

HOUSE BILL NO. 260

INTRODUCED BY M. REGIER, R. KNUDSEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EXEMPT PERSONAL STAFF OF LEGISLATIVE LEADERSHIP LAWS; PROVIDING FOR ONE ADDITIONAL PERSONAL STAFF TO SERVE AS SPECIAL COUNSEL FOR THE LEGISLATURE ON AN AS-NEEDED BASIS; PROVIDING SPECIAL COUNSEL MAY ENTER A CONTACT TO PERFORM THE DUTIES OF SPECIAL COUNSEL AFTER SERVING IN THAT POSITION AS AN EMPLOYEE; MAKING THE SPECIAL COUNSEL POSITION PERMANENT; REVISING A DEFINITION; AMENDING SECTIONS 2-2-201, 2-18-104, AND 5-5-110, MCA; REPEALING SECTION 6, CHAPTER 523, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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.

(1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees 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 if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

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

(b) "contract" does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

1 (iii) investments or deposits in financial institutions that are in the business of loaning or receiving
2 money;

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

9 (v) a contract with a former employee that served as special counsel pursuant to 5-5-110 if the
10 former employee is hired on a contract basis to fulfill the role of special counsel any period of time after
11 termination of employment;

12 (c) "directly involved" means the person directly monitors a contract, extends or amends a
13 contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or
14 vendor responsibility, or renders legal advice concerning the contract;

15 (d) "former employee" does not include a person whose employment with the state was
16 involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of
17 the provisions of this chapter."
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19 **Section 2.** Section 2-18-104, MCA, is amended to read:

20 **"2-18-104. Exemption for personal staff -- limit.** (1) Subject to the limitations in subsections (2) and
21 (3), members of a personal staff are exempt from parts 1 through 3 and 10.

22 (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise
23 approved by the department according to criteria developed by the department. Under no circumstances may
24 the total exemptions of each elected official exceed 15.

25 (3) The number of members of the personal staff of the public service commission who are
26 exempted by subsection (1) may not exceed 6.

27 (4) The number of members of the personal staff of the leadership of the legislature who are
28 exempted by subsection (1) may not exceed:

- 1 (a) one personal staff for the speaker of the house of representatives;
- 2 (b) one personal staff for the minority leader of the house of representatives;
- 3 (c) one personal staff for the president of the senate;
- 4 (d) one personal staff for the minority leader of the senate; and
- 5 (e) one personal staff, and one additional personal staff as needed, ~~that serves~~ serve at the
- 6 pleasure of the speaker of the house of representatives and the president of the senate for the purposes
- 7 provided in 5-5-110. ~~(Subsection (4)(e) terminates June 1, 2023--sec. 6, Ch. 523, L. 2021.)"~~

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9 **Section 3.** Section 5-5-110, MCA, is amended to read:

10 **"5-5-110. ~~(Temporary) Special counsel -- powers -- appointment -- reporting.~~** (1) The speaker of
 11 the house of representatives and president of the senate may hire, at any time, ~~one~~ two personal staff under 2-
 12 18-104 for the purposes of serving as a special counsel. The speaker of the house of representatives and
 13 president of the senate must consent in writing to the appointment of the special counsel.

14 (2) The special counsel serves at the pleasure of the speaker of the house of representatives and
 15 the president of the senate. The special counsel must be licensed to practice law in Montana. The special
 16 counsel may:

17 (a) be appointed to investigate and examine state governmental activities and may examine and
 18 inspect all records, books, and files of any department, agency, commission, board, or institution of the state of
 19 Montana. A governmental agency shall assist the special counsel in any activity conducted by the special
 20 counsel as provided in this section.

21 (b) exercise the investigatory powers under Title 5, chapter 5, part 1, on behalf of a standing
 22 committee, select committee, or interim committee and any subcommittees of those committees;

23 (c) if assigned to a legislative committee, hold hearings, administer oaths, issue subpoenas,
 24 compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony,
 25 and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil
 26 actions in district court;

27 (d) report to the speaker of the house of representatives and the president of the senate or any
 28 committee designated by the speaker of the house of representatives and the president of the senate, including

1 but not limited to standing committees, select committees, or interim committees and any subcommittees of
2 those committees. A special counsel that reports to a legislative committee must serve at the direction of the
3 speaker of the house of representatives and president of the senate and not the assigned committee.

4 (e) make recommendations for revisions of laws or rules for consideration by the legislature.

5 (3) The speaker of the house of representatives and president of the senate may designate the
6 attorney general or an employee of the attorney general to serve as the special counsel.

7 (4) Costs for the special counsel must be paid:

8 (a) by the department of justice if the special counsel is the attorney general or an employee of the
9 attorney general as provided in subsection (3);

10 (b) as directed by the speaker of the house of representatives or president of the senate, including
11 but not limited to using funding from interim committee operating funds. ~~(Terminates June 1, 2023--sec. 6, Ch.~~
12 ~~523, L. 2021.)"~~

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14 NEW SECTION. Section 4. Repealer. Section 6, Chapter 523, Laws of 2021, is repealed.

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16 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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18 NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively, within the
19 meaning of 1-2-109, to special counsel hired during the 68th legislative session.

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