set by the commission. Provides that certain members of the commission on Hispanic/Latino affairs are non-voting members.

Effective: July 1, 2009.

Riecken, Crouch, Pryor, Crawford

January 12, 2009, read first time and referred to Committee on Government and Regulatory Reform.
February 5, 2009, amended, reported — Do Pass.
February 12, 2009, read second time, amended, ordered engrossed.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1172

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

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

- 1 SECTION 1. IC 4-13-16.5-2, AS AMENDED BY P.L.87-2008,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 2. (a) There is established a governor's
4 commission on minority and women's business enterprises. The
5 commission shall consist of the following members:
6 (1) A governor's designee, who shall serve as chairman of the
7 commission.
8 (2) The commissioner of the Indiana department of transportation,
9 or the economic opportunity director of the Indiana department of
10 transportation if the commissioner of the Indiana department of
11 transportation so designates.
12 (3) The chairperson of the board of the Indiana economic
13 development corporation or the chairperson's designee.
14 (4) The commissioner of the department.
15 (5) Nine (9) individuals with demonstrated capabilities in
16 business and industry, especially minority and women's business
17 enterprises, appointed by the governor from the following

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1 geographical areas of the state:

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

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

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

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

6 than one (1) from the same political party, appointed by the

7 speaker of the house of representatives to serve in a nonvoting

8 advisory capacity.

9 (7) Two (2) members of the senate, no more than one (1) from the

10 same political party, appointed by the president pro tempore of

11 the senate to serve in a nonvoting advisory capacity.

12 Not more than six (6) of the ten (10) members appointed or designated

13 by the governor may be of the same political party. Appointed members

14 of the commission shall serve four (4) year terms. A vacancy occurs if

15 a legislative member leaves office for any reason. Any vacancy on the

16 commission shall be filled in the same manner as the original

17 appointment.

18 (b) Each member of the commission who is not a state employee is

19 entitled to the following:

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

21 (2) Reimbursement for traveling expenses and other expenses

22 actually incurred in connection with the member's duties as

23 provided under IC 4-13-1-4 and in the state travel policies and

24 procedures established by the Indiana department of

25 administration and approved by the budget agency.

26 (c) Each legislative member of the commission is entitled to receive

27 the same per diem, mileage, and travel allowances established by the

28 legislative council and paid to members of the general assembly

29 serving on interim study committees. The allowances specified in this

30 subsection shall be paid by the legislative services agency from the

31 amounts appropriated for that purpose.

32 (d) A member of the commission who is a state employee but who

33 is not a member of the general assembly is not entitled to any of the

34 following:

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

36 (2) Reimbursement for traveling expenses as provided under

37 IC 4-13-1-4.

38 (3) Other expenses actually incurred in connection with the

39 member's duties.

40 (e) The commission shall meet at least four (4) times each year and

41 at other times as the chairman considers necessary.

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

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- 1 the following:
- 2 (1) Identify minority and women's business enterprises in the
- 3 state.
- 4 (2) Assess the needs of minority and women's business
- 5 enterprises.
- 6 (3) Initiate aggressive programs to assist minority and women's
- 7 business enterprises in obtaining state contracts.
- 8 (4) Give special publicity to procurement, bidding, and qualifying
- 9 procedures.
- 10 (5) Include minority and women's business enterprises on
- 11 solicitation mailing lists.
- 12 (6) Evaluate the competitive differences between qualified
- 13 minority or women's nonprofit corporations and other than
- 14 qualified minority or women's nonprofit corporations that offer
- 15 similar services and make recommendation to the department on
- 16 policy changes necessary to ensure fair competition among
- 17 minority and women's business enterprises.
- 18 (7) Define the duties, goals, and objectives of the deputy
- 19 commissioner of the department as created under this chapter to
- 20 assure compliance by all state agencies, separate bodies corporate
- 21 and politic, and state educational institutions with state and
- 22 federal legislation and policy concerning the awarding of
- 23 contracts (including, notwithstanding section 1(d) of this chapter
- 24 or any other law, contracts of state educational institutions) to
- 25 minority and women's business enterprises.
- 26 (8) Establish annual goals:
- 27 (A) for the use of minority and women's business enterprises;
- 28 and
- 29 (B) derived from a statistical analysis of utilization study of
- 30 state contracts (including, notwithstanding section 1(d) of this
- 31 chapter or any other law, contracts of state educational
- 32 institutions) that are required to be updated every five (5)
- 33 years.
- 34 (9) Prepare a review of the commission and the various affected
- 35 departments of government to be submitted to the governor and
- 36 the legislative council on March 1 and October 1 of each year,
- 37 evaluating progress made in the areas defined in this subsection.
- 38 (10) Ensure that the statistical analysis required under this
- 39 section:
- 40 (A) is based on goals for participation of minority business
- 41 enterprises established in *Richmond v. Croson*, 488 U.S. 469
- 42 (1989);

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1 (B) includes information on both contracts and subcontracts
 2 (including, notwithstanding section 1(d) of this chapter or any
 3 other law, contracts and subcontracts of state educational
 4 institutions); and
 5 (C) uses data on the combined capacity of minority and
 6 women's businesses enterprises in Indiana and not just
 7 regional data.

8 **(11) Establish annual goals for the use of minority and**
 9 **women's business enterprises for any contract entered into:**

- 10 **(A) involving the use of state real property;**
 11 **(B) with the use of state funds involving the use of real**
 12 **property of a unit of local government; or**

13 **The department shall direct contractors to demonstrate a good**
 14 **faith effort to meet participation goals. The good faith effort shall**
 15 **be demonstrated by contractors using the repository of certified**
 16 **firms created under IC 4-13-16.5-3 or a similar repository**
 17 **maintained by a unit of local government.**

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

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

23 **(i) The commission shall advise the department on developing**
 24 **a statement, to be included in all applications for and agreements**
 25 **governing grants made with state funds, stating the importance of**
 26 **the use of minority and women's business enterprises in fulfilling**
 27 **the purposes of the grant.**

28 SECTION 2. IC 4-13-16.5-3, AS AMENDED BY P.L.228-2007,
 29 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2009]: Sec. 3. (a) There is created in the department a deputy
 31 commissioner for minority and women's business enterprise
 32 development. Upon consultation with the commission, the
 33 commissioner of the department, with the approval of the governor,
 34 shall appoint an individual who possesses demonstrated capability in
 35 business or industry, especially in minority or women's business
 36 enterprises, to serve as deputy commissioner to work with the
 37 commission in the implementation of this chapter.

38 (b) The deputy commissioner shall do the following:

- 39 (1) Identify and certify minority and women's business enterprises
 40 for state projects.
 41 (2) Establish a central certification file.
 42 (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)(8), **and 2(f)(11)** 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. **If a unit of local government receives a grant or enters into a contract under section 2(f)(11) of this chapter, the unit of local government shall report on planned and actual participation of minority and women's business enterprises in grants or contracts entered into under section 2(f)(11) of this chapter.** 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 3. IC 4-23-28-4, AS AMENDED BY P.L.1-2006, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The commission consists of twenty (20) members appointed as follows:

- (1) Two (2) members of the senate who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.
- (2) Two (2) members of the house of representatives who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.
- (3) Four (4) members of the Hispanic/Latino community who are not members of the general assembly, to be appointed by the president pro tempore of the senate.
- (4) Four (4) members of the Hispanic/Latino community who are not members of the general assembly, to be appointed by the speaker of the house of representatives.
- (5) The secretary of family and social services or a designee of the secretary who is a Hispanic or Latino employee of the office of the secretary of family and social services.
- (6) The commissioner of the state department of health or a

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- 1 designee of the commissioner who is a Hispanic or Latino
- 2 employee of the state department of health.
- 3 (7) The state superintendent of public instruction or a designee of
- 4 the superintendent who is a Hispanic or Latino employee of the
- 5 department of education.
- 6 (8) The commissioner of the department of correction or a
- 7 designee of the commissioner who is a Hispanic or Latino
- 8 employee of the department of correction.
- 9 (9) The director of the civil rights commission or a designee of the
- 10 director who is a Hispanic or Latino employee of the civil rights
- 11 commission.
- 12 (10) The lieutenant governor or a designee of the lieutenant
- 13 governor who is a Hispanic or Latino employee of the lieutenant
- 14 governor.
- 15 (11) A Hispanic or Latino business person, appointed by the
- 16 governor.
- 17 (12) The commissioner of workforce development or a designee
- 18 of the commissioner who is a Hispanic or Latino employee of the
- 19 department of workforce development, who shall serve as an ex
- 20 officio member of the commission.

21 In making their appointments under this section, the president pro
 22 tempore of the senate and the speaker of the house of representatives
 23 shall attempt to have the greatest possible number of counties
 24 represented on the commission.

25 **(b) The members appointed under subsection (a)(5) through**
 26 **(a)(9) and subsection (a)(12) are nonvoting members of the**
 27 **commission.**

28 ~~(b)~~ **(c)** If a legislative member of the commission ceases to be a
 29 member of the chamber from which the member was appointed, the
 30 member also ceases to be a member of the commission.

31 ~~(c)~~ **(d)** A member of the commission may be removed at any time
 32 by the appointing authority who appointed the member.

33 ~~(d)~~ **(e)** If a vacancy on the commission occurs, the appointing
 34 authority who appointed the former member whose position has
 35 become vacant shall appoint an individual to fill the vacancy.

36 SECTION 4. IC 4-23-28-8 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. The affirmative votes
 38 of a majority of the **voting** members appointed to the commission are
 39 required for the commission to take action on any measure, including
 40 final reports.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1172, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 8, delete "participation" and insert "**use**".

Page 4, line 9, delete "any:" and insert "**any contract entered into or grant made:**

(A) with the use of state funds;

(B) involving the use of state real property;

(C) with the use of state funds involving the use of real property of a unit of local government; or

(D) involving incentives offered using state funds."

Page 4, delete lines 10 through 17.

Page 4, line 40, delete "2(f)(11), and 2(f)(12)" and insert "**and 2(f)(11)**".

Page 5, line 2, after "agencies." insert "**If a unit of local government receives a grant or enters into a contract under section 2(f)(11) of this chapter, the unit of local government shall report on planned and actual participation of minority and women's business enterprises in grants or contracts entered into under section 2(f)(11) of this chapter.**".

and when so amended that said bill do pass.

(Reference is to HB 1172 as introduced.)

BARTLETT, Chair

Committee Vote: yeas 7, nays 4.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1172 be amended to read as follows:

Page 4, line 9, delete "into or" and insert "**into:**".

Page 4, delete lines 10 through 11.

Page 4, line 12, delete "(B)" and insert "**(A)**".

Page 4, line 13, delete "(C)" and insert "**(B)**".

Page 4, delete line 15.

Page 4, between lines 15 and 16, begin a new line blocked left and insert:

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"The department shall direct contractors to demonstrate a good faith effort to meet participation goals. The good faith effort shall be demonstrated by contractors using the repository of certified firms created under IC 4-13-16.5-3 or a similar repository maintained by a unit of local government."

Page 4, between lines 20 and 21, begin a new paragraph and insert:

"(i) The commission shall advise the department on developing a statement, to be included in all applications for and agreements governing grants made with state funds, stating the importance of the use of minority and women's business enterprises in fulfilling the purposes of the grant."

(Reference is to HB 1172 as printed February 6, 2009.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1172 be amended to read as follows:

Page 5, after line 15, begin a new paragraph and insert:

"SECTION 3. IC 4-23-28-4, AS AMENDED BY P.L.1-2006, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The commission consists of twenty (20) members appointed as follows:

- (1) Two (2) members of the senate who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.
- (2) Two (2) members of the house of representatives who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.
- (3) Four (4) members of the Hispanic/Latino community who are not members of the general assembly, to be appointed by the president pro tempore of the senate.
- (4) Four (4) members of the Hispanic/Latino community who are not members of the general assembly, to be appointed by the speaker of the house of representatives.
- (5) The secretary of family and social services or a designee of the secretary who is a Hispanic or Latino employee of the office of the secretary of family and social services.
- (6) The commissioner of the state department of health or a designee of the commissioner who is a Hispanic or Latino



employee of the state department of health.

(7) The state superintendent of public instruction or a designee of the superintendent who is a Hispanic or Latino employee of the department of education.

(8) The commissioner of the department of correction or a designee of the commissioner who is a Hispanic or Latino employee of the department of correction.

(9) The director of the civil rights commission or a designee of the director who is a Hispanic or Latino employee of the civil rights commission.

(10) The lieutenant governor or a designee of the lieutenant governor who is a Hispanic or Latino employee of the lieutenant governor.

(11) A Hispanic or Latino business person, appointed by the governor.

(12) The commissioner of workforce development or a designee of the commissioner who is a Hispanic or Latino employee of the department of workforce development, who shall serve as an ex officio member of the commission.

In making their appointments under this section, the president pro tempore of the senate and the speaker of the house of representatives shall attempt to have the greatest possible number of counties represented on the commission.

(b) The members appointed under subsection (a)(5) through (a)(9) and subsection (a)(12) are nonvoting members of the commission.

~~(b)~~ (c) If a legislative member of the commission ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the commission.

~~(c)~~ (d) A member of the commission may be removed at any time by the appointing authority who appointed the member.

~~(d)~~ (e) If a vacancy on the commission occurs, the appointing authority who appointed the former member whose position has become vacant shall appoint an individual to fill the vacancy.

SECTION 4. IC 4-23-28-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. The affirmative votes of a majority of the **voting** members appointed to the commission are required for the commission to take action on any measure, including final reports."

Renumber all SECTIONS consecutively.

(Reference is to HB 1172 as printed February 6, 2009.)

CANDELARIA REARDON



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