

HOUSE BILL No. 5572

March 3, 1992, Introduced by Rep. Hood and referred to the Committee on Civil Rights, Constitution and Women's Issues.

A bill to correct the present effects of past discrimination in state procurement practices; to insure the full and equitable participation of women owned and minority owned businesses in the procurement of state goods, services, and construction; to prescribe powers and duties of certain state officials and agencies; to prescribe 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 "women and minority businesses utilization act".

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

6 (a) The United States supreme court has established new
7 standards to determine the constitutionality of procurement

1 programs implemented specifically for women owned and minority
2 owned businesses.

3 (b) The supreme court has held that state and local govern-
4 ments may maintain a minority owned or women owned business pro-
5 curement program if the program is necessary to assure that it is
6 not a "passive participant" in a system of racial exclusion prac-
7 ticed by contractors in the private or public sector or if the
8 program is necessary to eradicate the vestiges of past
9 discrimination.

10 (c) As a result of past private and public discrimination,
11 the state's overall contracting process, difficulties in the
12 financing and bond market, and problems obtaining credit and
13 insurance have had an effect of underutilizing women owned and
14 minority owned businesses in contracts awarded by the state and
15 have contributed to the underdevelopment of such businesses.

16 (d) As a result of the past discrimination against women
17 owned and minority owned businesses, women and minorities have
18 been deprived of numerous employment opportunities.

19 (e) It is in the best interest of the state to promote equi-
20 table utilization of women owned and minority owned businesses in
21 state contracting in order to eradicate the lingering effects of
22 past discrimination and to prevent the state's own spending deci-
23 sions from reinforcing and perpetuating the exclusionary effects
24 of past discrimination.

25 (f) The requirements of this act are necessary to overcome
26 the present effects of discrimination and are designed to achieve
27 the goal of equitable utilization of women owned and minority

1 owned businesses while at the same time maintaining a high
2 quality of goods and services provided to the state through com-
3 petitive bidding.

4 (g) That developers, contractors, and consultants have sys-
5 tematically excluded women owned and minority owned businesses
6 from contracting and subcontracting opportunities.

7 (h) The race neutral measures employed by the state in the
8 past have not prevented the state from being a passive partici-
9 pant in the systematic discrimination against women owned and
10 minority owned businesses.

11 (i) Unless the state takes affirmative steps to prevent the
12 pervasive discrimination against women owned and minority owned
13 businesses in the private sector from affecting its contracting
14 processes, the state will become a passive participant in the
15 system of gender and racial exclusion practiced in the private
16 sector.

17 (j) A state women owned and minority owned business procure-
18 ment program must be established to prevent the state from con-
19 tinuing to be a passive participant in the systematic exclusion
20 of women owned and minority owned businesses from contracting and
21 subcontracting opportunities.

22 Sec. 3. It is the policy of the state to ensure the full
23 and equitable participation by women owned and minority owned
24 businesses in the provision of goods, services, and construction
25 to the state. The ultimate goal of this act is to address the
26 underutilization of women owned and minority owned businesses
27 within the state's procurement contracting process.

1 Sec. 4. As used in this act:

2 (a) "Controlled" means to exercise the power to make policy
3 decisions in a business.

4 (b) "Department" means a department of the executive branch
5 of the state government.

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

11 (d) "Joint venture" means an agreement that combines 2 or
12 more businesses for specified purposes involving 1 or more disad-
13 vantaged business enterprises and 1 or more businesses other than
14 a disadvantaged business enterprise.

15 (e) "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 (f) "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 (g) "Operated" means the activity of being involved in the
26 day to day management of a business.

1 (h) "Person" means an individual, partnership, association,
2 corporation, governmental entity, or any other legal entity.

3 (i) "Subcontract" means an agreement to share a prime con-
4 tract between a prime contractor and a minority owned or woman
5 owned business.

6 (j) "Women or woman owned business" means a business in
7 which more than 50% of the voting shares or interest in the busi-
8 ness is owned, controlled, and operated by a woman or women and
9 with respect to which more than 50% of the net profit or loss
10 attributable to the business accrues to the owners.

11 Sec. 5. (1) Except as provided in subsection (6), the con-
12 struction, goods, and services procurement policy for each
13 department shall provide that the percentage of expenditures to
14 be awarded to women owned and minority owned businesses by the
15 department is as follows:

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

18 (b) For women owned businesses, the percentage shall not be
19 less than 5% of expenditures.

20 (2) The governor shall recommend to the legislature changes
21 in programs to assist women owned and minority owned businesses
22 as provided by this act.

23 (3) To assist in meeting the construction, goods, and serv-
24 ices procurement expenditures percentages set forth in subsection
25 (1), each department shall include provisions for the accommoda-
26 tion of subcontracts and joint ventures. The provisions shall be
27 established by the governor and shall require a bidder to

1 indicate the extent of women owned and minority owned business
2 participation.

3 (4) Only the portion of a prime contract that reflects women
4 owned or minority owned business participation shall be consid-
5 ered in meeting the requirements of subsection (1).

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

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

13 Sec. 6. (1) The governor shall establish a procurement
14 policy for each executive department to implement and establish
15 the method of meeting the projected expenditure percentage estab-
16 lished in section 5.

17 (2) The governor shall submit annually a report to the leg-
18 islature that details the results of the governor's procurement
19 policy including, but not limited to, the specific contracts
20 awarded by each department and the type of business engaged in by
21 the person awarded the contract.

22 (3) The department of management and budget shall provide
23 appropriate staff to implement this act.

24 Sec. 7. If certified women owned or minority owned busi-
25 nesses are not available in a particular business to meet the
26 percentage provided for in section 5, the governor shall annually

1 review the particular business until the percentage set in
2 section 5 is reached.

3 Sec. 8. (1) A person who wishes to be certified as a women
4 owned or minority owned business shall complete a sworn affidavit
5 that the person is a women owned or minority owned business and
6 is prepared to bid on state contracts. All ownership interests
7 in the business shall be specifically identified in the
8 affidavit. The affidavit shall be filed with the governor or a
9 department designated by the governor.

10 (2) If the governor or a department designated by the gover-
11 nor finds that the person meets the requirements of this act, the
12 person shall be certified as a women owned or minority owned
13 business.

14 Sec. 9. (1) A person who knowingly violates or conspires to
15 violate this act, or who knowingly and fraudulently procures or
16 attempts to procure a contract with this state as a women owned
17 or minority owned business, is guilty of a felony, punishable by
18 imprisonment for not more than 2 years, or a fine of not less
19 than \$5,000.00, or both.

20 (2) A person who violates this act is barred from obtaining
21 future contracts with the state.

22 Sec. 10. If a women owned or minority owned business
23 receives a contract as a prime contractor, the women owned or
24 minority owned business shall remain the prime contractor through
25 the duration of the contract.

1 Sec. 11. Act No. 428 of the Public Acts of 1980, being
2 sections 450.771 to 450.776 of the Michigan Compiled Laws, is
3 repealed.