

HOUSE BILL NO. 550

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

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 Hayne Smith W. J. R. M. Harrison W. L. Spring
 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."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **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
 13 government waiver. (1) Members of the legislature; state,
 14 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 (a) "be interested in" does not include holding a
 25 minority interest in a corporation;

1 (b) "contract" does not include:
 2 (i) contracts awarded to the lowest responsible
 3 bidder or proposer based on competitive bidding procedures;
 4 (ii) merchandise sold to the highest bidder at public
 5 auctions;
 6 (iii) investments or deposits in financial
 7 institutions which that are in the business of loaning or
 8 receiving money;
 9 (iv) a contract with an interested party if, because
 10 of geographic restrictions, a local government could not
 11 otherwise reasonably afford itself of the subject of the
 12 contract. It ~~shall--be~~ 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 (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:

(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."

Section 2. Section 7-5-4109, MCA, is amended to read:

"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 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 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:

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-End-

APPROVED BY COMM.
ON LOCAL GOVERNMENT

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19 (c) "former employee" does not include a person
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23 (2) The governing body of a city, town, or county may
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(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:

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