

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 417
 2 INTRODUCED BY J. Bryan Doolittle Vincent Ly
 3 Don Brann Meigs Seberg J. Edwards Judith
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS Buffey

5 CONCERNING PREFERENCES FOR RESIDENT BIDDERS IN AWARDING
 6 PUBLIC CONTRACTS; PROVIDING A 5 PERCENT PREFERENCE FOR A
 7 RESIDENT BIDDER WHOSE GOODS ARE MONTANA-MADE WHEN COMPETING
 8 AGAINST A NONRESIDENT BIDDER; REQUIRING CERTAIN BIDDERS TO
 9 SUBMIT AN AFFIDAVIT SPECIFYING THE BASIS FOR CLAIMING A
 10 PREFERENCE; PROVIDING A PENALTY FOR SUBMITTING A FALSE
 11 AFFIDAVIT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO
 12 ADOPT RULES FOR ADMINISTERING THE PREFERENCES; AMENDING
 13 SECTIONS 18-1-101 THROUGH 18-1-103, 18-1-112, 18-5-308, AND
 14 20-15-403, MCA; AND REPEALING SECTION 18-1-111, MCA."

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

16 Section 1. Section 18-1-101, MCA, is amended to read:

17 "18-1-101. ~~Department---of---administration---~~defined

18 Definitions. (1) Unless the context requires otherwise, in
 19 this title "department" means the department of
 20 administration provided for in Title 2, chapter 15, part 10.

21 (2) Unless the context requires otherwise, in this
 22 part the following definitions apply:

23 (a) "Goods" means supplies, equipment, materials,
 24 commodities, and specially manufactured products.

1 (b) "Montana-made" means manufactured or produced in
 2 this state and made with the:

3 (i) use of parts, equipment, or supplies of which 50%
 4 or more were manufactured or produced in this state; or

5 (ii) employment of persons of whom 50% or more are bona
 6 fide residents of Montana as defined in 18-2-401.

7 (c) "Nonresident bidder" means a bidder whose
 8 residence is not in this state as determined under 18-1-103.

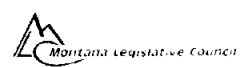
9 (d) "Public agency" means a department, commission,
 10 council, board, bureau, committee, institution, agency,
 11 government corporation, or other entity, instrumentality, or
 12 official of the legislative, executive, or judicial branch
 13 of this state and its political subdivisions, including the
 14 board of regents and the Montana university system.

15 (e) "Resident bidder" means a bidder whose residence
 16 is in this state as determined under 18-1-103."

17 Section 2. Section 18-1-102, MCA, is amended to read:

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

19 (1) In order to provide for an orderly administration of the
 20 business of the state of Montana in awarding public
 21 contracts for materials, supplies, equipment, the purchase
 22 of goods and for construction, repair, and public works of
 23 all kinds, it shall be the duty of each board, commission,
 24 officer, or individual charged by law with the
 25 responsibility for the execution of the contract on behalf



1 of--the--state,--board,--commission,--political-subdivision,
2 agency, school-district, or--a--public--corporation--of--the
3 state-of-Montana-to a public agency shall award such:

4 (a) a public contract for construction, repair, or
5 public works to the lowest responsible resident bidder who
6 is--a--resident-of-the-state-of-Montana-and whose bid is not
7 more than 3% higher than--that--of--the--lowest--responsible
8 bidder--who--is-a-nonresident-of-this-state, does not exceed
9 the applicable percentage when compared to the lowest
10 responsible nonresident bidder. The applicable percentage is
11 the greater of:

12 (i) 3%; or

13 (ii) the percentage that applies to a resident bidder
14 in the award of a public contract for construction, repair,
15 or public works in the nonresident bidder's state of
16 residence.

17 (2)(b) In-awarding-contracts a public contract for the
18 purchase of products,--materials,--supplies,--or--equipment,
19 such--board,--commission,--officer,--or--individual--shall--award
20 the-contract goods, if the goods are comparable in quality
21 and performance, to any-such the lowest responsible resident
22 whose---offered---materials,---supplies,---or---equipment---are
23 manufactured-or-produced-in-this-state-by--Montana--industry
24 and-labor-and bidder whose:

25 (i) bid is not more than 3% higher than that of the

1 lowest responsible resident nonresident bidder whose-offered
2 materials, supplies, or equipment are not so-manufactured-or
3 produced, provided that such products, materials,--supplies,
4 and equipment are comparable in quality and performance.;

5 (ii) offered goods are Montana-made and whose bid is
6 not more than 5% higher than that of the lowest responsible
7 nonresident bidder; or

8 (iii) offered goods are Montana-made and whose bid is
9 not more than 3% higher than that of the lowest responsible
10 resident bidder whose offered goods are not Montana-made.

11 (3)--In--awarding--contracts--for--construction, repair,
12 and--public--works--of--all--kinds,---bids---received---from
13 nonresident--bidders--are--subject--to--the--3%--preference, or
14 that-percent-that-applies-to-a-Montana-bidder-in--the--award
15 of--public--contracts--in--the-nonresident-bidder's-state-of
16 residence, whichever is greater.

17 (4)(2) This-requirement-shall-prevail The preferences
18 in this section apply:

19 (a) whether the law requires advertisement for bids or
20 does not require advertisement for bids; and

21 (b) it---shall---apply to contracts involving funds
22 obtained from the federal government unless expressly
23 prohibited by the laws of the United States or regulations
24 adopted pursuant thereto."

25 Section 3. Section 18-1-103, MCA, is amended to read:

1 "18-1-103. Residence defined. (1) For the purpose of
2 18-1-102, 18-1-103, and 18-1-112, the word "resident" shall
3 include actual residence of an individual within this state
4 for a period of more than 1 year immediately prior to
5 bidding.

6 (2) In a partnership enterprise or an association, the
7 majority of all partners or association members shall have
8 been actual residents of the state of Montana for more than
9 1 year immediately prior to bidding.

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

20 (4) Notwithstanding the foregoing, any bidder on a
21 contract for the purchase of products, materials, supplies,
22 or equipment goods, whether an individual, partnership, or
23 corporation, foreign or domestic and regardless of ownership
24 thereof, whose offered materials, supplies, or equipment
25 goods are manufactured or produced in this state by industry

1 ~~located in Montana and Montana labor shall be deemed to be~~
2 Montana-made is a resident for the purpose of 18-1-102,
3 18-1-103, and 18-1-112."

4 Section 4. Section 18-1-112, MCA, is amended to read:

5 "18-1-112. Montana product preference provisions. (1)
6 Each contract awarded by ~~any political subdivision, school~~
7 ~~district, public corporation, or~~ a public agency of the
8 ~~state of Montana shall~~ must contain among its provisions a
9 requirement that in all instances ~~products manufactured or~~
10 ~~produced in this state by Montana industry and labor shall~~
11 Montana-made goods must be preferred for use in all projects
12 ~~and in all materials, supplies, and equipment procured~~ if
13 such ~~products, materials, equipment, and supplies~~ goods are
14 comparable in price and quality.

15 (2) It is the intent of 18-1-102, 18-1-103, and this
16 section that, whenever possible, ~~products manufactured and~~
17 ~~produced in this state which~~ Montana-made goods that are
18 suitable substitutes for products goods manufactured or
19 produced outside the state and comparable in price, quality,
20 and performance ~~shall be~~ are preferred for use in all
21 projects and in all state institutions.

22 (3) Failure to comply with the law in this respect
23 ~~shall disqualify~~ disqualifies such contractor as a qualified
24 bidder for future contracts with the ~~state of Montana, any~~
25 ~~legal subdivision of the state of Montana, any school~~

1 ~~district, public corporation, or agency~~ for a period of 2
2 years.

3 (4) The preference given to ~~Montana products shall~~
4 apply Montana-made goods applies to contracts involving
5 funds obtained from the federal government unless expressly
6 prohibited by the laws of the United States or regulations
7 adopted pursuant thereto."

8 Section 5. Section 18-5-308, MCA, is amended to read:

9 "18-5-308. Construction with other sections.
10 Procurement from small businesses under this part is subject
11 to all other statutes governing state procurement and all
12 rules promulgated thereunder, as now or hereafter amended,
13 except that in case of conflict this part governs and the
14 provisions set forth in 18-1-102~~7-18-1-1117~~ and 18-1-112
15 shall not apply."

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

17 "20-15-403. Applications of other school district
18 provisions. (1) When the term "school district" appears in
19 the following sections outside of Title 20, the term
20 includes community college districts and the provisions of
21 those sections applicable to school districts apply to
22 community college districts: 2-9-101, 2-9-111, 2-9-316,
23 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,
24 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103,
25 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703,

1 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108,
2 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202,
3 17-6-103, 17-6-204, 17-6-213, 17-7-201, ~~18-1-1027-18-1-1127~~,
4 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404,
5 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402,
6 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103,
7 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206,
8 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
9 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and
10 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as
11 amended.

12 (2) When the term "school district" appears in a
13 section outside of Title 20 but the section is not listed in
14 subsection (1), the school district provision does not apply
15 to a community college district."

16 NEW SECTION. Section 7. Bidder to submit affidavit --
17 penalty. (1) A bidder on a public contract for goods who is
18 claiming a preference under this part shall submit to the
19 public agency, together with the bid, an affidavit
20 specifying in detail, as determined by rule by the
21 department, the basis on which the bidder claims the
22 preference.

23 (2) If the public agency determines that the bidder
24 has submitted a false affidavit under subsection (1), the
25 bidder is disqualified as a bidder for future public

1 contracts for goods with any public agency for a period of 5
2 years from the date of the determination.

3 NEW SECTION. Section 8. Rules. The department shall
4 adopt rules necessary to administer the preferences provided
5 in this part. The department's rules apply to all public
6 employers.

7 NEW SECTION. Section 9. Repealer. Section 18-1-111,
8 MCA, is repealed.

9 NEW SECTION. Section 10. Codification instruction.
10 Sections 7 and 8 are intended to be codified as an integral
11 part of Title 18, chapter 1, part 1, and the provisions of
12 Title 18, chapter 1, part 1, apply to sections 7 and 8.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB417, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the provisions concerning preferences for resident bidders in awarding public contracts; providing a 5% preference for a resident bidder whose goods are Montana-Made when competing against a nonresident bidder; requiring certain bidders to submit an affidavit specifying the basis for claiming a preference; providing a penalty for submitting a false affidavit; requiring the Department of Administration to adopt rules for administering the preferences; amending Sections 18-1-101 through 18-1-103, 18-1-112, 18-5-308, and 20-15-403, MCA; and repealing Section 18-1-111, MCA.

ASSUMPTIONS:

1. Significantly impacts statewide purchases of food and paint, and \$1.25 million of purchases made by Department of Highways.
2. Estimates are annualized.
3. State agencies will pay 2% more for goods.
4. Current preference is 3%. This is an additional 2%.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Increased Operating Expenses	\$3,747,976	\$3,822,936	\$ 74,960	\$3,747,976	\$3,822,936	\$ 74,960

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

This will affect all government purchasing activities in terms of determining preference and awarding contracts to vendors who fall within the applicable percentages (3% for Montana vendors; 5% for in-state products).

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Potential exists for out-of-state bidders to be forced out of competition with this additional preference. Within the category of food, a resulting increase of 12% (\$212,454), can be expected. This amount is equivalent to the business out-of-state food vendors are receiving, even with the 3% preference.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

The possibility of a non-resident vendor bidding "Montana Made" goods or providing Montana labor is not addressed. No clear award could be made under these circumstances.

David L. Hunter DATE 1/30/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

J. Brown DATE 1/31/87
 JAN BROWN, PRIMARY SPONSOR

Fiscal Note for HB417, as introduced.

HB 417

APPROVED BY COMM. ON
BUSINESS AND LABOR

1 STATEMENT OF INTENT

2 HOUSE BILL 417

3 House Business and Labor Committee

4

5 A statement of intent is required for this bill because
6 section 7 authorizes the department of administration to
7 adopt rules necessary to administer the preferences provided
8 in Title 18, chapter 1, part 1. The legislature intends that
9 the rules should prevent bidders from circumventing the
10 preference provisions by creating business entities
11 specifically to obtain residency status or to gain an award
12 of a public contract for goods after being disqualified for
13 submitting a false affidavit. The rules should also specify
14 the contents of an affidavit to be submitted by a bidder as
15 required under section 6.

1 HOUSE BILL NO. 417

2 INTRODUCED BY J. BROWN, GRADY, VINCENT, LORY, D. BROWN,
3 MEYER, GOULD, SCHYE, EUDAILY, MAZUREK, QUILICI, HAFPEY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS
6 CONCERNING PREFERENCES FOR RESIDENT BIDDERS IN AWARDING
7 PUBLIC CONTRACTS; PROVIDING A 5 PERCENT PREFERENCE FOR A
8 RESIDENT BIDDER WHOSE GOODS ARE MONTANA-MADE WHEN COMPETING
9 AGAINST A NONRESIDENT BIDDER; REQUIRING CERTAIN BIDDERS TO
10 SUBMIT AN AFFIDAVIT SPECIFYING THE BASIS FOR CLAIMING A
11 PREFERENCE; PROVIDING A PENALTY FOR SUBMITTING A FALSE
12 AFFIDAVIT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO
13 ADOPT RULES FOR ADMINISTERING THE PREFERENCES; AND AMENDING
14 SECTIONS 18-1-101 THROUGH 18-1-103, 18-1-112, ~~18-5-308~~ AND
15 ~~20-15-403, MCA; AND REPEALING SECTION 18-1-111, MCA."~~

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 18-1-101, MCA, is amended to read:

19 "18-1-101. ~~Department---of---administration---defined~~
20 Definitions. (1) Unless the context requires otherwise, in
21 this title "department" means the department of
22 administration provided for in Title 2, chapter 15, part 10.

23 (2) Unless the context requires otherwise, in this
24 part the following definitions apply:

25 (a) "Goods" means supplies, equipment, materials,

1 commodities, and specially manufactured products.

2 (b) "Montana-made" means manufactured or produced in
3 this state and made with the:

4 (i) use of parts, equipment MATERIAL, or supplies of
5 which 50% or more were manufactured or produced in this
6 state; or

7 (ii) employment of persons of whom 50% or more are bona
8 fide residents of Montana as defined in 18-2-401.

9 (c) "Nonresident bidder" means a bidder whose
10 residence is not in this state as determined under 18-1-103.

11 (d) "Public agency" means a department, commission,
12 council, board, bureau, committee, institution, agency,
13 government corporation, or other entity, instrumentality, or
14 official of the legislative, executive, or judicial branch
15 of this state and its political subdivisions, including the
16 board of regents and the Montana university system.

17 (e) "Resident bidder" means a bidder whose residence
18 is in this state as determined under 18-1-103."

19 Section 2. Section 18-1-102, MCA, is amended to read:

20 "18-1-102. State contracts to lowest resident bidder.

21 (1) In order to provide for an orderly administration of the
22 business of the state of Montana in awarding public
23 contracts for ~~materials, supplies, equipment,~~ the purchase
24 of goods and for construction, repair, and public works of
25 all kinds, ~~it shall be the duty of each board, commission,~~

1 officer, or individual charged by law with the
 2 responsibility for the execution of the contract on behalf
 3 of the state, board, commission, political subdivision,
 4 agency, school district, or a public corporation of the
 5 state of Montana to a public agency shall award such:

6 (a) a public contract for construction, repair, or
 7 public works to the lowest responsible resident bidder who
 8 is a resident of the state of Montana and whose bid is not
 9 more than 3% higher than that of the lowest responsible
 10 bidder who is a nonresident of this state. does not exceed
 11 the applicable percentage when compared to the lowest
 12 responsible nonresident bidder. The applicable percentage is
 13 the greater of:

14 (i) 3%; or

15 (ii) the percentage that applies to a resident bidder
 16 in the award of a public contract for construction, repair,
 17 or public works in the nonresident bidder's state of
 18 residence.

19 (b) In awarding contracts a public contract for the
 20 purchase of products, materials, supplies, or equipment,
 21 such board, commission, officer, or individual shall award
 22 the contract goods, if the goods are comparable in quality
 23 and performance, to any such the lowest responsible resident
 24 whose offered materials, supplies, or equipment are
 25 manufactured or produced in this state by Montana industry

1 and labor and bidder whose:

2 (i) bid is not more than 3% higher than that of the
 3 lowest responsible resident nonresident bidder whose offered
 4 materials, supplies, or equipment are not so manufactured or
 5 produced, provided that such products, materials, supplies,
 6 and equipment are comparable in quality and performance;

7 (ii) offered goods are Montana-made and whose bid is
 8 not more than 5% higher than that of the lowest responsible
 9 nonresident bidder; or

10 (iii) offered goods are Montana-made and whose bid is
 11 not more than 3% higher than that of the lowest responsible
 12 resident bidder whose offered goods are not Montana-made;

13 HOWEVER,

14 (IV) NO COMBINATION OF PREFERENCES UNDER THIS
 15 SUBSECTION MAY EXCEED 5%.

16 (3) In awarding contracts for construction, repair,
 17 and public works of all kinds, bids received from
 18 nonresident bidders are subject to the 3% preference, or
 19 that percent that applies to a Montana bidder in the award
 20 of public contracts in the nonresident bidder's state of
 21 residence, whichever is greater.

22 (4)(2) This requirement shall prevail. The preferences
 23 in this section apply:

24 (a) whether the law requires advertisement for bids or
 25 does not require advertisement for bids; and

1 ~~(b) it shall apply~~ to contracts involving funds
 2 obtained from the federal government unless expressly
 3 prohibited by the laws of the United States or regulations
 4 adopted pursuant thereto."

5 Section 3. Section 18-1-103, MCA, is amended to read:

6 "18-1-103. Residence defined. (1) For the purpose of
 7 18-1-102, 18-1-103, and 18-1-112, the word "resident" shall
 8 include actual residence of an individual within this state
 9 for a period of more than 1 year immediately prior to
 10 bidding.

11 (2) In a partnership enterprise or an association, the
 12 majority of all partners or association members shall have
 13 been actual residents of the state of Montana for more than
 14 1 year immediately prior to bidding.

15 (3) Domestic corporations organized under the laws of
 16 the state of Montana are prima facie eligible to bid as
 17 residents, but this qualification may be set aside and a
 18 successful bid disallowed where it is shown to the
 19 satisfaction of the board, commission, officer, or
 20 individual charged with the responsibility for the execution
 21 of such contract that said corporation is a wholly owned
 22 subsidiary of a foreign corporation or that said corporation
 23 was formed for the purpose of circumventing the provisions
 24 relating to residence.

25 (4) Notwithstanding the foregoing, any bidder on a

1 contract for the purchase of ~~products, materials, supplies,~~
 2 ~~or equipment~~ goods, whether an individual, partnership, or
 3 corporation, foreign or domestic and regardless of ownership
 4 thereof, whose offered ~~materials, supplies, or equipment~~
 5 goods are ~~manufactured or produced in this state by industry~~
 6 ~~located in Montana and Montana labor shall be deemed to be~~
 7 Montana-made is a resident for the purpose of 18-1-102,
 8 18-1-103, and 18-1-112."

9 Section 4. Section 18-1-112, MCA, is amended to read:

10 "18-1-112. Montana product preference provisions. (1)
 11 Each contract awarded by ~~any political subdivision, school~~
 12 ~~district, public corporation, or a public~~ agency ~~of the~~
 13 ~~state of Montana shall~~ must contain among its provisions a
 14 requirement that in all instances ~~products manufactured or~~
 15 ~~produced in this state by Montana industry and labor shall~~
 16 Montana-made goods must be preferred for use in all projects
 17 ~~and in all materials, supplies, and equipment procured~~ if
 18 such ~~products, materials, equipment, and supplies~~ goods are
 19 comparable in price and quality.

20 (2) It is the intent of 18-1-102, 18-1-103, and this
 21 section that, whenever possible, ~~products manufactured and~~
 22 ~~produced in this state which~~ Montana-made goods that are
 23 suitable substitutes for ~~products~~ goods manufactured or
 24 produced outside the state and comparable in price, quality,
 25 and performance ~~shall be~~ are preferred for use in all

1 projects and in all state institutions.

2 (3) Failure to comply with the law in this respect
 3 ~~shall disqualify~~ disqualifies such contractor as a qualified
 4 bidder for future contracts with the ~~state of Montana~~ any
 5 ~~legal subdivision of the state of Montana~~ any school
 6 district, public corporation or agency for a period of 2
 7 years.

8 (4) The preference given to ~~Montana products~~ shall
 9 apply Montana-made goods applies to contracts involving
 10 funds obtained from the federal government unless expressly
 11 prohibited by the laws of the United States or regulations
 12 adopted pursuant thereto."

13 ~~Section 5. Section 20-5-300, MCA, is amended to read:~~
 14 ~~"20-5-300. Construction with other sections:~~
 15 ~~Procurement from small businesses under this part is subject~~
 16 ~~to all other statutes governing state procurement and all~~
 17 ~~rules promulgated thereunder, as now or hereafter amended,~~
 18 ~~except that in case of conflict this part governs and the~~
 19 ~~provisions set forth in 20-1-102, 20-1-111, and 20-1-112~~
 20 ~~shall not apply."~~

21 Section 5. Section 20-15-403, MCA, is amended to read:
 22 "20-15-403. Applications of other school district
 23 provisions. (1) When the term "school district" appears in
 24 the following sections outside of Title 20, the term
 25 includes community college districts and the provisions of

1 those sections applicable to school districts apply to
 2 community college districts: 2-9-101, 2-9-111, 2-9-316,
 3 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,
 4 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103,
 5 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703,
 6 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108,
 7 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202,
 8 17-6-103, 17-6-204, 17-6-213, 17-7-201, ~~18-1-102, 18-1-112,~~
 9 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404,
 10 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402,
 11 27-18-406, 33-27-1104, 39-3-104, 39-4-107, 39-31-103,
 12 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206,
 13 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 14 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and
 15 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as
 16 amended.

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

21 NEW SECTION. Section 6. Bidder to submit affidavit --
 22 penalty. (1) A bidder on a public contract for goods who is
 23 claiming a preference under this part shall EITHER HAVE ON
 24 FILE WITH OR submit to the public agency, ~~together with the~~
 25 WITH ITS bid, an affidavit specifying in detail, as

1 determined by rule by the department, the basis on which the
2 bidder claims the preference.

3 (2) If the public agency determines that the bidder
4 has submitted a false affidavit under subsection (1), the
5 bidder is disqualified as a bidder for future public
6 contracts for goods with any public agency for a period of 5
7 years from the date of the determination.

8 NEW SECTION. Section 7. Rules. The department shall
9 adopt rules necessary to administer the preferences provided
10 in this part. The department's rules apply to all public
11 employers AGENCIES.

12 ~~NEW SECTION. Section 8. Repealer. Section 18-1-111,~~
13 ~~MEA, is repealed.~~

14 NEW SECTION. Section 8. Codification instruction.
15 Sections 7 6 and 8 7 are intended to be codified as an
16 integral part of Title 18, chapter 1, part 1, and the
17 provisions of Title 18, chapter 1, part 1, apply to sections
18 7 6 and 8 7.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 417

3 House Business and Labor Committee

4

5 A statement of intent is required for this bill because
6 section 7 authorizes the department of administration to
7 adopt rules necessary to administer the preferences provided
8 in Title 18, chapter 1, part 1. The legislature intends that
9 the rules should prevent bidders from circumventing the
10 preference provisions by creating business entities
11 specifically to obtain residency status or to gain an award
12 of a public contract for goods after being disqualified for
13 submitting a false affidavit. The rules should also specify
14 the contents of an affidavit to be submitted by a bidder as
15 required under section 6.



THIRD READING

HB-417

HOUSE BILL NO. 417

INTRODUCED BY J. BROWN, GRADY, VINCENT, LORY, D. BROWN,
MEYER, GOULD, SCHYE, EUDAILY, MAZUREK, QUILICI, HAFPEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS
CONCERNING PREFERENCES FOR RESIDENT BIDDERS IN AWARDING
PUBLIC CONTRACTS; PROVIDING A 5 PERCENT PREFERENCE FOR A
RESIDENT BIDDER WHOSE GOODS ARE MONTANA-MADE WHEN COMPETING
AGAINST A NONRESIDENT BIDDER; REQUIRING CERTAIN BIDDERS TO
SUBMIT AN AFFIDAVIT SPECIFYING THE BASIS FOR CLAIMING A
PREFERENCE; PROVIDING A PENALTY FOR SUBMITTING A FALSE
AFFIDAVIT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO
ADOPT RULES FOR ADMINISTERING THE PREFERENCES; AND AMENDING
SECTIONS 18-1-101 THROUGH 18-1-103, 18-1-112, 18-5-300, AND
20-15-403, MCA, AND REPEALING SECTION 18-1-111, MCA."

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

Section 1. Section 18-1-101, MCA, is amended to read:

"18-1-101. Department---of---administration---defined

Definitions. (1) Unless the context requires otherwise, in
this title "department" means the department of
administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this
part the following definitions apply:

(a) "Goods" means supplies, equipment, materials,

commodities, and specially manufactured products.

(b) "Montana-made" means manufactured or produced in
this state and made with the:

(i) use of parts, equipment MATERIAL, or supplies of
which 50% or more were manufactured or produced in this
state; or

(ii) employment of persons of whom 50% or more are bona
fide residents of Montana as defined in 18-2-401.

(c) "Nonresident bidder" means a bidder whose
residence is not in this state as determined under 18-1-103.

(d) "Public agency" means a department, commission,
council, board, bureau, committee, institution, agency,
government corporation, or other entity, instrumentality, or
official of the legislative, executive, or judicial branch
of this state and its political subdivisions, including the
board of regents and the Montana university system.

(e) "Resident bidder" means a bidder whose residence
is in this state as determined under 18-1-103."

Section 2. Section 18-1-102, MCA, is amended to read:

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

(1) In order to provide for an orderly administration of the
business of the state of Montana in awarding public
contracts for materials, supplies, equipment, the purchase
of goods and for construction, repair, and public works of
all kinds, it shall be the duty of each board, commission,



1 officer, or individual charged by law with the
 2 responsibility for the execution of the contract on behalf
 3 of the state, board, commission, political subdivision,
 4 agency, school district, or a public corporation of the
 5 state of Montana to a public agency shall award such:

6 (a) a public contract for construction, repair, or
 7 public works to the lowest responsible resident bidder who
 8 is a resident of the state of Montana and whose bid is not
 9 more than 3% higher than that of the lowest responsible
 10 bidder who is a nonresident of this state: does not exceed
 11 the applicable percentage when compared to the lowest
 12 responsible nonresident bidder. The applicable percentage is
 13 the greater of:

- 14 (i) 3%; or
- 15 (ii) the percentage that applies to a resident bidder
- 16 in the award of a public contract for construction, repair,
- 17 or public works in the nonresident bidder's state of
- 18 residence.

19 (b) In awarding contracts a public contract for the
 20 purchase of products, materials, supplies, or equipment,
 21 such board, commission, officer, or individual shall award
 22 the contract goods, if the goods are comparable in quality
 23 and performance, to any such the lowest responsible resident
 24 whose offered materials, supplies, or equipment are
 25 manufactured or produced in this state by Montana industry

1 and labor and bidder whose:

2 (i) bid is not more than 3% higher than that of the
 3 lowest responsible resident nonresident bidder whose offered
 4 materials, supplies, or equipment are not so manufactured or
 5 produced, provided that such products, materials, supplies,
 6 and equipment are comparable in quality and performance;

7 (ii) offered goods are Montana-made and whose bid is
 8 not more than 5% higher than that of the lowest responsible
 9 nonresident bidder; or

10 (iii) offered goods are Montana-made and whose bid is
 11 not more than 3% higher than that of the lowest responsible
 12 resident bidder whose offered goods are not Montana-made;

13 HOWEVER,

14 (IV) NO COMBINATION OF PREFERENCES UNDER THIS
 15 SUBSECTION MAY EXCEED 5%.

16 (3) In awarding contracts for construction, repair,
 17 and public works of all kinds, bids received from
 18 nonresident bidders are subject to the 3% preference, or
 19 that percent that applies to a Montana bidder in the award
 20 of public contracts in the nonresident bidder's state of
 21 residence, whichever is greater.

22 (4)(2) This requirement shall prevail. The preferences
 23 in this section apply:

24 (a) whether the law requires advertisement for bids or
 25 does not require advertisement for bids; and

1 **(b)** ~~it shall apply~~ to contracts involving funds
 2 obtained from the federal government unless expressly
 3 prohibited by the laws of the United States or regulations
 4 adopted pursuant thereto."

5 Section 3. Section 18-1-103, MCA, is amended to read:

6 "18-1-103. Residence defined. (1) For the purpose of
 7 18-1-102, 18-1-103, and 18-1-112, the word "resident" shall
 8 include actual residence of an individual within this state
 9 for a period of more than 1 year immediately prior to
 10 bidding.

11 (2) In a partnership enterprise or an association, the
 12 majority of all partners or association members shall have
 13 been actual residents of the state of Montana for more than
 14 1 year immediately prior to bidding.

15 (3) Domestic corporations organized under the laws of
 16 the state of Montana are prima facie eligible to bid as
 17 residents, but this qualification may be set aside and a
 18 successful bid disallowed where it is shown to the
 19 satisfaction of the board, commission, officer, or
 20 individual charged with the responsibility for the execution
 21 of such contract that said corporation is a wholly owned
 22 subsidiary of a foreign corporation or that said corporation
 23 was formed for the purpose of circumventing the provisions
 24 relating to residence.

25 (4) Notwithstanding the foregoing, any bidder on a

1 contract for the purchase of products, materials, supplies,
 2 or equipment goods, whether an individual, partnership, or
 3 corporation, foreign or domestic and regardless of ownership
 4 thereof, whose offered materials, supplies, or equipment
 5 goods are manufactured or produced in this state by industry
 6 located in Montana and Montana labor shall be deemed to be
 7 Montana-made is a resident for the purpose of 18-1-102,
 8 18-1-103, and 18-1-112."

9 Section 4. Section 18-1-112, MCA, is amended to read:

10 "18-1-112. Montana product preference provisions. (1)
 11 Each contract awarded by ~~any political subdivision, school~~
 12 ~~district, public corporation, or a public agency of the~~
 13 ~~state of Montana shall~~ must contain among its provisions a
 14 requirement that in all instances ~~products manufactured or~~
 15 ~~produced in this state by Montana industry and labor shall~~
 16 Montana-made goods must be preferred for use in all projects
 17 ~~and in all materials, supplies, and equipment procured~~ if
 18 such products, materials, equipment, and supplies goods are
 19 comparable in price and quality.

20 (2) It is the intent of 18-1-102, 18-1-103, and this
 21 section that, whenever possible, ~~products manufactured and~~
 22 ~~produced in this state which~~ Montana-made goods that are
 23 suitable substitutes for products goods manufactured or
 24 produced outside the state and comparable in price, quality,
 25 and performance ~~shall be~~ are preferred for use in all

1 projects and in all state institutions.

2 (3) Failure to comply with the law in this respect
 3 shall ~~disqualify~~ disqualifies such contractor as a qualified
 4 bidder for future contracts with the ~~state of Montana~~ any
 5 ~~legal subdivision of the state of Montana~~ any school
 6 district, public corporation, or agency for a period of 2
 7 years.

8 (4) The preference given to ~~Montana products~~ shall
 9 apply Montana-made goods applies to contracts involving
 10 funds obtained from the federal government unless expressly
 11 prohibited by the laws of the United States or regulations
 12 adopted pursuant thereto."

13 ~~Section 5. Section 20-15-403, MCA, is amended to read:~~
 14 ~~"20-15-403. Construction with other sections:~~
 15 ~~Procurement from small businesses under this part is subject~~
 16 ~~to all other statutes governing state procurement and all~~
 17 ~~rules promulgated thereunder, as now or hereafter amended,~~
 18 ~~except that in case of conflict this part governs and the~~
 19 ~~provisions set forth in 20-1-102, 20-1-111, and 20-1-112~~
 20 ~~shall not apply."~~

21 Section 5. Section 20-15-403, MCA, is amended to read:
 22 "20-15-403. Applications of other school district
 23 provisions. (1) When the term "school district" appears in
 24 the following sections outside of Title 20, the term
 25 includes community college districts and the provisions of

1 those sections applicable to school districts apply to
 2 community college districts: 2-9-101, 2-9-111, 2-9-316,
 3 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,
 4 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103,
 5 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703,
 6 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108,
 7 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202,
 8 17-6-103, 17-6-204, 17-6-213, 17-7-201, ~~20-1-102, 20-1-112,~~
 9 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404,
 10 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402,
 11 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103,
 12 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206,
 13 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 14 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and
 15 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as
 16 amended.

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

21 NEW SECTION. Section 6. Bidder to submit affidavit --
 22 penalty. (1) A bidder on a public contract for goods who is
 23 claiming a preference under this part shall EITHER HAVE ON
 24 FILE WITH OR submit to the public agency, ~~together with the~~
 25 WITH ITS bid, an affidavit specifying in detail, as

1 determined by rule by the department, the basis on which the
2 bidder claims the preference.

3 (2) If the public agency determines that the bidder
4 has submitted a false affidavit under subsection (1), the
5 bidder is disqualified as a bidder for future public
6 contracts for goods with any public agency for a period of 5
7 years from the date of the determination.

8 NEW SECTION. Section 7. Rules. The department shall
9 adopt rules necessary to administer the preferences provided
10 in this part. The department's rules apply to all public
11 employers AGENCIES.

12 ~~NEW SECTION. Section 8. Repealer. Section 18-1-117,~~
13 ~~MEA, is repealed.~~

14 NEW SECTION. Section 8. Codification instruction.
15 Sections 7 6 and 8 7 are intended to be codified as an
16 integral part of Title 18, chapter 1, part 1, and the
17 provisions of Title 18, chapter 1, part 1, apply to sections
18 7 6 and 8 7.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 417

3 House Business and Labor Committee

4
5 A statement of intent is required for this bill because
6 section 7 authorizes the department of administration to
7 adopt rules necessary to administer the preferences provided
8 in Title 18, chapter 1, part 1. The legislature intends that
9 the rules should prevent bidders from circumventing the
10 preference provisions by creating business entities
11 specifically to obtain residency status or to gain an award
12 of a public contract for goods after being disqualified for
13 submitting a false affidavit. The rules should also specify
14 the contents of an affidavit to be submitted by a bidder as
15 required under section 6.

1 HOUSE BILL NO. 417

2 INTRODUCED BY J. BROWN, GRADY, VINCENT, LORY, D. BROWN,
3 MEYER, GOULD, SCHYE, EUDAILY, MAZUREK, QUILICI, HAFPEY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS
6 CONCERNING PREFERENCES FOR RESIDENT BIDDERS IN AWARDING
7 PUBLIC CONTRACTS; PROVIDING A 5 PERCENT PREFERENCE FOR A
8 RESIDENT BIDDER WHOSE GOODS ARE MONTANA-MADE WHEN COMPETING
9 AGAINST A NONRESIDENT BIDDER; REQUIRING CERTAIN BIDDERS TO
10 SUBMIT AN AFFIDAVIT SPECIFYING THE BASIS FOR CLAIMING A
11 PREFERENCE; PROVIDING A PENALTY FOR SUBMITTING A FALSE
12 AFFIDAVIT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO
13 ADOPT RULES FOR ADMINISTERING THE PREFERENCES; AND AMENDING
14 SECTIONS 18-1-101 THROUGH 18-1-103, 18-1-112, ~~18-5-308~~, AND
15 20-15-403, MCA, ~~AND REPEALING SECTION 18-1-117, MCA.~~"

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 18-1-101, MCA, is amended to read:

19 "18-1-101. ~~Department---of---administration---defined~~
20 Definitions. (1) Unless the context requires otherwise, in
21 this title "department" means the department of
22 administration provided for in Title 2, chapter 15, part 10.

23 (2) Unless the context requires otherwise, in this
24 part the following definitions apply:

25 (a) "Goods" means supplies, equipment, materials,

1 commodities, and specially manufactured products.

2 (b) "Montana-made" means manufactured or produced in
3 this state and made with the:

4 (i) use of parts, equipment MATERIAL, or supplies of
5 which 50% or more were manufactured or produced in this
6 state; or

7 (ii) employment of persons of whom 50% or more are bona
8 fade residents of Montana as defined in 18-2-401.

9 (c) "Nonresident bidder" means a bidder whose
10 residence is not in this state as determined under 18-1-103.

11 (d) "Public agency" means a department, commission,
12 council, board, bureau, committee, institution, agency,
13 government corporation, or other entity, instrumentality, or
14 official of the legislative, executive, or judicial branch
15 of this state and its political subdivisions, including the
16 board of regents and the Montana university system.

17 (e) "Resident bidder" means a bidder whose residence
18 is in this state as determined under 18-1-103."

19 Section 2. Section 18-1-102, MCA, is amended to read:

20 "18-1-102. State contracts to lowest resident bidder.

21 (1) (A) In order to provide for an orderly administration of
22 the business of the state of Montana in awarding public
23 contracts for materials, supplies, equipment, the purchase
24 of goods and for construction, repair, and public works of
25 all kinds, it shall be the duty of each board, commission,

1 ~~officer, or individual charged by law with the~~
 2 ~~responsibility for the execution of the contract on behalf~~
 3 ~~of the state, board, commission, political subdivision,~~
 4 ~~agency, school district, or a public corporation of the~~
 5 ~~state of Montana to a public agency shall award such:~~
 6 (1)(I) a public contract for construction, repair, or
 7 public works to the lowest responsible resident bidder who
 8 is a resident of the state of Montana and whose bid is not
 9 more than 3% higher than that of the lowest responsible
 10 bidder who is a nonresident of this state. does not exceed
 11 the applicable percentage when compared to the lowest
 12 responsible nonresident bidder. The applicable percentage is
 13 the greater of:
 14 (i)(A) 3%; or
 15 (i)(B) the percentage that applies to a resident
 16 bidder in the award of a public contract for construction,
 17 repair, or public works in the nonresident bidder's state of
 18 residence.
 19 (2)(b)(II) In awarding contracts a public contract for
 20 the purchase of products, materials, supplies, or equipment,
 21 such board, commission, officer, or individual shall award
 22 the contract goods, if the goods are comparable in quality
 23 and performance, to any such the lowest responsible resident
 24 whose offered materials, supplies, or equipment are
 25 manufactured or produced in this state by Montana industry

1 ~~and labor and bidder whose:~~
 2 (i)(A) bid is not more than 3% higher than that of the
 3 lowest responsible resident nonresident bidder whose offered
 4 materials, supplies, or equipment are not so manufactured or
 5 produced, provided that such products, materials, supplies,
 6 and equipment are comparable in quality and performance;
 7 (i)(B) offered goods are Montana-made and whose bid is
 8 not more than 5% higher than that of the lowest responsible
 9 nonresident bidder; or
 10 (iii)(C) offered goods are Montana-made and whose bid
 11 is not more than 3% higher than that of the lowest
 12 responsible resident bidder whose offered goods are not
 13 Montana-made. HOWEVER,
 14 (B) (I) IF BOTH SUBSECTIONS (1)(A)(II)(B) AND
 15 (1)(A)(II)(C) ARE APPLICABLE TO BIDS FOR A CONTRACT, THE
 16 CONTRACT MUST BE AWARDED TO THE RESIDENT BIDDER WHOSE
 17 OFFERED GOODS ARE MONTANA-MADE IF THE BID IS:
 18 (A) NOT MORE THAN 3% HIGHER THAN THAT OF A RESIDENT
 19 BIDDER WHOSE OFFERED GOODS ARE NOT MONTANA-MADE; AND
 20 (B) NOT MORE THAN 5% HIGHER THAN THAT OF THE
 21 NONRESIDENT BIDDER.
 22 (II) HOWEVER,
 23 (iv) NO COMBINATION OF PREFERENCES UNDER THIS
 24 SUBSECTION MAY EXCEED 5%.
 25 (3) in awarding contracts for construction, repair,

1 and--public--works--of--all--kinds,---bids---received---from
 2 nonresident--bidders--are--subject--to--the--3%--preference,--or
 3 that--percent--that--applies--to--a--Montana--bidder--in--the--award
 4 of--public--contracts---in--the--nonresident--bidder's--state--of
 5 residence,--whichever--is--greater.

6 ~~{4}{2}~~ This requirement shall prevail. The preferences
 7 in this section apply:

8 (a) whether the law requires advertisement for bids or
 9 does not require advertisement for bids; and

10 (b) it---shall---apply to contracts involving funds
 11 obtained from the federal government unless expressly
 12 prohibited by the laws of the United States or regulations
 13 adopted pursuant thereto."

14 Section 3. Section 18-1-103, MCA, is amended to read:

15 "18-1-103. Residence defined. (1) For the purpose of
 16 18-1-102, 18-1-103, and 18-1-112, the word "resident" shall
 17 include actual residence of an individual within this state
 18 for a period of more than 1 year immediately prior to
 19 bidding.

20 (2) In a partnership enterprise or an association, the
 21 majority of all partners or association members shall have
 22 been actual residents of the state of Montana for more than
 23 1 year immediately prior to bidding.

24 (3) Domestic corporations organized under the laws of
 25 the state of Montana are prima facie eligible to bid as

1 residents, but this qualification may be set aside and a
 2 successful bid disallowed where it is shown to the
 3 satisfaction of the board, commission, officer, or
 4 individual charged with the responsibility for the execution
 5 of such contract that said corporation is a wholly owned
 6 subsidiary of a foreign corporation or that said corporation
 7 was formed for the purpose of circumventing the provisions
 8 relating to residence.

9 ~~{4}--FOR--THE--PURPOSES--OF--18-1-102{1}{A}{II}--AND--UNDER~~
 10 ~~RULES--ADOPTED--BY--THE--DEPARTMENT,--A--FOREIGN--CORPORATION--OR--A~~
 11 ~~SUBSIDIARY,--AFFILIATE,--OR--OPERATING--BRANCH--OF--A--CORPORATION~~
 12 ~~MAY--BE--CONSIDERED--A--RESIDENT--BY--A--PUBLIC--AGENCY--IF--IT:~~

13 ~~{A}--HAS--CONDUCTED--A--BONA--FIDE--BUSINESS--WITHIN--THE~~
 14 ~~STATE--FOR--NOT--LESS--THAN--5--YEARS;~~

15 ~~{B}--MAINTAINS--A--PLACE--OF--BUSINESS--WITHIN--THE--STATE--BY~~
 16 ~~WHICH--IT--DIRECTLY--OR--INDIRECTLY--PAYS--PROPERTY--TAXES--IN--THE~~
 17 ~~STATE;--AND~~

18 ~~{C}--EMPLOYS--ON--AN--ANNUAL--BASIS--THE--EQUIVALENT--OF--10~~
 19 ~~RESIDENTS--AS--DEFINED--IN--18-2-401;~~

20 ~~{4}{5}{4}~~ Notwithstanding the foregoing, any bidder on
 21 a contract for the purchase of products,--materials,
 22 supplies,--or--equipment goods, whether an individual,
 23 partnership, or corporation, foreign or domestic and
 24 regardless of ownership thereof, whose offered materials,
 25 supplies,--or--equipment goods are manufactured--or--produced--in

1 ~~this--state-by-industry-located-in-Montana-and-Montana-labor~~
 2 ~~shall-be-deemed-to-be~~ Montana-made is a resident for the
 3 purpose of 18-1-102, 18-1-103, and 18-1-112."

4 Section 4. Section 18-1-112, MCA, is amended to read:
 5 "18-1-112. Montana product preference provisions. (1)
 6 Each contract awarded by ~~any-political-subdivision, school~~
 7 ~~district, public corporation, or~~ a public agency of--the
 8 ~~state--of--Montana--shall~~ must contain among its provisions a
 9 requirement that in all instances ~~products--manufactured--or~~
 10 ~~produced--in--this-state-by-Montana-industry-and-labor--shall~~
 11 Montana-made goods must be preferred for use in all projects
 12 ~~and-in-all-materials, supplies, and--equipment--procured~~ if
 13 such ~~products, materials, equipment, and-supplies~~ goods are
 14 comparable in price and quality.

15 (2) It is the intent of 18-1-102, 18-1-103, and this
 16 section that, whenever possible, ~~products-manufactured-and~~
 17 ~~produced-in-this-state-which~~ Montana-made goods that are
 18 suitable substitutes for ~~products~~ goods manufactured or
 19 produced outside the state and comparable in price, quality,
 20 and performance ~~shall--be~~ are preferred for use in all
 21 projects and in all state institutions.

22 (3) Failure to comply with the law in this respect
 23 ~~shall-disqualify~~ disqualifies such contractor as a qualified
 24 bidder for future contracts with the ~~state-of--Montana,--any~~
 25 ~~legal--subdivision--of--the--state--of--Montana,--any-school~~

1 district, public corporation, or agency for a period of 2
 2 years.

3 (4) The preference given to ~~Montana-products-shall~~
 4 ~~apply~~ Montana-made goods applies to contracts involving
 5 funds obtained from the federal government unless expressly
 6 prohibited by the laws of the United States or regulations
 7 adopted pursuant thereto."

8 Section 5--Section--18-5-308, MCA, is amended to read:
 9 "~~18-5-308,--Construction--with--other--sections--~~
 10 ~~Procurement-from-small-businesses-under-this-part-is-subject~~
 11 ~~to--all--other--statutes-governing-state-procurement-and-all~~
 12 ~~rules-promulgated-thereunder, as now or hereafter--amended,~~
 13 ~~except--that--in--case-of-conflict--this-part-governs--and--the~~
 14 ~~provisions-set-forth-in--18-1-102,--18-1-111,--and--18-1-112~~
 15 ~~shall-not-apply."~~

16 Section 5. Section 20-15-403, MCA, is amended to read:
 17 "20-15-403. Applications of other school district
 18 provisions. (1) When the term "school district" appears in
 19 the following sections outside of Title 20, the term
 20 includes community college districts and the provisions of
 21 those sections applicable to school districts apply to
 22 community college districts: 2-9-101, 2-9-111, 2-9-316,
 23 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,
 24 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103,
 25 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703,

1 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108,
 2 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202,
 3 17-6-103, 17-6-204, 17-6-213, 17-7-201, ~~18-1-102, 18-1-117,~~
 4 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404,
 5 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402,
 6 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103,
 7 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206,
 8 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 9 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and
 10 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as
 11 amended.

12 (2) When the term "school district" appears in a
 13 section outside of Title 20 but the section is not listed in
 14 subsection (1), the school district provision does not apply
 15 to a community college district."

16 NEW SECTION. Section 6. Bidder to submit affidavit --
 17 penalty. (1) A bidder on a public contract for goods who is
 18 claiming a preference under this part shall EITHER HAVE ON
 19 FILE WITH OR submit to the public agency ~~together with the~~
 20 WITH ITS bid, an affidavit specifying in detail, as
 21 determined by rule by the department, the basis on which the
 22 bidder claims the preference.

23 (2) If the public agency determines that the bidder
 24 has submitted a false affidavit under subsection (1), the
 25 bidder is disqualified as a bidder for future public

1 contracts for goods with any public agency for a period of 5
 2 years from the date of the determination.

3 NEW SECTION. Section 7. Rules. The department shall
 4 adopt rules necessary to administer the preferences provided
 5 in this part. The department's rules apply to all public
 6 employers AGENCIES.

7 ~~NEW SECTION. Section 8. Repealer. Section 10-1-117,~~
 8 ~~MEA, is repealed.~~

9 NEW SECTION. Section 8. Codification instruction.
 10 Sections 7 6 and 8 7 are intended to be codified as an
 11 integral part of Title 18, chapter 1, part 1, and the
 12 provisions of Title 18, chapter 1, part 1, apply to sections
 13 7 6 and 8 7.

-End-

STANDING COMMITTEE REPORT

Committee on Business & Industry

Page 2 of 2
HB 417

SENATE

March 16 19 87

March 16 1987

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 417

Third reading copy (blue color)

PROVIDE PREFERENCE TO BIDDERS WITH MONTANA MADE GOODS IN
AWARDING CONTRACTS

BROWN (WALKER)

Respectfully report as follows: That HOUSE BILL No. 417

be amended as follows:

1. Page 2, line 21.
Following: "(1)"
Insert: "(a)"

2. Page 3, line 6.
Strike: "(a)"
Insert: "(i)"

3. Page 3, line 14.
Strike: "(i)"
Insert: "(A)"

4. Page 3, line 15.
Strike: "(ii)"
Insert: "(B)"

5. Page 3, line 19.
Strike: "(b)"
Insert: "(ii)"

6. Page 4, line 2.
Strike: "(i)"
Insert: "(A)"

7. Page 4, line 7.
Strike: "(ii)"
Insert: "(B)"

XXXXXX

XXXXXXXXXX

8. Page 4, line 10.
Strike: "(iii)"
Insert: "(C)"

9. Page 4, line 12.
Strike: ";"
Insert: "."

10. Page 4, lines 13 and 14.
Strike: "HOWEVER, (IV)"
Insert: "(b)(i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:
(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and
(B) not more than 5% higher than that of the nonresident bidder.
(ii) However,"

11. Page 5, following line 24.
Insert: "(4) For the purposes of 18-1-102(1)(a)(ii) and under rules adopted by the department, a foreign corporation or a subsidiary, affiliate, or operating branch of a corporation may be considered a resident by a public agency if it:
(a) has conducted a bona fide business within the state for not less than 5 years;
(b) maintains a place of business within the state by which it directly or indirectly pays property taxes in the state; and
(c) employs on an annual basis the equivalent of 10 residents as defined in 18-2-401."

Re-number: subsequent subsection

CONTINUED

AK
Chairman

3/1/87
S
K

AND AS AMENDED,
BE CONCURRED IN

Allen C. Kolstad
ALLEN C. KOLSTAD, Chairman

3/1/87
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COMMITTEE OF THE WHOLE AMENDMENT

3-21-87

DATE

SENATE

11:15

TIME

MR. CHAIRMAN: I MOVE TO AMEND House Bill

No. 417

third

blue

reading copy () as follows:
Color

AMENDING SENATE BUSINESS AND INDUSTRY STANDING COMMITTEE REPORT,
DATED MARCH 16, 1987.

1. Strike: amendment No. 11 in its entirety.

KAC

ADOPT

REJECT

[Handwritten Signature]

 Senator Mazurek