

HOUSE BILL NO. 344

INTRODUCED BY S. GIBSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE DEPARTMENT OF ADMINISTRATION  
5 AND OTHER STATE ENTITIES MAY NOT SHOW FAVORITISM OR BIAS TOWARD EITHER NONPROFIT OR  
6 FOR-PROFIT ENTITIES WHEN CONTRACTING FOR GOODS OR SERVICES; ALLOWING BOTH NONPROFIT  
7 AND FOR-PROFIT ENTITIES TO BE INCLUDED AS CERTIFIED SHELTERED WORKSHOPS AND AS WORK  
8 ACTIVITY CENTERS; ALLOWING THE DEPARTMENT OF ADMINISTRATION TO CONTRACT WITH  
9 NONPROFIT AND FOR-PROFIT ENTITIES WHENEVER PURCHASING SERVICES RELATED TO CERTIFIED  
10 SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS; ALLOWING THE DEPARTMENT OF PUBLIC  
11 HEALTH AND HUMAN SERVICES TO CONTRACT WITH NONPROFIT OR FOR-PROFIT AGENCIES FOR  
12 CERTAIN SERVICES RELATED TO RESPITE CARE PROVIDERS, TO AWARD GRANTS TO NONPROFIT  
13 OR FOR-PROFIT ORGANIZATIONS FOR CERTAIN CHILD-CARE SERVICES, AND TO IDENTIFY  
14 NONPROFIT OR FOR-PROFIT ENTITIES AS AREA AGENCIES THAT PROVIDE CERTAIN SERVICES TO  
15 OLDER PERSONS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT WITH NONPROFIT  
16 AND FOR-PROFIT ENTITIES TO ESTABLISH OR MAINTAIN PRERELEASE CENTERS, RESIDENTIAL  
17 METHAMPHETAMINE TREATMENT PROGRAMS, OR RESIDENTIAL SEXUAL OFFENDER TREATMENT  
18 PROGRAMS; AMENDING SECTIONS 18-1-111, 18-2-301, 18-4-304, 18-4-402, 18-4-403, 18-4-404, 18-4-405,  
19 18-5-101, 18-5-102, 18-5-103, 52-2-628, 52-2-711, 52-3-103, AND 53-1-203, MCA; AND PROVIDING AN  
20 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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24 **Section 1.** Section 18-1-111, MCA, is amended to read:  
25 **"18-1-111. Impartiality to be shown in letting contracts.** ~~The~~ In soliciting bids or proposals and in  
26 making awards or contracts, the department may not show favoritism or bias toward either nonprofit or for-profit  
27 entities or any partiality or favoritism not provided for by law in making awards or contracts."

28  
29 **Section 2.** Section 18-2-301, MCA, is amended to read:  
30 **"18-2-301. Bids required -- advertising.** (1) It is unlawful for any offices, departments, institutions, or



1 any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any  
2 contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on  
3 behalf of and for the benefit of the state when the amount involved is \$75,000 or more without first advertising  
4 in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which  
5 must be published at the seat of government and the other in the county where the work is to be performed,  
6 calling for sealed bids to perform the work and stating the time and place bids will be considered.

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

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

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

11 (5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when  
12 the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it  
13 owns at Bannack if:

14 (i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and

15 (ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and  
16 resources from degradation and loss.

17 (b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions  
18 listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation  
19 or restoration through:

20 (i) a memorandum of understanding with a local, state, or federal entity or nonprofit or for-profit  
21 organization when the entity or organization demonstrates the competence, knowledge, and qualifications to  
22 preserve or restore historic resources;

23 (ii) the use of qualified and trained department of fish, wildlife, and parks employees and volunteers;

24 (iii) a training program in historic preservation and restoration conducted by a qualified local, state, or  
25 federal entity or a qualified nonprofit or for-profit organization; or

26 (iv) any combination of the options described in subsection (5)(b)."  
27

28 **Section 3.** Section 18-4-304, MCA, is amended to read:

29 **"18-4-304. Competitive sealed proposals.** (1) The department may procure supplies and services  
30 through competitive sealed proposals.

1 (2) Proposals must be solicited through a request for proposals.

2 (3) Adequate public notice of the request for proposals must be given in the same manner as provided  
3 in 18-4-303(2).

4 (4) After the proposals have been opened at the time and place designated in the request for proposals  
5 and reviewed by the procurement officer for release, proposal documents may be inspected by the public, subject  
6 to the limitations of:

7 (a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;

8 (b) matters involving individual safety as determined by the department; and

9 (c) other constitutional protections.

10 (5) The request for proposals must state the evaluation criteria and their relative importance. The criteria  
11 and the relative importance of the criteria may not show or allow favoritism or bias toward either nonprofit or  
12 for-profit entities. If an award is made, it must be made to the responsible and responsive offeror whose proposal  
13 best meets the evaluation criteria. Other criteria may not be used in the evaluation. The contract file must  
14 demonstrate the basis on which the award is made.

15 (6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of  
16 the proposal."

17

18 **Section 4.** Section 18-4-402, MCA, is amended to read:

19 **"18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor, conduct,  
20 or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or  
21 more public procurement units in accordance with an agreement entered into between the participants  
22 independent of the requirements of Title 18, chapter 4, part 3, except that the agreement may not show or allow  
23 favoritism or bias toward either nonprofit or for-profit entities. Cooperative purchasing may include purchasing  
24 through federal supply schedules of the United States general services administration, joint or multiparty contracts  
25 between public procurement units and open-ended state public procurement unit contracts that are made  
26 available to local public procurement units."

27

28 **Section 5.** Section 18-4-403, MCA, is amended to read:

29 **"18-4-403. Sale, acquisition, or use of supplies by a public procurement unit.** (1) The Subject to  
30 the provisions of subsection (2), the department may sell to, acquire from, or use any supplies belonging to

1 another public procurement unit ~~independent of the requirements of part 3.~~

2 (2) The provisions of Title 18, chapter 4, part 3, do not apply whenever the department sells to, acquires  
 3 from, or uses any supplies belonging to another public procurement unit, except that the department and the other  
 4 public procurement unit may not show or allow favoritism or bias toward either nonprofit or for-profit entities."

5  
 6 **Section 6.** Section 18-4-404, MCA, is amended to read:  
 7 **"18-4-404. Cooperative use of supplies or services.** ~~(1) The~~ Subject to the provisions of subsection  
 8 (2), the department may enter into an agreement, independent of the requirements of part 3, with any other public  
 9 procurement unit for the cooperative use of supplies or services under the terms agreed upon between the  
 10 parties.

11 (2) The provisions of Title 18, chapter 4, part 3, do not apply to an agreement entered into pursuant to  
 12 this section, except that an agreement may not show or allow favoritism or bias toward either nonprofit or for-profit  
 13 entities."

14  
 15 **Section 7.** Section 18-4-405, MCA, is amended to read:  
 16 **"18-4-405. Joint use of facilities.** ~~(1) The~~ Subject to the provisions of subsection (2), the department  
 17 may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other  
 18 facilities with another public procurement unit under the terms agreed upon between the parties.

19 (2) The provisions of Title 18, chapter 4, part 3, do not apply to an agreement under subsection (1),  
 20 except that the terms and conditions to which the department and the other public procurement unit agree may  
 21 not show or allow favoritism or bias toward either nonprofit or for-profit entities."

22  
 23 **Section 8.** Section 18-5-101, MCA, is amended to read:  
 24 **"18-5-101. Definitions.** As used in this part, the following definitions apply:  
 25 (1) "Certified sheltered workshop" or "work activity center" means a ~~nonprofit~~ corporation, whether  
 26 nonprofit or for-profit, incorporated under the laws of the state for the purpose of providing vocational services  
 27 to persons with disabilities, in whole or in part, that:

28 (a) holds a current certificate issued by the United States department of labor for either one or all of the  
 29 following:

30 (i) evaluation or training;

- 1 (ii) a regular work program; or  
2 (iii) a work activity center;  
3 (b) complies with other applicable occupational, health, and safety standards of local, state, and federal  
4 governments governing the operation of the facility not otherwise included in this part;  
5 (c) in the manufacture of products and in the provision of service, whether or not the product or service  
6 is procured under this part, employs and trains persons with disabilities for not less than 75% of the hours of  
7 direct labor required for the manufacture of products or the provision of service; and  
8 (d) is referred to as a "facility".  
9 (2) "Department" means the department of administration.  
10 (3) "Person with a disability" means an individual with a physical, mental, or emotional disability that  
11 constitutes a substantial impediment to employment and that prevents the individual with the disability from  
12 engaging in normal competitive employment."  
13

14 **Section 9.** Section 18-5-102, MCA, is amended to read:

15 **"18-5-102. Duties and powers of department of administration.** (1) The department shall maintain  
16 a current list of facilities located in this state, including a list of products and services provided by each facility,  
17 based on information provided by the facilities. A facility requesting to be included on the list shall indicate the  
18 products and services available from it and shall provide the department with updated information, as necessary.

19 (2) The department may contract ~~with a nonprofit organization~~ for services to:

- 20 (a) certify facilities;  
21 (b) provide technical assistance to facilities on matters of product or service capabilities;  
22 (c) facilitate distribution of orders among facilities and to ensure equal opportunity in obtaining orders.

23 (3) The department shall adopt, revise, and amend rules to implement this part in accordance with the  
24 procedures of the Montana Administrative Procedure Act.

25 (4) The rules may not show or allow favoritism or bias toward either nonprofit or for-profit entities."  
26

27 **Section 10.** Section 18-5-103, MCA, is amended to read:

28 **"18-5-103. Procurement requirements.** State departments, institutions, and agencies may procure  
29 listed products and services from a facility. The provisions of this title relating to competitive bidding do not apply  
30 to purchases made in accordance with this part, except that state departments, institutions, and agencies may

1 not show or allow favoritism or bias toward either nonprofit or for-profit entities."

2

3 **Section 11.** Section 52-2-628, MCA, is amended to read:

4 **"52-2-628. Respite care providers -- recruitment, training, and employment -- qualifications.** (1)

5 The department shall either directly or by contract ~~with public or private, nonprofit agencies~~ recruit, train, and  
6 employ respite care providers.

7 (2) Respite care providers ~~shall~~ must meet the qualifications and requirements specified in rules adopted  
8 by the department pursuant to 52-2-603."

9

10 **Section 12.** Section 52-2-711, MCA, is amended to read:

11 **"52-2-711. Resource and referral and day-care improvement grant program.** (1) (a) There is a grant  
12 program established within the department for the allocation of grant money to local child-care resource and  
13 referral programs and for improving the availability of quality child care and school-age day care.

14 (b) Program funds may include money from the following sources:

15 (i) funds specifically appropriated by the legislature for use under this section;

16 (ii) private gifts, grants, and donations;

17 (iii) federal or foundation grants awarded to the state for the purposes of this section; and

18 (iv) any other money made available for the purposes of this section.

19 (2) (a) The department may award grants to ~~private, nonprofit organizations and~~ public organizations  
20 and private organizations, whether nonprofit or for-profit, that demonstrate the ability to provide child-care  
21 resource and referral services.

22 (b) To be eligible for a grant from the department as a resource and referral agency for a local area, an  
23 organization:

24 (i) shall maintain a database of child-care services in the community, including day-care facilities and  
25 preschools, which the organization continually updates;

26 (ii) shall include on the staff of the organization at least one individual who has expertise in child  
27 development;

28 (iii) must have the capability to provide resource and referral services in the local area;

29 (iv) must be able to respond to requests for information or assistance in a timely fashion;

30 (v) must be committed to providing services to all segments of the general public;

- 1 (vi) must be able to provide parents with a checklist to identify quality child-care services;
- 2 (vii) must be able to provide information on the availability of child-care subsidies;
- 3 (viii) shall maintain and make available to the public the number of all referrals made by the resource and  
4 referral agency; and
- 5 (ix) shall otherwise satisfy regulations promulgated by the department pursuant to this part.
- 6 (3) (a) The department may award grants for improving the availability of quality child care and  
7 school-age day care and for consumer education.
- 8 (b) The following grant applications must be given priority:
- 9 (i) grant applications for professional training for day-care or school-age care providers;
- 10 (ii) grant applications for the startup of school-age care programs or facilities when a community need  
11 has been demonstrated;
- 12 (iii) grant applications for consumer education; and
- 13 (iv) grant applications for preservation or expansion of existing care programs that fill a demonstrated  
14 need.
- 15 (4) The department shall adopt rules to administer the provisions of this section."  
16

17 **Section 13.** Section 52-3-103, MCA, is amended to read:

18 **"52-3-103. Designation of area agencies.** (1) The department of public health and human services may  
19 designate as an area agency in a geographical area an entity that demonstrates its ability to:

- 20 (a) develop and administer an area plan for a comprehensive and coordinated system of services; and  
21 (b) serve as the advocate and focal point for older persons in the planning and service area.

22 (2) An entity may be but is not limited to:

- 23 (a) an established office on aging that operates within the geographical area;  
24 (b) an office or agency of a unit of general purpose local government, except a local office of public  
25 assistance;
- 26 (c) any combination of offices or units of general purpose local governments; or  
27 (d) any other public agency or private, nonprofit agency any other entity, whether nonprofit or for-profit,  
28 except a regional or local agency of the state."  
29

30 **Section 14.** Section 53-1-203, MCA, is amended to read:

1           **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

2           (a) adopt rules necessary to carry out the purposes of 41-5-125, rules necessary for the siting,  
3 establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential  
4 methamphetamine treatment programs, and rules for the admission, custody, transfer, and release of persons  
5 in department programs except as otherwise provided by law. However, rules adopted by the department may  
6 not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the  
7 siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing  
8 conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease  
9 center may not be sited at any location without community support. The prerelease siting, establishment, and  
10 expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of  
11 community support or objection to the siting of a prerelease center in the area determined to be impacted. The  
12 prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to  
13 Title 2, chapter 3.

14           (b) subject to the functions of the department of administration, lease or purchase lands for use by  
15 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural  
16 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown  
17 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the  
18 persons confined in correctional facilities;

19           (c) enter into a contract with private, nonprofit Montana corporations for services to establish and  
20 maintain:

21           (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole  
22 eligibility or discharge for release into the community, providing an alternative placement for offenders who have  
23 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The  
24 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The  
25 centers must be operated in coordination with other department correctional programs. This subsection does not  
26 affect the department's authority to operate and maintain prerelease centers.

27           (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as  
28 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for  
29 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using  
30 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.



1 (d) use the staff and services of other state agencies and units of the Montana university system, within  
2 their respective statutory functions, to carry out its functions under this title;

3 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including  
4 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed  
5 in correctional facilities or programs;

6 (f) encourage the establishment of programs at the local and state level for the rehabilitation and  
7 education of felony offenders;

8 (g) administer all state and federal funds allocated to the department for youth in need of intervention  
9 and delinquent youth, as defined in 41-5-103, except as provided in 41-5-2012;

10 (h) collect and disseminate information relating to youth who are committed to the department for  
11 placement in a state youth correctional facility;

12 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed  
13 of the specific information, by category, related to youth in need of intervention and delinquent youth in  
14 out-of-home care facilities;

15 (j) provide funding for youth who are committed to the department for placement in a state youth  
16 correctional facility;

17 (k) administer youth correctional facilities;

18 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

19 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

20 (i) provide for delinquent youth committed to the department; and

21 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs  
22 administered by the department.

23 (2) The department may enter into a contract ~~with private, nonprofit or for-profit Montana corporations~~  
24 for services to establish and maintain a residential sexual offender treatment program. If the department intends  
25 to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that  
26 program.

27 (3) The department ~~and a private, nonprofit or for-profit Montana corporation~~ may not enter into a  
28 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit  
29 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a  
30 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit

1 committee. The legislative audit division shall review the contract and make recommendations or comments to  
2 the legislative audit committee. The committee may make recommendations or comments to the department. The  
3 department shall respond to the committee, accepting or rejecting the committee recommendations or comments  
4 prior to entering into the contract.

5 (4) The department of corrections may enter into contracts ~~with nonprofit corporations or associations~~  
6 ~~or private organizations for services~~ to provide substitute care for delinquent youth in state youth correctional  
7 facilities or on juvenile parole supervision.

8 (5) The department may enter into a contract ~~with Montana corporations for services~~ to operate a day  
9 reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction  
10 option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program,  
11 including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the  
12 monitoring of compliance with any conditions of probation, such as drug testing."

13  
14 NEW SECTION. Section 15. Saving clause. [This act] does not affect rights and duties that matured,  
15 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

16  
17 NEW SECTION. Section 16. Effective date -- applicability. [This act] is effective July 1, 2011, and  
18 applies to the solicitation and selection of bidders and vendors by the state after [the effective date of this act] and  
19 to contracts entered into by the state after [the effective date of this act].

20 - END -