

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN RICHARD SIMPKINS**, on January 19,
1995, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Richard D. Simpkins, Chairman (R)
Rep. Matt Denny, Vice Chairman (Majority) (R)
Rep. Dore Schwinden, Vice Chairman (Minority) (D)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Harriet Hayne (R)
Rep. Sam Kitzenberg (R)
Rep. Bonnie Martinez (R)
Rep. Gay Ann Masolo (R)
Rep. William Rehbein, Jr. (R)
Rep. George Heavy Runner (D)
Rep. Susan L. Smith (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Joe Tropila (D)

Members Excused: none

Members Absent: none

Staff Present: Sheri Heffelfinger, Legislative Council
Christen Vincent, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 178, HB 247, SB 14
Executive Action: SB 14 BE CONCURRED IN
HB 178 POSTPONED
HB 247 TABLED
HB 145 TABLED

HEARING ON HB 178Opening Statement by Sponsor:

REP. DAVID EWER opened by stating this bill allows for a different method for providing a deposit on bonds when bonds are being bid for by the state of Montana and local governments. Under current law when the state of Montana has a bond sale, the state requires a good faith check for two percent of the dollar amount the bonds are being bid on by underwriters. The philosophy behind the good faith bonds is they want people in good faith to stand behind the bid they make. This will allow the state of Montana to hold that person to the bid they made. The marketing industry has evolved in the past several years. What would be allowed under this bill would be an underwriter to use a financial guarantee company to serve as a middle entity so bidders wouldn't have to put cash in a bank and have that cash tied up.

He stated this would cut down on the changing of hands of the money issued in good faith for a bid on a bond. The winning bidder is required to come up with their own money within a certain amount of time. This is a way to pool various underwriters' efforts to access a paycheck as opposed to tying up cash. Presently the bidder needs a cashier's check which loses interest. He stated that an obvious question would be what the security as far as the financial insurance companies are. In the bill, on page two, it states the financial guarantee bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies. This bill tries to have more economies and more efficiency to how things are done. This is a process that will expedite and perhaps facilitate additional bids that are not being received at the present time. He didn't believe there would be any material risk with the passage of this bill.

Proponents' Testimony:

Gene Huntington, Dain Bosworth, stated a lot of work this company has done is by serving as financial consultants to local governments and school districts around the state. He stated they are in support of the bill. As financial consultants they help local government and school districts sell their bonds competitively. The way they get the best interest rate is to get as many bids as they can and get as competitive with the bidding as they can. The changes in technology in the past few years have made it possible for people to fax bids in which is more convenient and more efficient. In communities that don't have a major bank in the area, it is difficult to get money needed to support bids. This discourages bidders and often times they don't want to go through the hassle of arranging money. They then decide not to bid on the project. He believes this bill

will increase the number of bids the school districts and local government get.

Opponents' Testimony: none

Informational Testimony:

Connie Griffith, Director of Administration, stated the purpose of this bill is to make the bid process more efficient and more competitive. This will hopefully allow the state and local governments to have more competitive sales that will have lower interest charged on their long term debts and will save the state and local governments money in the long run. This process, by using a sure bid or bond rather than using cashier's checks, would save money because the fee bidders would pay to the bond insurance company is much less than what they would lose in interest over time by using cashier's checks. The capital finance group has reviewed this bill and has approved it. She has talked to various underwriters and companies this bill would affect. Everyone seems to be in favor of trying to smooth out the process of bidding on bonds and make it more efficient.

Questions From Committee Members and Responses:

CHAIRMAN SIMPKINS stated he had a discussion with Jones and Company who stated they were cut out of the bidding process in order to obtain bonds to sell. He asked if this was about direct bidding versus being able to get a cut of the bonds to sell to the markets.

Mr. Huntington stated he had also had a discussion with Jones and Company. He stated they were a very active bidder on these sales. They are one of the companies that bid and would benefit from this bill so they would not have to go through the hassle to get a cashiers check. He stated their concern may be when some of the agencies, through a different process, have come up with competitive groups that market state bonds. They have been left out of that process.

CHAIRMAN SIMPKINS stated he was talking about the Board of Housing bonds.

Mr. Huntington stated those bonds are not sold competitively. Those kind of sales require a major underwriter. There are a number of firms that are selected by the Board of Housing to be co-managers. They have access to bonds that Jones and Company may not.

REP. MATT DENNY asked that if section 17-5-806 on security would apply with any bidder contract.

Mr. Huntington stated the intention of this section only covers bonds that are financial bonds. It is not the intention of the bill to cover performance or ensued requirements for construction

bids of those in business. It is for the narrow area of financial bonds only.

Ms. Griffith stated this bill does repeal a specific exception of the long range planning bonds. This pertains to assertive bonds and applies to all bids and processes, including the long range building program.

REP. MATT BRAINARD asked if this would also affect bonds for state timber sales.

Ms. Griffith stated that she did not know if it would affect the bonds for the state timber sales. She stated this bill affects most purchasing type processes that go through the state.

CHAIRMAN SIMPKINS stated this bill deals with the state as the purchaser, not an independent organization. The state would receive the money and bid on the bonds.

Closing by Sponsor:

REP. EWER closed.

HEARING ON HB 247

Opening Statement by Sponsor:

REP. MARIAN HANSON, HD 1, opened by stating this bill cancels a voter's registration if they have voted by absentee for eight consecutive years. She stated people move away from the state who own land here and vote absentee even though they do not live in this state. She stated these people are influencing the outcome of school elections and property tax purposes by voting and not being here to hear the issues. She stated this does not affect students or people of the military, or people with a medical condition who can't come to the polls. She reserved the right to close.

Proponents' Testimony: none

Opponents' Testimony:

Fran Marsoll, State Director, United Transportation Union, stated that he opposed this bill. He stated that his employees are on call within an hour's notice and the majority of his employees vote by absentee ballots.

Scott St. Armauld, American Federation of State/County Municipal Employees, stated he hasn't voted in twelve years because his employer requires that he travel. He represents people that work twelve hours a day and find it difficult to find time to go to the polls and vote. There are many people who work two jobs and find it difficult to find time to break away to vote on election

day. He encouraged the committee to oppose this piece of legislation.

Informational Testimony:

Joe Kerwin, Election Bureau Chief, Secretary of State's Office, stated there would be some difficulties for election administrators to determine who is a student or who is in the military service. He stated that he could see some problems for clerks being able to figure out from an application who is a student or is in the military. The application now does not gather information showing exemptions of this type.

Questions From Committee Members and Responses:

REP. PAT GALVIN stated there have been more than eight years in succession that he has voted absentee. He stated that any one that operates with the railroad industry has to have the right to vote absentee. He gave an example where he was going to get home to vote, but the dispatcher decided that the train he was on was not necessary. He sat six miles from Whitefish for six hours. He stated that if REP. HANSON could work on a way to include those people in his position, he would go along with the bill.

REP. HANSON stated she was in the legislature when they increased the voting hours from 7:00 a.m. to 8:00 p.m. She stated that there are small communities that don't need that time, but there are other places that do need that extra hour to get the highest turn-out of voters possible.

REP. GALVIN stated that he had been in the position where he and the people he worked with were sent away from their homes for days and weeks at a time.

REP. HANSON stated if he wanted to amend this bill to include state voters that would be fine. She stated this bill was aimed at the voters who have moved out of state and left only a small piece of land in Montana. She said there is a challenge procedure, but this procedure is difficult.

REP. DENNY asked if they reregister there would there be a problem.

REP. HANSON stated there would be no problem.

REP. CAROLYN SQUIRES stated that she was concerned when REP. HANSON talked about those people who have bought a small parcel of land and who are not going to be returning. She asked why it would be right for the legislature to take away a person's ability to vote when a person's job forces them to be out of the area. She stated that she is thinking of those people who have not been able to find work in Montana and are forced to go out of state in order to find work. She stated she didn't believe if a person bought property they were never going to come back.

REP. HANSON stated the people that she is acquainted with are people that have made their living here and have since moved away, but have left a cabin behind. She stated if these people were to come back in June for the primary election, this bill wouldn't affect them. Those people who continually vote absentee with no intention of returning and have made their residence out of state are the people who are being addressed in this bill. She stated there should be another way, besides the challenging method now in place, to revoke these voting privileges.

REP. SUSAN SMITH asked if this would affect many people.

REP. HANSON stated that she didn't believe this bill would affect many people.

REP. SMITH asked if the people move from this state wouldn't they have to register to vote in the state they reside in.

REP. HANSON stated these people who move from Montana may not feel comfortable voting in the state they have moved to because they don't feel they know the candidates as well as they did in Montana. She stated these people are influencing school taxation and elections.

REP. BRAINARD asked if these people still have residency in Montana.

REP. HANSON stated that she could not answer that questions.

REP. HEAVY RUNNER asked if there were any statistics that would show how these people are swaying the election outcomes.

REP. HANSON stated there are some small precincts that she is concerned about. These people are influencing the elections for taxes and schools in these small communities.

REP. REHBEIN asked if these people maintain Montana driver's licenses.

REP. HANSON stated she didn't have an answer for that question.

REP. SIMPKINS stated he would like **Mr. Kerwin** to explain the voter's registration challenge for the committee.

Mr. Kerwin stated the appeal process now allows for a person to challenge a voter if that person thinks a voter does not meet the residency requirements. This challenge has to be at least 45 days in advance of the voter's registration deadline. There must be a written statement to the election administrator who then notifies the voter that their right to vote has been challenged. The voter has to respond to the election administrator. He also noted that with the passage of the National Voter's Registration Act and with the state's compliance with that, the challenge

process and the encouraging of voters will be affected by the Voter's Registration Act.

REP. DICK GREEN asked to have an explanation of the Voter's Registration Act.

Angela Fulton, Deputy, Secretary of State, stated one of the provisions of the Voter's Registration Act disallows the removing of individuals from the registration rules for voting or for failure to vote. The current guidelines state if an individual fails to respond to a notice and then fails to vote or appear to vote in any subsequent general federal election, that individual may then be removed. This bill would come in direct contradiction to these guidelines because the individual would still be offering to vote in some way.

Closing by Sponsor:

REP. HANSON stated she believed this bill would be a good idea. She stated if the committee would like to add some amendments to the bill she would have no objections. She stated there still needs to be another way of taking voters off the list when they move away and are no longer involved with the state.

HEARING ON SB 14

Opening Statement by Sponsor:

SEN. DEL GAGE, SD 14, opened by stating they are currently using the Generally Accepted Accounting Principles. This bill changes some language in regard to the naming an account so that the GAAP system of accounting is consistent. There is a federal standards group that has worked to get an accounting system, both governmental and privately, so on the national level they have accounts being kept on some sort of consistent basis. It would be much easier for those people who are reading financial statements to be able to understand what the statements say. Chief property is simply property that a person might have where they have lost contact or identification with the owner of that property. This property is turned over to a governmental agency and that agency then keeps that property in a trust. At any time, if a person can convince the state they are the rightful owners of the property, it is then turned back over to the owner.

Proponents' Testimony: none

Opponents' Testimony: none

Informational Testimony:

Connie Griffith, Administrator, Accounting Department Support Commission, Department of Administration, stated this bill allows them to take care of several changes that need to be made for

several agencies because of the statement that came out of the Governmental Accounting Standards Board requiring a change in chief property. Some changes can be done administratively but changes being made dealing with funds cause problems. She stated they would appreciate the committee's support of SB 14.

Neil Peterson, Bureau Chief, Department of Revenue, stated this bill increases the amount of money that would be found in the trust fund. The main claims giver set is property set in by sources, primarily banks and financial institutions, that send in unclaimed property. Currently they receive \$1.4 million a year in payments made where the owner or the owner's address has been lost. They then publish lists in newspapers trying to notify people of unclaimed property. When a person can identify themselves as the rightful owner of the property the Department of Revenue pays refunds. In the past year their department paid \$550,000 in refunds. What this bill does is increase the amount they can retain to pay refunds from \$25,000 to \$100,000. This would make things easier for them.

Questions From Committee Members and Responses:

REP. GALVIN asked if this bill includes holders of personalized shares and royalties.

SEN. GAGE stated this bill would include any funds going to those people. He stated that he was unsure as to exactly what.

Mr. Peterson stated he believed they are paid to the clerk and recorder in the county who holds them for a year and then turns them over to the unclaimed property in the state.

REP. GALVIN asked how the unclaimed properties are disposed of.

Mr. Peterson stated unclaimed properties are sent to the Department of Revenue who then in turn transfer the properties to the permanent trust fund where they are held in the name of the owner, if it is known, until someone comes forward and takes claim.

REP. GALVIN asked who could make a claim.

Mr. Peterson stated an heir to the claim, or the individual themselves, or someone who has an interest in the properties who can show they are owners of the property.

REP. GALVIN asked where a person could go to make a claim on unclaimed properties.

Mr. Peterson stated the Department of Revenue, Income Tax Division should be called and asked for the abandoned properties. The Department of Revenue will send that person a claim form which needs to be completed and returned to the Department of Revenue. **CHAIRMAN SIMPKINS** asked if the Department of Revenue

published at one time a complete list of all unclaimed properties.

Mr. Peterson stated this list is published on a yearly basis.

REP. STOVALL asked how a person would define chief property.

Mr. Peterson stated it is a reversion of property to the government and seeking claims from heirs. He stated this basically deals with intangible property.

CHAIRMAN SIMPKINS stated that recently they had passed a bill for telephone cooperatives to return this property in form of services or scholarships. He asked if this bill would affect telephone cooperative money in any way.

Mr. Peterson stated he didn't know if this bill would affect telephone cooperatives.

Closing by Sponsor:

SEN. GAGE stated this bill was fairly insignificant as far as affecting the property itself. It will not affect the property; it only changes the name of the account used by the accounting system to account for this property.

EXECUTIVE ACTION ON SB 14

Motion: **REP. PAT GALVIN** MOVED THAT SB 14 BE CONCURRED IN.

Vote: Do concur motion carried unanimously.

EXECUTIVE ACTION ON HB 178

Discussion:

REP. BILL REHBEIN asked if the bill dealing with expanding the time limit on bonding from five to ten years will be affected if this bill passes.

CHAIRMAN SIMPKINS stated the bill previously discussed would not be affected by this bill. He stated the bonding on **REP. DEBBIE SHEA'S** bill deals with the INCAP program where the state bids for the bonds. The schools don't bid for bonds, they go into the INCAP program and are consolidated.

REP. SQUIRES stated **Ms. Griffith** was not able to tell the committee how much this bill would cover. She stated that before the committee makes a movement on the bill she would like to know the depth of what this bidding process entails. She requested to delay the executive action on this bill until the amendment was

prepared, and also until there was more information available as to what the bill covers.

CHAIRMAN SIMPKINS stated with timber sales the bidder has to put up a ten percent deposit. The only way that he believes this bill would affect that is by saying the bonding company is backing the bid. The bonding company would back the bid the same way as if they would give a good faith check.

REP. BRAINARD stated he believed there may already be some legislation that will allow bonding as a deposit as well as a check.

REP. JOE TROPILA asked to delay action on this bill.

REP. DENNY stated the title should reflect what this bill affects. The title is limited to the purchase or sale of public bonds.

CHAIRMAN SIMPKINS restated this does not establish a bidding process for any property. It only establishes the surety bond of that bid.

Connie Griffith stated the title won't change on the bill because the second part of specifying a form of security to a company bid for purchaser sale public bonds is what the title specifically relates to. The first part states where the bond is allowable for bid security in lieu of actual cashier's checks.

CHAIRMAN SIMPKINS stated action on this bill would be delayed.

EXECUTIVE ACTION ON HB 247

Motion: **REP. BILL REHBEIN** MOVED THAT HB 247 DO PASS.

Discussion:

REP. SMITH stated because this only affects a few people in a district and there is already a way to challenge a person's right to vote, she believed it would be easier to challenge than to spend \$2,000 to move this bill through the system.

CHAIRMAN SIMPKINS stated this bill would not cost \$2,000 to move it through the system. He stated that **REP. SMITH** was correct in what she said. He stated this affects about 400 people in his district. These people are snowbirds who are gone during the winter. They are still residents of Montana and pay taxes on their homes and come back when the snow melts.

REP. GALVIN stated his concerns about the constitutionality of the bill.

REP. GAY ANN MASOLO stated this bill would be discriminatory.

Motion/Vote: REP. MATT BRAINARD MADE A SUBSTITUTE MOTION TO TABLE THE BILL. Motion carried unanimously.

EXECUTIVE ACTION ON HB 145

Motion: REP. BONNIE MARTINEZ MOVED THAT HB 145 DO NOT PASS.

Discussion:

REP. MARTINEZ stated she came to Helena to represent her people. These people asked for no more taxes and the legislators would be wise in presenting and making plans. This bill has no plan. She stated she lives in Billings and doesn't see the need for this bill. She said she has worked with Women's Federation groups and has made changes in the city. She doesn't see any plan to benefit the people through this bill. She said that she was unclear as to who would be the coordinator and there was nothing in the bill that stated who the coordinator would be. She also said there were no concrete numbers of minorities. She said that she would either like more information or for this bill to not pass.

REP. SUSAN SMITH stated the people that this bill would assist don't really need the help. These people have been there for years; they have homes, and they have jobs. She stated she would hate to see the committee pass a "feel good" bill. If the bill would help someone and it is necessary that would be great. She stated that they have been elected and sent here to be wise. She said she didn't think killing this bill would mean the committee has anything against minorities, it would just show they are being wise with their money and the rest of the taxpayers' money.

Motion/Vote: REP. MATT DENNY MADE A SUBSTITUTE MOTION TO TABLE HB 145. Motion carried 13-5 with REP. SQUIRES, REP. SCHWINDEN, REP. HAGENER, REP. GALVIN, and REP. HEAVY RUNNER voting no.

ADJOURNMENT

Adjournment: 10:00 A.M.


RICHARD SIMPKINS, Chairman


CHRISTEN VINCENT, Secretary

RS/cdv

HOUSE OF REPRESENTATIVES

State Administration

ROLL CALL

DATE 1-19-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Simpkin, Chairman	✓		
Rep. Matt Denny, Vice Chairman, Majority	✓		
Rep. Dore Schwinden, Vice Chair, Minority	✓		
Rep. Matt Brainard	✓		
Rep. Pat Galvin	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Sam Kitzenberg	✓		
Rep. Bonnie Martinez	✓		
Rep. Gay Ann Masolo	✓		
Rep. Bill Rehbein	✓		
Rep. Susan Smith	✓		
Rep. Jay Stovall	✓		
Rep. Carolyn Squires	✓		
Rep. Lila Taylor	✓		
Rep. Joe Tropila	✓		

COMMITTEE FILE COPY

TABLED BILL

The HOUSE STATE ADMINISTRATION COMMITTEE TABLED HB 247, by motion, on
THURSDAY, January 19, 1995.

Christen Vincent
(For the Committee)

M. Nusselt
(For the Chief Clerk)

11:15 (Time) 1-19-95 (Date)

January 19, 1995 -- 11:08am

Christen Vincent, Secretary

Phone: 4879

COMMITTEE FILE COPY

TABLED BILL

The HOUSE STATE ADMINISTRATION COMMITTEE Tabled HB 145, by motion, on
THURSDAY, January 19, 1995.

Christen Vincent
(For the Committee)

M. Newell
(For the Chief Clerk)

11:15
(Time)

1-19-95
(Date)

January 19, 1995 -- 11:09am

Christen Vincent, Secretary

Phone: 4879



HOUSE STANDING COMMITTEE REPORT

January 19, 1995

Page 1 of 1

Mr. Speaker: We, the committee on State Administration report that Senate Bill 14 (third reading copy -- blue) be concurred in.

Signed: *Dick Simpkins*
Dick Simpkins, Chair

Carried by: Rep. Brainard

H-19
mm

Committee Vote:
Yes 18, No 0.

161037SC.Hdh

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE 1-19-95 BILL NO. HB NUMBER 247

MOTION: Rep. Brainard moved to table

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE 1-19-95 BILL NO. HB NUMBER 1415

MOTION: Rep. Denny moved to table.

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority		✓
Rep. Matt Brainard	✓	
Rep. Pat Galvin		✓
Rep. Dick Green	✓	
Rep. Toni Hagener		✓
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner		✓
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires		✓
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE 1-19-95 BILL NO. SB NUMBER 141

MOTION: Rep Galvin moved Do Concur.

Brainard

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Fiscal analysis information from state agencies, 5-12-303.

Legislative Auditor — information from state agencies, 5-13-309.

Part 2 Bid Security

Part Cross-References

Rural special improvement districts — bids, 7-12-2131.
Special improvement districts — bids, 7-12-4141.
County road improvement districts — bids, 7-14-2715.
Bids and contractor's bond, 17-5-603, 17-5-613.

Surety insurance — performance bonds included, 33-1-211.
Resident insurance producer not required for sale of bid bond, 33-17-1111.
Surety insurers — may execute performance bonds, 33-26-104.
Highways — bidder's security — contractor's bond, 60-2-113.

18-1-201. Requirement for bidder's security. (1) A "public authority" or "obligee" includes:

(a) the state of Montana or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof;

(b) any county or other political subdivision of this state;

(c) any municipal corporation or authorized subdivision thereof; or

(d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana.

(2) Except as provided in 18-4-312, in all cases where a public authority or obligee is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind or for the purchase of commodities, goods, or property or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes, or any other forms of indebtedness of any such public authority, the respective executive, administrative, or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid or as a condition precedent to consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified for the performance of such covenant.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 424, L. 1985.

Cross-References

State contracts to lowest resident bidder, 18-1-102.

Bid security, 18-2-302.

Indemnity, Title 28, ch. 11, part 3.

EXHIBIT 040
DATE Jan. 19, 1985
HB 178

MEMORANDUM

TO: Representative David Ewer
Members of State Administration Committee

FROM: Department of Administration

DATE: January 16, 1995

RE: HB 178

The Capital Advisory Committee recommended the drafting of legislation that would accomplish two objectives:

- 1) to provide consistent requirements for bid security for the purchase of all state and local government indebtedness, and
- 2) to authorize a surety bond form of bid security for indebtedness.

The purpose of both changes is to facilitate the providing bid security to encourage greater participation in the sale of Montana bonds.

At present, in order to bid on a competitive bond sale in Montana, participants must submit a "good-faith" deposit along with their bid in the form of a certified or cashier's check drawn on a bank doing business in Montana in the amount of 2% of the total par value of the bonds being sold, except in the case of state long-range building program bonds where the check can be on any national or state bank insured by the FDIC.

The purpose of the bid security requirement is to legitimize the bidder's intent to purchase the bonds if won and to provide the issuer with a small cash settlement to offset the cost of advertising resulting in the event that the winning bidder does not ultimately purchase the bonds as required, and, as a result, the bond sale has to be re-scheduled.

EXHIBIT 1
DATE 1-19-95
HB 178

While the dollar amount of such "good-faith" deposits can seem trivial, in today's cost-sensitive environment, every day that a banker's cashier's check is outstanding is one more day of lost interest earnings on the dollar amount of the check. Typically, a banker must wait three to seven days before his losing bid cashier's check is re-credited to his account. Over the course of the year, this cost of doing business becomes noticeable. As a result, some firms will refrain from participating in bond sales that they view, for whatever reason, as having little chance of winning. This, of course, can limit competition and may increase the interest costs that the state and municipalities must pay.

This legislation will allow a surety bond to be provided as bid security for the purchase of state and local government bonds, as well as make consistent the bid security requirements for all debt issues. Specifically, this bill would:

1. Repeal Section 17-5-806. The existence of this section, which was presumably to get around the requirement that cashiers checks had to be drawn on Montana banks, necessitated the exclusionary paragraph (4) in Section 18-1-203, which by this bill would be eliminated. By repealing Section 17-5-806, all bonds issued by the State, as well as any other entities, will have the same requirement for bid security.
2. Amends Sections 18-1-202 and 18-1-203 to allow cashier's checks, certified checks, bank money orders, etc., to be drawn on a federally chartered or state chartered bank that is insured by the federal deposit insurance corporation. This is identical to what was provided for and allowed under Section 17-5-806 for the Long Range Building Program Bonds.
3. Allow a surety bond for all types of bid security, not just procurement and construction of property, as is currently the case. In the case of surety bonds provided to secure the purchase of indebtedness, the bill would require that the long term debt or claims ability of the surety company be rated.

These changes have been discussed with the State's financial advisor, as well as other firms serving as financial consultants to various state agencies and local governments, and those persons concur with these changes. It has also been reviewed by Capital Guaranty Insurance Company, a company who has developed the Sure-Bid good faith deposit program used in many other states and, if enacted, it would enable them to issue surety bonds in Montana.

It might be helpful to understand how such a surety bond would work, in the event the legislation is approved.

The surety company would provide a surety bond to the governmental entity issuing the debt on behalf of the bidder in lieu of a cashier's check. The surety bond is backed by the full faith and credit of the surety company whose long term indebtedness or claims paying ability is rated by a national rating institution. The successful bidder is required to deliver good funds in the amount of the good faith deposit requirement on the next business day following the award of the municipal securities. This is typically done by a Fed Fund wire transfer directly into the account of the issuer. In the event that the issuer's successful bidder used the surety-bond and failed to deliver the required Good Faith amount, Capital Guaranty would step in and pay the issuer the Good Faith amount on the next business day.

There is no charge to the issuer of the bonds. The surety company charges the bidder a nominal fee to use the service. Generally, the fee structure will be more attractive to the bidder than the cost of providing a cashier's check. If that is not the case, the bidder can simply opt not to use the surety bond and submit a cashier's check with his bid. In this way the issuer has provided all prospective bidders a choice.

