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SENATE BILL NO. 170

INTRODUCED BY Kentung

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE IN-STATE BIDDERS PREFERENCE IN AWARDING PUBLIC CONTRACTS; REPEALING THE PREFERENCE FOR MONTANA-MADE PRODUCTS; REPEALING THE REQUIREMENT THAT STATE PRINTING BE DONE IN MONTANA; AMENDING SECTIONS 7-14-2404, 7-14-2406, 7-14-2716, 18-1-102, 18-1-111, 18-5-308, 18-7-104, 18-7-105, 37-71-301, AND 60-2-112, MCA; AND REPEALING SECTIONS 18-1-112 AND 18-7-107, MCA."

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

Section 1. 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 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 2. 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 transportation has adopted or established a standard plan and specifications, the bids must be submitted ~~thereon~~ based on the standard 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 in accordance with the requirements of 18-1-102, ~~18-1-112~~, and Title 18, chapter 2, part 4. 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.

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

5
 6 **Section 3.** Section 7-14-2716, MCA, is amended to read:

7 **"7-14-2716. Award of contract by local improvement district.** (1) If the committee awards a
 8 contract, it shall do so in accordance with the requirements of 18-1-102, ~~18-1-112~~, and Title 18, chapter
 9 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall
 10 determine the prevailing rate to be stated in the contract.

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

13
 14 **Section 4.** Section 18-1-102, MCA, is amended to read:

15 **"18-1-102. State contracts to lowest bidder.** (1) ~~(a)~~ In order to provide for an orderly administration
 16 of the business of the state of Montana in awarding public contracts for the purchase of goods and for
 17 construction, repair, and public works of all kinds, a public agency shall award:

18 ~~(i)(a)~~ a public contract for construction, repair, or public works to the lowest responsible bidder
 19 without regard to residency. However, a resident bidder must be allowed a preference on a contract against
 20 the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders.
 21 The preference given to resident bidders of this state must be equal to the preference given in the other
 22 state or country.

23 ~~(ii)(b)~~ a public contract for the purchase of goods, ~~if the goods are comparable in quality and~~
 24 ~~performance,~~ to the lowest responsible resident bidder whose:

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

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

28 ~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the~~
 29 ~~lowest responsible resident bidder whose offered goods are not Montana-made.~~

30 ~~(b) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the~~

1 ~~contract must be awarded to the resident bidder whose offered goods are Montana made if the bid is:~~

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

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

5 ~~(iii) However, no combination of preferences under this subsection may exceed 5%.~~

6 (2) The ~~preferences~~ preference in this section ~~apply~~ applies:

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

8 (b) to contracts involving funds obtained from the federal government unless expressly prohibited
9 by the laws of the United States or regulations adopted pursuant ~~thereto~~ to those laws."

10
11 **Section 5.** Section 18-1-111, MCA, is amended to read:

12 **"18-1-111. Impartiality to be shown in letting contracts —~~preference to residents~~.** The department
13 may not show any partiality or favoritism in making awards or contracts and ~~shall~~ must be absolutely fair
14 and impartial. ~~Where both the bids and quality of goods offered are the same, preference shall be given to~~
15 ~~articles of local and domestic production and manufacture, and where both the bids and the quality of~~
16 ~~goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over~~
17 ~~nonresident bidders."~~

18
19 **Section 6.** Section 18-5-308, MCA, is amended to read:

20 **"18-5-308. Construction with other sections.** Procurement from small businesses under this part
21 is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now~~
22 ~~or hereafter amended~~ under the statutes, except that in case of conflict, this part governs and the
23 provisions set forth in 18-1-102, and 18-1-111, ~~and 18-1-112 shall~~ do not apply."
24

25 **Section 7.** Section 18-7-104, MCA, is amended to read:

26 **"18-7-104. Union label.** All printing for which the state of Montana is chargeable ~~shall~~ must bear
27 the label of the branch of the international typographical union, the allied printing trades council, or the
28 amalgamated lithographers of America of the locality in which it is printed, except under the following
29 conditions. Printing firms not having the use of the labels and ~~who are desirous of presenting~~ that wish to
30 present bids for printing ~~as enumerated above shall be~~ are required to establish consideration as a

1 responsible bidder as follows:

2 (1) As a condition to consideration as a responsible bidder, printing concerns ~~must~~ shall file with
3 the secretary of state a sworn statement to the effect that employees in the employ of the concern ~~which~~
4 that is to produce ~~such~~ the printing are receiving the prevailing wage rate and are working under conditions
5 prevalent in the locality in which the work is produced.

6 (2) Whenever a collective bargaining agreement is in effect between an employer and employees
7 who are represented by a responsible organization ~~which~~ that is in no way influenced or controlled by the
8 management, ~~such~~ the agreement and its provisions ~~shall~~ must be construed as conditions prevalent in ~~said~~
9 the locality and ~~shall~~ must be the minimum requirement for being adjudged a responsible bidder under ~~this~~
10 ~~section, 18-7-107, or~~ chapter 4 of this title, 18-7-107, or this section.

11 (3) Printing firms ~~having~~ that have the use of the union labels as ~~set forth above~~ shall ~~provided in~~
12 this section must be deemed considered as having complied with the provisions of ~~this section, 18-7-107,~~
13 ~~or~~ chapter 4 of this title or of this section, but ~~nothing in~~ these provisions ~~shall~~ may not be construed as
14 exempting ~~such~~ bidders from any provisions of ~~this section, 18-7-107, or~~ chapter 4 of this title or of this
15 section, and ~~such~~ bidders ~~shall~~ must also be required to conform to all provisions ~~thereof~~ of chapter 4."

16
17 **Section 8.** Section 18-7-105, MCA, is amended to read:

18 "18-7-105. **Penalty.** ~~Any~~ An officer of the state who ~~shall accept~~ accepts any printed matter for
19 which the state is chargeable in whole or in part or who is found to have had printed matter produced,
20 under conditions other than as set forth in chapter 4 of this title, or 18-7-104, ~~or 18-7-107 shall be is~~
21 subject to a fine of \$50 for each ~~and every~~ offense."

22
23 **Section 9.** Section 37-71-301, MCA, is amended to read:

24 "37-71-301. **Complaints against licensee -- grounds -- investigation -- hearing -- suspension of**
25 **license -- appeals.** (1) Any person or other organization may file a duly verified complaint with the
26 department charging that the licensee is guilty of one or more of the following acts or omissions:

27 (a) abandonment of any contract without legal excuse;

28 (b) diversion of funds or property received under express agreement for prosecution or completion
29 of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any
30 contract and their application or use for any other contract, obligation, or purpose with intent to defraud

1 or deceive creditors or the owner;

2 (c) ~~the doing~~ performance of any willful fraudulent act by the licensee as a public contractor in
3 consequence of which another is substantially injured;

4 (d) ~~the making~~ inclusion of any false statement in any application for a license or renewal ~~thereof~~;

5 ~~(e) the failure to comply with the provisions of 18-1-112 requiring preference of products~~
6 ~~manufactured or produced in this state by Montana industry and labor~~ of a license.

7 (2) Upon the filing of ~~such~~ the complaint, the department shall investigate the charge and within
8 60 days after the filing of ~~such~~ the complaint render and file a decision, along with the reasons ~~therefor~~ for
9 the decision. If the department's decision ~~be~~ is that the licensee has been guilty of any of ~~such~~ the acts
10 or omissions, the department shall suspend the contractor's license. At any time within 20 days ~~thereafter~~
11 after the decision, the complainant or the contractor may petition the department for a rehearing. In the
12 order granting or denying ~~such~~ the rehearing, the department shall set forth a statement of the particular
13 grounds and reasons for the department's actions on ~~such~~ the petition and shall mail a copy of ~~such~~ the
14 order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a
15 rehearing ~~be~~ is granted, the department shall set the matter for further hearing on due notice to the parties
16 and, within 30 days after submission of the matter, serve the department's decision after rehearing in ~~like~~
17 the same manner as an original decision.

18 (3) The filing of ~~such~~ the petition for rehearing as to the department's actions in suspending or
19 canceling ~~such~~ the license ~~shall suspend~~ suspends the operation of ~~such~~ the action and ~~permit~~ allows the
20 licensee to continue to do business as a public contractor pending final determination of the controversy.

21 (4) Within 30 days after the decision on rehearing, any party aggrieved by ~~such~~ the decision of the
22 department may appeal ~~therefrom~~ to the district court in ~~and for~~ the county in which the licensee ~~under this~~
23 ~~chapter~~ resides or does business as a public contractor by serving upon the department a notice of ~~such~~
24 appeal. The matter ~~shall thereupon~~ must be heard de novo by the district court. An appeal may be taken
25 from the decision of the district court in the same manner as appeals in other civil cases.

26 (5) In all cases ~~where~~ in which the licensee has filed ~~his~~ a notice of appeal from the decision of the
27 department or from the decision of the district court, ~~such~~ the licensee ~~shall be~~ is entitled to continue to
28 do business as a public contractor pending final decision of the controversy."
29

30

Section 10. Section 60-2-112, MCA, is amended to read:

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

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

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

14

15 **NEW SECTION. Section 11. Repealer.** Sections 18-1-112 and 18-7-107, MCA, are repealed.

16

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0170, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating the in-state bidders preference in awarding public contracts; repealing the preference for Montana-made products; repealing the requirements that state printing be done in Montana.

ASSUMPTIONS:

1. A comprehensive evaluation of the impact of the preferences eliminated by this bill is unavailable.
2. The fiscal impact shown below is anecdotal, based on the response of two agencies to this fiscal note. Other state agencies which have delegated purchasing authority for certain contracts above a \$5,000 threshold and which may have significant fiscal impacts resulting from this bill include the Montana University System, Department of State Lands, the Montana Lottery, and the Legislative Council.

FISCAL IMPACT:

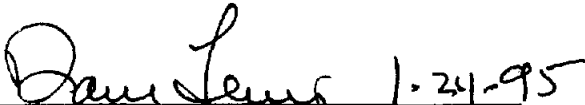
Expenditures:


SB170 would be likely to reduce state costs for certain contract items. Information regarding the full extent of savings statewide is unavailable. Examples of significant savings based on experience within the past two years is shown below. Potential savings in these areas would vary from year to year depending on when contracts are bid and the bids received in any particular year.

Department of Transportation	
Line paint contracts	(78,000)
Chemical de-icer	(5,000)
Department of Administration	
Natural gas contracts	(44,000)
Pursuit vehicles	(9,000)
Electrical products	(5,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties, cities and school districts are likely to experience similar savings.


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


TOM KEATING, PRIMARY SPONSOR DATE
Fiscal Note for SB0170, as introduced

SB 170

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

5
 6 **Section 3.** Section 7-14-2716, MCA, is amended to read:

7 **"7-14-2716. Award of contract by local improvement district.** (1) If the committee awards a
 8 contract, it shall do so in accordance with the requirements of 18-1-102, ~~18-1-112,~~ and Title 18, chapter
 9 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall
 10 determine the prevailing rate to be stated in the contract.

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

13
 14 **Section 4.** Section 18-1-102, MCA, is amended to read:

15 **"18-1-102. State contracts to lowest bidder.** (1) ~~(a)~~ In order to provide for an orderly administration
 16 of the business of the state of Montana in awarding public contracts for the purchase of goods and for
 17 construction, repair, and public works of all kinds, a public agency shall award:

18 ~~(i)(a)~~ a public contract for construction, repair, or public works to the lowest responsible bidder
 19 without regard to residency. However, a resident bidder must be allowed a preference on a contract against
 20 the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders.
 21 The preference given to resident bidders of this state must be equal to the preference given in the other
 22 state or country.

23 ~~(ii)(b)~~ a public contract for the purchase of goods, ~~if the goods are comparable in quality and~~
 24 ~~performance,~~ to the lowest responsible ~~resident~~ bidder ~~whose:~~

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

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

28 ~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the~~
 29 ~~lowest responsible resident bidder whose offered goods are not Montana-made.~~

30 ~~(b) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the~~

1 ~~contract must be awarded to the resident bidder whose offered goods are Montana made if the bid is:~~

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

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

5 ~~(iii) However, no combination of preferences under this subsection may exceed 5%.~~

6 (2) The ~~preferences~~ preference in this section ~~apply~~ applies:

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

8 (b) to contracts involving funds obtained from the federal government unless expressly prohibited
9 by the laws of the United States or regulations adopted pursuant ~~thereto~~ to those laws."

10
11 **Section 5.** Section 18-1-111, MCA, is amended to read:

12 **"18-1-111. Impartiality to be shown in letting contracts** ~~—preference to residents.~~ The department
13 may not show any partiality or favoritism in making awards or contracts and ~~shall~~ must be absolutely fair
14 and impartial. ~~Where both the bids and quality of goods offered are the same, preference shall be given to~~
15 ~~articles of local and domestic production and manufacture, and where both the bids and the quality of~~
16 ~~goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over~~
17 ~~nonresident bidders."~~

18
19 **Section 6.** Section 18-5-308, MCA, is amended to read:

20 **"18-5-308. Construction with other sections.** Procurement from small businesses under this part
21 is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now~~
22 ~~or hereafter amended~~ under the statutes, except that in case of conflict, this part governs and the
23 provisions set forth in 18-1-102, and 18-1-111, ~~and 18-1-112 shall do not apply."~~

24
25 **Section 7.** Section 18-7-104, MCA, is amended to read:

26 **"18-7-104. Union label.** All printing for which the state of Montana is chargeable ~~shall~~ must bear
27 the label of the branch of the international typographical union, the allied printing trades council, or the
28 amalgamated lithographers of America of the locality in which it is printed, except under the following
29 conditions. Printing firms not having the use of the labels and ~~who are desirous of presenting~~ that wish to
30 present bids for printing ~~as enumerated above shall be~~ are required to establish consideration as a

1 responsible bidder as follows:

2 (1) As a condition to consideration as a responsible bidder, printing concerns ~~must shall~~ file with
3 the secretary of state a sworn statement to the effect that employees in the employ of the concern ~~which~~
4 that is to produce ~~such the~~ printing are receiving the prevailing wage rate and are working under conditions
5 prevalent in the locality in which the work is produced.

6 (2) Whenever a collective bargaining agreement is in effect between an employer and employees
7 who are represented by a responsible organization ~~which that~~ is in no way influenced or controlled by the
8 management, ~~such the~~ agreement and its provisions ~~shall must~~ be construed as conditions prevalent in ~~said~~
9 the locality and shall must be the minimum requirement for being adjudged a responsible bidder under ~~this~~
10 section, 18-7-107, or chapter 4 of this title, 18-7-107, or this section.

11 (3) Printing firms ~~having that have~~ the use of the union labels as ~~set forth above shall~~ provided in
12 this section must be deemed considered as having complied with the provisions of ~~this section, 18-7-107,~~
13 ~~or chapter 4 of this title or of this section,~~ but ~~nothing in~~ these provisions ~~shall may not~~ be construed as
14 exempting ~~such~~ bidders from any provisions of ~~this section, 18-7-107, or chapter 4 of this title or of this~~
15 section, and such bidders shall must also be required to conform to all provisions ~~thereof of chapter 4.~~"

16

17 **Section 8.** Section 18-7-105, MCA, is amended to read:

18 "**18-7-105. Penalty.** ~~Any An~~ officer of the state who ~~shall accept~~ accepts any printed matter for
19 which the state is chargeable in whole or in part or who is found to have had printed matter produced,
20 under conditions other than as set forth in chapter 4 of this title, or 18-7-104, ~~or 18-7-107 shall be is~~
21 subject to a fine of \$50 for each ~~and every~~ offense."

22

23 **Section 9.** Section 37-71-301, MCA, is amended to read:

24 "**37-71-301. Complaints against licensee -- grounds -- investigation -- hearing -- suspension of**
25 **license -- appeals.** (1) Any person or other organization may file a duly verified complaint with the
26 department charging that the licensee is guilty of one or more of the following acts or omissions:

27 (a) abandonment of any contract without legal excuse;

28 (b) diversion of funds or property received under express agreement for prosecution or completion
29 of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any
30 contract and their application or use for any other contract, obligation, or purpose with intent to defraud

1 or deceive creditors or the owner;

2 (c) ~~the doing~~ performance of any willful fraudulent act by the licensee as a public contractor in
3 consequence of which another is substantially injured;

4 (d) ~~the making~~ inclusion of any false statement in any application for a license or renewal thereof;

5 ~~(e) the failure to comply with the provisions of 18-1-112 requiring preference of products~~
6 ~~manufactured or produced in this state by Montana industry and labor~~ of a license.

7 (2) Upon the filing of ~~such~~ the complaint, the department shall investigate the charge and within
8 60 days after the filing of ~~such~~ the complaint render and file a decision, along with the reasons ~~therefor~~ for
9 the decision. If the department's decision ~~be~~ is that the licensee has been guilty of any of ~~such~~ the acts
10 or omissions, the department shall suspend the contractor's license. At any time within 20 days ~~thereafter~~
11 after the decision, the complainant or the contractor may petition the department for a rehearing. In the
12 order granting or denying ~~such~~ the rehearing, the department shall set forth a statement of the particular
13 grounds and reasons for the department's actions on ~~such~~ the petition and shall mail a copy of ~~such~~ the
14 order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a
15 rehearing ~~be~~ is granted, the department shall set the matter for further hearing on due notice to the parties
16 and, within 30 days after submission of the matter, serve the department's decision after rehearing in ~~the~~
17 the same manner as an original decision.

18 (3) The filing of ~~such~~ the petition for rehearing as to the department's actions in suspending or
19 canceling ~~such~~ the license ~~shall suspend~~ suspends the operation of ~~such~~ the action and ~~permit~~ allows the
20 licensee to continue to do business as a public contractor pending final determination of the controversy.

21 (4) Within 30 days after the decision on rehearing, any party aggrieved by ~~such~~ the decision of the
22 department may appeal ~~therefrom~~ to the district court in ~~and for~~ the county in which the licensee ~~under this~~
23 ~~chapter~~ resides or does business as a public contractor by serving upon the department a notice of ~~such~~
24 appeal. The matter ~~shall thereupon~~ must be heard de novo by the district court. An appeal may be taken
25 from the decision of the district court in the same manner as appeals in other civil cases.

26 (5) In all cases ~~where in which~~ the licensee has filed ~~his~~ a notice of appeal from the decision of the
27 department or from the decision of the district court, ~~such~~ the licensee ~~shall be~~ is entitled to continue to
28 do business as a public contractor pending final decision of the controversy."

29
30 **Section 10.** Section 60-2-112, MCA, is amended to read:

