

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN WILLIAM BOHARSKI**, on January 26,
1995, at 3:10 P.M.

ROLL CALL

Members Present:

Rep. William E. Boharski, Chairman (R)
Rep. Jack R. Herron, Vice Chairman (Majority) (R)
Rep. David Ewer, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Ellen Bergman (R)
Rep. Matt Brainard (R)
Rep. Matt Denny (R)
Rep. Rose Forbes (R)
Rep. Antoinette R. Hagener (D)
Rep. Bob Keenan (R)
Rep. Linda McCulloch (D)
Rep. Jeanette S. McKee (R)
Rep. Norm Mills (R)
Rep. Debbie Shea (D)
Rep. Joe Tropila (D)
Rep. Diana E. Wyatt (D)

Members Excused: Rep. John Bohlinger

Members Absent: None

Staff Present: Bart Campbell, Legislative Council
Evelyn Burris, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 220, HB 303
Executive Action: HB 159 TABLED
HB 136 DO PASS AS AMENDED
HB 185 DO PASS
HB 282 DO PASS

HEARING ON HB 220Opening Statement by Sponsor:

REP. JIM ELLIOTT, HD 72, Trout Creek, stated this bill is being presented at the request of the City of Thompson Falls. It is entitled "An act revising the assessments that may be imposed for a special improvement lighting district in equal assessments for the cost of installation of improvements or for the cost of maintenance and operation of the district with Amendments." He said this law was originally written in 1915. He reviewed and explained the details of what this bill accomplishes.

{Tape: 1; Side: A; Approx. Counter: 4.1;}

Proponents' Testimony:

Alec Hanson, League of Cities and Towns, said they supported this bill because it would provide another option for assessing the costs of installing and operating a lighting district and gives the flexibility that may be necessary which will be explained by proponents from Thompson Falls.

Tom Eggensperger, City of Thompson Falls, said they conceived the idea for this legislation and asked REP. JIM ELLIOTT to present it. They are pressed to make their budget stretch for all the services they need to provide. Five years ago they created the lighting district and that allowed them to take money out of the general fund and use it in a separate manner. He then explained the methods and formulas of square footage on the lots and evaluations. Mr. Eggensperger said this also provides that a school, church or county buildings must pay a lighting district. This spreads the costs more evenly through the community. They felt that a set fee was the easiest way to administer so everyone would pay the same. He said that unfortunately they didn't know the rules of the legislature to get it introduced last session. The advantage of the set fee in lighting is one of the services a community provides that isn't related to the property, home or economic status. Therefore, it should be distributed as fairly and equitably as possible among the citizens. It takes away the disadvantage of the taxable value of the square footage. He gave examples of the unfairness of the old system and urged a do pass recommendation.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. DAVID EWER commented that for special improvement districts, they already have this and this is for lighting districts.

REP. MATT BRAINARD referred to Page 2, lines 3, 4, 5, of the bill and asked if this means one of the following methods or do they intend to do all of this. REP. ELLIOTT explained (a) is the square feet method; (b) is the linear feet method; (c) is the taxable valuation method. This was not changed in 1983 when the taxable evaluation method was adopted, so this is clean-up language.

REP. BRAINARD asked if he was going to include those words in this. REP. ELLIOTT responded that the amendment might be appropriate. He referred to Line 11, "in the district; or".

REP. EWER said in finding the statute for special improvement district law he agreed that it would be helpful to clarify the method.

{Tape: 1; Side: A; Approx. Counter: 13.7;}

REP. EWER and REP. BRAINARD discussed and read the original language in statute.

REP. SHIELL ANDERSON referred to the determinations of resolutions in linear feet and asked why the 43.8 determination on the taxable value. REP. ELLIOTT explained the sections of the law on methods of apportioning the costs.

REP. EWER requested that before the committee takes executive action that the attorney review the assessment option as provided in special improvement districts.

Closing by Sponsor: The sponsor closed.

CHAIRMAN BOHARSKI said regarding HB 303, there are substantial amendments and he suggested the committee and those testifying either way on HB 303 refer to them to enlighten their view on the bill.

{Tape: 1; Side: A; Approx. Counter: 16.6;}

HEARING ON HB 303

Opening Statement by Sponsor:

REP. MATT DENNY, HD 63, Missoula, said this bill is an act providing for the nonpartisan nature of counties, municipalities, and alternative forms of local government; providing that a person who holds a position on the governing body of a local government may not be appointed to or seek another office in local government; providing for control of a conflict of interest of an officer or employee of a local government; providing that an officer or an employee of a county, a municipality, or an alternative form of local government who becomes a candidate for a public office in local government is required to forfeit the

office or employment; and repealing sections 7-3-1254, 7-3-1255, 7-3-1256, and 7-3-1257, MCA."

This bill addresses some of the concerns constituents have with Title 7. **REP. DENNY** distributed copies and reviewed the sections of original codes, acts and language pertaining to HB 303.

EXHIBIT 1 He said that it was his intent by bringing this bill before the committee that they either get rid of the provisions that are redundant in Title 7 or the committee decides how it should be and repeal other sections so there will be only one place in Title 7 that they need to look.

Proponents' Testimony:

REP. MATT BRAINARD attested that HB 303 is a good bill and cleans up the language and puts it in one place where the average citizen and representative can read what the law says as it pertains to local government. Many of the legislators are freshmen and are here because of discontent with how they perceive the function of government. With many of the same names appearing time after time on different boards and committees it begins to look like the "good ol' boys' club." There are many individuals that have overlapping interests and duties in various forms of government. This bill will give a breath of fresh air to local government.

Opponents' Testimony:

Gordon Morris, Director, Association of Counties, said **REP. DENNY** did communicate his interest on wanting to work on the bill with him and he appreciated that. **Mr. Morris** said he is confident that the objectives are noble, but he is not convinced this is the right mechanism to achieve the objective in terms of the problem. He pointed out what he felt was appropriate and discussed the codes that are being repealed to deal with 7-3-1254. **Mr. Morris** explained his research in the section of code dealing with an alternative form of government. The sections were first written in 1923, recodified in 1935, and subsequently recodified in 1947. He believes they are arcane and characterized as anti-patronage provisions dating back to the early 1920s which was a different era with a lot more patronage. He said in 1994 there is "openness in government" and he doesn't believe there are any situations in Montana that need to be corrected by future legislation such as this.

{Tape: 1; Side 1; Approx. Counter: 29.8; .}

Mr. Morris said SB 135 and SB 115 are working their way through the Senate at this time and will be merged together and be considered during this legislative session. This will evolve in a new code of ethics for Montana public officials which he believed was appropriate. **Mr. Morris** said the legislature is not looking to enact laws of legislation for a particular region. If, for instance, there is a problem with an individual in

Missoula for the study commission who happens to serve on the redevelopment commission, **Mr. Morris** said he did not know if that is inappropriate. He stated the reasons he feels it is an infringement upon individual rights, particularly Sections 3 and 4. He then cited several examples of individuals filing, applying and being elected to different positions and how the language in the code is difficult to understand such as the violation of the rights of a local official when it comes to choosing to be involved in politics.

Mr. Morris said his conclusion is he doesn't know what it is other than it is under the arcade section of law and the only point **REP. DENNY** made that he would agree with and support is to amend the Title of the bill and repeal the Section segment of lines 11 and 12. Montana has what he thinks is a excellent code of ethics for public officials and has an excellent track record for the behavior of public officials and this bill would do a major disservice to the reasonable, hard-working, dedicated public servants and to anyone else considering getting into public service. He said he would speculate if this were to be put into law, they would be hard pressed to find people dedicated enough who would want to run for public office. He asked that the committee, at a minimum, table this bill or consider **REP. DENNY'S** suggestion of repealing the sections and striking the rest of the bill.

{Tape: 1; Side: A; Approx. Counter: 39.8;}

Jane Jelinski, Gallatin County Commissioner and President, MACO, spoke in opposition to HB 330 for a number of reasons citing Section 2. She felt it did not make sense if the county commissioners who are required to run for office on a party ballot be prohibited by law to participate in the party. They could not receive contributions from the party or participate in any of their work and could not become a functional member of the party. She gave some examples on Sections 3 and 4 of what this could do. It would eliminate history and experience with the county office. The office of Clerk of Court has very specific skills and duties that a person does not know until they are working in that office. If a Clerk of Court decides not to run for re-election, the best candidate to run for that office would be someone who had worked in that office and has a clue of what the duties are. "A non-experienced person would not have a clue." This bill would say any employee with the court could not file to run for clerk of the court. Therefore, this bill would require any new office holder be totally inexperienced and unable to do the duties of the office. **Ms. Jelinski** outlined other examples of experience and knowledge of duties required to keep some continuity in court-houses. She urged the committee to vote against this bill.

{Tape: 1; Side: A; Approx. Counter: 43.7;.}

John Lawton, City Manager, Great Falls, said he is not an opponent but is not sure of the intent of this bill. He talked briefly about non-partisan government and the precedent for non-partisan government in Montana. He cited the definitions of appointed officers' positions and said they needed to look at what this really intends to accomplish. He said the council/manager government in Montana is generally non-partisan which means the people who run for office don't run on a partisan ballot, they can be with any party. The theory behind council/manager government and non-partisanship is that they don't have patronage and there is not a Republican or Democratic way to fix the streets. On the city commission in Great Falls, there are both Democrats and Republicans and also people whose party is not known and it works very well. As a city manager he subscribes to a code of ethics that says he cannot take part in partisan political activities and cannot take part in local election campaigns of any kind, including a public part in campaigns for national office. If expanded, he sees some problems with this legislation in the way it's written that needs to be clarified. As far as whether partisanship should become statewide, he said he does not know but he believes in local control and believes that as many decisions should be made locally as possible.

Mr. Lawton said they do have a mechanism to put non-partisan politics in place and this is being done for a substantial portion of the state. The issue is if this is more restrictive than the 15-20 city charters and what would take precedent. He suggested that if this bill is going to be pursued, the intent be clarified and how it will be carried out.

Tim Bergstrom, Fire Fighter, Billings, said he is also an employee of local government and holds a position appointed by the city manager and is a confirmed fire fighter by the city council. He referred to Section 2 and discussed his participation in government and said the important thing is the right to participate and not be branded as a second-class citizen merely on the basis of a person's employment. He asked the committee not to adopt this bill as presented.

{Tape: 1; Side: A; Approx. Counter: 50.1;}

Darrell Holzer, Montana State AFL/CIO, spoke in opposition to HB 303 and reiterated what **Mr. Morris** and the other opponents stated. To him this is a "boogie man bill" and he does not think there is an ethics problem in the state of Montana. He said Montana has some of the most credible folks in political and public office and he is very proud of that.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. MATT BRAINARD asked **Mr. Bergstrom** if he would consider it appropriate to campaign for his boss while working for the department. **Mr. Bergstrom** responded it would be inappropriate, but he works in a self-government city where the appointment of city manager is done by the city council.

REP. BRAINARD asked if he would consider it appropriate to campaign for a city council member. **Mr. Bergstrom** responded he didn't think it would be necessarily inappropriate; however, he has not done that. He has campaigned for office holders and people seeking offices in the legislature and members of both parties. **REP. BRAINARD** asked if he does this on his time or company time. **Mr. Bergstrom** responded that he does this on his own time; he doesn't mix politics with his employment.

REP. BRAINARD asked if he thinks of himself as a responsible member of the community and a responsible job.

REP. JOE TROPILA asked what this has to do with the bill. **REP. BRAINARD** said his point is if this would be an inappropriate campaign law for people who serve as firemen, policemen or sheriff.

CHAIRMAN BOHARSKI said his feeling is **REP. BRAINARD** is trying to make the point of the witness does not have any problem answering questions and is going along the path of what **REP. DENNY** is trying to get done with the bill.

REP. DEBBIE SHEA asked **Mr. Lawton** if he believes as many decisions as possible should be made here. He responded that is correct and this is his personal opinion, he is not representing anyone. **REP. SHEA** asked if he meant locally by himself in his capacity or to the vote of the people. He responded he means to the community. **Mr. Lawton** attested that Montana has a good process to allow communities to make their own decisions as to how they want to structure their local governments. He discussed the study commissions in cities and counties that are working to decide how local governments should be structured.

REP. JACK HERRON asked **Mr. Morris** if in Eastern Montana and smaller communities, where they do not have the population necessary to fulfill all the elected positions, would a bill like this impose some further restrictions and problems on the local communities where they have small populations. **Mr. Morris** said in terms of situations where they might have elected officials serving on boards, commissions, school districts, etc. there is a provision in law that restricts that now. He said he could not think of a circumstance that would be unique to Eastern Montana that would be jeopardized by this bill.

REP. NORM MILLS referred to Section 3, and asked "If a person is in one office, he can't be moved to another office during the term he's in the first office, even if he resigns." **REP. DENNY**

responded that would be true. **REP. MILLS** referred to Section 4 and said he finds the two sections out of kilter with each other that if a person resigned, he could run for another office.

REP. DENNY said that is correct. There are many problems with the codes. Under current law, as it stands, it is inconsistent both in how officers are defined, what exactly a public officer is and what an appointed employee is.

REP. MILLS said having the two sections that disagree with each other is not the way to clean up this problem. **REP. MILLS** then referred to Section 2 and Section 1, Part 2 and asked if they are only talking about appointed officers, only in that part or elected position. **REP. DENNY** said yes, the original intent with this bill was elected or appointed officers.

REP. MILLS asked "If they are employed by the county and having run for the office of surveyor, during the time they are in that office, they cannot run for county commissioner, during the time they are in that office and they cannot resign and run for county commissioner". **REP. DENNY** responded yes. **REP. MILLS** referred to Section 4, and said if a person is in office and resigns, he can then run for county commissioner because he's already in the county commissioners office, and asked if he could not solicit funds.

REP. DENNY said that is correct. The intent of this legislation is they do not want to have the perception that campaigning and politicking is going on in the county courthouse or state offices. The definition is on who is a public officer, etc., so there should be some rules to prohibit or limit politicking or do away with the rules altogether.

REP. MILLS asked if someone in an elected office is running for re-election, can he solicit for funds? **REP. DENNY** said this was not the intent of the legislation and could not tell him at this point whether he can or cannot. **REP. MILLS** said in his opinion, the fact that any public official should have the right to get money to run for re-election and any public official should have this right.

REP. EWER asked **REP. DENNY** if he believes employment is a key aspect of social condition. **REP. DENNY** responded yes.

REP. TONI HAGENER asked what is specifically meant by governing body. **REP. DENNY** said his understanding of a governing body is either a county commissioner or a city council. **REP. HAGENER** said they do not include an elected official who is officially in charge of their office. **REP. DENNY** responded that is correct.

{Tape: 1; Side: B; Approx. Counter: .6;}

REP. HAGENER referred to Section 2, Line 26-27 and asked if that means as a member of the women's club of the Democrat party she could not serve coffee or be on the clean-up committee, or help

with any phase of a fund-raising activity? **REP. DENNY** explained that the official would not also hold the position as the chairman of the Republican Party, or a member of the executive board of that party and it does not preclude serving coffee.

Closing by Sponsor:

REP. DENNY addressed the issues of testimony brought up against this bill saying **Mr. Morris** stated the method of the language is arcane, and much of the existing code also. On the meaning of subscription, they do not have political subscriptions any longer. On the idea that there was once a problem with patronage in local government it has been cleaned up and there's no longer a problem. He didn't find that as a valid argument against Section 2 and there are many portions that are meant to prevent this from happening in the future. He said as local government chose the form of local government there will be one set of rules they all operate under. **REP. DENNY** said if none of the codes of conduct or other provisions of Title 7 applies because they are addressed in Title 2, then perhaps this bill should be changed to repeal all the redundant pieces that are confusing. There is a question about some decisions as to where and what avenues they can pursue and handle complaints. His desire is to establish one place or get rid of all of them so there's no further confusion on the part of the citizens. He said **Mr. Morris** testified he didn't address issues that only apply to one city or one region in the legislature and "he begged to differ." **REP. DENNY** said he just saw, "We want MICRON" signs again. This is a good example, they address single areas. This legislation would apply to all forms of local government.

REP. DENNY discussed Sections 3 and 4 and said a person that is handling federal money should not be making legislative decisions regarding the use of that money or influencing in a legislative way how the money is operated. The example of a city employee running for the council and then voting themselves a raise or influencing personnel decisions are made to benefit themselves and should be looked at as something that should be prohibited.

REP. DENNY reviewed the changes made in Section 4 in the drafting and said he will pursue this with the staff attorney to get a sufficient explanation. It meant that a department head would not be running for office. As the bill reads now, it's officers or any employee, and that was not the intent of this bill. The most important part of the bill is to control conflict of interest. He referred to his handout (Exhibit 4) distributed to committee members.

EXECUTIVE ACTION ON HB 159

Motion: **REP. BERGMAN** MOVED HB 159 DO PASS.

Discussion:

REP. BERGMAN said this bill is like one she had except hers contained conservation districts. She referred to line 5 in the Title and line 18 and said "conservation district or" should be inserted in the bill.

Bart Campbell, Legislative Council, spoke about the bill he drafted on behalf of the governor on unfunded mandates and said the language in the bill talked about not giving unfunded mandates to a political subdivision. He was concerned in drafting what is covered under political subdivisions. He scanned with his computer all of the Montana code and came up with thirteen specific places. In Title 2 he found a large, encompassing definition of what a political subdivision is. So his question is why a conservation district is not a political subdivision.

CHAIRMAN BOHARSKI said this amendment has not been moved and the question is, would conservation districts be covered in this bill and without objections from the committee he would allow the testimony requested by **REP. BERGMAN** from the conservation person in the audience.

REP. EWER objected saying he doesn't believe the information would be technically proficient. He said this is an issue of fact and the committee has the expertise of a staff attorney. The issue is whether they are in a political subdivision. **REP. MILLS** agreed.

REP. BERGMAN said she spoke with **Mr. Campbell** and he had already approved its inclusion in the bill.

CHAIRMAN BOHARSKI said according to the Legislative Council a conservation district official elected is already included in the Title of the bill. That is why **REP. EWER** objected to a lay person commenting because he feels the legal technical opinion of Legislative Council is going to stand.

REP. BERGMAN asked why she was told it was okay. **Mr. Campbell** said he didn't recall making that statement and if he did he apologizes because it is incorrect. In his opinion, based upon the search he did a political subdivision as generally defined in the state codes, it is all so encompassing that it includes everything, be it a school district or any form of local government, and is basically a political subdivision of the state. **REP. BERGMAN** asked if her problem is taken care of and inserting conservation districts is not necessary because it's already covered. **Mr. Campbell** responded yes, that would be his opinion. **REP. BERGMAN** said that is fine with her.

REP. SHIELL ANDERSON said he thought that conservation districts were figured as STS which would be a federal program and he did not understand how they could be political subdivisions of the

county and asked **Mr. Campbell** to comment. **Mr. Campbell** said what they are talking about in this bill is the election of state type people. There may be some federal laws that say what a conservation district does or does not do, but if an official of a conservation district is a state-elected official, this will cover that. A federal law cannot be affected with a state law. If they are a state-elected official that is a political subdivision and this bill would cover it.

CHAIRMAN BOHARSKI said one of the confusing parts is the question, is a conservation district a political subdivision of a county. **Mr. Campbell** referred to and explained the Title of the bill and said this bill as written, unamended, would not address a district that has an elected official that's not under the county.

CHAIRMAN BOHARSKI requested that the Secretary of State give a list of what he thought.

REP. JOE TROPILA said he spoke to **REP. TREXLER** and **Joe Kerwin**, from the Secretary of State's office, about this bill, and he was going to talk to the clerk and recorder in Hamilton, who requested this bill, to tell her this is being addressed with a Senate bill amending all the conservation, water and transportation districts. He said **REP. TREXLER** told him this committee does not have to take any action until he hears from the clerk and recorder in Hamilton. **REP. BERGMAN** said the clerk and recorder has already been consulted on this and it has been approved to insert "conservation districts" in the bill.

REP. DIANA WYATT said for the purpose of clarification, when she speaks again and is recognized by the chair, she will make a motion to postpone action on this bill until it has been clarified or until the bill from the Senate is presented.

REP. EWER said he is going to argue against this bill and his feeling is his worry about people not being able to write in candidates. He said he would vote for the amendment and speak on the bill.

CHAIRMAN BOHARSKI asked if water and school districts are covered. (Not answered)

Motion/Vote: **REP. EWER** MOVED TO TABLE HB 159. Motion carried 11-6 with **REPS. AHNER, ANDERSON, BERGMAN, BRAINARD, DENNY** and **FORBES** voting no.

{Tape: 1; Side: B; Approx. Counter: 30.1;}

EXECUTIVE ACTION ON HB 136

Motion: **REP. WYATT** MOVED HB 136 DO PASS.

Discussion:

REP. AHNER explained that the bill as amended would thoroughly separate the county printing function from legal advertising and printing of job forms, two separate functions. The board of county printing would remain in place to set a cap on a cost of legal advertising that the county has mandated to publish. The board of county printing would no longer do a function that it is, in fact, not doing any longer which is to set a cap on job printing.

{Tape: 1; Side: B; Approx. Counter: 32.2;}

Mr. Campbell explained the amendments.

REP. HAGENER said she believes the amendment clarifies most of the questions regarding the county board of printing and clarifies and separates advertising.

Motion/Vote: REP. HAGENER MOVED TO ADOPT THE AMENDMENT. The motion carried unanimously.

Motion/Vote: REP. MCKEE MOVED HB 136 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HB 185

Motion/Vote: REP. WYATT MOVED HB 185 DO PASS. The motion carried unanimously.

EXECUTIVE ACTION ON HB 282

Motion: REP. EWER MOVED HB 282 DO PASS.

Discussion:

REP. EWER said if the investment law that was heard in Appropriations the day before passes and this bill gets to the Senate he will clean up this bill so it parallels.

CHAIRMAN BOHARSKI asked about the changes. REP. EWER explained he was thinking about what kind of investments could be used for a security deposit of public funds, but that is not relevant to what he was talking about yesterday. He thought some coordinating would have to be done with the local investment bill.

REP. NORM MILLS said he is not objecting to the bill and referred to Section 6 and asked when did the elements of government statutorily lose their right to have a petty cash fund. They are getting the right here and he thought they always had it. Mr. Campbell responded it was from 1895 and last amended in 1979.

CHAIRMAN BOHARSKI asked **REP. EWER** when he went through the statutes with the Department of Commerce, did he find any others. **REP. EWER** said he couldn't say the Department of Commerce identified all their concerns. **REP. EWER** said he has a large bill in the bonding section that cleans out a lot of arcane laws.

Vote: The motion carried unanimously.

ADJOURNMENT

Adjournment: Meeting adjourned at 5:00 p.m.


WILLIAM BOHARSKI, Chairman


EVY BURRIS, Secretary

WB/ev

HOUSE OF REPRESENTATIVES

Local Government

ROLL CALL

DATE 1-26-95

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---------|--------|---------|
| Rep. Bill Boharski, Chairman | ✓ | | |
| Rep. Jack Herron, Vice Chairman, Majority | ✓ | | |
| Rep. David Ewer, Vice Chairman, Minority | ✓ | | |
| Rep. Chris Ahner | ✓ | | |
| Rep. Shiell Anderson | ✓ | | |
| Rep. Ellen Bergman | ✓ | | |
| Rep. John Bohlinger | | | ✓ |
| Rep. Matt Brainard | ✓ | | |
| Rep. Matt Denny | ✓ | | |
| Rep. Rose Forbes | ✓ | | |
| Rep. Toni Hagener | ✓ | | |
| Rep. Bob Keenan | ✓ | | |
| Rep. Linda McCulloch | ✓ | | |
| Rep. Jeanette McKee | ✓ | | |
| Rep. Norm Mills | ✓ | | |
| Rep. Debbie Shea | ✓ | | |
| Rep. Joe Tropila | ✓ | | |
| Rep. Diana Wyatt | ✓ | | |



HOUSE STANDING COMMITTEE REPORT

January 27, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 282 (first reading copy -- white) do pass.

Signed: Wm E Boharski
Bill Boharski, Chair

mm
1/27
Committee Vote:
Yes 18, No 0.

230949SC.Hbk



HOUSE STANDING COMMITTEE REPORT

January 27, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Local Government report that House Bill 136 (first reading copy -- white) do pass as amended.

Signed: _____

Wm E Boharski

Bill Boharski, Chair

And, that such amendments read:

1. Title, line 5.

Following: "7-5-2411,"

Strike: "AND"

2. Title, line 6.

Following: "7-5-2412,"

Insert: "AND 7-5-2413,"

3. Page 1, line 11.

Strike: "require"

Insert: "provide"

4. Page 1, line 12.

Following: "(1)."

Insert: "for"

5. Page 1, lines 14 and 15.

Strike: "the" on line 14 through "advertising" on line 15

Insert: "for county printing contracts for printed forms and materials"

6. Page 3, lines 10 and 11.

Strike: "A" on line 10 through "job" on line 11

Insert: "Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job"

Committee Vote:

Yes 18, No 0.

h

230954SC.Hbk

7. Page 3, line 27.

Following: "~~of the~~"

Insert: "contract must be let to the printing establishment that
in the judgment of the"

8. Page 3, line 27.

Strike: "shall"

Insert: "is the most suitable for performing the work. The
county commissioners shall require a contractor to perform the
county printing contract subject to the requirements of 18-2-201"

9. Page 4, lines 1 and 2.

Strike: "accept" on line 1 through "county" on line 2

10. Page 4, following line 3.

Insert: "(2) This part may not be construed to compel the
acceptance of unsatisfactory work."

Renumber: subsequent subsection

11. Page 4, line 4.

Following: "printing"

Strike: ", including"

Insert: "or"

Following: "advertising"

Strike: ","

12. Page 4, line 10.

Insert: "Section 7. Section 7-5-2413, MCA, is amended to read:

"7-5-2413. **Competitive bids required.** The board of county
commissioners shall call for competitive bids from persons or
firms qualified to bid on county printing, or for county legal
advertising if there is more than one legally qualified newspaper
in the county, under the terms of this part.""

-END-



HOUSE STANDING COMMITTEE REPORT

January 27, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Local Government report that House Bill 185 (first reading copy -- white) do pass.

Wm E Boharski

Signed: _____

Bill Boharski, Chair

mm
1/27

Committee Vote:

Yes *12*, No *0*.

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7-3-1254. Nonpartisan nature of government. (1) No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose whatever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in such service.

(2) No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization or serve as a member of a committee of any such organization or circulate or seek signatures for any petition provided for by primary or election laws.

(3) Any person who, by himself or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than \$50 or more than \$500 or by imprisonment for a term not exceeding 3 months or by both such fine and imprisonment, and if he is an officer or employee of the municipality, he shall immediately forfeit his office or employment.

History: En. Secs. 108, 109, 110, Ch. 121, L. 1923; re-en. Secs. 5520.109, 5520.110, 5520.111, R.C.M. 1935; R.C.M. 1947, 11-3549, 11-3550, 11-3551.

Cross References:

Rules of conduct for local government officers and employees, 2-2-125.

7-3-1255. Commissioners not to hold or seek other office. No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission shall become a candidate for any public office other than that of commissioner, he shall immediately forfeit his place on the commission.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).

7-3-1256. Appointive officers not to seek other office. Any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).

Cross References:

Mandatory leave of absence -- appointive employees holding public office, 2-18-620.

7-3-1257. Control of conflict of interest. No officer or employee of the municipality shall have a financial interest, direct or indirect, in any contract therewith or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality shall render the contract involved voidable by the manager or the commission.

History: En. Sec. 114, Ch. 121, L. 1923; re-en. Sec. 5520.115, R.C.M. 1935; R.C.M. 1947, 11-3555.

Cross References:

Rules of conduct for local government personnel, 2-2-125.

Official misconduct, 45-7-401.

2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 2-2-131.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707.

Attorney General Opinions:

Dual Trusteeship in Volunteer Fire District and Fire Service Area -- Not Conflict of Interest:

Trusteeship in a volunteer fire department is not incompatible with simultaneous trusteeship in a fire service area. Volunteer fire departments and fire service areas are separate governmental entities. Neither owes its creation or continued existence to the other, and each lacks any form of supervisory authority with respect to the personnel of the other. There is no indication that dual trusteeship imposes an insurmountable obstacle to the proper discharge of the duties attendant in trusteeship; therefore, concurrent trusteeship of both a volunteer fire department and a fire service area does not constitute a conflict of interest. 43 A.G. Op. 47 (1989).

Disclosure -- Abstinence From Voting -- When Contract Voidable: Where a local government official has a conflict of interest, such as a substantial interest in a business bidding on a local government contract, the official must comply with the disclosure and abstinence from voting provisions of 2-2-125 and 2-2-131, even though the interest may be permissible under the exceptions contained in 2-2-201. If the interest is not permissible under the exceptions listed in 2-2-201, the contract is voidable and abstinence from voting will not exonerate the official. 40 A.G. Op. 28 (1983).

County Commissioners -- Fiduciary Duty: A County Commissioner who is a voting member of the board of an organization that actually receives county contract funds does not have a prohibited conflict of interest under 7-5-2106 unless the Commissioner receives a personal pecuniary or proprietary benefit from the contract. He does, however, breach his fiduciary duty under 2-2-125 by acting officially to award county contracts to the organization unless he complies with the voluntary disclosure requirements of 2-2-125. 38 A.G. Op. 55 (1979).

County Commissioners -- Prohibited Interests: A County Commissioner who is a voting member of a board that channels county contract funds to other organizations but does not itself derive any economic benefit from the contract does not have a prohibited interest in the contract under 7-5-2106 and does not breach his fiduciary duty under 2-2-125 by acting officially to allocate funds to that board for subsequent disbursement. 38 A.G. Op. 55 (1979).

Coroner Who Is a Mortician: A County Coroner who is also a mortician or an employee of a funeral home is not automatically in violation of 2-2-125. However, the mortuary with which he is affiliated may not receive compensation for any services related to the County Coroner's official duties. This does not apply if the mortuary is the only mortuary in the county. 37 A.G. Op. 179 (1978).

A County Coroner who is also a mortician violates the provisions of 2-2-125 if he directs that a body be taken to a funeral parlor in which he has a substantial financial interest, unless he has no discretion to select the funeral parlor. 37 A.G. Op. 104 (1978), overruling 35 A.G. Op. 92 (1974).

Who Voluntary Disclosure Excuses: The voluntary disclosure provisions of this section serve to excuse an act that would otherwise be a violation of the code of ethics only if the individual involved is a member of the local governing body, a state department head, or a member of a state quasi-judicial or rulemaking board. 37 A.G. Op. 104 (1978).

Deputy Sheriff: A Deputy Sheriff may accept employment as a security guard without violating this

section because the latter position does not involve a financial transaction with a person he inspects or supervises. 37 A.G. Op. 104 (1978).

Personal Transaction With Person Inspected: A member of a county board breaches a fiduciary duty if he enters into a substantial financial transaction for personal business with a person he inspects or supervises in the course of his official duties. 37 A.G. Op. 104 (1978).

2-2-126 through 2-2-130 reserved.

2-2-131. Voluntary disclosure. A public officer or employee may, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710.

Attorney General Opinions:

Disclosure -- Abstinence From Voting -- When Contract Voidable: Where a local government official has a conflict of interest, such as a substantial interest in a business bidding on a local government contract, the official must comply with the disclosure and abstinence from voting provisions of 2-2-125 and 2-2-131, even though the interest may be permissible under the exceptions contained in 2-2-201. If the interest is not permissible under the exceptions listed in 2-2-201, the contract is voidable and abstinence from voting will not exonerate the official. 40 A.G. Op. 28 (1983).

Disclosure Voluntary: Disclosure of a potential conflict of interest by a local government official is purely voluntary and may be done prior to taking any official action, as defined in 2-2-102. 40 A.G. Op. 28 (1983).

County Commissioners -- Fiduciary Duty: A County Commissioner who is a voting member of the board of an organization that actually receives county contract funds does not have a prohibited conflict of interest under 7-5-2106 unless the Commissioner receives a personal pecuniary or proprietary benefit from the contract. He does, however, breach his fiduciary duty under 2-2-125 by acting officially to award county contracts to the organization unless he complies with the voluntary disclosure requirements of 2-2-125. 38 A.G. Op. 55 (1979).

Who Voluntary Disclosure Excuses: The voluntary disclosure provisions of this section serve to excuse an act that otherwise be a violation of the code of ethics only if the individual involved is a member of the local governing body, a state department head, or a member of a state quasi-judicial or rulemaking board as permitted by 2-2-121 and 2-2-125. Except in those two instances, this section does not relieve a public officer or employee of his obligations of breach of fiduciary duty other than to show good faith on the part of the person disclosing. 37 A.G. Op. 104 (1978).

Collateral References:

Validity and construction of enactments requiring public officers or candidates for office to disclose financial condition and relationships. 37 ALR 3d 1338.

7-5-4109. Control of conflict of interest. (1) The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

History: En. Sec. 345, 5th Div. Comp. Stat. 1887; amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907; re-en. Sec. 5069, R.C.M. 1921; re-en. Sec. 5069, R.C.M. 1935; R.C.M. 1947, 11-1201; amd. Sec. 2, Ch. 322, L. 1993.

Compiler's Comments:

1993 Amendment: Chapter 322 inserted (2) establishing a process whereby a local government governing body can waive the conflict of interest provision for certain officers and employees or their relatives; and made minor changes in style.

Cross References:

Governmental standards of conduct, Title 2, ch. 2.
Official misconduct, 45-7-401.

Case Notes:

Where Franchised Utility in No Position to Complain: A utility operating under a nonexclusive city franchise sought to enjoin a city from selling bonds for the purpose of securing its own gas distributing system, on ground of unlawful competition. The utility could not question the legality of any other contract entered into by the city in connection with the enterprise and hence was in no position to complain that the city's contract with a contracting firm relating to a supply of natural gas was illegal because a city employee, not served with summons, was interested in the contract contrary to this section. *Montana-Dakota Util. Co. v. Havre*, 109 M 164, 94 P2d 660 (1939).

Subsequent Interest: This section is not applicable to a Mayor who was not interested in a contract made with the city but who agreed, after the contract was accepted and filed with the proper official, to take stock in a corporation succeeding to the rights of the original contractor. *State ex rel. Great Falls Water Works v. Great Falls*, 19 M 518, 49 P 15 (1897).

Attorney General Opinions:

City Employee as Councilman -- No Conflict of Interest: There is no inherent conflict of interest when a city employee is also an elected city councilman in a council-mayor form of municipal government. The opportunity to commit the breach of a fiduciary duty does not constitute a conflict of interest. 41 A.G. Op. 81 (1986).

Definitions -- Incorporation: Since the Legislature is presumed not to perform useless acts, the definitions of "be interested in" and "contract" contained in 2-2-201 are incorporated into and are applicable to 7-5-2106 and 7-5-4109, which relate to the same subject matter, conflicts of interest for local

government officials. 40 A.G. Op. 28 (1983).

Disclosure -- Abstinence From Voting -- When Contract Voidable: Where a local government official has a conflict of interest, such as a substantial interest in a business bidding on a local government contract, the official must comply with the disclosure and abstinence from voting provisions of 2-2-125 and 2-2-131, even though the interest may be permissible under the exceptions contained in 2-2-201. If the interest is not permissible under the exceptions listed in 2-2-201, the contract is voidable and abstinence from voting will not exonerate the official. 40 A.G. Op. 28 (1983).

Control of Conflict of Interest -- Elected City Official Prohibited From Selling Supplies to City: A business operated by an elected city official or owned by a corporation in which the official is a major stockholder may not sell supplies to the city. The crucial factor in determining whether a conflict of interest lies and applying conflict of interest statutes is the presence of a pecuniary or proprietary interest. A formal contract is not required to find a conflict of interest. 38 A.G. Op. 79 (1980).

Law Review Articles:

A Model Ethical Code for Appointed Municipal Officials, Larson, 9 Hamline J. Pub. L. & Pol'y 395 (1989).
Conflicts of Interest in Government, Dahl, 18 Colo. Law. 595 (1989).

Collateral References:

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR 4th 237.

7-3-4256. Control of conflict of interest. (1) No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or materials, supplies, or services to be furnished or performed for the city. No such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise any frank, free pass, free ticket, or free service or accept or receive, directly or indirectly, from any such person, firm, or corporation any other service upon terms more favorable than is granted to the public generally. Such prohibition of free transportation shall not apply to policemen or firefighters in uniform, nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$300 or by imprisonment in the county jail not exceeding 30 days.

(2) Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

History: En. Sec. 24, Ch. 57, L. 1911; re-en. Sec. 5389, R.C.M. 1921; re-en. Sec. 5389, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3127.

Cross References:

Standards of conduct, Title 2, ch. 2.

Misdemeanors, 46-18-212.

Reduced rate or free transportation on common carriers, 69-11-208.

Case Notes:

Disqualified Commissioner -- Effect on Proceedings: When a City Commissioner who was alleged to have a financial interest in the district parking participated in voting on the special improvement district in question, the entire proceedings were not void but voidable by the City Commission. *Schumacher v. Bozeman*, 174 M 519, 571 P2d 1135 (1977).

7-3-4367. Control of conflict of interest. (1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).

Cross References:

Rules of conduct – local officers and employees, 2-2-125.

Case Notes:

Disqualified Commissioner -- Effect on Proceedings: When a City Commissioner who was alleged to have a financial interest in the district parking participated in voting on the special improvement district in question, the entire proceedings were not void but voidable by the City Commission. *Schumacher v. Bozeman*, 174 M 519, 571 P2d 1135 (1977).

7-5-2106. Control of conflict of interest. No member of the board must be directly or indirectly interested:

- (1) in any property purchased for the use of the county;
- (2) in any purchase or sale of property belonging to the county; or
- (3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

History: En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907; re-en. Sec. 4606, R.C.M. 1921; Cal. Pol. C. Sec. 4077; re-en. Sec. 4606, R.C.M. 1935; R.C.M. 1947, 16-1804.

Cross References:

Standards of conduct, Title 2, ch. 2.
Official misconduct, 45-7-401.

Attorney General Opinions:

Definitions -- Incorporation: Since the Legislature is presumed not to perform useless acts, the definitions of "be interested in" and "contract" contained in 2-2-201 are incorporated into and are applicable to 7-5-2106 and 7-5-4109, which relate to the same subject matter, conflicts of interest for local government officials. 40 A.G. Op. 28 (1983).

Disclosure -- Abstinence From Voting -- When Contract Voidable: Where a local government official has a conflict of interest, such as a substantial interest in a business bidding on a local government contract, the official must comply with the disclosure and abstinence from voting provisions of 2-2-125 and 2-2-131, even though the interest may be permissible under the exceptions contained in 2-2-201. If the interest is not permissible under the exceptions listed in 2-2-201, the contract is voidable and abstinence from voting will not exonerate the official. 40 A.G. Op. 28 (1983).

County Commissioners -- Fiduciary Duty: A County Commissioner who is a voting member of the board of an organization that actually receives county contract funds does not have a prohibited conflict of interest under 7-5-2106 unless the Commissioner receives a personal pecuniary or proprietary benefit from the contract. He does, however, breach his fiduciary duty under 2-2-125(2)(b) by acting officially to award county contracts to the organization unless he complies with the voluntary disclosure requirements of 2-2-125(3). 38 A.G. Op. 55 (1979).

County Commissioners -- Prohibited Interests: A County Commissioner who is a voting member of a board that channels county contract funds to other organizations but does not itself derive any economic benefit from the contract does not have a prohibited interest in the contract under 7-5-2106 and does not breach his fiduciary duty under 2-2-125(2)(b) by acting officially to allocate funds to that board for subsequent disbursement. 38 A.G. Op. 55 (1979).

7-15-4239. Control of conflict of interest. (1) (a) No public official, no employee of a municipality or urban renewal agency, and no department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project.

(b) Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body.

(2) If any such official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. Any such official or department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

7-15-4240. Misconduct in office. Any violation of the provisions of 7-15-4235 or 7-15-4239 shall constitute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

7-15-4241 through 7-15-4250 reserved.

7-15-4435. Control of conflict of interest. (1) Except as provided in 7-15-4431, a commissioner or employee of an authority may not acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project. A commissioner may not have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(2) (a) If a commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the interest in writing to the authority, and the disclosure must be entered upon the minutes of the authority.

(b) Failure to disclose an interest constitutes misconduct in office.

History: En. Sec. 7, Ch. 140, L. 1935; re-en. Sec. 5309.7, R.C.M. 1935; R.C.M. 1947, 35-107; amd. Sec. 4, Ch. 514, L. 1989.

Compiler's Comments:

1989 Amendment: At beginning of (1) inserted exception clause; and made minor changes in phraseology.

Attorney General Opinions:

Tenant's Eligibility as Commissioner: A tenant of a housing authority is ineligible to serve as a commissioner of that housing authority. 37 A.G. Op. 110 (1978).

7-16-2314. Control of conflict of interest and nepotism. (1) No park commissioner, directly or indirectly, shall be interested in or benefit by any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

(2) The laws of nepotism shall apply to employment under this part.

History: (1)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (2)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

Cross References:

Nepotism, Title 2, ch. 2, part 3.

EXHIBIT 1
DATE 1-26-95
HB 303

7-16-4212. Control of conflict of interest. No park commissioner shall be interested in any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Local Government

COMMITTEE

DATE *1-26-95*

BILL NO *HB 303*

SPONSOR(S)

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| NAME AND ADDRESS | REPRESENTING | Support | Oppose |
|------------------|--------------------------------------|----------|------------|
| Jane Jelinski | MACo | | HB303 X |
| Gordon Morris | MACo | | 303 X |
| Mark Brannard | HD62 | 303 X | |
| Tim BERGSTROM | MT. STATE FIREMENS ASSOC | | X 303 |
| WARRELL HOLZER | MT. ST. AFL-CIO | | X |
| Tom Eggensperger | City of Thompson Falls | 220 X | |
| John Lawton | City of Great Falls | | 303 |
| JOHN PAULL | MS FIREMEN ASSOC | | 303 X |
| RAY BERRYMAN | MS COUNCIL PROFESSIONAL FIREFIGHTERS | | 303 X |
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