

# HOUSE BILL No. 4619

May 19, 2015, Introduced by Reps. Gamrat, Courser, Glenn and Lucido and referred to the Committee on Government Operations.

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,  
and by adding section 261e.

**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  
10 clean corporate citizen under part 14 of the natural resources and

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

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

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

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

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

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

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

26 (e) Procurement of goods or services is in response to a  
27 declared state of energy emergency under 1982 PA 191, MCL 10.81 to

1 10.89.

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

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

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

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

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

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

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

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

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

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

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

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

25 (10) Each year, the department shall review the progress of  
26 all state agencies in meeting the 5% goal with input from statewide  
27 veterans service organizations and from the business community,

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

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

12 (12) **THE DEPARTMENT SHALL ENSURE THAT ALL STATE AGENCIES**  
13 **COMPLY WITH SECTION 261E.**

14 (13) ~~(12)~~As used in this section:

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

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

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

25 **SEC. 261E. (1) BEGINNING OCTOBER 1, 2015, A STATE AGENCY SHALL**  
26 **NOT ENTER INTO A PROCUREMENT CONTRACT OR RENEW AN EXISTING**  
27 **PROCUREMENT CONTRACT WITH A BUSINESS ENTITY OR INDIVIDUAL IF A**

1 COURT IN THIS STATE HAS DETERMINED THAT THE BUSINESS ENTITY OR  
2 INDIVIDUAL HAS ACTIVELY, KNOWINGLY, AND VOLUNTARILY ASSISTED WITH,  
3 OR PROVIDED MATERIAL SUPPORT OR RESOURCES TO, THE BULK COLLECTION  
4 OF ELECTRONIC DATA AND METADATA OF RESIDENTS OF THIS STATE WITHOUT  
5 INFORMED, AFFIRMATIVE CONSENT, OR A WARRANT BASED UPON PROBABLE  
6 CAUSE, AND THAT DESCRIBES THE PERSON, PLACE, OR THING TO BE  
7 SEARCHED OR SEIZED, OR ACTING IN ACCORDANCE WITH A LEGALLY  
8 RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENTS.

9 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DO EITHER OF  
10 THE FOLLOWING:

11 (A) PROHIBIT ANY BUSINESS ENTITY OR INDIVIDUAL FROM  
12 COOPERATING WITH FEDERAL AUTHORITIES WHEN REQUIRED UNDER FEDERAL  
13 LAW.

14 (B) CREATE ANY POWER, DUTY, OR OBLIGATION IN CONFLICT WITH ANY  
15 FEDERAL LAW.

16 (3) BEFORE A STATE AGENCY ENTERS INTO A PROCUREMENT CONTRACT  
17 OR RENEWS AN EXISTING PROCUREMENT CONTRACT WITH A BUSINESS ENTITY  
18 OR INDIVIDUAL, THAT BUSINESS ENTITY OR INDIVIDUAL SHALL EXECUTE AND  
19 FILE WITH THE DEPARTMENT, ON A FORM PROVIDED BY THE DEPARTMENT, A  
20 CERTIFICATION, UNDER OATH, SUBJECT TO THE PENALTY OF PERJURY,  
21 AFFIRMING THAT IT WILL NOT ACTIVELY, KNOWINGLY, AND VOLUNTARILY  
22 ASSIST WITH OR PROVIDE MATERIAL SUPPORT OR RESOURCES FOR THE BULK  
23 COLLECTION OF ELECTRONIC DATA AND METADATA OF THE RESIDENTS OF THIS  
24 STATE, WITHOUT 1 OR MORE OF THE FOLLOWING:

25 (A) THE INFORMED, AFFIRMATIVE CONSENT OF THE PERSON OR PERSONS  
26 WHOSE ELECTRONIC DATA OR METADATA IS BEING COLLECTED.

27 (B) A WARRANT BASED UPON PROBABLE CAUSE, THAT PARTICULARLY

1 DESCRIBES THE PERSON, PLACE, OR THING TO BE SEARCHED OR SEIZED.

2 (C) ACTING IN ACCORDANCE WITH A LEGALLY RECOGNIZED EXCEPTION  
3 TO THE WARRANT REQUIREMENTS.

4 (4) THE CERTIFICATION DESCRIBED IN SUBSECTION (3) IS AND SHALL  
5 BE CONSIDERED AN ONGOING AFFIRMATION UNTIL RESCINDED OR UNTIL THE  
6 EXPIRATION OF THE BUSINESS ENTITY'S OR INDIVIDUAL'S CONTRACTUAL  
7 RELATIONSHIP WITH THE STATE AGENCY. A BUSINESS ENTITY THAT OR  
8 INDIVIDUAL WHO HAS MADE A CERTIFICATION UNDER THIS SECTION MAY AT  
9 ANY TIME RESCIND THAT CERTIFICATION BY FILING A RESCISSION NOTICE  
10 WITH THE DEPARTMENT. THE DEPARTMENT SHALL IMMEDIATELY FORWARD A  
11 COPY OF THE RESCISSION NOTICE TO THE ATTORNEY GENERAL.