

Act No. 73  
Public Acts of 1998  
Approved by the Governor  
May 4, 1998  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1998

**Introduced by Senators Berryman, Conroy, Gougeon, North, Bullard, Vaughn, V. Smith, Peters, A. Smith, DeBeaussaert, Young, Stallings, Byrum, Koivisto and Hart**

# **ENROLLED SENATE BILL No. 393**

AN ACT to amend 1988 PA 112, entitled "An act to provide competitive opportunity in state procurements of goods, services, and construction for handicapper 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, and 5 (MCL 450.791, 450.792, 450.793, 450.794, and 450.795).

*The People of the State of Michigan enact:*

## TITLE

An act to provide competitive opportunity in state procurements of goods, services, and construction for businesses owned by persons with disabilities; 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. This act shall be known and may be cited as "the business opportunity act for persons with disabilities".

Sec. 2. As used in this act:

(a) "Business owned by persons with disabilities" means a business in which all of the following apply:

(i) More than 50% of the voting shares or interest in the business is owned, controlled, and operated by 1 or more persons with disabilities.

(ii) More than 50% of the net profit or loss attributable to the business accrues to shareholders who are persons with disabilities.

(iii) More than 50% of the employees of the business are residents of this state.

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

(c) "Department" means a principal department of the executive branch of the state government.

(d) "Disability" means a determinable physical or mental impairment of an individual or the history of an impairment that may result from disease, injury, congenital condition of birth, or functional disorder.

(e) "Expenditures" means payments and contracts for goods, services, and construction which may be acquired competitively and are not regulated by separate authority, and, where the department acts as the sole or primary contracting officer and has selective discretion as to the supplier, vendor, or contractor. This definition does not apply to expenditures by the department of transportation for road and bridge construction projects which receive federal

funds under section 112(b) of title 23 of the United States Code, 23 U.S.C. 112, 23 C.F.R. 635.104(a), and other applicable federal law until federal law recognizes small businesses owned by persons with disabilities.

(f) "Joint venture" means an agreement that combines 2 or more businesses for specified purposes involving 1 or more businesses owned by persons with disabilities and 1 or more businesses other than a business owned by persons with disabilities.

(g) "Operated" means the activity of being involved in the day-to-day management of a business.

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

(i) "Person with disabilities" means an individual with 1 or more disabilities.

(j) "Subcontract" means an agreement to share a prime contract between a prime contractor and a business owned by persons with disabilities.

Sec. 3. (1) It shall be the goal of each department to award each year not less than 3% of its total expenditures for construction, goods, and services, less expenditures to sole source vendors, to businesses owned by persons with disabilities.

(2) At 5-year intervals from the effective date of this act, the department of management and budget shall review the progress of the departments in meeting the 3% goal with input from the business community, including businesses owned by persons with disabilities, and shall make recommendations to the legislature regarding continuation, increases or decreases in the percentage goal. The recommendations shall be based upon the number of businesses which are owned by persons with disabilities and on the continued need to encourage and promote businesses owned by persons with disabilities.

(3) It shall be the goal of each department or agency that does not meet the goal provided in subsection (1) to award each year to businesses owned by persons with disabilities not less than 150% of the actual expenditures it awarded to businesses owned by persons with disabilities in the preceding year until not less than 3% of total expenditures is achieved as provided in subsection (1).

(4) To assist in reaching the goals set in subsections (1) and (3), the governor shall recommend to the legislature changes in programs to assist businesses owned by persons with disabilities.

(5) To assist in meeting the goals set forth in subsections (1) and (3), each department shall include provisions for the consideration of subcontracts and joint ventures. The provisions shall require a bidder to indicate the extent of participation of a business owned by persons with disabilities.

(6) Only the portion of a prime contract that reflects participation of a business owned by persons with disabilities shall be considered in meeting the requirements of subsections (1) and (3).

(7) Except as otherwise provided by statute, if the bidders for any contract for construction, goods, or services do not include a qualified business owned by persons with disabilities, the contract shall be awarded to the lowest bidder qualified to perform the contract.

Sec. 4. (1) The governor shall designate a department responsible for certifying that a person meets the requirements of this act.

(2) Unless subsection (3) applies, in determining whether a person seeking certification is a person with disabilities, the certifying agency may accept documentation from 1 or more of the following:

(a) The Michigan commission for the blind, Michigan rehabilitation services, or the social security administration SSI or SSDI programs. The documents shall show that the current disability was the basis for eligibility in the program within the last 5 years.

(b) The veterans administration. The documents shall show that the person has a 30% or greater disability rating.

(c) A licensed physician or psychiatrist, who shall certify that the person has a significant disability.

(3) The certifying department may require any person seeking certification to obtain verification pursuant to subsection (2)(c) to insure that the applicant currently meets the definition of a person with disabilities.

(4) An applicant seeking certification as a business owned by a person with disabilities shall complete an application form developed by the certifying department and submit to the certifying department an affidavit and documentation that the applicant is a business owned by a person with disabilities and is prepared to bid on state contracts. Proof of ownership interest, control, operational involvement, and profit and loss shall be specifically identified and provided with the affidavit.

Sec. 5. (1) A person shall not fraudulently procure or attempt to procure a contract under this act.

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

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

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate.

*Maya Rudolph*

Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.