



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2027 Biennium

Bill#/Title: HB0741.01: Generally revise procurement laws

Primary Sponsor: Bill Mercer Status: As Introduced

☐ Included in the Executive Budget ☒ Needs to be included in HB 2 ☐ Significant Local Gov Impact  
☐ Significant Long-Term Impacts ☒ Technical Concerns ☐ Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
<b>Expenditures</b>				
General Fund (01)	\$72,140	\$72,140	\$73,223	\$74,321
State Special Revenue (02)	\$13,117	\$13,117	\$13,313	\$13,513
Federal Special Revenue (03)	\$78,699	\$78,699	\$79,880	\$81,078
Other	\$0	\$0	\$0	\$0
Proprietary Fund	\$14,200,000	\$14,200,000	\$14,200,000	\$14,200,000
<b>Revenues</b>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$78,699	\$78,699	\$79,880	\$81,078
Other	\$0	\$0	\$0	\$0
<b>Net Impact</b>	<u>(\$72,140)</u>	<u>(\$72,140)</u>	<u>(\$73,223)</u>	<u>(\$74,321)</u>
<b>General Fund Balance</b>				

### Description of fiscal impact

HB 741 generally revises the state procurement laws, including definitions and exceptions to procurement laws. There is a fiscal impact to the state to implement the requirements of this proposed legislation.

### FISCAL ANALYSIS

#### Assumptions

#### Department of Administration

#### Health Care and Benefits

- The Department of Administration's Health Care and Benefits Division will need to devote additional staff time to perform the following duties under HB 741:
  - An administrator to draft RFPs, review submissions, and score responses at an estimated cost of \$6,365.
  - A contracts manager to assist in RFP drafting, review submissions, and score responses at an estimated cost of \$3,585.
  - Three additional staff to assist in reviewing submissions and scoring at an estimated cost of \$1,490.

*State Procurement Services Division (SPSD)*

2. The State Procurement Services Division (SPSD) does not foresee any fiscal impact for the majority of the changes to statute included in the bill. However, with the exemption of human services being removed from the Department of Public Health and Human Services (DPHHS), the division is unable to determine what, if any, impact the bill will have on SPSP. The solicitations/contracts will no longer be part of the electronic Montana Acquisition and Contracting System (eMACS), so the fiscal impact is undetermined.
3. DPHHS will need to ensure all contracts that are currently held outside of SPSP's eProcurement are moved to DOA.

#### *Montana Lottery (lottery)*

4. Apart from current central gaming system negotiations, the lottery operates utilizing the Montana Procurement Act. All contracts and purchases are completed using guidance from the Department of Administration's SPSP.

#### **Department of Public Health and Human Services**

5. Human Services procurement has been exempted in 18-4-123, MCA, for at least three decades and is imbedded in various processes at the Department of Public Health and Human Services (DPHHS).
6. HB 741 strikes "the provision of human services administered by the Department of Public Health and Human Services" in 18 (b). For this fiscal note, DPHHS assumes that removing this language will require DPHHS to engage in formal procurements for human services to be administered by the contract and assumes these services must be acquired competitively when they exceed the procurement threshold.
7. DPHHS, as a best practice, engages in the formal procurement process required by the Montana Procurement Act, regardless of this exemption, in all but a few instances. The human services exemption constitutes a small percentage of the agency's contracted expenditures.
8. Examples of human services administered that may be impacted by HB 741 include foster care placements; foster care support services, including one-on-one supervision of youth; chemical dependency evaluations; childcare services; placements of individuals with developmental disabilities; placements of children with mental health issues; and expenses related to individual plans for employment in Vocational Rehabilitation. Child welfare service delivery is unique to the child, family, and their circumstances at a given time. While there are times a formal procurement process is utilized, DPHHS is sometimes court-ordered to use particular service providers that are, at times, not respondents to the formal procurement.
9. Currently, the department uses the human services exemption to support the following activities through various agreements at a point in time.
  - a. 2,139 Foster placement
  - b. 865 childcare providers
  - c. 204 Individual employment plans and pre-employment training services
  - d. 140 Child and Adult Care Food Program
10. DPHHS currently manages approximately 4,000 formal contracts and contract amendments. Removing the exemption would almost double the number of contracts needing formal contract entry into the Department of Administration's eMACS system, RFP development and execution, contract drafting, monitoring, and review. The department assumes this would require twice the current procurement staffing to accommodate the workload adjustment and prevent delays.
  - a. The Business and Financial Services Division currently operates the centralized procurement function for DPHHS, with 2.0 HB2 Procurement officers and 1.0 modified procurement officers compensated at \$79,590 per year salary plus benefits. An additional 2.00 procurement officers will be necessary to accommodate the increased workload.  $\$79,590 \times 2 = \$159,181$  per year. Business and Financial Services operates at 44% general fund, 8 % state special, and 48% federal fund reimbursement. Indirect costs for rent, phone, etc. are calculated at 3% per year. This amount has been inflated by 1.5% for FY 2028 and FY 2029.

#### **Montana State Fund**

11. The bill is effective on passage and approval.
12. Montana State Fund (MSF) has existing contract arrangements made under this exception. It is unclear how the change in law would impact amendments and renewals of these contracts.

13. Private insurance companies that MSF competes with are not required to follow governmental procurement processes.
14. The new requirements may cause insurance service vendors not to contract with MSF. These vendors are not familiar with or accepting of governmental contracting processes because of the additional requirements and because they do not usually contract with governmental entities.
15. Some insurance vendors explicitly charge more when forced to engage with governmental contracting guidelines.
16. The effort and time needed for the new requirements could eliminate the ability to offer certain solutions to customers or increase risk due to the inability to access cost effective and risk mitigation services.
17. Some customer solutions will be smaller in scope than offered currently.
18. An estimated \$1 million increase in expenses equates to about a .7% increase in rates.
19. One sample contract related to medical payment negotiation servicing, preferred provider organization, and complex medical bill review is expected to create additional costs of approximately \$5 million in medical benefit payments and \$9.2 million in service expenses if the insurance services exemption were not used. This will be expected to create approximately a 10% rate increase.
20. The total impact is unknown.
21. MSF expects the rates it charges to its customers to increase. Due to the uncertainty surrounding the timing of implementation, the amount of these rate increases is indeterminable.

#### State Auditor's Office

22. HB 741 removes consulting actuaries from the list of contracts for which the Montana Procurement Act does not apply.
23. The State Auditor's Office (SAO) currently has six contracts for actuarial consulting services. The contracted services include:
  - Insurance rate reviews for the Affordable Care Act, long-term care insurance, credit life and disability insurance, workers' compensation, and property and casualty;
  - Review of the payment parameters and claims reimbursement calculations for the Montana Reinsurance Program;
  - Legal support in enforcement actions when needed; and
  - Support for examinations, captives, and market conduct audits when needed.
24. The SAO will need to complete additional solicitations, both limited solicitations and request for proposals, in accordance with the Montana Procurement Act, for actuarial services. These tasks will be completed using existing staff resources.

#### Fiscal Analysis Table

Department of Public Health and Human Services				
	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
<b><u>Fiscal Impact</u></b>				
FTE	2.00	2.00	2.00	2.00
<b>TOTAL Fiscal Impact</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>

#### Expenditures

**Fiscal Note Request - As Introduced***(continued)*

Operating Expenses	\$159,181	\$159,181	\$161,569	\$163,992
Equipment	\$4,775	\$4,775	\$4,847	\$4,920
<b>TOTAL Expenditures</b>	<b>\$163,956</b>	<b>\$163,956</b>	<b>\$166,416</b>	<b>\$168,912</b>

**Funding of Expenditures**

General Fund (01)	\$72,140	\$72,140	\$73,223	\$74,321
State Special Revenue (02)	\$13,117	\$13,117	\$13,313	\$13,513
Federal Special Revenue (03)	\$78,699	\$78,699	\$79,880	\$81,078
<b>TOTAL Funding of Expenditures</b>	<b>\$163,956</b>	<b>\$163,956</b>	<b>\$166,416</b>	<b>\$168,912</b>
Other	\$0	\$0	\$0	\$0

**Revenues**

Federal Special Revenue (03)	\$78,699	\$78,699	\$79,880	\$81,078
<b>TOTAL Revenues</b>	<b>\$78,699</b>	<b>\$78,699</b>	<b>\$79,880</b>	<b>\$81,078</b>

**Net Impact to Fund Balance (Revenue minus Funding of Expenditures)**

General Fund (01)	(\$72,140)	(\$72,140)	(\$73,223)	(\$74,321)
State Special Revenue (02)	(\$13,117)	(\$13,117)	(\$13,313)	(\$13,513)
Federal Special Revenue (03)	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0

**Montana State Fund**

	<b><u>FY 2026 Difference</u></b>	<b><u>FY 2027 Difference</u></b>	<b><u>FY 2028 Difference</u></b>	<b><u>FY 2029 Difference</u></b>
<b><u>Fiscal Impact</u></b>				
<b><u>Expenditures</u></b>				
Benefits	\$14,200,000	\$14,200,000	\$14,200,000	\$14,200,000
<b>TOTAL Expenditures</b>	<b>\$14,200,000</b>	<b>\$14,200,000</b>	<b>\$14,200,000</b>	<b>\$14,200,000</b>
<b><u>Funding of Expenditures</u></b>				
Other	\$0	\$0	\$0	\$0
Proprietary Fund	\$14,200,000	\$14,200,000	\$14,200,000	\$14,200,000
<b>TOTAL Funding of Expenditures</b>	<b>\$14,200,000</b>	<b>\$14,200,000</b>	<b>\$14,200,000</b>	<b>\$14,200,000</b>
<b><u>Revenues</u></b>				
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
Other	\$0	\$0	\$0	\$0
Proprietary Fund	(\$14,200,000)	(\$14,200,000)	(\$14,200,000)	(\$14,200,000)

**STATEWIDE SUMMARY**

<b><u>FY 2026 Difference</u></b>	<b><u>FY 2027 Difference</u></b>	<b><u>FY 2028 Difference</u></b>	<b><u>FY 2029 Difference</u></b>
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**Fiscal Impact**

FTE	2.00	2.00	2.00	2.00
<b>TOTAL Fiscal Impact</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>

**Expenditures**

Operating Expenses	\$159,181	\$159,181	\$161,569	\$163,992
Equipment	\$4,775	\$4,775	\$4,847	\$4,920
Benefits	\$14,200,000	\$14,200,000	\$14,200,000	\$14,200,000
<b>TOTAL Expenditures</b>	<b>\$14,363,956</b>	<b>\$14,363,956</b>	<b>\$14,366,416</b>	<b>\$14,368,912</b>

**Funding of Expenditures**

General Fund (01)	\$72,140	\$72,140	\$73,223	\$74,321
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Federal Special Revenue (03)	\$78,699	\$78,699	\$79,880	\$81,078
Other	\$0	\$0	\$0	\$0
Proprietary Fund	\$14,200,000	\$14,200,000	\$14,200,000	\$14,200,000
<b>TOTAL Funding of Expenditures</b>	<b>\$14,363,956</b>	<b>\$14,363,956</b>	<b>\$14,366,416</b>	<b>\$14,368,912</b>

**Revenues**

Federal Special Revenue (03)	\$78,699	\$78,699	\$79,880	\$81,078
<b>TOTAL Revenues</b>	<b>\$78,699</b>	<b>\$78,699</b>	<b>\$79,880</b>	<b>\$81,078</b>

**Net Impact to Fund Balance (Revenue minus Funding of Expenditures)**

General Fund (01)	(\$72,140)	(\$72,140)	(\$73,223)	(\$74,321)
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Federal Special Revenue (03)	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0
Proprietary Fund	(\$14,200,000)	(\$14,200,000)	(\$14,200,000)	(\$14,200,000)

**Technical Concerns****Department of Public Health and Human Services**

1. This bill strikes out the human services exemption for procurement and replaces it with "facility contracts". "Facility contracts" are limited to only those services provided by contracted medical providers such as hospitals, nursing facilities, and home health agencies. In the context of the procurement exemption, the Department typically defines "human services" as services being provided "directly" to or on behalf of a person. However, the proposed language is unclear to the Department, as the services contemplated by the human services procurement exemption are typically not medical and would not be provided in a hospital or nursing facility or by a home health agency.
2. Section 1: In the provision that created the "human services exemption" (which DPHHS uses for both health and human services contracts), "human services" is replaced with "facility contracts."
  - a. As defined, the term "facility" is troubling because it is defined as "a contracted medical provider that offers services to beneficiaries, such as a hospital, nursing facility, or home health agency, for the department of public health and human services." (Emphasis added.) The definition's reference to "beneficiaries" may limit these contractual agreements to Medicaid and other medical providers.
  - b. The use of "medical provider" in the definition of "facility" arguably may exclude mental health providers from the exemption. It would also exclude non-medical providers from the exemption.
  - c. While most health care services may continue to be covered by the exemption, there are human services (non-medical/non-health care services) that are provided to individuals through contractual agreements with human services providers (e.g., DETD services, such as Vocational Rehabilitation, and CFSD services). Such targeted services typically cannot be procured through standard purchasing procedures

when required but do not align with the definition of “exigency” in ARM 2.5.201. They are unique to the core services that DPHHS must provide its clients.

3. DPHHS does not leverage the human services exemption for information technology purchasing.

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Sponsor's Initials

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Date

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Budget Director's Initials

3/4/2025

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Date

**NOT SIGNED BY SPONSOR**