

1 *Senate* BYL NO. 91  
 2 INTRODUCED BY LOCKEEN Four Turning 91 Thacker  
 3 *Amend*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 6-501  
 5 AND 82-1133, R.C.M. 1947, RELATING TO BID SECURITY ON PUBLIC  
 6 CONTRACTS."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 6-501, R.C.M. 1947, is amended to  
 10 read as follows:

11 "6-501. Bids accompanied by covenant of  
 12 indemnity--contents--bidder's security--money, checks or  
 13 bonds--forfeiture. In all cases where (a) the state of  
 14 Montana, or any department (including the department of  
 15 administration, unless otherwise authorized by express  
 16 provision of law), institution, board, commission, agency,  
 17 authority or subordinate jurisdiction thereof, or (b) any  
 18 county, or other political subdivision of this state, or (c)  
 19 any municipal corporation or authorized subdivision thereof,  
 20 or (d) school districts, irrigation districts, or other  
 21 public authority organized under the laws of the state of  
 22 Montana (any and all thereof being herein referred to as a  
 23 "public authority" or "obligee") is authorized by law to  
 24 solicit bids, tenders or proposals for public works,  
 25 improvements or undertakings of any kind, or for the

1 purchase of commodities, goods, or property, or for the  
 2 procurement of technical or special services on a bid basis  
 3 (exclusive of services on the basis of salaries or wages) or  
 4 for the sale and purchase of bonds, debentures, notes or any  
 5 other forms of indebtedness of any such public authority,  
 6 the respective executive, administrative or other officers  
 7 of and acting for such public authority shall require, as a  
 8 condition precedent to considering any such bids, as  
 9 evidence of good faith on the part of the bidder, and as  
 10 indemnity for the benefit of such public authority against  
 11 the failure or refusal of any bidder to enter into any  
 12 written contract that may be awarded upon and following  
 13 acceptance of bid, or consummating any sale and purchase of  
 14 any forms of indebtedness, that any bid shall contain a  
 15 written covenant of indemnity conditioned as herein  
 16 prescribed and that the bid shall be accompanied by bid  
 17 security of the nature herein specified, for the performance  
 18 of such covenant. The advertisement, request, or  
 19 solicitation for bids or offers shall distinctly specify  
 20 that all bidders, offerors, tenderers or contractors shall,  
 21 (a) In any case where bids are solicited other than  
 22 for purchase of any forms of indebtedness, expressly  
 23 covenant in any bid that if the bidder shall be awarded the  
 24 contract the bidder will, within the time required, as  
 25 stated in the advertisement or solicitation, enter into a

1 formal contract and give a good and sufficient bond to  
 2 secure the performance of the terms and conditions of the  
 3 contract; otherwise, the bidder will pay unto the public  
 4 authority the difference in money between the amount of the  
 5 bid of the said bidder and the amount for which the public  
 6 authority legally contracts with another party to perform  
 7 the work or supply the property, commodities or services, as  
 8 the case may be, if the latter amount be in excess of the  
 9 former, but in no event shall the bidder's liability or the  
 10 liability of the surety of such bidder, exceed the penal sum  
 11 stated in the solicitation or advertisement for bids, which  
 12 sum shall be represented by the money posted or stated in  
 13 the security instrument or bid bond; or

14 (b) In any case where the bids are solicited for the  
 15 purchase and sale of any forms of indebtedness of such  
 16 public authority, expressly covenant that the money or bank  
 17 instrument accompanying the bid, in the sum specified by the  
 18 public authority, shall be kept and retained by the public  
 19 authority as liquidated damages for failure to consummate  
 20 the purchase of such forms of indebtedness as may be awarded  
 21 on acceptance of bid, and in compliance with the terms  
 22 thereof.

23 In no event shall the bidder's liability, or the  
 24 liability of the maker of the security instrument, or the  
 25 liability on the bid bond exceed the amount specified by the

1 public authority in the solicitation or advertisement for  
 2 bids, whether the amount shall be posted in money, or be  
 3 stated as the amount payable in the security instrument, or  
 4 as the maximum amount payable in the bid bond. The public  
 5 authority shall distinctly specify in the solicitation or  
 6 advertisement for bids the penal or other sum fixed by  
 7 statute to be paid by any bidder failing or refusing as  
 8 aforesaid, in any case where such sum or sums are fixed by  
 9 statute for bid security; otherwise, it shall in all cases  
 10 specify the sum, but in no case less than 10% of the bid  
 11 price, which it may deem reasonably necessary to protect and  
 12 indemnify the public authority against the failure or  
 13 refusal of the bidder to enter into the contract, or  
 14 consummate the purchase of indebtedness, as the case may be.

15 In all cases under category (a) the bidder, offeror, or  
 16 tenderer shall accompany any bid with either (1) lawful  
 17 moneys of the United States, or (2) with a cashier's check,  
 18 certified check, bank money order, or bank draft, in any  
 19 case drawn and issued by a national banking association  
 20 located in the state of Montana, or by any banking  
 21 corporation incorporated under the laws of the state of  
 22 Montana, or (3) a bid bond or bonds executed by a surety  
 23 corporation authorized to do business in the state of  
 24 Montana; and in all cases under category (b) the bidder  
 25 shall accompany the bid with the security described in (1)

1 or (2) above. The moneys or, in lieu of moneys, any of such  
2 bank instruments or bid bonds shall be payable directly to  
3 the public authority soliciting or advertising for bids.

4 If, in any instance, one or more bids be accepted, or  
5 if a sale of any form of indebtedness is ordered, or if a  
6 contract is awarded, any bidder whose bid is accepted and  
7 who shall thereafter refuse to enter into and execute the  
8 proposed contract, or carry out and consummate the purchase  
9 of any form of indebtedness, as stated in the covenant in  
10 the bid, and herein, shall absolutely forfeit such moneys or  
11 bank instruments to the public authority concerned, and  
12 become immediately liable on the bid bond but not in excess  
13 of the penal sum therein stated. The moneys or bank  
14 instruments or bid bonds, as the case may be, shall be  
15 returned to those bidders whose bids are not accepted. The  
16 advertisement, request or other solicitation for bids or  
17 offers shall distinctly specify that lawful moneys of the  
18 United States, or a cashier's check, certified check, bank  
19 money order, or bank draft, in any case drawn and issued by  
20 banks, as herein specified, payable as aforesaid, or bid  
21 bond in any case appropriate therefor, shall constitute  
22 compliance with the requirement for bid security. But  
23 nothing herein contained shall exclude or be construed to  
24 excuse compliance with any other requirements for bonds or  
25 other or further security after acceptance of bids or

1 following award of contract, or excuse compliance with any  
2 requirements for performance bonds, at any time, as such  
3 requirements may be prescribed or authorized by the laws of  
4 the state of Montana."

5 Section 2. Section 82-1133, R.C.M. 1947, is amended to  
6 read as follows:

7 "~~82-1133. Number of bids required--certified-check bid~~  
8 ~~security to accompany bid. There must be bids from at least~~  
9 ~~two (2) responsible contractors in their respective lines~~  
10 ~~when said contract involves an expenditure of more than two~~  
11 ~~thousand dollars (\$2,000.00); each bid must be accompanied~~  
12 ~~by a certified check for 5% of the amount of his bid bid~~  
13 ~~security in the amount of 10% of his bid, such security to~~  
14 ~~consist of cash, cashier's check, certified check, bank~~  
15 ~~money order, or bank draft, in any case drawn and issued by~~  
16 ~~a national banking association located in the state of~~  
17 ~~Montana or by any banking corporation incorporated under the~~  
18 ~~laws of the state of Montana, or a bid bond on bonds~~  
19 ~~executed by a surety corporation authorized to do business~~  
20 ~~in the state of Montana."~~

-End-

Approved by Committee  
on Business and Industry

*Senate* BYL NO. 91  
*LOCKEEN* *Tom* *Turney* *Thomson*  
*Shind*

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18 county, or other political subdivision of this state, or (c)  
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 2 secure the performance of the terms and conditions of the  
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 12 indemnify the public authority against the failure or  
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 23 corporation authorized to do business in the state of  
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5 Section 2. Section 82-1133, R.C.M. 1947, is amended to  
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7 "82-1133. Number of bids required--~~certified check bid~~  
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 11 thousand dollars (\$2,000.00); each bid must be accompanied  
 12 by ~~a certified check for 5% of the amount of his bid bid~~ bid  
 13 security in the amount of 10% of his bid, such security to  
 14 consist of cash, cashier's check, certified check, bank  
 15 money order, or bank draft, in any case drawn and issued by  
 16 a national banking association located in the state of  
 17 Montana or by any banking corporation incorporated under the  
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 19 executed by a surety corporation authorized to do business  
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-End-

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 3 *Shinal*

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-End-

## 1 SENATE BILL NO. 91

2 INTRODUCED BY LOCKREH, LOWE, TURNAGE, THIESSEN, HIMSL

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 12 indemnify the public authority against the failure or  
 13 refusal of the bidder to enter into the contract, or  
 14 consummate the purchase of indebtedness, as the case may be.

15 In all cases under category (a) the bidder, offeror, or  
 16 tenderer shall accompany any bid with either (1) lawful  
 17 moneys of the United States, or (2) with a cashier's check,  
 18 certified check, bank money order, or bank draft, in any  
 19 case drawn and issued by a national banking association  
 20 located in the state of Montana, or by any banking  
 21 corporation incorporated under the laws of the state of  
 22 Montana, or (3) a bid bond or bonds executed by a surety  
 23 corporation authorized to do business in the state of  
 24 Montana; and in all cases under category (b) the bidder  
 25 shall accompany the bid with the security described in (1)

1 or (2) above. The moneys or, in lieu of moneys, any of such  
 2 bank instruments or bid bonds shall be payable directly to  
 3 the public authority soliciting or advertising for bids.

4 If, in any instance, one or more bids be accepted, or  
 5 if a sale of any form of indebtedness is ordered, or if a  
 6 contract is awarded, any bidder whose bid is accepted and  
 7 who shall thereafter refuse to enter into and execute the  
 8 proposed contract, or carry out and consummate the purchase  
 9 of any form of indebtedness, as stated in the covenant in  
 10 the bid, and herein, shall absolutely forfeit such moneys or  
 11 bank instruments to the public authority concerned, and  
 12 become immediately liable on the bid bond but not in excess  
 13 of the penal sum therein stated. The moneys or bank  
 14 instruments or bid bonds, as the case may be, shall be  
 15 returned to those bidders whose bids are not accepted. The  
 16 advertisement, request or other solicitation for bids or  
 17 offers shall distinctly specify that lawful moneys of the  
 18 United States, or a cashier's check, certified check, bank  
 19 money order, or bank draft, in any case drawn and issued by  
 20 banks, as herein specified, payable as aforesaid, or bid  
 21 bond in any case appropriate therefor, shall constitute  
 22 compliance with the requirement for bid security. But  
 23 nothing herein contained shall exclude or be construed to  
 24 excuse compliance with any other requirements for bonds or  
 25 other or further security after acceptance of bids or

1 following award of contract, or excuse compliance with any  
 2 requirements for performance bonds, at any time, as such  
 3 requirements may be prescribed or authorized by the laws of  
 4 the state of Montana."

5 Section 2. Section 82-1133, R.C.M. 1947, is amended to  
 6 read as follows:

7 "82-1133. Number of bids required--~~certified-check bid~~  
 8 security to accompany bid. There must be bids from at least  
 9 two (2) responsible contractors in their respective lines  
 10 when said contract involves an expenditure of more than two  
 11 thousand dollars (\$2,000.00); each bid must be accompanied  
 12 by ~~a certified check for 5% of the amount of his bid bid~~  
 13 security in the amount of 10% of his IFE bid, such security  
 14 to consist of cash, cashier's check, certified check, bank  
 15 money order, or bank draft, in any case drawn and issued by  
 16 a national banking association located in the state of  
 17 Montana or by any banking corporation incorporated under the  
 18 laws of the state of Montana, or a bid bond on DR bonds  
 19 executed by a surety corporation authorized to do business  
 20 in the state of Montana."

-End-