

# Legislative Analysis



## STATE PURCHASING: CONDUCT OF VENDOR, ETC.

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**House Bill 4549**

**Sponsor: Rep. Marie Donigan**

**Committee: Oversight and Investigations**

**Complete to 3-23-10**

### A SUMMARY OF HOUSE BILL 4549 AS INTRODUCED 3-10-09

The bill would amend the Management and Budget Act to require the Department of Management and Budget to take certain specified past and present conduct of vendors into account when dealing with the solicitation, award, amendment, cancellation, or appeal of state contracts.

The bill would apply to the purchase, contracting for, or providing of supplies, materials, services, insurance utilities, third-part financing, equipment, printing and other items needed by state agencies. The past and present conduct would be taken into account in addition of the total overall value to the state when determining whether transactions are in the best interest of the state and in making all discretionary decisions.

The department would have to consider:

- Whether the vendor has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. This applies to affiliates, subsidiaries, officers, directors, managerial employees and anyone who, directly or indirectly, holds a 20 percent or more pecuniary interest in the vendor.
- Whether the vendor has been convicted of a criminal offense or held liable in a civil proceeding that negatively reflects on the vendor's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or a violation of federal or state antitrust statutes. Again, this applies to affiliates, subsidiaries, officers, directors, managerial employees and anyone who, directly or indirectly, holds a 20 percent or more pecuniary interest in the vendor.
- Whether a proposal by a vendor to provide services to the state using employees, contractors, subcontractors, or other individuals who are not citizens of the U.S., legal resident aliens, or individuals with a valid visa would be detrimental to the state, its residents, or this state's economy.
- Whether a proposal by a vendor to provide goods or services to Michigan from a location outside the state or the U.S. would be detrimental to the state, its residents, or its economy.

- Whether the acquisition of goods or services from a vendor that is an expatriated business entity located in a tax haven country of an affiliate of an expatriated entity would be detrimental to this state, its residents, or this state's economy.
- Whether the provision of services to this state at a location outside Michigan or the U.S. would be detrimental to the privacy interests of Michigan residents, or risk the disclosure of personal financial information of Michigan residents, such as Social Security, financial, or medical data.
- Whether a proposal by a vendor to provide goods services to the state from a state outside of Michigan or the U.S. would constitute undue risk under a risk management policy, practice, or procedure adopted by the DMB.

The DMB would next have to consider the following:

- Whether a proposal by a vendor to provide services to the state using employees, contractors, subcontractors, or other individuals who are not citizens of the U.S., resident aliens, or individuals with a valid visa would be detrimental to the state or its residents by negatively affecting the economy of the U.S.
- Whether a proposal by a vendor to provide goods to the state produced outside of Michigan or the U.S. would be detrimental to the state or its residents by negatively affecting the economy of the U.S.
- Whether the acquisition of goods or services from a vendor that is an expatriated business entity located in a tax haven country (or an affiliate of the entity) would be detrimental to the state or its residents by negatively affecting the economy of the U.S.

(The term "expatriated business entity" means a corporation or its affiliate incorporated in a tax haven country after September 11, 2001, but with the U.S. as the principal market for the public trading of its stock. The term "tax haven country" includes a country with tax laws that facilitate avoidance by a corporation or its affiliate of U.S. tax obligations; these countries include, but are not limited to, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the principalities of Liechtenstein and Monaco, and the Republic of the Seychelles.)

To help the DMB make these determinations, a vendor or subcontractor may be required to provide:

- Information related to the location of work performed under a state contract by the vendor and any subcontractor, employees, or others.

- Information about the corporate structure and location of corporate employees and activities.
- Notice of the relocation of those performing services under a state contract outside of Michigan or the U.S.
- A written affirmation that the vendor or subcontractor will not use state funds or the proceeds of a state contract to induce a business enterprise to leave the state.
- A written affirmation that the vendor or subcontractor will not violate internationally recognized workers rights (as defined in the federal Trade Act of 1974).

(The bill also requires that a vendor or subcontractor that is providing call center services or contact center services disclose to inbound callers the location from which the services are being provided.)

**FISCAL IMPACT:**

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.