

1 Zause BILL NO. 155
 2 INTRODUCED BY Wallace-Frost
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING POLICIES
 5 AND PROCEDURES FOR CONTRACTING PROFESSIONAL SERVICES BY THE
 6 STATE; PROHIBITING THE PAYMENT OF CONTINGENT FEES FOR
 7 PROFESSIONAL SERVICES CONTRACTS; PROVIDING PENALTIES; AND
 8 REPEALING SECTION 82-3319, R.C.M. 1947."

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

11 Section 1. Short title. This act may be cited as the
12 "Professional Services Procurement Act".

13 Section 2. Purpose. It is the purpose of this act and
14 the policy of the state of Montana that the state procure
15 professional services solely with those professionals who
16 have demonstrated competence in, and the qualifications for,
17 the type of professional service required. All selection
18 processes are open to the public and the remunerations paid
19 are matters of public record.

20 Section 3. Definitions. As used in this act, unless
21 the context clearly requires otherwise:

22 (1) "Professional services" means services in work
23 which;

24 (a) is predominantly intellectual and varied in
25 character as opposed to routine, menial, manual, mechanical,

1 or physical;

2 (b) involves the exercise of discretion and judgment
3 in its performance;

4 (c) is of such a character that the output produced or
5 the result accomplished cannot be judged objectively; or

6 (d) requires knowledge of an advanced type in a field
7 of science or learning customarily acquired by a prolonged
8 course of specialized intellectual instruction and study in
9 an institution of higher learning or a hospital, as
10 distinguished from a general academic education or from an
11 apprenticeship or from training in the performance of
12 routine, menial, manual, or physical processes; and

13 (e) includes, but is not limited to, such professions
14 as accounting, actuarial science, architecture, engineering,
15 landscape architecture, land surveying, law, medicine,
16 optometry, planning, and ecological science.

17 (2) "Agency" means the state of Montana, its boards,
18 institutions and agencies.

19 (3) "Firm" means any individual, firm, partnership,
20 corporation, association, or other legal entity permitted by
21 law to practice a specified profession.

22 (4) "Department" means the department of
23 administration.

24 Section 4. Annual statement of qualifications
25 --publication of projects. (1) In the procurement of

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1 professional services for any agency the department shall
 2 require firms engaged in the lawful practice of their
 3 professions who seek to perform such services to submit
 4 annually a statement of qualifications and performance data.

5 (2) Statewide announcements of all projects requiring
 6 professional services shall be made by the department
 7 through a semi-monthly department publication. Any
 8 political subdivision, including a school district, may list
 9 its requests for professional services in this publication.
 10 The publication shall also list firms selected for
 11 professional services.

12 Section 5. Selection of firm--public not to be
 13 excluded. (1) An interviewing committee composed of one
 14 (1) person from the department of administration and two (2)
 15 persons from the agency involved, specifically excluding the
 16 chief administrator of the agency involved, shall for each
 17 proposed project:

18 (a) evaluate current statements of qualifications and
 19 performance data of firms on file with the department;

20 (b) conduct discussions with no less than three (3)
 21 interested firms regarding anticipated concepts and the
 22 relative utility of alternative methods of approach for
 23 furnishing the required services;

24 (c) select therefrom, based upon criteria established
 25 and published by it, three (3) of the firms deemed to be the

1 most highly qualified to provide the services required, and;
 2 (d) submit those three (3) firms' names to the state
 3 board of examiners for final selection.

4 (2) The state board of examiners shall select one of
 5 the three (3) firms submitted to it to perform the
 6 professional service needed.

7 (3) The public shall not be excluded from proceedings
 8 under this act.

9 Section 6. Fees. (1) The department shall set the
 10 fee for the professional service required and this fee shall
 11 be in accordance with guidelines established by the
 12 department for similar services. (2) When the description
 13 of services required deviates from established guidelines,
 14 the agency involved shall participate in the establishment
 15 of a fee which is fair and reasonable. (3) If the firm is
 16 unwilling to perform the professional services for the fee
 17 set by the department the department shall then proceed to
 18 offer the same fee to the second choice of the names
 19 submitted to the board of examiners.

20 Section 7. Prohibition against contingent fees--
 21 penalty. (1) Each contract entered into by an agency for
 22 professional services shall contain a prohibition against
 23 contingent fees as follows: "The professional warrants that
 24 he has not employed or retained any company or person, other
 25 than a bona fide full time employee, to solicit or secure

1 this agreement, and that he has not paid or agreed to pay
2 any person, company, corporation, individual, or firm, other
3 than a bona fide full time employee, any fee, commission,
4 percentage, gift, or any other consideration, contingent
5 upon or resulting from the award or making of this
6 agreement". Upon the breaca or violation of this
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8 the agreement without liability and, at its discretion, to
9 aeduct from the contract price, or otherwise recover, the
10 full amount of such fee, commission, percentage, gift, or
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12 (2) Any individual, corporation, partnership, firm, or
13 company, other than a bona fide full time employee, is
14 prohibited from offering, agreeing, or contracting to
15 solicit or secure agency contracts for professional services
16 for any other individual, company, corporation, partnership,
17 or firm.

18 (3) A public official or employee is prohibited from
19 soliciting or securing, whether for consideration or not, a
20 contract for professional services for another.

21 (4) A person convicted of violating subsections (1)
22 (2) or (3) of this section shall be fined not to exceed five
23 hundred dollars (\$500) or be imprisoned in the county jail
24 for any term not to exceed six (6) months, or both.

25 Section 8. Section 82-3319, R.C.M. 1947, is repealed.

HB 155

Approved by Committee
on Judiciary

HOUSE BILL NO. 155

INTRODUCED BY YARDLEY, FAGG

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING POLICIES AND PROCEDURES FOR CONTRACTING PROFESSIONAL SERVICES BY THE STATE; PROHIBITING THE PAYMENT OF CONTINGENT FEES FOR PROFESSIONAL SERVICES CONTRACTS; PROVIDING PENALTIES; AND REPEALING SECTION 82-3319, R.C.M. 1947."

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Section 2. Purpose. It is the purpose of this act and the policy of the state of Montana that the state procure professional services solely with those professionals who have demonstrated competence in, and the qualifications for, the type of professional service required. All selection processes are open to the public and the remunerations paid are matters of public record.

Section 3. Definitions. As used in this act, unless the context clearly requires otherwise:

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or physical;

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(c) is of such a character that the output produced or the result accomplished cannot be judged objectively; or

(d) requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, menial, manual, or physical processes; and

(e) includes, but is not limited to, such professions as accounting, actuarial science, architecture, engineering, landscape architecture, land surveying, law, medicine, optometry, planning, and ecological science.

(2) "Agency" means the state of Montana, its boards, institutions and agencies.

(3) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice a specified profession.

(4) "Department" means the department of administration.

Section 4. Annual statement of qualifications --publication of projects. (1) In the procurement of

1 professional services for any agency the department shall
2 require firms engaged in the lawful practice of their
3 professions who seek to perform such services to submit
4 annually a statement of qualifications and performance data.

5 (2) Statewide announcements of all projects requiring
6 professional services shall be made by the department
7 through a semi-monthly department publication. Any
8 political subdivision, including a school district, may list
9 its requests for professional services in this publication.
10 The publication shall also list firms selected for
11 professional services.

12 Section 5. Selection of firm--public not to be
13 excluded. (1) An interviewing committee composed of one
14 (1) person from the department of administration and two (2)
15 persons from the agency involved, specifically excluding the
16 chief administrator of the agency involved, shall for each
17 proposed project:

18 (a) evaluate current statements of qualifications and
19 performance data of firms on file with the department;

20 (b) conduct discussions with no less than three (3)
21 interested firms regarding anticipated concepts and the
22 relative utility of alternative methods of approach for
23 furnishing the required services;

24 (c) select therefrom, based upon criteria established
25 and published by it, three (3) of the firms deemed to be the

1 most highly qualified to provide the services required, and;
2 (d) submit those three (3) firms' names to the state
3 board of examiners for final selection.

4 (2) The state board of examiners shall select one of
5 the three (3) firms submitted to it to perform the
6 professional service needed.

7 (3) The public shall not be excluded from proceedings
8 under this act.

9 Section 6. Fees. (1) The department shall set the
10 fee for the professional service required and this fee shall
11 be in accordance with guidelines established by the
12 department for similar services. (2) When the description
13 of services required deviates from established guidelines,
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16 unwilling to perform the professional services for the fee
17 set by the department the department shall then proceed to
18 offer the same fee to the second choice of the names
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20 Section 7. Prohibition against contingent fees--
21 penalty. (1) Each contract entered into by an agency for
22 professional services shall contain a prohibition against
23 contingent fees as follows: "The professional warrants that
24 he has not employed or retained any company or person, other
25 than a bona fide full time employee, to solicit or secure

1 this agreement, and that he has not paid or agreed to pay
 2 any person, company, corporation, individual, or firm, other
 3 than a bona fide full time employee, any fee, commission,
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 6 agreement". Upon the breach or violation of this
 7 prohibition, the agency shall have the right to terminate
 8 the agreement without liability and, at its discretion, to
 9 deduct from the contract price, or otherwise recover, the
 10 full amount of such fee, commission, percentage, gift, or
 11 consideration.

12 (2) Any individual, corporation, partnership, firm, or
 13 company, other than a bona fide full time employee, is
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 15 solicit or secure agency contracts for professional services
 16 for any other individual, company, corporation, partnership,
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 19 soliciting or securing, whether for consideration or not, a
 20 contract for professional services for another.

21 (4) A person convicted of violating subsections (1)
 22 (2) or (3) of this section shall be fined not to exceed five
 23 hundred dollars (\$500) or be imprisoned in the county jail
 24 for any term not to exceed six (6) months, or both.

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1 APPLICABLE:

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 3 OF LESS THAN TWO THOUSAND DOLLARS (\$2,000) FOR PERFORMING
 4 OUTSIDE PROFESSIONAL SERVICES;

5 (B) TO CONTRACTS FOR OUTSIDE PROFESSIONAL WITNESS
 6 WHERE THE PURPOSE OF SUCH SERVICES IS TO PROVIDE FOR
 7 SERVICES OR TESTIMONY RELATING TO AN EXISTING OR PROBABLE
 8 LAWSUIT IN WHICH THE STATE OF MONTANA OR ANY OF ITS AGENCIES
 9 IS OR MAY BECOME A PARTY;

10 (C) TO THE LEGISLATURE OR ITS SPECIALIZED AGENCIES.

11 Section 9. Section 82-3319, R.C.M. 1947, is repealed.

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March 20, 1975

SENATE COMMITTEE ON STATE ADMINISTRATION

AMENDMENTS TO HOUSE BILL NO. 155

That House Bill No. 155, third reading, be amended as follows:

1. Amend page 2, section 3, line 14.
Following: "science,"
Insert: "advertising,"
2. Amend page 3, section 4, line 4.
Following: "data."
Insert: "Attorneys at law shall not be required to submit a statement of qualifications and performance data, but may be required to submit information that does not violate their canons of ethics."
3. Amend page 4, section 5, line 8.
Following: line 8
Insert: "(4) The provisions of this section do not apply to extraordinary situations where there are less than three (3) qualified firms."
4. Amend page 6, section 8, line 3.
Following: "THAN"
Strike: "TWO"
Insert: "three"
5. Amend page 6, section 8, line 3.
Following: "DOLLARS"
Strike: "(\$2,000)"
Insert: "(\$3,000)"
6. Amend page 6, section 8, line 10.
Following: "AGENCIES"
Strike: "."
Insert: ";
(d) to state agencies that have established fee schedules and personnel standards for professional services in accordance with federal or state authority."

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 7 TO SUBMIT INFORMATION THAT DOES NOT VIOLATE THEIR CANONS OF
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 14 EXTRAORDINARY SITUATIONS WHERE THERE ARE LESS THAN THREE (3)
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 13 WHERE THE PURPOSE OF SUCH SERVICES IS TO PROVIDE FOR
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 15 LAWSUIT IN WHICH THE STATE OF MONTANA OR ANY OF ITS AGENCIES
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17 (C) TO THE LEGISLATURE OR ITS SPECIALIZED AGENCIES;

18 (D) TO STATE AGENCIES THAT HAVE ESTABLISHED FEE
 19 SCHEDULES AND PERSONNEL STANDARDS FOR PROFESSIONAL SERVICES
 20 IN ACCORDANCE WITH FEDERAL OR STATE AUTHORITY.

21 Section 9. Section 82-3319, R.C.M. 1947, is repealed.

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