

HOUSE BILL NO. 5000

September 19, 2019, Introduced by Reps. Hammoud, Brixie, Manoogian, Hood, Yancey, Garza, Sowerby, Pagan, Tyrone Carter and Peterson and referred to the Committee on Commerce and Tourism.

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:



JLB



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1 TITLE

2 An act to provide for the designation of state procurements of
 3 goods, services, and construction for ~~minority-owned immigrant-~~
 4 **owned, minority-owned,** and ~~woman-owned woman-owned~~ businesses; to
 5 provide powers and duties of the governor; to prescribe powers and
 6 duties of certain state departments and agencies; and to provide
 7 penalties.

8 Sec. 1. As used in this act:

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

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

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

18 (d) "Immigrant" means a non-native-born resident of this
 19 state.

20 (e) "Immigrant-owned business" means a business of which more
 21 than 50% of the voting shares or interest is owned, controlled, and
 22 operated by an immigrant and with respect to which more than 50% of
 23 the net profit or loss attributable to the business accrues to
 24 immigrant shareholders.

25 (f) ~~(d)~~ "Joint venture" means an agreement that combines 2 or
 26 more businesses for specified purposes involving 1 or more ~~minority~~
 27 ~~owned immigrant-owned businesses, minority-owned businesses, or~~
 28 ~~woman-owned woman-owned~~ businesses and 1 or more businesses other
 29 than a ~~minority-owned~~ **an immigrant-owned business, minority-owned**



1 **business**, or ~~woman-owned~~ **woman-owned** business.

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

6 (h) ~~(f)~~ "~~Minority-owned~~ **Minority-owned** business" means a
7 business enterprise of which more than 50% of the voting shares or
8 interest in the business is owned, controlled, and operated by
9 individuals who are members of a minority and with respect to which
10 more than 50% of the net profit or loss attributable to the
11 business accrues to shareholders who are members of a minority.

12 (i) ~~(g)~~ "Operated" means the activity of being involved in the
13 ~~day to day~~ **day-to-day** management of a business.

14 (j) ~~(h)~~ "Person" means an individual, sole proprietorship,
15 partnership, association, or corporation.

16 (k) ~~(i)~~ "Subcontract" means an agreement to share a prime
17 contract between a prime contractor, who is not ~~a minority-owned~~ **an**
18 **immigrant-owned business, minority-owned** business, or ~~a woman-owned~~
19 **woman-owned** business, and ~~a minority-owned~~ **an immigrant-owned**
20 **business, minority-owned business,** or ~~woman-owned~~ **woman-owned**
21 business.

22 (l) ~~(j)~~ "~~Woman-owned~~ **Woman-owned** business" means a business of
23 which more than 50% of the voting shares or interest in the
24 business is owned, controlled, and operated by women and with
25 respect to which more than 50% of the net profit or loss
26 attributable to the business accrues to the women shareholders.

27 Sec. 2. (1) The construction, goods, and services procurement
28 policy for each department shall provide for the following
29 percentage of expenditures to be awarded to ~~minority-owned~~



1 **immigrant-owned businesses, minority-owned businesses,** and ~~woman~~
 2 ~~owned woman-owned~~ businesses by each department except as provided
 3 in subsection (6):

4 (a) For ~~minority-owned~~ **minority-owned** business, ~~the goal for~~
 5 ~~1980-81 shall be 150% of the actual expenditures for 1979-80, the~~
 6 ~~goal for 1981-82 shall be 200% of the actual expenditures for 1980-~~
 7 ~~81, the goal for 1982-83 shall be 200% of the actual expenditures~~
 8 ~~for 1981-82, the goal for 1983-84 shall be 116% of the actual~~
 9 ~~expenditures for 1982-83, and this level of effort at~~ **for fiscal**
 10 **year 2019-2020 and each fiscal year thereafter,** not less than 7% of
 11 expenditures. ~~shall be maintained thereafter.~~

12 (b) For ~~woman-owned~~ **woman-owned** business, ~~the goal for 1980-81~~
 13 ~~shall be 150% of the actual expenditures for 1979-80, the goal for~~
 14 ~~1981-82 shall be 200% of the actual expenditures for 1980-81, the~~
 15 ~~goal for 1982-83 shall be 200% of the actual expenditures for 1981-~~
 16 ~~82, the goal for 1983-84 shall be 200% of the actual expenditures~~
 17 ~~for 1982-83, the goal for 1984-85 shall be 140% of the expenditures~~
 18 ~~for 1983-84, and this level of effort at~~ **for fiscal year 2019-2020**
 19 **and each fiscal year thereafter,** not less than 5% of expenditures.
 20 ~~shall be maintained thereafter.~~

21 (c) **For immigrant-owned business, for fiscal year 2019-2020**
 22 **and each fiscal year thereafter, not less than 5% of expenditures.**

23 (2) If the first year ~~goals~~ **construction, goods, and services**
 24 **procurement expenditures described in subsection (1)** are not
 25 achieved, the governor shall recommend to the legislature changes
 26 in programs to assist ~~minority~~ **immigrant-owned businesses,**
 27 **minority-owned businesses,** and ~~woman-owned~~ **woman-owned** businesses.

28 (3) Each department, to assist in meeting the construction,
 29 goods, and services procurement expenditures ~~percentages~~ set forth



1 in subsection (1), shall include provisions for the accommodation
 2 of subcontracts and joint ventures. The provisions shall be
 3 established by the governor and shall require a bidder to indicate
 4 the extent of ~~minority-owned~~**immigrant-owned business, minority-**
 5 **owned business**, or ~~woman-owned~~**woman-owned** business participation.

6 (4) Only the portion of a prime contract that reflects
 7 ~~minority-owned~~**immigrant-owned business, minority-owned business**,
 8 or ~~woman-owned~~**woman-owned** business participation shall be
 9 considered in meeting the requirements of subsection (1).

10 (5) ~~Minority-owned~~**Immigrant-owned businesses, minority-owned**
 11 **businesses**, or ~~woman-owned~~**woman-owned** businesses shall comply with
 12 the same requirements expected of other bidders, including, but not
 13 limited to, being adequately bonded.

14 (6) If the bidders for any contract do not include a qualified
 15 ~~minority owned and operated~~**immigrant-owned business, minority-**
 16 **owned business**, or ~~woman owned and operated~~**woman-owned** business,
 17 the contract shall be awarded to the lowest bidder otherwise
 18 qualified to perform the contract.

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

22 (2) The governor shall submit a report to the legislature
 23 ~~every 3 months during the first year of operation and every 6~~
 24 ~~months. during succeeding years.~~ The report shall detail ~~the~~**all of**
 25 **the following:**

26 (a) ~~The~~ results of the ~~governor's procurement policy~~
 27 **expenditures described in section 2(1)**, including the specific
 28 contracts awarded by each department. ~~and the~~

29 (b) ~~The~~ type of business engaged in by the person awarded the



1 contract.

2 (c) If the procurement expenditures described in section 2(1)
 3 have not been met, how the governor will meet the requirements
 4 described in section 2(1) and how the governor proposes to increase
 5 the number of immigrant-owned businesses, minority-owned
 6 businesses, and woman-owned businesses in the state to bid on state
 7 procurement contracts.

8 (3) Appropriate staff to implement the governor's policy shall
 9 be provided by the department of **technology**, management, and
 10 budget.

11 Sec. 4. A person who wishes to be certified as ~~a minority~~
 12 ~~owned~~ **an immigrant-owned business, minority-owned business,** or
 13 ~~woman-owned~~ **woman-owned** business shall complete a sworn affidavit
 14 that the person is ~~a minority-owned~~ **an immigrant-owned business,**
 15 **minority-owned business,** or ~~woman-owned~~ **woman-owned** business and is
 16 prepared to bid on state contracts. All ownership interests in the
 17 business shall be specifically identified in the affidavit. The
 18 affidavit shall be filed with the governor or a department
 19 designated by the governor.

20 Sec. 5. A person who knowingly violates or conspires to
 21 violate this act ~~or~~ who knowingly and fraudulently procures or
 22 attempts to procure a contract with this state as ~~a minority-owned~~
 23 **an immigrant-owned business, minority-owned business,** or ~~woman~~
 24 ~~owned~~ **woman-owned** business is guilty of a felony ~~or~~ punishable by
 25 imprisonment for not more than 2 years ~~or~~ a fine of not less than
 26 \$5,000.00, or both. A person who violates this act shall be barred
 27 from obtaining future contracts with the state.

28 Sec. 6. If ~~a minority-owned~~ **an immigrant-owned business,**
 29 **minority-owned business,** or ~~woman-owned~~ **woman-owned** business



1 receives a contract, the ~~minority-owned~~ **immigrant-owned business**,
2 **minority-owned business**, or ~~woman-owned~~ **woman-owned** business shall
3 be the prime contractor through its duration.

