

HOUSE BILL NO. 26

INTRODUCED BY MOORE, D. BROWN, PAVLOVICH, HARRINGTON, QUILICI, BRAND

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on State Administration.
	On motion by chief sponsor Representatives Brown, Pavlovich, Harrington, Quilici, Brand were added as authors to the prefiled bill.
February 16, 1981	Committee recommend bill do pass as amended. Report adopted.
February 17, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading, do pass as amended.
February 21, 1981	Correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 94; Noes, 2. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on State Administration.
March 20, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1981	Second reading, concurred in as amended.
March 25, 1981	Third reading, concurred in as amended. Ayes, 50; Noes, 0.

IN THE HOUSE

March 26, 1981 Returned from Senate with amendments.

April 8, 1981 Second reading, amendments not concurred in.

 On motion Conference Committee requested.

 Conference Committee appointed.

April 14, 1981 Conference Committee reported and dissolved.

April 17, 1981 Second reading, Conference Committee report adopted.

 On motion rules suspended and bill placed on third reading this day.

 Third reading, Conference Committee report adopted.

 Ayes, 90, Noes, 7. Transmitted to Senate.

IN THE SENATE

April 17, 1981 Conference Committee report adopted.

IN THE HOUSE

April 20, 1981 Returned from Senate. Concurred in. Sent to enrolling.

 Reported correctly enrolled.

1 HOUSE BILL NO. 26
2 INTRODUCTION BY MOORE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL AND REGULATE
5 THE USE OF PRIVATE CONSULTANTS BY STATE AGENCIES; AND
6 PROVIDING AN EFFECTIVE DATE."

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

9 Section 1. Purpose. (1) It is the intent of the
10 legislature that [this act] be interpreted in a manner that
11 assures the greatest fair competition in the selection by
12 state agencies of private consultants under contracts
13 covered by [this act] and that assures that all potential
14 providers of consulting services are afforded notice of the
15 need for and opportunity to provide the services.

16 (2) [This act] is not intended to discourage the use by
17 state agencies of private consultants if their use may
18 reasonably be expected to result in a more efficient and
19 less costly operation or project. [This act] is not intended
20 to prohibit the letting of a sole-source contract for
21 consulting services if no proposal is received from a
22 competent, knowledgeable, and qualified private consultant
23 at a reasonable fee, after the procedures set forth in [this
24 act] have been followed.

25 Section 2. Definitions. As used in [this act], unless

1 the context requires otherwise, the following definitions
2 apply:

3 (1) "Consulting service" means the human service of
4 studying or advising an agency under an independent
5 contract. The term includes routine work provided to an
6 agency under an independent contract that is necessary to
7 the functioning of the agency's programs. The term includes
8 only services for which payment is made from funds:

- 9 (a) that are appropriated by the legislature;
- 10 (b) that are generated by statutory functions of the
11 agency; or

12 (c) that are received by the state from the federal
13 government and that are awarded to the state without
14 requiring the state to request the funds through a grant
15 program.

16 (2) "Private consultant" means an entity that performs
17 consulting services.

18 (3) "State agency" means any state department,
19 commission, board, office, institution, facility, or other
20 agency, including a university system or an institution of
21 higher education.

22 Section 3. Exemptions. [This act] does not apply to
23 employment of registered professional engineers or
24 registered architects for architectural or engineering
25 studies for the design or construction of state facilities,

1 physicians, dentists, or other medical or dental services
2 providers, and it is not intended to discourage their use.

3 Section 4. Use and selection of private consultants.

4 (1) A state agency may use a private consultant only if:

5 (a) there is a substantial need for the consulting
6 services; and

7 (b) the state agency cannot adequately perform the
8 consulting services with its own personnel or through
9 contract with another state agency.

10 (2) In selecting a private consultant, a state agency
11 shall:

12 (a) base its choice on demonstrated competence,
13 knowledge, and qualifications and on the reasonableness of
14 the proposed fee for the services; and

15 (b) when other considerations are equal, give a
16 preference to a private consultant whose principal place of
17 business is within the state or who will manage the
18 consulting engagement wholly from one of its offices within
19 the state.

20 Section 5. Notice of intent to employ private
21 consultant. At least 30 days before contracting to use a
22 private consultant whose total anticipated fee exceeds
23 \$5,000, a state agency shall notify the legislative fiscal
24 analyst and the office of budget and program planning of the
25 agency's intent to use a private consultant and shall supply

1 the legislative fiscal analyst and the office of budget and
2 program planning with information demonstrating that the
3 agency has complied with the policies of [section 4].

4 Section 6. Information relating to consultant studies.

5 (1) After a state agency contracts to use a private
6 consultant, the state agency shall, upon request, supply the
7 legislative fiscal analyst and the office of budget and
8 program planning with copies of all documents, films,
9 recordings, or reports of intangible results of the
10 consultant service that are developed by the private
11 consultant.

12 (2) Copies of all documents, films, recordings, or
13 reports of intangible results shall be filed with the
14 Montana state library and shall be retained by the library
15 for at least 5 years after receipt.

16 (3) As part of the biennial budgetary hearing process
17 conducted by the legislative fiscal analyst and the office
18 of budget and program planning, a state agency shall supply
19 the legislative fiscal analyst and the office of budget and
20 program planning with reports on what action was taken in
21 response to the recommendations of any private consultant
22 employed by the state agency.

23 Section 7. Publication in Montana Administrative
24 Register. (1) If it is reasonably foreseeable that a
25 proposed use of a private consultant may involve a contract

1 with a value in excess of \$5,000, a state agency that
2 proposes the use of a private consultant shall file, at
3 least 40 days before contracting with a private consultant,
4 the following information with the secretary of state for
5 publication in the Montana Administrative Register:

6 (a) a notice of invitation for offers of consulting
7 services;

8 (b) the person who should be contacted by a private
9 consultant who wants to make an offer;

10 (c) the closing date for receipt of offers of
11 consulting services; and

12 (d) the procedure by which the agency will award the
13 contract for consulting services.

14 (2) A state agency that complies with subsection (1) of
15 this section shall file within 10 days after contracting
16 with the private consultant the following information with
17 the secretary of state for publication in the Montana
18 Administrative Register:

19 (a) a description of the study that the private
20 consultant is to conduct;

21 (b) the name and business address of the private
22 consultant;

23 (c) the total value and the beginning and ending dates
24 of the contract; and

25 (d) the due dates of documents, films, recordings, or

1 reports of intangible results that the private consultant is
2 to present to the agency.

3 (3) The Montana state library shall compile a list of
4 documents, films, recordings, and reports of intangible
5 results submitted to it under [subsection (2) of section 6]
6 and shall file the list in each quarter of the calendar year
7 with the secretary of state for publication in the Montana
8 Administrative Register.

9 (4) If the consulting service desired by a state agency
10 is a continuation of a service previously performed by a
11 private consultant, the agency shall state this in the
12 invitation for offers filed with the secretary of state
13 under subsection (1) of this section. If the state agency
14 intends to award the contract for the consulting services to
15 the private consultant that previously performed the
16 services, unless a better offer is submitted, it shall state
17 this in the invitation for offers.

18 Section 8. Conflicts of interest. An officer or
19 employee of a state agency who has a financial interest in
20 a firm or corporation that is a private consultant and that
21 submits an offer to provide consulting services to the
22 agency or who is related within the second degree by
23 consanguinity or affinity to a person having the financial
24 interest shall report the financial interest to the
25 executive head of the state agency not later than the 10th

HB 26

1 day after the day on which the private consultant submits
2 the consulting services offer.

3 Section 9. Restriction on former employees. A person
4 who offers to perform a consulting service for a state
5 agency and who has been employed by the agency or by another
6 state agency at any time during the 2 years preceding the
7 making of the offer shall disclose in the offer the nature
8 of the previous employment with the agency or the other
9 state agency, the date of termination of the employment, and
10 the annual rate of compensation for the employment at the
11 time of termination. A state agency that accepts the offer
12 shall include in the information filed under [subsection (2)
13 of section 7] a statement about the previous employment and
14 the nature of the employment.

15 Section 10. Contract in violation void. (1) If a state
16 agency contracts to use a private consultant without
17 complying with the requirements of [section 7] or if a
18 person contracts to perform a consulting service for a state
19 agency without complying with the requirements of [section
20 9], the contract is void.

21 (2) If a contract is void under this section, the state
22 or state agency may not make any payments under the contract
23 from any state or federal funds held in or outside the state
24 treasury.

25 Section 11. Effective date. This act is effective on

1 passage and approval.

-End-

Approved by Committee
on State Administration

HOUSE BILL NO. 26

INTRODUCED BY MOORE, D. BROWN, PAVLOVICH,
HARRINGTON, QUILICI, BRAND

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL AND REGULATE
THE USE OF PRIVATE CONSULTANTS BY STATE AGENCIES,--AND
PROVIDING--AN--EFFECTIVE--DATE."

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

Section 1. Purpose. (1) It is the intent of the legislature that [this act] be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by [this act] and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) [This act] is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. [This act] is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in [this act] have been followed.

Section 2. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. ~~The~~ HOWEVER, THE ~~term includes--routine~~ IS LIMITED TO PROFESSIONAL CONSULTING SERVICE work provided to an agency under an independent contract ~~that is necessary to the functioning of the--agency's--programs~~ WITH A PRIVATE CONSULTANT, BUT DOES NOT INCLUDE THE MAKING OF PERIODIC OR ROUTINE REPORTS OR THE COLLECTION OF ROUTINE DATA NECESSARY TO THE FUNCTIONING OF A STATE AGENCY OR ITS PROGRAMS OR NECESSARY FOR THE PROPER MONITORING OF PRIVATE PROVIDERS OF HUMAN SERVICES REGULATED BY A STATE AGENCY. The term includes only services for which payment is made from funds:

- (a) that are appropriated by the legislature;
- (b) that are generated by statutory functions of the agency; or
- (c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services OTHER THAN A STATE AGENCY OR EMPLOYEE.

(3) "State agency" means any state department,

1 commission, board, office, institution, facility, or other
 2 agency, including a university system or an institution of
 3 higher education.

4 Section 3. Exemptions. [This act] does not apply to
 5 employment of: ~~registered---professional---engineers---or~~
 6 ~~registered---architects---for---architectural---or---engineering~~
 7 ~~studies---for---the---design---or---construction---of---state---facilities,~~
 8 ~~physicians, dentists, or other medical---or---dental---services~~
 9 ~~providers,---and---it---is---not---intended---to---discourage---their---use.~~

10 (1) REGISTERED PROFESSIONAL ENGINEERS, SURVEYORS, REAL
 11 ESTATE APPRAISERS, OR REGISTERED ARCHITECTS CONCERNED WITH
 12 THE DESIGN OR CONSTRUCTION OF STATE FACILITIES OR HIGHWAYS;

13 (2) PHYSICIANS, DENTISTS, PSYCHIATRISTS,
 14 PSYCHOLOGISTS, PHYSICAL THERAPISTS, NURSES, PHARMACISTS,
 15 OPHTHALMOLOGISTS, OPTOMETRISTS, SPEECH PATHOLOGISTS, OR
 16 OTHER MEDICAL, DENTAL, OR HEALTH-CARE PROVIDERS; AND

17 (3) EXPERT WITNESSES HIRED FOR USE IN LITIGATION,
 18 HEARINGS OFFICERS HIRED IN RULEMAKING AND CONTESTED CASE
 19 PROCEEDINGS UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT,
 20 OR ATTORNEYS.

21 Section 4. Use and selection of private consultants.

- 22 (1) A state agency may use a private consultant only if:
 23 (a) there is a substantial need for the consulting
 24 services; and
 25 (b) the state agency cannot adequately perform the

1 consulting services with its own personnel ~~or---through~~
 2 ~~contract-with-another-state-agency.~~

3 (2) In selecting a private consultant, a state agency
 4 shall:

5 (a) base its choice on demonstrated competence,
 6 knowledge, and qualifications and on the reasonableness of
 7 the proposed fee for the services; and

8 (b) when other considerations are equal, give a
 9 preference to a private consultant WHO IS A BONA FIDE
 10 RESIDENT OF MONTANA AS DEFINED IN 18-2-401 AND whose
 11 principal place of business is within the state or who will
 12 manage the consulting engagement wholly from one of its
 13 offices within the state.

14 ~~Section 5. Notice of intent to employ private~~
 15 ~~consultants. At least 30 days before contracting to use a~~
 16 ~~private consultant whose total anticipated fee exceeds~~
 17 ~~\$5,000, a state agency shall notify the legislative fiscal~~
 18 ~~analyst and the office of budget and program planning of the~~
 19 ~~agency's intent to use a private consultant and shall supply~~
 20 ~~the legislative fiscal analyst and the office of budget and~~
 21 ~~program planning with information demonstrating that the~~
 22 ~~agency has complied with the policies of [section 4].~~

23 Section 5. Information relating to consultant studies.

24 (1) After a state agency contracts to use a private
 25 consultant, the state agency shall, upon request, supply the

1 legislative fiscal analyst and the office of budget and
2 program planning with ~~copies of all documents, films,~~
3 ~~recordings, or reports of intangible results of the~~
4 ~~consultant service that are developed~~ A BRIEF RESUME OF THE
5 RESULTS ACCOMPLISHED by the private consultant.

6 (2) Copies of all documents, films, recordings, or
7 reports of intangible results shall be filed with the
8 ~~Montana state library and shall be retained by the library~~
9 ~~for at least 5 years after receipt~~ CENTRAL OFFICE OF THE
10 STATE AGENCY OR REPOSITORY DESIGNATED BY THE STATE AGENCY.

11 (3) As part of the biennial budgetary hearing process
12 conducted by the legislative fiscal analyst and the office
13 of budget and program planning, a state agency shall UPON
14 REQUEST supply the legislative fiscal analyst and the office
15 of budget and program planning with reports on what action
16 was taken in response to the recommendations of any private
17 consultant employed by the state agency.

18 ~~Section 7, Publication in Montana Administrative~~
19 ~~Registers (1) if it is reasonably foreseeable that a~~
20 ~~proposed use of a private consultant may involve a contract~~
21 ~~with a value in excess of \$5,000, a state agency that~~
22 ~~proposes the use of a private consultant shall file at~~
23 ~~least 40 days before contracting with a private consultant,~~
24 ~~the following information with the secretary of state for~~
25 ~~publication in the Montana Administrative Register:~~

1 (a) ~~a notice of invitation for offers of consulting~~
2 ~~services;~~

3 (b) ~~the person who should be contacted by a private~~
4 ~~consultant who wants to make an offer;~~

5 (c) ~~the closing date for receipt of offers of~~
6 ~~consulting services; and~~

7 (d) ~~the procedure by which the agency will award the~~
8 ~~contract for consulting services.~~

9 (2) ~~A state agency that complies with subsection (1)~~
10 ~~of this section shall file within 10 days after contracting~~
11 ~~with the private consultant the following information with~~
12 ~~the secretary of state for publication in the Montana~~
13 ~~Administrative Register:~~

14 (a) ~~a description of the study that the private~~
15 ~~consultant is to conduct;~~

16 (b) ~~the name and business address of the private~~
17 ~~consultant;~~

18 (c) ~~the total value and the beginning and ending dates~~
19 ~~of the contract; and~~

20 (d) ~~the due dates of documents, films, recordings, or~~
21 ~~reports of intangible results that the private consultant is~~
22 ~~to present to the agency;~~

23 (3) ~~The Montana state library shall compile a list of~~
24 ~~documents, films, recordings, and reports of intangible~~
25 ~~results submitted to it under [subsection (2) of section 6]~~

1 and shall file the list in each quarter of the calendar year
 2 with the secretary of state for publication in the Montana
 3 Administrative Register.

4 (4) If the consulting service desired by a state
 5 agency is a continuation of a service previously performed
 6 by a private consultant, the agency shall state this in the
 7 invitation for offers filed with the secretary of state
 8 under subsection (1) of this section. If the state agency
 9 intends to award the contract for the consulting services to
 10 the private consultant that previously performed the
 11 services, unless a better offer is submitted, it shall state
 12 this in the invitation for offers.

13 SECTION 6. SOLICITATION OF BIDS. (1) IN ORDER TO
 14 CONTRACT WITH A PRIVATE CONSULTANT, A STATE AGENCY SHALL
 15 ESTABLISH A BID LIST IN ITS CENTRAL OFFICE OR IN ANOTHER
 16 APPROPRIATE DIVISION OR UNIT OF THE STATE AGENCY. ANY
 17 PRIVATE CONSULTANT WHO DESIRES TO SUBMIT BIDS TO THAT AGENCY
 18 TO PROVIDE CONSULTING SERVICES MAY REQUEST IN WRITING THE
 19 AGENCY PLACE HIM ON THE AGENCY'S BID LIST.

20 (2) WHENEVER IT IS REASONABLY FORESEEABLE THAT A
 21 PROPOSED CONTRACT FOR PRIVATE CONSULTANT SERVICES WILL
 22 EXCEED \$5,000, THE STATE AGENCY SHALL NOTIFY ALL PRIVATE
 23 CONSULTANTS WHO HAVE REQUESTED TO BE PLACED ON THE AGENCY'S
 24 BID LIST. THE NOTICE SHALL CONTAIN THE FOLLOWING:

25 (A) A NOTICE OF INVITATION FOR OFFERS OF CONSULTING

1 SERVICES;

2 (B) THE NAME AND ADDRESS OF THE PERSON WITHIN THE
 3 AGENCY TO BE CONTACTED BY A PRIVATE CONSULTANT WISHING TO
 4 MAKE AN OFFER;

5 (C) THE CLOSING DATE FOR RECEIPT OF OFFERS OF
 6 CONSULTING SERVICES;

7 (D) THE PROCEDURES AND SPECIFICATIONS UPON WHICH THE
 8 AGENCY WILL AWARD THE CONTRACT FOR CONSULTING SERVICES; AND

9 (E) ANY OTHER INFORMATION THAT THE AGENCY BELIEVES
 10 PERTINENT.

11 (3) IN ADDITION TO THE NOTIFICATION REQUIRED IN
 12 SUBSECTION (2), THE STATE AGENCY, IN ITS DISCRETION, MAY
 13 SOLICIT BIDS FOR CONSULTANT SERVICES BY ADVERTISEMENT OR
 14 OTHER MEANS.

15 (4) AN AGENCY NEED NOT FOLLOW THE PROVISIONS OF THIS
 16 SECTION IN BONA FIDE EMERGENCY SITUATIONS.

17 Section 8v - Conflicts of Interest - An officer or
 18 employee of a state agency who has a financial interest in
 19 a firm or corporation that is a private consultant and that
 20 submits an offer to provide consulting services to the
 21 agency or who is related within the second degree by
 22 consanguinity or affinity to a person having the financial
 23 interest shall report the financial interest to the
 24 executive head of the state agency not later than the 10th
 25 day after the day on which the private consultant submits

1 ~~the consulting services offer.~~

2 Section 7. Restriction on former employees. A person
 3 PRINCIPAL OR OFFICER OF A CONSULTING FIRM OR AN INDIVIDUAL
 4 who offers to perform a consulting service for a state
 5 agency and who has been employed by the agency or by another
 6 state agency at any time during the 2 years preceding the
 7 making of the offer shall disclose in the offer the nature
 8 of the previous employment with the agency or the other
 9 state agency AND the date of termination of the employment
 10 ~~and the annual rate of compensation for the employment at~~
 11 ~~the time of termination. A state agency that accepts the~~
 12 ~~offer shall include in the information filed under~~
 13 ~~[subsection (2) of section 7] a statement about the previous~~
 14 ~~employment and the nature of the employment.~~

15 Section 8. Contract in violation void. (1) If a state
 16 agency contracts to use a private consultant without
 17 complying with the requirements of [section 7 6] or if a
 18 person contracts to perform a consulting service for a state
 19 agency without complying with the requirements of [section
 20 9 7], the contract is void.

21 (2) If a contract is void under this section, the
 22 state or state agency may not make any payments under the
 23 contract from any state or federal funds held in or outside
 24 the state treasury IF VIOLATION OF [THIS ACT] WAS CAUSED BY
 25 THE CONSULTANT.

1 (3) IF A CONTRACT IS VOID UNDER THIS SECTION BECAUSE
 2 OF A VIOLATION OF [THIS ACT] BY THE STATE AGENCY, THE STATE
 3 SHALL PAY THE CONSULTANT FOR ALL WORK PERFORMED UP TO THE
 4 DATE THAT THE CONSULTANT IS INFORMED IN WRITING OF THE
 5 VIOLATION BY THE STATE AGENCY.

6 ~~Section 11. Effective date. This act is effective on~~
 7 ~~passage and approval.~~

-End-

HOUSE BILL NO. 26

INTRODUCED BY MOORE, D. BROWN, PAVLOVICH,

HARRINGTON, QUILICI, BRAND

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL AND REGULATE THE USE OF PRIVATE CONSULTANTS BY STATE AGENCIES, ~~AND PROVIDING AN EFFECTIVE DATE.~~"

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(2) [This act] is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. [This act] is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in [this act] have been followed.

Section 2. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. ~~The~~ HOWEVER, THE term includes--routine IS LIMITED TO PROFESSIONAL CONSULTING SERVICE work provided to an agency under an independent contract ~~that-is-necessary-to the-functioning-of-the--agency's--programs~~ WITH A PRIVATE CONSULTANT, BUT DOES NOT INCLUDE THE MAKING OF PERIODIC OR ROUTINE REPORTS OR THE COLLECTION OF ROUTINE DATA NECESSARY TO THE FUNCTIONING OF A STATE AGENCY OR ITS PROGRAMS OR NECESSARY FOR THE PROPER MONITORING OF PRIVATE PROVIDERS OF HUMAN SERVICES REGULATED BY A STATE AGENCY. The term

includes only services for which payment is made from funds:

- (a) that are appropriated by the legislature;
- (b) that are generated by statutory functions of the agency; or

(c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services OTHER THAN A STATE AGENCY OR EMPLOYEE.

(3) "State agency" means any state department,

1 commission, board, office, institution, facility, or other
2 agency, including a university system or an institution of
3 higher education.

4 Section 3. Exemptions. [This act] does not apply to
5 employment of: registered---professional---engineers--or
6 registered--architects--for--architectural--or---engineering
7 studies--for--the--design--or--construction--of--state--facilities;
8 physicians, dentists, or other medical--or--dental--services
9 providers,--and--it--is--not--intended--to--discourage--their--use.

10 (1) REGISTERED PROFESSIONAL ENGINEERS, SURVEYORS, REAL
11 ESTATE APPRAISERS, OR REGISTERED ARCHITECTS CONCERNED WITH
12 THE DESIGN OR CONSTRUCTION OF STATE FACILITIES OR HIGHWAYS;

13 (2) PHYSICIANS, _____ DENTISTS, PSYCHIATRISTS,
14 PSYCHOLOGISTS,--PHYSICAL--THERAPISTS,--NURSES,--PHARMACISTS,
15 OPHTHALMOLOGISTS,--OPTOMETRISTS,--SPEECH--PATHOLOGISTS, OR
16 OTHER MEDICAL, DENTAL, OR HEALTH-CARE PROVIDERS; AND

17 (3) EXPERT WITNESSES HIRED FOR USE IN LITIGATION,
18 HEARINGS OFFICERS HIRED IN RULEMAKING AND CONTESTED CASE
19 PROCEEDINGS UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT,
20 OR ATTORNEYS AS SPECIFIED BY EXECUTIVE ORDER OF THE
21 GOVERNOR.

22 Section 4. Use and selection of private consultants.

23 (1) A state agency may use a private consultant only if:

24 (a) there is a substantial need for the consulting
25 services; and

1 (b) the state agency cannot adequately perform the
2 consulting services with its own personnel or--through
3 contract-with-another-state-agency.

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5 shall:

6 (a) base its choice on demonstrated competence,
7 knowledge, and qualifications and on the reasonableness of
8 the proposed fee for the services; and

9 (b) when other considerations are equal, give a
10 preference to a private consultant WHO IS A BONA FIDE
11 RESIDENT OF MONTANA AS DEFINED IN 18-2-401 AND whose
12 principal place of business is within the state or who will
13 manage the consulting engagement wholly from one of its
14 offices within the state.

15 Section 5--Notice--of--intent--to--employ--private
16 consultants--At--least--30--days--before--contracting--to--use--a
17 private--consultant--whose--total--anticipated--fee--exceeds
18 \$5,000, a state agency shall notify the legislative fiscal
19 analyst and the office of budget and program planning of the
20 agency's intent to use a private consultant and shall supply
21 the legislative fiscal analyst and the office of budget and
22 program planning with information demonstrating that the
23 agency has complied with the policies of [section 4].

24 Section 5. Information relating to consultant studies.

25 (1) After a state agency contracts to use a private

1 consultant, the state agency shall, upon request, supply the
 2 legislative fiscal analyst and the office of budget and
 3 program planning with copies--of--all--documents,--films,
 4 recordings,--or--reports--of--intangible--results--of--the
 5 consultant--service--that--are--developed A BRIEF RESUME OF THE
 6 RESULTS ACCOMPLISHED by the private consultant.

7 (2) Copies of all documents, films, recordings, or
 8 reports of intangible results shall be filed with the
 9 Montana state library and shall be retained by the library
 10 for--at--least--5--years--after--receipt CENTRAL OFFICE OF THE
 11 STATE AGENCY OR REPOSITORY DESIGNATED BY THE STATE AGENCY.

12 (3) As part of the biennial budgetary hearing process
 13 conducted by the legislative fiscal analyst and the office
 14 of budget and program planning, a state agency shall UPON
 15 REQUEST supply the legislative fiscal analyst and the office
 16 of budget and program planning with reports on what action
 17 was taken in response to the recommendations of any private
 18 consultant employed by the state agency.

19 Section 7,--Publication--in--Montana--Administrative
 20 Register,--(1)--if--it--is--reasonably--foreseeable--that--a
 21 proposed--use--of--a--private--consultant--may--involve--a--contract
 22 with--a--value--in--excess--of--\$5,000,--a--state--agency--that
 23 proposes--the--use--of--a--private--consultant--shall--file,--at
 24 least--40--days--before--contracting--with--a--private--consultant,--
 25 the--following--information--with--the--secretary--of--state--for

1 publication--in--the--Montana--Administrative--Register:
 2 (a)--a--notice--of--invitation--for--offers--of--consulting
 3 services;
 4 (b)--the--person--who--should--be--contacted--by--a--private
 5 consultant--who--wants--to--make--an--offer;
 6 (c)--the--closing--date--for--receipt--of--offers--of
 7 consulting--services--and
 8 (d)--the--procedure--by--which--the--agency--will--award--the
 9 contract--for--consulting--services.
 10 (2)--A--state--agency--that--complies--with--subsection--(1)
 11 of--this--section--shall--file--within--10--days--after--contracting
 12 with--the--private--consultant--the--following--information--with
 13 the--secretary--of--state--for--publication--in--the--Montana
 14 Administrative--Register:
 15 (a)--a--description--of--the--study--that--the--private
 16 consultant--is--to--conduct;
 17 (b)--the--name--and--business--address--of--the--private
 18 consultant;
 19 (c)--the--total--value--and--the--beginning--and--ending--dates
 20 of--the--contract;--and
 21 (d)--the--due--dates--of--documents,--films,--recordings,--or
 22 reports--of--intangible--results--that--the--private--consultant--is
 23 to--present--to--the--agency.
 24 (3)--The--Montana--state--library--shall--compile--a--list--of
 25 documents,--films,--recordings,--and--reports--of--intangible

1 results submitted to it under [subsection (2) of section 6]
 2 and shall file the list in each quarter of the calendar year
 3 with the secretary of state for publication in the Montana
 4 Administrative Register.

5 (4) If the consulting service desired by a state
 6 agency is a continuation of a service previously performed
 7 by a private consultant, the agency shall state this in the
 8 invitation for offers filed with the secretary of state
 9 under subsection (1) of this section. If the state agency
 10 intends to award the contract for the consulting services to
 11 the private consultant that previously performed the
 12 services, unless a better offer is submitted, it shall state
 13 this in the invitation for offers.

14 SECTION 6. SOLICITATION OF BIDS. (1) IN ORDER TO
 15 CONTRACT WITH A PRIVATE CONSULTANT, A STATE AGENCY SHALL
 16 ESTABLISH A BID LIST IN ITS CENTRAL OFFICE OR IN ANOTHER
 17 APPROPRIATE DIVISION OR UNIT OF THE STATE AGENCY. ANY
 18 PRIVATE CONSULTANT WHO DESIRES TO SUBMIT BIDS TO THAT AGENCY
 19 TO PROVIDE CONSULTING SERVICES MAY REQUEST IN WRITING THE
 20 AGENCY PLACE HIM ON THE AGENCY'S BID LIST.

21 (2) WHENEVER IT IS REASONABLY FORESEEABLE THAT A
 22 PROPOSED CONTRACT FOR PRIVATE CONSULTANT SERVICES WILL
 23 EXCEED \$5,000, THE STATE AGENCY SHALL NOTIFY ALL PRIVATE
 24 CONSULTANTS WHO HAVE REQUESTED TO BE PLACED ON THE AGENCY'S
 25 BID LIST. THE NOTICE SHALL CONTAIN THE FOLLOWING:

1 (A) A NOTICE OF INVITATION FOR OFFERS OF CONSULTING
 2 SERVICES;

3 (B) THE NAME AND ADDRESS OF THE PERSON WITHIN THE
 4 AGENCY TO BE CONTACTED BY A PRIVATE CONSULTANT WISHING TO
 5 MAKE AN OFFER;

6 (C) THE CLOSING DATE FOR RECEIPT OF OFFERS OF
 7 CONSULTING SERVICES;

8 (D) THE PROCEDURES AND SPECIFICATIONS UPON WHICH THE
 9 AGENCY WILL AWARD THE CONTRACT FOR CONSULTING SERVICES; AND

10 (E) ANY OTHER INFORMATION THAT THE AGENCY BELIEVES
 11 PERTINENT.

12 (3) IN ADDITION TO THE NOTIFICATION REQUIRED IN
 13 SUBSECTION (2), THE STATE AGENCY, IN ITS DISCRETION, MAY
 14 SOLICIT BIDS FOR CONSULTANT SERVICES BY ADVERTISEMENT OR
 15 OTHER MEANS.

16 (4) AN AGENCY NEED NOT FOLLOW THE PROVISIONS OF THIS
 17 SECTION IN BONA FIDE EMERGENCY SITUATIONS.

18 ~~Section 8 - Conflicts of Interest - An officer or~~
 19 ~~employee of a state agency who has a financial interest in~~
 20 ~~a firm or corporation that is a private consultant and that~~
 21 ~~submits an offer to provide consulting services to the~~
 22 ~~agency or who is related within the second degree by~~
 23 ~~consanguinity or affinity to a person having the financial~~
 24 ~~interest shall report the financial interest to the~~
 25 ~~executive head of the state agency not later than the 10th~~

1 ~~day-after-the-day-on-which-the--private--consultant--submits~~
2 ~~the-consulting-services-offer.~~

3 Section 7. Restriction on former employees. A person
4 PRINCIPAL OR OFFICER OF A CONSULTING FIRM OR AN INDIVIDUAL
5 who offers to perform a consulting service for a state
6 agency and who has been employed by the agency or by another
7 state agency at any time during the 2 years preceding the
8 making of the offer shall disclose in the offer the nature
9 of the previous employment with the agency or the other
10 state agency, AND the date of termination of the employment,
11 ~~and--the--annual--rate-of-compensation-for-the-employment-at~~
12 ~~the-time-of-termination.--A-state-agency--that--accepts--the~~
13 ~~offer---shall---include---in--the--information--filed--under~~
14 ~~[subsection-(2)-of-section-7]-a-statement-about-the-previous~~
15 ~~employment-and-the-nature-of-the-employment.~~

16 Section 8. Contract in violation void. (1) If a state
17 agency contracts to use a private consultant without
18 complying with the requirements of [section 7 6] or if a
19 person contracts to perform a consulting service for a state
20 agency without complying with the requirements of [section
21 9 I], the contract is void.

22 (2) If a contract is void under this section, the
23 state or state agency may not make any payments under the
24 contract from any state or federal funds held in or outside
25 the state treasury IF VIOLATION OF [THIS ACT] WAS CAUSED BY

1 THE CONSULTANT.

2 (3) IF A CONTRACT IS VOID UNDER THIS SECTION BECAUSE
3 OF A VIOLATION OF [THIS ACT] BY THE STATE AGENCY, THE STATE
4 SHALL PAY THE CONSULTANT FOR ALL WORK PERFORMED UP TO THE
5 DATE THAT THE CONSULTANT IS INFORMED IN WRITING OF THE
6 VIOLATION BY THE STATE AGENCY.

7 ~~Section-its--Effective-date.--This-act-is-effective--on~~
8 ~~passage-and-approval.~~

-End-

HOUSE BILL NO. 26

INTRODUCED BY MOORE, D. BROWN, PAVLOVICH,
HARRINGTON, QUILICI, BRAND

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL AND REGULATE
THE USE OF PRIVATE CONSULTANTS BY STATE AGENCIES;--AND
~~PROVIDING AN EFFECTIVE DATE.~~"

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

Section 1. Purpose. (1) It is the intent of the legislature that [this act] be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by [this act] and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) [This act] is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. [This act] is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in [this act] have been followed.

Section 2. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. ~~The~~ HOWEVER, THE term includes routine IS LIMITED TO PROFESSIONAL CONSULTING SERVICE work provided to an agency under an independent contract ~~that is necessary to the functioning of the agency's programs~~ WITH A PRIVATE CONSULTANT, BUT DOES NOT INCLUDE THE MAKING OF PERIODIC OR ROUTINE REPORTS OR THE COLLECTION OF ROUTINE DATA NECESSARY TO THE FUNCTIONING OF A STATE AGENCY OR ITS PROGRAMS OR NECESSARY FOR THE PROPER MONITORING OF PRIVATE PROVIDERS OF HUMAN SERVICES REGULATED BY A STATE AGENCY. The term includes only services for which payment is made from funds:

(a) that are appropriated by the legislature;

(b) that are generated by statutory functions of the agency; or

(c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "~~Private-consultant~~ CONSULTANT" means an entity that performs consulting services ~~OTHER THAN A STATE AGENCY OR EMPLOYEE~~ INCLUDING OTHER STATE AGENCIES OR EMPLOYEES.

1 (3) "State agency" means any state department,
2 commission, board, office, institution, facility, or other
3 agency, including a university system or an institution of
4 higher education.

5 Section 3. Exemptions. [This act] does not apply to
6 employment of: registered---professional---engineers---or
7 registered---architects---for---architectural---or---engineering
8 studies---for---the---design---or---construction---of---state---facilities,
9 physicians,---dentists,---or---other---medical---or---dental---services
10 providers---and---it---is---not---intended---to---discourage---their---use.

11 (1) REGISTERED PROFESSIONAL ENGINEERS, SURVEYORS, REAL
12 ESTATE APPRAISERS, OR REGISTERED ARCHITECTS CONCERNED WITH
13 THE STUDY, DESIGN, OR CONSTRUCTION OF STATE FACILITIES OR
14 HIGHWAYS;

15 (2) PHYSICIANS, DENTISTS, PSYCHIATRISTS,
16 PSYCHOLOGISTS, PHYSICAL THERAPISTS, NURSES, PHARMACISTS,
17 OPHTHALMOLOGISTS, OPTOMETRISTS, SPEECH PATHOLOGISTS, OR
18 OTHER MEDICAL, DENTAL, OR HEALTH-CARE PROVIDERS; AND

19 (3) EXPERT WITNESSES HIRED FOR USE IN LITIGATION,
20 HEARINGS OFFICERS HIRED IN RULEMAKING AND CONTESTED CASE
21 PROCEEDINGS UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT,
22 OR ATTORNEYS AS SPECIFIED BY EXECUTIVE ORDER OF THE
23 GOVERNOR.

24 Section 4. Use and selection of private consultants.

25 (1) A state agency may use a private consultant only if:

1 (a) there is a substantial need for the consulting
2 services; and

3 (b) the state agency cannot adequately perform the
4 consulting services with its own personnel or through
5 contract with another state agency.

6 (2) In selecting a private consultant, a state agency
7 shall:

8 (a) base its choice on demonstrated competence,
9 knowledge, and qualifications and on the reasonableness of
10 the proposed fee for the services; and

11 (b) when other considerations are equal, give a
12 preference to a private consultant WHO IS A BONA FIDE
13 RESIDENT OF MONTANA AS DEFINED IN 18-2-401 AND whose
14 principal place of business is within the state or who will
15 manage the consulting engagement wholly from one of its
16 offices within the state.

17 Section 5. Notice of intent to employ private
18 consultants. At least 30 days before contracting to use a
19 private consultant whose total anticipated fee exceeds
20 \$5,000, a state agency shall notify the legislative fiscal
21 analyst and the office of budget and program planning of the
22 agency's intent to use a private consultant and shall supply
23 the legislative fiscal analyst and the office of budget and
24 program planning with information demonstrating that the
25 agency has complied with the policies of [section 4].

1 Section 5. Information relating to consultant studies.

2 (1) After a state agency contracts to use a private
3 consultant, the state agency shall, upon request, supply the
4 legislative fiscal analyst and the office of budget and
5 program planning with copies of all documents, films,
6 recordings, or reports of intangible results of the
7 consultant service that are developed A BRIEF RESUME OF THE
8 RESULTS ACCOMPLISHED by the private consultant.

9 (2) Copies of all documents, films, recordings, or
10 reports of intangible results shall be filed with the
11 Montana state library and shall be retained by the library
12 for at least 5 years after receipt CENTRAL OFFICE OF THE
13 STATE AGENCY OR REPOSITORY DESIGNATED BY THE STATE AGENCY.

14 (3) As part of the biennial budgetary hearing process
15 conducted by the legislative fiscal analyst and the office
16 of budget and program planning, a state agency shall UPON
17 REQUEST supply the legislative fiscal analyst and the office
18 of budget and program planning with reports on what action
19 was taken in response to the recommendations of any private
20 consultant employed by the state agency.

21 Section 7. Publication in Montana Administrative
22 Register. (1) If it is reasonably foreseeable that a
23 proposed use of a private consultant may involve a contract
24 with a value in excess of \$5,000, a state agency that
25 proposes the use of a private consultant shall file, at

1 least 49 days before contracting with a private consultant
2 the following information with the secretary of state for
3 publication in the Montana Administrative Register:

4 (a) a notice of invitation for offers of consulting
5 services;

6 (b) the person who should be contacted by a private
7 consultant who wants to make an offer;

8 (c) the closing date for receipt of offers of
9 consulting services; and

10 (d) the procedure by which the agency will award the
11 contract for consulting services.

12 (2) A state agency that complies with subsection (1)
13 of this section shall file within 18 days after contracting
14 with the private consultant the following information with
15 the secretary of state for publication in the Montana
16 Administrative Register:

17 (a) a description of the study that the private
18 consultant is to conduct;

19 (b) the name and business address of the private
20 consultant;

21 (c) the total value and the beginning and ending dates
22 of the contract; and

23 (d) the due dates of documents, films, recordings, or
24 reports of intangible results that the private consultant is
25 to present to the agency.

1 ~~{3}--The--Montana--state--library--shall--compile--a--list--of~~
2 ~~documents--films--recordings--and--reports--of--intangible~~
3 ~~results--submitted--to--it--under--[subsection--(2)--of--section--6]~~
4 ~~and--shall--file--the--list--in--each--quarter--of--the--calendar--year~~
5 ~~with--the--secretary--of--state--for--publication--in--the--Montana~~
6 ~~Administrative--Registers~~

7 ~~{4}--if--the--consulting--service--desired--by--a--state~~
8 ~~agency--is--a--continuation--of--a--service--previously--performed~~
9 ~~by--a--private--consultant--the--agency--shall--state--this--in--the~~
10 ~~invitation--for--offers--filed--with--the--secretary--of--state~~
11 ~~under--subsection--(1)--of--this--section--if--the--state--agency~~
12 ~~intends--to--award--the--contract--for--the--consulting--services--to~~
13 ~~the--private--consultant--that--previously--performed--the~~
14 ~~services--unless--a--better--offer--is--submitted--it--shall--state~~
15 ~~this--in--the--invitation--for--offers~~

16 SECTION 6. SOLICITATION OF BIDS. (1) IN ORDER TO
17 CONTRACT WITH A PRIVATE CONSULTANT, A STATE AGENCY SHALL
18 ESTABLISH A BID LIST IN ITS CENTRAL OFFICE OR IN ANOTHER
19 APPROPRIATE DIVISION OR UNIT OF THE STATE AGENCY. ANY
20 PRIVATE CONSULTANT WHO DESIRES TO SUBMIT BIDS TO THAT AGENCY
21 TO PROVIDE CONSULTING SERVICES MAY REQUEST IN WRITING THE
22 AGENCY PLACE HIM ON THE AGENCY'S BID LIST.

23 {2} WHENEVER IT IS REASONABLY FORESEEABLE THAT A
24 PROPOSED CONTRACT FOR PRIVATE CONSULTANT SERVICES WILL
25 EXCEED \$5,000, THE STATE AGENCY SHALL NOTIFY ALL PRIVATE

1 CONSULTANTS WHO HAVE REQUESTED TO BE PLACED ON THE AGENCY'S
2 BID LIST. THE NOTICE SHALL CONTAIN THE FOLLOWING:

3 (A) A NOTICE OF INVITATION FOR OFFERS OF CONSULTING
4 SERVICES;

5 (B) THE NAME AND ADDRESS OF THE PERSON WITHIN THE
6 AGENCY TO BE CONTACTED BY A PRIVATE CONSULTANT WISHING TO
7 MAKE AN OFFER;

8 (C) THE CLOSING DATE FOR RECEIPT OF OFFERS OF
9 CONSULTING SERVICES;

10 (D) THE PROCEDURES AND SPECIFICATIONS UPON WHICH THE
11 AGENCY WILL AWARD THE CONTRACT FOR CONSULTING SERVICES; AND

12 (E) ANY OTHER INFORMATION THAT THE AGENCY BELIEVES
13 PERTINENT.

14 {3} IN ADDITION TO THE NOTIFICATION REQUIRED IN
15 SUBSECTION (2), THE STATE AGENCY, IN ITS DISCRETION, MAY
16 SOLICIT BIDS FOR CONSULTANT SERVICES BY ADVERTISEMENT OR
17 OTHER MEANS.

18 {4} AN AGENCY NEED NOT FOLLOW THE PROVISIONS OF THIS
19 SECTION IN BONA FIDE EMERGENCY SITUATIONS.

20 ~~Section--6--Conflicts--of--interest--An--officer--or~~
21 ~~employee--of--a--state--agency--who--has--a--financial--interest--in~~
22 ~~a--firm--or--corporation--that--is--a--private--consultant--and--that~~
23 ~~submits--an--offer--to--provide--consulting--services--to--the~~
24 ~~agency--or--who--is--related--within--the--second--degree--by~~
25 ~~consanguinity--or--affinity--to--a--person--having--the--financial~~

1 interest---shall---report---the---financial---interest---to---the
 2 executive-head-of-the-state-agency-not-later-than---the---10th
 3 day---after---the---day-on-which-the-private-consultant-submits
 4 the-consulting-services-offers

5 Section 7. Restriction on former employees. A person
 6 PRINCIPAL OR OFFICER OF A CONSULTING FIRM OR AN INDIVIDUAL
 7 who offers to perform a consulting service for a state
 8 agency and who has been employed by the agency or by another
 9 state agency at any time during the 2 years preceding the
 10 making of the offer shall disclose in the offer the nature
 11 of the previous employment with the agency or the other
 12 state agency, AND the date of termination of the employment,
 13 and the annual rate of compensation for the employment at
 14 the time of termination. A state agency that accepts the
 15 offer shall include in the information filed under
 16 [subsection (2) of section 7] a statement about the previous
 17 employment and the nature of the employment.

18 Section 8. Contract in violation void. (1) If a state
 19 agency contracts to use a private consultant without
 20 complying with the requirements of [section 7 6] or if a
 21 person contracts to perform a consulting service for a state
 22 agency without complying with the requirements of [section
 23 9 7], the contract is void.

24 (2) If a contract is void under this section, the
 25 state or state agency may not make any payments under the

1 contract from any state or federal funds held in or outside
 2 the state treasury IF VIOLATION OF [THIS ACT] WAS CAUSED BY
 3 THE CONSULTANT.

4 (3) IF A CONTRACT IS VOID UNDER THIS SECTION BECAUSE
 5 OF A VIOLATION OF [THIS ACT] BY THE STATE AGENCY, THE STATE
 6 SHALL PAY THE CONSULTANT FOR ALL WORK PERFORMED UP TO THE
 7 DATE THAT THE CONSULTANT IS INFORMED IN WRITING OF THE
 8 VIOLATION BY THE STATE AGENCY.

9 Section its Effective date. This act is effective on
 10 passage and approval.

-End-

1 HOUSE BILL NO. 26

2 INTRODUCED BY MOORE, D. BROWN, PAVLOVICH,

3 HARRINGTON, QUILICI, BRAND

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTROL AND REGULATE
6 THE USE OF PRIVATE PRIVATE CONSULTANTS BY STATE AGENCIES
7 AND PROVIDING AN EFFECTIVE DATE."

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

10 Section 1. Purpose. (1) It is the intent of the
11 legislature that [this act] be interpreted in a manner that
12 assures the greatest fair competition in the selection by
13 state agencies of private PRIVATE consultants under
14 contracts covered by [this act] and that assures that all
15 potential providers of consulting services are afforded
16 notice of the need for and opportunity to provide the
17 services.

18 (2) [This act] is not intended to discourage the use
19 by state agencies of private PRIVATE consultants if their
20 use may reasonably be expected to result in a more efficient
21 and less costly operation or project. [This act] is not
22 intended to prohibit the letting of a sole-source contract
23 for consulting services if no proposal is received from a
24 competent, knowledgeable, and qualified private PRIVATE
25 consultant at a reasonable fee, after the procedures set

1 forth in [this act] have been followed.

2 Section 2. Definitions. As used in [this act], unless
3 the context requires otherwise, the following definitions
4 apply:

5 (1) "Consulting service" means the human service of
6 studying or advising an agency under an independent
7 contract. ~~The HOWEVER, THE term includes routine~~ IS LIMITED
8 TO PROFESSIONAL CONSULTING SERVICE work provided to an
9 agency under an independent contract ~~that is necessary to~~
10 ~~the functioning of the agency's programs~~ WITH A PRIVATE
11 CONSULTANT, BUT DOES NOT INCLUDE THE MAKING OF PERIODIC OR
12 ROUTINE REPORTS OR THE COLLECTION OF ROUTINE DATA NECESSARY
13 TO THE FUNCTIONING OF A STATE AGENCY OR ITS PROGRAMS OR
14 NECESSARY FOR THE PROPER MONITORING OF PRIVATE PROVIDERS OF
15 HUMAN SERVICES REGULATED BY A STATE AGENCY. The term
16 includes only services for which payment is made from funds:

17 (a) that are appropriated by the legislature;

18 (b) that are generated by statutory functions of the
19 agency; or

20 (c) that are received by the state from the federal
21 government and that are awarded to the state without
22 requiring the state to request the funds through a grant
23 program.

24 (2) "~~Private-consultant~~ PRIVATE CONSULTANT" means an
25 entity that performs consulting services ~~OTHER THAN A STATE~~

1 ~~AGENCY OR EMPLOYEE INCLUDING OTHER STATE AGENCIES OR~~
 2 ~~EMPLOYEES OTHER THAN A STATE AGENCY OR EMPLOYEE.~~

3 (3) "State agency" means any state department,
 4 commission, board, office, institution, facility, or other
 5 agency, including a university system or an institution of
 6 higher education.

7 Section 3. Exemptions. [This act] does not apply to
 8 employment of: ~~registered professional engineers or~~
 9 ~~registered architects for architectural or engineering~~
 10 ~~studies for the design or construction of state facilities~~
 11 ~~physicians dentists or other medical or dental services~~
 12 ~~providers and it is not intended to discourage their use~~

13 (1) REGISTERED PROFESSIONAL ENGINEERS, SURVEYORS, REAL
 14 ESTATE APPRAISERS, OR REGISTERED ARCHITECTS CONCERNED WITH
 15 THE STUDY, DESIGN, OR CONSTRUCTION OF STATE FACILITIES OR
 16 HIGHWAYS;

17 (2) PHYSICIANS, DENTISTS, PSYCHIATRISTS,
 18 PSYCHOLOGISTS, PHYSICAL THERAPISTS, NURSES, PHARMACISTS,
 19 OPHTHALMOLOGISTS, OPTOMETRISTS, SPEECH PATHOLOGISTS, OR
 20 OTHER MEDICAL, DENTAL, OR HEALTH-CARE PROVIDERS; AND

21 (3) EXPERT WITNESSES HIRED FOR USE IN LITIGATION,
 22 HEARINGS OFFICERS HIRED IN RULEMAKING AND CONTESTED CASE
 23 PROCEEDINGS UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT,
 24 OR ATTORNEYS AS SPECIFIED BY EXECUTIVE ORDER OF THE
 25 GOVERNOR.

1 Section 4. Use and selection of private PRIVATE
 2 consultants. (1) A state agency may use a private PRIVATE
 3 consultant only if:

4 (a) there is a substantial need for the consulting
 5 services; and

6 (b) the state agency cannot adequately perform the
 7 consulting services with its own personnel ~~or through~~
 8 ~~contract with another state agency.~~

9 (2) In selecting a private PRIVATE consultant, a state
 10 agency shall:

11 (a) base its choice on demonstrated competence,
 12 knowledge, and qualifications and on the reasonableness of
 13 the proposed fee for the services; and

14 (b) when other considerations are equal, give a
 15 preference to a private PRIVATE consultant WHO IS A BONA
 16 FIDE RESIDENT OF MONTANA AS DEFINED IN 18-2-401 AND whose
 17 principal place of business is within the state or who will
 18 manage the consulting engagement wholly from one of its
 19 offices within the state.

20 ~~Section 5. Notice of intent to employ private~~
 21 ~~consultant. At least 30 days before contracting to use a~~
 22 ~~private consultant whose total anticipated fee exceeds~~
 23 ~~\$5,000, a state agency shall notify the legislative fiscal~~
 24 ~~analyst and the office of budget and program planning of the~~
 25 ~~agency's intent to use a private consultant and shall supply~~

1 the legislative fiscal analyst and the office of budget and
 2 program planning with information demonstrating that the
 3 agency has complied with the policies of [section 4].

4 Section 5. Information relating to consultant studies.

5 (1) After a state agency contracts to use a private PRIVATE
 6 consultant, the state agency shall, upon request, supply the
 7 legislative fiscal analyst and the office of budget and
 8 program planning with copies of all documents, films,
 9 recordings, or reports of intangible results of the
 10 consultant service that are developed A BRIEF RESUME OF THE
 11 RESULTS ACCOMPLISHED by the private PRIVATE consultant.

12 (2) Copies of all documents, films, recordings, or
 13 reports of intangible results shall be filed with the
 14 Montana state library and shall be retained by the library
 15 for at least 5 years after receipt CENTRAL OFFICE OF THE
 16 STATE AGENCY OR REPOSITORY DESIGNATED BY THE STATE AGENCY.

17 (3) As part of the biennial budgetary hearing process
 18 conducted by the legislative fiscal analyst and the office
 19 of budget and program planning, a state agency shall UPON
 20 REQUEST supply the legislative fiscal analyst and the office
 21 of budget and program planning with reports on what action
 22 was taken in response to the recommendations of any private
 23 PRIVATE consultant employed by the state agency.

24 Section 7. Publication in Montana Administrative
 25 Register. (1) If it is reasonably foreseeable that a

1 proposed use of a private consultant may involve a contract
 2 with a value in excess of \$5,000, a state agency that
 3 proposes the use of a private consultant shall file at
 4 least 40 days before contracting with a private consultant
 5 the following information with the secretary of state for
 6 publication in the Montana Administrative Register:

7 (a) a notice of invitation for offers of consulting
 8 services;

9 (b) the person who should be contacted by a private
 10 consultant who wants to make an offer;

11 (c) the closing date for receipt of offers of
 12 consulting services; and

13 (d) the procedure by which the agency will award the
 14 contract for consulting services.

15 (2) A state agency that complies with subsection (1)
 16 of this section shall file within 10 days after contracting
 17 with the private consultant the following information with
 18 the secretary of state for publication in the Montana
 19 Administrative Register:

20 (a) a description of the study that the private
 21 consultant is to conduct;

22 (b) the name and business address of the private
 23 consultant;

24 (c) the total value and the beginning and ending dates
 25 of the contract; and

1 ~~(d) the due dates of documents, films, recordings, or~~
2 ~~reports of intangible results that the private consultant is~~
3 ~~to present to the agency;~~

4 ~~(3) The Montana state library shall compile a list of~~
5 ~~documents, films, recordings, and reports of intangible~~
6 ~~results submitted to it under [subsection (2) of section 6]~~
7 ~~and shall file the list in each quarter of the calendar year~~
8 ~~with the secretary of state for publication in the Montana~~
9 ~~Administrative Registers.~~

10 ~~(4) If the consulting service desired by a state~~
11 ~~agency is a continuation of a service previously performed~~
12 ~~by a private consultant, the agency shall state this in the~~
13 ~~invitation for offers filed with the secretary of state~~
14 ~~under subsection (1) of this section; if the state agency~~
15 ~~intends to award the contract for the consulting services to~~
16 ~~the private consultant that previously performed the~~
17 ~~services, unless a better offer is submitted, it shall state~~
18 ~~this in the invitation for offers.~~

19 SECTION 6. SOLICITATION OF BIDS. (1) IN ORDER TO
20 CONTRACT WITH A PRIVATE PRIVATE CONSULTANT, A STATE AGENCY
21 SHALL ESTABLISH A BID LIST IN ITS CENTRAL OFFICE OR IN
22 ANOTHER APPROPRIATE DIVISION OR UNIT OF THE STATE AGENCY.
23 ANY PRIVATE PRIVATE CONSULTANT WHO DESIRES TO SUBMIT BIDS TO
24 THAT AGENCY TO PROVIDE CONSULTING SERVICES MAY REQUEST IN
25 WRITING THE AGENCY PLACE HIM ON THE AGENCY'S BID LIST.

1 (2) WHENEVER IT IS REASONABLY FORESEEABLE THAT A
2 PROPOSED CONTRACT FOR PRIVATE PRIVATE CONSULTANT SERVICES
3 WILL EXCEED \$5,000, THE STATE AGENCY SHALL NOTIFY ALL
4 PRIVATE PRIVATE CONSULTANTS WHO HAVE REQUESTED TO BE PLACED
5 ON THE AGENCY'S BID LIST. THE NOTICE SHALL CONTAIN THE
6 FOLLOWING:

7 (A) A NOTICE OF INVITATION FOR OFFERS OF CONSULTING
8 SERVICES;

9 (B) THE NAME AND ADDRESS OF THE PERSON WITHIN THE
10 AGENCY TO BE CONTACTED BY A PRIVATE PRIVATE CONSULTANT
11 WISHING TO MAKE AN OFFER;

12 (C) THE CLOSING DATE FOR RECEIPT OF OFFERS OF
13 CONSULTING SERVICES;

14 (D) THE PROCEDURES AND SPECIFICATIONS UPON WHICH THE
15 AGENCY WILL AWARD THE CONTRACT FOR CONSULTING SERVICES; AND

16 (E) ANY OTHER INFORMATION THAT THE AGENCY BELIEVES
17 PERTINENT.

18 (3) IN ADDITION TO THE NOTIFICATION REQUIRED IN
19 SUBSECTION (2), THE STATE AGENCY, IN ITS DISCRETION, MAY
20 SOLICIT BIDS FOR CONSULTANT SERVICES BY ADVERTISEMENT OR
21 OTHER MEANS.

22 (4) AN AGENCY NEED NOT FOLLOW THE PROVISIONS OF THIS
23 SECTION IN BONA FIDE EMERGENCY SITUATIONS.

24 Section 8. Conflicts of interest. An officer or
25 employee of a state agency who has a financial interest in

1 ~~a--firm-or-corporation-that-is-a-private-consultant-and-that~~
 2 ~~submits-an-offer--to--provrde--consulting--services--to--the~~
 3 ~~agency--or--who--is--related--within--the--second--degree-by~~
 4 ~~consanguinity-or-affinity-to-a-person-having--the--financial~~
 5 ~~interest---shall---report--the--financial--interest--to--the~~
 6 ~~executive-head-of-the-state-agency-not-later-than--the--10th~~
 7 ~~day--after--the--day-on-which-the-private-consultant-submits~~
 8 ~~the-consulting-services-offers~~

9 Section 7. Restriction on former employees. A person
 10 PRINCIPAL OR OFFICER OF A CONSULTING FIRM OR AN INDIVIDUAL
 11 who offers to perform a consulting service for a state
 12 agency and who has been employed by the agency or by another
 13 state agency at any time during the 2 years preceding the
 14 making of the offer shall disclose in the offer the nature
 15 of the previous employment with the agency or the other
 16 state agency AND the date of termination of the employment
 17 ~~and-the-annual-rate-of-compensation-for--the--employment--at~~
 18 ~~the--time--of--termination--A-state-agency-that-accepts-the~~
 19 ~~offer--shall--include--in--the--information--filed--under~~
 20 ~~[subsection-(2)-of-section-7]-a-statement-about-the-previous~~
 21 ~~employment-and-the-nature-of-the-employment.~~

22 Section 8. Contract in violation void. (1) If a state
 23 agency contracts to use a private PRIVATE consultant without
 24 complying with the requirements of [section 7 6] or if a
 25 person contracts to perform a consulting service for a state

1 agency without complying with the requirements of [section
 2 9 7], the contract is void.

3 (2) If a contract is void under this section, the
 4 state or state agency may not make any payments under the
 5 contract from any state or federal funds held in or outside
 6 the state treasury IF VIOLATION OF [THIS ACT] WAS CAUSED BY
 7 THE CONSULTANT.

8 (3) IF A CONTRACT IS VOID UNDER THIS SECTION BECAUSE
 9 OF A VIOLATION OF [THIS ACT] BY THE STATE AGENCY, THE STATE
 10 SHALL PAY THE CONSULTANT FOR ALL WORK PERFORMED UP TO THE
 11 DATE THAT THE CONSULTANT IS INFORMED IN WRITING OF THE
 12 VIOLATION BY THE STATE AGENCY.

13 ~~Section-11--Effective-date--This-act-is-effective--on~~
 14 ~~passage-and-approve~~

-End-

002

JOINT CONFERENCE COMMITTEE REPORT NO. 1

ON HOUSE BILL NO. 26

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Conference Committee on House Bill No. 26, met April 13, 1981, and considered:

- 1. Senate Committee on State Administration amendments to the third reading copy, dated March 20, 1981, and
- 2. Senate Committee of the Whole amendments to the third reading copy, dated March 23, 1981.

We recommend that:

- 1. the House accede to the Committee amendment No. 1;
- 2. the Senate recede from Committee of the Whole amendments number 1 through 18;
- 3. the reference (engrossed) copy of House Bill No. 26 read as specified in the CLERICAL INSTRUCTIONS: and
- 4. the Conference Committee Report to House Bill No. 26 be adopted.

CLERICAL INSTRUCTIONS:

- | | |
|---|---|
| <ul style="list-style-type: none"> 1. Title, line 6.
Following: "PRIVATE"
Insert: "PRIVATE" 2. Page 1, line 13.
Following: "private"
Insert: "private" 3. Page 1, line 18.
Following: "private"
Insert: "private" 4. Page 1, line 23.
Following: "private"
Insert: "private" 5. Page 2, line 23.
Following: "consultant"
Insert: "private" | <ul style="list-style-type: none"> 6. Page 2, line 25.
Following: "EMPLOYEE"
Strike: "<u>INCLUDING OTHER STATE AGENCIES OR EMPLOYEES</u>"
Insert: "other than a state agency or employee" 7. Page 3, line 24.
Following: "private"
Insert: "private" 8. Page 3, line 25.
Following: "private"
Insert: "private" 9. Page 4, line 6.
Following: "private"
Insert: "private" |
|---|---|

087

10. Page 4, line 12.
Following: "private"
Insert: "private"

11. Page 5, line 2.
Following: "private"
Insert: "private"

12. Page 5, line 8.
Following: "private"
Insert: "private"

13. Page 5, line 19.
Following: "private"
Insert: "private"

14. Page 7, line 17.
Following: "PRIVATE"
Insert: "private"

15. Page 7, line 20.
Following: "PRIVATE"
Insert: "private"

16. Page 7, line 24.
Following: "PRIVATE"
Insert: "private"

17. Page 7, line 25.
Following: "PRIVATE"
Insert: "private"

18. Page 9, line 19.
Following: "private"
Insert: "private"

027

JOINT CONFERENCE COMMITTEE NO. 1

HOUSE BILL NO. 26

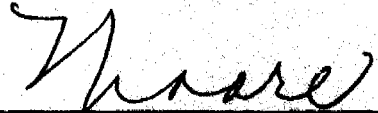
Page 3

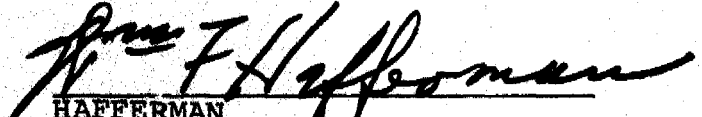
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19 81

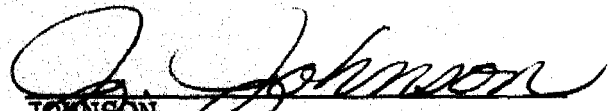
FOR THE HOUSE:

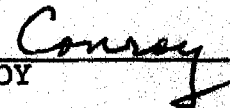
FOR THE SENATE:


MOORE (Chairman)


HAFFERMAN


FEDA


JOHNSON


CONROY


KOLSTAD

March 20, 1981

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House Bill No. 26 be amended as follows:

1. Page 3, line 12
Following: "THE"
Insert: "STUDY,"
Following: "DESIGN"
Insert: ", "

March 23, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 26, third reading copy, as follows:

1. Title, line 6.
Strike: "PRIVATE"
2. Page 1, line 13.
Strike: "private"
3. Page 1, line 18.
Strike: "private"
4. Page 1, line 23.
Strike: "private"
5. Page 2, line 23.
Strike: "Private consultant"
Insert: "Consultant"
6. Page 2, line 24.
Following: "services"
Strike: "OTHER THAN A STATE AGENCY OR EMPLOYEE"
Insert: "including other state agencies or employees"
7. Page 3, line 22.
Strike: "private"
8. Page 3, line 23.
Strike: "private"
18. Page 9, line 17.
Strike: "private"
9. Page 4, line 4.
Strike: "private"
10. Page 4, line 10.
Strike: "private"
11. Page 4, line 25.
Strike: "private"
12. Page 5, line 6.
Strike: "private"
13. Page 5, line 17.
Strike: "private"
14. Page 7, line 15.
Strike: "PRIVATE"
15. Page 7, line 18.
Strike: "PRIVATE"
16. Page 7, line 22.
Strike: "PRIVATE"
17. Page 7, line 23.
Strike: "PRIVATE"