

1 HOUSE BILL NO. 113
 2 INTRODUCED BY S. FITZPATRICK
 3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RESIDENT PREFERENCES FOR
 6 PUBLIC CONTRACTS AND CONTRACT TERM LIMITS; PROVIDING THAT THE DEPARTMENT OF
 7 ADMINISTRATION IS RESPONSIBLE FOR DETERMINING THE RESIDENCY OF CONTRACTORS WHO
 8 BID ON PUBLIC CONTRACTS FOR CONSTRUCTION, REPAIR, AND PUBLIC WORKS OR PUBLIC
 9 CONTRACTS FOR THE PURCHASE OF GOODS; ALLOWING CONTRACTORS TO SUPPORT
 10 PREFERENCE CLAIMS BY AFFIDAVIT OR DECLARATION; ALLOWING CONTRACTORS FOR MOST
 11 SUPPLIES AND SERVICES TO BE EXTENDED TO A MAXIMUM OF 10 YEARS; AND AMENDING
 12 SECTIONS 18-1-106, 18-1-113, 18-4-313, AND 23-1-102, MCA."
 13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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16 **Section 1.** Section 18-1-106, MCA, is amended to read:

17 **"18-1-106. Department of labor and industry to determine residency of selected contractors --**
 18 **applications for redetermination -- determination as prima facie evidence.** (1) The department of labor and
 19 industry shall determine whether or not certain contractors are residents of the state of Montana within the
 20 meaning of 18-1-102 and 18-1-103. Any public agency ~~charged by law with the responsibility~~ responsible for
 21 the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident
 22 or nonresident status be made by the department of labor and industry. All requests must specify the name and
 23 address of the ~~licensed public~~ contractor for whom a determination of resident or nonresident status is required.

24 (2) If a determination is made that a ~~public~~ contractor is not a resident ~~but and the public~~ contractor
 25 later qualifies as a resident, the contractor may apply to the department of labor and industry for a
 26 redetermination of residency. If, ~~upon~~ on redetermination, the ~~public~~ contractor is found to qualify as a resident,
 27 the contractor ~~must be furnished a letter by the department of labor and industry attesting to~~ shall provide the
 28 contractor with written attestation of the contractor's resident status.

1 (3) The determination of the department of labor and industry that a public contractor is or is not a
2 resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact."

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4 **Section 2.** Section 18-1-113, MCA, is amended to read:

5 **"18-1-113. Bidder to submit affidavit or declaration -- penalty.** (1) A bidder on a public contract for
6 goods subject to 18-1-102 who is claiming a preference under this part shall either have on file with or submit to
7 the public agency department with its bid an affidavit or a declaration, as provided in 1-6-105, specifying in
8 detail, as determined by rule by the department, the basis on which the bidder claims the preference.

9 (2) If the public agency department determines that the bidder has submitted a false affidavit or
10 declaration under subsection (1), the bidder is disqualified as a bidder for future public contracts for goods
11 subject to 18-1-102 with any public agency for a period of 5 years from the date of the determination."

12

13 **Section 3.** Section 18-4-313, MCA, is amended to read:

14 **"18-4-313. (Temporary) Contracts -- terms, extensions, and time limits.** (1) Except as provided in
15 subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or
16 services may not be made for a period of more than 7 10 years. A contract, lease, or rental agreement may be
17 extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are
18 available for the first fiscal period at the time of the agreement, and if the total contract period, including any
19 extension or renewal, does not exceed 7 10 years. Payment and performance obligations for succeeding fiscal
20 periods are subject to the availability and appropriation of funds for the fiscal periods.

21 (2) The contract term limit specified in subsection (1) does not apply to:

22 (a) ~~— a contract for hardware, software, or other information technology resources, which may be~~
23 ~~made for a period not to exceed 10 years;~~

24 **(b)(a)** a department of revenue liquor store contract governed by the term specified in 16-2-101;

25 **(c)(b)** a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or
26 53-30-608;

27 **(d)** ~~— the department of administration state employee group benefit plans contracts governed by the~~
28 ~~term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana~~

1 university system group benefit plan;

2 (e)(c) a contract for concessions or visitor services for a state park, state recreational area, state
3 monument, or state historic site established under Title 23, chapter 1, part 1, that, with the consent of the state
4 parks and recreation board, may be made for a period of not more than 20 years if a capital improvement is
5 made, subject to subsection (5); or

6 (f)(d) a comprehensive agreement that uses an innovative financing delivery option as provided in
7 18-2-501 through 18-2-503.

8 (3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

9 (a) estimated requirements cover the period of the contract and are reasonably firm and
10 continuing; and

11 (b) the contract will serve the best interests of the state by encouraging effective competition or
12 otherwise promoting economies in state procurement.

13 (4) If funds are not appropriated or otherwise made available to support continuation of
14 performance in a subsequent fiscal period, the contract must be canceled.

15 (5) A contract under subsection (2)(e) (2)(c) must require the concessionaire to provide a business
16 plan offering a reasonable estimation that the cost of any capital improvement by the concessionaire will be
17 repaid within the life of the contract or that where a proprietary interest is held, the concessionaire's interest in
18 any capital improvement may be sold at appraised value to a subsequent concessionaire when the contract
19 concludes. (Terminates July 1, 2033--sec. 6, Ch. 418, L. 2023.)

20 **18-4-313. (Effective July 2, 2033) Contracts -- terms, extensions, and time limits.** (1) Except as
21 provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for
22 supplies or services may not be made for a period of more than ~~7~~ 10 years. A contract, lease, or rental
23 agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the
24 solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract
25 period, including any extension or renewal, does not exceed ~~7~~ 10 years. Payment and performance obligations
26 for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

27 (2) The contract term limit specified in subsection (1) does not apply to:

28 (a) ~~a contract for hardware, software, or other information technology resources, which may be~~

1 made for a period not to exceed 10 years;

2 (b)(a) a department of revenue liquor store contract governed by the term specified in 16-2-101;

3 (e)(b) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or
4 53-30-608; or

5 (d) ~~the department of administration state employee group benefit plans contracts governed by the~~
6 ~~term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana~~
7 ~~university system group benefit plan; and~~

8 (e)(c) a contract for concessions or visitor services for a state park, state recreational area, state
9 monument, or state historic site established under Title 23, chapter 1, part 1, that, with the consent of the state
10 parks and recreation board, may be made for a period of not more than 20 years if a capital improvement is
11 made, subject to subsection (5).

12 (3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

13 (a) estimated requirements cover the period of the contract and are reasonably firm and
14 continuing; and

15 (b) the contract will serve the best interests of the state by encouraging effective competition or
16 otherwise promoting economies in state procurement.

17 (4) If funds are not appropriated or otherwise made available to support continuation of
18 performance in a subsequent fiscal period, the contract must be canceled.

19 (5) A contract under subsection ~~(2)(e)~~ (2)(c) must require the concessionaire to provide a business
20 plan offering a reasonable estimation that the cost of any capital improvement by the concessionaire will be
21 repaid within the life of the contract or that where a proprietary interest is held, the concessionaire's interest in
22 any capital improvement may be sold at appraised value to a subsequent concessionaire when the contract
23 concludes."

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25 **Section 4.** Section 23-1-102, MCA, is amended to read:

26 **"23-1-102. Powers and duties of department.** (1) The department shall make a study to determine
27 the scenic, historic, archaeological, scientific, and recreational resources of the state. The department may:

28 (a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas,

1 sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational
2 areas, state monuments, or state historic sites;

3 (b) with the consent of the board, acquire by condemnation, pursuant to Title 70, chapter 30, lands
4 or structures for the purposes provided in 87-1-209(2);

5 (c) with the consent of the board, enter into a contract pursuant to 18-4-313(2)(e)(2)(c);

6 (d) accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed,
7 entrusted, donated, or devised to the state; and

8 (e) lease those portions of designated lands that are necessary for the proper administration of the
9 lands in keeping with the basic purposes of this part.

10 (2) The department may accept gifts, grants, bequests, or contributions of money or other property
11 to be spent or used for any of the purposes of this part.

12 (3) A contract, for any of the purposes of this part, may not be entered into or another obligation
13 incurred until money has been appropriated by the legislature or is otherwise available. If the contract or
14 obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board
15 of land commissioners shall specifically approve the acquisition.

16 (4) The department has jurisdiction, custody, and control of all state parks, recreational areas,
17 public camping grounds, historic sites, and monuments, except wayside camps and other public conveniences
18 acquired, improved, and maintained by the department of transportation and contiguous to the state highway
19 system. The department may designate lands under its control as state parks, state historic sites, state
20 monuments, or any other designation that it considers appropriate. The department may remove or change the
21 designation of any area or portion of an area and may name or change the name of any area."

22 - END -