

SUBSTITUTE FOR
HOUSE BILL NO. 4282

A bill to amend 1984 PA 431, entitled
"The management and budget act,"
by amending section 264 (MCL 18.1264), as added by 1988 PA 504.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 264. (1) The department may debar a vendor from
2 ~~participation in the bid process and from contract award upon~~
3 ~~notice and a finding that the vendor is not able to perform~~
4 ~~responsibly, or that~~ **CONSIDERATION FOR THE AWARD OF A CONSTRUCTION**
5 **CONTRACT OR A CONTRACT FOR THE PROVISION OF GOODS OR SERVICES TO**
6 **THIS STATE IF, WITHIN THE IMMEDIATELY PRECEDING 3 YEARS, the**
7 **vendor, or an officer OF THE VENDOR, or an owner of a 25% or**
8 **greater share of INTEREST IN the vendor ,** ~~has demonstrated a lack~~
9 ~~of integrity that could jeopardize the state's interest if the~~
10 ~~state were to contract with the vendor.~~ **HAS DONE 1 OR MORE OF THE**

1 FOLLOWING:

2 (A) BEEN CONVICTED OF A CRIMINAL OFFENSE INCIDENT TO THE
3 APPLICATION FOR OR PERFORMANCE OF A STATE CONTRACT OR SUBCONTRACT.

4 (B) BEEN CONVICTED, UNDER A STATE OR FEDERAL STATUTE, OF
5 EMBEZZLEMENT, THEFT, FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION
6 OF RECORDS, RECEIVING STOLEN PROPERTY, OR ANY OTHER SIMILAR OFFENSE
7 THAT INDICATES A LACK OF BUSINESS INTEGRITY OR BUSINESS HONESTY
8 THAT CURRENTLY, SERIOUSLY, AND DIRECTLY AFFECTS RESPONSIBILITY AS A
9 STATE VENDOR.

10 (C) BEEN CONVICTED OF A VIOLATION OF A STATE OR FEDERAL
11 ANTITRUST STATUTE ARISING OUT OF THE SUBMISSION OF BIDS OR
12 PROPOSALS TO THE STATE.

13 (D) BEEN CONVICTED OF ANY OTHER OFFENSE, OR VIOLATED ANY OTHER
14 STATE OR FEDERAL LAW, AS DETERMINED BY A COURT OF COMPETENT
15 JURISDICTION OR AN ADMINISTRATIVE PROCEEDING, WHICH, IN THE OPINION
16 OF THE DEPARTMENT, INDICATES A LACK OF BUSINESS INTEGRITY OR
17 BUSINESS HONESTY THAT CURRENTLY, SERIOUSLY, AND DIRECTLY AFFECTS
18 RESPONSIBILITY AS A STATE VENDOR. AN OFFENSE OR VIOLATION UNDER
19 THIS SUBDIVISION INCLUDES, BUT IS NOT LIMITED TO, A WILLFUL OR
20 PERSISTENT OFFENSE UNDER OR VIOLATION OF 1 OR MORE OF THE
21 FOLLOWING:

22 (i) THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,
23 1994 PA 451, MCL 324.101 TO 324.90106.

24 (ii) THE MICHIGAN CONSUMER PROTECTION ACT, 1976 PA 331, MCL
25 445.901 TO 445.922.

26 (iii) 1965 PA 166, MCL 408.551 TO 408.558.

27 (iv) 1978 PA 390, MCL 408.471 TO 408.490.

1 (v) THE MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT, 1974 PA
2 154, MCL 408.1001 TO 408.1094.

3 (E) COMMITTED VIOLATIONS OF CONTRACT PROVISIONS THAT THE
4 DEPARTMENT REGARDS AS SO SERIOUS OR COMPELLING AS TO AFFECT THE
5 VENDOR'S PRESENT ABILITY TO PERFORM A STATE CONTRACT RESPONSIBLY.
6 SERIOUS AND COMPELLING VIOLATIONS INCLUDE DELIBERATE OR CONSISTENT
7 FAILURE WITHOUT GOOD CAUSE TO PERFORM IN ACCORDANCE WITH THE
8 SPECIFICATIONS OR WITHIN TIME LIMITS PROVIDED IN THE CONTRACT, BUT
9 FAILURE TO PERFORM OR UNSATISFACTORY PERFORMANCE THAT IS CAUSED BY
10 FACTORS BEYOND THE CONTROL OF THE VENDOR IS NOT GROUNDS FOR
11 DEBARMENT.

12 (F) VIOLATED DEPARTMENT BID SOLICITATION PROCEDURES OR
13 VIOLATED THE TERMS OF A SOLICITATION AFTER BID SUBMISSION.

14 (G) DELIBERATELY OR CONSISTENTLY REFUSED TO PROVIDE
15 INFORMATION OR DOCUMENTS REQUIRED BY A CONTRACT WITH THIS STATE,
16 INCLUDING, BUT NOT LIMITED TO, INFORMATION OR DOCUMENTS NECESSARY
17 FOR MONITORING CONTRACT PERFORMANCE.

18 (H) DELIBERATELY OR CONSISTENTLY FAILED TO RESPOND TO THE
19 DEPARTMENT'S REQUESTS FOR INFORMATION REGARDING VENDOR PERFORMANCE
20 OR TO ACCUMULATED, REPEATED, AND SUBSTANTIATED COMPLAINTS REGARDING
21 PERFORMANCE OF A CONTRACT OR PURCHASE ORDER WITH THIS STATE.

22 (I) DELIBERATELY OR CONSISTENTLY FAILED TO PERFORM A STATE
23 CONTRACT OR SUBCONTRACT IN A MANNER CONSISTENT WITH ANY APPLICABLE
24 STATE OR FEDERAL LAW, RULE, OR REGULATION.

25 (2) IF THE DEPARTMENT FINDS THAT GROUNDS TO DEBAR A VENDOR
26 EXIST, IT SHALL SEND THE VENDOR A NOTICE OF PROPOSED DEBARMENT
27 INDICATING THE GROUNDS AND THE PROCEDURE FOR REQUESTING A HEARING.

1 IF THE VENDOR DOES NOT RESPOND WITH A WRITTEN REQUEST FOR A HEARING
2 WITHIN 20 CALENDAR DAYS OF RECEIPT OF THE NOTICE, THE DEPARTMENT
3 SHALL ISSUE THE DECISION TO DEBAR WITHOUT A HEARING. THE DEBARMENT
4 PERIOD MAY BE OF ANY LENGTH, UP TO 3 YEARS. AFTER THE DEBARMENT
5 PERIOD EXPIRES, THE VENDOR MAY REAPPLY FOR INCLUSION ON BIDDER
6 LISTS THROUGH THE REGULAR APPLICATION PROCESS.

7 (3) THE DEPARTMENT SHALL INCLUDE ITS PROCEDURE FOR DEBARMENT
8 ON THE DEPARTMENT WEBSITE. THE PROCEDURE SHALL INCLUDE AN
9 INDEPENDENT REVIEW OF THE PROPOSED DEBARMENT BY A REVIEWER WHO WAS
10 NOT INVOLVED IN THE PROCESS OR DECISION TO DEBAR AND SHALL INDICATE
11 THAT THE DEBARMENT SHALL NOT TAKE EFFECT UNTIL APPROVED BY THE
12 DIRECTOR.

13 (4) AS USED IN THIS SECTION, "WILLFUL" MEANS COMMITTED WITH AN
14 INTENTIONAL AND KNOWING DISREGARD OF THE REQUIREMENTS OF THE ACT,
15 RULE, OR STANDARD, BUT DOES NOT REQUIRE A SHOWING OF MORAL
16 TURPITUDE, EVIL PURPOSE, OR CRIMINAL INTENT.