

## **House Bill 584 (Minority Set-Aside Legislation)**

On December 17, 1980, House Bill 584 was signed by Governor James A. Rhodes. The purpose of the Bill was to ensure minority business participation in the bidding process relating to the contracts awarded by the State of Ohio. Specifically, the bill mandated the following:

- a. Establish a minority development loan program;
- b. Provide construction contract bonds for minority businesses unable to obtain them from private sources;
- c. Set aside 5% of state construction contracts and 15% of procurement contracts for minority businesses;
- d. Require 7 to 10 percent of every state construction contract be awarded to minority subcontractors and material-men; and
- e. Require all state and local procurement contracts to contain anti-discrimination clauses, and to make an appropriation.

The statutory authority for Sub. H.B. 584 can be found in Sections 122.71 to 122.85, 123.151.081 and 153.02 of the Ohio Revised Code.

Minority Business Enterprise is defined as “an individual, partnership, corporation or joint venture owned and controlled by persons who are U.S. citizens, Ohio residents and a member of an economically disadvantaged group, limited to : Blacks, Native Americans, Latinos and Asians.

Owned and Controlled is defined as:

- a. Corporation: At least 51% of stock is owned by persons who belong to one or more of the groups set forth above; with 51% minority representation on Board of Directors and Executive Officers; minority must control management and day-to-day operations; and proportionate interest in capital, assets, profits and losses.
- b. Partnership: At least 51% control of disadvantaged persons previously certified as MBE; control over management and day-to-day operations; and proportionate interest in capital, assets, profits and losses.

The application procedures are as follows:

1. Make application to State EEO Coordinator at (DAS) for certification as MBE, at least 30 days prior to bid opening.
2. MBE must have been in business for at least one year or direct successor to a business that has operated for more than one year.
3. Provide State EEO Coordinator with substantiating documentation.
4. MBE must have construction or procurement capability.

House Bill 584 is administered by two state agencies whose major responsibilities are listed below:

- I. Ohio Department of Administrative Services/State EEO Coordinator
  - a. Approves/disapproves application for certification from MBE.

- b. Prepares and maintains a list of certified MBE's in three categories: contractors, subcontractors (construction), and materialmen and vendors of goods and services.
- c. Requests and reviews the documents for determination of eligibility (articles of incorporation, list of stockholders, financial statements—reviewed by CPA—partnership agreement, joint venture agreement).
- d. EEO Coordinator conducts review of MBE's financial statements.
- e. Prepares certificates of compliance.
- f. Set Aside Review Board (3 Member Board) was established to hear waiver or modification applications and appeals for MBE eligibility.
- g. Monitors all state agencies for compliance and makes reports to legislature.

II. Department of Economic and Community Development Minority Business Development Division

- a. Provide technical and managerial counseling and assistance to MBE.
- b. Provide procurement, bid packaging and bonding assistance.
- c. Assist other state agencies in establishing MBE's.
- d. Establish center for the development, collection and dissemination of MBE information.
- e. Assist MBE's in obtaining governmental or commercial financing and contract procurement. Review applications for loans to determine MBE eligibility.
- f. Receive and accept gifts, grants and private sources.
- g. Minority Development Financing Advisory Board makes recommendations to ODFC for operating of O.E.C. 122.15 and 122.82 funds; review bond applications; establish and adopt rules and regulations pertaining to conditions for receiving funds, employing MBE's, advisors, and consultants; provide technical assistance; and establish funds with the Treasurer of State.
- h. Minority Development Financing Commission makes loans provided by O.R.C. 122.82; improve the economic welfare of the people of the State through increased employment opportunities; receive and accept grants, gifts, and contributions; ensure that contributions are used for intended purposes; and encourage the establishment and expansion of MBE's.

Am. Sub. H.B. 584 authorizes the Ohio Development Financing Commission to make loans to minority business enterprises from a fund established for this purpose, to invest money from this loan fund, and to provide financial, business, and technical advice to minority business enterprises; creates the Minority Development Financing Advisory Board as an advisory board to the Ohio Development Financing Commission to review all applications from minority business enterprises for loans and construction contract surety bonds and to effectively make the determination as to whether a loan or bond should be granted; sets aside 5% of the aggregate value of all state construction contracts and 15% of the aggregate value of state procurement

contracts each fiscal year for bidding upon by minority business enterprises only; requires all construction contracts entered into by the state to provide for 7% of the total value of the contract to be allocated to minority business subcontractors, material suppliers, and service providers unless the requirement is modified or waived by the Set Aside Review Board; establishes a Minority Contractor's Bonding Fund for the purpose of enabling the Ohio Development Financing Commission to issue construction contract surety bonds to minority contractors who cannot otherwise obtain bonding; permits the Ohio Development Financing Commission to draw upon up to \$10,000,000 of unclaimed funds currently allocated to the Housing Development Fund and the Housing Guarantee Fund if needed for defaults on minority contractor bonds; the Housing Guarantee Fund if needed for defaults on minority contractor bonds; establishes by statute in the Department of Economic and Community Development a Minority Business Development Division to encourage the growth and establishment of minority-owned and operated businesses in Ohio; requires all state and local contracts for the procurement of goods and services to contain provisions prohibiting discrimination and providing for affirmative action by the contractor; establishes that the Department of Industrial Relations is to enforce the prevailing wage law with respect to a number of types of projects financed with state loans or loans guaranteed by the state, including loans to minority businesses; and makes several appropriations.

The act enacts as permanent law a purpose clause indicating that the Ohio Development Financing Commission (ODFC) is invested with the powers given it by the act in order to promote the public welfare by encouraging the establishment and expansion of minority business enterprises, to stabilize the economy, to assist in industrial, commercial, distribution, and research development, to create and preserve jobs, and to improve the economic welfare of Ohioans. These purposes are deemed essential to the maintenance of Ohioans' favorable standard of living as compared to persons in surrounding states and so that employment opportunities and the marketing of Ohio products will be enhanced.

For the purposes of the act, a "minority business enterprise" is a business enterprise which is at least 51% "owned and controlled" by United States citizens, residents of Ohio, who are members of economically disadvantaged groups. These groups include, but are not limited to Blacks, Native Americans, Latinos and Asians. A minority person must both be involved in the daily affairs of the business and have an interest in the capital, assets, and profits proportionate to the person's percentage of ownership. In order to qualify, the business must have been "owned and controlled" by members of the designated minority for at least one year prior to qualifying for any benefits under the act.

The Equal Employment Opportunity Coordinator of the Department of Administrative Services is responsible for certifying businesses as minority business enterprises and is authorized to make rules under which certification will occur. The act appropriates \$100,000 from unclaimed funds held by the Treasurer of State to the Department of Administrative Services for administrative expenses of the Equal Employment Opportunity Coordinator in certifying minority businesses.

Minority business loans

The act authorizes the ODFC, upon the approval of the Minority Development Financing Advisory Board, to lend money from the loan fund established by the act directly to a minority business enterprise or to community improvement corporations or an Ohio Development Corporation which in turn may lend the money to a minority business enterprise. Any loan made must be for the purpose of procuring or improving real or personal property or both, for the establishment, location, or expansion of industrial, distribution, commercial, or research facilities in Ohio. In addition, the Board must find that all of the following criteria are met:

- 1) The project is economically sound and will benefit the people of the state by increasing opportunities for employment and by expanding minority business enterprises;
- 2) The proposed minority business enterprise borrower is unable to finance the proposed project through ordinary channels at comparable terms;
- 3) The value of the project is, or upon completion thereof will be, at least equal to the total amount of the money expended in the procurement or improvement of the project and of which amount one or more financial institutions or other governmental entities have loaned not less than 50%;
- 4) The amount to be loaned by the Commission will not exceed 40% of the total amount expended in the procurement or improvement of the project;
- 5) The amount to be loaned by the Commission will be adequately secured by a first or second mortgage upon the project, and by mortgages, leases, liens, assignments or pledges on or of other property as the Board requires;
- 6) The minority business enterprise borrower has not defaulted on a previous loan from the Commission, and no full or limited partner, or major shareholder, or holder of an equity interest of the minority business enterprise borrower has defaulted on a loan from the Commission;
- 7) The Board must also decide that the minority business enterprise borrower will be able to compete successfully in the private sector if it obtains the necessary financial, technical, or managerial support. The Board is required to give favorable consideration to such factors as the applicant's successful completion of or participation in courses designed to provide financial, technical, or managerial skills relating to the operation of the applicant's business and the applicant's prior success in business activities.

All financial statements and data submitted to the Board in connection with a loan application are not open to public inspection. The Board in connection with a loan application is not open to public inspection. The Board must also determine all fees, charges, rates of interest, times of payment of interest, principal, and other terms of the financing. A mortgage lien securing any money loaned by the Commission may be subordinate to a mortgage lien securing any money loaned by a financial institution, but is to be superior to that securing any money loaned or expended by any other corporation or person. The Commission is also not permitted to lend its funds for the purpose of procuring or improving office equipment, raw materials, small tools, supplies, inventories, or accounts receivable.

**Tax exemption.** The act states that all powers exercised by the ODFC as provided for in the act are for the benefit of the people of the state, for the increase of state commerce and prosperity,

and for expanding minority business enterprises. As a consequence the act exempts the Commission from payment of any taxes upon any of its property, assets, or on income derived there from if such property or assets are used in the Minority Business Development Program. This exemption does not apply to property belonging to the Commission while it is in the possession of a private person and used for private purpose or profit.

**Minority Business Loan Fund.** The act creates a minority business loan fund to be held in custody of the State Treasurer. This fund consists of all money designated by the Commission for the purpose of making loans to minority business enterprises. The act requires the money be held as trust funds and be used solely for such purpose, and at no time, be part of other public funds.

In the event of a default with respect to a loan or lease, the ODFC must take action as it considers proper in the circumstances to enforce and protect the rights of the Commission. These actions include any appropriate action at law or in equity, enforcement or waiver of any provision of any mortgage or security agreement or reinstatement of any forfeited or cancelled right, title, or privilege.

**Minority Contractors Bonding Program.**

The act authorizes the ODFC to execute construction contract bonds as surety for minority contractors. Bonds may be issued when required either for public or private construction projects. The Minority Development Financing Advisory Board must review applications for bonds and make a recommendation to the Commission as to the bond worthiness of each applicant. The Commission must act in accordance with the Board's recommendation.

The act requires the Minority Development Financing Advisory Board to adopt rules pursuant to the Administrative Procedure Act governing the operation of the bonding program. The rules must provide that a minority contractor be denied bonding by two private surety companies before he may apply for a bond from the Commission. The rules must also establish a premium for bonds not to exceed 2% of the penal sum of the bond.

The act permits the ODFC to exercise the rights and powers of private surety companies but specifies that the Commission is not subject to regulation as a surety company by the Department of Insurance.

The act transfers \$100,000 from the unclaimed funds of the Treasurer of State to ODFC and appropriates this amount for the administrative costs of the program.

**Minority Contractors Bonding Special Account.** The act establishes the Minority Contractors Bonding Special Account as the fund from which the ODFC may pay claims arising from any defaults on construction contract surety bonds it issues. The Special Account consists of:

- Any grants, gifts, and contributions received by the Commission earmarked for the purposes of the program;
- Premiums paid for bonds by minority contractors;

- Any money recovered from a minority contractor following a default;
- Any unclaimed funds transferred to the Special Account; up to \$10,000,000.00 of unclaimed funds may be transferred to the Special Account upon request of the ODFC whenever needed (presumably the result of a default).

The act specifies that the special account is held in trust by the ODFC for the purposes of the Minority Contractors Bonding Special Account and is not part of public funds. In addition, the act indicates that any claims against the state arising from defaults are payable from the special account and that no person has any claim against any state money under the program other than the money in the Special Account (or available to the Special Account from unclaimed funds).

### Minority Development Financing Board

The act creates a Minority Development Financing Advisory Board to advise the ODFC on which minority business enterprises should receive the benefit of the Commission's financial aid.

The Minority Development Financing Advisory Board consists of seven members appointed by the Governor with the advice and consent of the Senate. No more than four of the Board members may be members of the same party. Terms of office are for seven years. Initially, however, only two members' terms are for the full seven years with the initial terms of three members for three years and five years for the remaining two members. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed is to hold office for the remainder of his predecessor's term. Any member: (1) is eligible for reappointment, (2) is required to take an oath, (3) may be removed by the Governor, and (4) serves without compensation, except for expenses.

The Governor must appoint persons to the Board who have knowledge and experience in the areas of financing, surety and construction.

The act requires the Board to annually elect one of its members as chairman and another as vice-chairman. Four members of the Board constitute a quorum and the affirmative vote of four members is necessary for any action taken by the Board. A vacancy in the membership of the Board does not impair the power of the Quorum to exercise their rights or to perform their duties.

**Duties of the Minority Development Financing Advisory Board.** The act requires the Minority Development Financing Advisory Board to maintain a principal office in the city of Columbus; other offices may be maintained elsewhere. The Board is required to adopt rules under the Administrative Procedures Act establishing procedures governing applications for minority business loans and for review and approval of those applications. The Board must review all applications and recommend to ODFC whether or not the Commission should grant the loan and on what terms. The ODFC must act in accordance with the recommendation. In addition, the Board reviews and recommends applicants for construction contract bonds under the Minority Contractors Bonding Program.

The Board must also adopt rules requiring proposed borrowers to employ certified public accountants, business advisors, and financial consultants as a condition for receiving loans and

allowing borrowers to compensate persons, regardless of whether they are required to be employed, from interest payments owed to the Commission on loans, and provide technical assistance to private, nonprofit corporations that are established to provide business, technical, and financial assistance to minority business enterprises in seeking grants from individuals, private and public corporations, and the United States or any agency thereof when the purpose of such grants is to aid minority business enterprises.

#### Duties of the Ohio Development Financing Commission

The act requires the ODGC to do the following acts with respect to its duties in administering the Minority Contractors Bonding Program and the Minority Business Loan Program:

1. Submit a financial report by the first day of February on its minority business loan program for the preceding calendar year to the Governor and the General Assembly. The commission must also have a certified public accountant audit its books at least once a year.
2. Hire employees, consultants, and agents and fix their salaries;
3. Adopt bylaws for the regulation of the business of the Minority Development Financing Advisory Board;
4. Receive from individuals, the United States or any agency thereof, or from any state or its political subdivisions grants, gifts, and contributions of anything of value if such grants or gifts are used and applied only for the purpose for which the grants, gifts, and contributions are made, and provision is also made for the repayment of the contributions or property as the Commission determines is proper;
5. Sue or be sued in its own name. Actions against the Commission must be brought in the Court of Common Pleas of Franklin County or of the county where the action arises.
6. Invest money in the funds it establishes, in excess of current needs, in notes, bonds, or other obligations that are direct obligations of or are guaranteed by the United States, or in certificates of deposit or other withdrawable accounts of banks, trust companies, and building and loan or savings and loan associations. The Commission may credit the income made from these investments to the fund or may sell the investments at its discretion.
7. Acquire in the name of the Commission any property by purchase, purchase at foreclosure, or exchange on terms according to its discretion;
8. Maintain, protect, repair, improve and insure any property it has acquired and dispose of it on terms and in a manner it considers proper. The Commission may operate any property as a business but only as a lessor thereof. When the cost of any contract for maintaining, protecting, repairing or improving any property connected with the minority business development loan program, other than compensation for personal services, involves an expenditure of more than \$1,000 the Commission is required to follow the normal state competitive bidding requirements.
9. Do all acts and things necessary to carry out the powers expressly granted and duties imposed on the Commission.

The act provides that all expenses incurred by the ODGC in carrying out its powers and in exercising its duties are payable from the grants, gifts, or contributions it receives or from the

funds appropriated by the General Assembly to the Minority Business Loan Fund or the Minority Contractors Bonding Program Administrative Special Account.

### Set Aside Program

**Prime Contract Set Asides.** The act requires the Department of Administrative Services and any other state agency authorized to enter into construction contracts to set aside a number of contracts the aggregate value of which is approximately 5% of the total estimated value of all construction contracts to be awarded each fiscal year. The contracts that are set aside are to be limited to competitive bidding by minority business enterprises only. The bidding procedures are to be the same as for all other state construction contracts, except that only minority businesses (certified as such by the Equal Employment Opportunity Coordinator) may submit bids.

The act also requires that the Department of Administrative Services and any other state agency (other than boards of elections, courts of appeals, courts of common pleas, the Supreme Court, the General Assembly, the Ohio National Guard, and agricultural experimental stations, and educational institutions) purchasing equipment, materials, supplies, contracts of insurance, or services set aside a number of contracts the aggregate value of which is approximately 15% of the total estimated value of all such purchases to be made each fiscal year. The purchases that are set aside are to be limited to competitive bidding by minority business enterprises only. The bidding procedures are to be the same as for all other purchases, except that only certified minority businesses may submit bids.

If no minority business enterprise submits a bid on either a construction contract or a purchase contract set aside under the act, the contract may be rebid under normal bidding procedures of the contracting agency. Where this occurs, however, the contracting agency must set aside an additional contract or contracts totaling the aggregate value of the rebid contract, so as to maintain the required value of set aside contracts for the fiscal year.

No state agency may expend any funds for either construction or purchase contracts until the agency certifies to the Equal Employment Opportunity Coordinator, the Clerk of the Senate, and the Clerk of the House of Representatives that the requisite amount of contracts has been set aside.

The act stipulates that minority business enterprises may also bid on any contract of any agency not specifically set aside for minority businesses.

**Subcontract Set Aside.** The act requires that every state construction contract, including those set aside for minority bidding only, include a provision mandating minority business enterprise participation in the contract as follows:

1. In the case of specialty contracts (those for plumbing and gas fitting; heating, ventilating, and steam power plants; and electrical equipment), the contractor must stipulate that the total value of subcontracts awarded to minority businesses and materials and services purchased from minority businesses will equal at least 7% of the value of the contract. Further, the portion of the 7% made up of purchases of

- services may not be more than 5% of the total value of the contract (that is at least 2% must be allocated to minority subcontractors and purchases of materials from minority businesses).
2. In the case of construction contracts other than specialty contracts, the contractor must stipulate that he will award subcontracts to minority businesses having an aggregate value of at least 5% of the total value of the contract and that the combined value of subcontracts awarded to minority subcontractors and materials purchased from minority businesses will equal 7% of the total value of the contract (the act does not permit purchases of services to count in fulfilling the 7% minority participation in the case of non-specialty contracts).

The act indicates that, while contracts actually require 7% minority business participation (unless waived by the Review Board), any contractor awarded a state construction contract is to “make every effort” to ensure 10% minority business participation “wherever possible”. In the case of specialty contracts, the purchase of services from minority providers may form one component of the 10% total (not to exceed 5% of the total value of the contract). In the case of all other contracts, the value of minority business subcontracts is to equal at least 5% of the value of the contract and the purchase of services from minority businesses does not count in calculating the 10% (that is, purchase of materials may count up to 5% of the total value of the contract).

#### Set Aside Review Board

Where a contractor is unable to agree to any portion of the required contract provisions, he may apply for a waiver or modification of the requirement. The act establishes a Set Aside Review Board to hear requests for waivers or modifications. The Review Board may grant the waiver or modification only if it finds that the contractor has made a good faith effort to locate and reach agreement with sufficient minority business subcontractors and materialmen or service providers (in the case of specialty contractor) to meet the requirement but has been unable to do so due to circumstances beyond the reasonable control of the contractor.

The Set Aside Review Board is composed of the Director of Administrative Services, one member of the Senate appointed by the Governor with the recommendation of the President of the Senate, and one member of the House of Representatives appointed by the Governor with the recommendation of the Speaker of the House. The legislative members will serve four-year terms (a replacement to be named in the same manner if a member were unable to finish the term).

The Set Aside Review Board is required to make a decision on each request for a waiver or modification within seven working days of its receipt of the request.

#### Director of Administrative Services rule-making authority

The Director of Administrative Services is mandated to make rules requiring bid notifications and specifications to include the set aside provisions of the contract and requiring a successful bidder to notify the contracting agency concerning the provisions he will make to meet the set

aside requirements. The Director's rules are to apply to all state agencies that engage in constructing a public improvement.

### The Minority Business Development division

The act establishes by statute the Minority Business development Division within the Department of Economic and Community Development. The Division is required to:

1. Provide technical, managerial and counseling services, and provide bid packaging and bonding assistance;
2. Participate with other state departments and agencies to assist in creating programs to establish and develop minority business enterprises and maintain such programs to ensure their success;
3. Assist in the coordination of activities, programs, and policies of state agencies and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer groups so that the growth of minority business enterprises is encouraged;
4. Establish a center for the collection and dissemination of information that will be helpful in establishing and expanding minority business enterprises;
5. Create and implement experimental and demonstration projects designed to overcome special problems of minority business enterprises;
6. Coordinate proposed state training and technical assistance activities in direct support of minority business enterprise programs to ensure consistency with program goals and to preclude duplication of efforts by other state agencies;
7. Recommend appropriate legislative and executive actions so that minority business opportunities in the state are enhanced;
8. Assist minority business enterprises in obtaining governmental or commercial financing for business expansion and in obtaining contract from governmental and commercial sources;
9. Establish procedures to identify groups who have been disadvantaged because of racial, cultural, or ethnic circumstances without regard to the individual qualities of the members of the group and procedures to identify persons who have been economically disadvantaged;
10. Review the eligibility of applicants seeking loans from the Ohio Development Finance Commission and to report its finding to the Minority Development Financing Advisory Board so that the Advisory Board can use such information in its own review of the loan application and in its recommendation of the applicant's eligibility to the ODFC;
11. Do all acts and things necessary to carry out the powers expressly granted and duties imposed by this act.

### Compliance with Prevailing Wage Law

The act also prohibits the ODFC from entering into any agreement for granting a loan or insuring a mortgage under the Minority Loan Program unless the agreement specifies that all wages be paid to persons employed on Commission-sponsored projects at the prevailing rate pursuant to Ohio's Prevailing Wage Law.

If a nonpublic beneficiary of a project undertakes as part of a project construction to be performed by employees, who are covered by a collective bargaining agreement which pre-existed the OSFC's commitment to insure a mortgage or to grant a loan, then the collective bargaining agreement will determine the employee's rate of pay. These requirements do not apply to the federal government, or any of its agencies, which furnishes by loan or grant all or any part of the funds used in connection with a project if that agency prescribes in conjunction with giving such aid predetermined minimum wages to be paid to the recipient's employees.

- The act designates the Department of Industrial Relations as the enforcement agency for prevailing wage provisions of laws providing state financial aid to projects not only under the Minority Loan Program, but also to other projects for which the ODFC makes or guarantees loans under current law; projects financed by industrial development bonds; projects financed with state funds authorized by the Director of Economic and Community Development for economic development in local economic needs areas of the state; energy resource development projects; community development corporation projects; and air quality development projects.

The act specifies that all contractors and subcontractors working on any of the above state-aided projects are subject to the prevailing wage law. The Department must appoint a prevailing wage coordinator for each project to assist in enforcement unless a coordinator has already been appointed by the public entity aiding in financing the project.

#### Nondiscrimination clauses in contracts

The act requires any contract for the purchase of goods or services entered into by the state or any political subdivision to contain the following nondiscrimination clauses:

- That in hiring employees for performance of work under the contract, no one connected with the contract will discriminate on the basis of race, color, religion, sex, age, handicap, national origin, or ancestry;
- That no person connected with the contract will discriminate against, intimidate or retaliate against any employee during his employment to perform work under the contract on the basis of race, color, religion, sex, age, handicap, national origin, or ancestry.

In addition, each contractor who contracts with the state or any political subdivision must have a written affirmative action program for the "effective utilization" of economically disadvantaged persons. The act does not specify that the written program be filed with any agency. Similar provisions are already required in all state and local construction contracts under current law.

#### Bid notification lists

Present law requires that all equipment, materials, supplies, and services or contracts of insurance purchased by the Department of Administrative Services be purchased through competitive bidding, except where noted otherwise in the Revised Code. The act stipulates that

any person who is certified as a minority business enterprise by the Equal Employment Opportunity Coordinator may have his/her name placed on a special minority business enterprise notification list to be used in connection with purchases awarded without competitive bidding. In all other respects this special list must be maintained and used in the same manner as the bid notification list maintained for competitive bidders, except that a firm must not be removed from the list unless the coordinator determines that the firm is no longer a minority business enterprise. A minority business enterprise may have its name placed on both the competitive and noncompetitive notification lists.

#### Competitive bidding exemption

Prior law exempted purchases of equipment, materials, supplies, and contracts of insurance by the Department of Administrative Services from the competitive bidding requirements of the law if the amount of purchase is \$3,000 or less. The act increased this exemption to \$5,000.

#### Penalties

The act makes the intentional misrepresentation of ownership, control, or participation in a minority business enterprise in order to obtain assistance under the act equivalent to the crime of “theft” by deception. Under existing law unchanged by the act, if the value of the property stolen is less than \$150, the offense is considered a first degree misdemeanor; if more than \$150, the offense becomes a felony of the fourth degree.