

# SENATE BILL No. 785

March 5, 1992, Introduced by Senators STABENOW, BERRYMAN, DILLINGHAM, KOIVISTO, FAUST, BOUCHARD, V. SMITH, CHERRY and KELLY and referred to the Committee on Corporations and Economic Development.

A bill to provide competitive opportunity in state procurements of goods, services, and construction for small businesses; to prescribe powers and duties of certain state departments and agencies; to establish certain fees; and to provide penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3       Sec. 2. As used in this act:

4       (a) "Affiliate" means a business that is a subsidiary of or  
5 owned in part by a larger business or that is owned in excess of  
6 20% by the partners, officers, directors, majority shareholders,  
7 or their equivalent of a larger business.

8       (b) "Baseline period" means the period of time commencing 90  
9 days after the effective date of this act and operating for 90

1 days or until the end of the state's fiscal year, whichever is  
2 longer.

3 (c) "Business" means an entity organized for profit, includ-  
4 ing, but not limited to, an individual, partnership, corporation,  
5 joint venture, association, or cooperative.

6 (d) "Construction" means projects that have a total value of  
7 \$2,000,000.00 or less.

8 (e) "Department" means a principal department of the execu-  
9 tive branch of state government.

10 (f) "Expenditure" means payments and contracts for goods,  
11 services, and construction that may be acquired competitively and  
12 are not regulated by separate authority and where the department  
13 acts as the sole or primary contracting officer and has selective  
14 discretion as to the supplier, vendor, or contractor.

15 (g) "Small business" means a business that does not have,  
16 together with any affiliate, gross receipts in excess of any of  
17 the following:

18 (i) For wholesale businesses of goods, \$1,000,000.00.

19 (ii) For wholesale businesses of food, \$5,000,000.00.

20 (iii) For retail businesses, \$500,000.00.

21 (iv) For businesses that provide general labor services,  
22 \$500,000.00.

23 (v) For businesses that provide professional services,  
24 \$1,000,000.00.

25 (vi) For construction businesses, \$1,700,000.00.

26 (h) "Small business set-aside" means a purchase request that  
27 is competitively bid and offered to, and response accepted from,

1 only small businesses that are designated as provided in  
2 section 6.

3 (i) "Gross receipts" means all pecuniary receipts of a busi-  
4 ness from whatever source derived as entered or to have been  
5 entered on its regular books of account for its most recently  
6 completed business year.

7 Sec. 3. (1) All state departments shall record expenditures  
8 for goods and services made to small businesses during the base-  
9 line period. The expenditures that are made to small businesses  
10 as compared to total expenditures made during the baseline period  
11 shall be used to determine the percentage of small business  
12 awards. This pro rata information shall be used in projecting 12  
13 months of small business expenditures. This baseline year data  
14 shall be used in determining small business expenditure require-  
15 ments for goods and services in subsequent years.

16 (2) All state departments shall record expenditures for con-  
17 struction made to small businesses during the baseline period.  
18 The expenditures that are made to small businesses as compared to  
19 total expenditures made during the baseline period shall be used  
20 to determine the percentage of small business awards. This pro  
21 rata information shall be used in projecting 12 months of small  
22 business expenditures. This baseline year data shall be used in  
23 determining small business expenditure requirements for construc-  
24 tion in subsequent years.

25 (3) After the baseline period ends, each state department  
26 shall annually increase expenditures to small businesses 150%  
27 from expenditures made to small businesses in the baseline year

1 until annual expenditures to small businesses reach 25% of annual  
2 total eligible state expenditures for each year thereafter.

3 (4) In determining whether a purchase shall be made through  
4 a small business set-aside, there shall be a reasonable expecta-  
5 tion of competition.

6 (5) All laws, rules, and regulations pertaining to competi-  
7 tive bids, the award of contracts, and other purchasing matters  
8 shall apply to solicitations set aside for small business.

9 (6) If a small business set-aside does not result in an  
10 award, the purchase request shall be returned to the normal bid-  
11 ding process.

12 Sec. 4. (1) All state departments shall report annually to  
13 the department of management and budget the number of small busi-  
14 nesses awarded contracts and the dollar value of those awards for  
15 the immediately preceding year, and the percentage of expendi-  
16 tures for goods and services and the percentage of expenditures  
17 for construction that awards to small business comprise for the  
18 immediately preceding year.

19 (2) The department of management and budget shall file an  
20 annual report with the governor and the legislature on the  
21 progress made by state departments in providing procurement  
22 opportunities to small businesses under this act.

23 Sec. 5. (1) Every 2 years the department of management and  
24 budget shall hold a public hearing to receive input from the  
25 business community as to what modifications are needed in the  
26 gross receipts dollar limits for the various types of small  
27 businesses as defined in section 2.

1       (2) The department of management and budget shall make  
2 recommendations to the governor and legislature regarding modifi-  
3 cations of these dollar limits.

4       Sec. 6. (1) The state departments that have statutory  
5 authority for purchasing goods, services, and construction shall  
6 implement a process to verify a business as a small business as  
7 defined in section 2.

8       (2) A business that wishes to be designated as a small busi-  
9 ness must complete an application form developed by the designat-  
10 ing department and annually submit a copy of a completed tax  
11 return with all schedules for the last business year, as filed  
12 with the United States department of treasury, internal revenue  
13 service.

14       (3) Tax information submitted pursuant to this act shall be  
15 treated as confidential, shall only be used for determining small  
16 business designation under this act, and shall be exempt from the  
17 freedom of information act, Act No. 442 of the Public Acts of  
18 1976, being sections 15.231 to 15.246 of the Michigan Compiled  
19 Laws.

20       Sec. 7. (1) A business that challenges a small business  
21 designation under this act through a formal protest of a contract  
22 award decision shall pay to the designating department \$1,000.00  
23 to cover the cost of review of the designation. Any unused  
24 amount shall be returned to the protesting business.

25       (2) The review by the designating department shall include  
26 an audit of gross receipts of the challenged business. The audit  
27 shall be conducted under the direction of the designating

1 department and shall be performed by an accounting firm that is  
2 not part of or affiliated with the business challenging the des-  
3 ignation or the designated business.

4       Sec. 8. (1) Businesses that wish to be placed on the  
5 department of management and budget bidder's list shall pay an  
6 annual fee. Businesses incorporated in Michigan or with their  
7 primary headquarters located in Michigan shall pay an annual fee  
8 of \$25.00. All other businesses shall pay an annual fee of  
9 \$75.00.

10       (2) Businesses that fail to pay the fee shall be removed  
11 from the bidder's list and not be allowed to submit bids on  
12 solicitations issued by the department of management and budget.

13       (3) Registration fees shall cover the costs of processing  
14 bidder information and the cost of administering the small busi-  
15 ness opportunity program.

16       Sec. 9. (1) A person shall not fraudulently procure or  
17 attempt to procure a contract under this act.

18       (2) A person who knowingly violates this act is guilty of a  
19 felony, punishable by imprisonment for not more than 2 years, or  
20 a fine of not less than \$5,000.00, or both.

21       (3) A person found guilty of violating this act shall be  
22 barred from obtaining future contracts with the state.