

SB 339 INTRODUCED BY BOYLAN, SWIFT
REGULATE GOVERNMENT EMPLOYEE INVOLVEMENT IN POLITICS

2/14 INTRODUCED
2/14 REFERRED TO STATE ADMINISTRATION
2/14 FISCAL NOTE REQUESTED
2/17 FISCAL NOTE RECEIVED
2/19 HEARING
2/20 ADVERSE COMMITTEE REPORT ADOPTED 47 2

1 INTROSUCED BY Senate BILL NO. 339
2 Boyer Swift

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING GOVERNMENT
5 EMPLOYEE INVOLVEMENT IN POLITICS."
6

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

8 Section 1. Short title. [Sections 1 through 9] may be
9 cited as "The Montana Political Fairness Act".

10 Section 2. Purpose. (1) The purpose of [sections 1
11 through 9] is to provide a complete and stern mechanism to:

12 (a) prevent inappropriate influences on law and public
13 policy by those persons who occupy a position of public
14 trust or employment or who have access to public resources;

15 (b) clearly define inappropriate influences and
16 establish public policy pursuant to Article II, section 1,
17 of the Montana constitution;

18 (c) apprehend violators of the public trust; and

19 (d) provide sufficient penalties to severely punish
20 violators so as to ensure the integrity of public processes
21 and prevent potential future abuses.

22 (2) [Sections 1 through 9] are intended to prevent the
23 weight and might of government from being used against
24 citizens who would like to exercise their right to effect
25 changes in government, and to prevent public employees from

1 having an undue influence by reason of proximity, knowledge,
2 interest, employment, financial support, or accessibility,
3 upon the legislative assemblies and election processes of
4 the people of Montana. It is not the intent of [sections 1
5 through 9] to interfere with a citizen's inalienable rights,
6 including the rights of speech and suffrage, when he is not
7 acting in the capacity of a public servant.

8 Section 3. Definitions. As used in [sections 1 through
9 9]:

10 (1) "Appear" means to be present personally and
11 provide comment, testimony, information, or opinions, or
12 answer questions.

13 (2) "Effects of a measure" means those descriptions
14 that are spoken of in the future tense.

15 (3) "Legislative body" means the Montana legislature,
16 boards of county commissioners, councils of cities and
17 towns, boards of school districts, fire districts, or other
18 deliberative public assemblies that have authority to make
19 laws or rules, set budgets, or establish policies that
20 affect the public or determine the expenditure of public
21 funds.

22 (4) "Public employee" means any nonelected person who
23 is employed by the state of Montana, any political
24 subdivision thereof, or any taxing district or who receives
25 any substantial regular compensation from taxpayer-derived



1 funds for services, work, or advice.

2 (5) "Public resources" means public funds, materials,
3 and other property purchased with public funds; public
4 credit; the paid time of public employees; and the
5 credibility and good reputation of public offices and
6 agencies.

7 (6) "Working" means a public employee is on duty or at
8 his place of work, or communicating from his place of work,
9 or off duty and holding himself out as acting or speaking in
10 some public capacity, as differentiated from holding himself
11 out only to be an interested citizen.

12 Section 4. Public employees and legislative bodies.

13 (1) A public employee may not appear before or directly
14 communicate with a legislative body or a committee thereof
15 while he is working, unless:

16 (a) he is employed by the legislative body for the
17 purpose of providing regular services to the body; or

18 (b) he receives a written request from an authorized
19 member of the legislative body to appear before the body or
20 a committee thereof for the purpose of providing information
21 and answering questions pertaining to the area of expertise
22 for which the public employee is employed. He must receive
23 written authorization from his immediate superior to be
24 absent from the usual workplace for the purpose of
25 appearance before such legislative body.

1 (2) The written request for appearance and written
2 authorization for appearance must be for a specific public
3 employee, time, date, and topic of appearance, and contain
4 the name and signature of the requestor or authorizer and
5 the date of issuance. Each request and authorization must be
6 for only one appearance and be issued at least 24 hours
7 prior to the appearance. The absence or nonavailability of a
8 written request or written authorization for public
9 inspection is evidence of the nonexistence of the written
10 request or written authorization.

11 (3) The public employee must:

12 (a) maintain a file of the written requests for 5
13 years. The file is a public record and is open to public
14 inspection.

15 (b) maintain a file of the written authorizations of
16 his superior for 5 years. The file is a public record and is
17 open to public inspection.

18 Section 5. Public employees and legislators. No public
19 employee may, while working, converse with or distribute
20 written or recorded materials to a member of a legislative
21 body within 200 feet of the place of assembly or from 1 hour
22 preceding a meeting to 1 hour after adjournment, unless he
23 is an employee of the legislative body or the conversation
24 or distribution is in conformance with subsections (1)(b),
25 (2), and (3) or does not relate to a matter before the

1 legislative body.

2 Section 6. Public employees and elections. (1) No
3 public employee may, while working, attempt to influence the
4 outcome of the election of a candidate, the success of a
5 ballot issue, or the attitude of any one or more electors
6 toward a candidate or ballot issue by:

7 (a) expressing opinions about the candidate or ballot
8 issue;

9 (b) alleging the effects of election or nonelection of
10 the candidate or passage or failure of the ballot issue;

11 (c) distributing any materials pertaining to the
12 issues surrounding the candidate or ballot issue;

13 (d) utilizing any public resources in support of or in
14 opposition to a candidate or ballot issue; and

15 (e) giving orders to any inferior to do any of the
16 above.

17 (2) In a proceeding under [sections 1 through 9]
18 against a public employee, it is no defense that he followed
19 a superior's order to do something prohibited by subsection
20 (1).

21 Section 7. Public resources and issues. (1) It is
22 illegal for any public resources to be used to support or
23 oppose a candidate or ballot issue, attempt to influence the
24 vote of a legislative body or the outcome of an election, or
25 attempt to influence one or more electors concerning a

1 candidate or ballot issue. It is illegal for a person
2 serving in a public capacity to authorize or order the use
3 of such public resources for such purposes.

4 (2) It is illegal for an organization or association
5 of elected or nonelected officials or of units of government
6 to use any funds budgeted by units of government from public
7 funds as dues or fees to such organizations or associations
8 to use the funds for the support or opposition of a
9 candidate or ballot issue or a proposed candidate or ballot
10 issue or the adoption or defeat of an issue before a
11 legislative body. It is illegal for a person serving in a
12 public capacity to authorize or order the use of such funds
13 for such purposes.

14 Section 8. Prosecutions. (1) Each violation of
15 [sections 1 through 9] is a separate offense.

16 (2) The county attorney must prosecute violations, and
17 the responsibility of the county attorney to the people of
18 the county and the state of Montana is superior to his
19 responsibility to provide legal counsel and defense to any
20 elected or nonelected public official or public employee.

21 (3) Ten registered electors of the state may petition
22 the county attorney of the county where a violation is
23 alleged to have occurred, stating the facts of the violation
24 and providing evidence. The petition must be delivered to
25 the county attorney and a certified copy filed with the

1 clerk of the district court.

2 (4) The county attorney must bring a prosecution of
3 the alleged violation within 15 working days of delivery of
4 the petition. If the county attorney fails to bring a
5 prosecution within 15 working days, the office of county
6 attorney shall immediately become vacant and the discharged
7 ex-officeholder is ineligible to occupy public office in
8 Montana, whether elected, appointed, or employed, for 10
9 years.

10 (5) The county attorney may require the petitioners to
11 post a bond, at a cost not to exceed \$1,000, in an amount
12 sufficient to cover the county attorney's and court's costs
13 of prosecution. If the district court dismisses the
14 complaint as lacking merit, the petitioners shall forfeit
15 reasonable court costs.

16 (6) If the county attorney is the individual accused
17 in the petition, the petitioners shall file the petition,
18 together with its supporting materials, in the district
19 court. The court shall appoint a special prosecutor to bring
20 the prosecution within 15 working days. A special prosecutor
21 who fails to bring a prosecution within 15 working days must
22 be held in contempt of court.

23 (7) The petitioners have standing before the court to
24 join the prosecution in offering testimony and other
25 evidence against the alleged violator.

1 Section 9. Penalties. (1) An elected, appointed, or
2 other public officer or employee found guilty of having
3 knowingly violated a provision of [sections 1 through 9]
4 shall:

5 (a) for the first offense in any 10-year period:

6 (i) be required to make restitution from nonpublic
7 funds to his government's general fund in the amount of
8 treble the amount or value of public resources used or
9 obligated by him;

10 (ii) be fined an amount equal to 2 months' salary,
11 including the value of fringe benefits; and

12 (iii) is deemed to have met, without question,
13 sufficient grounds to be eligible for recall if he is an
14 elected official; and

15 (b) for the second offense in any 10-year period:

16 (i) be required to make restitution from nonpublic
17 funds to his government's general fund in the amount of
18 treble the amount or the value of public resources used or
19 obligated by him;

20 (ii) immediately vacate his office or terminate his
21 employment; and

22 (iii) is ineligible to assume any public elected,
23 appointed, or employed office or position in the state of
24 Montana for 10 years.

25 (2) An elected, appointed, or other public officer or

1 employee found guilty of having knowingly violated a
2 provision of [sections 1 through 9] may, in addition to the
3 penalty required in subsection (1), be fined \$10,000 or
4 imprisoned in the county jail for a period not to exceed 90
5 days, or both.

6 (3) An organization or association found guilty of
7 having knowingly violated a provision of [sections 1 through
8 9] must be required to make restitution from nonpublic funds
9 to his government's general fund in the amount of treble the
10 amount of any funds expended in violation of [sections 1
11 through 9]. The treble amount must be recovered equally from
12 those individuals responsible for having decided to use the
13 funds in such a way as to cause the violation.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB339, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act regulating Government Employee Involvement in politics.

ASSUMPTIONS:

1. Added record keeping will be absorbed in existing budgets.
2. Revenues and expenditures for violations cannot be estimated.

FISCAL IMPACT:

Cannot be estimated.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Cannot be determined.

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

None.

 DATE 2/17/87
DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

 DATE _____
PAUL BOYLAN, PRIMARY SPONSOR

Fiscal Note for SB339, as introduced.

SB 339