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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 414 (as enrolled) (Public Act 112 of 1988)**Sponsor: Senator William Sederburg****Senate Committee: Government Operations****House Committee: State Affairs****Date Completed: 8-12-88****RECEIVED**

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RATIONALE

As a group, handicappers have a disproportionately high percentage of persons who are unemployed and/or living in poverty, when compared to the nonhandicapper population. According to census information cited by the Department of Labor, one-fourth of disabled persons between the ages 16 and 64 had incomes under the poverty level in 1985. Other data supplied to the Senate Government Operations Committee showed that of the State's working-age, noninstitutionalized population, approximately 8.5% have a disability and that around 66% of those persons remain unemployed. Among the reasons cited for high unemployment are that handicappers often face difficulties in getting hired because of stereotyping by employers, handicappers are considered unable to qualify for jobs that demand certain physical talents, and handicappers need a nontraditional job setting. Many handicappers encounter great difficulties in simply getting to a place of employment to apply for a job, further restricting their opportunities. For these reasons many handicappers have decided that starting their own businesses may offer the greatest chance for successful employment.

Currently, under Public Act 428 of 1980, the State is required to give preferential consideration to qualifying minority- and women-owned businesses in awarding a certain percentage of contracts. There is, however, no provision for giving preferential consideration to handicapper-owned businesses. According to the Handicapper Small Business Association, only one of its over 150 member-businesses received a State contract from the Department of Management and Budget in 1986, and of the State's \$205 million in purchasing orders only \$25,000 went to handicapper-owned businesses. Some people feel that handicapper-owned businesses should be given increased consideration in the awarding of State contracts in order to encourage and assist the development of handicapper businesses.

CONTENT

The bill would create the Handicapper Business Opportunity Act to provide that it would be the goal of State departments to award to handicapper-owned businesses at least 3% of total yearly expenditures for construction, goods, and services. If a department did not meet the 3% goal, the goal for subsequent years would be to make at least a 50% increase in the amount of expenditures awarded to handicapper-owned businesses until the 3% goal was reached.

A "handicapper-owned business" would be a business in which over 50% of the voting shares or interest is owned, controlled, and operated by "handicappers"; over 50% of the employees are residents of Michigan; and over 50%

of net profit or loss of the business accrued to handicapper shareholders. The bill would define "handicapper" as a person with a determinable physical or mental disability or the history of a disability which may result from disease, injury, congenital condition of birth, or functional disorder.

The bill would apply to expenditures made by State departments for construction, goods, and services that may be acquired competitively and are not regulated by separate authority, in cases in which a department is the primary contracting officer and has selective discretion to choose the supplier, vendor, or contractor. The Department of Management and Budget (DMB) would have to review, at five-year intervals from the effective date of the bill, the progress of the State departments in meeting the 3% goal. The DMB, with input from the business community — including handicapper-owned businesses — would be required to make recommendations regarding continuation, increases, or decreases in the percentage goal specified in the bill. The recommendations would have to consider the number of businesses which are handicapper-owned businesses and whether there is a continued need to encourage and promote handicapper-owned businesses.

The bill would require the Governor to designate a State department responsible for certifying that a person met the requirements of the bill. A certifying agency could accept handicapper documentation from one or more of the following: the Michigan Commission for the Blind; Michigan Rehabilitation Services; Social Security Administration; Veterans Administration (with documentation of at least 30% disability rating); or a licensed physician or psychiatrist. A person who wished to be certified as a handicapper-owned business would have to complete an application form developed by the certifying department (as determined by the Governor), submit an affidavit that the business was a handicapper-owned business prepared to bid on State contracts, and provide proof of ownership interest in the business.

The bill would require the Governor, in order to assist in reaching the bill's goals, to recommend to the Legislature changes in programs to assist handicapper-owned businesses. Departments, to assist in reaching the bill's goals, would be required to include provisions for the accommodation of agreements and contracts between handicapper-owned businesses and businesses other than handicapper-owned businesses. These provisions would have to include a requirement that a bidder indicate the extent of participation by a handicapper-owned business.

A person would be prohibited from fraudulently procuring

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or attempting to procure a contract. A person who knowingly violated the bill's provisions would be guilty of a felony punishable by imprisonment for up to two years, a fine of up to \$5,000, or both. A person found guilty of violating the bill would be barred from obtaining future contracts with the State.

The bill would not apply to expenditures of the Department of Transportation for road and bridge construction projects that receive Federal Title 23 funds, until Federal law recognized handicapper small businesses. (Title 23 and other Federal laws require that such construction contracts be awarded to the lowest responsible bidder, with no preferential treatment given except for Disadvantaged Business Enterprise programs specifically authorized by Federal law.)

FISCAL IMPACT

Fiscal information on the enrolled bill is not available.

ARGUMENTS

Supporting Argument

The bill would allow handicapper-owned businesses to receive special consideration in the awarding of State contracts similar to that which is currently given to minority- and women-owned businesses. Handicappers face enormous economic and employment hardships compared to the nonhandicapped population, as reflected by data that show a high percentage of handicappers as poor and unemployed.

Many handicappers have turned to self-employment as a way to create opportunities for themselves and to use their talents. By giving increased consideration to handicappers in the awarding of State contracts, the bill would increase the opportunities for handicapper entrepreneurs to succeed and thus would encourage the development of handicapper-owned businesses and the spread of small businesses in general.

Supporting Argument

Though the bill's provisions alone could not solve the economic and employment problems of the handicapped, the bill could be a positive step toward that goal. In addition, by encouraging development of handicapper-owned businesses, the bill could have some long-lasting effects. Handicapper business owners are more likely than other business groups to hire handicapped workers; thus, if handicapper business activity increases, greater numbers of handicappers will have employment opportunities. Handicappers employed in a handicapper-owned business may find the work environment more accommodating to their particular disability, which may in turn enhance the use of their abilities and talents. Additionally, handicappers' knowing that opportunities had been increased, and being able to observe successful handicapper enterprises and employees, could help the rehabilitation process of recently handicapped individuals or those who have long ago given up trying to find work.

Opposing Argument

By requiring that the State departments set a goal to award 3% of contract expenditures to handicapper businesses, the bill could cause the State to pay more for a service or product simply because the percentage had to be fulfilled. If vendors, whoever they may be, can't provide a competitive price, they should not be awarded a contract.

In addition, before a 3% requirement is placed in law, more research needs to be done to determine if that level reflects the capacity of handicapper-owned businesses to handle that volume of business. Under Public Act 428 of 1980, minority-owned businesses and women-owned businesses were assigned to receive 7% and 5%, respectively, of certain State contracts. The Department of Management and Budget has stated that the sponsors of Public Act 428 had sufficient information to support the inclusion of the 7% and 5% goals as realistic, but that similar information is not currently available concerning handicapper-owned businesses.

Legislative Analyst: G. Towne

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.