



**House  
Legislative  
Analysis  
Section**

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**DMB SELECTION OF ARCHITECTS,  
ENGINEERS, ETC. & RAINY DAY  
FUND WITHDRAWALS**

**House Bill 5883 as enrolled  
Public Act 504 of 2002  
Second Analysis (7-25-02)**

**Sponsor: Rep. David Mead  
House Committee: Commerce  
Senate Committee: Appropriations**

***THE APPARENT PROBLEM:***

Supporters of the qualifications-based selection of professional services (known as QBS) say that even though that system is an alternative to the "lowest bidder" selection system, it can nevertheless be the more cost-effective of the two methods. Under the QBS method, say advocates, professional firms, such as engineers, architects, and surveyors, are selected to work on a project based on their qualifications to carry out the kind of work the project demands, and not simply on the basis of price. As one supporter has said, "The QBS process saves the [entity doing the selecting] time and money through an organized approach that gets the design professional on board early enough to improve project planning [and] minimize total project cost, helps to prevent costly mistakes, and helps the client develop a project that fits their budget and schedule needs". On the other hand, accepting the lowest bid can lead to additional costs if the bidder is not as qualified, lacks creativity or problem-solving capacity, and has underbid the project through inexperience. Lower quality work on a construction project can also result in higher operational costs in the future. Under QBS, price enters into the process later, after a qualified firm or firms have been selected. Advocates of QBS say it is required for federal projects, is mandated in numerous states, and is used by many local units of government, as well as by the Michigan Department of Transportation. Legislation has been introduced that would require the QBS system for contracting certain professional services by the state's Department of Management and Budget.

One component of the fiscal package crafted by state officials to balance the state's budgets for the current and next fiscal years in the face of sharply declining state revenues is the use of money from the Countercyclical Budget and Economic Stabilization Fund, commonly referred to as either the Budget Stabilization Fund (BSF) or rainy day fund.

Legislation is necessary to appropriate money from the BSF.

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

The bill would amend the Management and Budget Act in the following ways:

- To require that the selection of architects, professional engineers, professional surveyors, and firms of architects, engineers, and surveyors for state agency capital outlay projects or facilities be made in accordance with competitive, qualifications-based selection processes and procedures for the type of professional services required by the DMB.
- To provide, for the fiscal year ending September 30, 2002, a \$335 million appropriation from the Budget Stabilization Fund (BSF) to the general fund and a \$350 million appropriation from the BSF to the School Aid Fund.
- To require, for the fiscal year ending September 30, 2002 only, that the state budget director calculate the amount of funds needed to ensure a zero balance in the general fund budget at bookclosing. The calculation would be made excluding \$114.5 million. The budget director would be required to provide a report to the House and Senate appropriations committees and the House and Senate fiscal agencies of the calculation as soon as it is completed. Based on the calculation, the bill would appropriate from the BSF to the general fund the amount calculated.
- To provide, for the fiscal year ending September 30, 2003, a \$207 million appropriation from the BSF to the general fund, and for the same fiscal year, to pause the annual \$35 million appropriation from the BSF to the State Trunk Line Fund.

MCL 18.1237 et al.

House Bill 5883 (7-25-02)

## **BACKGROUND INFORMATION:**

The advocates for the procurement portion of this bill, known as the Michigan QBS Coalition, have a web site. It can be found at [www.qbs-mi.org](http://www.qbs-mi.org). Official information about State of Michigan procurement practices can be found at [www.michigan.gov/doing-business](http://www.michigan.gov/doing-business).

## **FISCAL IMPLICATIONS:**

The bill would be the vehicle for withdrawing money from the Budget Stabilization Fund to be used for general fund purposes. The appropriations from the BSF are described in the "Content" section of the analysis. (See also the House Fiscal Agency floor analysis of House Bill 5883 dated 7-2-02.) There is no information on the fiscal impact of the provisions regarding using QBS processes or procedures to select architects, engineers, and surveyors.

## **ARGUMENTS:**

### ***For:***

Advocates of qualifications-based selection (or QBS) have said that this process of selecting engineering, architectural, and surveying services "is based on the premise that when a construction project is undertaken, the selection of a design professional firm is one of the most important events in the process. Selection of a qualified design professional has a positive influence on the entire course of a project as it relates to financial aspects, feasibility, public response, design, functional efficiency, construction costs, operating costs, and maintenance costs during the project's life". When a firm is selected because it is the most qualified for the job, rather than the low bidder, project costs may actually be reduced. The House Committee on Commerce was provided with several examples of significant savings in major public works projects due to the creativity and talents of expert engineering services. This bill would require that the hiring of firms of engineers, architects, and surveyors by the Department of Management and Budget be in accordance with QBS processes and procedures.

### ***Response:***

Reportedly, the DMB uses a variety of methods to select contractors, using both qualifications and cost as criteria. This is said to give department staff flexibility in deciding what process to use given the kind of project, the timeline for the project, and other factors. Isn't this kind of flexibility preferable to the mandating of one kind of selection process? According to department officials, the department is

engaged in substantial reworkings of departmental practices in a wide variety of areas, including contracting. This bill should be reviewed to ensure that it does not hamstring attempts to improve department operations. It should also be reviewed in order to determine whether it might slow down contracting for major public works projects and drive up costs.

### ***Against:***

Some concerns have been expressed about the effect of QBS on newly created firms and minority firms, who may not have extensive experience in a given line of work and never get to the front of the line under this selection system. Additional concerns have been expressed that large out-of-state firms will have the advantage over in-state firms if the competition is not price-based. There have also been concerns about the hiring of subcontractors and whether they too would be subject to the same kind of selection. The bill is silent on this. Whatever system is in place, some people believe it ought to be open, fair, and accountable, to encourage objective judgments and to reduce litigation.

### ***Response:***

Industry specialists say that newer firms, and minority firms, can join with more established firms. These kinds of partnerships can provide the experience younger or less experienced firms need to build expertise and a record of accomplishment. Moreover, representatives of engineering firms say that they often go through "debriefings" when they have finished out of the running for a project under a QBS selection and this helps them understand what is required of them to become better qualified for major public works projects. Under QBS, moreover, all of the firms enter the competition knowing how the system works. Litigation and resentment are more likely in a competitive price bidding system where the low bidder does not win the contract. Current law, by the way, does allow preferential treatment for in-state bidders in some circumstances.

### ***For:***

State revenue forecasts have been revised downward dramatically, and those responsible for putting together balanced state budgets this fiscal year and next have had to cobble together spending cuts, tax increases, and fund transfers. One component of the budget plan is the withdrawal of money from the Budget Stabilization Fund, or rainy day fund. Money has been set aside in this fund during times of bountiful state revenues just for this purpose. The

bill would appropriate from the BSF money considered sufficient to balance the state budgets in this fiscal year and next.

Analyst: C. Couch

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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.