

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 24, 1983

The fifty-fourth meeting of the Senate State Administration Committee was called to order by Senator Pete Story on March 24, 1983 at 10:00 a.m. in room 331 of the State Capitol Building in Helena, Montana.

ROLL CALL: Roll was taken and a quorum was present. All members were present with the exception of Senator Lee.

EXECUTIVE SESSION:

This meeting is held to act on the remainder of the House Bills now in Committee.

ACTION ON HOUSE BILL 493:

Senator Towe presented the committee with handouts. EXHIBIT 1 shows the Description; Change from Present Law; Change from A.B.A. Model and Justification. EXHIBIT 2 is the Analysis and Justification of the Montana Procurement Act, H.B.493. EXHIBIT 3 is the amendments presented by Senator Towe. The amendments were reviewed one at a time and voted on accordingly.

MOTIONS BY TOWE according to page sequence of Exhibit 3.

Amendment on Page 1. DO PASS
Amendment on Page 2. DO PASS
Amendment on Page 3. DO PASS
Amendment on Page 4. DO PASS
Amendment on Page 5. DO PASS
Amendment on Page 6. DO PASS
Amendment on Page 7. DO PASS
Amendment on Page 8.

It was suggested by Dave Cogley, legal counsel, that "and type" might not be proper in this case. Senator Towe moved the following amendment:

Page 21, line 14.

Strike: "set in an amount considered

Insert: "determined"

DO PASS

Amendment on Page 9.

Senator Towe moved that the following be added to the amendment.

Following "contract,"

Add: "the department may adopt rules to assist it in making determination and in protecting the state in dealing with irrevocable letters of credit."

DO PASS

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Page 2

The words "letter of credit" was discussed as being legal or not. Mr. Glenn Drake was asked to speak and he said that he was told a letter of credit would not hold up in a bankruptcy case. SENATOR TOWE MOVED the following amendments after some discussion.

Page 21, line 18

Add: "not to exceed \$100,000"

DO PASS

Amendment on Page 10. DO PASS

Amendment on Page 11. DO PASS

Amendment on Page 12. DO PASS

Amendment on Page 13

Page 14

and amend:

Page 29, line 15.

Strike: "but is not limited to"

Amendment on Page 15. DO PASS

Amendment on Page 16. DO PASS

Amendment on Page 17. DO PASS

Senator Towe MOVED the following amendment:

Page 32, line 25.

Following: "to"

Strike: "the"

Other questions were posed; one regarding repealing the printing section. There were also questions regarding the offense and fine on page 37, lines 1 and 2.

SENATOR MARBUT had to be excused for another meeting for a short time. It was the opinion of the chair to hold further action on this bill until he returned.

ACTION ON HOUSE BILL 689:

SENATOR TOWE made the following MOTION. TO AMEND:

Page 4, line 22.

FOLLOWING: "part"

STRIKE: to the end of the page

Page 5, lines 1 and 2.

STRIKE: in its entirety.

DO PASS

SENATOR TOWE MOVED H.B.689 BE CONCURRED IN AS AMENDED.
MOTION PASSED.

RETURN TO ACTION ON HOUSE BILL 493:

Amendment on Page 18. DO PASS

SENATOR TOWE MOVED the following amendment:

Page 22 and 23.

Strike: All of Section 25 in its entirety.

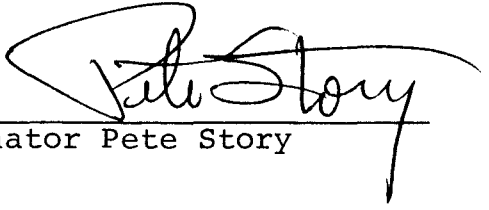
DO PASS

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Page 3

SENATOR TOWE MOVED HOUSE BILL 493 BE CONCURRED IN AS AMENDED.
MOTION PASS. Senator Marbut will carry this bill.

ACTION ON HOUSE BILL 580:
SENATOR MARBUT MOVED TO TABLE H.B.580.
MOTION PASSED

The meeting adjourned at 11:30 a.m.



CHAIRMAN, Senator Pete Story

ROLL CALL

STATE ADMINISTRATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date March 24

----- SENATE
SEAT #

NAME	PRESENT	ABSENT	EXCUSED
SENATOR PETE STORY, Chairman	X		
SENATOR H. W. HAMMOND, Vice Ch	X		
SENATOR REED MARBUT	X		
SENATOR LARRY TVEIT	X		
SENATOR R. MANNING	X		
SENATOR LAWRENCE STIMATZ	X		
SENATOR THOMAS TOWE	X		
SENATOR GARY LEE			

45

34

44

33

48

7

26

11

Each day attach to minutes.

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..... 19

46. Page 39, line 23 and line 25.

Strike: "48"

Insert: "45"

47. Page 39, line 25.

Strike: "49"

Insert: "46"

48. Page 40, line 3.

Strike: "49"

Insert: "46"

49. Page 40, lines 15 and 17.

Strike: "47"

Insert: "44"

And, as so amended
BE CONCURRED IN

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36. Page 32, lines 8, 12, 16, 20, 21, and 25.

Strike: "48"

Insert: "45"

37. Page 32, line 19.

Strike: "40"

Insert: "37"

Strike: "46"

Insert: "43"

38. Page 32, line 25.

Strike: "the"

39. Page 33, line 1.

Strike: "of public works"

Insert: "contracts"

40. Page 33, line 5.

Strike: "48"

Insert: "45"

41. Page 33.

Following: line 6

Strike: section 49 in its entirety

Insert: "Section 46. State printing, binding, and stationery work -- resident preference. All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

42. Page 34, line 16.

Strike: "48"

Insert: "45"

43. Page 35, line 5.

Strike: "48"

Insert: "45"

44. Page 36, lines 10, 13, 16, and 25.

Strike: "48"

Insert: "45"

45. Page 36, lines 10, 14, 17, and 25.

Strike: "49"

Insert: "46"

CONTINUED..

Chairman.

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25. Page 24, line 12.

Strike: "31"

Insert: "28"

Strike: "34"

Insert: "31"

26. Page 26, line 16.

Following: "adopt"

Strike: remainder of line 16 through "to" on line 17

27. Page 27, line 17.

Strike: "37"

Insert: "34"

Strike: "39"

Insert: "36"

28. Page 28, line 16.

Strike: "40"

Insert: "37"

Strike: "46"

Insert: "43"

29. Page 29, line 15.

Strike: "but is not limited to"

30. Page 29, line 23.

Following: "29"

Strike: remainder of line 23 through "39" on line 24

Insert: "27"

31. Page 30, line 3.

Strike: "30" through "39"

Insert: "27"

32. Page 30, line 12.

Strike: "director"

Insert: "department"

33. Page 31, lines 6, 15, and 21.

Strike: "director"

Insert: "department"

34. Page 31, line 24.

Following: "units."

Strike: remainder of line 24 through "units." on line 1, page 32.

35. Page 32, line 1.

Strike: "director"

Insert: "department"

CONTINUED..

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..... 19

15. Page 12, line 10.

Strike: "48"

Insert: "45"

16. Page 14, line 12.

Following: "bids."

Insert: "Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids."

17. Page 14, line 20.

Strike: "48"

Insert: "45"

18. Page 20.

Following: line 25

Insert: "required to be"

19. Page 21, line 4.

Following: "credit"

Insert: "not to exceed \$100,000"

20. Page 21, line 14.

Following: "amount"

Insert: "and type"

21. Page 21, line 15.

Strike: "set in an amount considered"

Insert: "determined"

22. Page 21.

Following: line 18

Insert: "In determining the amount and type of security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. The department may adopt rules to assist it in making this determination and in protecting the state in dealing with irrevocable letters of credit."

23. Page 21, line 23.

Strike: "48"

Insert: "45"

24. Page 22.

Following: line 23

Strike: Sections 25 through 27 in their entirety

Renumber: subsequent sections

CONTINUED..

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5. Page 6, lines 4, 8, 13, 15, and 16.

Strike: "48"

Insert: "45"

6. Page 7, lines 2, 8, 9, 13, and 15.

Strike: "48"

Insert: "45"

7. Page 7, line 19.

Following: "state;"

Insert: "and"

8. Page 7, line 21.

Following: "state"

Strike: remainder of line 21 through "services" on line 24

9. Page 9, lines 7 through 18.

Strike: subsections (a), (b), and (c) in their entirety

Renumber: subsequent subsections

10. Page 10, line 6.

Strike: "and"

Following: line 6

Insert: "(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules, and after adequate written notice to the affected person of the intent to remove or suspend; and"

Renumber: subsequent subsections

11. Page 10, line 16.

Following: "(1)"

Strike: remainder of line 16 and line 17 in their entirety

Insert: "If"

12. Page 10, line 19.

Following: "law"

Insert: ", the department may apply the remedies provided in subsections (2) and (3)"

13. Page 11.

Following: line 17

Insert: "(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3)."

14. Page 12, line 5.

Strike: "30"

Insert: "27"

CONTINUED..

ALA

STANDING COMMITTEE REPORT

MARCH 24 19 83

MR. **PRESIDENT**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE** Bill No. **493**

Yardley (Marbut)

Respectfully report as follows: That **HOUSE** Bill No. **493**

Third reading copy, be amended as follows:

1. Page 1, lines 17 and 20

Strike: "48"

Insert: "45"

2. Page 2, line 14.

Strike: "48"

Insert: "45"

3. Page 5, line 12.

Strike: "48"

Insert: "45"

4. Page 5, line 20.

Strike: "private"

~~REPAIR~~

CONTINUED..

MA

STANDING COMMITTEE REPORT

MARCH 24 19 83

MR. **PRESIDENT**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE** Bill No. **689**

Winslow (MARBUT)

Respectfully report as follows: That **HOUSE** Bill No. **689**

third reading copy, be amended as follows:

1. Page 4, line 22.
Following: "part"
Strike: remainder of line 22 through line 2, page 5

~~Amended~~ so amended
BE CONCURRED IN

~~XXXXXXXX~~

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MONTANA PROCUREMENT ACT

HB 493

STATE ADMINISTRATION
EXHIBIT 1
3-24-83

TOPIC: GENERAL PURPOSE

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
1.	Short Title			
2.	Purpose	No comparable provision	No substantial change	Provides a general rationale and philosophical framework
3.	Definitions	No comparable provisions	Omit construction Replace Board/Officer with Department Restrict services and supplies definition to conform with other law (leave out consulting, land purchase, insurance, construction etc.)	Definitions were adjusted to keep the present scope of purchasing laws and not expand into other areas
4.	Applicable State Laws are referenced, good faith required	No comparable provision. Prohibits writs of mandamus and prohibition to be used as remedy	Adds prohibition for use of writs of mandamus and prohibition.	Injunctions require hearing within ten days. No such time exists on other writs. No attorney fees are awarded on injunctions.
5.	Public Access to Records	No comparable provision	No substantial change Combined some sections.	

TOPIC: PURCHASING ORGANIZATION AND DUTIES

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
6.	Duties of Department	Clarifies and enumerates specific duties. 18-4-101	Suggested organizational structure is revised to conform with executive reorganization.	Present law states Department duties as "shall make or supervise the making of all purchases, leases or rentals." A.B.A. Model duties are more specific and provide better direction.
7.	Delegation of Authority	Clarifies Departments authority to delegate.	No substantial change	
8.	Procurement Rules	No comparable provisions	No substantial change	
9.	Authority To Remove or Suspend From Vendors List	Present law allows removal for failure to respond to 2 bid solicitations 18-4-202	No substantial change	This section expands and clarifies reasons for removing a vendor from the State bidders list, relating such action to cause
10.	Remedies Prior Or After Award	No comparable provisions	No substantial change	This section provides guidance if awards have been made in violation of the law.
11.	Collection of Procurement Data	No comparable provisions	No substantial change	

TOPIC: SOURCE SELECTION AND CONTRACT FORMATION

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
12.	Definitions	No comparable provision	No substantial change	
13.	Methods of Source Selection	This section establishes competitive sealed bidding as the state procurement method <u>except as provided by law.</u> Present law establishes the same method <u>except for purchases under \$2000.</u> 18-4-202/18-4-203	No substantial change	Present law sets out two methods to purchase: 1) competitive bids and 2) competitive sealed bids. These terms are not defined and application of the methods is determined by dollar amount: over or under \$2000. The model code will require clearer criteria for using purchasing methods other than competitive sealed bids and goes on to define such other methods. All of the options offered in the A.B.A. model are in following sections except for emergency purchases which are covered & retained in present law.
14.	Competitive Sealed Bids	No comparable provisions except 18-4-211/18-4-213	No substantial change	Defines the competitive sealed bid process
15.	Competitive Sealed Proposals	No comparable provision	No substantial change	Defines the competitive sealed proposal process. This section allows another procurement method to be implemented by rule-to use when the state will benefit by some negotiation (computer software packages, for example). See page 21, A.B.A. Code book commentary.
16.	Small Purchases	This section allows the Department to set up a procedure. Present law prescribes a procedure for purchases under \$2000. 18-4-203.	No substantial change	The present law requires that written bid requests be sent to all vendors on a state bidders' list for all items purchased under \$2000.00. This is not practical or cost effective.

17. Sole Source Procurement	No comparable provisions	no substantial change	This section allows a procurement method to be implemented by rule to be used when the purchase involves no competition. See A.B.A. Code book page 24 commentary.
18. Cancellations Of Invitations To Bid, Rejection Of All Bids	Authority to reject all bids is essentially unchanged- 18-4-213. Authority to cancel invitations is new although pre-sent law does not prohibit	No substantial change	
19. Nonresponsibility Of Bidders	Clarification of Department authority	No substantial change	
20. Prequalification of Supplier	Clarifies Department authority 18-4-202	No substantial change	
21. Types Of Contracts	No substantial change 18-4-102	No substantial change	
22. Approval of Accounting System	No comparable provisions	No substantial change	
23. Contract Performance Security	Allows Department discretion on performance, labor and material. Bonds not less than 25% of contract. Allow irrevocable letters of credit as security.	No comparable provisions	Should reduce costs to the state of 100% performance bonds on contracts where state's risk is less than 100% of the contract (janitorial contracts). Should increase competition and thus lower costs since paperwork is less for business, and insurance is good for the state.
24. Contracts	No change in 3 year time period, except for data processing and telecommunications contracts (10 yrs allowed). Adds criteria for extending and authority to cancel if funds are not appropriated 18-4-102	A.B.A. Model allows contracts for "any period of time deemed to be in the best interests of the State"; this has been changed to specify time limits. Specific reimbursement provisions have been deleted relating to cancellations	Time limitations are preferred. Cancellation provisions should be part of individual contract negotiations

25. Consultation with the legislature	No comparable provisions	No comparable provisions	House State Administration Committee added this section for long term telecommunication and data processing equipment as a safeguard.
26. Right to Inspect Plant	No comparable provisions	No substantial change	Nothing presently prohibits the State from making this a provision of a contact.
27. Finality of Determination	Clarifies present authority 18-4-213	No substantial change	
28. Reporting Anti-Competitive Practices	Present law prohibits such practices. This section requires they also be reported to Attorney General. 18-4-105	No substantial change	
29. Retention of Records	No comparable provisions	References Montana specific records retention laws.	
30. Records of Sole Source or Emergency Procurements	No comparable provisions	Change 5 year retention requirement to 4 year to be consistent with present retention schedules. Eliminate special reporting requirement.	

TOPIC: SPECIFICATIONS

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
31.	Definitions	No comparable provisions	Omit construction	
32.	Duties of Department	No comparable provisions	No substantial change	This section charges the Department with responsibility for standardizing product specifications for the State, where appropriate. Studies of State purchasing and other state agencies have recommended that this service be provided by the Department.
33.	Using Agencies' Advice in Developing Specifications.	No comparable provisions	No substantial change	
34.	Competition Must be Promoted by Specifications.	No comparable provisions	No substantial change	

TOPIC: CONTRACT CLAUSES/COST PRINCIPLES

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
35.	Contract Clauses	No comparable provisions. Present law does not prohibit such clauses.	No substantial change	This section clarifies that the department may issue contract clauses to cover situations that frequently develop.
36.	Cost Principles	No comparable provisions	No substantial change	This section requires the Department to issue rules to serve as guidance when estimated or incurred costs must be determined, such as when contracts are terminated, when contracts are modified, when no competition exists.

TOPIC: SUPPLY MANAGEMENT

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
37.	Definitions	No comparable provisions. Supplements sections 18-6-101 thru 18-6-103.	Eliminated definitions for "excess supplies" "expendable supplies" and "nonexpendable supplies."	The definitions that were dropped were based on Federal government distinctions and required additional tracking too burdensome for Montana.
38.	Supply Management Rules	No comparable provisions	No substantial change	This section requires the Department to adopt rules for state supply management.
39.	Allocation of Proceeds	Allows the Department to deduct a reasonable handling fee.	A.B.A. Model allows the Department discretion over the sale proceeds.	A handling fee is necessary to cover the cost of the supplies property activities. Allocation of proceeds is already in the law 18-6-101.

TOPIC: INTERGOVERNMENTAL RELATIONS

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
40.	Definitions	No comparable provisions	Wording simplified	
41.	Cooperative Purchasing	Counties may enter into such arrangements presently under 7-5-2308	No substantial change	This section allows the state to enter into purchasing agreements, to jointly purchase items, with any political subdivision. Creates the potential for increased cost savings and convenience.
42.	Sale, Acquisition Or Use Of Public Procurement Units	No comparable provisions	No substantial change	This section allows the Department to purchase from other political subdivisions.
43.	Cooperative Use Of Supplies And Services	No comparable provisions	No substantial change	Allows the Department to share supplies with other political subdivisions.
44.	Joint Use of Facilities	No comparable provisions	No substantial change	Allows the Department to share facilities with other political subdivisions.
45.	Supply Of Information And Services Fees	No comparable provisions	No substantial changes	Allows the Department to provide services to local jurisdictions and allows the Department to collect fees covering the cost of providing such services.
46.	Review of Procurement Requirements	No comparable provisions	No substantial change	Allows the Department to collect and distribute procurement information.

TOPIC: APPLICATION

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
47.	Application	No comparable provisions	No substantial change except to allow Section 24 to be retroactive	Allows the Department to convert telecommunication contract from lease to purchase for more advantageous financing.

TOPIC: LOCAL GOVERNMENT

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
48.	Local Government Adoption of Procurement Requirements	No comparable provisions	No substantial changes	House State Administration Committee added this provision at the request of local governments.

TOPIC: PRINTING

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
49.	Instate Printing Required	Present law provides for 2% instate bidders' preference (18-7-103) except for 10% preference on Montana Supreme Court decisions and all session laws and resolutions (18-7-102). This section essentially allows the Department to establish a preference amount by rule and 18-7-102 and 18-7-103 are repeated.	No comparable provisions in A.B.A.	An advisory council of instate printers has recommended this provision to the Department. The effect of this provision will be to encourage expansion of the instate printing industry's manufacturing capabilities. General procurement other than printing provides for 3% instate preference (18-1-102). Legislation has been introduced (HB 786) to increase this general preference to 5%.

TOPIC: INCORPORATION INTO LAW

Section No.	Description	Change From Present Law	Change from A.B.A. Model	Justification
50.	Amending Section 18-4-104 Purchases Exempt From General Requirements	References changed to refer to this bill	No comparable provisions	
51.	Amending Section 18-7-104 Union Label	References changed to refer to this bill	No comparable provisions	
52.	Amending 18-7-105 Penalties	References changed to refer to this bill	No comparable provisions	
53.	Amending 87-1-209 Acquisition And Sale Of Lands And Water	Omitting reference to 18-4-102. No substantial change.		
54.	Codification	Requiring codification into Title 18, MCA.		
55.	Severability			

56. Repealer	Repeals 18-4-101 General Duties of the Department 18-4-102 Contract terms and time limit 18-4-201 Requisitions for supplies 18-4-202 Contracts over Two Thousand Dollars 18-4-203 Contracts under Two Thousand Dollars 18-7-102 Montana Printers Preferred 18-7-103 State Printing-lowest bidder preference	Model code addresses these provisions Replaced by Section 49
57. Effective Date	Extends effective date to January 1, 1984, except for sections 24 and 47 which apply to telecommunication and data processing equipment.	Allows the Department adequate time to work with state agencies and other interested parties on preparing the procedures through rule to implement this bill. Allows the Department to convert the 10 year state telecommunication lease to a purchase and thereby obtain better financing.

HB 493

MONTANA PROCUREMENT ACT

Analysis and Justification

I. Background

Montana State Purchasing Division has been the subject of formal studies conducted by the Council of State Governments, the Legislative Auditor, the Department of Administration Director's Office and the Governor's Council on Management. All four have stated concern that Montana's Codes are unclear and/or unworkable.

Montana's purchasing laws were written in 1923 and have been revised in a piece-meal fashion since. They are particularly restrictive with regard to small day-to-day purchases and unclear with regard to the Department's ability to delegate purchasing authority. In trying to address these particular concerns, the Department concluded that a new look at State purchasing was in order rather than another piecemeal adjustment of the present Codes.

Recommended as a resource by the Council on Management Report was the American Bar Association's Model Procurement Code for State and Local Government. This code was introduced in its entirety in the 47th Legislature as HB 663, and the Department opposed it. HB 663 covered all possible purchases (construction, consulting services, insurance are examples), redefined the state administrative structure, and set up administrative remedies separate and unique for purchasing. The Department has taken the A.B.A. Model Code and adapted it to reflect the scope of present general purchasing and to fit within Montana's present administrative structure and remedies. The resulting bill will allow the recommendations of all four studies to be carried out by providing clear guidance and recognizing the fundamentals of sound modern public procurement.

II. Change From Present Law

Montana's Purchasing Division alone purchases approximately \$44,000,000 of supplies and services, issuing 8,000 purchase orders annually. In the complex market place of the 1980's questions, exceptions and unique circumstances arise daily for which no guidance exists in the present Montana Codes. In addition, no clear authorization is provided for the Department to establish guidance for State agencies for these difficult questions. Montana's Codes were written in 1923 and certainly many present day situations were simply not anticipated at that time.

Montana's general procurement laws are presently contained primarily in the twelve sections that make up Chapter 4 of Title 18, MCA. This bill will repeal five of those sections

and expand on the remaining provisions by defining terminology and addressing major duties as outlined in the A.B.A. Model Code. Present law does not address most of these integral duties as set forth in the A.B.A. Model Code.

A. General Purpose

Sections 1 through 5 provide the overall rationale, philosophical framework and definitions for state purchasing.

There are no comparable sections in present law. The definitions have been reduced in scope from the A.B.A. Model Code to be consistent with the present scope of law for general purchasing (present law excludes consulting services, insurance and construction).

B. Purchasing Organization and Duties

Sections 6 through 11 set out the duties of the Department of Administration to implement and carry out the provisions of this bill. These provisions specifically charge the Department with rule making responsibility, clarify the Department's authority to delegate purchasing to other agencies and allow the Department to remove vendors from a bidders' list for cause.

Present law provides no guidance on these issues. These sections replace 18-4-101 "General Duties of the Department" which is repealed in Section 53.

C. Source Selection and Contract Formation

1. Sections 12 through 20 identify and define modern purchasing practices. These sections specifically designate competitive sealed bids as the state's means of purchase and then recognize procedures to handle exceptions.

Present law sets out in sections 18-4-202 and 18-4-203 two methods to purchase state supplies and services: 1) competitive bids (obtained by written requests sent to all vendors on a list) for all purchases under \$2,000 and 2) competitive sealed bids for purchases over \$2,000. Some exceptions are noted such as fresh fruits and vegetables and emergencies. These methods, based on an arbitrary dollar amount, are not defined and do not reflect modern public purchasing practices and will be replaced by this bill. Sections 18-4-201, 18-4-202, 18-4-203 are repealed in Section 53.

2. Sections 21 through 27 relate to state contract terms, extensions, renewals and the authority to cancel such contracts if funds are not appropriated.

Present general procurement law does not address contract terms except to provide a time restriction for contracts of three years in section 18-4-102. This restriction has been maintained with an exception to ten years for data processing and telecommunication equipment contracts. This exception for data processing and telecommunications is considered by the Department to be a prerequisite for good management in these areas allowing the state to take advantage of the substantial savings generated by longer term fixed cost agreements. Section 18-4-102 of the present law is repealed in Section 53.

Section 23 exempts purchases under this bill from the performance, labor and materials bond requirements of Title 18, Chapter 2, Construction contracts. This section sets out bonding requirements that are essentially the same as present law except that performance, labor and material security may be less than one hundred percent of the contract and irrevocable letters of credit may be accepted as security. These changes have been recommended to the Department by a wide variety of individuals (businessmen, bonding professionals, other state agency representatives) as reasonable cost saving measures.

3. Sections 28 through 30 require reporting anticompetitive practices to the Attorney General and define record keeping requirements. Present general procurement law has no comparable provisions.

D. Specifications

Sections 31 through 34 charge the Department with responsibility for developing competitive product specifications, where appropriate. This is a recognized part of public procurement activities which saves both time and money.

Present law does not address these specifications.

E. Contract Clauses

Section 35 clarifies that the Department may issue contract clauses to cover situations that frequently develop in the purchasing process.

Present law does not prohibit such clauses.

F. Cost Principles

Section 36 requires the Department to issue rules to serve as guidance when estimated or incurred costs must be reimbursed, such as when contracts are terminated or modified or when no competition exists.

Present general procurement law does not address this issue.

G. Supply Management

Sections 37 through 39 define state surplus property and require the Department to adopt rules regarding management and disposition of surplus property.

Present law, Title 18, Chapter 6, addresses the sale of surplus property and is not changed by this bill except that the Department is authorized to deduct a reasonable handling fee from the proceeds of surplus sales.

H. Intergovernmental Relations

Sections 40 through 46 allow the state to enter into purchasing arrangements with other governmental jurisdictions. The state is allowed to provide purchasing services to local jurisdictions and to establish a fee schedule for such services.

Presently the state can agree to serve as purchasing agent for counties under Section 7-5-2308, M.C.A.

I. Application

Section 47 provides that the provisions of this bill are retroactive only for telecommunication and data processing systems (Section 24) and states other general application provisions.

J. Local Government

Section 48 allows political subdivisions or school districts to adopt all or part of the bill.

K. Printing

Section 49 requires all public printing, binding and stationery work to be performed within the state and prescribes certain exceptions. The Department has determined that adequate competition exists within Montana to allow this provision at no substantial cost

increase to state government while providing benefits to the state economy.

Present laws 18-7-102 and 18-7-103 established ten percent and two percent instate bidders' preference respectively. These sections are repealed in this bill.

L. Incorporation into State Law

Sections 50 through 57 provide instructions for incorporating this bill into state law.

Ten existing sections are repealed. In addition to the sections replaced by this Code, sections 18-7-111 through 18-7-113 which describe state printing specifications are repealed. These sections have not been updated since 1947 and refer to outdated equipment and pricing techniques.

With the exception of sections 24 and 47, the effective date of this bill has been extended to January 1, 1984 to allow the Department adequate time to meet rule making responsibilities and effect an orderly transition.

III. Major Changes from A.B.A. Model Code

The A.B.A. Model Code has twelve Articles:

- Article 1. General Provisions - The A.B.A. Code is written to apply to every kind of purchase. The definitions have been used to scale down the application to what is covered presently under Title 18, Chapter 4.
- Article 2. Procurement Organization - The organization outlined by the A.B.A. Code has been changed to fit into Montana State organization.
- Article 3. Source Selection and Contract Formation - Procedures for selecting consulting services have been deleted.
- Article 4. Specifications - No major change except to reduce scope as noted under Article 1.
- Article 5. Procurement of Construction, Architect and Engineer and Land Surveying Services - This entire Article has been deleted.
- Article 6. Modification and Termination of Contracts for Supplies and Services - No major change.

- Article 7. Cost principles - No major change.
- Article 8. Supply Management - No major change.
- Article 9. Legal and Contractual Remedies - This Article has been deleted except for the authority to remove and suspend vendors from the bidders' list. The provisions of this Article currently exist in Title 2, chapter 4, part 7, M.C.A.
- Article 10. Intergovernmental Relations - No major change.
- Article 11. Assistance to Small Disadvantaged Business; Federal Assistance or Contract Procurement Requirements - This Article has been deleted. Montana's preference and special conditions exist in Title 18, Chapter 1 and Title 18, Chapter 5.
- Article 12. Ethics in Public Contracting - This Article has been deleted. The provisions of this Article currently exist in Title 2, Chapter 2, M.C.A.

HB 493

Page 5, line 20

Following: "by"

Strike: "private"

HB 493

Page 7, line 22 through line 24

Strike: subsection (c) in its entirety

HB 493

Page 9, line 7 Through line 18

Following: line 6

Strike: line 7 Through line 18 in its entirety

Renumber: subsequent subsections

Page 10.

Following: line 10

Insert: " (f) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules and after adequate written notice to the affected person of the intent to remove or suspend."

HB 493

Page 10, line 16.

Following: " (1)"

Strike: the remainder of line 16
and line 17 in its entirety

Insert: "If"

Page 10, line 19.

Following: " law"

Insert: " , the department may
apply the remedies provided
in subsections (2) and (3) "

Page 11

Following: line 17

Insert: " In the event the
matter is reviewed by a court,
the court may apply the same
remedies provided in subsections (2)
and (3). "

Page 14, line 12

Following: "bids."

Insert: "Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids."

Page 20

Following: line 25

Insert: "required to be "

HB 493

Page 21, line 14

Following: "amount"

Insert: "and type"

HB 493

Page 21.

Following : line 18

Insert: " In determining the
amount and type of security
required for each contract, the
department should consider the
nature of the performance and the
need for future protection to
the state. "

HB 493

Page 23, line 7 through line 11

Strike: Section 26 in its entirety

Renumber: subsequent sections

HB 493

Page 23, line 12 Through line 16

Strike: Section 27 in its entirety

Re-number: subsequent sections

Page 26, line 16.

Following: "adopt"

Strike: the remainder of line 16
through "limited to" on line 17

HB 493

Page 30, line 3

Following: "30"

Strike: "and ~~36~~ 37 through ~~38~~ 39"

Page 29, line 23 and 24.

Strike: " and 36 37 through
38 39 =

Page 30, line 12

Strike: "director"

Insert: "department"

Page 31, line 6

Strike: "director"

Insert: "department"

Page 31, line 15

Strike: "director"

Insert: "department"

Page 31, line 21

Strike: "director"

Insert: "department"

Page 31, line 25

Strike: "director"

Insert: "department"

Page 32, line 1

Strike: "director"

Insert: "department"

HB 493

Page 31, line 24 through line 1 on page 32

Following: "units." on line 24

Strike: line 24 through "units." on line 1, page 32

Page 33, Line 1

Following: "construction"

Strike: "of public works"

Insert: "contracts"

Page 33, line 7 through page 34, line 11.

Strike: Section 49 in its entirety

Insert: "Section 49. State printing, binding, and stationery work -- resident preference. All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

HB 493

Page 5, line 20

Following: "by"

Strike: "private"

HB 493

Page 7, line 22 through line 24

Strike: subsection (c) in its entirety

HB 493

Page 9, line 7 Through line 18

Following: line 6

Strike: line 7 Through line 18 in its entirety

Renumber: subsequent subsections

Page 10.

Following: line 10^b

Insert: " (A) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules and after adequate written notice to the affected person of the intent to remove or suspend."

HB 493

Page 10, line 16.

Following: " (1)"

Strike: the remainder of line 16
and line 17 in its entirety

insert: "If"

Page 10, line 19.

Following: "law"

insert: " , the department may
apply the remedies provided
in subsections (2) and (3) "

Page 11

Following: line 17

Insert: " In the event the
matter is reviewed by a court,
the court may apply the same
remedies provided in subsections (2)
and (3). "

Page 14, line 12

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Insert: "Each bidder has the right to be present,
either in person or by agent, when the bids
are opened and has the right to examine
and inspect all bids."

Page 20

Following: line 25

Insert: "required to be"

#B 493

changed
see Dave

Page 21, line 14

Following: "amount"

Insert: ~~"and type"~~

*

HB 493

Page 21.

Following: line 18

Insert: " In determining the amount and type of security required for each contract, ~~the~~ department ~~should consider the nature of the performance and the need for future protection to the state.~~ "

* Town Amend

"The dept may employees to assist it in making claims against and in protecting the state in connection with ~~irrevocable~~ ^{irrevocable} ~~by accident~~."

*

Pg.

line 4

following credit

add - not to exceed \$100,000

Page 23, line 7 through line 11

Strike: Section 26 in its entirety

Renumber: subsequent sections

HB 493

Page 23, line 12 through line 16

Strike: Section 27 in its entirety

Re-number: subsequent sections

Page 26, line 16.

Following: "adopt"

Strike: the remainder of line 16
through "limited to" on line 17

HB 493

Page 30, line 3

Following: "30"

Strike: "and ~~36~~ 37 through ~~38~~ 39"

Page 29, line 23 and 24.

Strike: " and 36 37 through
38 39 =

row

*

pg 29 line 15

STRIKE "but is not limited to"

HB 493

Page 30, line 12

Strike: "director"

Insert: "department"

Page 31, line 6

Strike: "director"

Insert: "department"

Page 31, line 15

Strike: "director"

Insert: "department"

Page 31, line 21

Strike: "director"

Insert: "department"

Page 31, line 25

Strike: "director"

Insert: "department"

Page 32, line 1

Strike: "director"

Insert: "department"

HB 493

Page 31, line 24 through line 1 on page 32

Following: "units." on line 24

Strike: line 24 through "units." on line 1, page 32

HB 493

Page 33, line 1

Following: "construction"

Strike: "of public works"

Insert: "contracts"

Page 33, line 7 through page 34, line 11.

Strike: Section 49 in its entirety

Insert: "Section 49. State printing, binding, and stationery work -- resident preference. All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."