

Amendment - 1st Reading/2nd House-blue - Requested by: John Esp - (S) Finance and Claims

- 2023

68th Legislature 2023

Drafter: Julie Johnson, 406-444-4024

HB0260.002.002

1 HOUSE BILL NO. 260
2 INTRODUCED BY M. REGIER, R. KNUDSEN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EXEMPT PERSONAL STAFF OF LEGISLATIVE
5 LEADERSHIP LAWS; PROVIDING FOR ONE FOUR ADDITIONAL PERSONAL STAFF TO SERVE AS
6 SPECIAL COUNSEL FOR THE LEGISLATURE EXEMPT PERSONAL LEGAL STAFF FOR EACH CAUCUS
7 ON AN AS-NEEDED BASIS; INCREASING THE ALLOWABLE NUMBER OF EXEMPT PERSONAL STAFF
8 POSITIONS; REVISING SPECIAL COUNSEL DUTIES; PROVIDING A FUNDING ALLOCATION FOR THE
9 ADDITIONAL PERSONAL LEGAL STAFF; PROVIDING SPECIAL COUNSEL MAY ENTER A CONTACT
10 CONTRACT TO PERFORM THE DUTIES OF SPECIAL COUNSEL AFTER SERVING IN THAT POSITION AS
11 AN EMPLOYEE; MAKING THE SPECIAL COUNSEL POSITION PERMANENT; REVISING A DEFINITION;
12 AMENDING SECTIONS 2-2-201, AND 2-18-104, AND 5-5-110, AND 5-5-110, MCA; REPEALING SECTION
13 6, CHAPTER 523, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
14 RETROACTIVE APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 2-2-201, MCA, is amended to read:

19 **"2-2-201. Public officers, employees, and former employees not to have interest in contracts.**

20 (1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of
21 an enumerated governmental entity may not be interested in any contract made by them in their official capacity
22 or by any body, agency, or board of which they are members or employees if they are directly involved with the
23 contract. A former employee may not, within 6 months following the termination of employment, contract or be
24 employed by an employer who contracts with the state or any of its subdivisions involving matters with which
25 the former employee was directly involved during employment.

26 (2) In this section, the term:

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

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- 1 (b) "contract" does not include:
- 2 (i) contracts awarded based on competitive procurement procedures conducted after the date of
- 3 employment termination;
- 4 (ii) merchandise sold to the highest bidder at public auctions;
- 5 (iii) investments or deposits in financial institutions that are in the business of loaning or receiving
- 6 money;
- 7 (iv) a contract with an interested party if, because of geographic restrictions, a local government
- 8 could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government
- 9 could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local
- 10 government is greater than 10% of a contract with an interested party or if the contract is for services that must
- 11 be performed within a limited time period and no other contractor can provide those services within that time
- 12 period.
- 13 (v) a contract with a former employee that served as special counsel pursuant to 5-5-110 if the
- 14 former employee is hired on a contract basis to fulfill the role of special counsel any period of time after
- 15 termination of employment;
- 16 (c) "directly involved" means the person directly monitors a contract, extends or amends a
- 17 contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or
- 18 vendor responsibility, or renders legal advice concerning the contract;
- 19 (d) "former employee" does not include a person whose employment with the state was
- 20 involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of
- 21 the provisions of this chapter."

22

23 **Section 2.** Section 2-18-104, MCA, is amended to read:

24 **"2-18-104. Exemption for personal staff -- limit.** (1) Subject to the limitations in subsections (2) and

25 (3), members of a personal staff are exempt from parts 1 through 3 and 10.

26 (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise

27 approved by the department according to criteria developed by the department. Under no circumstances may

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1 the total exemptions of each elected official exceed 15.

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

4 (4) ~~(a) The Except as provided in subsection (4)(b), the~~ number of members of the personal staff of
5 the leadership of the legislature AND THE LEGAL STAFF OF THE MAJORITY AND MINORITY CAUCUSES who are
6 exempted by subsection (1) may not exceed:

7 ~~(a)(i) one two~~ personal staff for the speaker of the house of representatives;

8 ~~(b)(ii)~~ one personal staff for the minority leader of the house of representatives;

9 ~~(c)(iii)~~ one two personal staff for the president of the senate;

10 ~~(d)(iv)~~ one personal staff for the minority leader of the senate; ~~and~~

11 ~~(E)(v)~~ ONE PERSONAL LEGAL STAFF THAT SERVES ON AN AS-NEEDED BASIS FOR THE MAJORITY PARTY OF
12 THE HOUSE OF REPRESENTATIVES;

13 ~~(F)(vi)~~ ONE PERSONAL LEGAL STAFF THAT SERVES ON AN AS-NEEDED BASIS FOR THE MINORITY PARTY OF THE
14 HOUSE OF REPRESENTATIVES;

15 ~~(G)(vii)~~ ONE PERSONAL LEGAL STAFF THAT SERVES ON AN AS-NEEDED BASIS FOR THE MAJORITY PARTY OF
16 THE SENATE;

17 ~~(H)(viii)~~ ONE PERSONAL LEGAL STAFF THAT SERVES ON AN AS-NEEDED BASIS FOR THE MINORITY PARTY OF THE
18 SENATE; AND

19 ~~(e)(i)(ix)~~ one personal staff, ~~and one additional personal staff as needed,~~ that serves ~~serve~~ SERVES at
20 the pleasure of the speaker of the house of representatives and the president of the senate for the purposes
21 provided in 5-5-110.

22 ~~(b)~~ If the membership of the minority caucus in either chamber is 40% or greater of the total
23 membership of the chamber, then the respective minority leader provided for in subsection (4)(a)(ii) or (4)(a)(iv)
24 may appoint up to two exempt personal staff.

25 ~~(5)~~ SUBJECT TO LEGISLATIVE APPROPRIATION, THE FUNDING ALLOCATED TO THE PERSONAL LEGAL STAFF
26 FOR THE MINORITY PARTY IN SUBSECTIONS (4)(F) AND (4)(H) IS EQUAL TO ONE-THIRD OF THE FUNDING ALLOCATED TO
27 THE PERSONAL LEGAL STAFF FOR THE MAJORITY PARTY IN SUBSECTIONS (4)(E) AND (4)(G) IN HOUSE BILL NO. 2 IS

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1 prorated based on the ratio of the minority party and the majority party to the overall partisan makeup of the
2 legislature. THE EXEMPT PERSONAL LEGAL STAFF FOR THE MAJORITY AND MINORITY PARTIES MUST BE LICENSED TO
3 PRACTICE LAW IN MONTANA AND MAY BE HIRED ON A CONTRACT BASIS. (Subsection (4)(e) terminates June 1, 2023--
4 sec. 6, Ch. 523, L. 2021.)"

5

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

7 ~~"5-5-110. (Temporary) Special counsel -- powers -- appointment -- reporting.~~ (1) The speaker of
8 the house of representatives and president of the senate may hire, at any time, one ~~two~~ personal staff under 2-
9 18-104 for the purposes of serving as a special counsel. The speaker of the house of representatives and
10 president of the senate must consent in writing to the appointment of the special counsel.

11 (2) ~~— The special counsel serves at the pleasure of the speaker of the house of representatives and~~
12 ~~the president of the senate. The special counsel must be licensed to practice law in Montana. The special~~
13 ~~counsel may:~~

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

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

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

24 (d) ~~— report to the speaker of the house of representatives and the president of the senate or any~~
25 ~~committee designated by the speaker of the house of representatives and the president of the senate, including~~
26 ~~but not limited to standing committees, select committees, or interim committees and any subcommittees of~~
27 ~~those committees. A special counsel that reports to a legislative committee must serve at the direction of the~~

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1 ~~speaker of the house of representatives and president of the senate and not the assigned committee.~~

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

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

5 ~~(4) — Costs for the special counsel must be paid:~~

6 ~~(a) — by the department of justice if the special counsel is the attorney general or an employee of the~~
7 ~~attorney general as provided in subsection (3);~~

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

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

13 **"5-5-110. ~~(Temporary) Special counsel -- powers -- appointment -- reporting.~~** (1) The speaker of
14 the house of representatives and president of the senate may hire, at any time, one personal staff under 2-18-
15 104 for the purposes of serving as a special counsel. The speaker of the house of representatives and
16 president of the senate must consent in writing to the appointment of the special counsel.

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

20 (a) be appointed to ~~investigate and~~ examine state governmental activities and may examine and
21 inspect all records, books, communications, and files of any department, agency, commission, board, or
22 institution of the state of Montana at the request of a legislator or legislative committee. A governmental agency
23 shall assist the special counsel in any activity conducted by the special counsel as provided in this section.

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

26 (c) if assigned to a legislative committee, hold hearings, administer oaths, issue subpoenas,
27 compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony,

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1 and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil
2 actions in district court;

3 (d) report to the speaker of the house of representatives and the president of the senate or any
4 committee designated by the speaker of the house of representatives and the president of the senate, including
5 but not limited to standing committees, select committees, or interim committees and any subcommittees of
6 those committees. A special counsel that reports to a legislative committee must serve at the direction of the
7 speaker of the house of representatives and president of the senate and not the assigned committee.

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

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

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

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

14 (b) as directed by the speaker of the house of representatives or president of the senate, including
15 but not limited to using funding from interim committee operating funds. ~~(Terminates June 1, 2023—sec. 6, Ch.~~
16 ~~523, L. 2021.)"~~

17
18 NEW SECTION. Section 4. Repealer. Section 6, Chapter 523, Laws of 2021, is repealed.

19
20 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

21
22 NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively, within the
23 meaning of 1-2-109, to special counsel AND EXEMPT PERSONAL LEGAL STAFF hired during the 68th legislative
24 session.

25

26

- END -