



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** SB0287

**Title:** Generally revise public project financing laws

**Primary Sponsor:** Sales, Walt

**Status:** As Introduced

- Significant Local Gov Impact     
  Needs to be included in HB 2     
  Technical Concerns  
 Included in the Executive Budget     
  Significant Long-Term Impacts     
  Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**Description of fiscal impact:** SB 287 requires that when awarding public contracts, if the lowest bidder does not have a physical branch in Montana, the next lowest bidder who does have a physical branch in the state be given five working days to offer a bid equal to the lowest bidder.

### FISCAL ANALYSIS

#### Assumptions:

1. The Department of Administration's (DOA) Architecture and Engineering Division (A&E) awards contracts to the lowest responsible bidder for the construction of public works and does not award contracts for the financing of public works.

#### Technical Notes:

Department of Administration - State Financial Services Division – State Procurement Bureau

2. The definition of "public agency" on line 24 conflicts with the definition of the same term in 18-1-101 (2), MCA.
3. The definition of "public project" is limited to those located on state property. Typically, local governments and political subdivisions would not be doing business on state property.

4. This bill could impact the ability to negotiate agreements with equipment manufacturers that offer financing arrangements as a part of the purchase or upgrades. They would not be considered a "financial institution" under the proposed definition. The fiscal impact cannot be quantified.
5. On page 1, line 13, the term "public work" conflicts with the term "public project."
6. Page 1, line 28, uses the term "public works project". There is no definition of public works project. Is the intent to be "public works contract" in 18-4-401, MCA?
7. The bill may impact the reciprocal preference law, 18-1-102, MCA. This may penalize financial institutions with physical locations in Montana if they bid on these types of agreements in other states that have reciprocal preference laws, which is the majority of states.
8. The bill may negatively impact competition. For example, an out-of-state financial institution loses out on a bid under this law, if passed. The next time a bid goes out, it may not want to invest resources to bid knowing that any in-state financial institution could match its bid and win. Once out-of-state vendors quit bidding, the state's costs may go up because of decreased competition. This fiscal impact cannot be quantified.

Architecture and Engineering Division

9. New section 1, page 1, line 11, parenthesis (2), allows for state agencies to award a contract for the financing of a public works project. This language conflicts with 17-5-1612, MCA. This statute only allows state agencies to obtain loans when a simple majority vote authorizes a loan when the security is for an enterprise; or internal service fund or when a two-thirds vote authorizes a loan when the security is a general fund appropriation or revenue source, or any type of tax or fee imposed by the legislature.
10. New section 1, page 1, line 25, adds "local government" to the definition of public agency. Given the current codification instructions, this will add two differing definitions of public agency within Title 18, Chapter 1.
11. Under new section 1, page 2, line 2, the new definition of "state property" would now include a building that is leased, which would create a conflict with the definition of "building" in 18-2-101, MCA, where state real property does not include leases for the purpose of constructing a public works project. Additionally, if property is leased-to-own, consent of two-thirds of the Legislature is required by 18-3-101, MCA.

Director's Office

12. DOA finances of public work projects such as buildings with general obligation bonds. These bonds are sold in the municipal bond market by underwriters at the "lowest cost." Bonds are sold to individual investors in denominations of \$5,000.

NO SPONSOR SIGNATURE

*Sponsor's Initials*

2/25

*Date*

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2/23/21

*Date*