

1 INTRODUCTION BY H BILL NO. 462
 2 Alley Holmes
 3 Alley Holmes

4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE
 5 XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE
 6 A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY
 7 AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL
 8 OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY;
 9 AMENDING SECTION 94-7-401, R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Statement of purpose. The purpose of this
 13 act is to set forth a code of ethics prohibiting conflict
 14 between public duty and private interest as required by the
 15 constitution of Montana. This code recognizes distinctions
 16 between legislators, other officers and employees of state
 17 government, and officers and employees of local government,
 18 and prescribes some standards of conduct common to all
 19 categories and some standards of conduct adapted to each
 20 category. The provisions of this act recognize that some
 21 actions are conflicts per se between public duty and private
 22 interest while other actions may or may not pose such
 23 conflicts depending upon the surrounding circumstances.

24 Section 2. Definitions. As used in this act the
 25 following definitions apply:

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

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

9 (3) "Employee" means any temporary or permanent
 10 employee of the state or any subdivision thereof, or member
 11 of the judiciary, including a member of a board, commission,
 12 or committee except a legislator and an employee under
 13 contract to the state.

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

- 16 (a) an ownership interest in a business;
- 17 (b) a creditor interest in an insolvent business;
- 18 (c) an employment or prospective employment for which
- 19 negotiations have begun;
- 20 (d) an ownership interest in real or personal
- 21 property;
- 22 (e) a loan or other debtor interest; or
- 23 (f) a directorship or officership in a business.

24 (5) "Official act" or "official action" means a vote,
 25 decision, recommendation, approval, disapproval or other

1 action, including inaction, which involves the use of
2 discretionary authority.

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

6 (7) "State agency" includes the state; the legislature
7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

12 (8) "State officer" includes all elected officers and
13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
18 public officers, legislators, and employees. A public
19 officer, legislator, or employee shall carry out his duties
20 for the benefit of the people of the state. He may not use
21 his office, the influence created by his official position,
22 or the inside information gained by virtue of that position,
23 to advance any of his own, his relative's, or his
24 associate's personal economic interests, other than
25 advancing such strictly incidental benefits as may accrue to

1 any of them from the enactment or administration of laws
2 affecting the public generally.

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty under this section
5 is liable to the people of the state as a trustee of
6 property is liable to a beneficiary under 86-310 and shall
7 suffer such other liabilities as a private fiduciary would
8 suffer for abuse of his trust. The county attorney of the
9 county where the trust is violated may bring appropriate
10 judicial proceedings on behalf of the people. Any moneys
11 collected in such actions shall be paid to the general fund
12 of the county.

13 (3) This section sets forth the fundamental standard
14 of conduct for all public officers, legislators, and
15 employees. The following sections set forth various rules of
16 conduct, the transgression of any of which is, as such, a
17 violation of this standard, and various ethical principles,
18 the transgression of which may, in some cases, contribute to
19 a violation of this standard. The enumeration of prohibited
20 acts and cautioned acts does not exculpate an act not thus
21 enumerated if that act amounts to a breach of fiduciary
22 duty.

23 Section 4. Rules of conduct for all public officers,
24 legislators, and employees. (1) Proof of commission of any
25 act enumerated in this section is proof that the actor has

1 breached his fiduciary duty. A public officer, legislator,
2 or employee may not:

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

6 (b) accept a gift or accept an economic benefit
7 tantamount to a gift under circumstances from which it can
8 reasonably be inferred that a major purpose of the gift is
9 to influence him in the performance of his official duties
10 or to reward him for official action he has taken.

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

19 Section 5. Rules of conduct for legislators. Proof of
20 commission of any act enumerated in this section is proof
21 that the legislator committing the act has breached his
22 fiduciary duty. A legislator may not:

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

1 legislation;

2 (2) seek other employment for himself or contract for
3 his services by the use or attempted use of his office.

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

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

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

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

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

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

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

24 (3) A department head or a member of a quasi-judicial
25 or rule-making board may perform an official act

1 notwithstanding subsection (2) (e) if his participation is
2 necessary to the administration of a statute and if he
3 complies with the voluntary disclosure procedures under
4 [section 10].

5 Section 7. Rules of conduct for local government
6 officers and employees. (1) Proof of commission of any act
7 enumerated in this section is proof that the actor has
8 breached his fiduciary duty.

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

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

14 (b) perform an official act directly affecting a
15 business or other undertaking in which he either has a
16 substantial financial interest or is engaged as counsel,
17 consultant, representative, or agent.

18 (3) A member of the governing body of a local
19 government may perform an official act notwithstanding this
20 section when his participation is necessary to obtain a
21 quorum or otherwise enable the body to act, if he complies
22 with the voluntary disclosure procedures under [section 10].

23 Section 8. Ethical principles for legislators. (1) The
24 principles in this section are intended only as guides to
25 legislator conduct and do not constitute violations as such

1 of the public trust of legislative office.

2 (2) Whenever feasible and taking into account the
3 fact that legislative service is part-time, a legislator
4 should avoid accepting or retaining an economic benefit
5 which presents a substantial threat to his independence of
6 judgment.

7 (3) When a legislator must take official action on a
8 legislative matter as to which he has a conflict situation
9 created by a personal, family, or client legislative
10 interest, he should consider eliminating the interest
11 creating the conflict or abstaining from the official
12 action. In making his decision, he should further consider:

13 (a) whether the conflict impedes his independence of
14 judgment;

15 (b) the effect of his participation on public
16 confidence in the integrity of the legislature; and

17 (c) whether his participation is likely to have any
18 significant effect on the disposition of the matter.

19 (4) A conflict situation may arise from legislation
20 affecting less than the entire statewide membership of a
21 class but does not arise from legislation affecting the
22 entire statewide membership of a class. Examples of a class
23 are all ranchers, all teachers in the public schools, or all
24 members of a licensed profession or occupation.

25 Section 9. Ethical principles for all public officers,

1 legislators, and employees. (1) The principles in this
 2 section are intended as guides to conduct and do not
 3 constitute violations as such of the public trust of office
 4 or employment in state or local government. However, failure
 5 to observe one of these principles may be taken as evidence
 6 tending to establish, in conjunction with all the other
 7 facts of a case, a breach of fiduciary duty.

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

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

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

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

13 Section 11. Powers of the commissioner. The
 14 commissioner of campaign finances and practices may:

15 (1) issue and cause to be published advisory opinions,
 16 with such deletions as may be necessary to protect the
 17 identity of the requesting party, at the request of a public
 18 officer, legislator, or employee contemplating an action
 19 which may or may not be a breach of his fiduciary duty;

20 (2) keep and permit reasonable public access to
 21 voluntary disclosure statements;

22 (3) make rules for the conduct of his affairs under
 23 this chapter.

24 Section 12. Section 94-7-401, B.C.H. 1947, is amended
 25 to read as follows:

1 "94-7-401. Official misconduct. (1) A public servant
2 commits the offense of official misconduct when, in his
3 official capacity, he commits any of the following acts:

4 (a) purposely or negligently fails to perform any
5 mandatory duty as required by law or by a court of competent
6 jurisdiction; ~~or~~

7 (b) knowingly performs an act in his official capacity
8 which he knows is forbidden by law; ~~or~~

9 (c) with the purpose to obtain advantage for himself
10 or another, he performs an act in excess of his lawful
11 authority or in breach of the public trust of his office or
12 employment; ~~or~~

13 (d) solicits or knowingly accepts for the performance
14 of any act a fee or reward which he knows is not authorized
15 by law; or

16 (e) knowingly conducts a meeting of a public agency in
17 violation of ~~section~~ 82-3402.

18 (2) A public servant convicted of the offense of
19 official misconduct shall be fined not to exceed ~~five~~
20 ~~hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail
21 for a term not to exceed ~~six~~ ~~(6)~~ months, or both.

22 (3) The district court shall have exclusive
23 jurisdiction in prosecutions under this section, and any
24 action for official misconduct must be commenced by an
25 information filed after leave to file has been granted by

1 the district court or after a grand jury indictment has been
2 found.

3 (4) A public servant who has been charged as provided
4 in subsection (3) may be suspended from his office without
5 pay pending final judgment. Upon final judgment of
6 conviction he shall permanently forfeit his office. Upon
7 acquittal he shall be reinstated in his office and shall
8 receive all back pay.

9 (5) This section does not affect any power conferred
10 by law to impeach or remove any public servant or any
11 proceeding authorized by law to carry into effect such
12 impeachment or removal."

-End-

Committee on Judiciary

Objection Raised to
Adverse Committee Report

BILL NO. 462

INTRODUCED BY

Alvin Holmes

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY; AMENDING SECTION 94-7-401, R.C.M. 1947."

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Section 2. Definitions. As used in this act 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.

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(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;
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- (d) an ownership interest in real or personal property;
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1 action, including inaction, which involves the use of
2 discretionary authority.

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4 a legislator or member of the judiciary or any elected
5 officer of any subdivision of the state.

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7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

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13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
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19 officer, legislator, or employee shall carry out his duties
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24 associate's personal economic interests, other than
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1 any of them from the enactment or administration of laws
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4 conduct departs from his fiduciary duty under this section
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9 county where the trust is violated may bring appropriate
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21 enumerated if that act amounts to a breach of fiduciary
22 duty.

23 Section 4. Rules of conduct for all public officers,
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25 act enumerated in this section is proof that the actor has

1 breached his fiduciary duty. A public officer, legislator,
2 or employee may not:

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4 in the course of his official duties in order to further his
5 personal economic interests; or

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7 tantamount to a gift under circumstances from which it can
8 reasonably be inferred that a major purpose of the gift is
9 to influence him in the performance of his official duties
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18 obtaining a contract, claim, license, or other economic
19 benefit from any state agency; or

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21 business or other undertaking in which he either has a
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25 or rule-making board may perform an official act

1 notwithstanding subsection (2)(e) if his participation is
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11 proceeding authorized by law to carry into effect such
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Approved by Committee
on Judiciary

1 HOUSE BILL NO. 462
2 INTRODUCED BY MELDY, HOLMES, DUSSAULT
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25 following definitions apply:

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

6 (7) "State agency" includes the state; the legislature
7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

12 (8) "State officer" includes all elected officers and
13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
18 public officers, legislators, and employees. A public
19 officer, legislator, or employee shall carry out his duties
20 for the benefit of the people of the state. ~~He may not use~~
21 ~~his office, the influence created by his official position,~~
22 ~~or the inside information gained by virtue of that position~~
23 ~~to advance any of his own, his relatives, or his~~
24 ~~associates' personal economic interests, other than~~
25 ~~advancing such strictly incidental benefits as may accrue to~~

~~1 any of them from the enactment or administration of laws
2 affecting the public generally.~~

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty ~~under this section~~
5 is liable to the people of the state as a trustee of
6 property is liable to a beneficiary under 86-310 and shall
7 suffer such other liabilities as a private fiduciary would
8 suffer for abuse of his trust. The county attorney of the
9 county where the trust is violated may bring appropriate
10 judicial proceedings on behalf of the people. Any moneys
11 collected in such actions shall be paid to the general fund
12 of the county ~~STATE~~.

13 (3) ~~This section sets forth the fundamental standard~~
14 ~~of conduct for all public officers, legislators, and~~
15 ~~employees. The following sections set forth various rules of~~
16 ~~conduct, the transgression of any of which is, as such, a~~
17 ~~violation of this standard. FIDUCIARY DUTY, and various~~
18 ~~ethical principles, the transgression of which may in some~~
19 ~~cases contribute to a violation of this standard. The~~
20 ~~enumeration of prohibited acts and cautioned acts does not~~
21 ~~exclude an act not thus enumerated if that act amounts to~~
22 ~~a breach of fiduciary duty. ANY OF WHICH IS NOT, AS SUCH, A~~
23 ~~VIOLATION OF FIDUCIARY DUTY.~~

24 Section 4. Rules of conduct for all public officers,
25 legislators, and employees. (1) Proof of commission of any

1 act enumerated in this section is proof that the actor has
 2 breached his fiduciary duty. A public officer, legislator,
 3 or employee may not:

4 (a) disclose or use confidential information acquired
 5 in the course of his official duties in order to further
 6 SUBSTANTIALLY his personal economic interests; or

7 (b) ~~accept a gift or accept an economic benefit~~
 8 ~~tantamount to a gift under circumstances from which it can~~
 9 ~~reasonably be inferred that a major purpose of the gift is~~
 10 ~~to influence him in the performance of his official duties~~
 11 ~~or to reward him for official action he has taken.~~ ACCEPT A

12 GIFT OF SUBSTANTIAL VALUE OR A SUBSTANTIAL ECONOMIC BENEFIT
 13 TANTAMOUNT TO A GIFT;

14 (I) WHICH WOULD TEND IMPROPERLY TO INFLUENCE A
 15 REASONABLE PERSON IN HIS POSITION TO DEPART FROM THE
 16 FAITHFUL AND IMPARTIAL DISCHARGE OF HIS PUBLIC DUTIES; OR

17 (II) WHICH HE KNOWS OR WHICH A REASONABLE PERSON IN
 18 HIS POSITION SHOULD KNOW UNDER THE CIRCUMSTANCES IS
 19 PRIMARILY FOR THE PURPOSE OF REWARDING HIM FOR OFFICIAL
 20 ACTION HE HAS TAKEN.

21 (2) An economic benefit tantamount to a gift includes,
 22 without limitation, a loan at a rate of interest
 23 substantially lower than the commercial rate then currently
 24 prevalent for similar loans and compensation received for
 25 private services rendered at a rate substantially exceeding

1 the fair market value of such services. Campaign
 2 contributions reported as required by statute are not gifts
 3 or economic benefits tantamount to gifts.

4 Section 5. Rules of conduct for legislators. Proof of
 5 commission of any act enumerated in this section is proof
 6 that the legislator committing the act has breached his
 7 fiduciary duty. A legislator may not:

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

12 (2) seek other employment for himself or SOLICIT A
 13 contract for his services by the use ~~or attempted use~~ of his
 14 office.

15 Section 6. Rules of conduct for state officers and
 16 state employees. (1) Proof of commission of any act
 17 enumerated in this section is proof that the actor has
 18 breached his fiduciary duty.

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

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

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

25 (c) assist any person for a fee or other compensation

1 in obtaining a contract, claim, license, or other economic
2 benefit from his agency;

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

6 (e) perform an official act directly AND SUBSTANTIALLY
7 affecting TO ITS ECONOMIC BENEFIT a business or other
8 undertaking in which he either has a substantial financial
9 interest or is engaged as counsel, consultant,
10 representative, or agent.

11 (3) A department head or a member of a quasi-judicial
12 or rule-making board may perform an official act
13 notwithstanding subsection (2)(e) if his participation is
14 necessary to the administration of a statute and if he
15 complies with the voluntary disclosure procedures under
16 [section 10].

17 Section 7. Rules of conduct for local government
18 officers and employees. (1) Proof of commission of any act
19 enumerated in this section is proof that the actor has
20 breached his fiduciary duty.

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

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

1 (b) perform an official act directly AND SUBSTANTIALLY
2 affecting TO ITS ECONOMIC BENEFIT a business or other
3 undertaking in which he either has a substantial financial
4 interest or is engaged as counsel, consultant,
5 representative, or agent.

6 (3) A member of the governing body of a local
7 government may perform an official act notwithstanding this
8 section when his participation is necessary to obtain a
9 quorum or otherwise enable the body to act, if he complies
10 with the voluntary disclosure procedures under [section 10].

11 Section 8. Ethical principles for legislators. (1) The
12 principles in this section are intended only as guides to
13 legislator conduct and do not constitute violations as such
14 of the public trust of legislative office.

15 ~~(2) Whenever feasible and taking into account the~~
16 ~~fact that legislative service is part-time, a legislator~~
17 ~~should avoid accepting or retaining an economic benefit~~
18 ~~which presents a substantial threat to his independence of~~
19 ~~judgment.~~

20 (2) When a legislator must take official action on
21 a legislative matter as to which he has a conflict situation
22 created by a personal, family, or client legislative
23 interest OR FINANCIAL INTEREST WHICH WOULD BE DIRECTLY AND
24 SUBSTANTIALLY AFFECTED BY THE LEGISLATIVE MATTER, he should
25 consider DISCLOSING OR eliminating the interest creating the

1 conflict or abstaining from the official action. In making
2 his decision, he should further consider:

3 (a) whether the conflict impedes his independence of
4 judgment;

5 (b) the effect of his participation on public
6 confidence in the integrity of the legislature; and

7 (c) whether his participation is likely to have any
8 significant effect on the disposition of the matter.

9 ~~(4)(3) A conflict situation may arise from legislation~~
10 ~~affecting less than the entire statewide membership of a~~
11 ~~class does not arise from legislation affecting the~~
12 ~~entire statewide membership of a class. Examples of a class~~
13 ~~are all ranchers, all teachers in the public schools, or all~~
14 ~~members of a licensed profession or occupation.~~

15 (4) IF A LEGISLATOR ELECTS TO DISCLOSE THE INTEREST
16 CREATING THE CONFLICT, HE SHALL DO SO AS PROVIDED IN THE
17 JOINT RULES OF THE LEGISLATURE.

18 Section 9. Ethical principles for all public officers,
19 legislators, and employees. (1) The principles in this
20 section are intended as guides to conduct and do not
21 constitute violations as such of the public trust of office
22 or employment in state or local government. ~~However, failure~~
23 ~~to observe one of these principles may be taken as evidence~~
24 ~~tending to establish, in conjunction with all the other~~
25 ~~facts of a case, a breach of fiduciary duty.~~

1 (2) A public officer or employee should not acquire an
2 interest in any business or undertaking which he has reason
3 to believe may be directly AND SUBSTANTIALLY affected to its
4 economic benefit by official action to be taken by his
5 agency.

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

15 (4) A public officer, ~~legislator~~ or employee should
16 not perform an official act directly AND SUBSTANTIALLY
17 affecting a business or other undertaking to its economic
18 detriment when he has a substantial financial interest in a
19 competing firm or undertaking.

20 Section 10. Voluntary disclosure. A public officer,
21 legislator, or employee may, prior to acting in a manner
22 which may impinge on his fiduciary duty, disclose the nature
23 of his private interest which creates the conflict. He shall
24 make the disclosure IN WRITING to the ~~commissioner of~~
25 ~~campaign finances and practices~~ SECRETARY OF STATE, listing

1 the amount of his financial interest, if any, the purpose
 2 and duration of his services rendered, if any, and the
 3 compensation received for the services or such other
 4 information as is necessary to describe his interest. If he
 5 then performs the official act involved, he shall state for
 6 the record the fact and summary nature of the interest
 7 disclosed at the time of performing the act.

8 Section 11. Powers of the commissioner SECRETARY OF
 9 STATE. The commissioner-of-campaign-finances-and-practices
 10 SECRETARY OF STATE may:

11 ~~{1}--issue-and-cause-to-be-published-advisory-opinions,~~
 12 ~~with-such-deletions-as-may-be-necessary-to-protect-the~~
 13 ~~identity-of-the-requesting-party-at-the-request-of-a-public~~
 14 ~~officer,--legislative--or--employee--contemplating-an-action~~
 15 ~~which-may-or-may-not-be-a-breach-of-his-fiduciary-duty;~~

16 {2}{1} keep and permit reasonable public access to
 17 voluntary disclosure statements;

18 {3}{2} make rules for the conduct of his affairs under
 19 this chapter.

20 Section 12. Section 94-7-401, R.C.M., 1947, is amended
 21 to read as follows:

22 "94-7-401. Official misconduct. (1) A public servant
 23 commits the offense of official misconduct when, in his
 24 official capacity, he commits any of the following acts:

25 (a) purposefully or negligently fails to perform any

1 mandatory duty as required by law or by a court of competent
 2 jurisdiction; or

3 (b) knowingly performs an act in his official capacity
 4 which he knows is forbidden by law; or

5 (c) with the purpose to obtain advantage for himself
 6 or another, he performs an act in excess of his lawful
 7 authority ~~or in breach of the public trust of his office or~~
 8 ~~employment;~~ or

9 (d) solicits or knowingly accepts for the performance
 10 of any act a fee or reward which he knows is not authorized
 11 by law; or

12 (e) knowingly conducts a meeting of a public agency in
 13 violation of section 02-3402.

14 (2) A public servant convicted of the offense of
 15 official misconduct shall be fined not to exceed five
 16 hundred dollars (\$500) or be imprisoned in the county jail
 17 for a term not to exceed six (6) months, or both.

18 (3) The district court shall have exclusive
 19 jurisdiction in prosecutions under this section, and any
 20 action for official misconduct must be commenced by an
 21 information filed after leave to file has been granted by
 22 the district court or after a grand jury indictment has been
 23 found.

24 (4) A public servant who has been charged as provided
 25 in subsection (3) may be suspended from his office without

1 pay--pending--final--judgment--Upon--final--judgment--of
2 conviction--he--shall--permanently--forfeit--his--office--Upon
3 acquittal--he--shall--be--reinstated--in--his--office--and--shall
4 receive--all--back--pay
5 (b)--This--section--does--not--affect--any--power--conferred
6 by--law--to--impeach--or--remove--any--public--servant--or--any
7 proceeding--authorized--by--law--to--carry--into--effect--such
8 impeachment--or--removals"

-End-

1 HOUSE BILL NO. 462

2 INTRODUCED BY MELOY, HOLMES, DUSSAULT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE
5 XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE
6 A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY
7 AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL
8 OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY;
9 ~~AMENDING SECTION 94-7-401, R.C.M. 1947.~~"

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Statement of purpose. The purpose of this
13 act is to set forth a code of ethics prohibiting conflict
14 between public duty and private interest as required by the
15 constitution of Montana. This code recognizes distinctions
16 between legislators, other officers and employees of state
17 government, and officers and employees of local government,
18 and prescribes some standards of conduct common to all
19 categories and some standards of conduct adapted to each
20 category. The provisions of this act recognize that some
21 actions are conflicts per se between public duty and private
22 interest while other actions may or may not pose such
23 conflicts depending upon the surrounding circumstances.

24 Section 2. Definitions. As used in this act the
25 following definitions apply:

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

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

9 (3) "Employee" means any temporary or permanent
10 employee of the state or any subdivision thereof, or member
11 of the judiciary, including a member of a board, commission,
12 or committee except a legislator and an employee under
13 contract to the state.

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

- 16 (a) an ownership interest in a business;
17 (b) a creditor interest in an insolvent business;
18 (c) an employment or prospective employment for which
19 negotiations have begun;
20 (d) an ownership interest in real or personal
21 property;
22 (e) a loan or other debtor interest; or
23 (f) a directorship or officership in a business.
24 (5) "Official act" or "official action" means a vote,
25 decision, recommendation, approval, disapproval, or other

1 action, including inaction, which involves the use of
2 discretionary authority.

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

6 (7) "State agency" includes the state; the legislature
7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

12 (8) "State officer" includes all elected officers and
13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
18 public officers, legislators, and employees. A public
19 officer, legislator, or employee shall carry out his duties
20 for the benefit of the people of the state. He may not use
21 his office, the influence created by his official position,
22 or the inside information gained by virtue of that position
23 to advance any of his own, his relative's, or his
24 associate's personal economic interests, other than
25 advancing such strictly incidental benefits as may accrue to

1 ~~any of them from the enactment or administration of laws~~
2 ~~affecting the public generally.~~

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty under this section
5 is liable to the people of the state as a trustee of
6 property is liable to a beneficiary under 86-310 and shall
7 suffer such other liabilities as a private fiduciary would
8 suffer for abuse of his trust. The county attorney of the
9 county where the trust is violated may bring appropriate
10 judicial proceedings on behalf of the people. Any moneys
11 collected in such actions shall be paid to the general fund
12 of the county STATE.

13 (3) ~~This section sets forth the fundamental standard~~
14 ~~of conduct for all public officers, legislators, and~~
15 ~~employees. The following sections set forth various rules of~~
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24 Section 4. Rules of conduct for all public officers,
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HOUSE BILL NO. 462

INTRODUCED BY MELOY, HOLMES, DUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY; AMENDING SECTION 94-7-401V-R.C.M.-1947."

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

Section 1. Statement of purpose. The purpose of this act is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government, and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this act recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Section 2. Definitions. As used in this act 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.

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(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;
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4 obtaining a contract, claim, license, or other economic
5 benefit from any state agency; or

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12 or rule-making board may perform an official act
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23 ~~to observe one of these principles may be taken as evidence~~
24 ~~tending to establish in conjunction with all the other~~
25 ~~facts of a case a breach of fiduciary duty.~~

1 (2) A public officer or employee should not acquire an
2 interest in any business or undertaking which he has reason
3 to believe may be directly AND SUBSTANTIALLY affected to its
4 economic benefit by official action to be taken by his
5 agency.

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

15 (4) A public officer, ~~legislative~~ or employee should
16 not perform an official act directly AND SUBSTANTIALLY
17 affecting a business or other undertaking to its economic
18 detriment when he has a substantial financial interest in a
19 competing firm or undertaking.

20 Section 10. Voluntary disclosure. A public officer
21 ~~legislative~~ or employee may, prior to acting in a manner
22 which may impinge on his fiduciary duty, disclose the nature
23 of his private interest which creates the conflict. He shall
24 make the disclosure IN WRITING to the ~~commissioner of~~
25 ~~campaign finances and practices~~ SECRETARY OF STATE, listing

1 the amount of his financial interest, if any, the purpose
2 and duration of his services rendered, if any, and the
3 compensation received for the services or such other
4 information as is necessary to describe his interest. If he
5 then performs the official act involved, he shall state for
6 the record the fact and summary nature of the interest
7 disclosed at the time of performing the act.

8 Section 11. Powers of the commissioner SECRETARY OF
9 STATE. The ~~commissioner of campaign finances and practices~~
10 SECRETARY OF STATE may:

11 ~~{1} issue and cause to be published advisory opinions,~~
12 ~~with such deletions as may be necessary to protect the~~
13 ~~identity of the requesting party, at the request of a public~~
14 ~~officer, legislative or employee contemplating an action~~
15 ~~which may or may not be a breach of his fiduciary duty;~~

16 {2}{1} keep and permit reasonable public access to
17 voluntary disclosure statements;

18 {3}{2} make rules for the conduct of his affairs under
19 this chapter.

20 Section 12. Section 94-7-401, R.C.M. 1947, is amended
21 to read as follows:

22 "94-7-401. Official misconduct. (1) A public servant
23 commits the offense of official misconduct when, in his
24 official capacity, he commits any of the following acts:

25 (a) purposely or negligently fails to perform any

1 mandatory duty as required by law or by a court of competent
2 jurisdiction; or

3 (b) knowingly performs an act in his official capacity
4 which he knows is forbidden by law; or

5 (c) with the purpose to obtain advantage for himself
6 or another, he performs an act in excess of his lawful
7 authority or in breach of the public trust of his office or
8 employment; or

9 (d) solicits or knowingly accepts for the performance
10 of any act a fee or reward which he knows is not authorized
11 by law; or

12 (e) knowingly conducts a meeting of a public agency in
13 violation of section 82-3402.

14 (2) A public servant convicted of the offense of
15 official misconduct shall be fined not to exceed five
16 hundred dollars (\$500) or be imprisoned in the county jail
17 for a term not to exceed six (6) months or both.

18 (3) The district court shall have exclusive
19 jurisdiction in prosecutions under this section and any
20 action for official misconduct must be commenced by an
21 information filed after leave to file has been granted by
22 the district court or after a grand jury indictment has been
23 found.

24 (4) A public servant who has been charged as provided
25 in subsection (3) may be suspended from his office without

1 ~~pay pending final judgment. Upon final judgment of~~
2 ~~conviction he shall permanently forfeit his offices. Upon~~
3 ~~acquittal he shall be reinstated in his office and shall~~
4 ~~receive all back pay.~~

5 ~~(b) This section does not affect any power conferred~~
6 ~~by law to impeach or remove any public servant or any~~
7 ~~proceeding authorized by law to carry into effect such~~
8 ~~impeachment or removals."~~

-End-

SENATE
STANDING COMMITTEE REPORT
Committee on State Administration

That House Bill No. 462, third reading, be amended as follows:

1. Amend page 4, section 3, line 12.

Following: "county"

Strike: "STATE"

Insert: "aggrieved agency"

2. Amend page 7, section 6, line 16.

Following: line 16

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

3. Amend page 11, section 11, line 15.

Following: line 15

Insert: "(1) issue and cause to be published advisory opinions, with such deletions as may be necessary to protect the identity of the requesting party, at the request of a public officer, legislator, or employee contemplating an action which may or may not be a breach of his fiduciary duty;"

Renumber: subsequent subsections

HOUSE BILL NO. 462

INTRODUCED BY MELOY, HOLMES, DUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY;
~~AMENDING SECTION 94-7-401, R.C.M., 1947."~~

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

Section 1. Statement of purpose. The purpose of this act is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government, and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this act recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Section 2. Definitions. As used in this act 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 value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself 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) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other

1 action, including inaction, which involves the use of
2 discretionary authority.

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

6 (7) "State agency" includes the state; the legislature
7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

12 (8) "State officer" includes all elected officers and
13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
18 public officers, legislators, and employees. A public
19 officer, legislator, or employee shall carry out his duties
20 for the benefit of the people of the state. He may not use
21 his office, the influence created by his official position,
22 or the inside information gained by virtue of that position
23 to advance any of his own, his relatives', or his
24 associate's personal economic interests, other than
25 advancing such strictly incidental benefits as may accrue to

1 ~~any of them from the enactment or administration of laws~~
2 ~~affecting the public generally.~~

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty under this section
5 is liable to the people of the state as a trustee of
6 property is liable to a beneficiary under 86-310 and shall
7 suffer such other liabilities as a private fiduciary would
8 suffer for abuse of his trust. The county attorney of the
9 county where the trust is violated may bring appropriate
10 judicial proceedings on behalf of the people. Any moneys
11 collected in such actions shall be paid to the general fund
12 of the county STATE AGGRIEVED AGENCY.

13 (3) ~~This section sets forth the fundamental standard~~
14 ~~of conduct for all public officers, legislators, and~~
15 ~~employees. The following sections set forth various rules of~~
16 ~~conduct, the transgression of any of which is, as such, a~~
17 ~~violation of this standard FIDUCIARY DUTY, and various~~
18 ~~ethical principles, the transgression of which may in some~~
19 ~~cases, contribute to a violation of this standard. The~~
20 ~~enumeration of prohibited acts and cautioned acts does not~~
21 ~~exculpate an act not thus enumerated if that act amounts to~~
22 ~~a breach of fiduciary duty. ANY OF WHICH IS NOT, AS SUCH, A~~
23 ~~VIOLATION OF FIDUCIARY DUTY.~~

24 Section 4. Rules of conduct for all public officers,
25 legislators, and employees. (1) Proof of commission of any

1 act enumerated in this section is proof that the actor has
 2 breached his fiduciary duty. A public officer, legislator,
 3 or employee may not:

4 (a) disclose or use confidential information acquired
 5 in the course of his official duties in order to further
 6 SUBSTANTIALLY his personal economic interests; or

7 ~~(b) accept a gift or accept an economic benefit~~
 8 ~~tantamount to a gift under circumstances from which it can~~
 9 ~~reasonably be inferred that a major purpose of the gift is~~
 10 ~~to influence him in the performance of his official duties~~
 11 ~~or to reward him for official action he has taken. ACCEPT A~~
 12 ~~GIFT OF SUBSTANTIAL VALUE OR A SUBSTANTIAL ECONOMIC BENEFIT~~
 13 ~~TANTAMOUNT TO A GIFT:~~

14 (I) WHICH WOULD TEND IMPROPERLY TO INFLUENCE A
 15 REASONABLE PERSON IN HIS POSITION TO DEPART FROM THE
 16 FAITHFUL AND IMPARTIAL DISCHARGE OF HIS PUBLIC DUTIES; OR

17 (II) WHICH HE KNOWS OR WHICH A REASONABLE PERSON IN
 18 HIS POSITION SHOULD KNOW UNDER THE CIRCUMSTANCES IS
 19 PRIMARILY FOR THE PURPOSE OF REWARDING HIM FOR OFFICIAL
 20 ACTION HE HAS TAKEN.

21 (2) An economic benefit tantamount to a gift includes,
 22 without limitation, a loan at a rate of interest
 23 substantially lower than the commercial rate then currently
 24 prevalent for similar loans and compensation received for
 25 private services rendered at a rate substantially exceeding

1 the fair market value of such services. Campaign
 2 contributions reported as required by statute are not gifts
 3 or economic benefits tantamount to gifts.

4 Section 5. Rules of conduct for legislators. Proof of
 5 commission of any act enumerated in this section is proof
 6 that the legislator committing the act has breached his
 7 fiduciary duty. A legislator may not:

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

12 (2) seek other employment for himself or SOLICIT A
 13 contract for his services by the use or attempted use of his
 14 office.

15 Section 6. Rules of conduct for state officers and
 16 state employees. (1) Proof of commission of any act
 17 enumerated in this section is proof that the actor has
 18 breached his fiduciary duty.

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

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

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

25 (c) assist any person for a fee or other compensation

1 in obtaining a contract, claim, license, or other economic
2 benefit from his agency;

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

6 (e) perform an official act directly AND SUBSTANTIALLY
7 affecting TO ITS ECONOMIC BENEFIT a business or other
8 undertaking in which he either has a substantial financial
9 interest or is engaged as counsel, consultant,
10 representative, or agent.

11 (3) A department head or a member of a quasi-judicial
12 or rule-making board may perform an official act
13 notwithstanding subsection (2)(e) if his participation is
14 necessary to the administration of a statute and if he
15 complies with the voluntary disclosure procedures under
16 [section 10].

17 ~~(4) SUBSECTION (2)(D) DOES NOT APPLY TO A MEMBER OF A~~
18 ~~BOARD, COMMISSION, COUNCIL, OR COMMITTEE UNLESS HE IS ALSO A~~
19 ~~FULL-TIME STATE EMPLOYEE.~~

20 Section 7. Rules of conduct for local government
21 officers and employees. (1) Proof of commission of any act
22 enumerated in this section is proof that the actor has
23 breached his fiduciary duty.

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

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

4 (b) perform an official act directly AND SUBSTANTIALLY
5 affecting TO ITS ECONOMIC BENEFIT a business or other
6 undertaking in which he either has a substantial financial
7 interest or is engaged as counsel, consultant,
8 representative, or agent.

9 (3) A member of the governing body of a local
10 government may perform an official act notwithstanding this
11 section when his participation is necessary to obtain a
12 quorum or otherwise enable the body to act, if he complies
13 with the voluntary disclosure procedures under [section 10].

14 Section 8. Ethical principles for legislators. (1) The
15 principles in this section are intended only as guides to
16 legislator conduct and do not constitute violations as such
17 of the public trust of legislative office.

18 ~~(2) Whenever feasible and taking into account the~~
19 ~~fact that legislative service is part-time, a legislator~~
20 ~~should avoid accepting or retaining an economic benefit~~
21 ~~which presents a substantial threat to his independence of~~
22 ~~judgment.~~

23 ~~(3) (2) When a legislator must take official action on~~
24 ~~a legislative matter as to which he has a conflict situation~~
25 ~~created by a personal, family, or client legislative~~

1 ~~interest OR FINANCIAL INTEREST WHICH WOULD BE DIRECTLY AND~~
 2 ~~SUBSTANTIALLY AFFECTED BY THE LEGISLATIVE MATTER,~~ he should
 3 consider ~~DISCLOSING OR~~ eliminating the interest creating the
 4 conflict or abstaining from the official action. In making
 5 his decision, he should further consider:

6 (a) whether the conflict impedes his independence of
 7 judgment;

8 (b) the effect of his participation on public
 9 confidence in the integrity of the legislature; and

10 (c) whether his participation is likely to have any
 11 significant effect on the disposition of the matter.

12 ~~(4)(3) A conflict situation may arise from legislation~~
 13 ~~affecting less than the entire statewide membership of a~~
 14 ~~class but does not arise from legislation affecting the~~
 15 ~~entire statewide membership of a class. Examples of a class~~
 16 ~~are all ranchers, all teachers in the public schools, or all~~
 17 ~~members of a licensed profession or occupation.~~

18 (4) IF A LEGISLATOR ELECTS TO DISCLOSE THE INTEREST
 19 CREATING THE CONFLICT, HE SHALL DO SO AS PROVIDED IN THE
 20 JOINT RULES OF THE LEGISLATURE.

21 Section 9. Ethical principles for ~~all~~ public officers,
 22 ~~legislators,~~ and employees. (1) The principles in this
 23 section are intended as guides to conduct and do not
 24 constitute violations as such of the public trust of office
 25 or employment in state or local government. ~~However, failure~~

1 ~~to observe one of these principles may be taken as evidence~~
 2 ~~tending to establish, in conjunction with all the other~~
 3 ~~facts of a case, a breach of fiduciary duty.~~

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

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

18 (4) A public officer, ~~legislative,~~ or employee should
 19 not perform an official act directly AND SUBSTANTIALLY
 20 affecting a business or other undertaking to its economic
 21 detriment when he has a substantial financial interest in a
 22 competing firm or undertaking.

23 Section 10. Voluntary disclosure. A public officer,
 24 ~~legislative,~~ or employee may, prior to acting in a manner
 25 which may impinge on his fiduciary duty, disclose the nature

1 of his private interest which creates the conflict. He shall
 2 make the disclosure IN WRITING to the ~~commissioner of~~
 3 ~~campaign finances and practices~~ SECRETARY OF STATE, listing
 4 the amount of his financial interest, if any, the purpose
 5 and duration of his services rendered, if any, and the
 6 compensation received for the services or such other
 7 information as is necessary to describe his interest. If he
 8 then performs the official act involved, he shall state for
 9 the record the fact and summary nature of the interest
 10 disclosed at the time of performing the act.

11 Section 11. Powers of the ~~commissioner~~ SECRETARY OF
 12 STATE. ~~The commissioner of campaign finances and practices~~
 13 SECRETARY OF STATE may:

14 ~~(1) issue and cause to be published advisory opinions,~~
 15 ~~with such deletions as may be necessary to protect the~~
 16 ~~identity of the requesting party, at the request of a public~~
 17 ~~officer, legislator, or employee contemplating an action~~
 18 ~~which may or may not be a breach of his fiduciary duty;~~

19 (1) ISSUE AND CAUSE TO BE PUBLISHED ADVISORY OPINIONS,
 20 WITH SUCH DELETIONS AS MAY BE NECESSARY TO PROTECT THE
 21 IDENTITY OF THE REQUESTING PARTY, AT THE REQUEST OF A PUBLIC
 22 OFFICER, LEGISLATOR, OR EMPLOYEE CONTEMPLATING AN ACTION
 23 WHICH MAY OR MAY NOT BE A BREACH OF HIS FIDUCIARY DUTY;

24 ~~(2)(1)(2)~~ keep and permit reasonable public access to
 25 voluntary disclosure statements;

1 ~~(3)(2)(3)~~ make rules for the conduct of his affairs
 2 under this chapter.

3 Section ~~12~~ Section ~~94-7-401~~ ~~Revised 1977~~ is amended
 4 to read as follows:

5 "94-7-401. Official misconduct. (1) A public servant
 6 commits the offense of official misconduct when, in his
 7 official capacity, he commits any of the following acts:

8 (a) purposely or negligently fails to perform any
 9 mandatory duty as required by law or by a court of competent
 10 jurisdiction; or

11 (b) knowingly performs an act in his official capacity
 12 which he knows is forbidden by law; or

13 (c) with the purpose to obtain advantage for himself
 14 or another, he performs an act in excess of his lawful
 15 authority ~~or in breach of the public trust of his office or~~
 16 ~~employment; or~~

17 (d) solicits or knowingly accepts for the performance
 18 of any act a fee or reward which he knows is not authorized
 19 by law; or

20 (e) knowingly conducts a meeting of a public agency in
 21 violation of section 82-3402.

22 (2) A public servant convicted of the offense of
 23 official misconduct shall be fined not to exceed five
 24 hundred dollars (\$500) or be imprisoned in the county jail
 25 for a term not to exceed six (6) months, or both.

1 ~~(3) The district court shall have exclusive~~
2 ~~jurisdiction in prosecutions under this section, and any~~
3 ~~action for official misconduct must be commenced by an~~
4 ~~information filed after leave to file has been granted by~~
5 ~~the district court or after a grand jury indictment has been~~
6 ~~found.~~

7 ~~(4) A public servant who has been charged as provided~~
8 ~~in subsection (3) may be suspended from his office without~~
9 ~~pay pending final judgment. Upon final judgment of~~
10 ~~conviction he shall permanently forfeit his office. Upon~~
11 ~~acquittal he shall be reinstated in his office and shall~~
12 ~~receive all back pay.~~

13 ~~(5) This section does not effect any power conferred~~
14 ~~by law to impeach or remove any public servant or any~~
15 ~~proceeding authorized by law to carry into effect such~~
16 ~~impeachment or removals.~~

-End-

1 HOUSE BILL NO. 462

2 INTRODUCED BY MELOY, HOLMES, DUSSAULT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE
5 XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE
6 A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY
7 AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL
8 OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY;
9 ~~AMENDING SECTION 94-7-401, R.C.M. 1947."~~

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Statement of purpose. The purpose of this
13 act is to set forth a code of ethics prohibiting conflict
14 between public duty and private interest as required by the
15 constitution of Montana. This code recognizes distinctions
16 between legislators, other officers and employees of state
17 government, and officers and employees of local government,
18 and prescribes some standards of conduct common to all
19 categories and some standards of conduct adapted to each
20 category. The provisions of this act recognize that some
21 actions are conflicts per se between public duty and private
22 interest while other actions may or may not pose such
23 conflicts depending upon the surrounding circumstances.

24 Section 2. Definitions. As used in this act the
25 following definitions apply:

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

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

9 (3) "Employee" means any temporary or permanent
10 employee of the state or any subdivision thereof, or member
11 of the judiciary, including a member of a board, commission,
12 or committee except a legislator and an employee under
13 contract to the state.

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

16 (a) an ownership interest in a business;

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

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

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

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

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

24 (5) "Official act" or "official action" means a vote,
25 decision, recommendation, approval, disapproval, or other

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AND SENATE

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1 action, including inaction, which involves the use of
2 discretionary authority.

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

6 (7) "State agency" includes the state; the legislature
7 and its committees; all executive departments, boards,
8 commissions, committees, bureaus, and offices; the
9 university system; and all independent commissions and
10 other establishments of the state government; except the
11 courts.

12 (8) "State officer" includes all elected officers and
13 directors of the executive branch of state government as
14 defined in 82A-103.

15 Section 3. Public trust. (1) The holding of public
16 office or employment is a public trust, created by the
17 confidence which the electorate reposes in the integrity of
18 public officers, legislators, and employees. A public
19 officer, legislator, or employee shall carry out his duties
20 for the benefit of the people of the state. He may not use
21 his office, the influence created by his official position,
22 or the inside information gained by virtue of that position
23 to advance any of his own, his relative's, or his
24 associate's personal economic interests, other than
25 advancing such strictly incidental benefits as may accrue to

1 ~~any of them from the enactment or administration of laws~~
2 ~~affecting the public generally~~

3 (2) A public officer, legislator, or employee whose
4 conduct departs from his fiduciary duty ~~under this section~~
5 is liable to the people of the state as a trustee of
6 property is liable to a beneficiary under 86-310 and shall
7 suffer such other liabilities as a private fiduciary would
8 suffer for abuse of his trust. The county attorney of the
9 county where the trust is violated may bring appropriate
10 judicial proceedings on behalf of the people. Any moneys
11 collected in such actions shall be paid to the general fund
12 of the county STATE AGGRIEVED AGENCY.

13 (3) ~~This section sets forth the fundamental standard~~
14 ~~of conduct for all public officers, legislators, and~~
15 ~~employees. The following sections set forth various rules of~~
16 ~~conduct, the transgression of any of which is, as such, a~~
17 ~~violation of this standard FIDUCIARY DUTY, and various~~
18 ~~ethical principles, the transgression of which may in some~~
19 ~~cases contribute to a violation of this standard. The~~
20 ~~enumeration of prohibited acts and cautioned acts does not~~
21 ~~excuse an act not thus enumerated if that act amounts to~~
22 ~~a breach of fiduciary duty. ANY OF WHICH IS NOT, AS SUCH, A~~
23 VIOLATION OF FIDUCIARY DUTY.

24 Section 4. Rules of conduct for all public officers,
25 legislators, and employees. (1) Proof of commission of any

1 act enumerated in this section is proof that the actor has
 2 breached his fiduciary duty. A public officer, legislator,
 3 or employee may not:

4 (a) disclose or use confidential information acquired
 5 in the course of his official duties in order to further
 6 SUBSTANTIALLY his personal economic interests; or

7 ~~(b) accept a gift or accept an economic benefit~~
~~8 tantamount to a gift under circumstances from which it can~~
~~9 reasonably be inferred that a major purpose of the gift is~~
~~10 to influence him in the performance of his official duties~~
~~11 or to reward him for official action he has taken. ACCEPT A~~
~~12 GIFT OF SUBSTANTIAL VALUE OR A SUBSTANTIAL ECONOMIC BENEFIT~~
~~13 TANTAMOUNT TO A GIFT;~~

14 (I) WHICH WOULD TEND IMPROPERLY TO INFLUENCE A
 15 REASONABLE PERSON IN HIS POSITION TO DEPART FROM THE
 16 FATHEFUL AND IMPARTIAL DISCHARGE OF HIS PUBLIC DUTIES; OR

17 (II) WHICH HE KNOWS OR WHICH A REASONABLE PERSON IN
 18 HIS POSITION SHOULD KNOW UNDER THE CIRCUMSTANCES IS
 19 PRIMARILY FOR THE PURPOSE OF REWARDING HIM FOR OFFICIAL
 20 ACTION HE HAS TAKEN.

21 (2) An economic benefit tantamount to a gift includes,
 22 without limitation, a loan at a rate of interest
 23 substantially lower than the commercial rate then currently
 24 prevalent for similar loans and compensation received for
 25 private services rendered at a rate substantially exceeding

1 the fair market value of such services. Campaign
 2 contributions reported as required by statute are not gifts
 3 or economic benefits tantamount to gifts.

4 Section 5. Rules of conduct for legislators. Proof of
 5 commission of any act enumerated in this section is proof
 6 that the legislator committing the act has breached his
 7 fiduciary duty. A legislator may not:

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

12 (2) seek other employment for himself or SOLICIT A
 13 contract for his services by the use ~~or attempted use~~ of his
 14 office.

15 Section 6. Rules of conduct for state officers and
 16 state employees. (1) Proof of commission of any act
 17 enumerated in this section is proof that the actor has
 18 breached his fiduciary duty.

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

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

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

25 (c) assist any person for a fee or other compensation

1 in obtaining a contract, claim, license, or other economic
2 benefit from his agency;

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

6 (e) perform an official act directly AND SUBSTANTIALLY
7 affecting ID ITS ECONOMIC BENEFIT a business or other
8 undertaking in which he either has a substantial financial
9 interest or is engaged as counsel, consultant,
10 representative, or agent.

11 (3) A department head or a member of a quasi-judicial
12 or rulemaking board may perform an official act
13 notwithstanding subsection (2)(e) if his participation is
14 necessary to the administration of a statute and if he
15 complies with the voluntary disclosure procedures under
16 [section 10].

17 ~~(4) SUBSECTION (2)(D) DOES NOT APPLY TO A MEMBER OF A~~
18 ~~BOARD, COMMISSION, COUNCIL, OR COMMITTEE UNLESS HE IS ALSO A~~
19 ~~FULL-TIME STATE EMPLOYEE.~~

20 Section 7. Rules of conduct for local government
21 officers and employees. (1) Proof of commission of any act
22 enumerated in this section is proof that the actor has
23 breached his fiduciary duty.

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

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

4 (b) perform an official act directly AND SUBSTANTIALLY
5 affecting ID ITS ECONOMIC BENEFIT a business or other
6 undertaking in which he either has a substantial financial
7 interest or is engaged as counsel, consultant,
8 representative, or agent.

9 (3) A member of the governing body of a local
10 government may perform an official act notwithstanding this
11 section when his participation is necessary to obtain a
12 quorum or otherwise enable the body to act, if he complies
13 with the voluntary disclosure procedures under [section 10].

14 Section 8. Ethical principles for legislators. (1) The
15 principles in this section are intended only as guides to
16 legislator conduct and do not constitute violations as such
17 of the public trust of legislative office.

18 ~~(2) Whenever feasible and taking into account the~~
19 ~~fact that legislative service is part-time, a legislator~~
20 ~~should avoid accepting or retaining an economic benefit~~
21 ~~which presents a substantial threat to his independence of~~
22 ~~judgment.~~

23 ~~(3)(2) When a legislator must take official action on~~
24 ~~a legislative matter as to which he has a conflict situation~~
25 ~~created by a personal family or client legislative~~

1 ~~interest OR FINANCIAL INTEREST WHICH WOULD BE DIRECTLY AND~~
 2 ~~SUBSTANTIALLY AFFECTED BY THE LEGISLATIVE MATTER,~~ he should
 3 consider ~~DISCLOSING OR~~ eliminating the interest creating the
 4 conflict or abstaining from the official action. In making
 5 his decision, he should further consider:

6 (a) whether the conflict impedes his independence of
 7 judgment;

8 (b) the effect of his participation on public
 9 confidence in the integrity of the legislature; and

10 (c) whether his participation is likely to have any
 11 significant effect on the disposition of the matter.

12 ~~(4)(3) A conflict situation may arise from legislation~~
 13 ~~affecting less than the entire statewide membership of a~~
 14 ~~class--but~~ does not arise from legislation affecting the
 15 entire statewide membership of a class. ~~Examples of a class~~
 16 ~~are all ranchers, all teachers in the public schools, or all~~
 17 ~~members of a licensed profession or occupation.~~

18 (4) IF A LEGISLATOR ELECTS TO DISCLOSE THE INTEREST
 19 CREATING THE CONFLICT, HE SHALL DO SO AS PROVIDED IN THE
 20 JOINT RULES OF THE LEGISLATURE.

21 Section 9. Ethical principles for ~~all~~ public officers,
 22 ~~legislators,~~ and employees. (1) The principles in this
 23 section are intended as guides to conduct and do not
 24 constitute violations as such of the public trust of office
 25 or employment in state or local government. ~~However, failure~~

1 ~~to observe one of these principles may be taken as evidence~~
 2 ~~tending to establish, in conjunction with all the other~~
 3 ~~facts of a case, a breach of fiduciary duty.~~

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

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

18 (4) A public officer, ~~legislator,~~ or employee should
 19 not perform an official act directly AND SUBSTANTIALLY
 20 affecting a business or other undertaking to its economic
 21 detriment when he has a substantial financial interest in a
 22 competing firm or undertaking.

23 Section 10. Voluntary disclosure. A public officer,
 24 ~~legislator,~~ or employee may, prior to acting in a manner
 25 which may impinge on his fiduciary duty, disclose the nature

1 of his private interest which creates the conflict. He shall
 2 make the disclosure IN WRITING to the ~~commissioner of~~
 3 ~~campaign finances and practices~~ SECRETARY OF STATE, listing
 4 the amount of his financial interest, if any, the purpose
 5 and duration of his services rendered, if any, and the
 6 compensation received for the services or such other
 7 information as is necessary to describe his interest. If he
 8 then performs the official act involved, he shall state for
 9 the record the fact and summary nature of the interest
 10 disclosed at the time of performing the act.

11 Section 11. Powers of the ~~commissioner~~ SECRETARY OF
 12 STATE. The ~~commissioner of campaign finances and practices~~
 13 SECRETARY OF STATE may:

14 ~~{1} issue and cause to be published advisory opinions,~~
 15 ~~with such deletions as may be necessary to protect the~~
 16 ~~identity of the requesting party, at the request of a public~~
 17 ~~officer, legislator, or employee contemplating an action~~
 18 ~~which may or may not be a breach of his fiduciary duty;~~

19 ~~{1} ISSUE AND CAUSE TO BE PUBLISHED ADVISORY OPINIONS,~~
 20 ~~WITH SUCH DELETIONS AS MAY BE NECESSARY TO PROTECT THE~~
 21 ~~IDENTITY OF THE REQUESTING PARTY, AT THE REQUEST OF A PUBLIC~~
 22 ~~OFFICER, LEGISLATOR, OR EMPLOYEE CONTEMPLATING AN ACTION~~
 23 ~~WHICH MAY OR MAY NOT BE A BREACH OF HIS FIDUCIARY DUTY;~~

24 {1} ISSUE ADVISORY OPINIONS WITH SUCH DELETIONS AS ARE
 25 NECESSARY TO PROTECT THE IDENTITY OF THE REQUESTING PARTY OR

1 THE PARTY ABOUT WHOM THE OPINION IS WRITTEN:

2 ~~{2}{1}{2}{1}{2}~~ keep and permit reasonable public
 3 access to voluntary disclosure statements;

4 ~~{3}{2}{3}{2}{3}~~ make rules for the conduct of his
 5 affairs under this chapter.

6 ~~Section 12. Section 94-7-401, R.S.M. 1947, is amended~~
 7 ~~to read as follows:~~

8 ~~"94-7-401. Official misconduct. (1) A public servant~~
 9 ~~commits the offense of official misconduct when, in his~~
 10 ~~official capacity, he commits any of the following acts:~~

11 ~~(a) purposely or negligently fails to perform any~~
 12 ~~mandatory duty as required by law or by a court of competent~~
 13 ~~jurisdiction; or~~

14 ~~(b) knowingly performs an act in his official capacity~~
 15 ~~which he knows is forbidden by law; or~~

16 ~~(c) with the purpose to obtain advantage for himself~~
 17 ~~or another, he performs an act in excess of his lawful~~
 18 ~~authority or in breach of the public trust of his office or~~
 19 ~~employment; or~~

20 ~~(d) solicits or knowingly accepts for the performance~~
 21 ~~of any act a fee or reward which he knows is not authorized~~
 22 ~~by law; or~~

23 ~~(e) knowingly conducts a meeting of a public agency in~~
 24 ~~violation of section 82-3402.~~

25 ~~{2} A public servant convicted of the offense of~~

1 ~~official misconduct shall be fined not to exceed five~~
2 ~~hundred dollars (\$500) or be imprisoned in the county jail~~
3 ~~for a term not to exceed six (6) months, or both~~

4 ~~{3} The district court shall have exclusive~~
5 ~~jurisdiction in prosecutions under this section, and any~~
6 ~~action for official misconduct must be commenced by an~~
7 ~~information filed after leave to file has been granted by~~
8 ~~the district court or after a grand jury indictment has been~~
9 ~~found.~~

10 ~~{4} A public servant who has been charged as provided~~
11 ~~in subsection {3} may be suspended from his office without~~
12 ~~pay pending final judgment. Upon final judgment of~~
13 ~~conviction he shall permanently forfeit his office. Upon~~
14 ~~acquittal he shall be reinstated in his office and shall~~
15 ~~receive all back pay.~~

16 ~~{5} This section does not affect any power conferred~~
17 ~~by law to impeach or remove any public servant or any~~
18 ~~proceeding authorized by law to carry into effect such~~
19 ~~impeachment or removals.~~

-End-