

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 29, 1985

The thirteenth meeting of the State Administration Committee was called to order at 10 a.m. on January 29, 1985, by Chairman Jack Haffey in Room 331 of the Capitol Building.

ROLL CALL: All members were present with the exception of Senator Hirsch who arrived late and Senator Tveit who was excused.

CONSIDERATION OF SENATE BILL 131: Senator Haffey gave some background on the Governor's State Building Construction Advisory Council. He stated that the Council worked for one and one-quarter years and completed this study in late 1984. If the recommendation had the Governor's approval, it was stated on the bill, and if it didn't, it was prefaced with the words by request of the Governor's State Building Construction Advisory Council. This bill is one of the latter, and it is entitled, "AN ACT TO ALLOW THE ENCUMBRANCE AT FISCAL YEAREND OF APPROPRIATIONS FOR BUILDING REPAIR, MAINTENANCE, AND RENOVATION PROJECTS; AMENDING SECTION 17-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Senator Haffey said the purpose of this Council formed in 1983 was to review the construction process and try to make it smoother and more efficient. Senator Haffey passed out a report for the Committee to read regarding these bills and this Council. (Attached hereto marked Exhibit "C" and by this reference made a part hereof.) He told the Committee that the report was lengthy but easy to read. Senator Haffey said that most of the things listed in the report were passed unanimously by the Committee which consisted of Architects, Engineers, Contractors, etc. He said that he did not mean to imply that the bills were not controversial, some of them are. Senator Haffey said some of the recommendations in the report were administratively implementable. SENATE BILL 131, I want to explain to you a little more thoroughly. The subcommittees downstairs appropriate for state agencies for two years. This includes repair, maintenance, etc. If this money is not used, although already intended for repair, renovation or maintenance, it goes back into the general fund at the end of the fiscal year, and the agencies can't do the jobs they were supposed to do on their projects. This is a difficulty for the Architects and Engineers' Office because sometimes by the time they get the paperwork done, the money has reverted to the general fund. This bill would allow the agencies to carry this money over to the next year for the purpose the money was intended.

PROPOSERS: Bill Lannon, member of Governor's State Building Construction Advisory Council, supports this bill.

OPPONENTS: There were no opponents.

COMMITTEE QUESTIONS: Senator Lynch asked if this bill in any way eliminated the bidding process and the 3% that the state controls. Senator Haffey said no. Senator Farrell asked if this was for one fiscal year. Senator Haffey replied yes, paragraph 3 completes the circle and says that. Senator Harding asked if what they were doing is carrying over the money that was budgeted for a certain thing and paid out for that thing the following year. Senator Haffey answered that they would be able to line-item it and carry it over to the next year, but it will be spent on that item. Phil Hauck replied that this is a practical problem. He said that his office consists of a staff of one and all these requests come in at the end of the fiscal year and sometimes they can't get right to them because they have so many, and by the time they do get to them, the money has reverted to the general fund.

SENATE BILL 131 is closed.

EXECUTIVE ACTION ON SENATE BILL 131: Senator Conover moved that SENATE BILL 131 do pass. The Committee voted unanimously that SENATE BILL 131 DO PASS.

CONSIDERATION OF SENATE BILL 134: Senator Haffey introduced two other members of the Council, Marty Crennan and Wayne Edsall. Senator Mohar is the sponsor of this bill entitled, "AN ACT TO PERMIT NEGOTIATION WITH THE LOWEST RESPONSIBLE BIDDER ON BUILDING CONSTRUCTION PROJECTS WHEN ALL BIDS CAUSE THE PROJECT COSTS TO EXCEED THE APPROPRIATED FUNDS; AMENDING the appropriate sections, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Senator Mohar said that if you look in the booklet on page 12, this is recommendation number one. The language on page 2 that has been added says, "Extension of authority. Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act." It further states, "when all responsible bids cause the project to exceed the project appropriation, negotiate an adjustment of the bid price with the lowest responsible bidder in order to bring the project cost within the appropriation. Negotiations may not concern alterations in the plans or specifications that would substantially alter the scope of the project as approved by the legislature." As stated, this would only allow us to negotiate with the lowest bidder if the project looked like it was going to be inflated, instead of having to rebid the whole project.

PROPOSERS: Marty Crennan, Architect and member of the Governor's State Building Construction Advisory Council, supports this bill. Mr. Crennan felt that Phil Hauck's office ought to have the flexibility to negotiate with the lowest bidder on these projects. He said that if the whole project had to be rebid it would probably cost the state more, not to mention time lost that could have been used on the project.

Barbara Martin, staff researcher for the Governor's State Building Construction Advisory Council, supports this bill. Barbara Martin reaffirmed what Marty Crennan said about rebidding the projects, and she said negotiation would be necessarily confined to reducing the lowest responsible bidder's prices, because negotiation would only be permissible if all responsible bids cause the project to exceed the appropriation. Barbara further stated that if a price that would put the project cost within the appropriation cannot be negotiated with the lowest responsible bidder, the project can still be rebid. She said there are at least two states that have laws permitting the state to negotiate, Colorado and Wisconsin. Neither state has had any litigation on application of these laws. Barbara further stated that this bill specifically prohibits any negotiation that would substantially alter the scope of the project as approved by the Legislature. (For more of Barbara Martin's testimony, see Exhibit "A" attached hereto and by this reference made a part hereof.)

David Stover, Contractor, supports this bill.

Wayne Edsall, Governor's State Building Construction Advisory Council, supports this bill. Mr. Edsall said that he knew how expensive and time consuming it could be to rebid a project. He said you could get a 6-7 month lag, and he said in this amount of time wages could increase and other factors could rise.

Bill Lannon, Montana University System, supports this bill, because it is a more effective use of funds for the state.

Curt Chisholm, Department of Institutions, supports this bill.

Phil Hauck, Department of Administration, Architects and Engineers Office, supports this bill. Mr. Hauck said that he would welcome the opportunity to negotiate these contracts if it became necessary.

Denzel Davis, Contractor, supports this bill because he felt that some day they may have the opportunity to negotiate the low bid.

OPPONENTS: There were no opponents.

COMMITTEE QUESTIONS: Senator Lynch asked if it was public knowledge how much the appropriation was for those projects. Phil Hauck answered yes. Senator Lynch asked if it wouldn't be worth the contractors time to bid the amount of the appropriation plus one dollar. Mr. Hauck answered that this would not be the case because sometimes they are not in the ball park. He said if the contractor got the job and couldn't do it for that amount of money, he would lost money on the project. Senator Lynch asked if he would only be negotiating with the low bidder on the job and Mr. Hauck replied yes. Only with the low bidder would they be able to negotiate the contract. Senator Farrell asked at what kind of a difference

they would negotiate. Mr. Hauck felt that that is a judgment call. If they were too far out of the ball park, it would be rebid. Senator Harding said that they would only be able to negotiate down so that they could meet the appropriation. Senator Mohar said that that was right. Senator Lynch said the low guy gets to negotiate and go lower on his bid. Mr. Hauck said yes. Senator Lynch felt this was not fair. Senator Hirsch asked if someone bid an extra dollar what if the legislature had not given them enough money for the project. Senator Mohar said that a prime example was the Capitol building. The Legislature gave them \$6 million and it is costing \$8 million to restore. Since they would have to alter the scope of the project to bring this into line, this amount could not be negotiated. Senator Lynch brought up the fact that only two other states do it this way out of 51. Barbara Martin said that she only researched the western states. Senator Lynch said he felt that they should all have the chance to rebid. Senator Mohar said that this would save additional cost to the state as well as the contractors because the contractors would have to take the time to refigure their bids. We have a very short building season and if the final bid is not in until August, chances are you won't get the roof on by the time the snow flies. The other two states that have this system have the same type of weather that we do.

In closing, Senator Mohar said that as a contractor he felt that negotiating with the lowest bidder seemed very fair. He felt that this is a good bill that will give us more building for less money.

SENATE BILL 134 is closed.

EXECUTIVE ACTION ON SENATE BILL 134: Senator Conover made a motion that SENATE BILL 134 do pass. Senator Lynch said that he did not like this bill because it seems to him that a bid is a bid, and if you bid over, I think everyone should be back in the ball game. He also felt that there must be reasons why the vast majority of the states do it the way we do it now. Senator Manning called question. Senator Haffey explained that the bids are opened all at the same time and no one contractor knows what the other contractors have bid until they are opened. If the lowest bidder is a responsible bidder then the negotiations would be allowed if the lowest bidder is over the appropriations. Senator Farrell said that he would like to defer action on this until he has had time to read the book. Senator Conover asked if the lowest bidder comes in and you negotiate with him, do you have the right to stop negotiations and rebid the project. Mr. Hauck answered yes. Senator Conover withdrew his motion. Senator Haffey said we would have executive action on this bill on Friday.

CONSIDERATION OF SENATE BILL 138: Senator Mohar, Senate District #1, is the sponsor of this bill entitled, "AN ACT TO ELIMINATE THE PROVISION ALLOWING INDIVIDUAL SURETIES FOR PUBLIC WORKS PROJECTS; AMENDING the appropriate sections; AND PROVIDING AN IMMEDIATE

EFFECTIVE DATE." Senator Mohar explained that as the law now stands two individuals can walk in off the street and sign as sureties on state projects. This will would require these bidders to go to a surety company which does not need to be investigated. page 2, line 15 reads "notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency 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, materialmen, mechanics, and subcontractors;" Senator Mohar felt that the Department of Administration should not have to investigate these individual sureties.

PROPOSERS: Barbara Martin stated that the purpose of this bill is to eliminate the provision in the law that allows public contracting agencies to accept individual sureties. She went on to list various ways that a contractor can be covered and how it would be to their benefit and aid the state, as the state would not have to verify that individual sureties had enough money to cover these projects. (For more of Barbara Martin's testimony, see Exhibit "B" attached hereto, and by this reference made a part hereof.)

Eugene Fenderson, Laborers Local 254, supports this bill. He said that this would be a better way to insure that his laborers get paid. He says you can't enforce a mechanics lien against the Capitol.

Phil Hauck, Department of Administration, supports this bill. He said that when the current bill was originally passed in 1981, it scared the socks off him because it left quite a few projects covered only by individuals.

OPPOSERS: There were no opposers.

COMMITTEE QUESTIONS: Senator Hirsch said that he did not know that a surety could be a person or individual. Mr. Hauck said yes and that then his office would have to investigate.

SENATE BILL 138 is closed.

EXECUTIVE ACTION ON SENATE BILL 138: Senator Manning made a motion that SENATE BILL 138 do pass. The Committee voted unanimously that SENATE BILL 138 DO PASS.

The meeting was adjourned at 11:15 a.m.


SENATOR JACK HAFFEY, CHAIRMAN

DATE January 29, 1985.

COMMITTEE ON State Administration

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
DAVID STEUER	MT CONTRACTOR	513 134	X	
DENZEL C DAVIS	SELF	134	X	
WAYNE EDHALL	Gov. Council	134 138	X	
PHIL HAUCK	Dept. of Admin	134 138	✓	
Barbara Martin	Dept Admin / Gov. Council	134 138	X	
Bob Burt	MT. Assoc. of Counties	138		
Eugene Fenderson	Laborers Local 254	134 135	X	
Bill Lannan	Mont Univ System	134 134	✓	
Phil Norton	Painter DC 59	131 334 335	X	
Warty Cremon	Gov. Council	134	X	

(Please leave prepared statement with Secretary)

Exhibit A
SB-134
1-29-85

TESTIMONY

On SB 134

Under current law, if all responsible bids received on a project would cause the project cost to exceed the appropriation, the project must be rebid. This is an expensive process. All the staff time and advertising costs are incurred twice. If there is a large time lag before the project is rebid, or if the project is rebid late enough so it cannot be started because of the weather, substantial increase can be expected in the bids due to inflationary increases in labor, equipment, and supplies costs and increased costs to bidders to put the bid together twice which are ultimately passed on to the state or other owners. Competition may be reduced on a rebid because bidders, having shown their hand in the first bid opening may be reluctant to rebid the project, as a result bids may be higher. Permitting negotiation could eliminate the additional costs of rebidding. If bids cause the project costs to exceed the appropriation, negotiation could be used to reduce the costs. Considering the extra expense incurred in rebidding a project, the agency may get less for its money than if a price could be negotiated.

Negotiation would be necessarily confined to reducing the lowest responsible bidder's prices, because negotiation would only be permissible if all responsible bids cause the project to exceed the appropriation.

The words, "responsible bidder" are included in this bill so the department would not be prevented from negotiating with the second lowest bidder if the lowest bid was within the appropriation, but was either rejected as not responsible or was withdrawn by the bidder.

Negotiations are confined to the lowest responsible bidder or bidders when multiple contracts are used. There are three reasons for this:

1. The initial bidding process has satisfied the requirements for fair competition. If the bids had not caused the project cost to exceed the appropriation, the lowest responsible bidder would have been awarded the contract.
2. If all contractors who bid were allowed to negotiate, it would be a cumbersome job for the department to negotiate with all bidders.

If a price that would put the project cost within the appropriation cannot be negotiated with the lowest responsible bidder, the project can still be rebid.

There are at least two states that have laws permitting the state to negotiate. These are Colorado and Wisconsin. Neither of these states has had any litigation on application of these laws.

This bill specifically prohibits any negotiation that would substantially alter the scope of the project as approved by the Legislature.

Exhibit "B"
SB-138
1-29-85

TESTIMONY

ON SB138

INDIVIDUAL SURETIES

Background:

The purpose of this bill is to eliminate the provision in the law that allows public contracting agencies to accept individual sureties.

Individual sureties have been permitted by law since 1981 as have provisions allowing deposit of certain negotiable securities with the public contracting agency to guarantee performance of the contract and payment for all labor and materials. Until that time, only a surety bond was acceptable.

An individual surety is the signature of an individual rather than a licensed bonding company on the performance and payment bond forms certifying that the signator guarantees completion of the project according to the contract and that all labor and materials will be paid. The current law requires a minimum of two such signators.

State law requires all projects to be covered by a surety or security in an amount equal to 100% of the construction costs.

Assessment:

This law specifies that these individual sureties must be acceptable to the governmental agencies. However, any agency accepting such a surety must either have the resources to verify the financial responsibility of those persons acting as sureties or take the risk of having inadequate coverage or no coverage at

all if the contractor fails to perform, the contractor pay for labor or materials. There is also no limit on the size of project that can be covered by an individual surety, so the financial risks to the contracting agency could be considerable.

Since a contractor may furnish negotiable securities in lieu of a surety bond, he is not limited to having to get a bond from a licensed surety company to work on public works projects. A deposit of negotiable securities also provides more security to the contracting agency than an individual surety, because if the contractor fails to perform the contract or pay for labor and materials, the state may use the deposited securities to pay these costs.

STANDING COMMITTEE REPORT

January 29 19 85

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**

having had under consideration **SENATE BILL** No. **131**

first reading copy (**white**)
color

ENCUMBRANCE OF APPROPRIATIONS FOR BLDG. REPAIR MAINTENANCE RENOVATION

Respectfully report as follows: That **SENATE BILL** No. **131**

~~DO PASS.~~

~~DO NOT PASS~~

.....
Chairman. 110

STANDING COMMITTEE REPORT

January 29 1985

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**

having had under consideration **SENATE BILL** No. **138**

first reading copy (white)
color

DISALLOW INDIVIDUAL SURETIES ON PUBLIC WORKS PROJECTS

Respectfully report as follows: That **SENATE BILL** No. **138**

DO PASS

~~DO NOT PASS~~

[Signature]
Chairman.

Exhibit "C"

SB-131

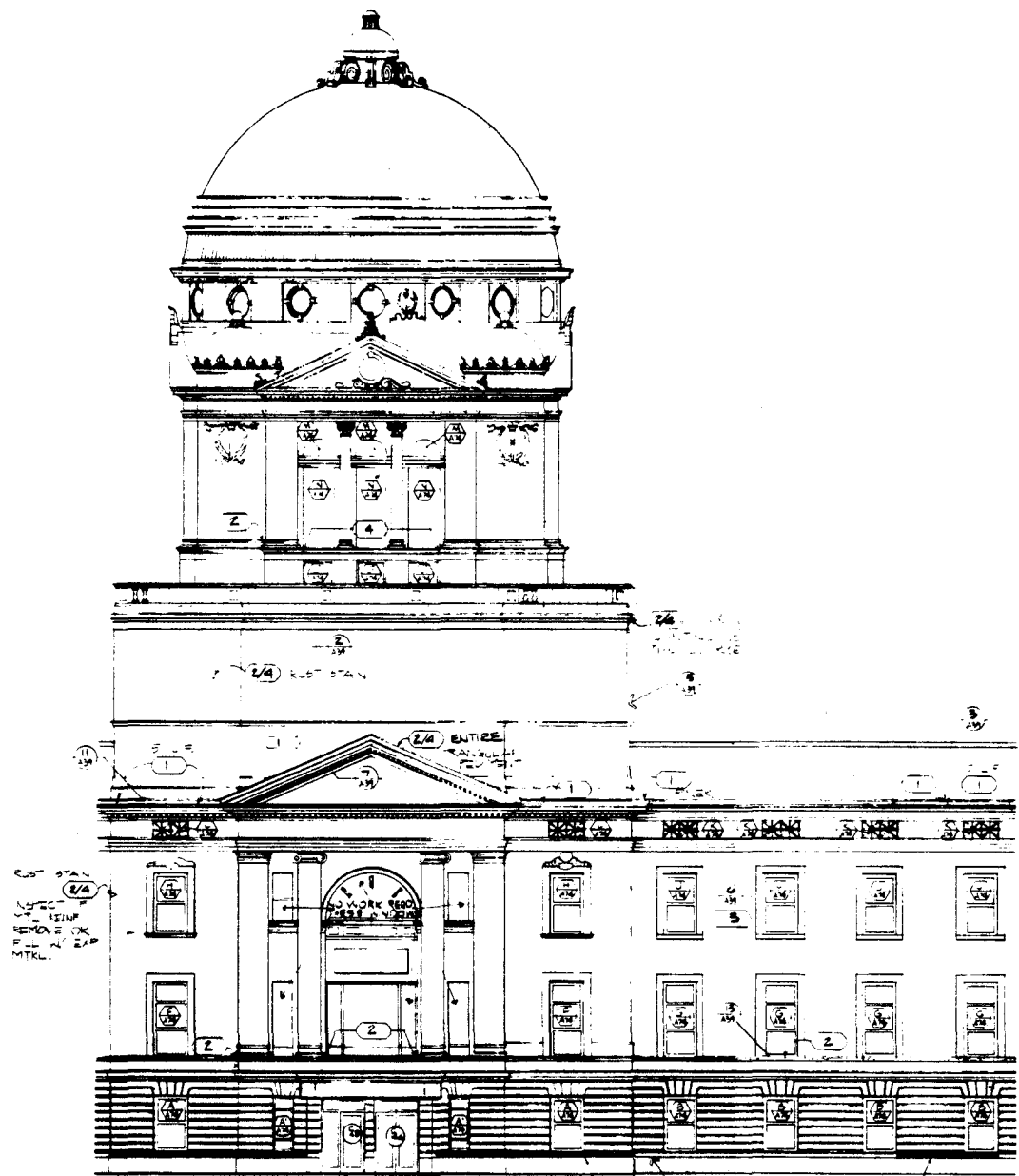
134

138

1-29-85

Report to the Governor

Recommended Improvements to Montana State Construction Laws, Policies and Procedures



Governor's State Building Construction Advisory Council
December 1984

December 6, 1984

The Honorable Ted Schwinden
The Governor's Office
Capitol Station
Helena, MT 59620

Dear Governor Schwinden:

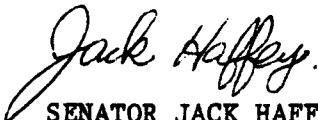
On behalf of the Governor's State Building Construction Advisory Council, I am pleased to present to you the Council's final report entitled "Recommended Improvements in the Montana State Construction Laws, Policies, and Procedures."

The 48th Legislature appropriated funds to support the Council which began its deliberations in August of 1983 to study the building construction policies and procedures to determine whether the needs of the state are being served and that a functional system of checks and balances exists. We have given the construction laws, policies and procedures careful review from the perspective of the design profession, construction industry, state agencies, and Legislators and we are in substantial accord on our recommendations.

We believe this study is significant because the building construction program is one of the largest programs in the state with respect to the size of the budget. It is also one of the most important because there is a direct working relationship between the state of Montana and the construction industry and the resulting facilities are seen and used by the public on a daily basis.

We appreciate the opportunity to have served on the Governor's State Building Construction Advisory Council and we are confident that implementation of these recommendations will increase the effectiveness of the building program and will help make better use of public funds.

Respectfully submitted,



SENATOR JACK HAFHEY, Chairman
Governor's State Building
Construction Advisory Council

GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL MEMBERS

CHAIRMAN

Senator Jack Haffey - Anaconda

VICE-CHAIRMAN

Representative W. Jay Fabrega - Great Falls

LEGISLATIVE MEMBERS

Senator Harold Dover - Lewistown

Representative Joe Quilici - Butte

DESIGN PROFESSIONAL MEMBERS

Martin Crennen

Campeau, Crennen & Karhu - Helena

David Davidson

Davidson & Kuhr Architects - Great Falls

James Spring

Christian, Spring, Sielbach & Associates - Billings

CONSTRUCTION INDUSTRY MEMBERS

Duane "Bud" Anderson

Anderson Steel Supply Co. - Great Falls

Norman Carey

4 G Plumbing & Heating, Inc. - Missoula

Wayne Edsall

Edsall Construction Co., Inc. - Bozeman

O. F. "Ty" Ingram (deceased)

Ingram-Clevenger, Inc. - Helena

Robert Sletten

Sletten Construction Co. - Great Falls

(Replaced Mr. Ingram)

Art Stuart

Retired Electrical Contractor - Bozeman

Claude Wilson

Claude Wilson & Co., Inc. - Bozeman

STATE AGENCIES

William "Bill" Lannan

Montana University System - Helena

Carroll South

Department of Institutions - Helena

STAFF

Barbara Martin

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**FINAL REPORT ON IMPROVEMENTS TO CONSTRUCTION LAWS, POLICIES AND PROCEDURES
RECOMMENDED BY THE
GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL**

INTRODUCTION

The Governor created the Governor's State Building Construction Advisory Council by Executive Order No. 9-83 on August 11, 1983, in response to interest expressed by the Legislature, state agencies, and representatives of the building industry. The 48th Legislature appropriated funds to support the Council, which is composed of fifteen members representing each of the following interests: Legislature - 4, Construction industry - 6, Design professionals - 3, and state agencies - 2 members respectively. The Department of Administration provided the following staff: Barbara Martin - Council Staff, and Jean Christofferson, Rae Jerrel, Rose Oleson, Peg Oens, and Colleen Strizic - clerical assistance.

The purpose of the Council as stated in the Executive Order is:

"(To) examine the state's building construction policies and procedures and recommend improvements to the Governor. For purpose of this order, "building" and "construction" are defined pursuant to Section 18-2-101, MCA."

"Specifically, the Council shall study and make recommendations on such construction functions and issues including, but not limited to:

- a. whether the existing building construction policies and procedures are effectively serving the needs of the state; and
- b. whether the current roles and responsibilities of the Architecture and Engineering Division and the Board of Examiners in the building construction process provide a functional system of checks and balances."

The Council made specific recommendations within these guidelines to improve administration of the construction program which must be presented in a report to the Governor by December 31, 1984. These recommendations are the result of careful study and consideration of information presented at public hearings (see Appendix 9) conducted by the Council, data collected from other states, and literature about the construction industry. The majority of the recommendations made by the Council affect the administration of the building program subsequent to approval by the Legislature. To maintain clarity, the program is discussed in sequence by operation. Council decisions that affect each operation are listed with the description of that part of the process, and a short discussion of the probable impact of those decisions follows. Five issues that are not related to a specific operation of this process, but were addressed by the Council, appear at the end of the report with a statement of probable impact of these decisions.

The Executive Order expires on December 31, but the Council voted unanimously to request an extension of the term of the Order through the 1985 Legislative Session for the purposes of completing the Council's work.

WORK PLAN

At the organizational meeting on August 30, 1983, the Council identified the relevant issues. The Council organized the issues into subject areas, and developed a work plan. In October the Council held a hearing to solicit the public's suggestions for issues to be considered by the Council. During the rest of the year the Council incorporated additional issues. The work plan shown below includes all issues addressed by the Council.

August 1983:

- Organizational meeting.
- Adoption of a preliminary work plan.

October 1983:

- Public hearing to solicit suggestions of issues for Council consideration.
- Review of the authority and responsibility of the Architecture & Engineering Division, the Director of the Department of Administration, and the Board of Examiners.
- Review of Architecture & Engineering Division workload and means of managing it.
- Review of the level of centralization of administration of the construction process and discuss the benefit of having facility planners in some user agencies.

December 1983, Discuss:

- The benefits of single and multiple prime contracts.
- Construction contract types and methods of contracting.
- The lease purchase option.
- Design professional selection and compensation.

March 1984, Discuss:

- The bidding procedure and bid irregularities.
- Contractor licensing.
- Negotiation of contracts when bids exceed estimated construction costs.
- Necessity for bid, performance and payment bonds on small projects.
- Design-build/turnkey construction.

April 1984, Discuss:

- Contractor licensing in more detail.
- Preplanning.
- Responsibilities of the design professional, A/E, user agency, and contractor during construction.

July 1984, Discuss:

- The contract boilerplate, liquidated damages, types of specifications.
- Use of the terms "observation" or "inspection" with regard to design professional responsibilities.
- Board of Examiners approval of the Capital Construction program.

- Responsibility for administration of the construction process.
- The law that restricts bidding by public contractors working past the deadline.
- Unfinished business for issues discussed at previous meetings.

September 1984:

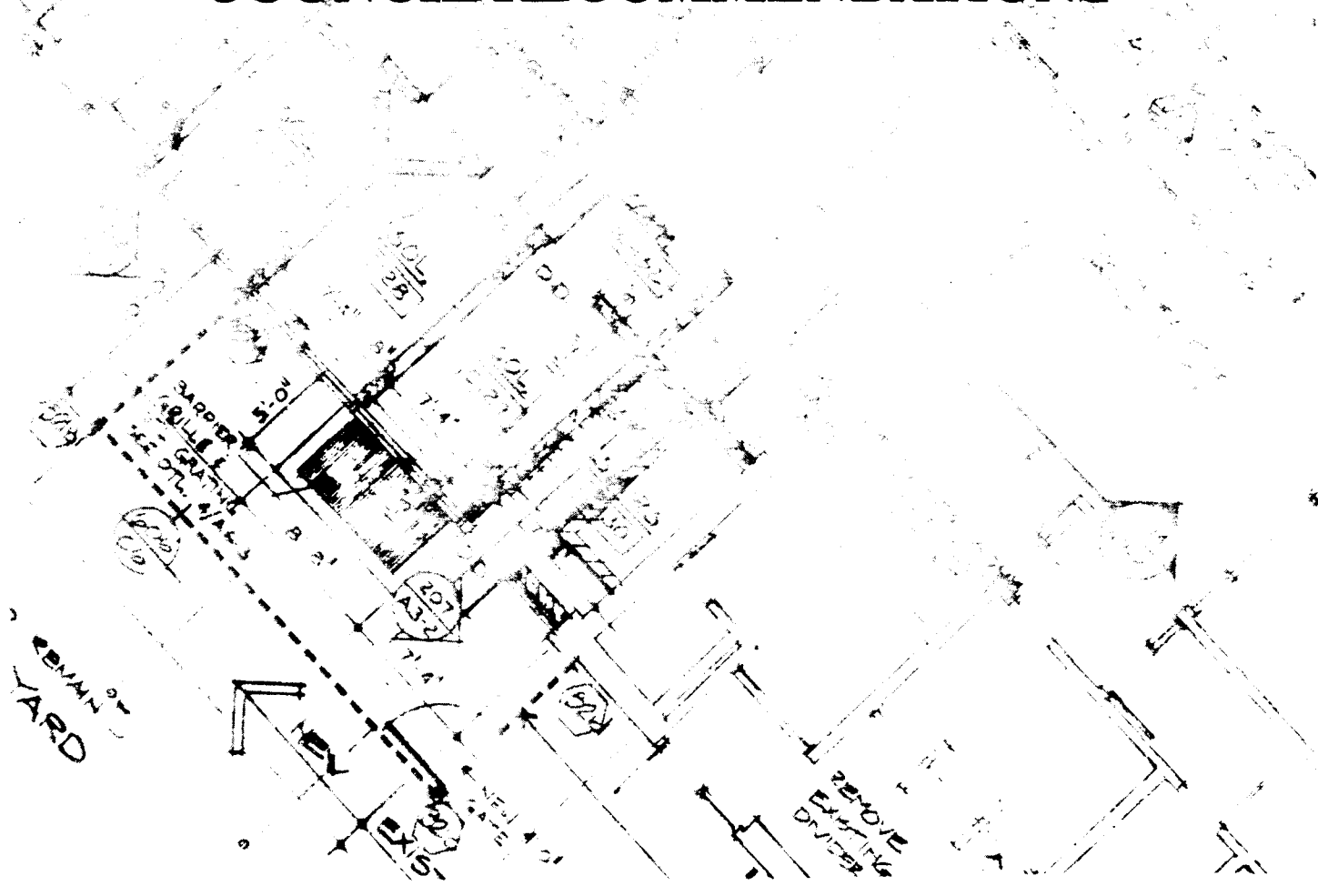
- Public hearing on recommendations made in draft report.
- Unfinished business on issues presented at the previous meeting.

October 1984:

- Review the final report and proposed legislation prior to submission to the Governor.



COUNCIL RECOMMENDATIONS



RECOMMENDATIONS RELATED TO MONTANA'S BUILDING CONSTRUCTION PROCESS

The State's building construction process applies to construction, remodeling, and major maintenance and repair projects on all State-owned facilities other than the road construction and maintenance administered by the Department of Highways, or water conservation projects. The Facility Planning Bureau, the Design Bureau, and the Construction Bureau in the Architecture & Engineering (A/E) Division, Department of Administration (DOA), and other agencies work to coordinate this process. The following description explains the role of each, and outlines the sequence of events through which projects proceed before reaching final acceptance and occupation by the State. The numbered statements below describe the current operation in sequence. Council recommendations that affect each operation follow the description. A statement of anticipated impact accompanies each recommendation.

PREPLANNING

1. A/E's Facility Planning Bureau solicits from agencies all requests ("wish lists") for facility construction, remodeling, repair, and maintenance projects. In most cases, A/E staff works with agencies to determine specific project needs, reasonably accurate space and cost estimates. The Department of Fish, Wildlife, and Parks and the University System usually use their own staffs to develop cost estimates on their projects. Large, complex projects requiring an appropriation for in-depth preplanning are identified at this time as well. All project requests must be submitted to DOA by July 1 of each even-numbered year.

Council Recommendations - Preplanning:

Recommendation #1:

Encourage the use of preplanning of construction projects whenever appropriate. Vote: Unanimous.

The DOA encourages preplanning on large or complex projects now. No change would be imposed by adopting this recommendation. Preplanning necessarily carries a project over two legislative sessions; one for preplanning and the next to appropriate funds for the project. However, the appropriation is based on a more accurate assessment of the project's scope and cost. Therefore, the probability of and the need for a supplemental appropriation due to inadequate planning is substantially reduced. The disadvantage of preplanning is that if one Legislature appropriates money for preplanning, the next Legislature may feel obligated to appropriate funds for construction because of the money already spent. Considering these arguments, the Council decided to encourage, but not require, preplanning which supports Department of Administration's current approach.

Recommendation #2:

With the exception of the University System, facility planning should remain at the current level of centralization. The Department of Fish, Wildlife and Parks may do their own preplanning subject to DOA approval. Vote: Unanimous.

Addition of a facility planner for the University System may improve coordination of the University's building program, but may also result in additional costs to another employee. The University System consistently has the largest number of projects submitted in the Capitol Construction Program and the campuses are located throughout the state. The benefit of a facility planner would be to ensure the building needs of the University System are identified and coordinated for all campuses. Currently, some campuses have staff qualified to assess construction needs and estimate cost and others do not. A facility planner would be helpful to assess the needs of each campus and put those into priority to make the best use of building funds available to the University System.

APPROVAL OF THE CAPITAL CONSTRUCTION PROJECTS

2. This list of project requests is revised and put into priority by the Department of Administration (DOA) in consultation with the Governor's Office of Budget and Program Planning, according to need and available revenue (see Appendix 1 for information on the amount requested for the Capital Construction Program (CCP) and the amount approved by the Legislature over the last four biennia). Following the Governor's approval of the revised list, the DOA prepares and publishes the Capital Construction Program report, which is submitted to the Legislature with the Governor's Executive Budget.

3. The Legislature has the final authority to determine which projects in the CCP will be funded and appropriates funds for each one. In certain cases, projects may also be authorized by the Board of Regents and the Governor. (See Appendix 2, MCA 18-2-102.)

Council Recommendations - Approval on Capital Construction Projects:

Recommendation #1:

The Board of Examiners should not be involved in reviewing or approving the Capital Construction Program. Vote: Unanimous.

This recommendation supports current practice which is adequate. Requiring review by the Board of Examiners would impose another unnecessary step to the review process without providing any additional checks and balances.

Recommendation #2:

The current law that requires legislative consent to construct any building costing more than \$25,000 should be amended to increase this amount to \$100,000. Vote: 10 to 1

Amending this law would increase the size of a project a department director, the Regents, or other governing person or body could authorize from \$25,000 to \$100,000. However, because the agency must either have appropriated funds available or funds not subject to legislative appropriation in their budget, this provision would have limited application. Implementation requires legislations.

DESIGN PROFESSIONAL SELECTION

4. When the department is ready to begin work on a project, the design professional selection procedure begins (see the Architect/Engineer Selection Procedure, Appendix 3). At this point, most projects are referred from the Facility Planning Bureau to the Design Bureau. Currently, on projects under \$100,000 there are no requirements for advertisement for DPs by the DOA. For projects of less than \$100,000, the user-agency submits a list of three design professionals to the Director of the Department of Administration, who then selects one for approval by the Board of Examiners. The formal selection procedure (Appendix 3) is followed for projects over \$100,000. In either case, the selected DP then submits a detailed cost proposal, and a final fee is negotiated between DOA and the DP.

Council Recommendations - Design Professional Selection:

Recommendation #1:

The DOA should continue its current design professional selection procedure. Cost should not be part of the selection process nor should design professional services be bid. Vote: Unanimous

This recommendation leaves the current selection procedure used by the DOA unchanged. The current procedure was adequate because selection is based on qualifications. If a reasonable fee cannot be negotiated, negotiations open with the next best qualified.

Recommendation #2:

The user agency must notify all local architects or consulting engineers when such design services are required on projects under \$100,000. The notification method used should be at the agency's discretion. Vote: Unanimous

Requiring user agencies to advertise for design professionals on projects under \$100,000 may impose some additional work on user agencies depending upon how they notify DPs of upcoming work now.

Recommendation #3:

The state should give preference to in-state design firms. Vote: Unanimous.

The DOA currently gives preference to in-state design firms.

Recommendation #4:

The state should adopt a statement for design professionals to sign which certifies that they have not paid contingency fees to the contracting agency or its representatives to secure appointment. Vote: Unanimous.

Currently, design professionals are not required to certify they have not paid contingency fees to secure appointment. Implementation would require developing such a statement for design professionals to sign.

Recommendation #5:

The state should not hire design professionals on an annual retainer basis to do small projects. Vote: Unanimous.

The DOA does not hire DPs on a retainer basis to do small projects because this would limit access of DPs to smaller projects for the state.

Recommendation #6:

The Department of Administration should have the authority to appoint design professionals on projects costing under \$100,000 without concurrence or approval by the Board of Examiners. (See Appendix 4, MCA 18-2-112.) Vote: Unanimous.

Giving authority to the Department of Administration to appoint DPs would result in elimination of the requirement for Board of Examiners' (BOE) approval of appointments on projects under \$100,000. This would speed up the appointment process and reduce the workload of the BOE, but would continue BOE involvement in selection of DPs for large projects. Implementation requires legislation.

Recommendation #7:

After-the-fact cost plus contracts for design professional services should not be used. Vote: Unanimous.

Cost plus contracts are currently prohibited by law. Allowing such contracts to be let may subject the state to unanticipated cost over runs which would not be in the best interest of the state.

IN-HOUSE DESIGN

5. A/E's staff plans and designs most repair and maintenance projects and many remodeling, renovation, and new construction projects under \$25,000. User agencies with qualified in-house staff may also do design work on these projects with DOA's concurrence. Neither the DOA nor any state agency may do design work on any construction project costing more than \$25,000, but they may do design work on any repair and maintenance project regardless of cost. No agency may use its own staff to do any construction work over \$5,000 because bids are required.

Council Recommendations - In-house Design Work:

Recommendation #1:

The DOA should contract with private design firms rather than expanding its staff to accomplish work on small projects or larger repair and maintenance jobs that exceed current DOA staff resources. The design costs incurred should be charged to the project funding source. Vote: Unanimous.

Contracting out excess design work could reduce A/E's workload at peak times so staff resources could be allocated to areas of greatest need. This would allow the characteristically fluctuating workload to be accommodated without substantial increases in A/E's staff. Currently, DOA assesses a 1% fee to do design work on projects not funded through the Long Range Building Program account, although this fee does not cover DOA's costs. If this recommendation is adopted, user agencies would pay more for design services but it may be easier to accommodate the user agencies' needs and also reduce A/E's workload. This could be done now.

Recommendation #2:

Leave the system as it is, with a ceiling of \$25,000 for in-house design and \$5,000 for construction. Vote: 9-yes, 2-no.

The rationale for this recommendation, which supports current practice, is that if these dollar levels are increased, it may reduce the opportunities for small contractors and design firms to do state work.

PLANS, SPECIFICATIONS, & COST ESTIMATES

6. The selected DP works with the user agency and DOA to complete preliminary and final working drawings. The DP prepares a construction cost estimate at each phase of the project prior to bidding. DOA reviews the plans and cost estimates.

Council Recommendations - Plans & Specifications:

Recommendation #1:

The DOA should review and accept plans, specifications, and cost estimates. Vote: Unanimous.

The word "accept" does not appear to confer as much liability or responsibility on the DOA as the word "approve" does. Including cost estimates gives the DOA some control over estimates submitted. Implementation of this recommendation requires legislation to change MCA 18-2-103(1)(a); (see Appendix 5).

Recommendation #2:

The DOA should develop a standard format for the boilerplate of the contract so the information that is similar from project to project has a standard location and content and is kept up to date. Vote: Unanimous.

A standard boilerplate would make review of the specifications easier for A/E staff, would clarify bidding procedures for contractors, and ensure that the provisions that are unchanged from project to project are accurate and consistent and that all information is included.

CONSTRUCTION CONTRACTING METHODS

7. The state usually solicits bids for separate mechanical, electrical, and general contracts, although sometimes a single general contract is let. In-house staff may be used to do construction work on projects less than \$5,000.

Council Recommendations - Construction Contracting Methods:

Recommendation #1:

The DOA, in consultation with the user agency staff, should have the flexibility to decide whether a single or multiple prime contracts should be used on a project. Vote: 9-Yes, 1-No.

The DOA will have more flexibility in deciding whether single or multiple prime contracts will be awarded. Current practice by the Board of Examiners is to let multiple prime contracts.

Recommendation #2:

At the present state of the art, the state should not engage in professional construction management. Vote: Unanimous.

The primary concern was that construction management in its current state of development may not be as cost effective as conventional contracting methods due to the cost and expertise required to coordinate the many contracts that are usually let with construction management.

Recommendation #3:

The design-build/turnkey method of construction is not a practical option for the state. This concept of construction should be rejected. Vote: Unanimous.

Because design-build/turnkey projects are bid as a package by a developer, the traditional relationship of a design professional as a representative of the owner is lost. If this representation is necessary or desired, it would add cost to the project. In addition, the owner, or a DP hired by the owner, must develop detailed bid packages so bids are comparable. This adds extra cost to a project to develop this bid package and reduces the cost effectiveness.

Recommendation #4:

The \$5,000 dollar limit on in-house construction should not be raised. Vote: 9-Yes, 2-No.

Small projects give small contractors an opportunity to get experience in state work. Raising the limit may reduce the number of small jobs that are bid out.

BIDDING PROCEDURE

8. When the plans are complete and have been reviewed by the user agencies, DOA and state and local building code officials, the DOA, or on some projects under \$25,000, the user agency advertises for bids. Contractors' bids must be accompanied by a 10% bid bond or a negotiable security of equivalent value.

Council Recommendations - Bidding Procedure:

The Council concurred that the state should have a written policy covering the bidding procedure, which should increase awareness of the DOA's policies and voted specifically that:

Recommendation #1:

The time allowed for advertisement and solicitation of bids should remain unchanged. Vote: Unanimous.

There was concurrence that the time the DOA allows for solicitation of bids is adequate.

Recommendation #2:

The waiving of bid irregularities should be left to the discretion of DOA. Vote: Unanimous.

There are many different types of irregularities and it is important for the DOA to retain the flexibility to decide on the impact of waiving any irregularities on a case-by-case basis to serve the state's best interests.

Recommendation #3:

DOA should enforce a deadline of 7 days for issuance of addenda prior to bid opening. Vote: Unanimous.

Strict enforcement of a seven-day deadline on issuance of addenda may result in moving bid opening dates or in changes by change order after contract award. However, it should eliminate the chances of bidders not receiving all addenda and reduce mistakes in bids due to the rush to incorporate last minute changes.

Recommendation #4:

Alternates should be handled according to the best interests of the state on a project-by-project basis. Vote: Unanimous.

Alternates are included in a bid package to accommodate the price of a project to the budget. The department needs to retain the flexibility to handle alternates on a project-by-project basis.

Recommendation #5:

- Prebidding should be allowed if the DOA decides it is in the state's best interest to do so. Vote: 9-Yes, 1-No.

DOA can prebid (open bids for major subcontracts first and let general contractors submit bids using these subcontractors' bids) projects now, but does not do this often because mechanical, electrical, and other subcontractors must subcontract to a general contractor who they may not want to work with. Bids may be fewer or higher to cover this uncertainty.

QUALIFIED BIDDER

9. The bids are opened at the time advertised in the solicitation for bids, and no bids are accepted after opening begins. Immediately after the bid opening, A/E prepares a Bid Tabulation sheet, listing every responding contractor's base bid and bids on alternates. All bids are then examined to determine who is the lowest "qualified" bidder, who is entitled by law to receive the contract. To be considered "qualified", a bidder must: (1) possess a valid Montana public contractor's license of the appropriate classification, (2) not be working beyond the deadline on another public project, and (3) furnish the required bid, performance and payment bonds or appropriate security, and insurance.

Council Recommendations - Qualified Bidder:

Recommendation #1:

The state should have the authority to waive bid, performance, and labor and materials bonds on projects up to \$25,000 on a project-by-project basis at the discretion of the contracting agency. (Current law appears in Appendix 6)
Vote: Unanimous.

This change may increase opportunities for small contractors who haven't been bonded to do state work without tying up their working capital which now must be deposited in lieu of a bond. If a contractor defaults, the state would be liable to pay costs now covered by the bonds or security.

Recommendation #2:

- Dispense with the wording in the law that allows individual sureties. Vote: Unanimous.

The provision in the law that permits individual sureties also applies to public bodies and political subdivisions of the state as well as the state. Acceptance of individual sureties, according to DOA staff, puts the contracting agency in a position of increased liability should a contractor default because the state has no means of assessing the credit of the persons acting as individual sureties. Since a governmental body may accept securities in lieu of bond, a contractor who could not, or preferred not, to get a bond could furnish securities. It appears that unless there are governmental bodies with the capability to evaluate individual sureties, and which want to use them, this change would have little adverse impact. An alternative would be to limit this change to state building construction or construction contracts. Implementation requires legislation.

Recommendation #3:

- Repeal the law (MCA 18-2-311, Appendix 7) that prevents a contractor from bidding on a public project when he is working past time on another public project. Vote: Unanimous.

Interviews with state and other governmental bodies indicate that repealing the law preventing contractors from bidding on public contracts when working past time on other public projects would be beneficial. It would reduce paperwork for governmental agencies and eliminate costs for litigation on this law which they believe is vague and difficult to enforce. Implementation requires legislation.

PROCEDURE WHEN BIDS EXCEED THE BUDGET

10. When the lowest qualified bidder on each contract is determined, A/E prepares a Financial Recap indicating the total amounts for all construction contracts, design fees, and other anticipated project expenses. If the total of all costs exceeds the funds appropriated, the project must be reduced in scope and re-bid.

Council Recommendation - Negotiation:

Recommendation #1:

When the bids cause the project cost to exceed the appropriation, the state should have the flexibility to negotiate with the low responsible bidder, or bidders, in the case of multiple contracts, to bring the cost within the budget as long as negotiation would not affect the scope or program of the project. Vote: Unanimous.

This recommendation is permissive. The state could choose not to negotiate, but having the flexibility to do so would provide the opportunity to get a project under construction without incurring extra cost and time delays involved when a project must be re-bid. Some states (Colorado and Wisconsin) have this flexibility now. Implementation requires legislation.

CONSTRUCTION CONTRACT AWARD

11. Upon award of the contracts and approval by the Board of Examiners when required, A/E sends prepared contract documents and bond forms to the selected contractors. In addition, each contractor is responsible for obtaining liability insurance covering himself and the state. Once DOA has received and approved the contracts, bonds, and insurance, the contracts are signed by the Director who also signs as Executive Secretary of the Board of Examiners. DOA then submits a Contract Award Report to the Department of Revenue to ensure the required 1% gross receipts tax will be credited to each contractor (MCA 15-50-206). When DOA is satisfied that everything is in order, a Notice to Proceed is issued and the project is referred from the Design Bureau to the Construction Bureau.

Council Recommendation - Construction Contract Award:

Recommendation #1:

The Department of Administration shall award all construction contracts. However, any contract award which is protested or the contract is awarded to a bidder other than the lowest bidder, shall be subject to the approval of the Board of Examiners. Vote: Unanimous.

This will speed up the contract award process so contracts can be let without waiting for the Board of Examiners (BOE) to meet and approve the award. Checks and balances are adequate because the contracts are awarded based on bid price. Contract awards that require judgement calls (protests and award to someone other than low bidder) will still be subject to BOE approval. Implementation requires legislation.

CONSTRUCTION CONTRACT PAYMENT

12. At a pre-construction conference coordinated by the selected DP, A/E familiarizes the contractors with the various forms and procedures required for state projects. Once construction is underway, contractors submit a monthly payment request to the DP, who verifies the level of project completion claimed by the contractor and refers the request on to DOA for payment. After DOA has verified that sufficient funds are available, the 1% gross receipts tax is deducted and forwarded to the Department of Revenue. A 10% retainage on each payment is also withheld until the project is at least 50% complete. If the contractor requests it, and the project is satisfactorily on schedule at this point, the 10% retainage may be discontinued at the discretion of DOA. Otherwise, it is continued until DOA is satisfied the project is on schedule and agrees to discontinue the retainage. This retainage, or any securities deposited by the contractor in lieu of the retainage, may be released all or in part by DOA upon substantial completion.

Council Recommendation - Retainage:

Recommendation #1:

Upon substantial completion the state should determine how much retainage to hold on a project-by-project basis. Vote: Unanimous.

This recommendation supports current practice. The amount of retainage depends on the amount of work required to complete the project. Therefore, the flexibility to decide this on a project-by-project basis needs to be retained.

CHANGE ORDERS

13. Changes are required on almost all projects during construction. Any changes affecting the cost or contract time must be made by a change order which may be initiated by the user agency, the contractor, the DP, or A/E. Currently, this must be approved by the DP, contractor, user agency, DOA (Director, A/E, and Legal Division), the surety company, and resident agent. In the case of changes over \$2,500 or cumulatively over \$5,000 or 5%, whichever is less, the approval of the

Board of Examiners is also required. For emergency change orders, DOA requires a preliminary estimate from the contractor and approval from at least two members of the Board of Examiners before allowing the contractor to proceed. If DOA and the contractor cannot subsequently agree on the costs for the work, the matter may be taken to arbitration and, if necessary, to district court.

Council Recommendations - Change Orders:

Recommendation #1:

Make a statutory change (See Appendix 5, MCA 18-2-103(1)(d)) placing the authority for approval of change orders with the Director of the Department of Administration unless the change order would:

- a. Change the scope of the project, or
- b. Force the cost of the project to exceed the appropriation. Vote: Unanimous.

Note: According to the legal staff, any change order that alters the scope of the project would be considered an invalid amendment to the contract. Any change order that causes the project cost to exceed the appropriation would require a budget amendment to be valid. Since the Board of Examiners could not approve these change orders, this motion has the effect of removing the Board from approving change orders. The legislation is written to reflect this.

Placing authority and responsibility for approving all change orders with DOA increases DOA authority substantially, but also provides the opportunity to streamline the process and have change orders approved more quickly. Implementation requires legislation.

Recommendation #2:

Changes from user agencies should be processed as follows:

From user agency to the design professional (DP), from the DP to the Architecture & Engineering Division (A/E), from A/E to the DP, from the DP to the contractor. Vote: Unanimous.

The method of processing user agency initiated change orders was recommended by the Council to limit requests to contractors for cost estimates to necessary and/or serious requests for changes. This may impose extra work on A/E by requiring review of a change order with respect to budget and need before the contractor gives a price and then again when the change order is approved.

OBSERVATION/INSPECTION BY DP

14. DOA's role during construction consists primarily of monitoring the project to resolve any problems involving the DP, the contractor, and/or the user agency. A/E inspections of the projects are generally unscheduled, and their frequency depends on the complexity of the project. The DP is primarily responsible for ensuring the project is constructed according to plans and specifications and representing the

owners' interests. The state usually requires the DP to visit the site during specified operations as well as at a certain number of times over the course of the project.

Council Recommendations - Observation/Inspection by the DP:

Recommendation #1:

The state should not contract for any outside independent inspection on projects in addition to that done by the DP or state staff. Vote: Unanimous.

None for either issue. These recommendations make no change in the current system. The DP is most familiar with the project and is in the best position to assess the status. Use of other inspectors would increase the project cost.

Recommendation #2:

The council discussed whether or not to use the term "inspection" or "observation" in owner-DP agreements when referring to the DP's responsibilities for monitoring a project, but chose not to vote on the issue.

SUBSTANTIAL COMPLETION & FINAL ACCEPTANCE

15. As the project nears completion, A/E staff, the DP, and the contractor make an acceptance inspection. The user agency may be invited, but is not required to participate. During the inspection, a "punch list" of minor repairs, corrections, and other required changes is prepared. If warranted by the inspection, DOA issues a Certificate of Substantial Completion and the user agency may begin to use the facility. At this time the state assumes responsibility for operation and maintenance of the facility, and the warranty period begins. The contractor's bonds remain in effect until the warranty ends.

Council Recommendations - Substantial Completion and Final Acceptance:

Recommendation #1:

There should be one punch list submitted by the DP in consultation with DOA and the user agency at substantial completion, and at that time a deadline should be negotiated for completion of the punch list items. Vote: Unanimous.

It is A/E's policy to issue a single punch list to the contractor, although occasionally additional punch lists are necessary, particularly if the original list was long. At substantial completion is an appropriate time to determine a date for completing punch list items because the work required to complete the job is known.

Recommendation #2:

Leave the system as it is, with the contract time and amount of liquidated damages stated in the agreement, and a deadline for completion of punch list items stated in the Certificate of Substantial Completion. Vote: Unanimous.

Contract time and amount of liquidated damages are currently included in the agreement between the owner and contractor. Putting the deadline for completion of punch list items in the Certificate of Substantial Completion ensures that this date is in writing, but does not require a change order to either include it, or change it, as it would be if it were in the agreement.

CLOSEOUT OF PROJECT FINANCES

Council Recommendation - Closeout of Project Finances:

No Council decisions were made on any of the procedures described above.

16. The contractor works on the "punch list" jobs during the initial occupation of the building by the user agency. Once these jobs are satisfactorily completed and the building has been accepted, the contractor submits to DOA an Affidavit on Behalf of Contractor certifying that he has met his financial obligations to all suppliers, subcontractors, other financial obligations on the project, and requests final payment. The DP receives final payment only after the contractors are paid and the final "as built" plans are submitted to DOA.

When all final payments have been made and there is no reason to expect further expenditures against the project's budget, A/E prepares a Project Completion Report listing the expenditures from each of the project's appropriations, total expenditures, and any amounts to be reverted to each funding source.

COUNCIL RECOMMENDATIONS NOT DIRECTLY RELATED TO BUILDING CONSTRUCTION PROCESS

Several issues discussed by the Council are not directly related to specific operations of the construction process and are described below:

DELEGATION OF PROJECT ADMINISTRATION

1. Council Recommendation: The Department of Administration shall provide project administration for all projects over \$5,000. However, the department may delegate any or all of the project administration activities to a user agency on a project-by-project basis if that agency, as determined by the department, has the expertise to provide the administration. Vote: Unanimous

Impact:

The recommendation changes the language in the law to allow the Department of Administration (DOA) to delegate authority for project administration. It gives the DOA the flexibility to delegate to user agencies based on their expertise, or other criteria established by the DOA. This change also removes the \$25,000 ceiling on the size of project that can be delegated, and simplifies the language of the law and clarifies the responsibilities of the DOA, and those of user agencies, and should make the projects easier to administer. Implementation requires legislation

ACCRUAL OF FUNDS TO ALLOW AWARD OF CERTAIN CONTRACTS PAST FISCAL YEAR END.

2. Council Recommendation: Amend the current law to allow funds to be accrued through an inter- or intra-agency agreement between the DOA and the user agency wanting to have the work done. The funds must be expended by the end of the next fiscal year, but may not be carried over the biennium.

Impact:

Currently, if an agency submits a request near the fiscal year end for a project that has been included in their budget, this cannot be done in compliance with the law. The proposed changes would allow contracts between user agencies and the DOA to be written that would obligate funds and permit them to be carried over one FYE. This process would allow automatic reversion of unexpended funds at the next fiscal year end, but funds could not be carried over from one biennium to another. As a party to these contracts, the DOA would retain control of projects accepted, and the conditions of acceptance of projects on which contracts would be let past the FYE. Implementation requires legislation.

CONTRACTOR LICENSING

3. Council Recommendation Contractor Licensing - Montana should adopt a competency-based public contractor licensing law using the Nevada contractor licensing law as a guideline. The Council voted to:
- Prepare legislation to strengthen the existing public contractors licensing law and recommend that the concept of competency-based licensing apply to contractors engaged in private work. Vote: 12 Yes, 1 No.
 - Establish a Contractor Licensing Board and have it consist of a membership which includes one member each: building, engineering, electrical, mechanical, and specialty contractors, and two public members.
 - Require contractors to submit a certified financial statement prepared by a CPA for licensing purposes. Vote: 10 Yes, 3 No.

Impact:

The recommendation would strengthen the current licensing law. Public contractors would be licensed according to classifications consistent and with established usage and procedure in the construction business, bid limits would be imposed based upon a contractor's financial responsibility, experience, and knowledge of the trade(s) in which the contractor wanted to be licensed and business laws. An increase in staff would be required to implement the law and start up money would be necessary, but future expenses would be covered by fees collected. Implementation requires legislation.

CONTRACTING OFFICER FOR 100% FEDERALLY FUNDED PROJECTS

4. Council Recommendation: The state should accept the concept of utilizing federal funds, and let the Department of Administration (DOA) and the Legislature work out the legislation. Vote: Unanimous.

NOTE: Currently, the Department of Military Affairs may not accept 100% federal funds for work to be done on federal land without legislative approval. DOA may not act as contracting office for these projects because they are not owned or to be owned by the state as required in MCA 18-2-101. It is anticipated that the legislation mentioned above would expand the definition of the word "building" in MCA 18-2-101 to include facilities of benefit to the state, but not to be owned by the state. This would allow the DOA to act as the contracting officer for these federally funded projects.

Impact:

Allowing DOA to act as the contracting officer would expose the state to similar liability as for any projects that are owned or to be owned by the state. However, it would be beneficial to have the contract administration managed by persons who have expertise in construction.

PREFERENCE FOR RESIDENT BIDDERS

5. Council Recommendation: Montana should adopt a reciprocal contractors' preference law for construction performed for the state and political subdivisions that are specified in 18-1-102, MCA. (See Appendix 8.) Vote: Unanimous.

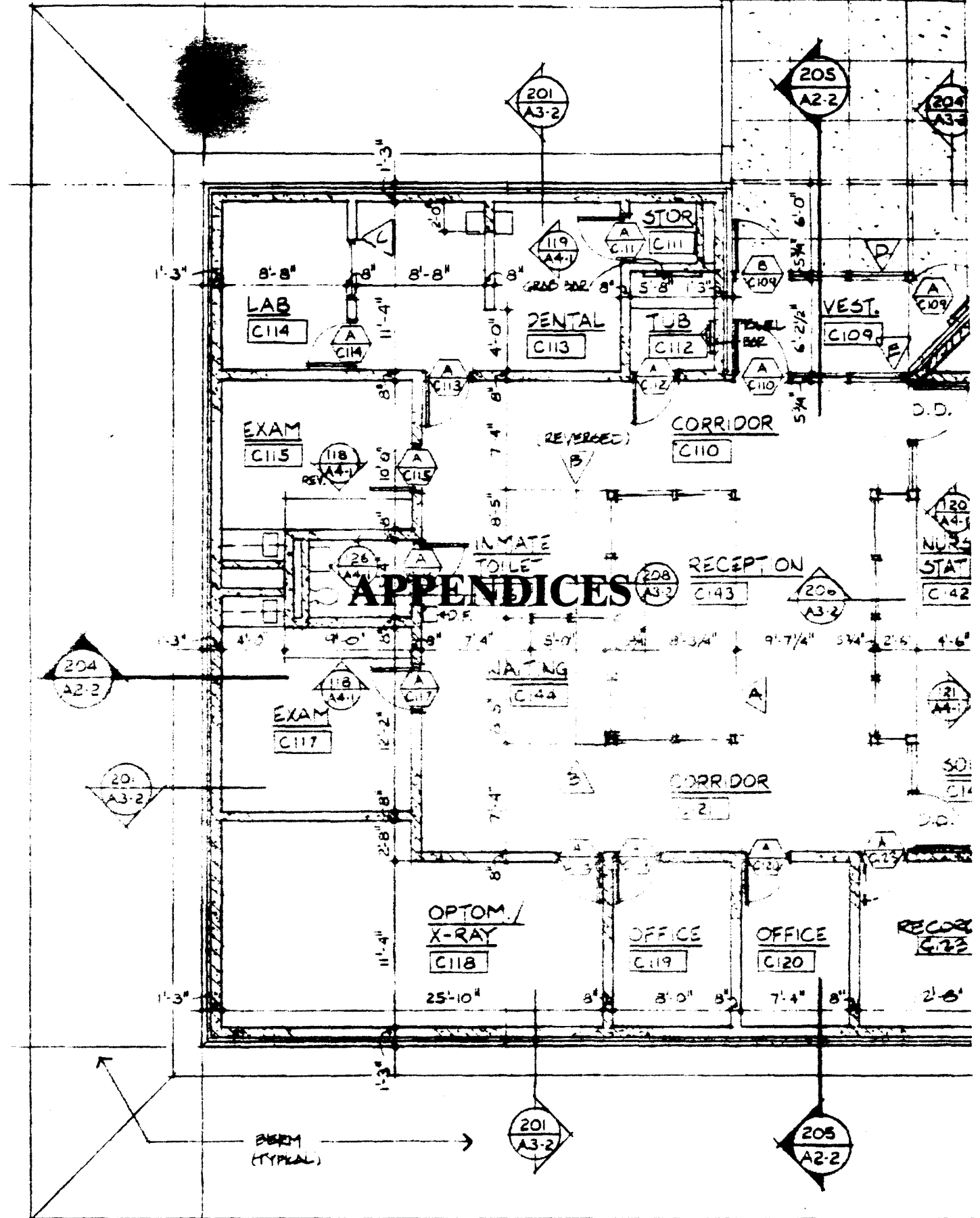
Impact:

This would remove the imposition of 3% preference for all in-state bidders on public construction work. This would eliminate the necessity of checking residence of contractors from states with no preference or reciprocal laws, but it would require knowledge of other states' preference laws. In cases where no preference would be applied, the state may be able to get the work done at a lower cost. Under the current law, the state, political subdivisions, school districts, agencies, Boards, Commissions, and public corporations have to pay up to 3% more if the low bidder is from out-of-state because the contract must be awarded to the second low bidder if that bidder is a Montana resident whose bid is not more than 3% higher than the low bid. Implementation requires legislation.

FIRE DOOR

35'-9"

12'-0"



APPENDICES

BURN (TYPICAL)

APPENDIX 1
OVERVIEW OF THE CAPITAL CONSTRUCTION PROGRAM

The Capital Construction Program (CCP) is presented to the Legislature every two years as a part of the Executive Budget. Money is appropriated for each project, with the exception of some major repair and maintenance projects. The funds come from the cigarette tax which is earmarked for this program, interest earnings on investments, federal and private money, other funds, and proceeds from bond sales. The Department of Administration is responsible for planning and administering this program.

In addition, money is appropriated to agencies for repair and maintenance in their operating budgets. These funds may be administered by the agency or the Architecture and Engineering Division of the Department of Administration, depending upon each agency's interest and ability in administering these projects.

The Governor's request for the Capital Construction Program is submitted to the Legislature, and the Legislature may make any changes in it it deems appropriate. The table below shows the appropriation authority requested in the Executive Budget and the amount provided by the Legislature for the cash and bonded programs for the last four biennia.

TABLE 2

Biennium- Program	Governor's Request	Legislative Appropriation
1977-79		
Cash	\$27,797,920	\$29,757,090
Bonded	-0-	2,275,000
Total	<u>\$27,797,920</u>	<u>\$32,032,090</u>
1979-81		
Cash	\$19,761,200	\$32,342,037
Bonded	10,032,000	19,130,000
Total	<u>\$29,793,200</u>	<u>\$51,472,037</u>
1981-83		
Cash	\$18,861,358	\$24,976,045
Bonded	23,919,633	36,550,505
Total	<u>\$42,780,991</u>	<u>\$61,526,550</u>
1983-85		
Cash	\$28,444,475	\$26,563,174
Bonded	35,943,815	39,334,695
Total	<u>\$64,388,290</u>	<u>\$65,897,869</u>

APPENDIX 2

18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than \$25,000 may not be constructed without the consent of the legislature. When a building costing more than \$25,000 is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-312 if they are to be financed wholly from the revenues therein described.

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

History: Ea. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974; R.C.M. 1947, 82-3316.

Cross-References

Long-range building program bonds, Title 17, ch. 5, part 4.

Employment security building bonds, Title 17, ch. 5, part 6.

Long-range building program and budget, Title 17, ch. 7, part 2.

Revenue-producing facilities — powers of regents, 20-25-302.

Construction project at Montana State University and Eastern Montana College, 20-25-431.

APPENDIX 3

STATE OF MONTANA

ARCHITECT/ENGINEER SELECTION PROCEDURES

1. Using agency notifies Architecture and Engineering Division of need for an architect or engineer.
2. Architecture and Engineering Division reviews proposed project for funding, authorization, need, etc.
3. On projects under \$100,000, using agency need not interview, but recommends 3 firms to the Director of the Department of Administration.
4. On projects costing \$100,000 or more, the Architecture and Engineering Division advertises for professional services.
5. Interested A/E firms submit state form 116 to the Architecture and Engineering Division.
6. A pre-selection committee selects 7 firms from those responding. (When 7 or less firms submit for consideration, all are included on the short list.)
7. The A/E firms making the short list are given an outline program and scope of services to familiarize each firm with the project. The using agency interviews each firm on the short list.
8. Using agency recommends 3 firms to the Director of the Department of Administration.
9. The Director of the Department of Administration and an evaluation committee evaluate, rank, and select a firm for the project, subject to concurrence of the State Board of Examiners.
10. The A/E Division requests a cost proposal from the selected firm based on the outline program and scope of services as provided.
11. The cost proposal is reviewed and a fee is negotiated by the Department of Administration. If agreement is not reached, negotiations terminate and a proposal is requested from the next ranked firm.

APPENDIX 4

18-2-112. Appointment of architects and consulting engineers.
The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last sentence.

Cross-References

Appointment of architect, 18-3-102.

APPENDIX

18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

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

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than \$25,000 but more than \$5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than \$5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 487, L. 1977; R.C.M. 1947, 82-3317; amd. Sec. 1, Ch. 16, L. 1979; amd. Sec. 15, Ch. 281, L. 1983; amd. Sec. 2, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 281, at end of (6), substituted "regulation account in the state special revenue fund" for "revolving account in the revolving fund".

Chapter 491 inserted (2); and in (4), after "alteration" inserted "repair, maintenance."

Cross-References

Bond issues, Title 17, ch. 5.

Long-range building program bonds, Title 17, ch. 5, part 4.

Bids required — advertising, 18-2-301.

School districts — conflicts of interest, letting contracts, and calling for bids, 20-9-204.

Construction project at Montana State University and Eastern Montana College, 20-25-431.

APPENDIX 6

18-2-201. Bonding requirements. (1) Whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with two or more sureties acceptable to the governmental body letting the contract, or with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

- (a) faithfully perform all of the provisions of such contract;
- (b) pay all laborers, mechanics, subcontractors, and materialmen; and
- (c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency 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, materialmen, mechanics, and subcontractors:

- (a) lawful money of the United States; or
- (b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or
- (c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 1, Ch. 602, L. 1981.

Compiler's Comments

1981 Amendment: In (1) near the end of the lead-in to (a), (b), and (c), inserted "acceptable to the governmental body letting the contract" after "sureties" and inserted "licensed" before

"surety company"; added subsection (3); and made minor changes in punctuation.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

18-2-202. Failure to require bond. If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation shall fail to take such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of such debts so contracted by any such subcontractor as well as such contractor.

History: En. Sec. 3, Ch. 20, L. 1931; re-en. Sec. 5668.43, R.C.M. 1935; R.C.M. 1947, 6-403; amd. Sec. 2, Ch. 602, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "cash, checks, drafts, money orders, or certificates of deposit" after "such bond" in the middle of the section.

Cross-References

Liens, Title 71, ch. 3.

APPENDIX 7

18-2-311. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in 37-71-101, who has been awarded a contract by the state of Montana or any board, commission, or department thereof or by any board of county commissioners or by any city or town council or agency thereof for the construction or reconstruction of a public work and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals or enter into any additional contract with any public agency of the state of Montana, county, or city thereof until he has completely executed the contract upon which he is working beyond contract time and all supplemental agreements thereto.

History: Ex. Sec. 1, Ch. 141, L. 1967; R.C.M. 1947, 82-1927.

Cross-References

Competitive bidding, 60-2-112.

APPENDIX 8

18-1-102. State contracts to lowest resident bidder. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair, and public works of all kinds, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969; R.C.M. 1947, 82-1924.

Cross-References

Competitive bids for county road contracts, 7-14-2404.

Contracts for bridges, 7-14-2406.

Award of contract by local improvement district, 7-14-2716.

Preference of Montana labor in public works — wages — federal exception, 18-2-403.

Small business set-asides, 18-5-304.

Construction with other sections — small business preferences, 18-5-308.

Letting contracts for school facilities, 20-6-606.

School districts — contracts with Montana firms encouraged, 20-6-635.

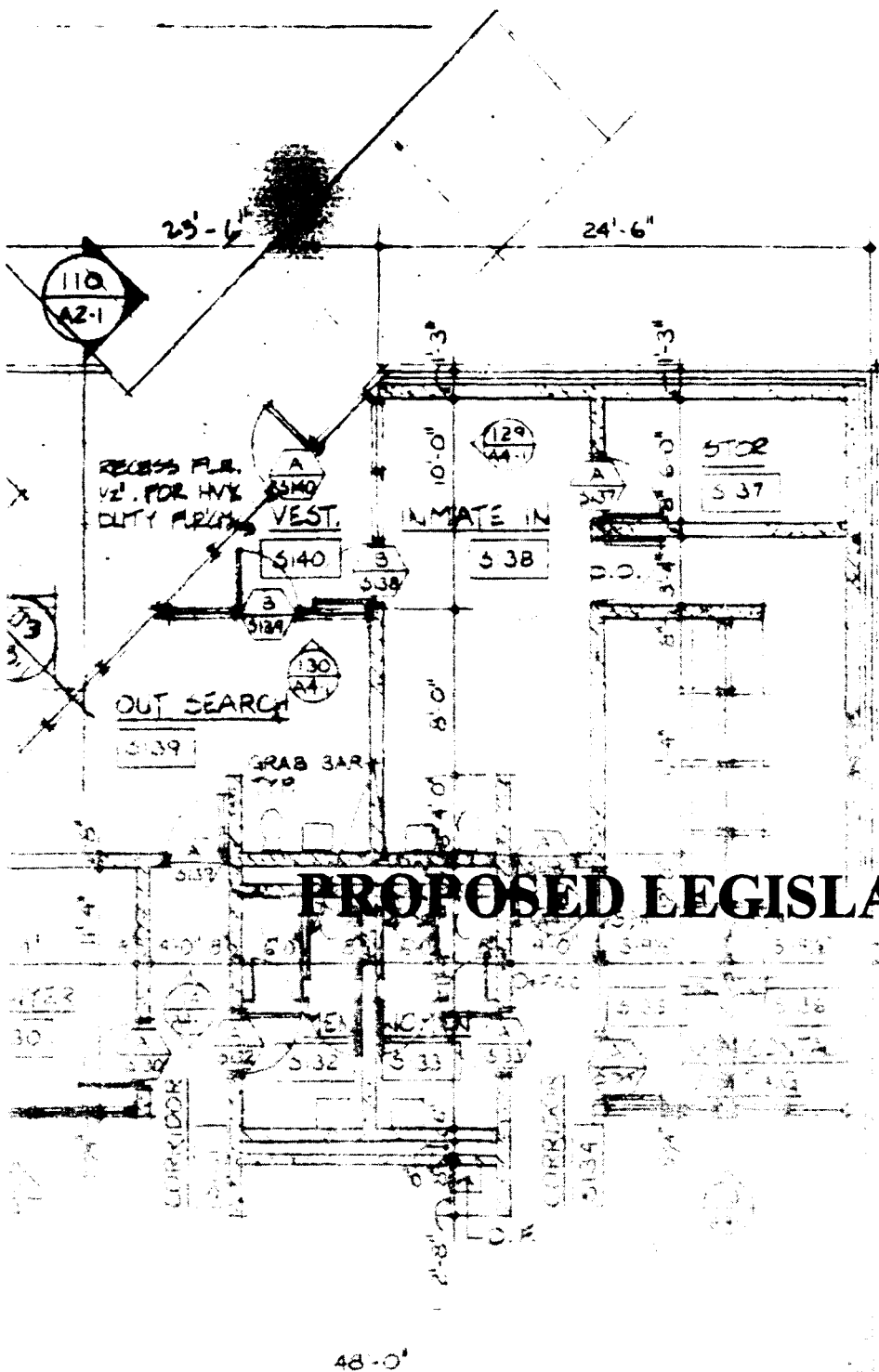
Competitive bidding — highways, 60-2-112.

APPENDIX 9

PERSONS SUBMITTING TESTIMONY

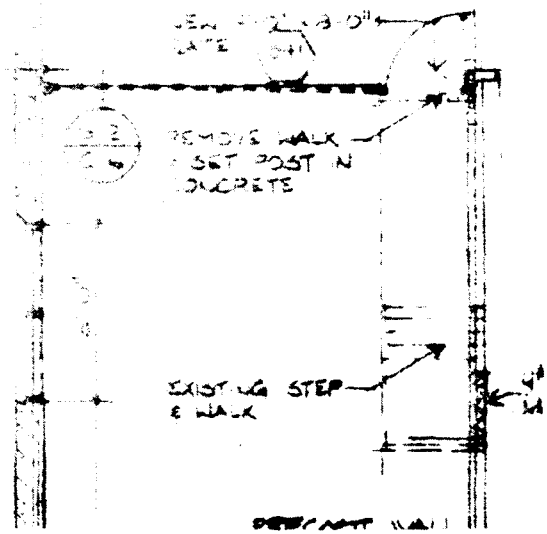
The following is a list of persons who testified in writing or in person before the Council.

- | | |
|--------------------------|---|
| 1. Ed Ayers | Montana College of Mineral Science & Technology |
| 2. Bill Belforte | Sheet Metal & Air Conditional Contractors Nat'l Assn. |
| 3. Cliff Blankenship | Sletten Construction Company |
| 4. Morris Brusett | Department of Administration |
| 5. Bob Bushmaker | Self |
| 6. Ken Cottrill | Department of Military Affairs |
| 7. Irving Dayton | Montana University System |
| 8. Irv Dellinger | Montana Building Material Dealers Assn. |
| 9. Adj. Gen. James Duffy | Department of Military Affairs |
| 10. Bob Durand | United States Fidelity & Guaranty Company |
| 11. Wayne Edsall | Edsall Construction Company |
| 12. Gene Fenderson | Laborer's International Union - Local 254 |
| 13. H. S. "Sonny" Hanson | Montana Technical Council |
| 14. Phil Hauck | Department of Administration (A/E) |
| 15. Tom Herzig | National Electric Contractors Assn. |
| 16. Clarence Hester | Department of Administration (A/E) |
| 17. Steve Joppa | Department of Fish, Wildlife & Parks |
| 18. Jim Lechner | Billings Contractors Council |
| 19. Beverly Lovejoy | Yellowstone Plumbing Company |
| 20. William Martel | Martel Construction Company |
| 21. Bill Olson | Montana Contractors Assn. |
| 22. Ted Parker | University of Montana |
| 23. Bill Pierce | Home Builders Assn. |
| 24. Isabelle Pistelak | Occupational & Professional Licensing, Commerce |
| 25. Craig Roloff | Montana State University |
| 26. J. Michael Scott | Self |
| 27. Jeff Shoquist | Foss & Associates |
| 28. Lewie Stackpole | Dana, Larson, Roubal & Assoc. |
| 29. James Tarr | Spildie Construction Company |
| 30. Bob Taylor | Taylor Construction Company |
| 31. Steve Winter | Governor's Council on Management |



PROPOSED LEGISLATION

CONTACT VISITING
 S129 FLOOR 2.0



PERMITS WALL

PROPOSED LEGISLATION

The proposed legislation that follows has been reviewed by legal counsel, but has not been reviewed by the Legislative Council staff, and therefore, is subject to change.

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INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REVIEW AND ACCEPT PLANS, SPECIFICATIONS AND COST ESTIMATES PERTAINING TO STATE BUILDING PROJECTS; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$25,000, the department of administration shall:

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

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

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved accepted plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than \$25,000 but more than \$5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than \$5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for th construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at

a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section.

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

- end -

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT NEGOTIATION WITH THE LOWEST RESPONSIBLE BIDDER ON BUILDING CONSTRUCTION PROJECTS WHEN ALL BIDS CAUSE THE PROJECT COSTS TO EXCEED THE APPROPRIATED FUNDS; AMENDING SECTION 18-2-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-105, MCA, is amended to read:

"18-2-105. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings, the department of administration may:

- (1) inspect buildings not under construction;
- (2) contract with the federal government for advance planning funds;
- (3) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for such buildings;
- (4) issue and sell bonds and other securities;
- (5) maintain an inventory of all buildings;
- (6) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against moneys available for construction;

(7) negotiate an adjustment of the bid price with the lowest responsible bidder to bring the project cost within the funds appropriated when all responsible bids cause the project cost to exceed the appropriation. However, no alterations may be made in the plans or specifications that would substantially alter the scope of the project as approved by the legislature."

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

- end -

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE REQUIREMENT FOR BOARD OF EXAMINERS' APPROVAL OF CHANGE ORDERS; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

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

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, ~~with the consent of the board of examiners,~~ approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than \$25,000 but more than \$5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than \$5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department

of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section."

NEW SECTION: Section 2. Effective date. This act is effective on passage and approval.

- end -

L.C. _____

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL THE RESTRICTION ON SUBMITTING BIDS BY PUBLIC CONTRACTORS WHEN WORKING BEYOND CONTRACT TIME; AMENDING SECTIONS 37-71-203, MCA AND 60-2-112, MCA; REPEALING SECTION 18-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 37-71-203, MCA, is amended to read:

"37-71-203. Bids to show bidder is licensed ~~and not beyond a contract time.~~ All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder, ~~and is not presently working beyond the contract time, including authorized time extensions, on any previously awarded public contract project.~~ The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as herein provided, ~~and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time."~~

Section 2. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding. (1) When the estimated cost of any work exceeds \$10,000, the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission must specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total cost of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

~~(4) If, on any highway construction work financed in whole or in part by federal funds, the commission finds that enforcement of the provisions contained in 37-71-203 and 18-2-311 relating to public contractors working beyond contract time will result in a reduction in the~~

~~full benefits of Title 29, U.S.C., it may waive enforcement of such provisions."~~

NEW SECTION. Section 3. Repealer. Section 18-2-311, MCA, is repealed.

NEW SECTION. Section 4. Effective date. This act is effective on passage and approval.

- end -

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A RECIPROCAL PREFERENCE LAW FOR BIDDERS ON CONSTRUCTION PROJECTS AND TO ELIMINATE THE CURRENT 3% PREFERENCE FOR SAID BIDDERS; AMENDING SECTION 18-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 18-1-102. State contracts to lowest resident bidder. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, and equipment, ~~construction, repair, and public works of all kinds~~, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) In awarding contracts for construction, repair and public works of all kinds, the 3% preference shall not apply. However, bids received from non-resident bidders shall be subject to the same preferences, if any, that apply to non-resident bidders in the award of public contracts in the bidder's state of residence.

~~(3)~~ (4) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

NEW SECTION. Section 2. Effective date. The act is effective on passage and approval.

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE LICENSING AND REVOCATION OF LICENSES OF PUBLIC CONTRACTORS; CREATING A BOARD OF PUBLIC CONTRACTORS TO REGULATE AND LICENSE PUBLIC CONTRACTORS; AMENDING SECTIONS 37-71-101, 37-71-104, 37-71-105 through 37-71-203, and 37-71-211 through 37-71-302, MCA; REPEALING SECTION 37-71-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION: Section 1. Board of Public Contractors. (1) There is a board of Public contractors. (2) The board consists of 7 members appointed by the Governor with concurrence of the senate. The members shall be residents of the state for not less than 5 years and consist of the following:

- (a) one engineering contractor as defined in [Section 10];
 - (b) one building contractor as defined in [Section 10];
 - (c) one electrical contractor;
 - (d) one mechanical contractor;
 - (e) one specialty contractor;
 - (f) two members of the public who are not engaged or directly connected with the construction business.
- (3) The members shall serve 4 year terms.
 (4) All members, except the public members, must have been engaged in their respective fields of contracting for a minimum of five (5) years prior to the date of their appointment.
 (5) The board is allocated to the Department of Commerce for administrative purposes only as prescribed in 2-15-121.

NEW SECTION. Section 2. Organization-Meetings. (1) The board shall:

- (a) elect a chairman from its membership;
- (b) hold at least two meetings annually and at such other times it considers necessary.

Section 3. Section 37-71-101, MCA, is amended to read:

"37-71-101. Definitions. The following words, terms, and phrases in this chapter are, for the purposes hereof, defined as follows:

(1) "Board" means the Board of Public Contractors as provided in [Section 1].

~~(1)~~(2) "Department", unless the context clearly indicates otherwise, means the department of commerce as provided in 2-15-1801.

~~(2)~~(3) "Field of contracting" includes but is not limited to the distinct fields of general contracting, mechanical contracting, electrical contracting, and plumbing, heating, and air-conditioning contracting.

~~(3)~~(4) "Gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, gross receipts shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectable accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

(5) "Person" as used in this chapter includes an individual, a firm, a copartnership, a corporation, an association or other organization, or any combination of any thereof.

~~(4)~~(6) A "public contractor", within the meaning of this chapter, includes:

(a) any person, except a registered architect or a registered professional engineer, acting solely in his professional capacity, who in any capacity other than as the employee of another with wages as the sole compensation, undertakes to, or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith who submits a proposal to or enters into a contract for performing public construction work in the state with the federal government or state of Montana, or with any board, commission, or department thereof, or with any board of county commissioners or any city or town council, or with any agency of any of them, or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of \$5,000;

(b) subcontractors undertaking to perform work within their field of contracting and within the limits of their class of license covered by the original contract or any part thereof, the contract cost, value, or price which exceeds the sum of \$5,000, but does not include anyone who merely furnishes materials or supplies without fabricating them into, or consuming them in the performance of the work of a public contractor;

(c) a construction manager who performs management and counseling services on a public construction project for a professional fee.

(7) "Responsible managing employee" means, in the case of a corporation, a corporate employee employed in a management capacity, or in the case of a partnership, a general unlimited partner who shall, when his principal or employer is actively engaged as a contractor, exercise and be in a position to exercise authority in connection with his principal or employer's contracting business in following manner:

(a) to make technical and administrative decisions;

(b) to hire, superintend, promote, transfer, lay off, discipline or discharge other employees and to direct them, either by himself or through others, or effectively recommend such action on behalf of his principal or employer."

NEW SECTION. Section 4. Power of board to hold hearings - subpoena - issue cease and desist orders. The board may:

(1) Hold hearings in accordance with the Montana Administrative Procedures Act.

(2) Compel the attendance of witnesses or the production of books and papers.

(3) Whenever it appears to the board that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts of this chapter or any rule or order hereunder, it may in its discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The board may issue a temporary order pending the hearing that remains in effect until 10 days after any hearing is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the provisions of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

Section 5. Section 37-71-104, MCA, is amended to read:

"37-71-104. Offices - Records. (1) The department board may maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter, but it shall maintain at Helena, Montana, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal, ~~and of cancellations~~ revocations or suspensions thereof and shall furnish a certified copy of any license issued, of renewal certificates, or of the revocations, or suspensions thereof, upon receipt of the sum of \$1. ~~and a~~ Such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

(2) Credit reports, references, investigative memoranda, and financial information or data pertaining to a licensee's net worth shall be confidential and not open to public inspection."

NEW SECTION. Section 6. Compensation of board members - expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

Section 7. Section 37-71-105, MCA is amended to read:

"37-71-104. Disposal of fees. All fees collected by the board must be reasonably related to the respective program costs, and ~~All moneys collected hereunder~~ shall be deposited by the department with the state treasurer, who shall credit them to the ~~general fund of the~~ state special revenue fund for the use of the board."

Section 8. Section 37-71-201, MCA, is amended to read:

"37-71-201. Unlawful to engage in public contracting business without license. It shall be unlawful for any person or any combination of persons to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided. Evidence of the securing of any permit from a governmental agency or the employment of any person on a public construction project shall be accepted by the board or any court of this state as prima facie evidence that the person securing such permit or employing any person on a construction project is acting in the capacity of a contractor under this chapter."

Section 9. Section 37-71-202, MCA, is amended to read:

"37-71-202. ~~Certain small or federal public contracts exempt.~~ Exemptions. This chapter does not apply to: (1) ~~Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than \$5,000; nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States, neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.~~

(2) Any contractor who exclusively contracts to do construction work for, or any construction work performed for the federal government, an instrumentality of the federal government, an Indian tribe, or tribal member within the exterior boundaries of an Indian reservation.

(3) Work done exclusively by an employee of the United States Government, the State of Montana, or any incorporated town, city, county, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state.

(4) Officers of a court when they are acting within the scope of their office.

(5) Work done exclusively by public utilities operating under the regulations of the public service commission on construction, maintenance and development work incidental to their own business.

(6) The sale or installation of any finished products, materials or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of the structure."

NEW SECTION. Section 10. Classification of Licenses. (1) For the purpose of classification, the contracting business includes any or all of the following fields of contracting:

(a) General engineering contracting. A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works, including irrigation, drainage, water supply, water power, flood control, harbors, railroads, highways, tunnels, airports and airways, sewers and sewage disposal systems, bridges, inland waterways, pipelines for transmission of petroleum and other liquid or gaseous substances, refineries, chemical plants and industrial plants, piers and foundations and structures or work incidental thereto.

(b) General building contracting. A general building contractor is a contractor whose principal contracting business is in connection with any structures built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. General engineering contracting and general building contracting are mutually exclusive branches.

(c) Specialty contracting. A specialty contractor is a contractor whose operations as such are the performance of construction requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

(2) Nothing in this section prevents the board from establishing, broadening, limiting or otherwise effectuating classifications in a manner consistent with established custom usage and procedure found in the construction business.

(3) The board may limit by rule the fields of public contracting and scope of the operations of a licensed contractor.

(4) The board is specifically prohibited from establishing classifications in such a manner as to determine or limit craft jurisdictions.

Section 11. Section 37-71-211, MCA, is amended to read:

"37-71-211. Application for license-contents-fees. (1) To obtain a license under this chapter, the applicant shall submit on such forms as the department board shall prescribe an application, under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of contract work completed and for whom performed during 5 years prior to the filing of such application; and a complete financial statement prepared by a certified public accountant on such forms and disclosing such information as shall be required by the department board. Such application shall also contain such other information as may be requested by the department board under such rules as may be adopted by the department board and which will assist the department board in determining the applicant's fitness to act in the capacity of a public contractor as defined in this chapter. Such application shall also contain a statement that the applicant desires the issuance of a license under the terms of this chapter and shall specify ~~the field~~ fields of contracting ~~and the class of license~~ licenses applied for.

(2) The application shall be accompanied by a fee fixed by the board.

(3) If a holder of license within a field of contracting applies for another license within a different field of contracting, or a different classification within the same field of contracting, he shall pay a fee established by the board, but which shall not exceed 25% of the fee for the initial application for a license."

Section 12. Section 37-71-212, MCA, is amended to read:

"37-71-212. Investigation of applicant - issuance of license. I shall be the duty of the department board to investigate and determine the applicant's fitness to act in the capacity of a public contractor as defined in this chapter, and based on the following criteria:

(1) The board shall require an applicant to show such a degree of experience, financial responsibility, and such general knowledge of the

building, safety, health and lien laws of the State of Montana and the rudimentary principles of the contracting business as the board shall deem necessary for the safety and protection of the public.

(2) An applicant may qualify in regard to his experience and knowledge in the following ways:

(a) if an individual, he may qualify by personal appearance or by the appearance of his responsible managing employee; or

(b) if a copartnership, a corporation or any other combination or organization, it may qualify by the appearance of the responsible managing employee of such applicant firm.

(3) the individual qualifying on behalf of an individual or firm under subsection (2) shall allege and prove that he is a responsible managing employee of such individual or firm.

(4) Under reasonable rules and regulations adopted by the board, the board may investigate, classify and qualify applicants for public contractors' licenses by written or oral examinations, or both, and is authorized to issue public contractors' licenses to qualified applicants. The examinations may, in the discretion of the board, be given in specific classifications only.

(5) The financial responsibility of an applicant for a public contractor's license or of a licensed public contractor shall be established by rules adopted by the board which may include the following standards and criteria in connection with each applicant or public contractor and each associate or partner thereof:

(a) net worth.

(b) amount of liquid assets.

(c) prior payment and credit records.

(d) previous business experience.

(e) prior and pending lawsuits.

(f) prior and pending liens.

(g) adverse judgements.

(h) prior suspension or revocation of a contractor's license in Montana or elsewhere.

(i) past and present business record of solvency. If the applicant or contractor is a corporation, its financial responsibility must be established independently of and without reliance on the assets of its officers, directors or stockholders, but the financial responsibility of its officers and directors may be inquired into and considered as a criterion in determining the corporation's financial responsibility.

(j) information obtained from confidential financial references and credit reports.

(k) the board may require an applicant or contractor to furnish a surety bond or other security acceptable to the board and in an amount fixed by the board.

(6) An applicant for a public contractor's license and each officer, director, partner and associate thereof shall possess good character. Lack of character may be established by showing that the applicant or any officer, director, partner or associate thereof has:

(a) committed any act which, if committed by any licensed public contractor, would be grounds for the suspension or revocation of a public contractor's license;

(b) entered a plea of guilty to, been found guilty of, or been convicted of a felony or crime involving moral turpitude arising out of, in connection with, or related to the activities of such person in such a

manner as to demonstrate his unfitness to act as a public contractor, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal; or

(c) had a license revoked for reasons that would preclude the granting of a license for which the application has been made.

(7) No license shall be issued to such applicant until the expiration of 10 days from and after the filing of such application. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject to the limitations of such license, until the expiration of the then-current calendar year."

NEW SECTION. Section 13. Power of Board to waive certain requirements.

(1) In cases in which an applicant has previously been licensed in Montana or elsewhere as an individual, a member of a licensed partnership, or as an officer of a corporation, and the prior license has never been suspended or revoked, and there is no disciplinary proceeding pending against the applicant or any licensee with whom he has been associated, the board may waive the requirement for written or oral examinations or information requested in the prescribed application form or any part thereof.

NEW SECTION. Section 14. Persons prohibited from serving as officers, directors, associates, partners of licensee. (1) Any person who:

(a) has been denied a license or who has had his license revoked or suspended or who has been denied a renewal of a license; or

(b) has been a member, officer, director or associate of any partnership, corporation, firm or association whose application for a license has been denied, or whose license has been revoked or suspended or which has been denied a renewal of a license, and while acting as such member, officer, director or associate had knowledge of or participated in any of the prohibited from serving as an officer, director, associate or partner of a licensee.

(2) The performance by any partnership, corporation, firm or association of any act or omission constituting a cause for disciplinary action likewise constitutes a cause for disciplinary action against any licensee who is a member, officer, director or associate of such partnership, corporation, firm or association, and who participated in such prohibited act or omission.

NEW SECTION. Section 15. Cessation of association of responsible managing employee-replacement. (1) If the individual qualifying on behalf of another individual or a firm pursuant to [Section 12] of this chapter ceases for any reason to be connected with the licensee to whom the license is issued, the licensee shall notify the board in writing within 30 days from such cessation of association or employment. If a notice is given, the license shall remain in force for a reasonable length of time to be set by the board, but not exceeding 60 days from the date of such cessation of association or employment.

(2) The licensee shall replace the person originally qualified with another individual similarly qualified and approved by the board within the time limited by subsection 1, unless extended by the board for good cause.

(3) If the licensee fails to notify the board within the 30-day period his license shall be automatically suspended. The license shall be reinstated upon the replacement of the person originally qualified by another individual similarly qualified and approved by the board.

Section 16. Section 37-71-212, MCA, is amended to read:

"37-71-213. Renewal - waiting period after ~~cancellation~~ revocation. (1) Any license issued under the provisions of this chapter may be renewed for each successive calendar year by obtaining from the department board a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the department board an application therefor, stating the field of contracting and class of license applied for and containing at least the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the department board on or before March 1 of each successive calendar year, and such renewal certificate shall be good for the then-current calendar year.

(2) At the time of filing the application for a certificate of renewal, the applicant shall pay to the department board a license fee equal to 50% of the license fee for the original license fixed by the board, provided that if any applicant for a certificate of renewal shall apply for a renewal under a different field ~~or class~~ from the license theretofore issued to him, such new license shall be issued only upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

~~(3) All certificates of renewal wherein the applicant does not apply for a change in the field or class of license shall be issued by the department to the applicant forthwith when the application is filed and the license renewal fee paid.~~

~~(4)~~ (3) After cancellation revocation of a license, such licensee shall not be relicensed during the current calendar year within 6 months of the date in on which the offense was committed license was revoked."

Section 17. Section 37-71-301, MCA, is amended to read:

"37-71-301. Complaints against licensee - grounds - investigation - hearing - suspension of license - appeals. (1) Any person or other organization may file a duly verified complaint with the department board charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment, failure to complete or prosecute diligently construction projects for the stated price, including modifications of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;

(c) the doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(d) the making of any false statement in any application for a license or renewal thereof;

(e) the failure to comply with the provisions of 18-1-112 requiring preference of products manufactured or produced in this state by Montana industry and labor;

(f) willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his duly authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications;

(g) willful failure or refusal without legal excuse on the part of a licensee to comply with the terms of a construction contract or written warranty, thereby causing material injury to another;

(h) willful or deliberate disregard and violation of:

(i) the building laws of the state or of any political subdivision thereof; or

(ii) the safety laws or labor laws of the state.

(i) willful or deliberate failure by any licensee or agent or officer thereof to pay any moneys when due for any materials or services rendered in connection with his operations as a public contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased, or the false denial of any such amount due or the validity of the claim thereof with intent to secure a discount upon such indebtedness or with intent to injure, delay or defraud the person to whom such indebtedness is due;

(j) failure to establish financial responsibility as determined in the manner provided in [Section 12] at the time of renewal of the license or at any other time when required by the board;

(k) acting in the capacity of a public contractor under any license issued hereunder except:

(i) in the name of the licensee as set forth upon the license;

(ii) as an employee of the licensee as set forth in the application for such license or as later changed pursuant to this chapter and the rules and regulations of the board.

(l) with the intent to evade the provisions of this chapter:

(i) aiding or abetting an unlicensed person to evade the provisions of this chapter;

(ii) combining or conspiring with an unlicensed person to perform an unauthorized act;

(iii) allowing a license to be used by an unlicensed person;

(iv) acting as agent, partner or associate of an unlicensed person;

(v) furnishing estimates or bids to an unlicensed person.

(m) any attempt by a licensee to assign, transfer or otherwise dispose of a license or permit the unauthorized use thereof;

(n) workmanship which is not commensurate with standards of the trade in general or which is below building or construction codes adopted by the city or county in which the work is performed. If no applicable building or construction code has been adopted locally, then workmanship shall meet the standards determined by the latest edition of the Uniform Building Code, Uniform Plumbing Code or National Electrical Code.

(o) acting in the capacity of a contractor beyond the scope of the license;

(p) bidding to contract or contracting for a sum for a construction contract or project in excess of the limit placed on the license by the board;

(q) knowingly entering into a contract with a contractor while that contractor is not licensed, or bidding to contract or entering into a contract with a contractor for work in excess of his limit or beyond the scope of his license;

(r) it is unlawful for any person to advertise as a public contractor unless he has a valid license in the appropriate classification established by [section 10]:

(i) as used in this section, "advertising" includes but is not limited to the issuance of any sign, card or device or by the permitting or allowing of any sign or marking in any building, structure, newspaper, magazine, airway transmission or in any directory under the listing of a contractor with or without any limiting qualifications;

(ii) all advertising by a licensed public contractor shall include the number of his license.

(s) failure in any material respect to comply with the provisions of this chapter or the rules and regulations of the board.

(2) Upon filing of such complaint, the department board shall investigate the charge and within 60 days after the filing of such complaint render and file a preliminary decision, with the reasons therefor. If the department's board's preliminary decision be that the licensee has been guilty of any of such acts or omissions, the department board shall suspend may take disciplinary action against the contractor's license in accordance with section 18] of this Chapter. At any time within 20 days thereafter, the complainant or the contractor may petition the department board for a rehearing contested case hearing in accordance with the Montana Administrative Procedures Act. In the order granting or denying such rehearing, the department shall set forth a statement of the particular grounds and reasons for the department's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the department shall set the matter for further hearing on due notice to the parties and, within 30 days after submission of the matter, serve the department's decision after rehearing in like manner as an original decision.

(3) The filing of such petition for rehearing as to the department's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

(4) Within 30 days after the decision on rehearing, any party aggrieved by such decision of the department may appeal therefrom to the district court in and for the county in which the licensee under this chapter resides or does business as a public contractor by serving upon the department a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

(5) In all cases where the licensee has filed his notice of appeal from the decision of the department or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy."

Section 18. Section 37-71-302, MCA, is amended to read:

"37-71-302. Penalties. (1) Any person or other organization acting in the capacity of public contractor within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and shall upon conviction thereof, if an individual, be punished by a fine of not to exceed \$500 or by imprisonment in the county jail for a term not to exceed 6 months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply upon conviction to any member of a partnership or to any construction, managing, or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

(2) No license may be used for any purpose by any person other than the person to whom such license is issued, and no license may be assigned, transferred or otherwise disposed of to permit the unauthorized use thereof. The license of any person who violates any provision of this section shall be automatically canceled and revoked.

(3) The board may suspend or revoke licenses already issued, refuse renewals of licenses, impose limits on the filed, scope and monetary limit of the license or reprimand or take other less severe disciplinary action, including without limitation, require or increase the amount of the surety bond or cash deposit of the licensee, if the licensee commits any act which constitutes a cause for disciplinary action.

(4) No person, firm, copartnership, corporation, association or other organization, or any combination of any thereof, engaged in the business or acting in the capacity of a contractor shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that such person, firm, copartnership, corporation, association or other organization, or any combination of any thereof, was a duly licensed contractor at all times during the performance of such act or contract and when the job was bid.

(5) Any person who has been convicted of acting as a public contractor without a license may be disqualified from taking a written or oral examination for a contractor's license for a period of 6 months from the date of his conviction."

NEW SECTION. Section 19. Repealer. Section 37-71-204, MCA, is repealed.

NEW SECTION. Section 20. Codification instruction. Sections 1 through 2 are intended to be codified as an integral part of Title 2, Chapter 15, Part 18 and the provisions of Title 2, Chapter 15, Part 18 apply to Sections 1 through 2.

NEW SECTION. Section 21. Severability. If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 22. Effective date. This Act is effective January 1, 1986.

- end -

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF ADMINISTRATION TO WAIVE THE REQUIREMENT FOR PERFORMANCE, LABOR AND MATERIALS BONDS OR BID SECURITY ON CONSTRUCTION CONTRACTS UNDER \$25,000; AMENDING SECTIONS 18-2-201, 18-2-202, AND 18-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-201, MCA, is amended to read:

"18-2-201. Bonding requirements. (1) Except as provided in subsection (4), W whenever any board, council, commission, trustees, or body acting for the state or any count, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with two or more sureties acceptable to the governmental body letting the contract, or with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

- (a) faithfully perform all of the provisions of such contract;
- (b) pay all laborers, mechanics, subcontractors, and materialmen; and
- (c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be file with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency 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, materialmen, mechanics, and subcontractors.

- (a) lawful money of the United States; or
- (b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(4) The department of administration may waive the requirements contained in subsections (1) through (3) above for building construction projects defined in 18-2-101 that cost less than \$25,000."

Section 2. Section 18-2-203, MCA, is amended to read:

"18-2-202. Failure to require bond - waiver of bond. (1) If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation shall fail to take such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of such debts so contracted by any such subcontractor as well as such contractor.

(2) Subsection (1) shall apply when the requirement for performance or labor and materials security is waived in accordance with section 18-2-201."

Section 3. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security. (1) Except as provided in subsection (2), E each bid must be accompanied by bid security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

(2) The department of administration may waive the requirement for bid security on building construction projects, as defined in 18-2-101, MCA, that cost less than \$25,000."

NEW SECTION. Section 4. Effective date. This act is effective on passage and approval.

- end -

L.C. _____

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT THE REQUIREMENT FOR BOARD OF EXAMINERS' APPROVAL OF APPOINTMENTS OF ARCHITECTS AND CONSULTING ENGINEERS TO PROJECTS COSTING MORE THAN \$100,000; AMENDING SECTION 18-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-112, MCA, is amended to read:

"18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution or agency where the work is to be done. Such appointment, for any project costing over \$100,000, shall be subject to the approval of the state board of examiners. The department need not appoint an architect or consulting engineer for repair or maintenance projects."

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

- end -

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE DEPARTMENT OF ADMINISTRATION'S POWERS AND DUTIES CONCERNING THE CONSTRUCTION OF STATE BUILDINGS; AUTHORIZING THE DEPARTMENT TO DELEGATE CERTAIN OF THOSE POWERS AND DUTIES TO OTHER STATE AGENCIES; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

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

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) The department may delegate any powers and duties specified in subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

~~(2)~~(3) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

~~(3)~~(4) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

~~(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than \$25,000 but more than \$5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonable available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.~~

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are \$25,000 or less ~~than \$5,000~~; provided however, that on all projects having a proposed cost of \$25,000 or less, but more than \$5,000, the agency awarding the contract shall procure at least three

informal bids from bona fide contractors duly licensed in the state of Montana, if reasonably available.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alternation. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through ~~(3)~~ (4) of this section."

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

- end -

L.C. _____

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE ENCUMBRANCE AT FISCAL YEAR END OF APPROPRIATIONS FOR REPAIR, MAINTENANCE AND RENOVATION PROJECTS; AMENDING SECTION 17-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 17-7-302, MCA is amended to read:

"17-7-302. Encumbrance of fiscal yearend obligations. (1) Any valid obligation not paid within the fiscal year, including valid written interagency or intra-agency service agreements for systems development, shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created--~~except--construction contracts which, upon approval of the department of administration, may be encumbered for only that portion of the contract for which service or materials have been received by the fiscal year's end.~~

(2) For the purposes of encumbering appropriations under subsection (1), a valid obligation includes a written interagency or intra-agency agreement with the department of administration for the alteration, repair, maintenance or renovation of a building pursuant to the provisions of Title 18, Chapter 2.

(3) Appropriations encumbered under the provisions of subsection (2) above that remain unexpended at the end of the next fiscal year or at the fiscal year end of a year in which the legislature convenes, whichever comes first, shall revert to the funds from which they were originally appropriated."

NEW SECTION: Section 2. Effective date. This act is effective on passage and approval.

- end -

L.C. _____

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE LIMIT ON THE COST OF A BUILDING, AS DEFINED IN 18-2-101, MCA, THAT MAY BE CONSTRUCTED WITHOUT LEGISLATIVE CONSENT; AMENDING SECTION 18-2-102, MCA."

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. (1) Except as provided in subsection (2) of this section, a building costing more than \$25,000 \$100,000 may not be constructed without the consent of the legislature. When a building costing more than \$25,000 \$100,000 is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-312 if they are to be financed wholly from the revenues therein described.

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

- end -

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE PROVISION IN THE LAW ALLOWING INDIVIDUAL SURETIES ON PUBLIC WORKS PROJECTS; AMENDING SECTION 18-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-201, MCA, is amended to read:

"18-2-201. Bonding requirements. (1) Whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond ~~with two or more sureties acceptable to the governmental body letting the contract, or~~ with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

(a) faithfully perform all of the provisions of such contract;

(b) pay all laborers, mechanics, subcontractors, and materialmen; and

(c) pay all persons who shall supply such corporation, persons or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency 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, materialmen, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana."

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

- end -

INTRODUCED BY _____

BY REQUEST OF THE GOVERNOR'S STATE BUILDING CONSTRUCTION ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE REQUIREMENT FOR BOARD OF EXAMINERS' APPROVAL OF CERTAIN CONSTRUCTION CONTRACTS; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

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

(c) ~~under the supervision and with the approval of the board of examiners,~~ solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount; However, any contract award that is protested or contract that is awarded to a bidder other than the lowest bidder, shall be subject to approval by the board of examiners;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than \$25,000 but more than \$5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than \$5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during

construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3) of this section."

NEW SECTION. Section 2. Effective Date. This act is effective on passage and approval.

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