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SENATE BILL NO. 115

INTRODUCED BY

*Eck Schuler* *Bonhag* *Minn Water*

BY REQUEST OF THE SECRETARY OF STATE

*James Harding* *Wallye Peak*  
*Greg* *James* *Carey*  
*Andy Bracke* *James* *Carroll* *James* *Weldon* *Doherty*

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

STATEMENT OF INTENT

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

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

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

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

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

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

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

10

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

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

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

1 duties;

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

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

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

5 the commission determines that the activity:

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

7 (B) clearly serves the public good; and

8 (C) is not lavish or extravagant.

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

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

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

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

14 (a) an employer;

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

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

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

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

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

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

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

29 An individual is a candidate when the individual:

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

1 officer;

2 (b) is nominated for office by:

3 (i) a party at a primary election;

4 (ii) a nominating convention; or

5 (iii) a petition for nomination;

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

10 (i) solicitation is made;

11 (ii) contribution is received and retained; or

12 (iii) expenditure is made; or

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

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

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

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

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

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

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

22 (a) evaluate bids for public contracts; or

23 (b) award public contracts.

24 (9) "Family member" means:

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

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

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

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

1 of the commission.

2 (12) "Immediate family" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (28) "Subcontractor" means:

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

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

21

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

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

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

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

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

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

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

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

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

11

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

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

18 (a) authorized by law; or

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

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

22

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

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

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

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



1 official or employee serves.

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

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

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

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

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

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

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

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

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

21

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

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

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

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

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

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

17 (a) benefit or influence an official act;

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

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

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

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

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

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

30 (a) a court;

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

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

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

6 (a) a court;

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

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

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

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

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

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

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

25

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

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

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

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

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

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

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

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

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

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

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

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

1 (8) For purposes of this section:

2 (a) "contract" does not include:

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

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

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

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

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

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

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

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

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

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

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

6 (a) the date of leaving office; or

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

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

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

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

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

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

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

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

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

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

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

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

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

5 and

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

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

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

16

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

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

20 (b) a former spouse;

21 (c) a gift from a family member; or

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

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

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

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

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

29 (d) a public member; and

30 (e) a consultant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 commissioner of political practices during ordinary business hours.

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

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

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

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

12 (ii) unless the individual otherwise requests.

13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17

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

21

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

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

30

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

8  
9            NEW SECTION. **Section 19. Montana ethics commission.** (1) Except as expressly provided in  
10 [sections 1 through 48], the commission is responsible for administering the provisions of [sections 1  
11 through 48]. The commission has the power and duties set forth in [sections 1 through 48].

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

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

17            (a) public official;

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

20            (c) candidate;

21            (d) lobbyist or lobbyist's principal;

22 or

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

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

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

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

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

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

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

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

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

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

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

12

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

16

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

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

22

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

26

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

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

1 duties assigned by the commission.

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

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

6

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

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

10 (1) make a financial contribution to a candidate;

11 (2) make a financial contribution to a political committee; or

12 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

13

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

18

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

22 (a) a public official or public employee;

23 (b) a former public official or former public employee; or

24 (c) a person who is personally and directly involved in the matter.

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

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

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

1 potential public service is confidential.

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

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

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

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

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

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

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

26

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

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

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

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

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

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

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

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

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

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

2

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

7

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

13

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

17

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

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

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

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



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

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

7

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

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

15

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

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

23

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

29

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

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

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

4

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

9

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

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

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

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

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

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

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

1 conclusions with the commission.

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

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

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

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

- 25 (a) must be a licensed attorney in the state of Montana;  
26 (b) may not be a public official or full-time employee of the executive or legislative branch.

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

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

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

3

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

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

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

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

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

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

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

25 (f) other orders or recommendations, including:

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

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

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

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

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

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

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

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

6

7 **NEW SECTION. Section 45. Action by attorney general.** (1) The attorney general may recover  
8 a fee, compensation, gift, or profit received by a person as a result of a violation of [sections 1 through  
9 48]. A request to the attorney general for an action under this section must be as timely as possible  
10 after the decision of the commission.

11 (2) Action taken by the attorney general under this section must be brought no later than 1  
12 year after a determination of a violation of [sections 1 through 48]. The action must be undertaken in  
13 the name of the commission.

14

15 **NEW SECTION. Section 46. Public inspection of records.** (1) Except as provided in  
16 subsection (2), all commission records are open for public inspection during normal business hours.

17 (2) The following records are not open for public inspection:

18 (a) records obtained in connection with a request for an advisory opinion. The commission may  
19 make records described by this subsection (a) public with the consent of the individual to whom the  
20 records pertain.

21 (b) records obtained or prepared by the commission in connection with an investigation or  
22 complaint, except:

23 (i) records made public in the course of a hearing;

24 (ii) verified complaints filed with the commission;

25 (iii) complaints issued by the commission;

26 (iv) probable cause decisions with findings of fact and conclusions of law;

27 (v) decisions with findings of fact and conclusions of law issued after a hearing;

28 (vi) a determination made by the commission regarding a rehearing; and

29 (vii) a settlement entered into by the commission and a respondent.

30 (3) A person who makes or purports to make public the substance or a portion of a confidential

1 advisory opinion requested by or on behalf of that person has waived the confidentiality of the request  
2 for an advisory opinion and of the record obtained by the commission in connection with the request  
3 for an advisory opinion.

4 (4) The commission may publicly respond to a statement or interpretation made concerning the  
5 contents of an advisory opinion or decision that it has issued or is purported to have issued.

6

7 **NEW SECTION. Section 47. Forfeiture of pension and retirement benefits.** (1) A public official  
8 or public employee, or a survivor, an heir, a successor, or the estate of a public official or public  
9 employee, who is convicted of a felony relating to or arising out of the official's or employee's public  
10 service may not receive that portion of pension or retirement benefits and interest on the benefits paid  
11 by a public entity or public employer.

12 (2) A public official or public employee entering public service subsequent to October 1, 1995,  
13 is considered to have consented to this section as a condition of employment.

14

15 **NEW SECTION. Section 48. Tax treatment of fines and repayments.** (1) A fine, penalty,  
16 reimbursement, or other payment ordered by the commission or court in connection with making the  
17 government whole for a transaction improperly entered into by a public official, public employee, or  
18 consultant or a family member of a public official, public employee, or consultant does not qualify for  
19 a state or local tax credit or deduction.

20 (2) The guilt or innocence of a party making a payment under subsection (1) does not affect  
21 state or local tax consequences.

22

23 **Section 49.** Section 2-2-125, MCA, is amended to read:

24 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of  
25 commission of any act enumerated in this section is proof that the actor has breached ~~his~~ the actor's  
26 fiduciary duty.

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

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

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

4 (3) A member of the governing body of a local government may perform an official act,  
 5 notwithstanding this section, when ~~his~~ the member's participation is necessary to obtain a quorum or  
 6 otherwise enable the body to act, if ~~he~~ the member complies with ~~the voluntary disclosure procedures~~  
 7 ~~under 2-2-131~~ [section 7]."

8  
 9 **Section 50.** Section 2-15-1814, MCA, is amended to read:

10 **"2-15-1814. Board of housing -- allocation -- composition -- quasi-judicial.** (1) There is a board  
 11 of housing.

12 (2) The board consists of seven members appointed by the governor as provided in 2-15-124.  
 13 The members ~~shall~~ must be informed and experienced in housing, economics, or finance.

14 (3) The board shall elect a ~~chairman~~ presiding officer and other necessary officers.

15 (4) The board is designated a quasi-judicial board for purposes of 2-15-124.

16 (5) The board is allocated to the department of commerce for administrative purposes only as  
 17 provided in 2-15-121.

18 (6) In compliance with the state pay plan, the department shall provide all staff and services  
 19 to the board as are determined by the board in conjunction with the department to be necessary for the  
 20 purposes of carrying out the board's programs. The department shall assess the board for reasonable  
 21 costs.

22 (7) A member of the board ~~shall not be deemed~~ is not considered to have a conflict of interest  
 23 under the provisions of ~~2-2-201~~ [section 7] merely because the member is a stockholder, officer, or  
 24 employee of a lending institution who may participate in the board's programs."

25  
 26 **Section 51.** Section 2-18-103, MCA, is amended to read:

27 **"2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following  
 28 positions in state government:

29 (1) elected officials;

30 (2) county assessors and their chief deputy;

- 1 (3) officers and employees of the legislative branch;
- 2 (4) judges and employees of the judicial branch;
- 3 (5) members of boards and commissions appointed by the governor, the legislature, or other  
4 elected state officials;
- 5 (6) officers or members of the militia;
- 6 (7) agency heads appointed by the governor;
- 7 (8) academic and professional administrative personnel with individual contracts under the  
8 authority of the board of regents of higher education;
- 9 (9) academic and professional administrative personnel and live-in houseparents who have  
10 entered into individual contracts with the state school for the deaf and blind under the authority of the  
11 state board of public education;
- 12 (10) teachers under the authority of the department of corrections and human services or family  
13 services;
- 14 (11) investment officer, assistant investment officer, executive director, and three professional  
15 staff positions of the board of investments;
- 16 (12) four professional staff positions under the board of oil and gas conservation;
- 17 (13) assistant director for security of the Montana state lottery;
- 18 (14) executive director and senior investment officer of the Montana board of science and  
19 technology development;
- 20 (15) executive director and employees of the state compensation insurance fund;
- 21 (16) state racing stewards employed by the executive secretary of the Montana board of  
22 horseracing;
- 23 (17) executive director of the Montana wheat and barley committee; ~~and~~
- 24 (18) commissioner of banking and financial institutions; and
- 25 (19) executive director and staff of the Montana ethics commission."
- 26

27 **Section 52.** Section 5-11-203, MCA, is amended to read:

28 **"5-11-203. Distribution of session laws -- inspection of journals.** (1) Immediately after the  
29 session laws are published, the legislative council shall distribute them.

30 (2) The council shall make the house and senate journals available for inspection or copying



1 by the public as provided in Title 2, chapter 6, part 1. The council may publish the journals in an  
2 electronic format.

3 (3) The following entities may receive the number of copies of session laws listed at no cost:

4 (a) to the library of congress, eight copies;

5 (b) to the state library, two copies;

6 (c) to the state historical library, two copies;

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

10 (e) to the library of each custodial institution, one copy;

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

14 (g) to any agency, board, commission, or office of the state, other than a state officer, and to  
15 any other subdivision of the state upon request and approval by the legislative council, one copy;

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

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

20 (j) to each county clerk, one copy for the use of the county; and

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

22

23 **Section 53.** Section 18-4-141, MCA, is amended to read:

24 **"18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) ~~No A~~  
25 contract or order or any interest ~~therein~~ in the contract or order may not be transferred, assigned, or  
26 subcontracted by the party to whom the contract or order is given to any other party without the  
27 express written approval of the state, and the state may declare void any unapproved transfer,  
28 assignment, or subcontract. ~~No~~ The approval of a transfer, assignment, or subcontract may not release  
29 the original obligor or ~~his~~ the obligor's sureties from their obligations to the state under the contract or  
30 order.

1           (2) Collusion or secret agreements between bidders for the purpose of securing any advantage  
2 to the bidders as against the state in the awarding of contracts ~~is~~ are prohibited. The state may declare  
3 the contract void if the department finds sufficient evidence after a contract has been let that the  
4 contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the  
5 bidders to the disadvantage of the state.

6           (3) All rights of action for a breach of a contract by the contracting parties are reserved to the  
7 state.

8           (4) A person who violates the provisions of ~~2-2-201~~ [section 9] or this section, or both, is  
9 guilty of a misdemeanor and shall be fined not less than \$500 or more than \$5,000, and the state of  
10 Montana may at its option declare any contract in violation of the provisions of ~~2-2-201~~ [section 9] or  
11 this section, or both, void ab initio."

12

13           **Section 54.** Section 49-2-303, MCA, is amended to read:

14           "**49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

15           (a) an employer to refuse employment to a person, to bar a person from employment, or to  
16 discriminate against a person in compensation or in a term, condition, or privilege of employment  
17 because of race, creed, religion, color, or national origin or because of age, physical or mental disability,  
18 marital status, or sex when the reasonable demands of the position do not require an age, physical or  
19 mental disability, marital status, or sex distinction;

20           (b) a labor organization or joint labor management committee controlling apprenticeship to  
21 exclude or expel any person from its membership or from an apprenticeship or training program or to  
22 discriminate in any way against a member of or an applicant to the labor organization or an employer  
23 or employee because of race, creed, religion, color, or national origin or because of age, physical or  
24 mental disability, marital status, or sex when the reasonable demands of the program do not require  
25 an age, physical or mental disability, marital status, or sex distinction;

26           (c) an employer or employment agency to print or circulate or cause to be printed or circulated  
27 a statement, advertisement, or publication or to use an employment application that expresses, directly  
28 or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or  
29 mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless  
30 based upon a bona fide occupational qualification;

1 (d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise  
 2 to discriminate against any individual because of sex, marital status, age, physical or mental disability,  
 3 race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

4 (2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications  
 5 must be strictly construed.

6 (3) Compliance with ~~2-2-302 and 2-2-303~~ [section 4], which ~~prohibit~~ prohibits nepotism in  
 7 public agencies, may not be construed as a violation of this section.

8 (4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not  
 9 be construed to be a violation of this section.

10 (5) It is not a violation of the prohibition against marital status discrimination in this section for  
 11 an employer or labor organization to provide greater or additional contributions to a bona fide group  
 12 insurance plan for employees with dependents than to those employees without dependents or with  
 13 fewer dependents."

14  
 15 **Section 55.** Section 49-3-201, MCA, is amended to read:

16 **"49-3-201. Employment of state and local government personnel.** (1) State and local  
 17 government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and  
 18 promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed,  
 19 political ideas, sex, age, marital status, physical or mental disability, or national origin.

20 (2) All state and local governmental agencies shall:

21 (a) promulgate written directives to carry out this policy and to guarantee equal employment  
 22 opportunities at all levels of state and local government;

23 (b) regularly review their personnel practices to ~~assure~~ ensure compliance; and

24 (c) conduct continuing orientation and training programs with emphasis on human relations and  
 25 fair employment practices.

26 (3) The department of administration shall ensure that the entire examination process, including  
 27 appraisal of qualifications, is free from bias.

28 (4) Appointing authorities shall exercise care to ensure ~~utilization~~ use of minority group  
 29 persons.

30 (5) Compliance with ~~2-2-302 and 2-2-303~~ [section 4], which ~~prohibit~~ prohibits nepotism in

1 public agencies, may not be construed as a violation of this section."

2

3 **Section 56.** Section 90-3-303, MCA, is amended to read:

4 **"90-3-303. Investments to board members prohibited.** (1) Board members may not personally  
5 apply for or receive board funds, except as provided in 2-15-124. If an organization with which a  
6 member is affiliated applies for board funds, the member ~~must~~ shall disclose the nature of the affiliation  
7 and may not participate in the decisionmaking process of the board regarding the application.

8 (2) The provisions of ~~2-2-201~~ [section 9] do not apply to board members."

9

10 **NEW SECTION. Section 57. Repealer.** Sections 2-2-101, 2-2-102, 2-2-104, 2-2-105,  
11 2-2-111, 2-2-112, 2-2-121, 2-2-131, 2-2-132, 2-2-201, 2-2-202, 2-2-203, 2-2-204, 2-2-205, 2-2-206,  
12 2-2-207, 2-2-301, 2-2-302, 2-2-303, and 2-2-304, MCA, are repealed.

13

14 **NEW SECTION. Section 58. Severability.** If a part of [this act] is invalid, all valid parts that  
15 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of  
16 its applications, the part remains in effect in all valid applications that are severable from the invalid  
17 applications.

18

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0115, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing ethics provisions to govern the conduct of executive and legislative branch officials and employees.

ASSUMPTIONS:

Secretary of State's Office:

1. The Ethics Commission will be a separate agency administratively attached to the Secretary of State's Office for purposes of centralizing administrative functions only. Administrative functions to be handled by the Secretary of State's Office will be limited to payroll, accounting, and computer network services. The Secretary of State's Office shall have no role in the management or decision making of the Ethics Commission.
2. As a general function of government, the Ethics Commission should begin as a general fund entity. However, the Ethics Commission should consider applying for funding under the Statewide Cost Allocation Plan (SWCAP) for its continuing operation to abate future general fund expenditures.
3. The effective date of the bill is October 1, 1995. The Ethics Commission staff will be employed for nine months of fiscal 1996 and will include 1.00 FTE Grade 18 executive director and 2.00 FTE Grade 9 administrative support positions.
4. Operating expenses for commission members and the staff include telephone charges, travel reimbursement, office rent, publication expenses, and routine office expenses. Equipment expenses include personal computers, a printer, computer software, office furniture, and a facsimile machine.

Commissioner of Political Practices:

5. Additional responsibilities required by this bill include collecting, filing, and reviewing for compliance all statements of financial interests at various required times with some "floating" dates. Statements of financial interests would be required for elected officials, high-level state employees, and individuals nominated to become a public official or public employee, "public members" appointed to "a noncompensated, part-time position on a board, commission, or council", and consultants entering into a contractual relationship with the state or a political subdivision if the consultant or a member of the household of the consultant has an economic interest.
6. Formal investigation and prosecution of complaints of violation of the ethics code would include assessing technical violation penalties, acceptance of complaints, holding hearings, and following the rules of the Montana Administrative Procedures Act. In addition, prosecution of alleged violations before the Montana Ethics Commission would be extensive.
7. The effective date of the bill is October 1, 1995. Additional staff that will be employed for nine months during fiscal 1996 include 1.00 FTE Grade 18 attorney, 1.00 FTE Grade 14 investigator, 1.00 FTE Grade 12 secretary, and 1.00 FTE Grade 9 administrative clerk.
8. Operating expenses include contracted services for hearings officers, telephone charges, training, and routine office expenses.
9. Office remodeling costs of \$17,016 will be incurred in fiscal 1996 to accommodate the additional FTE. Purchases of personal computers, printers, and office equipment in fiscal 1996 will amount to \$15,300. (continued)

(Continued)

Dave Lewis 1-20-95  
DAVE LEWIS BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Dorothy Eck 1/21/95  
DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0115, as introduced

**SB 115**

(continued)

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
<u>Ethics Commission:</u>	<u>Difference</u>	<u>Difference</u>
FTE	2.25	3.00
Personal Services	65,100	87,103
Operating Expenses	33,919	37,604
Equipment	<u>17,855</u>	<u>2,093</u>
Total	116,874	126,800
Funding:		
General Fund (01)	116,874	126,800

Commissioner Political Practices:

FTE	3.00	4.00
Personal Services	92,580	123,873
Operating Expenses	36,056	25,387
Equipment	<u>15,300</u>	<u>0</u>
Total	143,936	149,260
Funding:		
General Fund (01)	143,936	149,260

Revenues:

General Fund - copying fees (01)	1,000	2,000
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Net Impact:

General Fund (01)	(259,810)	(274,060)
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