

SENATE BILL No. 401

May 3, 1989, Introduced by Senator HOLMES and referred
to the Committee on Economic Development.

A bill to correct the present effects of past discrimination in state procurement practices; to assist disadvantaged business enterprises; to provide for the proper level of expenditures in state procurements of goods, services, and construction for minority owned and woman owned businesses; to provide powers and duties of the governor; to prescribe powers and duties of certain state departments and agencies; to provide penalties; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "disadvantaged business enterprises act".

3 Sec. 2. The legislature makes the following findings of
4 fact based on material factual evidence obtained through
5 extensive hearings, investigations, and research:

1 (a) That former Act No. 428 of the Public Acts of 1980,
2 being sections 450.771 to 450.776 of the Michigan Compiled Laws,
3 has been held to be unconstitutional by the United States supreme
4 court.

5 (b) That prior to former Act No. 428 of the Public Acts of
6 1980, discrimination by the state existed in state procurements
7 for minority owned and woman owned businesses and remedial action
8 was and still is necessary to correct the present effects of
9 these past practices.

10 (c) That although some improvement occurred as a result of
11 the enactment of former Act No. 428 of the Public Acts of 1980,
12 minority owned and woman owned businesses are still at a disad-
13 vantage to fairly compete for state procurements of goods, serv-
14 ices, and construction.

15 (d) That narrowly tailored statutory mandated percentage of
16 expenditures for disadvantaged businesses is necessary to purge
17 the present effects of past discrimination.

18 (e) That the percentage level of expenditures to be awarded
19 to minority owned and woman owned businesses by this act fairly
20 and accurately reflect the minimal level at which they should
21 participate in state procurements.

22 (f) That there is a compelling state interest in the exis-
23 tence and success of disadvantage business enterprises.

24 Sec. 3. As used in this act:

25 (a) "Controlled" means exercising the power to make policy
26 decisions in a business.

1 (b) "Department" means a department of the executive branch
2 of the state government.

3 (c) "Disadvantage business enterprises" means minority owned
4 or woman owned businesses as defined by this act.

5 (d) "Expenditures" means payments and contracts for goods,
6 services, and construction which may be acquired competitively
7 and are not regulated by separate authority, and, where the
8 department acts as the sole or primary contracting officer and
9 has selective discretion as to the supplier, vendor, or
10 contractor.

11 (e) "Joint venture" means an agreement that combines 2 or
12 more businesses for specified purposes involving 1 or more minor-
13 ity owned or woman owned businesses and 1 or more businesses
14 other than a minority owned or woman owned business.

15 (f) "Minority" means a person who is black, Hispanic,
16 Oriental, Eskimo, or an American Indian who is not less than 1/4
17 quantum Indian blood as certified by the person's tribal associa-
18 tion and verified by the Indian affairs commission.

19 (g) "Minority owned business" means a business enterprise of
20 which more than 50% of the voting shares or interest in the busi-
21 ness is owned, controlled, and operated by individuals who are
22 members of a minority and with respect to which more than 50% of
23 the net profit or loss attributable to the business accrues to
24 shareholders who are members of a minority.

25 (h) "Operated" means the activity of being involved in the
26 day to day management of a business.

1 (i) "Person" means an individual, sole proprietorship,
2 partnership, association, or corporation.

3 (j) "Subcontract" means an agreement to share a prime con-
4 tract between a prime contractor, who is not a minority owned
5 business or a woman owned business, and a minority owned or woman
6 owned business.

7 (k) "Woman owned business" means a business of which more
8 than 50% of the voting shares or interest in the business is
9 owned, controlled, and operated by women and with respect to
10 which more than 50% of the net profit or loss attributable to the
11 business accrues to the women shareholders.

12 Sec. 4. (1) The construction, goods, and services procure-
13 ment policy for each department shall provide for the following
14 percentage of expenditures to be awarded to minority owned and
15 woman owned businesses by the department except as provided in
16 subsection (6):

17 (a) For minority owned business, the percentage shall not be
18 less than 7% of expenditures.

19 (b) For woman owned business, the percentage shall not be
20 less than 5% of expenditures.

21 (2) The governor shall recommend to the legislature changes
22 in programs to assist minority and woman owned businesses as pro-
23 vided by this act.

24 (3) Each department, to assist in meeting the construction,
25 goods, and services procurement expenditures percentages set
26 forth in subsection (1), shall include provisions for the
27 accommodation of subcontracts and joint ventures. The provisions

1 shall be established by the governor and shall require a bidder
2 to indicate the extent of minority owned or woman owned business
3 participation.

4 (4) Only the portion of a prime contract that reflects
5 minority owned or woman owned business participation shall be
6 considered in meeting the requirements of subsection (1).

7 (5) Minority owned or woman owned businesses shall comply
8 with the same requirements expected of other bidders including,
9 but not limited to, being adequately bonded.

10 (6) If the bidders for any contract do not include a quali-
11 fied minority owned or woman owned business, the contract shall
12 be awarded to the lowest bidder otherwise qualified to perform
13 the contract.

14 Sec. 5. (1) The governor shall establish a procurement
15 policy for each executive department to implement and establish
16 the method of meeting the projected expenditure percentage estab-
17 lished in section 4.

18 (2) The governor shall submit annually a report to the leg-
19 islature which shall detail the results of the governor's pro-
20 curement policy including the specific contracts awarded by each
21 department and the type of business engaged in by the person
22 awarded the contract.

23 (3) Appropriate staff to implement the governor's policy
24 shall be provided by the department of management and budget.

25 Sec. 6. A person who wishes to be certified as a minority
26 owned or woman owned business shall complete a sworn affidavit
27 that the person is a minority owned or woman owned business and

1 is prepared to bid on state contracts. All ownership interests
2 in the business shall be specifically identified in the
3 affidavit. The affidavit shall be filed with the governor or a
4 department designated by the governor.

5 Sec. 7. A person who knowingly violates or conspires to
6 violate this act, or who knowingly and fraudulently procures or
7 attempts to procure a contract with this state as a minority
8 owned or woman owned business is guilty of a felony, punishable
9 by imprisonment for not more than 2 years, or a fine of not less
10 than \$5,000.00, or both. A person who violates this act shall be
11 barred from obtaining future contracts with the state.

12 Sec. 8. If a minority owned or woman owned business
13 receives a contract, the minority owned or woman owned business
14 shall remain the prime contractor through the duration of the
15 contract.

16 Sec. 9. Act No. 428 of the Public Acts of 1980, being sec-
17 tions 450.771 to 450.776 of the Michigan Compiled Laws, is
18 repealed.