

Approved Arthur Douville 4-22-86
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:00 a.m. ~~pm~~ on March 6, 1986 in room 526-S of the Capitol.

All members were present except:

All members were present.

Committee staff present:

All present.

Conferees appearing before the committee:

Mr. Alonzo Harrison, ADBE & HDB Const.
Senator Eugene Anderson
Representative Clarence C. Love
Dr. Gilbert R. Parks
Mr. Marc Marcano, KS Advisory Comm. on Mex.-Amer. Affairs
Mr. Bi-ly Q. McCray, KS Dept. of Economic Development
Mr. Glen Coulter, KS Contractors Assoc.

The committee conducted hearings on H.B. 2780. Representative Cribbs, a sponsor of the bill, gave a statement on the bill. The next speaker was Representative Love who spoke as a proponent on the bill. (See attachment #1.) The following people all spoke as proponents of the bill: Alonzo Harrison (see attachment #2), Senator Eugene Anderson, Dr. Gilbert R. Parks, Marc Marcano and Billy Q. McCray (see attachment #3). Representative Bideau asked Mr. McCray if it was correct that he had indicated in his testimony that the Governor had the authority to implement the measures contained in the bill under consideration by executive order. Mr. McCray replied that this was correct and the Governor did have such authority. Representative Bideau then asked Mr. McCray if he knew of any reason why the Governor had not implemented such a program during the seven years of his administration. Mr. McCray replied that he did not know of any reason why this had not been done.

The last speaker was Mr. Glen Coulter. Mr. Coulter gave statistics on the Kansas Department of Transportation hiring guidelines for minorities and women.

D12-5

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date 3-6-86

Name	City	Representing
Alvin H. Hargis	Topeka	ADBE & HDB Const. I.
Gilbert R. Parks (M)	Topeka	SOA
W.D. Rodgers	Topeka	R. B. Bonta
Gordon Criswell	Kansas City	KDED
Tony August	Topeka	KDED Kansas Adv. of Mex Affairs
Gene Gull	Topeka	Kansas Advisory Committee on Mex-Am Affairs
Harry D. Nelson	Wichita	Ka. AFL-CIO
Dille S. Nidark	TOPEKA	
Open Coulter	Topeka	Ks. Contractors Assoc.
Tom Slattery	Topeka	Assoc. Gen. Contractors
Billy G. Gray	Topeka	KDED

CLARENCE C. LOVE
 REPRESENTATIVE, THIRTY-FIFTH DISTRICT
 WYANDOTTE COUNTY
 2853 PARKVIEW
 KANSAS CITY, KANSAS 66104
 (913) 371-5625



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER COMMUNICATION, COMPUTERS
 AND TECHNOLOGY
 GOVERNMENTAL ORGANIZATION
 INTERSTATE COOPERATION

RE: HOUSE BILL NO. 2780 -- The MINORITY AND WOMEN-OWNED BUSINESS
 ENTERPRISE ACT

Brief of H.B. 2780

H.B. 2780 would enact new legislation to be administered by the Secretary of Economic Development and aimed at promoting and encouraging the economic development of minority and women-owned businesses. In addition, the bill would encourage these businesses to participate in the state's procurement process as both prime contractors and subcontractors.

The definition section of the bill declares that a minority person is a United States citizen who is a Negro, Hispanic, Oriental, American Indian, Eskimo, or Aluet. A minority business is defined as a business that is more than 50 percent owned by one or more minority person or in the case of a corporation, more than 50 percent of the stock is owned by minorities. The management and operations of the business must be controlled by one or more of the minority owners. Women-owned businesses are defined as those which are more than 50 percent owned by one or more women who are United States citizens. In the case of a corporation, more than 50 percent of the stock must be owned by one or more women, and the daily management and operation must be controlled by one or more of the women who own the business. Other definitions include sheltered market which means a procurement procedure whereby certain contracts are selected and set aside for minority or women-owned businesses on a competitive bid or negotiated basis.

The bill prohibits that at least 10 percent of the total dollar amount of state contracts, shall be the goal to be awarded to minority and women-owned businesses. At least 50 percent of the total amount of contracts awarded to minority and women-owned businesses shall be awarded to women-owned business. The target date for these goals shall be within three years of the effective date of the Act.

In administering this Act, the Secretary of Economic Development would work with a liaison from each state agency to further the law's objectives. Duties of the liaison include submitting to the Secretary any necessary reports and documents.

AH. #1

3-6-86

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1. Formulate a certification procedure that will assure that businesses wanting to take advantage of the Act are legitimate minority or women-owned businesses.
2. Maintain a list of all valid minority and women-owned businesses.
3. Review rules and regulations for the implementation of the program.
4. Review compliance plans submitted by each agency pursuant to this Act.
5. Make annual reports to the Governor and the Legislature on the status of the program.
6. Serve as a coordinator for all of the state's minority and women-owned business programs and as the repository of information and referrals for all state minority and women-owned business initiatives.
7. Recommend rules and regulations for the use of sheltered market procurement procedures.
8. Establish an enforcement procedure which could include the following:
 - a. termination of the contract involved;
 - b. prohibition of participation by the respondent in public contracts for a period not to exceed one year;
 - c. imposition of a penalty not to exceed any profit acquired as a result of violation; or
 - d. any combination thereof.
9. Devise appropriate policies, rules and regulations, and procedures for including minority and women-owned business participation as prime contractors including, but not limited to:
 - a. Encouraging the inclusions of qualified minority and women-owned businesses on solicitation lists.
 - b. Investigating the potential of blanket bonding programs for small construction jobs.
 - c. Investigating and making recommendations concerning the use of the sheltered market process.
10. Devise procedures for the waiver of the participation goals in appropriate circumstances.

Duties of the state agencies will be to file an annual compliance plan that will outline the agency's minority and women-owned business goals for the current fiscal year. The compliance plan will need to include the following:

1. a policy statement, expressing a commitment to use minority and women-owned business participation;
2. the designation of the liaison officer;
3. procedures to distribute to potential contractors and vendors the list of all bona fide minority and women-owned businesses certified under this Act;
4. procedures to set separate contract goals on specific prime contracts and purchase orders with subcontracting possibilities based upon the type of work or services and subcontractor availability;
5. procedures to assure that contractors and vendors make good faith efforts to meet contract goals;
6. procedures for contract goal exemption, modification, and waiver;
7. if applicable, procedures by which the agency will implement sheltered market techniques; and
8. the delineation of separate contract goals for minority and women-owned businesses.

The Secretary may either reject or approve the compliance plans.

If a state agency administers a construction program that is covered by federal law or regulations regarding minority or women-owned businesses, the agency may use the federal standards and procedures for the establishment of goals and utilization procedures.

In the bill there are exemption provisions for contract(s) to be excluded, either wholly or partially, from the requirements of the Act when it is determined that there is an insufficient number of minority or women-owned businesses to ensure adequate competition and an expectation of reasonable prices.

Conflicts that may occur with provisions of this Act and federal mandates shall be resolved in favor of the federal mandates. Conflicts between the Act and the Kansas Small Business Procurement Act shall be resolved according to this Act.

Upon a finding of noncompliance by a state agency, the Secretary may recommend any or all of the following actions:

1. termination of the contract involved;
2. prohibition of participation of the respondents in public contracts for a period not to exceed one year;
3. imposition of a penalty not to exceed any profit acquired as a result of violation; or
4. any combination thereof.

Alternatively, the Secretary may recommend that the agency revise its plan to provide to more fully comply with the goals of the Act.

Prepared by,

Jerry Ann Donaldson
Research Analyst

HOUSE BILL 2780
TESTIMONY ALONZO HARRISON
MARCH 6 1986

LADIES AND GENTLEMEN, I COME BEFORE YOU TODAY AS A MINORITY BUSINESS ENTERPRISE AND AS A STRUGGLING ENTREPRENEUR TRYING TO REDEEM A CHECK THAT HAS COME BACK TO ME MARKED "INSUFFICIENT FUNDS". AS A BUSINESS MAN HERE IN KANSAS, I SEEK NOTHING MORE THAN AN EQUAL, OPEN, HONEST OPPORTUNITY TO PARTICIPATE IN FREE MARKET ENTERPRISE. FOR A NUMBER OF REASONS THAT HAS NOT BEEN POSSIBLE.

THEREFORE, I AM HERE FOR THE PURPOSE OF ENGAGEING IN MEANINGFUL DIALOGUE AROUND THE ISSUES ESTABLISHED IN HOUSE BILL 2780. ONE MIGHT ASK THE QUESTION, WHY IS SUCH A BILL NEEDED? WHO WILL BENEFIT? AND DO WE NOT HAVE A SMALL BUSINESS SET ASIDE PROGRAM ALREADY? THE ANSWER TO THESE QUESTIONS REALLY REQUIRE THAT WE LOOK AT SOME EXISTING CONDITIONS THAT PRECIPITATED THE DRAFTING OF THIS BILL.

WHY IS SUCH A BILL NEEDED?

FIRST, THE STATE OF KANSAS DOES NEARLY \$350 MILLION DOLLARS WORTH OF PROCUREMENT EACH YEAR, (THIS DOES NOT INCLUDE ANY WORK DONE BY KDOT WHICH DOES ANOTHER 200 MILLION DOLLARS PER YEAR), OF THE 300 MILLION SPENT IN 1982 THE LAST YEAR IN WHICH RECORDS WERE KEPT, LESS THAN ONE HALF OF ONE PERCENT OR 900,000. DOLLARS WAS SPENT WITH MINORITIES AND OR WOMEN. IT IS SPECULATED THAT IN 1985 THAT A TOTAL OF "ONE PERCENT" OR THREE AND ONE HALF MILLION WAS SPENT WITH MINORITIES AND WOMEN.

WHO WILL BENEFIT?

ALL OF KANSAS. CONSIDER, KDOT WHO BOAST OF MINORITY BUSINESS ENTERPRISE PARTICIPATION, MUST DO SO UNDER SOMETHING OF A DARK CLOUD, DUE MAINLY TO THE FACT THAT MBE/WBE PARTICPATE ONLY IN THOSE PROJECTS THAT ARE FUNDED BY FEDERAL FUNDS. UNDER THE FEDERAL HIGHWAY RESURFAING ACT KANSAS RECIVES FUNDS BASED ON THE FACT, THAT WE WILL INSURE THAT NOT LESS THAN TEN PERCENT OF ALL HIGHWAY WORK WILL BE DONE BY MBES. ON ALL PROJECTS FUNDED BY STATE FUNDS MINORITY PARTICIPATION IS ALL BUT NON EXISTANT.

DO WE NOT HAVE A SMALL BUSINESS SET ASIDE PROGRAM ALREADY?

AS 2780 SUGGEST, THE ANSWER TO THAT QUESTION IS YES. FURTHER, IT SEEMS TO BE WORKING BASED ON THE FACT THAT A SMALL BUSINESS IS CONSIDERED ANY BUSINESS THAT DOES FIFTEEN MILLION DOLLARS OR LESS OF BUSINESS EACH YEAR. HOWEVER, AS HAS BEEN POINTED OUT IT DOES NOT WORK FOR MINORITIES.

Att. #2

3-6-86

H. L+I

YOU MIGHT WELL ASK THE QUESTION CAN YOU NOT WAIT AND PERHAPS SHOULD YOU NOT WAIT FOR THE NATURAL EVOLUTIONARY PROCESS TO TAKE PLACE? MY RESPONSE WOULD HAVE TO BE NO. NO, BECAUSE THE NOTION OF "WAIT", RINGS WITH AN EVER PIERCING FAMILIARITY TO MBES. THIS "WAIT" HAS ALMOST ALWAYS MEANT "NEVER". CLEARLY THE POINT TO BE GAINED HERE IS QUITE SIMPLE, HOUSE BILL 2780 RECOGNIZES, THAT MINORITIES ARE NOT PARTICIPATING FULLY AND OR RESPONSIBLY IN THE PROCUREMENT ACTIVITIES OF THE STATE. FURTHER, AS MINORITIES REPRESENT NEARLY 10 PERCENT OF THE STATES POPULATION AND AS THEIR ARE NEARLY 550 MINORITY OWNED AND OPERATED BUSINESS ENTERPRISES HERE IN KANSAS IT IS NEITHER TRUE NOR PLAUSABLE THAT THERE IS EITHER A SHORTAGE OF MINORITIES OR BUSINESS ENTERPRISES AVAILABLE OR WANTING TO DO BUSINESS HERE IN OUR STATE. THEREFORE, IT IS FAIRLY OBVIOUS, THAT THE UNDERLING PROBLEM REST IN A NON RECEPTIVE MARKET PLACE AND NOT WITH A NON AVAILABLE MINORITY PROVIDER. CLEARLY, THE KANSAS MINORITY BUSINESS ENTERPRISE IS STILL LANGUISHING IN THE CORNERS OF OUR SOCIETY, AND EFFECTIVELY FINDS HIMSELF IN EXILE IN HIS PURSUIT OF ENTREPRENEURIAL OPPORTUNITIES HERE IN KANSAS. HOUSE BILL 2780 BEGINS TO SPEAK TO THE PROBLEM AND OFFERS UP SOME SOLUTIONS. SOLUTIONS THAT WARRANT MY BEING HERE TO CONVEY MY CONCERNS AND THE CONCERNS OF MBES THROUGHOUT KANSAS.

IN A SENSE MY PRESENT HERE, IS INTENDED TO DRAMATIZE AN APPALLING CONDITION OF BENIGN NEGLECT AND OR INDIFFERENCE. I TRULY BELEIVE, THAT THE ARCHITECTS OF OUR STATE CONSITUTION AND CERTAINLY THIS WAS TRUE WHEN THOSE MAGNIFICENT WORDS OF THE CONSITUTION AND DECLARATION OF INDEPENDENCE, WERE PENNDE TO PARCHMENT, THAT EVERY CITIZEN WOULD FALL HEIR TO A PROMISSORY NOTE. THIS NOTE WAS A PROMISE THAT ALL CITIZENS WOULD BE ABLE TO PURSUE AND HAVE EQUAL ACCESS TO OPPORTUNITY. OBVIOUSLY, THIS IS NOT THE CASE, OBVIOUSLY MBE ARE NOT PARTICIPATING FULLY AND OR AS RESPONSIBLY AS THEY WOULD LIKE TO AND OR HAVE THE ABILITY TO. IT IS EQUALLY OBVIOUS THAT KANSAS HAS DEFAULTED ON THIS PROMISSORY NOTE INSOFAR AS HER MBES ARE CONCERNED. INSTEAD OF HONORING THIS SACRED OBLIGATION KANSAS HAS GIVEN HER MBES A BAD CHECK; A CHECK WHICH HAS COME BACK MARKED "INSUFFICIENT FUNDS". BUT WE ARE HERE IN SUPPORT OF HOUSE BILL 2780, BECAUSE WE REFUSE TO BELIEVE, THAT THE BANK OF JUSTICE IS BANKRUPT. WE REFUSE TO BELIEVE, THAT THERE ARE INSUFFICIENT FUNDS IN THE GREAT VAULTS OF OPPORTUNITY IN THIS STATE. SO WE HAVE COME THIS DAY, TO PETTION YOU TO CASH THIS CHECK - A CHECK THAT ONCE HONORED, WILL REUSULT IN THE RICHES OF RESPONSIBLE AND PRODUCTIVE PARTICIPATION IN THE PROCUREMENT OPPORTUNITIES HERE IN KANSAS.

WE ARE NOT HERE ASKING THAT YOU CHANGE THE SPECIFICATIONS OR ACCEPT INFERIOR PRODUCTS OR SERVICE. RATHER WE ARE HERE ASKING THAT THOSE LEFT OUT FOR WHAT EVER REASONS, BE ALLOWED TO COME INTO THE MAINSTREAM OF OPPORTUNITY TO WORK WITH AND FOR THE STATE OF KANSAS.

THANK YOU

KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT

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JOHN CARLIN
Governor

CHARLES J. "Jamie" SCHWARTZ
Secretary

M E M O R A N D U M

TO: House Labor and Industry
Committee

FROM: Billy Q. McCray - Director
Office of Minority Business

B.Q.M.

RE: HB 2780 - by Representative Cribbs
and Others

DATE: March 6, 1986

Purpose of HB 2780:

Currently minority business owners in Kansas are being awarded less than one-half ($\frac{1}{2}$) of one percent (1%) of all contracts awarded through the Division of Purchases. There are no available documented statistics on women owned businesses at the present.

HB 2780 will encourage all state agencies to set goals for a specific amount for both minorities and women.

What the bill does:

Section four (4) is the key provision of the bill. It provides that not less than ten percent (10%) of the total dollar amount of the state contracts shall be established as a goal to be awarded to minority and women owned businesses. It also provides that fifty percent (50%) of that amount shall be awarded to women owned businesses.

Other Provisions:

The Secretary of Economic Development shall administer the Act. The head of each agency under the jurisdiction of this Act shall appoint a liason to the Secretary of Economic Development. The liason shall be responsible for submitting to the Secretary any reports or documents necessary under the Act.

Each agency under this Act shall file with the Secretary an Annual Compliance Plan which shall outline the agency's minority and women owned business contracting goal, the manner in which they plan to meet those goals and utilization procedures. The Secretary shall have the authority to enforce this Act under the procedures provided therein.

BQM:bjc

Att. #3

3-6-86

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