
SUBSTITUTE HOUSE BILL 1390

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Government Administration (originally sponsored by Representatives Hatfield, Pennington, Doumit, Robertson, Murray, D. Schmidt, Chopp, Scott, Gardner, Romero, Dunshee, Wolfe, Morris, Wensman, Kessler and Dunn)

Read first time 02/10/97.

1 AN ACT Relating to municipal officers' interest in contracts;
2 amending RCW 42.23.030, 42.23.040, 42.23.050, and 42.23.060; and
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) The current statutes pertaining to municipal officers'
7 beneficial interest in contracts are quite confusing and have resulted
8 in some inadvertent violations of the law.

9 (2) The dollar thresholds for many of the exemptions have not been
10 changed in over thirty-five years, and the restrictions apply to the
11 total amount of the contract instead of the portion of the contract
12 that pertains to the business operated by the municipal officer.

13 (3) The confusion existing over these current statutes discourages
14 some municipalities from accessing some efficiencies available to them.

15 Therefore, it is the intent of the legislature to clarify the
16 statutes pertaining to municipal officers and contracts and to enact
17 reasonable protections against inappropriate conflicts of interest.

1 **Sec. 2.** RCW 42.23.030 and 1996 c 246 s 1 are each amended to read
2 as follows:

3 No municipal officer shall be beneficially interested, directly or
4 indirectly, in any contract which may be made by, through or under the
5 supervision of such officer, in whole or in part, or which may be made
6 for the benefit of his or her office, or accept, directly or
7 indirectly, any compensation, gratuity or reward in connection with
8 such contract from any other person beneficially interested therein.
9 This section shall not apply in the following cases:

10 (1) The furnishing of electrical, water or other utility services
11 by a municipality engaged in the business of furnishing such services,
12 at the same rates and on the same terms as are available to the public
13 generally;

14 (2) The designation of public depositaries for municipal funds;

15 (3) The publication of legal notices required by law to be
16 published by any municipality, upon competitive bidding or at rates not
17 higher than prescribed by law for members of the general public;

18 (4) The designation of a school director as clerk or as both clerk
19 and purchasing agent of a school district;

20 (5) The employment of any person by a municipality(~~(, other than a~~
21 ~~county with a population of one hundred twenty-five thousand or more,~~
22 ~~a city of the first or second class, an irrigation district~~
23 ~~encompassing in excess of fifty thousand acres, or a first class school~~
24 ~~district,~~)) for unskilled day labor at wages not exceeding ((one)) two
25 hundred dollars in any calendar month. The exception provided in this
26 subsection does not apply to a county with a population of one hundred
27 twenty-five thousand or more, a city with a population of more than one
28 thousand five hundred, an irrigation district encompassing more than
29 fifty thousand acres, or a first class school district;

30 (6)(a) The letting of any other contract (~~(except a sale or lease~~
31 ~~as seller or lessor) by a municipality, other than a county with a~~
32 ~~population of one hundred twenty-five thousand or more, a city with a~~
33 ~~population of ten thousand or more, or an irrigation district~~
34 ~~encompassing in excess of fifty thousand acres: PROVIDED, That)) in~~
35 which the total ((volume of business represented by such contract or
36 contracts in which a particular officer is interested, singly or in the
37 aggregate, as measured by the dollar amount of the municipality's
38 liability thereunder, shall)) amount received under the contract or
39 contracts by the municipal officer or the municipal officer's business

1 does not exceed ((seven)) one thousand two hundred ((fifty)) dollars in
2 any calendar month((:—PROVIDED FURTHER, That))i

3 (b) However, in the case of a particular officer of a second class
4 city or town, or a noncharter optional code city, or a member of any
5 county fair board in a county which has not established a county
6 purchasing department pursuant to RCW 36.32.240, the total ((volume))
7 amount of such contract or contracts authorized in this subsection (6)
8 may exceed ((seven)) one thousand two hundred ((fifty)) dollars in any
9 calendar month but shall not exceed ((nine)) fourteen thousand four
10 hundred dollars in any calendar year((:—PROVIDED FURTHER, That there
11 shall be public disclosure by having an available))i

12 (c) The exceptions provided in this subsection (6) do not apply to
13 a sale or lease by the municipality as the seller or lessor. The
14 exceptions provided in this subsection (6) also do not apply to the
15 letting of any contract by a county with a population of one hundred
16 twenty-five thousand or more, a city with a population of ten thousand
17 or more, or an irrigation district encompassing more than fifty
18 thousand acres;

19 (d) The municipality shall maintain a list of ((such purchases or))
20 all contracts((, and if the supplier or contractor is an official of
21 the municipality, he or she shall not vote on the authorization:
22 PROVIDED FURTHER, That in the case of a first class school district,
23 there shall be notice of the proposed contract by publication given in
24 one or more newspapers of general circulation within the district))
25 that are awarded pursuant to this subsection (6). The list must be
26 made available for public inspection and copying;

27 (7) The leasing by a port district as lessor of port district
28 property to a municipal officer or to a contracting party in which a
29 municipal officer may be beneficially interested, if in addition to all
30 other legal requirements, a board of three disinterested appraisers((,
31 who shall be appointed from members of the American institute of real
32 estate appraisers by the presiding judge of)) and the superior court in
33 the county where the property is situated((, shall find and the court))
34 finds that all terms and conditions of such lease are fair to the port
35 district and are in the public interest. The appraisers must be
36 appointed from members of the American institute of real estate
37 appraisers by the presiding judge of the superior court;

38 (8) The letting of any employment contract for the driving of a
39 school bus in a second class school district((:—PROVIDED, That)) if

1 the terms of such contract (~~(shall be)~~) are commensurate with the pay
2 plan or collective bargaining agreement operating in the district;

3 (9) The letting of any employment contract to the spouse of an
4 officer of a (~~second class school district in which less than two~~
5 ~~hundred full time equivalent students are enrolled at the start of the~~
6 ~~school year as defined in RCW 28A.150.040, when such contract is solely~~
7 ~~for employment as a certificated or classified employee of the school~~
8 ~~district, or the letting of any contract to the spouse of an officer of~~
9 ~~a~~) school district, when such contract is solely for employment as a
10 substitute teacher for the school district(~~(: PROVIDED, That)~~). This
11 exception applies only if the terms of (~~such~~) the contract (~~shall~~
12 be) are commensurate with the pay plan or collective bargaining
13 agreement applicable to all district employees and the board of
14 directors has found, consistent with the written policy under RCW
15 28A.330.240, that there is a shortage of substitute teachers in the
16 school district;

17 (10) The letting of any employment contract to the spouse of an
18 officer of a school district if the spouse was under contract as a
19 certificated or classified employee with the school district before the
20 date in which the officer assumes office(~~(: PROVIDED, That)~~) and the
21 terms of (~~such~~) the contract (~~shall be~~) are commensurate with the
22 pay plan or collective bargaining agreement operating in the district.
23 However, in a second class school district that has less than two
24 hundred full time equivalent students enrolled at the start of the
25 school year as defined in RCW 28A.150.040, the spouse is not required
26 to be under contract as a certificated or classified employee before
27 the date on which the officer assumes office.

28 A municipal officer may not vote in the authorization, approval, or
29 ratification of any contract in which he or she is beneficially
30 interested even though one of the exemptions allowing the awarding of
31 such a contract applies. The interest of the municipal officer must be
32 disclosed to the governing body of the municipality and noted in the
33 official minutes or similar records of the municipality prior to the
34 formation of the contract.

35 **Sec. 3.** RCW 42.23.040 and 1961 c 268 s 5 are each amended to read
36 as follows:

37 A municipal officer (~~shall~~) is not (~~be deemed to be~~) interested
38 in a contract, within the meaning of RCW 42.23.030, if (~~he~~) the

1 officer has only a remote interest in the contract and ~~((if))~~ the
2 ~~((fact and))~~ extent of ~~((such))~~ the interest is disclosed to the
3 governing body of the municipality of which ~~((he))~~ the officer is an
4 officer and noted in the official minutes or similar records of the
5 municipality prior to the formation of the contract, and thereafter the
6 governing body authorizes, approves, or ratifies the contract in good
7 faith by a vote of its membership sufficient for the purpose without
8 counting the vote or votes of the officer having the remote interest.
9 As used in this section "remote interest" means:

- 10 (1) That of a nonsalaried officer of a nonprofit corporation;
- 11 (2) That of an employee or agent of a contracting party where the
12 compensation of such employee or agent consists entirely of fixed wages
13 or salary;
- 14 (3) That of a landlord or tenant of a contracting party;
- 15 (4) That of a holder of less than one percent of the shares of a
16 corporation or cooperative which is a contracting party.

17 None of the provisions of this section ~~((shall be))~~ are applicable
18 to any officer interested in a contract, ~~((though his))~~ even if the
19 officer's interest ~~((be))~~ is only remote, ~~((who))~~ if the officer
20 influences or attempts to influence any other officer of the
21 municipality of which he or she is an officer to enter into the
22 contract.

23 **Sec. 4.** RCW 42.23.050 and 1961 c 268 s 6 are each amended to read
24 as follows:

25 Any contract made in violation of the provisions of this ~~((act~~
26 ~~shall be))~~ chapter is void and the performance thereof, in full or in
27 part, by a contracting party shall not be the basis of any claim
28 against the municipality. Any officer violating the provisions of this
29 ~~((act shall be))~~ chapter is liable to the municipality of which he or
30 she is an officer for a penalty in the amount of ~~((three))~~ five hundred
31 dollars, in addition to such other civil or criminal liability or
32 penalty as may otherwise be imposed upon ~~((him))~~ the officer by law.

33 In addition to all other penalties, civil or criminal, the
34 violation by any officer of the provisions of this ~~((act shall work a))~~
35 chapter may be grounds for forfeiture of his or her office.

36 **Sec. 5.** RCW 42.23.060 and 1961 c 268 s 16 are each amended to read
37 as follows:

1 If any provision of this ((act)) chapter conflicts with any
2 provision of a city or county charter, or with any provision of a
3 city-county charter, the ((city)) charter shall control if it contains
4 stricter requirements than this chapter. The provisions of this
5 chapter shall be considered as minimum standards to be enforced by
6 municipalities.

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