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## REQUIRE GOVERNOR TO SIGN OUT-OF-STATE CONTRACTS

### House Bill 5032 (Substitute H-1) First Analysis (4-28-98)

**Sponsor: Rep. Lingg Brewer**  
**Committee: House Oversight and Ethics**

#### ***THE APPARENT PROBLEM:***

The Management and Budget Act specifies general requirements for the Department of Management and Budget (DMB) regarding the procurement of goods and services for state agencies. The act requires the DMB to "provide for" the state's purchase of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, "and all other items as needed by state agencies for which the legislature has not otherwise expressly provided." The DMB also must meet certain other requirements concerning state contracts, including, generally using a competitive bidding process from the private sector; giving preference to Michigan-based firms; issuing directives for procuring, receiving, inspecting, and storing supplies, materials, and equipment (and for printing and services) needed by state agencies; and providing standard specifications and standards of performances for purchase. The DMB may enter into certain lease or installment purchases ("for periods not exceeding the anticipated useful life of the items purchased") unless otherwise prohibited by law, and enter into cooperative purchasing agreements with other states or public entities for the purchase of goods. The DMB also may delegate its procurement authority to other state agencies "within dollar limitations and for designated types of procurements" and may withdraw such delegated authority "upon a finding that the state agency did not comply with departmental procurement directives."

In July 1992, Governor Engler created the seven-member Michigan Public-Private Partnership Commission (Executive Order 1992-17) to study and make recommendations to the governor on how to develop ways to provide efficient state services by "introducing competition into the public sector." The commission's final report, released in December 1992, made two recommendations: One was to expand the scope of the study, the other was a four-item scale to evaluate activities within state executive departments. The scale, and the reporting process developed around it, was known by the acronym

"PERM," which refers to a process by which state agencies are to analyze ongoing activities and recommend whether the activities should be "privatized, eliminated, retained, or modified." This PERM framework was developed by the Privatization Division of the Department of Management and Budget, which evolved from the department's Purchasing Reform Task Force. The department's Privatization Division was assigned to help state agencies to complete PERM reports, and also was given the responsibility for compiling and evaluating PERM reports as they were submitted and for independently assessing state functions not examined by state agencies. The Privatization Division, which began its work in January 1993, was abolished as an independent unit within the Department of Management and Budget in September 1997.

While a number of former state functions have been either privatized outright or contracted out as pilot projects to Michigan-based companies (such as, for example, the 1995 sale of the Accident Fund of Michigan, which provides workers' compensation insurance, to Blue Cross and Blue Shield of Michigan, and the 1994 pilot project by the Michigan Department of Transportation to contract with a Trenton-based company to take over road maintenance of certain highways around Lansing), other contracts have gone to out-of-state companies. For example, after the April 1995 state Department of Natural Resources contract with a Livonia-based company to take over the state campground reservation system -- which worked so badly that 300,000 calls reportedly went unanswered in the first month, and the state wound up paying the company \$500,000 to get out of the contract -- the state then contracted with an Illinois company to take over the reservation service. However, under that contract, a computer system crash for nearly a week at the peak of the 1997 camping season resulted in further problems, not all of which reportedly have yet been satisfactorily solved. In another out-of-state contract, the state Department of Corrections entered

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into a two-year \$68.8 contract originally with a California-based company and since transferred to a St. Louis, Missouri-based firm to provide managed health care services for prisoners. While the contract was supposed to save the state millions of dollars each year in prisoner health care costs and to slow a reported 15 percent annual increase in prisoner health care costs, the company apparently quickly fell millions of dollars (according to one report, ranging from \$5.5 million to \$12 million) behind in paying Michigan health care providers. Reportedly, some Michigan health care providers were not paid for nearly a year after performing services, prompting some of them to finally discontinue their services. In addition to these DNR and DOC contracts, there have been other state contracts that have gone to out-of-state companies that also have come under criticism. For example, despite the explicit language in the Department of Management and Budget act that requires the department to give preference to Michigan-based firms when letting state contracts, the 1992 Project MAIN (Michigan Administrative Information Network, the state's central computer system for accounting and purchasing activities) Request For Proposal stated that "[i]t is neither required nor desired that the vendor processing facility serving MAIN, sometimes referred to as the 'MAIN Data Center,' be dedicated solely to MAIN or be located in Michigan." The ten-year multi-million dollar contract for this project subsequently was awarded to a company located in Boulder, Colorado.

Some people believe that given the problems with some of the state's privatization efforts, the governor should be required to take responsibility for policy decisions that give state services over to out-of-state companies. Legislation has been introduced to do this.

### ***THE CONTENT OF THE BILL:***

The bill would add a new section to the Management and Budget Act that would require the governor, on behalf of the state, to execute contracts entered into under the act (namely, contracts entered into by the Department of Management and Budget or a state agency to which the department had delegated procurement authority under the act) that had been limited ("expressly or impliedly") to entities located outside of Michigan.

MCL 18.1262a

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill has no fiscal implications. (4-24-98)

### ***ARGUMENTS:***

#### ***For:***

If the state is going to contract with private businesses to conduct services or provide products that the state needs, then Michigan-based companies should be given preference in the bidding process, as current law requires, particularly given the executive branch's drive for privatization of state services in recent years. At the very least, Michigan companies should not be excluded from bidding for such contracts if they so desire, and should be able to do so on an equal basis with out-of-state companies.

The language in the Project MAIN Request for Proposal tipped the competitive bidding process in favor of companies located outside of Michigan, if not in favor of a particular company outside of Michigan. The current situation, in which Project MAIN's data base is located in Boulder, Colorado, also means that it is beyond the reach of Michigan laws (including the Freedom of Information Act) and potentially could jeopardize the security of a Michigan data base that include data relating to all businesses in Michigan. As the recent problems with the Michigan Jobs Commission's computer-based employment services data base (in which unemployed workers were encouraged to enter their Social Security numbers, which a computer "hacker" in Pennsylvania subsequently accessed) shows, the security of state computer data bases containing confidential information is not always guaranteed.

Since any decision by the executive branch to limit state contracts to non-Michigan companies is a policy decision by the executive to depart from the statutory language of the public act governing the letting of state contracts, the governor, and not some unnamed bureaucrat, ought to take public responsibility for such decisions. Making the governor publicly accountable for policy decisions that exclude Michigan-based companies from lucrative state contracts could result in "leveling the playing field" for Michigan companies and in encouraging job retention and development in the state.

#### ***Response:***

Currently, all contracts that are \$250,000 or more must be approved by the State Administrative Board, of which the governor is chairperson. (Other members include the state treasurer, the secretary of state, the lieutenant governor, the superintendent of public instruction, and the attorney general or their designees.) Thus, the governor, or his or her designee, does now review contracts more than \$250,000 as part of the legal requirement of the State Administrative Board review of state contracts. In addition, however, the Department of Management and Budget points out that the Project MAIN Request For Proposal (RFP) also specifically states that "[p]reference will not be awarded for a dedicated data center, a dedicated processor, or for location of the data center to serve MAIN in Michigan unless performance or cost advantages can be demonstrated." At the same time, the RFP also specifies that "[t]he Outsourcing Contractor is to provide an on-site Outsourcing Contractor Representative (OCR), to be based at the MAIN Project Facility located in Lansing, Michigan, along with adequate staff to perform the functions described in this RFP. Other services and components to be provided in Lansing include the equipment and related operations and maintenance of a remote print and tape facility on State premises, and a connection to the MAIN Internetwork."

***Against:***

Concerns raised about the bill include the fact that "out-of-state" is not defined. Would this mean all multinational companies? Companies headquartered out-of-state but with Michigan-based holdings? Companies that had business office locations in other states? Secondly, what if an out-of-state company is the only company available to provide the desired product or service?

***Response:***

First, the bill would not restrict the governor's ability to contract with companies out-of-state. It merely would require the governor to take responsibility for out-of-state contracts that Michigan companies were excluded from bidding on, and would mean that the governor could not lay the responsibility for such policy decisions on some bureaucrat. With regard to a definition of out-of-state, one would only have to look at where the majority of dollars in a contract was received in order to determine whether or not it was an "out-of-state" contract.

The Department of Management and Budget opposed the bill as introduced but has not yet completed an analysis of the substitute as reported from committee. (4-27-98)

The executive office has no position on the bill. (4-27-98)

Analyst: S. Ekstrom

***POSITIONS:***

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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.