

HOUSE BILL NO. 569

INTRODUCED BY T. JACOBSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE PROCUREMENT LAWS; PROHIBITING A STATE CONTRACT FROM BEING ISSUED TO ANOTHER STATE AGENCY OR ENTITY IF A PRIVATE ENTITY HAS SUBMITTED A RESPONSE AND IS OTHERWISE QUALIFIED TO RECEIVE THE CONTRACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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 -- prohibition on award to state agency or entity. (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 another statute;

(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; 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.

(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;

(c) 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;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than

1 \$250,000;

2 (e) contracts entered into by the state compensation insurance fund to procure insurance-related
3 services;

4 (f) employment of:

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

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

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

10 (iv) consulting actuaries;

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

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

14 (vii) a private investigator licensed by any jurisdiction;

15 (viii) a claims adjuster; or

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

17 (g) electrical energy purchase contracts by the university of Montana or Montana state university, as
18 defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the
19 purchase or acquisition of energy must be retained by the board of regents of higher education for university
20 allocation and expenditure.

21 (h) the purchase or commission of art for a museum or public display;

22 (i) contracting under 47-1-216 of the Montana Public Defender Act; or

23 (j) contracting under Title 90, chapter 4, part 11.

24 (4) (a) Food products produced in Montana may be procured by either standard procurement procedures
25 or by direct purchase. Montana-produced food products may be procured by direct purchase when:

26 (i) the quality of available Montana-produced food products is substantially equivalent to the quality of
27 similar food products produced outside the state;

28 (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

29 (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest
30 bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid

1 or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for
2 a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's
3 existing budget without any further supplemental or additional appropriation.

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

6 (5) If a state agency or entity issues an invitation for bid or request for proposal that is subject to the
7 provisions of this chapter, another state agency or entity may submit a response to the invitation for bid or request
8 for proposal but may not be awarded the contract if a private entity has submitted a response and is otherwise
9 qualified to receive the award pursuant to this chapter.

10 ~~(5)~~(6) As used in this section, the following definitions apply:

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

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

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

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