HOUSE BILL NO. 550

INTRODUCED BY BERGMAN, HAYNE, SMITH, MILLS, M. HANSON, WALLIN, SPRING, HANSEN

IN THE HOUSE

	IN THE HOUSE
FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
FEBRUARY 22, 1993	THIRD READING, PASSED. AYES, 67; NOES, 31.
FEBRUARY 23, 1993	TRANSMITTED TO SENATE.
	IN THE SENATE
MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT.
	FIRST READING.
MARCH 26, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 29, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 1.
	RETURNED TO HOUSE.
	IN THE HOUSE
MARCH 30, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1	House BILL NO. 550
2	INTRODUCED BY E. Bergman
3	INTRODUCED BY E. Benguer Weller Spring Lacque milh While M. Hawan Weller Spring And Proceedings Proceedings
4	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE
5	FOR WAIVING THE CONFLICT OF INTEREST PROVISION FOR LOCAL
6	GOVERNMENT OFFICERS AND EMPLOYEES; AND AMENDING SECTIONS
7	2-2-201 AND 7-5-4109, MCA."
В	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
0	Section 1. Section 2-2-201, MCA, is amended to read:
11	-2-2-201. Public officers, employees, and former
12	employees not to have interest in contracts local
L3	government waiver. (1) Members of the legislature; state,
L 4	county, city, town, or township officers; or any deputy or
15	employee thereof-must of an enumerated governmental entity
16	may not be interested in any contract made by them in their
17	official capacity or by any body, agency, or board of which
18	they are members or employees. A former employee may not,
19	within 6 months following the termination of his employment,
20	contract or be employed by an employer who contracts with
21	the state or any of its subdivisions involving matters with
22	which he the former employee was directly involved during
23	his employment. In this section the term:
24	(1)(a) "be interested in" does not include holding a
25	minority interest in a corporation;

1	<pre>+2+(b) "contract" does not include:</pre>
2	<pre>(a)(i) contracts awarded to the lowest responsible</pre>
3	bidder or proposer based on competitive bidding procedures;
4	<pre>tb)(ii) merchandise sold to the highest bidder at public</pre>
5	auctions;
6	<pre>(c)(iii) investments or deposits in financial</pre>
7	institutions which that are in the business of loaning or
8	receiving money;
9	<pre>fdf(iv) a contract with an interested party if, because</pre>
10	of geographic restrictions, a local government could not
11	otherwise reasonably afford itself of the subject of the
12	contract. It shallbe is presumed that a local government
13	could not otherwise reasonably afford itself of the subject
14	of a contract if the additional cost to the local government
15	is greater than 10% of a contract with an interested party
16	or if the contract is for services that must be performed
17	within a limited time period and no other contractor can
18	provide those services within that time period.
19	(3)(c) "former employee" does not include a person
20	whose employment with the state was involuntarily terminated
21	due to a reduction in force or other involuntary termination
22	not involving violation of the provisions of this chapter.
23	(2) The governing body of a city, town, or county may
24	waive the application of the prohibition contained in
25	subsection (1) for a present or former city, town, or county

- officer or employee who in an official capacity 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:
- 9 (a) whether the waiver would provide to a program or
 10 project a significant benefit or an essential skill or
 11 expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open
 competitive bidding or negotiation;

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- (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
- 18 (d) whether the hardship imposed on the affected person

 19 or the governmental entity by prohibiting the conflict will

 20 outweigh the public interest served by avoiding the

 21 conflict."
- Section 2. Section 7-5-4109, MCA, is amended to read:
- 23 "7-5-4109. Control of conflict of interest. (1) The
 24 mayor, any member of the council, any city or town officer,
 25 or any relative or employee thereof-must of an enumerated

- officer may not be directly or indirectly interested in the profits of any contract entered into by the council while he the officer is or was in office.
- (2) The governing body of a city or town may waive the 4 5 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 10 question. A governing body may grant a waiver under this 11 subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that 12 13 purpose. In determining whether to grant a waiver, the 14 qoverning body shall consider the following factors, where 15 applicable:
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APPROVED BY COMM. ON LOCAL GOVERNMENT

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2 INTRODUCED BY Express

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5 FOR WAIVING THE CONFLICT OF INTEREST PROVISION FOR LOCAL

6 GOVERNMENT OFFICERS AND EMPLOYEES; AND AMENDING SECTIONS

7 2-2-201 AND 7-5-4109, MCA."

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

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts -- local government waiver. (1) Members of the legislature; state, county, city, town, or township officers; or any deputy or employee thereof-must of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he the former employee was directly involved during his employment. In this section the term:

ti)(a) "be interested in" does not include holding a
minority interest in a corporation;

†2)(b) "contract" does not include:

2 fa;(i) contracts awarded to the lowest responsible
3 bidder or proposer based on competitive bidding procedures;

4 (b)(ii) merchandise sold to the highest bidder at public

auctions;

of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall—be is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

19 (3)(c) "former employee" does not include a person
20 whose employment with the state was involuntarily terminated
21 due to a reduction in force or other involuntary termination
22 not involving violation of the provisions of this chapter.

23 (2) The governing body of a city, town, or county may
24 waive the application of the prohibition contained in
25 subsection (1) for a present or former city, town, or county

LC 1393/01

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2	influence the decisionmaking process or supervise a function
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В	following factors, where applicable:
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10	project a significant benefit or an essential skill or
11	expertise that would otherwise not be available;
12	(b) whether an opportunity was provided for open
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14	(c) whether the person affected is a member of a
15	clearly identified group of persons that is the intended
16	beneficiary of the program or project involved in the
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18	(d) whether the hardship imposed on the affected person
19	or the governmental entity by prohibiting the conflict will
20	outweigh the public interest served by avoiding the
21	conflict."
22	Section 2. Section 7-5-4109, MCA, is amended to read:
23	*7-5-4109. Control of conflict of interest. (1) The

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 10 question. A governing body may grant a waiver under this 11 subsection only after publicly disclosing the nature of the 12 conflict at an advertised public hearing held for that 13 purpose. In determining whether to grant a waiver, the 14 governing body shall consider the following factors, where 15 applicable: 16 (a) whether the waiver would provide to a program or

officer may not be directly or indirectly interested in the

profits of any contract entered into by the council while he

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2	INTRODUCED BY E. BUANANI
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3	Layne fruit 81 fill States. Hansen
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(2)(b) "contract" does not include:

HB 550 THIRD READING

(2) The governing body of a city, town, or county may

waive the application of the prohibition contained in

subsection (1) for a present or former city, town, or county

1	officer or employee who in an official capacity does not
2	influence the decisionmaking process or supervise a function
3	regarding the contract in question. A governing body may
4	grant a waiver under this subsection only after publicly
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- 14 <u>(c) whether the person affected is a member of a</u>
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3	MILLS, M. HANSON, WALLIN, SPRING, HANSEN
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HB 550

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