

HOUSE BILL 90

Introduced by Gervais, et al.

12/13	Introduced
12/13	Referred to Business & Economic Development
12/13	First Reading
12/13	Fiscal Note Requested
12/15	Hearing
12/15	Committee Report--Bill Passed as Amended
12/16	2nd Reading Passed
12/16	3rd Reading Passed
12/17	Fiscal Note Received
	Transmitted to Senate
12/17	First Reading
12/17	Referred to Finance & Claims
12/18	Hearing
12/18	Tabled in Committee

1 House BILL NO. 90
2 INTRODUCED BY Russell Yellowstone
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PUBLIC
5 CONTRACT BIDDING PREFERENCE FOR A MINORITY BUSINESS
6 ENTERPRISE; DEFINING A MINORITY BUSINESS ENTERPRISE;
7 AMENDING SECTIONS 18-1-101 AND 18-1-102, MCA; AND PROVIDING
8 AN EFFECTIVE DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 **Section 1.** Section 18-1-101, MCA, is amended to read:
12 "18-1-101. Definitions. (1) Unless the context requires
13 otherwise, in this title "department" means the department
14 of administration provided for in Title 2, chapter 15, part
15 10.
16 (2) Unless the context requires otherwise, in this part
17 the following definitions apply:
18 (a) "Goods" means supplies, equipment, materials,
19 commodities, and specially manufactured products.
20 (b) "Minority business enterprise" means a business at
21 least 50% of which is owned by minority group members or, in
22 the case of a publicly owned business, at least 51% of the
23 stock of which must be owned by minority group members. For
24 purposes of this subsection, minority group members are
25 residents of Montana who are Native Americans,

1 Afro-Americans, Hispanics, or Asian Americans.
2 ~~(b)~~(c) "Montana-made" means manufactured or produced in
3 this state and made with the:
4 (i) use of parts, materials, or supplies of which 50%
5 or more were manufactured or produced in this state; or
6 (ii) employment of persons of whom 50% or more are bona
7 fide residents of Montana as defined in 18-2-401.
8 ~~(c)~~(d) "Nonresident bidder" means a bidder whose
9 residence is not in this state as determined under 18-1-103.
10 ~~(d)~~(e) "Public agency" means a department, commission,
11 council, board, bureau, committee, institution, agency,
12 government corporation, or other entity, instrumentality, or
13 official of the legislative, executive, or judicial branch
14 of this state and its political subdivisions, including the
15 board of regents and the Montana university system.
16 ~~(e)~~(f) "Resident bidder" means a bidder whose residence
17 is in this state as determined under 18-1-103."
18 **Section 2.** Section 18-1-102, MCA, is amended to read:
19 "18-1-102. State contracts to lowest bidder. (1) (a) In
20 order to provide for an orderly administration of the
21 business of the state of Montana in awarding public
22 contracts for the purchase of goods and for construction,
23 repair, and public works of all kinds, a public agency shall
24 award:
25 (i) a public contract for construction, repair, or

1 public works to the lowest responsible bidder without regard
 2 to residency. However, a resident bidder must be allowed a
 3 preference on a contract against the bid of any nonresident
 4 bidder from any state or country that enforces a preference
 5 for resident bidders. The preference given to resident
 6 bidders of this state must be equal to the preference given
 7 in the other state or country.

8 (ii) a public contract for the purchase of goods, if the
 9 goods are comparable in quality and performance, to the
 10 lowest responsible resident bidder whose:

11 (A) bid is not more than 3% higher than that of the
 12 lowest responsible nonresident bidder;

13 (B) offered goods are Montana-made and whose bid is not
 14 more than 5% higher than that of the lowest responsible
 15 nonresident bidder; or

16 (C) offered goods are Montana-made and whose bid is not
 17 more than 3% higher than that of the lowest responsible
 18 resident bidder whose offered goods are not Montana-made; or

19 (D) offered goods are Montana-made by a minority
 20 business enterprise and whose bid is not more than 8% higher
 21 than that of the lowest responsible resident bidder whose
 22 offered goods are not Montana-made.

23 (b) (i) If both subsections (1)(a)(ii)(B) and
 24 (1)(a)(ii)(C) are applicable to bids for a contract, the
 25 contract must be awarded to the resident bidder whose

1 offered goods are Montana-made if the bid is:

2 (A) not more than 3% higher than that of a resident
 3 bidder whose offered goods are not Montana-made; and

4 (B) not more than 5% higher than that of the
 5 nonresident bidder.

6 (ii) However, no combination of preferences under this
 7 subsection (1)(b) may exceed 5%.

8 (2) The preferences in this section apply:

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

11 (b) to contracts involving funds obtained from the
 12 federal government unless expressly prohibited by the laws
 13 of the United States or regulations adopted pursuant ~~thereto~~
 14 to federal law."

15 NEW SECTION. Section 3. Effective date. [This act] is
 16 effective July 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0090, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing a public contract bidding preference for a minority business enterprise and defining a minority business enterprise effective July 1, 1994.

ASSUMPTIONS:

1. The extent to which Montana-made goods would be offered by a minority business under a public contract is unknown.
2. The extent to which Montana-made goods offered by a minority business under a public contract would exceed the cost of out-of-state produced goods is unknown.

FISCAL IMPACT:

Insofar as Montana-made goods are offered by a minority business enterprise under a public contract at prices which exceed out-of-state goods by less than 8%, 11%, or 13% (see technical note below), there would be additional costs for the state. The amount of this potential cost increase is inestimable.

TECHNICAL NOTE:

The following factors are not clearly addressed in the introduced bill nor is legislative intent specified for rulemaking:

- a. How the residency and racial makeup of the owners of a "minority business enterprise" will be determined.
- b. The definition of a Native American, Afro-American, Hispanic, or Asian American for the purposes of this preference.
- c. Whether the preference stipulated is 8%, 11%, or 13% when all provisions of Section 2 are read.

David Lewis 12-16

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Floyd "Bob" Gervais 12-17-93

FLOYD "BOB" GERVAIS, PRIMARY SPONSOR DATE
Fiscal Note for HB0090, as introduced

HB 90

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 90

INTRODUCED BY GERVAIS, RUSSELL, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PUBLIC
CONTRACT BIDDING PREFERENCE FOR A MINORITY BUSINESS
ENTERPRISE; DEFINING A MINORITY BUSINESS ENTERPRISE;
AMENDING SECTIONS 18-1-101 AND 18-1-102, MCA; AND PROVIDING
AN EFFECTIVE DATE."

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. 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) "Minority business enterprise" means a business
THAT IS NOT SUPPORTED BY OR RECEIVING A SUBSIDY FROM A
TRIBAL GOVERNMENT AND at least 50% of which is owned by
minority group members or, in the case of a publicly owned
business, at least 51% of the stock of which must be owned
by minority group members. For purposes of this subsection,

minority group members are residents of Montana who are
Native Americans, Afro-Americans, Hispanics, or Asian
Americans.

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

(i) use of parts, materials, 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.

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

(e) "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.

(f) "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 bidder. (1) (a) In
order to provide for an orderly administration of the
business of the state of Montana in awarding public
contracts for the purchase of goods and for construction,
repair, and public works of all kinds, a public agency shall

1 award:

2 (i) a public contract for construction, repair, or
3 public works to the lowest responsible bidder without regard
4 to residency. However, a resident bidder must be allowed a
5 preference on a contract against the bid of any nonresident
6 bidder from any state or country that enforces a preference
7 for resident bidders. The preference given to resident
8 bidders of this state must be equal to the preference given
9 in the other state or country.

10 (ii) a public contract for the purchase of goods, if the
11 goods are comparable in quality and performance, to the
12 lowest responsible resident bidder whose:

13 (A) bid is not more than 3% higher than that of the
14 lowest responsible nonresident bidder;

15 (B) offered goods are Montana-made and whose bid is not
16 more than 5% higher than that of the lowest responsible
17 nonresident bidder; or

18 (C) offered goods are Montana-made and whose bid is not
19 more than 3% higher than that of the lowest responsible
20 resident bidder whose offered goods are not Montana-made; or

21 (D) offered goods are Montana-made by a minority
22 business enterprise and whose bid is not more-than-0% higher
23 than that of the lowest responsible resident bidder whose
24 offered goods are not Montana-made.

25 (b) (i) If both subsections (1)(a)(ii)(B) and

1 (1)(a)(ii)(C) are applicable to bids for a contract, the
2 contract must be awarded to the resident bidder whose
3 offered goods are Montana-made if the bid is:

4 (A) not more than 3% higher than that of a resident
5 bidder whose offered goods are not Montana-made; and

6 (B) not more than 5% higher than that of the
7 nonresident bidder.

8 (ii) However, no combination of preferences under this
9 subsection (1)(b) may exceed 5%.

10 (2) The preferences in this section apply:

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

13 (b) to contracts involving funds obtained from the
14 federal government unless expressly prohibited by the laws
15 of the United States or regulations adopted pursuant ~~thereto~~
16 to federal law."

17 NEW SECTION. Section 3. Effective date. [This act] is
18 effective July 1, 1994.

-End-

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PUBLIC CONTRACT BIDDING PREFERENCE FOR A MINORITY BUSINESS ENTERPRISE; DEFINING A MINORITY BUSINESS ENTERPRISE; AMENDING SECTIONS 18-1-101 AND 18-1-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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"18-1-101. 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) "Minority business enterprise" means a business THAT IS NOT SUPPORTED BY OR RECEIVING A SUBSIDY FROM A TRIBAL GOVERNMENT AND at least 50% of which is owned by minority group members or, in the case of a publicly owned business, at least 51% of the stock of which must be owned by minority group members. For purposes of this subsection,

minority group members are residents of Montana who are Native Americans, Afro-Americans, Hispanics, or Asian Americans.

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

(i) use of parts, materials, 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.

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

(e) "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.

(f) "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 bidder. (1) (a) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall

1 award:

2 (i) a public contract for construction, repair, or
3 public works to the lowest responsible bidder without regard
4 to residency. However, a resident bidder must be allowed a
5 preference on a contract against the bid of any nonresident
6 bidder from any state or country that enforces a preference
7 for resident bidders. The preference given to resident
8 bidders of this state must be equal to the preference given
9 in the other state or country.

10 (ii) a public contract for the purchase of goods, if the
11 goods are comparable in quality and performance, to the
12 lowest responsible resident bidder whose:

13 (A) bid is not more than 3% higher than that of the
14 lowest responsible nonresident bidder;

15 (B) offered goods are Montana-made and whose bid is not
16 more than 5% higher than that of the lowest responsible
17 nonresident bidder; or

18 (C) offered goods are Montana-made and whose bid is not
19 more than 3% higher than that of the lowest responsible
20 resident bidder whose offered goods are not Montana-made; or

21 (D) offered goods are Montana-made by a minority
22 business enterprise and whose bid is not more-than-8% higher
23 than that of the lowest responsible resident bidder whose
24 offered goods are not Montana-made.

25 (b) (i) If both subsections (1)(a)(ii)(B) and

1 (1)(a)(ii)(C) are applicable to bids for a contract, the
2 contract must be awarded to the resident bidder whose
3 offered goods are Montana-made if the bid is:

4 (A) not more than 3% higher than that of a resident
5 bidder whose offered goods are not Montana-made; and

6 (B) not more than 5% higher than that of the
7 nonresident bidder.

8 (ii) However, no combination of preferences under this
9 subsection (1)(b) may exceed 5%.

10 (2) The preferences in this section apply:

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

13 (b) to contracts involving funds obtained from the
14 federal government unless expressly prohibited by the laws
15 of the United States or regulations adopted pursuant thereto
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