

HOUSE BILL NO. 463

INTRODUCED BY K. SULLIVAN, K. KORTUM

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REPORTING REQUIREMENTS FOR FOOD
PROCURED BY GOVERNMENTAL BODIES; REVISING A DEFINITION; ~~AND~~ AMENDING SECTION 18-4-
132, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money,
by this state acting through a governmental body under any contract, except a contract exempted from this
chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may
be derived by the vendor and to a procurement of supplies or services from which income or a more
advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body
or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative
agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments,
except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised
by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than

- 1 \$250,000;
- 2 (e) contracts entered into by the state compensation insurance fund to procure insurance-related
- 3 services;
- 4 (f) employment of:
- 5 (i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;
- 6 (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;
- 7 (iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
- 8 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive
- 9 order of the governor;
- 10 (iv) consulting actuaries;
- 11 (v) a private consultant employed by the student associations of the university system with money
- 12 raised from student activity fees designated for use by those student associations;
- 13 (vi) a private consultant employed by the Montana state lottery;
- 14 (vii) a private investigator licensed by any jurisdiction;
- 15 (viii) a claims adjuster; or
- 16 (ix) a court reporter appointed as an independent contractor under 3-5-601;
- 17 (g) electrical energy purchase contracts by the university of Montana or Montana state university,
- 18 as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the
- 19 purchase or acquisition of energy must be retained by the board of regents of higher education for university
- 20 allocation and expenditure.
- 21 (h) the purchase or commission of art for a museum or public display;
- 22 (i) contracting under 47-1-121 of the Montana Public Defender Act;
- 23 (j) contracting under Title 90, chapter 4, part 11; or
- 24 (k) contracting under Title 90, chapter 14, part 1, when the total contract value is \$12,501 or less.
- 25 ~~(4) — (a) Food products produced in Montana may be procured by either standard procurement~~
- 26 ~~procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:~~
- 27 ~~(i) — the quality of available Montana-produced food products is substantially equivalent to the~~
- 28 ~~quality of similar food products produced outside the state;~~

1 (ii) ~~_____ a vendor is able to supply Montana-produced food products in sufficient quantity; and~~
2 (iii) ~~_____ a bid for Montana-produced food products either does not exceed or reasonably exceeds the~~
3 ~~lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the~~
4 ~~lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food~~
5 ~~products for a governmental body, the higher bid is reasonable and capable of being paid out of that~~
6 ~~governmental body's existing budget without any further supplemental or additional appropriation.~~

7 (b) ~~_____ The department shall compile data reports from governmental bodies procuring food and~~
8 ~~prepare a n annual report for the economic affairs interim committee and the state administration and veterans'~~
9 ~~affairs interim committee in accordance with 5-11-210 that describes:~~

10 (i) ~~_____ the total dollar amount of food purchased by governmental bodies;~~
11 (ii) ~~_____ the total dollar amount of Montana-produced food purchased by governmental bodies; and~~
12 (iii) ~~_____ the percent age of the total amount of Montana-produced food purchased by category of each~~
13 ~~type of food as follows :~~

14 (A) ~~_____ meat, including but not limited to beef, poultry, pork, fish, sheep, and goat;~~

15 (B) ~~_____ produce, as defined in 80-3-302;~~

16 (C) ~~_____ alcoholic beverage s, as defined in 16-1-106;~~

17 (D) ~~_____ nonalcoholic beverages and drinks;~~

18 (E) ~~_____ dairy products and eggs;~~

19 (F) ~~_____ pulse crops, as defined in 15-6-220;~~

20 (G) ~~_____ grain, as defined in 80-4-402; and~~

21 (H) ~~_____ processed food articles.~~

22 (c) ~~_____ The department shall adopt any rules necessary to administer the optional procurement~~
23 ~~exception and reporting requirement established in this subsection (4).~~

24 (5) ~~_____ As used in this section, the following definitions apply:~~

25 (a) ~~_____ "Food" means articles normally used by humans as food or drink, including alcoholic and~~
26 ~~nonalcoholic beverages and articles used for components of articles normally used by humans as food or drink.~~

27 (b) ~~_____ "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or~~
28 ~~manufactured."~~

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NEW SECTION. SECTION 2. PROCUREMENT OF FOOD -- RULEMAKING -- REPORTING. (1) FOOD PRODUCTS PRODUCED IN THE STATE MAY BE PROCURED EITHER BY STANDARD PROCEDURES OR BY DIRECT PURCHASE. MONTANA-PRODUCED FOOD PRODUCTS MAY BE PROCURED BY DIRECT PURCHASE WHEN:

(A) THE QUALITY OF AVAILABLE MONTANA-PRODUCED FOOD PRODUCTS IS SUBSTANTIALLY EQUIVALENT TO THE QUALITY OF SIMILAR FOOD PRODUCTS PRODUCED OUTSIDE THE STATE;

(B) A VENDOR IS ABLE TO SUPPLY MONTANA-PRODUCED FOOD PRODUCTS IN SUFFICIENT QUANTITY; AND

(C) A BID FOR MONTANA-PRODUCED FOOD PRODUCTS EITHER DOES NOT EXCEED OR REASONABLY EXCEEDS THE LOWEST BID OR PRICE QUOTED FOR SIMILAR PRODUCTS PRODUCED OUTSIDE THE STATE. A BID REASONABLY EXCEEDS THE LOWEST BID OR PRICE QUOTED WHEN, IN THE DISCRETION OF THE PERSON CHARGED BY LAW WITH THE DUTY TO PURCHASE FOOD PRODUCTS FOR A GOVERNMENTAL BODY, THE HIGHER BID IS REASONABLE AND CAPABLE OF BEING PAID OUT OF THAT GOVERNMENTAL BODY'S EXISTING BUDGET WITHOUT ANY FURTHER SUPPLEMENTAL OR ADDITIONAL APPROPRIATION.

(2) THE DEPARTMENT SHALL ADOPT ANY RULES NECESSARY TO ADMINISTER THE OPTIONAL PROCUREMENT EXCEPTION AND REPORTING REQUIREMENT ESTABLISHED IN THIS SECTION.

(3) EXCEPT AS PROVIDED IN SUBSECTION(5), ALL CONTRACTS FOR THE PROCUREMENT OF FOOD BY A GOVERNMENTAL BODY WITH A TOTAL CONTRACT VALUE OF \$100,000 OR MORE THAT ARE ENTERED INTO OR RENEWED AFTER JUNE 30, 2023, MUST INCLUDE A PROVISION THAT REQUIRES THE VENDOR TO PROVIDE THE REPORTS DESCRIBED IN SUBSECTION (4). A VENDOR SHALL SUBMIT ITS REPORT ANNUALLY TO THE GOVERNMENTAL BODY BY THE DATE PRESCRIBED BY THE DEPARTMENT.

(4) FOR THE PURPOSE OF COMPLYING WITH SUBSECTION (3), FOR THE YEAR PRECEDING THE DATE SET BY THE DEPARTMENT, A VENDOR SHALL REPORT:

(A) THE TOTAL DOLLAR VALUE OF FOOD PURCHASED BY THE GOVERNMENTAL BODY;

(B) THE TOTAL DOLLAR VALUE OF MONTANA-PRODUCED FOOD PURCHASED BY THE GOVERNMENTAL BODY;

AND

(C) TO THE EXTENT THE VENDOR CAN PROVIDE SUCH INFORMATION, THE TOTAL DOLLAR VALUE OF MONTANA-PRODUCED FOOD PURCHASED BY THE GOVERNMENTAL BODY IN EACH OF THE FOLLOWING CATEGORIES:

(I) MEAT, INCLUDING BUT NOT LIMITED TO BEEF, POULTRY, PORK, FISH, SHEEP, AND GOAT;

1 (II) PRODUCE, AS DEFINED IN 80-3-302;

2 (III) ALCOHOLIC BEVERAGES, AS DEFINED IN 16-1-106;

3 (IV) NONALCOHOLIC BEVERAGES AND DRINKS;

4 (V) DAIRY PRODUCTS AND EGGS;

5 (VI) PULSE CROPS, AS DEFINED IN 15-6-220; AND

6 (VII) GRAIN, AS DEFINED IN 80-4-402.

7 (5) CONTRACTS FOR ALCOHOLIC BEVERAGE PURCHASES MADE BY THE DEPARTMENT OF REVENUE

8 PURSUANT TO TITLE 16 ARE NOT SUBJECT TO THE CONTRACTUAL PROVISION REQUIREMENT IN SUBSECTION (3), AND THE

9 VENDORS OF ALCOHOLIC BEVERAGES PURCHASED BY THE DEPARTMENT OF REVENUE PURSUANT TO TITLE 16 ARE NOT

10 SUBJECT TO THE REPORTING REQUIREMENTS IN SUBSECTIONS (3) AND (4).

11 (6) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

12 (A) "FOOD" MEANS ARTICLES NORMALLY USED BY HUMANS AS FOOD OR DRINK, INCLUDING ALCOHOLIC AND

13 NONALCOHOLIC BEVERAGES AND ARTICLES USED FOR COMPONENTS OF ARTICLES NORMALLY USED BY HUMANS AS FOOD

14 OR DRINK.

15 (B) "PRODUCED" MEANS PLANTED, CULTIVATED, GROWN, HARVESTED, RAISED, COLLECTED, PROCESSED,

16 OR MANUFACTURED.

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18 NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION. [SECTION 2] IS INTENDED TO BE CODIFIED AS AN

19 INTEGRAL PART OF TITLE 18, CHAPTER 4, PART 1, AND THE PROVISIONS OF TITLE 18, CHAPTER 4, PART 1, APPLY TO

20 [SECTION 2].

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22 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2023.

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- END -