

House BILL NO. 178

INTRODUCED BY Epuch

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO BID SECURITY; SPECIFYING THE FORM OF SECURITY TO ACCOMPANY A BID FOR THE PURCHASE OR SALE OF PUBLIC BONDS; AMENDING SECTIONS 18-1-202 AND 18-1-203, MCA; REPEALING SECTION 17-5-806, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 18-1-202, MCA, is amended to read:

"18-1-202. Advertisement for bid to specify required security. (1) The advertisement, request, or solicitation for bids or offers shall must distinctly specify that all bidders, offerors, tenderers, or contractors shall:

(a) ~~in any case where~~ whenever bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder ~~shall be~~ is awarded the contract, the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; ~~otherwise, If a bond is not provided,~~ the bidder ~~will~~ shall pay ~~unto~~ the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount ~~be~~ is in excess of the former; ~~or,~~

(b) ~~in any case where~~ whenever the bids are solicited for the purchase and sale of any forms of indebtedness of ~~such~~ the public authority, expressly covenant that the ~~money or bank instrument~~ security accompanying the bid in the ~~sum~~ amount specified by the public authority ~~shall~~ must be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of ~~such~~ the forms of indebtedness ~~as~~ that may be awarded on acceptance of bid and in compliance with the terms ~~thereof~~ of the bid.

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal

1 or other sum fixed by statute to be paid by ~~any a~~ bidder failing or refusing as aforesaid ~~in any case where~~
 2 ~~such sum or sums are~~ whenever the amount of the bid security is fixed by statute, for bid security;
 3 ~~otherwise, it shall in all cases specify the sum~~ Otherwise, the public authority shall specify the amount,
 4 ~~but in no case which may not be less than 2% of the principal amount of the indebtedness for a bid for the~~
 5 purchase of indebtedness and 10% of the bid price for any other bid, ~~which it may deem~~ that it considers
 6 reasonably necessary to protect and indemnify the public authority against the failure or refusal of the
 7 bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

8 (3) The advertisement, request, or other solicitation for bids or offers ~~shall~~ must distinctly specify
 9 that ~~lawful moneys of the United States or a cashier's check, certified check, bank money order, or bank~~
 10 ~~draft, in any case drawn and issued by banks as herein specified, payable as aforesaid, or bid bond in any~~
 11 ~~case appropriate therefor shall constitute~~ a bid bond or other form of security specified in 18-1-203
 12 constitutes compliance with the requirement for bid security."

13
 14 **Section 2.** Section 18-1-203, MCA, is amended to read:

15 "**18-1-203. Form of security.** (1) ~~Except as provided in subsection (4), in~~ In all cases under
 16 18-1-202(1)(a), the bidder, offeror, or tenderer shall accompany any bid with either:

17 (a) lawful ~~moneys~~ money of the United States;

18 (b) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and
 19 issued by a ~~national banking association located in the state of Montana or by any banking corporation~~
 20 ~~incorporated under the laws of the state of Montana~~ federally chartered or state-chartered bank insured by
 21 the federal deposit insurance corporation; or

22 (c) a bid bond ~~or bonds~~, guaranty bond, or surety bond executed by a surety corporation authorized
 23 to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure
 24 the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty
 25 bond or surety bond must carry an investment grade rating of one or more nationally recognized
 26 independent rating agents.

27 (2) ~~Except as provided in subsection (4), in all cases under 18-1-202(1)(b) the bidder shall~~
 28 ~~accompany the bid with the security described in (1)(a) or (1)(b) above.~~

29 (3) The ~~moneys~~ money or, in lieu of ~~moneys~~ money, ~~any of such~~ the bank instruments or bid
 30 bonds, financial guaranty bonds, or surety bonds ~~shall~~ must be payable directly to the public authority

1 soliciting or advertising for bids.

2 ~~(4) The provisions of this section do not apply to bonds issued under Title 17, chapter 5, part 8."~~

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4 NEW SECTION. **Section 3. Repealer.** Section 17-5-806, MCA, is repealed.

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6 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0178, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising laws relating to bid security; specifying the form of security to accompany a bid for the purchase or sale of public bonds.

ASSUMPTIONS:

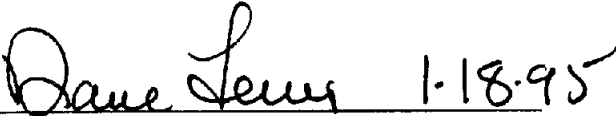
1. Decisions to bid on public bonds are often made on the basis of "last minute" financial market conditions.
2. Greater flexibility in bid security requirements for the sale of public bonds would promote greater participation of potential bidders.
3. Greater participation of financial entities in bidding for state bond issues would tend to result in lower bids.

FISCAL IMPACT:

Insufficient information is available to make a specific estimate but significant savings in interest costs for the state are likely to occur as a result of HB0178.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No effect.


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


DAVID EWER, PRIMARY SPONSOR DATE

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HB 178

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17 indebtedness, expressly covenant in any bid that if the bidder ~~shall be~~ is awarded the contract, the bidder
18 will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and
19 give a good and sufficient bond to secure the performance of the terms and conditions of the contract;
20 ~~otherwise, if a bond is not provided,~~ the bidder ~~will~~ shall pay ~~unto~~ the public authority the difference in
21 money between the amount of the bid of the bidder and the amount for which the public authority legally
22 contracts with another party to perform the work or supply the property, commodities, or services, as the
23 case may be, if the latter amount ~~be~~ is in excess of the former; ~~or.~~

24 (b) ~~in any case where~~ whenever the bids are solicited for the purchase and sale of any forms of
25 indebtedness of ~~such~~ the public authority, expressly covenant that the ~~money or bank instrument~~ security
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