

Legislative Analysis



DEBARMENT PROCESS FOR VENDORS

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House Bill 4282 (Substitute H-2)

Sponsor: Rep. Fred Miller

Committee: Commerce

Complete to 4-16-09

A SUMMARY OF HOUSE BILL 4282 AS REPORTED FROM COMMITTEE

The bill would amend the Management and Budget Act to rewrite the provisions that allow the DMB to debar a vendor who is seeking a state contract to provide goods or services.

Under House Bill 4282, the DMB could debar a vendor from being considered for the awarding of a construction contract or a contract for goods or services, or could suspend the procurement of goods and services from a vendor, if within the immediately preceding three years, one or more of the following forms of conduct applied to the vendor (or an officer or owner):

- Been convicted of a criminal offense related to the application for or performance of a state contract.
- Been convicted of any offense negatively reflecting on the vendor's business integrity, including embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or a violation of state or federal antitrust statutes.
- Been convicted of any other offense, or violated any other state or federal law, that indicated to the department that the vendor is unable to perform responsibly or that reflected a lack of integrity that could negatively affect or reflect upon the state government. This would include willful or persistent violations of the Natural Resources and Environmental Protection Act (NREPA), the Consumer Protection Act, the state prevailing wage on state projects law, the state law on the payment of wages and fringe benefits, and the Michigan Occupational Safety and Health Act. [The term "willful" means committed with an intentional and knowing disregard of the requirements of the act, rule, or standard, but does not require a showing of moral turpitude, evil purpose, or criminal intent.]
- Failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits.
- Violated DMB bid solicitation procedures or the terms of a solicitation after bid submission.
- Refused to provide information or documents required by contract, including information or documents needed to monitor contract performance.

- Failed to respond to requests for information about vendor performance or accumulated repeated substantiated complaints connected to a performance of a contract or purchase order.
- Failed to perform a state contract or subcontract in a manner consistent with applicable state or federal laws, rules, or regulations.

If the DMB found that the grounds existed to debar a vendor, it would have to send the vendor a notice of proposed debarment setting forth the grounds and the procedures for requesting a hearing. If the vendor fails to request a hearing within 20 calendar days, the DMB could issue the decision to debar without a hearing. The debarment period could be of any length up to eight years.

The department would have to include its debarment procedure on its website. The procedures would have to include an independent review of a proposed debarment by a reviewer not involved in the process or decision to debar and would have to indicate that a debarment could not take effect until approved by the director.

The section being amended currently says, "The department may debar a vendor from participation in the bid process and from contract award upon notice and a finding that the vendor is not able to perform responsibly or that the vendor . . . has demonstrated a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor." The bill would strike that language and replace it with the new language described above.

MCL 18.1264

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS:

The Department of Management and Budget testified in support of the bill. (4-1-09)

Indicating support for the bill to the House Committee on Commerce were the International Union, UAW; the Michigan Laborers District Council; the Michigan Association of Government Employees; and the International Brotherhood of Electrical Workers. (3-25-09)

Indicating opposition to the bill to the House Committee on Commerce were the Michigan Chamber of Commerce; the National Federation of Independent Business; the Michigan Infrastructure and Transportation Association; the Michigan Association of General Contractors; the Associated Builders and Contractors; and the Michigan Association of Home Builders. (4-1-09)

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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.