

HOUSE BILL NO. 5323

November 09, 2023, Introduced by Reps. Aragona, Bierlein, Johnsen, BeGole, Rigas, St. Germaine, Phil Green and Jaime Greene and referred to the Committee on Government Operations.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending sections 114, 115, 241c, 261, 305, and 404 (MCL 18.1114, 18.1115, 18.1241c, 18.1261, 18.1305, and 18.1404), section 114 as amended by 2001 PA 61, section 115 as amended by 2018 PA 389, section 241c as added by 2016 PA 527, section 261 as amended by 2020 PA 174, and sections 305 and 404 as amended by 1999 PA 8, and by adding section 261g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 114. (1) "Facility" means a building or structure along

1 with the building's or structure's grounds, approaches, services,
 2 and appurtenances owned by, or leased through a building authority
 3 by, the state such as office buildings, research buildings,
 4 academic buildings, laboratories, hospitals, prisons, recreational
 5 structures, garages, warehouses, physical plant buildings, energy
 6 or power plants, and any other building or project included by the
 7 director if the director considers the building or project to be in
 8 the public interest. Facility does not include any of the
 9 following:

10 (a) A building or structure for an institution of higher
 11 education except as mutually agreed ~~upon~~**on** by the director and the
 12 governing board of the state institution of higher education.

13 (b) A road, bridge, or railroad under the jurisdiction of the
 14 state transportation department.

15 (c) An existing building or structure ~~which~~**that** is mutually
 16 agreed to be excluded from the definition of facility by the
 17 department and the state agency having jurisdiction over the
 18 building or structure.

19 (d) The capitol building and grounds. As used in this
 20 subdivision, "grounds" means the property ~~upon~~**on** which the ~~state~~
 21 ~~capitol building~~**State Capitol Building** is situated, bordered on
 22 the north by Ottawa ~~street~~**Street**; on the east by Capitol ~~avenue~~
 23 **Avenue**; on the south by Allegan ~~street~~**Street**; and on the west by
 24 Walnut ~~street~~**Street**.

25 (e) A building or structure owned by, or under the
 26 jurisdiction of, the legislature.

27 (2) "Fiscal agencies" means the senate fiscal agency and the
 28 house fiscal agency.

29 (3) **"Forced labor" means any of the following:**

1 (a) Any work or service that is obtained by any of the
2 following:

3 (i) Any force, fraud, or coercion, including, but not limited
4 to, by threat of serious harm to, or physical restraint against, an
5 individual or a relative of the individual.

6 (ii) A scheme, plan, or pattern intended to cause an individual
7 or a relative of the individual to believe that if the individual
8 did not perform the labor or service, that individual, or another
9 individual, would suffer serious harm or physical restraint.

10 (iii) Any abuse or threatened abuse of law or the legal process.

11 (b) Any work or service that is imposed on the basis of a
12 characteristic that is protected under the Elliott-Larsen civil
13 rights act, 1976 PA 453, MCL 37.2101 to 37.2804.

14 (c) Any work or service that is not offered or provided
15 voluntarily by the individual.

16 (d) Any work or service that is produced through oppressive
17 child labor.

18 (4) ~~(3)~~ "FTE" means full-time equated position in the
19 classified service of this state.

20 Sec. 115. ~~(1) "Institution of higher education" or~~
21 ~~"university" means a state supported 4-year college or university.~~

22 (1) ~~(2)~~ "Information technology services" means services
23 involving all aspects of managing and processing information,
24 including, but not limited to, all of the following:

25 (a) Application development and maintenance.

26 (b) Desktop computer support and management.

27 (c) Mainframe computer support and management.

28 (d) Server support and management.

29 (e) Local area network support and management, including, but

1 not limited to, wireless networking.

2 (f) Information technology project management.

3 (g) Information technology planning and budget management.

4 (h) Telecommunication services, security, infrastructure, and
5 support.

6 **(2) "Institution of higher education" or "university" means a**
7 **state-supported 4-year college or university.**

8 (3) "JCOS" means the joint capital outlay subcommittee of the
9 appropriations committees.

10 **(4) "Oppressive child labor" means a condition of employment**
11 **under which an individual who is under 14 years of age is employed**
12 **in an occupation that is hazardous for the employment of children,**
13 **including, but not limited to, manufacturing or mining.**

14 (5) ~~(4)~~—Except as used in sections 284 to 292, "record" means
15 a public record, as **that term is** defined in section 2 of the
16 freedom of information act, 1976 PA 442, MCL 15.232.

17 **(6) "Solar panel" means an instrument that is designed to**
18 **harness and transform solar radiation into electric energy.**

19 (7) ~~(5)~~—"State agency" means a department, board, commission,
20 office, agency, authority, or other unit of state government. State
21 agency does not include an institution of higher education or a
22 community college or, for purposes of article 2 or 3, the
23 legislative branch of government. For purposes of article 2 or 3,
24 except for those sections pertaining to the authorization,
25 planning, construction, and funding of a capital outlay project,
26 including construction of a facility to house offices or functions
27 necessary for operation of the judicial branch of government, state
28 agency does not include the judicial branch of government.

29 **(8) ~~(6)~~—"Unit of local government" means a political**

1 subdivision of this state, including school districts, community
2 college districts, intermediate school districts, cities, villages,
3 townships, counties, and authorities, if the political subdivision
4 has as its primary purpose the providing of local governmental
5 service for citizens in a geographically limited area of the state
6 and has the power to act primarily on behalf of that area.

7 Sec. 241c. (1) Beginning October 1, 2017, the department or a
8 state agency may not enter into a contract with a person for the
9 construction, alteration, or repair of a state building or other
10 state property unless the contract includes a representation that
11 the person is not currently engaged in, and an agreement that the
12 person will not engage in, the boycott of a person based in or
13 doing business with a strategic partner.

14 **(2) Beginning on the effective date of the amendatory act that**
15 **added this subsection, the department or a state agency may not**
16 **enter into a contract with a person for the construction,**
17 **alteration, or repair of a state building or other state property,**
18 **if the contract involves the installation or repair of a solar**
19 **panel or solar panel component, unless the person provides the**
20 **department or the state agency with a sworn declaration from the**
21 **manufacturer of the solar panel or solar panel component certifying**
22 **both of the following:**

23 **(a) That the manufacturer consents to personal jurisdiction by**
24 **this state over the manufacturer.**

25 **(b) That every person involved in the production of the solar**
26 **panel or solar panel component, and every person involved in the**
27 **mining or sourcing of the material used in the solar panel or solar**
28 **panel component, did not use forced labor or oppressive child labor**
29 **in the production, mining, or sourcing of the solar panel or solar**

1 **panel component.**

2 (3) ~~(2)~~—As used in this section, "boycott", "person", and
3 "strategic partner" mean those terms as defined in section 261.

4 Sec. 261. (1) The department shall provide for the purchase
5 of, the contracting for, and the providing of supplies, materials,
6 services, insurance, utilities, ~~third party~~ **third-party** financing,
7 equipment, printing, and all other items as needed by state
8 agencies for which the legislature has not otherwise expressly
9 provided. If consistent with federal ~~statutes,~~ **law**, in all
10 purchases made by the department, all other things being equal,
11 preference ~~shall~~ **must** be given to products manufactured or services
12 offered by Michigan-based firms or by facilities with respect to
13 which the operator is designated as a clean corporate citizen under
14 part 14 of the natural resources and environmental protection act,
15 1994 PA 451, MCL 324.1401 to 324.1429, or to biobased products
16 whose content is sourced in this state. The department shall
17 solicit competitive bids from the private sector whenever
18 practicable to efficiently and effectively meet the state's needs.
19 The department shall first determine that competitive solicitation
20 of bids in the private sector is not appropriate before using any
21 other procurement method for an acquisition.

22 (2) The department shall make all discretionary decisions
23 concerning the solicitation, award, amendment, cancellation, and
24 appeal of state contracts.

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

28 (a) Procurement of goods or services is necessary for the
29 imminent protection of public health or safety or to mitigate an

1 imminent threat to public health or safety, as determined by the
2 director or ~~his or her~~ **the** designated representative **of the**
3 **director.**

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

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

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

12 **(d)** ~~(e)~~ Procurement of goods or services is in response to a
13 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
14 10.89.

15 **(e)** ~~(f)~~ Procurement of goods or services is within a state
16 agency's purchasing authority delegated under subsection (4), and
17 the state agency has established policies or procedures approved by
18 the department to ensure that goods or services are purchased by
19 the state agency at fair and reasonable prices.

20 (4) The department may delegate its procurement authority to
21 other state agencies within dollar limitations and for designated
22 types of procurements. The department may withdraw delegated
23 authority ~~upon~~ **on** a finding that a state agency did not comply with
24 departmental procurement directives. If a state agency has the
25 department's procurement authority delegated to it under this
26 subsection and if it chooses to exercise an option under an
27 existing procurement contract to continue that procurement
28 contract, before exercising that option, the state agency ~~shall~~
29 **must** first obtain written approval from the department that

1 exercising the option is in the best interest of this state.

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

6 (6) The department shall issue directives for the procurement,
7 receipt, inspection, and storage of supplies, materials, and
8 equipment, and for printing and services needed by state agencies.
9 The department shall provide standard specifications and standards
10 of performance applicable to purchases.

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

15 (8) In awarding a contract under this section, the department
16 shall give a preference of up to 10% of the amount of the contract
17 to a qualified disabled veteran. If the qualified disabled veteran
18 otherwise meets the requirements of the contract solicitation and
19 with the preference is the lowest bidder, the department ~~shall~~**must**
20 enter into a procurement contract with the qualified disabled
21 veteran under this act. If 2 or more qualified disabled veterans
22 are the lowest bidders on a contract, all other things being equal,
23 the qualified disabled veteran with the lowest bid ~~shall~~**must** be
24 awarded the contract under this act.

25 (9) It is the goal of the department to award each year not
26 less than 5% of its total expenditures for construction, goods, and
27 services to qualified disabled veterans. The department may count
28 toward its 5% yearly goal described in this subsection that portion
29 of all procurement contracts in which the business entity that

1 received the procurement contract subcontracts with a qualified
2 disabled veteran. Each year, the department shall report to each
3 house of the legislature on all of the following for the
4 immediately preceding 12-month period:

5 (a) The number of qualified disabled veterans ~~who~~**that**
6 submitted a bid for a state procurement contract.

7 (b) The number of qualified disabled veterans ~~who~~**that** entered
8 into procurement contracts with this state and the total value of
9 those procurement contracts.

10 (c) Whether the department achieved the goal described in this
11 subsection.

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

13 (10) Each year, the department shall review the progress of
14 all state agencies in meeting the 5% goal with input from statewide
15 veterans service organizations and from the business community,
16 including businesses owned by qualified disabled veterans, and
17 shall make recommendations to each house of the legislature
18 regarding continuation, increases, or decreases in the percentage
19 goal. The recommendations ~~shall~~**must** be based ~~upon~~**on** the number of
20 businesses that are owned by qualified disabled veterans and on the
21 continued need to encourage and promote businesses owned by
22 qualified disabled veterans.

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

27 (12) Beginning October 1, 2017, the department and all state
28 agencies may not enter into a contract with a person to acquire or
29 dispose of supplies, services, or information technology unless the

1 contract includes a representation that the person is not currently
2 engaged in, and an agreement that the person ~~will~~**may** not engage
3 in, the boycott of a person based in or doing business with a
4 strategic partner.

5 **(13) Beginning on the effective date of the amendatory act**
6 **that added this subsection, the department or a state agency may**
7 **not enter into a contract with a person to acquire a solar panel or**
8 **a solar panel component unless the person provides the department**
9 **or the state agency with a sworn declaration from the manufacturer**
10 **of the solar panel or solar panel component certifying both of the**
11 **following:**

12 (a) That the manufacturer consents to personal jurisdiction by
13 this state over the manufacturer.

14 (b) That every person involved in the production of the solar
15 panel or solar panel component, and every person involved in the
16 mining or sourcing of the material used in the solar panel or solar
17 panel component, did not use forced labor or oppressive child labor
18 in the production, mining, or sourcing of the solar panel or solar
19 panel component.

20 **(14) ~~(13)~~**The following records are exempt from disclosure
21 under the freedom of information act, 1976 PA 442, MCL 15.231 to
22 15.246, as provided in this subsection:

23 (a) A bid, quote, or proposal submitted in connection with the
24 authority granted under this section, and records created in the
25 preparation for and evaluation of the bid, quote, or proposal until
26 the time of final notification of award of the contract.

27 (b) Records containing a trade secret, as **that term is** defined
28 under section 2 of the uniform trade secrets act, 1998 PA 448, MCL
29 445.1902, or financial or proprietary information submitted in

1 connection with the authority granted under this section.

2 **(15)** ~~(14)~~—The department shall develop policies and procedures
3 that require all procurement contracts entered into by the
4 department or a state agency, including departments that have
5 delegated procurement authority under this act, to include
6 performance-related liquidated damages or performance targets with
7 incentives in all procurement contracts. The department shall also
8 develop policies and procedures that require the department or
9 state agency to enforce these provisions. Departments or state
10 agencies acting under delegated authority shall inform the
11 department of relevant performance issues. Exceptions to the
12 inclusion or enforcement of performance-related contract provisions
13 may only be granted by the department as provided in a written or
14 electronic record by the department.

15 **(16)** ~~(15)~~—As used in this section:

16 (a) "Biobased product" means a product granted the United
17 States Department of Agriculture certified biobased product label.

18 (b) "Boycott" means refusal to have dealings with, divest
19 from, or otherwise engage with a person. Boycott does not include 1
20 or more of the following:

21 (i) A decision based on bona fide business or economic reasons.

22 (ii) A boycott against a public entity of a foreign state when
23 the boycott is applied in a nondiscriminatory manner.

24 (iii) Conduct necessary to comply with applicable law in the
25 person's home jurisdiction.

26 (c) "Financial or proprietary information" means information
27 that has not been publicly disseminated or ~~which~~**that** is
28 unavailable from other sources, the release of which might cause
29 the submitter of the information competitive harm.

1 (d) "Person" means any of the following:

2 (i) An individual, corporation, company, limited liability
3 company, business association, partnership, society, trust, or any
4 other nongovernmental entity, organization, or group.

5 (ii) Any governmental entity or agency of a government.

6 (iii) Any successor, subunit, parent company, or subsidiary of,
7 or company under common ownership or control with, any entity
8 described in subparagraph (i) or (ii).

9 (e) "Qualified disabled veteran" means a business entity that
10 is 51% or more owned by 1 or more veterans with a service-connected
11 disability.

12 (f) "Service-connected disability" means a disability incurred
13 or aggravated in the line of duty in the active military, naval, or
14 air service as described in 38 USC 101(16).

15 (g) "Strategic partner" means a strategic partner described in
16 22 USC 8601 to ~~8606~~-8607.

17 (h) "Veteran" means an individual who meets both of the
18 following:

19 (i) Is a veteran, as **that term is** defined in section 1 of 1965
20 PA 190, MCL 35.61.

21 (ii) Was released from ~~his or her~~ service with an honorable or
22 general discharge.

23 **Sec. 261g. (1) If a person or manufacturer provides false or**
24 **misleading information to the department or a state agency**
25 **concerning a contract described in section 241c(2) or 261(13), the**
26 **person or manufacturer may be ordered to pay a civil fine of not**
27 **less than \$100,000.00 per false or misleading statement, or 1/2 of**
28 **the total price paid by the department or the state agency for the**
29 **solar panel or solar panel component.**

1 (2) If the department or a state agency knowingly violates
 2 section 241c(2) or 261(13), the department or the state agency may
 3 be ordered to pay a civil fine of not less than \$100,000.00 per
 4 false or misleading statement, or the total price paid by the
 5 department or state agency for the solar panel or solar panel
 6 component, which must be deposited in the state procurement
 7 enforcement fund created in section 3b of the Michigan trust fund
 8 act, 2000 PA 489, MCL 12.253b.

9 (3) If a member of a corporate board affirmatively votes to
 10 authorize the purchase of a solar panel or solar panel component by
 11 the department or a state agency and the purchase violates section
 12 241c(2) or 261(13), the member may be ordered to pay a civil fine
 13 of \$10,000.00, which must be deposited in the state procurement
 14 enforcement fund created in section 3b of the Michigan trust fund
 15 act, 2000 PA 489, MCL 12.253b.

16 (4) A violation under this section may be prosecuted by the
 17 prosecutor of the county in which the violation occurred or by the
 18 attorney general.

19 Sec. 305. (1) "Total state spending" means the sum of state
 20 operating fund expenditures, not including transfers between funds.

21 (2) "Total state spending from state sources" means the sum of
 22 state operating fund expenditures not including transfers between
 23 funds, federal aid, and restricted local and private sources of
 24 financing.

25 (3) "Transfer payments" means as defined by the ~~bureau of~~
 26 ~~economic analysis~~ **Bureau of Economic Analysis** of the United States
 27 ~~department of commerce~~ **Department of Commerce** or its successor.

28 ~~(4) "Unit of local government" means unit of local government~~
 29 ~~as defined in section 115(5).~~

1 Sec. 404. (1) "Revenues" means the increases in the net
2 current assets of a fund other than from expenditure refunds and
3 residual equity transfers.

4 (2) "Revolving fund" means a self-supporting fund which
5 provides services or sells goods to state agencies, other
6 governmental jurisdictions, or the public.

7 (3) "Unencumbered balance" means that portion of an
8 appropriation not yet expended and encumbered.

9 (4) "Unexpended balance" means that portion of an
10 appropriation not yet expended.

11 ~~(5) "Unit of local government" means unit of local government~~
12 ~~as defined by section 115(5).~~

13 (5) ~~(6)~~ "Work project" means a 1-time nonrecurring undertaking
14 for the purpose of accomplishing an objective contained in specific
15 line-item appropriation for that purpose or any other specific
16 line-item appropriation designated as a work project by law under
17 criteria established under section 451a(1).

18 Enacting section 1. This amendatory act does not take effect
19 unless Senate Bill No. ____ or House Bill No. 5325 (request no.
20 04403'23) of the 102nd Legislature is enacted into law.