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House BILL NO. 217
Bergquist

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING CONSTRUCTION COST AUTHORIZATION THAT DOES NOT REQUIRE LEGISLATIVE CONSENT; INCREASING THE COST LIMIT FOR PROJECTS SUBJECT TO ADVERTISING AND BIDDING; AMENDING SECTIONS 18-2-102, 18-2-103, AND 18-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 18-2-102, MCA, is amended to read:

"18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2), a building costing more than ~~\$50,000~~ \$150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than ~~\$50,000~~ \$150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state."

1 **Section 2.** Section 18-2-103, MCA, is amended to read:

2 **"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing
3 more than ~~\$50,000~~ \$150,000, the department of administration shall:

4 (a) review and accept all plans, specifications, and cost estimates prepared by architects or
5 consulting engineers;

6 (b) approve all bond issues or other financial arrangements and supervise and approve the
7 expenditure of all ~~moneys~~ money;

8 (c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering
9 conformity with specifications and terms and reasonableness of the bid amount;

10 (d) review and approve all change orders; and

11 (e) accept the building when completed according to accepted plans and specifications.

12 (2) The department may delegate on a project-by-project basis any powers and duties under
13 subsection (1) to other state agencies, including units of the Montana university system, upon terms and
14 conditions specified by the department.

15 (3) Before a contract under subsection (1) is awarded, two formal bids must have been received,
16 if reasonably available.

17 (4) The department need not require the provisions of Montana law relating to advertising, bidding,
18 or supervision when proposed construction costs are ~~\$25,000~~ \$75,000 or less. However, with respect to
19 a project having a proposed cost of ~~\$25,000~~ \$75,000 or less but more than ~~\$5,000~~ \$25,000, the agency
20 awarding the contract shall procure at least three informal bids from contractors licensed in Montana, if
21 reasonably available.

22 (5) For the construction of buildings owned or to be owned by a school district, the department
23 of administration shall, upon request, provide inspection to ensure compliance with the plans and
24 specifications for the construction of the buildings. "Construction" includes construction, repair, alteration,
25 equipping, and furnishing during construction, repair, or alteration. These services must be provided at a
26 cost to be contracted for between the department of administration and the school district, with the
27 receipts to be deposited in the department of administration's construction regulation account in a state
28 special revenue fund.

29 (6) It is the intent of the legislature that student housing and other facilities constructed under the
30 authority of the regents of the university system are subject to the provisions of subsections (1) through

1 (3).

2 (7) The department of military affairs may act as the contracting agency for buildings constructed
3 under the authority of 18-2-102(2)(d) ~~however~~ However, the department of administration may agree to
4 act as the contracting agency on behalf of the department of military affairs. Montana law applies to any
5 controversy involving a contract."

6

7 **Section 3.** Section 18-2-301, MCA, is amended to read:

8 "**18-2-301. Bids required -- advertising.** (1) It is unlawful for any offices, departments, institutions,
9 or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to
10 let any contract for the construction of buildings or the alteration and improvement of buildings and
11 adjacent grounds on behalf of and for the benefit of the state when the amount involved is ~~\$25,000~~
12 \$75,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two
13 newspapers published in the state, one of which must be published at the seat of government and the other
14 in the county where the work is to be performed, calling for sealed bids to perform the work and stating
15 the time and place bids will be considered.

16 (2) All work may be done, caused to be done, or contracted for only after competitive bidding.

17 (3) If responsible bids are not received after two attempts, the department or agency may contract
18 for the work in a manner determined to be cost-effective for the state.

19 (4) This section does not apply to work done by inmates at an institution in the department of
20 corrections."

21

22 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 1997.

23

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0217, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act increasing construction cost authorization that does not require legislative consent; increasing the cost limit for projects subject to advertising and bidding; amending sections 18-2-102, 18-2-103, and 18-2-301, MCA; and providing an effective date.

ASSUMPTIONS:

Department of Administration:

1. Any staff or advertising savings will be offset by increased construction costs. There will be no fiscal impact to the Department of Administration.
2. If an agency is competing for long-range building program funds, they will continue to submit their requests to the Architecture and Engineering Division each biennium for inclusion in the Executive Budget regardless of the project cost.
3. The proposed legislation will simplify the process for agencies to execute small construction projects.
4. If the limits for advertising a project are raised to \$75,000, approximately \$1 million of projects would not have to be formally advertised (based on 1996 data).

Department of Fish, Wildlife and Parks (FWP):

5. The FWP will continue the same level of capital construction projects.
6. The FWP will have an estimated 15 projects per biennium which have a proposed cost of between \$25,000 and \$75,000 with a total estimated value of \$600,000.
7. Each project which no longer requires formal bidding, but can be bid through informal bidding, will save the department \$2,000 per project, generated from savings in preparing, advertising, copying and delivering specifications.
8. There would be an additional 10% savings for projects under \$25,000 which would not require formal bid documents. The FWP does approximately 45 of these projects per biennium with an average value of \$15,000.
5. The FWP will use the savings in contract costs to do additional maintenance and site protection work at other parks, fishing access sites and wildlife management areas.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
Department of Fish, Wildlife and Parks:	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Bidding costs	(97,500)	(97,500)
Maintenance and site protection	<u>97,500</u>	<u>97,500</u>
Total	0	0

TECHNICAL NOTES:

1. This bill revises the limits relating to advertising, bidding, or supervision of a project; however, the security requirements have not been revised:

MCA 18-2-201(5) currently states: "Except as provided in subsection (6), the state or other governmental entity may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than \$5,000." The security requirements should be increased to \$25,000 to be consistent with the other project limits.

MCA 18-2-302(2) currently states: "The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than \$5,000." The bid security should be waived on building or construction projects that cost less than \$25,000 to be consistent with the other project limits.

Dave Lewis 1-16-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0217, as introduced

HB 217

1 HOUSE BILL NO. 217

2 INTRODUCED BY BERGSAGEL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING CONSTRUCTION COST AUTHORIZATION THAT
5 DOES NOT REQUIRE LEGISLATIVE CONSENT; INCREASING THE COST LIMIT FOR PROJECTS SUBJECT
6 TO ADVERTISING AND BIDDING; ELIMINATING THE APPROVAL OF NEGOTIATED CONTRACTS BY THE
7 BOARD OF EXAMINERS; INCREASING THE COST OF BUILDING OR CONSTRUCTION PROJECTS FOR
8 WHICH SECURITY MAY BE WAIVED; AMENDING SECTIONS 18-2-102, 18-2-103, AND 18-2-105,
9 18-2-201, 18-2-301, AND 18-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

12
13 **Section 1.** Section 18-2-102, MCA, is amended to read:

14 **"18-2-102. Authority to construct buildings.** (1) Except as provided in subsection (2), a building
15 costing more than ~~\$50,000~~ \$150,000 may not be constructed without the consent of the legislature.
16 Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes
17 the legislature's consent. When a building costing more than ~~\$50,000~~ \$150,000 is to be financed in a
18 manner that does not require legislative appropriation of money, the consent may be in the form of a joint
19 resolution.

20 (2) (a) The governor may authorize the emergency repair or alteration of a building and is
21 authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be
22 made from the funds for an uncompleted capital project unless the project is under the supervision of the
23 same agency.

24 (b) The regents of the Montana university system may authorize the construction of
25 revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue
26 from the facility.

27 (c) The regents of the Montana university system, with the consent of the governor, may authorize
28 the construction of a building that is financed wholly with federal or private money if the construction of
29 the building will not result in any new programs.

30 (d) The department of military affairs, with the consent of the governor, may authorize the

1 construction of a building that is financed wholly with federal or private money on federal land for the use
2 or benefit of the state."

3

4 **Section 2.** Section 18-2-103, MCA, is amended to read:

5 **"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing
6 more than ~~\$50,000~~ \$150,000, the department of administration shall:

7 (a) review and accept all plans, specifications, and cost estimates prepared by architects or
8 consulting engineers;

9 (b) approve all bond issues or other financial arrangements and supervise and approve the
10 expenditure of all ~~moneys~~ money;

11 (c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering
12 conformity with specifications and terms and reasonableness of the bid amount;

13 (d) review and approve all change orders; and

14 (e) accept the building when completed according to accepted plans and specifications.

15 (2) The department may delegate on a project-by-project basis any powers and duties under
16 subsection (1) to other state agencies, including units of the Montana university system, upon terms and
17 conditions specified by the department.

18 (3) Before a contract under subsection (1) is awarded, two formal bids must have been received,
19 if reasonably available.

20 (4) The department need not require the provisions of Montana law relating to advertising, bidding,
21 or supervision when proposed construction costs are ~~\$25,000~~ \$75,000 or less. However, with respect to
22 a project having a proposed cost of ~~\$25,000~~ \$75,000 or less but more than ~~\$5,000~~ \$25,000, the agency
23 awarding the contract shall procure at least three informal bids from contractors licensed in Montana, if
24 reasonably available.

25 (5) For the construction of buildings owned or to be owned by a school district, the department
26 of administration shall, upon request, provide inspection to ensure compliance with the plans and
27 specifications for the construction of the buildings. "Construction" includes construction, repair, alteration,
28 equipping, and furnishing during construction, repair, or alteration. These services must be provided at a
29 cost to be contracted for between the department of administration and the school district, with the
30 receipts to be deposited in the department of administration's construction regulation account in a state

1 special revenue fund.

2 (6) It is the intent of the legislature that student housing and other facilities constructed under the
3 authority of the regents of the university system are subject to the provisions of subsections (1) through
4 (3).

5 (7) The department of military affairs may act as the contracting agency for buildings constructed
6 under the authority of 18-2-102(2)(d); ~~however~~ However, the department of administration may agree to
7 act as the contracting agency on behalf of the department of military affairs. Montana law applies to any
8 controversy involving a contract."

9

10 **SECTION 3. SECTION 18-2-105, MCA, IS AMENDED TO READ:**

11 **"18-2-105. General powers and duties of department of administration.** In carrying out powers
12 relating to the construction of buildings, the department of administration may:

- 13 (1) inspect buildings not under construction;
- 14 (2) contract with the federal government for advance planning funds;
- 15 (3) transfer funds and authority to agencies and accept funds and authority from agencies;
- 16 (4) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark
17 County and equipment and furnishings for the buildings;
- 18 (5) issue and sell bonds and other securities;
- 19 (6) maintain an inventory of all buildings;
- 20 (7) appoint a project representative to supervise architects' and consulting engineers' inspection
21 of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and
22 specifications. The cost of supervision may be charged against money available for construction.

23 (8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest
24 responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or
25 with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of
26 the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required
27 to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The
28 department may terminate negotiations at any time. ~~Any contract award resulting from negotiation is
29 subject to the approval of the board of examiners."~~

30

1 **SECTION 4. SECTION 18-2-201, MCA, IS AMENDED TO READ:**

2 **"18-2-201. Security requirements.** (1) Except as otherwise provided in 85-1-219 and subsections
3 (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the
4 state or any county, municipality, or any public body contracts with a person or corporation to do work for
5 the state, county, or municipality or other public body, city, town, or district, the board, council,
6 commission, trustees, or body shall require the corporation, person, or persons with whom the contract
7 is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and
8 sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or
9 persons shall:

10 (a) faithfully perform all of the provisions of the contract;

11 (b) pay all laborers, mechanics, subcontractors, and material suppliers; and

12 (c) pay all persons who supply the corporation, person or persons, or subcontractors with
13 provisions, provender, material, or supplies for performing the work.

14 (2) A copy of the bond must be filed with the county clerk and recorder of the county in which the
15 work is to be performed or the improvement is to be made or, if the work is to be performed or the
16 improvement is to be made in more than one county, with the county clerk of either county, except in
17 cases of cities and towns, in which case the bond must be filed with the city or town clerk.

18 (3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental
19 entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency
20 of the following securities in an amount at least equal to the contract sum to guarantee the faithful
21 performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and
22 subcontractors:

23 (a) lawful money of the United States; or

24 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market
25 certificate, or bank draft, drawn or issued by:

26 (i) any federally or state-chartered bank or savings and loan association that is insured by or for
27 which insurance is administered by the federal deposit insurance corporation; or

28 (ii) a credit union insured by the national credit union share insurance fund.

29 (4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission,
30 trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu

1 of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties
2 acceptable to the governmental body.

3 (5) Except as provided in subsection (6), the state or other governmental entity may waive the
4 requirements contained in subsections (1) through (4) for building or construction projects, as defined in
5 18-2-101, that cost less than ~~\$5,000~~ \$25,000.

6 (6) A school district may waive the requirements contained in subsections (1) through (4) for
7 building or construction projects, as defined in 18-2-101, that cost less than \$7,500."
8

9 **Section 5.** Section 18-2-301, MCA, is amended to read:

10 "18-2-301. **Bids required -- advertising.** (1) It is unlawful for any offices, departments, institutions,
11 or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to
12 let any contract for the construction of buildings or the alteration and improvement of buildings and
13 adjacent grounds on behalf of and for the benefit of the state when the amount involved is ~~\$25,000~~
14 \$75,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two
15 newspapers published in the state, one of which must be published at the seat of government and the other
16 in the county where the work is to be performed, calling for sealed bids to perform the work and stating
17 the time and place bids will be considered.

18 (2) All work may be done, caused to be done, or contracted for only after competitive bidding.

19 (3) If responsible bids are not received after two attempts, the department or agency may contract
20 for the work in a manner determined to be cost-effective for the state.

21 (4) This section does not apply to work done by inmates at an institution in the department of
22 corrections."
23

24 **SECTION 6. SECTION 18-2-302, MCA, IS AMENDED TO READ:**

25 "18-2-302. **Bid security -- waiver.** (1) Except as provided in subsection (2), each bid must be
26 accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's
27 check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank
28 draft. The security must be:

29 (a) drawn and issued by a federally chartered or state-chartered bank or savings and loan
30 association that is insured by or for which insurance is administered by the federal deposit insurance

1 corporation;

2 (b) drawn and issued by a credit union insured by the national credit union share insurance fund;

3 or

4 (c) a bid bond or bonds executed by a surety company authorized to do business in the state of
5 Montana.

6 (2) The state or other governmental entity may waive the requirements for bid security on building
7 or construction projects, as defined in 18-2-101, that cost less than ~~\$5,000~~ \$25,000."

8

9 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 1997.

10

-END-

1 HOUSE BILL NO. 217

2 INTRODUCED BY BERGSAGEL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING CONSTRUCTION COST AUTHORIZATION THAT
5 DOES NOT REQUIRE LEGISLATIVE CONSENT; INCREASING THE COST LIMIT FOR PROJECTS SUBJECT
6 TO ADVERTISING AND BIDDING; ELIMINATING THE APPROVAL OF NEGOTIATED CONTRACTS BY THE
7 BOARD OF EXAMINERS; INCREASING THE COST OF BUILDING OR CONSTRUCTION PROJECTS FOR
8 WHICH SECURITY MAY BE WAIVED; AMENDING SECTIONS 18-2-102, 18-2-103, AND 18-2-105,
9 18-2-201, 18-2-301, AND 18-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

HOUSE BILL NO. 217

INTRODUCED BY BERGSAGEL

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING CONSTRUCTION COST AUTHORIZATION THAT
5 DOES NOT REQUIRE LEGISLATIVE CONSENT; INCREASING THE COST LIMIT FOR PROJECTS SUBJECT
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HOUSE BILL NO. 217

INTRODUCED BY BERGSAGEL

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING CONSTRUCTION COST AUTHORIZATION THAT DOES NOT REQUIRE LEGISLATIVE CONSENT; INCREASING THE COST LIMIT FOR PROJECTS SUBJECT TO ADVERTISING AND BIDDING; ELIMINATING THE APPROVAL OF NEGOTIATED CONTRACTS BY THE BOARD OF EXAMINERS; INCREASING THE COST OF BUILDING OR CONSTRUCTION PROJECTS FOR WHICH SECURITY MAY BE WAIVED; AMENDING SECTIONS 18-2-102, 18-2-103, AND 18-2-105, 18-2-201, 18-2-301, AND 18-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 18-2-102, MCA, is amended to read:

"18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2), a building costing more than ~~\$50,000~~ \$150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than ~~\$50,000~~ \$150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the

1 construction of a building that is financed wholly with federal or private money on federal land for the use
2 or benefit of the state."

3

4 **Section 2.** Section 18-2-103, MCA, is amended to read:

5 **"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing
6 more than ~~\$50,000~~ \$150,000, the department of administration shall:

7 (a) review and accept all plans, specifications, and cost estimates prepared by architects or
8 consulting engineers;

9 (b) approve all bond issues or other financial arrangements and supervise and approve the
10 expenditure of all ~~moneys~~ money;

11 (c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering
12 conformity with specifications and terms and reasonableness of the bid amount;

13 (d) review and approve all change orders; and

14 (e) accept the building when completed according to accepted plans and specifications.

15 (2) The department may delegate on a project-by-project basis any powers and duties under
16 subsection (1) to other state agencies, including units of the Montana university system, upon terms and
17 conditions specified by the department.

18 (3) Before a contract under subsection (1) is awarded, two formal bids must have been received,
19 if reasonably available.

20 (4) The department need not require the provisions of Montana law relating to advertising, bidding,
21 or supervision when proposed construction costs are ~~\$25,000~~ \$75,000 or less. However, with respect to
22 a project having a proposed cost of ~~\$25,000~~ \$75,000 or less but more than ~~\$5,000~~ \$25,000, the agency
23 awarding the contract shall procure at least three informal bids from contractors licensed in Montana, if
24 reasonably available.

25 (5) For the construction of buildings owned or to be owned by a school district, the department
26 of administration shall, upon request, provide inspection to ensure compliance with the plans and
27 specifications for the construction of the buildings. "Construction" includes construction, repair, alteration,
28 equipping, and furnishing during construction, repair, or alteration. These services must be provided at a
29 cost to be contracted for between the department of administration and the school district, with the
30 receipts to be deposited in the department of administration's construction regulation account in a state

1 special revenue fund.

2 (6) It is the intent of the legislature that student housing and other facilities constructed under the
3 authority of the regents of the university system are subject to the provisions of subsections (1) through
4 (3).

5 (7) The department of military affairs may act as the contracting agency for buildings constructed
6 under the authority of 18-2-102(2)(d), ~~however~~ However, the department of administration may agree to
7 act as the contracting agency on behalf of the department of military affairs. Montana law applies to any
8 controversy involving a contract."

9

10 **SECTION 3. SECTION 18-2-105, MCA, IS AMENDED TO READ:**

11 **"18-2-105. General powers and duties of department of administration.** In carrying out powers
12 relating to the construction of buildings, the department of administration may:

13 (1) inspect buildings not under construction;

14 (2) contract with the federal government for advance planning funds;

15 (3) transfer funds and authority to agencies and accept funds and authority from agencies;

16 (4) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark
17 County and equipment and furnishings for the buildings;

18 (5) issue and sell bonds and other securities;

19 (6) maintain an inventory of all buildings;

20 (7) appoint a project representative to supervise architects' and consulting engineers' inspection
21 of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and
22 specifications. The cost of supervision may be charged against money available for construction.

23 (8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest
24 responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or
25 with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of
26 the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required
27 to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The
28 department may terminate negotiations at any time. ~~Any contract award resulting from negotiation is~~
29 ~~subject to the approval of the board of examiners."~~

30

1 **SECTION 4. SECTION 18-2-201, MCA, IS AMENDED TO READ:**

2 **"18-2-201. Security requirements.** (1) Except as otherwise provided in 85-1-219 and subsections
3 (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the
4 state or any county, municipality, or any public body contracts with a person or corporation to do work for
5 the state, county, or municipality or other public body, city, town, or district, the board, council,
6 commission, trustees, or body shall require the corporation, person, or persons with whom the contract
7 is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and
8 sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or
9 persons shall:

10 (a) faithfully perform all of the provisions of the contract;

11 (b) pay all laborers, mechanics, subcontractors, and material suppliers; and

12 (c) pay all persons who supply the corporation, person or persons, or subcontractors with
13 provisions, provender, material, or supplies for performing the work.

14 (2) A copy of the bond must be filed with the county clerk and recorder of the county in which the
15 work is to be performed or the improvement is to be made or, if the work is to be performed or the
16 improvement is to be made in more than one county, with the county clerk of either county, except in
17 cases of cities and towns, in which case the bond must be filed with the city or town clerk.

18 (3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental
19 entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency
20 of the following securities in an amount at least equal to the contract sum to guarantee the faithful
21 performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and
22 subcontractors:

23 (a) lawful money of the United States; or

24 (b) a cashier's check, certified check, bank money order, certificate of deposit, money market
25 certificate, or bank draft, drawn or issued by:

26 (i) any federally or state-chartered bank or savings and loan association that is insured by or for
27 which insurance is administered by the federal deposit insurance corporation; or

28 (ii) a credit union insured by the national credit union share insurance fund.

29 (4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission,
30 trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu

1 of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties
2 acceptable to the governmental body.

3 (5) Except as provided in subsection (6), the state or other governmental entity may waive the
4 requirements contained in subsections (1) through (4) for building or construction projects, as defined in
5 18-2-101, that cost less than ~~\$5,000~~ \$25,000.

6 (6) A school district may waive the requirements contained in subsections (1) through (4) for
7 building or construction projects, as defined in 18-2-101, that cost less than \$7,500."

8

9 **Section 5.** Section 18-2-301, MCA, is amended to read:

10 **"18-2-301. Bids required -- advertising.** (1) It is unlawful for any offices, departments, institutions,
11 or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to
12 let any contract for the construction of buildings or the alteration and improvement of buildings and
13 adjacent grounds on behalf of and for the benefit of the state when the amount involved is ~~\$25,000~~
14 \$75,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two
15 newspapers published in the state, one of which must be published at the seat of government and the other
16 in the county where the work is to be performed, calling for sealed bids to perform the work and stating
17 the time and place bids will be considered.

18 (2) All work may be done, caused to be done, or contracted for only after competitive bidding.

19 (3) If responsible bids are not received after two attempts, the department or agency may contract
20 for the work in a manner determined to be cost-effective for the state.

21 (4) This section does not apply to work done by inmates at an institution in the department of
22 corrections."

23

24 **SECTION 6. SECTION 18-2-302, MCA, IS AMENDED TO READ:**

25 **"18-2-302. Bid security -- waiver.** (1) Except as provided in subsection (2), each bid must be
26 accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's
27 check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank
28 draft. The security must be:

29 (a) drawn and issued by a federally chartered or state-chartered bank or savings and loan
30 association that is insured by or for which insurance is administered by the federal deposit insurance

1 corporation;

2 (b) drawn and issued by a credit union insured by the national credit union share insurance fund;

3 or

4 (c) a bid bond or bonds executed by a surety company authorized to do business in the state of
5 Montana.

6 (2) The state or other governmental entity may waive the requirements for bid security on building
7 or construction projects, as defined in 18-2-101, that cost less than ~~\$5,000~~ \$25,000."

8

9 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 1997.

10

-END-