

1 HOUSE BILL NO. 439  
2 INTRODUCED BY Repatish  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A 2  
5 PERCENT BIDDING PREFERENCE FOR LOCAL BIDDERS IN COUNTY,  
6 MUNICIPAL, SCHOOL, COMMUNITY COLLEGE, AND CERTAIN DISTRICT  
7 PURCHASING LAWS; AND AMENDING SECTIONS 7-3-1323, 7-5-2301,  
8 7-5-2302, 7-5-4302, 7-14-2404, 7-14-2406, 7-14-2716,  
9 20-9-204, AND 20-15-104, MCA."

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

12 NEW SECTION. Section 1. Bid preference for local  
13 business. (1) A local governmental entity in awarding a  
14 contract pursuant to a bidding process may award the  
15 contract to the lowest responsible local bidder whose bid  
16 does not exceed by more than 2% the bid of the lowest  
17 responsible bidder who is not a local bidder.

18 (2) For the purposes of this section, "local bidder"  
19 means a person or commercial entity that has had its primary  
20 place of business within the geographical boundary of the  
21 contracting governmental entity for at least 1 year prior to  
22 the solicitation for bids.

23 Section 2. Section 7-3-1323, MCA, is amended to read:

24 "7-3-1323. Competitive, advertised bidding required  
25 for certain contracts. All contracts entered into by the

1 municipality for supplies or materials, for any public work,  
2 or for the construction, reconstruction, repair,  
3 maintenance, or operation of any public works or  
4 improvements, ~~for which must be paid a sum~~ exceeding \$2,000,  
5 shall be awarded to the lowest responsible bidder, with  
6 consideration given local bidders as provided in [section  
7 1]. The award must be made after public advertisement and  
8 competition as may be prescribed by ordinance, but the  
9 manager shall have the right to reject all bids and  
10 advertise again. All advertisements as to contracts ~~shall~~  
11 must contain a reservation of the foregoing right. All  
12 contracts entered into by the municipality ~~shall~~ must be  
13 signed by the manager after approval thereof by the  
14 commission."

15 Section 3. Section 7-5-2301, MCA, is amended to read:

16 "7-5-2301. Competitive, advertised bidding required  
17 for certain large purchases or construction contracts. (1)  
18 Except as provided in 7-5-2304, no contract for the purchase  
19 of any vehicle, road machinery, or other machinery,  
20 apparatus, appliances, or equipment or for any materials or  
21 supplies of any kind ~~for which must be paid a sum~~ in excess  
22 of \$10,000 or for the construction of any building, road, or  
23 bridge ~~for which must be paid a sum~~ in excess of \$10,000 or  
24 for the repair or maintenance of any building, road, or  
25 bridge ~~for which must be paid a sum~~ in excess of \$25,000

1 ~~shall~~ may be entered into by a county governing body without  
2 first publishing a notice calling for bids for furnishing  
3 the same.

4 (2) The notice must be published as provided in  
5 7-1-2121.

6 (3) Every such contract ~~shall~~ must be let to the  
7 lowest and best responsible bidder, with consideration given  
8 local bidders as provided in [section 1]."

9 **Section 4.** Section 7-5-2302, MCA, is amended to read:

10 "7-5-2302. Use of competitive, nonadvertised bidding  
11 for certain purchases. (1) Except as provided in 7-5-2303,  
12 on any purchase contract entered into by a county governing  
13 body for the purchase of any vehicle, machinery, appliances,  
14 apparatus, building, or materials and supplies ~~for--which~~  
15 ~~must--be--paid--a--sum~~ in excess of \$10,000 but less than  
16 \$25,000, bids ~~shall~~ must be solicited without advertising  
17 from persons, firms, or corporations who have caused to be  
18 filed with the governing body of the county a request in  
19 writing that its name be listed with the governing body for  
20 solicitations on the particular items set forth in the  
21 request. The governing body shall solicit bids of  
22 prospective suppliers whose names are listed as provided  
23 herein~~7~~, which The solicitation ~~shall~~ must contain the same  
24 information as is required to be set forth in  
25 advertisements. If a person, firm, or corporation whose

1 name is listed fails for a period of 1 year to respond to  
2 any solicitation for bids, ~~such~~ the listing may be canceled.

3 (2) The governing body of the county shall let such  
4 contract to the lowest and best responsible bidder, with  
5 consideration given local bidders as provided in [section  
6 1].

7 (3) Compliance with the provisions of this section  
8 ~~shall--be~~ is considered as meeting the requirements of  
9 7-5-2301."

10 **Section 5.** Section 7-5-4302, MCA, is amended to read:

11 "7-5-4302. Competitive, advertised bidding required  
12 for certain purchase and construction contracts. (1) Except  
13 as provided in 7-5-4303 or 7-5-4310, all contracts for the  
14 purchase of any automobile, truck, other vehicle, road  
15 machinery, other machinery, apparatus, appliances, or  
16 equipment, for any materials or supplies of any kind, or for  
17 construction, repair, or maintenance ~~for--which--must--be--paid~~  
18 ~~a--sum~~ exceeding \$10,000 must be let to the lowest  
19 responsible bidder, with consideration given local bidders  
20 as provided in [section 1], after advertisement for bids.

21 (2) ~~Such~~ The advertisement ~~shall~~ must be made in the  
22 official newspaper of the city or town if there ~~be--such~~ is  
23 an official newspaper, and if not, it ~~shall~~ must be made in  
24 a daily newspaper of general circulation published in the  
25 city or town if there ~~be--such~~ is one and, otherwise, by

posting in three of the most public places in the city or town. Such The advertisement, if by publication in a newspaper, ~~shall~~ must be made once each week for 2 consecutive weeks, and the second publication ~~shall~~ must be made not less than 5 days or more than 12 days before the consideration of bids. If ~~such the~~ advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of ~~such the~~ advertisement and the day set for considering bids.

(3) The council may postpone action as to any ~~such~~ contract until the next regular meeting after bids are received in response to ~~such an~~ advertisement and may reject any and all bids and readvertise as provided herein in this section."

**Section 6.** Section 7-14-2404, MCA, is amended to read:

"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4, ~~and the~~ with consideration given local bidders as provided in [section 1]. The board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in

the contract."

**Section 7.** Section 7-14-2406, MCA, is amended to read:

"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges ~~shall~~ must meet these requirements:

(a) If the department of highways has adopted or established a standard plan and specifications, the bids must be submitted thereon on the basis of the plan and specifications.

(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any and all bids. If a contract is awarded, the board shall ~~do so~~ make the award in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4, with consideration given local bidders as provided in [section 1]. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ is not be completed until the board, while formally convened,

affirmatively accepts all of the work thereunder."

**Section 8.** Section 7-14-2716, MCA, is amended to read:

"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall do so make the award in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4, with consideration given local bidders as provided in [section 1]. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

**Section 9.** Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when such the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of such the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$7,500, the work done or the purchase made ~~shall~~ must be by contract. Each such contract must be let to the lowest responsible bidder, with consideration given local bidders as provided in [section 1], after advertisement for bids. Such The advertisement ~~shall~~ must be published in the newspaper which will give notice to the largest number of

1 people of the district as determined by the trustees. Such  
 2 ~~The~~ advertisement ~~shall~~ must be made once each week for 2  
 3 consecutive weeks and the second publication ~~shall~~ must be  
 4 made not less than 5 days or more than 12 days before  
 5 consideration of bids. A contract not let pursuant to this  
 6 section ~~shall-be~~ is void.

7 (4) Whenever bidding is required, the trustees shall  
 8 award the contract to the lowest responsible bidder, with  
 9 consideration given local bidders as provided in [section  
 10 1], except that the trustees may reject any or all bids.

11 (5) Nothing in this section ~~shall-require~~ requires the  
 12 board of trustees to let a contract for any routine and  
 13 regularly performed maintenance or repair project or service  
 14 which can be accomplished by district staff whose regular  
 15 employment with ~~such~~ the school district is related to the  
 16 routine performance of maintenance for ~~such~~ the district."

17 **Section 10.** Section 20-15-104, MCA, is amended to  
 18 read:

19 "20-15-104. Pecuniary interest and letting contracts.

20 (1) It ~~shall-be~~ is unlawful for any community college  
 21 district trustee to have any pecuniary interest, either  
 22 directly or indirectly, in the erection of any community  
 23 college building in his district or in furnishing or  
 24 repairing the same building or be in any manner connected  
 25 with the furnishing of supplies for the maintenance of the

1 college or to receive or accept any compensation or reward  
 2 for services rendered as trustee, except as herein provided.

3 (2) The board of trustees shall let contracts for  
 4 building, furnishing, repairing, or other work or supplies  
 5 for the benefit of the district according to the following  
 6 rules and procedures:

7 (a) The board of trustees need not meet requirements  
 8 relating to advertising or bidding if a proposed contract  
 9 for building, furnishing, repairing or other work or  
 10 supplies is for less than \$5,000.

11 (b) Whenever the proposed contract costs are less than  
 12 \$25,000 but more than \$5,000, the board of trustees shall  
 13 procure at least three informal bids, if reasonably  
 14 available, from contractors licensed in Montana.

15 (c) Whenever the proposed contract costs are more than  
 16 \$25,000, the board of trustees shall solicit formal bids and  
 17 advertise once each week for at least 2 weeks in a newspaper  
 18 published in each county wherein in which the area of the  
 19 district lies, calling for bids to perform ~~such~~ the work or  
 20 furnish ~~such~~ supplies. If advertising is required, the board  
 21 shall award the contract to the lowest responsible bidder,  
 22 with consideration given local bidders as provided in  
 23 [section 1]. However, the board of trustees has the right to  
 24 reject any and all bids."

-End-

APPROVED BY COMM.  
ON LOCAL GOVERNMENT

HOUSE BILL NO. 439

INTRODUCED BY KILPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A 2  
PERCENT BIDDING PREFERENCE FOR LOCAL BIDDERS IN COUNTY,  
MUNICIPAL, SCHOOL, COMMUNITY COLLEGE, AND CERTAIN DISTRICT  
PURCHASING LAWS; AND AMENDING SECTIONS 7-3-1323, 7-5-2301,  
7-5-2302, 7-5-4302, 7-14-2404, 7-14-2406, 7-14-2716,  
20-9-204, AND 20-15-104, MCA."

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

NEW SECTION. **Section 1.** Bid preference for local  
business. (1) A local governmental entity in awarding a  
contract pursuant to a bidding process may award the  
contract to the lowest responsible local bidder whose bid  
does not exceed by more than 2% the bid of the lowest  
responsible bidder who is not a local bidder.

(2) For the purposes of this section, "local bidder"  
means a person or commercial entity that has had its primary  
place of business within the geographical boundary of the  
contracting governmental entity for at least 1 year prior to  
the solicitation for bids.

(3) A SELF-GOVERNING LOCAL GOVERNMENT MAY ADOPT THE  
LOCAL BID PREFERENCE AUTHORIZED BY THIS SECTION OR IT MAY  
ADOPT A DIFFERENT METHOD FOR PROVIDING A LOCAL BID

PREFERENCE.

**Section 2.** Section 7-3-1323, MCA, is amended to read:

"7-3-1323. Competitive, advertised bidding required  
for certain contracts. All contracts entered into by the  
municipality for supplies or materials, for any public work,  
or for the construction, reconstruction, repair,  
maintenance, or operation of any public works or  
improvements, ~~for which must be paid a sum~~ exceeding \$2,000,  
shall be awarded to the lowest responsible bidder, with  
consideration given local bidders as provided in [section  
1]. The award must be made after public advertisement and  
competition as may be prescribed by ordinance, but the  
manager shall have the right to reject all bids and  
advertise again. All advertisements as to contracts shall  
must contain a reservation of the foregoing right. All  
contracts entered into by the municipality shall must be  
signed by the manager after approval thereof by the  
commission."

**Section 3.** Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required  
for certain large purchases or construction contracts. (1)  
Except as provided in 7-5-2304, no contract for the purchase  
of any vehicle, road machinery, or other machinery,  
apparatus, appliances, or equipment or for any materials or  
supplies of any kind ~~for which must be paid a sum~~ in excess

of \$10,000 or for the construction of any building, road, or bridge ~~for which must be paid a sum~~ in excess of \$10,000 or for the repair or maintenance of any building, road, or bridge ~~for which must be paid a sum~~ in excess of \$25,000 ~~shall may~~ be entered into by a county governing body without first publishing a notice calling for bids for furnishing the same.

(2) The notice must be published as provided in 7-1-2121.

(3) Every such contract ~~shall must~~ be let to the lowest and best responsible bidder, with consideration given local bidders as provided in [section 1]."

**Section 4.** Section 7-5-2302, MCA, is amended to read:

"7-5-2302. Use of competitive, nonadvertised bidding for certain purchases. (1) Except as provided in 7-5-2303, on any purchase contract entered into by a county governing body for the purchase of any vehicle, machinery, appliances, apparatus, building, or materials and supplies ~~for which must be paid a sum~~ in excess of \$10,000 but less than \$25,000, bids ~~shall must~~ be solicited without advertising from persons, firms, or corporations who have caused to be filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids of

prospective suppliers whose names are listed as provided herein, which The solicitation shall must contain the same information as is required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, such the listing may be canceled.

(2) The governing body of the county shall let such contract to the lowest and best responsible bidder, with consideration given local bidders as provided in [section 1].

(3) Compliance with the provisions of this section ~~shall be is~~ considered as meeting the requirements of 7-5-2301."

**Section 5.** Section 7-5-4302, MCA, is amended to read:

"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, repair, or maintenance ~~for which must be paid a sum~~ exceeding \$10,000 must be let to the lowest responsible bidder, with consideration given local bidders as provided in [section 1], after advertisement for bids.

(2) Such The advertisement ~~shall must~~ be made in the

1 official newspaper of the city or town if there be ~~such~~ is  
 2 an official newspaper, and if not, it ~~shall~~ must be made in  
 3 a daily newspaper of general circulation published in the  
 4 city or town if there be ~~such~~ is one and, otherwise, by  
 5 posting in three of the most public places in the city or  
 6 town. Such The advertisement, if by publication in a  
 7 newspaper, ~~shall~~ must be made once each week for 2  
 8 consecutive weeks, and the second publication ~~shall~~ must be  
 9 made not less than 5 days or more than 12 days before the  
 10 consideration of bids. If ~~such~~ the advertisement is made by  
 11 posting, 15 days must elapse, including the day of posting,  
 12 between the time of the posting of ~~such~~ the advertisement  
 13 and the day set for considering bids.

14 (3) The council may postpone action as to any ~~such~~  
 15 contract until the next regular meeting after bids are  
 16 received in response to ~~such~~ an advertisement and may reject  
 17 any and all bids and readvertise as provided herein in this  
 18 section."

19 **Section 6.** Section 7-14-2404, MCA, is amended to read:

20 "7-14-2404. Competitive bids for county road  
 21 contracts. Each bidder shall comply with the requirements of  
 22 Title 18, chapter 1, part 2. The contract ~~shall~~ must be  
 23 awarded to the lowest responsible bidder in accordance with  
 24 the requirements of 18-1-102, 18-1-112, and Title 18,  
 25 chapter 2, part 4, and the with consideration given local

1 bidders as provided in [section 1]. The board may reserve  
 2 the right to reject any and all bids. When there is no  
 3 prevailing rate of wages set by collective bargaining, the  
 4 board shall determine the prevailing rate to be stated in  
 5 the contract."

6 **Section 7.** Section 7-14-2406, MCA, is amended to read:

7 "7-14-2406. Contracts for bridges. (1) All bids for  
 8 construction or repair of bridges ~~shall~~ must meet these  
 9 requirements:

10 (a) If the department of highways has adopted or  
 11 established a standard plan and specifications, the bids  
 12 must be submitted thereon on the basis of the plan and  
 13 specifications.

14 (b) All bids must be sealed. Each bidder shall meet  
 15 the requirements of Title 18, chapter 1, part 2.

16 (2) The board may reject any and all bids. If a  
 17 contract is awarded, the board shall ~~do so~~ make the award in  
 18 accordance with the requirements of 18-1-102, 18-1-112, and  
 19 Title 18, chapter 2, part 4, with consideration given local  
 20 bidders as provided in [section 1]. When there is no  
 21 prevailing rate of wages set by collective bargaining, the  
 22 board shall determine the prevailing rate to be stated in  
 23 the contract. The contract must be entered with the  
 24 unanimous consent of the members of the board.

25 (3) Before entering upon performance of the work, the



contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ is not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder."

**Section 8.** Section 7-14-2716, MCA, is amended to read:

"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall ~~do--so make the award~~ in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4, with consideration given local bidders as provided in [section 1]. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

**Section 9.** Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district

of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when ~~such the~~ investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of ~~such the~~ lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$7,500, the work done or the purchase made ~~shall~~ must be by contract. Each ~~such~~ contract must be let to the

1 lowest responsible bidder, with consideration given local  
 2 bidders as provided in [section 1], after advertisement for  
 3 bids. ~~Such~~ The advertisement ~~shall~~ must be published in the  
 4 newspaper which will give notice to the largest number of  
 5 people of the district as determined by the trustees. ~~Such~~  
 6 The advertisement ~~shall~~ must be made once each week for 2  
 7 consecutive weeks and the second publication ~~shall~~ must be  
 8 made not less than 5 days or more than 12 days before  
 9 consideration of bids. A contract not let pursuant to this  
 10 section ~~shall-be~~ is void.

11 (4) Whenever bidding is required, the trustees shall  
 12 award the contract to the lowest responsible bidder, with  
 13 consideration given local bidders as provided in [section  
 14 1], except that the trustees may reject any or all bids.

15 (5) Nothing in this section ~~shall-require~~ requires the  
 16 board of trustees to let a contract for any routine and  
 17 regularly performed maintenance or repair project or service  
 18 which can be accomplished by district staff whose regular  
 19 employment with ~~such~~ the school district is related to the  
 20 routine performance of maintenance for ~~such~~ the district."

21 **Section 10.** Section 20-15-104, MCA, is amended to  
 22 read:

23 **"20-15-104. Pecuniary interest and letting contracts.**

24 (1) It ~~shall-be~~ is unlawful for any community college  
 25 district trustee to have any pecuniary interest, either

1 directly or indirectly, in the erection of any community  
 2 college building in his district or in furnishing or  
 3 repairing the ~~same~~ building or be in any manner connected  
 4 with the furnishing of supplies for the maintenance of the  
 5 college or to receive or accept any compensation or reward  
 6 for services rendered as trustee, except as herein provided.

7 (2) The board of trustees shall let contracts for  
 8 building, furnishing, repairing, or other work or supplies  
 9 for the benefit of the district according to the following  
 10 rules and procedures:

11 (a) The board of trustees need not meet requirements  
 12 relating to advertising or bidding if a proposed contract  
 13 for building, furnishing, repairing or other work or  
 14 supplies is for less than \$5,000.

15 (b) Whenever the proposed contract costs are less than  
 16 \$25,000 but more than \$5,000, the board of trustees shall  
 17 procure at least three informal bids, if reasonably  
 18 available, from contractors licensed in Montana.

19 (c) Whenever the proposed contract costs are more than  
 20 \$25,000, the board of trustees shall solicit formal bids and  
 21 advertise once each week for at least 2 weeks in a newspaper  
 22 published in each county ~~wherein~~ in which the area of the  
 23 district lies, calling for bids to perform ~~such~~ the work or  
 24 furnish ~~such~~ supplies. If advertising is required, the board  
 25 shall award the contract to the lowest responsible bidder,

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1 with consideration given local bidders as provided in  
2 [section 1]. However, the board of trustees has the right to  
3 reject any and all bids."

-End-

## HOUSE BILL NO. 439

INTRODUCED BY KILPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A 2 PERCENT BIDDING PREFERENCE FOR LOCAL BIDDERS IN COUNTY, MUNICIPAL, SCHOOL, COMMUNITY COLLEGE, AND CERTAIN DISTRICT PURCHASING LAWS; AND AMENDING SECTIONS 7-3-1323, 7-5-2301, 7-5-2302, 7-5-4302, 7-14-2404, 7-14-2406, 7-14-2716, 20-9-204, AND 20-15-104, MCA."

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

**NEW SECTION. Section 1.** Bid preference for local business. (1) A local governmental entity in awarding a contract pursuant to a bidding process may award the contract to the lowest responsible local bidder whose bid does not exceed by more than 2% the bid of the lowest responsible bidder who is not a local bidder.

(2) For the purposes of this section, "local bidder" means a person or commercial entity that has had its primary place of business within the geographical boundary of the contracting governmental entity for at least 1 year prior to the solicitation for bids.

(3) A SELF-GOVERNING LOCAL GOVERNMENT MAY ADOPT THE LOCAL BID PREFERENCE AUTHORIZED BY THIS SECTION OR IT MAY ADOPT A DIFFERENT METHOD FOR PROVIDING A LOCAL BID

PREFERENCE.**Section 2.** Section 7-3-1323, MCA, is amended to read:

"7-3-1323. Competitive, advertised bidding required for certain contracts. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance, or operation of any public works or improvements, ~~for which must be paid a sum~~ exceeding \$2,000, shall be awarded to the lowest responsible bidder, with consideration given local bidders as provided in [section 1]. The award must be made after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts ~~shall~~ must contain a reservation of the foregoing right. All contracts entered into by the municipality ~~shall~~ must be signed by the manager after approval thereof by the commission."

**Section 3.** Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or other machinery, apparatus, appliances, or equipment or for any materials or supplies of any kind ~~for which must be paid a sum~~ in excess

1 of \$10,000 or for the construction of any building, road, or  
 2 bridge ~~for which must be paid a sum~~ in excess of \$10,000 or  
 3 for the repair or maintenance of any building, road, or  
 4 bridge ~~for which must be paid a sum~~ in excess of \$25,000  
 5 ~~shall~~ may be entered into by a county governing body without  
 6 first publishing a notice calling for bids for furnishing  
 7 the same.

8 (2) The notice must be published as provided in  
 9 7-1-2121.

10 (3) Every such contract ~~shall~~ must be let to the  
 11 lowest and best responsible bidder, with consideration given  
 12 local bidders as provided in [section 1]."

13 **Section 4.** Section 7-5-2302, MCA, is amended to read:

14 "7-5-2302. Use of competitive, nonadvertised bidding  
 15 for certain purchases. (1) Except as provided in 7-5-2303,  
 16 on any purchase contract entered into by a county governing  
 17 body for the purchase of any vehicle, machinery, appliances,  
 18 apparatus, building, or materials and supplies ~~for which~~  
 19 ~~must be paid a sum~~ in excess of \$10,000 but less than  
 20 \$25,000, bids ~~shall~~ must be solicited without advertising  
 21 from persons, firms, or corporations who have caused to be  
 22 filed with the governing body of the county a request in  
 23 writing that its name be listed with the governing body for  
 24 solicitations on the particular items set forth in the  
 25 request. The governing body shall solicit bids of

1 prospective suppliers whose names are listed as provided  
 2 herein, ~~which~~ The solicitation ~~shall~~ must contain the same  
 3 information as is required to be set forth in  
 4 advertisements. If a person, firm, or corporation whose  
 5 name is listed fails for a period of 1 year to respond to  
 6 any solicitation for bids, ~~such~~ the listing may be canceled.

7 (2) The governing body of the county shall let such  
 8 contract to the lowest and best responsible bidder, with  
 9 consideration given local bidders as provided in [section  
 10 1].

11 (3) Compliance with the provisions of this section  
 12 ~~shall be~~ is considered as meeting the requirements of  
 13 7-5-2301."

14 **Section 5.** Section 7-5-4302, MCA, is amended to read:

15 "7-5-4302. Competitive, advertised bidding required  
 16 for certain purchase and construction contracts. (1) Except  
 17 as provided in 7-5-4303 or 7-5-4310, all contracts for the  
 18 purchase of any automobile, truck, other vehicle, road  
 19 machinery, other machinery, apparatus, appliances, or  
 20 equipment, for any materials or supplies of any kind, or for  
 21 construction, repair, or maintenance ~~for which must be paid~~  
 22 ~~a sum~~ exceeding \$10,000 must be let to the lowest  
 23 responsible bidder, with consideration given local bidders  
 24 as provided in [section 1], after advertisement for bids.

25 (2) Such The advertisement ~~shall~~ must be made in the

1 official newspaper of the city or town if there ~~be-such~~ is  
 2 an official newspaper, and if not, it ~~shall~~ must be made in  
 3 a daily newspaper of general circulation published in the  
 4 city or town if there ~~be-such~~ is one and, otherwise, by  
 5 posting in three of the most public places in the city or  
 6 town. Such ~~The~~ advertisement, if by publication in a  
 7 newspaper, ~~shall~~ must be made once each week for 2  
 8 consecutive weeks, and the second publication ~~shall~~ must be  
 9 made not less than 5 days or more than 12 days before the  
 10 consideration of bids. If ~~such the~~ advertisement is made by  
 11 posting, 15 days must elapse, including the day of posting,  
 12 between the time of the posting of ~~such the~~ advertisement  
 13 and the day set for considering bids.

14 (3) The council may postpone action as to any ~~such~~  
 15 contract until the next regular meeting after bids are  
 16 received in response to ~~such an~~ advertisement and may reject  
 17 any and all bids and readvertise as provided ~~herein in this~~  
 18 section."

19 **Section 6.** Section 7-14-2404, MCA, is amended to read:

20 "7-14-2404. Competitive bids for county road  
 21 contracts. Each bidder shall comply with the requirements of  
 22 Title 18, chapter 1, part 2. The contract ~~shall~~ must be  
 23 awarded to the lowest responsible bidder in accordance with  
 24 the requirements of 18-1-102, 18-1-112, and Title 18,  
 25 chapter 2, part 4, ~~and-the~~ with consideration given local

1 bidders as provided in [section 1]. The board may reserve  
 2 the right to reject any and all bids. When there is no  
 3 prevailing rate of wages set by collective bargaining, the  
 4 board shall determine the prevailing rate to be stated in  
 5 the contract."

6 **Section 7.** Section 7-14-2406, MCA, is amended to read:

7 "7-14-2406. Contracts for bridges. (1) All bids for  
 8 construction or repair of bridges ~~shall~~ must meet these  
 9 requirements:

10 (a) If the department of highways has adopted or  
 11 established a standard plan and specifications, the bids  
 12 must be submitted ~~thereon~~ on the basis of the plan and  
 13 specifications.

14 (b) All bids must be sealed. Each bidder shall meet  
 15 the requirements of Title 18, chapter 1, part 2.

16 (2) The board may reject any and all bids. If a  
 17 contract is awarded, the board shall ~~do-so~~ make the award in  
 18 accordance with the requirements of 18-1-102, 18-1-112, and  
 19 Title 18, chapter 2, part 4, with consideration given local  
 20 bidders as provided in [section 1]. When there is no  
 21 prevailing rate of wages set by collective bargaining, the  
 22 board shall determine the prevailing rate to be stated in  
 23 the contract. The contract must be entered with the  
 24 unanimous consent of the members of the board.

25 (3) Before entering upon performance of the work, the

1 contractor shall comply with the requirements of Title 18,  
2 chapter 2, part 2. For the purposes of those sections with  
3 relation to contracts with the board, a contract ~~shall~~ is  
4 not be completed until the board, while formally convened,  
5 affirmatively accepts all of the work thereunder."

6 **Section 8.** Section 7-14-2716, MCA, is amended to read:  
7 "7-14-2716. Award of contract by local improvement  
8 district. (1) If the committee awards a contract, it shall  
9 ~~do--so make the award~~ in accordance with the requirements of  
10 18-1-102, 18-1-112, and Title 18, chapter 2, part 4, with  
11 consideration given local bidders as provided in [section  
12 1]. When there is no prevailing rate of wages set by  
13 collective bargaining, the committee shall determine the  
14 prevailing rate to be stated in the contract.

15 (2) Partial payments may be provided for in the  
16 contract and paid when certified by the county surveyor and  
17 committee."

18 **Section 9.** Section 20-9-204, MCA, is amended to read:

19 "20-9-204. Conflicts of interests, letting contracts,  
20 and calling for bids. (1) It is unlawful for any trustee to:

21 (a) have any pecuniary interest, either directly or  
22 indirectly, in any contract made by him in his official  
23 capacity or by the board of trustees of which he is a  
24 member; or

25 (b) be employed in any capacity by the school district

1 of which he is trustee.

2 (2) For the purposes of subsection (1):

3 (a) "pecuniary interest" does not include holding an  
4 interest of 10% or less in a corporation;

5 (b) "contract" does not include:

6 (i) merchandise sold to the highest bidder at public  
7 auctions;

8 (ii) investments or deposits in financial institutions  
9 which are in the business of loaning or receiving money when  
10 such the investments or deposits are made on a rotating or  
11 ratable basis among financial institutions in the community  
12 or when there is only one financial institution in the  
13 community; or

14 (iii) contracts for professional services other than  
15 salaried services or for maintenance or repair services or  
16 supplies when the services or supplies are not reasonably  
17 available from other sources if the interest of any board  
18 member and a determination of such the lack of availability  
19 are entered in the minutes of the board meeting at which the  
20 contract is considered.

21 (3) Whenever the estimated cost of any building,  
22 furnishing, repairing, or other work for the benefit of the  
23 district or purchasing of supplies for the district exceeds  
24 the sum of \$7,500, the work done or the purchase made ~~shall~~  
25 must be by contract. Each ~~such~~ contract must be let to the

1 lowest responsible bidder, with consideration given local  
 2 bidders as provided in [section 1], after advertisement for  
 3 bids. Such ~~The~~ advertisement ~~shall~~ must be published in the  
 4 newspaper which will give notice to the largest number of  
 5 people of the district as determined by the trustees. Such  
 6 ~~The~~ advertisement ~~shall~~ must be made once each week for 2  
 7 consecutive weeks and the second publication ~~shall~~ must be  
 8 made not less than 5 days or more than 12 days before  
 9 consideration of bids. A contract not let pursuant to this  
 10 section ~~shall-be~~ is void.

11 (4) Whenever bidding is required, the trustees shall  
 12 award the contract to the lowest responsible bidder, with  
 13 consideration given local bidders as provided in [section  
 14 1], except that the trustees may reject any or all bids.

15 (5) Nothing in this section ~~shall-require~~ requires the  
 16 board of trustees to let a contract for any routine and  
 17 regularly performed maintenance or repair project or service  
 18 which can be accomplished by district staff whose regular  
 19 employment with such the school district is related to the  
 20 routine performance of maintenance for such the district."

21 **Section 10.** Section 20-15-104, MCA, is amended to  
 22 read:

23 "20-15-104. Pecuniary interest and letting contracts.

24 (1) It ~~shall--be~~ is unlawful for any community college  
 25 district trustee to have any pecuniary interest, either

1 directly or indirectly, in the erection of any community  
 2 college building in his district or in furnishing or  
 3 repairing the ~~same~~ building or be in any manner connected  
 4 with the furnishing of supplies for the maintenance of the  
 5 college or to receive or accept any compensation or reward  
 6 for services rendered as trustee, except as herein provided.

7 (2) The board of trustees shall let contracts for  
 8 building, furnishing, repairing, or other work or supplies  
 9 for the benefit of the district according to the following  
 10 rules and procedures:

11 (a) The board of trustees need not meet requirements  
 12 relating to advertising or bidding if a proposed contract  
 13 for building, furnishing, repairing or other work or  
 14 supplies is for less than \$5,000.

15 (b) Whenever the proposed contract costs are less than  
 16 \$25,000 but more than \$5,000, the board of trustees shall  
 17 procure at least three informal bids, if reasonably  
 18 available, from contractors licensed in Montana.

19 (c) Whenever the proposed contract costs are more than  
 20 \$25,000, the board of trustees shall solicit formal bids and  
 21 advertise once each week for at least 2 weeks in a newspaper  
 22 published in each county wherein in which the area of the  
 23 district lies, calling for bids to perform such the work or  
 24 furnish such supplies. If advertising is required, the board  
 25 shall award the contract to the lowest responsible bidder,



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1 with consideration given local bidders as provided in  
2 [section 1]. However, the board of trustees has the right to  
3 reject any and all bids."

-End-