

2 **SHB 1390** - S COMM AMD

3 By Committee on Government Operations

4

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 1997 c 98 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 under this subsection (6). The list must be made  
12 available for public inspection and copying.

13 (e) The dollar amount in this subsection (6) must be adjusted  
14 annually based on the governmental price index established by the  
15 department of revenue under RCW 82.14.200;

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

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

31 (9) The letting of any employment contract to the spouse of an  
32 officer of a ((~~second class school district in which less than two~~  
33 ~~hundred full time equivalent students are enrolled at the start of the~~  
34 ~~school year as defined in RCW 28A.150.040, when such contract is solely~~  
35 ~~for employment as a certificated or classified employee of the school~~  
36 ~~district, or the letting of any contract to the spouse of an officer of~~  
37 ~~a~~)) school district, when such contract is solely for employment as a  
38 substitute teacher for the school district((~~: PROVIDED, That~~)). This  
39 exception applies only if the terms of ((such)) the contract ((shall

1 be)) are commensurate with the pay plan or collective bargaining  
2 agreement applicable to all district employees and the board of  
3 directors has found, consistent with the written policy under RCW  
4 28A.330.240, that there is a shortage of substitute teachers in the  
5 school district;

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

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

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

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

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

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

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

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

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

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

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

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

9       **SHB 1390** - S COMM AMD  
10       By Committee on Government Operations

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12       In line 1 of the title, after "contracts;" strike the remainder of  
13 the title and insert "amending RCW 42.23.030, 42.23.040, 42.23.050, and  
14 42.23.060; creating a new section; and prescribing penalties."

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