STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Rep. Kowall

ENROLLED HOUSE BILL No. 5831

AN ACT to amend 1984 PA 431, entitled "An act to prescribe the powers and duties of the department of management and budget; to define the authority and functions of its director and its organizational entities; to authorize the department to issue directives; to provide for the capital outlay program; to provide for the leasing, planning, constructing, maintaining, altering, renovating, demolishing, conveying of lands and facilities; to provide for centralized administrative services such as purchasing, payroll, record retention, data processing, and publishing and for access to certain services; to provide for a system of internal accounting and administrative control for certain principal departments; to provide for an internal auditor in certain principal departments; to provide for certain powers and duties of certain state officers and agencies; to codify, revise, consolidate, classify, and add to the powers, duties, and laws relative to budgeting, accounting, and the regulating of appropriations; to provide for the implementation of certain constitutional provisions; to create funds and accounts; to make appropriations; to prescribe remedies and penalties; to rescind certain executive reorganization orders; to prescribe penalties; and to repeal certain acts and parts of acts," by amending sections 115, 221, 237a, 241, 242, 246, 248, 249, and 393 (MCL 18.1115, 18.1221, 18.1237a, 18.1241, 18.1242, 18.1246, 18.1248, 18.1249, and 18.1393), sections 115, 221, 242, 246, 248, and 393 as amended and section 237a as added by 1999 PA 8 and section 241 as amended by 2010 PA 22, and by adding sections 221a, 238, and 242a.

The People of the State of Michigan enact:

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

(2) "JCOS" means the joint capital outlay subcommittee of the appropriations committees.

(3) Except as used in sections 284 to 292, "record" means a public record as defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

(4) "State agency" means a department, board, commission, office, agency, authority, or other unit of state government. State agency does not include an institution of higher education or a community college or, for purposes of article 2 or 3, the legislative branch of government. For purposes of article 2 or 3, except for those sections pertaining to the authorization, planning, construction, and funding of a capital outlay project, including construction of a facility to house offices or functions necessary for operation of the judicial branch of government, state agency does not include the judicial branch of government.

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

Sec. 221. (1) The director may provide for the rental and lease of land and facilities for the use of state agencies in the manner provided by law. The rentals and leases shall not be effective unless approved by the board.

(2) If the director proposes to lease space or a facility for which the annual base cost of the proposed lease is more than $500,000.00, approval of the joint capital outlay subcommittee is required prior to board approval.

(3) The department shall provide notification to the JCOS and to the fiscal agencies within 5 business days of rental agreements entered into in which the base cost is more than $500,000.00.

(4) For the purposes of this section, the renewal of an existing lease will require the approval of the joint capital outlay subcommittee if the renewal results in changes to the lease that would cause it to meet the requirements outlined in subsection (2).

(5) The department may grant easements, upon terms and conditions the board determines are just and reasonable, for highway and road purposes, and for constructing, operating, and maintaining pipelines or electric, telephone, telegraph, television, gas, sanitary sewer, storm sewer, or other utility lines including all supporting fixtures and other appurtenances over, through, under, upon, and across any land belonging to this state, except lands under the jurisdiction of the department of natural resources, the department of military and veterans affairs, or the state transportation department.

(6) The department shall determine annually the prevailing market rental values of all state owned office facilities and private facilities which provide housing for state employees. The rental values determined pursuant to this subsection shall not be effective unless approved by the board. The renting, leasing, or licensing of state-owned land and facilities to private and public entities shall be at prevailing market rental values or at actual costs as determined by the director.

(7) The department shall charge state agencies for building occupancy in state-owned facilities under the jurisdiction of the department. The rates to be charged for building occupancy shall be coordinated with the budget cycle. The rates shall reflect the actual cost for occupancy of the facilities.

Sec. 221a. (1) The department shall provide the JCOS and the fiscal agencies with the following reports:

(a) By November 1 of each year, for state-owned space as of September 30 of that year, all of the following:

(*i*) The department occupying or using the space.

(*ii*) The building location, including street address, city or township, and county.

(*iii*) The type of building, such as office, warehouse, garage, storage, or other use.

(*iv*) The square footage.

(*v*) The occupancy and usage of space compared to total space available.

(*vi*) The condition of facility and estimated future special maintenance costs.

(b) By November 1 of each year, for privately owned state-leased space as of September 30 of that year, all of the following:

(*i*) The department occupying or using the space.

(*ii*) The lease number.

(*iii*) The building location, including street address, city or township, and county.

(*iv*) The type of building, such as office, warehouse, garage, storage, or other use.

(*v*) The name and address of lessor.

(*vi*) The square footage and net square footage rate.

(*vii*) The occupancy and usage of space compared to total space available.

(*viii*) The monthly and annual cost.

(*ix*) The date the lease starts and expires.

(*x*) The options and services.

(*xi*) The total monthly and annual cost for all leases described in this subdivision.

(c) At least 2 weeks prior to a state lease proposal being included on a JCOS meeting agenda for review and approval, all of the following:

(*i*) The lease number.

(*ii*) The department.

(*iii*) The location.

(*iv*) The lessor.

(*v*) The total square footage and use of space.

(*vi*) Lease costs, to include annual costs of lease, monthly costs of lease, cost per square foot, and increases, if any, from prior lease to new lease.

(*vii*) The costs to renovate.

(*viii*) The costs for utilities.

(*ix*) The management fees.

(*x*) The amount paid for ad valorem property taxes.

(*xi*) The operating costs.

(*xii*) The lease terms.

(*xiii*) If an option to purchase is included, the terms of the offer to purchase and rationale for not funding construction through the state building authority.

(*xiv*) The existing space, including years in existing location, cost, terms of the lease, and disadvantages related to continuing in current location.

(*xv*) The bid process, including an overview including dates, number of proposals submitted, cost range of proposals, comparable market rates, and an explanation if lowest bid was not accepted.

(*xvi*) A cost comparison listing the total square footage, base cost per square foot, annual lease cost, cost for utilities, taxes, operating costs, and total annual cost for the proposed lease and the current lease, and show the difference in costs.

(d) Not later than 45 days after the close of the fiscal year, the status of all active planning and construction projects approved by JCOS and financed through the state building authority or state general fund/general purpose revenues, including all of the following:

(*i*) The name of each project.

(*ii*) The applicable appropriation acts.

(*iii*) The appropriation year and account numbers.

(*iv*) The total authorized cost for the project and state authorized share.

(*v*) The unencumbered balance remaining in each account.

(*vi*) The expiration date of authorization.

(*vii*) The current project status: planning, preconstruction, construction, or postconstruction.

(*viii*) The estimated completion date.

(*ix*) As applicable, the qualifying carryforward exemption under section 248(4) or (6).

(2) This section is in effect until March 31, 2015.

(3) As used in this section, “project” includes appropriation line items made for purchase of real estate.

Sec. 237a. (1) This section pertains to capital outlay projects for community colleges and universities.

(2) The department shall review documents associated with community college and university capital outlay projects for which an appropriation or other authorization has been made.

(3) The department shall provide architectural and professional engineering review of documents including designs, plans, and change orders at each stage of the project to ensure that the project or facility is in compliance with approved program, appropriation, and capital outlay requirements.

(4) The department shall review the award and selection of architects, professional engineers, construction managers, and other design or construction professional service contractors.

(5) The department shall do all of the following:

(a) Review the construction bid.

(b) Review monthly reports to ensure appropriate construction progress, evaluate change orders, and watch for potential problems.

(c) Respond to college and university requests for assistance on the capital outlay process, contractor issues, and other capital outlay related issues.

(d) Provide for field checks and audits throughout the project in order to meet the trustee requirements of the state building authority.

(6) The department may require that community colleges and universities self-managing construction of a capital outlay project enter into an agreement with the department in which the community college or university agrees to construct the project within the total authorized cost, design, and program scope established by the legislature. This agreement shall include, but is not limited to, certification from the community college or university that the operating costs resulting from the capital outlay project are the responsibility of the community college or university. The agreement may include other requirements as identified by the department that are necessary to complete the project and fulfill the project oversight requirements of this act.

(7) The department retains the authority and fiduciary responsibility normally associated with the prudent maintenance of the public's financial and policy interests relative to the state-financed construction projects managed by a community college or university. The director may take appropriate action to bring the capital outlay project to conclusion if the public's financial and policy interests are in jeopardy and there is a failure on the part of a community college or university to adhere to the requirements of this act. The director shall provide notice to the joint capital outlay subcommittee within 10 days of exercising authority under this subsection.

(8) The department may charge a fee for the services described in this section at a rate not to exceed actual costs.

(9) In the event that a college or university chooses to have the department provide for the complete administration of a capital outlay project, then the provisions of section 237 apply to the project.

(10) Prior to state building authority financing, the department shall provide final review of the capital outlay project to ensure compliance with the authorized program, plans, and specifications.

Sec. 238. (1) Universities and community colleges shall report on all contracts entered into for new construction of self-funded projects costing in excess of $1,000,000.00. New construction includes land or property acquisition, remodeling and additions, maintenance projects, roads, landscaping, equipment, telecommunications, utilities, and parking lots and structures. Reports shall be submitted to the JCOS, the fiscal agencies, and the state budget office on or before June 30 and December 31 of each year. Each report shall include, but not be limited to, the following information on all self-funded capital projects commenced for the immediately preceding 6-month period:

(a) Description of the project, to include purpose, need, justification, and start and completion dates.

(b) Statement of gross estimated capital improvement or project costs including a breakdown of land costs, site development and demolition costs, construction costs, costs of furnishings and equipment, fees, and any other special costs.

(c) Listing of all sources of funding for project costs to include borrowed funds, university or college funds, gifts, grants, federal funds, private funds, state funds, student fees or tuition, any other funds, and any combination of funds.

(d) Statement of the impact of project financing on student tuition.

(2) If changes occur in any information provided in a previously submitted report, those changes shall be included in the next report issued. Failure to comply with this section will result in penalties as provided for in the higher education and community colleges appropriations bills. The university of Michigan hospital and health center is excluded from this reporting requirement.

Sec. 241. (1) Except for the contracts permitted in section 240, a contract shall not be awarded for the construction, repair, remodeling, or demolition of a facility unless the contract is let pursuant to a bidding procedure that is approved by the board. The department shall issue directives prescribing procedures to be used to implement this section. The procedures shall require a competitive solicitation in the award of any contract for construction, repair, remodeling, or demolition of a facility.

(2) The department may award or approve the award, if the board approves, of construction contracts to construct a project for which the director is the agent and may expend, for the purposes and in the manner set forth, the amounts appropriated. The director is not the agent for a community college or institution of higher education, but may act in that capacity upon the specific request of a community college or institution of higher education.

(3) In awarding a contract under this section, the department shall give a preference of up to 10% of the amount of the contract to a qualified disabled veteran, as defined in section 261. If the qualified disabled veteran otherwise meets the requirements of the contract solicitation and with the preference is the lowest bidder, the department shall enter into a construction contract with the qualified disabled veteran under this act. If 2 or more qualified disabled veterans are the lowest bidders on a contract, all other things being equal, the qualified disabled veteran with the lowest bid shall be awarded the contract under this act.

(4) Subject to subsection (3), for projects funded in whole or part with state funds, the construction contract award shall be made to the responsive and responsible best value bidder. As used in this subsection, "responsive and responsible best value bidder" means a bidder who meets all the following:

(a) A bidder who complies with all bid specifications and requirements.

(b) A bidder who has been determined by the department to be responsible by the following criteria:

(*i*) The bidder's financial resources.

(*ii*) The bidder's technical capabilities.

(*iii*) The bidder's professional experience.

(*iv*) The bidder's past performance.

(*v*) The bidder's insurance and bonding capacity.

(*vi*) The bidder's business integrity.

(c) A bidder who has been selected by the department through a selection process that evaluates the bid on both price and qualitative components to determine what is the best value for this state. Qualitative components may include, but are not limited to, all of the following:

(*i*) Technical design.

(*ii*) Technical approach.

(*iii*) Quality of proposed personnel.

(*iv*) Management plans.

Sec. 242. (1) State agencies, community colleges, and universities shall develop 5-year capital outlay plans, which shall identify capital outlay needs, including new construction, or the addition, renovation, adaptive reuse, and improvement of existing facilities. For state agencies, community colleges, and universities, the 5-year capital outlay plans shall also include the need for special maintenance. These plans shall be submitted in electronic format to the department, to members of the JCOS, and to the fiscal agencies not later than November 1 of each year.

(2) The department and the JCOS shall review state agency, community college, and university capital outlay plans. The department and the JCOS shall prioritize requests. The department shall include the department-recommended requests in the executive budget recommendation. If a state agency, community college, or university subsequently modifies a request, the revision shall be submitted to the department, members of the JCOS, and the fiscal agencies.

(3) The department and the chairperson and vice-chairperson of the JCOS shall review and evaluate by March 1 of each year capital outlay project requests received from community colleges, universities, and state agencies. All of the following shall be considered when reviewing and evaluating project requests:

(a) Investment in existing facilities and infrastructure.

(b) Life and safety deficiencies.

(c) Occupancy and utilization of existing facilities.

(d) Integration of sustainable design to enhance the efficiency and operations of the facility.

(e) Estimated cost.

(f) Institutional support.

(g) Estimated operating costs.

(h) Impact on tuition, if any.

(i) Impact on job creation in this state.

(j) History of prior appropriations received by the institution through the capital outlay process.

(4) The request for program development and schematic planning must be approved by the JCOS and the legislature through the appropriation process.

(5) Program statements and schematic planning documents shall be reviewed by the department and, when the review is completed, shall be submitted to the JCOS as either approved or not approved.

(6) Upon review and approval by the JCOS, the JCOS and the legislature may authorize the project for final design and construction with a line-item appropriation in an appropriation bill. The appropriations bill shall include appropriations for projected state building authority rental payments associated with the projects that are authorized for construction. The authorization shall include the legislative lease approval required for state building authority financing.

(7) Preliminary plans shall be submitted to the department for review and approval. The department shall review and approve final plans to be prepared for bidding. A summary of bid results shall be submitted to the JCOS.

(8) The department shall provide for review and oversight of capital outlay projects financed either in total or in part by the state building authority pursuant to the provisions of sections 237 and 237a.

(9) Appropriations made for studies and initial plans shall not be considered a commitment on the part of the legislature to appropriate funds for the completion of plans or construction of any project based on the studies or planning documents.

Sec. 242a. The JCOS and department shall annually review the outstanding obligations of the state building authority, as well as the state's lease obligations for previously constructed and state building authority financed projects that provide revenue to the state building authority to retire outstanding bonds.

Sec. 246. The release of allocations may be approved when the legislature has specified either a total authorized cost or has appropriated an amount sufficient to complete the designated project. The authorized cost and program scope of state agency, community college, and university projects shall only be established or revised by specific reference in a budget act.

Sec. 248. (1) This section applies to all state agency, community college, and university capital outlay projects appropriated in any budget act. Projects authorized prior to the amendatory act that added this sentence shall be carried forward consistent with the provisions of this section in effect prior to the date of the amendatory act that added this sentence.

(2) Appropriations made in any budget act for a planning project shall not lapse to the fund from which appropriated at the end of the fiscal year, but shall continue until the purposes for which the sums were appropriated are completed. However, planning authorization for each project which has not been authorized for final design and construction in an appropriation act shall be terminated 24 months after the last day of the fiscal year in which the authorization was originally made, unless the project is specifically reauthorized in a budget act. The termination of authorization in the immediately preceding sentence does not apply if program and schematic planning documents are submitted by community colleges and universities within the time frame specified in the immediately preceding sentence.

(3) Appropriations made in any budget act for final design and construction shall not lapse to the fund from which they are appropriated at the end of the fiscal year, but shall continue until the purposes for which the sums were appropriated are completed. However, final design and construction authorization for each project where construction has not commenced shall be terminated 36 months after the last day of the fiscal year in which the authorization was originally made, unless the project is specifically reauthorized in a budget act.

(4) A capital outlay project may be continued beyond the limitations contained in this section if 1 or more of the following conditions apply:

(a) A bid for the start of construction of the project is awarded or construction of the project has commenced.

(b) A capital outlay project for the purchase of property in which a contract is entered into, but the acquisition is not completed. Only the amount necessary to complete the purchase of property pursuant to the contract shall be carried forward.

(c) A federal grant award is pending release.

(d) The project is subject to legal action, the balance shall lapse 30 days after the legal action is settled, or 30 days after a final order is entered, whichever is later.

(e) The unobligated balance of the appropriations for the project may continue for 12 months after a project is substantially completed.

(f) Not later than 45 days after the conclusion of the fiscal year, the director shall notify the JCOS and the fiscal agencies of planning and construction authorizations that will continue beyond limitations specified under this section.

(5) An unexpended balance which is to lapse pursuant to this section shall lapse to the fund from which the appropriation is made.

(6) A grant or grant-in-aid appropriated for the demolition, acquisition, construction, repair, or maintenance of capital assets shall not be reduced, adjusted, delayed, impounded, lapsed, or otherwise altered by the director for any purpose without legislative approval and shall be carried forward until the work is completed or for 36 months after the last day of the fiscal year in which the construction appropriation was originally made, whichever comes first.

Sec. 249. (1) If matching revenues for a capital outlay project are received in an amount less than the appropriations contained in a budget act, the state portion of the appropriation shall be reduced in proportion to the amount of matching revenue received.

(2) A state agency, community college, or university shall take the steps necessary to make available federal or other money that may be available and to use all or part of the appropriations to meet matching requirements that are considered to be in the best interest of this state. However, the purpose, scope, and total estimated cost of a project shall not be altered to meet the matching requirements. Any federal matching revenues received to support the construction of a project shall be applied to the total authorized project cost, with state, community college, or university financing shares proportionately adjusted.

Sec. 393. (1) Administrative transfers of appropriations within any department to adjust for current cost and price variations from the enacted budget items, or to adjust amounts between federal sources of financing for a specific appropriation line item, or to adjust amounts between restricted sources of financing for a specific appropriation line item, or to pay court judgments, including court approved consent judgments, or to pay all settlements and claims may be made by the state budget director not less than 30 days after notifying each member of the senate and house appropriations committees. Administrative transfers shall not include adjustments that have policy implications or that have the effect of creating, expanding, or reducing programs within that department. Those transfers may be disapproved by either appropriations committee within the 30 days and, if disapproved within that time, shall not be effective.

(2) A transfer of appropriations within any department other than an administrative transfer pursuant to subsection (1) shall not be made by the state budget director unless approved by both the senate and house appropriations committees. If the state budget director does not approve transfers adopted by both the senate and house appropriations committees under this subsection, the state budget director shall notify each member of both the senate and house

appropriations committees of his or her action within 15 days after the senate and house appropriations committees' final approval.

(3) A transfer approved by the appropriations committees shall not be effective unless it is identical in terms of funding sources and dollar amounts.

(4) A transfer approved pursuant to this section shall constitute authorization to transfer the amount recommended and approved. However, the amount shall be reduced by the state budget director to be within the current unobligated amount of the appropriation.

(5) Capital outlay appropriations may be transferred from a state agency, community college, or institution of higher education to provide necessary funds for the completion of an authorized capital outlay project. Operating appropriations shall not be transferred into an existing capital outlay account.

(6) Transfers shall not be authorized under any of the following circumstances:

(a) To create a new line-item appropriation or to create a new state program.

(b) To or from an operating appropriation line-item that did not appear in the fiscal year appropriation bills for which the transfer is being made.

(c) To or from a work project as designated under section 451a.

(d) Between state governmental funds.

(7) Transfers of appropriations for financing sources shall be made concurrently with related transfers of appropriations for line expenditure items.

This act is ordered to take immediate effect.

Gary L Randall

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved ....

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Governor