

House Bill 663

In The House

February 6, 1981	Introduced and referred to Committee on State Administration.
February 9, 1981	Fiscal note requested.
February 18, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

1 *House* BILL NO. *663*
 2 INTRODUCED BY *Mark Gardner Don*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SIMPLIFY, CLARIFY,
 5 MAKE UNIFORM, AND CENTRALIZE PROCUREMENT OF ALL
 6 CONSTRUCTION, SUPPLIES, AND SERVICES FOR STATE AGENCIES IN A
 7 PROCUREMENT DIVISION ALLOCATED TO THE DEPARTMENT OF
 8 ADMINISTRATION AND UNDER A POLICY OFFICE APPOINTED BY THE
 9 GOVERNOR AND CONFIRMED BY THE SENATE AND A CHIEF PROCUREMENT
 10 OFFICER APPOINTED BY THE POLICY OFFICE; TO PROVIDE
 11 RULEMAKING AUTHORITY TO THE POLICY OFFICE AND CHIEF
 12 PROCUREMENT OFFICER; AND TO TRANSFER ALL PROCURING FUNCTIONS
 13 TO THE PROCUREMENT DIVISION; AMENDING SECTIONS 2-17-403,
 14 3-2-603, 5-17-101, 13-27-410, 18-1-102, 18-1-103, 18-1-112,
 15 18-1-201, 18-1-301, 18-1-402, 18-1-404, 18-2-101, 18-2-102,
 16 18-2-105, 18-2-111, 18-2-201, 18-4-111, 18-5-304 THROUGH
 17 18-5-306, 18-5-308, 18-7-104, 20-15-403, 60-2-111, 60-4-206,
 18 87-1-209, AND 87-1-211, MCA; REPEALING SECTIONS 18-2-103,
 19 18-2-112, 18-2-301, 18-2-302, 18-2-314, 18-2-315, 18-4-101,
 20 18-4-102, 18-4-104, 18-4-105, 18-4-201 THROUGH 18-4-203,
 21 18-4-211 THROUGH 18-4-214, 18-7-101 THROUGH 18-7-103,
 22 18-7-105, 18-7-106, 18-7-111 THROUGH 18-7-113, 60-2-112,
 23 60-2-113, AND TITLE 18, CHAPTER 6, PART 1, MCA."
 24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Short title. This title shall
 2 be known and may be cited as the "Montana Procurement Act".
 3 NEW SECTION. Section 2. Purposes and policies. The
 4 underlying purposes and policies of this title are:
 5 (1) to simplify, clarify, and modernize the law
 6 governing procurement by the state of Montana;
 7 (2) to permit the continued development of procurement
 8 policies and practices;
 9 (3) to make as consistent as possible the procurement
 10 laws among the various jurisdictions;
 11 (4) to ensure the fair and equitable treatment of all
 12 persons who deal with the procurement system of the state;
 13 (5) to provide increased economy in the state
 14 procurement activities and to maximize to the fullest extent
 15 practicable the purchasing value of public funds of the
 16 state;
 17 (6) to foster effective, broad-based competition
 18 within the free enterprise system; and
 19 (7) to provide safeguards for the maintenance of a
 20 procurement system of quality and integrity.
 21 NEW SECTION. Section 3. Definitions. In this title,
 22 unless the context clearly requires otherwise or a different
 23 definition is prescribed for a particular section or
 24 sections, the following definitions apply:
 25 (1) "Architect, engineer, and land surveying services"

-2- INTRODUCED BILL
 HB 663

1 are those professional services within the scope of the
2 practice of architecture, professional engineering, or land
3 surveying as defined by the laws of this state.

4 (2) "Business" means any corporation, partnership,
5 individual, sole proprietorship, joint-stock company, joint
6 venture, or any other private legal entity.

7 (3) "Change order" means a written order, signed by
8 the procurement officer, directing the contractor to make
9 changes that the changes clause of the contract authorizes
10 the procurement officer to order without the consent of the
11 contractor.

12 (4) "Chief procurement officer" means the person
13 holding the position created in [section 10] as the head of
14 the central procurement office of the state.

15 (5) "Construction" means the process of building,
16 altering, repairing, improving, or demolishing any public
17 structure, building, bridge, or highway or other public
18 improvements of any kind to any public real property. It
19 does not include the routine operation, repair, or
20 maintenance of existing structures, buildings, bridges,
21 highways, or real property.

22 (6) "Contract" means all types of state agreements,
23 regardless of what they may be called, for the procurement
24 or disposal of supplies, services, or construction.

25 (7) "Contract modification" means any written

1 alteration in specifications, delivery point, rate of
2 delivery, period of performance, price, quantity, or other
3 provisions of any contract accomplished by mutual action of
4 the parties to the contract.

5 (8) "Contractor" means any person having a contract
6 with a state agency.

7 (9) "Employee" means an individual drawing a salary
8 from a state agency, elected officers of the state, and any
9 noncompensated individual performing personal services for
10 any state agency.

11 (10) "Person" means any business, individual, union,
12 committee, club, other organization, or group of
13 individuals.

14 (11) "Political subdivision" includes a county, city,
15 town, school district, irrigation district, drainage
16 district, special improvement district, or any other
17 governmental subdivision of the state but does not include
18 the state of Montana or any state agency.

19 (12) "Procurement" means buying, purchasing, renting,
20 leasing, or otherwise acquiring any supplies, services, or
21 construction. It also includes all functions that pertain to
22 the obtaining of any supply, service, or construction,
23 including description of requirements, selection and
24 solicitation of sources, preparation and award of contract,
25 and all phases of contract administration.

1 (13) "Procurement division" means the procurement
2 division created within the department of administration by
3 [section 14].

4 (14) "Procurement officer" means any person duly
5 authorized to enter into and administer contracts and make
6 written determinations with respect to contracts. The term
7 also includes an authorized representative acting within the
8 limits of authority.

9 (15) "Purchasing agency" means any state agency, other
10 than the chief procurement officer, that is authorized by
11 this title or its implementing rules or by way of delegation
12 from the chief procurement officer to enter into contracts.

13 (16) "Services" means the furnishing of labor, time, or
14 effort by a contractor, not involving the delivery of a
15 specific end product other than reports that are merely
16 incidental to the required performance. This term does not
17 include employment agreements or collective bargaining
18 agreements.

19 (17) "State agency" includes the state; the legislature
20 and its committees; the courts; all executive departments,
21 boards, commissions, committees, bureaus, and officers; the
22 university system; and all independent commissions and other
23 establishments of the state government.

24 (18) "Supplies" means all property, including but not
25 limited to equipment, materials, printing, data processing,

1 and insurance. It does not include land, the purchase of an
2 interest in land, water or mineral rights, workers'
3 compensation insurance, or benefit insurance for state
4 employees. It does include the lease of buildings.

5 (19) "Using agency" means any state agency which
6 utilizes any supplies, services, or construction procured
7 under this title.

8 NEW SECTION. Section 4. Supplementary general
9 principles of law applicable -- requirement of good faith.
10 (1) Unless displaced by the particular provisions of this
11 title, the principles of law and equity, including the
12 Uniform Commercial Code, the law merchant, and law relative
13 to capacity to contract, agency, fraud, misrepresentation,
14 duress, coercion, mistake, or bankruptcy supplement the
15 provisions of this title.

16 (2) This title requires all parties involved in the
17 negotiation, performance, or administration of state
18 contracts to act in good faith.

19 NEW SECTION. Section 5. Application -- time -- state
20 and local procurement. (1) This title, as amended on [the
21 effective date of this act], applies only to contracts
22 solicited or entered into after [the effective date of this
23 act] unless the parties agree to its application to a
24 contract solicited or entered into prior to [the effective
25 date of this act].

1 (2) This title applies to each publicly funded
 2 contract entered into by a state agency. It also applies to
 3 each contract funded in whole or in part with federal
 4 assistance money. However, this title does not apply to the
 5 awarding of either grants or contracts between the state and
 6 its political subdivisions or other governments except as
 7 provided in [sections 76 through 85]. It applies to the
 8 transfer or disposal of state supplies. Upon request of a
 9 state agency purchasing items for resale to the public, the
 10 chief procurement officer or the head of the appropriate
 11 purchasing agency may, by written determination, provide
 12 that this title does not apply to items acquired for resale.
 13 Nothing in this title or in rules adopted under this title
 14 prevents any state agency or political subdivision from
 15 complying with the terms and conditions of any grant, gift,
 16 bequest, or cooperative agreement.

17 (3) All political subdivisions are authorized to adopt
 18 all or any part of this title and its accompanying rules. If
 19 a political subdivision adopts all or any part of this title
 20 and accompanying rules, those provisions of state law in
 21 conflict with the parts of this title adopted are superseded
 22 as to that political subdivision.

23 NEW SECTION. Section 6. Public access to procurement
 24 information -- records -- retention. (1) Procurement
 25 information is a public writing and must be available to the

1 public as provided in 2-6-102.

2 (2) All procurement records shall be retained and
 3 disposed of in accordance with the state records management
 4 program.

5 (3) Written determinations required by this title must
 6 be retained in the appropriate official contract file of the
 7 department or the purchasing agency administering the
 8 procurement in accordance with the state records management
 9 program.

10 NEW SECTION. Section 7. Creation and allocation of
 11 procurement policy office. There is created the state
 12 procurement policy office hereafter referred to as the
 13 policy office. The policy office is allocated to the
 14 procurement division for administrative purposes only as
 15 prescribed in 2-15-121.

16 NEW SECTION. Section 8. Membership of the policy
 17 office. The policy office shall consist of a board of three
 18 members, who may not otherwise be full-time employees of the
 19 state and who must be appointed by the governor and
 20 confirmed by the senate. Each appointed member shall have
 21 demonstrated sufficient business or professional experience
 22 to discharge the functions of the policy office. The term of
 23 office of each member shall be 6 years, except that in
 24 making the initial appointments the governor shall appoint
 25 one member for a term of 2 years, one member for a term of

1 4 years, and one member for a term of 6 years so that the
 2 term of one member expires every 2 years. Members may be
 3 reappointed for succeeding terms. The chairperson must be
 4 the director of the department of administration, but he has
 5 no vote. No member of the policy office is eligible for
 6 appointment as the chief procurement officer. Members of the
 7 policy office may receive compensation for services as
 8 provided by 2-15-124 and shall be reimbursed for any
 9 expenses reasonably incurred in the performance of their
 10 duties as provided in 2-18-501 through 2-18-503. The
 11 members of the policy office shall devote such time to their
 12 duties as may be necessary for their proper discharge.

13 NEW SECTION. Section 9. Authority and duties of the
 14 policy office. Except as otherwise provided in this title,
 15 the policy office shall adopt rules, consistent with this
 16 title, governing the procurement, management, control, and
 17 disposal of any and all supplies, services, and construction
 18 to be procured by the state. The policy office shall
 19 consider and decide matters of policy within the provisions
 20 of this title, including those referred to it by the chief
 21 procurement officer. The policy office may audit and
 22 monitor the implementation of its rules and the requirements
 23 of this title, but may not exercise authority over the award
 24 or administration of any particular contract or over any
 25 dispute, claim, or litigation pertaining to any contract.

1 NEW SECTION. Section 10. Appointment and
 2 qualifications -- chief procurement officer. The policy
 3 office shall appoint the chief procurement officer, subject
 4 to confirmation by the senate. The chief procurement officer
 5 must have a minimum of 8 years' experience, at least 5 years
 6 of which must have been in public procurement within 12
 7 years preceding the date of appointment in the large-scale
 8 procurement of supplies, services, or construction and must
 9 be a person with demonstrated executive and organizational
 10 ability.

11 NEW SECTION. Section 11. Tenure, removal, and
 12 compensation. (1) The chief procurement officer shall be a
 13 full-time public official of the state, appointed to serve a
 14 term of 6 years, and may be removed from office by the
 15 policy office only upon a showing of just cause.

16 (2) The chief procurement officer shall be compensated
 17 as provided by law for administrators of divisions.

18 NEW SECTION. Section 12. Authority of the chief
 19 procurement officer. (1) The chief procurement officer shall
 20 serve as the central procurement officer of the state.

21 (2) Consistent with the provisions of this title, the
 22 chief procurement officer may adopt operational procedures
 23 governing the internal functions of the procurement
 24 division.

25 (3) Except as otherwise specifically provided in this

1 title, the chief procurement officer shall, in accordance
2 with rules adopted by the policy office:

3 (a) procure or supervise the procurement of all
4 supplies, services, and construction needed by the state;

5 (b) exercise general supervision and control over all
6 inventories of supplies belonging to the state;

7 (c) sell, trade, or otherwise dispose of surplus
8 supplies belonging to the state; and

9 (d) establish and maintain programs for the
10 inspection, testing, and acceptance of supplies, services,
11 and construction.

12 **NEW SECTION.** Section 13. Delegation of authority by
13 the chief procurement officer. Subject to the rules of the
14 policy office, the chief procurement officer may delegate
15 authority to designees or to any department, agency, or
16 official.

17 **NEW SECTION.** Section 14. Procurement division --
18 head. (1) There is a procurement division within the
19 department of administration. The division head is the
20 chief procurement officer appointed by the policy office,
21 subject to confirmation by the senate, and shall serve as
22 provided for directors in 2-15-111.

23 (2) The division is allocated to the department for
24 administrative purposes only as prescribed in 2-15-121.
25 However, the division may hire its own personnel, and

1 2-15-121(2)(d) does not apply.

2 **NEW SECTION.** Section 15. Centralization of
3 procurement authority. Except as otherwise provided (in
4 particular in [sections 16 and 17]), all rights, powers,
5 duties, and authority relating to the procurement of
6 supplies, services, and construction and the management,
7 control, warehousing, sale, and disposal of supplies,
8 services, and construction vested prior to [the effective
9 date of this act] in or exercised by any state agency under
10 the several statutes relating thereto are transferred to the
11 policy office and the chief procurement officer as provided
12 in this title.

13 **NEW SECTION.** Section 16. Authority to contract for
14 certain professional services. (1) For the purpose of
15 procuring the services of consultants, clergy, accountants,
16 physicians, dentists, and legal counsel, as defined by the
17 laws of this state or rules of the policy office, any state
18 agency may act as a purchasing agency and contract on its
19 own behalf for such services, subject to this title and
20 rules promulgated by the policy office. The purchasing
21 agency shall consult with the chief procurement officer or a
22 designee of such officer when procuring these services.

23 (2) No contract for the services of legal counsel may
24 be awarded without the approval of such officer or board as
25 may be required by applicable law or rule adopted by the

1 head of each branch of government.

2 NEW SECTION. Section 17. Exemptions. Unless otherwise
3 ordered by rule of the policy office, the following
4 supplies, services, and construction need not be procured
5 through the office of the chief procurement officer but
6 shall nevertheless be procured by the appropriate purchasing
7 agency subject to the requirements of this title and the
8 rules promulgated by the policy office:

- 9 (1) works of art for museum and public display;
10 (2) published books, maps, periodicals, and technical
11 pamphlets; and
12 (3) architect, engineer, and land surveying services
13 as defined in [section 3].

14 NEW SECTION. Section 18. State procurement rules --
15 delegation -- existing rights. (1) Rules must be adopted by
16 the policy office in accordance with the applicable
17 provisions of the Montana Administrative Procedure Act.

18 (2) The policy office may not delegate its power to
19 adopt rules.

20 (3) No rule may change any commitment, right, or
21 obligation of the state or of a contractor under a contract
22 in existence on the effective date of the rule.

23 NEW SECTION. Section 19. Collection of data
24 concerning public procurement -- forms. The chief
25 procurement officer shall cooperate with the budget office,

1 the office of the legislative auditor, and other state
2 agencies in the preparation of statistical data concerning
3 the procurement, usage, and disposition of all supplies,
4 services, and construction and employ such trained personnel
5 as may be necessary to carry out this function. All using
6 agencies shall furnish the reports the chief procurement
7 officer requires concerning usage, needs, and stocks on
8 hand. The chief procurement officer has authority to
9 prescribe forms to be used by the using agencies in
10 requisitioning, ordering, and reporting of supplies,
11 services, and construction.

12 NEW SECTION. Section 20. Definitions. As used in
13 [sections 20 through 43], the following definitions apply:

14 (1) "Cost-reimbursement contract" means a contract
15 under which a contractor is reimbursed for costs that are
16 allowable and allocable in accordance with the contract
17 terms and the provisions of this title and a fee, if any.

18 (2) "Established catalog price" means the price
19 included in a catalog, price list, schedule, or other form
20 that:

21 (a) is regularly maintained by a manufacturer or
22 contractor;

23 (b) is either published or otherwise available for
24 inspection by customers; and

25 (c) states prices at which sales are currently or were

1 last made to a significant number of any category of buyers
2 or buyers constituting the general buying public for the
3 supplies or services involved.

4 (3) "Invitation for bids" means all documents, whether
5 attached or incorporated by reference, utilized for
6 soliciting bids.

7 (4) "Purchase description" means the words used in a
8 solicitation to describe the supplies, services, or
9 construction to be purchased and includes specifications
10 attached to or made a part of the solicitation.

11 (5) "Request for proposals" means all documents,
12 whether attached or incorporated by reference, utilized for
13 soliciting proposals.

14 (6) "Responsible bidder or offeror" means a person who
15 has the capability in all respects to perform fully the
16 contract requirements and the integrity and reliability that
17 will assure good faith performance.

18 (7) "Responsive bidder" means a person who has
19 submitted a bid that conforms in all material respects to
20 the invitation for bids.

21 NEW SECTION. Section 21. Methods of source selection
22 -- competitive sealed bidding. Unless otherwise authorized
23 by law, all state contracts must be awarded by competitive
24 sealed bidding, pursuant to [sections 21 through 25], except
25 as provided in Title 18, chapter 5, and [sections 26 through

1 31] and [sections 53 through 55].

2 NEW SECTION. Section 22. Invitation for bids --
3 public notice. (1) An invitation for bids must be issued and
4 must include a purchase description and all contractual
5 terms and conditions applicable to the procurement.

6 (2) Adequate public notice of the invitation for bids
7 must be given at a reasonable time prior to the date set
8 forth in the invitation for bids for the opening of bids, in
9 accordance with rules of the policy office. Notice may
10 include publication in a newspaper of general circulation at
11 a reasonable time prior to bid opening.

12 NEW SECTION. Section 23. Bid opening -- acceptance --
13 evaluation. (1) Bids must be opened publicly in the presence
14 of one or more witnesses at the time and place designated in
15 the invitation for bids. The amount of each bid and such
16 other relevant information as may be specified by rules,
17 together with the name of each bidder, must be entered on a
18 record, and the record must be open to public inspection.
19 After the time of award, all bids and bid documents must be
20 open to public inspection in accordance with the provisions
21 of 2-6-102.

22 (2) Bids must be unconditionally accepted except as
23 authorized by [subsection (2) of section 24]. Bids must be
24 evaluated based on the requirements set forth in the
25 invitation for bids, which may include criteria to determine

1 acceptability, such as inspection, testing, quality,
 2 workmanship, delivery, and suitability for a particular
 3 purpose. Those criteria that will affect the bid price and
 4 be considered in evaluation for award must be objectively
 5 measurable, such as discounts, transportation costs, and
 6 total or life-cycle costs. The invitation for bids must set
 7 forth the evaluation criteria to be used. Only criteria that
 8 are set forth in the invitation for bids may be used in bid
 9 evaluation.

10 NEW SECTION. Section 24. Correction or withdrawal of
 11 bids -- cancellation of awards -- awards. (1) Correction or
 12 withdrawal of inadvertently erroneous bids before or after
 13 award or cancellation of awards or contracts based on such
 14 bid mistakes may be permitted in accordance with rules
 15 adopted by the policy office. After bid opening, no changes
 16 in bid prices or other provisions of bids prejudicial to the
 17 interest of the state or to fair competition may be
 18 permitted. Except as otherwise provided by rules, all
 19 decisions to permit the correction or withdrawal of bids or
 20 to cancel awards or contracts based on bid mistakes must be
 21 supported by a written determination made by the chief
 22 procurement officer or head of a purchasing agency.

23 (2) The contract must be awarded with reasonable
 24 promptness by written notice to the lowest responsible and
 25 responsive bidder whose bid meets the requirements and

1 criteria set forth in the invitation for bids, including the
 2 preferences established by Title 18, chapter 1, part 1. If
 3 all bids for a construction project exceed available funds
 4 as certified by the appropriate fiscal officer and the
 5 lowest responsive and responsible bid does not exceed such
 6 funds by more than 5%, the chief procurement officer or the
 7 head of a purchasing agency is authorized, in situations
 8 where time or economic considerations preclude
 9 resolicitation of work of a reduced scope, to negotiate an
 10 adjustment of the bid price, including changes in the bid
 11 requirements, with the lowest responsive and responsible
 12 bidder, in order to bring the bid within the amount of
 13 available funds.

14 NEW SECTION. Section 25. Multistep sealed bidding.
 15 When it is considered impractical to initially prepare a
 16 purchase description to support an award based on price, an
 17 invitation for bids may be issued requesting the submission
 18 of unpriced offers to be followed by an invitation for bids
 19 limited to those bidders whose offers have been qualified
 20 under the criteria set forth in the first solicitation.

21 NEW SECTION. Section 26. Competitive sealed
 22 proposals. (1) Whenever, under rules adopted by the policy
 23 office, the chief procurement officer, the head of a
 24 purchasing agency, or a designee of either officer above the
 25 level of the procurement officer determines in writing that

1 the use of competitive sealed bidding is either not
 2 practicable or not advantageous to the state, a contract may
 3 be entered into by competitive sealed proposals. The policy
 4 office may provide by rule that it is either not practicable
 5 or not advantageous to the state to procure specified types
 6 of supplies, services, or construction by competitive sealed
 7 bidding.

8 (2) Proposals must be solicited through a request for
 9 proposals.

10 (3) Adequate public notice of the request for
 11 proposals must be given in the same manner as provided in
 12 [section 22].

13 (4) Proposals must be opened so as to avoid disclosure
 14 of contents to competing offerors during the process of
 15 negotiation. A register of proposals must be prepared in
 16 accordance with rules adopted by the policy office and must
 17 be open for public inspection after contract award.

18 (5) The request for proposals must state evaluation
 19 factors.

20 NEW SECTION. Section 27. Discussion with responsible
 21 offerors and revisions of proposals -- award. (1) As
 22 provided in the request for proposals and under rules
 23 adopted by the policy office, discussions may be conducted
 24 with responsible offerors who submit proposals determined to
 25 be reasonably susceptible of being selected for award for

1 the purpose of clarification to assure full understanding of
 2 and responsiveness to the solicitation requirements.
 3 Offerors must be accorded fair and equal treatment with
 4 respect to any opportunity for discussion and revision of
 5 proposals, and such revisions may be permitted after
 6 submissions and prior to award for the purpose of obtaining
 7 best and final offers. In conducting discussions, there may
 8 be no disclosure of any information derived from proposals
 9 submitted by competing offerors.

10 (2) The award shall be made to the responsible offeror
 11 whose proposal is determined in writing to be the most
 12 advantageous to the state, taking into consideration price,
 13 including the preference in 18-1-102, and the evaluation
 14 factors set forth in the request for proposals. No other
 15 factors or criteria may be used in the evaluation. The
 16 contract file shall contain the basis on which the award is
 17 made.

18 NEW SECTION. Section 28. Small purchases. Any
 19 procurement not exceeding the amount established by rules of
 20 the policy office may be made in accordance with small
 21 purchase procedures established in rules of the policy
 22 office. Procurement requirements may not be artificially
 23 divided to constitute a small purchase under this section.

24 NEW SECTION. Section 29. Sole source procurement. A
 25 contract may be awarded for a supply, service, or

1 construction item without competition when, under rules
2 adopted by the policy office, the chief procurement officer,
3 the head of a purchasing agency, or a designee of either
4 officer above the level of the procurement officer
5 determines in writing that there is only one source for the
6 required supply, service, or construction item.

7 NEW SECTION. Section 30. Emergency procurements.
8 Notwithstanding any other provision of this title, the chief
9 procurement officer, the head of a purchasing agency, or a
10 designee of either officer may make or authorize others to
11 make emergency procurements if there exists a threat to
12 public health, welfare, or safety under emergency conditions
13 as defined in rules adopted by the policy office. The
14 emergency procurements must be made with such competition as
15 is practicable under the circumstances. A written
16 determination of the basis for the emergency and for the
17 selection of the particular contractor must be included in
18 the contract file.

19 NEW SECTION. Section 31. Selection procedures --
20 professional services. (1) The services specified in
21 [section 16] must be procured in accordance with this
22 section, except as authorized under [section 29 or 30].

23 (2) Persons engaged in providing the types of services
24 specified in [section 16] may submit statements of
25 qualifications and expressions of interest in providing such

1 types of services. The procurement officer may specify a
2 uniform format for statements of qualifications. Persons may
3 amend these statements at any time by filing a new
4 statement.

5 (3) The purchasing agency shall give adequate notice
6 of the need for such services through a request for
7 proposals. The request for proposals must describe the
8 services required, list the type of information and data
9 required of each offeror, and state the relative importance
10 of particular qualifications.

11 (4) The head of the purchasing agency or a designee of
12 such officer may conduct discussions with any offeror who
13 has submitted a proposal to determine such offeror's
14 qualifications for further consideration. Discussions may
15 not disclose any information derived from proposals
16 submitted by other offerors.

17 (5) Award shall be made to the offeror determined in
18 writing by the head of the purchasing agency or a designee
19 of such head to be best qualified based on the evaluation
20 factors set forth in the request for proposals and who has
21 agreed through negotiations to compensation determined to be
22 fair and reasonable. Legal counsel must also be approved
23 under [subsection (2) of section 16]. If compensation cannot
24 be agreed upon with the best-qualified offeror, then
25 negotiations must be formally terminated with the selected

1 offeror. If proposals were submitted by one or more other
 2 offerors determined to be qualified, negotiations may be
 3 conducted with such other offeror or offerors, in the order
 4 of their respective qualification ranking, and the contract
 5 may be awarded to the offeror then ranked as best qualified
 6 if the amount of compensation is determined to be fair and
 7 reasonable.

8 NEW SECTION. Section 32. Cancellation -- invitations
 9 for bids -- requests for proposals. An invitation for bids,
 10 a request for proposals, or other solicitation may be
 11 canceled, or any or all bids or proposals may be rejected in
 12 whole or in part as may be specified in the solicitation,
 13 whenever it is in the best interests of the state in
 14 accordance with rules adopted by the policy office. The
 15 reasons shall be made part of the contract file.

16 NEW SECTION. Section 33. Nonresponsibility of bidders
 17 and offerors. (1) A written determination of
 18 nonresponsibility of a bidder or offeror must be made in
 19 accordance with rules. The unreasonable failure of a bidder
 20 or offeror to promptly supply information in connection with
 21 an inquiry with respect to responsibility may be grounds for
 22 a determination of nonresponsibility with respect to such
 23 bidder or offeror.

24 (2) Information furnished by a bidder or offeror
 25 pursuant to this section may not be disclosed outside of the

1 office of the chief procurement officer or the purchasing
 2 agency without prior written consent by the bidder or
 3 offeror.

4 NEW SECTION. Section 34. Prequalification of
 5 suppliers. Prospective suppliers may be prequalified for
 6 particular types of supplies, services, and construction,
 7 and the method of compiling and soliciting from such mailing
 8 lists of potential contractors shall be in accordance with
 9 rules adopted by the policy office.

10 NEW SECTION. Section 35. Cost or pricing data. (1) A
 11 contractor shall, except as provided in subsection (3),
 12 submit cost or pricing data and shall certify that, to the
 13 best of his knowledge and belief, the cost or pricing data
 14 submitted was accurate, complete, and current as of a
 15 mutually determined specified date prior to the date of:

16 (a) the pricing of any contract awarded by competitive
 17 sealed proposals or pursuant to the sole source procurement
 18 authority if the total contract price is expected to exceed
 19 an amount established by policy office rules; or

20 (b) the pricing of any change order or contract
 21 modification that is expected to exceed an amount
 22 established by policy office rules.

23 (2) Any contract, change order, or contract
 24 modification under which a certificate is required must
 25 contain a provision that the price to the state, including

1 profit or fee, must be adjusted to exclude any significant
 2 sums by which the state finds that such price was increased
 3 because the contractor-furnished cost or pricing data was
 4 inaccurate, incomplete, or not current as of the date agreed
 5 upon between the parties.

6 (3) The requirements of this section need not be
 7 applied to contracts if:

8 (a) the contract price is based on adequate price
 9 competition;

10 (b) the contract price is based on established catalog
 11 prices or market prices;

12 (c) contract prices are set by law or rules; or

13 (d) it is determined in writing in accordance with
 14 rules adopted by the policy office that the requirements of
 15 this section may be waived and the reasons for such waiver
 16 are stated in writing.

17 NEW SECTION. Section 36. Types of contracts. Subject
 18 to the limitations of this section, any type of contract
 19 that will promote the best interests of the state may be
 20 used, except the use of a cost-plus-a-percentage-of-cost
 21 contract is prohibited. A cost-reimbursement contract may be
 22 used only when a determination is made in writing that such
 23 contract is likely to be less costly to the state than any
 24 other type or that it is impracticable to obtain the
 25 supplies, services, or construction required except under

1 such a contract.

2 NEW SECTION. Section 37. Approval of accounting
 3 system. Except with respect to firm fixed-price contracts,
 4 no contract type may be used unless it has been determined
 5 in writing by the chief procurement officer, the head of a
 6 purchasing agency, or a designee of either officer that:

7 (1) the proposed contractor's accounting system will
 8 permit timely development of all necessary cost data in the
 9 form required by the specific contract type contemplated;
 10 and

11 (2) the proposed contractor's accounting system is
 12 adequate to allocate costs in accordance with generally
 13 accepted accounting principles.

14 NEW SECTION. Section 38. Multiyear contracts --
 15 cancellation. (1) Unless otherwise provided by law, a
 16 contract for supplies or services may be entered into for
 17 any period of time considered to be in the best interests of
 18 the state if the term of the contract and conditions of
 19 renewal or extension, if any, are included in the
 20 solicitation and funds are available for the first year at
 21 the time of contracting. Payment and performance obligations
 22 for succeeding fiscal years shall be subject to the
 23 availability and appropriation of funds therefor.

24 (2) Prior to the utilization of a multiyear contract,
 25 it shall be determined in writing that:

1 (a) estimated requirements cover the period of the
2 contract and are reasonable, firm, and continuing; and

3 (b) the contract will serve the best interests of the
4 state by encouraging effective competition or otherwise
5 promoting economies in state procurement.

6 (3) When funds are not appropriated or otherwise made
7 available to support continuation of performance in a
8 subsequent fiscal year, the contract must be canceled and
9 the contractor may be reimbursed for the reasonable value of
10 any nonrecurring costs incurred but not delivered under the
11 contract.

12 NEW SECTION. Section 39. Right to inspect plant. The
13 state may, at reasonable times, inspect the part of the
14 plant or place of business of a contractor or any
15 subcontractor that is related to the performance of any
16 contract awarded or to be awarded by the state.

17 NEW SECTION. Section 40. Right to audit records. (1)
18 The state may, at reasonable times and places, audit the
19 books and records of any person who has submitted cost or
20 pricing data pursuant to [section 35] to the extent that the
21 books and records relate to the cost or pricing data. Any
22 person who receives a contract, change order, or contract
23 modification for which cost or pricing data is required must
24 maintain the books and records that relate to the cost or
25 pricing data for 3 years from the date of final payment

1 under the contract, unless a shorter period is otherwise
2 authorized in writing.

3 (2) The state is entitled to audit the books and
4 records of a contractor or any subcontractor under any
5 negotiated contract or subcontract other than a firm
6 fixed-price contract to the extent that the books and
7 records relate to the performance of the contract or
8 subcontract. The books and records must be maintained by the
9 contractor for a period of 3 years from the date of final
10 payment under the prime contract and by the subcontractor
11 for a period of 3 years from the date of final payment under
12 the subcontract, unless a shorter period is otherwise
13 authorized in writing.

14 NEW SECTION. Section 41. Finality of determinations.
15 The determinations required by [subsection (1) of section
16 24], [section 26], [subsection (2) of section 27], [sections
17 29 and 30], [subsection (1) of section 33], [subsection (3)
18 of section 35], [sections 36 and 37], and [subsection (2) of
19 section 38] are final and may be protested under [section
20 65].

21 NEW SECTION. Section 42. Reporting of anticompetitive
22 practices. If, for any reason, collusion or other
23 anticompetitive practices are suspected among any bidders or
24 offerors, a notice of the relevant facts shall be
25 transmitted to the attorney general.

1 NEW SECTION. Section 43. Records of sole source and
 2 emergency procurement -- submission to legislature. (1) The
 3 chief procurement officer shall maintain a record listing
 4 all contracts made under [sections 29 and 30] for a minimum
 5 of 5 years. The record shall contain:

6 (a) each contractor's name;
 7 (b) the amount and type of each contract; and
 8 (c) a listing of the supplies, services, or
 9 construction procured under each contract.

10 (2) A copy of such record shall be submitted to the
 11 legislature on a biennial basis. The record shall be
 12 available for public inspection.

13 NEW SECTION. Section 44. Definition. As used in
 14 [sections 44 through 47], "specification" means any
 15 description of the physical or functional characteristics or
 16 of the nature of a supply, service, or construction item. It
 17 may include a description of any requirement for inspecting,
 18 testing, or preparing a supply, service, or construction
 19 item for delivery.

20 NEW SECTION. Section 45. Duties -- policy office --
 21 chief procurement officer. (1) The policy office shall adopt
 22 rules governing the preparation, maintenance, and content of
 23 specifications for supplies, services, and construction
 24 required by the state.

25 (2) The chief procurement officer shall prepare,

1 issue, revise, maintain, and monitor the use of
 2 specifications for supplies, services, and construction
 3 required by the state.

4 NEW SECTION. Section 46. Coverage -- exempted items.
 5 (1) The requirements of [sections 44 through 47] regarding
 6 the purposes and nonrestrictiveness of specifications apply
 7 to all specifications, including but not limited to those
 8 prepared by architects, engineers, designers, and draftsmen
 9 for public contracts.

10 (2) Specifications for supplies, services, or
 11 construction items procured under [section 16] or exempted
 12 pursuant to [section 17] may be prepared by a purchasing
 13 agency in accordance with the provisions of [sections 44
 14 through 47] and rules adopted under [sections 44 through
 15 47].

16 NEW SECTION. Section 47. Specifications using
 17 agencies' advice -- competition -- life-cycle costing. (1)
 18 The chief procurement officer shall obtain expert advice and
 19 assistance from personnel of using agencies in the
 20 development of specifications and may delegate in writing to
 21 a using agency the authority to prepare and utilize its own
 22 specifications.

23 (2) All specifications must seek to promote overall
 24 economy for the purposes intended and encourage competition
 25 in satisfying the state's needs and may not be unduly

1 restrictive.

2 (3) When feasible, specifications must incorporate the
3 concepts of energy efficiency, value analysis, and
4 life-cycle costing.

5 NEW SECTION. Section 48. Construction contracting
6 management. The policy office shall adopt rules providing
7 for as many alternative methods of construction contracting
8 management as it may determine to be feasible. These rules
9 shall:

10 (1) set forth criteria to be used in determining which
11 method of construction contracting management is to be used
12 for a particular project;

13 (2) grant to the chief procurement officer or the head
14 of the purchasing agency responsible for carrying out the
15 construction project the discretion to select the
16 appropriate method of construction contracting management
17 for a particular project; and

18 (3) require the procurement officer to execute and
19 include in the contract file a written statement setting
20 forth the facts that led to the selection of a particular
21 method of construction contracting management for each
22 project.

23 NEW SECTION. Section 49. Bid security -- rejection
24 for noncompliance -- withdrawal. (1) When the invitation for
25 bids requires bid security, noncompliance requires that the

1 bid be rejected as nonresponsive.

2 (2) After the bids are opened, they are irrevocable
3 for the period specified in the invitation for bids, except
4 as provided in [subsection (1) of section 24]. If a bidder
5 is permitted to withdraw his bid before award, no action may
6 arise against the bidder or the bid security.

7 NEW SECTION. Section 50. Contract performance and
8 payment bonds. (1) When a construction contract is awarded
9 in excess of \$25,000, the following bonds or security must
10 be delivered to the state and become binding on the parties
11 upon the execution of the contract:

12 (a) a performance bond satisfactory to the state,
13 executed by a surety company authorized to do business in
14 this state or otherwise secured in a manner satisfactory to
15 the state, in an amount equal to 100% of the price specified
16 in the contract; and

17 (b) a payment bond satisfactory to the state, executed
18 by a surety company authorized to do business in this state
19 or otherwise secured in a manner satisfactory to the state,
20 for the protection of all persons supplying labor and
21 material to the contractor or his subcontractors for the
22 performance of the work provided for in the contract. The
23 bond shall be in an amount equal to 100% of the price
24 specified in the contract.

25 (2) The policy office may adopt rules that authorize

1 the chief procurement officer or head of a purchasing agency
2 to reduce the amount of performance and payment bonds to 50%
3 of the contract price for each bond.

4 (3) Nothing in this section may be construed to limit
5 the authority of the state to require a performance bond or
6 other security in addition to those bonds or in
7 circumstances other than specified in subsection (1).

8 NEW SECTION. Section 51. Bid security -- bond -- form
9 -- copy. (1) The policy office shall adopt by rule the form
10 of the bonds required by [sections 49 and 50].

11 (2) Any person may request and obtain from the state a
12 certified copy of a bond upon payment of the cost of
13 reproduction of the bond and postage, if any. A certified
14 copy of a bond is prima facie evidence of the content,
15 execution, and delivery of the original.

16 NEW SECTION. Section 52. Suits on payment bonds. (1)
17 Every person who has furnished labor or material to the
18 contractor or his subcontractors for the work provided in
19 the contract, in respect to which a payment bond is
20 furnished under [section 50], and who has not been paid in
21 full therefor before the expiration of a period of 90 days
22 after the day on which the last of the labor was done or
23 performed by him or material was furnished or supplied by
24 him for which the claim is made has the right to sue on the
25 payment bond for the amount or the balance thereof unpaid at

1 the time of institution of the suit and to prosecute the
2 action for the sum or sums justly due him. However, any
3 person having a direct contractual relationship with a
4 subcontractor of the contractor, but no contractual
5 relationship express or implied with the contractor
6 furnishing the payment bond, has a right of action upon the
7 payment bond upon giving written notice to the contractor
8 within 90 days from the date on which he did or performed
9 the last of the labor or furnished or supplied the last of
10 the material upon which the claim is made, stating with
11 substantial accuracy the amount claimed and the name of the
12 party to whom the material was furnished or supplied or for
13 whom the labor was done or performed. The notice must be
14 personally served or served by mailing the same by
15 registered or certified mail, postage prepaid, in an
16 envelope addressed to the contractor at any place the
17 contractor maintains an office or conducts his business.

18 (2) Every suit instituted upon a payment bond must be
19 brought in a court of competent jurisdiction for the county
20 or district in which the construction contract was to be
21 performed, but no suit may be commenced after the expiration
22 of 1 year after the day on which the last of the labor was
23 performed or material was supplied by the person bringing
24 suit. The obligee named in the bond need not be joined as a
25 party in any such suit.

1 NEW SECTION. Section 53. Architect, engineer, and
 2 land surveying -- application -- policy. (1) Architect,
 3 engineer, and land surveying services must be procured as
 4 provided in [sections 53 through 55], except as authorized
 5 by [sections 28 through 30].

6 (2) It is the policy of this state to publicly
 7 announce all requirements for architect, engineer, and land
 8 surveying services and to negotiate contracts for architect,
 9 engineer, and land surveying services on the basis of
 10 demonstrated competence and qualification for the type of
 11 services required and at fair and reasonable prices.

12 NEW SECTION. Section 54. Architect and engineer
 13 selection committee -- submissions. In the procurement of
 14 architect, engineer, and land surveying services, the chief
 15 procurement officer or the head of a purchasing agency shall
 16 encourage firms engaged in the lawful practice of their
 17 profession to submit annually a statement of qualifications
 18 and performance data. The chief procurement officer, an
 19 architect or engineer of the department, and the procurement
 20 officer of the using agency shall comprise the architect and
 21 engineer selection committee for each architect, engineer,
 22 and land surveying services contract over \$5,000. The
 23 selection committee for architect, engineer, and land
 24 surveying services contracts under this amount shall be
 25 established in accordance with rules adopted by the policy

1 office. The selection committee shall evaluate current
 2 statements of qualifications and performance data on file
 3 with the state, together with those that may be submitted by
 4 other firms regarding the proposed contract. The selection
 5 committee shall conduct discussions with no less than three
 6 firms regarding the contract and the relative utility of
 7 alternative methods of approach for furnishing the required
 8 services and then shall select therefrom in order of
 9 preference based upon criteria established and published by
 10 the selection committee no less than three of the firms
 11 considered to be qualified to provide the services required.

12 NEW SECTION. Section 55. Negotiation. The procurement
 13 officer shall negotiate a contract with the highest
 14 qualified firm for architect, engineer, or land surveying
 15 services at compensation that the procurement officer
 16 determines in writing to be fair and reasonable to the
 17 state. In making this decision, the procurement officer
 18 shall take into account the estimated value, scope,
 19 complexity, and professional nature of the services to be
 20 rendered. Should the procurement officer be unable to
 21 negotiate a satisfactory contract with the firm considered
 22 to be the most qualified, at a price the procurement officer
 23 determines to be fair and reasonable to the state,
 24 negotiations with that firm must be formally terminated. The
 25 procurement officer shall then undertake negotiations with

1 the second most qualified firm. If there is no accord with
 2 the second most qualified firm, the procurement officer
 3 shall formally terminate negotiations. The procurement
 4 officer shall then undertake negotiations with the third
 5 most qualified firm. Should the procurement officer be
 6 unable to negotiate a contract at a fair and reasonable
 7 price with any of the selected firms, the procurement
 8 officer shall select additional firms in order of their
 9 competence and qualifications, and the procurement officer
 10 shall continue negotiations in accordance with this section
 11 until an agreement is reached.

12 NEW SECTION. Section 56. Contract clauses. (1) The
 13 policy office may adopt rules permitting or requiring the
 14 inclusion of clauses providing for adjustments in prices,
 15 time of performance, or other contract provisions as
 16 appropriate covering the following subjects:

17 (a) the unilateral right of the state to order in
 18 writing:

19 (i) changes in the work within the scope of the
 20 contract; and

21 (ii) temporary stopping of the work or delaying
 22 performance; and

23 (b) variations occurring between estimated quantities
 24 of work in a contract and actual quantities.

25 (2) The provisions in subsection (1) are required for

1 state construction contracts. In addition, each state
 2 construction contract must include clauses covering the
 3 following subjects:

4 (a) suspension of work ordered by the state; and

5 (b) site conditions differing from those indicated in
 6 the contract or ordinarily encountered, except that
 7 differing site conditions clauses adopted by the policy
 8 office need not be included in a contract if:

9 (i) the contract is negotiated; or

10 (ii) the contractor provides the site or design.

11 NEW SECTION. Section 57. Price adjustments. (1)
 12 Adjustments in price pursuant to clauses adopted under
 13 [section 56] shall be computed in one or more of the
 14 following ways:

15 (a) by agreement on a fixed price adjustment before
 16 commencement of the pertinent performance or as soon
 17 thereafter as practicable;

18 (b) by unit prices specified in the contract or
 19 subsequently agreed upon;

20 (c) by the costs attributable to the events or
 21 situations under such clauses, with adjustment of profit or
 22 fee, all as specified in the contract or subsequently agreed
 23 upon;

24 (d) in such other manner as the contracting parties
 25 may mutually agree; or

1 (e) in the absence of agreement by the parties, by a
 2 unilateral determination by the state of the costs
 3 attributable to the events or situations under such clauses,
 4 with adjustment of profit or fee, all as computed by the
 5 state in accordance with applicable sections of the rules
 6 adopted under [section 61] and subject to the provisions of
 7 [sections 65 through 75].

8 (2) A contractor must submit cost or pricing data if
 9 any adjustment in contract price is subject to the
 10 provisions of [section 35].

11 **NEW SECTION.** Section 58. Additional contract clauses.

12 (1) The policy office may adopt rules, including but not
 13 limited to rules permitting or requiring the inclusion in
 14 state contracts of clauses providing for appropriate
 15 remedies and covering the following subjects:

- 16 (a) liquidated damages as appropriate;
- 17 (b) specified excuses for delay or nonperformance;
- 18 (c) termination of the contract for default; and
- 19 (d) termination of the contract in whole or in part
 20 for the convenience of the state.

21 (2) The clauses in subsection (1) are required for
 22 state construction contracts.

23 **NEW SECTION.** Section 59. Modification of clauses. The
 24 chief procurement officer or the head of a purchasing agency
 25 may vary the clauses promulgated by the policy office under

1 [sections 56 and 58] for inclusion in any particular state
 2 contract. Any variations must be supported by a written
 3 determination that states the circumstances justifying such
 4 variation. Notice of any material variation must be stated
 5 in the invitation for bids or request for proposals.

6 **NEW SECTION.** Section 60. Fiscal responsibility --
 7 construction contracts. Every contract modification, change
 8 order, or contract price adjustment under a construction
 9 contract with the state in excess of an amount specified in
 10 the contract is subject to prior written certification by
 11 the fiscal officer of the entity responsible for funding the
 12 project or the contract or other official responsible for
 13 monitoring and reporting upon the status of the costs of the
 14 total project budget or contract budget as to the effect of
 15 the contract modification, change order, or adjustment in
 16 contract price on the total project budget or the total
 17 contract budget. In the event that the certification by the
 18 fiscal officer or other responsible official discloses a
 19 resulting increase in the total project budget or the total
 20 contract budget, or both, the procurement officer may not
 21 execute or make such contract modification, change order, or
 22 adjustment in contract price unless sufficient funds are
 23 available therefor or the scope of the project or contract
 24 is adjusted to permit the degree of completion that is
 25 feasible within the total project budget or total contract

1 budget, or both, as it existed prior to the contract
 2 modification, change order, or adjustment in contract price
 3 under consideration. However, with respect to the validity
 4 as to the contractor of any executed contract modification,
 5 change order, or adjustment in contract price that the
 6 contractor has reasonably relied upon, it is presumed that
 7 there has been compliance with the provisions of this
 8 section.

9 NEW SECTION. Section 61. Cost principles -- rules.
 10 The policy office may adopt rules setting forth cost
 11 principles, which may be used to determine the allowability
 12 of incurred costs for the purpose of reimbursing costs under
 13 contract provisions that provide for the reimbursement of
 14 costs; however, if a written determination is approved at a
 15 level above the procurement officer, such cost principles
 16 may be modified by contract.

17 NEW SECTION. Section 62. Definitions. As used in
 18 [sections 62 through 64], the following definitions apply:

19 (1) "Excess supplies" means any supplies that have an
 20 original acquisition cost of over \$100 per unit and a
 21 remaining useful life, but which are no longer required by
 22 the using agency in possession of the supplies.

23 (2) "Surplus supplies" means any supplies that no
 24 longer have any use to the state.

25 NEW SECTION. Section 63. Supply management rules. (1)

1 The policy office shall adopt rules governing:

2 (a) the sale, lease, or disposal of surplus supplies
 3 by public auction or competitive sealed bidding; and

4 (b) the transfer of excess supplies.

5 (2) No employee of the owning or disposing agency may
 6 purchase supplies sold by his agency.

7 NEW SECTION. Section 64. Allocation of proceeds.
 8 Except as otherwise provided, the proceeds from the sale,
 9 lease, or disposal of surplus supplies must be paid to the
 10 state treasurer and credited to the general fund. Upon the
 11 recommendation of the director of the department and with
 12 the approval of the state auditor, the proceeds may be
 13 credited to the account of the owning state agency.

14 NEW SECTION. Section 65. Authority to resolve
 15 protested solicitations and awards. (1) Any actual or
 16 prospective bidder, offeror, or contractor who is aggrieved
 17 in connection with the solicitation or award of a contract
 18 may protest to the chief procurement officer or head of a
 19 purchasing agency. The protest must be submitted in writing
 20 within 7 working days after the aggrieved person knows or
 21 should have known of the facts giving rise to the protest.

22 (2) The chief procurement officer, head of a
 23 purchasing agency, or designee of either officer has the
 24 authority, prior to the commencement of contested case
 25 proceedings concerning the controversy, to settle and

1 resolve a protest of an aggrieved bidder, offeror, or
 2 contractor, actual or prospective, concerning the
 3 solicitation or award of a contract. This authority must be
 4 exercised in accordance with rules adopted by the policy
 5 office.

6 (3) If a timely protest is made under subsection (1),
 7 the state may not proceed further with the solicitation or
 8 with the award of the contract until the chief procurement
 9 officer, after consultation with the head of the using
 10 agency or the head of a purchasing agency, makes a written
 11 determination that the award of the contract without delay
 12 is necessary to protect substantial interests of the state.

13 (4) In addition to any other relief, when a protest
 14 under subsection (1) is sustained and the protesting bidder
 15 or offeror should have been awarded the contract under the
 16 solicitation but was not, the protesting bidder or offeror
 17 is entitled to the reasonable costs incurred in connection
 18 with the solicitation, including bid preparation costs, but
 19 excluding attorney's fees.

20 NEW SECTION. Section 66. Decision -- hearing --
 21 appeals-- (1) The chief procurement officer, head of a
 22 purchasing agency, or designee of either officer shall
 23 promptly issue a written decision regarding any protest
 24 under [section 65] if it is not settled by mutual agreement.
 25 The decision shall state the reasons for the action taken

1 and inform the protestor of the right of a contested case
 2 hearing. A copy of the decision must immediately be mailed
 3 or otherwise furnished to the protestor. The decision shall
 4 be final unless the contractor appeals to the chief
 5 procurement officer and is effective unless stayed or until
 6 reversed on appeal.

7 (2) The aggrieved person may file an appeal with the
 8 chief procurement officer within 7 days of receipt of a
 9 decision under subsection (1).

10 (3) The chief procurement officer shall conduct a de
 11 novo contested case hearing and determine if the
 12 solicitation or award was in accordance with the law, the
 13 rules of the policy office, and the terms and conditions of
 14 the solicitation.

15 NEW SECTION. Section 67. Authority to debar or
 16 suspend. (1) After notice to the person involved and
 17 opportunity for that person to be heard under Title 2,
 18 chapter 4, part 6, the chief procurement officer, after
 19 consultation with the using agency and the attorney general,
 20 has the authority to debar a person for cause from
 21 consideration for award of contracts. The debarment may not
 22 be for a period of more than 3 years.

23 (2) The chief procurement officer, after consultation
 24 with the using agency and the attorney general, has
 25 authority to suspend a person from consideration for award

1 of contracts if there is probable cause to believe that such
 2 person has engaged in activities that may lead to debarment.
 3 The suspension may not be for a period exceeding 3 months
 4 unless an indictment has been issued for an offense that
 5 would be a cause for debarment under subsection (3), in
 6 which case the suspension must, at the request of the
 7 attorney general, remain in effect until after the trial of
 8 the suspended person. The authority to debar or suspend must
 9 be exercised in accordance with rules adopted by the policy
 10 office.

11 (3) The causes for debarment include the following:

12 (a) conviction of a criminal offense as an incident to
 13 obtaining or attempting to obtain a public or private
 14 contract or subcontract or in the performance of such
 15 contract or subcontract;

16 (b) conviction under state or federal statutes of
 17 embezzlement, theft, forgery, bribery, falsification or
 18 destruction of records, receiving stolen property, or any
 19 other offense indicating a lack of business integrity or
 20 business honesty that currently, seriously, and directly
 21 effect responsibility as a state contractor;

22 (c) conviction under state or federal antitrust
 23 statutes arising out of the submission of bids or proposals;

24 (d) failure without good cause to perform in
 25 accordance with the terms of any contract;

1 (e) any other cause the chief procurement officer or
 2 head of a purchasing agency determines to be so serious and
 3 compelling as to affect responsibility as a state
 4 contractor, including debarment by another governmental
 5 entity for any cause listed in rules adopted by the policy
 6 office; and

7 (f) violation of the ethical standards set forth in
 8 Title 2, chapter 2.

9 NEW SECTION. Section 68. Authority to resolve
 10 contract and breach of contract controversies. (1) This
 11 section applies to controversies between the state and a
 12 contractor that arise under or by virtue of a contract
 13 between them. This includes without limitation controversies
 14 based upon breach of contract, mistake, misrepresentation,
 15 or other cause for contract modification or rescission.

16 (2) The chief procurement officer, head of a
 17 purchasing agency, or designee of either officer is
 18 authorized, prior to commencement of contested case
 19 proceedings concerning the controversy, to settle and
 20 resolve a controversy described in subsection (1). This
 21 authority must be exercised in accordance with rules adopted
 22 by the policy office.

23 NEW SECTION. Section 69. Decision -- notice. (1) The
 24 chief procurement officer, head of a purchasing agency, or
 25 designee of either officer shall promptly issue a written

1 decision regarding any contract controversy if it is not
2 settled by mutual agreement. The decision shall state the
3 reasons for the action taken and inform the contractor of
4 his right to a contested case hearing.

5 (2) A copy of the decision must immediately be mailed
6 or otherwise furnished to the contractor. The decision shall
7 be final unless the contractor appeals to the chief
8 procurement officer and is effective unless stayed or until
9 reversed on appeal.

10 NEW SECTION. Section 70. Failure to render timely
11 decision. If the chief procurement officer, head of a
12 purchasing agency, or a designee of either officer does not
13 issue a written decision regarding a contract controversy
14 under [section 69] within 20 working days after written
15 request for a final decision or within such longer period as
16 may be agreed upon by the parties, the contractor may
17 proceed as if an adverse decision had been received.

18 NEW SECTION. Section 71. Appeals -- hearing. (1) An
19 aggrieved contractor may file his appeal with the chief
20 procurement officer within 60 days of the receipt of a
21 decision under [section 69] or, if no decision is rendered,
22 80 days after his request.

23 (2) The chief procurement officer shall conduct a de
24 novo contested case hearing to decide the contract or breach
25 of contract controversy.

1 NEW SECTION. Section 72. Remedies prior to and after
2 award. (1) The provisions of this section apply whenever it
3 is determined administratively or upon administrative or
4 judicial review that a solicitation or award of a contract
5 is in violation of law.

6 (2) If prior to award it is determined that a
7 solicitation or proposed award of a contract is in violation
8 of law, the solicitation or proposed award shall be:

- 9 (a) canceled; or
10 (b) revised to comply with the law.

11 (3) If after an award it is determined that a
12 solicitation or award of a contract is in violation of law
13 and:

14 (a) the person awarded the contract has not acted
15 fraudulently or in bad faith:

16 (i) the contract may be ratified and affirmed,
17 provided it is determined that doing so is in the best
18 interests of the state; or

19 (ii) the contract may be terminated and the person
20 awarded the contract shall be compensated for the actual
21 expenses reasonably incurred under the contract, plus a
22 reasonable profit, prior to the termination;

23 (b) the person awarded the contract has acted
24 fraudulently or in bad faith:

25 (i) the contract may be declared void; or

1 (ii) the contract may be ratified and affirmed if such
2 action is in the best interests of the state, without
3 prejudice to the state's rights to appropriate damages.

4 NEW SECTION. Section 73. Interest. Interest on
5 amounts ultimately determined to be due a contractor or the
6 state shall be payable at the statutory rate applicable to
7 judgments from the date the claim arose through the date of
8 decision or judgment, whichever is later.

9 NEW SECTION. Section 74. Standards of review for
10 administrative determinations. In any judicial action, the
11 standards of review contained in 2-4-704 apply to factual or
12 legal determinations by employees, agents, or other persons
13 appointed by the state.

14 NEW SECTION. Section 75. Appeals. A person who has
15 exhausted all administrative remedies available under this
16 title and who is aggrieved by a final decision in a
17 contested case under [subsection (3) of section 66],
18 [subsection (1) of section 67], or [subsection (2) of
19 section 71] is entitled to judicial review under Title 2,
20 chapter 4, part 7.

21 NEW SECTION. Section 76. Definitions. As used in
22 [sections 76 through 85], the following definitions apply:

23 (1) "Cooperative purchasing" means procurement
24 conducted by or on behalf of more than one public
25 procurement unit or by a public procurement unit with an

1 external procurement activity.

2 (2) "External procurement activity" means any buying
3 organization not located in this state that, if located in
4 this state, would qualify as a public procurement unit. An
5 agency of the United States is an external procurement
6 activity.

7 (3) "Local public procurement unit" means any
8 political subdivision of the state or public agency of any
9 such subdivision; public authority; educational, health, or
10 other institution; and, to the extent provided by law, any
11 other entity that expends public funds for the procurement
12 of supplies, services, and construction.

13 (4) "Public procurement unit" means either a local
14 public procurement unit or a state public procurement unit.

15 (5) "State public procurement unit" means the office
16 of the chief procurement officer and any other purchasing
17 agency of this state.

18 NEW SECTION. Section 77. Cooperative purchasing
19 authorized. Any public procurement unit may participate in,
20 sponsor, conduct, or administer a cooperative purchasing
21 agreement for the procurement of any supplies, services, or
22 construction with one or more public procurement units or
23 external procurement activities in accordance with an
24 agreement entered into between the participants. Such
25 cooperative purchasing may include but is not limited to

1 joint or multiparty contracts between public procurement
2 units and open-ended state public procurement unit contracts
3 that are made available to local public procurement units.

4 NEW SECTION. Section 78. Sale, acquisition, or use of
5 supplies by a public procurement unit. Any public
6 procurement unit may sell supplies to, acquire supplies
7 from, or use any supplies belonging to another public
8 procurement unit or external procurement activity
9 independent of the requirements of [sections 20 through 43]
10 and [sections 62 through 64].

11 NEW SECTION. Section 79. Cooperative use of supplies
12 or services. Any public procurement unit may enter into an
13 agreement, independent of the requirements of [sections 20
14 through 43] and [sections 62 through 64], with any other
15 public procurement unit or external procurement activity for
16 the cooperative use of supplies or services under the terms
17 agreed upon between the parties.

18 NEW SECTION. Section 80. Joint use of facilities. Any
19 public procurement unit may enter into agreements for the
20 common use or lease of warehousing facilities, capital
21 equipment, and other facilities with another public
22 procurement unit or an external procurement activity under
23 the terms agreed upon between the parties.

24 NEW SECTION. Section 81. Supply of personnel,
25 information, and technical services -- fees. (1) Any public

1 procurement unit may, in its discretion, upon written
2 request from another public procurement unit or external
3 procurement activity, provide personnel to the requesting
4 public procurement unit or external procurement activity.
5 The public procurement unit or external procurement activity
6 making the request shall pay the public procurement unit
7 providing the personnel the direct and indirect costs of
8 furnishing the personnel, in accordance with an agreement
9 between the parties.

10 (2) The informational, technical, and other services
11 of any public procurement unit may be made available to any
12 other public procurement unit or external procurement
13 activity; however, the requirements of the public
14 procurement unit tendering the services have precedence over
15 the requesting public procurement unit or external
16 procurement activity. The requesting public procurement unit
17 or external procurement activity shall pay for the expenses
18 of the services so provided, in accordance with an agreement
19 between the parties.

20 (3) Upon request, the chief procurement officer may
21 make available to public procurement units or external
22 procurement activities the following services, among others:

- 23 (a) standard forms;
- 24 (b) printed manuals;
- 25 (c) product specifications and standards;

1 (d) quality-assurance testing services and methods;
 2 (e) qualified products lists;
 3 (f) source information;
 4 (g) common-use commodities listings;
 5 (h) supplier prequalification information;
 6 (i) supplier performance ratings;
 7 (j) debarred and suspended bidders lists;
 8 (k) forms for invitations for bids, requests for
 9 proposals, instructions to bidders, general contract
 10 provisions, and other contract forms; and
 11 (l) contracts or published summaries thereof,
 12 including price and time of delivery information.

13 (4) The state, through the chief procurement officer,
 14 may provide the following technical services, among others,
 15 to local public procurement units or external procurement
 16 activities:

17 (a) development of products specifications;
 18 (b) development of quality assurance test methods,
 19 including receiving, inspection, and acceptance procedures;
 20 (c) use of product testing and inspection facilities;
 21 and
 22 (d) use of personnel training programs.

23 (5) The state, through the chief procurement officer,
 24 may enter into contractual arrangements and publish a
 25 schedule of fees for the services provided under subsections

1 (3) and (4).

2 NEW SECTION. Section 82. Use of payments received by
 3 a supplying public procurement unit. All payments from any
 4 public procurement unit or external procurement activity
 5 received by a public procurement unit supplying personnel or
 6 services shall be available for the use of the supplying
 7 public procurement unit.

8 NEW SECTION. Section 83. Public procurement units in
 9 compliance with requirements of title. If the public
 10 procurement unit or external procurement activity
 11 administering a cooperative purchase complies with the
 12 requirements of this title, any public procurement unit
 13 participating in such a purchase shall be considered to have
 14 complied with this title. Public procurement units may not
 15 enter into a cooperative purchasing agreement for the
 16 purpose of circumventing this title.

17 NEW SECTION. Section 84. Review of procurement
 18 requirements. To the extent possible, the chief procurement
 19 officer may collect information concerning the type, cost,
 20 quality, and quantity of commonly used supplies, services,
 21 or construction being procured or used by state public
 22 procurement units. The chief procurement officer may also
 23 collect such information from local public procurement
 24 units. The chief procurement officer may make available all
 25 such information to any public procurement unit upon

1 request.

2 NEW SECTION. Section 85. Public procurement unit
3 contract controversies. (1) Under a cooperative purchasing
4 agreement, controversies arising between an administering
5 public procurement unit and its bidders, offerors, or
6 contractors must be resolved in accordance with [sections 65
7 through 75].

8 (2) Any local public procurement unit is authorized to
9 enter into an agreement with:

10 (a) the procurement division to use the department to
11 resolve controversies between the local public procurement
12 unit and its contractors, whether or not such controversy
13 arose from a cooperative purchasing agreement; and

14 (b) another local public procurement unit or external
15 procurement activity to establish procedures or use such
16 unit's or activity's existing procedures to resolve
17 controversies with contractors, whether or not such
18 controversy arose under a cooperative purchasing agreement.

19 Section 86. Section 2-17-403, MCA, is amended to read:

20 "2-17-403. Requisitions for purchases. All
21 requisitions for motor vehicle purchases shall be submitted
22 to the ~~department--of--administration~~ procurement division
23 twice yearly at the times that it specifies. Other
24 requisitions for automobile purchases may not be accepted by
25 it unless the ~~governor~~ chief procurement officer considers

1 the purchase to be an emergency necessity."

2 Section 87. Section 3-2-603, MCA, is amended to read:

3 "3-2-603. Duties of reporters. (1) The reporters of
4 the decisions of the supreme court shall make careful and
5 accurate reports of the cases decided by the supreme court.
6 The reports of the cases shall be made under the supervision
7 of and pursuant to rules adopted by the justices of the
8 supreme court.

9 (2) Reports of all cases shall be furnished to the
10 West Publishing Company for inclusion in its publication,
11 the Pacific Reporter, and to any other private printing or
12 duplicating concern requesting the reports for publication.

13 (3) The ~~procurement division of the~~ department of
14 administration, on request of the supreme court, shall
15 contract with a publishing house to publish volumes of
16 reports. The style, size, and format of the reports shall be
17 determined by the justices. The ~~department-of-administration~~
18 ~~division~~ shall ~~prepare-and-issue-a-call--for--bids--and--in~~
19 ~~accordance--with--the--terms-and-specifications-of-the-call~~
20 ~~contract with the lowest and best bidder~~ for printing the
21 reports under Title 18."

22 Section 88. Section 5-17-101, MCA, is amended to read:

23 "5-17-101. Capitol building and planning committee --
24 appointment, composition, and meetings. (1) There is a
25 capitol building and planning committee consisting of eight

1 members as follows:

2 (a) two members of the house of representatives
3 appointed by the speaker on a bipartisan basis;

4 (b) two members of the senate appointed by the
5 committee on committees on a bipartisan basis;

6 (c) the director of the department of administration;

7 (d) ~~the administrator~~ a representative of the
8 ~~architectural and engineering procurement~~ division of the
9 department of administration;

10 (e) a representative of the governor's office
11 designated by the governor; and

12 (f) the director of the Lewis and Clark areawide
13 planning organization who shall serve as a nonvoting member.

14 (2) The committee shall select a chairman who may call
15 meetings at his discretion for the conduct of committee
16 business."

17 Section 69. Section 13-27-410, MCA, is amended to
18 read:

19 "13-27-410. Printing and distribution of voter
20 information pamphlet. (1) The secretary of state shall
21 arrange with the procurement division of the department of
22 administration by requisition for the printing and delivery
23 of a voter information pamphlet for all ballot issues to be
24 submitted to the people at least 90 days before the election
25 at which they will be submitted. The requisition shall

1 include a delivery list providing for shipment of the
2 required number of pamphlets to each county and to the
3 secretary of state.

4 (2) The secretary of state shall estimate the number
5 of copies necessary to furnish one copy to every voter in
6 each county, except that two or more voters with the same
7 mailing address and the same last name may be counted as one
8 voter. The secretary of state shall provide for an extra
9 supply of the pamphlets in determining the number of voter
10 pamphlets to be ordered in the requisition.

11 (3) The procurement division of the department of
12 administration shall call for bids and contract ~~with the~~
13 ~~lowest-bidder~~ for the printing and delivery of the voter
14 information pamphlet under the provisions of Title 13. The
15 contract shall require completion of printing and shipment,
16 as specified on the delivery list, of the voter information
17 pamphlets by not later than 30 days before the election at
18 which the ballot issues will be voted on by the people.

19 (4) The county official responsible for voter
20 registration in each county shall mail one copy of the voter
21 information pamphlet to each registered voter in the county,
22 except that two or more voters with the same mailing address
23 and the same last name may be counted as one voter. The
24 mailing shall take place no later than 2 weeks after the
25 pamphlets are received from the printer.

1 (5) Ten copies of the voter information pamphlet shall
2 be available at each precinct for use by any voter wishing
3 to read the explanatory information and complete text before
4 voting on the ballot issues."

5 Section 90. Section 18-1-102, MCA, is amended to read:

6 "18-1-102. State contracts to lowest resident bidder.

7 ~~(1) In order to provide for an orderly administration of the~~
8 ~~business of the state of Montana a state agency or political~~
9 ~~subdivision in awarding contracts for materials, supplies,~~
10 ~~equipment, construction, repair, and public works of all~~
11 ~~kinds services, as defined in this title, it shall be the~~
12 ~~duty of each board, commission, officer, or individual~~
13 ~~charged by law with the responsibility for the execution of~~
14 ~~the contract on behalf of the state, board, commission,~~
15 ~~political subdivision, agency, school district, or a public~~
16 ~~corporation of the state of Montana to award such contract~~
17 ~~to the lowest responsive and responsible bidder who is a~~
18 ~~resident of the state of Montana and whose bid is not more~~
19 ~~than 3% higher than that of the lowest responsive and~~
20 ~~responsible bidder who is a nonresident of this state.~~

21 (2) In A state agency or political subdivision in
22 awarding contracts for purchase or procurement of products,
23 materials, supplies, or equipment, such board, commission,
24 officer, or individual shall award the contract to any such
25 resident whose offered materials, supplies, or equipment are

1 manufactured or produced in this state by Montana industry
2 and labor and whose bid is not more than 3% higher than that
3 of the lowest responsive and responsible resident bidder
4 whose offered ~~materials, supplies, or equipment~~ are not so
5 manufactured or produced, provided that such ~~products~~
6 ~~materials, supplies, and equipment~~ are comparable in quality
7 and performance.

8 (3) ~~This requirement shall prevent section applies to~~
9 ~~contracts of a political subdivision~~ whether the law
10 requires advertisement for bids or does not require
11 advertisement for bids, and it shall apply to contracts
12 involving funds obtained from the federal government unless
13 expressly prohibited by the laws of the United States or
14 regulations adopted pursuant thereto. This section applies
15 to a contract of a state agency only if it is required to be
16 awarded under [sections 21 through 27]."

17 Section 91. Section 18-1-103, MCA, is amended to read:

18 "18-1-103. Residence defined. (1) For the purpose of
19 ~~18-1-102, 18-1-103, and 18-1-112~~ this part, the word
20 "resident" shall include actual residence of an individual
21 within this state for a period of more than 1 year
22 immediately prior to bidding.

23 (2) In a partnership enterprise or an association, the
24 majority of all partners or association members shall have
25 been actual residents of the state of Montana for more than

1 1 year immediately prior to bidding.

2 (3) Domestic corporations organized under the laws of
3 the state of Montana are prima facie eligible to bid as
4 residents, but this qualification may be set aside and a
5 successful bid disallowed where it is shown to the
6 satisfaction of the board, commission, officer, or
7 individual charged with the responsibility for the execution
8 of such contract that said corporation is a wholly owned
9 subsidiary of a foreign corporation or that said corporation
10 was formed for the purpose of circumventing the provisions
11 relating to residence.

12 (4) Notwithstanding the foregoing, any bidder on a
13 contract for purchase of ~~products, materials, supplies, or~~
14 ~~equipment~~ whether an individual, partnership, or
15 corporation, foreign or domestic and regardless of ownership
16 thereof, whose offered ~~materials, supplies, or equipment~~ are
17 manufactured or produced in this state by industry located
18 in Montana and Montana labor shall be deemed to be a
19 resident for the purpose of ~~18-1-102, 18-1-103, and 18-1-112~~
20 this part."

21 Section 92. Section 18-1-112, MCA, is amended to read:
22 "18-1-112. Montana product preference provisions. (1)
23 Each contract awarded by any political subdivision, ~~school~~
24 ~~district, public corporation, or state~~ agency of ~~the state~~
25 ~~of Montana~~ shall contain among its provisions a requirement

1 that in all instances products manufactured or produced in
2 this state by Montana industry and labor shall be preferred
3 for use in all projects and in all ~~materials, supplies, and~~
4 ~~equipment~~ procured if such ~~products, materials, equipment,~~
5 ~~and supplies~~ are comparable in price and quality.

6 (2) It is the intent of ~~18-1-102, 18-1-103, and this~~
7 ~~section part~~ that, whenever possible, products manufactured
8 and produced in this state which are suitable substitutes
9 for products manufactured or produced outside the state and
10 comparable in price, quality, and performance shall be
11 preferred for use in all projects and in all state
12 institutions.

13 (3) Failure to comply with the law in this respect
14 shall disqualify such contractor as a qualified bidder for
15 future contracts with the ~~any state of Montana~~ agency ~~and~~
16 ~~any legal political subdivision of the state of Montana, any~~
17 ~~school, district, public corporation, or agency~~ for a period
18 of 2 years.

19 (4) The preference given to Montana products shall
20 apply to contracts involving funds obtained from the federal
21 government unless expressly prohibited by the laws of the
22 United States or regulations adopted pursuant thereto."

23 Section 93. Section 18-1-201, MCA, is amended to read:
24 "18-1-201. Requirement for bidder's security. (1) A
25 "public authority" or "obligee" includes:

1 (a) the state of Montana or any department--(including
2 the---department---of---administration,---unless---otherwise
3 authorized-by-express-provision-of-law)--institutions, boards,
4 commissions, agency, authority or subordinate jurisdiction
5 thereof state agency; or

6 (b) any county or other political subdivision of this
7 state;

8 (c) ~~any municipal corporation or authorized~~
9 ~~subdivision thereof~~; or

10 (d) ~~school districts, irrigation districts, or other~~
11 ~~public authority organized under the laws of the state of~~
12 ~~Montana~~

13 (2) In all cases where a public authority or obligee
14 is authorized by law to solicit bids, tenders, or proposals
15 for ~~public works, improvements, or undertakings of any kind~~
16 ~~or for the purchase of commodities, goods, or property or~~
17 ~~for the procurement of technical or special construction or~~
18 ~~services on a bid basis,~~ (exclusive of services on the basis
19 of salaries or wages), estimated to exceed \$25,000 or for
20 the sale and purchase of bonds, debentures, notes, or any
21 other forms of indebtedness of any such public authority,
22 the respective executive, administrative, or other officers
23 of and acting for such public authority shall require, as a
24 condition precedent to considering any such bids, as
25 evidence of good faith on the part of the bidder, and as

1 indemnity for the benefit of such public authority against
2 the failure or refusal of any bidder to enter into any
3 written contract that may be awarded upon and following
4 acceptance of bid or as a condition precedent to
5 consummating any sale and purchase of any forms of
6 indebtedness, that any bid shall contain a written covenant
7 of indemnity conditioned as herein prescribed and that the
8 bid shall be accompanied by bid security of the nature
9 herein specified for the performance of such covenant.

10 (3) The policy office may by rule require bid security
11 on any state contract."

12 Section 94. Section 18-1-301, MCA, is amended to read:
13 "18-1-301. Contractor withdrawals -- deposit of
14 obligations. (1) The contractor under any construction
15 contract made or awarded by the state of Montana or any
16 department, agency, or political subdivision thereof,
17 including any contract for the construction, improvement,
18 maintenance, or repair of any road or highway or the
19 appurtenances thereto, may, from time to time, withdraw the
20 whole or any portion of the sums otherwise due to the
21 contractor under such contract which are retained by the
22 state of Montana or any department, agency, or political
23 subdivision thereof pursuant to the terms of such contract,
24 provided the contractor shall deposit with the treasurer of
25 the state of Montana:

1 (a) United States treasury bonds, United States
2 treasury notes, United States treasury certificates of
3 indebtedness, or United States treasury bills;

4 (b) bonds or notes of the state of Montana;

5 (c) bonds of any political subdivision of the state of
6 Montana of a market value not exceeding par at the time of
7 deposit; or

8 (d) certificates of deposit drawn and issued by a
9 national banking association located in the state of Montana
10 or by any banking corporation incorporated under the laws of
11 the state of Montana.

12 (2) Deposited obligations shall be at least equal in
13 value to the amount so withdrawn from payments retained
14 under such contract."

15 Section 95. Section 18-1-402, MCA, is amended to read:

16 "18-1-402. Administrative procedures -- exhaustion --
17 time limitations. Whenever any contracting agency of the
18 state of Montana provides a procedure for the settlement of
19 any question or dispute arising between the contractor and
20 said agency, the contractor, before proceeding to bring an
21 action in court under the provisions of this part, must
22 resort to such procedure within the time specified in his
23 contract or, if no time is specified, within 90 days after
24 the question or dispute has arisen, provided:

25 (1) in the case where a settlement procedure is

1 provided by said contracting agency, all actions authorized
2 hereunder, not otherwise provided for by law, must be
3 commenced within 1 year after a final decision has been
4 rendered pursuant to such settlement procedure; and

5 (2) in the case where no settlement procedure is
6 provided by said contracting agency, the action must be
7 commenced by the contractor within 1 year after the cause of
8 action has arisen."

9 Section 96. Section 18-1-404, MCA, is amended to read:

10 "18-1-404. Liability of state -- limitations -- costs.

11 (1) The state of Montana shall be liable in respect to any
12 contract entered into in the same manner and to the same
13 extent as a private individual under like circumstances,
14 except the state of Montana shall not be liable for interest
15 prior to or after judgment or for punitive damages unless
16 otherwise provided by law.

17 (2) Costs may be allowed as provided in 25-10-711. In
18 all other cases, costs shall be allowed in all courts to the
19 successful claimant to the same extent as if the state of
20 Montana were a private litigant, except that such costs
21 shall not include attorney's fees."

22 Section 97. Section 18-2-101, MCA, is amended to read:

23 "18-2-101. Definitions of building and construction.
24 In part 1 of this chapter, with the exception of 18-2-104,
25 18-2-107, 18-2-113, and 18-2-114:

1 (1) "building" includes:

2 (a) a building, facility, or structure constructed or
3 purchased wholly or in part with state moneys;

4 (b) a building, facility, or structure at a state
5 institution;

6 (c) a building, facility, or structure owned or to be
7 owned by a state agency, including the department of
8 highways;

9 (2) "building" does not include:

10 (a) a building, facility, or structure owned or to be
11 owned by a county, city, town, school district, or special
12 improvement district;

13 (b) a facility or structure used as a component part
14 of a highway or water conservation project;

15 ~~(3) "construction" includes construction, repair,~~
16 ~~alteration, and equipping and furnishing during~~
17 ~~construction, repair, or alteration."~~

18 Section 98. Section 18-2-102, MCA, is amended to read:

19 "18-2-102. Authority to construct buildings. (1)
20 Except as provided in subsection (2) of this section, a
21 building costing more than \$25,000 may not be constructed
22 without the consent of the legislature. When a building
23 costing more than \$25,000 is to be financed in such a manner
24 as not to require legislative appropriation of moneys, such
25 consent may be in the form of a joint resolution.

1 (2) (a) The ~~governor~~ chief procurement officer may
2 authorize the emergency repair or alteration of a building.

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

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

12 ~~(3) The chief procurement officer shall award all~~
13 ~~contracts and supervise the construction for all buildings."~~

14 Section 99. Section 18-2-105, MCA, is amended to read:

15 "18-2-105. General powers and duties of department of
16 administration and chief procurement officer. (1) In
17 carrying out powers relating to the construction of
18 buildings, the department of administration may shall:

19 (a) approve all bond issues or other financial
20 arrangements and supervise and approve the expenditure of
21 all money;

22 (b) issue and sell bonds and other securities;

23 ~~(1)(c)~~ inspect buildings not under construction; and

24 ~~(2)(d)~~ contract with the federal government for
25 advance planning funds;

1 (2) The chief procurement officer may:

2 ~~(3)(a) purchase, lease, and acquire by exchange or~~
3 otherwise, land and buildings in Lewis and Clark County and
4 ~~equipment and furnishings for such buildings;~~

5 ~~(4) issue and sell bonds and other securities;~~

6 ~~(5)(b) maintain an inventory of all buildings;~~

7 ~~(6)(c) appoint a project representative to supervise~~
8 architects' and consulting engineers' inspection of
9 construction of buildings to assure that all construction is
10 in accordance with the contracts, plans, and specifications.
11 The cost of supervision may be charged against moneys
12 available for construction."

13 Section 100. Section 18-2-111, MCA, is amended to
14 read:

15 "18-2-111. Policy regarding practice of architecture
16 -- preparation of working drawings by department limited.

17 (1) It is the policy of the state not to engage in the
18 practice of architecture; however, this policy shall not be
19 construed as prohibiting the department of administration
20 from:

21 (a) engaging in preplanning functions necessary to
22 prepare a building program for presentation to the
23 legislature;

24 (b) supervising construction as provided in
25 ~~18-2-105(6) 18-2-105(2)(c); or~~

1 (c) preparing working drawings for minor projects.

2 (2) The department of administration is expressly
3 prohibited from preparing working drawings for the
4 construction of a building when the total cost of the
5 construction will exceed \$25,000."

6 Section 101. Section 18-2-201, MCA, is amended to
7 read:

8 "18-2-201. Bonding requirements. (1) Whenever any
9 board, council, commission, trustees, or body acting for the
10 state or any county, municipality, or any public body shall
11 contract with any person or corporation to do any work for
12 the state, county, or municipality or other public body,
13 city, town, or district, such board, council, commission,
14 trustees, or body shall require the corporation, person, or
15 persons with whom such contract is made to make, execute,
16 and deliver to such board, council, commission, trustees, or
17 body a good and sufficient bond with two or more sureties or
18 with a surety company as surety, conditioned that such
19 corporation, person, or persons shall:

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

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

24 (c) pay all persons who shall supply such corporation,
25 person or persons, or subcontractors with provisions,

1 provender, material, or supplies for the carrying on of such
2 work.

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

10 ~~(3) The provisions of this part do not apply to~~
11 ~~construction contracts for which bonds are required by~~
12 ~~[section 50]."~~

13 Section 102. Section 18-4-111, MCA, is amended to
14 read:

15 "18-4-111. Responsibilities of ~~budget-director chief~~
16 ~~procurement officer~~ for data processing. The ~~budget-director~~
17 ~~chief procurement officer~~ shall:

18 (1) establish guidelines for the operation and
19 development of data processing services by or for state
20 government;

21 (2) set ~~pr~~ priorities for the development and acquisition
22 of data processing systems;

23 (3) approve the procurement of data processing
24 equipment before such equipment is acquired for state
25 government ~~by the department of administration;~~

1 (4) approve the addition of data processing staff; and
2 (5) review and approve all contracts for private
3 sector data processing services."

4 Section 103. Section 18-5-304, MCA, is amended to
5 read:

6 "18-5-304. Designation of small business set-asides.

7 (1) ~~Each--department~~ The procurement division has authority
8 to designate as small business set-asides specified
9 commodities--~~equipment~~ supplies or services, except those
10 services rendered and furnished by registered professions,
11 such as but not limited to accountants, attorneys,
12 architects, dentists, engineers, land surveyors,
13 optometrists, physicians, and pharmacists, for which
14 purchase has been requested under the Montana Small Business
15 Purchasing Act. Such a designation shall be made prior to
16 the advertisement for bids in a daily state newspaper, and
17 when the advertisement is published, it shall indicate the
18 purchases which have been designated small business
19 set-asides. To effectuate the purposes of this part, a
20 ~~department~~ the division shall exercise this authority
21 whenever there is a reasonable expectation that bids will be
22 obtained from at least three small businesses capable of
23 furnishing the desired property or service at a fair and
24 reasonable price.

25 (2) In the case of purchase designated as small

1 business set-asides, invitations to bid shall be confined to
 2 small businesses, and bids from other businesses shall be
 3 rejected. The purchase, contract, or expenditure of funds
 4 shall be awarded to the lowest responsible bidder among the
 5 small businesses (considering conformity with specifications
 6 and terms) in accordance with the rules for purchasing
 7 published by the department policy office."

8 Section 104. Section 18-5-305, MCA, is amended to
 9 read:

10 "18-5-305. Insufficient bids -- withdrawal -- reissue.
 11 (1) If the total number of small businesses responding to
 12 the invitation to bid and considered capable of meeting the
 13 specifications and terms of the invitation to bid is less
 14 than three or if ~~a--department~~ the procurement division
 15 determines that acceptance of the best bid will result in
 16 the payment of an unreasonable price, the department
 17 division shall reject all bids and withdraw the designation
 18 of small business set-aside.

19 (2) If ~~a--department~~ the division withdraws the
 20 designation of small business set-aside, it shall notify the
 21 bidders of the reason why the bids were rejected.
 22 Invitations to bid containing the same or rewritten
 23 specifications and terms shall then be reissued under the
 24 Montana Small Business Purchasing Act, without the
 25 designation of small business set-aside."

1 Section 105. Section 18-5-306, MCA, is amended to
 2 read:

3 "18-5-306. Successful bidder -- notice and purchase
 4 order. (1) After the successful bidder has been determined,
 5 the department procurement division shall place an
 6 advertisement in a daily newspaper indicating that all bids
 7 submitted on a small business set-aside have been opened and
 8 reporting the name and address of the successful bidder.

9 (2) ~~A--department~~ The division shall send a purchase
 10 order to the successful bidder no later than 14 days after
 11 the appearance of the advertisement announcing the
 12 successful bidder."

13 Section 106. Section 18-5-308, MCA, is amended to
 14 read:

15 "18-5-308. Construction with other sections.
 16 Procurement from small businesses under this part is subject
 17 to all other statutes governing state procurement and all
 18 rules promulgated thereunder, as now or hereafter amended,
 19 except that in case of conflict this part governs ~~and--the~~
 20 ~~provisions--set--forth--in--18-1-102, 18-1-111, and 18-1-112~~
 21 ~~shall not apply.~~"

22 Section 107. Section 18-7-104, MCA, is amended to
 23 read:

24 "18-7-104. Union label. All printing for which the
 25 state of Montana is chargeable shall bear the label of the

1 branch of the international typographical union, the allied
 2 printing trades council, or the amalgamated lithographers of
 3 America of the locality in which it is printed, except under
 4 the following conditions. Printing firms not having the use
 5 of the labels and who are desirous of presenting bids for
 6 printing as enumerated above shall be required in the
 7 invitation for bids to establish consideration as a
 8 responsible bidder as follows:

9 (1) As a condition to consideration as a responsible
 10 bidder in conformance with this section, printing concerns
 11 must file with the secretary of state a sworn statement to
 12 the effect that employees in the employ of the concern which
 13 is to produce such printing are receiving the prevailing
 14 wage rate and are working under conditions prevalent in the
 15 locality in which the work is produced.

16 (2) Whenever a collective bargaining agreement is in
 17 effect between an employer and employees who are represented
 18 by a responsible organization which is in no way influenced
 19 or controlled by the management, such agreement and its
 20 provisions shall be construed as conditions prevalent in
 21 said locality and shall be the minimum requirement for being
 22 adjudged a responsible bidder under in conformance with
 23 ~~18-7-103 or 18-7-104~~ this section.

24 (3) Printing firms having the use of the union labels
 25 as set forth above shall be deemed as having complied with

1 ~~the provisions of 18-7-103 or 18-7-104~~ this section but
 2 ~~nothing in these provisions shall be construed as exempting~~
 3 ~~such bidders from any provisions of 18-7-103 or 18-7-104~~
 4 ~~and such bidders shall also be required to conform to all~~
 5 ~~provisions thereof.~~

6 Section 108. Section 20-15-403, MCA, is amended to
 7 read:

8 "20-15-403. Applications of other school district
 9 provisions. (1) When the term "school district" appears in
 10 the following sections outside of Title 20, the term
 11 includes community college districts and the provisions of
 12 those sections applicable to school districts apply to
 13 community college districts: 2-9-101, 2-9-111, 2-9-316,
 14 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,
 15 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103,
 16 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703,
 17 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108,
 18 15-24-502, 15-24-505, 15-30-221, 15-55-106, 15-70-301,
 19 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
 20 17-7-201, ~~18-1-102~~ [section 3], 18-1-105, ~~18-1-112~~
 21 ~~18-1-291~~, 18-2-101, ~~18-2-103~~, 18-2-113, 18-2-114, 18-2-115,
 22 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-602, 19-1-811,
 23 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104,
 24 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117,
 25 39-71-2106, 39-71-2206, 40-6-237, 40-8-124, 40-8-125,

1 40-8-128, 41-5-912, 49-3-101, 49-3-102, 53-20-304, 77-3-321,
2 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and
3 Rules 40(2)(g) and 15(c), M.R.Civ.P., as amended.

4 (2) When the term "school district" appears in a
5 section outside of Title 20 but the section is not listed in
6 subsection (1), the school district provision does not apply
7 to a community college district."

8 Section 109. Section 60-2-111, MCA, is amended to
9 read:

10 "60-2-111. Letting of contracts on state and
11 federal-aid highways. All contracts for work on state and
12 federal-aid highways, including portions in cities and
13 towns, and all contracts entered into under 7-14-410j shall
14 ~~must~~ be let by the commission state procurement officer.
15 ~~Except--as--otherwise--specifically--provided--the--commission~~
16 ~~may--enter--such--types--of--contracts--and--upon--such--terms--as--it~~
17 ~~may--decide~~. All contracts shall meet the requirements of
18 ~~Title 18, chapter 2, part 4 Title 18~~. When ~~there--is--no~~
19 ~~prevailing--rate--of--wages--set--by--collective--bargaining--the~~
20 ~~commission--shall--determine--the--prevailing--rate--to--be--stated~~
21 ~~in--the--contracts~~"

22 Section 110. Section 60-4-206, MCA, is amended to
23 read:

24 "60-4-206. Sale of ~~person's~~ property supplies and
25 ~~printed--matter~~. (1) ~~The--department--may--sell--at--public--or~~

1 ~~private--sale--as--it--determines--an--interest--in--person's~~
2 ~~property--however--acquired--by--it~~, Supplies which ~~it~~ the
3 ~~department~~ determines ~~is~~ are not necessary to the laying
4 out, altering, construction, improvement, or maintenance of
5 a highway shall be sold or transferred as provided in
6 [sections 62 through 64].

7 ~~(2)--The--department--may--sell--at--public--or--private--sale~~
8 ~~as--it--determines--maps--books--pamphlets--or--other--printed~~
9 ~~matter--prepared--or--acquired--by--the--department~~. ~~The~~
10 ~~department--may--sell--copies--of--highway--records--to--the--public~~
11 ~~and--may--set--reasonable--prices--for--them~~

12 ~~(3)(2)~~ The proceeds from sales made under this section
13 shall be paid into the state treasury to the credit of the
14 department."

15 Section 111. Section 87-1-209, MCA, is amended to
16 read:

17 "87-1-209. Acquisition and sale of lands or waters.
18 (1) The department, with the consent of the commission, may
19 acquire by purchase, condemnation, lease, agreement, gift,
20 or devise and may acquire easements upon lands or waters for
21 the purposes listed in this subsection. The department may
22 develop, operate, and maintain acquired lands or waters:

23 (a) for fish hatcheries, nursery ponds, or game farms;
24 (b) as lands or water suitable for game, bird, fish,
25 or fur-bearing animal restoration, propagation, or

1 protection;

2 (c) for public hunting, fishing, or trapping areas;

3 (d) to capture, propagate, transport, buy, sell, or
4 exchange any game, birds, fish, fish eggs, or fur-bearing
5 animals needed for propagation or stocking purposes or to
6 exercise control measures of undesirable species;

7 (e) for state parks and outdoor recreation;

8 (f) to extend and consolidate by exchange, lands or
9 waters suitable for these purposes.

10 (2) (a) The department, with the consent of the
11 commission, may dispose of lands and waters acquired by it
12 on those terms after that public notice, without regard to
13 other laws which provide for sale or disposal of state lands
14 and with or without reservation, as it considers necessary
15 and advisable.

16 (b) Notice of sale describing the lands or waters to
17 be disposed of shall be published once a week for 3
18 successive weeks in a newspaper with general circulation
19 printed and published in the county where the lands or
20 waters are situated or, if no newspaper is published in that
21 county, then in any newspaper with general circulation in
22 that county.

23 (c) The notice shall advertise for cash bids to be
24 presented to the director within 30 days from the date of
25 the first publication. Each bid must be accompanied by a

1 cashier's check or cash deposit in an amount equal to 10% of
2 the amount bid. The highest bid shall be accepted upon
3 payment of the balance due within 10 days after mailing
4 notice by registered or certified mail to the highest
5 bidder. If that bidder defaults on payment of the balance
6 due, then the next highest bidders shall be similarly
7 notified in succession until a sale is completed. Deposits
8 shall be returned to the unsuccessful bidders except bidders
9 defaulting after notification.

10 (d) The department shall reserve the right to reject
11 any bids which do not equal or exceed the full market value
12 of the lands and waters as determined by the department. The
13 department shall convey the lands and waters without
14 covenants of warranty by deed executed by the governor or in
15 his absence or disability by the lieutenant governor,
16 attested by the secretary of state and further countersigned
17 by the director.

18 ~~(3) Notwithstanding the provisions of 19-4-102, the~~
19 ~~The~~ department, with the consent of the commission, is
20 authorized to utilize the installment contract method to
21 facilitate the acquisition of wildlife management areas, in
22 which game and nongame fur-bearing animals and game and
23 nongame birds may breed and replenish, and areas which
24 provide access to fishing sites for the public. In no case
25 may the total cost of such installment contracts exceed the

1 cost of purchases authorized by the department and
2 appropriated by the legislature."

3 Section 112. Section 87-1-211, MCA, is amended to
4 read:

5 "87-1-211. Procuring of plans for construction
6 projects. ~~{1}--it--shall--be--the--duty--of--the~~ The department,
7 with the consent of the commission, ~~to~~ shall procure
8 suitable plans and specifications for any construction
9 project under its authority or under authority of the state
10 legislature when the estimated value or cost of the same
11 shall be more than \$1,000 but less than \$5,000, and the
12 ~~department--with--the--consent--of--the--commission--shall~~ cause
13 ~~said~~ the project to be constructed by contract, ~~but~~ the
14 ~~contract must be let by the procurement division of the~~
15 ~~department of administration~~ in accordance with ~~such~~ plans
16 ~~Title 18, and specifications. The contract is to be let~~
17 ~~after publishing a notice stating the time and place of~~
18 ~~letting the same and where plans and specifications may be~~
19 ~~seen. Notice shall be published not less than once a week~~
20 ~~for 2 weeks prior to the time of letting such contract in~~
21 ~~some newspaper of general circulation in the county in which~~
22 ~~said project is to be constructed and elsewhere if deemed~~
23 ~~best by the department. Upon concurrence of the commission~~
24 ~~the department, if not satisfied with the bids received or~~
25 ~~for any other reason, may reject any and all bids received~~

1 ~~and readvertise as often as may be necessary. Only one bid~~
2 ~~need be received and the contract shall be let to the lowest~~
3 ~~responsible bidder. Any person to whom a contract may be~~
4 ~~given shall be required to give a good and sufficient bond~~
5 ~~conditioned for the faithful performance and completion of~~
6 ~~such contract, the same to be approved by the department~~
7 ~~with the consent of the commission.~~

8 ~~{2}--The--department--may--contract--for--construction~~
9 ~~projects estimated to cost \$1,000 or less without providing~~
10 ~~for plans or specifications, notice, competitive bidding, or~~
11 ~~performance bonds."~~

12 Section 113. Functions of the department of
13 administration transferred to procurement division. The
14 functions of the department of administration in sections
15 2-15-1011, 2-17-403, 2-19-102, 18-2-104, 18-2-111, 18-3-101
16 through 18-3-104, 18-5-303, 13-7-302, 18-7-304, and in Title
17 18, chapter 5, parts 1 and 2, are transferred to the
18 procurement division of the department of administration.
19 Whenever the words "department of administration",
20 "department", or "director" appear in those sections, the
21 words "procurement division", "division", or "chief
22 procurement officer" shall be substituted, as appropriate.

23 Section 114. Codification instruction. Sections 1
24 through 85, except for sections 7 and 14, are intended to be
25 codified as an integral part of Title 18. Sections 7 and 14

LC 0748/01

1 are intended to be codified as an integral part of Title 2,
2 chapter 15, part 10, and the provisions of Title 2, chapter
3 15, apply to sections 7 and 14.

4 Section 115. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 116. Repealer. Sections 18-2-103, 18-2-112,
11 18-2-301, 18-2-302, 18-2-314, 18-2-315, 18-4-101, 18-4-102,
12 18-4-104, 18-4-105, 18-4-201 through 18-4-203, 18-4-211
13 through 18-4-214, 18-7-101 through 18-7-103, 18-7-105,
14 18-7-106, 18-7-111 through 18-7-113, 60-2-112, 60-2-113, and
15 Title 18, chapter 6, part 1, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 339-81

FISCAL NOTE

Form BD-15

In compliance with a written request received 2-9, 19 81, there is hereby submitted a Fiscal Note for House Bill 663 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Bill

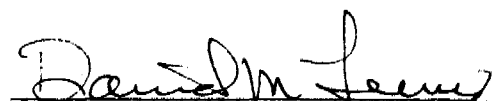
An act to simplify, clarify, make uniform, and centralize procurement of all construction, supplies, and services for state agencies in a Procurement Division allocated to the Department of Administration.

Assumptions

1. This bill will require a large scale transfer to the Department of Administration of resources and responsibilities related to purchasing from several agencies including Highway Planning, Highway Preconstruction, Fish and Game (Parks Division), DNRC (Water Division), University System, Data Processing Coordinator, and all consulting and professional service contracts. It is assumed that these transfers will have no net cost to the state (there may be some shifting of funds from earmarked or special revenue funds to general fund).
2. This bill will also result in transfers within the Department of Administration from the Architecture and Engineering, Purchasing, and Board of Examiners to the newly created Procurement Division. It is assumed that these transfers will not result in any increased net cost.
3. There will be new costs associated with administration of this bill for lawyers, technical writers and forms design technicians to develop and maintain the rules, regulations, forms and procedures for the new Procurement Division. Honorarium and expenses for the new policy board will also be additional cost. There may be (depending upon the rules and regulations adopted by the board) a general increase in administrative overhead accompanying all purchasing by the state. This would include the additional administrative costs associated with securing building leases and professional services through the bid procedures outlined in this bill.

Fiscal Impact

The net fiscal impact for administrative costs only for this bill are FY82 \$108,044, FY83 \$70,816, total biennium \$179,264.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/18/81