

# HOUSE BILL NO. 5622

March 20, 2024, Introduced by Reps. Paiz, Pohutsky, Rheingans, Byrnes, Dievendorf, Young, Steckloff, Brixie, Hood, Arbit, Tsernoglou, Conlin, Price, MacDonell, Glanville, McKinney, Breen, Wilson, Hope, Grant, Weiss, Wegela, Andrews, Coffia, Brabec, Scott, McFall, Rogers, Skaggs, Morgan, Haadsma, Farhat, Hill, Martus and Aiyash and referred to the Committee on Labor.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending sections 241 and 261 (MCL 18.1241 and 18.1261), section 241 as amended by 2012 PA 430 and section 261 as amended by 2020 PA 174.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 241. (1) Except for the contracts permitted in section  
2 240, a contract ~~shall~~**must** not be awarded for the construction,  
3 repair, remodeling, or demolition of a facility unless the contract

1 is let ~~pursuant to~~ **in accordance with** a bidding procedure that is  
 2 approved by the board. The department shall issue directives  
 3 prescribing procedures to be used to implement this section. The  
 4 procedures ~~shall~~ **must** require a competitive solicitation in the  
 5 award of any contract for construction, repair, remodeling, or  
 6 demolition of a facility.

7 (2) The department may award or approve the award, if the  
 8 board approves, of construction contracts to construct a project  
 9 for which the director is the agent and may expend, for the  
 10 purposes and in the manner set forth, the amounts appropriated. The  
 11 director is not the agent for a community college or institution of  
 12 higher education, but may act in that capacity ~~upon~~ **on** the specific  
 13 request of a community college or institution of higher education.

14 (3) **The department shall not award a contract under this**  
 15 **section to an employer unless the employer possesses a fair**  
 16 **paycheck workplace certificate.**

17 (4) ~~(3)~~ In awarding a contract under this section, the  
 18 department shall give a preference of up to 10% of the amount of  
 19 the contract to a qualified disabled veteran. ~~, as defined in~~  
 20 ~~section 261.~~ If the qualified disabled veteran otherwise meets the  
 21 requirements of the contract solicitation and with the preference  
 22 is the lowest bidder, the department ~~shall~~ **must** enter into a  
 23 construction contract with the qualified disabled veteran under  
 24 this act. If 2 or more qualified disabled veterans are the lowest  
 25 bidders on a contract, all other things being equal, the qualified  
 26 disabled veteran with the lowest bid ~~shall~~ **must** be awarded the  
 27 contract under this act.

28 (5) ~~(4)~~ ~~Subject to~~ **Except as otherwise provided in** subsection  
 29 (3), **and subject to subsection (4)**, for projects funded in whole or

1 part with state funds, the construction contract award ~~shall~~**must**  
2 be made to the responsive and responsible best value bidder.

3 (6) As used in this subsection, ~~"responsive~~**section:**

4 (a) **"Employer"** means that term as defined in section 3 of the  
5 fair paycheck workplace certificate act.

6 (b) **"Fair paycheck workplace certificate"** means that term as  
7 defined in section 3 of the fair paycheck workplace certificate  
8 act.

9 (c) **"Qualified disabled veteran"** means that term as defined in  
10 section 261.

11 (d) **"Qualitative components"** includes, but is not limited to,  
12 all of the following:

13 (i) **Technical design.**

14 (ii) **Technical approach.**

15 (iii) **Quality of proposed personnel.**

16 (iv) **Management plans.**

17 (e) **"Responsive** and responsible best value bidder" means a  
18 bidder ~~who~~**that** meets all the following:

19 (i) ~~(a)~~ A bidder ~~who~~**that** complies with all bid specifications  
20 and requirements.

21 (ii) ~~(b)~~ A bidder ~~who~~**that** has been determined by the  
22 department to be responsible by the following criteria:

23 (A) ~~(i)~~ The bidder's financial resources.

24 (B) ~~(ii)~~ The bidder's technical capabilities.

25 (C) ~~(iii)~~ The bidder's professional experience.

26 (D) ~~(iv)~~ The bidder's past performance.

27 (E) ~~(v)~~ The bidder's insurance and bonding capacity.

28 (F) ~~(vi)~~ The bidder's business integrity.

1            ~~(iii) (e)~~ A bidder ~~who~~ **that** has been selected by the department  
2 through a selection process that evaluates the bid on both price  
3 and qualitative components to determine what is the best value for  
4 this state. ~~Qualitative components may include, but are not limited~~  
5 ~~to, all of the following:~~

6            ~~(i) Technical design.~~

7            ~~(ii) Technical approach.~~

8            ~~(iii) Quality of proposed personnel.~~

9            ~~(iv) Management plans.~~

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

28          (2) The department shall make all discretionary decisions  
29 concerning the solicitation, award, amendment, cancellation, and

1 appeal of state contracts.

2 (3) The department shall utilize competitive solicitation for  
3 all purchases authorized under this act unless 1 or more of the  
4 following apply:

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

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

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

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

18 **(d)** ~~(e)~~ Procurement of goods or services is in response to a  
19 declared state of energy emergency under 1982 PA 191, MCL 10.81 to  
20 10.89.

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

26 (4) The department may delegate its procurement authority to  
27 other state agencies within dollar limitations and for designated  
28 types of procurements. The department may withdraw delegated  
29 authority ~~upon~~ **on** a finding that a state agency did not comply with

1 departmental procurement directives. If a state agency has the  
2 department's procurement authority delegated to it under this  
3 subsection and if it chooses to exercise an option under an  
4 existing procurement contract to continue that procurement  
5 contract, before exercising that option, the state agency ~~shall~~  
6 **must** first obtain written approval from the department that  
7 exercising the option is in the best interest of this state.

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

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

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

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

1 awarded the contract under this act.

2 (9) It is the goal of the department to award each year not  
3 less than 5% of its total expenditures for construction, goods, and  
4 services to qualified disabled veterans. The department may count  
5 toward its 5% yearly goal described in this subsection that portion  
6 of all procurement contracts in which the business entity that  
7 received the procurement contract subcontracts with a qualified  
8 disabled veteran. Each year, the department shall report to each  
9 house of the legislature on all of the following for the  
10 immediately preceding 12-month period:

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

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

16 (c) Whether the department achieved the goal described in this  
17 subsection.

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

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

29 (11) To assist the department in reaching the goal described

1 in subsection (9), the governor shall recommend to the legislature  
2 changes in programs to assist businesses owned by qualified  
3 disabled veterans.

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

11 **(13) The department or any state agency shall not award a**  
12 **contract under this section to an employer unless the employer**  
13 **possesses a fair paycheck workplace certificate.**

14 **(14)** ~~(13)~~—The following records are exempt from disclosure  
15 under the freedom of information act, 1976 PA 442, MCL 15.231 to  
16 15.246, as provided in this subsection:

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

21 (b) Records containing a trade secret, as **that term is** defined  
22 under section 2 of the uniform trade secrets act, 1998 PA 448, MCL  
23 445.1902, or financial or proprietary information submitted in  
24 connection with the authority granted under this section.

25 **(15)** ~~(14)~~—The department shall develop policies and procedures  
26 that require all procurement contracts entered into by the  
27 department or a state agency, including departments that have  
28 delegated procurement authority under this act, to include  
29 performance-related liquidated damages or performance targets with



1 incentives in all procurement contracts. The department shall also  
2 develop policies and procedures that require the department or  
3 state agency to enforce these provisions. Departments or state  
4 agencies acting under delegated authority shall inform the  
5 department of relevant performance issues. Exceptions to the  
6 inclusion or enforcement of performance-related contract provisions  
7 may only be granted by the department as provided in a written or  
8 electronic record by the department.

9 **(16)** ~~(15)~~—As used in this section:

10 (a) "Biobased product" means a product granted the United  
11 States Department of Agriculture certified biobased product label.

12 (b) "Boycott" means refusal to have dealings with, divest  
13 from, or otherwise engage with a person. Boycott does not include 1  
14 or more of the following:

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

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

18 (iii) Conduct necessary to comply with applicable law in the  
19 person's home jurisdiction.

20 **(c) "Employer" means that term as defined in section 3 of the**  
21 **fair paycheck workplace certificate act.**

22 **(d) "Fair paycheck workplace certificate" means that term as**  
23 **defined in section 3 of the fair paycheck workplace certificate**  
24 **act.**

25 **(e)** ~~(e)~~—"Financial or proprietary information" means  
26 information that has not been publicly disseminated or ~~which~~ **that**  
27 is unavailable from other sources, the release of which might cause  
28 the submitter of the information competitive harm.

29 **(f)** ~~(d)~~—"Person" means any of the following:

1 (i) An individual, corporation, company, limited liability  
 2 company, business association, partnership, society, trust, or any  
 3 other nongovernmental entity, organization, or group.

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

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

8 (g) ~~(e)~~—"Qualified disabled veteran" means a business entity  
 9 that is 51% or more owned by 1 or more veterans with a service-  
 10 connected disability.

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

14 (i) ~~(g)~~—"Strategic partner" means a strategic partner  
 15 described in 22 USC 8601 to ~~8606~~-8607.

16 (j) ~~(h)~~—"Veteran" means an individual who meets both of the  
 17 following:

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

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

22 Enacting section 1. This amendatory act does not take effect  
 23 unless Senate Bill No.\_\_\_\_ or House Bill No. 5625 (request no.  
 24 02267'23 \*) of the 102nd Legislature is enacted into law.