

Presented to the governor April 24, 1990

Signed by the governor April 26, 1990, 10:24 p.m.

### CHAPTER 541—H.F.No. 2230

*An act relating to public purchasing; establishing programs for purchasing from certain small targeted group businesses and businesses located in economically disadvantaged areas; requiring prompt payment to subcontractors; providing penalties; amending Minnesota Statutes 1988, sections 16B.07, by adding a subdivision; 16B.20, subdivisions 1 and 3; 161.321, subdivisions 1, 4, 5, and by adding a subdivision; Minnesota Statutes 1989 Supplement, sections 16B.19; 16B.20, subdivision 2; 16B.21; 16B.22; 16B.226; 116J.68; 136.27; 136.72; 137.31, subdivision 6; 161.321, subdivisions 2, 3, and 6; 161.3211; 241.27, subdivision 2; 471.345, subdivision 8; and 473.142; Laws 1989, chapter 352, section 25; proposing coding for new law in Minnesota Statutes, chapters 16A; 16B; and 137; repealing Minnesota Statutes 1989 Supplement, sections 16B.189; 137.31, subdivision 3a; and 645.445, subdivision 5.*

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

#### Section 1. [16A.1245] PROMPT PAYMENT TO SUBCONTRACTORS.

Each state agency contract must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

Sec. 2. Minnesota Statutes 1988, section 16B.07, is amended by adding a subdivision to read:

Subd. 6. NONCOMPETITIVE BIDS. Agencies are encouraged to purchase from small targeted group businesses designated under section 16B.19 when making purchases that are not subject to competitive bidding procedures.

Sec. 3. Minnesota Statutes 1989 Supplement, section 16B.19, is amended to read:

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**16B.19 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.**

Subdivision 1. **SMALL BUSINESS PROCUREMENTS.** The commissioner shall for each fiscal year ensure that small businesses receive at least 25 percent of the value of anticipated total state procurement of goods and services, including printing and construction. The commissioner shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses. In making the annual red 19:8 designation of such procurements the commissioner shall attempt (1) to vary the included procurements so that a variety of goods and services produced by different small businesses are obtained each year, and (2) to designate small business procurements in a manner that will encourage proportional distribution of such 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 small business set-aside procurement for award to bidders from a specified congressional district or other geographical region specified by the commissioner. The failure of the commissioner to designate 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.** The commissioner shall adopt rules defining "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 137.31, 137.35, 161.321, and 473.142. The definition must include only businesses with their principal place of business in Minnesota. The definition must establish different size standards for various types of businesses. In establishing these standards, the commissioner must consider the differences among industries caused by the size of the market for goods or services and the relative size and market share of the competitors operating in those markets.

The definition of "small business" in section 645.445 applies to sections 16B.189 to 16B.22, 137.31, 137.35, 161.321, and 473.142, until the commissioner adopts rules with a new definition. However, only small businesses with a principal place of business in Minnesota are included for purposes of these sections.

Subd. 2. **CONSULTANT, PROFESSIONAL AND TECHNICAL PROCUREMENTS.** Every state agency shall for each fiscal year designate for awarding to small businesses 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.

Subd. 2a. **TARGETED GROUP PURCHASING.** The commissioner shall establish a program for purchasing goods and services from targeted group businesses, as designated in subdivision 2b. The purpose of the program is to remedy the effects of past discrimination against members of targeted groups.

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In furtherance of this purpose, the commissioner shall attempt to assure that for each category of goods or services purchased by the state, the percentage of purchasing from each type of targeted group business is proportional to the representation of that targeted group business among all businesses in the state in the purchasing category.

**Subd. 2b. DESIGNATION OF TARGETED GROUPS.** (a) The commissioner of administration shall periodically designate businesses that are majority owned and operated by women, persons with a disability, or specific minorities as targeted group businesses within purchasing categories the commissioner determines. A group must be targeted within a purchasing category if the commissioner determines there is a statistical disparity between the percentage of purchasing from businesses owned by group members and the representation of business owned by group members among all business in the state in the purchasing category. The commissioner must review public agencies' purchasing from businesses owned by women, persons with a disability, and minorities at least once every two years. The commissioner must review the representation of businesses owned by these groups among all businesses in the state at least once every five years.

(b) In addition to designations under paragraph (a), an individual business may be included as a targeted group business if the commissioner determines that inclusion is necessary to remedy discrimination against the owner based on race, gender, or disability in attempting to operate a business that would provide goods or service to public agencies.

(c) The designations of purchasing categories and businesses under paragraphs (a) and (b) are not rules for purposes of chapter 14, and are not subject to rulemaking procedures of that chapter.

**Subd. 2c. PURCHASING METHODS.** (a) The commissioner may award up to a six percent preference in the amount bid for specified goods or services to small targeted group businesses.

(b) The commissioner may designate a purchase of goods or services for award only to small targeted group businesses, if the commission determines that at least three small targeted group businesses are likely to bid.

(c) The commissioner, as a condition of awarding a construction contract or approving a contract for consultant, professional, or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses.

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Subd. 2d. ECONOMICALLY DISADVANTAGED AREAS. The commissioner may award up to a four percent preference in the amount bid on state procurement to small businesses located in an economically disadvantaged area. A business is located in an economically disadvantaged area if:

(1) the 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

(3) the business is a rehabilitation facility or work activity program.

The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as enterprise zones under section 469.167 as economically disadvantaged areas for purposes of this subdivision if the commissioner determines that this designation would further the purposes of this section. If the owner of a small business resides or is employed in a designated area, the small business is eligible for any preference provided under this subdivision.

The department of revenue shall gather data necessary to make the determinations required by clause (1), and shall annually certify counties that qualify under clause (1). 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.

**Subd. 3. NEGOTIATED PRICE OR BID CONTRACT SURETY BONDS.** 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 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 preference programs established in ~~subdivision 5 for economically disadvantaged small businesses subdivisions 2a to 2d,~~ 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.

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Subd. 5. **CERTAIN SMALL BUSINESS PREFERENCES LIMITS.** The commissioner shall award a five percent preference in the amount bid on all state procurements to economically disadvantaged small businesses to encourage the participation of economically disadvantaged small businesses in state procurement. At least 75 percent of the value of the procurements subcontracts awarded to economically disadvantaged small targeted group businesses under subdivision 2c, paragraph (c) must actually be performed by the business to which the award subcontract is made awarded or by another economically disadvantaged small targeted group 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 preference advantages for that fiscal year.

Subd. 6. **-CONTRACTS IN EXCESS OF \$200,000; SUBCONTRACTS.** The commissioner, as a condition of awarding state procurements for construction contracts or approving contracts for consultant, professional, or technical services under section 16B.17 in excess of \$200,000, 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 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 economically disadvantaged 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 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, as certified under section 16B.22.

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 under section 16B.17 that are financed in whole or in part with federal funds and that are subject to federal disadvantaged business enterprise regulations.

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Sec. 4. Minnesota Statutes 1988, section 16B.20, subdivision 1, is amended to read:

Subdivision 1. **COMMISSIONER OF ADMINISTRATION.** The commissioners of administration and trade and economic development shall publicize the provisions of the ~~set-aside program~~ purchasing programs in sections 16B.19 to 16B.22, attempt to locate small businesses able to perform ~~set-aside procurement awards under the programs~~, and encourage participation. When the commissioner of administration determines that a small business is unable to perform under a ~~set-aside contract program established in sections 16B.19 to 16B.22~~, the commissioner shall inform the commissioner of trade and economic development who shall assist the small business in attempting to remedy the causes of the inability to perform a set-aside award. In assisting the small business, the commissioner of trade and economic development in cooperation with the commissioner of administration shall use management or financial assistance programs made available by or through the department of trade and economic development, other state or governmental agencies, or private sources.

Sec. 5. Minnesota Statutes 1989 Supplement, section 16B.20, subdivision 2, is amended to read:

Subd. 2. **ADVISORY COUNCIL.** A small business and targeted group 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.

Sec. 6. Minnesota Statutes 1988, section 16B.20, subdivision 3, is amended to read:

Subd. 3. **DUTIES.** The small business procurement advisory council shall:

(1) advise the commissioner of administration on matters relating to the small business and targeted group procurement program;

(2) review complaints or grievances from small business and targeted group vendors or contractors who are doing or attempting to do business under the program; and

(3) review the reports of the commissioners of administration and trade and economic development provided by section 16B.21 to ensure compliance with the goals of the program.

Sec. 7. Minnesota Statutes 1989 Supplement, section 16B.21, is amended to read:

**16B.21 REPORTS.**

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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, 137.31, 137.35, 161.321, and 473.142 during the preceding fiscal year. The commissioner shall also submit a quarterly report to the small business and targeted group 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 small business procurement program, the total dollar value and number of set-aside and other contracts actually awarded to small businesses, 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 targeted group businesses pursuant to each bidding process authorized by ~~section~~ sections 16B.19, subdivision ~~5~~ 2c, 137.31, 137.35, 161.321, and 473.142; the total number and value of these contracts awarded to each ~~economically disadvantaged~~ small targeted group business and to each ~~category~~ type of economically disadvantaged small targeted group business in each purchasing category, and the percentages of the total state ~~procurements~~ procurement for each purchasing category the figures represent.

(4) the total dollar value and number of contracts awarded to small businesses in economically disadvantaged areas under the bidding process authorized in section 16B.19, subdivision 2d; the total number and value of these contracts awarded to each business, and to all business within each economically disadvantaged area in each purchasing category, and the percentages of total procurement for each purchasing category the figures represent.

The information required by clauses (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 small business and small targeted group business procurement program during the preceding fiscal year;

(2) the efforts undertaken to identify ~~economically disadvantaged~~ small tar-

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~~geted~~ group businesses and the efforts undertaken to encourage participation in the ~~set-aside bid preference~~ targeted group purchasing program;

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

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

**Subd. 3. REPORTS FROM OTHER AGENCIES.** The commissioner of transportation, each metropolitan agency listed in section 473.143, subdivision 1, and the University of Minnesota shall report to the commissioner of administration all information that the commissioner requests to make reports required under this section. The information must be reported at the time and in the manner requested by the commissioner of administration.

Sec. 8. Minnesota Statutes 1989 Supplement, section 16B.22, is amended to read:

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

~~Subdivision 1. ELIGIBILITY.~~ A small business certified as economically disadvantaged under section 645.445, subdivision 5, clause (1) or (2), 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 award under this program and after that period is not eligible to participate for another five years. 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.~~

**Subd. 2. RULES.** (a) A small business wishing to participate in the programs under section 16B.19, subdivisions 2a to 2d, must be certified by the commissioner. The commissioner shall adopt by rule ~~additional~~ standards and procedures for certifying that small businesses ~~and economically disadvantaged,~~ small targeted group businesses, and small businesses located in economically disadvantaged areas 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.

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(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.

(c) The commissioner may make rules that set time limits and other eligibility limits on business participation in programs under sections 16B.19 to 16B.22.

Sec. 9. Minnesota Statutes 1989 Supplement, section 16B.226, is amended to read:

#### 16B.226 CERTIFICATION.

A business that is certified by the commissioner of administration as a small business ~~or an economically disadvantaged~~, small targeted group business ~~or a business located in an economically disadvantaged area~~ 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) as a small targeted group business~~, 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. 10. [16B.227] CRIMINAL PENALTY.

A person who knowingly provides false information to a public official or employee for the purpose of obtaining or retaining certification as a small targeted group business or a small business located in an economically disadvantaged area under sections 16B.189 to 16B.226, 137.31, 137.35, 161.321, or 473.142, is guilty of a misdemeanor.

Sec. 11. Minnesota Statutes 1989 Supplement, section 116J.68, is amended to read:

#### 116J.68 BUREAU OF SMALL BUSINESS.

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 ~~economically disadvantaged~~ small targeted group businesses ~~and small businesses located in an economically disadvantaged area.~~

Subd. 2. The bureau shall:

(a) provide information and assistance with respect to all aspects of business planning and business management related to the start-up, operation, or expansion of a small business in Minnesota;

(b) refer persons interested in the start-up, operation, or expansion of a small business in Minnesota to assistance programs sponsored by federal agencies, state agencies, educational institutions, chambers of commerce, civic orga-

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nizations, community development groups, private industry associations, and other organizations or to the business assistance referral system established by the Minnesota Project Outreach Corporation;

(c) plan, develop, and implement a master file of information on small business assistance programs of federal, state, and local governments, and other public and private organizations so as to provide comprehensive, timely information to the bureau's clients;

(d) employ staff with adequate and appropriate skills and education and training for the delivery of information and assistance;

(e) seek out and utilize, to the extent practicable, contributed expertise and services of federal, state, and local governments, educational institutions, and other public and private organizations;

(f) maintain a close and continued relationship with the director of the procurement program within the department of administration so as to facilitate the department's duties and responsibilities under sections 16B.19 to 16B.22 relating to the small targeted group business ~~set aside~~ and economically disadvantaged business program of the state;

(g) develop an information system which will enable the commissioner and other state agencies to efficiently store, retrieve, analyze, and exchange data regarding small business development and growth in the state. All executive branch agencies of state government and the secretary of state shall to the extent practicable, assist the bureau in the development and implementation of the information system;

(h) establish and maintain a toll free telephone number so that all small business persons anywhere in the state can call the bureau office for assistance. An outreach program shall be established to make the existence of the bureau well known to its potential clientele throughout the state. If the small business person requires a referral to another provider the bureau may use the business assistance referral system established by the Minnesota Project Outreach Corporation;

(i) conduct research and provide data as required by state legislature;

(j) develop and publish material on all aspects of the start-up, operation, or expansion of a small business in Minnesota;

(k) collect and disseminate information on state procurement opportunities, including information on the procurement process;

(l) develop a public awareness program through the use of newsletters, personal contacts, and electronic and print news media advertising about state assistance programs for small businesses, including those programs specifically for socially disadvantaged small business persons;

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(m) publicize to small businesses section 14.115 which requires consideration of small business issues in state agency rulemaking;

(n) enter into agreements with the federal government and other public and private entities to serve as the statewide coordinator or host agency for the federal small business development center program under United States Code, title 15, section 648;

(o) establish an evaluation mechanism to determine if assistance providers have adequate expertise and resources to deliver quality services. Evaluation of assistance providers may be based on the ability of the provider to offer the advertised service, the training and experience of the provider, and the formal evaluation process used by the provider. The evaluation mechanism must be designed so that the business assistance referral system established by the Minnesota Project Outreach Corporation may use the results of the evaluation in providing clients with referrals to providers; and

(p) assist providers in the evaluation of their programs and the assessment of their service area needs. The bureau may establish model evaluation techniques and performance standards for providers to use.

Sec. 12. Minnesota Statutes 1989 Supplement, 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 economically disadvantaged~~, small targeted group businesses, and businesses in economically disadvantaged areas designated under section 16B.19.

Sec. 13. Minnesota Statutes 1989 Supplement, 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 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 economically disadvantaged~~, small targeted group businesses, and businesses in economically disadvantaged areas designated under section 16B.19.

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Sec. 14. Minnesota Statutes 1989 Supplement, 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 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; and

~~(c) the total dollar value and number of procurement contracts awarded to economically disadvantaged small businesses 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. 15. [137.35] **TARGETED BUSINESSES.**

Subdivision 1. PURCHASING METHODS. (a) The regents may award up to a six percent preference in the amount bid for specified goods and services to small targeted group businesses designated under section 16B.19.

(b) The regents may designate a purchase of goods or services for award only to small targeted group businesses designated under section 16B.19 if the regents determine that at least three small targeted group businesses are likely to bid.

(c) The regents, as a condition of awarding a construction contract or approving a contract for consultant, professional, or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses. The regents must establish a procedure for

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granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The regents may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses. At least 75 percent of the value of the subcontracts awarded to small targeted group businesses under this paragraph must be performed by the business to which the subcontract is awarded or by another small targeted group business.

(d) The regents may award up to a four percent preference in the amount bid on university procurement to small businesses located in an economically disadvantaged area as defined in section 16B.19.

(e) The regents may delegate responsibility under this section to university employees.

Subd. 2. ELIGIBILITY. The rules adopted by the commissioner of administration to define small businesses and to set time and other eligibility requirements for participation in programs under sections 16B.19 to 16B.22 apply to this section.

Subd. 3. NONCOMPETITIVE BIDS. The regents are encouraged to purchase from small targeted group businesses designated under section 16B.19 when making purchases that are not subject to competitive bidding procedures.

Subd. 4. REPORT. The regents must report to the commissioner of administration on compliance with this section. The information must be reported at the time and in the manner requested by the commissioner.

#### Sec. 16. [137.36] PROMPT PAYMENT TO SUBCONTRACTORS.

Each university contract must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the university for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney fees, incurred in bringing the action.

Sec. 17. Minnesota Statutes 1988, section 161.321, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For purposes of this section the following

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terms have the meanings given them, except where the context clearly indicates a different meaning is intended.

(a) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding except as otherwise provided in this section.

(b) "Contract" means an agreement entered into between a business entity and the state of Minnesota for the construction of transportation improvements.

(c) "Subcontractor" means a business entity which enters into a legally binding agreement with another business entity which is a party to a contract as defined in clause (b).

(d) "targeted group business" means a business designated under section 16B.19, subdivision 2b.

Sec. 18. Minnesota Statutes 1989 Supplement, 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 five percent of the construction work to be performed by contract for award to small businesses or economically disadvantaged small businesses or for award to businesses which guarantee use of small businesses or economically disadvantaged small businesses as subcontractors.~~  
(a) The commissioner may award up to a six percent preference in the amount bid for specified construction work to small targeted group businesses.

(b) The commissioner may designate a contract for construction work for award only to small targeted group businesses if the commissioner determines that at least three small targeted group businesses are likely to bid.

(c) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses.

(d) The commissioner may award up to a four percent preference in the amount bid on procurement to small businesses located in an economically disadvantaged area as defined in section 16B.19.

Sec. 19. Minnesota Statutes 1989 Supplement, section 161.321, subdivision 3, is amended to read:

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Subd. 3. **AWARDS TO SMALL BUSINESSES.** At least 75 percent of the amount so set aside must be subcontracts awarded; if possible, either to economically disadvantaged small targeted group businesses as direct contracts or as part of contracts awarded to businesses which guarantee the use, as subcontractors, of economically disadvantaged small businesses. 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 must be performed by the business to which the subcontract is awarded or another small targeted group business.

Sec. 20. Minnesota Statutes 1988, section 161.321, subdivision 4, is amended to read:

Subd. 4. **AWARDS, LIMITATIONS.** The amount of any individual contract or subcontract awarded pursuant to subdivisions 2 and 3 shall not exceed \$200,000, nor shall any one small business be awarded an aggregate amount of contracts or subcontracts or both in excess of \$200,000 in any one fiscal year. Contracts awarded pursuant to this section shall be are subject to all applicable limitations contained in section 16B.19, subdivisions 2, 3, and 6 rules adopted by the commissioner of administration.

Sec. 21. Minnesota Statutes 1988, section 161.321, subdivision 5, is amended to read:

Subd. 5. **RECOURSE TO OTHER BUSINESSES.** In the event that If the commissioner is unable to award a contract pursuant to the provisions of subdivisions 2 and 3, the award may be placed pursuant to the normal solicitation and award provisions set forth in this chapter and chapter 46 16B.

Sec. 22. Minnesota Statutes 1989 Supplement, section 161.321, subdivision 6, is amended to read:

Subd. 6. **RULES.** ~~The commissioner may promulgate by rule, standards and procedures for certifying that small businesses, and economically disadvantaged small businesses are eligible to participate in the set-aside program authorized in subdivisions 2 and 3. The rules adopted by the commissioner of administration to define small businesses and to set time and other eligibility requirements for participation in programs under sections 16B.19 to 16B.22 apply to this section. The commissioner may promulgate other rules as may be necessary to carry out the provisions of this section.~~

Sec. 23. Minnesota Statutes 1988, section 161.321, is amended by adding a subdivision to read:

Subd. 7. **NONCOMPETITIVE BIDS.** The commissioner is encouraged to purchase from small targeted group businesses designated under section 16B.19 when making purchases that are not subject to competitive bidding procedures.

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

Sec. 24. Minnesota Statutes 1989 Supplement, 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 with an approximate designation as to the total number and value of 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 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 report to the commissioner of administration on compliance with this section. The information must be reported at the time and in the manner requested by the commissioner.

Sec. 25. Minnesota Statutes 1989 Supplement, 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 commissioner 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

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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 ~~economically disadvantaged~~ small targeted group businesses designated under section 16B.19. 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. 26. Minnesota Statutes 1989 Supplement, section 471.345, subdivision 8, is amended to read:

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

(a) "Economically disadvantaged Small targeted group business" has the meaning given it in means businesses designated under section 645.445 16B.19.

(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 ~~economically disadvantaged~~ small targeted group 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.

Sec. 27. Minnesota Statutes 1989 Supplement, section 473.142, is amended to read:

**473.142 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 (e), to economically disadvantaged small businesses. For purposes of this section, economically disadvantaged 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

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percentage of all procurements for bidding only by these businesses. The council or an agency shall award a five percent preference to economically disadvantaged small businesses, as defined in section 645.445, in the amount bid on 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 a portion of the contract award to a prime contractor be subcontracted to an economically disadvantaged small business, or that a portion of the contract award be expended in purchasing materials or supplies from an economically disadvantaged small business. 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 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.

(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 may award up to a six percent preference in the amount bid for specified goods or services to small targeted group businesses designated under section 16B.19.

(b) The council and each agency specified in section 473.143, subdivision 1, may designate a purchase of goods or services for award only to small targeted group businesses designated under section 16B.19 if the council or agency determines that at least three small targeted group businesses are likely to bid.

(c) The council and each agency specified in section 473.143, subdivision 1, as a condition of awarding a construction contract or approving a contract for consultant, professional, or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses designated under section 16B.19. The council or agency must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The council or agency may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting

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requirements of this paragraph do not apply to prime contractors who are small targeted group businesses. At least 75 percent of the value of the subcontracts awarded to small targeted group businesses under this paragraph must be performed by the business to which the subcontract is awarded or by another small targeted group business.

(d) The council and each agency listed in section 473.143, subdivision 1, are encouraged to purchase from small targeted group businesses designated under section 16B.19 when making purchases that are not subject to competitive bidding procedures.

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

(f) Each council or agency contract must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the council or agency for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney fees, incurred in bringing the action.

(g) 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 commissioner of administration on compliance with this subdivision section. The reports must include the information specified in section 16B.21 that pertains to purchasing from economically disadvantaged small businesses must be reported at the time and in the manner requested by the commissioner.

#### Sec. 28. STUDIES.

(a) The commissioner of trade and economic development shall evaluate the effectiveness of programs to provide working capital to small businesses and the need for additional programs.

(b) The commissioner of administration shall review current practice and study the extent to which public agencies need to reserve retainage from progress payments on public contracts.

(c) The commissioner of administration shall review current practices and study the extent to which public agencies need to require security bonds on public contracts.

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(d) The reviews and evaluations in this section must be done by January 15, 1991.

Sec. 29. Laws 1989, chapter 352, section 25, is amended to read:

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. 30. **RULES.**

The commissioner of administration may adopt emergency rules for purposes of implementing sections 3 to 9. For purposes of certifying small targeted group businesses and small businesses located in economically disadvantaged areas, the commissioner of administration may use, without further rulemaking, previous rules used to implement the program governing socially or economically disadvantaged businesses. If the commissioner uses those rules, the phrase "socially or economically disadvantaged business" in those rules must be read to refer to targeted group businesses and businesses located in economically disadvantaged areas. The phrase "set-aside" program in those rules must be read to refer to the programs created in section 3.

Sec. 31. **REPEALER.**

Minnesota Statutes 1989 Supplement, sections 16B.189; 137.31, subdivision 3a; and 645.445, subdivision 5, are repealed.

Sec. 32. **EFFECTIVE DATE.**

Sections 1 to 28 and 31 are effective July 1, 1990, and apply only to contracts for which notice of invitation to bid or requests for proposals are issued after that date. Sections 29 and 30 are effective the day following final enactment. The rulemaking authority granted to the commissioner of administration in section 8, paragraph (c), is effective the day following final enactment.

Presented to the governor April 26, 1990

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

Signed by the governor May 3, 1990, 5:55 p.m.

**CHAPTER 542—H.F.No. 2390**

*An act relating to children; creating a legislative commission on child protection; providing improved procedures to protect the safety and welfare of abused and neglected children; improving data practices; including mental injuries and threatened injuries as abuse to be reported as maltreatment of minors; increasing penalties for assault against a child when there is a past pattern of child abuse; increasing the penalty for malicious child punishment resulting in great bodily harm; excluding persons convicted of child abuse or criminal sexual conduct seeking employment in juvenile corrections from certain protections for criminal offenders; providing for maternal and child health services in chemical abuse situations; defining controlled substances for purposes of reporting prenatal exposure to controlled substances; appropriating money; amending Minnesota Statutes 1988, sections 145.88; 145.882, subdivision 7; 147.09; 259.40, subdivisions 1 and 4; 260.011, subdivision 2; 260.155, subdivision 1; 609.379, subdivision 2; 626.556, subdivisions 1, 3, 4, and by adding a subdivision; and 626.559, subdivision 2; Minnesota Statutes 1989 Supplement, sections 245A.04, subdivision 3; 260.015, subdivision 2a; 260.161, subdivision 2; 260.171, subdivision 4; 260.221, subdivision 1; 364.09; 609.223; 609.377; 626.556, subdivisions 2, 10e, and 11; 626.5561, subdivisions 1, 3, 4, and by adding a subdivision; 626.5562, subdivisions 1, 2, and 4; and 626.558, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 3; 144; and 245.*

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

**Section 1. [3.9227] LEGISLATIVE COMMISSION ON CHILD PROTECTION.**

Subdivision 1. CREATION. A legislative commission on child protection is created consisting of ten members. Five members of the house of representatives, including members of the minority caucus, shall be appointed by the speaker and five members of the senate, including members of the minority caucus, shall be appointed by the subcommittee on committees. Members serve until expiration of their legislative terms and vacancies must be filled in the same manner as the original positions.

Subd. 2. POWERS AND DUTIES. The commission shall study matters relating to child protection and coordinate and oversee activities of the standing committees dealing with these issues. The commission's agenda shall include:

(1) analyzing and making recommendations regarding federal, state, and county funding and responsibility for the child protection system;

(2) developing ways to maximize the use of federal funding sources to enhance state child protection efforts; and

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