

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

JOINT COMMITTEE ON ETHICS

Call to Order: By **CHAIRMAN JOHN G. HARP**, on March 7, 1995, at 5:30 p.m.

ROLL CALL

Members Present:

Sen. John G. Harp, Chairman (R)
Rep. Ray Peck, Vice Chairman (D)
Sen. Al Bishop (R)
Rep. Vicki Cocchiarella (D)
Rep. Matt Denny (R)
Rep. Rose Forbes (R)
Sen. Linda J. Nelson (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: none.

Members Absent: none.

Staff Present: Greg Petesch, Legislative Council
Fredella Haab, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: THIS IS AN INFORMATIONAL AND
ORGANIZATIONAL MEETING REGARDING
PROPOSED ETHICS LEGISLATION
SB 115, SB 136, HB 410, HB 362, HB 571

Discussion:

CHAIRMAN JOHN HARP stated the purpose of the Joint Committee on Ethics was to review all pending ethics legislation and recommend an omnibus bill to the legislature. He stressed the issue was non-partisan and the decisions made would affect legislators' political activities for years. He reported SB 136 (**BAER**) and SB 115 (**ECK**) had been thoroughly studied in a Judiciary Subcommittee and HB 571 (**HARPER**) and HB 362 (**FORBES**) were due for hearing later in the week. He noted **Greg Petesch** had staffed the Judiciary Subcommittee. **CHAIRMAN HARP** stressed the Ethics legislation would have to be drafted and reported out of the Ethics Committee in thirteen days. He informed the Committee SB

136, in its current form, was a blend of sections from both SB 115 and SB 136.

REP. ROSE FORBES noted HB 362 clarified restrictions on the use of public funds and expressed hope that portions of her bill could be incorporated into the final legislation.

SEN. LINDA NELSON suggested the Committee review the ethics provisions of SB 98 (**FOSTER**). **CHAIRMAN HARP** asked **Greg Petesch** to review the bill for consideration by the Committee.

REP. VICKI COCCHIARELLA asked if any of the provisions of Constitutional Initiative 118 applied to ethics considerations. **Greg Petesch** explained CI-118 dealt with campaign contributions and the use of campaign donation surplus funds. He was not sure it was an ethics issue so much as an election campaign contribution issue. **REP. COCCHIARELLA** suggested the Committee keep CI 118 in mind in the event the Committee decided to include campaign donations in the proposed ethics legislation.

SEN. FRED VAN VALKENBURG stated the Senate had a long standing tradition of requiring every member of the Senate to vote on all issues regardless of conflicts of interest. He explained the reason for the requirement was to preclude Senators from selectively avoiding a controversial or unpopular vote by declaring a conflict. He added Senators were elected to represent their constituents and Senators declaring frequent conflicts could cause the constituency to effectively lose its representation. He said the House was free to adopt its own conflict provision, but he hoped the Senate would not adopt a conflict of interest position. He cautioned there was a tremendous danger in allowing the avoidance of a vote by claiming the existence of a conflict.

REP. DENNY, REP. COCCHIARELLA, REP. FORBES, AND REP. GRINDE agreed with **SEN. VAN VALKENBURG**. The ethics legislation would have to address the difference in rules between the House of Representatives' and the Senate.

CHAIRMAN HARP asked **Mr. Petesch** to review the actions taken by the Judiciary Subcommittee.

Mr. Petesch reported the Subcommittee had discussed issues which would "give rise to and appearance of impropriety." It was felt a test should be devised which would assure that a conflict did not arise from a legislator being a member of an entire class. The test for a conflict of interest recommended by the Subcommittee specified a legislator who was a member of a profession, occupation, or class may vote on the legislation unless the class become so narrow that the vote would have a direct personal impact on the legislator. Each House would establish an Ethics Committee which could give guidance to members concerned about the direct personal impact of pending legislation when the class became narrow. The Ethics Committee

would then advise the legislator as to whether he/she should vote or claim a conflict on that particular issue. After the narrowness of the class was determined each body would adopt its own rules as to whether the member should vote or not. The key was disclosure at the point when the class became too narrow.

REP. COCCHIARELLA asked if the Subcommittee had discussed the issue of individual sections of bills posing a conflict as opposed to the entire piece of legislation? **Greg Petesch** reported the decision was to not allow voting on only portions of bills. **REP. RAY PECK** contended there could be an amendment which suggested it might not be appropriate for a legislator to vote on but the total bill could still be appropriate to vote on. **CHAIRMAN HARP** asked **Mr. Petesch** to draft possible changes addressing the portion of the conflict provision to be addressed in the Joint Rules and providing for the Senate and House to operate in the same manner.

Greg Petesch reported the Subcommittee addressed ethics considerations for all public officers and employees. He further noted the Code of Judicial Conduct in the Judicial Branch was the only segment of government excluded from the ethics provisions. He explained the Constitution provided the Legislature shall adopt a Code of Ethics to regulate conflicts between public duty and private interests. He related the Subcommittee had matched statute to the Constitutional directive.

Mr. Petesch explained the definition section was key in determining the applicability of the provisions of the Subcommittee recommendations. The definitions adopted by the Subcommittee included changing the existing definition of "financial interest" to "private interest" and substituting "public duty" for "fiduciary duty", a trust concept.

Mr. Petesch stated the issue of gifts to legislators was a difficult issue to address. A \$50 figure was used as the definition of substantial value as it was the current lobbyist disclosure threshold.

Greg Petesch stated the Subcommittee had dealt with the dual salary issue by determining that public employees serving in dual capacities were prohibited from receiving two salaries in the same time period from two separate entities unless one salary was in the capacity of leave time.

REP. COCCHIARELLA asked **Mr. Petesch** how leave time applied to the Teachers' Collective Bargaining Agreement. **Greg Petesch** related the Subcommittee realized it could not impair any existing Collective Bargaining Agreement with the bill. However, any new Collective Bargaining Agreement entered into after passage of the Ethics Bill would have to reflect the law as passed. He concluded no one would be immediately impacted because the existing contracts could not be impaired.

SEN. VAN VALKENBURG asked about compensation received for interim committee meetings. Many legislators would be receiving a monthly or semi-monthly salary at the time of the meeting.

Greg Petesch stated the Subcommittee prohibited overlapping hourly pay for the hours being served. If a legislator were on an interim committee they would either have to be in a leave status from the public job or not take legislative salary for that day. It would be the individual member's choice as the statute on legislative salary does provide that a legislator may serve for no salary. The legislator would have the option of choosing to not receive a salary for attending the interim meeting or being in a leave status of some sort from the other position.

REP. PECK asked if a teacher receiving teacher's retirement or a legislator receiving public employees retirement would be in a position of duality. **Greg Petesch** stated retirement was not a salary, it was a benefit and the Subcommittee bill did not prohibit receiving compensation - just salary.

REP. COCCHIARELLA said, for clarification purposes, that if she choose to take her legislative salary during the interim she would accrue no hours of sick or annual leave as a state employee. **Greg Petesch** stated she was exactly correct for state public employees. The classification, pay, and leave administration rules for the state did not apply to other public employees from local government or other subdivisions of the state.

CHAIRMAN HARP asked if the Subcommittee researched the general policies regarding a K-12 school employee or local government employee receiving both salaries? **Greg Petesch** stated it varied from jurisdiction to jurisdiction.

REP. COCCHIARELLA pointed out some of the issues were covered by collective bargaining. It also depended upon what type of position an employee held within the other governmental entity. The Subcommittee essentially adopted the state policy for all public employees.

CHAIRMAN HARP asked **Mr. Petesch** if the foregoing was close to current policy regarding public employees in Montana. **Greg Petesch** said that was basically the way the policy stands.

SEN. VAN VALKENBURG said the makeup of a citizen legislature was a unique quality of Montana. He explained legislators served only 90 days every two years but their basic professions continued to take place outside the context of the legislature. Legislators sacrifice a tremendous amount to serve the public. Legislation requiring someone, particularly a public employee, to give up the equivalent of 1/30th of their monthly pay to attend an interim committee would be another huge sacrifice to make.

Mr. Petesch noted another issue addressed in the section was the "revolving door" policy. The Subcommittee adopted a provision from SB 115 prohibiting a department director, elected official, legislator, or public employee from registering as a lobbyist for the next regular session following termination of employment or office. **CHAIRMAN HARP** questioned including "public employee" in the list of affected employees. He contended a maintenance employee in Winnett, who had never been to Helena, should not be barred from lobbying.

Greg Petesch clarified a public employee, by definition, was not limited to state employees. It was included to address individuals who dealt with the legislature on a daily basis in their public employee capacity. There were individuals in those circumstances who would be prohibited from registering as a lobbyist for one session.

REP. PECK noted the bill read a temporary or permanent employee of the state or any subdivision of the state. **Greg Petesch** stated if restriction was desired the bill could be changed to say state employees.

REP. COCCHIARELLA asked what definition of lobbyist was being used. She reported she was a staff person at U of M and lobbied the legislature for three sessions before running for office. She had not been a paid registered lobbyist but rather a citizen lobbyist. She asked if she quit the Legislature and chose to become a lobbyist on any issue in the following session, would it be prohibited. **Greg Petesch** stated she couldn't be a paid lobbyist; prohibiting her from registering as a lobbyist which was determined by lobbying for compensation.

REP. FORBES asked what was the purpose of prohibiting the particular group from becoming lobbyists. **SEN. VAN VALKENBURG** asked what was the harm in allowing the specific group to lobby. He speculated the general theory was because they served in the Legislature, knew legislators on a personal basis they could have an advantage over other groups. **CHAIRMAN HARP** commented some of the provisions in the Ethics Bills seemed to confuse Montana issues with issues in Washington D. C. **REP. FORBES** stated she had Constitutional concerns. **CHAIRMAN HARP** stated he would review the provision and speak with **REP. HAL HARPER** and **SEN. LARRY BAER**.

REP. MATT DENNY stated the biggest issue was public perception. He noted the legislators were aware of the wide open process but the public seemed to have the perception that it was not.

CHAIRMAN HARP hoped the Joint Committee could come up with provisions which were workable for Montana and made the constituents feel comfortable.

Greg Petesch referred to subsections 2 and 3 regarding sanctions for receiving gifts. He explained the bill prohibited the

receipt of a gift of substantial value and the \$50 limit would apply in the situation. He added in the following section the Subcommittee had attempted to exclude certain things from what constituted a gift, such as educational material or educational activities related to the legislator's public office. The test was whether or not the trip was intended to influence the vote or merely to show what issue the bill addressed. He noted the bill did not define "educational" and justifications as to why the activity was education would be required. He added there were sub-conditions providing the activity could not appear to place the recipient under any obligation, it must clearly serve the public good and must not be lavish nor extravagant.

SEN. NELSON asked if honorariums were considered gifts. **Greg Petesch** stated the bill did not specifically address honorariums; the Committee intended them to fall under the \$50 restriction. **SEN. NELSON** referred to instances of speaking at graduations or similar situations where the group wanted to give something to cover the mileage. She speculated it could be chalked up to mileage.

REP. COCCHIARELLA reported she had spoken at NCSL and her travel and room had been paid for the time she was there to represent Montana. **CHAIRMAN HARP** stated his perception was that fell under legislative duties and would be exempted from that section. **Greg Petesch** elaborated Montana was a member of NCSL as were all legislators and representing the state at an organization could not be considered a personal gift. He added in the event it was considered a gift it would be considered an educational activity in that the purpose was to impart knowledge on random issues to other legislators. He noted the legislature did not want to prohibit that kind of activity. He further noted the sanction for a gift in violation of the provisions was the repayment of the amount of the gift as restitution to the General Fund of the employing entity.

CHAIRMAN HARP stated he was unclear of the definition of "lavish and extravagant" and speculated it could be in the eye of the beholder. **Greg Petesch** commented the Subcommittee had come to that conclusion.

SEN. VAN VALKENBURG referred to the \$50.00 provision. The \$50 limit was the threshold level where lobbyists must file a report. The Ethics Bill prohibited any gift in excess of \$50.00. In effect no gift would ever be reported and yet the current law stated as long as the gift was reported it was out for public scrutiny for the public to make the judgement. With the legislation nothing would be reported and the floor would be made the ceiling. **Greg Petesch** commented that was correct.

CHAIRMAN HARP wondered if the ceiling was too low or if it was necessary at all. **Greg Petesch** noted current law prohibited gifts of substantial value, however, substantial value had never

been defined. The Subcommittee defined the value as \$50 according to SB 115 and the Secretary of State's study.

SEN. VAN VALKENBURG reported he had seen several long term legislators receive paintings and added even gavels could cost more than \$50. He stated being presented with a painting after many years of service was an honor but any painting worth less than \$50.00 wasn't worth having.

Greg Petesch stated that appropriate actions for disciplining the employee by the employer at the state level could be suspension with or without pay. He added a civil penalty was also proposed; the civil penalty for a public employee would be less than that for a public officer. He added the section on disclosing confidential information was not new it had simply been moved to another section because the Subcommittee felt it was more appropriate. He explained the bill provided conformity to the Constitutional terms of private interest and public duty.

REP. DENNY asked who would initiate the civil penalties in section 4. **Greg Petesch** replied the civil penalties could be sought by the county attorney for a county employee, for a state employee it could be the employing agency and for the local government entity it could be the city attorney.

REP. DENNY asked if the county attorney initiated the action would the county attorney also be obligated to defend the public employee rendering the provision ineffective. **Greg Petesch** replied the county attorney was only required to defend the public employee if the employee was acting in the course and scope of his employment; violating the law would not be considered acting in the course and scope of employment.

REP. FORBES referred to the bottom of page 6 and asked about disclosures of confidential information for other purposes. **Greg Petesch** stated disclosures for other purposes was contained in a later section of the bill. He stated existing law read may disclose; that was made mandatory under this legislation.

REP. FORBES asked if the confidential information section would apply to situations where someone released confidential information about another person. **Greg Petesch** replied that situation was not covered by the statute. The intent of the bill was to address situations where the person had to be trying to further their own interest through disclosure of confidential information. He referred to subsection 3 which provided an individual "may not in the months following voluntary termination of employment take advantage of anything learned during the employment". He noted it had been clarified to be twelve months.

Greg Petesch explained section 7 applied to local government officers and employees. The section prohibited the use of public time, facilities, equipment, supplies, personnel or funds for an employee's own private business. Previously the law

stated time, facilities, and equipment. The concept was taken from SB 136 and put into section 7 to apply to local government employees also. The section addressed conflicts of interest for public employees. A public employee in an inspection or supervisory position may not engage in a substantial financial transaction for private business with employees under their supervision. He added the section clarified public time, facilities, equipment, etc. could not be used for any political or campaign activity with the exception that the use was authorized by law or properly incidental to an activity required or authorized by the law. The examples used to further flush out that activity were the functions of the Governor, the Governor's staff or legislative staff in the normal course of their duties. This concept also came from SB 136 and was modified by the Subcommittee because an absolute prohibition on using public time or facilities for political activities may, for example, prohibit the legislative staffers from having a job. The Subcommittee did not want to preclude an elected official from making public policies or statements on political issues.

CHAIRMAN HARP stated there were two issues in this area - one dealing with political decisions and the other with financial decisions for both local and state employees.

Greg Petesch stated the only distinction made between local and state employees in this section was if a person brought an allegation against a state employee there would be an informal contested case proceeding in front of the **Commissioner of Political Practices**. The Subcommittee did not want the Commissioner hearing local government disputes. The section also provided the Commissioner in the informal contested case proceeding could impose a civil penalty between \$50 and \$1000. The cost of the proceeding, in order to reduce impact to the State Fund, would be assessed against the person violating the sanction or the person bringing the charge of the violation. If a violation was found to not have occurred and if the decision was appealed to the court system, the court could award costs and fees to the prevailing party. Local government employees would be assessed a civil penalty. The Subcommittee didn't provide how they were to do that; the decision would be made in local jurisdictions. The bill provided that a purposeful or knowing violation constituted a misdemeanor, included the criminal mental state, and provided civil and criminal proceedings were not mutually exclusive.

REP. FORBES stated that section was an area which would require much deliberation. She had met with the Commissioner's Office and the Governor's Office. Her intent was not to handcuff the Governor from being able to make statements but felt in an effort to provide him leeway the door would be opened for the abuses currently taking place. She noted hundreds of situations of abuse were uncovered, the situation had continued because of loopholes in the law. She suggested the Committee needed to

assist the Commissioner's Office with the enforcement; the biggest challenges in current law were due to loopholes.

SEN. VAN VALKENBURG claimed he was unaware of hundreds of cases of abuse and asked **REP. FORBES** if she was referring to school boards promoting a levy or county commissioners promoting a bond issue. He asked if she considered that an abuse. **REP. FORBES** said it was abuse when public funds were used to influence the outcome of a ballot issue. She had talked to thousands of people and taxpayers that were basically opposed to their tax dollars being spent to influence their decision when they went to the polls. There was a current system and somebody asked her not to mention it because there were two types of systems to the Metnet service. She didn't know a great deal about it but it was one of the first examples brought up to her that there was currently a lot of public employees that were sending messages on the public's time, compliments of the taxpayers. She noted the number of public employees who had come to Helena to testify in front of the Legislature and stressed public money was used to send them to Helena. She mention letters from school kids in the 2nd grade telling legislators how they needed to vote on an issue 2nd graders would know nothing about. She informed the Committee a student in Missoula had testified who actually dropped out of school in Missoula because the superintendent had pulled her out of class to spend 1½ hours telling her to be sure to tell her parents to vote for the mill levy. The young lady went to a radio station and voiced her views and the next day a teacher went into her file, pulled a copy of that file and faxed it to the radio station to discredit her. As a consequence she dropped out of school. She received so much harassment from teachers, other students, and administrators over the issue. It was an adamant abuse of public time, public equipment, supplies, and everything else.

REP. COCCHIARELLA stated the Governor using state mailing to tell employees to vote for Republicans in the November 8th election should not be allowed. **REP. FORBES** agreed that was a situation where the taxpayers should not be funding state officials agendas. They shouldn't be paying no matter what it was. **CHAIRMAN HARP** agreed.

REP. DENNY reported HB 362 addressed the issue and amendments were placed on the bill which would not prohibit public officials from issuing public statements within the scope of their office. It would however require them to put a disclaimer or disclosure on the amount of public money that was spent so that taxpayers would have an idea of the amount of money spent. **SEN. VAN VALKENBURG** stated that was a whole different situation than prohibiting a school board from promoting a levy. **REP. DENNY** stated they could promote the levy, however they would have to disclose the amount of money spent on the promotion.

REP. FORBES stated anyone who ran for office had to sell their message by going out and raising funds and was required to

disclose where those funds came from, and how they were being spent. She believed anybody attempting to influence someone should have to do the same type of thing.

SEN. VAN VALKENBURG stated legislators weren't prohibited from using the state mailing system and state postage to write constituents regarding positions on various bills. Fulfilling constituents informational queries was much different than campaigning. **REP. FORBES** agreed with him and stressed the section would require close attention.

REP. PECK noted school trustees had to file campaign reports if they spent above the minimum. He was unclear what the difference would be between that provision and current law.

REP. FORBES said all she knew was whether they had to file reports or not they were spending taxpayers dollars currently to influence the voters and therefore the outcome of the election. **REP. FORBES** stated perception was reality. The public was offended.

REP. DENNY noted there were many sections of Title 7 dealing with conflicts of interest for all different entities. He thought it should be clarified to have one reference title. **Greg Petesch** stated the Subcommittee did not attempt to do that. They had left local government alone except for the broad categories that already applied under the current ethic laws. The Subcommittee had simply put enforcement mechanisms in place for the current laws.

CHAIRMAN HARP stated the Committee needed to proceed carefully to avoid having a bill so thick it became a reorganization bill. He stated he would like to give **SEN. BAER** an opportunity to speak and to hear from the public.

Greg Petesch stated the next section the Subcommittee dealt with was rules of conduct for local government officers and employees. The Subcommittee provided for disciplinary action by the employing entity including the civil penalty. Disclosure would be required rather than voluntary. The Subcommittee provided that a matter that may impinge on public duty would include awarding a permit, contract or license where there may be some personal interest in the matter. The disclosure was made mandatory and the violation was subject to the civil penalty or sanctions as provided.

Greg Petesch reported the Subcommittee had reviewed the provisions in SB 115 regarding nepotism and provided an exception for election judges due to the difficulty of getting an election judge in smaller polling places. The Subcommittee sanctioned the practice that currently took place in the legislature in employing pages and temporary session staff. He stated the Subcommittee had made a resolution of the educational concept from SB 115. It required the Personnel

Division of the Department of Administration to adopt model Rules of Conduct for state employees and to provide state employees with a summary of the Rules of Conduct. It allowed each agency to adopt additional Rules of Conduct for its own employees. It provided that the agency shall provide a methodology for the employee to request advise regarding ethical conduct within the agency. **CHAIRMAN HARP** asked if there were cost estimates for those provisions. **Greg Petesch** stated the cost had been discussed briefly and the decision was made if the bill was reported out a fiscal note would be requested.

Greg Petesch reported the Subcommittee had addressed financial disclosure. Most of the provision had been existing law and the Subcommittee had adopted items that had been incorporated through rules. The disclosure also included members of quasi-judicial boards and commissions and department directors. The Subcommittee required that candidates file shortly after they became a candidate for statewide or state offices elected from a district such as legislators or public service commissioners. The provision was expanded to include past and present employment including retirement benefits that were received by the member and the member's immediate family. The Subcommittee had also required reporting each entity in which the person was an officer or director regardless of whether it was a for profit entity because it was determined that some non-profit agencies had business with government and that disclosure of directorship or officer in those types of entities could be important in determining whether a conflict of interests arose. He noted the family residence had been excluded for the real property disclosure and the property interest had to be greater than \$1000. The Subcommittee had clarified the property could be identified by general description rather than giving a legal description of the real property and defined who an immediate family member was in the same manner as the current law did.

CHAIRMAN HARP stated that the D-1 form currently was adopted by administrative rule. If we were to delete this from this section of the bill would it still have that enforcement in place?

Greg Petesch stated that the current D-1, as required by rule, may go beyond the scope of authority in this section, so we clarified the authority to adopt the current D-1 and then enhanced some reporting categories.

Greg Petesch explained the Subcommittee had incorporated by reference the prohibitions from HB 362, the prohibitions made earlier in the ethics bill on page 19 and took the Ethics Advisory Committee concept from SB 115 and seriously mitigated its scope and fiscal impact. Each House was required to create its own Ethics Committee because of the conflict of interest issue where legislators were required to seek advice in the case of an extremely narrow class. The requirement was placed in statute to ensure it would be nonpartisan.

He reported a limited Ethics Commission had been created and attached to the Commissioner's Office. The Commission would give advisory opinions to public officers and employees with complaints regarding the conduct of a state officer.

Greg Petesch stated the provisions had been contained in SB 115 which outlined an extensive provision on advisory opinions and a full time Ethics Commission employing a full time staff. The Subcommittee had limited the provisions held in SB 115 to reduce the fiscal impact of the Ethics Commission.

Greg Petesch stated the existing statute found unenforceable in District Court in Lewis and Clark County concerning the issuance of advisory opinions by the Secretary of State had been repealed.

REP. PECK asked if confidentiality as stated on page 23, sub 7 could be retained. **Greg Petesch** stated where an advisory opinion was sought concerning conduct of a specific individual there was some privacy interest involved and the Subcommittee felt that there were legitimate privacy issues involved in seeking guidance either for personal conduct or inquiring about another individual's conduct. The determination was made that privacy interests were involved. It also allowed for the waiver of that by the parties involved seeking the opinions.

Testimony:

SEN. LARRY BAER, S.D. 38, Bigfork, reported many long agonizing hours were spent by the Subcommittee deliberating the ethics issues and producing the final version of SB 136. He stressed no ethics bill would provide what everyone was looking for. He reported public perception prompted him to introduce ethics legislation. Public perception was strong but not always accurate. Nevertheless the concerns needed to be addressed, to ignore them would be a lapse in duty to the public. He argued if the final bill had passages that seemed basically unnecessary the legislature should consider the psychological effect upon society to know that a yardstick had been placed on the behavior of public representatives. Even though many sections may never be used they would be a deterrent for anyone who would consider violating the codes. **SEN. BAER** noted one major aspect of the bill that concerned him was the wrongful use of public resources by public employees to further political ideology. He stated Supreme Court Justice Brennan had said when a public person uses public funds to encroach upon the public's decisions politically it was a violation of the First Amendment of the Constitution.

SEN. DOROTHY ECK, S.D. 15, Bozeman, informed the committee SB 115 had started from scratch 1½ years previous and was modeled from the National Council of State Governments. She noted SB 136 modified and amended current law and suggested the Committee should decide whether they would be working with current law or develop an entirely rewritten bill. She stated public trust and public education were important and it was important for

legislators, public officials, and public employees to have a sensitivity to what ethical behavior was. She referred to Judy Browning who had worked in Washington D. C. in the area of ethics. She stated Ms. Browning had said by our laws there are many actions that are purely illegal and you'll find those in the statute. There are some that are unethical and those that are in the statutes have now become illegal. **SEN. ECK** summarized the guidelines had been in place but with amendments there would no longer be guidelines but requirements or rules. She stated with education and sensitivity situations could be avoided. She hoped the Committee would look through the provisions in SB 115 regarding advisory opinions. The idea was if a person, an employee, or a public officer, including a legislator, was contemplating an action, but was unsure, he could get an advisory opinion. She noted there were many grey areas. She noted it would be tough to settle the grey areas without a commission of some kind. She related one of the early objections to SB 115 had been the excessive cost; she contended the job which needed to be done could not be done without a good amount of money. She urged, if the Committee decided to work with current law, they should clarify the provisions in SB 136. She suggested having Rules of Conduct may be an easier way to work with the current law. She noted in SB 136 there were at least four sections that provided Rules of Conduct for everyone with others applying specifically to legislators or state officials or local government officials. She stated it would be easier to include everything. She stated the members of the council who had researched and drafted SB 115 would like to speak to the Committee if it was possible. She gave **CHAIRMAN HARP** her files regarding ethics.

Garth Jacobson, Secretary of State's Office, stated he had served on the Ethics Advisory Commission. **Garth Jacobson** said there were three things that should be identified: prevention, prescribed rules, and enforcement. He thought the area the Committee really needed to focus on was, regardless of the enforcement procedure set up, avoiding political ethics because to set up enforcement provisions that don't somehow sanitize or protect from politics entering into the ethical arena would be doing more of a disservice than doing nothing. He stated he had many suggestions but would save them for an appropriate time. He reported there had been extensive work done by the Commission in preparing Senate Bill 115. He thought there were many items the Committee may want to take a second look at. He noted it was a difficult area and everybody had their own set of ideas; coming to a collective judgement was almost impossible and determining minimum standards would be extremely difficult.

Ed Argenbright, Commissioner of Political Practices, reported he had attended most of the meetings with the Senate Committee purely out of self-interest. He wanted to remind the Committee that it was he and two hard working Montana folks down in the Commissioner's Office and the tasks that seemed to be inherent in any kind of program would be substantial to his office. He

stated he would be watching very closely and would be willing to support and assist the Committee in any way.

CHAIRMAN HARP asked **Commissioner Argenbright** if he could estimate the costs for the Ethics Bill to be included in House Bill 2 or the Main Budget funding as discussions proceeded through the provisions of the Ethics Bill. **Commissioner Argenbright** agreed he would do that.

Debbie Smith, an attorney representing Common Cause, reported Common Cause had been one of the critical organizations that sponsored Initiative 118 which restricted the amount of contributions in campaigns. Common Cause believed there was a real public perception problem. She agreed with **SEN. BAER** that the issue in ethics reform was legislator and public officer accountability -- not just legislators, but public employees and public officials also. The message from the last election was the people were tired of the old way of doing things. Ethics reform was part of what was driving the Initiative. The bill before the Committee, a compromise bill, reflected that effort and she was impressed by the amount of thought that had gone into crafting the bill. For those who were hesitant in going forward in ethics reform, there was a fiduciary relationship to the public that was higher than that of a person who worked for a private corporation or on his/her behalf, much like the relationship she had as an attorney with her clients. She had to behave in a manner that was different than that of the public at large.

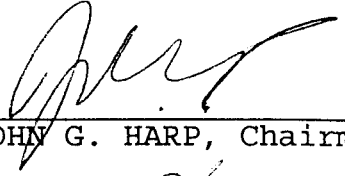
Ms. Smith continued Common Cause believed addressing the issue of money and corruption in politics was to identify the problems that have been brought out by **REP. FORBES** and the clear abuses talked about by public school employees, uses of faxes, and use of 2nd graders as conduits. However, she added that was not to say that was a valid issue that made school trustees equivalent to legislators. She thought that was valid. She stated **SEN. VAN VALKENBURG** had a valid point about making the floor of lobbying reporting contributions the ceiling. There were things that could be re-examined but she cautioned in examining don't throw out the baby with the bath water. She identified, from the **Common Cause** perspective, four critical elements which needed to be in ethics reform. Two dealt with education and two dealt with accountability. The education issue should include model Rules of Conduct for officers, employees and legislators so that people knew what was considered ethical by the governing bodies of those institutions. When there were issues which were legitimate grey areas there should be a mechanism for an advisory opinion. The other two things dealt with accountability. One would be mandatory disclosure of financial interests. The grey bill did that very well. It let people know where their public official's money was coming from, which was relevant. She added there needed to be teeth in the ethics reform. There needed to be sanctions causing people to reconsider their actions.

SEN. VAN VALKENBURG noted the main source, with respect to SB 115, was a model ethics act. He was not sure what **SEN. BAER'S** source was. He asked if a neighboring state, like Idaho or Wyoming, had ethics legislation pertaining specifically to legislators that could be accessed.

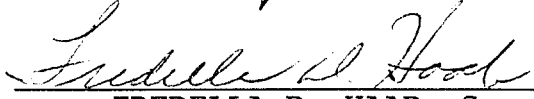
Greg Petesch reported most states that he was familiar with had used the model at least as a beginning point. The original statutes in Montana were the model at that time as modified by the legislative process.

ADJOURNMENT

Adjournment: CHAIRMAN HARP adjourned the meeting at 7:35 p.m.



SEN. JOHN G. HARP, Chairman



FREDELLA D. HAAB, Secretary

JGH/fdh

Amendments to Senate Bill No. 136
First Reading Copy

For the Subcommittee on Ethics

Prepared by Greg Petesch
February 13, 1995

1. Title, lines 9 and 10.

Following: "SUPPLIES," on line 9

Insert: "PERSONNEL,"

Following: "FUNDS" on line 9

Strike: remainder of line 9 through "ISSUE; AND" on line 10

Insert: "FOR ANY POLITICAL OR CAMPAIGN ACTIVITY PERSUADING OR AFFECTING A POLITICAL DECISION UNLESS THE USE IS AUTHORIZED BY LAW OR PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC OFFICIALS AND EMPLOYEES; PROVIDING FOR EDUCATION AND TRAINING ON ETHICAL MATTERS; PROVIDING PENALTIES FOR VIOLATIONS OF ETHICAL PROVISIONS; CREATING AN ETHICS COMMISSION TO ISSUE ADVISORY OPINIONS IN LIMITED CASES;"

Following: "SECTIONS"

Insert: "2-2-102, 2-2-103,"

Following: "2-2-105,"

Insert: "2-2-111,"

Strike: "AND"

2. Title, line 11.

Following: line 10

Insert: "2-2-131, 2-2-302, 2-18-102, 5-7-213, AND 13-35-226,"

Following: "MCA"

Insert: "; REPEALING SECTION 2-2-132, MCA; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, lines 15 through 17.

Following: "employees" on line 15

Strike: remainder of line 15 through "mandate" on line 17

4. Page 1, line 21 through page 5, line 19.

Strike: everything after the enacting clause

Insert: "Section 1. Section 2-2-102, MCA, is amended to read:

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

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

(2) "Compensation" means any money, thing of substantial value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself the person or another.

~~(3) "Employee" means any temporary or permanent employee of~~

~~the state or any subdivision thereof or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.~~

~~(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:~~

~~(a) an ownership interest in a business;~~

~~(b) a creditor interest in an insolvent business;~~

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

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

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

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

~~(5)(3) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.~~

(4) "Private interest" means an interest held by an individual or the individual's spouse or minor children that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

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

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Public employee" means:

(a) any temporary or permanent employee of the state or any subdivision of the state;

(b) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(c) a person under contract to the state.

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

(7)(a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government except the courts.

(b) The term does not include the judicial branch.

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

(9) "Substantial value" means an amount equal to or greater than \$50 for an individual."

{Internal References to 2-2-102:

5-11-203}

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

"2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary~~ the person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject to the penalties provided in this part for abuse of ~~his~~ the public's trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any ~~moneys~~ money collected in ~~such~~ the actions ~~shall~~ must be paid to the general fund of the aggrieved agency.

(3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the transgression of any of which ~~is not, as such, a violation of fiduciary duty~~ must be avoided."

{Internal References to 2-2-103: None.}

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

"2-2-104. *Rules of conduct for ~~all~~ public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ the actor's public duty. A public officer,

legislator, or public employee may not:

~~(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or~~

~~(b)~~ accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

~~(i)(a)~~ ~~which~~ that would tend improperly to influence a reasonable person in ~~his~~ the person's position to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

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

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

(b) A gift or an economic benefit tantamount to a gift does not include educational material or an educational activity directly related to the public officer's, legislator's, or public employee's governmental duties if the activity:

(i) does not place or appear to place the recipient under obligation;

- (ii) clearly serves the public good; and
(iii) is not lavish or extravagant.

(3) A person who receives a gift in violation of subsection (1) is liable to the state or local government for restitution in the amount of the gift. A person receiving a gift in violation of subsection (1) may be reported to the governing body of the employing entity. If the governing body determines that the gift violated subsection (1), the governing body shall order the individual receiving the gift to make restitution. The restitution must be paid to the general fund of the entity employing the person.

(4) A public employee may not receive salaries from two separate public employment positions unless the employment activities do not overlap for the hours being compensated. This subsection does not prohibit an employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment.

(5) A public officer, legislator, or public employee may not be registered as a lobbyist for the next regular session of the legislature following the termination of employment or office."

{ Internal References to 2-2-104: None. }

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

"2-2-105. Ethical principles requirements for public officers and public employees. (1) The principles requirements in this section are intended as guides to rules of conduct, and ~~do not constitute violations as such~~ constitute a breach of the

public trust and public duty of office or employment in state or local government. A public employee who violates this section is subject to disciplinary action by the employee's employer, a civil penalty of not less than \$50 or more than \$500, or both. A public officer who violates this section is subject to a civil penalty of not less than \$200 or more than \$1,000.

(2) A public officer or public employee ~~should~~ may not acquire an interest in any business or undertaking ~~which he~~ that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by ~~his~~ the officer's or employee's agency.

(3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the voluntary termination of his office or employment, obtain employment in which ~~he~~ the officer or employee will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active participant.

(4) A public officer or public employee ~~should~~ may not:

(a) perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a competing firm or undertaking;
or

(b) disclose or use confidential information acquired in the

course of official duties in order to substantially further the officer's or employee's private interests."

{Internal References to 2-2-105: None.}

Section 5. Section 2-2-111, MCA, is amended to read:

"2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's services by the use of ~~his~~ the office."

{Internal References to 2-2-111: None.}

Section 6. Section 2-2-112, MCA, is amended to read:

"2-2-112. Ethical ~~principles~~ requirements for legislators.

(1) The ~~principles~~ requirements in this section are intended only as ~~guides to rules for~~ legislator conduct, and ~~do not constitute violations as such~~ constitute a breach of the public trust of legislative office.

(2) When a legislator ~~must~~ is required to take official action on a legislative matter as to which ~~he~~ the legislator has a conflict created by a personal or ~~financial~~ private interest ~~which that would be directly and substantially affected by~~ give rise to an appearance of impropriety as to the legislator's

influence, benefit, or detriment in regard to the legislative matter, he should consider disclosing or eliminating the legislator shall disclose the interest creating the conflict ~~or abstaining and abstain~~ from the official action, as provided in subsection (4) and the joint rules of the legislature. In making ~~his a~~ decision, ~~he should~~ the legislator shall further consider:

- (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;
- (b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the legislature; and
- (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition of the matter; and
- (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(3) A conflict situation does not arise from legislation or legislative duties affecting the ~~entire~~ membership of a profession, occupation, or class.

(4) ~~If a~~ A legislator elects to shall disclose the an interest creating the a conflict, ~~he shall do so~~ as provided in the joint rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation may vote on the legislation unless the class is so narrow that the vote will have a direct personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in [section 14].

(5) A legislator concerned with the possibility of a conflict should briefly present the facts to the committee of

that house that is assigned the determination of ethical issues.

The committee shall advise the legislator as to whether the legislator should participate in action involving the issue pursuant to the provisions of subsection (4)."

{Internal References to 2-2-112: None.}

Section 7. Section 2-2-121, MCA, is amended to read:

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

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

(a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for ~~his~~ private business purposes;

(b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from ~~his~~ the officer's or employee's agency;

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

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking

in which ~~he~~ the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; ~~or~~

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first giving written notification to ~~his~~ the officer's or employee's supervisor and department director;

(g) use public time, facilities, equipment, supplies, personnel, or funds for any political or campaign activity persuading or affecting a political decision unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of the governor, the governor's staff, or the legislative staff in the normal course of their duties.

(3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2) (e) if ~~his~~ participation is necessary to the administration of a statute and if ~~he~~ the person complies with the ~~voluntary~~ disclosure procedures under 2-2-131.

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

(5) A person alleging a violation of this section by a state officer or state employee may bring an informal contested case proceeding, as provided in Title 2, chapter 4, part 6, before the commissioner of political practices. If the

commissioner determines that a violation has occurred, the commissioner may impose a civil penalty of not less than \$50 or more than \$1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing agency discipline the employee. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur. If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award costs and fees to the prevailing party.

(6) A local government officer or employee violating this section is subject to a civil penalty of not less than \$50 or more than \$1,000.

(7) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under subsection (5) or (6) does not preclude an action under this subsection."

{Internal References to 2-2-121: None.}

Section 8. Section 2-2-125, MCA, is amended to read:

"2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ a public duty subjecting the actor to disciplinary action by the employing entity and a civil penalty of not less than \$50 or more

than \$1,000.

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

(a) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business purposes with a person whom he the officer or employee inspects or supervises in the course of ~~his~~ official duties; or

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

(3) A Notwithstanding the provisions of subsection (2), a member of the governing body of a local government may perform an official act ~~notwithstanding this section~~ when ~~his~~ the member's participation is necessary to obtain a quorum or otherwise enable the body to act, ~~if he complies with the voluntary disclosure procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of impropriety."

{Internal References to 2-2-125: None.}

Section 9. Section 2-2-131, MCA, is amended to read:

"2-2-131. ~~Voluntary disclosure~~ Disclosure. A public officer or public employee ~~may shall~~, prior to acting in a manner which may impinge on ~~his fiduciary~~ public duty, including the award of a permit, contract, or license, disclose the nature of ~~his~~ the private interest ~~which that~~ creates the conflict. He The public officer or public employee shall make the disclosure in writing to the secretary of state, listing the amount of ~~his financial~~

private interest, if any, the purpose and duration of his the person's services rendered, if any, and the compensation received for the services or ~~such~~ other information as that is necessary to describe ~~his~~ the interest. If ~~he~~ the public officer or public employee then performs the official act involved, ~~he~~ the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act."

{ Internal References to 2-2-131:
2-2-121 2-2-125 }

Section 10. Section 2-2-302, MCA, is amended to read:

"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions -- publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days; or

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom he the person is related assumed the duties of the office;

(e) the employment of election judges; or

(f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located."

{ Internal References to 2-2-302:
49-2-303 49-3-201 }

Section 11. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and

selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state. Adequate public notice ~~shall~~ must be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or

additions to the personnel policies before the date they are to take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency. Each agency shall provide a mechanism for the employees of the agency to request advisory opinions from the agency concerning ethical issues."

{Internal References to 2-18-102: None.}

Section 12. Section 5-7-213, MCA, is amended to read:

"5-7-213. ~~Disclosure by elected officials.~~ (1)(a) Prior to December 15 of each even-numbered year, each elected official, ~~or official elect~~ member of a quasi-judicial board or commission, or department director shall file with the commissioner a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time the candidate files for office, file a business disclosure statement with the commissioner on a form provided by the commissioner.

(c) An individual who would be required to file under subsection (1)(a) or (1)(b) is required to file the business

disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement shall must provide the following information:

(a) the name, address, and type of business of such the individual and each member of such the individual's immediate family;

(b) each present or past employment from which benefits, including retirement benefits, are currently received by the individual and each member of the individual's immediate family;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual or a member of the individual's immediate family holds an interest:

(i) the value of which is greater than \$10,000; or

(ii) from which the individual receives 20% or more of the individual's expected annual income or in which the individual owns 20% or more of the value;

(d) each entity not listed under subsections (1)(a) through (1)(c) in which the individual or a member of the individual's immediate family is an officer or director, regardless of whether or not the entity is organized for profit;

(e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and

(f) all real property, other than a personal residence, in which the individual or a member of the individual's immediate family holds an interest, the value of which is estimated to be

greater than \$1,000. Real property may be described by general description. For this purpose "immediate family" includes the individual's spouse and minor children only.

~~(2)~~ (3) ~~No such~~ An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until ~~such~~ the statement has been filed as provided in subsection (1).

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

(5) For purposes of this section, "immediate family" means the individual's spouse and minor children."

{ Internal References to 5-7-213: None. }

Section 13. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises ~~(express or implied)~~, calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where ~~his~~ the employer's workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected, work in ~~his~~ the employer's place or establishment will cease, in whole or in part, or will be continued or increased; ~~his~~ the employer's place or establishment will be closed; the salaries or wages of ~~his~~ the

workers or employees will be reduced or increased; or other threats or promises ~~+~~express or implied~~+~~ intended or calculated to influence the political opinions or actions of ~~his~~ the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals, and public officers and employees.

(2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at ~~his~~ the place of employment. However, ~~nothing in~~ subject to 2-2-121, this section is not intended to restrict the right of a public employee to express ~~his~~ personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense."

{Internal References to 13-35-226: None.}

NEW SECTION. Section 14. Ethics committees. Each house of the legislature shall establish an ethics committee. The minority and majority leader of the house shall each appoint two members to the committee. The committees may meet jointly. Each committee shall educate members concerning the provisions of

Title 2, chapter 2, part 1, concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

NEW SECTION. Section 15. Ethics advisory commission. (1)
There is an ethics advisory commission attached to the office of the commissioner of political practices for administrative purposes only.

(2) The commission consists of five members. The members are appointed in the same manner as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as provided in subsection (6). A member of the commission must be a citizen of the United States and a resident of Montana. A member of the commission may not be a:

- (a) public official;
 - (b) public employee, except as the fifth member, who must be chosen by consensus of the other members;
 - (c) candidate;
 - (d) lobbyist or lobbyist's principal;
- or
- (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

(3) A member of the commission serves a term of 4 years. However, the initial members of the commission shall serve the following terms:

- (a) One member shall serve a term of 1 year.
- (b) One member shall serve a term of 2 years.

(c) One member shall serve a term of 3 years.

(d) Two members shall serve terms of 4 years.

(4) An individual may not serve more than two consecutive terms as a member of the commission. A member of the commission continues in office until a successor is appointed and has qualified.

(5) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall appoint a successor.

(b) If at the time that a vacancy occurs the appointing authority is of a different political party than that of the original appointing authority, the majority or minority leader in the same house and of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall appoint the successor.

(6) The presiding officer and vice presiding officer of the commission must be elected by a majority of the members of the commission. The presiding officer and vice presiding officer shall serve terms of 1 year and may be reelected. The presiding officer presides at meetings of the commission. The vice presiding officer presides in the absence or disability of the presiding officer.

(7) A member of the commission may not receive a salary but is entitled to expenses as provided in Title 2, chapter 18, part 5.

NEW SECTION. Section 16. Meetings -- quorum. The ethics advisory commission shall meet at the call of the presiding officer or a majority of its members when an advisory opinion is requested. A quorum consists of three or more members. An

affirmative vote of three or more members is necessary for the issuance of an opinion.

NEW SECTION. Section 17. Prohibition on political activity by commission members. A member of the ethics advisory commission may not participate in political activity or in a political campaign during the term of office. A member of the commission may not:

- (1) make a financial contribution to a candidate;
 - (2) make a financial contribution to a political committee;
- or
- (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

NEW SECTION. Section 18. Prohibition on lobbying activity. A member of the ethics advisory commission may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are permitted under state law.

NEW SECTION. Section 19. Advisory opinions. (1) The ethics advisory commission may render advisory opinions concerning this part, based upon actual or anticipated circumstances, when requested in writing by:

- (a) a state officer concerning the officer's own conduct;
- or
- (b) a state employee concerned with the conduct of a state officer; or
 - (c) a state officer concerning the conduct of a state employee if the state agency is unable to resolve the issue.

(2) An advisory opinion request is confidential.

(3) An advisory opinion must be in writing and must be made available to the public. The identity of the person requesting the opinion and the identity of a person whose affairs are involved in the circumstances described in the request are confidential unless the person whose affairs are involved discloses the opinion. A person disclosing the opinion shall maintain the confidentiality of other individuals involved in the opinion.

(4) An advisory opinion is rendered when signed by three or more commission members subscribing to the advisory opinion and must be issued within 30 calendar days after submission of the request for an advisory opinion.

(5) A commission member who agrees with the advisory opinion but for different reasons from those stated may file a written concurring opinion.

(6) A commission member who disagrees with the advisory opinion may file a written dissenting opinion, which must be placed at the end of the majority opinion or at the end of a concurring opinion, if any.

(7) Subject to the provisions of subsection (3), an advisory opinion requested under this section and any related internal commission materials requested or prepared as a result of an advisory opinion request are confidential.

NEW SECTION. Section 20. {standard} Repealer. Section 2-2-132, MCA, is repealed.

{Internal References to 2-2-132: None.}

NEW SECTION. Section 21. {standard} Codification

instruction. [Sections 14 through 19] are intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [sections 14 through 19].

NEW SECTION. Section 22. Code commissioner instruction. The code commissioner shall renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

NEW SECTION. Section 23. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 24. {standard} Effective date. [This act] is effective July 1, 1995."

HOUSE BILL NO. 410

INTRODUCED BY PAVLOVICH, FELAND, ORR, ROSE, BAER, BURNETT, MERCER, QUILICI, GALVIN,
BECK, DEVLIN, KEATING

A BILL FOR AN ACT ENTITLED: "~~AN ACT REQUIRING STATE OFFICERS AND EMPLOYEES TO REPORT~~
~~MEMBERSHIP IN AND CONTRIBUTIONS TO ORGANIZATIONS THAT PARTICIPATE IN PROCEEDINGS~~
~~BEFORE THE EMPLOYING AGENCY OR THAT LOBBY THE LEGISLATURE~~ EMPLOYEES TO DISCLOSE
POTENTIAL CONFLICTS OF INTEREST; AMENDING SECTION 2-2-121, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE ~~AND AN APPLICABILITY PROVISION.~~"

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

Section 1. Section 2-2-121, MCA, is amended to read:

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

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

(a) use state time, facilities, or equipment for ~~his~~ the officer's or employee's private business
purposes;

(b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business
purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official
duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
other economic benefit from ~~his~~ the officer's or employee's agency;

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

(e) perform an official act directly and substantially affecting to its economic benefit a business or
other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is
engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first

1 giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

2 ~~(3)(a) A state officer or a state employee shall annually report to the secretary of state membership~~
3 ~~in organizations that:~~

4 ~~(i) participate in proceedings before the agency that employs the officer or employee; or~~

5 ~~(ii) engage in lobbying the legislature with regard to subjects within the jurisdiction of the agency;~~

6 ~~(b) The report must include the amount of dues and contributions paid during the previous year to~~
7 ~~each listed organization. Union membership and dues are not required to be reported.~~

8 ~~(c) SHALL NOTIFY THE EMPLOYEE'S IMMEDIATE SUPERVISOR THAT A POTENTIAL CONFLICT~~
9 ~~OF INTEREST EXISTS WHEN AN ORGANIZATION OF WHICH THE EMPLOYEE IS A MEMBER IS INVOLVED~~
10 ~~IN A PROCEEDING BEFORE THE EMPLOYING AGENCY THAT IS WITHIN THE SCOPE OF THE EMPLOYEE'S~~
11 ~~JOB DUTIES.~~

12 ~~(B) THE EMPLOYEE'S SUPERVISOR SHALL MAKE THE DISCLOSED INFORMATION AVAILABLE TO~~
13 ~~AN INTERESTED PERSON UPON THE PERSON'S REQUEST.~~

14 ~~(4) A state officer or a state employee may not engage in any activity, INCLUDING LOBBYING, AS~~
15 ~~DEFINED IN 5-7-102, on behalf of an organization listed in the report under subsection (3)(a) that would~~
16 ~~constitute a conflict of interest with regard to~~ OF WHICH THE OFFICER OR EMPLOYEE IS A MEMBER
17 WHILE ENGAGED IN PERFORMING the officer's or employee's job duties.

18 ~~(3)(4) (5)~~ A department head or a member of a quasi-judicial or rulemaking board may perform an
19 official act notwithstanding subsection (2)(e) if ~~his~~ participation is necessary to the administration of a
20 statute and if ~~he~~ the department head or board member complies with the voluntary disclosure procedures
21 under 2-2-131.

22 ~~(4)(5) (6)~~ Subsection (2)(d) does not apply to a member of a board, commission, council, or
23 committee unless ~~he~~ the member is also a full-time state employee."

25 ~~NEW SECTION. Section 2. Applicability. The first report filed pursuant to 2-2-121(3) must cover~~
26 ~~1993 and 1994.~~

28 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

29 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0410, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

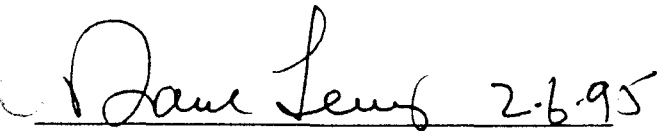
An act requiring state officers and employees to report membership in and contributions to organizations that participate in proceedings before the employing agency or that lobby the legislature.

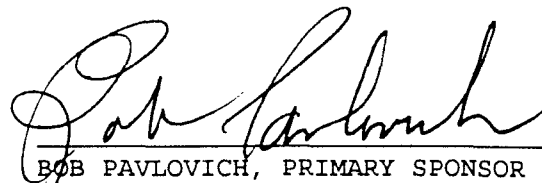
ASSUMPTIONS:

1. It will be the responsibility of the Secretary of State to receive and file the documents required.
2. No investigatory authority is vested with the Secretary of State as regards these documents.
3. No prosecutorial authority is delegated to the Secretary of State to handle any potential violations of this act.

FISCAL IMPACT:

This bill has no fiscal impact on state government.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


BOB PAVLOVICH, PRIMARY SPONSOR DATE

Fiscal Note for HB0410, as introduced

HB 410

EXHIBIT NO. 3DATE 3/7/95BILL NO. SB 136

SENATE BILL NO. 136

INTRODUCED BY BAER, KEENAN, BENEDICT, BURNETT, DENNY, MOHL, HARGROVE, BRAINARD,
EMERSON, MESAROS, JORE, JENKINS, CRISMORE, ESTRADA, KEATING, FORBES, PECK,
COCCHIARELLA, PAVLOVICH, MURDOCK, BOHARSKI, VICK, WISEMAN, GREEN, MOLNAR,
HARRINGTON, MERCER, GRINDE, MCKEE, TAYLOR, AHNER, MILLS, L. SMITH, MARTINEZ, OHS,
SLITER, T. NELSON, STOVALL, SIMON, LARSON, R. JOHNSON, WELLS, MCGEE, KITZENBERG, ELLIS,
TREXLER, FUCHS, CLARK, BARNHART, SQUIRES, TUSS, ELLINGSON, SHEA, MENAHAN, RYAN,
SWANSON, CAREY, TROPILA, ELLIOTT, J. JOHNSON, WENNEMAR, HURDLE, HEAVY RUNNER,
HOLLAND, MCCULLOCH, MASOLO, BOHLINGER, LYNCH, JACOBSON, FORRESTER, CHRISTIAENS,
L. NELSON, JERGESON, COLE, MILLER, BROOKE, WELDON, VAN VALKENBURG, FRANKLIN,
PIPINICH, SPRAGUE, HARDING, FOSTER, HARP, GROSFIELD, BISHOP, HOLDEN

BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS;
CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE
INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO ~~REFRAIN FROM VOTING ON CERTAIN~~
VOTE ON ALL MATTERS; PROHIBITING PROVIDING REQUIREMENTS FOR A PUBLIC EMPLOYEE WHO IS
~~A LEGISLATOR FROM RECEIVING BOTH SALARIES WHILE SERVING IN THE LEGISLATURE, PUBLIC~~
OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE PUBLIC SALARY FOR OVERLAPPING HOURS
OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND PUBLIC EMPLOYEES FROM USING PUBLIC TIME,
EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR FUNDS ~~TO PROMOTE POLITICAL IDEOLOGY OR~~
~~TO INFLUENCE A POLITICAL ISSUE; AND~~ FOR ANY POLITICAL OR CAMPAIGN ACTIVITY PERSUADING
OR AFFECTING A POLITICAL DECISION UNLESS THE USE IS AUTHORIZED BY LAW OR PROPERLY
INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT
BY CURRENT AND FORMER PUBLIC OFFICIALS AND EMPLOYEES; PROVIDING FOR EDUCATION AND
TRAINING ON ETHICAL MATTERS; PROVIDING ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS;
~~PROVIDING THAT FILING TAX RETURNS IS AN ETHICAL REQUIREMENT; CREATING AN ETHICS~~
COMMISSION TO PROVIDE REVIEW OF ETHICS DECISIONS IN CASES INVOLVING STATE OFFICERS AND
STATE EMPLOYEES; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112,
2-2-121, AND 2-2-125, 2-2-131, 2-2-302, 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING

1 SECTION 2-2-132, MCA; AND PROVIDING AN EFFECTIVE DATE."

2
3 WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of
4 prohibiting conflict between public duty and private interest for members of the Legislature and for all state
5 and local government officers and employees; and

6 WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana
7 Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 (Refer to First Reading Bill)

11 Strike everything after the enacting clause and insert:

12
13 Section 1. Section 2-2-102, MCA, is amended to read:

14 "2-2-102. Definitions. As used in this part, the following definitions apply:

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

17 (2) "Compensation" means any money, thing of substantial value, or economic benefit conferred
18 on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or
19 another.

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

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

25 ~~(a) an ownership interest in a business;~~

26 ~~(b) a creditor interest in an insolvent business;~~

27 ~~(c) an employment or prospective employment for which negotiations have begun;~~

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

29 ~~(e) a loan or other debtor interest; or~~

30 ~~(f) a directorship or officership in a business.~~

1 ~~(5)~~(3) "Official act" or "official action" means a vote, decision, recommendation, approval,
2 disapproval, or other action, including inaction, ~~which~~ that involves the use of discretionary authority.

3 (4) "Private interest" means an interest held by an individual or the individual's spouse or minor
4 children that is:

5 (a) an ownership interest in a business;

6 (b) a creditor interest in an insolvent business;

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

8 (d) an ownership interest in real property;

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

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

11 (5) "Public employee" means:

12 (a) any temporary or permanent employee of the state or any subdivision of the state;

13 (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with
14 rulemaking authority; and

15 (c) a person under contract to the state.

16 (6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any
17 elected officer of any subdivision of the state.

18 (7)(a) "State agency" includes:

19 (i) the state;

20 (ii) the legislature and its committees;

21 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

22 (iv) the university system; and

23 (v) all independent commissions and other establishments of the state government ~~except the~~
24 courts.

25 (b) The term does not include the judicial branch.

26 (8) "State officer" includes all elected officers and directors of the executive branch of state
27 government as defined in 2-15-102."

28
29 Section 2. Section 2-2-103, MCA, is amended to read:

30 "2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public

1 trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers,
 2 legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the
 3 individual's duties for the benefit of the people of the state.

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

10 (3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of
 11 any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the
 12 transgression of any of which ~~is not, as such,~~ a violation of ~~fiduciary~~ duty must be avoided.

13 (4)(a) The enforcement of this part for:

14 (i) state officers and employees is provided for in [sections 16 and 17 15 AND 16];

15 (ii) legislators is provided for in [section 15 14];

16 (iii) local government officers and employees is provided for in [section 22 21].

17 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action
 18 must be deposited in the general fund of the unit of government."

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

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

24 ~~(a) disclose or use confidential information acquired in the course of his official duties in order to~~
 25 ~~further substantially his personal economic interests; or~~

26 ~~(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:~~

27 ~~(i)(a) which that~~ which that would tend improperly to influence a reasonable person in ~~his~~ the person's position
 28 to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

29 ~~(ii)(b) which he that the person~~ which that the person knows or ~~which that~~ which that a reasonable person in ~~his~~ that position should
 30 know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official action

1 ~~he has~~ taken.

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

7 (3)(a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may
8 not receive salaries from two separate public employment positions that overlap for the hours being
9 compensated, unless:

10 (i) the public officer, legislator, or public employee reimburses the public entity from which the
11 employee is absent for its costs in THE SALARY PAID FOR performing the function from which the officer,
12 legislator, or employee is absent; or

13 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by
14 the amount of salary received from the other public employer in order to avoid duplicate compensation for
15 the overlapping hours.

16 (b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving
17 income from the use of accrued leave or compensatory time during the period of overlapping employment."

18
19 **Section 4.** Section 2-2-105, MCA, is amended to read:

20 **"2-2-105. Ethical ~~principles~~ requirements for public officers and public employees.** (1) The
21 principles requirements in this section are intended as ~~guides to rules of~~ guides to rules of conduct, and ~~do not constitute~~
22 ~~violations as such~~ constitute a breach of the public trust and public duty of office or employment in state
23 or local government.

24 (2) A public officer or public employee ~~should~~ may not acquire an interest in any business or
25 undertaking ~~which he~~ that the officer or employee has reason to believe may be directly and substantially
26 affected to its economic benefit by official action to be taken by ~~his~~ the officer's or employee's agency.

27 (3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the
28 voluntary termination of ~~his~~ the officer or employee office or employment, obtain employment in which ~~he~~ the officer or employee
29 will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was
30 directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules

1 of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,
2 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active
3 participant.

4 (4) A public officer or public employee ~~should~~ may not:

5 (a) perform an official act directly and substantially affecting a business or other undertaking to its
6 economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a
7 competing firm or undertaking; or

8 (b) disclose or use confidential information acquired in the course of official duties in order to
9 substantially further the officer's or employee's private interests."

10
11 **Section 5.** Section 2-2-111, MCA, is amended to read:

12 **"2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this
13 section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty.

14 A legislator may not:

15 (1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation
16 provided by statute, for promoting or opposing the passage of legislation;

17 (2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's
18 services by the use of ~~his~~ the office."

19
20 **Section 6.** Section 2-2-112, MCA, is amended to read:

21 **"2-2-112. Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this
22 section are intended ~~only as guides to~~ rules for legislator conduct, ~~and do not constitute violations as such~~
23 constitute a breach of the public trust of legislative office.

24 (2) A legislator has a responsibility to the legislator's constituents to participate in all matters
25 affecting the constituents AS REQUIRED IN THE JOINT RULES OF THE LEGISLATURE. A legislator
26 concerned with the possibility of a conflict should briefly present the facts to the committee of that house
27 that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether
28 the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of
29 subsection (5). The legislator shall vote on the issue after disclosing the interest.

30 ~~(2)(3)~~ When a legislator ~~must~~ is required to take official action on a legislative matter as to which

~~he the legislator~~ has a conflict created by a personal or ~~financial~~ private interest ~~which that~~ would be directly ~~and substantially affected by~~ give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, ~~he should consider disclosing or eliminating the legislator shall disclose~~ the interest creating the conflict ~~or abstaining from~~ prior to participating in the official action, as provided in subsections (2) and (5) and the joint rules of the legislature. In making ~~his a~~ decision, ~~he should the legislator shall further~~ consider:

(a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

(b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the legislature; and

(c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition of the matter; and

(d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

~~(3)(4)~~ A conflict situation does not arise from legislation or legislative duties affecting the entire membership of a profession, occupation, or class.

~~(4)(5)~~ If a legislator elects to shall disclose the an interest creating the a conflict, he shall do so as provided in the joint rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in [section 15 14]."

Section 7. Section 2-2-121, MCA, is amended to read:

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

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

(a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for ~~his~~ the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official

1 duties;

2 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
3 other economic benefit from ~~his~~ the officer's or employee's agency;

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

6 (e) perform an official act directly and substantially affecting to its economic benefit a business or
7 other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is
8 engaged as counsel, consultant, representative, or agent; or

9 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
10 with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first
11 giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

12 (3)(a) A public officer or public employee may not use public time, facilities, equipment, supplies,
13 personnel, or funds for any political or campaign activity persuading or affecting a political decision unless
14 the use is:

15 (i) authorized by law; or

16 (ii) properly incidental to another activity required or authorized by law, such as the function of an
17 elected public official, the official's staff, or the legislative staff in the normal course of duties.

18 (b) Subsection (3)(a) does not prohibit an elected public official from issuing public statements
19 concerning matters within the scope of the official's office. However, a document that is published
20 pursuant to this subsection (3) and that is aimed at supporting or opposing a political committee, a
21 candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce
22 the document. The statement must meet the specifications described in 18-7-306, and the costs must be
23 estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed
24 with the commissioner of political practices.

25 (4)(a) A state employee shall notify the employee's immediate supervisor that a potential conflict
26 of interest exists when AN ORGANIZATION OF WHICH THE EMPLOYEE IS AN OFFICER OR DIRECTOR IS:

27 (i) an organization of which the employee is a member is involved in a proceeding before the
28 employing agency that is within the scope of the employee's job duties; or

29 (ii) the employee is a member of or affiliated with any organization attempting to influence a local,
30 state, or federal proceeding in which the employee represents the state.

1 (b) The employee's supervisor shall make the disclosed information available to an interested
2 person upon the person's request.

3 (5) A state officer or state employee may not engage in any activity, including lobbying, as defined
4 in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the
5 officer's or employee's job duties. THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT AN
6 OFFICER OR EMPLOYEE FROM PERFORMING CHARITABLE FUNDRAISING ACTIVITIES IF APPROVED BY
7 THE EMPLOYEE'S SUPERVISOR OR AUTHORIZED BY LAW.

8 ~~(3)(6)~~ A department head or a member of a quasi-judicial or rulemaking board may perform an
9 official act notwithstanding the provisions of subsection (2)(e) if ~~his~~ participation is necessary to the
10 administration of a statute and if ~~he~~ the person complies with the ~~voluntary~~ disclosure procedures under
11 2-2-131.

12 ~~(4)(7)~~ Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
13 unless ~~he~~ the member is also a full-time ~~state~~ public employee.

14 (8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon
15 conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the
16 county jail for not more than 6 months, or by both. A civil proceeding under [section ~~46~~ 15] or [section
17 ~~22~~ 21] does not preclude an action under this subsection."

18
19 **Section 8.** Section 2-2-125, MCA, is amended to read:

20 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission
21 of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ a public duty
22 subjecting the actor to disciplinary action by the employing entity.

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

24 (a) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business
25 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official
26 duties; or

27 (b) perform an official act directly and substantially affecting to its economic benefit a business or
28 other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is
29 engaged as counsel, consultant, representative, or agent.

30 (3) A Notwithstanding the provisions of subsection (2), a member of the governing body of a local

1 government may perform an official act notwithstanding this section when his the member's participation
2 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he complies with the voluntary~~
3 ~~disclosure procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of
4 impropriety."

5
6 **Section 9.** Section 2-2-131, MCA, is amended to read:

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

16
17 **Section 10.** Section 2-2-302, MCA, is amended to read:

18 **"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions --**
19 **publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of any
20 board, bureau, or commission or employee at the head of a department of this state or any political
21 subdivision of this state to appoint to any position of trust or emolument any person related or connected
22 by consanguinity within the fourth degree or by affinity within the second degree.

23 (2) The provisions of this section and 2-2-303 do not apply to:

24 (a) a sheriff in the appointment of a person as a cook or an attendant;

25 (b) school district trustees if all the trustees, with the exception of any trustee who is related to
26 the person being appointed and who must abstain from voting for the appointment, approve the
27 appointment of a person related to a trustee;

28 (c) a school district in the employment of a person as a substitute teacher who is not employed
29 as a substitute teacher for more than 30 consecutive school days; ~~or~~

30 (d) the renewal of an employment contract of a person who was initially hired before the member

1 of the board, bureau, or commission or the department head to whom ~~he~~ the person is related assumed the
2 duties of the office;

3 (e) the employment of election judges; or

4 (f) the employment of pages or temporary session staff by the legislature.

5 (3) Prior to the appointment of a person referred to in subsection (2), the school district trustees
6 shall give written notice of the time and place of their intended action. The notice must be published at
7 least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in
8 which the school district is located."

9
10 **Section 11.** Section 2-18-102, MCA, is amended to read:

11 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided by
12 law or collective bargaining agreement, the department shall:

13 (a) encourage and exercise leadership in the development of effective personnel administration
14 within the several agencies in the state and make available the facilities of the department to this end;

15 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
16 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
17 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
18 for productivity and retention in permanent status;

19 (c) foster, develop, and promote job sharing in agencies;

20 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
21 policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

22 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
23 state service;

24 (f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform
25 any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts
26 1 and 2.

27 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
28 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
29 that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards
30 established by the department.

1 (3) The department shall develop and issue personnel policies for the state. Adequate public notice
2 shall must be given to all interested parties of proposed changes or additions to the personnel policies
3 before the date they are to take effect. If requested by any of the affected parties, the department shall
4 schedule a public hearing on proposed changes or additions to the personnel policies before the date they
5 are to take effect.

6 (4) The department shall develop model rules of conduct for all state employees based upon the
7 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
8 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
9 rules appropriate to the specific circumstances of the agency."

10
11 **Section 12.** Section 5-7-213, MCA, is amended to read:

12 "5-7-213. ~~Disclosure by elected officials.~~ (1)(a) Prior to December 15 of each even-numbered year,
13 each elected official, ~~or official-elect~~ member of a quasi-judicial board or commission, or department director
14 shall file with the commissioner a business disclosure statement on a form provided by the commissioner.
15 An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a)
16 during the same period.

17 (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of
18 the time that the candidate files for office, file a business disclosure statement with the commissioner on
19 a form provided by the commissioner.

20 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)
21 is required to file the business disclosure statement at the earlier of the time of submission of the person's
22 name for confirmation or the assumption of the office.

23 (2) The statement shall must provide the following information:

24 (a) the name, address, and type of business of such the individual and each member of such the
25 individual's immediate family;

26 (b) each present or past employing entity from which benefits, including retirement benefits, are
27 currently received by the individual and each member of the individual's immediate family;

28 (c) each business, firm, corporation, partnership, and other business or professional entity or trust
29 in which the individual or a member of the individual's immediate family holds an interest;

30 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual or a

1 member of the individual's immediate family is an officer or director, regardless of whether or not the entity
2 is organized for profit;

3 (e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and

4 (f) all real property, other than a personal residence, in which the individual or a member of the
5 individual's immediate family holds an interest. Real property may be described by general description. For
6 this purpose "immediate family" includes the individual's spouse and minor children only.

7 ~~(2)(3)~~ (3) ~~No such~~ An individual may not assume or continue to exercise the powers and duties of the
8 office to which that individual has been elected or appointed until ~~such~~ the statement has been filed as
9 provided in subsection (1).

10 ~~(3)(4)~~ (4) The commissioner shall make ~~such~~ the business disclosure statements available to any
11 individual upon request.

12 (5) For purposes of this section, "immediate family" means the individual's spouse and minor
13 children."

14
15 **Section 13.** Section 13-35-226, MCA, is amended to read:

16 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in
17 paying ~~his~~ employees the salary or wages due them, to include with their pay the name of any candidate
18 or any political mottoes, devices, or arguments containing threats or promises ~~{express or implied}~~,
19 calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an
20 employer to exhibit in a place where ~~his~~ the employer's workers or employees may be working any handbill
21 or placard containing any threat, promise, notice, or information that, in case any particular ticket or
22 political party, organization, or candidate is elected, work in ~~his~~ the employer's place or establishment will
23 cease, in whole or in part, or will be continued or increased; ~~his~~ the employer's place or establishment will
24 be closed; the salaries or wages of ~~his~~ the workers or employees will be reduced or increased; or other
25 threats or promises ~~{express or implied}~~, intended or calculated to influence the political opinions or actions
26 of ~~his~~ the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals,
27 and public officers and employees.

28 (2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or
29 oppose any political committee, the nomination or election of any person to public office, or the passage
30 of a ballot issue.

1 (3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the
2 nomination or election of any person to public office, or the passage of a ballot issue while on the job or
3 at ~~his~~ the place of employment. However, ~~nothing in~~ subject to 2-2-121, this section is not intended to
4 restrict the right of a public employee to express ~~his~~ personal political views.

5 (4) Any person who violates the provisions of this section shall be fined an amount not to exceed
6 \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate
7 offense."

8
9 ~~NEW SECTION. Section 14. Filing tax returns. (1) It is the responsibility of legislators, public~~
10 ~~officers, and public employees to determine on an annual basis whether they are required to file tax returns~~
11 ~~with the state of Montana and to file a complete return in a timely manner, if required.~~

12 ~~(2) The department of revenue shall provide to the commissioner of political practices information~~
13 ~~necessary to determine compliance with this section, whether or not the information is confidential. The~~
14 ~~commissioner of political practices shall keep the information confidential unless it is necessary to prove~~
15 ~~that a violation of this section has occurred.~~

16
17 NEW SECTION. Section 14. Ethics committees. (1) Each house of the legislature shall establish
18 an ethics committee. The committee must consist of two members of each political party. The committees
19 may meet jointly. Each committee shall educate members concerning the provisions of this part concerning
20 legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The
21 joint committee may consider matters affecting the entire legislature.

22 (2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for
23 enforcement of the provisions of this part concerning legislators.

24
25 NEW SECTION. Section 15. Enforcement for state officers and state employees. (1)(a) A person
26 alleging a violation of this part by a state officer or state employee may file a complaint with the
27 commissioner of political practices. The commissioner shall request any information necessary to make a
28 determination from the complainant or the person who is the subject of the complaint and may issue
29 subpoenas.

30 (b) Unless the complaint is referred to the county attorney under subsection (1)(c), the

1 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
2 4, part 6. The commissioner shall issue a decision based upon the record established before the
3 commissioner.

4 (c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner
5 shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

6 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may
7 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was
8 committed by a state employee, the commissioner may also recommend that the employing agency
9 discipline the employee. The commissioner may assess the costs of the proceeding against the person
10 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
11 employee if the commissioner determines that a violation did occur.

12 (3) The decision of the commissioner may be appealed to the ethics commission as provided in
13 [section ~~47~~ 16].
14

15 **NEW SECTION. Section 16. Administrative appeal.** (1) The ethics commission shall provide a
16 hearing on the record, when requested in writing by a party to an issue that has been decided by the
17 commissioner of political practices. The appeal must be requested within 60 days of a decision by the
18 commissioner.

19 (2) The hearing is limited to matters contained in the record established before the commissioner.
20 The commission may affirm, modify, or reverse a decision of the commissioner.

21 (3) A decision is rendered when signed by three or more commission members subscribing to the
22 decision and must be issued within 30 calendar days after submission of the request for an opinion.

23 (4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award
24 costs and fees to the prevailing party.
25

26 **NEW SECTION. Section 17. Ethics commission.** (1) There is an ethics commission attached to
27 the office of the commissioner of political practices for administrative purposes only.

28 (2) The commission consists of five members. The members are appointed in the same manner
29 as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as
30 provided in subsection (6) of this section. A member of the commission must be a citizen of the United

1 States and a resident of Montana. A member of the commission may not be a:

2 (a) public official;

3 (b) public employee, except as the fifth member, who must be chosen by consensus of the other
4 members;

5 (c) candidate;

6 (d) lobbyist or lobbyist's principal; or

7 (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

8 (3) A member of the commission serves a term of 4 years. However, the initial members of the
9 commission shall serve the following terms:

10 (a) One member shall serve a term of 1 year.

11 (b) One member shall serve a term of 2 years.

12 (c) One member shall serve a term of 3 years.

13 (d) Two members shall serve terms of 4 years.

14 (4) An individual may not serve more than two consecutive terms as a member of the commission.

15 A member of the commission continues in office until a successor is appointed and has qualified.

16 (5)(a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall
17 appoint a successor.

18 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than
19 that of the original appointing authority, the majority or minority leader in the same house who is of the
20 same political party as the appointing authority that made the original appointment of the commissioner
21 whose position is vacated shall appoint the successor.

22 (6) The presiding officer and vice presiding officer of the commission must be elected by a majority
23 of the members of the commission. The presiding officer and vice presiding officer shall serve in those
24 positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission.
25 The vice presiding officer presides in the absence or disability of the presiding officer.

26 (7) A member of the commission may not receive a salary but is entitled to expenses as provided
27 in Title 2, chapter 18, part 5.

28
29 **NEW SECTION. Section 18. Meetings -- quorum.** The ethics commission shall meet at the call of
30 the presiding officer or a majority of its members when an appeal from a decision of the commissioner of

1 political practices is requested. A quorum consists of three or more members. An affirmative vote of three
2 or more members is necessary for the issuance of a decision.

3
4 **NEW SECTION. Section 19. Prohibition on political activity by commission members.** A member
5 of the ethics commission may not participate in political activity or in a political campaign during the term
6 of office. A member of the commission may not:

- 7 (1) make a financial contribution to a candidate;
8 (2) make a financial contribution to a political committee; or
9 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

10
11 **NEW SECTION. Section 20. Prohibition on lobbying activity.** A member of the ethics commission
12 may not be a registered lobbyist or participate in lobbying activities that would require the individual to
13 register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are
14 permitted under state law.

15
16 **NEW SECTION. Section 21. Enforcement for local government.** (1) Except as provided in
17 subsection (5), a person alleging a violation of this part by a local government officer or local government
18 employee shall notify the county attorney of the county where the local government is located. The county
19 attorney shall request from the complainant or the person who is the subject of the complaint any
20 information necessary to make a determination concerning the validity of the complaint.

21 (2) If the county attorney determines that the complaint is justified, the county attorney may bring
22 an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county
23 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal
24 charges against the officer or employee.

25 (3) If the county attorney declines to bring an action under this section, the person alleging a
26 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more
27 than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees
28 against the person bringing the charges if the court determines that a violation did not occur or against the
29 officer or employee if the court determines that a violation did occur. The court may impose sanctions if
30 the court determines that the action was frivolous or intended for harassment.

1 (4) The employing entity of a local government employee may take disciplinary action against an
2 employee for a violation of this part.

3 (5)(a) A local government may establish a three-member panel to review complaints alleging
4 violations of this part by officers or employees of the local government. The local government shall
5 establish procedures and rules for the panel. The members of the panel may not be officers or employees
6 of the local government. The panel shall review complaints and may refer to the county attorney
7 complaints that appear to be substantiated.

8 (b) In a local government that establishes a panel under this subsection, a complaint must be
9 referred to the panel prior to making a complaint to the county attorney.

10 (6) For purposes of this section, "local government" means a county, an incorporated city or town,
11 a consolidated government, or a school district.

12
13 NEW SECTION. **Section 22. Repealer.** Section 2-2-132, MCA, is repealed.

14
15 NEW SECTION. **Section 23. Codification instruction.** [Sections 14 through ~~22~~ 21] are intended to
16 be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1,
17 apply to [sections 14 through ~~22~~ 21].

18
19 NEW SECTION. **Section 24. Code commissioner instruction.** The code commissioner shall
20 renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

21
22 NEW SECTION. **Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
24 applications, the part remains in effect in all valid applications that are severable from the invalid
25 applications.

26
27 NEW SECTION. **Section 26. Effective date.** [This act] is effective July 1, 1995.

28 -END-

INTRODUCED BY

SENATE BILL NO. 115

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ETHICS PROVISIONS TO GOVERN THE CONDUCT

OF EXECUTIVE AND LEGISLATIVE BRANCH OFFICIALS AND EMPLOYEES; RESTRICTING GIFTS AND
 GRATUITIES TO PUBLIC OFFICIALS AND PUBLIC EMPLOYEES; REGULATING CONTRACTS BY PUBLIC
 OFFICIALS AND PUBLIC EMPLOYEES; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC
 OFFICIALS AND PUBLIC EMPLOYEES; REQUIRING FINANCIAL DISCLOSURES BY CERTAIN PUBLIC
 OFFICIALS AND PUBLIC EMPLOYEES; CREATING AN ETHICS COMMISSION; PROVIDING FOR
 INVESTIGATIONS AND ENFORCEMENT OF ETHICS, CONFLICT OF INTEREST, AND FINANCIAL
 DISCLOSURE LAWS; AMENDING SECTIONS 2-2-125, 2-15-1814, 2-18-103, 5-11-203, 18-4-141,
 49-2-303, 49-3-201, AND 90-3-303, MCA; AND REPEALING SECTIONS 2-2-101, 2-2-102, 2-2-104,
 2-2-105, 2-2-111, 2-2-112, 2-2-121, 2-2-131, 2-2-132, 2-2-201, 2-2-202, 2-2-203, 2-2-204, 2-2-205,
 2-2-206, 2-2-207, 2-2-301, 2-2-302, 2-2-303, AND 2-2-304, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is delegated to the ethics
 commission. It is the intent of the legislature that in adopting rules, the ethics commission use existing
 provisions from other states that have implemented model legislation.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 48] may be cited as the "Ethics,
 Conflict of Interest, and Personal Financial Disclosure Act".

NEW SECTION. **Section 2. Purpose -- intent.** (1) The purpose of [sections 1 through 48] is to
 set forth an enforceable code of ethics that prohibits conflict between public duty and private interest as
 required by the constitution of Montana.

(2) It is the intent of [sections 1 through 48] to promote the education of public officials and public

employees regarding proper ethical actions during their terms of public office and public employment. The proper operation of democratic government requires that:

- (a) a public official or public employee be independent and impartial;
- (b) government policy and decisions be made through the established processes of government;
- (c) a public official or public employee not use public office to obtain private benefits;
- (d) a public official or public employee avoid action that creates the appearance of using public office to obtain benefit; and
- (e) the public have confidence in the integrity of its government and public officials and public employees.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 48], unless the context clearly indicates otherwise, the following definitions apply:

- (1) (a) "Anything of value" includes:
 - (i) a pecuniary item, including money, a bank bill, or a note;
 - (ii) a promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;
 - (iii) a contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
 - (iv) a stock, bond, note, or other investment interest in an entity;
 - (v) a receipt given for the payment of money or other property;
 - (vi) a right in action;
 - (vii) a gift, tangible good, or chattel or an interest in a gift, tangible good, or chattel;
 - (viii) a loan or forgiveness of indebtedness;
 - (ix) a work of art, antique, or collectible;
 - (x) an automobile or other means of personal transportation;
 - (xi) real property or an interest in real property, including:
 - (A) a title to realty;
 - (B) a fee simple or partial interest;
 - (C) a present or future interest;
 - (D) a contingent or vested interest;

- 1 (E) a leasehold interest; or
- 2 (F) any other beneficial interest in realty;
- 3 (xii) an honorarium or compensation for services;
- 4 (xiii) a rebate or discount in the price of anything of value unless the rebate or discount is made in
- 5 the ordinary course of business to a member of the public without regard to that person's status as a public
- 6 official or public employee;
- 7 (xiv) the sale or trade of something for reasonable compensation that would ordinarily not be
- 8 available to a member of the public;
- 9 (xv) a promise or offer of employment;
- 10 (xvi) any other thing of value that is pecuniary or compensatory in value to a person;
- 11 (xvii) additional things of value as defined by commission rule.
- 12 (b) Anything of value does not include:
- 13 (i) a campaign contribution, as defined under 13-1-101, properly received and reported, if
- 14 reportable, to the extent that consideration of equal or greater value is not received;
- 15 (ii) printed informational promotional material;
- 16 (iii) a gift that:
- 17 (A) is not used; and
- 18 (B) no later than 30 days after receipt, is returned to the donor or delivered to a charitable
- 19 organization and is not claimed as a charitable contribution for federal income tax purposes;
- 20 (iv) a gift, devise, or inheritance from an individual's spouse, child, parent, grandparent, brother,
- 21 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse
- 22 of that individual, if the donor is not acting as the agent or intermediary for someone other than a person
- 23 covered by this subsection (iv);
- 24 (v) a personalized plaque or trophy with a value that does not exceed \$150;
- 25 (vi) food and beverages consumed on the occasion when in participation in a charitable, civic, or
- 26 community event that bears a relationship to the public official's or public employee's office and when the
- 27 official or employee is in attendance in an official capacity;
- 28 (vii) food and beverages or entertainment with a value of \$25 per occasion or less or gifts of
- 29 nominal value;
- 30 (viii) educational material directly related to the public official's or public employee's governmental

1 duties;

2 (ix) an award publicly presented in recognition of public service;

3 (x) commercially reasonable loans made in the ordinary course of the lender's business;

4 (xi) educational activities not otherwise excepted in this subsection (1)(b) if, prior to the activity,
5 the commission determines that the activity:

6 (A) does not place or appear to place the recipient under obligation;

7 (B) clearly serves the public good; and

8 (C) is not lavish or extravagant.

9 (2) "Associated", when used with reference to an organization, includes an organization in which
10 an individual or a member of the individual's immediate family:

11 (a) is a director, officer, fiduciary, trustee, agent, or partner; or

12 (b) owns or controls, in the aggregate, at least 2% or \$1,000 or more of the outstanding equity.

13 (3) "Business associate" includes the following:

14 (a) an employer;

15 (b) a general or limited partnership or a general or limited partner within the partnership;

16 (c) (i) a corporation that is family-owned;

17 (ii) a corporation or the shareholders, owners, or officers of a corporation in which all shares of
18 stock are closely held; and

19 (iii) a corporation in which the public official or public employee or other person subject to [sections
20 1 through 48] has an investment interest in, owns, or has a beneficial interest in shares of stock that
21 constitute more than 5% of the value of the corporation or have a value of \$1,000.

22 (d) a corporation, business association, or other business entity in which the public official or public
23 employee or other person subject to [sections 1 through 48] serves as an agent or a compensated
24 representative; or

25 (e) an association not otherwise covered by this subsection (3) between the public official or public
26 employee or other person subject to [sections 1 through 48] and another person, which involves the
27 conduct of a common for-profit enterprise.

28 (4) "Candidate" means an individual who seeks nomination or election to a state or a district office.

29 An individual is a candidate when the individual:

30 (a) files a statement of candidacy or petition for nomination for office with the appropriate filing

1 officer;

2 (b) is nominated for office by:

3 (i) a party at a primary election;

4 (ii) a nominating convention; or

5 (iii) a petition for nomination;

6 (c) solicits or receives and retains contributions, makes expenditures, or gives consent to an
7 individual, organization, political party, or committee to solicit or receive and retain contributions or to make
8 expenditures to secure nomination or election to any office at any time, whether or not the office for which
9 the individual will seek nomination or election is known when the:

10 (i) solicitation is made;

11 (ii) contribution is received and retained; or

12 (iii) expenditure is made; or

13 (d) is an officeholder who is the subject of a recall election.

14 (5) "Charitable organization" means a public benefit nonprofit corporation as provided in Title 35,
15 chapter 2.

16 (6) "Commission" means the Montana ethics commission provided for in [section 19].

17 (7) "Compensation" includes anything of value, except reimbursement of expenses if:

18 (a) the reimbursement does not exceed the amount actually expended for the expenses; and

19 (b) it is substantiated by an itemization of expenses.

20 (8) "Consultant" means an individual other than a public official or public employee who contracts
21 to:

22 (a) evaluate bids for public contracts; or

23 (b) award public contracts.

24 (9) "Family member" means:

25 (a) a spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law,
26 grandparent, or grandchild; or

27 (b) a member of an individual's household.

28 (10) "Gift" means anything of value.

29 (11) "High-level public employee" means a state employee with substantial policymaking authority,
30 generally at a grade 18 or higher, as designated by the employee's respective agency, with the approval

1 of the commission.

2 (12) "Immediate family" means:

3 (a) an unemancipated child residing in a public official's or public employee's household;

4 (b) a spouse of a public official or public employee; or

5 (c) an individual claimed by the public official or public employee or the official's or employee's
6 spouse as a dependent for tax purposes.

7 (13) "Judge" means an official who presides over a state, county, or municipal court or an
8 administrative law hearings officer.

9 (14) (a) "Local entity" means a local or regional government office, department, division, bureau,
10 board, or commission.

11 (b) The term does not include a court.

12 (15) "Negotiating for employment" means a communication, directly or indirectly, with a prospective
13 employer to discuss rendering services for compensation to that prospective employer.

14 (16) "Official responsibility" means the direct administrative or operating authority, whether
15 intermediate or final, exercisable alone or with others, either personally or through subordinates, to approve,
16 disapprove, or otherwise direct government action.

17 (17) "Participation" includes a decision, an approval, a disapproval, a recommendation, the
18 rendering of advice, or a vote.

19 (18) (a) "Particular matter" includes a judicial or other proceeding, an application, a request for a
20 ruling or other determination, a contract, a claim, a controversy, an investigation, a charge, an accusation,
21 an arrest, rulemaking, or special legislation.

22 (b) The term does not include the request for, drafting of, and voting on general legislation by the
23 state legislature.

24 (19) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint-stock
25 company, syndicate, business trust, estate, company, corporation, association, club, committee,
26 organization, or group of persons acting in concert.

27 (20) "Prime contractor" means a person who has entered into a public contract.

28 (21) "Public contract" means a contract for goods, services, or construction let by a unit of
29 government.

30 (22) "Public employee" means an individual who holds a position, including a person appointed to

1 a position created by statute, whether compensated or not, in state government.

2 (23) "Public member" means a member appointed to a noncompensated, part-time position on a
3 board, commission, or council. A public member does not lose this status by receiving reimbursement of
4 expenses or a per diem payment for services.

5 (24) (a) "Public official" means an individual elected to a state or district office or an individual who
6 is appointed to fill a vacancy in the office, whether or not the individual has yet assumed the office.

7 (b) The term does not include a public member of an advisory board, commission, or council as
8 defined in 2-15-122.

9 (25) "Representation" means an appearance before a state entity or local entity, whether gratuitous
10 or for compensation.

11 (26) (a) "State entity" means a state agency, office, department, division, bureau, board,
12 commission, or council, including the legislature and the state university system.

13 (b) The term does not include a court or an agency in the judicial branch.

14 (27) "Subcontract" means a contract or contractual action entered into by a prime contractor or
15 subcontractor for obtaining goods or services under a public contract.

16 (28) "Subcontractor" means:

17 (a) a person, other than the prime contractor, who offers to furnish or furnishes goods or services
18 under a public contract or a subcontract entered into in connection with the public contract; or

19 (b) a person who offers to furnish or furnishes goods or services to the prime contractor or a higher
20 tier subcontractor.

21

22 **NEW SECTION.** **Section 4. Nepotism.** (1) A public official or public employee may not advocate
23 or cause the employment, appointment, promotion, transfer, or advancement to an office or position of the
24 state, county, municipality, or political subdivision or supervise or manage a person related to the public
25 official or public employee.

26 (2) A public official or public employee may not participate in an action relating to the employment
27 or discipline of a member of the public official's or public employee's household or of a family member.

28 (3) The provisions of subsection (1) do not apply to:

29 (a) a sheriff in the appointment of a person as a cook or an attendant;

30 (b) school district trustees if all the trustees, with the exception of any trustee who is related to

1 the person being appointed and who must abstain from voting for the appointment, approve the
2 appointment of a person related to a trustee;

3 (c) a school district in the employment of a person as a substitute teacher who is not employed
4 as a substitute teacher for more than 30 consecutive school days; or

5 (d) the renewal of an employment contract of a person who was initially hired before the member
6 of the board, bureau, or commission or the department head to whom the individual is related assumed the
7 duties of the office.

8 (4) For purposes of this section, a person is "related" if the person is a family member of the public
9 official or public employee or is connected by consanguinity within the fourth degree or by affinity within
10 the second degree.

11
12 **NEW SECTION. Section 5. Misuse of office.** (1) A public official or public employee may not use
13 public funds, time, personnel, facilities, or equipment for private gain or the gain of another unless the use
14 is authorized by law, joint legislative rule, or collective bargaining agreement or is required for professional
15 responsibility obligations.

16 (2) A public official or public employee may not use public funds, time, personnel, facilities, or
17 equipment for political or campaign activity unless the use is:

18 (a) authorized by law; or

19 (b) properly incidental to another activity required or authorized by law.

20 (3) A state entity may adopt rules specifying examples of public benefit activities permissible or
21 not permissible under this section.

22
23 **NEW SECTION. Section 6. Representation by public officials and public employees.** (1) (a) A
24 state elected official, other than a legislator, may not represent another person before a state or local entity,
25 except as required by statute.

26 (b) A legislator may not represent another person before a state entity, other than a court, during
27 a legislative session.

28 (c) A public official may not represent another person before an entity of the same political
29 subdivision that the public official serves, except as required by statute.

30 (d) A public official or public employee may not represent another person before the entity that the

1 official or employee serves.

2 (e) A high-level public employee who receives compensation other than reimbursement or per diem
3 payments for the high-level public employee's official duties may not represent another person before an
4 entity of the same political subdivision, including a court.

5 (2) Subsection (1) does not apply to the following:

6 (a) purely ministerial matters that do not require discretion on the part of the entity;

7 (b) representation by a public official or public employee in the course of the official's or
8 employee's official duties, including uncompensated constituent representation by a legislator;

9 (c) representation of the public official or public employee in the official's or employee's personal
10 capacity; or

11 (d) representation by an attorney who is a public official or a public employee before a court when
12 the representation is not otherwise prohibited by applicable codes of attorney or judicial conduct.

13 (3) This section does not apply if a public official, former public official, public employee, or former
14 public employee is:

15 (a) testifying under oath to facts that are within the individual's knowledge or as an expert witness
16 who does not accept compensation other than the compensation regularly provided for by law or rule for
17 subpoenaed witnesses; or

18 (b) an elected representative of the federal government or a local government within the state
19 whose principal occupation or employment is with the federal government or a local government and whose
20 appearance, communication, assistance, or representation is on behalf of the government.

21

22 **NEW SECTION. Section 7. Conflicts of interest in votes, deliberations, and discussions.** (1) A
23 public official or public employee may not participate in, vote on, influence, or attempt to influence an
24 official decision if the public official or public employee or a business or organization with which the public
25 official or public employee is associated has a pecuniary interest in or a reasonably foreseeable direct
26 benefit from the matter under consideration by the governmental entity of which the public official or public
27 employee is a member. A benefit includes detriment to a business competitor to the public official or public
28 employee or business or organization with which the public official or public employee is associated.

29 (2) A public official or public employee may participate in, vote on, influence, or attempt to
30 influence an official decision if the only pecuniary interest or reasonably foreseeable benefit that may accrue

1 to the public official or public employee is incidental to the official's or employee's position or if the benefit
2 accrues to the public official or public employee as a member of a profession, occupation, or class, to no
3 greater extent than the pecuniary interest or potential benefit could reasonably be foreseen to accrue to all
4 other members of the profession, occupation, or class.

5 (3) This section applies to a business or organization with which a family member of a public
6 official or public employee is associated if the family member's pecuniary interest or a business or
7 organization with which a family member is associated has a reasonably foreseeable benefit from a matter
8 under consideration.

9 (4) The legislature shall adopt rules governing conduct of its members consistent with the
10 provisions of this section.

11
12 **NEW SECTION. Section 8. Restraints on solicitation or acceptance of gifts and gratuities.** (1) A
13 person may not, directly or indirectly, give, offer, or promise to give anything of value to a public official,
14 a public employee, a person who has been elected or selected to be a public official or public employee,
15 or a member of the official's or employee's immediate family that can reasonably be inferred as intended
16 or expected to:

17 (a) benefit or influence an official act;

18 (b) influence the performance of or failure to perform an act in violation of the public official's or
19 public employee's lawful duty; or

20 (c) defraud a state, county, or municipal governmental entity.

21 (2) A person listed in subsection (1) may not, directly or indirectly, ask, demand, exact, solicit,
22 seek, accept, assign, receive, or agree to receive anything of value for the person, or for any other person
23 or entity, in return for:

24 (a) the performance of an official act or act in violation of official duties; or

25 (b) committing, aiding in committing or colluding in, or allowing acts of fraud or making an
26 opportunity for the commission of fraud on a state, county, or municipal governmental entity.

27 (3) A person may not, directly or indirectly, give, offer, or promise to give anything of value to
28 another person or entity, with the intent to influence a witness to fail to appear or to influence testimony
29 under oath or affirmation in a trial or other proceeding before:

30 (a) a court;

1 (b) a committee of either house or both houses of the legislature; or

2 (c) an agency, commission, or officer authorized to hear evidence or take testimony.

3 (4) A person may not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign,
4 receive, or agree to receive anything of value in return for influencing a witness to fail to appear or for
5 influencing testimony under oath or affirmation in a trial or other proceeding before:

6 (a) a court;

7 (b) a committee of either house or both houses of the legislature; or

8 (c) an agency, commission, or officer authorized to hear evidence or take testimony.

9 (5) Subsections (3) and (4) do not prohibit the payment or receipt of witness fees provided by law
10 or the payment by the party on whose behalf a witness is called and the receipt by a witness of the
11 reasonable cost of travel and subsistence at a trial, hearing, or proceeding or, in the case of an expert
12 witness involving a technical or professional opinion, a reasonable fee for time spent in preparing the
13 opinion and in appearing or testifying.

14 (6) A public official or public employee may not abuse the title and prestige of public office by
15 receiving anything of value for the private benefit of the official or employee or the official's or employee's
16 immediate family or an organization with which the official or employee is associated, unless the public
17 official or public employee can show by clear and convincing evidence that:

18 (a) the thing of value was conveyed for a reason unrelated to and not arising from the recipient's
19 holding or having held a public office or public position; and

20 (b) the receipt was unrelated to actions or matters before or affecting the government body of
21 which the public official's or public employee's office or employment is a part.

22 (7) A lobbyist or principal employing a lobbyist may not contribute to, act as an agent or
23 intermediary for contribution to, or arrange for the making of contributions to the campaign funds of any
24 elected official during a legislative session.

25
26 **NEW SECTION. Section 9. Private interests by public official or public employee in public**
27 **contracts.** (1) (a) Public officials and public employees may not have an interest in any public contract
28 made by them in their official capacity or by any body, agency, business, or board of which they or
29 members of their immediate family are members or employees or are otherwise associated. A former public
30 official or former public employee may not, within 6 months following the termination of employment,

1 contract with or be employed by an employer who contracts with the state or any of its subdivisions
2 involving matters with which the former public official or former public employee was directly involved
3 during public employment.

4 (b) Subsection (1)(a) does not apply if the public official or public employee in good faith and within
5 30 days of learning of an actual or prospective violation of this section makes full disclosure of the financial
6 interest to the contracting agency and to the agency and terminates or disposes of the interest.

7 (2) A public official may not be a purchaser at any sale or a vendor at any purchase made in an
8 official capacity.

9 (3) A contract made in violation of this section may be voided at the instance of any party, except
10 the public official interested in the contract.

11 (4) Public officials and public employees may not purchase, sell, or in any manner receive to their
12 own use or benefit or to the use or benefit of any person any evidences of indebtedness against the state
13 or any subdivision of the state, except:

14 (a) evidences of indebtedness issued to or held by them for services rendered as an officer, deputy,
15 or clerk; and

16 (b) evidences of the funded indebtedness of the state, county, city, township, or town.

17 (5) An official whose duty it is to audit and allow the accounts of other public officials shall, before
18 allowing the accounts, require each public official to make and file an affidavit that the public official has
19 not violated any of the provisions of [sections 1 through 48].

20 (6) Public officials charged with the disbursement of public money may not pay any warrant or
21 other evidence of indebtedness against the state, county, city, township, or town when the indebtedness
22 has been purchased, sold, received, or transferred contrary to any of the provisions of [sections 1 through
23 48].

24 (7) (a) A public official charged with the disbursement of public money who is informed by an
25 affidavit establishing probable cause that a public official whose account is about to be settled, audited,
26 or paid by the disbursing public official has violated any of the provisions of [sections 1 through 48] shall
27 suspend the settlement or payment and cause the public official to be prosecuted by the county attorney
28 of the county.

29 (b) If there is a judgment for the defendant in the prosecution, the proper public official may
30 proceed to settle, audit, or pay the account as if an affidavit had not been filed.

1 (8) For purposes of this section:

2 (a) "contract" does not include:

3 (i) a contract awarded to the lowest responsible bidder based on competitive bidding procedures
4 when the public official or public employee has filed with the agency a statement making full disclosure of
5 the public official's, the public employee's, or an immediate family member's interest in the contract;

6 (ii) merchandise sold to the highest bidder at public auction;

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

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

14 (b) "former public employee" does not include a person whose employment with the state was
15 involuntarily terminated because of a reduction in force or other involuntary termination not involving a
16 violation of the provisions of [sections 1 through 48];

17 (c) "have an interest in" does not include holding a minority interest in a corporation.
18

19 **NEW SECTION. Section 10. Actions taken while negotiating for employment.** A public official or
20 public employee may not act or fail to take action in a matter affecting a person with whom the public
21 official or public employee is negotiating for employment.
22

23 **NEW SECTION. Section 11. Postemployment restriction.** (1) A former public official or former
24 public employee may not represent, aid, or advise a person in a particular matter before a government entity
25 in which the former public official or former public employee participated personally and substantially while
26 a public official or public employee.

27 (2) A former public official or former public employee may not represent a person in a particular
28 matter that was pending under the former official's or former employee's official responsibility within 1 year
29 before the termination of that responsibility for 1 year after the former official's or former employee's
30 service in the public position has ceased.

1 (3) A former public official or former high-level public employee may not represent a person in a
2 matter before the government entity for which the former official or former high-level employee served for
3 a period of 1 year after the former official's or former high-level employee's employment has ceased.

4 (4) A former public official may not register as a lobbyist or lobbyist's principal, other than for a
5 government entity, for a period of 1 year after the later of:

6 (a) the date of leaving office; or

7 (b) the date of expiration of the term of office to which the public official was elected.

8
9 NEW SECTION. **Section 12. Blind trusts.** (1) (a) A public official or public employee who has a
10 direct, indirect, or beneficial interest in a blind trust that meets the standards set forth in subsection (2) is
11 not required to disclose the pro rata share of interests in real property or investments, or income deriving
12 from the interests or investments, if those interests or investments are acquired by the trustee after the
13 trust complies with subsection (2).

14 (b) For purposes of this section, a "filer" is a person required to file a personal financial disclosure
15 statement pursuant to [section 13].

16 (2) The trustee of a blind trust must be:

17 (a) a disinterested party other than the public official's or public employee's spouse, child, parent,
18 grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first
19 cousin or the spouse of an enumerated person;

20 (b) someone who is not a public official or public employee; and

21 (c) someone who has not been appointed to a public entity by the public official or public employee
22 or by a public official or public employee supervised by the filer.

23 (3) The trustee must be given complete discretion to manage the trust, including but not limited
24 to the power to dispose of and acquire trust assets without consulting or notifying the filer.

25 (4) The trustee is required to notify the filer of the date of disposition and value at disposition of
26 any original interests or investments in real property so that information can be reported on the filer's
27 personal financial disclosure statement.

28 (5) The trustee is prohibited from disclosing to the filer any information concerning the replacement
29 assets, except for information required under this section or the minimum tax information that lists only the
30 totals of taxable items from the trust and does not describe the source of individual items of income.

(6) A copy of the trust agreement must be filed with the agency within 5 business days after execution, including:

(a) an identification of the assets placed in trust;

(b) a statement detailing the date of the trust's creation and the name and address of the trustee;

and

(c) a statement signed by the trustee, under penalty of perjury, stating that the trustee has not revealed any information to the filer, except that which is permitted under this section, and that to the best of the trustee's knowledge, the trust is in compliance with this section.

(7) (a) If the trust is revoked while the filer is a public official or public employee or if the filer learns of any replacement assets of the trust, the filer shall file an amendment to the most recent statement of personal financial disclosure disclosing the date of revocation and the previously unreported pro rata share of the trust's interests in real property or investments or income deriving from any interests in real property or investments and disqualify the filer as necessary.

(b) For purposes of this section, any replacement of assets of which the filer learns must, after replacement, be treated as though they were original assets of the trust.

NEW SECTION. Section 13. Personal financial disclosure. (1) This section does not require the disclosure of financial information concerning the following:

(a) a spouse legally separated from the public official or public employee;

(b) a former spouse;

(c) a gift from a family member; or

(d) a campaign contribution that is permitted and reported under Title 13, chapter 37, part 2, if required.

(2) The following individuals shall file a statement of financial interests with the commissioner of political practices:

(a) a public official or high-level public employee;

(b) an individual nominated to become a public official or public employee;

(c) an individual who is a candidate to become a public official;

(d) a public member; and

(e) a consultant.

1 (3) The statement of financial interests must be filed for the preceding year no later than April 30
2 of each year, complete through December 31 of the preceding year, except:

3 (a) in the case of an individual nominated to be a public official, public member, or public employee,
4 no later than 21 days after the nomination;

5 (b) in the case of a candidate to become a public official, at the time of filing for public office;

6 (c) in the case of a public employee employed after January 1, the later of April 30 or 21 days after
7 employment.

8 (4) A consultant shall file a statement of economic interests no later than 21 days after entering
9 into a contractual relationship with the state or a political subdivision if the consultant or a member of the
10 household of the consultant has an economic interest in an entity:

11 (a) whose bid was evaluated by the consultant and who was subsequently awarded the contract
12 by the state or the political subdivision that contracted with the consultant; or

13 (b) who was awarded a contract by the consultant.

14 (5) When an amount or value is reported, a filer shall report information in the following category
15 amounts unless otherwise indicated:

16 (a) \$1,000 - \$9,999;

17 (b) \$10,000 - \$24,999;

18 (c) \$25,000 - \$49,999;

19 (d) \$50,000 - \$99,999; and

20 (e) \$100,000 or more.

21 (6) A candidate for public office and an individual listed in subsection (2) may not take the oath
22 of office, enter or continue the person's duties, or receive compensation from public funds unless the
23 person has filed a statement of financial interests with the commissioner of political practices as required
24 by this section.

25
26 **NEW SECTION. Section 14. Commissioner of political practices -- disclosure of statements.** (1)

27 The commissioner of political practices may grant a reasonable extension of time for filing a statement of
28 financial interests. The extension may not exceed 30 days, except in cases of illness or incapacitation.

29 (2) A statement of financial interests becomes a public record available for copying when received
30 by the commissioner of political practices. A statement may be reviewed and copied at the office of the

1 commissioner of political practices during ordinary business hours.

2 (3) A statement of financial interests must be retained by the commissioner of political practices
3 for a period of 5 years after filing in a form that will facilitate document retention, except that:

4 (a) 3 years after an individual ceases to be a public official, the commissioner of political practices
5 shall, unless the former public official otherwise requests, destroy any statements of financial interests or
6 copies of the statements filed by the former public official and any copies in the possession of the
7 commissioner of political practices;

8 (b) 3 years after any election at which a candidate for election as a public official was not elected
9 or a nominee for a public office was not confirmed in the position, the commissioner of political practices
10 shall destroy any statements of financial interests or copies of the statements filed by the person:

11 (i) unless the individual is otherwise required to file a statement; or

12 (ii) unless the individual otherwise requests.

13

14 **NEW SECTION. Section 15. Information required.** (1) A statement of financial interests must
15 contain full and complete information concerning the following:

16 (a) the name, business or governmental address, and workplace telephone number of the filer and
17 the filer's spouse and dependents;

18 (b) the source, type, and amount or value of income received from a governmental entity by the
19 filer;

20 (c) the source, type, and amount of income in cash or in-kind received by the filer;

21 (d) the source, payee, type, date, and exact amount of gifts, including food, lodging, or
22 entertainment, received by a filer and a filer's spouse and dependents that is in excess of \$500 aggregate
23 from all sources in a calendar year, excluding receipts from registered lobbyists and lobbying principals;

24 (e) the description (commercial, residential, or rural), value, and location of all real property owned
25 during the calendar year by the filer and the same information for options to purchase real property;

26 (f) the identity of each business or entity in which the filer held securities valued at \$1,000 or more
27 during the reporting period;

28 (g) a listing by name and address of each creditor to whom the public official, public employee,
29 or consultant and the official's, employee's, or consultant's immediate family members owed a debt in
30 excess of \$1,000 at any time during the calendar year, other than for a credit card or retail installment

1 contract, and the original amount of the debt and amount outstanding;

2 (h) for the filer and the filer's spouse and dependents, each officership, directorship, trusteeship,
3 or other fiduciary relationship held in a business during the disclosure period and the term of office. The
4 annual compensation must be included for the filer only.

5 (i) the amount of any loan made to someone by the filer and the filer's immediate family members
6 in an amount of \$1,000 or more, the amount of the loan outstanding, the rate of interest, the payment
7 schedule, and the name and address of the person to whom the loan was made;

8 (j) the name of a lobbyist who is:

9 (i) an immediate family member of the filer;

10 (ii) a partner of the filer or of an immediate family member;

11 (iii) an officer or director of the filer's employer or an employer of the filer or an immediate family
12 member; or

13 (iv) a business associate of the filer or a member of the filer's immediate family.

14 (2) The information must be filed on a form prescribed by the commissioner of political practices.

15 (3) The commissioner of political practices shall prepare and publish summaries of the reports
16 required by this section and shall provide for public dissemination of the summaries and reports.

17
18 **NEW SECTION. Section 16. Review of statements.** The commissioner of political practices shall
19 review each statement filed in accordance with [section 13] for compliance with the provisions of [section
20 15] and notify the individual on whose behalf the statement is filed of an omission or deficiency.

21
22 **NEW SECTION. Section 17. Access to statements.** (1) The commissioner of political practices
23 shall, upon the written request of an individual, make statements and reports filed with the commission
24 available for public inspection and copying during regular office hours. The commission shall make copying
25 facilities available free of charge or at a cost not to exceed actual cost. A statement may be requested by
26 mail, and the commission shall mail a copy of the requested statement to the individual making the request
27 upon payment of appropriate costs.

28 (2) The commission shall compile and maintain an index of statements and reports filed with the
29 commission to facilitate public access to the statements and reports.

NEW SECTION. Section 18. Technical violations of disclosure requirement. The commissioner of political practices may determine that errors or omissions on statements of economic interests are inadvertent and unintentional and not an effort to violate a requirement of [sections 13 and 15] and may be handled as technical violations not subject to the provisions of [sections 1 through 48] pertaining to violations. Technical violations must remain confidential unless requested to be made public by the person filing the statement. In lieu of all other penalties, the commissioner of political practices may assess a technical violations penalty not exceeding \$50.

NEW SECTION. Section 19. Montana ethics commission. (1) Except as expressly provided in [sections 1 through 48], the commission is responsible for administering the provisions of [sections 1 through 48]. The commission has the power and duties set forth in [sections 1 through 48].

(2) The commission is established as an independent authority attached to the office of secretary of state for administrative purposes only.

(3) The commission consists of five members. The members are appointed in the same manner as prescribed in 5-1-102. A member of the commission must be a citizen of the United States and a resident of Montana. A member of the commission may not be a:

(a) public official;

(b) public employee, except as the fifth member, who must be chosen by consensus of the other members;

(c) candidate;

(d) lobbyist or lobbyist's principal;

or

(e) member of the immediate family of an individual listed in subsections (3)(a) through (3)(d).

(4) A member of the commission serves a term of 4 years. However, the initial members of the commission shall serve the following terms:

(a) One member shall serve a term of 1 year.

(b) One member shall serve a term of 2 years.

(c) One member shall serve a term of 3 years.

(d) Two members shall serve a term of 4 years.

(5) An individual may not serve more than two consecutive terms as a member of the commission.

1 A member of the commission continues in office until a successor is appointed and has qualified.

2 (6) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall
3 appoint a successor.

4 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than
5 that of the original appointing authority, the majority or minority leader in the same house and of the same
6 political party as the appointing authority that made the original appointment of the commissioner whose
7 position is vacated shall appoint the successor.

8 (7) The presiding officer and vice presiding officer of the commission must be elected by a majority
9 of the members of the commission. The presiding officer and vice presiding officer serve a term of 1 year
10 and may be reelected. The presiding officer presides at meetings of the commission. The vice presiding
11 officer presides in the absence or disability of the presiding officer.

12
13 NEW SECTION. **Section 20. Meetings -- quorum.** The commission shall meet at the call of the
14 presiding officer or a majority of its members. A quorum consists of three or more members. An
15 affirmative vote of three or more members is necessary for commission action.

16
17 NEW SECTION. **Section 21. Removal of member.** (1) The governor may remove or suspend a
18 member of the commission upon filing with the commission a written finding of the member's misfeasance
19 or malfeasance and upon serving a copy of the written finding on the member.

20 (2) The removal or suspension of a member may be appealed immediately to the first district court
21 and may take precedence over all other matters pending before the court.

22
23 NEW SECTION. **Section 22. Expenses.** A member of the commission serves without
24 compensation but is entitled to actual and necessary expenses incurred in the performance of commission
25 duties.

26
27 NEW SECTION. **Section 23. Commission staff.** (1) The commission may employ and remove at
28 its pleasure an executive director to perform its functions. The executive director may employ and remove
29 other personnel as necessary.

30 (2) The executive director shall administer the daily business of the commission and perform the

1 duties assigned by the commission.

2 (3) The commission shall fix the compensation of its employees. An individual may not be a public
3 official or a candidate while a member of the staff.

4 (4) A member of the commission and the commission employees shall file a statement of financial
5 disclosure as required by [sections 13 through 15].
6

7 **NEW SECTION. Section 24. Prohibition on political activity by commission members and staff.**

8 A member of the commission or the staff may not participate in political activity or in a political campaign
9 during the term of office or employment. A member of the commission or the staff may not:

- 10 (1) make a financial contribution to a candidate;
11 (2) make a financial contribution to a political committee; or
12 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.
13

14 **NEW SECTION. Section 25. Prohibition on lobbying activity.** A member of the commission or the
15 staff may not be a registered lobbyist or participate in lobbying activities that would require the individual
16 to register as a lobbyist unless the lobbyist activities are authorized by the commission, are conducted on
17 behalf of the commission, and are permitted under state law.
18

19 **NEW SECTION. Section 26. Advisory opinions.** (1) The commission may render advisory opinions
20 concerning [sections 1 through 48], based upon actual or anticipated circumstances, when requested in
21 writing by:

- 22 (a) a public official or public employee;
23 (b) a former public official or former public employee; or
24 (c) a person who is personally and directly involved in the matter.

25 (2) An advisory opinion request by a public official or public employee concerning the individual's
26 own affairs or the affairs of a subordinate public official or public employee or potential public official or
27 public employee is confidential.

28 (3) An advisory opinion request by a former public official or former public employee concerning
29 the individual's own affairs is confidential.

30 (4) An advisory opinion request by a person concerning the person's own affairs with regard to

1 potential public service is confidential.

2 (5) Except as provided in subsections (2) through (4), an advisory opinion must be in writing and
3 must be made available to the public. In the case of a confidential advisory opinion, the identity of the
4 person requesting the opinion and the identity of a person whose affairs are involved in the circumstances
5 described in the request for the advisory opinion are confidential.

6 (6) An advisory opinion is rendered when signed by three or more commission members subscribing
7 to the advisory opinion and must be issued within 30 calendar days after submission of the request for an
8 advisory opinion.

9 (7) A commission member who agrees with the advisory opinion but for different reasons from
10 those stated may file a written concurring opinion.

11 (8) A commission member who disagrees with the advisory opinion may file a written dissenting
12 opinion, which must be placed at the end of the majority opinion or at the end of a concurring opinion, if
13 any.

14 (9) Commission attorneys may issue advice, upon request, either orally or in writing, concerning
15 [sections 1 through 48], based upon actual or anticipated circumstances, when the advice is consistent
16 with [sections 1 through 48] or previous advisory opinions issued by the commission. Advice is
17 confidential when an advisory opinion on the matter would be confidential. Advice by commission
18 attorneys need not be made available to the public. Opinions by commission attorneys are nonbinding.

19 (10) An advisory opinion requested under this section and any related internal commission materials
20 requested or prepared as a result of an advisory opinion request are confidential.

21 (11) The confidentiality of an advisory opinion may be waived either in writing by the person who
22 requested the advisory opinion or by a majority vote of the members of the commission if a person makes
23 or purports to make public the substance or any portion of an advisory opinion requested by or on behalf
24 of the person. The commission may also vote to make public the advisory opinion request and related
25 materials.

26
27 **NEW SECTION. Section 27. Investigations.** (1) The commissioner of political practices shall
28 conduct investigations, inquiries, and hearings concerning any matter covered by [sections 1 through 48]
29 and certify the commissioner's own acts and records.

30 (2) Upon receipt of a complaint, the commissioner of political practices shall determine within 14

1 calendar days whether to conduct a formal investigation or dismiss the complaint, in whole or in part, as
2 frivolous or as having no basis for formal investigation.

3 (3) When the commissioner of political practices determines that assistance is needed in conducting
4 investigations or when required by law, the commissioner shall request the assistance of other appropriate
5 agencies.

6
7 **NEW SECTION. Section 28. Adoption of rules.** The commission shall adopt and enforce rules to
8 implement [sections 1 through 48].

9
10 **NEW SECTION. Section 29. Forms and documents.** The commissioner of political practices shall
11 adopt and provide forms for statements, reports, notices, complaints, and other documents required by
12 [sections 1 through 48]. Documents filed with the commission as public records must be retained for at
13 least 5 years from the date of receipt.

14
15 **NEW SECTION. Section 30. Access to information for investigations.** The commissioner of
16 political practices may require the cooperation of a state agency, public official, public employee, and other
17 person whose conduct is regulated by [sections 1 through 48]. An individual shall make information
18 reasonably related to an investigation available to the commissioner of political practices upon written
19 request.

20
21 **NEW SECTION. Section 31. Annual report of Montana ethics commission.** No later than January
22 1 of each year, the commission shall report to the legislature and the governor on the commission's
23 activities in the preceding year. The report must contain the names and duties of each individual employed
24 by the commission and a summary of commission determinations and advisory opinions. The commission
25 shall prevent disclosure of the identity of a person involved in a confidential advisory opinion. The report
26 may contain other information on matters within the commission's jurisdiction and recommendations for
27 legislation.

28
29 **NEW SECTION. Section 32. Publication of information.** The commission shall publish and make
30 available explanatory information concerning [sections 1 through 48], the duties imposed by [sections 1

1 through 48], and the means for enforcing [sections 1 through 48].

2
3 NEW SECTION. Section 33. Education outreach. The commission shall, within 6 months of [the
4 effective date of sections 1 through 48], implement the educational programs that it considers necessary
5 to effectuate [sections 1 through 48] and produce educational materials, in plain language, explaining the
6 obligations of public officials and public employees.

7
8 NEW SECTION. Section 34. Oaths and subpoenas. The commission may administer oaths and
9 affirmations for testimony of witnesses and issue subpoenas by a vote of three or more members for the
10 procurement of witnesses and materials relevant to the commissioner of political practice's investigations,
11 including books, papers, records, documents, or other tangible objects. Subpoenas are subject to judicial
12 enforcement.

13
14 NEW SECTION. Section 35. Other duties. The commission may perform other acts, duties, and
15 functions authorized by [sections 1 through 48] that it considers appropriate in connection with [sections
16 1 through 48].

17
18 NEW SECTION. Section 36. Complaints. (1) The commissioner of political practices shall accept
19 from an individual, either personally or on behalf of an organization or governmental body, a verified
20 complaint in writing that states the name of a person alleged to have committed a violation of [sections 1
21 through 48] and that sets forth the particulars of the violation.

22 (2) The commissioner of political practices shall forward a copy of the complaint and a general
23 statement of the applicable law with respect to the complaint to the person named in the complaint.

24 (3) If the commissioner of political practices determines that the complaint does not allege facts
25 sufficient to constitute a violation of [sections 1 through 48], the commissioner shall dismiss the complaint
26 and notify the complainant and the person named in the complaint. If the commissioner of political
27 practices determines that the complaint alleges facts sufficient to constitute a violation of [sections 1
28 through 48], an investigation may be conducted with respect to the alleged violation.

29 (4) If the commissioner of political practices determines that information that the commissioner has
30 received provides an adequate basis for the belief that a violation of [sections 1 through 48] has been

EXHIBIT 4
DATE 8-7-95
SB 136

committed and that an investigation of a possible violation is warranted, an investigation may be conducted with respect to the alleged violation.

(5) If the commissioner of political practices, during the course of an investigation or upon the receipt of information, finds probable cause to believe that a violation of [sections 1 through 48] has occurred, the commissioner may make a complaint in writing, stating the name of the person who is alleged to have committed the violation and setting forth the particulars of the violation.

NEW SECTION. Section 37. Amendment of complaint. (1) If a verified complaint has been filed or if the commissioner of political practices has issued a complaint, the commission may allow amendment of the complaint if additional violations of [sections 1 through 48] are alleged and verified by the original complainant or by the commissioner.

(2) An amended complaint must be approved through an order signed by a majority of the members of the commission. The original complainant or the commissioner of political practices shall forward a copy of the amended complaint to the person named in the complaint.

NEW SECTION. Section 38. Right to appear. (1) The commission shall allow a public official or public employee who is the subject of a complaint an opportunity to explain the conduct alleged to be in violation of [sections 1 through 48] at a preliminary hearing. A public official or public employee who is the subject of a complaint has the right to appear with or without legal counsel, to be heard under oath, and to offer information that may tend to exonerate the public official or public employee.

(2) Unless requested by the person named in the complaint, this hearing may not be open to the public.

NEW SECTION. Section 39. Right to request investigation of one's own conduct. A public official or public employee may request the commissioner of political practices to make an investigation of the individual's own conduct or of allegations made by another individual as to the public official's or public employee's conduct. The request must be in writing and must set forth in detail the reasons for requesting an investigation.

NEW SECTION. Section 40. Statute of limitations. (1) Action may not be taken on a complaint

1 filed more than 3 years after a violation of [sections 1 through 48] is alleged to have occurred.

2 (2) This section does not bar proceedings against a person who, by fraud or other device, prevents
3 discovery of a violation of [sections 1 through 48].
4

5 **NEW SECTION. Section 41. Referral of evidence of violation of law.** Notwithstanding of the
6 provisions of [sections 27 and 36 through 38], the commissioner of political practices may turn over to an
7 appropriate government agency upon request or as a matter of course apparent evidence of a violation of
8 law.
9

10 **NEW SECTION. Section 42. Authorization to conduct formal investigation.** (1) Before the
11 commissioner of political practices may subpoena a witness, take sworn statements, or compel the
12 production for examination of books and papers with respect to an investigation, the commissioner shall
13 file a notice of a complaint and formal investigation with the commission. The notice must define the
14 nature and scope of the commissioner of political practice's inquiry.

15 (2) The commission may, after a proceeding specified in [section 27], quash or limit the scope
16 of an investigation upon a showing of clear and convincing evidence that there is no basis for a
17 complaint and that the matter is frivolous.

18 (3) The commissioner of political practices shall complete a formal investigation within 60 days
19 of the decision to conduct a formal investigation. At the conclusion of the formal investigation, if the
20 commissioner of political practices determines that probable cause exists to believe that a violation of
21 [sections 1 through 48] has occurred, then the commissioner shall issue to the alleged violator a notice
22 to appear before the commission, setting forth:

23 (a) findings of fact and conclusions of law that demonstrate that probable cause exists to
24 believe a violation of [sections 1 through 48] has occurred;

25 (b) the date, time, and place that the hearing before the commission will take place pursuant
26 to provisions of the Montana Administrative Procedure Act; and

27 (c) the possible penalties or sanctions that may be imposed against the alleged violator if the
28 commission finds a violation of [sections 1 through 48] occurred.

29 (4) If the commissioner of political practices determines that no probable cause exists to
30 prosecute, then the commissioner shall file a written notice of no probable cause and findings and

1 conclusions with the commission.

2 (5) If the commissioner of political practices finds probable cause to believe that a violation of
3 [sections 1 through 48] occurred, the commissioner may waive further proceedings if the alleged
4 violator agrees to remedy or correct the alleged violation. The remedy may include the payment of fines
5 or the acceptance of other sanctions. The commissioner of political practice's waiver of further
6 proceedings may be contingent upon the alleged violator's timely and actual completion of the
7 recommended or voluntary corrective action. The commission may issue an order that approves the
8 remedial or corrective action taken by the alleged violator and the commissioner of political practice's
9 decision to waive further proceedings. The order is part of the public record. If the commission does
10 not approve the settlement of the matter as recommended by the commissioner of political practices,
11 then the commissioner shall issue a notice of hearing pursuant to subsection (3).

12 (6) If, at the end of an investigation, the commissioner of political practices determines that
13 the allegations made by the complainant were frivolous or groundless and were made recklessly or with
14 malice, the commissioner shall initiate an action against the complainant. The action must be pursued
15 in accordance with [section 36], and the commission may order the complainant to pay a civil penalty
16 of up to \$1,000 and to pay any attorney fees and other expenses related to the investigation of the
17 complaint.

18 (7) An action by the commissioner of political practices supersedes other civil remedies
19 available to the respondent for a malicious or frivolous complaint, but any other civil recovery arising
20 out of the same complaint must be reduced by the amount recovered under this section.

21
22 **NEW SECTION. Section 43. Hearing procedures.** (1) The commission shall conduct a hearing
23 pursuant to the provisions of Title 2, chapter 4, part 6, with the exception that if a hearings examiner
24 is appointed, the hearings examiner:

25 (a) must be a licensed attorney in the state of Montana;

26 (b) may not be a public official or full-time employee of the executive or legislative branch.

27 (2) The commissioner of political practices or the commissioner's designee shall prosecute the
28 case before the commission.

29 (3) If a hearings officer is appointed and a majority of the members of the commission are not
30 present at the hearing, the commission may not begin deliberations until the proposed decision prepared

1 by the hearings officer is served upon the commission and the parties and an opportunity is provided
2 for oral arguments to the commission.

3
4 NEW SECTION. **Section 44. Orders and recommendations.** (1) Within 60 days after the
5 conclusion of a hearing held to determine whether a violation of [sections 1 through 48] has occurred,
6 the commission shall issue a written decision containing findings of fact and conclusions of law. The
7 commission shall send its decision to the person who is the subject of the hearing, the complainant,
8 and the commissioner of political practices.

9 (2) If the commission determines that a violation of [sections 1 through 48] occurred, the
10 written decision must contain one or more of the following orders or recommendations:

11 (a) in the case of a state official liable to impeachment, a recommendation to the presiding
12 officer of each house of the legislature that the official be removed from office;

13 (b) in the case of a public official or public employee, a recommendation to the appropriate
14 appointing authority that the official or employee be censured, suspended, or removed from office or
15 employment;

16 (c) in the case of a member of the state legislature, a recommendation to the presiding officer
17 of the appropriate house of the legislature that the legislator be censured, suspended, or removed from
18 office;

19 (d) an order requiring the public official or public employee to conform the official's or
20 employee's conduct to the requirements of [sections 1 through 48];

21 (e) an order requiring the public official or public employee to pay a civil penalty of not more
22 than \$2,000 for each violation of [sections 1 through 48]. The attorney general, when requested by
23 the commission, shall institute proceedings to recover a fine or forfeiture incurred under this section
24 that is not paid by, or on behalf of, the person against whom it is assessed.

25 (f) other orders or recommendations, including:

26 (i) forfeiture of gifts, receipts, or profits obtained through a violation of [sections 1 through 48];

27 (ii) voiding of a state action obtained through a violation of [sections 1 through 48]; or

28 (iii) a combination of orders or recommendations, as necessary and appropriate, consistent with
29 [sections 1 through 48].

30 (3) A fine imposed by the commission, a disciplinary action taken by an appropriate authority,

EXHIBIT

4

DATE

3-7-95

SB 136

or a determination not to take disciplinary action made by an appropriate authority is a public record.

(4) This section does not limit the power of:

(a) either chamber of the legislature to discipline its own members or to impeach a public official; or

(b) a department to discipline its officials or employees.

NEW SECTION. Section 45. Action by attorney general. (1) The attorney general may recover a fee, compensation, gift, or profit received by a person as a result of a violation of [sections 1 through 48]. A request to the attorney general for an action under this section must be as timely as possible after the decision of the commission.

(2) Action taken by the attorney general under this section must be brought no later than 1 year after a determination of a violation of [sections 1 through 48]. The action must be undertaken in the name of the commission.

NEW SECTION. Section 46. Public inspection of records. (1) Except as provided in subsection (2), all commission records are open for public inspection during normal business hours.

(2) The following records are not open for public inspection:

(a) records obtained in connection with a request for an advisory opinion. The commission may make records described by this subsection (a) public with the consent of the individual to whom the records pertain.

(b) records obtained or prepared by the commission in connection with an investigation or complaint, except:

(i) records made public in the course of a hearing;

(ii) verified complaints filed with the commission;

(iii) complaints issued by the commission;

(iv) probable cause decisions with findings of fact and conclusions of law;

(v) decisions with findings of fact and conclusions of law issued after a hearing;

(vi) a determination made by the commission regarding a rehearing; and

(vii) a settlement entered into by the commission and a respondent.

(3) A person who makes or purports to make public the substance or a portion of a confidential

1 advisory opinion requested by or on behalf of that person has waived the confidentiality of the request
2 for an advisory opinion and of the record obtained by the commission in connection with the request
3 for an advisory opinion.

4 (4) The commission may publicly respond to a statement or interpretation made concerning the
5 contents of an advisory opinion or decision that it has issued or is purported to have issued.

6
7 **NEW SECTION. Section 47. Forfeiture of pension and retirement benefits.** (1) A public official
8 or public employee, or a survivor, an heir, a successor, or the estate of a public official or public
9 employee, who is convicted of a felony relating to or arising out of the official's or employee's public
10 service may not receive that portion of pension or retirement benefits and interest on the benefits paid
11 by a public entity or public employer.

12 (2) A public official or public employee entering public service subsequent to October 1, 1995,
13 is considered to have consented to this section as a condition of employment.

14
15 **NEW SECTION. Section 48. Tax treatment of fines and repayments.** (1) A fine, penalty,
16 reimbursement, or other payment ordered by the commission or court in connection with making the
17 government whole for a transaction improperly entered into by a public official, public employee, or
18 consultant or a family member of a public official, public employee, or consultant does not qualify for
19 a state or local tax credit or deduction.

20 (2) The guilt or innocence of a party making a payment under subsection (1) does not affect
21 state or local tax consequences.

22
23 **Section 49.** Section 2-2-125, MCA, is amended to read:

24 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of
25 commission of any act enumerated in this section is proof that the actor has breached ~~his~~ the actor's
26 fiduciary duty.

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

28 (a) engage in a substantial financial transaction for ~~his~~ the individual's private business
29 purposes with a person whom ~~he~~ the individual inspects or supervises in the course of ~~his~~ the
30 individual's official duties; or

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

(3) A member of the governing body of a local government may perform an official act, notwithstanding this section, when ~~his~~ the member's participation is necessary to obtain a quorum or otherwise enable the body to act, if ~~he~~ the member complies with ~~the voluntary disclosure procedures under 2-2-131~~ [section 7]."

Section 50. Section 2-15-1814, MCA, is amended to read:

"2-15-1814. Board of housing -- allocation -- composition -- quasi-judicial. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 2-15-124. The members ~~shall~~ must be informed and experienced in housing, economics, or finance.

(3) The board shall elect a ~~chairman~~ presiding officer and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(6) In compliance with the state pay plan, the department shall provide all staff and services to the board as are determined by the board in conjunction with the department to be necessary for the purposes of carrying out the board's programs. The department shall assess the board for reasonable costs.

(7) A member of the board ~~shall not be deemed~~ is not considered to have a conflict of interest under the provisions of ~~2-2-201~~ [section 7] merely because the member is a stockholder, officer, or employee of a lending institution who may participate in the board's programs."

Section 51. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

- 1 (3) officers and employees of the legislative branch;
- 2 (4) judges and employees of the judicial branch;
- 3 (5) members of boards and commissions appointed by the governor, the legislature, or other
- 4 elected state officials;
- 5 (6) officers or members of the militia;
- 6 (7) agency heads appointed by the governor;
- 7 (8) academic and professional administrative personnel with individual contracts under the
- 8 authority of the board of regents of higher education;
- 9 (9) academic and professional administrative personnel and live-in houseparents who have
- 10 entered into individual contracts with the state school for the deaf and blind under the authority of the
- 11 state board of public education;
- 12 (10) teachers under the authority of the department of corrections and human services or family
- 13 services;
- 14 (11) investment officer, assistant investment officer, executive director, and three professional
- 15 staff positions of the board of investments;
- 16 (12) four professional staff positions under the board of oil and gas conservation;
- 17 (13) assistant director for security of the Montana state lottery;
- 18 (14) executive director and senior investment officer of the Montana board of science and
- 19 technology development;
- 20 (15) executive director and employees of the state compensation insurance fund;
- 21 (16) state racing stewards employed by the executive secretary of the Montana board of
- 22 horseracing;
- 23 (17) executive director of the Montana wheat and barley committee; ~~and~~
- 24 (18) commissioner of banking and financial institutions; and
- 25 (19) executive director and staff of the Montana ethics commission."
- 26

27 **Section 52. Section 5-11-203, MCA, is amended to read:**

28 **"5-11-203. Distribution of session laws -- inspection of journals.** (1) Immediately after the

29 session laws are published, the legislative council shall distribute them.

30 (2) The council shall make the house and senate journals available for inspection or copying

EXHIBIT 4
DATE 3-7-95
SB 136

1 by the public as provided in Title 2, chapter 6, part 1. The council may publish the journals in an
2 electronic format.

3 (3) The following entities may receive the number of copies of session laws listed at no cost:

4 (a) to the library of congress, eight copies;

5 (b) to the state library, two copies;

6 (c) to the state historical library, two copies;

7 (d) to the state law librarian, four copies for the use of the library and additional copies as may
8 be required for exchange with libraries and institutions maintained by other states and territories and
9 public libraries;

10 (e) to the library of each custodial institution, one copy;

11 (f) to each Montana member of congress, each United States district judge in Montana, each
12 of the judges of the state supreme and district courts, and each of the state elected officers ~~as defined~~
13 ~~in 2-2-102(8)~~ and directors of executive branch agencies, one copy;

14 (g) to any agency, board, commission, or office of the state, other than a state officer, and to
15 any other subdivision of the state upon request and approval by the legislative council, one copy;

16 (h) to each member of the legislature, the secretary of the senate, and the chief clerk of the
17 house of representatives from the session at which the laws were adopted, one copy;

18 (i) to each of the community college districts of the state, as defined in 20-15-101, and each
19 unit of the Montana university system, one copy;

20 (j) to each county clerk, one copy for the use of the county; and

21 (k) to each county attorney and to each clerk of a district court, one copy."

22

23 **Section 53.** Section 18-4-141, MCA, is amended to read:

24 **"18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) ~~No A~~
25 contract or order or any interest ~~therein~~ in the contract or order may not be transferred, assigned, or
26 subcontracted by the party to whom the contract or order is given to any other party without the
27 express written approval of the state, and the state may declare void any unapproved transfer,
28 assignment, or subcontract. ~~No~~ The approval of a transfer, assignment, or subcontract may not release
29 the original obligor or ~~his~~ the obligor's sureties from their obligations to the state under the contract or
30 order.

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

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

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

12
13 **Section 54.** Section 49-2-303, MCA, is amended to read:

14 **"49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

15 (a) an employer to refuse employment to a person, to bar a person from employment, or to
16 discriminate against a person in compensation or in a term, condition, or privilege of employment
17 because of race, creed, religion, color, or national origin or because of age, physical or mental disability,
18 marital status, or sex when the reasonable demands of the position do not require an age, physical or
19 mental disability, marital status, or sex distinction;

20 (b) a labor organization or joint labor management committee controlling apprenticeship to
21 exclude or expel any person from its membership or from an apprenticeship or training program or to
22 discriminate in any way against a member of or an applicant to the labor organization or an employer
23 or employee because of race, creed, religion, color, or national origin or because of age, physical or
24 mental disability, marital status, or sex when the reasonable demands of the program do not require
25 an age, physical or mental disability, marital status, or sex distinction;

26 (c) an employer or employment agency to print or circulate or cause to be printed or circulated
27 a statement, advertisement, or publication or to use an employment application that expresses, directly
28 or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or
29 mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless
30 based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with ~~2-2-302 and 2-2-303~~ [section 4], which ~~prohibit~~ prohibits nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents."

Section 55. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to ~~assure~~ ensure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure ~~utilization~~ use of minority group persons.

(5) Compliance with ~~2-2-302 and 2-2-303~~ [section 4], which ~~prohibit~~ prohibits nepotism in

1 public agencies, may not be construed as a violation of this section."

2

3 **Section 56.** Section 90-3-303, MCA, is amended to read:

4 **"90-3-303. Investments to board members prohibited.** (1) Board members may not personally
5 apply for or receive board funds, except as provided in 2-15-124. If an organization with which a
6 member is affiliated applies for board funds, the member ~~must~~ shall disclose the nature of the affiliation
7 and may not participate in the decisionmaking process of the board regarding the application.

8 (2) The provisions of ~~2-2-204~~ [section 9] do not apply to board members."

9

10 **NEW SECTION. Section 57. Repealer.** Sections 2-2-101, 2-2-102, 2-2-104, 2-2-105,
11 2-2-111, 2-2-112, 2-2-121, 2-2-131, 2-2-132, 2-2-201, 2-2-202, 2-2-203, 2-2-204, 2-2-205, 2-2-206,
12 2-2-207, 2-2-301, 2-2-302, 2-2-303, and 2-2-304, MCA, are repealed.

13

14 **NEW SECTION. Section 58. Severability.** If a part of [this act] is invalid, all valid parts that
15 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of
16 its applications, the part remains in effect in all valid applications that are severable from the invalid
17 applications.

18

-END-

STATE OF MONTANA - FISCAL NOTE

EXHIBIT 4DATE 3-7-95Fiscal Note for SB0115, as introducedSB 136DESCRIPTION OF PROPOSED LEGISLATION:

An act providing ethics provisions to govern the conduct of executive and legislative branch officials and employees.

ASSUMPTIONS:Secretary of State's Office:

1. The Ethics Commission will be a separate agency administratively attached to the Secretary of State's Office for purposes of centralizing administrative functions only. Administrative functions to be handled by the Secretary of State's Office will be limited to payroll, accounting, and computer network services. The Secretary of State's Office shall have no role in the management or decision making of the Ethics Commission.
2. As a general function of government, the Ethics Commission should begin as a general fund entity. However, the Ethics Commission should consider applying for funding under the Statewide Cost Allocation Plan (SWCAP) for its continuing operation to abate future general fund expenditures.
3. The effective date of the bill is October 1, 1995. The Ethics Commission staff will be employed for nine months of fiscal 1996 and will include 1.00 FTE Grade 18 executive director and 2.00 FTE Grade 9 administrative support positions.
4. Operating expenses for commission members and the staff include telephone charges, travel reimbursement, office rent, publication expenses, and routine office expenses. Equipment expenses include personal computers, a printer, computer software, office furniture, and a facsimile machine.

Commissioner of Political Practices:

5. Additional responsibilities required by this bill include collecting, filing, and reviewing for compliance all statements of financial interests at various required times with some "floating" dates. Statements of financial interests would be required for elected officials, high-level state employees, and individuals nominated to become a public official or public employee, "public members" appointed to "a noncompensated, part-time position on a board, commission, or council", and consultants entering into a contractual relationship with the state or a political subdivision if the consultant or a member of the household of the consultant has an economic interest.
6. Formal investigation and prosecution of complaints of violation of the ethics code would include assessing technical violation penalties, acceptance of complaints, holding hearings, and following the rules of the Montana Administrative Procedures Act. In addition, prosecution of alleged violations before the Montana Ethics Commission would be extensive.
7. The effective date of the bill is October 1, 1995. Additional staff that will be employed for nine months during fiscal 1996 include 1.00 FTE Grade 18 attorney, 1.00 FTE Grade 14 investigator, 1.00 FTE Grade 12 secretary, and 1.00 FTE Grade 9 administrative clerk.
8. Operating expenses include contracted services for hearings officers, telephone charges, training, and routine office expenses.
9. Office remodeling costs of \$17,016 will be incurred in fiscal 1996 to accommodate the additional FTE. Purchases of personal computers, printers, and office equipment in fiscal 1996 will amount to \$15,300. (continued)

(Continued)

Dave Lewis 1-20-95
DAVE LEWIS BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dorothy Eck 1/21/95
DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0115, as introduced**SB 115**

(continued)

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
<u>Ethics Commission:</u>	<u>Difference</u>	<u>Difference</u>
FTE	2.25	3.00
Personal Services	65,100	87,103
Operating Expenses	33,919	37,604
Equipment	<u>17,855</u>	<u>2,093</u>
Total	116,874	126,800
Funding:		
General Fund (01)	116,874	126,800

Commissioner Political Practices:

FTE	3.00	4.00
Personal Services	92,580	123,873
Operating Expenses	36,056	25,387
Equipment	<u>15,300</u>	<u>0</u>
Total	143,936	149,260
Funding:		
General Fund (01)	143,936	149,260

Revenues:

General Fund - copying fees (01)	1,000	2,000
----------------------------------	-------	-------

Net Impact:

General Fund (01)	(259,810)	(274,060)
-------------------	-----------	-----------

3/2/95

SB136

HOUSE BILL NO. 571

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE DISCLOSURE OF CONFLICT OF INTEREST LAW AND RULES OF CONDUCT FOR LEGISLATORS; REQUIRING DISCLOSURE OF A CONFLICT OF INTEREST; AND AMENDING SECTIONS 2-2-104, 2-2-111, AND 2-2-112, MCA."

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

Section 1. Section 2-2-104, MCA, is amended to read:

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

(a) disclose or use confidential information acquired in the course of ~~his~~ the officer's or employee's official duties in order to further substantially ~~his~~ the officer's or employee's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift: (i) ~~which that~~ would tend improperly to influence a reasonable person in ~~his~~ that position to depart from the faithful and impartial discharge of ~~his~~ the officer's or employee's public duties; or

(ii) ~~which he~~ that the officer or employee knows or ~~which that~~ a reasonable person in ~~his~~ that position should know under the circumstances is primarily for the purpose of rewarding ~~him~~ the officer or employee for official action ~~he has~~ taken.

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

Section 2. Section 2-2-111, MCA, is amended to read:

"2-2-111. Rules of conduct for legislators. (1) Proof of commission of any act enumerated in this

1 ~~section~~ subsection is proof that the legislator committing the act has breached ~~his~~ a fiduciary duty. A
2 legislator may not:

3 ~~(1)(a)~~ (a) accept a fee, contingent fee, or any other compensation, except ~~his~~ the legislator's official
4 compensation provided by statute, for promoting or opposing the passage of legislation;

5 ~~(2)(b)~~ (b) seek other employment ~~for himself~~ or solicit a contract for ~~his~~ the legislator's services by
6 the use of ~~his~~ the legislator's office;

7 (c) disclose or use confidential information acquired in the course of the legislator's official duties
8 in order to further the legislator's personal economic interests;

9 (d) accept or receive, directly or indirectly, a gift or substantial economic benefit as a gratuity from
10 a person or entity, except as provided in this section;

11 (e) accept a substantial gift or other gratuity if it could reasonably be inferred that the gift or
12 gratuity is intended to improperly influence the performance of the legislator's official duties, actions, or
13 judgments;

14 (f) accept a substantial gift or gratuity that the legislator knows or should under the circumstances
15 know is primarily for the purpose of rewarding the legislator for official action that the legislator has taken.

16 (2) A legislator may accept reimbursement for reasonable food, travel, lodging, and other expenses
17 incurred to attend a meeting at which the legislator has a speaking engagement, participates in a panel
18 discussion, or otherwise engages in an activity in the legislator's official capacity.

19 (3) (a) An economic benefit tantamount to a gift includes without limitation:

20 (i) a loan at a rate of interest substantially lower than the commercial rate then currently prevalent
21 for similar loans; and

22 (ii) compensation that is received for private services rendered and that is at a rate substantially
23 exceeding the fair market value of the services.

24 (b) Campaign contributions reported as required by statute are not gifts or economic benefits
25 tantamount to gifts."

26
27 **Section 3.** Section 2-2-112, MCA, is amended to read:

28 **"2-2-112. Ethical principles Conflict of interest rules for legislators.** ~~(1) The principles in this~~
29 ~~section are intended only as guides to legislator conduct and do not constitute violations as such of the~~
30 ~~public trust of legislative office.~~

(2)(1) When a legislator ~~must take~~ takes official action on a legislative matter as to which ~~he the~~ legislator has a conflict created by a ~~personal or~~ financial interest ~~which that~~ that would be directly and substantially affected by the legislative matter, ~~he should consider disclosing~~ the legislator shall disclose or ~~eliminating~~ eliminate the interest creating the conflict or ~~abstaining~~ abstain from the official action. In making ~~his this~~ this decision, ~~he the legislator~~ the legislator should further consider:

(a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

(b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the legislature; and

(c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition of the matter.

(2) A conflict situation does not arise from legislation affecting the entire membership of a class.

~~(4)(3) If a~~ A legislator who elects to disclose or eliminate the interest creating the conflict, ~~he or~~
who elects to abstain shall do so as provided in the joint rules of the legislature."

-END-

EXHIBIT NO. 6DATE 3/2/95BILL NO. SP 136

HOUSE BILL NO. 362

INTRODUCED BY FORBES, BOHARSKI, DENNY, JORE, DEVANEY, BRAINARD, BARNETT, MURDOCK,
MCGEE, MCKEE, T. NELSON. M. HANSON, ANDERSON, BERGMAN, DEBRUYCKER, KASTEN, SOFT,
SIMON, S. HANSON, AHNER, BOHLINGER, SOMERVILLE, KEENAN, OHS, KNOX, GRINDE, SIMPKINS,
STANG, L. SMITH, KITZENBERG, WISEMAN, MOLNAR, SLITER, S. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE RESTRICTIONS ON THE USE OF PUBLIC
FUNDS, PUBLIC TIME, AND PUBLIC SUPPLIES AND EQUIPMENT TO SUPPORT OR OPPOSE ANY
POLITICAL COMMITTEE, THE NOMINATION OR ELECTION OF ANY PERSON TO PUBLIC OFFICE, OR THE
PASSAGE OR DEFEAT OF A BALLOT ISSUE; REQUIRING DISCLOSURE OF COSTS FOR ISSUING PUBLIC
STATEMENTS; AND AMENDING SECTION 13-35-226, MCA."

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

Section 1. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) (a) It is unlawful for any employer,
in paying his employees the salary or wages due them, to include with their pay the name of any candidate
or any political mottoes, devices, or arguments containing threats or promises, {express or implied},
calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an
employer to exhibit in a place where his the employer's workers or employees may be working any handbill
or placard containing any threat, promise, notice, or information that:

(i) in case any particular ticket or political party, organization, or candidate is elected;

(A) work in his the employer's place or establishment will cease, in whole or in part, or will be
continued or increased;

(B) his the employer's place or establishment will be closed; or

(C) the salaries or wages of his the employer's workers or employees will be reduced or increased;
or

(ii) ~~other threats or promises (express or implied)~~ is intended or calculated to influence the political
opinions or actions of his the employer's workers or employees.

(b) This section ~~shall apply~~ applies to corporations, individuals, and public officers and employees.

1 (2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or
2 oppose any political committee, the nomination or election of any person to public office, or the passage
3 of a ballot issue.

4 (3)(a) ~~No~~ A public officer or public employee may not solicit support for or opposition to any
5 political committee, the nomination or election of any person to public office, or the passage or defeat of
6 a ballot issue while on the job or at ~~his~~ the employee's place of employment. Subject to subsection (3)(b),
7 a public officer or public employee may not use public funds, public time, or public supplies or equipment
8 to support or oppose any political committee, the nomination or election of any person to public office, or
9 the passage or defeat of a ballot issue.

10 (b) Subsection (3)(a) does not prohibit an elected public official from issuing PUBLIC statements
11 concerning matters within the scope of the official's office. HOWEVER, A DOCUMENT THAT IS PUBLISHED
12 PURSUANT TO THIS SUBSECTION (3)(B) AND THAT IS AIMED AT SUPPORTING OR OPPOSING A
13 POLITICAL COMMITTEE, A CANDIDATE, OR A BALLOT ISSUE MUST INCLUDE A WRITTEN STATEMENT
14 DISCLOSING THE COSTS INCURRED TO PRODUCE THE DOCUMENT. THE STATEMENT MUST MEET THE
15 SPECIFICATIONS DESCRIBED IN 18-7-306, AND THE COSTS MUST BE ESTIMATED BASED ON THE
16 FACTORS LISTED IN 18-7-307. DOCUMENTATION OF THE COST OF PUBLICATION MUST BE FILED WITH
17 THE COMMISSIONER OF POLITICAL PRACTICES. However, nothing in this This section is intended to does
18 not restrict the right of a public employee to express ~~his~~ personal political views.

19 (c) As used in this subsection (3), "public official" and "public employee" include officers and
20 employees of state and local government, including school districts and other special districts.

21 (4) ~~Any~~ A person who violates the provisions of this section shall be fined not to exceed \$1,000,
22 be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense."

23 -END-

NO. 6

March 7, 1945

SB 136

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136 as introduced
General conflict of interest prohibitions in decisions making actions	Section 7 prohibits voting or participation when person has direct foreseeable pecuniary interests in matter. Excludes matters in which person is a member of a class of people. Leg. creates its own rules.	2-2-112 provides guidelines for leg to not participate when matter directly affects personal or financial interest. Other officials prohibited from participating in matters if they have financial interest in matter. 23-7-203 prohibits members of the legislative liaison to state lottery from owing gambling devices.	Strict prohibition from participating in any matter that legislator or family to fourth degree in has financial interest in. Legislature creates ethics committees to deal with conflict of interest matters. Section 3.
Use of office title for personal gain. Section	Section 8 (6) Prohibits the use of title or prestige of office to obtain anything of value.	Legislators may not use office to obtain employment or contract. 2-2-111(2)	No change from existing law.
Prohibition from state employee from receiving two salaries at the same time for being a legislator and state employment	Does not address this issue. No change from existing law.	No specific provision. Handled by the agencies individually as a personnel matter. State law required all employers permit employees to attend leg	Prohibits double dipping of public employee serving in the leg. Does not address federal employees. Section 1.
Use of confidential information for personal gain	Generally prohibited in matters such as fraud or collusion in public contract or receipt of gifts. Section 8 and 9	Prohibits use of confidential info for person gain 2-2-103(1)(a)	No change from existing law.
Personal interest in public in Contracts	Extensive prohibition found in Section 9, exceptions made for competitive bid or auction bidding	Similar provisions found in 2-2-201 et seq.	No change from existing law.
Nepotism	Very similar to existing law. Section 4.	Prohibition against hiring or promoting the family members to the 4 consanguinity. Some exclusions. Section 2-2-301 et seq	No change from existing law.
Prohibitions against gifts from lobbyists, and others	Prohibits gifts or meals over \$25 if part of influencing a vote (generally prohibit lobbyist from making gifts over 25 per occasion). Can not receive "anything of value" that can be construed as influencing an official act. Section 8	Prohibits substantial gifts that would tend to improperly influence a reasonable person. 2-2-104	No change from existing law.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Outside employment restrictions	Limitations on public contracts. Section 9. Prohibits or limits involvement in matters of representing others before state agencies. Section 6. Limits regulating one's own business. Section 7.	Similar to SB 115. Contracts 2-2-201, Prohibitions on representation 2-2-121(2)(c)(d), limits regulating one's own business 2-2-121(2)(b)	Adds legislators to these restrictions regarding representing others. Section 4.
Misuse of office for personal or political purposes	Prohibits use of office for personal or political activities unless incidental to function of office. Certain exception may permit limited non-governmental activities. Permits legislative exceptions established in joint rule. Section 5.	May not use state office for private business purposes. 2-2-121. Public employees may not campaign while on the job. 13-35-226.	Prohibits use of office for political purposes unless it is incidental to the office. Excludes legislators, Section 4. This section adds to existing law.
Limitation of post-employment activities	Creates limitations in dealing with former agency or gov. depending on the level of employment. Post-employment restrictions generally last 1 year. Legislators prohibited from lobbying for one year after the expiration of their term of office. Section 11	Officer or employee should not get involved with matter he was directly involved with during employment for months following employment. 2-2-105(3)	Same as existing law but specifies 12 month period to not having any involvement
Reporting of financial interests	Requires extensive reporting requirements for state public officials, high level employees, public member boards, consultants to contacts, and candidates. Sections 13 - 15 Gifts with an aggregate value over \$500 would have to be reported. Would not report meals etc received from lobbyists.	Requires reporting of limited business information by state public officials and their families 5-7-213. Permits voluntary conflict of interest disclosures 2-2-131. Lobbyist principle required to report certain expenditures of public officials 5-7-208.	No change from existing law.

Activity or action	SB 115	Current law 2-2-101 et seq	SB 136
Restrictions against representing others before gov. agencies	Prohibits representing anyone before other state agencies by public officials and high level public employees. Other employees may not represent another before their own agency. Legislators would be restricted from representing others before state agencies during session. Legislators could do constituent representation. Section 6	Prohibits state employees and officers from representing others for a fee before their own or a contingent fee other state agencies. 121(1)(c)(d)	Adds legislators to this restriction. Section 4.
Education of regarding matters of ethical conduct.	Provides for establishing an education program for state officers and employees. Section 33.	No provision for education	No change from existing law.
Ethics advisory opinions.	Provides for ethics advisory opinions by ethics commission. Provides for confidentiality for informal opinions. Section 26	No advisory opinions available because section 2-2-132 found unconstitutional.	No change from existing law.
Enforcement provisions.	Provides for the Commissioner of Campaign Practices to investigate and prosecute ethics violation complaints. The Ethics Commission would adjudicate the cases and issue orders. Criminal matters referred to county attorney or attorney general. Sections 36-44	Enforcement performed by county attorney using trust law 72-34-105 as the basis for initiating an action. Section 2-2-103. Criminal matters handled by county attorney or attorney general.	Leaves existing law as is but adds criminal violation for violations of 2-2-121. Provides civil penalties but does not specify if that is tied to county attorney prosecution or agency action.
Sanctions for violations.	Penalties include civil fines up to \$2,000 per offence and recommendations for disciplinary action by agency or appropriate authority. Also permits loss of pension and other employment benefits upon conviction of office related felony. Section 44, 47 No change in criminal violations.	Violation of 72-34-105 would probable provide that the benefit of the gain would have to be returned or the contract would be voided. Criminal statutes would result in fine or imprisonment.	Civil penalty between \$50 to \$1,000. Criminal penalty between \$50 to \$1,000, 6 mo jail time. Section 4. Adds penalties for local government ethics violations.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Protection against malicious prosecution.	Provides for fine for malicious complaints and potential payment of other party attorney fees. Section 3	Common law tort malicious prosecution.	Attorney fees available from losing party for legislative conflict of interest violations. Section 3 Statute not clear if this suggest that citizen suits possible. Otherwise common law malicious prosecution tort possible.
Treatment of local governments	Leaves existing law the same	Local gov. officers and employees generally prohibited from having a financial interest in a matter they inspect supervise or perform an official act affecting their financial interest. 2-2-125	Adds local government officials and employees to treatment similar to state employees and officers.
Confidentiality of investigations	Investigations would be confidential until concluded. Section 30.	No provision	No provision
Negotiation for future employment while serving in office or employment.	Section 10 prohibits altering actions in order to obtain future employment	Requires notification of supervisor to negotiate with potential employee that person regulates. Section 2-2-121(f)	No change from existing law
Right to call investigation on one's conduct	Section 39 permits an individual the right to have an investigation on one's own conduct.	No provision	No provision

DATE 3-7-95

SENATE COMMITTEE ON Ethics - Joint

BILLS BEING HEARD TODAY: SB 115 SB 136

HB 571

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bill Olson	AARP	SB 115	✓	
Deborah Smith	Common Cause	All	✓	
J.V. Bennett	Mont PIRG	All	✓	
Chas Imhoff	MT League of Women Voters	ALL		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY