

HOUSE BILL NO. 585

INTRODUCED BY G. BENNETT

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW BY THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE OR A COMMISSION APPOINTED BY THE GOVERNOR OF CERTAIN CONTRACTS FOR THE PROCUREMENT OF THE SERVICES OF PRIVATE ATTORNEYS BY STATE AGENCIES; AMENDING SECTIONS 5-5-228 AND 18-4-302, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Review of agency contracts for private attorney services.** (1) A contract

for procurement of the services of a private attorney may not be entered into by an agency unless the agency has complied with the requirements of this section.

(2) Subject to [section 2], when the state administration and veterans' affairs interim committee receives a proposed contract for procurement of the services of a private attorney by an agency pursuant to [section 3], the committee shall:

(a) hold a public hearing on the contract referred from the agency at which the terms of the contract are subject to public comment;

(b) conduct an analysis of the proposed contract in light of the terms of the contract, the public comment received, and the requirements of state law; and

(c) issue a report to the agency containing the results of the analysis required by subsection (1)(b) and any changes to the contract that the committee recommends to the language or terms of the contract in light of that analysis.

(3) The committee report must be issued within 60 days from the committee's public hearing on the contract. If the committee report recommends no changes to the language or terms of the contract, the agency may enter into the proposed contract. If the committee recommends changes to the contract, the agency shall make changes responsive to the committee report, file a statement with the committee as provided for in subsection (3), or both, as appropriate. The agency shall respond to the report of the committee within 14 days after receiving the report.



1 (4) If the committee report recommends changes to the contract that the agency chooses not to adopt,  
2 the agency shall return the unrevised contract to the committee with a statement addressing the reason why the  
3 agency chose not to adopt the committee's recommendation for changes. Upon receipt of the statement and  
4 contract from the agency, the committee may, within 60 days, hold an additional public hearing on the contract  
5 proposed by the agency, including any changes to the language of the contract agreed to by the agency, and may  
6 issue an additional report in the same manner as the first report. Except as provided in subsection (4), if the  
7 committee determines not to hold a hearing or at the end of the 60-day period provided for in this subsection, the  
8 agency may enter into the contract in compliance with Title 18, chapter 4, part 3.

9 (5) Any revised contract containing terms not previously reviewed or recommended by the committee  
10 that can reasonably be expected to increase the fees and expenses to be paid by the agency must be treated  
11 as a new contract and must be filed and reviewed in accordance with subsections (1) through (3).

12 (6) Terms used in this section are defined in [section 3].  
13

14 **NEW SECTION. Section 2. Governor to create commission to review contracts for procurement**  
15 **of private attorney services -- commission duties.** (1) The governor shall create a commission to review  
16 contracts for the procurement of the services of private attorneys by state agencies if the state administration and  
17 veterans' affairs interim committee is unable to review a proposed contract pursuant to [section 1] for the first time  
18 within 60 days from its receipt by the committee. The commission is composed of five members of the legislature  
19 composed of one member to be appointed by the governor and one member to be appointed by each of the  
20 majority and minority leaders of the house of representatives and the senate. The members of the commission  
21 serve without pay but must be reimbursed for their expenses as provided in 2-18-501 through 2-18-503.

22 (2) If the state administration and veterans' affairs interim committee is unable to review a proposed  
23 contract within the time period provided in subsection (1), the commission shall review the proposed contract  
24 under the same procedure and subject to the same time periods that apply to the state administration and  
25 veterans' affairs interim committee under [section 1].

26 (3) If the state agency files a statement with the governor that time exigencies require the employment  
27 of a private attorney before the schedule provided for in subsection (1) and (2) may be complied with, the  
28 commission shall negotiate a time schedule for the review of the proposed contract as provided in subsections  
29 (1) and (2) on an expedited schedule mutually agreed upon by the agency and the commission.

30 (4) Terms used in this section are defined in [section 3].

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2           **NEW SECTION. Section 3. Contracts for procurement of services of private attorney -- maximum**  
3 **hourly charge.** (1) Before an agency may contract with an attorney who is not a state employee to act as an  
4 attorney for the agency, the agency, in a matter for which the legal fees and expenses will exceed or are  
5 reasonable likely to exceed \$500,000, shall, before complying with the requirements of this part, provide a copy  
6 of the proposed contract to the state administration and veterans' affairs interim committee provided for in 5-5-228  
7 or the commission created by [section 2], as appropriate, along with a statement explaining:

8           (a) the reason why the state should procure the services of a private attorney and the alternatives  
9 considered by the agency and the reason for rejection of those alternatives;

10           (b) the name of the attorney with whom the agency proposes to contract and the reason for the selection  
11 of that attorney;

12           (c) any past or present relationship that the agency has with the attorney with whom the agency  
13 proposes to contract; and

14           (d) if the proposed contract contemplates that all or part of the fee is contingent on the outcome of the  
15 legal matter for which the attorney is to be hired, the reasons the contingent-fee arrangement is believed by the  
16 agency to be in the state's best interest and any effort that was undertaken by the agency to obtain a private  
17 attorney on a noncontingent-fee basis.

18           (2) (a) A contract with an attorney that is subject to this section must contain a provision that at the  
19 conclusion of the matter for which the private attorney was retained pursuant to a contingent-fee contract, the  
20 attorney shall submit to the agency a statement showing:

21           (i) the hours worked on the matter for which the attorney has billed the agency;

22           (ii) the expenses incurred by the attorney;

23           (iii) the aggregate fee amount; and

24           (iv) a breakdown as to the hourly rate, based upon hours worked divided into the fee recovered, less  
25 expenses.

26           (b) An agency may not incur fees and expenses in excess of \$500 per hour for legal services. If a  
27 statement as provided in subsection (2)(a) discloses a fee in excess of \$500 per hour, the agency shall reduce  
28 any amount paid or to be paid pursuant to that statement to an amount equivalent to no more than \$500 per hour.

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

30           (a) "Agency" means a department, division, office, commission, committee, or any other entity of the

1 executive branch of state government.

2 (b) "Attorney" means one or more individual attorneys or a group of attorneys practicing as one or more  
3 law firms.

4 (c) "Fee" includes any form of compensation for legal services, whether paid as an hourly rate, a flat  
5 charge, or a contingency charge in which the attorney receives nothing if the agency does not prevail.

6

7 **Section 4.** Section 5-5-228, MCA, is amended to read:

8 **"5-5-228. State administration and veterans' affairs interim committee.** (1) The state administration  
9 and veterans' affairs interim committee has administrative rule review, draft legislation review, program  
10 evaluation, and monitoring functions for the public employee retirement plans and for the following executive  
11 branch agencies and the entities attached to the agencies for administrative purposes:

12 (a) department of administration;

13 (b) department of military affairs; and

14 (c) office of the secretary of state.

15 (2) The committee shall:

16 (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based  
17 on reports from the teachers' retirement board, the public employees' retirement board, and the board of  
18 investments, and study and evaluate the equity and benefit structure of the state's public employee retirement  
19 systems;

20 (b) establish principles of sound fiscal and public policy as guidelines;

21 (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy  
22 principles;

23 (d) solicit and review proposed statutory changes to any of the state's public employee retirement  
24 systems;

25 (e) report to the legislature on each legislative proposal reviewed by the committee. The report must  
26 include but is not limited to:

27 (i) a summary of the fiscal implications of the proposal;

28 (ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

29 (iii) an analysis of the soundness of the proposal as a matter of public policy;

30 (iv) any amendments proposed by the committee; and

- 1 (v) the committee's recommendation on whether the proposal should be enacted by the legislature.
- 2 (f) attach the committee's report to any proposal that the committee considered and that is or has been
- 3 introduced as a bill during a legislative session; ~~and~~
- 4 (g) publish, for legislators' use, information on the state's public employee retirement systems; and
- 5 (h) review contracts for procurement of the services of a private attorney as provided in [section 1].
- 6 (3) The committee may:
- 7 (a) specify the date by which proposals affecting a retirement system must be submitted to the committee
- 8 for the review contemplated under subsection (2)(d); and
- 9 (b) request personnel from state agencies, including boards, political subdivisions, and the state public
- 10 employee retirement systems, to furnish any information and render any assistance that the committee may
- 11 request."

12

13 **Section 5.** Section 18-4-302, MCA, is amended to read:

14 **"18-4-302. Methods of source selection -- authorization for alternative procurement methods.** (1)

15 Unless otherwise authorized by law and except as provided in [section 3], all state contracts for supplies and

16 services must be awarded by a source selection method provided for in this title. Supplies or services offered for

17 sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services

18 are regulated by the public service commission or other governmental authority.

19 (2) When the department or another agency opens bids or proposals, if a supplier's current publicly

20 advertised or established catalog price is received at or before the time that the bids or proposals are opened and

21 is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions

22 for the best proposal received using the same factors and weights included in the proposal, the department or

23 agency may reject all bids and purchase the supply from that supplier without meeting the requirements of

24 18-4-303 through 18-4-306.

25 (3) An office supply procured by the department's central stores program may be purchased by an

26 agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly

27 advertised price, established catalog price, or discount price offered to the agency is less than the price offered

28 by the central stores program if the office supply conforms in all material respects to the terms, conditions, and

29 quality offered by the central stores program. A state office supply term contract must include a provision by which

30 the contracting parties acknowledge and agree to the provisions of this subsection.

- 1           (4) (a) Under rules adopted by the department, an agency may request from the department  
2 authorization for an alternative procurement method.
- 3           (b) A request for authorization must specify:
- 4           (i) the problem to be solved;
- 5           (ii) the proposed alternative procurement method;
- 6           (iii) the reasons why the alternative procurement method may be more appropriate than a method  
7 authorized by law; and
- 8           (iv) how competition and fairness will be achieved by the alternative procurement method.
- 9           (c) Within 30 days after receiving the request, the department shall:
- 10          (i) evaluate the request;
- 11          (ii) approve or deny the request; and
- 12          (iii) issue a written statement providing the reasons for its decision.
- 13          (d) Whenever the department approves a request submitted under this section, the department:
- 14          (i) may authorize the alternative procurement method on a trial basis; and
- 15          (ii) if the alternative procurement method is employed, shall make a written determination as to the  
16 success of the method.
- 17          (e) If the department determines that the alternative procurement method is successful and should be  
18 an alternative that is generally available, it shall promulgate rules that establish the use of the alternative  
19 procurement method as an additional source selection method. The rules promulgated by the department under  
20 this subsection must reflect the purposes described in 18-4-122."

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22           NEW SECTION. Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an  
23 integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 1].

24           (2) [Section 2] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the  
25 provisions of Title 2, chapter 15, part 2, apply to [section 2].

26           (3) [Section 3] is intended to be codified as an integral part of Title 18, chapter 4, part 3, and the  
27 provisions of Title 18, chapter 4, part 3, apply to [section 3].

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29           NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable  
30 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are severable from the invalid applications.

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3 NEW SECTION. Section 8. Applicability. [This act] applies to contracts for procurement of the services  
4 of a private attorney by a state agency proposed for agreement after October 1, 2011.

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