

HOUSE BILL NO. 5310

November 09, 2023, Introduced by Reps. Beeler, Cavitt, Smit, Maddock, Schriver, DeSana, Fox, Wozniak, Outman, Harris, Bezotte, Bierlein, Alexander, Friske, Carra, Aragona, Schuette, Kunse, Prestin, BeGole, Rigas, Borton, Hoadley, Neyer, Markkanen, Bollin, Meerman, Hall, Lightner, Posthumus, St. Germaine, Beson, Bruck, Paquette, Thompson, Slagh, Jaime Greene and Johnsen and referred to the Committee on Government Operations.

A bill to amend 1984 PA 431, entitled
"The management and budget act,"
by amending sections 114 and 261 (MCL 18.1114 and 18.1261), section
114 as amended by 2001 PA 61 and section 261 as amended by 2020 PA
174, and by adding section 261g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 114. (1) "Facility" means a building or structure along
- 2 with the building's or structure's grounds, approaches, services,
- 3 and appurtenances owned by, or leased through a building authority

1 by, the state such as office buildings, research buildings,
 2 academic buildings, laboratories, hospitals, prisons, recreational
 3 structures, garages, warehouses, physical plant buildings, energy
 4 or power plants, and any other building or project included by the
 5 director if the director considers the building or project to be in
 6 the public interest. Facility does not include any of the
 7 following:

8 (a) A building or structure for an institution of higher
 9 education except as mutually agreed ~~upon~~**on** by the director and the
 10 governing board of the state institution of higher education.

11 (b) A road, bridge, or railroad under the jurisdiction of the
 12 state transportation department.

13 (c) An existing building or structure ~~which~~**that** is mutually
 14 agreed to be excluded from the definition of facility by the
 15 department and the state agency having jurisdiction over the
 16 building or structure.

17 (d) The capitol building and grounds. As used in this
 18 subdivision, "grounds" means the property ~~upon~~**on** which the ~~state~~
 19 ~~capitol building~~**State Capitol Building** is situated, bordered on
 20 the north by Ottawa ~~street~~**Street**; on the east by Capitol ~~avenue~~**;**
 21 **Avenue**; on the south by Allegan ~~street~~**Street**; and on the west by
 22 Walnut ~~street~~**Street**.

23 (e) A building or structure owned by, or under the
 24 jurisdiction of, the legislature.

25 (2) "**Financial institution**" means a state or national bank, a
 26 state or federally chartered savings and loan association, a state
 27 or federally chartered savings bank, a state or federally chartered
 28 credit union, or other regulated lending institution that maintains
 29 a principal office or branch office in this state under the laws of

1 **this state or the United States, including, but not limited to, an**
2 **entity of the federally chartered farm credit system.**

3 (3) ~~(2)~~—"Fiscal agencies" means the senate fiscal agency and
4 the house fiscal agency.

5 (4) ~~(3)~~—"FTE" means full-time equated position in the
6 classified service of this state.

7 Sec. 261. (1) The department shall provide for the purchase
8 of, the contracting for, and the providing of supplies, materials,
9 services, insurance, utilities, ~~third party~~ **third-party** financing,
10 equipment, printing, and all other items as needed by state
11 agencies for which the legislature has not otherwise expressly
12 provided. If consistent with federal ~~statutes,~~ **law**, in all
13 purchases made by the department, all other things being equal,
14 preference ~~shall~~ **must** be given to products manufactured or services
15 offered by Michigan-based firms or by facilities with respect to
16 which the operator is designated as a clean corporate citizen under
17 part 14 of the natural resources and environmental protection act,
18 1994 PA 451, MCL 324.1401 to 324.1429, or to biobased products
19 whose content is sourced in this state. The department shall
20 solicit competitive bids from the private sector whenever
21 practicable to efficiently and effectively meet the state's needs.
22 The department shall first determine that competitive solicitation
23 of bids in the private sector is not appropriate before using any
24 other procurement method for an acquisition.

25 (2) The department shall make all discretionary decisions
26 concerning the solicitation, award, amendment, cancellation, and
27 appeal of state contracts.

28 (3) The department shall utilize competitive solicitation for
29 all purchases authorized under this act unless 1 or more of the

1 following apply:

2 (a) Procurement of goods or services is necessary for the
3 imminent protection of public health or safety or to mitigate an
4 imminent threat to public health or safety, as determined by the
5 director or ~~his or her~~ **the** designated representative **of the**
6 **director.**

7 (b) Procurement of goods or services is for emergency repair
8 or construction caused by unforeseen circumstances when the repair
9 or construction is necessary to protect life or property.

10 (c) Procurement of goods or services is in response to a
11 declared state of emergency or state of disaster under the
12 emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

13 ~~(d) Procurement of goods or services is in response to a
14 declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.~~

15 **(d)** ~~(e)~~ Procurement of goods or services is in response to a
16 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
17 10.89.

18 **(e)** ~~(f)~~ Procurement of goods or services is within a state
19 agency's purchasing authority delegated under subsection (4), and
20 the state agency has established policies or procedures approved by
21 the department to ensure that goods or services are purchased by
22 the state agency at fair and reasonable prices.

23 (4) The department may delegate its procurement authority to
24 other state agencies within dollar limitations and for designated
25 types of procurements. The department may withdraw delegated
26 authority ~~upon~~ **on** a finding that a state agency did not comply with
27 departmental procurement directives. If a state agency has the
28 department's procurement authority delegated to it under this
29 subsection and if it chooses to exercise an option under an

1 existing procurement contract to continue that procurement
2 contract, before exercising that option, the state agency ~~shall~~
3 **must** first obtain written approval from the department that
4 exercising the option is in the best interest of this state.

5 (5) The department may enter into lease purchases or
6 installment purchases for periods not exceeding the anticipated
7 useful life of the items purchased unless otherwise prohibited by
8 law.

9 (6) The department shall issue directives for the procurement,
10 receipt, inspection, and storage of supplies, materials, and
11 equipment, and for printing and services needed by state agencies.
12 The department shall provide standard specifications and standards
13 of performance applicable to purchases.

14 (7) The department may enter into a cooperative purchasing
15 agreement with 1 or more other states or public entities for the
16 purchase of goods, including, but not limited to, recycled goods,
17 and services necessary for state programs.

18 (8) In awarding a contract under this section, the department
19 shall give a preference of up to 10% of the amount of the contract
20 to a qualified disabled veteran. If the qualified disabled veteran
21 otherwise meets the requirements of the contract solicitation and
22 with the preference is the lowest bidder, the department ~~shall~~**must**
23 enter into a procurement contract with the qualified disabled
24 veteran under this act. If 2 or more qualified disabled veterans
25 are the lowest bidders on a contract, all other things being equal,
26 the qualified disabled veteran with the lowest bid ~~shall~~**must** be
27 awarded the contract under this act.

28 (9) It is the goal of the department to award each year not
29 less than 5% of its total expenditures for construction, goods, and

1 services to qualified disabled veterans. The department may count
2 toward its 5% yearly goal described in this subsection that portion
3 of all procurement contracts in which the business entity that
4 received the procurement contract subcontracts with a qualified
5 disabled veteran. Each year, the department shall report to each
6 house of the legislature on all of the following for the
7 immediately preceding 12-month period:

8 (a) The number of qualified disabled veterans ~~who~~**that**
9 submitted a bid for a state procurement contract.

10 (b) The number of qualified disabled veterans ~~who~~**that** entered
11 into procurement contracts with this state and the total value of
12 those procurement contracts.

13 (c) Whether the department achieved the goal described in this
14 subsection.

15 (d) The recommendations described in subsection (10).

16 (10) Each year, the department shall review the progress of
17 all state agencies in meeting the 5% goal with input from statewide
18 veterans service organizations and from the business community,
19 including businesses owned by qualified disabled veterans, and
20 shall make recommendations to each house of the legislature
21 regarding continuation, increases, or decreases in the percentage
22 goal. The recommendations ~~shall~~**must** be based ~~upon~~**on** the number of
23 businesses that are owned by qualified disabled veterans and on the
24 continued need to encourage and promote businesses owned by
25 qualified disabled veterans.

26 (11) To assist the department in reaching the goal described
27 in subsection (9), the governor shall recommend to the legislature
28 changes in programs to assist businesses owned by qualified
29 disabled veterans.

1 (12) Beginning October 1, 2017, the department and all state
2 agencies may not enter into a contract with a person to acquire or
3 dispose of supplies, services, or information technology unless the
4 contract includes a representation that the person is not currently
5 engaged in, and an agreement that the person ~~will~~**may** not engage
6 in, the boycott of a person based in or doing business with a
7 strategic partner.

8 **(13) Beginning on the effective date of the amendatory act**
9 **that added this subsection, the department and all state agencies**
10 **may not enter into a contract under this section with a financial**
11 **institution unless the contract includes a representation that the**
12 **financial institution is not currently refusing to do business**
13 **with, and an agreement that the financial institution may not**
14 **refuse to do business with, a designated actor based solely on the**
15 **designated actor being any of the following:**

- 16 (a) A firearms dealer.
17 (b) A firearms manufacturer.
18 (c) A firearm advocacy group.
19 (d) A fossil fuel company.
20 (e) An agriculture producer.
21 (f) A timber company.

22 **(14) ~~(13)~~**The following records are exempt from disclosure
23 under the freedom of information act, 1976 PA 442, MCL 15.231 to
24 15.246, as provided in this subsection:

25 (a) A bid, quote, or proposal submitted in connection with the
26 authority granted under this section, and records created in the
27 preparation for and evaluation of the bid, quote, or proposal until
28 the time of final notification of award of the contract.

29 (b) Records containing a trade secret, as **that term is** defined

1 under section 2 of the uniform trade secrets act, 1998 PA 448, MCL
 2 445.1902, or financial or proprietary information submitted in
 3 connection with the authority granted under this section.

4 **(15)** ~~(14)~~—The department shall develop policies and procedures
 5 that require all procurement contracts entered into by the
 6 department or a state agency, including departments that have
 7 delegated procurement authority under this act, to include
 8 performance-related liquidated damages or performance targets with
 9 incentives in all procurement contracts. The department shall also
 10 develop policies and procedures that require the department or
 11 state agency to enforce these provisions. Departments or state
 12 agencies acting under delegated authority shall inform the
 13 department of relevant performance issues. Exceptions to the
 14 inclusion or enforcement of performance-related contract provisions
 15 may only be granted by the department as provided in a written or
 16 electronic record by the department.

17 **(16)** ~~(15)~~—As used in this section:

18 **(a) "Agriculture producer" means a designated actor that**
 19 **engages in farming or the raising of animals for the purpose of**
 20 **food production.**

21 **(b)** ~~(a)~~—"Biobased product" means a product granted the United
 22 States Department of Agriculture certified biobased product label.

23 **(c)** ~~(b)~~—"Boycott" means refusal to have dealings with, divest
 24 from, or otherwise engage with a person. Boycott does not include 1
 25 or more of the following:

26 *(i)* A decision based on bona fide business or economic reasons.

27 *(ii)* A boycott against a public entity of a foreign state when
 28 the boycott is applied in a nondiscriminatory manner.

29 *(iii)* Conduct necessary to comply with applicable law in the

1 person's home jurisdiction.

2 (d) "Designated actor" means an individual, a corporation, or
3 a charitable organization.

4 (e) ~~(e)~~—"Financial or proprietary information" means
5 information that has not been publicly disseminated or ~~which—that~~
6 is unavailable from other sources, the release of which might cause
7 the submitter of the information competitive harm.

8 (f) "Firearm advocacy group" means a designated actor that
9 operates for the purpose of advocating for the protection or
10 expansion of the rights afforded under the Second Amendment of the
11 Constitution of the United States.

12 (g) "Firearms dealer" means a designated actor licensed under
13 18 USC 923 as a dealer.

14 (h) "Firearms manufacturer" means either of the following:

15 (i) A designated actor whose business deals with the production
16 of firearms for sale.

17 (ii) A designated actor licensed under 18 USC 923 as a
18 manufacturer or importer.

19 (i) "Fossil fuel company" means a designated actor that does
20 either of the following:

21 (i) Extracts, by any means, oil, coal, natural gas, or any
22 other natural combustible fuel for purposes of sale.

23 (ii) Refines oil, coal, natural gas, or any other natural
24 combustible fuel for use in combustible or noncombustible products.

25 (j) ~~(d)~~—"Person" means any of the following:

26 (i) An individual, corporation, company, limited liability
27 company, business association, partnership, society, trust, or any
28 other nongovernmental entity, organization, or group.

29 (ii) Any governmental entity or agency of a government.

1 (iii) Any successor, subunit, parent company, or subsidiary of,
2 or company under common ownership or control with, any entity
3 described in subparagraph (i) or (ii).

4 (k) ~~(e)~~—"Qualified disabled veteran" means a business entity
5 that is 51% or more owned by 1 or more veterans with a service-
6 connected disability.

7 (l) ~~(f)~~—"Service-connected disability" means a disability
8 incurred or aggravated in the line of duty in the active military,
9 naval, or air service as described in 38 USC 101(16).

10 (m) ~~(g)~~—"Strategic partner" means a strategic partner
11 described in 22 USC 8601 to ~~8606~~.8607.

12 (n) **"Timber company" means a designated actor that engages in**
13 **logging or the refining of logs into timber.**

14 (o) ~~(h)~~—"Veteran" means an individual who meets both of the
15 following:

16 (i) Is a veteran, as **that term is** defined in section 1 of 1965
17 PA 190, MCL 35.61.

18 (ii) Was released from ~~his or her~~ service with an honorable or
19 general discharge.

20 **Sec. 261g. (1) If the attorney general has reasonable cause to**
21 **believe that a financial institution has violated, is violating, or**
22 **is about to violate a contract clause described in section 261(13),**
23 **the attorney general may do any of the following:**

24 (a) **Require the financial institution to file a statement or**
25 **report under oath, in the form prescribed by the attorney general,**
26 **which contains the facts and circumstances underlying the alleged**
27 **violation and any other information as the attorney general**
28 **considers necessary.**

29 (b) **Examine any person under oath in connection with the**

1 alleged violation.

2 (c) Examine a record, book, document, account, or paper, as
3 the attorney general considers necessary.

4 (d) In accordance with a court order, impound and retain a
5 record, book, document, account, paper, or other material relating
6 to the alleged violation.

7 (2) In addition to any other remedy prescribed by law, if a
8 financial institution violates a contract clause described in
9 section 261(13), the financial institution may be ordered to pay a
10 civil fine in an amount not to exceed 3 times the amount paid by
11 the state under the contract.