

Legislation Text

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AN ORDINANCE creating a program to promote the use of small economically disadvantaged businesses in competing for county contracting opportunities; adding a new chapter to the King County Code and prescribing penalties.

STATEMENT OF FACTS:

1. The success of small economically disadvantaged businesses is important to the region's overall economy, including the development of job opportunities and social mobility in the county.
2. Businesses located within the county that seek contracting opportunities operate under a competitive disadvantage with businesses located elsewhere because of higher taxes and higher operating and administrative costs.
3. Economic justice is served by enhancing opportunities for small economically disadvantaged business owners who pursue relevant technical and entrepreneurial training to become more skilled competitors.
4. Businesses that locate and remain in economically distressed areas help to strengthen those areas by stimulating economic activity and revitalizing neighborhoods.
5. Through its contracting activities, the county is in a position to create important economic incentives to use small economically disadvantaged businesses.
3. It is in the county's economic interest to provide incentives to encourage small economically disadvantaged businesses to locate and remain within the county.
3. It is also in the county's economic interests to continue to encourage participation of women and minority-owned business enterprises that meet the criteria for being economically disadvantaged and to do so in a manner consistent with current law and the overall interests of the polity.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

NEW SECTION. SECTION 1. Boost program for small economically disadvantaged businesses.

The executive shall implement a boost program under which the county and its contractors have an incentive to

make use of small economically disadvantaged businesses as prime contractors, subcontractors and suppliers on county contracts.

NEW SECTION. SECTION 2. **Scope.** The boost program shall apply to county public works, consulting and procurement contracts.

NEW SECTION. SECTION 3. **Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Administrator" means the manager of the contract compliance and minority/women and disadvantaged business division in the department of finance.

B. "Economically distressed area" means a geographic area determined by the county council to require the use of incentives in order to stimulate economic activity and revitalize declining neighborhoods.

C. "Located within" the county or an economically distressed area means that a business that at least:

1. has its primary offices or distribution points, other than residential or post office box, physically within the relevant boundaries;
2. lists the address on a valid business permit as being within the relevant boundaries;
3. has been doing business within the relevant boundaries for at least twelve months; and
4. submits other proof of compliance with subsection C. 1 through 3 of this section as required by the administrator.

D. "Small economically disadvantaged business" means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. In assessing these financial conditions, the administrator shall substantially adopt the approach used by the federal Small Business Administration, but the administrator shall adjust the Small Business Administration dollar ceilings for various standard business classifications and levels for owners' personal net worth to account for local market conditions. Initially, the dollar ceiling for standard business classifications shall be

fifty percent of the 1999 Small Business Administration thresholds.

NEW SECTION. SECTION 4. Criteria for participation. To be certified for the boost program, a business must be a small economically disadvantaged business serving a commercially useful function, as defined in K.C.C. 4.18, and must be a business involved with business development.

A small economically disadvantaged business can meet and maintain this criterion by having the person or persons who own and control the business annually complete at least fifteen hours of business-related training in a program approved by the administrator. In establishing regulations for approval of such a training program, the administrator shall look for one or more of the following indications of the program's value: the program's historical use of support from within the relevant industry; affiliation the program has with established schools, if any, and accreditation by an established association.

NEW SECTION. SECTION 5. Certification process. The administrator may develop a process for certifying businesses for participation in the boost program. If feasible, the administrator shall arrange or contract for a coordinated certification agency in cooperation with other agencies that may adopt compatible programs.

NEW SECTION. SECTION 6. Limitation of certification. To provide significant opportunities and incentives for boost program businesses to prove themselves competitive within the market, the certification of the businesses is limited to five years or a specified contract and dollar volume of participation.

NEW SECTION. SECTION 7. Methods of providing incentive. A. The boost program shall use one or more methods to create an incentive to promote the use of boost program businesses. This incentive shall be produced either through a bonus system in which the increased participation of boost program businesses is a factor in the award of contracts; through a factor in compensation to the contractor; or through a set-aside system under which contractors are required to achieve a specified level of participation by boost program businesses. If the bonus system is used, the contract shall state the maximum incentive available for boost program participation and the possible methods for making use of the incentive. If a set-aside system is used,

the contract shall state a required minimum utilization.

B. As a matter of policy, opportunities for small economically disadvantaged businesses to act as prime contractors will be identified on an on-going basis.

C. The specific methods to be used to provide incentives to boost program participating small economically disadvantaged businesses and for them to be prime contractors, as opportunities arise, shall be fully addressed in the rule-making process.

NEW SECTION. SECTION 8. Violations and sanctions. A person who violates this chapter or the rules adopted under this chapter or who fails to comply with representations or commitments made to receive a benefit or qualify for an incentive under the boost program is subject to sanctions including but not limited to: liquidated damages; withholding of funds, a civil fine or penalty; and disqualification from eligibility for bidding on or entering into or participating, as a subcontractor or in any other manner, in a contract with the county for a period not to exceed five years. The administrator shall: set forth either the sanctions or liquidated damages, or both, to be imposed and the reasons for the imposition in a written order; promptly furnish a copy of the order to the contract awarding authority or contract administering authority; and mail a copy by certified mail, return receipt requested, to the person being sanctioned.

NEW SECTION. SECTION 9. Appeals. A person against whom sanctions are imposed by the administrator under this chapter may appeal within fifteen days from the date the administrator's decision was mailed to the person being sanctioned, by filing a notice of appeal with the office of the hearing examiner. Within forty-five days after receiving the notice of appeal, the hearing examiner shall convene the appeal hearing. Written notice of the hearing date shall be given to the appellant and to the department of finance at least thirty days before the hearing. Within thirty days after conclusion of the appeal hearing, the hearing examiner presiding at the hearing shall prepare a written decision and order. The final decision shall be filed as a public record with the county clerk, and copies of the final decision mailed to each party of record and to the administrator.

NEW SECTION. SECTION 10. **Rule making.** The executive shall adopt rules to implement this chapter, the council must approve them before they become effective. Where appropriate, the executive may employ a factor in favor of businesses located in economically disadvantaged areas of King County.

SECTION 11. Sections 1 through 10 of this ordinance should constitute a new chapter in the King County Code.

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