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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - EQUAL OPPORTUNITY AND  
AFFIRMATIVE ACTION - DISABILITY BUSINESS ENTERPRISES

Introduced By: Representatives Ruggiero, Felix, Casimiro, Diaz, Kislak, McNamara,  
Cortvriend, Morales, Williams, and Vella-Wilkinson

Date Introduced: February 02, 2022

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-5.1-3.2, 28-5.1-10 and 28-5.1-17 of the General Laws in Chapter  
2 28-5.1 entitled "Equal Opportunity and Affirmative Action" are hereby amended to read as follows:

3 **28-5.1-3.2. Enforcement.**

4 (a) The state equal opportunity administrator is authorized to initiate complaints against  
5 any agencies, administrators, or employees of any department or division within state government,  
6 excluding the legislative branch, who or which willfully fail to comply with the requirements of  
7 any applicable affirmative action plan or of this chapter or who or which fail to meet the standards  
8 of good faith effort, reasonable basis, or reasonable action, as defined in guidelines promulgated  
9 by the federal Equal Employment Opportunity Commission as set forth in 29 CFR 1607 [and Office](#)  
10 [of Federal Contract Compliance Programs, as set forth in 41 CFR Part 60-741.](#)

11 (b) Whenever the equal employment opportunity administrator initiates a complaint, he or  
12 she shall cause to be issued and served in the name of the equal employment opportunity office a  
13 written notice, together with a copy of the complaint, requiring that the agency, administrator,  
14 agent, or employee respond and appear at a hearing at a time and place specified in the notice. The  
15 equal employment opportunity office shall follow its lawfully adopted rules and regulations  
16 concerning hearings of discrimination complaints.

17 (c) The equal employment opportunity office shall have the power, after a hearing, to issue  
18 an order requiring a respondent to a complaint to cease and desist from any unlawful discriminatory

1 practice and/or to take any affirmative action, including, but not limited to, hiring, reinstatement,  
2 transfer, or upgrading employees, with or without back pay, or dismissal, that may be necessary to  
3 secure compliance with any applicable affirmative action plan or with state or federal law.

4 (d) A final order of the equal employment opportunity office constitutes an "order" within  
5 the meaning of § 42-35-1~~(13)~~(13); is enforceable as an order; is to be rendered in accordance with §  
6 42-35-12; and is subject to judicial review in accordance with § 42-35-15.

7 **28-5.1-10. State contracts.**

8 The division of purchases shall prepare any rules, regulations, and compliance reports that  
9 shall require of state contractors the same commitment to equal opportunity as prevails under  
10 federal contracts controlled by federal executive orders 11246, 11625 and 11375 [and Office of](#)  
11 [Federal Contract Compliance Programs as set forth in 41 CFR Part 60-741](#). Affirmative action  
12 plans prepared pursuant to those rules and regulations shall be reviewed by the state equal  
13 opportunity office. The state equal opportunity office shall prepare a comprehensive plan to provide  
14 compliance reviews for state contracts. A contractor's failure to abide by the rules, regulations,  
15 contract terms, and compliance reporting provisions as established shall be ground for forfeitures  
16 and penalties as established by the department of administration in consultation with the state equal  
17 opportunity office.

18 **28-5.1-17. Utilization analysis.**

19 (a)(1) The personnel administrator, in consultation with the equal employment opportunity  
20 administrator, and the human resources outreach and diversity administrator within the department  
21 of administration, shall annually conduct a utilization analysis of positions within state government  
22 based upon the annual review conducted pursuant to §§ [28-5-40](#), 28-5.1-3 and 28-5.1-4.

23 (2)(i) To the extent the analysis determines that minorities as currently defined in federal  
24 employment law as Blacks, Hispanics, American Indians (including Alaskan natives), Asians  
25 (including Pacific Islanders), are being underrepresented and/or underutilized, the personnel  
26 administrator shall, through the director of administration, direct the head of the department where  
27 the under-representation and/or under-utilization exists to establish precise goals and timetables  
28 and assist in the correction of each deficiency, to the extent permitted by law and by collective  
29 bargaining agreements.

30 [\(ii\) To the extent the analysis determines that persons with disabilities as defined by Office](#)  
31 [of Federal Contract Compliance Programs as set forth in 41 CFR Part 60-741 are being](#)  
32 [underrepresented and/or underutilized, the personnel administrator shall, through the director of](#)  
33 [administration, direct the head of the department, where the under-representation and/or under-](#)  
34 [utilization exists to establish precise goals and timetables and assist in the correction of each](#)

1 [deficiency, to the extent permitted by law and by collective bargaining agreements.](#)

2 (3) The initial analysis shall be directed toward service oriented departments of the state,  
3 state police, labor and training, corrections, children, youth and families, courts, transportation, and  
4 human services.

5 (4) The equal employment opportunity administrator shall be consulted in the selection  
6 process for all positions certified as underrepresented and/or underutilized and shall report the  
7 results of progress toward goals to the governor and to the general assembly by January 31 and July  
8 31 of each year. A copy of these results which shall be referred to the Rhode Island commission  
9 for human rights which may, in its discretion, investigate whether a violation of chapter 5 of this  
10 title has occurred. The results shall be a public record and shall be made available electronically on  
11 the secretary of state's website.

12 (b)(1) In the event of a reduction in force, the personnel administrator, in consultation with  
13 the equal employment opportunity administrator and director of the department(s) where the  
14 reduction is proposed, shall develop a plan to ensure that affirmation action gains are preserved to  
15 the extent permitted by law and by collective bargaining agreements. A copy of this plan shall be  
16 referred to the Rhode Island commission for human rights which may, in its discretion, investigate  
17 whether a violation of chapter 5 of this title has occurred. The plan shall be a public record and  
18 shall be made available electronically on the secretary of state's website.

19 (2) The equal employment opportunity administrator shall report the results of the plans  
20 and their subsequent actions to the governor and to the general assembly by January 31 and July  
21 31 of each year, to the Rhode Island commission for human rights. The report shall be a public  
22 record and shall be made available electronically on the secretary of state's website. Consistent with  
23 § 28-5.1-6, the Rhode Island commission for human rights shall have the power to order  
24 discontinuance of any department or division employment pattern or practice deemed  
25 discriminatory in intent or result by the commission.

26 (3) The equal opportunity administrator shall notify the commission of reports and results  
27 under this chapter.

28 SECTION 2. Sections 37-2.2-2 and 37-2.2-3.1 of the General Laws in Chapter 37-2.2  
29 entitled "Disability Business Enterprises" are hereby amended to read as follows:

30 **37-2.2-2. Definitions.**

31 As used in this chapter, the following words and phrases shall have the following meanings  
32 unless the context shall indicate another or different meaning or intent:

33 (1) "Persons with disabilities" or "person with a disability" shall mean any individual who  
34 has a physical or mental impairment which constitutes a substantial barrier to employment as

1 certified by the department of human services, ~~or~~ the department of behavioral healthcare,  
2 developmental disabilities and hospitals, [U.S. Department of Veterans' Affairs, Social Security](#)  
3 [Administration, or other certifying state or federal entities.](#)

4 (2) "Small disadvantaged businesses owned and controlled by persons with disabilities"  
5 shall mean small business concern, which is at least fifty-one percent (51%) owned by one or more  
6 person(s) with disabilities or, in the case of a publicly owned business, at least fifty-one percent  
7 (51%) of the stock of which is owned by one or more disabled person, whose management and  
8 daily business operations are controlled by one or more person(s) with disabilities, and have fifty  
9 or fewer employees.

10 (3) "A physical or mental impairment" shall mean any physiological disorder or condition,  
11 cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:  
12 neurological; musculoskeletal; special sense organs; respiratory, including speech organs;  
13 cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;  
14 or any mental psychological disorder, such as mental retardation, organic brain syndrome,  
15 emotional or mental illness, and specific learning disabilities.

16 **37-2.2-3.1. Policy and applicability.**

17 (a) It is the policy of the state of Rhode Island that small disadvantaged disability  
18 businesses shall have the maximum opportunity to participate in the performance of procurements  
19 and projects as outlined in this chapter. This chapter shall apply to any and all state purchasing,  
20 including, but not limited to, the procurement of goods and services, construction projects, or  
21 contracts funded in whole or in part by state funds, or funds which, in accordance with a federal  
22 grant or otherwise, the state expends or administers or in which the state is a signatory to the  
23 construction contract.

24 (b) The director of administration, in consultation with the governor's commission on  
25 disabilities, is authorized and directed to establish rules and regulation formulas for awarding  
26 contracts to small disadvantaged businesses owned and controlled by persons with disabilities in  
27 the procurement of goods, services, construction projects, or contracts funded in whole or in part  
28 by state funds, in accordance with § 37-2-9(b)(14) on or before January 1, 2013.

29 [\(c\) The state's annual goal for disability business enterprises to participate in state](#)  
30 [procurements and construction projects under this chapter, shall be no less than three percent \(3%\)](#)  
31 [of the total value all contracts available to businesses in each fiscal year. The director of the](#)  
32 [department of administration is further authorized to establish, by rules and regulations, formulas,](#)  
33 [for giving disability business enterprises, a preference in contract and subcontract awards.](#)

34 SECTION 3. Chapter 37-2.2 of the General Laws entitled "Disability Business Enterprises"

1 is hereby amended by adding thereto the following sections:

2 **37-2.2-6. Sanctions.**

3 The director of the department of administration shall have the power to impose sanctions  
4 upon contractors not in compliance with this chapter which may include, but not be limited to:

5 (1) Suspension of payments;

6 (2) Termination of the contract;

7 (3) Recovery by the state of ten percent (10%) of the contract award price, as liquidated  
8 damages; and

9 (4) Denial of the right to participate in future projects, for up to three (3) years.

10 **37-2.2-7. Reporting.**

11 By August 1, 2023, and each August 1 thereafter, the department of administration shall  
12 submit an annual report to the governor, speaker of the house, senate president, and executive  
13 secretary of the governor's commission on disabilities, for the period from July 1 to June 30, on the  
14 actual utilization of disability-owned small business enterprises as contractors, subcontractors,  
15 suppliers, and professional service providers for the state. The annual report shall include a list of  
16 all disability-owned small businesses that participated as contractors, subcontractors, suppliers, and  
17 professional service providers for the state, during the previous fiscal year.

18 SECTION 4. Section 37-2.4-1 of the General Laws in Chapter 37-2.4 entitled "Habilitation  
19 Procurement Program" is hereby amended to read as follows:

20 **37-2.4-1. Definitions.**

21 The words defined in this section have the meanings set forth below whenever they appear  
22 in this chapter, unless context in which they are used clearly requires a different meaning or a  
23 different definition as prescribed for a particular section, group of sections, or provision:

24 (1) "Board" means the habilitation procurement board created under this section;

25 (2) "Career development plan" means a plan that identifies the individual's employment  
26 goals and objectives, the services and supports needed to achieve those goals, the persons, agencies,  
27 and providers assigned to assist the person to attain those goals, and the obstacles to the individual  
28 working in an individualized job in an integrated employment setting at competitive wages, and  
29 seeks to identify the appropriate services and supports necessary to overcome those obstacles.

30 (3) "Consent decree" means the interim settlement agreement in United States v. State of  
31 Rhode Island and City of Providence, No. 1:13-cv-00442 (D.R.I. July 11, 2013) and consent decree  
32 Case 1:14-cv-00175-JJM-PAS (D.R.I. April 9, 2014) and subsequent orders of the federal district  
33 court.

34 ~~(2)~~(4) "Habilitation facility" means a program that is operated primarily for the purpose of

1 the employment and training of persons with a disability by a government agency or a qualified  
2 organization licensed by the State of Rhode Island providing vocational rehabilitation to support  
3 people with disabilities and:

4 (i) Maintains an employment ratio of at least forty percent (40%) of the program employees  
5 under the procurement contract in question have ~~severe~~ significant disabilities in integrated  
6 employment settings;

7 (ii) Complies with any applicable occupational health and safety standards prescribed by  
8 the United States Department of Labor ~~or is a~~ and provides supported employment services  
9 ~~program~~ approved by the state of Rhode Island office of rehabilitation services or the department  
10 of behavioral healthcare, developmental disabilities, and hospitals;

11 (iii) Has its principal place of business in Rhode Island;

12 (iv) Produces any goods provided under this section in Rhode Island; ~~and~~

13 (v) The services provided, in accordance with the provisions of this chapter, are provided  
14 by individuals with the majority being domiciled residents of the state of Rhode Island;

15 (vi) Each person with disabilities employed by the facility has an annually updated career  
16 development plan; and

17 (vii) Persons with disabilities are compensated at or above Rhode Island's minimum wage,  
18 but not less than the customary wage and level of benefits paid by the employer for the same or  
19 similar work performed by individuals without disabilities.

20 ~~(3)(5)~~ "Person with a disability" means any individual who has a significant disability, as  
21 defined in § 42-12.2-2. ~~severe physical or mental impairment that constitutes a substantial barrier~~  
22 ~~to employment,~~ as certified by the department of human services, ~~or~~ the department of behavioral  
23 healthcare, developmental disabilities and hospitals, U.S. department of veterans' affairs, social  
24 security administration, or other certifying state or federal entities.

25 (6) "Supported employment services" means employment services provided in the amount,  
26 duration, and intensity, that allow persons with disabilities to work the maximum number of hours,  
27 consistent with their abilities in a competitive integrated employment setting. Supported  
28 employment services include services necessary to place, maintain, and provide ongoing support  
29 to a person with disabilities in an integrated employment setting.

30 SECTION 5. Chapter 37-2.4 of the General Laws entitled "Habilitation Procurement  
31 Program" is hereby amended by adding thereto the following sections:

32 **37-2.4-4. Habilitation facilities participation.**

33 The state's annual goal for the habilitation facilities to participate in state procurements and  
34 construction projects under this chapter, shall be no less than one percent of the total value of all

1 contracts available to all businesses in each fiscal year. The director of the department of  
2 administration is further authorized to establish, by rules and regulations, formulas for giving  
3 habilitation facilities a preference in contract and subcontract awards.

4 **37-2.4-5. Sanctions.**

5 The director of the department of administration shall have the power to impose sanctions  
6 upon contractors not in compliance with this chapter which may include, but not be limited to:

- 7 (1) Suspension of payments;
- 8 (2) Termination of the contract;
- 9 (3) Recovery by the state of ten percent (10%) of the contract award price as liquidated  
10 damages; and
- 11 (4) Denial of right to participate in future projects for up to three (3) years.

12 **37-2.4-6. Reporting.**

13 By August 1, 2023, and each August 1 thereafter, the department of administration shall  
14 submit an annual report to the governor, speaker of the house, senate president, secretary of the  
15 executive office of health and human services, the director of the department of behavioral  
16 healthcare, developmental disabilities, and hospitals, executive secretary of the governor's  
17 commission on disabilities, and the director of the office of rehabilitation services, for the period  
18 from July 1 to June 30 during the previous fiscal year addressing the:

- 19 (1) Actual utilization of habilitation services as contractors, subcontractors, suppliers, and  
20 professional service providers for the state;
- 21 (2) The number of persons with disabilities who transition to competitive integrated  
22 employment;
- 23 (3) The number of persons with disabilities who transition to self-employment or owners  
24 of disability-owned small businesses; and
- 25 (4) A list of those disability-owned small businesses that subsequently participated as  
26 contractors, subcontractors, suppliers, and professional service providers for the state.

27 SECTION 6. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - EQUAL OPPORTUNITY AND  
AFFIRMATIVE ACTION - DISABILITY BUSINESS ENTERPRISES

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1           This act would incorporate the federal affirmative action and nondiscrimination obligations  
2 of federal contractors and subcontractors regarding individuals with disabilities utilization goal of  
3 seven percent (7%) for employment of qualified individuals with disabilities into the Rhode Island  
4 equal opportunity and affirmative action policy.

5           This act would expand the existing disability business enterprises program, by allowing  
6 Veterans' Affairs, the Social Security Administration and others to verify that a business owner has  
7 a disability and is eligible for the current benefits program. This act would set a goal of no less than  
8 three percent (3%) for state procurement by June 30, 2023.

9           This act would set a goal for the habilitation facilities to participate in state procurements  
10 and construction projects of less than one percent (1%) of the total value of all contracts available  
11 to businesses in each fiscal year by June 30, 2023. This act would also create additional supported  
12 employment pathways necessary to allow person with disabilities to participate in a competitive  
13 integrated employment setting, pursuant to a federal court consent decree.

14           This act would take effect upon passage.

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