

HOUSE BILL 719

Introduced by Menahan, et al.

2/16	Introduced
2/16	Referred to Labor & Employment Relations
2/16	Hearing
2/17	Committee Report--Bill Passed
2/21	2nd Reading Passed
2/22	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Busines & Industry
3/16	Hearing
3/21	Committee Report--Bill Not Concurred
3/21	Adverse Committee Report Adopted

1 *Amend* BILL NO. *719*  
2 INTRODUCED BY *Merrilee Carls* *Ream*  
3 *Blotkamp* *Dusell*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE  
5 PRIVATIZATION OF STATE FUNCTIONS; ALLOWING STATE AGENCIES TO  
6 CONTRACT FOR STATE FUNCTIONS UNDER SPECIFIC CIRCUMSTANCES;  
7 ESTABLISHING A CONTRACT REVIEW BOARD; AND PROVIDING AN  
8 APPLICABILITY DATE."

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

11 NEW SECTION. Section 1. Short title. [This act] may  
12 be cited as the "State Privatization Act".

13 NEW SECTION. Section 2. Definitions. As used in [this  
14 act], the following definitions apply:

15 (1) "Board" means the contract review board.

16 (2) "Department" means the department of  
17 administration provided for in 2-15-1001.

18 (3) "Displacement" means the layoff of a state  
19 employee. The term does not mean changes in shift or days  
20 off or reassignment to other positions within the same class  
21 and at the same general location.

22 (4) "Indirect overhead costs" means the pro rata share  
23 of existing administrative salaries and benefits, rent,  
24 equipment costs, utilities, and materials.

25 (5) "Private enterprise" means an individual, firm,

1 partnership, joint venture, corporation, association, or any  
2 other legal entity engaging in the manufacturing,  
3 processing, sale, offering for sale, rental, leasing,  
4 delivery, dispensing, distributing, or advertising of goods  
5 or services for profit.

6 (6) "Service agreement" means a contract for services  
7 that are incidental to a contract for the purchase or lease  
8 of real or personal property, including agreements to  
9 service or maintain leased or rented office or computer  
10 equipment.

11 (7) "State agency" means the state; the legislature  
12 and its committees; all executive departments, boards,  
13 commissions, committees, bureaus, and offices; the  
14 university system; and all independent commissions and other  
15 establishments of state government, except the courts.

16 NEW SECTION. Section 3. Contracting for services. (1)  
17 A state agency may contract for services to achieve cost  
18 savings if:

19 (a) the contracting agency clearly demonstrates that  
20 the proposed contract will result in actual overall cost  
21 savings to the state;

22 (b) the contract does not cause displacement of state  
23 employees;

24 (c) the contract does not adversely affect the state's  
25 affirmative action efforts;

1 (d) the savings are large enough to ensure that they  
2 will not be eliminated by the private sector and state cost  
3 fluctuations that could normally be expected during the  
4 contracting period;

5 (e) the amount of savings clearly justifies the size  
6 and duration of the contracting agreement;

7 (f) the contract is awarded through a publicized,  
8 competitive bidding process, with at least three bidders;

9 (g) the contract includes specific provisions  
10 pertaining to the qualifications of the staff that will  
11 perform the work under the contract and agency supervision  
12 of the work performed under the contract, as well as  
13 assurance that the contractor's hiring practices meet  
14 applicable nondiscrimination and affirmative action  
15 standards;

16 (h) the potential for future economic risk to the  
17 state from potential contract rate increases is minimal;

18 (i) the contract is with a private enterprise;

19 (j) the potential economic advantage of contracting is  
20 not outweighed by the public's interest in having a  
21 particular function performed directly by state government;

22 (k) confidentiality considerations do not require that  
23 the state agency provide the services; and

24 (l) the state agency cannot provide higher quality  
25 services.

1 (2) In calculating the cost savings required by  
2 subsection (1)(a), the state agency:

3 (a) shall allow the state employees involved to  
4 actively demonstrate their ability to provide the same  
5 services through the agency at a lower cost;

6 (b) shall include the additional cost to the state of  
7 providing the services as proposed by the contractor,  
8 including the salaries and benefits of additional staff that  
9 would be needed and the cost of additional space, equipment,  
10 and materials needed to perform the function;

11 (c) may not include the state's indirect overhead  
12 costs, unless those costs can be attributed solely to the  
13 function in question and would not exist if that function  
14 were not performed by the state; and

15 (d) shall include any continuing state costs that  
16 would be directly associated with the contracted function,  
17 such as inspection, monitoring, or supervision costs, in  
18 calculating the contractor's cost for providing the service.

19 (3) A state agency may not contract for work solely on  
20 the grounds that savings will result from lower contractor  
21 pay rates or benefits.

22 (4) (a) A state agency may also contract for services  
23 if:

24 (i) the contract is for a new state function, the  
25 legislature has mandated or authorized the performance of

1 the work by independent contractors and the work does not  
2 cause displacement of current state employees;

3 (ii) the contracted services are not available within  
4 state government, cannot be performed satisfactorily by  
5 state employees, or are of such a highly specialized or  
6 technical nature that the necessary expert knowledge,  
7 experience, and ability are not available from career state  
8 employees;

9 (iii) the services are incidental to a service  
10 agreement;

11 (iv) the state agency needs private counsel because a  
12 conflict of interest prevents the attorney general's office  
13 from representing the agency;

14 (v) the contractor will provide equipment, materials,  
15 facilities, or support services that could not feasibly be  
16 provided by the state in the location where the services are  
17 to be performed;

18 (vi) the contractor will conduct training courses when  
19 qualified state instructors are not available; or

20 (vii) the services are of such an urgent, temporary, or  
21 occasional nature that the delay incumbent in their  
22 implementation by a state agency would frustrate their very  
23 purpose.

24 (b) A state agency may also contract for services if  
25 the legislative, administrative, or legal goals and purposes

1 cannot be accomplished through the use of state employees. A  
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3 (i) prevent a conflict of interest or to ensure  
4 independent and unbiased findings in cases where there is a  
5 clear need for a different, outside perspective; or

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7 NEW SECTION. **Section 4. Preparation of bid**  
8 **invitations.** Before preparing an invitation to bid, a state  
9 agency shall:

10 (1) notify the department and the chief procurement  
11 officer of the purchasing division;

12 (2) retain and provide all data and other information  
13 relevant to the contract and necessary for a specific  
14 application of the standards established in [section 3]; and

15 (3) notify the following organizations of the state  
16 agency's pending invitation to bid and invite their comment:

17 (a) all organizations that represent state employees;

18 (b) all organizations that perform the type of work to  
19 be contracted; and

20 (c) any person or organization that has filed a  
21 request for notice with the department.

22 NEW SECTION. **Section 5. Contract review board.** (1)  
23 There is created a contract review board consisting of three  
24 members appointed by the governor.

25 (2) The board must include one member who is a state

1 employee, one member from the state employees' union, and  
 2 one member from the general public. No more than two members  
 3 may be from the same political party.

4 (3) The governor may appoint a chairman to serve for a  
 5 prescribed period of time, not to exceed the length of the  
 6 governor's term. The board may elect a vice chairman to  
 7 serve in the absence of the chairman.

8 (4) Each board member shall serve a 2-year term,  
 9 except for the original board members, who shall serve  
 10 staggered terms of 2, 3, and 4 years. Members shall serve  
 11 until a successor is appointed and qualified.

12 (5) A person appointed to fill a vacancy must be  
 13 appointed for the remainder of the unexpired term.

14 (6) Members will serve part time, without  
 15 compensation, but are entitled to expenses as provided in  
 16 2-18-501 through 2-18-503.

17 (7) The board shall meet at least once quarterly but  
 18 may meet more frequently, as necessary, at the call of the  
 19 chairman.

20 (8) The board is allocated to the department for  
 21 administrative purposes only as provided in 2-15-121.

22 **NEW SECTION. Section 6. Contract review by the board**  
 23 -- petition to district court. (1) Any employee organization  
 24 may request the board to review any contract proposed or  
 25 executed pursuant to [this act].

1 (2) Upon request, the board shall review the contract  
 2 for compliance with the standards and requirements specified  
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4 (3) The board shall direct the state agency to  
 5 transmit a contract requested by an employee organization to  
 6 it for review and shall review the contract before any  
 7 review is conducted by the department.

8 (4) If the board finds that the contract complies with  
 9 the provisions of [this act], it shall forward the contract  
 10 to the department for determination of the acceptability of  
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 12 disapproval.

13 (5) If the board finds that the contract does not meet  
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 15 awarded and the board shall report its findings to the  
 16 department and the agency involved.

17 (6) The board may request assistance from the attorney  
 18 general and other state agencies in conducting research or  
 19 investigating contracts for compliance.

20 (7) If a state agency, the board, or the department  
 21 fails to follow the requirements of this section, an  
 22 interested party may petition the district court to void the  
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24 **NEW SECTION. Section 7. Severability.** If a part of  
 25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this  
2 act] is invalid in one or more of its applications, the part  
3 remains in effect in all valid applications that are  
4 severable from the invalid applications.

5 NEW SECTION. **Section 8. Applicability.** [This act]  
6 applies to contracts entered into after [the effective date  
7 of this act].

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APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

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