

HOUSE BILL 632

Introduced by Brooke, et al.

| | |
|------|----------------------------------|
| 2/06 | Introduced |
| 2/06 | Referred to State Administration |
| 2/06 | Fiscal Note Requested |
| 2/06 | First Reading |
| 2/12 | Fiscal Note Received |
| 2/13 | Fiscal Note Printed |
| 2/14 | Hearing |
| 2/20 | Tabled in Committee |

1 House BILL NO. 632
 2 INTRODUCED BY Senale
 3 Fritz David Berent Henry
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 DISCLOSURE OF CONFLICT OF INTEREST AND FINANCIAL REPORTING
 6 REQUIREMENTS FOR PUBLIC OFFICIALS; REQUIRING DISCLOSURE OF A
 7 CONFLICT OF INTEREST; TRANSFERRING AUTHORITY FOR THE
 8 ENFORCEMENT OF ETHICS LAWS FROM THE SECRETARY OF STATE TO
 9 THE COMMISSIONER OF POLITICAL PRACTICES; AUTHORIZING THE
 10 COMMISSIONER OF POLITICAL PRACTICES TO CONDUCT EDUCATIONAL
 11 PROGRAMS AND ISSUE ADVISORY OPINIONS; REQUIRING THAT
 12 FINANCIAL REPORTING BE EXPANDED IN ORDER TO ALLOW THE
 13 COMMISSIONER OF POLITICAL PRACTICES TO DETERMINE WHETHER A
 14 CONFLICT OF INTEREST EXISTS; AND AMENDING SECTIONS 2-2-102,
 15 2-2-103, 2-2-104, 2-2-105, 2-2-121, 2-2-125, 2-2-131,
 16 2-2-132, 2-2-201, 5-7-103, 5-7-213, AND 5-11-203, MCA."

STATEMENT OF INTENT

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 18
 19 A statement of intent is required for [this act] because
 20 [section 11] grants rulemaking authority to the commissioner
 21 of political practices to require the disclosure of
 22 financial information. The commissioner may only require the
 23 disclosure of financial information not listed in [section
 24 11] if the commissioner decides that the information is
 25 necessary for determining if an elected official has a

1 conflict of interest.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 **Section 1.** Section 2-2-102, MCA, is amended to read:

5 "2-2-102. Definitions. As used in this part, the
6 following definitions apply:

7 (1) "Business" includes a corporation, partnership,
8 sole proprietorship, trust or foundation, or any other
9 individual or organization carrying on a business, whether
10 or not operated for profit.

11 (2) "Commissioner" means the commissioner of political
12 practices as established in 2-15-411.

13 (3) "Compensation" means any money, thing of value,
14 or economic benefit conferred on or received by any person
15 in return for services rendered or to be rendered by himself
16 or another.

17 (4) "Employee" means any temporary or permanent
18 employee of the state or any subdivision thereof or member
19 of the judiciary, including a member of a board, commission,
20 or committee except a legislator and an employee under
21 contract to the state.

22 (5) "Financial interest" means an interest held by
23 an individual, his spouse, or minor children which is:

- 24 (a) an ownership interest in a business;
- 25 (b) a creditor interest in an insolvent business;

1 (c) an employment or prospective employment for which
2 negotiations have begun;

3 (d) an ownership interest in real or personal property;

4 (e) a loan or other debtor interest; or

5 (f) a directorship or officership in a business.

6 ~~(5)~~(6) "Official act" or "official action" means a
7 vote, decision, recommendation, approval, disapproval, or
8 other action, including inaction, which involves the use of
9 discretionary authority.

10 ~~(6)~~(7) "Public officer" includes any state officer
11 except a legislator or member of the judiciary or any
12 elected officer of any subdivision of the state.

13 ~~(7)~~(8) "State agency" includes the state; the
14 legislature and its committees; all executive departments,
15 boards, commissions, committees, bureaus, and offices; the
16 university system; and all independent commissions and other
17 establishments of the state government except the courts.

18 ~~(8)~~(9) "State officer" includes all elected officers
19 and directors of the executive branch of state government as
20 defined in 2-15-102."

21 **Section 2.** Section 2-2-103, MCA, is amended to read:

22 "2-2-103. Public trust. (1) The holding of public
23 office or employment is a public trust, created by the
24 confidence which the electorate reposes in the integrity of
25 public officers, legislators, and employees. A public

1 officer, legislator, or employee shall carry out his duties
2 for the benefit of the people of the state.

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty is liable to the
5 people of the state as a trustee of property, is liable to a
6 beneficiary under 72-34-105, and shall suffer such other
7 liabilities as a private fiduciary would suffer for abuse of
8 his trust. The county attorney of the county where the trust
9 is violated, the commissioner, or a private citizen may
10 bring appropriate judicial proceedings on behalf of the
11 people. Any moneys collected in such actions shall be paid
12 to the general fund of the aggrieved agency.

13 (3) The following sections set forth various rules of
14 conduct, the transgression of any of which is, as such, a
15 violation of fiduciary duty, and various ethical principles,
16 the transgression of any of which is not, as such, a
17 violation of fiduciary duty."

18 **Section 3.** Section 2-2-104, MCA, is amended to read:

19 "2-2-104. Rules of conduct for all public officers,
20 legislators, and employees. (1) Proof of commission of any
21 act enumerated in this section is proof that the actor has
22 breached his fiduciary duty. A public officer, legislator,
23 or employee may not:

24 (a) disclose or use confidential information acquired
25 in the course of his official duties in order to further

1 substantially his personal economic interests; or

2 (b) accept a gift of substantial-value more than \$50 or
3 a substantial economic benefit tantamount to a gift:

4 (i) which would tend improperly to influence a
5 reasonable person in his position to depart from the
6 faithful and impartial discharge of his public duties; or

7 (ii) which he knows or which a reasonable person in his
8 position should know under the circumstances is primarily
9 for the purpose of rewarding him for official action he has
10 taken.

11 (2) An economic benefit tantamount to a gift includes
12 without limitation a loan at a rate of interest
13 substantially lower than the commercial rate then currently
14 prevalent for similar loans and compensation received for
15 private services rendered at a rate substantially exceeding
16 the fair market value of such services. Campaign
17 contributions reported as required by statute are not gifts
18 or economic benefits tantamount to gifts.

19 (3) A public officer or employee may not, within 2
20 years following the termination of employment, represent a
21 private interest before the agency that employed him on
22 matters in which the former officer or employee was
23 personally and substantially involved during his public
24 employment."

25 **Section 4.** Section 2-2-105, MCA, is amended to read:

1 "2-2-105. **Ethical principles for public officers and**
2 **employees.** (1) The principles in this section are intended
3 as guides to conduct and do not constitute violations as
4 such of the public trust of office or employment in state or
5 local government.

6 (2) A public officer or employee should not acquire an
7 interest in any business or undertaking which he has reason
8 to believe may be directly and substantially affected to its
9 economic benefit by official action to be taken by his
10 agency.

11 (3) A Subject to 2-2-104(3), a public officer or
12 employee should not, within the months following the
13 voluntary termination of his office or employment, obtain
14 employment in which he will take direct advantage,
15 unavailable to others, of matters with which he was directly
16 involved during his term or employment. These matters are
17 rules, other than rules of general application, which he
18 actively helped to formulate and applications, claims, or
19 contested cases in the consideration of which he was an
20 active participant.

21 (4) A public officer or employee should not perform an
22 official act directly and substantially affecting a business
23 or other undertaking to its economic detriment when he has a
24 substantial financial interest in a competing firm or
25 undertaking.

1 (5) A public officer or employee who violates
2 subsection (2) or (4) may be reprimanded or suspended."

3 **Section 5.** Section 2-2-121, MCA, is amended to read:

4 "2-2-121. Rules of conduct for state officers and state
5 employees. (1) Proof of commission of any act enumerated in
6 this section is proof that the actor has breached his
7 fiduciary duty.

8 (2) A state officer or a state employee may not:

9 (a) use state time, facilities, or equipment for his
10 private business purposes;

11 (b) engage in a substantial financial transaction for
12 his private business purposes with a person whom he inspects
13 or supervises in the course of his official duties;

14 (c) assist any person for a fee or other compensation
15 in obtaining a contract, claim, license, or other economic
16 benefit from his agency;

17 (d) assist any person for a contingent fee in obtaining
18 a contract, claim, license, or other economic benefit from
19 any state agency; or

20 (e) perform an official act directly and substantially
21 affecting to its economic benefit a business or other
22 undertaking in which he either has a substantial financial
23 interest or is engaged as counsel, consultant,
24 representative, or agent.

25 (3) A department head or a member of a quasi-judicial

1 or rulemaking board may perform an official act
2 notwithstanding subsection (2)(e) if his participation is
3 necessary to the administration of a statute and if he
4 complies with the voluntary disclosure procedures under
5 2-2-131.

6 (4) Subsection (2)(d) does not apply to a member of a
7 board, commission, council, or committee unless he is also a
8 full-time state employee."

9 **Section 6.** Section 2-2-125, MCA, is amended to read:

10 "2-2-125. Rules of conduct for local government
11 officers and employees. (1) Proof of commission of any act
12 enumerated in this section is proof that the actor has
13 breached his fiduciary duty.

14 (2) An officer or employee of local government may not:

15 (a) engage in a substantial financial transaction for
16 his private business purposes with a person whom he inspects
17 or supervises in the course of his official duties; or

18 (b) perform an official act directly and substantially
19 affecting to its economic benefit a business or other
20 undertaking in which he either has a substantial financial
21 interest or is engaged as counsel, consultant,
22 representative, or agent.

23 (3) A member of the governing body of a local
24 government may perform an official act notwithstanding this
25 section when his participation is necessary to obtain a

1 quorum or otherwise enable the body to act, if he complies
2 with the voluntary disclosure procedures under 2-2-131."

3 **Section 7.** Section 2-2-131, MCA, is amended to read:

4 "2-2-131. Voluntary Conflict disclosure. A public
5 officer or employee may shall, prior to acting in a manner
6 which that may impinge on his fiduciary duty, disclose the
7 nature of his private interest which that creates the
8 conflict. He shall make the disclosure in writing to the
9 secretary--of--state commissioner, listing the amount of his
10 financial interest, if any, the purpose and duration of his
11 services rendered, if any, and the compensation received for
12 the services or such other information as is necessary to
13 describe his interest. If he then performs the official act
14 involved, he shall state for the record the fact and summary
15 nature of the interest disclosed at the time of performing
16 the act."

17 **Section 8.** Section 2-2-132, MCA, is amended to read:

18 "2-2-132. Powers of the secretary-of-state commissioner
19 -- investigation -- hearing. (1) The secretary--of--state
20 commissioner may:

21 (1)(a) issue advisory opinions with such deletions as
22 are necessary to protect the identity of the requesting
23 party or the party about whom the opinion is written;

24 (2)(b) keep and permit reasonable public access to
25 voluntary disclosure statements;

1 (3)(c) make rules for the conduct of his affairs under
2 this part;

3 (d) conduct educational programs and publish a
4 practical guide to assist public officers and employees in
5 understanding the ethical principles and conflict of
6 interest disclosure requirements of this part.

7 (2) Upon the filing of a complaint alleging a violation
8 of 2-2-104 or 2-2-121, the commissioner shall investigate
9 the complaint. If the commissioner determines that there are
10 grounds for the complaint, the commissioner may refer the
11 matter to the county attorney having jurisdiction of the
12 matter or may conduct a contested case hearing. If the
13 commissioner determines that a violation of 2-2-104 or
14 2-2-121 has occurred, the commissioner may issue a public
15 reprimand or impose a civil penalty not to exceed \$500 on
16 the violator. Civil penalties collected under this
17 subsection must be deposited in the general fund."

18 **Section 9.** Section 2-2-201, MCA, is amended to read:

19 "2-2-201. Public officers, employees, and former
20 employees not to have interest in contracts. Members of the
21 legislature, state, county, city, town, or township officers
22 or any deputy or employee thereof must not be interested in
23 any contract made by them in their official capacity or by
24 any body, agency, or board of which they are members or
25 employees. A Subject to 2-2-104(3), a former employee may

1 not, within 6 months following the termination of his
2 employment, contract or be employed by an employer who
3 contracts with the state or any of its subdivisions
4 involving matters with which he was directly involved during
5 his employment. In this section the term:

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

8 (2) "contract" does not include:

9 (a) contracts awarded to the lowest responsible bidder
10 based on competitive bidding procedures;

11 (b) merchandise sold to the highest bidder at public
12 auctions.

13 (c) investments or deposits in financial institutions
14 which are in the business of loaning or receiving money;

15 (d) a contract with an interested party if, because of
16 geographic restrictions, a local government could not
17 otherwise reasonably afford itself of the subject of the
18 contract. It shall be presumed that a local government could
19 not otherwise reasonably afford itself of the subject of a
20 contract if the additional cost to the local government is
21 greater than 10% of a contract with an interested party or
22 if the contract is for services that must be performed
23 within a limited time period and no other contractor can
24 provide those services within that time period."

25 **Section 10.** Section 5-7-103, MCA, is amended to read:

1 "5-7-103. Licenses -- fees -- eligibility. (1) (a) Any
2 Except as provided in subsection (1)(b), an adult of good
3 moral character who is a citizen of the United States and
4 who is otherwise qualified under this chapter may be
5 licensed as a lobbyist.

6 (b) A state officer, as defined in 2-2-102, may not
7 within 2 years of leaving office be licensed as a lobbyist.

8 (2) The commissioner shall provide a license
9 application form. The application form may be obtained in
10 the office of the commissioner and filed therein in the
11 office. Upon approval of the application and receipt of the
12 license fee of \$10 by the commissioner, a license ~~shall~~ must
13 be issued ~~which~~ that entitles the licensee to practice
14 lobbying on behalf of one or more enumerated principals.
15 Each license ~~shall--expire~~ expires on December 31 of each
16 even-numbered year or may be terminated at the request of
17 the lobbyist.

18 ~~(3)~~ (3) No An application may not be disapproved without
19 affording the applicant a hearing. The hearing ~~shall~~ must be
20 held and the decision entered within 10 days of the date of
21 the filing of the application.

22 ~~(4)~~ (4) The fines and license fees collected under this
23 chapter ~~shall~~ must be deposited in the state treasury."

24 **Section 11.** Section 5-7-213, MCA, is amended to read:

25 "5-7-213. Disclosure by elected public officials.

1 (1) (a) Prior to December 15 of each even-numbered year,
 2 each elected public official or official-elect [other than a
 3 legislator] shall file with the commissioner a business
 4 disclosure statement on a form provided by the commissioner
 5 under penalty for false swearing, as provided in 45-7-202.

6 The statement ~~shall~~ must provide the following information:

7 (i) the name, address, and type of business of such
 8 individual the public official or official-elect and each
 9 member of such--individual's the public official's or
 10 official-elect's immediate family; and

11 (ii) the financial data required by subsection (3).

12 (b) For this--purpose the purposes of this section,
 13 "immediate family" includes means the individual's spouse
 14 and minor children only.

15 (2) ~~No--such--individual~~ A public official or
 16 official-elect [other than a legislator] may not assume or
 17 continue to exercise the powers and duties of the office to
 18 which that individual has been elected or appointed until
 19 such the statement has been filed.

20 (3) The commissioner may by rule prescribe the
 21 financial data required to be reported. The financial data
 22 must enable the commissioner to advise a public official
 23 [other than a legislator] concerning a conflict of interest.
 24 Financial data required to be reported must include:

25 (a) the name of, address of, nature of association

1 with, the share of equity in, and amount of income, if
 2 greater than \$1,000, from each business with which the
 3 official is associated;

4 (b) the identity of all securities and other
 5 investments with a fair market value greater than \$1,000;

6 (c) the names and addresses of each creditor to whom
 7 more than \$1,000 is owed, other than a mortgage on a primary
 8 residence, and the original amount, amount outstanding,
 9 terms of repayment, and general nature of security pledged
 10 for repayment of the underlying obligation;

11 (d) the name, address, source, and value of any
 12 reimbursement for expenses aggregating more than \$100 in a
 13 calendar year if the source of reimbursement is a registered
 14 lobbyist;

15 (e) the name and address of the donor and the fair
 16 market value of any gifts aggregating more than \$50 in the
 17 calendar year if the donor is a registered lobbyist;

18 (f) the description and amount of assessed value of all
 19 real property in this state in which a financial interest is
 20 held and that has an assessed value of more than \$1,000 and
 21 the purchaser of any real property transferred during the
 22 reporting period;

23 (g) the name and address of the source and the fair
 24 market value of any honoraria aggregating more than \$50; and

25 (h) the name and address of any creditor who has

1 forgiven an indebtedness of over \$1,000 and the amount
2 forgiven.

3 ~~†3~~(4) The commissioner shall make such business
4 disclosure statements available to any individual upon
5 request."

6 **Section 12.** Section 5-11-203, MCA, is amended to read:
7 "5-11-203. Distribution of senate and house journals
8 and session laws. (1) Immediately after the senate and house
9 journals and the session laws are bound, the legislative
10 council shall distribute them.

11 (2) The council shall distribute the house and senate
12 journals as follows:

13 (a) to each county clerk, one copy of each for the use
14 of the county;

15 (b) to the Montana state library, 20 copies of each for
16 the use of the library and distribution to depository
17 libraries, of which two copies will be deposited with the
18 state historical library for security purposes;

19 (c) to the state law librarian, two copies of each for
20 the use of the library and such additional copies as may be
21 necessary for the purposes of exchange;

22 (d) to the library of congress and each public officer
23 as defined in 2-2-102, two copies of each; and

24 (e) to each member of the legislature, the secretary of
25 the senate, and the chief clerk of the house of

1 representatives from the session at which the journals were
2 adopted, one copy of each.

3 (3) The council shall distribute the session laws as
4 follows:

5 (a) to each cabinet level department of the executive
6 branch of the United States, one copy each; to any agency,
7 commission, conference, or corporation established by the
8 United States government or any other subdivision thereof
9 upon request and approval by the legislative council, one
10 copy;

11 (b) to the library of congress, eight copies;

12 (c) to the state library, two copies;

13 (d) to the state historical library, two copies;

14 (e) to the state law librarian, four copies for the use
15 of the library and such additional copies as may be required
16 for exchange with libraries and institutions maintained by
17 other states and territories and public libraries;

18 (f) to the library of each custodial institution, one
19 copy;

20 (g) to each Montana member of congress, each United
21 States district judge in Montana, each of the judges of the
22 state supreme and district courts, and each of the state
23 officers as defined in 2-2-102~~†8~~, one copy;

24 (h) to any agency, board, commission, or office of the
25 state other than a state officer and to any other

1 subdivision of the state upon request and approval by the
2 legislative council, one copy;

3 (i) to each member of the legislature, the secretary of
4 the senate, and the chief clerk of the house of
5 representatives from the session at which the laws were
6 adopted, one copy;

7 (j) to each of the community college districts of the
8 state, as defined in 20-15-101, and each unit of the Montana
9 university system, one copy;

10 (k) to each county clerk, three copies for the use of
11 the county; and

12 (l) to each county attorney and to each clerk of a
13 district court, one copy."

14 NEW SECTION. **Section 13.** Coordination instruction. If
15 [this act] and ___Bill No. ___ [LC 1801] are both passed and
16 approved, the bracketed language inserted in 5-7-213 by
17 [this act] is void. If ___Bill No. ___ [LC 1801] is not
18 passed and approved, the code commissioner shall replace the
19 brackets with commas.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0632, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

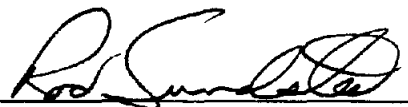
An act to generally revise the disclosure of conflict of interest and financial reporting requirements for public officials; requiring disclosure of a conflict of interest; transferring authority for the enforcement of ethics laws from the secretary of state to the commissioner of political practices to conduct educational programs and issue advisory opinions; requiring that financial reporting be expanded in order to allow the commissioner of political practices to determine whether a conflict of interest exists.

ASSUMPTIONS:


1. Educational materials surrounding ethics would be developed and a practical guide published.
2. At least five workshops would be conducted, four of which would be outside of Helena.
3. Extensive rule making would occur with attendant hearings, preparation of transcripts, review, and publications of rules in the Administrative Rules of Montana.
4. At least five advisory opinions would be issued per year.
5. An additional 1.00 FTE grade 14 will be required to serve as executive assistant to the commissioner to assist in drafting rules and educational materials, conducting workshops and hearings, writing opinions, and otherwise assisting in policy issues.
6. Development and printing of forms to disclose financial information to determine conflict of interest would occur.
7. Remodeling of office space in the basement of the commissioner's office would be required.
8. One time costs for office furnishings and equipment will occur during FY92.
9. Additional legal costs will be incurred in FY92 for rule making and in FY93 for advisory opinions and rulings.
10. Current law is represented by the executive budget recommendation for the Commissioner of Political Practices.
11. Responsibility for ethics enforcement by the Secretary of State currently requires no FTE nor does the Secretary of State's Office receive an appropriation for this function. The authority of the Secretary of State to act in this area was struck down by court order.

FISCAL IMPACT:

see next page



ROD SUNDSTED, BUDGET DIRECTOR 2-12-91 DATE
Office of Budget and Program Planning



VIVIAN M. BROOKE, PRIMARY SPONSOR 2/13/91 DATE
Fiscal Note for HB0632, as introduced HB 632

Fiscal Note Request, HB0632, as introduced

Form BD-15

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FISCAL IMPACT:

Commissioner of Political Practices

| | FY 92 | | | FY 93 | | |
|----------------------|--------------------|---------------------|-------------------|--------------------|---------------------|-------------------|
| | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> |
| <u>Expenditures:</u> | | | | | | |
| FTE | 3.00 | 4.00 | 1.00 | 3.00 | 4.00 | 1.00 |
| Personal Services | 86,600 | 115,550 | 28,950 | 85,800 | 116,300 | 30,500 |
| Operating Costs | 25,450 | 37,700 | 12,250 | 27,500 | 34,500 | 7,000 |
| Capital Outlay | <u>1,600</u> | <u>9,781</u> | <u>8,181</u> | <u>2,100</u> | <u>2,100</u> | <u>0</u> |
| Total | 113,650 | 163,031 | 49,381 | 115,400 | 152,900 | 37,500 |
| <u>Funding:</u> | | | | | | |
| General Fund | 113,650 | 163,031 | 49,381 | 115,400 | 152,900 | 37,500 |
| General Fund Impact | | | (49,381) | | | (37,500) |

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

None.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Additional legal costs may be incurred in succeeding years for advisory opinions and rulings.

HB 632