

# HOUSE BILL No. 4731

June 8, 2017, Introduced by Reps. Ellison, Hammoud, LaGrand, Geiss, Chang, Love, Neeley, Peterson, Gay-Dagnogo, Sabo, Chirkun, Cochran, Rabhi, Wittenberg, Byrd, Sowerby, Scott, Moss, Green and Jones and referred to the Committee on Government Operations.

A bill to amend 1980 PA 428, entitled

"An act to provide for the designation of 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; and to provide penalties,"

by amending the title and sections 1, 2, 3, 4, 5, and 6 (MCL 450.771, 450.772, 450.773, 450.774, 450.775, and 450.776).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

TITLE

An act to provide for the designation of state procurements of goods, services, and construction for **IMMIGRANT OWNED**, 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; and to provide penalties.

Sec. 1. As used in this act:

(a) "Controlled" means exercising the power to make policy

1 decisions in a business.

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

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

9 (D) **"IMMIGRANT" MEANS A NON-NATIVE-BORN RESIDENT OF THIS**  
10 **STATE.**

11 (E) **"IMMIGRANT OWNED BUSINESS" MEANS A BUSINESS OF WHICH MORE**  
12 **THAN 50% OF THE VOTING SHARES OR INTEREST IS OWNED, CONTROLLED, AND**  
13 **OPERATED BY AN IMMIGRANT AND WITH RESPECT TO WHICH MORE THAN 50% OF**  
14 **THE NET PROFIT OR LOSS ATTRIBUTABLE TO THE BUSINESS ACCRUES TO**  
15 **IMMIGRANT SHAREHOLDERS.**

16 (F) ~~(d)~~ "Joint venture" means an agreement that combines 2 or  
17 more businesses for specified purposes involving 1 or more  
18 **IMMIGRANT OWNED BUSINESSES**, minority owned **BUSINESSES**, or woman  
19 owned businesses and 1 or more businesses other than ~~a~~ **AN IMMIGRANT**  
20 **OWNED BUSINESS**, minority owned **BUSINESS**, or woman owned business.

21 (G) ~~(e)~~ "Minority" means a person who is black, hispanic,  
22 oriental, eskimo, or an American Indian who is not less than 1/4  
23 quantum Indian blood as certified by the person's tribal  
24 association and verified by the Indian affairs commission.

25 (H) ~~(f)~~ "Minority owned business" means a business enterprise  
26 of which more than 50% of the voting shares or interest in the  
27 business is owned, controlled, and operated by individuals who are

1 members of a minority and with respect to which more than 50% of  
 2 the net profit or loss attributable to the business accrues to  
 3 shareholders who are members of a minority.

4 (I) ~~(g)~~ "Operated" means the activity of being involved in the  
 5 ~~day to day~~ **DAY-TO-DAY** management of a business.

6 (J) ~~(h)~~ "Person" means an individual, sole proprietorship,  
 7 partnership, association, or corporation.

8 (K) ~~(i)~~ "Subcontract" means an agreement to share a prime  
 9 contract between a prime contractor, who is not a ~~an~~ **IMMIGRANT**  
 10 **OWNED BUSINESS**, minority owned business, or a woman owned business,  
 11 and a ~~an~~ **IMMIGRANT OWNED BUSINESS**, minority owned **BUSINESS**, or  
 12 woman owned business.

13 (L) ~~(j)~~ "Woman owned business" means a business of which more  
 14 than 50% of the voting shares or interest in the business is owned,  
 15 controlled, and operated by women and with respect to which more  
 16 than 50% of the net profit or loss attributable to the business  
 17 accrues to the women shareholders.

18 Sec. 2. (1) The construction, goods, and services procurement  
 19 policy for each department shall provide for the following  
 20 percentage of expenditures to be awarded to **IMMIGRANT OWNED**  
 21 **BUSINESSES**, minority owned **BUSINESSES**, and woman owned businesses  
 22 by each department except as provided in subsection (6):

23 (a) For minority owned business, ~~the goal for 1980-81 shall be~~  
 24 ~~150% of the actual expenditures for 1979-80, the goal for 1981-82~~  
 25 ~~shall be 200% of the actual expenditures for 1980-81, the goal for~~  
 26 ~~1982-83 shall be 200% of the actual expenditures for 1981-82, the~~  
 27 ~~goal for 1983-84 shall be 116% of the actual expenditures for 1982-~~

1 ~~83, and this level of effort at~~ **FOR FISCAL YEAR 2017-2018 AND EACH**  
 2 **FISCAL YEAR THEREAFTER**, not less than 7% of expenditures. ~~shall be~~  
 3 ~~maintained thereafter.~~

4 (b) For woman owned business, ~~the goal for 1980-81 shall be~~  
 5 ~~150% of the actual expenditures for 1979-80, the goal for 1981-82~~  
 6 ~~shall be 200% of the actual expenditures for 1980-81, the goal for~~  
 7 ~~1982-83 shall be 200% of the actual expenditures for 1981-82, the~~  
 8 ~~goal for 1983-84 shall be 200% of the actual expenditures for 1982-~~  
 9 ~~83, the goal for 1984-85 shall be 140% of the expenditures for~~  
 10 ~~1983-84, and this level of effort at~~ **FOR FISCAL YEAR 2017-2018 AND**  
 11 **EACH FISCAL YEAR THEREAFTER**, not less than 5% of expenditures.  
 12 ~~shall be maintained thereafter.~~

13 **(C) FOR IMMIGRANT OWNED BUSINESS, FOR FISCAL YEAR 2017-2018**  
 14 **AND EACH FISCAL YEAR THEREAFTER, NOT LESS THAN 5% OF EXPENDITURES.**

15 (2) If the first year ~~goals~~ **CONSTRUCTION, GOODS, AND SERVICES**  
 16 **PROCUREMENT EXPENDITURES DESCRIBED IN SUBSECTION (1)** are not  
 17 achieved, the governor shall recommend to the legislature changes  
 18 in programs to assist **IMMIGRANT OWNED BUSINESSES**, minority **OWNED**  
 19 **BUSINESSES**, and woman owned businesses.

20 (3) Each department, to assist in meeting the construction,  
 21 goods, and services procurement expenditures ~~percentages~~ set forth  
 22 in subsection (1), shall include provisions for the accommodation  
 23 of subcontracts and joint ventures. The provisions shall be  
 24 established by the governor and shall require a bidder to indicate  
 25 the extent of **IMMIGRANT OWNED BUSINESS**, minority owned **BUSINESS**, or  
 26 woman owned business participation.

27 (4) Only the portion of a prime contract that reflects

1 **IMMIGRANT OWNED BUSINESS**, minority owned **BUSINESS**, or woman owned  
2 business participation shall be considered in meeting the  
3 requirements of subsection (1).

4 (5) ~~Minority~~ **IMMIGRANT OWNED BUSINESSES, MINORITY** owned  
5 **BUSINESSES**, or woman owned businesses shall comply with the same  
6 requirements expected of other bidders, including, but not limited  
7 to, being adequately bonded.

8 (6) If the bidders for any contract do not include a qualified  
9 **IMMIGRANT OWNED BUSINESS**, minority owned ~~and operated~~ **BUSINESS**, or  
10 woman owned ~~and operated~~ business, the contract shall be awarded to  
11 the lowest bidder otherwise qualified to perform the contract.

12 Sec. 3. (1) The governor shall establish a procurement policy  
13 for each executive department to implement ~~and establish the method~~  
14 ~~of meeting the projected goals established in section 2.~~

15 (2) The governor shall submit a report to the legislature  
16 ~~every 3 months during the first year of operation and every 6~~  
17 ~~months. during succeeding years.~~ The report shall detail ~~the~~ **ALL OF**  
18 **THE FOLLOWING:**

19 (A) **THE** results of the ~~governor's~~ procurement policy  
20 **EXPENDITURES DESCRIBED IN SECTION 2(1)**, including the specific  
21 contracts awarded by each department. ~~and the~~

22 (B) **THE** type of business engaged in by the person awarded the  
23 contract.

24 (C) **IF THE PROCUREMENT EXPENDITURES DESCRIBED IN SECTION 2(1)**  
25 **HAVE NOT BEEN MET, HOW THE GOVERNOR WILL MEET THE REQUIREMENTS**  
26 **DESCRIBED IN SECTION 2(1) AND HOW THE GOVERNOR PROPOSES TO INCREASE**  
27 **THE NUMBER OF IMMIGRANT OWNED BUSINESSES, MINORITY OWNED**

1 **BUSINESSES, AND WOMEN OWNED BUSINESSES IN THE STATE TO BID ON STATE**  
2 **PROCUREMENT CONTRACTS.**

3 (3) Appropriate staff to implement the governor's policy shall  
4 be provided by the department of **TECHNOLOGY**, management, and  
5 budget.

6 Sec. 4. A person who wishes to be certified as a ~~an~~ **IMMIGRANT**  
7 **OWNED BUSINESS**, minority owned **BUSINESS**, or woman owned business  
8 shall complete a sworn affidavit that the person is a ~~an~~ **IMMIGRANT**  
9 **OWNED BUSINESS**, minority owned **BUSINESS**, or woman owned business  
10 and is prepared to bid on state contracts. All ownership interests  
11 in the business shall be specifically identified in the affidavit.  
12 The affidavit shall be filed with the governor or a department  
13 designated by the governor.

14 Sec. 5. 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 ~~an~~ **IMMIGRANT**  
17 **OWNED BUSINESS**, minority owned **BUSINESS**, or woman owned business is  
18 guilty of a felony ~~or~~ punishable by imprisonment for not more than 2  
19 years ~~or~~ a fine of not less than \$5,000.00, or both. A person who  
20 violates this act shall be barred from obtaining future contracts  
21 with the state.

22 Sec. 6. If a ~~an~~ **IMMIGRANT OWNED BUSINESS**, minority owned  
23 **BUSINESS**, or woman owned business receives a contract, the  
24 **IMMIGRANT OWNED BUSINESS**, minority owned **BUSINESS**, or woman owned  
25 business shall be the prime contractor through its duration.