

HOUSE BILL NO. 160

INTRODUCED BY R. OSMUNDSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE DUTIES OF THE ARCHITECTURE AND  
5 ENGINEERING DIVISION TO INDIVIDUAL AGENCIES; PROVIDING LEGISLATIVE OBJECTIONS TO THE  
6 ADMINISTRATIVE RULE ESTABLISHING THE DIVISION; REPEALING A PORTION OF THE  
7 ADMINISTRATIVE RULE ESTABLISHING THE DIVISION; PROHIBITING THE DEPARTMENT OF  
8 ADMINISTRATION FROM REESTABLISHING THE DIVISION; TRANSFERRING RESPONSIBILITY FOR  
9 CERTAIN LONG-RANGE BUILDING PLANNING TO THE BUDGET DIRECTOR OR THE GOVERNOR;  
10 AMENDING SECTIONS 17-5-820, 17-7-202, 17-7-211, 22-2-403, 22-2-404, 22-2-406, AND 22-2-602, MCA; AND  
11 PROVIDING AN EFFECTIVE DATE."

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13 WHEREAS, the existing Architecture and Engineering Division of the Department of Administration  
14 duplicates other agencies' responsibilities and work; and

15 WHEREAS, the Architecture and Engineering Division is established by an administrative rule; and

16 WHEREAS, Montana law allows the Legislature to repeal an existing rule by enacting a bill; and

17 WHEREAS, funding for the Architecture and Engineering Division could instead be used to fund  
18 Montana's system of primary and secondary education.

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20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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22 **NEW SECTION. Section 1. Legislative objections to an administrative rule.** The legislature makes  
23 the following objections to ARM 2.1.101(2)(a), which establishes the architecture and engineering division of the  
24 department of administration:

25 (1) the division duplicates long-range building planning responsibilities currently performed by state  
26 agencies;

27 (2) the division also duplicates work done by these state agencies during the contracting and building  
28 processes; and

29 (3) the size of Montana's state government can be reduced by eliminating parts of government that are  
30 found to be duplicative or not cost-efficient.



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2           **NEW SECTION. Section 2. Repeal of administrative rule establishing architecture and**  
3 **engineering division of department of administration.** ARM 2.1.101(2)(a), establishing the architecture and  
4 engineering division of the department of administration, is repealed.

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6           **NEW SECTION. Section 3. Department prohibited from reestablishing architecture and**  
7 **engineering division or performing functions previously assigned to division.** The department of  
8 administration may not reestablish or perform the functions of the architecture and engineering division after [the  
9 effective date of this act].

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11           **Section 4.** Section 17-5-820, MCA, is amended to read:  
12           **"17-5-820. Authorization of bonds.** (1) The board of examiners is authorized to issue and sell general  
13 obligation bonds in an amount not exceeding \$20 million in accordance with the terms and in the manner required  
14 by Title 17, chapter 5, part 8, for the purpose of financing and acquiring infrastructure improvements as  
15 enumerated in 7-15-4288 for aerospace transportation and technology infrastructure development projects  
16 recommended by the department of commerce in accordance with the authority granted to the board by this  
17 section. The bonds are in addition to any other authorization to the board to issue and sell general obligation  
18 bonds and subject to the conditions set forth in this section.

19           (2) The department of commerce may request the board of examiners to issue the bonds for one or more  
20 specified projects in one or more series, but the total amount of bonds issued may not exceed \$20 million. Bond  
21 proceeds must be appropriated to the department of commerce, and the department of commerce is authorized  
22 to acquire or construct the infrastructure improvements, to contract with the incorporated city or town, county, or  
23 city-county consolidated local government in which a project is located, to contract with an airport authority as  
24 defined in 67-1-101, a local port authority as described in 7-14-1101, or a regional port authority as described in  
25 7-14-1102, to contract with a certified regional development corporation as defined in 90-1-116, or, upon a  
26 determination that it is in the best interest of the project, to contract with the developer of an approved project for  
27 the acquisition or construction of the infrastructure improvement. The plans and specifications for the  
28 infrastructure to be financed from the proceeds of the bonds must be prepared by an engineer or architect who  
29 is licensed and bonded in Montana, and the state must be named as an additional insured under any contract,  
30 performance bond, or other documents for the design of any improvements to be financed by the state. The plans

1 and specifications must be reviewed and approved by the department of commerce ~~after consultation with the~~  
2 ~~architecture and engineering division of the department of administration.~~ The design and acquisition or  
3 construction of the infrastructure for approved projects are not, with the exception of Title 18, chapter 2, part 4,  
4 subject to the public procurement requirements contained in Title 18. All construction contracts entered into for  
5 the construction of improvements to be financed under this section must name the state as an additional insured  
6 if the state is not otherwise party to the contract. All improvements financed with bond proceeds must be owned  
7 by the state, and the use must be governed by a development agreement between the state and the developer  
8 of the project. The agreement may provide for the lease or the use of the infrastructure at less than fair market  
9 value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the  
10 amount of capital contributed by the developer, and the projected tax revenue to be received by the state and  
11 local governments from the project over the term of the lease or use agreement. The agreement must require  
12 the contractor to insure for liability and workers' compensation claims during construction and must provide the  
13 project developer with the right of first refusal for the purchase of any real property and improvements financed  
14 by the bonds at fair market value. Fair market value must be determined by a certified appraiser. For purposes  
15 of this section, state and local governments may not provide telecommunications or other services in competition  
16 with private providers unless private providers cannot provide the services.

17 (3) It is the intent of the legislature that state individual and corporate income taxes and state property  
18 taxes generated by the aerospace transportation and technology infrastructure development projects will be at  
19 least equal to the projected amount of the debt service to be paid by the state for the bonds authorized by this  
20 section over the term of the bonds. Prior to requesting the board of examiners to issue the bonds, the department  
21 of commerce shall determine that the developer of a proposed project has the financial ability to implement the  
22 project based upon the audited financial statements of the developer. When requesting the board to issue the  
23 bonds, the department of commerce shall present to the legislative finance committee and to the department of  
24 administration for presentation to the board the following:

25 (a) evidence satisfactory to the board that the developer of each aerospace transportation and  
26 technology infrastructure development project has committed itself to locate its project in Montana; and

27 (b) a certificate signed by the director of the office of budget and program planning that the proposed  
28 project will, over the term of the bonds, generate state individual and corporate income taxes and state property  
29 taxes at least equal to the total aggregate amount of principal and interest on the bonds over the term of the  
30 bonds. In preparing the analysis for the report on the projected tax revenue from the project, the multiplier effect

1 may be taken into account, using the number of jobs, the salary levels for the jobs, and the estimated date of hire  
 2 for each position that the developer will commit to create as part of the development agreement. The development  
 3 agreement must provide that if the developer has not created the total number of jobs at the estimated salaries  
 4 by the date specified in the development agreement and assumed for purposes of meeting the projections, the  
 5 state may terminate the lease or use of the improvements upon 30 days' notice. If the department of commerce  
 6 is unable to enter into a new lease or use agreement for the improvements that is advantageous to the state, the  
 7 state may sell the facility to the highest and best bidder and use the proceeds of the sale to redeem the  
 8 outstanding bonds.

9 (4) In determining whether to recommend to the board of examiners that improvements should be  
 10 constructed by the state from the proceeds of the bonds for a project, the department of commerce may take into  
 11 consideration only the following factors:

- 12 (a) whether the project is eligible for financing;
- 13 (b) whether there is sufficient evidence to demonstrate the developer's ability to implement the project;
- 14 (c) the projected tax revenue report;
- 15 (d) whether the project as proposed and situated can obtain the necessary zoning, building, and  
 16 environmental permits required; and
- 17 (e) whether the project is in the public interest.

18 (5) In recommending the amount of bonds to be issued for a qualified project, the department of  
 19 commerce shall independently determine that the proposed estimated cost of the project is not in excess of what  
 20 is required for the project and independently verify the projected costs of designing and constructing the  
 21 improvements proposed to be financed exclusive of any development fee to the developer. The authorized bond  
 22 proceeds must be used for projects on a first-come, first-served basis."  
 23

24 **Section 5.** Section 17-7-202, MCA, is amended to read:

25 **"17-7-202. Preparation of building programs and submission to ~~department of administration~~**  
 26 **budget director.** (1) Before July 1 of each even-numbered year, each state agency and institution shall submit  
 27 to the ~~department of administration~~ budget director, on forms furnished by the ~~department~~ budget director, a  
 28 proposed long-range building program, if any, for the agency or institution. Each agency and institution shall  
 29 furnish any additional information requested by the ~~department~~ budget director relating to the utilization of or need  
 30 for buildings.

1           (2) The ~~department~~ budget director shall examine the information furnished by each agency and  
 2 institution and shall gather whatever additional information is necessary and conduct whatever surveys are  
 3 necessary in order to provide a factual basis for determining the need for and the feasibility of the construction  
 4 of buildings. The information must be compiled by the department budget director ~~shall be submitted to the~~  
 5 ~~governor~~ before December 1 of each even-numbered year."

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7           **Section 6.** Section 17-7-211, MCA, is amended to read:

8           **"17-7-211. Expansion to be authorized -- budget amendment.** (1) An existing capital project may not  
 9 be expanded beyond the scope of the project approved by the legislature unless the expansion of the project is  
 10 authorized by a long-range building program budget amendment approved by the budget director.

11           (2) ~~A~~ An agency seeking to expand the scope of an existing capital project shall submit a proposed  
 12 long-range building program budget amendment ~~must be submitted~~ to the budget director ~~through the~~  
 13 ~~architecture and engineering division of the department of administration.~~ The budget director, through a  
 14 long-range building program budget amendment, may authorize:

15           (a) the transfer of excess funds appropriated to a capital project within an agency to increase the  
 16 appropriation of another capital project within that agency; or

17           (b) financing to expand a project with funds that were not available for consideration by the legislature."

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19           **Section 7.** Section 22-2-403, MCA, is amended to read:

20           **"22-2-403. Definitions.** As used in this part, the following definitions apply:

21           (1) (a) "Artist" means a practitioner in the visual arts generally recognized by the practitioner's peers or  
 22 critics as a professional who produces works of art.

23           (b) The term does not include the project architect, or any member of the architect's firm, of a new state  
 24 building that is to have works of art under the provisions of this part.

25           (2) "New state building" means any structure to be built, remodeled, or renovated with money  
 26 appropriated by the legislature that is, ~~in the opinion of the architecture and engineering division of the department~~  
 27 ~~of administration,~~ appropriate for the inclusion of works of art.

28           (3) (a) "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural,  
 29 fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching, lithograph,  
 30 offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed

1 media (including a collage, assemblage, or any combination of art media).

2 (b) The term does not include environmental landscaping."  
3

4 **Section 8.** Section 22-2-404, MCA, is amended to read:

5 **"22-2-404. Art for new state buildings -- finance.** (1) Subject to legislative allocations as provided in  
6 subsection (2), all capital project appropriations by the legislature shall include, as a part of the appropriation, an  
7 amount not to exceed 1% of the amount appropriated for the use of the Montana arts council for the acquisition  
8 of works of art for new state buildings, maintenance of works of art, and administration of this part as provided  
9 in subsection (3).

10 (2) (a) If a state building recommended for construction in the report required by Title 17, chapter 7, part  
11 2, is also recommended as appropriate for the inclusion of works of art as provided in 22-2-403(2), the report shall  
12 so state, and in addition the report shall include any recommendation made by the Montana arts council  
13 concerning the appropriateness of the building for the inclusion of works of art, the types of works of art  
14 suggested for inclusion in such building, and the anticipated cost of such suggested works of art, including costs  
15 of acquisition, maintenance, and administrative expenses associated with the suggested works of art. ~~The~~  
16 ~~Montana arts council may submit a recommendation even if the architecture and engineering division of the~~  
17 ~~department of administration has determined that a structure is not appropriate for inclusion of works of art.~~

18 (b) The legislature may, for those buildings recommended as appropriate for the inclusion of works of  
19 art, allocate an amount not to exceed 1% of the appropriated cost for use as specified in subsection (1).

20 (c) Additional funds, including separate appropriations, donations, grants, and other available  
21 governmental funds, may be used for the acquisition of works of art for new state buildings.

22 (3) (a) One percent of the funds received from the maximum appropriation setoff allocated by the  
23 legislature must be granted to the Montana arts council for the maintenance of art in state buildings.

24 (b) The administration of this part may be funded out of the appropriation setoff allocated by the  
25 legislature."  
26

27 **Section 9.** Section 22-2-406, MCA, is amended to read:

28 **"22-2-406. Administration -- selection of works of art.** (1) The Montana arts council is primarily  
29 responsible for the administration of this part. The council shall:

30 (a) submit its recommendations to the ~~architecture and engineering division of the department of~~

1 ~~administration~~ governor for inclusion in the report required by Title 17, chapter 7, part 2, concerning the  
 2 appropriateness of any building for the inclusion of works of art, a description of the types of works of art  
 3 suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative  
 4 expenses associated with the suggested works of art;

5 (b) appoint a three-member screening committee for each new state building to recommend artists to  
 6 be commissioned or completed works of art to be purchased. The committee consists of the project architect or  
 7 the architect's designee, a professional artist, and a representative from the user agency who is a resident of the  
 8 community in which the new state building is to be constructed.

9 (c) select, commission the artist for, review the design, execution, and placement of, and finally accept  
 10 all works of art. The Montana arts council shall consult with the screening committee in fulfilling the requirements  
 11 of this subsection (1)(c).

12 (d) assist in contract negotiations with artists who are selected;

13 (e) ensure that works of art acquired for display under the provisions of this part are displayed in a  
 14 manner that they are in public view;

15 (f) ensure that each work of art is properly maintained and may use the funds provided for in 22-2-404  
 16 or any other funds available for maintenance; and

17 (g) maintain a close working relationship with the artist throughout each project.

18 (2) A payment may not be made to any artist for works of art under this part without prior authorization  
 19 of the Montana arts council."

20

21 **Section 10.** Section 22-2-602, MCA, is amended to read:

22 **"22-2-602. Advisory committee -- composition -- duties.** (1) To coordinate the project provided for  
 23 in 22-2-601, the governor shall appoint an advisory committee composed of the following ~~11~~ 10 members:

24 (a) a representative from the Montana arts council;

25 (b) a representative from each of the state's seven Indian reservations;

26 ~~(c) a representative from the architecture and engineering division of the department of administration;~~

27 ~~(d)~~(c) the state director of Indian affairs or the state director's designee; and

28 ~~(e)~~(d) a representative of the Montana historical society.

29 (2) The advisory committee shall review the proposals submitted in the design competition for the  
 30 monument and flag circle and select an appropriate design.

1           (3) The advisory committee shall make recommendations to the department of administration for an  
2 appropriate site for the monument and the flag circle on the grounds of the capitol complex. The monument and  
3 flag circle may be located separately on the grounds.

4           (4) The advisory committee shall solicit and accept private contributions to finance the monument and  
5 the placement of the monument and the flag circle on the grounds of the capitol complex."

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7           NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2011.

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