

**Sec. 4. EFFECTIVE DATE.**

This act is effective the day following final enactment.

Approved April 27, 1988

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**CHAPTER 680—H.F.No. 2596**

*An act relating to metropolitan government; prescribing the contents of affirmative action plans for metropolitan agencies and a process for approval and reporting of those plans; requiring purchases from businesses owned by socially or economically disadvantaged persons; requiring certain contractors to have affirmative action plans; amending Minnesota Statutes 1986, sections 473.141, subdivision 9; and 473.406, subdivisions 2, 5, 6, and 7; proposing coding for new law in Minnesota Statutes, chapters 3 and 473.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 473.141, subdivision 9, is amended to read:

Subd. 9. **PERSONNEL CODE; MERIT SYSTEM.** (a) The council shall by resolution adopt guidelines for a personnel code relating to the employees of the commissions, except that nothing in Laws 1974, Chapter 422 shall impair the rights of any commission or employee under sections 473.405 and 473.415. After adoption of the guidelines, each commission shall by resolution adopt a personnel code in general conformance therewith. The code shall include a job classification plan, procedures for employment and promotion of personnel based on merit, procedures for the demotion, suspension or discharge of employees, procedures for hearing grievances, procedures for salary administration, and such other provisions as the council deems appropriate. In addition, the code shall provide for the development by each commission of affirmative action plans, ~~which shall be submitted for approval to the appropriate agency or office of the state. The plans shall include a yearly progress report to the agency or office as provided in section 3.~~ The chief administrator of each commission shall administer the code, and no commission shall take any action inconsistent with the personnel code.

(b) All employees of the commission except those expressly designated for the unclassified service, shall serve in the classified service. The unclassified service shall include: members of the commission, the chief administrator of the commission, all officers of the commission, any employee of the commission who is determined by the commission to have a confidential relationship to the commission or the council; and any employee of the commission expressly exempted from the classified service by law. Each code shall also include procedures for open competitive examinations to test the relative skill or ability of all applicants for positions in the classified service. Such examinations may

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consist of written or oral tests of the subjective or objective type, physical tests, and practical or demonstration tests for the evaluation of past training and experience. Oral tests may be used to test the applicant's knowledge of the position applied for or personal fitness for the position. Where there is more than one applicant for a position, each code shall provide for the employment of one of the three applicants best qualified for it.

(c) When a commission employee has been demoted, suspended or dismissed by the chief administrator, the employee may, within 30 days after such action becomes effective, file with the commission a written request for a hearing showing the position from which the employee was dismissed, the date of dismissal, and the reason for requesting the hearing, full name and present mailing address. Upon receipt of a request for a hearing the commission shall appoint three of its members to act as an appeal committee and preside at a hearing on the action of the administrator. The hearing shall be held within 30 days after the request is received by the commission, upon written notice mailed or delivered to the employee at the employee's present mailing address, not less than seven days before the hearing. The appeal committee shall approve or disapprove the action of the administrator, and in the case of approval the action of the administrator shall be final. In the case of disapproval the appeal committee may reinstate the employee under such conditions as it deems proper, and may order the payment to the employee of compensation lost as a result of the demotion, suspension or dismissal.

**Sec. 2. [473.142] SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESSES.**

(a) The metropolitan council and agencies specified in section 3, subdivision 1, shall attempt to award at least nine percent of the value of all procurement, other than contracts under clause (c), to businesses owned and operated by socially or economically disadvantaged persons. For purposes of this section, "socially or economically disadvantaged person" means a person who has been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic conditions. This disadvantage may arise from cultural, social or economic circumstances, background, or other similar cause. It includes racial minorities, women, persons with a disability as defined in section 363.01, subdivision 25, sheltered workshops, and work activity programs. To the extent practicable, the council and agencies shall attempt to meet this goal through procurement from businesses with their principal place of business in Minnesota. In furtherance of this goal, the council or an agency shall set aside a percentage of all procurements for bidding only by these businesses. The council or an agency may also award a five percent preference to these businesses in the amount bid on selected procurements.

(b) The council and each agency specified in section 3, subdivision 1, as a condition of awarding procurements for construction, consultant, professional, or technical service contracts in excess of \$200,000, shall attempt to assure that at least ten percent of the contract award to a prime contractor be subcontracted to a business owned and operated by a socially or economically disadvantaged

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person, or that at least ten percent of the contract award be expended in purchasing materials or supplies from this type of business. This paragraph does not apply if the council or agency determines that there is no business owned and operated by a socially or economically disadvantaged person able to perform the subcontract or provide the supplies, or if the prime contractor is a business owned and operated by a socially or economically disadvantaged person. Subcontracting or purchasing of supplies under this subdivision is not included in determining achievement of goals under paragraph (a) or (c).

(c) The council and each agency specified in section 3, subdivision 1, shall attempt to award at least six percent of the value of all procurements for consultant services or professional or technical services to businesses owned and operated by socially or economically disadvantaged persons.

(d) In implementing paragraphs (a) and (c), the council and each agency specified in section 3, subdivision 1, shall attempt to purchase a variety of goods and services from different businesses owned and operated by socially or economically disadvantaged persons.

(e) The council and each agency may adopt rules to implement this section.

(f) This section does not apply to procurement financed in whole or in part with federal funds if the procurement is subject to federal disadvantaged, minority or women business enterprise regulations. The council and each agency shall report annually to the legislature on compliance with this subdivision. The reports must include the information specified in section 16B.21 that pertains to purchasing from businesses owned by socially or economically disadvantaged persons.

### Sec. 3. [473.143] AFFIRMATIVE ACTION PLANS.

Subdivision 1. APPLICATION. For purposes of this section, "agency" means a metropolitan agency as defined in section 473.121, except the metropolitan parks and open space commission. Agency also means the metropolitan mosquito control commission. For purposes of this section, "commissioner" means the commissioner of the state department of employee relations.

Subd. 2. DEVELOPMENT AND CONTENTS. The council and each agency shall develop an affirmative action plan and submit its plan to the commissioner for approval. The commissioner may not approve a plan unless the commissioner determines that it will be effective in assuring that employment positions are equally accessible to all qualified persons, in eliminating the underutilization of qualified members of protected groups, in providing a supportive work environment to all employees, regardless of race, religion, sex, national origin, or disability, and in dealing with discrimination complaints. For purposes of this section, "protected group" has the meaning given it in section 43A.02, subdivision 33. A plan must contain at least the elements required in this subdivision.

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(a) It must identify protected groups that are underrepresented in the council's or agency's work force.

(b) It must designate a person responsible for directing and implementing the affirmative action program and assign the specific responsibilities and duties of that person. The person responsible for implementing the program shall report directly to the council's or agency's chief operating officer regarding the person's affirmative action duties. The person responsible for the affirmative action program shall review examination and other selection criteria to assure compliance with law. This person shall be involved in the filling of all vacancies in the council or agency work force, to the extent necessary to facilitate attainment of affirmative action goals.

(c) It must describe the methods by which the plan will be communicated to employees and to other persons.

(d) It must describe methods for recruiting members of protected groups. These methods may include internship programs, cooperation with union apprenticeship programs, and other steps necessary to expand the number of protected group members in applicant pools.

(e) It must describe internal procedures in accordance with this paragraph for processing complaints of alleged discrimination from job applicants and employees. The procedures must provide for an initial determination of whether the complaint is properly a discrimination complaint subject to the procedure under the affirmative action plan. Complaints filed under the discrimination procedures that allege reprisals against an employee for opposing a forbidden practice or for filing a charge, testifying, or participating in an investigation, proceeding, or hearing relating to a forbidden practice are appealable to the chief operating officer of the council or agency. Procedures under this paragraph must be distinct from any procedures available under a union contract or personnel policy for nondiscrimination complaints. Use of procedures developed under this paragraph is not a prerequisite to filing charges with a governmental enforcement agency, nor does it limit a person's right to file these charges.

(f) It must set goals and timetables to eliminate underutilization of members of each protected group in the council or agency work force.

(g) It must provide a plan for retaining and promoting protected group members in the council or agency work force. This plan should encourage training opportunities for protected group members, to the extent necessary to eliminate underutilization in specific parts of the work force.

(h) It must describe methods of auditing, evaluating, and reporting program success, including a procedure that requires a preemployment review of all hiring decisions for occupational groups with unmet affirmative action goals.

(i) It must provide for training of management and supervisory personnel in implementation of the plan and in dealing with alleged acts of discrimination in the workplace.

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(j) It must provide for periodic surveying of the council or agency work force to determine employee attitudes toward implementation of the plan.

(k) It must provide for creation of an employee committee to advise on implementation of the plan and on any changes needed in the plan.

Subd. 3. HARASSMENT. The council and each agency shall adopt written policies forbidding harassment based on sex, disability, or race in their workplaces and establishing implementation plans and grievance procedures to deal with complaints of harassment based on sex, disability, or race.

Subd. 4. PERFORMANCE EVALUATION. The evaluation of the performance of each supervisory and managerial employee of the council and the agencies must include evaluation of the person's performance in implementing the council's or agency's affirmative action plan and in preventing forbidden discrimination in the workplace.

Subd. 5. REPORT. By March 1 each year, the commissioner shall report to the legislature on affirmative action progress of the council and of each agency. The report must include:

(1) an audit of the record of the council and each agency to determine compliance with affirmative action goals and to evaluate overall progress in attainment of overall affirmative actions objectives;

(2) if the council or any agency has failed to make satisfactory progress toward its affirmative action goals, a list of unmet goals and an analysis of why the failure occurred;

(3) a summary of all personnel actions taken by the council and each agency during the past calendar year, categorized by occupational group, protected group status, and full-time, part-time, temporary, and seasonal status; and

(4) a summary of discrimination complaints and lawsuits against the council and each agency filed or resolved during the past calendar year, including the basis for the complaints and lawsuits.

For purposes of this subdivision, "personnel action" means a new hire, promotion, transfer, demotion, layoff, recall from layoff, suspension with or without pay, letter of reprimand, involuntary termination, other disciplinary action, and voluntary termination.

The council and each agency shall report to the commissioner all information that the commissioner requests to make the report required by this subdivision. In providing this information, the council and agencies are not required to reveal information that is not public data under chapter 13.

The council and each agency shall submit these reports at the time and in the manner requested by the commissioner. The commissioner shall report to the legislature on the failure of the council or an agency to file the required report in a timely manner.

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**Subd. 6. COORDINATION.** The commissioner or a designee shall meet with affirmative action officers of the council and all of the agencies to share successful techniques and foster innovative means to implement affirmative action plans and eliminate discrimination in the workplace.

**Subd. 7. COORDINATION WITH LEGISLATURE.** The council and each agency shall facilitate legislative oversight of equal opportunity practices by providing the legislature access, including access to computerized records if compatible systems exist, to public data maintained by the agency. The council and agencies must not provide access to information that is not public data as defined in section 13.02, subdivision 8a.

**Sec. 4. [473.144] CERTIFICATES OF COMPLIANCE FOR CONTRACTS.**

Neither the council nor an agency listed in section 3, subdivision 1, may accept any bid or proposal for a contract or execute a contract for goods or services in excess of \$50,000 with any business having more than 20 full-time employees in Minnesota at any time during the previous 12 months, unless the business has an affirmative action plan for the employment of minority persons, women, and the disabled that has been approved by the commissioner of human rights. Receipt of a certificate of compliance from the commissioner of human rights signifies that a business has an approved affirmative action plan. A certificate is valid for two years. Section 363.073 governs revocation of certificates. The rules adopted by the commissioner of human rights under section 363.074 apply to this section.

Sec. 5. Minnesota Statutes 1986, section 473.406, subdivision 2, is amended to read:

**Subd. 2. SET-ASIDES.** ~~The metropolitan transit commission may, on a fiscal year basis, designate and set aside for awarding to~~ shall comply with the requirements of section 2 relating to procurement from business entities controlled by socially or economically disadvantaged persons ~~or handicapped persons, or for awarding to business entities which guarantee the use of subcontractors controlled by socially or economically disadvantaged persons or handicapped persons, approximately five percent of the value of its anticipated total procurement of goods and services, including construction.~~ The failure of the commission to set aside particular procurements shall not be deemed to prohibit or discourage business entities controlled by socially or economically disadvantaged persons or handicapped persons from seeking the procurement award through the normal solicitation and bidding processes.

Sec. 6. Minnesota Statutes 1986, section 473.406, subdivision 5, is amended to read:

**Subd. 5. RECOURSE TO OTHER BUSINESSES.** If this section does and section 2 do not operate to extend a contract award to a business entity controlled by socially or economically disadvantaged persons ~~or handicapped persons,~~

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the award shall be placed pursuant to the normal solicitation and award procedures set forth in section 471.345.

Sec. 7. Minnesota Statutes 1986, section 473.406, subdivision 6, is amended to read:

Subd. 6. **RULES.** The commission shall promulgate by rule standards and procedures for certifying that business entities eligible to participate in the ~~set-aside~~ program ~~authorized in~~ required by this section and section 2 are controlled by socially or economically disadvantaged persons ~~or handicapped persons~~. The commission shall promulgate other rules as may be necessary or advisable to carry out the provisions of this section and section 2.

Sec. 8. Minnesota Statutes 1986, section 473.406, subdivision 7, is amended to read:

Subd. 7. **OTHER LAWS SUPERSEDED.** In the event of conflict with other laws or rules, the provisions of this section and section 2 and rules promulgated pursuant to ~~it~~ them shall govern.

Sec. 9. **DEADLINE.**

By January 1, 1989, the metropolitan council and each agency listed in section 3, subdivision 1, must have an affirmative action plan and anti-harassment policies that meet the requirements of section 3.

Sec. 10. **AUTHORITY.**

If a joint House-Senate committee or subcommittee is appointed to study and monitor equal opportunity activities of metropolitan agencies, the group has the powers granted to legislative committees under section 3.153.

Sec. 11. **EFFECTIVE DATE.**

Sections 1 to 9 apply in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. Sections 2, 4, 5, and 6 are effective January 1, 1989, and apply only to contracts for which notice of invitation to bid or requests for proposals are issued after the effective date of the section.

Approved April 27, 1988

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## CHAPTER 681—S.F.No. 392

*An act relating to public safety; providing for the mandatory surrender of registration plates and certificates of motor vehicles operated by repeat DWI offenders; providing for administrative review; requiring a report; making a variety of administrative changes to the traffic laws; increasing penalties for falsely using the identity of another person to a peace*

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