

HOUSE BILL NO. 151

INTRODUCED BY M. HOPKINS

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE BUILDING CONSTRUCTION PROCUREMENT LAWS; RAISING THE COST THRESHOLD OF CONSTRUCTION ACTIVITIES THAT REQUIRE LEGISLATIVE APPROVAL; RAISING CERTAIN COST THRESHOLDS FOR SUPERVISION REQUIREMENTS OF BUILDING CONSTRUCTION; PROVIDING FOR INFLATIONARY ADJUSTMENT OF CERTAIN COST THRESHOLDS THROUGH RULEMAKING; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO NEGOTIATE A CONTRACT WITHOUT COMPETITIVE BIDDING IF AN EMERGENCY OR PUBLIC EXIGENCY EXISTS AND TO NEGOTIATE DEDUCTIVE CHANGES OF A GREATER PERCENTAGE OF THE TOTAL COST OF THE PROJECT WHEN BIDS RECEIVED EXCEED THE APPROPRIATION; RAISING THE COST THRESHOLD UNDER WHICH THE DEPARTMENT OF ADMINISTRATION MAY PREPARE WORKING DRAWINGS FOR BUILDING CONSTRUCTION; RAISING THE COST THRESHOLD FOR WAIVING CERTAIN SECURITY REQUIREMENTS; ALLOWING FOR PUBLIC NOTICE THROUGH ELECTRONIC MEANS FOR COMPETITIVE BIDDING ON CERTAIN PROJECTS; ALLOWING BUILDING CONSTRUCTION BIDS TO BE SECURED BY AN IRREVOCABLE LETTER OF CREDIT; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTIONS 18-2-102, 18-2-103, 18-2-105, 18-2-111, 18-2-201, 18-2-301, 18-2-302, AND 18-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-102, MCA, is amended to read:

"18-2-102. Authority to construct buildings -- reporting requirement. (1) Except as provided in 22-3-1003 and subsection (2) of this section, ~~a building costing more than \$150,000 may not be constructed without~~ construction activities costing more than \$300,000 require the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's

consent. When a building costing more than \$150,000 \$300,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The regents of the Montana university system may authorize the construction of facilities as provided in 20-25-309.

(e) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.

(f) Each year by August 1, the department of administration shall report, in accordance with 5-11-210, to the long-range planning budget committee provided for in 5-12-501 on all buildings constructed without legislative approval that cost between \$150,000 and \$300,000 during the previous fiscal year."

Section 2. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building activities costing more than \$150,000 \$300,000, the department shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and, except as provided in Title 18, chapter 2, part 5, award all

(2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, bank draft, or irrevocable letter of credit, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(3) Any board, council, commission, trustee, or body acting for any county, municipality, or public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than ~~\$50,000~~ \$150,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

Section 6. Section 18-2-301, MCA, is amended to read:

"18-2-301. Bids required -- advertising public notice. (1) ~~(a) It is unlawful for any offices~~ Offices, departments, or institutions, or any agent of the state of Montana acting for or ~~in~~ on behalf of the state, ~~to may~~ not do, ~~to~~ cause to be done, or ~~to~~ let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is ~~\$75,000~~ \$150,000 or more without first ~~advertising in at least one issue each week~~ providing public notice for 3 consecutive weeks ~~in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed,~~ in two newspapers

1 published in the state, one of which must be published at the seat of government and the other in the county
2 nearest to where the work is to be performed, calling for sealed bids to perform the work and stating the time
3 and place bids will be considered. Notice may include electronic notification, publication in newspapers of
4 general circulation, or other appropriate means.

5 (b) Starting July 1, 2028, and every 5 years after that, the department shall adjust the limits in
6 subsection (1)(a) for inflation. The inflation adjustment is determined by dividing the consumer price index for
7 June of the previous tax year by the consumer price index for June 2023. The newly adjusted limits must be
8 rounded to the nearest \$1,000 and adopted by rule.

9 (2) All work may be done, caused to be done, or contracted for only after competitive bidding.

10 (3) If responsible bids are not received after two attempts, the department or agency may contract
11 for the work in a manner determined to be cost-effective for the state.

12 (4) This section does not apply to work done by inmates at an institution in the department of
13 corrections.

14 (5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply
15 when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources
16 that it owns at Bannack if:

17 (i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state;
18 and

19 (ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic
20 buildings and resources from degradation and loss.

21 (b) For the preservation or restoration of historic buildings and resources at Bannack when the
22 conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the
23 preservation or restoration through:

24 (i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization
25 when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or
26 restore historic resources;

27 (ii) the use of qualified and trained department of fish, wildlife, and parks employees and
28 volunteers;

(iii) a training program in historic preservation and restoration conducted by a qualified local, state, or federal entity or a qualified nonprofit organization; or

(iv) any combination of the options described in subsection (5)(b)."

Section 7. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security -- waiver -- authority to submit. (1) (a) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, an irrevocable letter of credit, or a bank draft. The security must be:

(i) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or

(iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(b) The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than ~~\$25,000~~ \$150,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification."

Section 8. Section 18-2-501, MCA, is amended to read:

"18-2-501. (Temporary) Definitions. As used in this part, unless the context clearly requires

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23; or

(c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401.

(7) "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, ~~18-2-304~~, and 20-9-204 or the provision of public notice pursuant to 18-2-301.

(9) "State agency" has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency."

COORDINATION SECTION. **Section 9. Coordination instruction.** If House Bill No. 110 is not passed and approved, then the reference to the long-range planning budget committee in [section 1(2)(f) of this act], amending 18-2-102, must be changed to refer to the legislative finance committee.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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