

2 **SSB 5363** - H COMM AMD **ADOPTED 4-8-97**
3 By Committee on Government Administration

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

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

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

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

22 No municipal officer shall be beneficially interested, directly or
23 indirectly, in any contract which may be made by, through or under the
24 supervision of such officer, in whole or in part, or which may be made
25 for the benefit of his or her office, or accept, directly or
26 indirectly, any compensation, gratuity or reward in connection with
27 such contract from any other person beneficially interested therein.
28 This section shall not apply in the following cases:

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

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

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

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

6 (5) The employment of any person by a municipality(~~(, other than a~~
7 ~~county with a population of one hundred twenty five thousand or more,~~
8 ~~a city of the first or second class, an irrigation district~~
9 ~~encompassing in excess of fifty thousand acres, or a first class school~~
10 ~~district,~~) for unskilled day labor at wages not exceeding ~~((one))~~ two
11 hundred dollars in any calendar month. The exception provided in this
12 subsection does not apply to a county with a population of one hundred
13 twenty-five thousand or more, a city with a population of more than one
14 thousand five hundred, an irrigation district encompassing more than
15 fifty thousand acres, or a first class school district;

16 (6)(a) ~~The letting of any other contract ((except a sale or lease~~
17 ~~as seller or lessor) by a municipality, other than a county with a~~
18 ~~population of one hundred twenty five thousand or more, a city with a~~
19 ~~population of ten thousand or more, or an irrigation district~~
20 ~~encompassing in excess of fifty thousand acres: PROVIDED, That))~~ in
21 which the total ((volume of business represented by such contract or
22 contracts in which a particular officer is interested, singly or in the
23 aggregate, as measured by the dollar amount of the municipality's
24 liability thereunder, shall)) amount received under the contract or
25 contracts by the municipal officer or the municipal officer's business
26 does not exceed ((seven)) one thousand five hundred ((fifty)) dollars
27 in any calendar month((: PROVIDED FURTHER, That)));

28 (b) However, in the case of a particular officer of a second class
29 city or town, or a noncharter optional code city, or a member of any
30 county fair board in a county which has not established a county
31 purchasing department pursuant to RCW 36.32.240, the total ~~((volume))~~
32 amount of such contract or contracts authorized in this subsection (6)
33 may exceed ~~((seven))~~ one thousand five hundred ((fifty)) dollars in any
34 calendar month but shall not exceed ~~((nine))~~ eighteen thousand dollars
35 in any calendar year((: PROVIDED FURTHER, That there shall be public
36 disclosure by having an available)));

37 (c) The exceptions provided in this subsection (6) do not apply to
38 a sale or lease by the municipality as the seller or lessor. The
39 exceptions provided in this subsection (6) also do not apply to the

1 letting of any contract by a county with a population of one hundred
2 twenty-five thousand or more, a city with a population of ten thousand
3 or more, or an irrigation district encompassing more than fifty
4 thousand acres;

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

13 (e) Beginning January 1, 1998, and each January 1st thereafter, the
14 dollar amounts in subsection (6) of this section shall be adjusted
15 annually by the department of revenue based on the governmental price
16 index established by the department of revenue under RCW 82.14.200.
17 The adjusted dollar amounts shall be published in the Washington State
18 Register;

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

30 (8) The letting of any employment contract for the driving of a
31 school bus in a second class school district((:—PROVIDED, That)) if
32 the terms of such contract ((shall be)) are commensurate with the pay
33 plan or collective bargaining agreement operating in the district;

34 (9) The letting of any employment contract to the spouse of an
35 officer of a ((second class school district in which less than two
36 hundred full time equivalent students are enrolled at the start of the
37 school year as defined in RCW 28A.150.040, when such contract is solely
38 for employment as a certificated or classified employee of the school
39 district, or the letting of any contract to the spouse of an officer of

1 a)) school district, when such contract is solely for employment as a
2 substitute teacher for the school district(~~(:—PROVIDED, That))~~). This
3 exception applies only if the terms of ((such)) the contract ((shall
4 be)) are commensurate with the pay plan or collective bargaining
5 agreement applicable to all district employees and the board of
6 directors has found, consistent with the written policy under RCW
7 28A.330.240, that there is a shortage of substitute teachers in the
8 school district;

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

20 (11) The authorization, approval, or ratification of any employment
21 contract with the spouse of a public hospital district commissioner if:
22 (a) The spouse was employed by the public hospital district before the
23 date the commissioner was initially elected; (b) the terms of the
24 contract are commensurate with the pay plan or collective bargaining
25 agreement operating in the district for similar employees; (c) the
26 interest of the commissioner is disclosed to the board of commissioners
27 and noted in the official minutes or similar records of the public
28 hospital district prior to the letting or continuation of the contract;
29 (d) and the commissioner does not vote on the authorization, approval,
30 or ratification of the contract or any conditions in the contract.

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

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

3 A municipal officer (~~shall~~) is not (~~be deemed to be~~) interested
4 in a contract, within the meaning of RCW 42.23.030, if (~~he~~) the
5 officer has only a remote interest in the contract and (~~if~~) the
6 (~~fact and~~) extent of (~~such~~) the interest is disclosed to the
7 governing body of the municipality of which (~~he~~) the officer is an
8 officer and noted in the official minutes or similar records of the
9 municipality prior to the formation of the contract, and thereafter the
10 governing body authorizes, approves, or ratifies the contract in good
11 faith by a vote of its membership sufficient for the purpose without
12 counting the vote or votes of the officer having the remote interest.
13 As used in this section "remote interest" means:

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

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

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

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

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

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

6 If any provision of this ((act)) chapter conflicts with any
7 provision of a city or county charter, or with any provision of a
8 city-county charter, the ((city)) charter shall control if it contains
9 stricter requirements than this chapter. The provisions of this
10 chapter shall be considered as minimum standards to be enforced by
11 municipalities."

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13 By Committee on Government Administration

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15 On page 1, line 1, after "officers;" strike the remainder of the
16 title and insert "amending RCW 42.23.030, 42.23.040, 42.23.050, and
17 42.23.060; and creating a new section."

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