HOUSE BILL NO. 683

INTRODUCED BY S. GIST

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONFLICT OF INTEREST LAWS FOR CERTAIN LOCAL GOVERNMENT CONTRACTS; PROHIBITING CONTRACTS WITH A PERSON OR ENTITY THAT WAS INVOLVED IN THE DESIGN OR ENGINEERING OF A PRIMARY PROJECT; REQUIRING THE DISCLOSURE OF CONFLICTS; PROVIDING A DEFINITION; AND AMENDING SECTIONS 7-3-1323, 7-5-2301, 7-5-4301, AND 7-14-2404, MCA."

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

NEW SECTION. **Section 1. County contracts -- conflict of interest.** (1) (A) Except as provided in Title 18, chapter 2, part 5, regarding use of an alternative project delivery contract, the governing body of a county or consolidated city-county government may not award a construction contract to a contractor if the entity has ~~an ownership or~~ A financial interest, directly or indirectly, with a person, employee, contractor, subcontractor, or entity that has participated in the design or engineering of the project as a consultant or otherwise, or that represents the owner in the oversight or management of the contracted project, WITHOUT DISCLOSURE OF THE CONFLICT.

(B) A CONTRACTOR WHO FAILS TO DISCLOSE A CONFLICT WITH THE SUBMISSION OF A BID MUST BE DETERMINED TO BE NONRESPONSIVE TO THE BID. THE GOVERNING BODY SHALL, AT THE TIME OF BID OPENING, ANNOUNCE THE DISCLOSURE OF ANY CONFLICTS FOR ALL BIDDERS. SUBSEQUENT TO BID OPENING AND PRIOR TO FORMAL AWARD, THE GOVERNING BODY SHALL, IN A PUBLIC MEETING, RECEIVE PUBLIC COMMENT ON DISCLOSED CONFLICTS. THE GOVERNING BODY MAY DETERMINE AND STIPULATE APPROPRIATE REMEDIES, IF ANY, IN THE FORMAL AWARD OF THE CONTRACT.

(2) For the purpose of this section, "financial interest" means ownership of a legal or equitable interest~~, however small,~~ OF 24% OR MORE or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a financial

interest in the securities unless the entity participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the entity;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the entity could substantially affect the value of the interest; and

(d) ownership of government securities is a financial interest in the issuer only if the contractor could substantially affect the value of the securities.

NEW SECTION. **Section 2. Municipal contracts -- conflict of interest.** (1) (A) Except as provided in Title 18, chapter 2, part 5, regarding use of an alternative project delivery contract, the governing body of a city or town or other local government legislative body may not award a construction contract to a contractor if the entity has ~~an ownership or~~ A financial interest, directly or indirectly, with a person, employee, contractor, subcontractor, or entity that has participated in the design or engineering of the project as a consultant or otherwise, or that represents the owner in the oversight or management of the contracted project, WITHOUT DISCLOSURE OF THE CONFLICT.

(B) A CONTRACTOR WHO FAILS TO DISCLOSE A CONFLICT WITH THE SUBMISSION OF A BID MUST BE DETERMINED TO BE NONRESPONSIVE TO THE BID. THE GOVERNING BODY SHALL, AT THE TIME OF BID OPENING, ANNOUNCE THE DISCLOSURE OF ANY CONFLICTS FOR ALL BIDDERS, SUBSEQUENT TO BID OPENING AND PRIOR TO FORMAL AWARD, THE GOVERNING BODY SHALL, IN A PUBLIC MEETING, RECEIVE PUBLIC COMMENT ON DISCLOSED CONFLICTS. THE GOVERNING BODY MAY DETERMINE AND STIPULATE APPROPRIATE REMEDIES, IF ANY, IN THE FORMAL AWARD OF THE CONTRACT.

(2) For the purposes of this section, "financial interest" has the same meaning as provided in [section 1].

Section 3. Section 7-3-1323, MCA, is amended to read:

"**7-3-1323. Competitive, advertised bidding required for certain contracts.** All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction,

repair, maintenance, or operation of any public works or improvements, for which must be paid a sum exceeding $2,000, ~~shall~~ must be awarded to the lowest responsible bidder after public advertisement and competition as may be prescribed by ordinance, but the manager ~~shall~~ must have the right to reject all bids and advertise again. All advertisements as to contracts ~~shall~~ must contain a reservation of the foregoing right. All contracts entered into by the municipality ~~shall~~ must be signed by the manager after approval ~~thereof~~ of the contracts by the commission. A contract may not be issued in violation of [section 2] regarding a conflict of interest."

Section 4. Section 7-5-2301, MCA, is amended to read:

"**7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts.** (1) Except as provided in 7-5-2304 and Title 18, chapter 2, part 5, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of $80,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309 and subsection (4) of this section and except as provided in Title 18, chapter 2, part 5, ~~every~~ each contract subject to bidding must be let to the lowest responsible bidder.

(4) A contract may not be issued in violation of [section 1] regarding a conflict of interest."

Section 5. Section 7-5-4301, MCA, is amended to read:

"**7-5-4301. Power to enter and execute contracts.** (1) ~~A~~ Except as provided in [section 2] regarding a conflict of interest, a city or town is authorized to make any contracts necessary to carry into effect the applicable powers granted by this chapter and to provide for the manner of executing the contracts.

(2) (a) All necessary contracts for professional, technical, engineering, or legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307. However, contracts in which the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, or legal services must be awarded under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

(b) (i) Except as provided in subsection (2)(b)(ii), supervision over or operation of a physical plant that provides water, sewer, or power services to a municipality does not constitute a service excluded under the provisions of subsection (2)(a).

(ii) A city, town, or municipality may extend, renew, or amend a contract or series of contracts for the supervision or operation of a physical plant that provides water, sewer, or power services without proceeding under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307 if:

(A) one or more of the contracts were awarded to the entity in accordance with the competitive bidding procedures provided in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307; and

(B) the entity has provided the services to the city, town, or municipality for the immediately preceding 5-year period."

Section 6. Section 7-14-2404, MCA, is amended to read:

"**7-14-2404. Competitive bids for county road contracts.** Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102 and Title 18, chapter 2, part 4, and the board may reserve the right to reject any bids. If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. A contract may not be issued in violation of [section 1] regarding a conflict of interest."

NEW SECTION. **Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 23, and the provisions of Title 7, chapter 5, part 23, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 5, part 43, and the provisions of Title 7, chapter 5, part 43, apply to [section 2].

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