

STATE ADMINISTRATION
FEBRUARY 18, 1981
RM 436

The meeting of the State Administration Committee was called to order at 8:00 a.m. on February 18, 1981, with Chairman Jerry Feda presiding. All members were present except Representative Azzara and Representative Dussault who was excused.

Chairman Feda opened the hearing on HB 724.

HOUSE BILL 724-SPONSOR, Representative Neuman, introduced this bill which creates an exception to the conflict of interest provisions within the code of ethics statutes that prohibit conflict between public duty and private interest as required by the Montana Constitution. This amendment permits public officers and employees to contract with an interested party whenever geographical restrictions would make a contract otherwise unavailable to a local government.

PROPOSERS

DALE KLOCK, Cascade businessman, stated that he is on the city council and has been prohibited from serving the community in his business capacity. This bill would allow businessmen to contribute to the community in both public and private interests. Mr. Klock made apologies for Mr. Ellis who was not able to attend the meeting but was one of the main sponsors of the bill. A copy of Mr. Ellis' written statement is EXHIBIT 1 of the minutes.

CHARLES CUNNINGHAM, Cascade, MT, was not present to testify but presented a written statement to the committee. A copy of his statement is attached and is EXHIBIT 2 of the minutes.

Others who were present at the hearing but did not testify are listed on the Visitors' Registration form.

OPPOSERS

There were no opposers to House Bill 724.

QUESTIONS BY THE COMMITTEE:

Mueller: Is there any protection provided in this bill against overcharging by the local businessmen?

Neuman: Free enterprise is the protection.

Representative Neuman closed the hearing on HB 724.

HOUSE BILL 754-SPONSOR, Representative Bengtson, introduced this bill to the committee. This bill declares that it is in the public interest to provide consolidated financing for school district improvements to reduce borrowing cost. To facilitate this purpose, a school district finance fund is created in the bond proceeds and insurance clearance fund for depositing funds from the proceeds of bonds issued under this act. The Board of Examiners may lend money to school districts through the purchase of school bonds and impose interest rates necessary to pay the debt service on the consolidated revenue bonds. The school bonds purchased must be secured by a pledge of state equalization aid receivable by a school district, in addition to the full faith, credit, and taxable interest of the district. Representative Bengtson submitted a letter addressed to herself from Mr. John J. Oitzinger which is a summary of HB 754. A copy of this letter is attached and is EXHIBIT 3 of the minutes.

PROPONENTS

JOHN OITZINGER, attorney, Helena, stated that this legislation should be self-supporting and should not require any additional funding from the state. (See Mr. Oitzinger's letter, exhibit 3 for summary of his testimony.)

DAVE LEWIS, Office of Budget and Program Planning, stated that they were requested by the school board to look into this idea and basically they came up with the same concept presented in the letter from Mr. Oitzinger. (exhibit 3)

WAYNE BUCHANAN, Montana School Board Assoc., stated that this would save the school districts money and make it possible for many school districts to build new schools. He stated that "we are caught between dwindling bonds and soaring interest rates". He said that there is a bill in the Senate that would raise the 7% cap on interest. This would enable them to compete in the bonding market. He said that this is a measure that will affect the local property tax. The bonds come out of the property tax, and if you save money from the interest rate, this will go back to the property tax payers.

OFFICE OF PUBLIC INSTRUCTION, requested to be entered into the record as a proponent of House Bill 754.

OPPONENTS

BRUCE MacKENZIE, D.A. DAVIDSON & CO., testified in opposition to HB 754. A copy of his written testimony is attached and is EXHIBIT 4 of the minutes.

HB 754 (cont.)

QUESTIONS BY THE COMMITTEE:

Sales: Mr. MacKenzie, there is probably more competition in the market for tax exempt bonds than there has ever been before in the history of Montana, wouldn't you agree?

MacKenzie : Yes, and it is true that on smaller bond issues, \$100,000 or less, D.A. Davidson typically will not bid on them because the profitability is not there. We facilitate the issue by referring it to another company that we know would be interested. Therefore the interest rate on small issues is usually higher.

Sales: Wouldn't you agree that the pre that has been put on the market by things like the state housing board bonds and industrial revenue bonds and all this type of financing that has increased so much in the past few years, is in direct competition with the schools getting financing?

MacKenzie: I do not believe so because you are talking about two different kinds of credits.

Following further questions, Representative Bengtson closed the hearing on HB 754. She said that she wanted to point out that this bill is optional. The bonds can still be offered to private bond companies. This bill is mainly aimed at schools that have trouble selling their bonds. She said that Montana is one out of only thirteen states that do not offer some type of help for school capital outlays. There are a multitude of methods of tapping this problem. The structure for this bill has been patterned after the board of housing we are not "plowing any new ground".

HOUSE BILL 761-SPONSOR, Representative Fabrega, introduced this bill to the committee. This bill requires the county clerk and recorder to notify a property owner within five business days after a mechanic's lien is filed against the owner's property. The clerk may collect a fee of 50 cents from the person filing the lien to compensate the county for expenses in notifying the property owner. Representative Fabrega said that he would like an amendment that would increase the fee collected by the clerk.

PROPONENTS

WILLIAM (BILL) ROMINE, Montana Clerks & Recorders, stated that they would like to see the lien served by the person filing the lien instead of the clerk & recorders office. Sometimes a lien is filed on property and the owner named

HB 761 (cont.)

on the lien is no longer the owner. This can cause problems when the lien is delivered. A certification at the end of the lien, similar to certifications used in legal papers filed in court, could merely state that a copy of the lien was mailed to the owner. He stated that if this is not acceptable to the committee then at least the fee should be increased to cover the time and expense of sending the notice. A copy of Mr. Romine's testimony and his proposed amendment is attached and is EXHIBIT 5 of the minutes.

OPPONENTS

There were no opponents present for HB 761

QUESTIONS BY THE COMMITTEE:

Pistoria: Do you agree with Mr. Romine's suggested amendment?

Fabrega: I do not think it should be changed, how would the lien filer prove that he had mailed copies, and so forth. I would urge the committee not to make this amendment.

Representative Fabrega closed briefly on HB 761.

HOUSE BILL 723, SPONSOR, Representative Bertlesen, presented this bill to the committee. This bill directs the Administrative Code Committee to study procedures and methods for terminating administrative rules affecting the environment and natural resources of the state. Included in the study is a review of other states' laws providing for the termination or sunset of certain administrative rules. The committee must prepare a report of its study, including any recommended legislation, by January 15, 1983. Representative Bertelsen said that David Niss, with the legislative council, would be available to answer any questions the committee may have concerning this legislation.

PROPONENTS

MONA JAMISON, Governor's office, stated that the governor urges support of this bill. She said that there have been a number of bills that have been introduced that relate to the suspension of rules but none of them have been adequately explored. She suggested an amendment to the bill on page 2, line 17, that would clarify the term "rules of administrative

HB 723 (cont.)

agencies" by inserting "rules by agencies as defined in 2-3-102"

OPPONENTS

There were no opponents to House Bill 723.

QUESTIONS BY THE COMMITTEE:

McBride: Would you have any objection to not restricting this bill to the environment and natural resources of the state?

Niss: A rule by rule procedure could cause many problems because an agency may have 500 different rules with amendments adopted at different times. This could cause a "checkerboard pattern" on rules that are sunsetted. Many of the rules are required to be in the statutes. The question would arise as to whether the statute is still in effect if the rule is sunsetted?

Representative Bertelsen closed the hearing on HB 723

HOUSE BILL 663-SPONSOR, Representative Moore, introduced this bill to the committee. This bill centralizes the procurement (buying, purchasing, renting, or leasing) of all construction, supplies, and services for state agencies. It creates the Procurement Division with the Department of Administration and the Procurement Policy Office that is allocated to the Division for administrative purposes only. The Policy Office consists of a board of three members with rulemaking authority to govern the procurement, management, control, and disposal of supplies, services, and construction to be acquired by the state. The Policy Office also appoints a Chief Procurement Officer to serve as the central procurement officer of the state. The bill also transfers the procuring functions held by other state agencies to the Procurement Division.

PROPONENTS

H. S. HANSON, Montana Technical Council, stated that this measure would standardize procurement procedures. Mr. Hanson passed out a sheet to the committee that outlined each section of the bill with a brief summary. A copy is attached and is EXHIBIT 6 of the minutes

HB 663 (cont.)

He also submitted a questionnaire and a statement of intent which are EXHIBIT 7 and 8 respectively of the minutes. He said this would result in a cost savings to the state and would locate the total purchasing process with one individual who is an accountable person. He said that if SB 294 passes we will no longer have career employees handling the purchasing but it will be handled by political appointees.

BILL OLSON, Montana Contractors, arose and stated that they are neither opponents or proponents of this bill but are concerned with certain areas of the bill. He said they like the delegation of the chief procurement officer but we have problems with section 48 of the bill. He said that many times the local contractors can do a better job and they would like to see this changed.

ALAN ROBERTSON, Secretary of State, Helena stated that they support the bill but would like it amended. A copy of his proposed amendment is attached and is EXHIBIT 9 of the minutes.

JOE THORES, Mountain Bell, said that they would like the bill amended so that they could enter sealed bids because there is competition within the utilities. A copy of their proposed amendment is attached and is EXHIBIT 10 of the minutes.

OPPONENTS

MORRIS BRUSETT, Department of administration, stated that this legislation would create more problems than it would solve. He said this would move the functions of several agencies into one "super agency" and this would not necessarily make things more manageable. The other agencies should not be attached to the department of administration in this way. Furthermore, he stated, there would be no significant savings involved. There would be a cost in relocating the division. If there is a problem, it should be corrected through a review of the fiscal analyst office by a performance audit not by creating a "super agency". This is a voluminous bill and would only create problems.

HB 663 (cont.)

MIKE YOUNG, attorney, Department of Administration, stated opposition to this bill

DAVE LEWIS, representing the governor, stated, to quote an old saying, "if it ain't broken, don't fix it". He said that over the past few years there have been two or three audits done and we feel the audit has come up with some good results and the system is now working. This bill would create more "bureaucratic red tape".

JIM DUTTON, Department of Highways, submitted proposed amendments to HB 663. A copy is attached and is EXHIBIT 11 of the minutes.

JACK BECKERT, Department of Highways, also suggested the amendment, EXHIBIT 11.

PHIL HAUCK, Department of Administration, stated that he could not see anything wrong with the system as it is now. He said he would prefer to operate under legislative law rather than administrative law. This "overlap in policy" would be very confusing to consulting businesses.

LUTHER GLENN, Administrative Purchasing Division, stated that the National Purchasing Association does not endorse a model procurement code in the present statute. This program would have to be improved and defined according to existing statutes.

RON BROWN, SRS, stated that section 3 needs to be clarified. He said that these additional restrictions would not be beneficial to the department or the clients. He also said that he could see no reason why an employee could not purchase surplus property unless they are the person responsible for declaring the item surplus.

QUESTIONS BY THE COMMITTEE:

Mueller: What is the history of results in other states that have tried this.

Moore: Only 5 states have tried this system and they have all been very recent so there is no background on it.

Spilker: Does this bill mesh with house bill 26 in any way.

Moore: In some areas yes, but HB 26 only deals with professional consulting services.

Representative Moore closed the hearing on House Bill 663. He stated that he has no objections to the amendments that have been suggested. The purpose of this bill is to make the state more cost effective and provide standardization. It will, as stated, create a "super agency" but this committee will get input from all the agencies. This will provide better management throughout the system.

EXECUTIVE SESSION

HOUSE BILL 649

DO NOT PASS

Representative Mueller made a DO NOT PASS motion on HB 649. Discussion followed.

Representative O'Connell made a substitute motion that HB 649 DO PASS. Following discussion, a roll call vote was taken and the motion failed with 6 YES, 12 NO and 1 absent. See roll call vote sheet for vote.

HOUSE BILL 584

DO PASS

Representative O'Connell moved a DO PASS on HB 584. Question was called on the motion and a vote carried unanimously with those present.

HOUSE BILLS 503 - 637

Representative Spilker made a motion that an amendment be drafted to provide funding for this benefit through employer contributions. Discussion on this followed. A vote was taken on the motion and carried. Representatives Kanduch and Smith voted no on this motion.

Representative Spilker made a motion to TABLE HB 503. A vote was taken and carried unanimously.

HOUSE BILL 761

DO PASS AS AMENDED

Representative McBride moved an amendment to strike 50 cents and insert \$2. Representative Mueller seconded the motion. A vote was taken and carried unanimously. Representative McBride made a motion that HB 761 DO PASS AS AMENDED. A vote was taken and carried unanimously.

EXECUTIVE SESSION (cont.)

HOUSE BILL 754

DO NOT PASS

Representative Sales made a DO NOT PASS motion on HB 754. A vote was taken and carried with 15 YES, 2 NO and 2 absent. Representatives McBride and O'Connell voted no.

HOUSE BILL 724

DO PASS

Representative Kropp made a DO PASS motion on HB 724. A vote was taken and carried unanimously with those present.

HOUSE BILL 723

DO PASS AS AMENDED

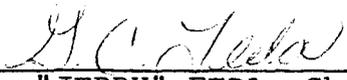
Representative Kanduch moved the amendment proposed by Mona Jamison. Discussion followed. A vote was taken and carried unanimously.

Representative Kanduch moved a DO PASS AS AMENDED on HB 723. A vote was taken and carried with 16 YES, 1 NO and 2 absent. Representative McBride voted NO

Chairman Fedas asked for a vote of the committee to introduce a committee bill entitled: "An act to require lobbyists to report entertainment expenses." A poll was taken and carried with 17 members voting for the bill and 2 members voting against. Representatives McBride and Dussault voted no. A copy of the bill is attached and is EXHIBIT 12 of the minutes.

A motion was made to adjourn at 11:00 a.m.

Respectfully submitted,



G. C. "JERRY" FEDAS, Chairman

Cathy Martin-Secretary

ELLIS CATTLE COMPANY

"HOME OF THE PANAMAS"

REGISTERED AND COMMERCIAL HEREFORDS

WM. B. ELLIS & SON

CASCADE, MONTANA

Feb. 18, 1981

House Bill No. 724

Mr. Chairman and Committee Members:

My name is William B. Ellis, Cascade, Mont.

This is to request a change in the law to make it possible for local Businessmen as well as skilled workmen to serve on City Councils and School Boards, and also be able to do business with City Government and School Districts in the small communities of the State.

The judgement and experience of the business men of the community is greatly needed in city or school management and to exclude such people works a hardship on them as well as the community.

William B. Ellis
William B. Ellis

MEMBER

EXHIBIT 2

House Bill # 724

B. & Y. Store
Cascade, Mont.
Feb. 18, 1981

Mr. Chairman and Committee Members:

My name is Charles N. Cunningham;

Under the present law it is illegal for any one serving on School Boards or City Councils to do business with City Government or the School District.

I request that this law be changed to make it possible for local business men as well as skilled workmen to serve as City Councilmen or School Board members, without being penalized.

The judgement and experience of the business men of the community is greatly needed in City and School management and to exclude such people is wrong.

Charles N. Cunningham
Owner of the B. & Y. Store
Cascade, Mont. 59421

Charles N. Cunningham

JACKSON, OITZINGER & MURDO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

203 NORTH EWING STREET

HELENA, MONTANA 59601

EXHIBIT 3

L. V. HARRIS

COUNSEL

TELEPHONE
(406) 442-1300

DAVID L. JACKSON
JOHN J. OITZINGER
ROBERT M. MURDO
JOHN H. GRANT

February 16, 1981

The Honorable Esther G. Bengston
House of Representatives
State Capital Building
Helena, Montana 59601

Re: House Bill 754

Dear Mrs. Bengston:

House Bill 754 introduced by you will provide for consolidated financing of school districts throughout the state. You have asked me to summarize and comment on the bill.

The bill would create a separate school district finance fund within the state treasury fund structure. This fund would use the proceeds from the sale of revenue bonds to purchase bonds issued by various school districts.

As far as the school districts are concerned they would proceed in the same way they do now to have bonds authorized and issued. Use of the state financing fund would be optional with each school district. Interest rates on the school bonds would be set at a level sufficient to pay the interest on the revenue bonds and associated administrative costs. Presumably, school districts would either issue their bonds to the public or to the state finance fund depending upon where they thought they could get a lower interest cost.

Once the school bonds are acquired by the state finance fund the interest and principal payments on school bonds will be paid to a trustee which will use the moneys to pay debt service on the revenue bonds. Mechanics for handling the funds and securing the revenue bonds are virtually the same as used by the Board of Housing. As with the Board of Housing, a capital reserve account is provided into which future legislative appropriations could be made if payment of the bonds was threatened. However, it may not be necessary to implement the capital reserve account feature since the school bonds are already supported by state aid payments as well as local taxation.

The indications are that given this credit structure the revenue bonds would receive a high A rating and possibly a

Mrs. Esther G. Bengston
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"AA" rating. This should permit bond issues at the lowest possible interest rates. Bonds could be issued on either a negotiated or competitive bid basis. Probably it would be best to negotiate the first such bond issue to establish the credit and familiarize the financial markets with the bonds and then do competitive bids in succeeding years.

Please let me know if you need anything further.

Best regards,

John J. Oitzinger

JJO/csm

Bruce MacKenzie

EXHIBIT 4



Because you want your money to do more.

**D.A.
Davidson
& Co.**

Incorporated

Montana's Oldest
Investment Firm

P.O. Box 5015
Davidson Building
Great Falls, Montana
59403

(406) 727-4200

Offices: Billings,
Bozeman, Butte,
Havre, Helena, Kalispell,
Missoula, Montana;
Williston, North Dakota

Corporate Office:
Davidson Building
Great Falls,
Montana 59401

Members:
Midwest Stock
Exchange Inc.
Pacific Stock
Exchange Inc.
Securities Investor
Protection Corp.

February 17, 1981

House State Administration Committee
Capitol Building
Helena, Montana 59601

Re: House Bill No. 754

Mr. Chairman and Members of the Committee:

D.A. Davidson & Co. opposes the concept of a School District Bond Bank which would be created by House Bill No. 754. D.A. Davidson & Co. is a Montana based investment firm which over the years has been a major purchaser of Montana Municipal and School District Bond issues. The Company believes that it has continually purchased these bonds at competitive rates at or below the national market and views the concept of a State Bond Bank as an unnecessary intrusion into the private business sector. In addition, the Company believes there are other substantial reasons to reject the concept of a bond bank.

First, it must be assumed that the principal reason for the state to create a bond bank is to provide local communities and school districts with low interest rates. At the present time issuing entities within Montana are being provided low interest rate money by various bond dealers. There are presently five states which have bond banks: Vermont, Alaska, Maine, North Dakota and New Hampshire. As can be seen from the attached table prepared by the Public Securities Association for all issues for the period January through November 1980, Montana had the third lowest average net interest cost of all fifty states and was well below the five states with Bond Banks.

Secondly, operating expenses of the Bank must be passed on to the local communities thereby increasing total costs to the communities. If costs are not passed on, the State must be prepared to subsidize the Bank from the general fund. These expenses can be significant, as evidenced by the operating expenses for the Alaska Municipal Bond Bank for the year 1978 (the most current figures we have available) which were as follows:

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House State Administration Committee
February 17, 1981
Page Two

EXHIBIT 4

Personal Services	\$50,213
Travel	5,463
Contractual Services	973
Office	3,011
Office Equipment	1,541
Board Travel and Per Diem	3,686
Office Rent	8,683
Printing	8,496
Advertising	766
Trust and Custodian Fees	12,331
Accounting	11,296
Financial Advisor	21,804
Bond Counsel	22,114
Bond Rating and Delivery	<u>4,316</u>
TOTAL	\$154,693

Assuming the state incurred similar expenses and charged the issuers 1% of the principal amount of bonds sold, the Bank would have to issue and loan to the issuers over \$15,000,000 to break even. In the opinion of the Company, less than \$3,000,000 of small issues are offered for sale each year within the state. Therefore, it would appear that the Bank would be financially impractical.

Third, because of the small number of small project issues within the State, it could take a substantial amount of time to collect sufficient issues before the Bank could issue its bonds. If interest rates are increasing during this period of time, the issuing entities will end up paying more in interest costs than if they issued their own bonds. Even if interest rates move down during this time period, the time delay could result in increased construction costs due to inflation.

In summary, it is the opinion of D.A. Davidson & Co. that a Bond Bank is not needed and if created would prove uneconomical and inefficient. Further, since the Bank in effect would be packaging all Montana's small issues into one large issue, the Bank favors the larger eastern bond firms and not the regional firms that have been servicing the State for a number of years.

We respectfully request a do not pass recommendation.

Sincerely,

Bruce A. MacKenzie
Vice President & General Counsel

BAM:als

TABLE 7 - VOLUME BY STATE - JAN THRU NOV 1980

*** STATE ***	ALL ISSUES		
	SALES	AMOUNT	ANIC
50 States	4,934	42,956,509	8.50
Alabama	106	615,722	7.84
* Alaska	11	809,675	9.32
Arizona	71	921,072	7.46
Arkansas	65	333,200	7.68
California	181	3,424,040	8.57
Colorado	160	1,047,327	8.52
Connecticut	39	770,342	8.60
Delaware	12	181,086	7.94
Florida	103	2,000,946	8.89
Georgia	51	751,038	7.82
Hawaii	7	296,500	6.96
Idaho	27	226,730	8.04
Illinois	238	2,173,376	8.29
Indiana	110	885,951	8.43
Iowa	278	486,834	8.42
Kansas	183	878,488	7.69
Kentucky	93	353,423	7.94
Louisiana	68	1,007,081	6.90
* Maine	22	136,250	7.74
Maryland	34	966,280	7.34
Massachusetts	89	1,173,999	8.41
Michigan	250	1,244,521	9.07
Minnesota	287	1,156,879	8.00
Mississippi	54	387,469	7.37
Missouri	88	509,846	8.71
Montana	18	113,570	7.06
Nebraska	115	437,404	8.08
Nevada	21	201,298	8.37
* New Hampshire	18	166,786	7.49
New Jersey	123	869,922	7.87
New Mexico	50	388,397	7.40
New York	111	3,148,495	9.17
N. Carolina	62	577,225	7.93
* N. Dakota	49	69,716	7.25
Ohio	308	1,406,528	8.22
Oklahoma	122	948,179	7.93
Oregon	110	1,458,279	8.70
Pennsylvania	173	1,605,660	8.73
Rhode Island	21	154,680	8.30
S. Carolina	35	333,185	8.52
S. Dakota	43	216,042	8.33
Tennessee	82	839,674	7.95
Texas	412	3,660,509	8.14
Utah	54	436,565	7.58
* Vermont	18	161,118	7.56
Virginia	45	521,195	7.21
Washington	134	1,296,096	9.39
W. Virginia	24	413,170	7.99
Wisconsin	121	683,273	8.01
Wyoming	38	111,468	7.34

- Amounts in thousands.

- ANIC - average net interest cost weighted by average maturity (life) and size of issue.

* Have Spnd Bank

8.5

NAME William L. Romine BILL No. H.B. 761
 ADDRESS PA Box 1691 DATE 2-18-81
 WHOM DO YOU REPRESENT Mont. Clerks & Recorders
 SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The clerks agree that notice of a mechanic's lien should be given to the owner. However, they feel that the person filing the lien should have the responsibility of giving the notice. A certification, at the end of the lien, similar to certifications used in legal papers filed in court, could merely state that a copy of the lien was mailed to the owner. The certification would state the date the copy was sent, which would generally be the same day the lien is filed.

If this is not acceptable to the committee, at least the fee should be increased to \$1.00 to cover the time & expense of sending the notice.

Proposed Amendment to H.B. 761

from Bill Romine, Clerk & Recorders Assn.

Amend title

line 6, strike words "The county Clerk and Recorder To"
line 7, strike word "notify" and instead "notification to"
line 8, strike entire line.

Amend section 1.

Strike lines 20 thru 25, page 1 and line 1 thru 4 page 2.

Insert following:

(2) the clerk shall not file the lien unless there is attached thereto a certification by the lienholder or his agent that a copy of the lien has been served upon the owner of the property named in the lien. Service may be made by delivering a copy to the owner or by mailing it to him at his last known address. The certification shall state whether service was made by delivery or mail.

Not
accepted
by committee

HB-663

This Bill Covers The Following General Areas

General Items	Sections 1 - 6	Architect, Engineers and Land Surveying	Sections 53 - 55
Policy Office	Sections 7 - 9	Contract Modifications	Sections 56 - 61
Chief Procurement Officer	Sections 10 - 13	Surplus Supplies	Sections 65 - 75
Procurement Division	Sections 14 - 19	Contract Conflicts	Sections 76 - 85
Specifications	Sections 44 - 48	*Amend Sections	Sections 86 - 113
Documents	Sections 49 - 52	Codification, Severability and Repealer	Sections 114 - 116
<i>Contracts</i>	<i>Section 20-43</i>		

* Necessary to Integrate the Model Procurement Act with old contract and purchase acts. This will provide one procurement act - Title 18.

General Items (1 - 6)

- Section 1 (2) Montana Procurement Act
- " 2 (2) Purposes and policies
- " 3 (2) Definitions
- " 4 (6) Supplementary general principals of law
- " 5 (6) Application - time - state and local procurement
- " 6 (7) Public access to procurement information

Policy Office (7 - 9)

- Section 7 (8) Creation and allocation of procurement policy office
- " 8 (8) Membership of the policy office. 3 people appointed by governor - confirmed by senate. Serve 6 years. Chairman (Director of Department of Administration) has no vote

- Section 9 (9) Authority and duties of the policy office. Adopt rules governing procurement, management control and disposal of any and all supplies, services and construction to be procured by state. Policy office shall decide policy. It may audit and monitor its rule but may not exercise authority over award or administration or any contract, dispute, claim, etc. (It is a Policy Office)

Chief Procurement Officer (10 - 13)

- Section 10 (10) Appointment and Qualifications. Chief procurement officer. Appointed by policy office. Confirmed by senate.
- Section 11 (10) Tenure, removal and compensation. Appointed for 6 years with removal from office for cause.
- Section 12 (10) Authority of the chief procurement officer. Serve as central procurement officer with authority as listed.

- Section 27 (19) Discussion with responsible offerors and revisions of proposals
- Section 28 (20) Small purchases
- Section 29 (20) Sole source procurement
- Section 30 (21) Emergency procurements
- Section 31 (21) Selection procedures for professional services as specified in Section 16
- Section 32 (23) Cancellation. Invitations for bids - requests for proposals
- Section 33 (23) Nonresponsibility of bidders and offerors
- Section 34 (24) Prequalification of suppliers
- Section 35 (24) Cost or pricing data
- Section 36 (25) Types of contracts
Cost-plus-a-percentage-of-cost contract is prohibited
- Section 37 (26) Approval of accounting systems
- Section 38 (26) Multiyear contracts - cancellation
- Section 39 (27) Right to inspect the plant
- Section 40 (27) Right to audit records
- Section 41 (28) Finality of determinations
- Section 42 (28) Reporting of Anticompetitive practices
- Section 43 (29) Records of Sale source and emergency procurement --
Submissions to Legislature. Copy submittal to legislature as a biennial base.

Section 13 (11) Delegation of authority by the chief procurement officer (Very Important)

Procurement Division (14-19)

Section 14 (11) Procurement division - head. Procurement division within Department of Administration

Section 15 (12) Centralization of procurement authority

Section 16 (12) Authority to contract for certain professional services. Allows to direct agency procurement (according to division rules) for listed professions
Para. (2) provides an additional approval for authority regarding attorneys

Section 17 (13) Exemptions

Section 18 (13) State procurement rules

Section 19 (13) Collection of data concerning public procurement

Section 20 (14) Definitions. (Section 20 thru 43)

Section 21 (15) All state contracts awarded by competitive sealed bidding

Section 22 (16) Invitation for bids - public notice

Section 23 (16) Bid opening and acceptance

Section 24 (17) Correction or withdrawal of bids - awards and award cancellation

Section 25 (18) Multistep sealed bidding

Section 26 (18) Competitive sealed proposals

Contract Notification (Section 56 through 61)

Section 56 (37) Contract Clauses for adjustment prices, time of performance, etc.

Section 57 (38) Price Adjustment

Section 58 (39) Additional Contract Clauses

Section 59 (39) Modification of Clauses

Section 60 (40) Fiscal Responsibility construction contracts

Section 61 (41) Cost principles -- rules

Surplus Supplies (Sections 62 through 64)

Section 62 (41) Definition

Section 63 (41) Supply management rules

Section 64 (42) Allocation of Proceeds

Conflicts (Section 65 through 75)

Section 65 (42) Authority to resolve potential solicitation and awards

Section 66 (43) Decision - hearing - appeals

Section 67 (44) Authority to debar or suspend

Section 68 (46) Authority to resolve contract and breach of contract controversies

Section 69 (46) Decision - notice

Section 70 (47) Failure to render timely decision

Section 71 (47) Appeals - hearing

Specifications (Section 44 through 47)

- Section 44 (29) Definition
- Section 45 (29) Duties - Policy Office -
chief procurement officer
- Section 46 (30) Coverage - exempted items
- Section 47 (30) Specification using agencies advice --
competition-life-cycle costing
- Section 49 (31) Construction contracting management

Documents (Sections 49 through 52)

- Section 49 (31) Bid Securities - rejection for
noncompliance - withdrawal
- Section 50 (32) Contract performance and payment bonds
- Section 51 (33) Bid security--bond--form--copy
- Section 52 (33) Suits on payment bonds

Architect, Engineers & Land Surveyors (Section 53 through 55)

- Section 53 (35) Application -- policy
- Section 54 (35) Architect and Engineer Selection
Committee -- Submission
- Section 55 (36) Negotiation with selected firm

Section 72 (48) Remedies prior to and after award

Section 73 (49) Interest

Section 74 (49) Standards of review for administrative determinations

Section 75 (49) Appeals

Purchasing (Section 76 through 85)

Section 76 (49) Definitions

Section 77 (50) Cooperative purchasing authorized

Section 78 (51) Sale, acquisition, or use of supplies by a public procurement unit

Section 79 (51) Cooperative use of supplies or services

Section 80 (51) Joint use of facilities

Section 81 (51) Supply of personnel, information and technical services - fees

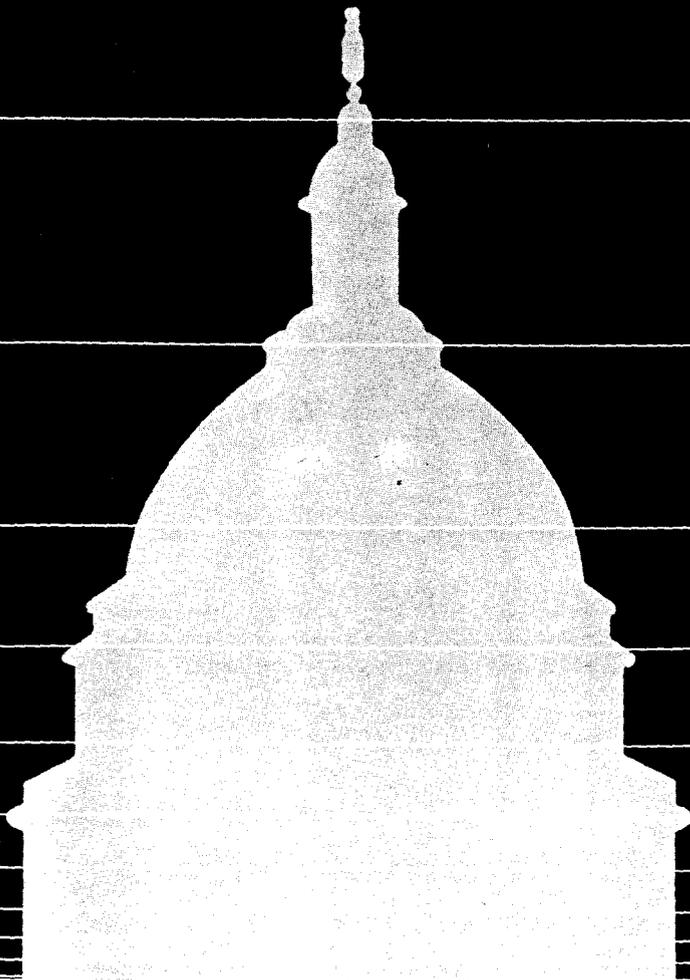
Section 82 (54) Use of payments received by a supplying public procurement unit

Section 83 (54) Public procurement units in compliance with requirements of title

Section 84 (54) Review of procurement requirements

Section 85 (55) Public procurement unit contract controversies

**A CODE
FOR
BETTER
GOVERNMENT**



A statement of intent is required for HB 663 because it grants rulemaking authority to the Policy Office and Chief Procurement Officer and Provides for Delegation of procurement authority by the Policy Office and Chief Procurement Officer.

The purposes and policies stated in [Section 2] clearly provide the broad guidelines for implementation of the bill and by their implications, state the problems to be solved. If not otherwise addressed in the statement of intent, Section 2 should be read with each grant of rulemaking authority or discretionary authority.

In addition, the policy office shall use such model rules as are adopted by the American Bar Association for its Model Procurement Act, after which this act is patterned, as a guide for the adoption of rules under this title unless in conflict with the provisions of this title or otherwise provided for in the statement of intent.

Sections 9, 12, and 13. The legislature intends by these sections to concentrate responsibility in the policy office and the chief procurement officer. However, the legislature intends for the rules of the policy office to broadly delegate the authority of the chief procurement office to existing state agency's performing procurement functions, including but not limited to the architecture and engineering division, purchasing division, and surplus property bureau of the department of administration; design and construction bureau of the department of fish, wildlife, and parks; engineering division of the department of highways; and engineering bureau of the department of natural resources and conservation.

The policy office shall evaluate the need for continuation, termination, or modification of existing state agencies performing procurement functions. The criteria to be used are:

- (1) effectiveness of administration;
- (2) efficiency and adequacy in terms of the purposes and policies of [Section 2] and the program the agency is authorized by law to perform;
- (3) duplication of efforts between agencies performing procurement functions;
- (4) quality of service being rendered.

The policy office shall make a report of its recommendations for continuation, modification, or termination and submit a proposal for the ensuing legislative session.

AMENDMENTS TO H.B. 663

On Page 8, line 17, strike the word "a" and insert in place thereof the word "the".

On Page 8, line 17, after the word "board" strike the balance of Section eight of the Bill and insert in place thereof the word "examiners".

Nt Bell

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HB 663

EXHIBIT 10

In order to place the same amendments in this bill as were placed in House Bill 482, the following amendments should be made. "New Section 17", page 13, should be amended following Subsection "(3)" by adding a new subsection (4) which reads:

"(4) Supplies or services offered for sale, lease or rental by public utilities if the prices are regulated by the public service commission or other governmental authority."

Additionally Section 21 should be amended, pages 15 and 16, following the material on line 1, page 16, by inserting the following new material:

"Where supplies or services are offered for sale, lease or rental by public utilities and the prices of such supplies or services are regulated by the public service commission or other governmental authority, competitive sealed proposals shall be accepted from such public utility in lieu of competitive sealed bids."

PROPOSED AMENDMENTS TO H.B. 663

Page 3

Line 17 - after the comma strike the words "bridge or highway"

Page 3

Line 19 - after the word "include" insert the words "the construction of highways and bridges or"

Page 7

Line 2 - after the word "agency" strike the period and insert the words "except contracts for the construction of highways and bridges."

Page 13

In section 17 add a new subsection

(4) which reads:

"(4) appraisal services used in connection with the construction of highways and bridges."

Page 35

Line 2 - insert the number "17" between the words "section" and the number "28".

Page 46

Line 13 - after the word "them" strike the period and insert the words "which is covered by the act."

Page 77

Strike section 109 in its entirety.
Strike section 110 in its entirety.

Page 83

Line 14 - after the comma next to the 18-7-113 strike the sections "60-2-112, 60-2-113,"

Line 15 - strike the words "Title 18, Chapter 6, part 1," and insert "18-6-101, and 18-6-102"

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE LOBBYISTS
4 TO REPORT ENTERTAINMENT EXPENSES."

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

7 New Section. Section 1. There shall be a new
8 section of the Montana Code Annotated, to be designated
9 Section 5-7-208, MCA, which shall read:

10 5-7-208. Report of entertainment expenses. A
11 lobbyist registered under this act shall file a written
12 report with the secretary of state, on a form provided
13 by the secretary of state, all entertainment expenses in-
14 curred by him during the previous month. For the purpose
15 of this act, "entertainment expenses" means any expendi-
16 ture to provide food, drink, or entertainment to a legis-
17 lator where the principal purpose of the expense is to
18 assist in the presentation of the lobbyist on the subject
19 of pending or proposed legislation to a member of the
20 legislature.

21 New Section. Section 2. There shall be a new
22 section of the Montana Code Annotated to be designated
23 Section 5-7-209, MCA, which shall read:

24 5-7-209. Form of report. The reports required by
25 this act shall contain the name of the lobbyist making

1 the expenditures, the name of the principal on behalf
2 of whom the expenditures were made, and the total
3 amount of entertainment expenses incurred on behalf of
4 each principal during the reporting period.

5 New Section. Section 3. There shall be a new
6 section of the Montana Code Annotated to be designated
7 Section 5-7-210, MCA, which shall read:

8 5-7-210. Time of filing entertainment expense
9 reports. When the legislature is in session, reports of
10 entertainment expenses shall be filed no later than the
11 15th day of the month following the month in which the
12 entertainment expenses were incurred and shall report all
13 entertainment expenses for that month. When the legisla-
14 ture is not in session, said reports shall be filed quar-
15 terly, on the 15th days of January, April, July, and Oc-
16 tober, and shall report all entertainment expenses for
17 the previous three month period.

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Roll of State Ad Committee
to introduce Lobbyist disclosure
bill as submitted to the committee
2/17/81 For Minutes 2/18/81.

FOR

H. G. Guda
Phillips
Col. Alston
Briggs
Pistoria
Gay Holliday
Helen Connell
S. AZZARA
Edant Sweeney
Walter J. Sob
Paul Kopp
Denny Mueller
Ben Hansen
C. Smith
STILKER
Kanduch
Ryan

AGAINST

McBride
Hussain

Statement of Intent - HB 754

A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Examiners in section 6 to adopt all procedural and substantive rules necessary for the administration of this act.

Under ARM 2.53.201, the board has adopted the Attorney General's model procedural rules. The board may adopt the following rules governing: the application by a school district that wishes to sell a school bond to the school district finance fund; and any necessary fees or charges that the board must charge to cover any administrative expenses of the board.

Moore Amendment on effective dates 663

Section 117 effective date. Sections 7 thru 12 are effective on July 1, 1981. Sections 1 thru 6 and 13 thru 116 are effective on July 1, 1983.

Amendments to HB 723:

1. Page 2, Line 17.
Following: "Rules"
Strike: "of Administrative Agencies"
2. Page 2, Line 19.
Following: "Act"
Insert: "by agencies as defined in 2-3-102"
3. Page 2, Lines 22 and 23.
Following: "Rules"
Strike: "of" through "agencies" on line 23.

Amendments to H.B. 761

1. Page 1, line 25.
Following: "of"
Strike: "50 cents"
Insert: "§2"

