

## **PROCUREMENT PERFORMANCE-RELATED CONTRACT PROVISIONS**

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**House Bill 5053 (H-1) as reported from committee**  
**Sponsor: Rep. Mark E. Huizenga**  
**Committee: Appropriations**  
**Complete to 2-26-20**

Analysis available at  
<http://www.legislature.mi.gov>

### **SUMMARY:**

House Bill 5053 would amend the Management and Budget Act (1984 PA 431) to require the Department of Technology, Management, and Budget (DTMB) to develop, by October 1, 2020, policies and procedures that require all state procurement contracts entered into by DTMB, or any state agency or department that has delegated procurement authority under the Management and Budget Act, to include performance-related liquidated damages or performance targets with incentives in all procurement contracts. A state agency, or any department that has delegated procurement authority, would also be required to enforce the performance-related contract provisions and to inform DTMB of relevant performance issues. The bill would allow DTMB to grant exceptions to the contract provisions and enforcement requirements if it provides it in a written or electronic record.

MCL 18.1261

### **BACKGROUND INFORMATION:**

According to DTMB, the Central Procurement Office (CPO) rarely issues payments to vendors for goods or services in advance and, instead, issues payments upon the delivery of specified goods and services or the vendor's meeting certain milestones. These conditions on issuing payments to vendors are included in state contracts as a service level agreement (SLA). 2018 PA 389 requires DTMB to develop and update SLAs for IT-related contracts. The CPO may also use performance-related liquidated damages clauses that stipulate in the contract a specific or determinable amount for how much is owed to the state in damages resulting from a breach in the contract or conditions not being met.

The CPO has used SLAs and performance-related liquidated damages clauses in contracting for many years but has begun including them in contracts more frequently over the last 18 months after the establishment of a Supplier Relationship Management team. According to DTMB, SLAs are included in nearly all contracts that are deemed appropriate for them; however, currently, not all state agencies agree to include SLAs upon the CPO's recommendation, most often due to the added time necessary to negotiate the contract agreement.

## **FISCAL IMPACT:**

The bill would have no discernable fiscal impact on the state and local units of government. The CPO reports that the large majority of new contracts currently contain performance-related liquidated damages clauses and would not require significant changes.

The bill would also require DTMB, departments, and agencies to enforce the performance-related provisions. This could bring additional indeterminate costs to those departments and agencies. If a department or agency is the contract owner, it would be responsible for monitoring and enforcing the provisions and may require additional administrative resources and possibly an additional FTE position depending on the volume of contracts under a department. Additionally, the Department of Attorney General (AG) would be responsible for providing any legal and litigation services if enforcement activity reaches that point; however, AG would likely be able to cover with its ongoing appropriations the costs of any caseload resulting from the bill.

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