

Amendment - 2nd Reading-yellow - Requested by: Mike Hopkins - (H) Committee of the Whole

68th Legislature

Drafter: Julie Johnson, 406-444-4024

HB0151.002.003

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

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(ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

(iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

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

(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:

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1 **"18-2-301. Bids required -- advertising public notice.** (1)(a) ~~It is unlawful for any offices Offices,~~
2 departments, or institutions, or any agent of the state of Montana acting for or in on behalf of the state, ~~to may~~
3 ~~not~~ do, ~~to~~ cause to be done, or ~~to~~ let any contract for the construction of buildings or the alteration and
4 improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount
5 involved is \$75,000 \$150,000 or more without first advertising in ~~at least one issue each week~~ providing public
6 notice for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the
7 ~~seat of government and the other in the county where the work is to be performed, IN TWO NEWSPAPERS~~
8 PUBLISHED IN THE STATE, ONE OF WHICH MUST BE PUBLISHED AT THE SEAT OF GOVERNMENT AND THE OTHER IN THE
9 COUNTY NEAREST TO WHERE THE WORK IS TO BE PERFORMED, calling for sealed bids to perform the work and
10 stating the time and place bids will be considered. Notice may include electronic notification, publication in
11 newspapers of general circulation, or other appropriate means.

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

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

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

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

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

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

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

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- (b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation or restoration through:
- (i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore historic resources;
 - (ii) the use of qualified and trained department of fish, wildlife, and parks employees and 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.