

SENATE BILL NO. 88

INTRODUCED BY J. BRENDEN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING CONSERVATION DISTRICT PROCUREMENT LAWS; PROVIDING FOR COMPETITIVE BIDDING AND EXEMPTIONS; LIMITING TERMS OF CONTRACTS; GRANTING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, procurement laws governing conservation districts should be clarified and made as consistent as possible among the various conservation districts; and

WHEREAS, laws governing public procurement of services, materials, supplies, and construction contracts should be codified within the conservation district laws; and

WHEREAS, conservation district procurement procedures must provide for confidence in the public procurement process and foster effective, broad-based competition within the free enterprise system.

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

NEW SECTION. **Section 1. Power to enter and execute contracts.** A conservation district is authorized to make contracts necessary to implement the applicable powers granted by this chapter and to provide for the manner of executing contracts.

NEW SECTION. **Section 2. Service contracts.** (1) Contracts for architectural, engineering, land surveying, auditing, accounting, or legal services that are estimated to:

(a) exceed the amount provided for in 18-8-212 may be entered into by publication of a request for qualifications pursuant to [section 4] and negotiation with the most qualified responder;

(b) not exceed the amount provided for in 18-8-212 may be by direct negotiations.

(2) Contracts in which the majority of the services to be rendered constitute services other than architectural, engineering, land surveying, auditing, accounting, or legal services must be awarded under the procedure provided for in subsection (3).



1 (3) Except as provided in subsection (1), contracts may be entered into as follows:

2 (a) When the total contract value is estimated to be less than \$5,000, a procurement technique may be
3 used that best meets the conservation district's needs.

4 (b) When the total contract value is estimated to be between \$5,001 and \$25,000, a limited solicitation
5 procedure must be used by receiving a minimum of three written or oral quotations. The limited solicitation
6 procedure must be documented.

7 (c) When the total contract value is estimated to be greater than \$25,000, a request for proposal or
8 invitation to bid pursuant to [section 4] must be used to select a contractor that best meets the conservation
9 district's needs.

10
11 **NEW SECTION. Section 3. Requirements for purchases or construction contracts.** For contracts
12 for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration,
13 or maintenance under this chapter in excess of the limit provided in 7-5-2301, supervisors shall comply with the
14 provisions of [section 4] and may:

15 (1) award the contract to the lowest responsible bidder;

16 (2) postpone awarding a contract;

17 (3) reject any or all bids; or

18 (4) readvertise the contract.

19
20 **NEW SECTION. Section 4. Advertisements.** (1) The advertisement for requests for bids, proposals,
21 or qualifications must be published in a newspaper of general circulation that includes the conservation district.

22 (2) A second publication may not be made less than 5 days or more than 12 days before the opening
23 of bids.

24 (3) A second publication may not be made less than 5 days or more than 12 days before the deadline
25 for the submission of a request for proposals or a request for qualifications.

26
27 **NEW SECTION. Section 5. Exemptions from advertising and bidding.** (1) When immediate delivery
28 of supplies, equipment, or services is required in an emergency, including but not limited to fire, flood, explosion,
29 storm, earthquake, riot, or insurrection, the provisions of [sections 3 and 4] do not apply if:

30 (a) the supervisors act, by majority vote in an open meeting, in a manner that best meets the emergency

1 and serves the public interest; and

2 (b) the emergency is declared and recorded in the minutes of the board of supervisors meeting.

3 (2) Supplies or services may be purchased without bid from government agencies if purchased at a
4 substantial savings.

5 ~~(3) Vehicles, machinery, equipment, materials, or supplies may be purchased at a public auction if the~~
6 ~~cost is less than \$150,000.~~

7 ~~(4)~~(3) Contracts may be entered into by direct negotiations for the purchase of vehicles, machinery,
8 equipment, materials, or supplies or for construction, repair, restoration, or maintenance under Title 76, chapter
9 15, for which the cost is less than the limit provided in 7-5-2301.

10 ~~(5)~~(4) Vehicles, machinery, equipment, materials, or supplies may be rented if the rental results in a
11 substantial savings over purchase.

12
13 **NEW SECTION. Section 6. Terms and extensions.** (1) Prior to the issuance, extension, or renewal
14 of a contract, it must be determined that:

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

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

18 (2) A contract may not be made for a period of more than 7 years.

19 (3) A contract may be extended or renewed if:

20 (a) the terms of the extension or renewal, if any, are included in the solicitation;

21 (b) funds are available for the first fiscal period at the time of the agreement; and

22 (c) the total contract period, including any extension or renewal, does not exceed 7 years.

23 (4) Payment and performance obligations for succeeding fiscal periods are subject to the availability and
24 appropriation of funds for the fiscal periods.

25 (5) If funds are not available to support continuation of performance in a subsequent fiscal period, the
26 contract must be canceled.

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28 **NEW SECTION. Section 7. Division of contracts prohibited.** Contracts may not be divided or projects
29 split to circumvent the provisions of this part.

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1 ~~NEW SECTION. Section 8. Optional bidding preference for conservation district resident --~~
 2 **definition.** (1) If there are no out-of-state bidders for a contract that is subject to competitive bid under this part,
 3 the contract may be awarded to the lowest bidder who is a conservation district resident and who makes a bid
 4 that is no more than \$500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder who is
 5 not a conservation district resident.

6 ~~(2) If one or more out-of-state bidders submit bids on a contract for construction, repair, restoration, or~~
 7 ~~maintenance that is subject to competitive bid under this part, the state resident bid preference provided in~~
 8 ~~18-1-102(1)(a) applies.~~

9 ~~(3) For the purposes of this section, "conservation district resident" means a person, corporation,~~
 10 ~~business, or other entity whose principal business location is within the boundaries of the conservation district.~~

11
 12 **NEW SECTION. Section 8. Cooperative purchasing contracts.** A conservation district may, in
 13 cooperation with one or more other conservation districts, conduct cooperative purchasing as defined in 18-4-401
 14 for the procurement of supplies or services.

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 16 ~~NEW SECTION. Section 10. Rulemaking.~~ The department, after consultation with the Montana
 17 association of conservation districts, may adopt and revise rules, standards, forms, and guidelines for the
 18 purposes of this part.

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 20 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable
 21 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
 22 remains in effect in all valid applications that are severable from the invalid applications.

23
 24 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 40 8] are intended to be
 25 codified as an integral part of Title 76, chapter 15, and the provisions of Title 76, chapter 15, apply to [sections
 26 1 through 40 8].

27
 28 **NEW SECTION. Section 11. Effective date.** [This act] is effective July 1, 2015.

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