

**Sec. 20. EFFECTIVE DATE.**

Section 6 is effective the day following final enactment.

Presented to the governor May 26, 1989

Signed by the governor May 26, 1989, 6:20 p.m.

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**CHAPTER 352—H.F.No. 1443**

*An act relating to government operations; regulating purchasing from small businesses; appropriating money; amending Minnesota Statutes 1988, sections 16B.189; 16B.19; 16B.20, subdivision 2; 16B.21; 16B.22; 116J.68, subdivision 1; 136.27; 136.72; 137.31, subdivisions 4, 6, and by adding a subdivision; 161.321, subdivisions 2, 3, and 6; 161.3211; 241.27, subdivision 2; 471.345, subdivision 8; 473.142; 645.445, subdivision 5; proposing coding in Minnesota Statutes, chapter 16B; repealing Minnesota Statutes 1988, sections 137.31, subdivision 3; 473.406; and Laws 1984, chapter 654, article 2, section 49.*

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

**Section 1. SMALL BUSINESS PROCUREMENTS COMMISSION.**

Subdivision 1. CREATION. A small business procurements commission is created to study the small business procurement programs in Minnesota Statutes, sections 16B.189; 16B.19, subdivisions 2, 4, 5, and 6; 16B.21, subdivision 2; 16B.22; 116J.68, subdivision 1; 136.27; 136.72; 137.31, subdivision 3; 161.321, subdivisions 2, 3, and 6; 241.27, subdivision 2; 471.345, subdivision 8; 473.142; 473.406, subdivisions 1, 2, 4, 5, and 6; and 645.445, subdivision 5, in order to propose amendments that will conform the programs to recent United States Supreme Court decisions. The commission shall take steps to at least:

(1) assure that minority and women's businesses and organizations know of its existence and purpose;

(2) determine the existence and extent of discrimination in Minnesota business, trade, and industry;

(3) recommend appropriate statutory or regulatory changes; and

(4) recommend programs targeted to small businesses in need of assistance.

Subd. 2. MEMBERSHIP. The commission shall consist of 11 members: three members, one of which shall be of the minority caucus of the house of representatives appointed by the speaker, three members, one of which shall be of the minority caucus of the senate appointed by the committee on committees; three members appointed by the governor; and two members from the socially or economically disadvantaged community appointed by the commissioner of administration. The attorney general or the attorney general's designee shall

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nate particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal solicitation and bidding processes.

Subd. 1a. SMALL BUSINESS. For purposes of sections 16B.189 to 16B.22, "small business" means a small business, as defined in section 645.445, with its principal place of business in Minnesota.

Subd. 2. **CONSULTANT, PROFESSIONAL AND TECHNICAL PROCUREMENTS.** Every state agency shall for each fiscal year designate for awarding to small businesses ~~with their principal place of business in Minnesota~~ at least 25 percent of the value of anticipated procurements of that agency for consultant services or professional and technical services. The set-aside under this subdivision is in addition to that provided by subdivision 1, but shall otherwise comply with section 16B.17. ~~At least six percent of all these procurements for consultant services or professional or technical services shall be set aside for small businesses owned and operated by socially or economically disadvantaged persons.~~

Subd. 3. **NEGOTIATED PRICE OR BID CONTRACT.** The commissioner may elect to use either a negotiated price or bid contract procedure as may be appropriate in the awarding of a procurement contract under the set-aside or preference program established in sections 16B.19 to 16B.22. The amount of an award may not exceed by more than five percent the commissioner's estimated price for the goods or services, if they were to be purchased on the open market and not under this set-aside program. Surety bonds guaranteed by the federal Small Business Administration and second party bonds are acceptable security for a construction award under this section. "Second party bond" means a bond which that designates as principal, guarantor, or both, a person or persons in addition to the person to whom the contract is proposed for award.

Subd. 4. **DETERMINATION OF ABILITY TO PERFORM.** Before making an award under the ~~set-aside or preference programs established in subdivision 5~~ for economically disadvantaged small businesses ~~owned and operated by socially or economically disadvantaged persons~~, the commissioner shall evaluate whether the small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence.

Subd. 5. **CERTAIN SMALL BUSINESS PREFERENCES AND SET-ASIDES.** ~~At least nine percent of the value of all procurements shall be awarded, if possible, for award to businesses owned and operated by socially or economically disadvantaged persons as defined in section 645.445 with their principal place of business in Minnesota. The commissioner shall designate set-aside procurements in a manner that will encourage proportional distribution of set-aside awards among the geographical regions of the state. To promote the geographical distribution of set-aside awards, the commissioner may designate a portion of the set-aside for small businesses owned and operated by socially or~~

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economically disadvantaged persons for award to bidders from a specified congressional district or other geographical region specified by the commissioner and shall report annually to the governmental operations committees of the house of representatives and the senate on the use and impact of this provision. To reach a goal of nine percent, the commissioner must set aside at least three percent of all procurements for bidding only by small businesses owned and operated by socially or economically disadvantaged persons; may The commissioner shall award a five percent preference in the amount bid on selected all state procurements to economically disadvantaged small businesses owned and operated by socially or economically disadvantaged persons; or may utilize any other bidding process authorized by this chapter to encourage the participation of economically disadvantaged small businesses in state procurement. In the event small businesses owned and operated by socially or economically disadvantaged persons are unable to perform at least nine percent of the value of all procurements, the commissioner shall award the remainder to other small businesses. At least 50 75 percent of the value of the procurements awarded to economically disadvantaged small businesses owned and operated by socially or economically disadvantaged persons shall must actually be performed by the business to which the award is made or another economically disadvantaged small business owned and operated by a socially or economically disadvantaged person or persons. The commissioner may not designate more than 20 percent of any commodity class for set-aside or preference awards to businesses owned and operated by socially or economically disadvantaged persons. A An economically disadvantaged small business owned and operated by socially or economically disadvantaged persons that has been awarded more than three-tenths of one percent of the value of the total anticipated procurements for a fiscal year under this subdivision is disqualified from receiving further ~~set-aside or preference advantages~~ for that fiscal year.

Subd. 6. CONTRACTS IN EXCESS OF \$200,000; SET-ASIDE SUB-CONTRACTS. The commissioner, as a condition of awarding state procurements for construction contracts or approving contracts for consultant, professional, or technical services pursuant to under section 16B.17 in excess of \$200,000, shall require 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 person or persons or that at least ten percent of the contract award be expended in purchasing materials or supplies from said person or persons. If there is no socially or economically disadvantaged person or persons or other small businesses able to perform the subcontract or to provide the supplies or materials, the construction contract or contract for consultant, professional, or technical services may be awarded notwithstanding the ten percent requirement provided that the ten percent requirement is made up in other such contracts awarded or to be awarded by the same agency. Any subcontracting or purchasing of supplies and materials pursuant to this subdivision may not be included in determining the total amount of awards required by subdivisions 1, 2, and 5. In the event small businesses owned and operated by socially and economically disadvantaged persons are unable to perform ten percent of the prime contract award, the commissioner shall require that other small busi-

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nesses perform at least ten percent of the prime contract award. The commissioner may determine that small businesses owned and operated by socially and economically disadvantaged persons are unable to perform at least ten percent of the prime contract award prior to the advertising for bids may set goals which require that the prime contractor subcontract a portion of the contract to economically disadvantaged small businesses. Each construction contractor bidding on a project over \$200,000 on which this subcontracting is required shall submit with the bid a list of the economically disadvantaged small businesses owned and operated by socially or economically disadvantaged persons that are proposed to be utilized on the project with a statement indicating the portion of the total bid to be performed by each business. The commissioner shall reject any bid to which this subdivision applies that does not contain this information. Prime contractors receiving construction contract awards in excess of \$200,000 shall furnish to the commissioner the name of each business owned and operated by a socially or economically disadvantaged person or persons or other small business that is performing work or supplying supplies and materials on the prime contract and the dollar amount of the work performed or to be performed or the supplies and materials to be supplied. Once the contract has been awarded, the prime contractor must use the socially and economically disadvantaged small business subcontractors proposed to be utilized on the project, unless the subcontractors are unable to perform in accordance with the award.

This subdivision does not apply to prime contractors that are themselves economically disadvantaged small businesses owned and operated by socially or economically disadvantaged persons, as duly certified pursuant to under section 16B.22.

Subd. 8. ~~RECOURSE TO OTHER BUSINESSES.~~ In the event that subdivisions 1 to 6 do not operate to extend a contract award to a small business the award must be placed pursuant to the normal solicitation and award provisions in this chapter. The commissioner shall then designate for small businesses additional state procurements corresponding in approximate value to the contract unable to be awarded pursuant to subdivisions 1 to 6.

Subd. 9. **PROCUREMENT PROCEDURES.** All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply equally to procurements designated for small businesses. In the event of conflict with other rules, section 16B.18 and rules adopted under it govern, if section 16B.18 applies. If it does not apply, sections 16B.19 to 16B.22 and rules adopted under those sections govern.

Subd. 10. **APPLICABILITY.** This section does not apply to construction contracts or contracts for consultant, professional, or technical services pursuant to under section 16B.17 which that are financed in whole or in part with federal funds and which that are subject to federal disadvantaged business enterprise regulations.

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Sec. 4. Minnesota Statutes 1988, section 16B.20, subdivision 2, is amended to read:

Subd. 2. **ADVISORY COUNCIL.** A small business procurement advisory council is created. The council consists of 13 members appointed by the commissioner of administration. A chair of the advisory council shall be elected from among the members. The appointments are subject to the appointments program provided by section 15.0597. The terms, compensation, and removal of members are as provided in section 15.059; ~~but members do not receive per diem. The council expires as provided in section 15.059, subdivision 5.~~

Sec. 5. Minnesota Statutes 1988, section 16B.21, is amended to read:

#### 16B.21 **REPORTS.**

Subdivision 1. **COMMISSIONER OF ADMINISTRATION.** The commissioner shall submit an annual report pursuant to section 3.195 to the governor and the legislature with a copy to the commissioner of trade and economic development indicating the progress being made toward the objectives and goals of sections 16B.19 to 16B.22 during the preceding fiscal year. The commissioner shall also submit a quarterly report to the small business procurement advisory council. These reports shall include the following information:

(1) the total dollar value and number of potential set-aside awards identified during this period and the percentage of total state procurement this figure reflects;

(2) the number of small businesses identified by and responding to the set-aside small business procurement program, the total dollar value and number of set-aside and other contracts actually awarded to small businesses ~~with appropriate designation as to the total number and value of set-aside contracts awarded to each small business~~, and the total number of small businesses that were awarded set-aside and other contracts;

(3) the total dollar value and number of contracts awarded to economically disadvantaged small businesses ~~owned and operated by economically or socially disadvantaged persons~~ pursuant to each bidding process authorized by section 16B.19, subdivision 5; the total number and value of these contracts awarded to each economically disadvantaged small business and to each category of ~~economically or socially disadvantaged persons as defined by section 645.445 and agency rules~~ small business, and the percentages of the total state procurements the figures of total dollar value and the number of contracts awarded by each bidding process; represent.

(4) ~~for each set-aside or preference contract awarded to a small business, the estimated additional cost to the state of awarding the contract; and~~

(5) ~~the number of contracts which were designated and set aside pursuant to section 16B.19 but which were not awarded to a small business; the estimated~~

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total dollar value of these awards; the lowest offer or bid on each of these awards made by the small business; and the price at which these contracts were awarded pursuant to the normal procurement procedures.

The information required by paragraphs (1) and (2) must be presented on a statewide basis and also broken down by geographic regions within the state.

Subd. 2. **COMMISSIONER OF TRADE AND ECONOMIC DEVELOPMENT.** The commissioner of trade and economic development shall submit an annual report to the governor and the legislature pursuant to section 3.195 with a copy to the commissioner of administration. This report shall include the following information:

(1) the efforts undertaken to publicize the provisions of the ~~set-aside~~ small business procurement program during the preceding fiscal year;

(2) the efforts undertaken to identify economically disadvantaged small businesses ~~including those owned and operated by socially or economically disadvantaged persons~~; and the efforts undertaken to encourage participation in the set-aside bid preference program;

(3) the efforts undertaken by the commissioner to remedy the inability of small businesses to perform on potential set-aside or other contract awards; and

(4) the commissioner's recommendations for strengthening the ~~set-aside program~~ small business and economically disadvantaged small business procurement program and delivery of services to small businesses.

Sec. 6. Minnesota Statutes 1988, section 16B.22, is amended to read:

**16B.22 ELIGIBILITY; RULES.**

Subdivision 1. **ELIGIBILITY.** A small business certified as owned and operated by socially or economically disadvantaged under section 645.445, subdivision 5, clause (1) or (2), persons is eligible to participate under the requirements of sections 16B.19 to 16B.22 for a maximum of five years from the date of receipt of the first ~~set-aside~~ award under this program and after that period is not eligible to participate for another five years. ~~A small business that received its first set-aside award more than five years before July 1, 1985 is not eligible to participate for five years after July 1, 1985. The five-year maximum does not apply to sheltered workshops and work activity programs. An economically disadvantaged small business is not eligible to participate in this program if:~~

(1) The owner of the business has previously participated in the program and the business exceeded the time limit specified in section 645.445, subdivision 5, clause (4) or this subdivision.

(2) The business has exceeded the time limit specified in section 645.445, subdivision 5, clause (4) or this subdivision, and has been renamed, restructured, or otherwise reorganized.

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Subd. 2. **RULES.** (a) The commissioner shall adopt by rule additional standards and procedures for certifying that small businesses and economically disadvantaged small businesses ~~owned and operated by socially or economically disadvantaged persons~~ are eligible to participate under the requirements of sections 16B.19 to 16B.22. The commissioner shall adopt by rule standards and procedures for hearing appeals and grievances and other rules necessary to carry out the duties set forth in sections 16B.19 to 16B.22.

(b) The commissioner may make rules which exclude or limit the participation of nonmanufacturing business, including third-party lessors, brokers, franchises, jobbers, manufacturers' representatives, and others from eligibility under sections 16B.19 to 16B.22.

**Sec. 7. [16B.226] CERTIFICATION.**

A business that is certified by the commissioner of administration as a small business or an economically disadvantaged small business is eligible to participate under the requirements of sections 137.31, 161.321, 471.345, and, if certified under section 645.445, subdivision 5, clauses (3) to (5), under section 473.142 without further certification by the contracting agency. Personnel in state agencies currently involved in certifying small businesses shall be reduced accordingly.

Sec. 8. Minnesota Statutes 1988, section 116J.68, subdivision 1, is amended to read:

Subdivision 1. The bureau of small business within the business assistance center shall serve as a clearinghouse and referral service for information needed by small businesses including ~~those operated by a socially or economically disadvantaged person~~ small businesses.

Sec. 9. Minnesota Statutes 1988, section 136.27, is amended to read:

**136.27 CAPITAL PROJECTS BIDDING PROCEDURES.**

In awarding contracts for capital projects under section 16B.09, the board must consider the documentation provided by the bidders regarding their qualifications including evidence of having successfully completed similar work, or delivering services or products comparable to that being requested. The board shall formulate procedures to administer this section which include practices that will assist in the economic development of small businesses and ~~small businesses owned and operated by socially or economically disadvantaged persons~~ economically disadvantaged small businesses.

Sec. 10. Minnesota Statutes 1988, section 136.72, is amended to read:

**136.72 CAPITAL PROJECTS BIDDING PROCEDURES.**

In awarding contracts for capital projects under section 16B.09, the state board for community colleges shall consider the documentation provided by the

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bidders regarding their qualifications, including evidence of having successfully completed similar work, or delivering services or products comparable to that being requested. The board shall set procedures to administer this section, which must include practices that will assist in the economic development of small businesses and ~~small businesses owned and operated by socially or economically disadvantaged persons~~ economically disadvantaged small businesses.

Sec. 11. Minnesota Statutes 1988, section 137.31, is amended by adding a subdivision to read:

Subd. 3a. BID PREFERENCE. The regents shall award a five percent preference in the amount bid on all university procurement to economically disadvantaged small businesses, as defined in section 645.445. At least 75 percent of the value of the procurements awarded to economically disadvantaged small businesses must actually be performed by the business to which the award is made or another economically disadvantaged small business. An economically disadvantaged small business that has been awarded more than three-tenths of one percent of the value of the total anticipated procurements for a fiscal year under this subdivision is disqualified from receiving further bid preferences for that fiscal year. An economically disadvantaged small business is not eligible to participate in the bid preference established under this subdivision under conditions specified in section 16B.22, subdivision 1.

Sec. 12. Minnesota Statutes 1988, section 137.31, subdivision 4, is amended to read:

**Subd. 4. REPLACEMENT CONTRACTS.** If a procurement contract designated for the set-aside program cannot be awarded to a small business under the conditions prescribed in subdivisions 1 to 3, and 2 the award shall be placed in accordance with the regular procurement policies of the university. In this event, the university shall designate as a replacement a procurement contract of comparable value to be included in the university set-aside program during that fiscal year if practicable.

Sec. 13. Minnesota Statutes 1988, section 137.31, subdivision 6, is amended to read:

**Subd. 6. ANNUAL REPORT.** The University of Minnesota shall submit an annual report as provided in section 3.195, to the governor and the legislature, with a copy to the commissioner of trade and economic development, indicating the progress being made toward the objectives and goals of this section. The report shall include the following information:

(a) The total dollar value and number of procurement contracts identified and set aside during this period and the percentage of total value of university procurements that this figure reflects;

(b) The number of small businesses identified by and responding to the university set-aside program, the total dollar value and number of procurement

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contracts actually awarded to small businesses with appropriate designation as to the total number and value of procurement contracts awarded to each small business, and the total number of small businesses that were awarded procurement contracts;

(c) The total dollar value and number of procurement contracts awarded to economically disadvantaged small businesses ~~owned and operated by economically or socially disadvantaged persons~~ with appropriate designation as to the total number and value of procurement contracts awarded to each small business, and the percentages of the total value of university procurements the figures of total dollar value and the number of procurement contracts reflect; and

(d) The number of procurement contracts which were designated and set aside pursuant to this section but which were not awarded to a small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business and the price at which these contracts were awarded pursuant to regular procurement procedures.

Sec. 14. Minnesota Statutes 1988, section 161.321, subdivision 2, is amended to read:

Subd. 2. **SMALL BUSINESS SET ASIDES.** The commissioner shall set aside, on a fiscal year basis, at least ~~two~~ five percent of the construction work to be performed by contract for award to small businesses; ~~small businesses owned and operated by socially or economically disadvantaged persons and small businesses owned and operated by physically handicapped persons or economically disadvantaged small businesses~~ or for award to businesses which guarantee use of ~~such~~ small businesses or economically disadvantaged small businesses as subcontractors.

Sec. 15. Minnesota Statutes 1988, section 161.321, subdivision 3, is amended to read:

Subd. 3. **AWARDS TO ~~MINORITY~~ SMALL BUSINESSES.** At least 50 ~~75~~ percent of the amount so set aside ~~shall~~ must be awarded, if possible, either to economically disadvantaged small businesses ~~owned and operated by socially and economically disadvantaged persons~~ as direct contracts or as part of contracts awarded to businesses which guarantee the use, as subcontractors, of economically disadvantaged small businesses ~~owned and operated by socially and economically disadvantaged persons~~. ~~Any funds subject to this subdivision which are not awarded according to this subdivision shall be awarded to other small businesses and small businesses owned and operated by physically handicapped persons. For purposes of this section, economically disadvantaged small business has the meaning defined in section 645.445, subdivision 5, except that a business is also eligible under clause (4) if it filed its first annual federal and state income tax returns within the preceding ten years.~~

Sec. 16. Minnesota Statutes 1988, section 161.321, subdivision 6, is amended to read:

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Subd. 6. **RULES.** The commissioner may promulgate by rule, standards and procedures for certifying that small businesses, and economically disadvantaged small businesses ~~owned and operated by physically handicapped persons and small businesses owned and operated by socially or economically disadvantaged persons~~ are eligible to participate in the set aside program authorized in ~~subdivision~~ subdivisions 2 and 3. The commissioner may promulgate other rules as may be necessary to carry out the provisions of this section.

Sec. 17. Minnesota Statutes 1988, section 161.3211, is amended to read:

**161.3211 REPORT BY COMMISSIONER OF TRANSPORTATION.**

The commissioner of transportation shall submit an annual report pursuant to section 3.195, to the governor and the legislature indicating the progress being made toward the objectives and goals of section 161.321 during the preceding fiscal year. This report shall include the following information:

(a) The total dollar value and number of potential set-aside awards identified during this period and the percentage of total construction work this figure reflects;

(b) The number of small businesses identified and responding to the set-aside program, the total dollar value and number of set-aside contracts actually awarded to small businesses with an approximate designation as to the total number and value of set-aside contracts awarded to each small business, and the total number of small businesses that were awarded set-aside contracts;

(c) The total dollar value and number of set-aside contracts awarded to economically disadvantaged small businesses ~~owned and operated by economically or socially disadvantaged persons~~ with an approximate designation as to the total number and value of ~~set-aside~~ contracts awarded to each such small business, and the percentages of the total construction work the figures of the total dollar value and the number of ~~set-asides~~ contracts reflect;

(d) The number of contracts which were designated and set-aside pursuant to section 161.321, but which were not awarded to a small business, the estimated total dollar value of these awards, the lowest bid on each of these awards made by a small business and the price at which these contracts were awarded pursuant to the normal procedures.

Sec. 18. Minnesota Statutes 1988, section 241.27, subdivision 2, is amended to read:

Subd. 2. **REVOLVING FUND; USE OF FUND.** There is established in the department of corrections under the control of the commissioner of corrections the Minnesota correctional industries revolving fund to which shall be transferred the revolving funds authorized in Minnesota Statutes 1978, sections 243.41, 243.85, clause (f), and any other industrial revolving funds heretofore established at any state correctional facility under the control of the commis-

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sioner of corrections. The revolving fund established shall be used for the conduct of the industrial and commercial activities now or hereafter established at any state correctional facility, including but not limited to the purchase of equipment, raw materials, the payment of salaries, wages and other expenses necessary and incident thereto. The purchase of materials and commodities for resale are not subject to the competitive bidding procedures of section 16B.07, but are subject to all other provisions of chapter 16B. When practical, purchases must be made from ~~socially and economically disadvantaged~~ economically disadvantaged small businesses. Additionally, the expenses of inmate vocational training and the inmate release fund may be financed from the correctional industries revolving fund in an amount to be determined by the commissioner. The proceeds and income from all industrial and commercial activities conducted at state correctional facilities shall be deposited in the correctional industries revolving fund subject to disbursement as hereinabove provided. The commissioner of corrections may request that money in the fund be invested pursuant to section 11A.25; the proceeds from the investment not currently needed shall be accounted for separately and credited to the fund.

Sec. 19. Minnesota Statutes 1988, section 471.345, subdivision 8, is amended to read:

Subd. 8. **PROCUREMENT FROM SOCIALLY OR ECONOMICALLY DISADVANTAGED PERSONS.** For purposes of this subdivision, the following terms shall have the meanings herein ascribed to them:

(a) "~~socially and 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 disadvantage. This disadvantage may arise from cultural, social or economic circumstances or background; physical location if the person resides or is employed in an area declared as a labor surplus area by the United States department of commerce; physical handicap; or other similar cause "economically disadvantaged small business" has the meaning given it in section 645.445.

(b) "business entity" means an entity organized for profit, including an individual, partnership, corporation, joint venture, association, or cooperative.

Nothing in this section shall be construed to prohibit any municipality from adopting a resolution, rule, regulation or ordinance which on an annual basis designates and sets aside for awarding to ~~business entities controlled by socially or economically disadvantaged persons~~ economically disadvantaged small businesses a percentage of the value of its anticipated total procurement of goods and services, including construction, and which uses either a negotiated price or bid contract procedure in the awarding of a procurement contract under a set-aside program as allowed in this subdivision, provided that any award based on a negotiated price shall not exceed by more than five percent the municipality's estimated price for the goods and services if they were purchased on the open market and not under the set-aside program.

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Sec. 20. Minnesota Statutes 1988, section 473.142, is amended to read:

**473.142 SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESSES.**

(a) The metropolitan council and agencies specified in section 473.143, subdivision 1, shall attempt to award at least nine percent of the value of all procurement, other than contracts under paragraph (c), to economically disadvantaged small 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, rehabilitation facilities, 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 small business has the meaning defined in section 645.445, clauses (3) to (5). 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~~ shall award a five percent preference to these businesses economically disadvantaged small businesses, as defined in section 645.445, in the amount bid on selected procurements. At least 75 percent of the value of the procurements awarded to economically disadvantaged small businesses must actually be performed by the business to which the award was made or another economically disadvantaged small business. An economically disadvantaged small business that has been awarded more than three-tenths of one percent of the value of the total anticipated procurements for a fiscal year from the agency is disqualified from receiving further preference advantages for that fiscal year from that agency. An economically disadvantaged small business is not eligible to participate in the bid preference established under this subdivision under conditions specified in section 16B.22, subdivision 1.

(b) The council and each agency specified in section 473.143, 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~~ a portion of the contract award to a prime contractor be subcontracted to an economically disadvantaged small business owned and operated by a socially or economically disadvantaged person, or that ~~at least ten percent~~ a portion of the contract award be expended in purchasing materials or supplies from this type of an economically disadvantaged small 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).

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(c) The council and each agency specified in section 473.143, 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 economically disadvantaged small 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 473.143, subdivision 1, shall attempt to purchase a variety of goods and services from different economically disadvantaged small 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 economically disadvantaged small businesses owned by socially or economically disadvantaged persons.

Sec. 21. Minnesota Statutes 1988, section 645.445, subdivision 5, is amended to read:

Subd. 5. "Socially or Economically disadvantaged person business" means a person who business that is not an affiliate or subsidiary of a business dominant in its field of operation and that 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, or background, physical location~~ A business is economically disadvantaged if:

(1) the person owner resides or is employed in a county in which the median income for married couples is less than 70 percent of the state median income for married couples; or

(2) the owner resides or is employed in an area designated a labor surplus area by the United States Department of Labor; ~~or other similar cause.~~ For purposes of this subdivision, an area designated a labor surplus area retains that status for 120 days after certified small businesses in the area are notified of the termination of the designation by the United States Department of Labor. ~~It includes racial minorities, women, or persons who have suffered a substantial physical disability; or~~

(3) the owner lacks adequate external support necessary to operate a competitive business enterprise as evidenced by diminished ability to secure long-term or working capital financing; equipment, raw material, or supplier trade credit; bonding and insurance, or if the business has not captured a proportionate share of the market for its goods or services; or

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(4) the business filed its first annual federal and state income tax returns which reflected its operation as a business within the preceding five years or will file its first annual return which reflects its operation as a business within the next 12 months; or

(5) for purposes of sections 16B.19 to 16B.22 and 137.31, the definition of "socially or economically disadvantaged person" includes the business in a rehabilitation facilities and facility or work activity programs program.

#### Sec. 22. STUDY OF SMALL BUSINESS PROGRAM.

The commissioner of administration shall assist the commission created in section 1 in its study of small business procurement programs. The commissioner shall review recent United States Supreme Court decisions to determine whether there is sufficient justification under a strict scrutiny standard to establish a narrowly tailored purchasing program for the benefit of any socially disadvantaged groups, and shall make recommendations to the commission regarding legislation and program operation where justification exists. The commissioner shall make recommendations:

(1) for revising the definition of small business contained in Minnesota Statutes, section 645.445; and

(2) for alternative programs to stimulate growth opportunities for small businesses.

The commissioner shall also assess the feasibility of establishing a preference program that incorporates urban and rural areas of high unemployment.

#### Sec. 23. RULES.

The commissioner of administration may adopt emergency rules to implement sections 3 to 6. For the purpose of certifying economically disadvantaged small businesses, the commissioner of administration may use, without further rulemaking, Minnesota Rules, Parts 1230.1400, 1230.1500, subparts 1, 2, 4-11, 1230.1600, 1230.1700, 1230.1900, subparts 1 to 5. The phrase "socially or economically disadvantaged" in those rules must be read to mean "economically disadvantaged" as defined in section 645.445, subdivision 5. The phrase "set-aside program" in those rules must be read to mean the preference programs created in this act.

#### Sec. 24. APPROPRIATIONS.

(a) The following amounts are appropriated from the general fund to the commissioner of administration for the purposes indicated.

(1) \$125,000 in fiscal year 1990 for the study required in section 22.

(2) \$85,000 in fiscal year 1990 and \$105,000 in fiscal year 1991 and two positions for the purposes of certifying small businesses and administering the provisions of this act.

New language is indicated by underline, deletions by ~~strikeout~~.

(b) \$75,000 is appropriated from the general fund to the legislative coordinating commission to administer section 1.

Sec. 25. **REPEALER.**

(a) Minnesota Statutes 1988, section 137.31, subdivision 3, is repealed.

(b) Laws 1984, chapter 654, article 2, section 49, is repealed.

(c) Sections 1 and 22 are repealed on January 4, 1990.

(d) Minnesota Statutes 1988, section 473.406, is repealed.

(e) The amendments to Minnesota Statutes, made by sections 2 to 21, are repealed June 30, 1990, and the revisor shall reinstate the stricken language and delete the new language in those sections.

(f) Notwithstanding Minnesota Statutes, section 645.36, section 25, paragraphs (a) and (d), are repealed June 30, 1990, and Minnesota Statutes 1988, sections 137.31, subdivision 3; and 473.406, are revived on that date.

Sec. 26. **EFFECTIVE DATE.**

Sections 1 to 25 are effective on the day following enactment and apply only to contracts for which notice of invitation to bid or requests for proposals are issued after that time.

Presented to the governor May 30, 1989

Signed by the governor June 2, 1989, 12:16 p.m.

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**CHAPTER 353—S.F.No. 895**

*An act relating to natural resources; amending provisions relating to the conservation reserve program; changing authority over the conservation reserve program from the commissioner of agriculture to the board of water and soil resources; defining certain terms; changing criteria for eligible land; prohibiting grazing of land under future agreements; providing conditions and payment for wetland restoration; providing for enforcement and liability for damages for violation of the terms of a conservation easement or agreement; authorizing the board to adopt rules; authorizing the commissioner of agriculture to allow town boards to suspend the duty of owners and occupants to control noxious weeds under certain conditions; withdrawing certain marginal land and wetlands from sale by the state unless restricted by a conservation easement under certain conditions; requiring certain acquisition procedures before the commissioner of natural resources accepts agricultural land or farm homesteads in fee from the federal government; authorizing aliens and non-Americans to own certain agricultural land to comply with pollution control laws or rules; amending Minnesota Statutes 1988, sections 40.42; 40.43; 40.44; 40.45; 84.95, subdivision 2; 282.018; 500.221, subdivi-*

New language is indicated by underline, deletions by ~~strikeout~~.