

HOUSE BILL NO. 573

INTRODUCED BY J. KASSMIER, J. COHENOUR

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A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING ALL CONTRACTS MADE UNDER THE MONTANA COMMUNITY SERVICE ACT FROM THE MONTANA PROCUREMENT ACT REGARDLESS OF THE DOLLAR AMOUNT OF THE CONTRACT; 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; and

WHEREAS, the Montana Community Service Act asks state agencies, including the Department of Environmental Quality, the Department of Natural Resources and Conservation, the Department of Transportation, and the Department of 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 current restriction on contracts valued less than \$12,501 under the Montana Community Service Act being exempted from the Montana Procurement Act creates obstacles to the development and implementation of contracts for community service projects benefiting the state; and

WHEREAS, removing the current restriction and completely exempting contracts under the Montana Community Service Act from the Montana Procurement Act reconciles the intention of these acts to facilitate the development and implementation of community service opportunities consistent with section 90-14-105, MCA, and clarifies that agencies, when operating under the Montana Community Service Act, will 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:



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

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

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

8 (c) the disposal of state supplies.

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

12 (3) This chapter does not apply to:

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

15 (b) construction contracts;

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

18 (d) contracts entered into by the Montana state lottery that have an aggregate value of less than
19 \$250,000;

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

22 (f) employment of:

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

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

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

28 (iv) consulting actuaries;

- 1 (v) a private consultant employed by the student associations of the university system with money
2 raised from student activity fees designated for use by those student associations;
- 3 (vi) a private consultant employed by the Montana state lottery;
- 4 (vii) a private investigator licensed by any jurisdiction;
- 5 (viii) a claims adjuster; or
- 6 (ix) a court reporter appointed as an independent contractor under 3-5-601;
- 7 (g) electrical energy purchase contracts by the university of Montana or Montana state university,
8 as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the
9 purchase or acquisition of energy must be retained by the board of regents of higher education for university
10 allocation and expenditure.
- 11 (h) the purchase or commission of art for a museum or public display;
- 12 (i) contracting under 47-1-121 of the Montana Public Defender Act;
- 13 (j) contracting under Title 90, chapter 4, part 11; or
- 14 (k) contracting under Title 90, chapter 14, part 1, ~~when the total contract value is \$12,501 or less.~~
- 15 (4) (a) Food products produced in Montana may be procured by either standard procurement
16 procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:
- 17 (i) the quality of available Montana-produced food products is substantially equivalent to the
18 quality of similar food products produced outside the state;
- 19 (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and
- 20 (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the
21 lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the
22 lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food
23 products for a governmental body, the higher bid is reasonable and capable of being paid out of that
24 governmental body's existing budget without any further supplemental or additional appropriation.
- 25 (b) The department shall adopt any rules necessary to administer the optional procurement
26 exception established in this subsection (4).
- 27 (5) As used in this section, the following definitions apply:
- 28 (a) "Food" means articles normally used by humans as food or drink, including articles used for

1 components of articles normally used by humans as food or drink.

2 (b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or

3 manufactured."

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5 NEW SECTION. **Section 2. Applicability.** [This act] applies to contracts and cooperative agreements

6 executed on or after [the effective date of this act].

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