

Filed for intro on 02/02/95
Senate Bill _____
By

House Bill No.HB0392
By Jones

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8 and Title 54, relative to minority business enterprise.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-3-101, is amended by inserting the following as a new, appropriately designated item:

() Department of minority business enterprise;

SECTION 2. Tennessee Code Annotated, Section 4-3-104, is amended by inserting the following as a new, appropriately designated subsection:

() References appearing elsewhere in this code to the office of business enterprise shall be deemed references to the department of minority business enterprise.

SECTION 3. Tennessee Code Annotated, Section 4-3-111, is amended by inserting the following as a new, appropriately designated item:

() Commissioner of minority business enterprise, for the department of minority business enterprise;

SECTION 4. Tennessee Code Annotated, Title 4, Chapter 3, is amended by inserting Sections 5 through 10 of this act as a new, appropriately designated part.

SECTION 5. There is hereby created the department of minority business enterprise.

SECTION 6. For the purpose of this part, unless the context otherwise requires:

(1) "Bid bond" means a bond conditioned upon the entering into a contract by a bidder, if the bidder receives the award thereof, and furnishing the prescribed payment bond and performance bond;

(2) "Commissioner" means the commissioner of minority business enterprise;

(3) "Department" means the department of minority business enterprise;

(4) "Disadvantaged business" means a business which is solely owned, or at least fifty-one percent (51%) of the outstanding stock of which is owned, by a person who is either:

(A) By reason of social background unable to obtain technical, business or financial assistance of a quality or quantity similar to that available to the average business;

(B) Impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, sex or service in the armed forces during the Vietnam War; provided, that it is not the policy of this state to encourage employment outside the home of mothers of minor children;

(C) Unable to compete effectively because of tendencies of regular financing and commercial organizations to restrict their services to established businesses; or

(D) In a state of chronically low income because of long residence in an urban area with high unemployment and low income;

(5) "Obligee" means:

(A) In the case of a bid bond, the person requesting bids for the performance of a contract; or

(B) In the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond;

(6) "Payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with the principal;

(7) "Performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms;

(8) "Prime contractor" means the person with whom the obligee has contracted to perform the contract;

(9) "Principal" means:

(A) In the case of a bid bond, a person bidding for the award of a contract; or

(B) The person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond.

A principal may be a prime contractor or a subcontractor;

(10) "Subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract; and

(11) "Surety" means the person who:

(A) Under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond;

(B) Under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract; or

(C) Under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment.

SECTION 7.

(a) The department is authorized to:

(1) Provide assistance to disadvantaged businesses by advising and counseling on all phases of procurement policies, by obtaining information concerning prime contractors in letting subcontracts and by encouraging the letting of subcontracts by prime contractors to disadvantaged businesses;

(2) Receive funding from sources other than the state;

(3) Make studies and conduct workshops, conferences and seminars, with owners and employees of disadvantaged businesses to enhance their understandings of business management, bidding, licensing procedures, procurement procedures and any other activities incident to their positions in business;

(4) Develop training and educational programs in cooperation with institutions, associations, and other state, local and federal agencies, and coordinate the training efforts of the various organizations presently providing technical assistance to disadvantaged businesses;

(5) Encourage and provide the direction and coordination necessary to secure franchises and dealerships from private firms for disadvantaged businesses;

(6) Review and evaluate legislation and determine its effect upon disadvantaged businesses and make appropriate recommendations to the governor and the general assembly;

(7) Employ such personnel as may be required to implement and administer this chapter; and

(8)

(A) Develop sources of capital for minority entrepreneurs;

(B) Assist in setting up new minority banks, small business investment companies, as defined in 15 U.S.C. § 681(a), and minority enterprise small business investment companies, being the companies authorized in 15 U.S.C. § 681(d); and

(C) Develop loan packages to assist minority business persons in the start-up or expansion of businesses, or any other financial counseling necessary to enable minority business operations to operate on a sound financial basis.

(b)

(1) The department shall continually evaluate the progress of disadvantaged businesses through monitoring and techniques of evaluation, such as surveys and feasibility studies.

(2) The department shall maintain complete and consistent program data.

SECTION 8. This part shall be liberally construed to carry out the following purposes and objectives that:

(1) Disadvantaged businesses share in the American economic system of private enterprise through free and vigorous competition;

(2) Such competition be fostered through the encouragement and development of disadvantaged businesses; and

(3) The state aid, counsel and assist in every practical manner disadvantaged businesses in order to preserve free competition on equal terms with those businesses constituting the major part of the business community.

SECTION 9.

(a) The department shall make a written report to the governor, the speaker of the senate, the speaker of the house of representatives, the chairman of the senate commerce, labor and agriculture committee, the chairman of the house commerce committee, and any governor's advisory committee on minority economic development, at least once each year, such report to be made no later than December 1.

(b) The report shall advise the aforementioned officials and committees on the administration and operation of this part.

SECTION 10.

(a)

(1) The general assembly finds that conventional funding sources for emerging and expanding disadvantaged businesses are limited or nonexistent.

(2) The general assembly further finds that promoting and encouraging economic opportunity and development within the state's minority community is a worthy public purpose.

(3) Such economic opportunity and development serve the health, safety and welfare of all citizens through creation of long-term employment opportunities, reduction of unemployment, diminished demand for costly social services and increased revenue collections.

(b)

(1) There is created within the state treasury a restricted account not to exceed one million dollars (\$1,000,000) to be known as the "disadvantaged business loan guarantee account."

(2) Amounts in the account at the end of any fiscal year shall not revert to the general fund but shall remain available to the department for the purposes set forth in this section.

(3) Amounts in the account shall be invested for the benefit of the account by the treasurer pursuant to Section 9-4-603. The account shall be administered by the commissioner.

(c)

(1) There is created, within the department of minority business enterprise, the disadvantaged business loan guarantee program.

(2) The purpose of the loan guarantee program is to ensure the availability of conventional financial resources to emerging and expanding disadvantaged businesses by guaranteeing loans for disadvantaged businesses.

(3) To qualify for a loan guarantee, a disadvantaged business must demonstrate to the satisfaction of the commissioner that the loan will be fully repaid and will produce economic benefit for the community and state.

(4) The department is authorized to determine the total dollar amount of loans to be guaranteed, subject to a maximum of five (5) times the balance of appropriated funds within the loan guarantee account, plus income, less expenses associated with the program.

(5) The department is authorized to charge a premium to the borrower to help defray the cost of administering the program.

(6) The department may establish other terms and conditions for guarantees of loans.

(7) The total aggregate amount of the loan guarantee may not exceed eighty percent (80%) of any loan.

(8) All documentation evidencing a loan guarantee shall clearly state that such guarantee is an obligation of the disadvantaged business loan guarantee

account and not of the general fund or the state of Tennessee, and that any amounts required to be paid pursuant to the loan guarantee are subject to the availability of sufficient funds within the guarantee account.

(d) The commissioner shall annually submit to the governor and the speakers of the senate and house of representatives, within ninety (90) days after the end of the fiscal year, a complete and detailed report setting forth the operations, transactions and accomplishments of the disadvantaged business loan guarantee fund.

SECTION 11. Tennessee Code Annotated, Title 4, Chapter 26, is amended by deleting Part 1.

SECTION 12. All persons employed within the department of economic and community development, office of business enterprise on the effective date of this act shall be transferred to and shall become employees of the department of minority business enterprise.

SECTION 13. This act shall take effect on July 1, 1995, the public welfare requiring it.