

HOUSE BILL NO. 689

Introduced: 02/08/83

Referred to Committee on State Administration: 02/08/83

Hearing: 2/15/83

Report: 02/16/83, Do Pass, As Amended

2nd Reading: 02/19/83, Do Pass

3rd Reading: 02/22/83, Do Pass

Transmitted to Senate: 2/22/83

Referred to Committee on State Administration: 3/1/83

Hearing: 3/22/83

Report: 3/24/83, Be Concurred In, As Amended

2nd Reading: 03/26/83, Be Concurred In

3rd Reading: 03/26/83, Be Indefinitely Postponed

Bill Killed

House BILL NO. 689

INTRODUCED BY

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A COMMISSION ON ETHICS AND POLITICAL PRACTICES TO TAKE THE PLACE OF THE COMMISSIONER OF POLITICAL PRACTICES; SPECIFYING ITS STRUCTURE AND ORGANIZATION; DEFINING ITS POWERS AND DUTIES, INCLUDING ADMINISTRATION OF LOBBYING AND CAMPAIGN PRACTICE LAWS CURRENTLY ADMINISTERED BY THE COMMISSIONER; TRANSFERRING THE ADMINISTRATION OF THE CODE OF ETHICS FROM THE SECRETARY OF STATE TO THE COMMISSION; CREATING NEW DUTIES REGARDING FAIR CAMPAIGN PRACTICES FOR CANDIDATES AND CONCERNING BALLOT ISSUES; GENERALLY REVISING AND CLARIFYING THE CODE OF ETHICS; PROVIDING PENALTIES FOR VIOLATIONS OF THE CODE OF ETHICS; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-105, 2-2-121, 2-2-125, 2-2-131, 2-2-132, 2-15-411, 2-16-603, 5-7-102, 5-11-203, 13-37-101 THROUGH 13-37-106, 13-37-112, 13-37-116, 13-37-119, 13-37-120, 13-37-124, AND 45-7-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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) "Commission" means the commission on ethics and political practices as established in 2-15-411.

(3) (1) "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) (4) "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, a member of the judiciary, and or an employee under contract to the state.

(4) (5) "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.

-2- INTRODUCED BILL  
HB 689

~~§57(6)~~ "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

~~§57(7)~~ "Public officer" includes any state officer except a legislator or member of the judiciary or any elected officer of any subdivision of the state.

~~§77(8)~~ "State agency" includes the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government except the courts.

~~§87(9)~~ "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

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

"2-2-103. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state. ~~He may not use his office, the influence created by his official position, or the information gained by virtue of that position to~~

~~advance any personal economic interest of his own or of a relative, other than such strictly incidental benefits as may accrue from the enactment or administration of laws affecting the public generally.~~

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state ~~as in the same manner and for up to triple the amount that~~ a trustee of property ~~is~~ would be liable to a beneficiary under 72-20-203(2), and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

~~(3) If a county attorney has received a complaint alleging any violation of this part, he may in his sole discretion request an advisory opinion from the commission in the manner provided in this part, if he is uncertain whether the conduct complained of would be considered a violation when:~~

~~(a) viewed by an impartial panel of citizens; or~~

~~(b) compared to conduct occurring in other counties of the state.~~

~~(4) The determination of the commission is advisory~~

~~only, and the county attorney seeking the opinion is not obligated to follow or agree with the advice.~~

~~†3†(5) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."~~

Section 3. Section 2-2-105, MCA, is amended to read:

"2-2-105. Ethical principles for public officers and employees. (1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government. ~~However, failure to observe one of these principles may be taken as evidence tending to establish, in conjunction with all the other facts of a case, a breach of fiduciary duty.~~

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

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with

which he was directly involved during his term or employment. These matters are rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

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

NEW SECTION. Section 4. Penalties for code of ethics violation. (1) In addition to the liabilities provided for in 2-2-103, any public official or employee adjudged in violation of the provisions of this part may be:

(a) subject to recall under the provisions of chapter 16 of this title;

(b) subject to prosecution for official misconduct under 45-7-401; and

(c) subject to disciplinary action by his supervisor, if any.

(2) A public official or employee who is uncertain as to whether the conduct of someone under his supervision is a violation of the provisions of this part may request an advisory opinion from the commission in the manner provided in this part.

Section 5. 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 fiduciary duty.

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

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

(b) engage in a substantial financial transaction for his private business purposes with a person whom he 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 agency;

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

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

(3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding subsection (2)(e) if his participation is

necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 2-2-121.

(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."

Section 6. 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 duty.

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

(a) engage in a substantial financial transaction for his private business purposes with a person whom he 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 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 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."

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

"2-2-131. ~~Voluntary disclosure~~ Disclosure of interest  
~~---when mandatory---when voluntary---procedure.~~ (1) A  
 public officer or employee ~~may shall~~, prior to acting in a  
 manner which may impinge on his fiduciary duty, disclose the  
 nature of his private interest which creates the conflict.  
 He shall make the disclosure in writing to the ~~secretary--of~~  
~~state commission~~, listing the amount of his financial  
 interest, if any, the purpose and duration of his services  
 rendered, if any, and the compensation received for the  
 services or such other information as is necessary to  
 describe his interest. If he then performs the official act  
 involved, he shall state for the record the fact and summary  
 nature of the interest disclosed at the time of performing  
 the act.

(2) ~~A public officer or employee who is uncertain of  
 whether he has a conflict requiring disclosure under this  
 section may make a voluntary disclosure in the manner  
 provided in subsection (1) or request an advisory opinion  
 from the commission in the manner provided in this part, or  
 both."~~

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

"2-2-132. Powers of the ~~secretary-of-state commission~~.  
 The ~~secretary-of-state commission~~ may:

(1) ~~Issue advisory opinions with such deletions as are  
 necessary to protect the identity of the requesting party or  
 the party about whom the opinion is written as provided in  
 this part;~~

(2) keep and permit reasonable public access to  
 voluntary disclosure statements filed as provided in this  
~~part;~~

(3) ~~make rules for the conduct of his affairs under  
 this part;~~ publish and distribute summaries of any advisory  
 opinions issued;

~~(4) review the provisions of this part and recommend  
 legislation relating to ethics to any session of the  
 legislature; and~~

~~(5) make rules for the conduct of its affairs under  
 this part concerning;~~

~~(a) the form for making disclosures under 2-2-131 and  
 the manner in which the public will be allowed reasonable  
 access to such disclosure statements; and~~

~~(b) the procedures for requesting and issuing advisory  
 opinions consistent with the provisions of [sections 9  
 through 14]."~~

NEW SECTION. Section 9. Advisory opinions -- who may  
 request. (1) The commission may issue an advisory opinion as  
 to whether in its judgment certain conduct would be  
 considered a violation of this part.

(2) The commission may issue an advisory opinion only at the request of:

(a) any public officer or employee who in his discretion seeks the advice of the commission regarding his own conduct;

(b) any public officer or employee who in his discretion seeks the advice of the commission regarding the conduct of someone under his supervision; or

(c) any county attorney who has received a complaint from any citizen and who in his discretion seeks the advice of the commission regarding the conduct of a public officer or employee of his county.

(3) The commission may not issue an opinion at the request of anyone or concerning the conduct of anyone not specifically provided for in this section. The commission may not initiate a request on its own motion.

NEW SECTION. Section 10. How advisory opinions requested -- contents. (1) An advisory opinion request must:

(a) be submitted to the commission in writing;

(b) set forth the specific transaction or activity for which an opinion is being requested;

(c) be submitted by the requesting party as posing a hypothetical situation, with such deletions being made by the requesting party as are necessary to protect the identity of the party about whom the opinion is requested;

and

(d) include facts sufficient to enable the commission to answer a specific question.

(2) An advisory opinion request may include:

(a) any interpretations asserted by the requesting party; and

(b) any supporting material that the requesting party wishes to include.

(3) An advisory opinion request may not:

(a) identify the party about whom the opinion is requested unless the requesting party is seeking an opinion about his own conduct; or

(b) contain any defamatory, slanderous, or libelous statements.

NEW SECTION. Section 11. Commission to refer certain requests. (1) Whenever the commission receives any complaint or request concerning conduct other than as specified in [section 9], the commission shall immediately and without taking any action on the request refer it to the appropriate county attorney and to:

(a) the presiding officer of the appropriate body of the legislature if the request concerns the conduct of a member or employee of the legislature;

(b) the supreme court if the request concerns the conduct of a member or employee of the judiciary; or

(c) the supervisor, if any, of the public official or employee whose conduct is the subject of the request.

(2) Requests or complaints received and referred according to this section may not be made public by the commission.

**NEW\_SECTION.** Section 12. Issuing advisory opinions -- procedure -- content of opinion. (1) Upon receiving a request for an advisory opinion, the commission shall:

(a) read and consider the facts presented;

(b) apply the applicable sections of this part; and

(c) reach a determination as to whether, in its judgment, the facts presented would amount to a violation of any section of this part.

(2) Upon reaching a determination, the commission shall issue to the requesting party its advisory opinion, containing only:

(a) a summary of the facts presented;

(b) its determination; and

(c) the rationale supporting its determination.

(3) No advisory opinion may be issued by the commission unless it is signed by a majority of the members.

**NEW\_SECTION.** Section 13. Considering requests -- items to be included -- hearings prohibited. In considering a request for an advisory opinion:

(1) the commission may:

(a) consider only the facts submitted by the requesting party;

(b) if it determines it does not have sufficient facts to issue an opinion, deliver to the requesting party a notice to that effect, including a statement of the specific facts it needs in order to issue an opinion; and

(c) utilize materials prepared by its staff, including draft opinions and statutory interpretations.

(2) the commission may not:

(a) hold any hearings on any request;

(b) conduct an inquiry of any kind as to the situation surrounding the request; or

(c) proceed with a request which has been withdrawn by the requesting party.

**NEW\_SECTION.** Section 14. Advisory opinions made public -- confidentiality. (1) When an advisory opinion is issued it must be made available to the public.

(2) Except as provided in [section 11(2)] and subsection (3), the requesting party is solely responsible for protection of the identity of the party about whom the opinion is written.

(3) The advisory opinion may contain the facts as related in the request but may not add anything that would tend to reveal the identity of the party about whom the opinion is written.



Section 15. Section 2-15-411, MCA, is amended to read:

"2-15-411. ~~Commissioner of Commission on ethics and~~ political practices. (1) There is a ~~commissioner of~~ commission on ethics and political practices who ~~is~~ appointed as provided in 13-37-102.

(2) The ~~office of the commissioner~~ commission is attached to the office of the secretary of state for administrative purposes only, as specified in 2-15-121, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 2-15-121 do not apply.

~~(3) The commission is designated a quasi-judicial board for the purposes of 2-15-124, except that the provisions of subsections (2), (3), and (5) of 2-15-124 do not apply.~~

Section 16. Section 2-16-603, MCA, is amended to read:

"2-16-603. Officers subject to recall -- grounds for recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for

the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, ~~breach of his fiduciary duty in violation of 2-2-103~~, or conviction of a felony offense enumerated in Title 45 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct."

Section 17. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Individual" means a human being.

(2) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision thereof, or other organization or group of persons.

(3) "Public official" means any individual, elected or appointed, acting in his official capacity for the state or local government or any political subdivision thereof, but does not include those acting in a judicial or quasi-judicial capacity.

(4) "Lobbying" includes:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity; and

(b) the practice of promoting or opposing official action by any public official in the event the person engaged in such practice expends \$1,000 per calendar year or more exclusive of personal travel and living expenses.

(5) (a) "Lobbyist" means any person who engages in the practice of lobbying for hire.

(b) "Lobbyist" does not include:

(i) any individual Montana citizen acting solely on his own behalf; or

(ii) any individual working for the same principal as a licensed lobbyist, such individual having no personal contact with any public official on behalf of his principal.

(c) Nothing in this section deprives any citizen not lobbying for hire of the constitutional right to communicate with public officials.

(6) "Lobbying for hire" includes activities of any officers, agents, attorneys, or employees of any principal who are paid, reimbursed, or retained by such principal and whose duties include lobbying. When an individual is reimbursed only for his personal living and travel expenses,

which together do not exceed \$1,000 per calendar year, that individual shall not be considered to be lobbying for hire.

(7) "Unprofessional conduct" means:

(a) a violation of any of the provisions of this chapter;

(b) instigating action by any public official for the purpose of obtaining employment in opposition thereto;

(c) attempting to influence the action of any public official on any measure pending or to be proposed by:

(i) the promise of support or opposition at any future election;

(ii) promise of financial support;

(iii) making public any unsubstantiated charges of improper conduct on the part of any other lobbyist, any principal, or any legislator;

(iv) any improper economic reprisal or other unlawful retaliation against any public official; or

(v) any means other than argument on the merits thereof;

(d) attempting to influence a decision or vote by a hearing examiner or quasi-judicial officer in any contested case proceeding under Title 2, chapter 4, part 6, except as provided therein;

(e) attempting to knowingly deceive any public official with regard to the pertinent facts of an official

1 matter or attempt to knowingly misrepresent pertinent facts  
2 of an official matter to any public official; or

3 (f) engaging in practices which reflect discredit on  
4 the practice of lobbying.

5 (8) "Principal" means any person who makes payments in  
6 excess of \$1,000 per calendar year for any of the following:

7 (a) to engage a lobbyist; or

8 (b) in the case of a person other than an individual,  
9 to solicit, directly, indirectly, or by an advertising  
10 campaign, the lobbying efforts of another person.

11 (9) "Docket" means the register and reports of  
12 lobbyists and principals maintained by the commissioner  
13 pursuant to 5-7-201.

14 (10) "Payment" means distribution, transfer, loan,  
15 advance, deposit, gift, or other rendering made or to be  
16 made of money, property, or anything of value.

17 (11) "Payment to influence official action" means any  
18 of the following types of payment:

19 (a) direct or indirect payment to a lobbyist by a  
20 principal, as salary, fee, or compensation for expenses or  
21 for any other purpose;

22 (b) payment in support of or assistance to a lobbyist  
23 or lobbying activities, including, but not limited to, the  
24 direct payment of expenses incurred at the request or  
25 suggestion of the lobbyist.

1 (12) "Business" means any holding or interest whose  
2 fair market value is greater than \$1,000, in any  
3 corporation, partnership, sole proprietorship, firm,  
4 enterprise, franchise, association, self-employed  
5 individual, holding company, joint stock company,  
6 receivership, trust, or other entity or property held in  
7 anticipation of profit, but does not include nonprofit  
8 organizations.

9 (13) "~~Commissioner Commission~~" means the commissioner  
10 ~~of--practices--practices~~ commission on ethics and political  
11 practices established by 2-15-411.

12 (14) "Elected official" means a public official holding  
13 a state office filled by a statewide vote of all the  
14 electors of Montana or a state district office, including,  
15 but not limited to legislators, public service  
16 commissioners, and district court judges. The term  
17 "official-elect" shall also apply only to such offices."

18 Section 18. Section 5-11-203, MCA, is amended to read:

19 "5-11-203. Distribution of senate and house journals  
20 and session laws. (1) Immediately after the senate and house  
21 journals and the session laws are bound, the legislative  
22 council shall distribute them.

23 (2) The council shall distribute the house and senate  
24 journals as follows:

25 (a) to each county clerk, one copy of each for the use

1 of the county;

2 (b) to the Montana state library, 20 copies of each  
3 for the use of the library and distribution to depository  
4 libraries, of which 2 copies will be deposited with the  
5 state historical library for security purposes;

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

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

11 (e) to each member of the legislature, the secretary  
12 of the senate, and the chief clerk of the house of  
13 representatives from the session at which the journals were  
14 adopted, one copy of each.

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

17 (a) to each department of the executive branch of the  
18 United States; agency, commission, conference, or  
19 corporation established by the United States government; or  
20 any other subdivision thereof upon request and approval by  
21 the legislative council, one copy;

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

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

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

25 (e) to the state law librarian, four copies for the

1 use of the library and such additional copies as may be  
2 required for exchange with libraries and institutions  
3 maintained by other states and territories and public  
4 libraries;

5 (f) to the library of each custodial institution, one  
6 copy;

7 (g) to each Montana member of congress, each United  
8 States district judge in Montana, each of the judges of the  
9 state supreme and district courts, and each of the state  
10 officers as defined in 2-2-102~~(f)~~, one copy;

11 (h) to each member of the legislature, the secretary  
12 of the senate, and the chief clerk of the house of  
13 representatives from the session at which the laws were  
14 adopted, one copy;

15 (i) to each of the community college districts of the  
16 state, as defined in 20-15-101, and each unit of the Montana  
17 university system, one copy;

18 (j) to each county clerk, three copies for the use of  
19 the county; and

20 (k) to each county attorney and to each clerk of a  
21 district court, one copy."

22 Section 19. Section 13-37-101, MCA, is amended to  
23 read:

24 "13-37-101. ~~Commissioner of Commission on ethics and~~  
25 political practices. In this chapter, "commissioner

1 ~~commission" means the commissioner of commission on ethics~~  
 2 ~~and political practices created by 13-37-102, unless the~~  
 3 ~~context clearly indicates otherwise."~~

4 Section 20. Section 13-37-102, MCA, is amended to  
 5 read:

6 "13-37-102. Creation of office ~~== members ==~~  
 7 ~~appointment. (1) There is a commissioner of commission on~~  
 8 ~~ethics and political practices who is appointed by the~~  
 9 ~~governor subject to confirmation by a majority of the~~  
 10 ~~senate consisting of six members. A four-member selection~~  
 11 ~~committee comprised of the republicans holding any of the~~  
 12 ~~offices of governor, secretary of state, attorney general,~~  
 13 ~~auditor, superintendent of public instruction, speaker of~~  
 14 ~~the house, the president of the senate, and the minority~~  
 15 ~~floor leaders leader of both houses either house of the~~  
 16 ~~legislature shall submit to the governor a list of not less~~  
 17 ~~than two or more than five names of individuals for his~~  
 18 ~~consideration appoint three members to the commission. The~~  
 19 ~~remaining three members shall be appointed by a second~~  
 20 ~~selection committee comprised of any of the officeholders~~  
 21 ~~listed above who are democrats.~~

22 (2) A majority of the members of the each selection  
 23 committee shall agree upon each nomination appointment.

24 (3) Every appointment must be confirmed by the senate,  
 25 but an appointment made while the senate is not in regular

1 session is effective as an appointment until the end of the  
 2 next regular session.

3 (2)(4) The An individual selected to serve as  
 4 commissioner of political practices on the commission may be  
 5 removed by the governor prior to the expiration of the his  
 6 term only for incompetence, malfeasance, or neglect of duty.  
 7 The sufficiency of such causes shall be subject to judicial  
 8 review."

9 Section 21. Section 13-37-103, MCA, is amended to  
 10 read:

11 "13-37-103. Term of office -- limitations on holding  
 12 other office. (1) The individual individuals selected to  
 13 serve as on the commissioner of commission on ethics and  
 14 political practices is appointed for a 6-year term, but he  
 15 is shall serve terms of 6 years each. Once having served a  
 16 term on the commission, a member is thereafter ineligible to  
 17 serve as on the commissioner of political practices  
 18 commission.

19 (2) The An individual selected to serve as  
 20 commissioner of political practices on the commission is  
 21 precluded from being a candidate for public office as  
 22 defined in 13-1-101 for a period of 5 3 years from the time  
 23 that he leaves office as a commissioner."

24 Section 22. Section 13-37-104, MCA, is amended to  
 25 read:

1       "13-37-104. Vacancy. (1) If for any reason a vacancy  
2 occurs in the ~~a position of commissioner on the commission,~~  
3 a successor shall be appointed within 30 days as provided in  
4 13-37-102(1) to serve out the unexpired term. Every  
5 nomination ~~shall be confirmed by the senate, but a~~  
6 nomination made while the senate is not in session shall be  
7 effective as an appointment until the end of the next  
8 session The appointment to fill a vacancy is made by the  
9 selection committee of members of the same political party  
10 that appointed the commissioner whose position is vacant.

11       (2) An individual who is selected to serve out the  
12 unexpired term of a preceding commissioner and who has  
13 served 3 years or more of an unexpired term is not eligible  
14 for reappointment.

15       (3) An individual who is selected to serve out the  
16 unexpired term of a preceding commissioner and who has  
17 served less than 3 years may be reappointed for a 6-year  
18 term as provided in 13-37-102(1)."

19       Section 23. Section 13-37-105, MCA, is amended to  
20 read:

21       "13-37-105. Impeachment and prosecution of  
22 commissioner. ~~The~~ A commissioner may be removed from office  
23 by impeachment as provided in Title 5, chapter 5, part 4.  
24 He may also be prosecuted by the appropriate county attorney  
25 for official misconduct as specified in 45-7-401."

1       Section 24. Section 13-37-106, MCA, is amended to  
2 read:

3       "13-37-106. Salary. ~~(1) The commissioner of Each~~  
4 member of the commission on ethics and political practices  
5 is entitled to receive ~~a salary of \$23,794 in fiscal year~~  
6 ~~1982 and \$25,754 after June 30, 1982~~ compensation as  
7 provided in 2-15-124(7).

8       ~~(2) The salary commission must review the~~  
9 ~~commissioner's salary and may recommend salary increases to~~  
10 ~~the legislature."~~

11       NEW SECTION. Section 25. Commission structure --  
12 chairman and vice-chairman. (1) The commission shall elect a  
13 chairman and a vice-chairman from among its members to serve  
14 for a term of 1 year each.

15       (2) A member may serve as chairman only once during  
16 any term of office to which such member is appointed.

17       (3) The chairman and vice-chairman may not be  
18 affiliated with the same political party.

19       (4) The vice-chairman shall act as chairman in the  
20 absence or disability of the chairman or in the event of a  
21 vacancy in such office.

22       (5) The chairman and vice-chairman may each make and  
23 second motions and vote.

24       NEW SECTION. Section 26. Commission meetings. (1) The  
25 commission shall meet at least once every other month and at

1 other times at the call of the chairman.

2 (2) The commission shall meet at the time and place  
3 designated in the call.

4 (3) All meetings of the commission are to be conducted  
5 as provided in Title 2, chapter 3.

6 Section 27. Section 13-37-112, MCA, is amended to  
7 read:

8 "13-37-112. Personnel and budget. (1) The commissioner  
9 commission shall select an appropriate staff to enforce the  
10 provisions of chapters 35, 36, or 37 of this title; Title  
11 5, chapter 7; Title 2, chapter 2, part 1; and [sections 32  
12 through 40 of this act]; and he it may hire and fire all  
13 personnel under his its supervision.

14 (2) The commissioner commission shall be responsible  
15 for preparing, administering, and allocating the budget for  
16 his its office."

17 Section 28. Section 13-37-116, MCA, is amended to  
18 read:

19 "13-37-116. Exercise of powers. The commissioner  
20 commission may exercise all of the powers conferred upon him  
21 it by law in any jurisdiction or political subdivision of  
22 the state."

23 Section 29. Section 13-37-119, MCA, is amended to  
24 read:

25 "13-37-119. Availability of information. (1) The

1 commissioner commission shall make statements and other  
2 information filed with his-office it available for public  
3 inspection and copying during regular office hours and make  
4 copying facilities available free of charge or at a charge  
5 not to exceed actual cost.

6 (2) The commissioner commission shall preserve  
7 statements and other information filed with his-office it  
8 for a period of 10 years from date of receipt.

9 (3) The commissioner commission shall prepare and  
10 publish summaries of the statements received and such other  
11 reports as he it considers appropriate.

12 (4) The commissioner commission shall provide for wide  
13 public dissemination of summaries and reports."

14 Section 30. Section 13-37-120, MCA, is amended to  
15 read:

16 "13-37-120. Reports. The commissioner commission shall  
17 at the close of each fiscal year report to the legislature  
18 and the governor concerning the action he it has taken,  
19 including the names, salaries, and duties of all individuals  
20 in his its employ and the money he it has disbursed. The  
21 commissioner commission shall also make further reports on  
22 the matters within his its jurisdiction that the legislature  
23 may prescribe and shall also make recommendations for  
24 further legislation that may appear desirable."

25 Section 31. Section 13-37-124, MCA, is amended to

1 reads:

2 "13-37-124. Consultation and cooperation with county  
3 attorney. (1) Whenever the commissioner commission  
4 determines that there appears to be sufficient evidence to  
5 justify a civil or criminal prosecution under chapters 35,  
6 36, or 37 of this title, he it shall notify the county  
7 attorney of the county in which the alleged violation  
8 occurred and shall arrange to transmit to the county  
9 attorney all information relevant to the alleged violation.  
10 If the county attorney fails to initiate the appropriate  
11 civil or criminal action within 30 days after he receives  
12 notification of the alleged violation, the commissioner  
13 commission may then initiate the appropriate legal action.

14 (2) A county attorney may, at any time prior to the  
15 expiration of the 30-day time period specified in subsection  
16 (1), waive his right to prosecute and thereby authorize the  
17 commissioner commission to initiate the appropriate civil or  
18 criminal action.

19 (3) The provisions of subsection (1) do not apply to a  
20 situation in which the alleged violation has been committed  
21 by the county attorney of a county. In this instance, the  
22 commissioner commission is authorized to directly prosecute  
23 any alleged violation of chapters 35, 36, or 37 of this  
24 title.

25 (4) If a prosecution is undertaken by the commissioner

1 commission, all court costs associated with the prosecution  
2 shall be paid by the state of Montana, and all fines and  
3 forfeitures imposed pursuant to a prosecution by the  
4 commissioner commission shall be deposited in the state  
5 general fund."

6 NEW SECTION. Section 32. Definitions. Unless the  
7 context requires otherwise, the following definitions apply:

8 (1) "Commission" means the commission on ethics and  
9 political practices established by 13-37-102.

10 (2) "False" means clearly incorrect, contrary to fact,  
11 mistaken, or untruthful.

12 (3) "Misleading" means clearly inaccurate,  
13 exaggerative, or designed to deceive or cause misperception.

14 NEW SECTION. Section 33. False or misleading  
15 statements relating to ballot issues. No person or political  
16 committee as defined in 13-1-101 may knowingly, either  
17 through actual or constructive knowledge, make, publish, or  
18 circulate any false or misleading statement, claim, slogan,  
19 or message in any letter, circular, advertisement, telephone  
20 advertising, or poster or in any other writing or form of  
21 media, including radio, television, buttons, or stickers,  
22 that is designed to affect the vote on any ballot issue  
23 provided for in Title 13, chapter 27.

24 NEW SECTION. Section 34. Statement of opinion on  
25 ballot issue -- penalty. (1) Any letter, circular,



1 advertisement, poster, or other writing or electronic  
2 advertisement paid for by a political committee or person  
3 and designed to affect the vote on any ballot issue must  
4 contain within it a clearly conspicuous statement that all  
5 information contained therein is an expression of the  
6 opinion of the person or committee disseminating the  
7 information.

8 (2) Failure to comply with this section is punishable  
9 by a fine of \$50 per letter, circular, advertisement, or  
10 segment or unit of any other communication referred to in  
11 subsection (1).

12 NEW SECTION. Section 35. Commission powers -- fair  
13 campaign practices -- candidates and ballot issues. (1)  
14 The commission may:

15 (a) proceed on a complaint filed as provided in this  
16 part to arbitrate a dispute between and among candidates and  
17 political committees concerning an allegation of unfair  
18 campaign practices; or

19 (b) proceed on a complaint filed as provided in this  
20 part to examine a statement regarding a ballot issue.

21 (2) The commission may conduct hearings and compel the  
22 attendance of parties and witnesses as necessary to  
23 investigate any complaint.

24 (3) The commission shall adopt rules of evidence and  
25 procedure, which need not be in accordance with the

1 provisions of Title 2, chapter 4, part 6, or the rules of  
2 evidence or procedure provided for the courts of the state.

3 (4) The commission shall meet to investigate  
4 complaints and conduct hearings as it determines necessary.  
5 Upon concluding its investigations and hearings, the  
6 commission shall issue a statement indicating its findings  
7 of fact and conclusions of law.

8 NEW SECTION. Section 36. Initiation of proceedings by  
9 candidates -- complaint. (1) A candidate who believes  
10 another candidate or political committee has made a  
11 statement about him in the course of the campaign that is  
12 unfair or untrue or that violates an oath or pledge of fair  
13 campaign practices to which the other candidate or political  
14 committee has subscribed may file a complaint with the  
15 commission. The complaint must contain a specific statement  
16 of the basis of the complaint, together with evidence to  
17 support the allegation.

18 (2) Upon receipt of a complaint, the commission shall  
19 determine if the complainant has demonstrated reasonable  
20 grounds for a complaint. If it finds the complaint fails to  
21 state reasonable grounds, it must return the complaint to  
22 the candidate, stating its finding. If the commission finds  
23 the complaint does state reasonable grounds, it shall  
24 proceed on the complaint to hearing and arbitration.

25 NEW SECTION. Section 37. Initiation of proceedings on

ballot issues -- public disclaimer -- penalties. (1) The commission shall, on the sworn complaint in writing of any individual, determine whether a person or political committee has violated the provisions of [section 33 or 34] regarding ballot issues.

(2) If the commission determines by a vote of a majority of its members that a person or committee has violated [section 33], it may order the offending party to either discontinue issuance of the false or misleading information or to issue a public disclaimer, in the same medium or media that carried the false or misleading information, stating:

(a) that this information was found to be false or misleading; and

(b) the reasons for the finding.

(3) A person or committee that fails to comply with an order of the commission is subject to a fine of \$500 a day. Any penalties collected under this subsection must be deposited in the earmarked revenue fund for operation of the commission.

NEW SECTION. Section 38. Expedited hearings -- frivolous or unfounded complaints -- notice and hearing.

(1) Upon receipt of a complaint under either [section 36 or 37], the commission shall schedule a hearing within 7 days of receipt of the complaint and shall render a determination

within 10 days of receipt.

(2) If a complaint is received after October 15 of a general election year, the commission shall schedule a hearing within 3 days of receipt of the complaint and shall render a determination within 7 days of receipt.

(3) The commission may assess reasonable costs incurred by a defendant against any complaining party who submits a complaint found by the commission to be frivolous or without foundation.

(4) Each party to a proceeding under this section is entitled to reasonable notice, opportunity for a hearing, within the constraints of subsections (1) and (2), and judicial review.

NEW SECTION. Section 39. Investigative and hearing powers. (1) The commission may inspect any records, transcripts, drafts, or notes used in preparation of any writing or advertisement referred to in [section 33] by any person or political committee accused of violating [section 33].

(2) The commission may administer oaths, subpoena witnesses and compel their attendance, take evidence, and require the production of materials referred to in subsection (1) that are relevant or material for the purpose of conducting any hearing or investigation.

NEW SECTION. Section 40. Rulemaking authority. The

1 commission may adopt rules necessary to carry out the  
2 provisions of this part concerning:

3 (1) the form for making complaints under [section 36  
4 or 37]; and

5 (2) the procedures for holding hearings as provided in  
6 this part.

7 Section 41. Section 45-7-401, MCA, is amended to read:

8 "45-7-401. 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;

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

16 (c) with the purpose to obtain advantage for himself  
17 or another, performs an act in excess of his lawful  
18 authority or in breach of his fiduciary duty in violation of  
19 2-2-103;

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 2-3-203.

25 (2) A public servant convicted of the offense of

1 official misconduct shall be fined not to exceed \$500 or be  
2 imprisoned in the county jail for a term not to exceed 6  
3 months, or both.

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

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

15 (5) This section does not affect any power conferred  
16 by law to impeach or remove any public servant or any  
17 proceeding authorized by law to carry into effect such  
18 impeachment or removal."

19 NEW SECTION. Section 42. Initial appointments to  
20 commission. Notwithstanding the provisions of 13-37-103, the  
21 initial appointments to the commission on ethics and  
22 political practices must be made as follows:

23 (1) one member must be appointed by each selection  
24 committee for a term of 2 years; and

25 (2) one member must be appointed by each selection

1 committee for a term of 4 years.

2 **NEW\_SECTION.** Section 43. Word substitution. Unless  
3 inconsistent with this act, any reference in the MCA,  
4 including laws passed by the 48th legislature and approved  
5 by the governor, to the "commissioner of political  
6 practices" or "commissioner" (of political practices) is  
7 changed to "commission on ethics and political practices" or  
8 "commission" (on ethics and political practices). The code  
9 commissioner shall, without changing meaning, make such  
10 grammatical and other incidental changes in the MCA as are  
11 necessary to effect such terminology changes.

12 **NEW\_SECTION.** Section 44. Codification Instructions.  
13 (1) Sections 4 and 9 through 14 are intended to be codified  
14 as an integral part of Title 2, chapter 2, part 1, and the  
15 provisions of Title 2, chapter 2, part 1, apply to sections  
16 4 and 9 through 14.

17 (2) Sections 25 and 26 are intended to be codified as  
18 an integral part of Title 13, chapter 37, part 1, and the  
19 provisions of Title 13, chapter 37, part 1, apply to  
20 sections 25 and 26.

21 (3) Sections 32 through 40 are intended to be codified  
22 as an integral part of Title 13, chapter 35, part 3, and the  
23 provisions of Title 13, chapter 35, part 3, apply to  
24 sections 32 through 40.

25 **NEW\_SECTION.** Section 45. Severability. If a part of

1 this act is invalid, all valid parts that are severable from  
2 the invalid part remain in effect. If a part of this act is  
3 invalid in one or more of its applications, the part remains  
4 in effect in all valid applications that are severable from  
5 the invalid applications.

6 **NEW\_SECTION.** Section 46. Effective date. This act is  
7 effective July 1, 1983.

-End-

## STATE OF MONTANA

REQUEST NO. 361-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 9, 1983, there is hereby submitted a Fiscal Note for House Bill 689 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 689 creates a commission on ethics and political practices; replaces the Commissioner of Political Practices; transfers the administration of the code of ethics from the Secretary of State to the commission; creates new duties regarding fair campaign practices and ballot issues; and provides penalties for violations of code of ethics.

ASSUMPTIONS:

- 1) Current staff would not be able to administer proposed legislation.
- 2) More demand would be created for working space and storage.
- 3) The following operating expenses would be affected; travel, printing, postage, telephone.
- 4) The commission will meet more often during the general election year.

FISCAL IMPACT:

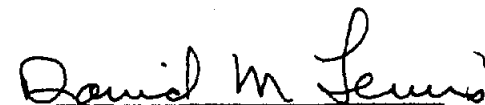
<u>Expenditure:</u>	<u>FY 84</u>	<u>FY 85</u>
Personal Services		
Under Current Law	\$ 123,188	\$ 122,920
Under Proposed Law	126,584	129,712
Increased	\$ 3,396	\$ 6,792
Operating Expenses		
Under Current Law	\$ 26,426	\$ 20,448
Under Proposed Law	34,517	31,392
Increased	\$ 8,091	\$ 10,944
Equipment		
Under Current Law	\$ 200	\$ 0
Under Proposed Law	2,687	0
Increased	\$ 2,487	\$ 0
Total Expenditure		
Under Current Law	\$ 149,814	\$ 143,368
Under Proposed Law	163,788	161,104
Increased To General Fund	\$ 13,974	\$ 17,736

FISCAL 13:J/1

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-14-83



STATE OF MONTANA

REQUEST NO. 519-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 25, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 689, Amended, pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

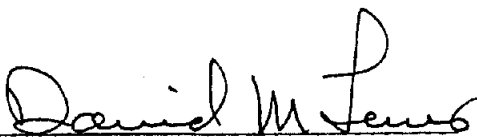
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 689, amended, creates a commission on ethics and political practices; replaces the Commissioner of Political Practices; transfers the administration of the code of ethics from the Secretary of State to the commission; creates new duties regarding fair campaign practices and ballot issues; and provides penalties for violations of code of ethics.

COMMENT:

The amendments do not change the original fiscal note. Refer to that for the assumptions and costs.

FISCAL NOTE 13:J/2



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-26-83

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 689

## 3 House State Administration Committee

4  
5 It is the intent of the Legislature to create a  
6 Commission on Ethics and Political Practices to take the  
7 place of the Commissioner of Political Practices.

8 It is intended that the duties of the Commission  
9 include those duties presently assigned to the Commissioner.  
10 It is not the intent of this bill to expand the powers of  
11 the Commission beyond those powers currently granted to the  
12 Commissioner in the areas of lobbyist regulation and  
13 campaign finance.

14 It is intended that the duties of the Commission  
15 include those duties presently assigned to the Secretary of  
16 State in the administration of Title 2, chapter 2, part 1.

17 It is intended that the powers of the Commission in this  
18 area are limited to those specifically granted in this bill.

19 It is intended that the Commission not have the authority to  
20 hold hearings or conduct investigations of any kind  
21 regarding the behavior of any public official or employee.

22 It is intended that the penalties contained in this  
23 bill are applicable to all public officials and employees,  
24 whether their functions be legislative, judicial, or  
25 executive.

1 It is intended that the portions of this bill revising  
2 the code of ethics in the areas of ethical standards,  
3 disclosure requirements and mechanics, and the advisory  
4 opinion function, apply only to executive branch officials  
5 and employees at the state and local level. This is intended  
6 because ethical provisions regarding the judiciary are  
7 already in place and because it is the intent of the  
8 Legislature, after review, to implement its own conduct  
9 review and disclosure requirements and mechanics.

10 It is intended that the Commission will study the laws  
11 given to it to administer, particularly the code of ethics,  
12 and reports to the Legislature at the next legislative  
13 session or subsequent sessions any changes it wishes to  
14 recommend.

15 It is intended that any study or review of the code of  
16 ethics and any legislation recommended by the Commission be  
17 limited to those standards or mechanics that apply to  
18 executive branch officials and not include provisions which  
19 apply to members of the Legislature.

20 It is intended that the authority given to the  
21 Commission in section 26 of this bill to hire and fire all  
22 personnel under its supervision not be used to fire any of  
23 the personnel currently employed in the office of  
24 Commissioner of Political Practices, unless there be good  
25 and sufficient cause to do so.

1       A Statement of Intent is required for this bill because  
 2       section 8 grants the Commission the authority to adopt rules  
 3       for the conduct of its affairs under the code of ethics. It  
 4       is intended that the authority to adopt rules is  
 5       specifically limited to the areas provided for in section 8.  
 6       Rules are to be adopted under the Montana Administrative  
 7       Procedure Act. The rules regarding advisory opinions must be  
 8       consistent with sections 9 through 14 of this bill. It is  
 9       intended that the Commission may not, by rule, provide for  
 10      any hearing or investigation of any kind regarding the  
 11      behavior of any individual.



Approved by Committee  
on State Administration

1 HOUSE BILL NO. 689  
2 INTRODUCED BY WINSLOW, ECK, VINCENT, FABREGA, CURTISS,  
3 IVERSON, D. BROWN, BERTELSEN, SHONTZ, HANNAH,  
4 KOLSTAD, GALT, ADDY, BERGENE, EUDAILY  
5 BY REQUEST OF THE SECRETARY OF STATE  
6  
7 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A COMMISSION  
8 ON ETHICS AND POLITICAL PRACTICES TO TAKE THE PLACE OF THE  
9 COMMISSIONER OF POLITICAL PRACTICES; SPECIFYING ITS  
10 STRUCTURE AND ORGANIZATION; DEFINING ITS POWERS AND DUTIES,  
11 INCLUDING ADMINISTRATION OF LOBBYING AND CAMPAIGN PRACTICE  
12 LAWS CURRENTLY ADMINISTERED BY THE COMMISSIONER;  
13 TRANSFERRING THE ADMINISTRATION OF THE CODE OF ETHICS FROM  
14 THE SECRETARY OF STATE TO THE COMMISSION; CREATING NEW  
15 DUTIES REGARDING FAIR CAMPAIGN PRACTICES FOR CANDIDATES--AND  
16 CONCERNING--BALLOT--ISSUES; GENERALLY REVISING AND CLARIFYING  
17 THE CODE OF ETHICS; PROVIDING PENALTIES FOR VIOLATIONS OF  
18 THE CODE OF ETHICS; AMENDING SECTIONS 2-2-102, 2-2-103,  
19 2-2-105, 2-2-121, 2-2-125, 2-2-131, 2-2-132, 2-15-411,  
20 2-16-603, 5-7-102, 5-11-203, 13-37-101 THROUGH 13-37-106,  
21 13-37-112, 13-37-116, 13-37-119, 13-37-120, 13-37-124, AND  
22 45-7-401, MCA; AND PROVIDING AN EFFECTIVE DATE."  
23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
25 Section 1. Section 2-2-102, MCA, is amended to read:

1 "2-2-102. Definitions. As used in this part, the  
2 following definitions apply:  
3 (1) "Business" includes a corporation, partnership,  
4 sole proprietorship, trust or foundation, or any other  
5 individual or organization carrying on a business, whether  
6 or not operated for profit.  
7 ~~(2) "Commission" means the commission on ethics and~~  
8 ~~political practices as established in 2-15-411.~~  
9 ~~(2)(3)~~ "Compensation" means any money, thing of value,  
10 or economic benefit conferred on or received by any person  
11 in return for services rendered or to be rendered by himself  
12 or another.  
13 ~~(3)(4)~~ "Employee" means any temporary or permanent  
14 employee of the state or any subdivision thereof ~~or member~~  
15 ~~of the judiciary~~, including a member of a board, commission,  
16 or committee, except a legislator, ~~a member of the~~  
17 ~~judiciary~~, and ~~or~~ an employee under contract to the state.  
18 ~~(4)(5)~~ "Financial interest" means an interest held by  
19 an individual, his spouse, or minor children which is:  
20 (a) an ownership interest in a business;  
21 (b) a creditor interest in an insolvent business;  
22 (c) an employment or prospective employment for which  
23 negotiations have begun;  
24 (d) an ownership interest in real or personal  
25 property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

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

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

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

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

"2-2-103. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state. ~~He may not use~~

~~his office, the influence created by his official position, or the information gained by virtue of that position to advance any personal economic interest of his own or of a relative, other than such strictly incidental benefits as may accrue from the enactment or administration of laws affecting the public generally.~~

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state ~~as in the same manner and for up to triple the amount that~~ a trustee of property ~~is~~ would be liable to a beneficiary under 72-20-203(2), and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

~~(3) If a county attorney has received a complaint alleging any violation of this part, he may in his sole discretion request an advisory opinion from the commission in the manner provided in this part, if he is uncertain whether the conduct complained of would be considered a violation when:~~

~~(a) viewed by an impartial panel of citizens; or~~

~~(b) compared to conduct occurring in other counties of~~

1 the state.

2 ~~(4) The determination of the commission is advisory~~  
 3 ~~only, and the county attorney seeking the opinion is not~~  
 4 ~~obligated to follow or agree with the advice.~~

5 ~~(3)(5)~~ The following sections set forth various rules  
 6 of conduct, the transgression of any of which is, as such, a  
 7 violation of fiduciary duty, and various ethical principles,  
 8 the transgression of any of which is not, as such, a  
 9 violation of fiduciary duty."

10 Section 3. Section 2-2-105, MCA, is amended to read:

11 "2-2-105. Ethical principles for public officers and  
 12 employees. (1) The principles in this section are intended  
 13 as guides to conduct and do not constitute violations as  
 14 such of the public trust of office or employment in state or  
 15 local government. ~~However, failure to observe one of these~~  
 16 ~~principles may be taken as evidence tending to establish, in~~  
 17 ~~conjunction with all the other facts of a case, a breach of~~  
 18 ~~fiduciary duty.~~

19 (2) A public officer or employee should not acquire an  
 20 interest in any business or undertaking which he has reason  
 21 to believe may be directly and substantially affected to its  
 22 economic benefit by official action to be taken by his  
 23 agency.

24 (3) A public officer or employee should not, within  
 25 the months following the voluntary termination of his office

1 or employment, obtain employment in which he will take  
 2 direct advantage, unavailable to others, of matters with  
 3 which he was directly involved during his term or  
 4 employment. These matters are rules, other than rules of  
 5 general application, which he actively helped to formulate  
 6 and applications, claims, or contested cases in the  
 7 consideration of which he was an active participant.

8 (4) A public officer or employee should not perform an  
 9 official act directly and substantially affecting a business  
 10 or other undertaking to its economic detriment when he has a  
 11 substantial financial interest in a competing firm or  
 12 undertaking."

13 NEW SECTION. Section 4. Penalties for code of ethics  
 14 violation. ~~(1)~~ In addition to the liabilities provided for  
 15 in 2-2-103, any public official or employee adjudged in  
 16 violation of the provisions of this part may be:

17 ~~(a)(1)~~ subject to recall under the provisions of  
 18 chapter 16 of this title; AND

19 ~~(b)(2)~~ subject to prosecution for official misconduct  
 20 under 45-7-401; and

21 ~~(c)--subject-to-disciplinary-action-by-his-supervisor~~  
 22 ~~if-any~~

23 ~~(2)--A public official or employee who is uncertain as~~  
 24 ~~to whether the conduct of someone under his supervision is a~~  
 25 ~~violation of the provisions of this part may request an~~

1 ~~advisory--opinion-from-the-commission-in-the-manner-provided~~  
2 ~~in-this-part.~~

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

4 "2-2-121. 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 and substantially  
21 affecting to its economic benefit a business or other  
22 undertaking in which he either has a substantial financial  
23 interest or is engaged as counsel, consultant,  
24 representative, or agent.

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

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

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

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

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

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

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

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

24 (3) A member of the governing body of a local  
25 government may perform an official act notwithstanding this

section when his 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."

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

"2-2-131. ~~Voluntary--disclosure~~ Disclosure of interest ~~--when mandatory--when voluntary--~~ procedure. (1) A public officer or employee ~~may shall~~, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary-of-state ~~commission~~, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

(2) ~~A public officer or employee who is uncertain of whether he has a conflict requiring disclosure under this section may make a voluntary disclosure in the manner provided in subsection (1) or request an advisory opinion from the commission in the manner provided in this part, or both.~~

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

"2-2-132. Powers of the secretary-of-state ~~commission~~.

The secretary-of-state ~~commission~~ may:

(1) ~~issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written as provided in this part;~~

(2) keep and permit reasonable public access to ~~voluntary disclosure statements filed as provided in this part;~~

(3) ~~make--rules--for--the conduct of his affairs under this part; publish and distribute summaries of any advisory opinions issued;~~

(4) ~~review the provisions of this part and recommend legislation relating to ethics to any session of the legislature; and~~

(5) ~~make rules for the conduct of its affairs under this part concerning:~~

(a) ~~the form for making disclosures under 2-2-131 and the manner in which the public will be allowed reasonable access to such disclosure statements; and~~

(b) ~~the procedures for requesting and issuing advisory opinions consistent with the provisions of [sections 9 through 14]."~~

~~NEW SECTION.~~ Section 9. Advisory opinions -- who may request. (1) The commission may issue an advisory opinion as

to whether in its judgment certain conduct would be considered a violation of this part.

(2) The commission may issue an advisory opinion only at the request of:

(a) any public officer or employee who in his discretion seeks the advice of the commission regarding his own conduct; OR

~~(b) any public officer or employee who in his discretion seeks the advice of the commission regarding the conduct of someone under his supervision; or~~

~~(c) any county attorney who has received a complaint from any citizen and who in his discretion seeks the advice of the commission regarding the conduct of a public officer or employee of his county.~~

(3) The commission may not issue an opinion at the request of anyone or concerning the conduct of anyone not specifically provided for in this section. The commission may not initiate a request on its own motion.

NEW SECTION. Section 10. How advisory opinions requested -- contents. (1) An advisory opinion request must:

(a) be submitted to the commission in writing;

(b) set forth the specific transaction or activity for which an opinion is being requested;

(c) be submitted by the requesting party as posing a hypothetical situation, with such deletions being made by

the requesting party as are necessary to protect the identity of the party about whom the opinion is requested; and

(d) include facts sufficient to enable the commission to answer a specific question.

(2) An advisory opinion request may include:

(a) any interpretations asserted by the requesting party; and

(b) any supporting material that the requesting party wishes to include.

(3) An advisory opinion request may not:

(a) identify the party about whom the opinion is requested unless the requesting party is seeking an opinion about his own conduct; or

(b) contain any defamatory, slanderous, or libelous statements.

NEW SECTION. Section 11. Commission to refer certain requests. (1) Whenever the commission receives any complaint or request concerning conduct other than as specified in [section 9], the commission shall immediately and without taking any action on the request refer it to the appropriate county attorney and to:

(a) the presiding officer of the appropriate body of the legislature if the request concerns the conduct of a member or employee of the legislature; OR

(b) the supreme court if the request concerns the conduct of a member or employee of the judiciary†-or

~~(c) -- the -- supervisor -- if -- any -- of -- the -- public -- official -- or employee -- whose -- conduct -- is -- the -- subject -- of -- the -- request.~~

(2) Requests or complaints received and referred according to this section may not be made public by the commission.

NEW SECTION. Section 12. Issuing advisory opinions -- procedure -- content of opinion. (1) Upon receiving a request for an advisory opinion, the commission shall:

(a) read and consider the facts presented;

(b) apply the applicable sections of this part; and

(c) reach a determination as to whether, in its judgment, the facts presented would amount to a violation of any section of this part.

(2) Upon reaching a determination, the commission shall issue to the requesting party its advisory opinion, containing only:

(a) a summary of the facts presented;

(b) its determination; and

(c) the rationale supporting its determination.

(3) No advisory opinion may be issued by the commission unless it is signed by a majority of the members.

NEW SECTION. Section 13. Considering requests -- items to be included -- hearings prohibited. In considering

a request for an advisory opinion:

(1) the commission may:

(a) consider only the facts submitted by the requesting party;

(b) if it determines it does not have sufficient facts to issue an opinion, deliver to the requesting party a notice to that effect, including a statement of the specific facts it needs in order to issue an opinion; and

(c) utilize materials prepared by its staff, including draft opinions and statutory interpretations.

(2) the commission may not:

(a) hold any hearings on any request;

(b) conduct an inquiry of any kind as to the situation surrounding the request; or

(c) proceed with a request which has been withdrawn by the requesting party.

NEW SECTION. Section 14. Advisory opinions made public -- confidentiality. (1) When an advisory opinion is issued it must be made available to the public.

(2) Except as provided in [section 11(2)] and subsection (3), the requesting party is solely responsible for protection of the identity of the party about whom the opinion is written.

(3) The advisory opinion may contain the facts as related in the request but may not add anything that would

1 tend to reveal the identity of the party about whom the  
2 opinion is written.

3 Section 15. Section 2-15-411, MCA, is amended to read:

4 "2-15-411. ~~Commissioner--of Commission on ethics and~~  
5 political practices. (1) There is a ~~commissioner--of~~  
6 ~~commission on ethics and~~ political practices ~~who--is~~  
7 appointed as provided in 13-37-102.

8 (2) The ~~office--of--the--commissioner~~ commission is  
9 attached to the office of the secretary of state for  
10 administrative purposes only, as specified in 2-15-121,  
11 except that the provisions of subsections (1)(b), (1)(c),  
12 (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 2-15-121 do  
13 not apply.

14 ~~(3) The commission is designated a quasi-judicial~~  
15 ~~board for the purposes of 2-15-124, except that the~~  
16 ~~provisions of subsections (2), (3), and (5) of 2-15-124 do~~  
17 ~~not apply."~~

18 Section 16. Section 2-16-603, MCA, is amended to read:

19 "2-16-603. Officers subject to recall -- grounds for  
20 recall. (1) Every person holding a public office of the  
21 state or any of its political subdivisions, either by  
22 election or appointment, is subject to recall from such  
23 office.

24 (2) A public officer holding an elective office may be  
25 recalled by the qualified electors entitled to vote for his

1 successor. A public officer holding an appointive office may  
2 be recalled by the qualified electors entitled to vote for  
3 the successor or successors of the elective officer or  
4 officers who have the authority to appoint a person to that  
5 position.

6 (3) Physical or mental lack of fitness, incompetence,  
7 violation of his oath of office, official misconduct, ~~breach~~  
8 ~~of his fiduciary duty in violation of 2-2-103,~~ or conviction  
9 of a felony offense enumerated in Title 45 is the only basis  
10 for recall. No person may be recalled for performing a  
11 mandatory duty of the office he holds or for not performing  
12 any act that, if performed, would subject him to prosecution  
13 for official misconduct."

14 Section 17. Section 5-7-102, MCA, is amended to read:

15 "5-7-102. Definitions. The following definitions apply  
16 in this chapter:

17 (1) "Individual" means a human being.

18 (2) "Person" means an individual, corporation,  
19 association, firm, partnership, state or local government or  
20 subdivision thereof, or other organization or group of  
21 persons.

22 (3) "Public official" means any individual, elected or  
23 appointed, acting in his official capacity for the state or  
24 local government or any political subdivision thereof, but  
25 does not include those acting in a judicial or



1 quasi-judicial capacity.

2 (4) "Lobbying" includes:

3 (a) the practice of promoting or opposing the  
4 introduction or enactment of legislation before the  
5 legislature or the members thereof by any person other than  
6 a member of the legislature or a public official acting in  
7 his official capacity; and

8 (b) the practice of promoting or opposing official  
9 action by any public official in the event the person  
10 engaged in such practice expends \$1,000 per calendar year or  
11 more exclusive of personal travel and living expenses.

12 (5) (a) "Lobbyist" means any person who engages in the  
13 practice of lobbying for hire.

14 (b) "Lobbyist" does not include:

15 (i) any individual Montana citizen acting solely on  
16 his own behalf; or

17 (ii) any individual working for the same principal as a  
18 licensed lobbyist, such individual having no personal  
19 contact with any public official on behalf of his principal.

20 (c) Nothing in this section deprives any citizen not  
21 lobbying for hire of the constitutional right to communicate  
22 with public officials.

23 (6) "Lobbying for hire" includes activities of any  
24 officers, agents, attorneys, or employees of any principal  
25 who are paid, reimbursed, or retained by such principal and

1 whose duties include lobbying. When an individual is  
2 reimbursed only for his personal living and travel expenses,  
3 which together do not exceed \$1,000 per calendar year, that  
4 individual shall not be considered to be lobbying for hire.

5 (7) "Unprofessional conduct" means:

6 (a) a violation of any of the provisions of this  
7 chapter;

8 (b) instigating action by any public official for the  
9 purpose of obtaining employment in opposition thereto;

10 (c) attempting to influence the action of any public  
11 official on any measure pending or to be proposed by:

12 (i) the promise of support or opposition at any future  
13 election;

14 (ii) promise of financial support;

15 (iii) making public any unsubstantiated charges of  
16 improper conduct on the part of any other lobbyist, any  
17 principal, or any legislator;

18 (iv) any improper economic reprisal or other unlawful  
19 retaliation against any public official; or

20 (v) any means other than argument on the merits  
21 thereof;

22 (d) attempting to influence a decision or vote by a  
23 hearing examiner or quasi-judicial officer in any contested  
24 case proceeding under Title 2, chapter 4, part 6, except as  
25 provided therein;

(e) attempting to knowingly deceive any public official with regard to the pertinent facts of an official matter or attempt to knowingly misrepresent pertinent facts of an official matter to any public official; or

(f) engaging in practices which reflect discredit on the practice of lobbying.

(6) "Principal" means any person who makes payments in excess of \$1,000 per calendar year for any of the following:

(a) to engage a lobbyist; or

(b) in the case of a person other than an individual, to solicit, directly, indirectly, or by an advertising campaign, the lobbying efforts of another person.

(9) "Docket" means the register and reports of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(10) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

(11) "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, as salary, fee, or compensation for expenses or for any other purpose;

(b) payment in support of or assistance to a lobbyist or lobbying activities, including, but not limited to, the

direct payment of expenses incurred at the request or suggestion of the lobbyist.

(12) "Business" means any holding or interest whose fair market value is greater than \$1,000, in any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed individual, holding company, joint stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations.

(13) "~~Commissioner Commission~~" means the ~~commissioner of political practices commission on ethics and political practices established by 2-15-411.~~

(14) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including, but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" shall also apply only to such offices."

Section 18. Section 5-11-203, MCA, is amended to read:

"5-11-203. Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws are bound, the legislative council shall distribute them.

(2) The council shall distribute the house and senate

1 journals as follows:

2 (a) to each county clerk, one copy of each for the use  
3 of the county;

4 (b) to the Montana state library, 20 copies of each  
5 for the use of the library and distribution to depository  
6 libraries, of which 2 copies will be deposited with the  
7 state historical library for security purposes;

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

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

13 (e) to each member of the legislature, the secretary  
14 of the senate, and the chief clerk of the house of  
15 representatives from the session at which the journals were  
16 adopted, one copy of each.

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

19 (a) to each department of the executive branch of the  
20 United States; agency, commission, conference, or  
21 corporation established by the United States government; or  
22 any other subdivision thereof upon request and approval by  
23 the legislative council, one copy;

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

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

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

2 (e) to the state law librarian, four copies for the  
3 use of the library and such additional copies as may be  
4 required for exchange with libraries and institutions  
5 maintained by other states and territories and public  
6 libraries;

7 (f) to the library of each custodial institution, one  
8 copy;

9 (g) to each Montana member of congress, each United  
10 States district judge in Montana, each of the judges of the  
11 state supreme and district courts, and each of the state  
12 officers as defined in 2-2-102~~(9)~~, one copy;

13 (h) to each member of the legislature, the secretary  
14 of the senate, and the chief clerk of the house of  
15 representatives from the session at which the laws were  
16 adopted, one copy;

17 (i) to each of the community college districts of the  
18 state, as defined in 20-15-101, and each unit of the Montana  
19 university system, one copy;

20 (j) to each county clerk, three copies for the use of  
21 the county; and

22 (k) to each county attorney and to each clerk of a  
23 district court, one copy."

24 Section 19. Section 13-37-101, MCA, is amended to  
25 read:

"13-37-101. Commissioner--of commission on ethics and political practices. In this chapter, "commissioner commission" means the commissioner-of commission on ethics and political practices created by 13-37-102, unless the context clearly indicates otherwise."

Section 20. Section 13-37-102, MCA, is amended to read:

"13-37-102. Creation of office ~~== members ==~~ appointment. (1) There is a commissioner-of commission on ethics and political practices ~~who--is--appointed--by--the~~ governor,--subject--to--confirmation--by--a--majority--of--the ~~senate consisting of six members~~. A four-member selection committee comprised of the republicans holding any of the offices of governor, secretary of state, attorney general, auditor, superintendent of public instruction, speaker of the house, the president of the senate, and the minority floor leaders leader of both--houses either house of the legislature shall ~~submit to the governor a list of not less than two or more than five names of individuals for his consideration~~ THROUGH A RECRUITMENT, SELECTION, AND APPOINTMENT PROCESS OPEN TO THE PUBLIC appoint three members to the commission. The remaining three members shall be appointed IN A LIKE MANNER by a second selection committee comprised of any of the officeholders listed above who are democrats.

(2) A majority of the members of the each selection committee shall agree upon each ~~nomination~~ appointment.

~~(3) Every appointment must be confirmed by the senate, but an appointment made while the senate is not in regular session is effective as an appointment until the end of the next regular session.~~

~~(2)(4) The~~ An individual selected to serve as ~~commissioner-of-political-practices on the commission~~ may be removed by the governor prior to the expiration of the his term only for incompetence, malfeasance, or neglect of duty. The sufficiency of such causes shall be subject to judicial review."

Section 21. Section 13-37-103, MCA, is amended to read:

"13-37-103. Term of office -- limitations on holding other office. (1) The ~~individual~~ individuals selected to serve as on the commissioner-of commission on ethics and political practices ~~is appointed for a 6-year term--but--he~~ is shall serve terms of 6 years each. Once having served a term on the commission, a member is thereafter ineligible to serve as on the commissioner--of--political--practices commission.

(2) ~~The~~ An individual selected to serve as ~~commissioner-of-political-practices on the commission~~ is precluded from being a candidate for public office as

defined in 13-1-101 for a period of 5 1/2 years from the time that he leaves office as a commissioner."

Section 22. Section 13-37-104, MCA, is amended to read:

"13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the a position of ~~commissioner on the commission~~, a successor shall be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Every ~~nomination---shall---be---confirmed---by---the---senate---but---a nomination-made-while-the-senate-is-not-in-session-shall---be effective---as---an---appointment---until---the---end---of---the---next session~~ The appointment to fill a vacancy is made by the selection committee of members of the same political party that appointed the commissioner whose position is vacant.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1)."

Section 23. Section 13-37-105, MCA, is amended to read:

"13-37-105. Impeachment and prosecution of

commissioner. The A commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401."

Section 24. Section 13-37-106, MCA, is amended to read:

"13-37-106. Salary. ~~It~~ The commissioner of Each member of the commission on ethics and political practices is entitled to receive a ~~salary of \$23,794 in fiscal year 1982 and \$25,754 after June 30, 1982~~ compensation as provided in 2-15-124(7).

~~(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislatures"~~

NEW SECTION. Section 25. Commission structure -- chairman and vice-chairman. (1) The commission shall elect a chairman and a vice-chairman from among its members to serve for a term of 1 year each.

(2) A member may serve as chairman only once during any term of office to which such member is appointed.

(3) The chairman and vice-chairman may not be affiliated with the same political party.

(4) The vice-chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in such office.

(5) The chairman and vice-chairman may each make and second motions and vote.

~~NEW SECTION.~~ Section 26. Commission meetings. (1) The commission shall meet at least once every other month and at other times at the call of the chairman.

(2) The commission shall meet at the time and place designated in the call.

(3) All meetings of the commission are to be conducted as provided in Title 2, chapter 3.

Section 27. Section 13-37-112, MCA, is amended to read:

"13-37-112. Personnel and budget. (1) The ~~commissioner~~ ~~commission~~ shall select an appropriate staff to enforce the provisions of chapters 35, 36, or 37 of this title: ~~Title 2, chapter 7; AND Title 2, chapter 2, part 1; and sections 22 through 48 of this act~~ and he ~~it~~ may hire and fire all personnel under ~~his~~ ~~its~~ supervision.

(2) The ~~commissioner~~ ~~commission~~ shall be responsible for preparing, administering, and allocating the budget for ~~his~~ ~~its~~ office."

Section 28. Section 13-37-116, MCA, is amended to read:

"13-37-116. Exercise of powers. The ~~commissioner~~ ~~commission~~ may exercise all of the powers conferred upon ~~him~~ ~~it~~ by law in any jurisdiction or political subdivision of

the state."

Section 29. Section 13-37-119, MCA, is amended to read:

"13-37-119. Availability of information. (1) The ~~commissioner~~ ~~commission~~ shall make statements and other information filed with ~~his~~ ~~office~~ ~~it~~ available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(2) The ~~commissioner~~ ~~commission~~ shall preserve statements and other information filed with ~~his~~ ~~office~~ ~~it~~ for a period of 10 years from date of receipt.

(3) The ~~commissioner~~ ~~commission~~ shall prepare and publish summaries of the statements received and such other reports as ~~he~~ ~~it~~ considers appropriate.

(4) The ~~commissioner~~ ~~commission~~ shall provide for wide public dissemination of summaries and reports."

Section 30. Section 13-37-120, MCA, is amended to read:

"13-37-120. Reports. The ~~commissioner~~ ~~commission~~ shall at the close of each fiscal year report to the legislature and the governor concerning the action ~~he~~ ~~it~~ has taken, including the names, salaries, and duties of all individuals in ~~his~~ ~~its~~ employ and the money ~~he~~ ~~it~~ has disbursed. The ~~commissioner~~ ~~commission~~ shall also make further reports on

the matters within his jurisdiction that the legislature may prescribe and shall also make recommendations for further legislation that may appear desirable."

Section 31. Section 13-37-124, MCA, is amended to read:

"13-37-124. Consultation and cooperation with county attorney. (1) Whenever the commissioner commission determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37 of this title, he it shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner commission may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner commission to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the

commissioner commission is authorized to directly prosecute any alleged violation of chapters 35, 36, or 37 of this title.

(4) If a prosecution is undertaken by the commissioner commission, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner commission shall be deposited in the state general fund."

~~NEW-SECTION--Section-32--Definitions--Unless--the context-requires--otherwise--the-following-definitions-apply--~~  
~~(1)--"Commission"--means--the-commission--on--ethics--and political-practices-established-by-13-37-102.~~

~~(2)--"False"--means--clearly--incorrectly--contrary--to--fact, mistaken--or--untruthful.~~

~~(3)--"Misleading"--means--clearly--inaccurate, exaggerated--or--designed--to--deceive--or--cause--misperception.~~

~~NEW-SECTION--Section-33--False--or--misleading statements--relating--to--ballot--issues--No--person--or political-committee--as--defined--in--13-1-101--may--knowingly--either--through--actual--or--constructive--knowledge--make, publish--or--circulate--any--false--or--misleading--statements, claims--slogans--or--message--in--any--letter--circular, advertisement, telephone-advertising--or--poster--or--in--any other-writing--or--form--of--media--including--radio--television.~~

1 buttons or stickers that is designed to affect the vote on  
 2 any ballot issue provided for in Title 13 chapter 27.  
 3 ~~NEW SECTION~~ Section 34v--Statement of opinion on  
 4 ballot issue-----penalty--(1)--Any letter, circular,  
 5 advertisement, poster, or other writing, or electronic  
 6 advertisement paid for by a political committee or person  
 7 and designed to affect the vote on any ballot issue must  
 8 contain within it a clearly conspicuous statement that all  
 9 information contained therein is an expression of the  
 10 opinion of the person or committee disseminating the  
 11 information.  
 12 (2)--Failure to comply with this section is punishable  
 13 by a fine of \$50 per letter, circular, advertisement, or  
 14 segment or unit of any other communication referred to in  
 15 subsection (1).  
 16 ~~NEW SECTION~~ Section 35v--Commission powers-----fair  
 17 campaign practices-----candidates and ballot issues--(1)  
 18 The commission may:  
 19 (a)--proceed on a complaint filed as provided in this  
 20 part to arbitrate a dispute between and among candidates and  
 21 political committees concerning an allegation of unfair  
 22 campaign practices; or  
 23 (b)--proceed on a complaint filed as provided in this  
 24 part to examine a statement regarding a ballot issue;  
 25 (2)--The commission may conduct hearings and compel the

1 attendance of parties and witnesses as necessary to  
 2 investigate any complaint.  
 3 (3)--The commission shall adopt rules of evidence and  
 4 procedure which need not be in accordance with the  
 5 provisions of Title 27 chapter 47 part 6 or the rules of  
 6 evidence or procedure provided for the courts of the state.  
 7 (4)--The commission shall meet to investigate  
 8 complaints and conduct hearings as it determines necessary.  
 9 Upon concluding its investigations and hearings, the  
 10 commission shall issue a statement indicating its findings  
 11 of fact and conclusions of law.  
 12 ~~NEW SECTION~~ Section 36v--Initiation of proceedings by  
 13 candidates-----complaint--(1)--A candidate who believes  
 14 another candidate or political committee has made a  
 15 statement about him in the course of the campaign that is  
 16 unfair or untrue or that violates an oath or pledge of fair  
 17 campaign practices to which the other candidate or political  
 18 committee has subscribed may file a complaint with the  
 19 commission. The complaint must contain a specific statement  
 20 of the basis of the complaint, together with evidence to  
 21 support the allegation.  
 22 (2)--Upon receipt of a complaint, the commission shall  
 23 determine if the complainant has demonstrated reasonable  
 24 grounds for a complaint. If it finds the complaint fails to  
 25 state reasonable grounds, it must return the complaint to



the candidate stating its findings. If the commission finds the complaint does state reasonable grounds, it shall proceed on the complaint to hearing and arbitration.

~~NEW SECTION~~ Section 37. Initiation of proceedings on ballot issues. Public disclaimer. Penalties. (1) The commission shall, on the sworn complaint in writing of any individual, determine whether a person or political committee has violated the provisions of [section 33 or 34] regarding ballot issues.

(2) If the commission determines by a vote of a majority of its members that a person or committee has violated [section 33], it may order the offending party to either discontinue issuance of the false or misleading information or to issue a public disclaimer in the same medium or media that carried the false or misleading information, stating:

(a) that this information was found to be false or misleading; and

(b) the reasons for the findings.

(c) A person or committee that fails to comply with an order of the commission is subject to a fine of \$500 a day. Any penalties collected under this subsection must be deposited in the earmarked revenue fund for operation of the commissions.

~~NEW SECTION~~ Section 38. Expedited hearings.

frivolous or unfounded complaints. Notice and hearings. (1) Upon receipt of a complaint under either [section 36 or 37], the commission shall schedule a hearing within 7 days of receipt of the complaint and shall render a determination within 10 days of receipt.

(2) If a complaint is received after October 15 of a general election year, the commission shall schedule a hearing within 3 days of receipt of the complaint and shall render a determination within 7 days of receipt.

(3) The commission may assess reasonable costs incurred by a defendant against any complaining party who submits a complaint found by the commission to be frivolous or without foundation.

(4) Each party to a proceeding under this section is entitled to reasonable notice, opportunity for a hearing, within the constraints of subsections (1) and (2), and judicial review.

~~NEW SECTION~~ Section 39. Investigative and hearing powers. (1) The commission may inspect any records, transcripts, drafts, or notes used in preparation of any writing or advertisement referred to in [section 33] by any person or political committee accused of violating [section 33].

(2) The commission may administer oaths, subpoena witnesses, and compel their attendance, take evidence, and

1 require--the--production--of--materials---referred---to---in  
2 subsection--(1)--that--are--relevant--or--material--for--the--purpose  
3 of--conducting--any--hearing--or--investigation.

4 ~~NEW SECTION. Section 40. Rulemaking authority. The~~  
5 ~~commission may adopt rules necessary to carry out the~~  
6 ~~provisions of this part concerning~~

7 ~~(1) the form for making complaints under section 36~~  
8 ~~or 37; and~~

9 ~~(2) the procedures for holding hearings as provided in~~  
10 ~~this part.~~

11 Section 32. Section 45-7-401, MCA, is amended to read:

12 "45-7-401. Official misconduct. (1) A public servant  
13 commits the offense of official misconduct when in his  
14 official capacity he commits any of the following acts:

15 (a) purposely or negligently fails to perform any  
16 mandatory duty as required by law or by a court of competent  
17 jurisdiction;

18 (b) knowingly performs an act in his official capacity  
19 which he knows is forbidden by law;

20 (c) with the purpose to obtain advantage for himself  
21 or another, performs an act in excess of his lawful  
22 authority or in breach of his fiduciary duty in violation of  
23 2-2-103;

24 (d) solicits or knowingly accepts for the performance  
25 of any act a fee or reward which he knows is not authorized

1 by law; or

2 (e) knowingly conducts a meeting of a public agency in  
3 violation of 2-3-203.

4 (2) A public servant convicted of the offense of  
5 official misconduct shall be fined not to exceed \$500 or be  
6 imprisoned in the county jail for a term not to exceed 6  
7 months, or both.

8 (3) The district court shall have exclusive  
9 jurisdiction in prosecutions under this section. Any action  
10 for official misconduct must be commenced by an information  
11 filed after leave to file has been granted by the district  
12 court or after a grand jury indictment has been found.

13 (4) A public servant who has been charged as provided  
14 in subsection (3) may be suspended from his office without  
15 pay pending final judgment. Upon final judgment of  
16 conviction he shall permanently forfeit his office. Upon  
17 acquittal he shall be reinstated in his office and shall  
18 receive all backpay.

19 (5) This section does not affect any power conferred  
20 by law to impeach or remove any public servant or any  
21 proceeding authorized by law to carry into effect such  
22 impeachment or removal."

23 ~~NEW SECTION. Section 33. Initial appointments to~~  
24 ~~commission. Notwithstanding the provisions of 13-37-103, the~~  
25 ~~initial appointments to the commission on ethics and~~

1 political practices must be made as follows:

2 (1) one member must be appointed by each selection  
3 committee for a term of 2 years; and

4 (2) one member must be appointed by each selection  
5 committee for a term of 4 years.

6 NEW SECTION. Section 34. Word substitution. Unless  
7 inconsistent with this act, any reference in the MCA,  
8 including laws passed by the 48th legislature and approved  
9 by the governor, to the "commissioner of political  
10 practices" or "commissioner" (of political practices) is  
11 changed to "commission on ethics and political practices" or  
12 "commission" (on ethics and political practices). The code  
13 commissioner shall, without changing meaning, make such  
14 grammatical and other incidental changes in the MCA as are  
15 necessary to effect such terminology changes.

16 NEW SECTION. Section 35. Codification instructions.  
17 (1) Sections 4 and 9 through 14 are intended to be codified  
18 as an integral part of Title 2, chapter 2, part 1, and the  
19 provisions of Title 2, chapter 2, part 1, apply to sections  
20 4 and 9 through 14.

21 (2) Sections 25 and 26 are intended to be codified as  
22 an integral part of Title 13, chapter 37, part 1, and the  
23 provisions of Title 13, chapter 37, part 1, apply to  
24 sections 25 and 26.

25 ~~(3) Sections 32 through 40 are intended to be codified~~

1 ~~as an integral part of Title 13, chapter 35, part 3, and the~~  
2 ~~provisions of Title 13, chapter 35, part 3, apply to~~  
3 ~~sections 32 through 40.~~

4 NEW SECTION. Section 36. Severability. If a part of  
5 this act is invalid, all valid parts that are severable from  
6 the invalid part remain in effect. If a part of this act is  
7 invalid in one or more of its applications, the part remains  
8 in effect in all valid applications that are severable from  
9 the invalid applications.

10 NEW SECTION. Section 37. Effective date. This act is  
11 effective July 1, 1983.

-End-

## STATEMENT OF INTENT

## HOUSE BILL 689

## House State Administration Committee

It is the intent of the Legislature to create a Commission on Ethics and Political Practices to take the place of the Commissioner of Political Practices.

It is intended that the duties of the Commission include those duties presently assigned to the Commissioner. It is not the intent of this bill to expand the powers of the Commission beyond those powers currently granted to the Commissioner in the areas of lobbyist regulation and campaign finance.

It is intended that the duties of the Commission include those duties presently assigned to the Secretary of State in the administration of Title 2, chapter 2, part 1.

It is intended that the powers of the Commission in this area are limited to those specifically granted in this bill.

It is intended that the Commission not have the authority to hold hearings or conduct investigations of any kind regarding the behavior of any public official or employee.

It is intended that the penalties contained in this bill are applicable to all public officials and employees, whether their functions be legislative, judicial, or executive.

It is intended that the portions of this bill revising the code of ethics in the areas of ethical standards, disclosure requirements and mechanics, and the advisory opinion function, apply only to executive branch officials and employees at the state and local level. This is intended because ethical provisions regarding the judiciary are already in place and because it is the intent of the Legislature, after review, to implement its own conduct review and disclosure requirements and mechanics.

It is intended that the Commission will study the laws given to it to administer, particularly the code of ethics, and reports to the Legislature at the next legislative session or subsequent sessions any changes it wishes to recommend.

It is intended that any study or review of the code of ethics and any legislation recommended by the Commission be limited to those standards or mechanics that apply to executive branch officials and not include provisions which apply to members of the Legislature.

It is intended that the authority given to the Commission in section 26 of this bill to hire and fire all personnel under its supervision not be used to fire any of the personnel currently employed in the office of Commissioner of Political Practices, unless there be good and sufficient cause to do so.

1        A Statement of Intent is required for this bill because  
2        section 8 grants the Commission the authority to adopt rules  
3        for the conduct of its affairs under the code of ethics. It  
4        is intended that the authority to adopt rules is  
5        specifically limited to the areas provided for in section 8.  
6        Rules are to be adopted under the Montana Administrative  
7        Procedure Act. The rules regarding advisory opinions must be  
8        consistent with sections 9 through 14 of this bill. It is  
9        intended that the Commission may not, by rule, provide for  
10       any hearing or investigation of any kind regarding the  
11       behavior of any individual.

1                   HOUSE BILL NO. 689  
 2       INTRODUCED BY WINSLOW, ECK, VINCENT, FABREGA, CURTISS,  
 3       IVERSON, D. BROWN, BERTELSEN, SHONTZ, HANNAH,  
 4       KOLSTAD, GALT, ADDY, BERGENE, EUDAILY  
 5       BY REQUEST OF THE SECRETARY OF STATE  
 6  
 7   A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A COMMISSION  
 8   ON ETHICS AND POLITICAL PRACTICES TO TAKE THE PLACE OF THE  
 9   COMMISSIONER OF POLITICAL PRACTICES; SPECIFYING ITS  
 10   STRUCTURE AND ORGANIZATION; DEFINING ITS POWERS AND DUTIES,  
 11   INCLUDING ADMINISTRATION OF LOBBYING AND CAMPAIGN PRACTICE  
 12   LAWS CURRENTLY ADMINISTERED BY THE COMMISSIONER;  
 13   TRANSFERRING THE ADMINISTRATION OF THE CODE OF ETHICS FROM  
 14   THE SECRETARY OF STATE TO THE COMMISSION; CREATING NEW  
 15   DUTIES REGARDING FAIR CAMPAIGN PRACTICES FOR CANDIDATES--AND  
 16   CONCERNING--BALLOT ISSUES; GENERALLY REVISING AND CLARIFYING  
 17   THE CODE OF ETHICS; PROVIDING PENALTIES FOR VIOLATIONS OF  
 18   THE CODE OF ETHICS; AMENDING SECTIONS 2-2-102, 2-2-103,  
 19   2-2-105, 2-2-121, 2-2-125, 2-2-131, 2-2-132, 2-15-411,  
 20   2-16-603, 5-7-102, 5-11-203, 13-37-101 THROUGH 13-37-106,  
 21   13-37-112, 13-37-116, 13-37-119, 13-37-120, 13-37-124, AND  
 22   45-7-401, MCA; AND PROVIDING AN EFFECTIVE DATE."  
 23  
 24   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 25       Section 1. Section 2-2-102, MCA, is amended to read:

1       "2-2-102. Definitions. As used in this part, the  
 2       following definitions apply:  
 3       (1) "Business" includes a corporation, partnership,  
 4       sole proprietorship, trust or foundation, or any other  
 5       individual or organization carrying on a business, whether  
 6       or not operated for profit.  
 7       ~~(2) "Commission" means the commission on ethics and~~  
 8       ~~political practices as established in 2-15-411.~~  
 9       ~~(2)(3) "Compensation" means any money, thing of value,~~  
 10       or economic benefit conferred on or received by any person  
 11       in return for services rendered or to be rendered by himself  
 12       or another.  
 13       ~~(3)(4) "Employee" means any temporary or permanent~~  
 14       employee of the state or any subdivision thereof or member  
 15       of the judiciary, including a member of a board, commission,  
 16       or committee, except a legislator, a member of the  
 17       judiciary, and or an employee under contract to the state.  
 18       ~~(4)(5) "Financial interest" means an interest held by~~  
 19       an individual, his spouse, or minor children which is:  
 20       (a) an ownership interest in a business;  
 21       (b) a creditor interest in an insolvent business;  
 22       (c) an employment or prospective employment for which  
 23       negotiations have begun;  
 24       (d) an ownership interest in real or personal  
 25       property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

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

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

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

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

"2-2-103. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state. ~~He may not~~

~~PURPOSELY AND KNOWINGLY use his office, the influence created by his official position, or the information gained by virtue of that position to advance any personal economic interest of his own or of a relative, other than such strictly incidental benefits as may accrue from the enactment or administration of laws affecting the public generally.~~

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as ~~in the same manner and for up to triple the amount that~~ a trustee of property ~~---+s would be~~ liable to a beneficiary under 72-20-203(2), and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

~~(3) If a county attorney has received a complaint alleging any violation of this part, he may in his sole discretion request an advisory opinion from the commission in the manner provided in this part. If he is uncertain whether the conduct complained of would be considered a violation when:~~

~~(a) viewed by an impartial panel of citizens; or~~

1 ~~(b) compared to conduct occurring in other counties of~~  
2 ~~the state.~~

3 ~~(4) The determination of the commission is advisory~~  
4 ~~only, and the county attorney seeking the opinion is not~~  
5 ~~obligated to follow or agree with the advice.~~

6 ~~{3}{5}~~ The following sections set forth various rules  
7 of conduct, the transgression of any of which is, as such, a  
8 violation of fiduciary duty, and various ethical principles,  
9 the transgression of any of which is not, as such, a  
10 violation of fiduciary duty."

11 Section 3. Section 2-2-105, MCA, is amended to read:

12 "2-2-105. Ethical principles for public officers and  
13 employees. (1) The principles in this section are intended  
14 as guides to conduct and do not constitute violations as  
15 such of the public trust of office or employment in state or  
16 local government. ~~However, failure to observe one of these~~  
17 ~~principles may be taken as evidence tending to establish, in~~  
18 ~~conjunction with all the other facts of a case, a breach of~~  
19 ~~fiduciary duty.~~

20 (2) A public officer or employee should not acquire an  
21 interest in any business or undertaking which he has reason  
22 to believe may be directly and substantially affected to its  
23 economic benefit by official action to be taken by his  
24 agency.

25 (3) A public officer or employee should not, within

1 the months following the voluntary termination of his office  
2 or employment, obtain employment in which he will take  
3 direct advantage, unavailable to others, of matters with  
4 which he was directly involved during his term or  
5 employment. These matters are rules, other than rules of  
6 general application, which he actively helped to formulate  
7 and applications, claims, or contested cases in the  
8 consideration of which he was an active participant.

9 (4) A public officer or employee should not perform an  
10 official act directly and substantially affecting a business  
11 or other undertaking to its economic detriment when he has a  
12 substantial financial interest in a competing firm or  
13 undertaking."

14 ~~NEW SECTION.~~ Section 4. Penalties for code of ethics  
15 violation. ~~{1}~~ In addition to the liabilities provided for  
16 in 2-2-103, any public official or employee adjudged in  
17 violation of the provisions of this part may be:

18 ~~{a}{1}~~ subject to recall under the provisions of  
19 chapter 16 of this title; ~~AND~~

20 ~~{a}{2}~~ subject to prosecution for official misconduct  
21 under 45-7-401; and

22 ~~{c}--subject--to-disciplinary-action-by-his-supervisors~~  
23 ~~if any.~~

24 ~~{2}--A public official or employee who is uncertain--as~~  
25 ~~to whether the conduct of someone under his supervision is a~~



1 ~~violation of the provisions of this part may request an~~  
 2 ~~advisory opinion from the commission in the manner provided~~  
 3 ~~in this part.~~

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

5 "2-2-121. Rules of conduct for state officers and  
 6 state 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) A state officer or a state employee may not:

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) A member of the governing body of a local

1 government may perform an official act notwithstanding this  
 2 section when his participation is necessary to obtain a  
 3 quorum or otherwise enable the body to act, if he complies  
 4 with the voluntary disclosure procedures under 2-2-131."

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

6 "2-2-131. ~~Voluntary disclosure~~ Disclosure of interest  
 7 ~~---when mandatory---when voluntary---procedure.~~ (1) A  
 8 public officer or employee may ~~shall~~, prior to acting in a  
 9 manner which may ~~impinge~~ IMPINGES on his fiduciary duty,  
 10 disclose the nature of his private interest which creates  
 11 the conflict. He shall make the disclosure in writing to the  
 12 ~~secretary of state commission~~, listing the amount of his  
 13 financial interest, if any, the purpose and duration of his  
 14 services rendered, if any, and the compensation received for  
 15 the services or such other information as is necessary to  
 16 describe his interest. If he then performs the official act  
 17 involved, he shall state for the record the fact and summary  
 18 nature of the interest disclosed at the time of performing  
 19 the act.

20 (2) ~~A public officer or employee who is uncertain of~~  
 21 ~~whether he has a conflict requiring disclosure under this~~  
 22 ~~section may make a voluntary disclosure in the manner~~  
 23 ~~provided in subsection (1) or request an advisory opinion~~  
 24 ~~from the commission in the manner provided in this part, or~~  
 25 ~~both."~~

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

2 "2-2-132. Powers of the ~~secretary of state~~ commission.

3 The ~~secretary of state~~ commission may:

4 (1) ~~issue advisory opinions with such deletions as are~~  
 5 ~~necessary to protect the identity of the requesting party or~~  
 6 ~~the party about whom the opinion is written as provided in~~  
 7 ~~this part;~~

8 (2) keep and permit reasonable public access to  
 9 voluntary disclosure statements ~~filed as provided in this~~  
 10 ~~part;~~

11 (3) ~~make rules for the conduct of his affairs under~~  
 12 ~~this part~~ publish and distribute summaries of any advisory  
 13 opinions issued;

14 (4) ~~review the provisions of this part and recommend~~  
 15 ~~legislation relating to ethics to any session of the~~  
 16 ~~legislature; and~~

17 (5) ~~make rules for the conduct of its affairs under~~  
 18 ~~this part concerning:~~

19 (a) ~~the form for making disclosures under 2-2-131 and~~  
 20 ~~the manner in which the public will be allowed reasonable~~  
 21 ~~access to such disclosure statements; and~~

22 (b) ~~the procedures for requesting and issuing advisory~~  
 23 ~~opinions consistent with the provisions of [sections 9~~  
 24 ~~through 14]."~~

25 NEW SECTION. Section 9. Advisory opinions -- who may

1 request. (1) The commission may issue an advisory opinion as  
2 to whether in its judgment certain conduct would be  
3 considered a violation of this part.

4 (2) The commission may issue an advisory opinion only  
5 at the request of:

6 (a) any public officer or employee who in his  
7 discretion seeks the advice of the commission regarding his  
8 own conduct; OR

9 ~~(b) any public officer or employee who in his~~  
10 ~~discretion seeks the advice of the commission regarding the~~  
11 ~~conduct of someone under his supervision or~~

12 ~~(c) any county attorney who has received a~~  
13 ~~complaint from any citizen and who in his discretion seeks~~  
14 ~~the advice of the commission regarding the conduct of a~~  
15 ~~public officer or employee of his county.~~

16 (3) The commission may not issue an opinion at the  
17 request of anyone or concerning the conduct of anyone not  
18 specifically provided for in this section. The commission  
19 may not initiate a request on its own motion.

20 NEW SECTION. Section 10. How advisory opinions  
21 requested -- contents. (1) An advisory opinion request must:

22 (a) be submitted to the commission in writing;

23 (b) set forth the specific transaction or activity for  
24 which an opinion is being requested;

25 (c) be submitted by the requesting party as posing a

1 hypothetical situation, with such deletions being made by  
2 the requesting party as are necessary to protect the  
3 identity of the party about whom the opinion is requested;  
4 and

5 (d) include facts sufficient to enable the commission  
6 to answer a specific question.

7 (2) An advisory opinion request may include:

8 (a) any interpretations asserted by the requesting  
9 party; and

10 (b) any supporting material that the requesting party  
11 wishes to include.

12 (3) An advisory opinion request may not:

13 (a) identify the party about whom the opinion is  
14 requested unless the requesting party is seeking an opinion  
15 about his own conduct; or

16 (b) contain any defamatory, slanderous, or libelous  
17 statements.

18 NEW SECTION. Section 11. Commission to refer certain  
19 requests. (1) Whenever the commission receives any complaint  
20 or request concerning conduct other than as specified in  
21 [section 9], the commission shall immediately and without  
22 taking any action on the request refer it to the appropriate  
23 county attorney and to:

24 (a) the presiding officer of the appropriate body of  
25 the legislature if the request concerns the conduct of a

1 member or employee of the legislature; OR  
 2 (b) the supreme court if the request concerns the  
 3 conduct of a member or employee of the judiciary; or  
 4 ~~(c) the supervisory if any of the public official or~~  
 5 ~~employee whose conduct is the subject of the request.~~  
 6 (2) Requests or complaints received and referred  
 7 according to this section may not be made public by the  
 8 commission.  
 9 NEW SECTION. Section 12. Issuing advisory opinions --  
 10 procedure -- content of opinion. (1) Upon receiving a  
 11 request for an advisory opinion, the commission shall:  
 12 (a) read and consider the facts presented;  
 13 (b) apply the applicable sections of this part; and  
 14 (c) reach a determination as to whether, in its  
 15 judgment, the facts presented would amount to a violation of  
 16 any section of this part.  
 17 (2) Upon reaching a determination, the commission  
 18 shall issue to the requesting party its advisory opinion,  
 19 containing only:  
 20 (a) a summary of the facts presented;  
 21 (b) its determination; and  
 22 (c) the rationale supporting its determination.  
 23 (3) No advisory opinion may be issued by the  
 24 commission unless it is signed by a majority of the members.  
 25 NEW SECTION. Section 13. Considering requests --

1 items to be included -- hearings prohibited. In considering  
 2 a request for an advisory opinion:  
 3 (1) the commission may:  
 4 (a) consider only the facts submitted by the  
 5 requesting party;  
 6 (b) if it determines it does not have sufficient facts  
 7 to issue an opinion, deliver to the requesting party a  
 8 notice to that effect, including a statement of the specific  
 9 facts it needs in order to issue an opinion; and  
 10 (c) utilize materials prepared by its staff, including  
 11 draft opinions and statutory interpretations.  
 12 (2) the commission may not:  
 13 (a) hold any hearings on any request;  
 14 (b) conduct an inquiry of any kind as to the situation  
 15 surrounding the request; or  
 16 (c) proceed with a request which has been withdrawn by  
 17 the requesting party.  
 18 NEW SECTION. Section 14. Advisory opinions made  
 19 public -- confidentiality. (1) When an advisory opinion is  
 20 issued it must be made available to the public.  
 21 (2) Except as provided in [section 11(2)] and  
 22 subsection (3), the requesting party is solely responsible  
 23 for protection of the identity of the party about whom the  
 24 opinion is written.  
 25 (3) The advisory opinion may contain the facts as

1 related in the request but may not add anything that would  
2 tend to reveal the identity of the party about whom the  
3 opinion is written.

4 Section 15. Section 2-15-411, MCA, is amended to read:

5 "2-15-411. ~~Commissioner--of~~ Commission on ethics and  
6 political practices. (1) There is a ~~commissioner--of~~  
7 commission on ethics and political practices ~~who is~~  
8 appointed as provided in 13-37-102.

9 (2) ~~The office of the commissioner~~ commission is  
10 attached to the office of the secretary of state for  
11 administrative purposes only, as specified in 2-15-121,  
12 except that the provisions of subsections (1)(b), (1)(c),  
13 (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 2-15-121 do  
14 not apply.

15 (3) The commission is designated a quasi-judicial  
16 board for the purposes of 2-15-124, except that the  
17 provisions of subsections (2), (3), and (5) of 2-15-124 do  
18 not apply.

19 Section 16. Section 2-16-603, MCA, is amended to read:

20 "2-16-603. Officers subject to recall -- grounds for  
21 recall. (1) Every person holding a public office of the  
22 state or any of its political subdivisions, either by  
23 election or appointment, is subject to recall from such  
24 office.

25 (2) A public officer holding an elective office may be

1 recalled by the qualified electors entitled to vote for his  
2 successor. A public officer holding an appointive office may  
3 be recalled by the qualified electors entitled to vote for  
4 the successor or successors of the elective officer or  
5 officers who have the authority to appoint a person to that  
6 position.

7 (3) Physical or mental lack of fitness, incompetence,  
8 violation of his oath of office, official misconduct, ~~breach~~  
9 ~~of his fiduciary duty in violation of 2-2-103,~~ or conviction  
10 of a felony offense enumerated in Title 45 is the only basis  
11 for recall. No person may be recalled for performing a  
12 mandatory duty of the office he holds or for not performing  
13 any act that, if performed, would subject him to prosecution  
14 for official misconduct."

15 Section 17. Section 5-7-102, MCA, is amended to read:

16 "5-7-102. Definitions. The following definitions apply  
17 in this chapter:

18 (1) "Individual" means a human being.

19 (2) "Person" means an individual, corporation,  
20 association, firm, partnership, state or local government or  
21 subdivision thereof, or other organization or group of  
22 persons.

23 (3) "Public official" means any individual, elected or  
24 appointed, acting in his official capacity for the state or  
25 local government or any political subdivision thereof, but

1 does not include those acting in a judicial or  
2 quasi-judicial capacity.

3 (4) "Lobbying" includes:

4 (a) the practice of promoting or opposing the  
5 introduction or enactment of legislation before the  
6 legislature or the members thereof by any person other than  
7 a member of the legislature or a public official acting in  
8 his official capacity; and

9 (b) the practice of promoting or opposing official  
10 action by any public official in the event the person  
11 engaged in such practice expends \$1,000 per calendar year or  
12 more exclusive of personal travel and living expenses.

13 (5) (a) "Lobbyist" means any person who engages in the  
14 practice of lobbying for hire.

15 (b) "Lobbyist" does not include:

16 (i) any individual Montana citizen acting solely on  
17 his own behalf; or

18 (ii) any individual working for the same principal as a  
19 licensed lobbyist, such individual having no personal  
20 contact with any public official on behalf of his principal.

21 (c) Nothing in this section deprives any citizen not  
22 lobbying for hire of the constitutional right to communicate  
23 with public officials.

24 (6) "Lobbying for hire" includes activities of any  
25 officers, agents, attorneys, or employees of any principal

1 who are paid, reimbursed, or retained by such principal and  
2 whose duties include lobbying, when an individual is  
3 reimbursed only for his personal living and travel expenses,  
4 which together do not exceed \$1,000 per calendar year, that  
5 individual shall not be considered to be lobbying for hire.

6 (7) "Unprofessional conduct" means:

7 (a) a violation of any of the provisions of this  
8 chapter;

9 (b) instigating action by any public official for the  
10 purpose of obtaining employment in opposition thereto;

11 (c) attempting to influence the action of any public  
12 official on any measure pending or to be proposed by:

13 (i) the promise of support or opposition at any future  
14 election;

15 (ii) promise of financial support;

16 (iii) making public any unsubstantiated charges of  
17 improper conduct on the part of any other lobbyist, any  
18 principal, or any legislator;

19 (iv) any improper economic reprisal or other unlawful  
20 retaliation against any public official; or

21 (v) any means other than argument on the merits  
22 thereof;

23 (d) attempting to influence a decision or vote by a  
24 hearing examiner or quasi-judicial officer in any contested  
25 case proceeding under Title 2, chapter 4, part 6, except as

1 provided therein;

2 (e) attempting to knowingly deceive any public  
3 official with regard to the pertinent facts of an official  
4 matter or attempt to knowingly misrepresent pertinent facts  
5 of an official matter to any public official; or

6 (f) engaging in practices which reflect discredit on  
7 the practice of lobbying.

8 (8) "Principal" means any person who makes payments in  
9 excess of \$1,000 per calendar year for any of the following:

10 (a) to engage a lobbyist; or

11 (b) in the case of a person other than an individual,  
12 to solicit, directly, indirectly, or by an advertising  
13 campaign, the lobbying efforts of another person.

14 (9) "Docket" means the register and reports of  
15 lobbyists and principals maintained by the commissioner  
16 pursuant to 5-7-201.

17 (10) "Payment" means distribution, transfer, loan,  
18 advance, deposit, gift, or other rendering made or to be  
19 made of money, property, or anything of value.

20 (11) "Payment to influence official action" means any  
21 of the following types of payment:

22 (a) direct or indirect payment to a lobbyist by a  
23 principal, as salary, fee, or compensation for expenses or  
24 for any other purpose;

25 (b) payment in support of or assistance to a lobbyist

1 or lobbying activities, including, but not limited to, the  
2 direct payment of expenses incurred at the request or  
3 suggestion of the lobbyist.

4 (12) "Business" means any holding or interest whose  
5 fair market value is greater than \$1,000, in any  
6 corporation, partnership, sole proprietorship, firm,  
7 enterprise, franchise, association, self-employed  
8 individual, holding company, joint stock company,  
9 receivership, trust, or other entity or property held in  
10 anticipation of profit, but does not include nonprofit  
11 organizations.

12 (13) ~~"Commissioner Commission" means the commissioner~~  
13 ~~of-political-practices commission on ethics and political~~  
14 ~~practices established by 2-15-11.~~

15 (14) "Elected official" means a public official holding  
16 a state office filled by a statewide vote of all the  
17 electors of Montana or a state district office, including,  
18 but not limited to legislators, public service  
19 commissioners, and district court judges. The term  
20 "official-elect" shall also apply only to such offices."

21 Section 18. Section 5-11-203, MCA, is amended to read:

22 "5-11-203. Distribution of senate and house journals  
23 and session laws. (1) Immediately after the senate and house  
24 journals and the session laws are bound, the legislative  
25 council shall distribute them.

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

3       (a) to each county clerk, one copy of each for the use  
4 of the county;

5       (b) to the Montana state library, 20 copies of each  
6 for the use of the library and distribution to depository  
7 libraries, of which 2 copies will be deposited with the  
8 state historical library for security purposes;

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

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

14       (e) to each member of the legislature, the secretary  
15 of the senate, and the chief clerk of the house of  
16 representatives from the session at which the journals were  
17 adopted, one copy of each.

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

20       (a) to each department of the executive branch of the  
21 United States; agency, commission, conference, or  
22 corporation established by the United States government; or  
23 any other subdivision thereof upon request and approval by  
24 the legislative council, one copy;

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

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

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

3       (e) to the state law librarian, four copies for the  
4 use of the library and such additional copies as may be  
5 required for exchange with libraries and institutions  
6 maintained by other states and territories and public  
7 libraries;

8       (f) to the library of each custodial institution, one  
9 copy;

10       (g) to each Montana member of congress, each United  
11 States district judge in Montana, each of the judges of the  
12 state supreme and district courts, and each of the state  
13 officers as defined in 2-2-102~~(8)~~, one copy;

14       (h) to each member of the legislature, the secretary  
15 of the senate, and the chief clerk of the house of  
16 representatives from the session at which the laws were  
17 adopted, one copy;

18       (i) to each of the community college districts of the  
19 state, as defined in 20-15-101, and each unit of the Montana  
20 university system, one copy;

21       (j) to each county clerk, three copies for the use of  
22 the county; and

23       (k) to each county attorney and to each clerk of a  
24 district court, one copy."

25       Section 19. Section 13-37-101, MCA, is amended to



1 read:

2 "13-37-101. ~~Commissioner--of Commission on ethics and~~  
3 political practices. In this chapter, "commissioner  
4 commission" means the commissioner of ~~commission on ethics~~  
5 and political practices created by 13-37-102, unless the  
6 context clearly indicates otherwise."

7 Section 20. Section 13-37-102, MCA, is amended to  
8 read:

9 "13-37-102. Creation of office ~~=== members ===~~  
10 appointment. (1) There is a commissioner of ~~commission on~~  
11 ~~ethics and~~ political practices who ~~is appointed by the~~  
12 ~~governor subject to confirmation by a majority of the~~  
13 ~~senate consisting of six members.~~ A four-member selection  
14 committee comprised of the ~~republicans holding any of the~~  
15 ~~offices of governor, secretary of state, attorney general,~~  
16 ~~auditor, superintendent of public instruction,~~ speaker of  
17 the house, the president of the senate, and the minority  
18 floor leaders ~~leader of both houses either house of the~~  
19 legislature shall submit to the governor a list of not less  
20 than two or more than five names of individuals for his  
21 consideration THROUGH A RECRUITMENT, SELECTION, AND  
22 APPOINTMENT PROCESS OPEN TO THE PUBLIC appoint three members  
23 to the commission. The remaining three members shall be  
24 appointed IN A LIKE MANNER by a second selection committee  
25 comprised of any of the officeholders listed above who are

1 democrats.

2 (2) A majority of the members of the each selection  
3 committee shall agree upon each nomination appointment.

4 (3) ~~Every appointment must be confirmed by the senate,~~  
5 ~~but an appointment made while the senate is not in regular~~  
6 ~~session is effective as an appointment until the end of the~~  
7 ~~next regular session.~~

8 (2)(4) The An individual selected to serve as  
9 commissioner of ~~political practices on the commission~~ may be  
10 removed by the governor prior to the expiration of the his  
11 term only for incompetence, malfeasance, or neglect of duty.  
12 The sufficiency of such causes shall be subject to judicial  
13 review."

14 Section 21. Section 13-37-103, MCA, is amended to  
15 read:

16 "13-37-103. Term of office -- limitations on holding  
17 other office. (1) The ~~individual~~ individuals selected to  
18 serve as on the commissioner of ~~commission on ethics and~~  
19 political practices ~~is appointed for a 6-year term but he~~  
20 ~~is shall serve terms of 6 years each. Once having served a~~  
21 ~~term on the commission, a member is thereafter ineligible to~~  
22 ~~serve as on the commissioner of political practices~~  
23 ~~commission.~~

24 (2) The An individual selected to serve as  
25 commissioner of ~~political practices on the commission~~ is

precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 3 years from the time that he leaves office as a commissioner."

Section 22. Section 13-37-104, MCA, is amended to read:

"13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the a position of ~~commissioner on the commission~~, a successor shall be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Every nomination ~~shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session~~ The appointment to fill a vacancy is made by the selection committee of members of the same political party that appointed the commissioner whose position is vacant.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1)."

Section 23. Section 13-37-105, MCA, is amended to read:

"13-37-105. Impeachment and prosecution of commissioner. The A commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401."

Section 24. Section 13-37-106, MCA, is amended to read:

"13-37-106. Salary. ~~(1) The commissioner of Each member of the commission on ethics and political practices is entitled to receive a salary of \$23,794 in fiscal year 1982 and \$25,754 after June 30, 1982 compensation as provided in 2-15-124(1).~~

~~(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislature."~~

**NEW SECTION.** Section 25. Commission structure -- chairman and vice-chairman. (1) The commission shall elect a chairman and a vice-chairman from among its members to serve for a term of 1 year each.

(2) A member may serve as chairman only once during any term of office to which such member is appointed.

(3) The chairman and vice-chairman may not be affiliated with the same political party.

(4) The vice-chairman shall act as chairman in the absence or disability of the chairman or in the event of a

1 vacancy in such office.

2 (5) The chairman and vice-chairman may each make and  
3 second motions and vote.

4 ~~NEW SECTION.~~ Section 26. Commission meetings. (1) The  
5 commission shall meet at least once every other month and at  
6 other times at the call of the chairman.

7 (2) The commission shall meet at the time and place  
8 designated in the call.

9 (3) All meetings of the commission are to be conducted  
10 as provided in Title 2, chapter 3.

11 Section 27. Section 13-37-112, MCA, is amended to  
12 read:

13 "13-37-112. Personnel and budget. (1) The commissioner  
14 commission shall select an appropriate staff to enforce the  
15 provisions of chapters 35, 36, or 37 of this title; 1. Title  
16 5, chapter 7; AND Title 2, chapter 2, part 1; and sections  
17 32 through 40 of this act and he ~~it~~ may hire and fire all  
18 personnel under ~~his~~ its supervision.

19 (2) The commissioner commission shall be responsible  
20 for preparing, administering, and allocating the budget for  
21 ~~his~~ its office."

22 Section 28. Section 13-37-116, MCA, is amended to  
23 read:

24 "13-37-116. Exercise of powers. The commissioner  
25 commission may exercise all of the powers conferred upon him

1 ~~it~~ by law in any jurisdiction or political subdivision of  
2 the state."

3 Section 29. Section 13-37-119, MCA, is amended to  
4 read:

5 "13-37-119. Availability of information. (1) The  
6 commissioner commission shall make statements and other  
7 information filed with ~~his~~ office ~~it~~ available for public  
8 inspection and copying during regular office hours and make  
9 copying facilities available free of charge or at a charge  
10 not to exceed actual cost.

11 (2) The commissioner commission shall preserve  
12 statements and other information filed with ~~his~~ office ~~it~~  
13 for a period of 10 years from date of receipt.

14 (3) The commissioner commission shall prepare and  
15 publish summaries of the statements received and such other  
16 reports as he ~~it~~ considers appropriate.

17 (4) The commissioner commission shall provide for wide  
18 public dissemination of summaries and reports."

19 Section 30. Section 13-37-120, MCA, is amended to  
20 read:

21 "13-37-120. Reports. The commissioner commission shall  
22 at the close of each fiscal year report to the legislature  
23 and the governor concerning the action he ~~it~~ has taken,  
24 including the names, salaries, and duties of all individuals  
25 in ~~his~~ its employ and the money he ~~it~~ has disbursed. The

1 commissioner ~~commission~~ shall also make further reports on  
2 the matters within ~~his~~ its jurisdiction that the legislature  
3 may prescribe and shall also make recommendations for  
4 further legislation that may appear desirable."

5 Section 31. Section 13-37-124, MCA, is amended to  
6 read:

7 "13-37-124. Consultation and cooperation with county  
8 attorney. (1) Whenever the commissioner ~~commission~~  
9 determines that there appears to be sufficient evidence to  
10 justify a civil or criminal prosecution under chapters 35,  
11 36, or 37 of this title, ~~he~~ it shall notify the county  
12 attorney of the county in which the alleged violation  
13 occurred and shall arrange to transmit to the county  
14 attorney all information relevant to the alleged violation.  
15 If the county attorney fails to initiate the appropriate  
16 civil or criminal action within 30 days after he receives  
17 notification of the alleged violation, the commissioner  
18 ~~commission~~ may then initiate the appropriate legal action.

19 (2) A county attorney may, at any time prior to the  
20 expiration of the 30-day time period specified in subsection  
21 (1), waive his right to prosecute and thereby authorize the  
22 commissioner ~~commission~~ to initiate the appropriate civil or  
23 criminal action.

24 (3) The provisions of subsection (1) do not apply to a  
25 situation in which the alleged violation has been committed

1 by the county attorney of a county. In this instance, the  
2 commissioner ~~commission~~ is authorized to directly prosecute  
3 any alleged violation of chapters 35, 36, or 37 of this  
4 title.

5 (4) If a prosecution is undertaken by the commissioner  
6 ~~commission~~, all court costs associated with the prosecution  
7 shall be paid by the state of Montana, and all fines and  
8 forfeitures imposed pursuant to a prosecution by the  
9 commissioner ~~commission~~ shall be deposited in the state  
10 general fund."

11 ~~NEW-SECTION:--Section-32--Definitions--Unless--the~~  
12 ~~context-requires-otherwise-the-following-definitions-apply:~~

13 (1)--"Commission"--means-the-commission-on-ethics-and  
14 political-practices-established-by-13-37-102.

15 (2)--"False"--means-clearly-incorrectly-contrary-to-fact  
16 mistaken-or-untruthful

17 (3)--"Misleading"-----means-----clearly-----inaccurate  
18 exaggerative-or-designed-to-deceive-or-cause-misperception

19 ~~NEW-SECTION:--Section-33--False-----or-----misleading~~  
20 ~~statements--relating--to--ballot--issues--No--person--or~~  
21 ~~political-committee-as-defined-in-13-1-101--may--knowingly~~  
22 ~~either--through--actual--or--constructive--knowledge--make~~  
23 ~~publish--or--circulate--any--false--or--misleading--statement~~  
24 ~~claim--slogans--or--message--in--any--letter--circular~~  
25 ~~advertisement--telephone-advertising--or--poster--or--in--any~~

1 other writing or form of media including radio, television,  
2 buttons, or stickers that is designed to affect the vote on  
3 any ballot issue provided for in Title 13, chapter 27.

4 ~~NEW SECTION~~ Section 34. Statement of opinion on  
5 ballot issue. --- penalty. --- (1) Any letter, circular,  
6 advertisement, poster, or other writing or electronic  
7 advertisement paid for by a political committee or person  
8 and designed to affect the vote on any ballot issue must  
9 contain within it a clearly conspicuous statement that all  
10 information contained therein is an expression of the  
11 opinion of the person or committee disseminating the  
12 information.

13 (2) Failure to comply with this section is punishable  
14 by a fine of \$50 per letter, circular, advertisement, or  
15 segment or unit of any other communication referred to in  
16 subsection (1).

17 ~~NEW SECTION~~ Section 35. Commission powers. --- fair  
18 campaign practices. --- candidates and ballot issues. --- (1)  
19 The commission may:

20 (a) proceed on a complaint filed as provided in this  
21 part to arbitrate a dispute between and among candidates and  
22 political committees concerning an allegation of unfair  
23 campaign practices or

24 (b) proceed on a complaint filed as provided in this  
25 part to examine a statement regarding a ballot issue.

1 (2) The commission may conduct hearings and compel the  
2 attendance of parties and witnesses as necessary to  
3 investigate any complaint.

4 (3) The commission shall adopt rules of evidence and  
5 procedure which need not be in accordance with the  
6 provisions of Title 2, chapter 4, part 6, or the rules of  
7 evidence or procedure provided for the courts of the state.

8 (4) The commission shall meet to investigate  
9 complaints and conduct hearings as it determines necessary.  
10 Upon concluding its investigations and hearings, the  
11 commission shall issue a statement indicating its findings  
12 of fact and conclusions of law.

13 ~~NEW SECTION~~ Section 36. Initiation of proceedings by  
14 candidates. --- complaints. --- (1) A candidate who believes  
15 another candidate or political committee has made a  
16 statement about him in the course of the campaign that is  
17 unfair or untrue or that violates an oath or pledge of fair  
18 campaign practices to which the other candidate or political  
19 committee has subscribed may file a complaint with the  
20 commission. The complaint must contain a specific statement  
21 of the basis of the complaint together with evidence to  
22 support the allegation.

23 (2) Upon receipt of a complaint, the commission shall  
24 determine if the complainant has demonstrated reasonable  
25 grounds for a complaint. If it finds the complaint fails to

state reasonable grounds, it must return the complaint to the candidate stating its findings. If the commission finds the complaint does state reasonable grounds, it shall proceed on the complaint to hearing and arbitration.

~~NEW SECTION~~ Section 37. Initiation of proceedings on ballot issues. Public disclaimer. Penalties. (1) The commission shall, on the sworn complaint in writing of any individual, determine whether a person or political committee has violated the provisions of [section 33 or 34] regarding ballot issues.

(2) If the commission determines by a vote of a majority of its members that a person or committee has violated [section 33], it may order the offending party to either discontinue issuance of the false or misleading information or to issue a public disclaimer in the same medium or media that carried the false or misleading information, stating:

(a) that this information was found to be false or misleading; and

(b) the reasons for the findings.

(3) A person or committee that fails to comply with an order of the commission is subject to a fine of \$500 a day. Any penalties collected under this subsection must be deposited in the earmarked revenue fund for operation of the commission.

~~NEW SECTION~~ Section 38. Expedited hearings. Frivolous or unfounded complaints. Notice and hearing. (1) Upon receipt of a complaint under either [section 36 or 37], the commission shall schedule a hearing within 7 days of receipt of the complaint and shall render a determination within 18 days of receipt.

(2) If a complaint is received after October 15 of a general election year, the commission shall schedule a hearing within 3 days of receipt of the complaint and shall render a determination within 7 days of receipt.

(3) The commission may assess reasonable costs incurred by a defendant against any complaining party who submits a complaint found by the commission to be frivolous or without foundation.

(4) Each party to a proceeding under this section is entitled to reasonable notice and opportunity for a hearing within the constraints of subsections (1) and (2) and judicial review.

~~NEW SECTION~~ Section 39. Investigative and hearing powers. (1) The commission may inspect any records, transcripts, drafts, or notes used in preparation of any writing or advertisement referred to in [section 33] by any person or political committee accused of violating [section 33].

(2) The commission may administer oaths and subpoena

~~witnesses--and--compel--their--attendance--take--evidence--and  
require--the--production--of--materials--referred--to--in  
subsection--(1)--that--are--relevant--or--material--for--the--purpose  
of--conducting--any--hearing--or--investigation~~

~~NEW SECTION. Section 40. Rulemaking authority. The  
commission may adopt rules necessary to carry out the  
provisions of this part concerning~~

~~(1) the form for making complaints under [section 36  
or 37] and~~

~~(2) the procedures for holding hearings as provided in  
this part~~

Section 32. Section 45-7-401, MCA, is amended to read:

"45-7-401. Official misconduct. (1) A public servant  
commits the offense of official misconduct when in his  
official capacity he commits any of the following acts:

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

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

(c) with the purpose to obtain advantage for himself  
or another, performs an act in excess of his lawful  
authority ~~or in breach of his fiduciary duty in violation of  
2-2-103;~~

(d) solicits or knowingly accepts for the performance

of any act a fee or reward which he knows is not authorized  
by law; or

(e) knowingly conducts a meeting of a public agency in  
violation of 2-3-203.

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

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

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

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

~~NEW SECTION.~~ Section 33. Initial appointments to  
commission. Notwithstanding the provisions of 13-37-103, the

1 Initial appointments to the commission on ethics and  
2 political practices must be made as follows:

3 (1) one member must be appointed by each selection  
4 committee for a term of 2 years; and

5 (2) one member must be appointed by each selection  
6 committee for a term of 4 years.

7 **NEW\_SECTION.** Section 34. Word substitution. Unless  
8 inconsistent with this act, any reference in the MCA,  
9 including laws passed by the 48th legislature and approved  
10 by the governor, to the "commissioner of political  
11 practices" or "commissioner" (of political practices) is  
12 changed to "commission on ethics and political practices" or  
13 "commission" (on ethics and political practices). The code  
14 commissioner shall, without changing meaning, make such  
15 grammatical and other incidental changes in the MCA as are  
16 necessary to effect such terminology changes.

17 **NEW\_SECTION.** Section 35. Codification instructions.  
18 (1) Sections 4 and 9 through 14 are intended to be codified  
19 as an integral part of Title 2, chapter 2, part 1, and the  
20 provisions of Title 2, chapter 2, part 1, apply to sections  
21 4 and 9 through 14.

22 (2) Sections 25 and 26 are intended to be codified as  
23 an integral part of Title 13, chapter 37, part 1, and the  
24 provisions of Title 13, chapter 37, part 1, apply to  
25 sections 25 and 26.

1 ~~{3}--Sections-32-through-40-are-intended-to-be-codified~~  
2 ~~as-an-integral-part-of-Title-13,chapter-35,part-3,--and-the~~  
3 ~~provisions--of--Title--13,--chapter--35,--part--3,--apply-to~~  
4 ~~sections-32-through-40.~~

5 **NEW\_SECTION.** Section 36. Severability. If a part of  
6 this act is invalid, all valid parts that are severable from  
7 the invalid part remain in effect. If a part of this act is  
8 invalid in one or more of its applications, the part remains  
9 in effect in all valid applications that are severable from  
10 the invalid applications.

11 **NEW\_SECTION.** Section 37. Effective date. This act is  
12 effective July 1, 1983.

-End-



March 24, 1983

SENATE STANDING COMMITTEE REPORT  
(State Administration)

That House Bill No. 689 be amended as follows:

- 
1. Page 4, line 22.  
Following: "part"  
Strike: remainder of line 22 through line 2, page 5