

# HOUSE BILL No. 4771

June 15, 2017, Introduced by Rep. Marino and referred to the Committee on Appropriations.

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~~ **SHALL** 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 vendor, or an officer or an owner of a 25%~~  
5 ~~or greater share of the vendor, has demonstrated a lack of~~  
6 ~~integrity that could jeopardize the state's interest if the state~~  
7 ~~were to contract with the vendor.~~ **THE CONSIDERATION FOR THE AWARD**  
8 **OF A CONTRACT FOR THE PROVISION OF GOODS OR SERVICES TO THIS STATE**  
9 **OR SUSPEND THE PROCUREMENT OF GOODS AND SERVICES FROM A VENDOR IF,**  
10 **WITHIN THE PAST 3 YEARS, THE VENDOR, AN OFFICER OF THE VENDOR, OR**

1 AN OWNER OF A 25% OR GREATER INTEREST IN THE VENDOR HAS DONE 1 OR  
2 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 WHICH 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 STATE OR FEDERAL  
9 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 WHICH REFLECTS A LACK OF INTEGRITY THAT COULD  
15 NEGATIVELY IMPACT OR REFLECT UPON THIS STATE. AN OFFENSE OR  
16 VIOLATION UNDER THIS SUBDIVISION MAY INCLUDE, BUT IS NOT LIMITED  
17 TO, AN OFFENSE 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 OR 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. EXCEPT AS OTHERWISE PROVIDED IN THIS  
20 SUBSECTION, THE DEBARMENT PERIOD MAY BE OF ANY LENGTH, UP TO 8  
21 YEARS. HOWEVER, IF A VENDOR IS DEBARRED FOR A VIOLATION OF  
22 SUBSECTION (1) (A) OR (B), THEN, EXCEPT AS OTHERWISE PROVIDED IN  
23 THIS SUBSECTION, THE DEBARMENT SHALL BE FOR AN INDEFINITE PERIOD.  
24 HOWEVER, IF A VENDOR IS DEBARRED FOR A DURATION OF MORE THAN 2  
25 YEARS, AFTER WAITING THE FOLLOWING PERIODS OF TIME FOLLOWING  
26 DEBARMENT, THE VENDOR MAY, DUE TO A CHANGE OF CIRCUMSTANCES,  
27 REQUEST A REDETERMINATION OF THE DECISION TO DEBAR OR THE DURATION

1 OF DEBARMENT UPON WRITTEN REQUEST TO THE DEPARTMENT:

2 (A) FOR A DEBARMENT OF MORE THAN 2 YEARS AND UP TO 8 YEARS, A  
3 2-YEAR PERIOD.

4 (B) FOR A DEBARMENT OF MORE THAN 8 YEARS, A 5-YEAR PERIOD.

5 (3) AFTER THE DEBARMENT PERIOD EXPIRES, THE VENDOR MAY REAPPLY  
6 FOR INCLUSION ON BIDDER LISTS THROUGH THE REGULAR APPLICATION  
7 PROCESS.

8 (4) A VENDOR SUBJECT TO DEBARMENT UNDER THIS SECTION HAS THE  
9 RIGHT TO CHALLENGE A DECISION TO DEBAR OR THE DURATION OF DEBARMENT  
10 MADE BY THE DEPARTMENT, OR UPHELD AFTER A HEARING IN SUBSECTION  
11 (2), AS PROVIDED IN THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969  
12 PA 306, MCL 24.201 TO 24.328, AND THIS ACT.

13 (5) THE DEPARTMENT SHALL MAINTAIN AND MAKE PUBLICLY AVAILABLE  
14 A LIST OF ALL DEBARRED VENDORS UNDER THIS SECTION. THE LIST OF  
15 DEBARRED VENDORS SHALL CONTAIN THE NAME OF THE VENDOR, THE DATE OF  
16 THE DECISION TO DEBAR THE VENDOR, AND THE DURATION OF THE DEBARMENT  
17 PERIOD.