

SENATE BILL NO. 328  
INTRODUCED BY D. STEINBEISSER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN OPTIONAL PROCUREMENT EXCEPTION APPLICABLE TO THE PURCHASE OF MONTANA-PRODUCED FOOD PRODUCTS BY PUBLIC AGENCIES; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 18-4-132, MCA, is amended to read:

**"18-4-132. Application.** (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a another statute ~~that provides that this chapter does not apply to the contract. This chapter applies to;~~

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. ~~This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to; and~~

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

~~(2)(3)~~ This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

~~(3)(c)~~ This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the

university system;

~~(4)(d) This chapter does not apply to~~ contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;

~~(5)(e) This chapter does not apply to~~ contracts entered into by the state compensation insurance fund to procure insurance-related services;

~~(6)(f) This chapter does not apply to~~ employment of:

~~(a)(i)~~ a registered professional engineer, surveyor, real estate appraiser, or registered architect;

~~(b)(ii)~~ a physician, dentist, pharmacist, or other medical, dental, or health care provider;

~~(c)(iii)~~ an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

~~(d)(iv)~~ consulting actuaries;

~~(e)(v)~~ a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

~~(f)(vi)~~ a private consultant employed by the Montana state lottery;

~~(g)(vii)~~ a private investigator licensed by any jurisdiction;

~~(h)(viii)~~ a claims adjuster; or

~~(i)(ix)~~ a court reporter appointed as an independent contractor under 3-5-601;

~~(7)(g) (a) This chapter does not apply to~~ electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

~~(b)~~ Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

~~(8)(h) This chapter does not apply to~~ the purchase or commission of art for a museum or public display;

or

~~(9)(i) This chapter does not apply to~~ contracting under 47-1-216 of the Montana Public Defender Act.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by open purchase or contract at the place and in the manner in which Montana-produced food products are usually bought and sold. Montana-produced food products may be procured by open purchase or contract rather than by standard procurement procedures when:

(i) the quality of available Montana-produced food products is substantially equivalent to the quality of

similar food products produced outside the state;

(ii) available Montana-produced food products are suitable for the use intended by the purchasing entity;

(iii) a bidder is able to supply Montana-produced food products in sufficient quantity; and

(iv) a bid or quoted price for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a public agency, the higher bid is reasonable and capable of being paid out of that public agency's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

(5) As used in this section, the following definitions apply:

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, or manufactured."

**NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. Section 3. Applicability.** [This act] applies to public contracts for the purchase of food products by public agencies that are opened to bidding on or after [the effective date of this act].

- END -

