

# HOUSE BILL No. 5821

Introduced by Reps. Pscholka, Wittenberg, Callton, Afendoulis, Geiss, Poleski, Bumstead, Moss, Lucido, Schor and Faris.

A bill to amend 1984 PA 431, entitled  
"The management and budget act,"  
by amending section 261 (MCL 18.1261), as amended by 2012 PA 555.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 261. (1) The department shall provide for the purchase  
2 of, the contracting for, and the providing of supplies, materials,  
3 services, insurance, utilities, third party financing, equipment,  
4 printing, and all other items as needed by state agencies for which  
5 the legislature has not otherwise expressly provided. If consistent  
6 with federal statutes, in all purchases made by the department, all  
7 other things being equal, preference shall be given to products  
8 manufactured or services offered by Michigan-based firms or by  
9 facilities with respect to which the operator is designated as a

1 clean corporate citizen under part 14 of the natural resources and  
2 environmental protection act, 1994 PA 451, MCL 324.1401 to  
3 ~~324.1427.~~ **324.1429.** The department shall solicit competitive bids  
4 from the private sector whenever practicable to efficiently and  
5 effectively meet the state's needs. The department shall first  
6 determine that competitive solicitation of bids in the private  
7 sector is not appropriate before using any other procurement method  
8 for an acquisition.

9 (2) The department shall make all discretionary decisions  
10 concerning the solicitation, award, amendment, cancellation, and  
11 appeal of state contracts.

12 (3) The department shall utilize competitive solicitation for  
13 all purchases authorized under this act unless 1 or more of the  
14 following apply:

15 (a) Procurement of goods or services is necessary for the  
16 imminent protection of public health or safety or to mitigate an  
17 imminent threat to public health or safety, as determined by the  
18 director or his or her designated representative.

19 (b) Procurement of goods or services is for emergency repair  
20 or construction caused by unforeseen circumstances when the repair  
21 or construction is necessary to protect life or property.

22 (c) Procurement of goods or services is in response to a  
23 declared state of emergency or state of disaster under the  
24 emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

25 (d) Procurement of goods or services is in response to a  
26 declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.

27 (e) Procurement of goods or services is in response to a

1 declared state of energy emergency under 1982 PA 191, MCL 10.81 to  
2 10.89.

3 (f) Procurement of goods or services is within a state  
4 agency's purchasing authority delegated under subsection (4), and  
5 the state agency has established policies or procedures approved by  
6 the department to ensure that goods or services are purchased by  
7 the state agency at fair and reasonable prices.

8 (4) The department may delegate its procurement authority to  
9 other state agencies within dollar limitations and for designated  
10 types of procurements. The department may withdraw delegated  
11 authority upon a finding that a state agency did not comply with  
12 departmental procurement directives.

13 (5) The department may enter into lease purchases or  
14 installment purchases for periods not exceeding the anticipated  
15 useful life of the items purchased unless otherwise prohibited by  
16 law.

17 (6) The department shall issue directives for the procurement,  
18 receipt, inspection, and storage of supplies, materials, and  
19 equipment, and for printing and services needed by state agencies.  
20 The department shall provide standard specifications and standards  
21 of performance applicable to purchases.

22 (7) The department may enter into a cooperative purchasing  
23 agreement with 1 or more other states or public entities for the  
24 purchase of goods, including, but not limited to, recycled goods,  
25 and services necessary for state programs.

26 (8) In awarding a contract under this section, the department  
27 shall give a preference of up to 10% of the amount of the contract

1 to a qualified disabled veteran. If the qualified disabled veteran  
2 otherwise meets the requirements of the contract solicitation and  
3 with the preference is the lowest bidder, the department shall  
4 enter into a procurement contract with the qualified disabled  
5 veteran under this act. If 2 or more qualified disabled veterans  
6 are the lowest bidders on a contract, all other things being equal,  
7 the qualified disabled veteran with the lowest bid shall be awarded  
8 the contract under this act.

9 (9) It is the goal of the department to award each year not  
10 less than 5% of its total expenditures for construction, goods, and  
11 services to qualified disabled veterans. The department may count  
12 toward its 5% yearly goal described in this subsection that portion  
13 of all procurement contracts in which the business entity that  
14 received the procurement contract subcontracts with a qualified  
15 disabled veteran. Each year, the department shall report to each  
16 house of the legislature on all of the following for the  
17 immediately preceding 12-month period:

18 (a) The number of qualified disabled veterans who submitted a  
19 bid for a state procurement contract.

20 (b) The number of qualified disabled veterans who entered into  
21 procurement contracts with this state and the total value of those  
22 procurement contracts.

23 (c) Whether the department achieved the goal described in this  
24 subsection.

25 (d) The recommendations described in subsection (10).

26 (10) Each year, the department shall review the progress of  
27 all state agencies in meeting the 5% goal with input from statewide

1 veterans service organizations and from the business community,  
2 including businesses owned by qualified disabled veterans, and  
3 shall make recommendations to each house of the legislature  
4 regarding continuation, increases, or decreases in the percentage  
5 goal. The recommendations shall be based upon the number of  
6 businesses that are owned by qualified disabled veterans and on the  
7 continued need to encourage and promote businesses owned by  
8 qualified disabled veterans.

9 (11) To assist the department in reaching the goal described  
10 in subsection (9), the governor shall recommend to the legislature  
11 changes in programs to assist businesses owned by qualified  
12 disabled veterans.

13 (12) BEGINNING JULY 1, 2016, THE DEPARTMENT AND ALL STATE  
14 AGENCIES MAY NOT ENTER INTO A CONTRACT WITH A PERSON TO ACQUIRE OR  
15 DISPOSE OF SUPPLIES, SERVICES, OR INFORMATION TECHNOLOGY UNLESS THE  
16 CONTRACT INCLUDES A REPRESENTATION THAT THE PERSON IS NOT CURRENTLY  
17 ENGAGED IN, AND AN AGREEMENT THAT THE PERSON WILL NOT ENGAGE IN,  
18 THE BOYCOTT OF A PERSON BASED IN OR DOING BUSINESS WITH A  
19 JURISDICTION WITH WHOM THIS STATE CAN ENJOY OPEN TRADE.

20 (13) ~~(12)~~As used in this section:

21 (A) "BOYCOTT" MEANS TO BLACKLIST, DIVEST FROM, OR OTHERWISE  
22 REFUSE TO DEAL WITH A PERSON BASED ON RACE, COLOR, RELIGION,  
23 GENDER, OR NATIONAL ORIGIN. BOYCOTT DOES NOT INCLUDE 1 OR MORE OF  
24 THE FOLLOWING:

25 (i) A DECISION BASED ON BUSINESS OR ECONOMIC REASONS, OR THE  
26 SPECIFIC CONDUCT OF A TARGETED PERSON.

27 (ii) A BOYCOTT AGAINST A PUBLIC ENTITY OF A FOREIGN STATE WHEN

1 THE BOYCOTT IS APPLIED IN A NONDISCRIMINATORY MANNER.

2 (iii) CONDUCT NECESSARY TO COMPLY WITH APPLICABLE LAW IN THE  
3 PERSON'S HOME JURISDICTION.

4 (B) "JURISDICTION WITH WHOM THIS STATE CAN ENJOY OPEN TRADE"  
5 INCLUDES WORLD TRADE ORGANIZATION MEMBERS AND THOSE WITH WHICH THE  
6 UNITED STATES AND THIS STATE HAVE FREE TRADE OR OTHER AGREEMENTS  
7 AIMED AT ENSURING OPEN AND NONDISCRIMINATORY TRADE RELATIONS.

8 (C) "PERSON" MEANS ANY OF THE FOLLOWING:

9 (i) AN INDIVIDUAL, CORPORATION, COMPANY, LIMITED LIABILITY  
10 COMPANY, BUSINESS ASSOCIATION, PARTNERSHIP, SOCIETY, TRUST, OR ANY  
11 OTHER NONGOVERNMENTAL ENTITY, ORGANIZATION, OR GROUP.

12 (ii) ANY GOVERNMENTAL ENTITY OR AGENCY OF A GOVERNMENT.

13 (iii) ANY SUCCESSOR, SUBUNIT, PARENT COMPANY, OR SUBSIDIARY  
14 OF, OR COMPANY UNDER COMMON OWNERSHIP OR CONTROL WITH, ANY ENTITY  
15 DESCRIBED IN SUBPARAGRAPH (i) OR (ii).

16 (D) ~~(a)~~—"Qualified disabled veteran" means a business entity  
17 that is 51% or more owned by 1 or more veterans with a service-  
18 connected disability.

19 (E) ~~(b)~~—"Service-connected disability" means a disability  
20 incurred or aggravated in the line of duty in the active military,  
21 naval, or air service as described in 38 USC 101(16).

22 (F) ~~(c)~~—"Veteran" means a person who served in the army, air  
23 force, navy, marine corps, or coast guard and who was discharged or  
24 released from his or her service with an honorable or general  
25 discharge.