

SENATE BILL NO. 364

INTRODUCED BY D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE CONTRACT LAWS; REVISING THE TIMEFRAME AND PROVIDING SPECIFICITY FOR PROHIBITED ACTIVITY; PROVIDING FINES FOR VIOLATIONS; AND AMENDING SECTIONS 2-2-201 AND 18-4-141, MCA."

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~~ Except as provided in subsection (2), 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 as provided in subsections (1)(a) through (1)(i). A former employee of the state or any of its subdivisions may not, within ~~6~~ 12 months following the termination of employment, contract with 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~~:

(a) signed a contract;

(b) monitored a contract;

(c) extended or amended a contract;

(d) audited a contract;

(e) was responsible for conducting procurement or for evaluating proposals or vendor responsibility prior to awarding a contract;

(f) rendered legal advice concerning a contract;

(g) approved payment of invoices or settled claims relating to a contract;

(h) performed other administrative functions defined in statute as being required elements of the procurement or contract management process; or

(i) had direct supervisory or executive control over any employee who performed any of the actions specified in this subsection (1).

1 ~~(2)~~ Subsection (1) does not prohibit a former employee from accepting employment from or contracting
 2 with an employer that is a legally separate entity that does not provide similar products or services as the
 3 contractor with which the former employee performed any of the activities specified in subsections (1)(a) through
 4 (1)(g).

5 ~~(2)~~(3) In this section, the term:

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

7 (b) "contract" does not include:

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

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

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

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

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

20 ~~(d)~~(c) "former employee" does not include a person whose employment with the state was involuntarily
 21 terminated because of a reduction in force or other involuntary termination not involving violation of the provisions
 22 of this chapter.

23 (4) A person who violates the provisions of this section is guilty of a misdemeanor and shall be fined an
 24 amount not less than \$500 or more than \$5,000 plus twice the amount of compensation that the individual
 25 received or offered for the prohibited conduct, and the state of Montana may at its option declare any contract
 26 in violation of this section void ab initio."

27

28 **Section 2.** Section 18-4-141, MCA, is amended to read:

29 **"18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) A contract or
 30 order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to

1 whom the contract or order is given to any other party without the express written approval of the state, and the
2 state may declare void any unapproved transfer, assignment, or subcontract.

3 (2) Collusion or secret agreements between vendors for the purpose of securing any advantage to the
4 vendors as against the state in the awarding of contracts are prohibited. The state may declare the contract void
5 if the department finds sufficient evidence after a contract has been let that the contract was obtained by a vendor
6 or vendors by reason of collusive or secret agreement among the vendors to the disadvantage of the state.

7 (3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

8 (4) A person who violates the provisions of ~~2-2-201~~ or this section, ~~or both~~, is guilty of a misdemeanor
9 and shall be fined an amount of not less than \$500 or more than \$5,000, and the state of Montana may at its
10 option declare any contract in violation of ~~the provisions of 2-2-201~~ or this section, ~~or both~~, void ab initio."

11 - END -