

# HOUSE BILL No. 4282

February 17, 2009, Introduced by Reps. Miller, Espinoza, Gregory, Geiss, Haugh, Switalski, Liss, Robert Jones, Smith, Roberts, Lisa Brown and Polidori and referred to the Committee on Commerce.

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~~ **THE CONSIDERATION FOR THE AWARD OF A CONTRACT**  
5 **FOR THE PROVISION OF GOODS OR SERVICES TO THIS STATE OR SUSPEND THE**  
6 **PROCUREMENT OF GOODS AND SERVICES FROM A VENDOR IF, WITHIN THE**  
7 **IMMEDIATELY PRECEDING 3 YEARS, the vendor, or an officer OF THE**  
8 **VENDOR, or an owner of a 25% or greater share of INTEREST IN the**  
9 ~~vendor , has demonstrated a lack of integrity that could jeopardize~~

1 ~~the state's interest if the state were to contract with the vendor.~~  
2 HAS DONE 1 OR MORE OF THE FOLLOWING:

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

5 (B) BEEN CONVICTED OF ANY OFFENSE THAT NEGATIVELY REFLECTS ON  
6 THE VENDOR'S BUSINESS INTEGRITY, INCLUDING, BUT NOT LIMITED TO,  
7 EMBEZZLEMENT, THEFT, FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION  
8 OF RECORDS, RECEIVING STOLEN PROPERTY, OR A VIOLATION OF STATE OR  
9 FEDERAL ANTITRUST STATUTES.

10 (C) BEEN CONVICTED OF ANY OTHER OFFENSE, OR VIOLATED ANY OTHER  
11 STATE OR FEDERAL LAW, AS DETERMINED BY A COURT OF COMPETENT  
12 JURISDICTION OR AN ADMINISTRATIVE PROCEEDING, WHICH, IN THE OPINION  
13 OF THE DEPARTMENT, INDICATES THAT THE VENDOR IS UNABLE TO PERFORM  
14 RESPONSIBLY OR REFLECTS A LACK OF INTEGRITY THAT COULD NEGATIVELY  
15 IMPACT OR REFLECT UPON THIS STATE. AN OFFENSE OR VIOLATION UNDER  
16 THIS SUBDIVISION MAY INCLUDE, BUT IS NOT LIMITED TO, AN OFFENSE  
17 UNDER OR VIOLATION OF 1 OR MORE OF THE FOLLOWING:

18 (i) THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,  
19 1994 PA 451, MCL 324.101 TO 324.90106.

20 (ii) THE MICHIGAN CONSUMER PROTECTION ACT, 1976 PA 331, MCL  
21 445.901 TO 445.922.

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

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

24 (v) A WILLFUL OR PERSISTENT VIOLATION OF THE MICHIGAN  
25 OCCUPATIONAL SAFETY AND HEALTH ACT, 1974 PA 154, MCL 408.1001 TO  
26 408.1094.

27 (D) FAILED TO SUBSTANTIALLY PERFORM A STATE CONTRACT OR

1 SUBCONTRACT ACCORDING TO ITS TERMS, CONDITIONS, AND SPECIFICATIONS  
2 WITHIN SPECIFIED TIME LIMITS.

3 (E) VIOLATED DEPARTMENT BID SOLICITATION PROCEDURES OR  
4 VIOLATED THE TERMS OF A SOLICITATION AFTER BID SUBMISSION.

5 (F) REFUSED TO PROVIDE INFORMATION OR DOCUMENTS REQUIRED BY A  
6 CONTRACT, INCLUDING, BUT NOT LIMITED TO, INFORMATION OR DOCUMENTS  
7 NECESSARY FOR MONITORING CONTRACT PERFORMANCE.

8 (G) FAILED TO RESPOND TO REQUESTS FOR INFORMATION REGARDING  
9 VENDOR PERFORMANCE, OR ACCUMULATED REPEATED SUBSTANTIATED  
10 COMPLAINTS REGARDING PERFORMANCE OF A CONTRACT OR PURCHASE ORDER.

11 (H) FAILED TO PERFORM A STATE CONTRACT OR SUBCONTRACT IN A  
12 MANNER CONSISTENT WITH ANY APPLICABLE STATE OR FEDERAL LAW, RULE,  
13 OR REGULATION.

14 (2) IF THE DEPARTMENT FINDS THAT GROUNDS TO DEBAR A VENDOR  
15 EXIST, IT SHALL SEND THE VENDOR A NOTICE OF PROPOSED DEBARMENT  
16 INDICATING THE GROUNDS AND THE PROCEDURE FOR REQUESTING A HEARING.  
17 IF THE VENDOR DOES NOT RESPOND WITH A WRITTEN REQUEST FOR A HEARING  
18 WITHIN 20 CALENDAR DAYS, THE DEPARTMENT SHALL ISSUE THE DECISION TO  
19 DEBAR WITHOUT A HEARING. THE DEBARMENT PERIOD MAY BE OF ANY LENGTH,  
20 UP TO 8 YEARS. AFTER THE DEBARMENT PERIOD EXPIRES, THE VENDOR MAY  
21 REAPPLY FOR INCLUSION ON BIDDER LISTS THROUGH THE REGULAR  
22 APPLICATION PROCESS.