

HB 107 INTRODUCED BY WINSLOW, ET AL.  
REPLACE POLITICAL PRACTICES COMMISSIONER WITH  
ETHICS & POLITICAL PRACTICES COMMISSION

1/08 INTRODUCED  
1/08 REFERRED TO STATE ADMINISTRATION  
1/08 FISCAL NOTE REQUESTED  
1/14 HEARING  
1/16 FISCAL NOTE RECEIVED  
1/21 COMMITTEE REPORT--BILL NOT PASSED  
1/22 REREFERRED TO STATE ADMINISTRATION  
FAILED TO MEET TRANSMITTAL DEADLINE

1 H.B. BILL NO. 107  
 2 INTRODUCED BY Winters Al Bishop  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A COMMISSION  
 5 ON ETHICS AND POLITICAL PRACTICES TO REPLACE THE  
 6 COMMISSIONER OF POLITICAL PRACTICES; SPECIFYING ITS  
 7 STRUCTURE AND ORGANIZATION; DEFINING ITS POWERS AND DUTIES,  
 8 INCLUDING ADMINISTRATION OF LOBBYING AND CAMPAIGN PRACTICE  
 9 LAWS CURRENTLY ADMINISTERED BY THE COMMISSIONER;  
 10 TRANSFERRING THE ADMINISTRATION OF THE CODE OF ETHICS FROM  
 11 THE SECRETARY OF STATE TO THE COMMISSION; CREATING NEW  
 12 COMMISSION DUTIES REGARDING FAIR CAMPAIGN PRACTICES FOR  
 13 CANDIDATES AND CONCERNING BALLOT ISSUES; GENERALLY REVISING  
 14 AND CLARIFYING THE CODE OF ETHICS; PROVIDING PENALTIES FOR  
 15 VIOLATIONS OF THE CODE OF ETHICS; AMENDING SECTIONS 2-2-102,  
 16 2-2-103, 2-2-105, 2-2-121, 2-2-125, 2-2-131, 2-2-132,  
 17 2-15-411, 2-16-603, 5-7-102, 5-11-203, 13-37-101 THROUGH  
 18 13-37-106, 13-37-112, AND 45-7-401, MCA; AND PROVIDING AN  
 19 EFFECTIVE DATE."  
 20

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

22 Section 1. Section 2-2-102, MCA, is amended to read:  
 23 "2-2-102. Definitions. As used in this part, the  
 24 following definitions apply:

25 (1) "Business" includes a corporation, partnership,

1 sole proprietorship, trust or foundation, or any other  
 2 individual or organization carrying on a business, whether  
 3 or not operated for profit.

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

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

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

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

17 (a) an ownership interest in a business;  
 18 (b) a creditor interest in an insolvent business;  
 19 (c) an employment or prospective employment for which  
 20 negotiations have begun;

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

23 (e) a loan or other debtor interest; or  
 24 (f) a directorship or officership in a business.

25 (6) "Official act" or "official action" means a

1 vote, decision, recommendation, approval, disapproval, or  
2 other action, including inaction, which involves the use of  
3 discretionary authority.

4 {6}(7) "Public officer" includes any state officer  
5 except a legislator or member of the judiciary or any  
6 elected officer of any subdivision of the state.

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

13 {8}(9) "State officer" includes all elected officers  
14 and directors of the executive branch of state government as  
15 defined in 2-15-102."

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

17 "2-2-103. Public trust. (1) The holding of public  
18 office or employment is a public trust, created by the  
19 confidence which the electorate reposes in the integrity of  
20 public officers, legislators, and employees. A public  
21 officer, legislator, or employee shall carry out his duties  
22 for the benefit of the people of the state. He may not use  
23 his office, the influence created by his official position,  
24 or information gained by virtue of that position to advance  
25 a personal economic interest of his own or of a relative,

1 other than such strictly incidental benefits as may accrue  
2 from the enactment or administration of laws affecting the  
3 public generally.

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

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

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

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

24 (4) The determination of the commission is advisory  
25 only, and the county attorney seeking the opinion is not

1 obligated to act upon the advice.

2 ~~(3)~~(5) The following sections set forth various rules  
3 of conduct, the transgression of any of which is, as such, a  
4 violation of fiduciary duty, and various ethical principles,  
5 the transgression of any of which is not, as such, a  
6 violation of fiduciary duty."

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

8 "2-2-105. Ethical principles for public officers and  
9 employees. (1) The principles in this section are intended  
10 as guides to conduct and do not constitute violations as  
11 such of the public trust of office or employment in state or  
12 local government. However, failure to observe one of these  
13 principles is evidence tending to establish, in conjunction  
14 with all the other facts of a case, a breach of fiduciary  
15 duty.

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

21 (3) A public officer or employee should not, within  
22 the months following the voluntary termination of his office  
23 or employment, obtain employment in which he will take  
24 direct advantage, unavailable to others, of matters with  
25 which he was directly involved during his term or

1 employment. These matters are rules, other than rules of  
2 general application, which he actively helped to formulate  
3 and applications, claims, or contested cases in the  
4 consideration of which he was an active participant.

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

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

- 14 (a) recall under chapter 16 of this title;  
15 (b) prosecution for official misconduct under  
16 45-7-401; and  
17 (c) disciplinary action by his supervisor, if any.

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

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

24 "2-2-121. Rules of conduct for state officers and  
25 state employees. (1) Proof of commission of any act

1 enumerated in this section is proof that the actor has  
2 breached his fiduciary duty.

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

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

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

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

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

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

20 (3) A department head or a member of a quasi-judicial  
21 or rulemaking board may perform an official act  
22 notwithstanding subsection (2)(e) if his participation is  
23 necessary to the administration of a statute and if he  
24 complies with the voluntary disclosure procedures under  
25 2-2-131.

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

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

5 "2-2-125. Rules of conduct for local government  
6 officers and employees. (1) Proof of commission of any act  
7 enumerated in this section is proof that the actor has  
8 breached his fiduciary duty.

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

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

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

19 (3) A member of the governing body of a local  
20 government may perform an official act notwithstanding this  
21 section when his participation is necessary to obtain a  
22 quorum or otherwise enable the body to act, if he complies  
23 with the voluntary disclosure procedures under 2-2-131."

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

25 "2-2-131. ~~Voluntary-disclosure~~ Disclosure of interest.

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

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

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

19 "2-2-132. Powers of the secretary-of-state commission.  
 20 The secretary-of-state commission may:

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

25 (2) keep and permit reasonable public access to

1 voluntary disclosure statements filed as provided in this  
 2 part;

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

6 (4) review the provisions of this part and recommend  
 7 legislation relating to ethics to the legislature; and

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

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

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

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

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

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

24 (b) a public officer or employee who in his discretion  
 25 seeks the advice of the commission regarding the conduct of

1 someone under his supervision; or  
 2 (c) a county attorney who has received a complaint  
 3 from a citizen and who in his discretion seeks the advice of  
 4 the commission regarding the conduct of a public officer or  
 5 employee of his county.  
 6 (3) The commission may not issue an opinion at the  
 7 request of a person or concerning the conduct of a person  
 8 not specifically provided for in this section. The  
 9 commission may not initiate a request on its own motion.  
 10 NEW SECTION. Section 10. How advisory opinion  
 11 requested -- content. (1) An advisory opinion request must:  
 12 (a) be submitted to the commission in writing;  
 13 (b) describe the specific transaction or activity for  
 14 which an opinion is being requested;  
 15 (c) be submitted by the requesting party as posing a  
 16 hypothetical situation, with such deletions being made by  
 17 the requesting party as are necessary to protect the  
 18 identity of the party about whom the opinion is requested;  
 19 and  
 20 (d) include facts sufficient to enable the commission  
 21 to answer a specific question.  
 22 (2) An advisory opinion request may include:  
 23 (a) interpretations asserted by the requesting party;  
 24 and  
 25 (b) supporting material that the requesting party

1 wishes to include.  
 2 (3) An advisory opinion request may not:  
 3 (a) identify the party about whom the opinion is  
 4 requested unless the requesting party is seeking an opinion  
 5 about his own conduct; or  
 6 (b) contain defamatory, slanderous, or libelous  
 7 statements.  
 8 NEW SECTION. Section 11. Commission to refer certain  
 9 requests. (1) Whenever the commission receives a complaint  
 10 or request concerning conduct other than as specified in  
 11 [section 9], the commission shall immediately and without  
 12 taking action on the request refer it to the appropriate  
 13 county attorney and to the:  
 14 (a) presiding officer of the appropriate body of the  
 15 legislature if the request concerns the conduct of a member  
 16 or employee of the legislature;  
 17 (b) supreme court if the request concerns the conduct  
 18 of a member or employee of the judiciary; or  
 19 (c) supervisor, if any, of the public official or  
 20 employee whose conduct is the subject of the request.  
 21 (2) Requests or complaints received and referred  
 22 according to this section may not be made public by the  
 23 commission.  
 24 NEW SECTION. Section 12. Issuing advisory opinions --  
 25 procedure -- content of opinion. (1) Upon receiving a

1 request for an advisory opinion, the commission shall:

- 2 (a) read and consider the facts presented;  
 3 (b) apply the applicable sections of this part; and  
 4 (c) reach a determination as to whether in its  
 5 judgment the facts presented would amount to a violation of  
 6 this part.

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

- 10 (a) a summary of the facts presented;  
 11 (b) its determination; and  
 12 (c) the rationale supporting its determination.  
 13 (3) No advisory opinion may be issued by the  
 14 commission unless it is signed by a majority of the members.

15 NEW SECTION. Section 13. Considering requests --  
 16 items to be included -- hearings prohibited. In considering  
 17 a request for an advisory opinion:

- 18 (1) the commission may:  
 19 (a) consider only the facts submitted by the  
 20 requesting party;  
 21 (b) if it determines it does not have sufficient facts  
 22 to issue an opinion, deliver to the requesting party a  
 23 notice to that effect, including a statement of the specific  
 24 facts it needs to issue an opinion; and  
 25 (c) use materials prepared by its staff, including

1 draft opinions and statutory interpretations.

- 2 (2) The commission may not:  
 3 (a) hold a hearing on a request;  
 4 (b) conduct an inquiry of any kind as to the situation  
 5 surrounding the request; or  
 6 (c) proceed with a request that has been withdrawn by  
 7 the requesting party.

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

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

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

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

20 "2-15-411. ~~Commissioner--of~~ Commission on ethics and  
 21 political practices. (1) There is a ~~commissioner---~~  
 22 commission on ethics and political practices, ~~who--is~~  
 23 appointed as provided in 13-37-102.

24 (2) The ~~office--of--the--commissioner~~ commission is  
 25 attached to the ~~office-of-the-secretary-of-state~~ department



1 of administration for administrative purposes only, as  
 2 specified in 2-15-121, except that the provisions of  
 3 subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e),  
 4 and (3)(a) of 2-15-121 do not apply.

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

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

10 "2-16-603. Officers subject to recall -- grounds for  
 11 recall. (1) Every person holding a public office of the  
 12 state or any of its political subdivisions, either by  
 13 election or appointment, is subject to recall from such  
 14 office.

15 (2) A public officer holding an elective office may be  
 16 recalled by the qualified electors entitled to vote for his  
 17 successor. A public officer holding an appointive office may  
 18 be recalled by the qualified electors entitled to vote for  
 19 the successor or successors of the elective officer or  
 20 officers who have the authority to appoint a person to that  
 21 position.

22 (3) Physical or mental lack of fitness, incompetence,  
 23 violation of his oath of office, official misconduct, breach  
 24 of his fiduciary duty as provided in 2-2-104, 2-2-111,  
 25 2-2-121, or 2-2-125, or conviction of a felony offense

1 enumerated in Title 45 is the only basis for recall. No  
 2 person may be recalled for performing a mandatory duty of  
 3 the office he holds or for not performing any act that, if  
 4 performed, would subject him to prosecution for official  
 5 misconduct."

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

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

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

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

14 (3) "Public official" means any individual, elected or  
 15 appointed, acting in his official capacity for the state  
 16 government, but does not include those acting in a judicial  
 17 or quasi-judicial capacity or performing ministerial acts.

18 (4) "Lobbying" includes:

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

24 (b) the practice of promoting or opposing official  
 25 action by any public official in the event the person

1 engaged in such practice expends \$1,000 per calendar year or  
2 more exclusive of personal travel and living expenses.

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

5 (b) "Lobbyist" does not include:

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

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

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

15 (6) "Lobbying for hire" includes activities of any  
16 officers, agents, attorneys, or employees of any principal  
17 who are paid, reimbursed, or retained by such principal and  
18 whose duties include lobbying. When an individual is  
19 reimbursed only for his personal living and travel expenses,  
20 which together do not exceed \$1,000 per calendar year, that  
21 individual shall not be considered to be lobbying for hire.

22 (7) "Unprofessional conduct" means:

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

25 (b) instigating action by any public official for the

1 purpose of obtaining employment in opposition thereto;

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

4 (i) promise of financial support; or

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

8 (d) attempting to knowingly deceive any public  
9 official with regard to the pertinent facts of an official  
10 matter or attempt to knowingly misrepresent pertinent facts  
11 of an official matter to any public official.

12 (8) "Principal" means any person who makes payments in  
13 excess of \$1,000 per calendar year to engage a lobbyist.

14 (9) "Docket" means the register and reports of  
15 lobbyists and principals maintained by the commissioner  
16 commission 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, compensation, or reimbursement  
24 for expenses, excluding personal living expenses;

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:

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

12 (b) present or past employment from which benefits,  
13 including retirement allowances, are received.

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

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

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

24 "5-11-203. Distribution of senate and house journals  
25 and session laws. (1) Immediately after the senate and house

1 journals and the session laws are bound, the legislative  
2 council shall distribute them.

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

5 (a) to each county clerk, one copy of each for the use  
6 of the county;

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

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

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

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

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

22 (a) to each cabinet level department of the executive  
23 branch of the United States, one copy each; to any agency,  
24 commission, conference, or corporation established by the  
25 United States government or any other subdivision thereof

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

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

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

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

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

11 (f) to the library of each custodial institution, one  
12 copy;

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

17 (h) to any agency, board, commission, or office of the  
18 state other than a state officer and to any other  
19 subdivision of the state upon request and approval by the  
20 legislative council, one copy;

21 (i) to each member of the legislature, the secretary  
22 of the senate, and the chief clerk of the house of  
23 representatives from the session at which the laws were  
24 adopted, one copy;

25 (j) to each of the community college districts of the

1 state, as defined in 20-15-101, and each unit of the Montana  
2 university system, one copy;

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

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

7 Section 19. Section 13-37-101, MCA, is amended to  
8 read:

9 "13-37-101. ~~Commissioner~~ of Commission on ethics and  
10 political practices. In this chapter, "~~commissioner~~"  
11 "commission" means the ~~commissioner of~~ commission on ethics  
12 and political practices created by 13-37-102, unless the  
13 context clearly indicates otherwise."

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

16 "13-37-102. Creation of office -- members --  
17 appointments. (1) There is a ~~commissioner of~~ commission on  
18 ethics and political practices, ~~who is appointed by the~~  
19 ~~governor, subject to confirmation by a majority of the~~  
20 senate consisting of six members. A four-member selection  
21 committee comprised of the republicans holding any of the  
22 offices of governor, secretary of state, attorney general,  
23 auditor, superintendent of public instruction, speaker of  
24 the house, the president of the senate, and the minority  
25 floor leaders leader of both houses either house of the

1 legislature shall ~~submit to the governor a list of not less~~  
 2 ~~than two or more than five names of individuals for his~~  
 3 consideration appoint three members to the commission. The  
 4 remaining three members must be appointed by a second  
 5 selection committee comprised of any of the officeholders  
 6 listed above who are democrats.

7 (2) A majority of the members of the each selection  
 8 committee shall agree upon each nomination appointment by  
 9 that committee.

10 (3) Each appointment must be confirmed by the senate,  
 11 but an appointment made while the senate is not in regular  
 12 session is effective until the end of the next regular  
 13 session.

14 ~~(2)(4)~~ The An individual selected to serve as  
 15 commissioner of political practices on the commission may be  
 16 removed by the governor prior to the expiration of the his  
 17 term only for incompetence, malfeasance, or neglect of duty.  
 18 The sufficiency of such causes shall be subject to judicial  
 19 review."

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

22 "13-37-103. Term of office -- limitations on holding  
 23 other office. (1) The An individual selected to serve as on  
 24 the commissioner of political practices commission is  
 25 appointed for a 6-year term, but he is thereafter ineligible

1 to serve as on the ~~commissioner of political practices~~  
 2 commission.

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

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

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

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

24 (3) An individual who is selected to serve out the  
 25 unexpired term of a preceding commissioner and who has

1 served less than 3 years may be reappointed for a 6-year  
2 term as provided in 13-37-102~~(1)~~."

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

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

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

12 "13-37-106. Salary. ~~(1)-The-commissioner-of-political~~  
13 ~~practices~~ A member of the commission is entitled to receive  
14 ~~a--salary-of-\$27,655-a--year~~ compensation as provided in  
15 2-15-124.

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

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

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

25 (3) The chairman and vice-chairman may not be

1 affiliated with the same political party.

2 (4) The vice-chairman shall act as chairman if the  
3 chairman is absent or disabled or a vacancy occurs in the  
4 office.

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

7 NEW SECTION. Section 26. Commission meetings.

8 (1) The commission shall meet at least once every other  
9 month and at other times at the call of the chairman.

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

12 (3) Meetings of the commission must be conducted as  
13 provided in Title 2, chapter 3.

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

16 "13-37-112. Personnel and budget. (1) The commissioner  
17 commission shall select an appropriate staff to enforce the  
18 provisions of Title 2, chapter 2, part 1; Title 5, chapter  
19 7; and chapters 35, 36, or 37 of this title, and he it may  
20 hire and fire all personnel under his its supervision.

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

24 NEW SECTION. Section 28. False or misleading  
25 statements relating to ballot issues. No person or political

1 committee may knowingly make, publish, or circulate a false  
 2 or misleading statement, claim, slogan, or message in a  
 3 letter, circular, advertisement, telephone advertisement, or  
 4 poster or in any other writing or form of media, including  
 5 radio, television, buttons, or stickers, that is designed to  
 6 affect the vote on a ballot issue.

7 NEW SECTION. Section 29. Statement of opinion on  
 8 ballot issue -- penalty. (1) A letter, circular,  
 9 advertisement, poster, or other writing or electronic  
 10 advertisement paid for by a person or political committee  
 11 and designed to affect the vote on a ballot issue must  
 12 contain within it a clearly conspicuous statement that all  
 13 information contained therein is an expression of the  
 14 opinion of the person or committee disseminating the  
 15 information.

16 (2) Failure to comply with this section is punishable  
 17 by a fine of \$50 per letter, circular, advertisement, or  
 18 segment or unit of any other communication referred to in  
 19 subsection (1) except that the total fine under this section  
 20 may not exceed \$1,500.

21 NEW SECTION. Section 30. Complaints concerning  
 22 certain alleged violations. (1) A written complaint may be  
 23 filed with the commission by:

- 24 (a) a candidate who believes that:  
 25 (i) another candidate has violated the code of fair

1 campaign practices contained in 13-35-301 to which the other  
 2 candidate has subscribed; or

3 (ii) a person or political committee has violated  
 4 13-35-234; or

5 (b) a person who believes that another person or a  
 6 political committee has violated [section 28].

7 (2) The complaint must contain a specific statement of  
 8 the basis of the complaint, together with supporting  
 9 evidence.

10 (3) Upon receipt of the complaint, the commission  
 11 shall determine if the complainant has demonstrated  
 12 reasonable grounds for the complaint. If the commission  
 13 finds that the complainant has not demonstrated reasonable  
 14 grounds, it shall return the complaint to the complainant,  
 15 stating its findings. If the commission finds that the  
 16 complainant has demonstrated reasonable grounds, it shall  
 17 schedule a hearing on the complaint as provided in [section  
 18 31].

19 NEW SECTION. Section 31. Schedule for holding  
 20 hearings and issuing findings and determinations.

21 (1) Except as provided in subsection (2), the commission  
 22 shall schedule a hearing as required in [section 30] within  
 23 7 days after receiving the complaint and shall issue a  
 24 statement containing its findings and determinations within  
 25 10 days after receiving the complaint.

1 (2) If a complaint requiring a hearing is received  
 2 after October 15 in a general election year, the commission  
 3 shall schedule a hearing within 3 days after receiving the  
 4 complaint and shall issue a statement containing its  
 5 findings and determinations within 7 days after receiving  
 6 the complaint.

7 NEW SECTION. Section 32. Powers in conducting  
 8 hearings -- commission to adopt rules. (1) The commission  
 9 may administer oaths, subpoena witnesses and compel their  
 10 attendance, take evidence, and require the production of  
 11 relevant materials for the purpose of conducting a hearing.

12 (2) The commission shall adopt rules of evidence and  
 13 procedure for conducting a hearing, which need not be in  
 14 accordance with Title 2, chapter 4, part 6, or the rules  
 15 provided for in the courts of the state.

16 NEW SECTION. Section 33. Commission orders concerning  
 17 violation -- administrative penalty. (1) If the commission  
 18 determines that a violation of 13-35-234, 13-35-301, or  
 19 [section 28] has occurred, it may order the offending party  
 20 to:

21 (a) discontinue issuance of the false or misleading  
 22 information; or

23 (b) issue a public disclaimer, in the same medium or  
 24 media that carried the false or misleading information,  
 25 stating:

1 (i) that this information was found to be false or  
 2 misleading; and

3 (ii) the reasons for the finding.

4 (2) A person or political committee that fails to  
 5 comply with an order of the commission is subject to a fine  
 6 of \$500 a day for each day of noncompliance except that the  
 7 total fine under this section may not exceed \$2,500.

8 Section 34. Section 45-7-401, MCA, is amended to read:

9 "45-7-401. Official misconduct. (1) A public servant  
 10 commits the offense of official misconduct when in his  
 11 official capacity he commits any of the following acts:

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

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

17 (c) with the purpose to obtain advantage for himself  
 18 or another, performs an act in excess of his lawful  
 19 authority or in breach of his fiduciary duty as provided in  
 20 2-2-104, 2-2-111, 2-2-121, or 2-2-125;

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

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



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

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

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

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

20 NEW SECTION. Section 35. Initial appointments to  
21 commission. Notwithstanding the provisions of 13-37-103, the  
22 initial appointments to the commission on ethics and  
23 political practices must be made as follows:

24 (1) one member must be appointed by each selection  
25 committee for a 2-year term; and

1 (2) one member must be appointed by each selection  
2 committee for a 4-year term.

3 NEW SECTION. Section 36. Word substitution. Unless  
4 inconsistent with this act, any reference in the MCA,  
5 including laws passed by the 50th legislature and approved  
6 by the governor, to the "commissioner of political  
7 practices" or "commissioner" (of political practices) is  
8 changed to "commission on ethics and political practices" or  
9 "commission" (on ethics and political practices). The code  
10 commissioner shall, without changing meaning, make such  
11 grammatical and other incidental changes in the MCA as are  
12 necessary to effect such terminology changes.

13 NEW SECTION. Section 37. Codification instructions.  
14 (1) Sections 4 and 9 through 14 are intended to be codified  
15 as an integral part of Title 2, chapter 2, part 1, and the  
16 provisions of Title 2, chapter 2, part 1, apply to sections  
17 4 and 9 through 14.

18 (2) Sections 28 and 29 are intended to be codified as  
19 an integral part of Title 13, chapter 35, part 2, and the  
20 provisions of Title 13, chapter 35, part 2, apply to  
21 sections 28 and 29.

22 (3) Sections 25, 26, and 30 through 33 are intended to  
23 be codified as an integral part of Title 13, chapter 37,  
24 part 1, and the provisions of Title 13, chapter 37, part 1,  
25 apply to sections 25, 26, and 30 through 33.

1           (4) Section 2-15-411 is intended to be renumbered and  
2 codified as an integral part of Title 2, chapter 15, part  
3 10.

4           NEW SECTION. Section 38. 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 39. Effective date. This act is  
11 effective July 1, 1987.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB107, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a commission on ethics and political practices, replacing the commissioner of political practices, transferring the administration of the code of ethics from the Secretary of State to the commission, creating new duties regarding fair campaign practices and ballot issues, providing penalties for violations of code of ethics.

ASSUMPTIONS:

1. Travel and honorarium costs for six commission members to meet for one day six times a year.

FISCAL IMPACT:Expenditures:

	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
	\$ 151,639	\$ 160,417	\$ 8,778	\$ 147,097	\$ 155,875	\$ 8,778

Funding:

General Fund	\$ 150,839	\$ 159,617	\$ 8,778	\$ 146,497	\$ 155,275	\$ 8,778
State Special						
Revenue Fund	\$ 800	\$ 800	\$ 0	\$ 600	\$ 600	\$ 0

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

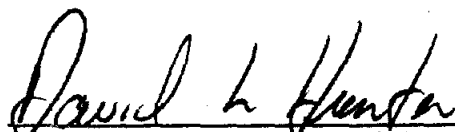
N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A



DATE

1/16/87

DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning



DATE

1/16/87

CAL WINSLOW, PRIMARY SPONSOR

Fiscal Note for HB107, as introduced.