

SENATE BILL 400

Introduced by Harp, et al.

2/11	Introduced
2/11	Referred to State Administration
	Died in Committee

1 *Amended* BILL NO. *400*
 2 INTRODUCED BY *HARP Owens Speech Hager*
 3 *Shirley Stoney Ramsey*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A
 5 SERVICE OR PROJECT OF GOVERNMENT THAT COSTS MORE THAN
 6 \$10,000 BE PERFORMED BY PRIVATE ENTERPRISE; AND AMENDING
 7 SECTIONS 7-3-1323, 7-3-1332, 7-3-4442, 7-5-2301, 7-14-2401,
 8 7-14-2402, 7-14-2714, 15-70-101, 18-2-301, 60-2-112, AND
 9 85-8-361, MCA."

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

12 NEW SECTION. Section 1. Privatization required in
 13 certain purchases and projects. (1) It is the intent of the
 14 legislature to require private contract bidding for all
 15 purchases of supplies, materials, services, or projects that
 16 exceed the fair market price set forth in subsection (2).

17 (2) A municipality or government subdivision or agency
 18 may not perform a service or undertake a project with its
 19 own forces and resources if the fair market price of the
 20 service or project exceeds \$10,000. As used in this
 21 section, "project" means a completed undertaking as planned,
 22 without segregation into smaller activities to evade the
 23 intent of this section.

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

25 "7-3-1323. Competitive, advertised bidding required

1 for certain contracts. All contracts entered into by the
 2 municipality for supplies or materials, plans to perform
 3 services or to undertake a project as defined in [section 1]
 4 for any public work, or for the construction,
 5 reconstruction, or repair, maintenance, or operation of any
 6 public works or improvements, for which must be paid a sum
 7 exceeding \$2,000, ~~shall~~ \$10,000, must be awarded under
 8 contract to the lowest responsible bidder after public
 9 advertisement and competition as may be prescribed by
 10 ordinance, but the manager ~~shall have~~ has the right to
 11 reject all bids and advertise again. All advertisements as
 12 to contracts ~~shall must~~ contain a reservation of the
 13 foregoing right. ~~All contracts~~ The manager shall sign every
 14 contract entered into by the municipality ~~shall be signed by~~
 15 the manager after approval thereof of the contract by the
 16 commission."

17 **Section 3.** Section 7-3-1332, MCA, is amended to read:

18 "7-3-1332. Public works and improvements. (1) Any
 19 Subject to the provisions of [section 1], any local public
 20 work may be done or any local public works or improvements
 21 may be constructed, reconstructed, or repaired, maintained,
 22 ~~or operated,~~ either by contract or directly by the
 23 municipality, as may be determined by the commission. Before
 24 authorizing that any local public works or improvements be
 25 directly constructed, reconstructed, or repaired,

maintained,--or--operated, detailed plans and estimates for each-such the work or improvement ~~shall must~~ be submitted to the commission by the manager, and there ~~shall must~~ be separate accounting for each work or improvement so executed.

(2) The municipality ~~shall-have~~ has the same power and authority to create special improvement districts, ~~and--for like--purposes-and-to-create~~ special lighting districts, and maintenance districts for cities and towns as provided by the laws of the state.

(3) The director of public works ~~shall--be~~ is the engineer in charge of all such work,--works, or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts, and maintenance districts in cities and towns ~~shall~~ apply to and control the establishment under this part of special improvement districts, special lighting districts, and maintenance districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, or repair,--maintenance,--or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district,--and-such. The general law ~~shall~~ also apply applies to the manner of levying and collecting such assessments."

Section 4. Section 7-3-4442, MCA, is amended to read:

"7-3-4442. Local improvements. (1) The Subject to the provisions of [section 1], the commission shall-have has the power by ordinance to provide for:

(a) the construction, reconstruction, and repair, and maintenance, by contract or directly by the employment of labor, of all things in the nature of local improvements; and

(b) the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefited property, as provided by general law.

(2) Whenever the payments for such the improvements are to extend over a period of years and are to be paid for in installments, the proceedings and all things done in connection with such the improvements ~~are-to must~~ be done in strict conformity with the provisions of parts 41 and 42 of chapter 12."

Section 5. 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 a 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 a project for the construction of any
 2 building, road, or bridge ~~for which must be paid a sum~~ in
 3 excess of \$10,000 or for the repair or--maintenance of any
 4 building, road, or bridge ~~for which must be paid a sum~~ in
 5 excess of ~~\$25,000 shall~~ \$10,000 may not be entered into or
 6 performed by a county governing body without first
 7 publishing a notice calling for bids for furnishing a
 8 private contract to furnish or construct the same.

9 (2) The notice must be published as provided in
 10 7-1-2121.

11 (3) Every such contract shall in excess of \$10,000
 12 must be let to the lowest and best responsible bidder."

13 **Section 6.** Section 7-14-2401, MCA, is amended to read:

14 "7-14-2401. Authority to enter contracts. (1) Subject
 15 to the limitations and restrictions provided in the code for
 16 the letting of contracts, each board ~~may~~ shall let by
 17 contract the construction, ~~maintenance,~~ and improvement of
 18 county roads and the construction, ~~maintenance,~~ or repair of
 19 bridges when the amount of work to be done exceeds the sum
 20 of ~~\$1,000~~ \$10,000.

21 (2) As used in this part, unless the context requires
 22 otherwise, "board" means the board of county commissioners."

23 **Section 7.** Section 7-14-2402, MCA, is amended to read:

24 "7-14-2402. Contracts for county roads. When the
 25 estimated cost of opening, establishing, constructing,

1 changing, abandoning, discontinuing, or widening a county
 2 road exceeds ~~\$1,000~~ \$10,000, the work ~~may in the discretion~~
 3 ~~of the board be~~ shall let the work by contract unless--the
 4 board--~~shall find that such work may be otherwise done at~~
 5 ~~less cost and competitive bidding."~~

6 **Section 8.** Section 7-14-2714, MCA, is amended to read:

7 "7-14-2714. County authorized to carry out
 8 construction repair or improvement maintenance project. (1)
 9 Roads Subject to the provisions of [section 1], roads in
 10 districts may be constructed repaired and improved
 11 maintained in the first instance at the entire expense of
 12 the county, and the county may, as far as practicable, take
 13 the place of a private contractor.

14 (2) If bids for construction and improvement are
 15 rejected by the committee, the district may contract with
 16 the board to ~~construct or improve~~ repair the road.

17 (3) When the county has paid for construction and
 18 improvements, it shall be recompensed by the district in
 19 accordance with their agreement. If bonds were issued under
 20 the installment plan, they shall become the property of the
 21 county.

22 (4) The county shall have the same lien as if the
 23 contract had been let to a private contractor."

24 **Section 9.** Section 15-70-101, MCA, is amended to read:

25 "15-70-101. Disposition of funds. All taxes, interest,

1 and penalties collected under this chapter, except those
2 collected by a justice's court, ~~shall~~ must be turned over
3 promptly to the state treasurer, who shall place the same in
4 the state special revenue fund to the credit of the
5 department of highways. Those funds ~~hereinbelow~~ allocated
6 in this section to cities, towns, and counties ~~shall~~ must be
7 paid by the department of highways from the state special
8 revenue fund to ~~such~~ the cities, towns, and counties.

9 (1) \$14,000,000 of the funds collected under this
10 chapter, except those collected by a justice's court, is
11 statutorily appropriated, as provided in 17-7-502, to the
12 department of highways and ~~shall~~ must be allocated each
13 fiscal year on a monthly basis to the counties and
14 incorporated cities and towns in Montana for construction,
15 reconstruction, maintenance, and repair of rural roads and
16 city or town streets and alleys, as provided in subsections
17 (1)(a) through (1)(c):

18 (a) \$54,000 ~~shall~~ must be designated for the purposes
19 and functions of the Montana rural technical assistance
20 transportation program in Bozeman;

21 (b) \$6,323,000 ~~shall~~ must be divided among the various
22 counties in the following manner:

23 (i) 40% in the ratio that the rural road mileage in
24 each county, exclusive of the federal-aid interstate system
25 and the federal-aid primary system, bears to the total rural

1 road mileage in the state, exclusive of the federal-aid
2 interstate system and the federal-aid primary system;

3 (ii) 40% in the ratio that the rural population in each
4 county outside incorporated cities and towns bears to the
5 total rural population in the state outside incorporated
6 cities and towns;

7 (iii) 20% in the ratio that the land area of each
8 county bears to the total land area of the state;

9 (c) \$7,623,000 shall be divided among the incorporated
10 cities and towns in the following manner:

11 (i) 50% of the sum in the ratio that the population
12 within the corporate limits of the city or town bears to the
13 total population within corporate limits of all the cities
14 and towns in Montana;

15 (ii) 50% in the ratio that the city or town street and
16 alley mileage, exclusive of the federal-aid interstate
17 system and the federal-aid primary system, within corporate
18 limits bears to the total street and alley mileage,
19 exclusive of the federal-aid interstate system and
20 federal-aid primary system, within the corporate limits of
21 all cities and towns in Montana.

22 (2) All funds hereby allocated to counties, cities,
23 and towns ~~shall~~ in this section must be used, subject to the
24 provisions of [section 1], for the construction,
25 reconstruction, maintenance, and repair of rural roads, city

1 or town streets and alleys or for the share which ~~such~~ the
 2 city, town, or county might otherwise expend for
 3 proportionate matching of federal funds allocated for the
 4 construction of roads or streets which are part of the
 5 federal-aid primary or secondary highway system or urban
 6 extensions ~~thereto~~ to the systems, except that the governing
 7 body of a town or third-class city, as defined in 7-1-4111,
 8 may each year expend no more than 25% of the funds allocated
 9 to that town or third-class city for the purchase of capital
 10 equipment and supplies to be used for the maintenance and
 11 repair of town or third-class city streets and alleys.

12 (3) Upon receipt of the allocation provided herein in
 13 this section, the governing bodies of the recipient
 14 counties, cities, and towns shall inform the department of
 15 highways of the purposes for which the funds will be
 16 expended so that the county commissioners, the governing
 17 body, and the department of highways may coordinate the
 18 expenditure of public funds for road improvements.

19 (4) All funds hereby allocated to counties, cities,
 20 and towns ~~shall~~ must be disbursed to the lowest responsible
 21 bidder according to applicable bidding procedures followed
 22 in all cases where the contract for construction,
 23 reconstruction, maintenance, or repair is in excess of
 24 \$4,000 \$10,000.

25 (5) For the purposes of this section where

1 distribution of funds is made on a basis related to
 2 population, the population ~~shall~~ must be determined by the
 3 last preceding official federal census.

4 (6) For the purposes of this section where
 5 determination of mileage is necessary for distribution of
 6 funds, it ~~shall--be~~ is the responsibility of the cities,
 7 towns, and counties to furnish to the department of highways
 8 a yearly certified statement indicating the total mileage
 9 within their respective areas applicable to this chapter.
 10 All mileage submitted ~~shall--be~~ is subject to review and
 11 approval by the department of highways.

12 (7) Except by a town or third-class city as provided
 13 in subsection (2), ~~none-of~~ the funds authorized by this
 14 section ~~shall~~ may not be used for the purchase of capital
 15 equipment.

16 (8) Funds authorized by this section ~~shall~~ must be
 17 used for construction and maintenance programs only."

18 **Section 10.** Section 18-2-301, MCA, is amended to read:

19 "18-2-301. Bids required -- advertising. (1) It is
 20 unlawful for the board of examiners or any offices,
 21 departments, institutions, or any agent of the state of
 22 Montana acting for or in behalf of the state to do, to cause
 23 to be done, or to let any contract for the construction of
 24 buildings or the alteration and improvement of buildings and
 25 adjacent grounds on behalf of and for the benefit of the

1 state when the amount involved is ~~\$25,000~~ \$10,000 or more
 2 without first advertising in at least one issue each week
 3 for 3 consecutive weeks in two newspapers published in the
 4 state, one of which must be published at the seat of
 5 government and the other in the county where the work is to
 6 be performed, calling for sealed bids to perform ~~such the~~
 7 work and stating the time and place bids will be considered.

8 (2) All ~~such~~ work referred to in subsection (1) may be
 9 done, caused to be done, or contracted for only after
 10 competitive bidding.

11 (3) If no bid for ~~such the~~ work is accepted, the work
 12 may not be done or accomplished. The work may be
 13 readvertised from time to time until awarded to a qualified
 14 competitive bidder.

15 (4) This section does not apply to work done by
 16 inmates at an institution in the department of
 17 institutions."

18 **Section 11.** Section 60-2-112, MCA, is amended to read:

19 "60-2-112. **Competitive bidding.** (1) When the estimated
 20 cost of any work exceeds \$10,000, the commission shall let
 21 the contract by competitive bidding. Award ~~shall must~~ be
 22 made upon ~~such~~ notice and ~~upon-such~~ terms as the commission
 23 ~~may--prescribe~~ prescribes by its rules. However, except when
 24 prohibited by federal law, the commission shall make awards
 25 and contracts in accordance with 18-1-102 and 18-1-112.

1 (2) The commission may let a contract by means other
 2 than competitive bidding if it determines that special
 3 circumstances ~~so~~ require. The commission must specify the
 4 special circumstances in writing.

5 (3) The Subject to the provisions of [section 1], the
 6 commission may enter into contracts with units of local
 7 government for the construction of projects without
 8 competitive bidding if it finds that the work can be
 9 accomplished at lower total costs, including total cost of
 10 labor, materials, supplies, equipment usage, engineering,
 11 supervision, clerical and accounting services,
 12 administrative costs, and reasonable estimates of other
 13 costs attributable to the project."

14 **Section 12.** Section 85-8-361, MCA, is amended to read:

15 "85-8-361. **Contracts.** ~~In-all-cases-where--the~~ If the
 16 estimated cost of work to be done at any one time under the
 17 direction of the commissioners ~~shall--in-their-opinion--cost~~
 18 ~~to-exceed--\$27,500~~ exceeds \$10,000, the same commissioners
 19 shall be let the work to the lowest responsible bidder, ~~and~~
 20 after the commissioners ~~shall-advertise~~ have advertised for
 21 sealed bids, by notice published in some newspaper published
 22 in the county in which the petition is filed, and may
 23 advertise in one or more newspapers published elsewhere. If
 24 there ~~be is~~ no newspaper published in the county in which
 25 the petition is filed, ~~they~~ the commissioners shall

1 advertise in ~~some~~ a newspaper published in an adjoining
2 county, ~~which and the notice shall--particularly--set--forth~~
3 must state the time and place when and where the bids
4 advertised will be opened, the kind of work to be let, and
5 the terms of payment. ~~Said~~ The commissioners may continue
6 the letting from time to time, if in their judgment the ~~same~~
7 ~~shall-be~~ continuation is necessary, and shall reserve the
8 right to reject any and all bids."

9 NEW SECTION. **Section 13.** Exception for architectural,
10 engineering, and land surveying services. [This act] does
11 not apply to Title 18, chapter 8, part 2.

12 NEW SECTION. **Section 14.** Extension of authority. Any
13 existing authority to make rules on the subject of the
14 provisions of [this act] is extended to the provisions of
15 [this act].

16 NEW SECTION. **Section 15.** Codification instruction.
17 [Section 1] is intended to be codified as an integral part
18 of Title 18, chapter 1, and the provisions of Title 18,
19 chapter 1, apply to [section 1].

20 NEW SECTION. **Section 16.** Saving clause. [This act]
21 does not affect rights and duties that matured, penalties
22 that were incurred, or proceedings that were begun before
23 [the effective date of this act].

-End-