

HOUSE BILL NO. 260

INTRODUCED BY J. KASSMIER

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A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CONTRACTS ISSUED UNDER THE MONTANA COMMUNITY SERVICE ACT FROM THE MONTANA PROCUREMENT ACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, the Montana Community Service Act promotes public service that provides a benefit to the State of Montana; and

WHEREAS, the Montana Community Service Act asks state agencies, including the Departments of Environmental Quality, Natural Resources and Conservation, Transportation, and Fish, Wildlife, and Parks, to develop and implement community service opportunities consistent with the mission and function of each agency; and

WHEREAS, the Montana Community Service Act authorizes state agencies engaged in community service to execute contracts or cooperative agreements; and

WHEREAS, the omission of the Montana Community Service Act from the list of exemptions to the Montana Procurement Act creates obstacles to the development and implementation of contracts for community service projects to benefit the state; and

WHEREAS, the addition of the Montana Community Service Act to the list of exemptions to the Montana Procurement Act is consistent with current practice for state agencies entering into contracts and cooperative agreements; and

WHEREAS, this act reconciles the intention of the Montana Community Service Act with the Montana Procurement Act to facilitate the development and implementation of community service opportunities consistent with section 90-14-105, MCA, and it clarifies that agencies, when operating under the Montana Community Service Act, may be exempted from state procurement requirements.

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:



1 (a) the expenditure of public funds irrespective of their source, including federal assistance money, by  
2 this state acting through a governmental body under any contract, except a contract exempted from this chapter  
3 by this section or by another statute;

4 (b) a procurement of supplies or services that is at no cost to the state and from which income may be  
5 derived by the vendor and to a procurement of supplies or services from which income or a more advantageous  
6 business position may be derived by the state; and

7 (c) the disposal of state supplies.

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

11 (3) This chapter does not apply to:

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

14 (b) construction contracts;

15 (c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by  
16 student activity fees designated for use by the student associations of the university system;

17 (d) contracts entered into by the Montana state lottery that have an aggregate value of less than  
18 \$250,000;

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

21 (f) employment of:

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

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

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

27 (iv) consulting actuaries;

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

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

1 (vii) a private investigator licensed by any jurisdiction;  
 2 (viii) a claims adjuster; or  
 3 (ix) a court reporter appointed as an independent contractor under 3-5-601;  
 4 (g) electrical energy purchase contracts by the university of Montana or Montana state university, as  
 5 defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the  
 6 purchase or acquisition of energy must be retained by the board of regents of higher education for university  
 7 allocation and expenditure.

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

9 (i) contracting under 47-1-121 of the Montana Public Defender Act; ~~or~~

10 (j) contracting under Title 90, chapter 4, part 11; or

11 (k) contracting under Title 90, chapter 14, part 1.

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

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

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

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

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

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

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

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

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30 NEW SECTION. **Section 2. Contracts and cooperative agreements authorized under part. A**

1 contract or cooperative agreement may be authorized under this part for the purposes of an exemption from the  
2 Montana Procurement Act pursuant to 18-4-132(3)(k) only if:

3 (1) the contract implements a community service project consistent with the provisions of 90-14-105; and

4 (2) the contract does not involve an activity prohibited under 90-14-106.

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6 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an  
7 integral part of Title 90, chapter 14, part 1, and the provisions of Title 90, chapter 14, part 1, apply to [section 2].

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9 **NEW SECTION. Section 4. Applicability.** [This act] applies to contracts and cooperative agreements  
10 executed on or after [the effective date of this act].

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