

Brainard

Denny for Hayden

SENATE BILL NO. 136

W. Craig Emerson

INTRODUCED BY

A. Bruce Keenan

Benjamin Burdette

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS CONCERNING ETHICS; CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO REFRAIN FROM VOTING ON CERTAIN MATTERS; PROHIBITING A PUBLIC EMPLOYEE WHO IS A LEGISLATOR FROM RECEIVING BOTH SALARIES WHILE SERVING IN THE LEGISLATURE; PROHIBITING PUBLIC OFFICERS AND PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, OR FUNDS TO PROMOTE POLITICAL IDEOLOGY OR TO INFLUENCE A POLITICAL ISSUE; AND AMENDING SECTIONS 2-2-104, 2-2-105, 2-2-112, 2-2-121, AND 2-2-125, MCA."

WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of prohibiting conflict between public duty and private interest for members of the Legislature and for all state and local government officers and employees; and

WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.

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

Section 1. Section 2-2-104, MCA, is amended to read:

"2-2-104. Rules of conduct for all public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his a fiduciary duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his the person's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which that would tend improperly to influence a reasonable person in his the person's position to depart from the faithful and impartial discharge of his the person's public duties; or

(ii) which he that the person knows or which that a reasonable person in his that position should

1 know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official action
2 ~~he has~~ taken.

3 (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest
4 substantially lower than the commercial rate then currently prevalent for similar loans and compensation
5 received for private services rendered at a rate substantially exceeding the fair market value of ~~such~~ the
6 services. Campaign contributions reported as required by statute are not gifts or economic benefits
7 tantamount to gifts.

8 (3) A public employee who is also a legislator may not draw a salary for the public employee
9 position during the time the public employee is compensated as a legislator."

10

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

12 **"2-2-105. Ethical ~~principles~~ requirements for public officers and employees.** (1) The ~~principles~~
13 requirements in this section are intended as ~~guides to~~ mandatory rules of conduct, and ~~do not constitute~~
14 violations ~~as such~~ constitute a breach of the public trust and fiduciary duty of office or employment in state
15 or local government. A violation of this section is subject to disciplinary action and a civil penalty of not
16 less than \$50 or more than \$1,000.

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

20 (3) A public officer or employee ~~should~~ may not, within the months following the voluntary
21 termination of ~~his~~ office or employment, obtain employment in which ~~he~~ the officer or employee will take
22 direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was directly
23 involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules of
24 general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,
25 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active
26 participant.

27 (4) A public officer or employee ~~should~~ may not perform an official act directly and substantially
28 affecting a business or other undertaking to its economic detriment when ~~he~~ the officer or employee has
29 a substantial financial interest in a competing firm or undertaking."
30

1 **Section 3.** Section 2-2-112, MCA, is amended to read:

2 "**2-2-112. Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this
3 section are intended ~~only~~ as ~~guides to~~ mandatory rules for legislator conduct, and ~~do not constitute~~
4 violations ~~as such~~ constitute a breach of the public trust and the fiduciary duty of legislative office. A
5 violation of this section is subject to disciplinary action and a civil penalty of not less than \$50 or more than
6 \$1,000.

7 (2) When a legislator ~~must~~ is required to take official action, including voting, on a legislative matter
8 as to which ~~he~~ the legislator has a conflict created by a personal or financial interest ~~which that~~ would be
9 directly and substantially affected by or collaterally give rise to an appearance of impropriety as to the
10 legislator's influence, benefit, or detriment in regard to the legislative matter, ~~he should consider disclosing~~
11 ~~or eliminating~~ the legislator shall disclose and eliminate the interest creating the conflict or ~~abstaining~~
12 abstain from the official action. In making ~~his~~ a decision, ~~he should~~ the legislator shall further consider:

13 (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

14 (b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the
15 legislature; ~~and~~

16 (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition
17 of the matter; and

18 (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family
19 benefit could arise from the legislator's participation.

20 (3) A conflict situation does not arise from legislation ~~affecting~~ that does not directly or significantly
21 affect the entire membership ~~of~~ in a profession, occupation, or class. If a legislator or a person connected
22 with a legislator by consanguinity within the fourth degree or by affinity within the second degree is a
23 public employee and a member of a profession, occupation, or class affected in any way by the legislation,
24 the legislator shall refrain from participation in the action.

25 (4) ~~If a~~ A legislator ~~elects to~~ shall disclose the interest creating the conflict and refrain from
26 participation in the action, ~~he shall do so~~ as provided in the joint rules of the legislature."

27

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

29 "**2-2-121. Rules of conduct for ~~state~~ public officers, legislators, and state public employees.** (1)

30 Proof of commission of any act enumerated in ~~this section~~ subsection (2) or (3) is proof that the actor has

1 breached ~~his~~ a fiduciary duty.

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

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

4 (b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business
5 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official
6 duties;

7 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
8 other economic benefit from ~~his~~ the officer's or employee's agency;

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

11 (e) perform an official act directly and substantially affecting to its economic benefit a business or
12 other undertaking in which ~~he~~ the officer, legislator, or employee either has a substantial financial interest
13 or is engaged as counsel, consultant, representative, or agent; ~~or~~

14 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
15 with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first
16 giving written notification to ~~his~~ the officer's or employee's supervisor and department director;

17 (g) use public time, facilities, equipment, supplies, or funds to promote a political ideology that
18 could potentially affect the outcome of an election; or

19 (h) use public resources to pay, supplement, or subsidize in any way a lobbyist, the media, or any
20 other method of influence intended to persuade or affect a political decision.

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

24 (4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
25 unless ~~he~~ the member is also a full-time state or local government employee.

26 (5) Subsections (2)(g) and (2)(h) do not apply to a legislator or legislative staff in the ordinary
27 course and performance of legislative duties.

28 (6)(a) A violation of this section is subject to disciplinary action and a civil penalty of not less than
29 \$50 or more than \$1,000.

30 (b) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon

1 conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the
2 county jail for not more than 6 months, or by both."

3

4 **Section 5.** Section 2-2-125, MCA, is amended to read:

5 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission
6 of any act enumerated in this section is proof that the actor has breached ~~his~~ a fiduciary duty subjecting
7 the actor to disciplinary action and a civil penalty of not less than \$50 or more than \$1,000.

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

9 (a) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business
10 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official
11 duties; or

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

15 (3) ~~A Notwithstanding the provisions of subsection (2), a member of the governing body of a local~~
16 ~~government may perform an official act notwithstanding this section when his~~ the member's participation
17 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he~~ The member shall ~~complies with~~
18 ~~the voluntary disclosure procedures under 2-2-131~~ disclose and eliminate the interest creating the
19 appearance of impropriety."

20

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0136, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

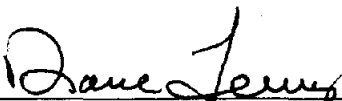
An act generally revising laws concerning ethics for legislators, public employees, and public officers.

ASSUMPTIONS:

Commissioner of Political Practices:

1. Additional responsibilities for the Office of the Commissioner of Political Practices under SB0136 will include the adoption of administrative rules, formal investigation and prosecution of complaints of violation of the ethics code by state officers or state employees. This will involve acceptance of complaints, conducting hearings within the requirements of the Montana Administrative Procedures Act, and the assessment of technical violation penalties. In addition, there will be responsibility for the prosecution of alleged violations before the Montana Ethics Commission.
2. The ethics commission will be attached to the Commissioner of Political Practices for administrative purposes only. It is assumed that the commission will be accounted for and budgeted as a program in the office of the Commissioner of Political Practices but will operate as an autonomous commission.
3. It is estimated that the provisions of the bill will result in the filing of five to ten formal complaints per month (60-120 per year) and the conduct of two to five informal contested case hearings per month (24-60 per year). It is also estimated that some number of hearing decisions made by the commissioner will be further appealed to the ethics commission that will conduct an appeal hearing. In order to provide daily legal support and interpretations, complaint resolution assistance, and hearing preparation and representation, it is estimated that 1.00 FTE attorney (grade 18) will be necessary. The personal services cost for the FTE is about \$21 per hour; contract legal service obtained from Agency Legal Services in the Department of Justice is at the rate of \$53 per hour.
4. It is estimated that there will be sufficient investigatory work required to support the addition of 1.00 FTE investigator (grade 14). The personal services cost for the FTE is \$15 per hour; contract investigatory service obtained from Agency Legal Services is at the rate of \$35 per hour.
5. Additional staff will be necessary: 1.00 FTE (grade 11) administrative assistant to provide administrative and technical support to the attorney and investigator, and to be the initial contact point for information and requests for advisory opinions; and 1.00 FTE (grade 9) clerical support position that will also provide clerical and organizational support to the ethics commission.
6. It is estimated that the cost for contracted hearings officers will be \$8,000 each year. This equates to approximately 40 hearings per year x 5 hours per hearing (including pre-hearing preparation and writing decisions) x \$40 per hour.
7. Start-up expenses in FY96 for the additional staff include \$17,000 for remodeling the basement of the present building to provide office space and necessary exits and access, and \$17,000 for office furniture and equipment.

(continued)

 3.28.95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3-29-96

LARRY L. BAER, PRIMARY SPONSOR DATE

Fiscal Note for SB0136, second reading

SB 136

(continued)

Commissioner of Political Practices (continued):

8. The five-member ethics commission is entitled to reimbursement for expenses as provided in Title 2, chapter 18, part 5, MCA. It is assumed that the commission will meet an average of one day per month with average reimbursement expenses of \$683.50 per meeting (5 members x \$136.70 per day; mileage (300 miles x \$0.30 = \$90), lodging (\$31.20 for one night), and meals (\$15.50 per day)). Total expenses for the year would be \$8,200 (\$683.50 x 12).

Department of Administration:

9. The estimated costs, in FY96 only, of adopting rules on standards of conduct and producing a brochure for all state employees (to include the university system) is \$4,015. These costs include copying and postage to distribute rule notices, administrative rule filing fees for the publication of rule notices, and the printing of brochures.

Department of Revenue:

10. The bill has no impact on expenditures and may result in a nominal increase in state income tax revenues due to the requirement for the department to provide information to the commissioner as necessary to determine compliance with tax return filing responsibilities.

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Commissioner of Political Practices:		
FTE	4.00	4.00
Personal Services	121,509	121,935
Operating Expenses	49,500	30,500
Equipment	<u>17,000</u>	<u>0</u>
Total	188,009	152,435
Ethics Commission (travel reimbursement):		
Operating Expenses	8,200	8,200
Department of Administration:		
Operating Expenses	4,015	0
<u>Funding:</u>		
General Fund (01)	200,224	160,635

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0136, reference bill, as amended

DESCRIPTION OF PROPOSED LEGISLATION:

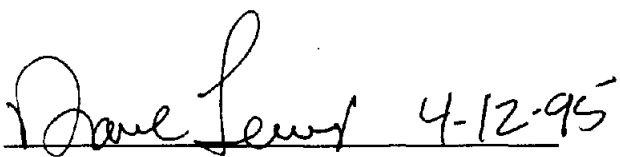
An act generally revising laws concerning ethics for legislators, public employees, and public officers.

ASSUMPTIONS:

Commissioner of Political Practices:

1. Additional responsibilities for the Office of the Commissioner of Political Practices under SB0136 will include the adoption of administrative rules, formal investigation, and prosecution of complaints of violation of the ethics code by state officers, state employees, or legislators. This will involve acceptance of complaints, conducting hearings within the requirements of the Montana Administrative Procedures Act, and the assessment of technical violation penalties.
2. The ethics commission will be attached to the Commissioner of Political Practices for administrative purposes only. It is assumed that the commission will receive staff support from the office but the direct commission expenses will be separately accounted for and it will operate as an autonomous commission.
3. It is estimated that the provisions of the bill, as amended to include complaints against legislators will result in the filing of eight to fifteen formal complaints per month (96-180 per year) and the conduct of three to seven informal contested case hearings per month (36-84 per year). It is also estimated that some number of hearing decisions made by the commissioner will be further appealed to the ethics commission that will conduct an appeal hearing. In order to provide daily legal support and interpretations, complaint resolution assistance, and hearing preparation and representation, it is estimated that 1.00 FTE attorney (grade 18) will be necessary. The personal services cost for the FTE is about \$21 per hour; contract legal service obtained from Agency Legal Services in the Department of Justice is at the rate of \$53 per hour.
4. It is estimated that there will be sufficient investigatory work required to support the addition of 1.00 FTE investigator (grade 14). The personal services cost for the FTE is \$15 per hour; contract investigatory service obtained from Agency Legal Services is at the rate of \$35 per hour.
5. Additional staff will be necessary: 1.00 FTE (grade 11) administrative assistant to provide administrative and technical support to the attorney and investigator and records maintenance for investigations, hearings, and disclosure statements, and to assist in telephone and reception coverage as the initial ethics unit contact point; and 1.00 FTE (grade 9) clerical support position that will also provide clerical and organizational support to the ethics commission.
6. It is estimated that the cost for contracted hearings officers will be \$12,000 each year. This equates to approximately 60 hearings per year x 5 hours per hearing (including pre-hearing preparation and writing decisions) x \$40 per hour.
7. Start-up expenses in FY96 for the additional staff include \$17,000 for remodeling the basement of the present building to provide office space and necessary exits and access, and \$17,000 for office furniture and equipment.

(continued)

 4-12-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

LARRY L. BAER, PRIMARY SPONSOR DATE

Fiscal Note for SB0136, reference
bill, as amended

SB 136-#2

(continued)

Commissioner of Political Practices (continued):

8. The five-member ethics commission is entitled to reimbursement for expenses as provided in Title 2, chapter 18, part 5, MCA. It is assumed that the commission will meet an average of one day per month with average reimbursement expenses of \$683.50 per meeting (5 members x \$136.70 per day; mileage (300 miles x \$0.30 = \$90), lodging (\$31.20 for one night), and meals (\$15.50 per day)). Total expenses for the year would be \$8,200 (\$683.50 x 12).

Department of Administration:

9. The estimated costs, in FY96 only, of adopting rules on standards of conduct and producing a brochure for all state employees (to include the university system) is \$4,015. These costs include copying and postage to distribute rule notices, administrative rule filing fees for the publication of rule notices, and the printing of brochures.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Commissioner of Political Practices:		
FTE	4.00	4.00
Personal Services	121,509	121,935
Operating Expenses	53,500	34,500
Equipment	<u>17,000</u>	<u>0</u>
Total	192,009	156,435
Ethics Commission (travel reimbursement):		
Operating Expenses	8,200	8,200
Department of Administration:		
Operating Expenses	4,015	0
<u>Funding:</u>		
General Fund (01)	204,224	164,635

REREFERRED AND
 APPROVED BY COM
 ON JUDICIARY

SENATE BILL NO. 136

INTRODUCED BY BAER, KEENAN, BENEDICT, BURNETT, DENNY, MOHL, HARGROVE, BRAINARD,
 EMERSON, MESAROS, JORE, JENKINS, CRISMORE, ESTRADA, KEATING, FORBES, PECK,
 COCCHIARELLA, PAVLOVICH, MURDOCK, BOHARSKI, VICK, WISEMAN, GREEN, MOLNAR,
 HARRINGTON, MERCER, GRINDE, MCKEE, TAYLOR, AHNER, MILLS, L. SMITH, MARTINEZ, OHS,
 SLITER, T. NELSON, STOVALL, SIMON, LARSON, R. JOHNSON, WELLS, MCGEE, KITZENBERG, ELLIS,
 TREXLER, FUCHS, CLARK, BARNHART, SQUIRES, TUSS, ELLINGSON, SHEA, MENAHAN, RYAN,
 SWANSON, CAREY, TROPILA, ELLIOTT, J. JOHNSON, WENNEMAR, HURDLE, HEAVY RUNNER,
 HOLLAND, MCCULLOCH, MASOLO, BOHLINGER, LYNCH, JACOBSON, FORRESTER, CHRISTIAENS,
 L. NELSON, JERGESON, COLE, MILLER, BROOKE, WELDON, VAN VALKENBURG, FRANKLIN,
 PIPINICH, SPRAGUE, HARDING, FOSTER, HARP, GROSFIELD, BISHOP, HOLDEN

BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS;
 CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE
 INTERESTS; RAISING THE APPEARANCE OF IMPROPRIETY AND TO ~~REFRAIN FROM VOTING ON CERTAIN~~
~~VOTE ON ALL MATTERS; PROHIBITING PROVIDING REQUIREMENTS FOR A PUBLIC EMPLOYEE WHO IS~~
~~A LEGISLATOR FROM RECEIVING BOTH SALARIES WHILE SERVING IN THE LEGISLATURE, PUBLIC~~
~~OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE PUBLIC SALARY FOR OVERLAPPING HOURS~~
~~OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND PUBLIC EMPLOYEES FROM USING PUBLIC TIME,~~
~~EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR FUNDS TO PROMOTE POLITICAL IDEOLOGY OR~~
~~TO INFLUENCE A POLITICAL ISSUE; AND FOR ANY POLITICAL OR CAMPAIGN ACTIVITY PERSUADING~~
~~OR AFFECTING A POLITICAL DECISION UNLESS THE USE IS AUTHORIZED BY LAW OR PROPERLY~~
~~INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT~~
~~BY CURRENT AND FORMER PUBLIC OFFICIALS AND EMPLOYEES; PROVIDING FOR EDUCATION AND~~
~~TRAINING ON ETHICAL MATTERS; PROVIDING ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS;~~
~~PROVIDING THAT FILING TAX RETURNS IS AN ETHICAL REQUIREMENT; CREATING AN ETHICS~~
~~COMMISSION TO PROVIDE REVIEW OF ETHICS DECISIONS IN CASES INVOLVING STATE OFFICERS AND~~
~~STATE EMPLOYEES; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112,~~
~~2-2-121, AND 2-2-125, 2-2-131, 2-2-302, 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING~~

1 SECTION 2-2-132, MCA; AND PROVIDING AN EFFECTIVE DATE."

2
3 WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of
4 prohibiting conflict between public duty and private interest for members of the Legislature and for all state
5 and local government officers and employees; and

6 ~~WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana~~
7 ~~Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.~~

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 (Refer to First Reading Bill)

11 Strike everything after the enacting clause and insert:

12
13 **Section 1.** Section 2-2-102, MCA, is amended to read:

14 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

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

17 (2) "Compensation" means any money, thing of substantial value, or economic benefit conferred
18 on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or
19 another.

20 ~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision~~
21 ~~thereof or member of the judiciary, including a member of a board, commission, or committee except a~~
22 ~~legislator and an employee under contract to the state.~~

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

25 ~~(a) an ownership interest in a business;~~

26 ~~(b) a creditor interest in an insolvent business;~~

27 ~~(c) an employment or prospective employment for which negotiations have begun;~~

28 ~~(d) an ownership interest in real or personal property;~~

29 ~~(e) a loan or other debtor interest; or~~

30 ~~(f) a directorship or officership in a business.~~

1 ~~(5)~~(3) "Official act" or "official action" means a vote, decision, recommendation, approval,
2 disapproval, or other action, including inaction, ~~which~~ that involves the use of discretionary authority.

3 (4) "Private interest" means an interest held by an individual or the individual's spouse or minor
4 children that is:

5 (a) an ownership interest in a business;

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

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

8 (d) an ownership interest in real property;

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

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

11 (5) "Public employee" means:

12 (a) any temporary or permanent employee of the state or any subdivision of the state;

13 (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with
14 rulemaking authority; and

15 (c) a person under contract to the state.

16 (6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any
17 elected officer of any subdivision of the state.

18 (7)(a) "State agency" includes:

19 (i) the state;

20 (ii) the legislature and its committees;

21 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

22 (iv) the university system; and

23 (v) all independent commissions and other establishments of the state government ~~except the~~
24 courts.

25 (b) The term does not include the judicial branch.

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

28
29 **Section 2.** Section 2-2-103, MCA, is amended to read:

30 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public

1 trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers,
 2 legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the
 3 individual's duties for the benefit of the people of the state.

4 (2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary~~ the
 5 person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary~~
 6 ~~under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject to the
 7 penalties provided in this part for abuse of ~~his~~ the public's trust. ~~The county attorney of the county where~~
 8 ~~the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys~~
 9 ~~collected in such actions shall be paid to the general fund of the aggrieved agency.~~

10 (3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of
 11 any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the
 12 transgression of any of which is ~~not, as such,~~ a violation of ~~fiduciary duty~~ must be avoided.

13 (4)(a) The enforcement of this part for:

14 (i) state officers and employees is provided for in [sections 16 and 17 15 AND 16];

15 (ii) legislators is provided for in [section 15 14];

16 (iii) local government officers and employees is provided for in [section 22 21].

17 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action
 18 must be deposited in the general fund of the unit of government."

19
 20 **Section 3.** Section 2-2-104, MCA, is amended to read:

21 **"2-2-104. Rules of conduct for all public officers, legislators, and public employees.** (1) Proof of
 22 commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ the
 23 actor's public duty. A public officer, legislator, or public employee may not:

24 (a) ~~disclose or use confidential information acquired in the course of his official duties in order to~~
 25 ~~further substantially his personal economic interests; or~~

26 (b) ~~accept a gift of substantial value or a substantial economic benefit tantamount to a gift:~~

27 (i)(a) ~~which that~~ would tend improperly to influence a reasonable person in ~~his~~ the person's position
 28 to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

29 (ii)(b) ~~which he that the person~~ knows or ~~which that~~ a reasonable person in ~~his~~ that position should
 30 know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official action

1 ~~he has~~ taken.

2 (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest
3 substantially lower than the commercial rate then currently prevalent for similar loans and compensation
4 received for private services rendered at a rate substantially exceeding the fair market value of ~~such the~~
5 services. Campaign contributions reported as required by statute are not gifts or economic benefits
6 tantamount to gifts.

7 (3)(a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may
8 not receive salaries from two separate public employment positions that overlap for the hours being
9 compensated, unless:

10 (i) the public officer, legislator, or public employee reimburses the public entity from which the
11 employee is absent for ~~its costs in~~ THE SALARY PAID FOR performing the function from which the officer,
12 legislator, or employee is absent; or

13 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by
14 the amount of salary received from the other public employer in order to avoid duplicate compensation for
15 the overlapping hours.

16 (b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving
17 income from the use of accrued leave or compensatory time during the period of overlapping employment."
18

19 **Section 4.** Section 2-2-105, MCA, is amended to read:

20 **"2-2-105. Ethical ~~principles~~ requirements for public officers and public employees.** (1) The
21 ~~principles requirements~~ in this section are intended as ~~guides to rules of~~ conduct, and ~~do not constitute~~
22 ~~violations as such~~ constitute a breach of the public trust and public duty of office or employment in state
23 or local government.

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

27 (3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the
28 voluntary termination of ~~his~~ the officer or employee office or employment, obtain employment in which ~~he~~ the officer or employee
29 will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was
30 directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules

1 of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,
2 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active
3 participant.

- 4 (4) A public officer or public employee ~~should~~ may not:
 - 5 (a) perform an official act directly and substantially affecting a business or other undertaking to its
 - 6 economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a
 - 7 competing firm or undertaking; or
 - 8 (b) disclose or use confidential information acquired in the course of official duties in order to
 - 9 substantially further the officer's or employee's private interests."

10

11 **Section 5.** Section 2-2-111, MCA, is amended to read:

12 **"2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this
13 section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty.
14 A legislator may not:

- 15 (1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation
- 16 provided by statute, for promoting or opposing the passage of legislation;
- 17 (2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's
- 18 services by the use of ~~his~~ the office."

19

20 **Section 6.** Section 2-2-112, MCA, is amended to read:

21 **"2-2-112. Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this
22 section are intended ~~only as guides to~~ rules for legislator conduct, and ~~do not constitute~~ violations as such
23 constitute a breach of the public trust of legislative office.

24 (2) A legislator has a responsibility to the legislator's constituents to participate in all matters
25 affecting the constituents AS REQUIRED IN THE JOINT RULES OF THE LEGISLATURE. A legislator
26 concerned with the possibility of a conflict should briefly present the facts to the committee of that house
27 that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether
28 the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of
29 subsection (5). The legislator shall vote on the issue after disclosing the interest.

30 ~~(2)(3)~~ (3) When a legislator ~~must~~ is required to take official action on a legislative matter as to which

1 ~~he the legislator~~ has a conflict created by a personal or ~~financial~~ private interest ~~which that~~ would be
 2 directly ~~and substantially affected by~~ give rise to an appearance of impropriety as to the legislator's
 3 influence, benefit, or detriment in regard to the legislative matter, he should consider disclosing or
 4 eliminating the legislator shall disclose the interest creating the conflict ~~or abstaining from prior to~~
 5 participating in the official action, as provided in subsections (2) and (5) and the joint rules of the
 6 legislature. In making his a decision, he should the legislator shall further consider:

7 (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

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

10 (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition
 11 of the matter; ~~and~~

12 (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family
 13 benefit could arise from the legislator's participation.

14 ~~(3)(4)~~ (4) A conflict situation does not arise from legislation or legislative duties affecting the entire
 15 membership of a profession, occupation, or class.

16 ~~(4)(5)~~ (5) ~~If a A legislator elects to shall disclose the an~~ interest creating ~~the a~~ conflict, ~~he shall do so~~
 17 as provided in the joint rules of the legislature. A legislator who is a member of a profession, occupation,
 18 or class affected by legislation is not required to disclose an interest unless the class contained in the
 19 legislation is so narrow that the vote will have a direct personal impact on the legislator. A legislator may
 20 seek a determination from the appropriate committee provided for in [section 14 14]."

21
 22 **Section 7.** Section 2-2-121, MCA, is amended to read:

23 **"2-2-121. Rules of conduct for state public officers and state public employees.** (1) Proof of
 24 commission of any act enumerated in ~~this section~~ subsection (2) is proof that the actor has breached his
 25 ~~fiduciary a~~ public duty.

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

27 (a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for his
 28 the officer's or employee's private business purposes;

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

1 duties;

2 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
3 other economic benefit from ~~his~~ the officer's or employee's agency;

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

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

9 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
10 with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first
11 giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

12 (3)(a) A public officer or public employee may not use public time, facilities, equipment, supplies,
13 personnel, or funds for any political or campaign activity persuading or affecting a political decision unless
14 the use is:

15 (i) authorized by law; or

16 (ii) properly incidental to another activity required or authorized by law, such as the function of an
17 elected public official, the official's staff, or the legislative staff in the normal course of duties.

18 (b) Subsection (3)(a) does not prohibit an elected public official from issuing public statements
19 concerning matters within the scope of the official's office. However, a document that is published
20 pursuant to this subsection (3) and that is aimed at supporting or opposing a political committee, a
21 candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce
22 the document. The statement must meet the specifications described in 18-7-306, and the costs must be
23 estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed
24 with the commissioner of political practices.

25 (4)(a) A state employee shall notify the employee's immediate supervisor that a potential conflict
26 of interest exists when:

27 (i) an organization of which the employee is a member is involved in a proceeding before the
28 employing agency that is within the scope of the employee's job duties; or

29 (ii) the employee is a member of or affiliated with any organization attempting to influence a local,
30 state, or federal proceeding in which the employee represents the state.

1 **(b) The employee's supervisor shall make the disclosed information available to an interested**
 2 **person upon the person's request.**

3 **(5) A state officer or state employee may not engage in any activity, including lobbying, as defined**
 4 **in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the**
 5 **officer's or employee's job duties.**

6 ~~(3)~~**(6)** A department head or a member of a quasi-judicial or rulemaking board may perform an
 7 official act notwithstanding the provisions of subsection (2)(e) if ~~his~~ participation is necessary to the
 8 administration of a statute and if ~~he~~ the person complies with the ~~voluntary~~ disclosure procedures under
 9 2-2-131.

10 ~~(4)~~**(7)** Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
 11 unless ~~he~~ the member is also a full-time ~~state~~ public employee.

12 **(8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon**
 13 **conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the**
 14 **county jail for not more than 6 months, or by both. A civil proceeding under [section ~~16~~ 15] or [section**
 15 **~~22~~ 21] does not preclude an action under this subsection."**

16
 17 **Section 8.** Section 2-2-125, MCA, is amended to read:

18 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission
 19 of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ a public duty
 20 subjecting the actor to disciplinary action by the employing entity.

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

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

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

28 (3) ~~A~~ **Notwithstanding the provisions of subsection (2),** a member of the governing body of a local
 29 government may perform an official act ~~notwithstanding this section~~ when ~~his~~ the member's participation
 30 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he complies with the voluntary~~

1 ~~disclosure procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of
 2 impropriety."

3

4 **Section 9.** Section 2-2-131, MCA, is amended to read:

5 "2-2-131. ~~Voluntary disclosure~~ **Disclosure.** A public officer or public employee ~~may~~ shall, prior to
 6 acting in a manner ~~which~~ that may impinge on ~~his fiduciary~~ public duty, including the award of a permit,
 7 contract, or license, disclose the nature of ~~his~~ the private interest ~~which~~ that creates the conflict. ~~He~~ The
 8 public officer or public employee shall make the disclosure in writing to the secretary of state, listing the
 9 amount of ~~his financial~~ private interest, if any, the purpose and duration of ~~his~~ the person's services
 10 rendered, if any, and the compensation received for the services or ~~such~~ other information ~~as~~ that is
 11 necessary to describe ~~his~~ the interest. If ~~he~~ the public officer or public employee then performs the official
 12 act involved, ~~he~~ the officer or employee shall state for the record the fact and summary nature of the
 13 interest disclosed at the time of performing the act."

14

15 **Section 10.** Section 2-2-302, MCA, is amended to read:

16 "2-2-302. **Appointment of relative to office of trust or emolument unlawful -- exceptions --**
 17 **publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of any
 18 board, bureau, or commission or employee at the head of a department of this state or any political
 19 subdivision of this state to appoint to any position of trust or emolument any person related or connected
 20 by consanguinity within the fourth degree or by affinity within the second degree.

21 (2) The provisions of this section and 2-2-303 do not apply to:

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

23 (b) school district trustees if all the trustees, with the exception of any trustee who is related to
 24 the person being appointed and who must abstain from voting for the appointment, approve the
 25 appointment of a person related to a trustee;

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

28 (d) the renewal of an employment contract of a person who was initially hired before the member
 29 of the board, bureau, or commission or the department head to whom ~~he~~ the person is related assumed the
 30 duties of the office;

1 (e) the employment of election judges; or

2 (f) the employment of pages or temporary session staff by the legislature.

3 (3) Prior to the appointment of a person referred to in subsection (2), the school district trustees
4 shall give written notice of the time and place of their intended action. The notice must be published at
5 least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in
6 which the school district is located."

7
8 **Section 11.** Section 2-18-102, MCA, is amended to read:

9 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided by
10 law or collective bargaining agreement, the department shall:

11 (a) encourage and exercise leadership in the development of effective personnel administration
12 within the several agencies in the state and make available the facilities of the department to this end;

13 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
14 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
15 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
16 for productivity and retention in permanent status;

17 (c) foster, develop, and promote job sharing in agencies;

18 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
19 policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

20 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
21 state service;

22 (f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform
23 any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts
24 1 and 2.

25 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
26 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
27 that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards
28 established by the department.

29 (3) The department shall develop and issue personnel policies for the state. Adequate public notice
30 ~~shall~~ must be given to all interested parties of proposed changes or additions to the personnel policies

1 before the date they are to take effect. If requested by any of the affected parties, the department shall
 2 schedule a public hearing on proposed changes or additions to the personnel policies before the date they
 3 are to take effect.

4 (4) The department shall develop model rules of conduct for all state employees based upon the
 5 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
 6 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
 7 rules appropriate to the specific circumstances of the agency."

8
 9 **Section 12.** Section 5-7-213, MCA, is amended to read:

10 **"5-7-213. Disclosure ~~by elected officials.~~** (1)(a) Prior to December 15 of each even-numbered year,
 11 each elected official, ~~or official elect~~ member of a quasi-judicial board or commission, or department director
 12 shall file with the commissioner a business disclosure statement on a form provided by the commissioner.
 13 An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a)
 14 during the same period.

15 (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of
 16 the time that the candidate files for office, file a business disclosure statement with the commissioner on
 17 a form provided by the commissioner.

18 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)
 19 is required to file the business disclosure statement at the earlier of the time of submission of the person's
 20 name for confirmation or the assumption of the office.

21 (2) The statement ~~shall~~ must provide the following information:

22 (a) the name, address, and type of business of ~~such~~ the individual and each member of ~~such~~ the
 23 individual's immediate family;

24 (b) each present or past employing entity from which benefits, including retirement benefits, are
 25 currently received by the individual and each member of the individual's immediate family;

26 (c) each business, firm, corporation, partnership, and other business or professional entity or trust
 27 in which the individual or a member of the individual's immediate family holds an interest;

28 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual or a
 29 member of the individual's immediate family is an officer or director, regardless of whether or not the entity
 30 is organized for profit;

1 (e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and

2 (f) all real property, other than a personal residence, in which the individual or a member of the
 3 individual's immediate family holds an interest. Real property may be described by general description. For
 4 this purpose "immediate family" includes the individual's spouse and minor children only.

5 ~~(2)(3)~~ An individual may not assume or continue to exercise the powers and duties of the
 6 office to which that individual has been elected or appointed until such the statement has been filed as
 7 provided in subsection (1).

8 ~~(3)(4)~~ The commissioner shall make such the business disclosure statements available to any
 9 individual upon request.

10 (5) For purposes of this section, "immediate family" means the individual's spouse and minor
 11 children."

12
 13 **Section 13.** Section 13-35-226, MCA, is amended to read:

14 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in
 15 paying his employees the salary or wages due them, to include with their pay the name of any candidate
 16 or any political mottoes, devices, or arguments containing threats or promises ~~{_express or implied}_~~
 17 calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an
 18 employer to exhibit in a place where his the employer's workers or employees may be working any handbill
 19 or placard containing any threat, promise, notice, or information that, in case any particular ticket or
 20 political party, organization, or candidate is elected, work in his the employer's place or establishment will
 21 cease, in whole or in part, or will be continued or increased; his the employer's place or establishment will
 22 be closed; the salaries or wages of his the workers or employees will be reduced or increased; or other
 23 threats or promises ~~{_express or implied}_~~ intended or calculated to influence the political opinions or actions
 24 of his the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals,
 25 and public officers and employees.

26 (2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or
 27 oppose any political committee, the nomination or election of any person to public office, or the passage
 28 of a ballot issue.

29 (3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the
 30 nomination or election of any person to public office, or the passage of a ballot issue while on the job or

1 at his the place of employment. However, ~~nothing in~~ subject to 2-2-121, this section is not intended to
 2 restrict the right of a public employee to express his personal political views.

3 (4) Any person who violates the provisions of this section shall be fined an amount not to exceed
 4 \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate
 5 offense."

6
 7 ~~**NEW SECTION. Section 14. Filing tax returns.** (1) It is the responsibility of legislators, public
 8 officers, and public employees to determine on an annual basis whether they are required to file tax returns
 9 with the state of Montana and to file a complete return in a timely manner, if required.~~

10 ~~(2) The department of revenue shall provide to the commissioner of political practices information
 11 necessary to determine compliance with this section, whether or not the information is confidential. The
 12 commissioner of political practices shall keep the information confidential unless it is necessary to prove
 13 that a violation of this section has occurred.~~

14
 15 ~~**NEW SECTION. Section 14. Ethics committees.** (1) Each house of the legislature shall establish
 16 an ethics committee. The committee must consist of two members of each political party. The committees
 17 may meet jointly. Each committee shall educate members concerning the provisions of this part concerning
 18 legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The
 19 joint committee may consider matters affecting the entire legislature.~~

20 (2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for
 21 enforcement of the provisions of this part concerning legislators.

22
 23 ~~**NEW SECTION. Section 15. Enforcement for state officers and state employees.** (1)(a) A person
 24 alleging a violation of this part by a state officer or state employee may file a complaint with the
 25 commissioner of political practices. The commissioner shall request any information necessary to make a
 26 determination from the complainant or the person who is the subject of the complaint and may issue
 27 subpoenas.~~

28 (b) Unless the complaint is referred to the county attorney under subsection (1)(c), the
 29 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
 30 4, part 6. The commissioner shall issue a decision based upon the record established before the

1 commissioner.

2 (c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner
3 shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

4 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may
5 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was
6 committed by a state employee, the commissioner may also recommend that the employing agency
7 discipline the employee. The commissioner may assess the costs of the proceeding against the person
8 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
9 employee if the commissioner determines that a violation did occur.

10 (3) The decision of the commissioner may be appealed to the ethics commission as provided in
11 [section ~~17~~ 16].

12

13 **NEW SECTION. Section 16. Administrative appeal.** (1) The ethics commission shall provide a
14 hearing on the record, when requested in writing by a party to an issue that has been decided by the
15 commissioner of political practices. The appeal must be requested within 60 days of a decision by the
16 commissioner.

17 (2) The hearing is limited to matters contained in the record established before the commissioner.
18 The commission may affirm, modify, or reverse a decision of the commissioner.

19 (3) A decision is rendered when signed by three or more commission members subscribing to the
20 decision and must be issued within 30 calendar days after submission of the request for an opinion.

21 (4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award
22 costs and fees to the prevailing party.

23

24 **NEW SECTION. Section 17. Ethics commission.** (1) There is an ethics commission attached to
25 the office of the commissioner of political practices for administrative purposes only.

26 (2) The commission consists of five members. The members are appointed in the same manner
27 as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as
28 provided in subsection (6) of this section. A member of the commission must be a citizen of the United
29 States and a resident of Montana. A member of the commission may not be a:

30 (a) public official;

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

3 (c) candidate;

4 (d) lobbyist or lobbyist's principal; or

5 (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

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

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

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

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

11 (d) Two members shall serve terms of 4 years.

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

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

14 (5)(a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall
15 appoint a successor.

16 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than
17 that of the original appointing authority, the majority or minority leader in the same house who is of the
18 same political party as the appointing authority that made the original appointment of the commissioner
19 whose position is vacated shall appoint the successor.

20 (6) The presiding officer and vice presiding officer of the commission must be elected by a majority
21 of the members of the commission. The presiding officer and vice presiding officer shall serve in those
22 positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission.
23 The vice presiding officer presides in the absence or disability of the presiding officer.

24 (7) A member of the commission may not receive a salary but is entitled to expenses as provided
25 in Title 2, chapter 18, part 5.

26

27 **NEW SECTION. Section 18. Meetings -- quorum.** The ethics commission shall meet at the call of
28 the presiding officer or a majority of its members when an appeal from a decision of the commissioner of
29 political practices is requested. A quorum consists of three or more members. An affirmative vote of three
30 or more members is necessary for the issuance of a decision.

1 **NEW SECTION. Section 19. Prohibition on political activity by commission members.** A member
2 of the ethics commission may not participate in political activity or in a political campaign during the term
3 of office. A member of the commission may not:

- 4 (1) make a financial contribution to a candidate;
5 (2) make a financial contribution to a political committee; or
6 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

7
8 **NEW SECTION. Section 20. Prohibition on lobbying activity.** A member of the ethics commission
9 may not be a registered lobbyist or participate in lobbying activities that would require the individual to
10 register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are
11 permitted under state law.

12
13 **NEW SECTION. Section 21. Enforcement for local government.** (1) Except as provided in
14 subsection (5), a person alleging a violation of this part by a local government officer or local government
15 employee shall notify the county attorney of the county where the local government is located. The county
16 attorney shall request from the complainant or the person who is the subject of the complaint any
17 information necessary to make a determination concerning the validity of the complaint.

18 (2) If the county attorney determines that the complaint is justified, the county attorney may bring
19 an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county
20 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal
21 charges against the officer or employee.

22 (3) If the county attorney declines to bring an action under this section, the person alleging a
23 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more
24 than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees
25 against the person bringing the charges if the court determines that a violation did not occur or against the
26 officer or employee if the court determines that a violation did occur. The court may impose sanctions if
27 the court determines that the action was frivolous or intended for harassment.

28 (4) The employing entity of a local government employee may take disciplinary action against an
29 employee for a violation of this part.

30 (5)(a) A local government may establish a three-member panel to review complaints alleging

1 violations of this part by officers or employees of the local government. The local government shall
2 establish procedures and rules for the panel. The members of the panel may not be officers or employees
3 of the local government. The panel shall review complaints and may refer to the county attorney
4 complaints that appear to be substantiated.

5 (b) In a local government that establishes a panel under this subsection, a complaint must be
6 referred to the panel prior to making a complaint to the county attorney.

7 (6) For purposes of this section, "local government" means a county, an incorporated city or town,
8 a consolidated government, or a school district.

9
10 **NEW SECTION.** **Section 22. Repealer.** Section 2-2-132, MCA, is repealed.

11
12 **NEW SECTION.** **Section 23. Codification instruction.** [Sections 14 through ~~22~~ 21] are intended to
13 be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1,
14 apply to [sections 14 through ~~22~~ 21].

15
16 **NEW SECTION.** **Section 24. Code commissioner instruction.** The code commissioner shall
17 renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

18
19 **NEW SECTION.** **Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
21 applications, the part remains in effect in all valid applications that are severable from the invalid
22 applications.

23
24 **NEW SECTION.** **Section 26. Effective date.** [This act] is effective July 1, 1995.

25 -END-

SENATE BILL NO. 136

INTRODUCED BY BAER, KEENAN, BENEDICT, BURNETT, DENNY, MOHL, HARGROVE, BRAINARD,
 EMERSON, MESAROS, JORE, JENKINS, CRISMORE, ESTRADA, KEATING, FORBES, PECK,
 COCCHIARELLA, PAVLOVICH, MURDOCK, BOHARSKI, VICK, WISEMAN, GREEN, MOLNAR,
 HARRINGTON, MERCER, GRINDE, MCKEE, TAYLOR, AHNER, MILLS, L. SMITH, MARTINEZ, OHS,
 SLITER, T. NELSON, STOVALL, SIMON, LARSON, R. JOHNSON, WELLS, MCGEE, KITZENBERG, ELLIS,
 TREXLER, FUCHS, CLARK, BARNHART, SQUIRES, TUSS, ELLINGSON, SHEA, MENAHAN, RYAN,
 SWANSON, CAREY, TROPILA, ELLIOTT, J. JOHNSON, WENNEMAR, HURDLE, HEAVY RUNNER,
 HOLLAND, MCCULLOCH, MASOLO, BOHLINGER, LYNCH, JACOBSON, FORRESTER, CHRISTIAENS,
 L. NELSON, JERGESON, COLE, MILLER, BROOKE, WELDON, VAN VALKENBURG, FRANKLIN,
 PIPINICH, SPRAGUE, HARDING, FOSTER, HARP, GROSFIELD, BISHOP, HOLDEN

BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS;
 CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE
 INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO ~~REFRAIN FROM VOTING ON CERTAIN~~
~~VOTE ON ALL MATTERS; PROHIBITING PROVIDING REQUIREMENTS FOR A PUBLIC EMPLOYEE WHO IS~~
~~A LEGISLATOR FROM RECEIVING BOTH SALARIES WHILE SERVING IN THE LEGISLATURE, PUBLIC~~
~~OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE PUBLIC SALARY FOR OVERLAPPING HOURS~~
~~OF EMPLOYMENT~~; PROHIBITING PUBLIC OFFICERS AND PUBLIC EMPLOYEES FROM USING PUBLIC TIME,
 EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR FUNDS ~~TO PROMOTE POLITICAL IDEOLOGY OR~~
~~TO INFLUENCE A POLITICAL ISSUE; AND FOR ANY POLITICAL OR CAMPAIGN ACTIVITY PERSUADING~~
~~OR AFFECTING A POLITICAL DECISION UNLESS THE USE IS AUTHORIZED BY LAW OR PROPERLY~~
~~INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT~~
~~BY CURRENT AND FORMER PUBLIC OFFICIALS AND EMPLOYEES; PROVIDING FOR EDUCATION AND~~
~~TRAINING ON ETHICAL MATTERS; PROVIDING ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS;~~
~~PROVIDING THAT FILING TAX RETURNS IS AN ETHICAL REQUIREMENT;~~ CREATING AN ETHICS
 COMMISSION TO PROVIDE REVIEW OF ETHICS DECISIONS IN CASES INVOLVING STATE OFFICERS AND
 STATE EMPLOYEES; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112,
2-2-121, AND 2-2-125, 2-2-131, 2-2-302, 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING

1 SECTION 2-2-132, MCA; AND PROVIDING AN EFFECTIVE DATE."

2
3 WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of
4 prohibiting conflict between public duty and private interest for members of the Legislature and for all state
5 and local government officers and employees; and

6 ~~WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana~~
7 ~~Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.~~

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 (Refer to First Reading Bill)

11 Strike everything after the enacting clause and insert:

12
13 **Section 1.** Section 2-2-102, MCA, is amended to read:

14 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

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

17 (2) "Compensation" means any money, thing of substantial value, or economic benefit conferred
18 on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or
19 another.

20 ~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision~~
21 ~~thereof or member of the judiciary, including a member of a board, commission, or committee except a~~
22 ~~legislator and an employee under contract to the state.~~

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

25 ~~(a) an ownership interest in a business;~~

26 ~~(b) a creditor interest in an insolvent business;~~

27 ~~(c) an employment or prospective employment for which negotiations have begun;~~

28 ~~(d) an ownership interest in real or personal property;~~

29 ~~(e) a loan or other debtor interest; or~~

30 ~~(f) a directorship or officership in a business.~~

1 ~~(5)~~(3) "Official act" or "official action" means a vote, decision, recommendation, approval,
2 disapproval, or other action, including inaction, ~~which~~ that involves the use of discretionary authority.

3 (4) "Private interest" means an interest held by an individual or the individual's spouse or minor
4 children that is:

5 (a) an ownership interest in a business;

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

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

8 (d) an ownership interest in real property;

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

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

11 (5) "Public employee" means:

12 (a) any temporary or permanent employee of the state or any subdivision of the state;

13 (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with
14 rulemaking authority; and

15 (c) a person under contract to the state.

16 (6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any
17 elected officer of any subdivision of the state.

18 (7)(a) "State agency" includes:

19 (i) the state;

20 (ii) the legislature and its committees;

21 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

22 (iv) the university system; and

23 (v) all independent commissions and other establishments of the state government ~~except the~~
24 courts.

25 (b) The term does not include the judicial branch.

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

28
29 **Section 2.** Section 2-2-103, MCA, is amended to read:

30 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public

1 trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers,
 2 legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the
 3 individual's duties for the benefit of the people of the state.

4 (2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary~~ the
 5 person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary~~
 6 ~~under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject to the
 7 penalties provided in this part for abuse of ~~his~~ the public's trust. ~~The county attorney of the county where~~
 8 ~~the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys~~
 9 ~~collected in such actions shall be paid to the general fund of the aggrieved agency.~~

10 (3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of
 11 any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the
 12 transgression of any of which is ~~not, as such,~~ a violation of ~~fiduciary~~ duty must be avoided.

13 (4)(a) The enforcement of this part for:

14 (i) state officers and employees is provided for in [sections 16 and 17 15 AND 16];

15 (ii) legislators is provided for in [section 15 14];

16 (iii) local government officers and employees is provided for in [section 22 21].

17 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action
 18 must be deposited in the general fund of the unit of government."

19
 20 **Section 3.** Section 2-2-104, MCA, is amended to read:

21 **"2-2-104. Rules of conduct for all public officers, legislators, and public employees.** (1) Proof of
 22 commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ the
 23 actor's public duty. A public officer, legislator, or public employee may not:

24 ~~(a) disclose or use confidential information acquired in the course of his official duties in order to~~
 25 ~~further substantially his personal economic interests; or~~

26 ~~(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:~~

27 ~~(i)(a) which that~~ would tend improperly to influence a reasonable person in ~~his~~ the person's position
 28 to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

29 ~~(ii)(b) which he that the person~~ knows or ~~which that~~ a reasonable person in ~~his~~ that position should
 30 know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official action

1 ~~he has~~ taken.

2 (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest
3 substantially lower than the commercial rate then currently prevalent for similar loans and compensation
4 received for private services rendered at a rate substantially exceeding the fair market value of ~~each~~ the
5 services. Campaign contributions reported as required by statute are not gifts or economic benefits
6 tantamount to gifts.

7 (3)(a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may
8 not receive salaries from two separate public employment positions that overlap for the hours being
9 compensated, unless:

10 (i) the public officer, legislator, or public employee reimburses the public entity from which the
11 employee is absent for its costs in THE SALARY PAID FOR performing the function from which the officer,
12 legislator, or employee is absent; or

13 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by
14 the amount of salary received from the other public employer in order to avoid duplicate compensation for
15 the overlapping hours.

16 (b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving
17 income from the use of accrued leave or compensatory time during the period of overlapping employment."

18

19 **Section 4.** Section 2-2-105, MCA, is amended to read:

20 **"2-2-105. Ethical ~~principles~~ requirements for public officers and public employees.** (1) The
21 ~~principles requirements~~ in this section are intended as ~~guides to~~ rules of conduct, and ~~do not constitute~~
22 violations ~~as such~~ constitute a breach of the public trust and public duty of office or employment in state
23 or local government.

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

27 (3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the
28 voluntary termination of ~~his~~ office or employment, obtain employment in which ~~he~~ the officer or employee
29 will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was
30 directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules

1 of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,
 2 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active
 3 participant.

4 (4) A public officer or public employee ~~should~~ may not:

5 (a) perform an official act directly and substantially affecting a business or other undertaking to its
 6 economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a
 7 competing firm or undertaking; or

8 (b) disclose or use confidential information acquired in the course of official duties in order to
 9 substantially further the officer's or employee's private interests."

10
 11 **Section 5.** Section 2-2-111, MCA, is amended to read:

12 **"2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this
 13 section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty.

14 A legislator may not:

15 (1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation
 16 provided by statute, for promoting or opposing the passage of legislation;

17 (2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's
 18 services by the use of ~~his~~ the office."

19
 20 **Section 6.** Section 2-2-112, MCA, is amended to read:

21 **"2-2-112. Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this
 22 section are intended ~~only as guides to rules for~~ legislator conduct, and ~~do not constitute~~ violations ~~as such~~
 23 constitute a breach of the public trust of legislative office.

24 (2) A legislator has a responsibility to the legislator's constituents to participate in all matters
 25 affecting the constituents AS REQUIRED IN THE JOINT RULES OF THE LEGISLATURE. A legislator
 26 concerned with the possibility of a conflict should briefly present the facts to the committee of that house
 27 that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether
 28 the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of
 29 subsection (5). The legislator shall vote on the issue after disclosing the interest.

30 (2)(3) When a legislator ~~must~~ is required to take official action on a legislative matter as to which

1 ~~he the legislator~~ has a conflict created by a personal or ~~financial~~ private interest ~~which that~~ would ~~be~~
 2 ~~directly and substantially affected by~~ give rise to an appearance of impropriety as to the legislator's
 3 influence, benefit, or detriment in regard to the legislative matter, ~~he should consider disclosing or~~
 4 eliminating the legislator shall disclose the interest creating the conflict ~~or abstaining from prior to~~
 5 participating in the official action, as provided in subsections (2) and (5) and the joint rules of the
 6 legislature. In making ~~his a~~ decision, ~~he should~~ the legislator shall further consider:

- 7 (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;
- 8 (b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the
 9 legislature; and
- 10 (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition
 11 of the matter; and
- 12 (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family
 13 benefit could arise from the legislator's participation.

14 ~~(3)(4)~~ A conflict situation does not arise from legislation or legislative duties affecting the entire
 15 membership of a profession, occupation, or class.

16 ~~(4)(5)~~ ~~If a~~ A legislator elects to shall disclose ~~the an~~ interest creating ~~the a~~ conflict, ~~he shall do so~~
 17 as provided in the joint rules of the legislature. A legislator who is a member of a profession, occupation,
 18 or class affected by legislation is not required to disclose an interest unless the class contained in the
 19 legislation is so narrow that the vote will have a direct personal impact on the legislator. A legislator may
 20 seek a determination from the appropriate committee provided for in [section ~~15~~ 14]."

21

22 **Section 7.** Section 2-2-121, MCA, is amended to read:

23 **"2-2-121. Rules of conduct for state public officers and state public employees.** (1) Proof of
 24 commission of any act enumerated in ~~this section~~ subsection (2) is proof that the actor has breached ~~his~~
 25 fiduciary a public duty.

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

27 (a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for his
 28 the officer's or employee's private business purposes;

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

1 duties;

2 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
3 other economic benefit from ~~his~~ the officer's or employee's agency;

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

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

9 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
10 with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first
11 giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

12 (3)(a) A public officer or public employee may not use public time, facilities, equipment, supplies,
13 personnel, or funds for any political or campaign activity persuading or affecting a political decision unless
14 the use is:

15 (i) authorized by law; or

16 (ii) properly incidental to another activity required or authorized by law, such as the function of an
17 elected public official, the official's staff, or the legislative staff in the normal course of duties.

18 (b) Subsection (3)(a) does not prohibit an elected public official from issuing public statements
19 concerning matters within the scope of the official's office. However, a document that is published
20 pursuant to this subsection (3) and that is aimed at supporting or opposing a political committee, a
21 candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce
22 the document. The statement must meet the specifications described in 18-7-306, and the costs must be
23 estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed
24 with the commissioner of political practices.

25 (4)(a) A state employee shall notify the employee's immediate supervisor that a potential conflict
26 of interest exists when AN ORGANIZATION OF WHICH THE EMPLOYEE IS AN OFFICER OR DIRECTOR IS:

27 (i) an organization of which the employee is a member is involved in a proceeding before the
28 employing agency that is within the scope of the employee's job duties; or

29 (ii) the employee is a member of or affiliated with any organization attempting to influence a local,
30 state, or federal proceeding in which the employee represents the state.

1 **(b) The employee's supervisor shall make the disclosed information available to an interested**
 2 **person upon the person's request.**

3 **(5) A state officer or state employee may not engage in any activity, including lobbying, as defined**
 4 **in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the**
 5 **officer's or employee's job duties. THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT AN**
 6 **OFFICER OR EMPLOYEE FROM PERFORMING CHARITABLE FUNDRAISING ACTIVITIES IF APPROVED BY**
 7 **THE EMPLOYEE'S SUPERVISOR OR AUTHORIZED BY LAW.**

8 ~~(3)~~**(6)** A department head or a member of a quasi-judicial or rulemaking board may perform an
 9 official act notwithstanding the provisions of subsection (2)(e) if ~~his~~ participation is necessary to the
 10 administration of a statute and if ~~he~~ the person complies with the ~~voluntary~~ disclosure procedures under
 11 2-2-131.

12 ~~(4)~~**(7)** Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
 13 unless ~~he~~ the member is also a full-time ~~state~~ public employee.

14 **(8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon**
 15 **conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the**
 16 **county jail for not more than 6 months, or by both. A civil proceeding under [section ~~46~~ 15] or [section**
 17 **~~22~~ 21] does not preclude an action under this subsection."**

18
 19 **Section 8.** Section 2-2-125, MCA, is amended to read:

20 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission
 21 of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ a public duty
 22 subjecting the actor to disciplinary action by the employing entity.

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

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

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

30 (3) **A Notwithstanding the provisions of subsection (2),** a member of the governing body of a local

1 government may perform an official act ~~notwithstanding this section~~ when his the member's participation
 2 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he complies with the voluntary~~
 3 ~~disclosure procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of
 4 impropriety."

5
 6 **Section 9.** Section 2-2-131, MCA, is amended to read:

7 **"2-2-131. ~~Voluntary disclosure~~ Disclosure.** A public officer or public employee may shall, prior to
 8 acting in a manner ~~which that~~ may impinge on ~~his fiduciary~~ public duty, including the award of a permit,
 9 contract, or license, disclose the nature of ~~his the~~ private interest which that creates the conflict. ~~He The~~
 10 public officer or public employee shall make the disclosure in writing to the secretary of state, listing the
 11 amount of ~~his financial~~ private interest, if any, the purpose and duration of ~~his the person's~~ services
 12 rendered, if any, and the compensation received for the services or ~~such~~ other information as that is
 13 necessary to describe ~~his the~~ interest. If ~~he the~~ public officer or public employee then performs the official
 14 act involved, ~~he the officer or employee~~ shall state for the record the fact and summary nature of the
 15 interest disclosed at the time of performing the act."

16
 17 **Section 10.** Section 2-2-302, MCA, is amended to read:

18 **"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions --**
 19 **publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of any
 20 board, bureau, or commission or employee at the head of a department of this state or any political
 21 subdivision of this state to appoint to any position of trust or emolument any person related or connected
 22 by consanguinity within the fourth degree or by affinity within the second degree.

23 (2) The provisions of this section and 2-2-303 do not apply to:

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

25 (b) school district trustees if all the trustees, with the exception of any trustee who is related to
 26 the person being appointed and who must abstain from voting for the appointment, approve the
 27 appointment of a person related to a trustee;

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

30 (d) the renewal of an employment contract of a person who was initially hired before the member

1 of the board, bureau, or commission or the department head to whom ~~he~~ the person is related assumed the
2 duties of the office;

3 (e) the employment of election judges; or

4 (f) the employment of pages or temporary session staff by the legislature.

5 (3) Prior to the appointment of a person referred to in subsection (2), the school district trustees
6 shall give written notice of the time and place of their intended action. The notice must be published at
7 least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in
8 which the school district is located."

9
10 **Section 11.** Section 2-18-102, MCA, is amended to read:

11 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided by
12 law or collective bargaining agreement, the department shall:

13 (a) encourage and exercise leadership in the development of effective personnel administration
14 within the several agencies in the state and make available the facilities of the department to this end;

15 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
16 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
17 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
18 for productivity and retention in permanent status;

19 (c) foster, develop, and promote job sharing in agencies;

20 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
21 policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

22 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
23 state service;

24 (f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform
25 any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts
26 1 and 2.

27 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
28 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
29 that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards
30 established by the department.

1 (3) The department shall develop and issue personnel policies for the state. Adequate public notice
 2 ~~shall~~ must be given to all interested parties of proposed changes or additions to the personnel policies
 3 before the date they are to take effect. If requested by any of the affected parties, the department shall
 4 schedule a public hearing on proposed changes or additions to the personnel policies before the date they
 5 are to take effect.

6 (4) The department shall develop model rules of conduct for all state employees based upon the
 7 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
 8 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
 9 rules appropriate to the specific circumstances of the agency."

10
 11 **Section 12.** Section 5-7-213, MCA, is amended to read:

12 "**5-7-213. Disclosure by elected officials.** (1)(a) Prior to December 15 of each even-numbered year,
 13 each elected official, ~~or official-elect~~ member of a quasi-judicial board or commission, or department director
 14 shall file with the commissioner a business disclosure statement on a form provided by the commissioner.
 15 An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a)
 16 during the same period.

17 (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of
 18 the time that the candidate files for office, file a business disclosure statement with the commissioner on
 19 a form provided by the commissioner.

20 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)
 21 is required to file the business disclosure statement at the earlier of the time of submission of the person's
 22 name for confirmation or the assumption of the office.

23 (2) The statement ~~shall~~ must provide the following information:

24 (a) the name, address, and type of business of such the individual and each member of such the
 25 individual's immediate family;

26 (b) each present or past employing entity from which benefits, including retirement benefits, are
 27 currently received by the individual and each member of the individual's immediate family;

28 (c) each business, firm, corporation, partnership, and other business or professional entity or trust
 29 in which the individual or a member of the individual's immediate family holds an interest;

30 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual or a

1 member of the individual's immediate family is an officer or director, regardless of whether or not the entity
 2 is organized for profit;

3 (e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and
 4 (f) all real property, other than a personal residence, in which the individual or a member of the
 5 individual's immediate family holds an interest. Real property may be described by general description. For
 6 this purpose "immediate family" includes the individual's spouse and minor children only.

7 ~~(2)(3) No such~~ An individual may not assume or continue to exercise the powers and duties of the
 8 office to which that individual has been elected or appointed until ~~such~~ the statement has been filed as
 9 provided in subsection (1).

10 ~~(3)(4)~~ The commissioner shall make ~~such~~ the business disclosure statements available to any
 11 individual upon request.

12 (5) For purposes of this section, "immediate family" means the individual's spouse and minor
 13 children."

14
 15 **Section 13.** Section 13-35-226, MCA, is amended to read:

16 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in
 17 paying ~~his~~ employees the salary or wages due them, to include with their pay the name of any candidate
 18 or any political mottoes, devices, or arguments containing threats or promises ~~{express or implied}~~,
 19 calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an
 20 employer to exhibit in a place where ~~his~~ the employer's workers or employees may be working any handbill
 21 or placard containing any threat, promise, notice, or information that, in case any particular ticket or
 22 political party, organization, or candidate is elected, work in ~~his~~ the employer's place or establishment will
 23 cease, in whole or in part, or will be continued or increased; ~~his~~ the employer's place or establishment will
 24 be closed; the salaries or wages of ~~his~~ the workers or employees will be reduced or increased; or other
 25 threats or promises ~~{express or implied}~~, intended or calculated to influence the political opinions or actions
 26 of ~~his~~ the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals,
 27 and public officers and employees.

28 (2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or
 29 oppose any political committee, the nomination or election of any person to public office, or the passage
 30 of a ballot issue.

1 (3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the
2 nomination or election of any person to public office, or the passage of a ballot issue while on the job or
3 at ~~his~~ the place of employment. However, ~~nothing in~~ subject to 2-2-121, this section is not intended to
4 restrict the right of a public employee to express ~~his~~ personal political views.

5 (4) Any person who violates the provisions of this section shall be fined an amount not to exceed
6 \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate
7 offense."

8
9 ~~NEW SECTION. Section 14. Filing tax returns. (1) It is the responsibility of legislators, public~~
10 ~~officers, and public employees to determine on an annual basis whether they are required to file tax returns~~
11 ~~with the state of Montana and to file a complete return in a timely manner, if required.~~

12 ~~(2) The department of revenue shall provide to the commissioner of political practices information~~
13 ~~necessary to determine compliance with this section, whether or not the information is confidential. The~~
14 ~~commissioner of political practices shall keep the information confidential unless it is necessary to prove~~
15 ~~that a violation of this section has occurred.~~

16
17 NEW SECTION. Section 14. Ethics committees. (1) Each house of the legislature shall establish
18 an ethics committee. The committee must consist of two members of each political party. The committees
19 may meet jointly. Each committee shall educate members concerning the provisions of this part concerning
20 legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The
21 joint committee may consider matters affecting the entire legislature.

22 (2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for
23 enforcement of the provisions of this part concerning legislators.

24
25 NEW SECTION. Section 15. Enforcement for state officers and state employees. (1)(a) A person
26 alleging a violation of this part by a state officer or state employee may file a complaint with the
27 commissioner of political practices. The commissioner shall request any information necessary to make a
28 determination from the complainant or the person who is the subject of the complaint and may issue
29 subpoenas.

30 (b) Unless the complaint is referred to the county attorney under subsection (1)(c), the

1 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
2 4, part 6. The commissioner shall issue a decision based upon the record established before the
3 commissioner.

4 (c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner
5 shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

6 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may
7 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was
8 committed by a state employee, the commissioner may also recommend that the employing agency
9 discipline the employee. The commissioner may assess the costs of the proceeding against the person
10 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
11 employee if the commissioner determines that a violation did occur.

12 (3) The decision of the commissioner may be appealed to the ethics commission as provided in
13 ~~section 47 16~~.
14

15 **NEW SECTION. Section 16. Administrative appeal.** (1) The ethics commission shall provide a
16 hearing on the record, when requested in writing by a party to an issue that has been decided by the
17 commissioner of political practices. The appeal must be requested within 60 days of a decision by the
18 commissioner.

19 (2) The hearing is limited to matters contained in the record established before the commissioner.
20 The commission may affirm, modify, or reverse a decision of the commissioner.

21 (3) A decision is rendered when signed by three or more commission members subscribing to the
22 decision and must be issued within 30 calendar days after submission of the request for an opinion.

23 (4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award
24 costs and fees to the prevailing party.
25

26 **NEW SECTION. Section 17. Ethics commission.** (1) There is an ethics commission attached to
27 the office of the commissioner of political practices for administrative purposes only.

28 (2) The commission consists of five members. The members are appointed in the same manner
29 as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as
30 provided in subsection (6) of this section. A member of the commission must be a citizen of the United

1 States and a resident of Montana. A member of the commission may not be a:

2 (a) public official;

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

5 (c) candidate;

6 (d) lobbyist or lobbyist's principal; or

7 (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

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

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

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

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

13 (d) Two members shall serve terms of 4 years.

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

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

16 (5)(a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall
17 appoint a successor.

18 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than
19 that of the original appointing authority, the majority or minority leader in the same house who is of the
20 same political party as the appointing authority that made the original appointment of the commissioner
21 whose position is vacated shall appoint the successor.

22 (6) The presiding officer and vice presiding officer of the commission must be elected by a majority
23 of the members of the commission. The presiding officer and vice presiding officer shall serve in those
24 positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission.
25 The vice presiding officer presides in the absence or disability of the presiding officer.

26 (7) A member of the commission may not receive a salary but is entitled to expenses as provided
27 in Title 2, chapter 18, part 5.

28

29 **NEW SECTION. Section 18. Meetings -- quorum.** The ethics commission shall meet at the call of
30 the presiding officer or a majority of its members when an appeal from a decision of the commissioner of

1 political practices is requested. A quorum consists of three or more members. An affirmative vote of three
2 or more members is necessary for the issuance of a decision.

3
4 **NEW SECTION. Section 19. Prohibition on political activity by commission members.** A member
5 of the ethics commission may not participate in political activity or in a political campaign during the term
6 of office. A member of the commission may not:

- 7 (1) make a financial contribution to a candidate;
8 (2) make a financial contribution to a political committee; or
9 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

10
11 **NEW SECTION. Section 20. Prohibition on lobbying activity.** A member of the ethics commission
12 may not be a registered lobbyist or participate in lobbying activities that would require the individual to
13 register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are
14 permitted under state law.

15
16 **NEW SECTION. Section 21. Enforcement for local government.** (1) Except as provided in
17 subsection (5), a person alleging a violation of this part by a local government officer or local government
18 employee shall notify the county attorney of the county where the local government is located. The county
19 attorney shall request from the complainant or the person who is the subject of the complaint any
20 information necessary to make a determination concerning the validity of the complaint.

21 (2) If the county attorney determines that the complaint is justified, the county attorney may bring
22 an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county
23 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal
24 charges against the officer or employee.

25 (3) If the county attorney declines to bring an action under this section, the person alleging a
26 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more
27 than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees
28 against the person bringing the charges if the court determines that a violation did not occur or against the
29 officer or employee if the court determines that a violation did occur. The court may impose sanctions if
30 the court determines that the action was frivolous or intended for harassment.

1 (4) The employing entity of a local government employee may take disciplinary action against an
2 employee for a violation of this part.

3 (5)(a) A local government may establish a three-member panel to review complaints alleging
4 violations of this part by officers or employees of the local government. The local government shall
5 establish procedures and rules for the panel. The members of the panel may not be officers or employees
6 of the local government. The panel shall review complaints and may refer to the county attorney
7 complaints that appear to be substantiated.

8 (b) In a local government that establishes a panel under this subsection, a complaint must be
9 referred to the panel prior to making a complaint to the county attorney.

10 (6) For purposes of this section, "local government" means a county, an incorporated city or town,
11 a consolidated government, or a school district.

12
13 **NEW SECTION. Section 22. Repealer.** Section 2-2-132, MCA, is repealed.

14
15 **NEW SECTION. Section 23. Codification instruction.** [Sections 14 through ~~22~~ 21] are intended to
16 be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1,
17 apply to [sections 14 through ~~22~~ 21].

18
19 **NEW SECTION. Section 24. Code commissioner instruction.** The code commissioner shall
20 renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

21
22 **NEW SECTION. Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
24 applications, the part remains in effect in all valid applications that are severable from the invalid
25 applications.

26
27 **NEW SECTION. Section 26. Effective date.** [This act] is effective July 1, 1995.

28 -END-



HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Rules report that Senate Bill 136 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Handwritten signature of Larry Grinde in cursive.

Larry Grinde, Chair

Carried by: Rep. Denny

And, that such amendments read:

1. Title, line 17.

Strike: "ALL"

Following: "MATTERS"

Insert: "AS PROVIDED IN LEGISLATIVE RULES"

2. Title, lines 22 through 24.

Strike: "POLITICAL OR" on line 22

Following: "ACTIVITY" on line 22

Strike: remainder of line 22 through "LAW" on line 24

3. Page 2, line 17.

Strike: "substantial"

4. Page 3, line 1.

Following: page 2

Insert: "(3) "Gift of substantial value" does not include:

(a) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(b) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in

Committee Vote:
Yes 11, No 1.

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HOUSE

an official capacity;

(c) educational material directly related to official governmental duties;

(d) an award publicly presented in recognition of public service; or

(e) educational activity that:

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

(ii) clearly serves the public good; and

(ii) is not lavish or extravagant."

Renumber: subsequent subsections

5. Page 3, lines 3 and 4.

Following: "individual" on line 3

Strike: remainder of line 3 through "children" on line 4

6. Page 4, line 14.

Following: "officers"

Insert: ", legislators,"

Following: "and"

Insert: "state"

7. Page 4, line 15.

Strike: subsection (ii) in its entirety

Renumber: subsequent subsection

8. Page 4, line 25.

Following: "~~or~~"

Insert: "(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests;"

Renumber: subsequent subsections

9. Page 5, line 18.

Insert: "(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices."

10. Page 6, lines 4 and 5.

Strike: ":" on line 4 through "(a)" on line 5

11. Page 6, line lines 7 through 9.

Following: "undertaking" on line 7

Strike: remainder of line 7 through "interests" on line 9

12. Page 6, line 25.

Strike: "JOINT"

13. Page 6, line 26.

Strike: "should"

Insert: "may"

14. Page 6, line 29.

Strike: "shall"

Insert: "may"

Following: "on"

Strike: "the"

Insert: "an"

Following: "issue"

Insert: "on which the legislator has a conflict,"

15. Page 8, line 12.

Strike: "(a)"

16. Page 8, lines 13 through 24.

Strike: "political or" on line 13

Following: "activity" on line 13

Strike: remainder of line 13 through "." on line 24

Insert: ". This subsection does not apply to the preparation of
official voter information pamphlets."

17. Page 8, lines 25 and 26.

Strike: "(a)" on line 25

Following: "employee" on line 25

Strike: remainder of line 25 through "exists" on line 26

Insert: "may not participate in a proceeding"

18. Page 8, line 27.

Strike: "(i)"

Insert: "(a)"

Renumber: subsequent subsection

19. Page 9, lines 1 and 2.

Strike: subsection (b) in its entirety

20. Page 12, line 13.

Following: "official"

Strike: "."

Strike: "member of a quasi-judicial board or commission."

21. Page 12, lines 24 and 25.

Following: "individual" on line 24

Strike: remainder of line 24 thorough "family" on line 25

22. Page 12, line 27.
Strike: "and" through "family"
23. Page 12, line 29.
Strike: "or" through "family"
24. Page 12, line 30 through page 13, line 1.
Following: "individual" on line 30
Strike: remainder of line 30 through "family" on line 1
25. Page 13, line 3.
Strike: "(e)" through "i."
Re-number: subsequent subsection
26. Page 13, lines 4 and 5.
Following: "individual" on line 4
Strike: remainder of line 4 through "family" on line 5
27. Page 13, lines 12 and 13.
Strike: subsection (5) in its entirety
28. Page 14, line 25.
Following: "officers"
Insert: ", legislators,"
29. Page 14, line 26.
Following: "officer"
Insert: ", legislator,"
30. Page 15, line 14.
Insert: "(4) Except for records made public in the course of a hearing, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are not open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.
(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
31. Page 17, line 1.
Following: "practices"
Insert: "under this part"

-END-



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 136
Representative Kadas

April 8, 1995 9:55 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 136 (third reading copy -- blue).

Signed: *Kadas*
Representative Kadas

And, that such amendments to Senate Bill 136 read as follows:

AMEND HOUSE COMMITTEE ON RULES STANDING COMMITTEE REPORT DATED
APRIL 6, 1995 AS FOLLOWS:

1. Amendment No. 4 in the insert
Following: "Gift of"
Strike: "substantial"

AND THAT SENATE BILL NO. 136, THIRD READING COPY, BE FURTHER
AMENDED AS FOLLOWS:

2. Page 4, line 26.
Following: "of"
Strike: "substantial"
Strike: "a substantial"
Insert: "an"

3. Page 7, line 5.
Strike: "joint"

4. Page 7, line 17.
Strike: "joint"

-END-

ADOPT

72-21

REJECT

SB 136

HOUSE

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HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 136
Representative Anderson

April 8, 1995 12:41 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 136 (third reading copy -- blue).

Signed: 
Representative Anderson

And, that such amendments to Senate Bill 136 read as follows:

1. Page 5, line 24.

Strike: "A"

Insert: "Except as provided in subsection (4), a"

2. Page 6.

Following: line 3

Insert: "(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action."

Renumber: subsequent subsection

-END-

ADOPT

91-C

REJECT

SB 136

HOUSE

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SENATE BILL NO. 136

INTRODUCED BY BAER, KEENAN, BENEDICT, BURNETT, DENNY, MOHL, HARGROVE, BRAINARD,
 EMERSON, MESAROS, JORE, JENKINS, CRISMORE, ESTRADA, KEATING, FORBES, PECK,
 COCCHIARELLA, PAVLOVICH, MURDOCK, BOHARSKI, VICK, WISEMAN, GREEN, MOLNAR,
 HARRINGTON, MERCER, GRINDE, MCKEE, TAYLOR, AHNER, MILLS, L. SMITH, MARTINEZ, OHS,
 SLITER, T. NELSON, STOVALL, SIMON, LARSON, R. JOHNSON, WELLS, MCGEE, KITZENBERG, ELLIS,
 TREXLER, FUCHS, CLARK, BARNHART, SQUIRES, TUSS, ELLINGSON, SHEA, MENAHAN, RYAN,
 SWANSON, CAREY, TROPILA, ELLIOTT, J. JOHNSON, WENNEMAR, HURDLE, HEAVY RUNNER,
 HOLLAND, MCCULLOCH, MASOLO, BOHLINGER, LYNCH, JACOBSON, FORRESTER, CHRISTIAENS,
 L. NELSON, JERGESON, COLE, MILLER, BROOKE, WELDON, VAN VALKENBURG, FRANKLIN,
 PIPINICH, SPRAGUE, HARDING, FOSTER, HARP, GROSFIELD, BISHOP, HOLDEN

BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS;
 CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE
 INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO REFRAIN FROM VOTING ON CERTAIN
~~VOTE ON ALL MATTERS AS PROVIDED IN LEGISLATIVE RULES; PROHIBITING PROVIDING~~
~~REQUIREMENTS FOR A PUBLIC EMPLOYEE WHO IS A LEGISLATOR FROM RECEIVING BOTH SALARIES~~
~~WHILE SERVING IN THE LEGISLATURE, PUBLIC OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE~~
~~PUBLIC SALARY FOR OVERLAPPING HOURS OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND~~
 PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR
 FUNDS TO ~~PROMOTE POLITICAL IDEOLOGY OR TO INFLUENCE A POLITICAL ISSUE; AND FOR ANY~~
~~POLITICAL OR CAMPAIGN ACTIVITY PERSUADING OR AFFECTING A POLITICAL DECISION UNLESS THE~~
~~USE IS AUTHORIZED BY LAW OR PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR~~
~~AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC OFFICIALS AND~~
 EMPLOYEES; PROVIDING FOR EDUCATION AND TRAINING ON ETHICAL MATTERS; PROVIDING
 ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS; ~~PROVIDING THAT FILING TAX RETURNS IS AN~~
~~ETHICAL REQUIREMENT; CREATING AN ETHICS COMMISSION TO PROVIDE REVIEW OF ETHICS~~
 DECISIONS IN CASES INVOLVING STATE OFFICERS AND STATE EMPLOYEES; AMENDING SECTIONS
 2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112, 2-2-121, AND 2-2-125, 2-2-131, 2-2-302,

1 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING SECTION 2-2-132, MCA; AND PROVIDING AN
 2 EFFECTIVE DATE."

3

4 WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of
 5 prohibiting conflict between public duty and private interest for members of the Legislature and for all state
 6 and local government officers and employees; ~~and~~

7 ~~WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana~~
 8 ~~Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.~~

9

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

11 (Refer to First Reading Bill)

12 Strike everything after the enacting clause and insert:

13

14 **Section 1.** Section 2-2-102, MCA, is amended to read:

15 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

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

18 (2) "Compensation" means any money, thing of ~~substantial~~ value, or economic benefit conferred
 19 on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or
 20 another.

21 ~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision~~
 22 ~~thereof or member of the judiciary, including a member of a board, commission, or committee except a~~
 23 ~~legislator and an employee under contract to the state.~~

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

26 ~~(a) an ownership interest in a business;~~

27 ~~(b) a creditor interest in an insolvent business;~~

28 ~~(c) an employment or prospective employment for which negotiations have begun;~~

29 ~~(d) an ownership interest in real or personal property;~~

30 ~~(e) a loan or other debtor interest; or~~

1 ~~(f) a directorship or officership in a business.~~

2 (3) "GIFT OF SUBSTANTIAL VALUE" DOES NOT INCLUDE:

3 (A) A GIFT THAT IS NOT USED AND THAT, WITHIN 30 DAYS AFTER RECEIPT, IS RETURNED TO
 4 THE DONOR OR DELIVERED TO A CHARITABLE ORGANIZATION OR THE STATE AND THAT IS NOT
 5 CLAIMED AS A CHARITABLE CONTRIBUTION FOR FEDERAL INCOME TAX PURPOSES;

6 (B) FOOD AND BEVERAGES CONSUMED ON THE OCCASION WHEN PARTICIPATION IN A
 7 CHARITABLE, CIVIC, OR COMMUNITY EVENT BEARS A RELATIONSHIP TO THE PUBLIC OFFICER'S OR
 8 PUBLIC EMPLOYEE'S OFFICE OR EMPLOYMENT OR WHEN THE OFFICER OR EMPLOYEE IS IN
 9 ATTENDANCE IN AN OFFICIAL CAPACITY;

10 (C) EDUCATIONAL MATERIAL DIRECTLY RELATED TO OFFICIAL GOVERNMENTAL DUTIES;

11 (D) AN AWARD PUBLICLY PRESENTED IN RECOGNITION OF PUBLIC SERVICE; OR

12 (E) EDUCATIONAL ACTIVITY THAT:

13 (I) DOES NOT PLACE OR APPEAR TO PLACE THE RECIPIENT UNDER OBLIGATION;

14 (II) CLEARLY SERVES THE PUBLIC GOOD; AND

15 (III) IS NOT LAVISH OR EXTRAVAGANT.

16 ~~(5)(3)~~ "Official act" or "official action" means a vote, decision, recommendation, approval,
 17 disapproval, or other action, including inaction, ~~which~~ that involves the use of discretionary authority.

18 (4) "Private interest" means an interest held by an individual ~~or the individual's spouse or minor~~
 19 children that is:

20 (a) an ownership interest in a business;

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

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

23 (d) an ownership interest in real property;

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

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

26 (5) "Public employee" means:

27 (a) any temporary or permanent employee of the state or any subdivision of the state;

28 (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with
 29 rulemaking authority; and

30 (c) a person under contract to the state.

1 (6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any
2 elected officer of any subdivision of the state.

3 (7) (a) "State agency" includes;

4 (i) the state;

5 (ii) the legislature and its committees;

6 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

7 (iv) the university system; and

8 (v) all independent commissions and other establishments of the state government ~~except the~~
9 ~~courts.~~

10 (b) The term does not include the judicial branch.

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

13
14 **Section 2.** Section 2-2-103, MCA, is amended to read:

15 "**2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public
16 trust, created by the confidence ~~which that~~ the electorate reposes in the integrity of public officers,
17 legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his the~~
18 individual's duties for the benefit of the people of the state.

19 (2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary the~~
20 person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary~~
21 ~~under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject to the
22 penalties provided in this part for abuse of his the public's trust. ~~The county attorney of the county where~~
23 ~~the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys~~
24 ~~collected in such actions shall be paid to the general fund of the aggrieved agency.~~

25 (3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of
26 any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the
27 transgression of any of which is ~~not, as such,~~ a violation of ~~fiduciary duty~~ must be avoided.

28 (4) (a) The enforcement of this part for:

29 (i) state officers, LEGISLATORS, and STATE employees is provided for in [sections 16 and 17 15

30 AND 16];

1 ~~(ii) legislators is provided for in [section 15-14];~~

2 ~~(iii) (ll) local government officers and employees is provided for in [section 22-21].~~

3 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action
4 must be deposited in the general fund of the unit of government."

5
6 **Section 3.** Section 2-2-104, MCA, is amended to read:

7 **"2-2-104. Rules of conduct for all public officers, legislators, and public employees.** (1) Proof of
8 commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ the
9 actor's public duty. A public officer, legislator, or public employee may not:

10 ~~(a) disclose or use confidential information acquired in the course of his official duties in order to~~
11 ~~further substantially his personal economic interests; or~~

12 (A) DISCLOSE OR USE CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF OFFICIAL
13 DUTIES IN ORDER TO FURTHER SUBSTANTIALLY THE INDIVIDUAL'S PERSONAL ECONOMIC INTERESTS;

14 ~~(b)(B)~~ accept a gift of ~~substantial~~ value or ~~a substantial~~ AN economic benefit tantamount to a gift:
15 ~~(i)(a)(C)~~ ~~which that~~ would tend improperly to influence a reasonable person in ~~his~~ the person's
16 position to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

17 ~~(iii)(b)(D)~~ ~~which he~~ that the person knows or ~~which that~~ a reasonable person in ~~his~~ that position
18 should know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official
19 action ~~he has~~ taken.

20 (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest
21 substantially lower than the commercial rate then currently prevalent for similar loans and compensation
22 received for private services rendered at a rate substantially exceeding the fair market value of ~~such~~ the
23 services. Campaign contributions reported as required by statute are not gifts or economic benefits
24 tantamount to gifts.

25 (3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may
26 not receive salaries from two separate public employment positions that overlap for the hours being
27 compensated, unless:

28 (i) the public officer, legislator, or public employee reimburses the public entity from which the
29 employee is absent for its costs in THE SALARY PAID FOR performing the function from which the officer,
30 legislator, or employee is absent; or

1 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by
 2 the amount of salary received from the other public employer in order to avoid duplicate compensation for
 3 the overlapping hours.

4 (b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving
 5 income from the use of accrued leave or compensatory time during the period of overlapping employment.

6 (C) IN ORDER TO DETERMINE COMPLIANCE WITH THIS SUBSECTION (3), A PUBLIC OFFICER,
 7 LEGISLATOR, OR PUBLIC EMPLOYEE SUBJECT TO THIS SUBSECTION (3) SHALL DISCLOSE THE
 8 AMOUNTS RECEIVED FROM THE TWO SEPARATE PUBLIC EMPLOYMENT POSITIONS TO THE
 9 COMMISSIONER OF POLITICAL PRACTICES."

10
 11 **Section 4.** Section 2-2-105, MCA, is amended to read:

12 **"2-2-105. Ethical ~~principles~~ requirements for public officers and public employees.** (1) The
 13 ~~principles requirements~~ in this section are intended as ~~guides to~~ rules of conduct, and ~~do not constitute~~
 14 violations ~~as such~~ constitute a breach of the public trust and public duty of office or employment in state
 15 or local government.

16 (2) A EXCEPT AS PROVIDED IN SUBSECTION (4), A public officer or public employee ~~should~~ may
 17 not acquire an interest in any business or undertaking ~~which he~~ that the officer or employee has reason to
 18 believe may be directly and substantially affected to its economic benefit by official action to be taken by
 19 ~~his~~ the officer's or employee's agency.

20 (3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the
 21 voluntary termination of ~~his~~ office or employment, obtain employment in which ~~he~~ the officer or employee
 22 will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was
 23 directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules
 24 of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,
 25 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active
 26 participant.

27 (4) WHEN A PUBLIC EMPLOYEE WHO IS A MEMBER OF A QUASI-JUDICIAL BOARD OR
 28 COMMISSION OR OF A BOARD, COMMISSION, OR COMMITTEE WITH RULEMAKING AUTHORITY IS
 29 REQUIRED TO TAKE OFFICIAL ACTION ON A MATTER AS TO WHICH THE PUBLIC EMPLOYEE HAS A
 30 CONFLICT CREATED BY A PERSONAL OR PRIVATE INTEREST THAT WOULD DIRECTLY GIVE RISE TO

1 AN APPEARANCE OF IMPROPRIETY AS TO THE PUBLIC EMPLOYEE'S INFLUENCE, BENEFIT, OR
 2 DETRIMENT IN REGARD TO THE MATTER, THE PUBLIC EMPLOYEE SHALL DISCLOSE THE INTEREST
 3 CREATING THE CONFLICT PRIOR TO PARTICIPATING IN THE OFFICIAL ACTION.

4 ~~(4)~~(5) A public officer or public employee ~~should~~ may not:

5 ~~(a)~~ perform an official act directly and substantially affecting a business or other undertaking to its
 6 economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a
 7 competing firm or undertaking; ~~or~~

8 ~~(b) disclose or use confidential information acquired in the course of official duties in order to~~
 9 ~~substantially further the officer's or employee's private interests."~~

10
 11 **Section 5.** Section 2-2-111, MCA, is amended to read:

12 **"2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this
 13 section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty.

14 A legislator may not:

15 (1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation
 16 provided by statute, for promoting or opposing the passage of legislation;

17 (2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's
 18 services by the use of ~~his~~ the office."

19
 20 **Section 6.** Section 2-2-112, MCA, is amended to read:

21 **"2-2-112. Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this
 22 section are intended ~~only as guides to rules for~~ legislator conduct, ~~and do not constitute violations as such~~
 23 ~~constitute a breach~~ of the public trust of legislative office.

24 ~~(2) A legislator has a responsibility to the legislator's constituents to participate in all matters~~
 25 ~~affecting the constituents~~ AS REQUIRED IN THE JOINT RULES OF THE LEGISLATURE. A legislator
 26 ~~concerned with the possibility of a conflict~~ should MAY briefly present the facts to the committee of that
 27 house that is assigned the determination of ethical issues. The committee shall advise the legislator as to
 28 whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions
 29 of subsection (5). The legislator ~~shall~~ MAY vote on ~~the~~ AN issue ON WHICH THE LEGISLATOR HAS A
 30 CONFLICT, after disclosing the interest.

1 ~~(2)~~(3) When a legislator ~~must~~ is required to take official action on a legislative matter as to which
 2 ~~he~~ the legislator has a conflict created by a personal or ~~financial~~ private interest ~~which~~ that would ~~be~~
 3 directly ~~and substantially affected by~~ give rise to an appearance of impropriety as to the legislator's
 4 influence, benefit, or detriment in regard to the legislative matter, he should consider disclosing or
 5 ~~eliminating~~ the legislator shall disclose the interest creating the conflict ~~or abstaining from~~ prior to
 6 participating in the official action, as provided in subsections (2) and (5) and the joint rules of the
 7 legislature. In making ~~his~~ a decision, ~~he should~~ the legislator shall further consider:

8 (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

9 (b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the
 10 legislature; ~~and~~

11 (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition
 12 of the matter; and

13 (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family
 14 benefit could arise from the legislator's participation.

15 ~~(3)~~(4) A conflict situation does not arise from legislation or legislative duties affecting the entire
 16 membership of a profession, occupation, or class.

17 ~~(4)~~(5) If a A legislator ~~elects to~~ shall disclose the an interest creating the a conflict, ~~he shall do so~~
 18 as provided in the ~~joint~~ rules of the legislature. A legislator who is a member of a profession, occupation,
 19 or class affected by legislation is not required to disclose an interest unless the class contained in the
 20 legislation is so narrow that the vote will have a direct personal impact on the legislator. A legislator may
 21 seek a determination from the appropriate committee provided for in [section 45 14]."

22
 23 **Section 7.** Section 2-2-121, MCA, is amended to read:

24 **"2-2-121. Rules of conduct for state public officers and state public employees.** (1) Proof of
 25 commission of any act enumerated in ~~this section~~ subsection (2) is proof that the actor has breached ~~his~~
 26 fiduciary a public duty.

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

28 (a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for ~~his~~
 29 the officer's or employee's private business purposes;

30 (b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business

1 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official
2 duties;

3 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
4 other economic benefit from ~~his~~ the officer's or employee's agency;

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

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

10 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
11 with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first
12 giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

13 ~~(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies,~~
14 ~~personnel, or funds for any political or campaign activity persuading or affecting a political decision unless~~
15 ~~the use is:~~

16 ~~(i) authorized by law; or~~

17 ~~(ii) properly incidental to another activity required or authorized by law, such as the function of an~~
18 ~~elected public official, the official's staff, or the legislative staff in the normal course of duties.~~

19 ~~(b) Subsection (3)(a) does not prohibit an elected public official from issuing public statements~~
20 ~~concerning matters within the scope of the official's office. However, a document that is published~~
21 ~~pursuant to this subsection (3) and that is aimed at supporting or opposing a political committee, a~~
22 ~~candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce~~
23 ~~the document. The statement must meet the specifications described in 18-7-306, and the costs must be~~
24 ~~estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed~~
25 ~~with the commissioner of political practices. THIS SUBSECTION DOES NOT APPLY TO THE~~
26 ~~PREPARATION OF OFFICIAL VOTER INFORMATION PAMPHLETS.~~

27 ~~(4) (a) A state employee shall notify the employee's immediate supervisor that a potential conflict~~
28 ~~of interest exists~~ MAY NOT PARTICIPATE IN A PROCEEDING when AN ORGANIZATION OF WHICH THE
29 EMPLOYEE IS AN OFFICER OR DIRECTOR IS:

30 ~~(i)(A) an organization of which the employee is a member is involved in a proceeding before the~~

1 employing agency that is within the scope of the employee's job duties; or

2 ~~(iii)(B) the employee is a member of or affiliated with any organization attempting to influence a~~
3 local, state, or federal proceeding in which the employee represents the state.

4 ~~(b) The employee's supervisor shall make the disclosed information available to an interested~~
5 person upon the person's request.

6 (5) A state officer or state employee may not engage in any activity, including lobbying, as defined
7 in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the
8 officer's or employee's job duties. THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT AN
9 OFFICER OR EMPLOYEE FROM PERFORMING CHARITABLE FUNDRAISING ACTIVITIES IF APPROVED BY
10 THE EMPLOYEE'S SUPERVISOR OR AUTHORIZED BY LAW.

11 ~~(3)(6)~~ A department head or a member of a quasi-judicial or rulemaking board may perform an
12 official act notwithstanding the provisions of subsection (2)(e) if ~~his~~ participation is necessary to the
13 administration of a statute and if ~~he~~ the person complies with the ~~voluntary~~ disclosure procedures under
14 2-2-131.

15 ~~(4)(7)~~ Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
16 unless ~~he~~ the member is also a full-time state public employee.

17 (8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon
18 conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the
19 county jail for not more than 6 months, or by both. A civil proceeding under [section ~~46~~ 15] or [section
20 22 21] does not preclude an action under this subsection."

21
22 **Section 8.** Section 2-2-125, MCA, is amended to read:

23 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission
24 of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ a public duty
25 subjecting the actor to disciplinary action by the employing entity.

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

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

30 (b) perform an official act directly and substantially affecting to its economic benefit a business or

1 other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is
 2 engaged as counsel, consultant, representative, or agent.

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

8
 9 **Section 9.** Section 2-2-131, MCA, is amended to read:

10 "**2-2-131. ~~Voluntary disclosure~~ Disclosure.** A public officer or public employee ~~may~~ shall, prior to
 11 acting in a manner ~~which~~ that may impinge on his ~~fiduciary~~ public duty, including the award of a permit,
 12 contract, or license, disclose the nature of ~~his~~ the private interest ~~which~~ that creates the conflict. ~~He~~ The
 13 public officer or public employee shall make the disclosure in writing to the secretary of state, listing the
 14 amount of ~~his financial~~ private interest, if any, the purpose and duration of ~~his~~ the person's services
 15 rendered, if any, and the compensation received for the services or ~~such~~ other information ~~as~~ that is
 16 necessary to describe ~~his~~ the interest. If ~~he~~ the public officer or public employee then performs the official
 17 act involved, ~~he~~ the officer or employee shall state for the record the fact and summary nature of the
 18 interest disclosed at the time of performing the act."

19
 20 **Section 10.** Section 2-2-302, MCA, is amended to read:

21 "**2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions --**
 22 **publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of
 23 any board, bureau, or commission or employee at the head of a department of this state or any political
 24 subdivision of this state to appoint to any position of trust or emolument any person related or connected
 25 by consanguinity within the fourth degree or by affinity within the second degree.

26 (2) The provisions of this section and 2-2-303 do not apply to:

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

28 (b) school district trustees if all the trustees, with the exception of any trustee who is related to
 29 the person being appointed and who must abstain from voting for the appointment, approve the
 30 appointment of a person related to a trustee;

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

3 (d) the renewal of an employment contract of a person who was initially hired before the member
4 of the board, bureau, or commission or the department head to whom ~~he~~ the person is related assumed the
5 duties of the office;

6 (e) the employment of election judges; or

7 (f) the employment of pages or temporary session staff by the legislature.

8 (3) Prior to the appointment of a person referred to in subsection (2), the school district trustees
9 shall give written notice of the time and place of their intended action. The notice must be published at
10 least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in
11 which the school district is located."
12

13 **Section 11.** Section 2-18-102, MCA, is amended to read:

14 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided
15 by law or collective bargaining agreement, the department shall:

16 (a) encourage and exercise leadership in the development of effective personnel administration
17 within the several agencies in the state and make available the facilities of the department to this end;

18 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
19 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,
20 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
21 for productivity and retention in permanent status;

22 (c) foster, develop, and promote job sharing in agencies;

23 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
24 policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

25 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
26 state service;

27 (f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform
28 any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts
29 1 and 2.

30 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the

1 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
 2 that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards
 3 established by the department.

4 (3) The department shall develop and issue personnel policies for the state. Adequate public notice
 5 ~~shall~~ must be given to all interested parties of proposed changes or additions to the personnel policies
 6 before the date they are to take effect. If requested by any of the affected parties, the department shall
 7 schedule a public hearing on proposed changes or additions to the personnel policies before the date they
 8 are to take effect.

9 (4) The department shall develop model rules of conduct for all state employees based upon the
 10 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
 11 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
 12 rules appropriate to the specific circumstances of the agency."

13

14 **Section 12.** Section 5-7-213, MCA, is amended to read:

15 "**5-7-213. Disclosure by ~~elected officials.~~** (1) (a) Prior to December 15 of each even-numbered
 16 year, each elected official; ~~or official elect member of a quasi-judicial board or commission, or department~~
 17 director shall file with the commissioner a business disclosure statement on a form provided by the
 18 commissioner. ~~An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this~~
 19 subsection (1)(a) during the same period.

20 (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of
 21 the time that the candidate files for office, file a business disclosure statement with the commissioner on
 22 a form provided by the commissioner.

23 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)
 24 is required to file the business disclosure statement at the earlier of the time of submission of the person's
 25 name for confirmation or the assumption of the office.

26 (2) The statement ~~shall~~ must provide the following information:

27 (a) the name, address, and type of business of ~~such the~~ individual ~~and each member of such the~~
 28 individual's immediate family;

29 (b) each present or past employing entity from which benefits, including retirement benefits, are
 30 currently received by the individual ~~and each member of the individual's immediate family;~~

1 (c) each business, firm, corporation, partnership, and other business or professional entity or trust
 2 in which the individual or a member of the individual's immediate family holds an interest;

3 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual or a
 4 member of the individual's immediate family is an officer or director, regardless of whether or not the entity
 5 is organized for profit;

6 (e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and

7 (f)(E) all real property, other than a personal residence, in which the individual or a member of the
 8 individual's immediate family holds an interest. Real property may be described by general description. For
 9 this purpose "immediate family" includes the individual's spouse and minor children only.

10 ~~(2)(3)~~ No such An individual may not assume or continue to exercise the powers and duties of the
 11 office to which that individual has been elected or appointed until ~~such~~ the statement has been filed as
 12 provided in subsection (1).

13 ~~(3)(4)~~ The commissioner shall make ~~such~~ the business disclosure statements available to any
 14 individual upon request.

15 ~~(5) For purposes of this section, "immediate family" means the individual's spouse and minor~~
 16 ~~children."~~

17
 18 **Section 13.** Section 13-35-226, MCA, is amended to read:

19 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in
 20 paying ~~his~~ employees the salary or wages due them, to include with their pay the name of any candidate
 21 or any political mottoes, devices, or arguments containing threats or promises ~~{express or implied}~~,
 22 calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an
 23 employer to exhibit in a place where ~~his~~ the employer's workers or employees may be working any handbill
 24 or placard containing any threat, promise, notice, or information that, in case any particular ticket or
 25 political party, organization, or candidate is elected, work in ~~his~~ the employer's place or establishment will
 26 cease, in whole or in part, or will be continued or increased; ~~his~~ the employer's place or establishment will
 27 be closed; the salaries or wages of ~~his~~ the workers or employees will be reduced or increased; or other
 28 threats or promises ~~{express or implied}~~, intended or calculated to influence the political opinions or actions
 29 of ~~his~~ the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals,
 30 and public officers and employees.

1 (2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or
 2 oppose any political committee, the nomination or election of any person to public office, or the passage
 3 of a ballot issue.

4 (3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the
 5 nomination or election of any person to public office, or the passage of a ballot issue while on the job or
 6 at ~~his~~ the place of employment. However, ~~nothing in~~ subject to 2-2-121, this section is not intended to
 7 restrict the right of a public employee to express ~~his~~ personal political views.

8 (4) Any person who violates the provisions of this section shall be fined an amount not to exceed
 9 \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate
 10 offense."

11
 12 ~~NEW SECTION. Section 14. Filing tax returns.~~ (1) ~~It is the responsibility of legislators, public~~
 13 ~~officers, and public employees to determine on an annual basis whether they are required to file tax returns~~
 14 ~~with the state of Montana and to file a complete return in a timely manner, if required.~~

15 ~~(2) The department of revenue shall provide to the commissioner of political practices information~~
 16 ~~necessary to determine compliance with this section, whether or not the information is confidential. The~~
 17 ~~commissioner of political practices shall keep the information confidential unless it is necessary to prove~~
 18 ~~that a violation of this section has occurred.~~

19
 20 ~~NEW SECTION. Section 14. Ethics committees.~~ (1) Each house of the legislature shall establish
 21 an ethics committee. The committee must consist of two members of each political party. The committees
 22 may meet jointly. Each committee shall educate members concerning the provisions of this part concerning
 23 legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The
 24 joint committee may consider matters affecting the entire legislature.

25 (2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for
 26 enforcement of the provisions of this part concerning legislators.

27
 28 ~~NEW SECTION. Section 15. Enforcement for state officers, LEGISLATORS, and state employees.~~
 29 (1) (a) A person alleging a violation of this part by a state officer, LEGISLATOR, or state employee may
 30 file a complaint with the commissioner of political practices. The commissioner shall request any

1 information necessary to make a determination from the complainant or the person who is the subject of
2 the complaint and may issue subpoenas.

3 (b) Unless the complaint is referred to the county attorney under subsection (1)(c), the
4 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
5 4, part 6. The commissioner shall issue a decision based upon the record established before the
6 commissioner.

7 (c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner
8 shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

9 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may
10 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was
11 committed by a state employee, the commissioner may also recommend that the employing agency
12 discipline the employee. The commissioner may assess the costs of the proceeding against the person
13 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
14 employee if the commissioner determines that a violation did occur.

15 (3) The decision of the commissioner may be appealed to the ethics commission as provided in
16 [section ~~47~~ 16].

17 (4) EXCEPT FOR RECORDS MADE PUBLIC IN THE COURSE OF A HEARING, A COMPLAINT AND
18 RECORDS OBTAINED OR PREPARED BY THE COMMISSIONER IN CONNECTION WITH AN INVESTIGATION
19 OR COMPLAINT ARE NOT OPEN FOR PUBLIC INSPECTION. THE COMMISSIONER'S DECISION ISSUED
20 AFTER A HEARING IS A PUBLIC RECORD OPEN TO INSPECTION.

21 (5) THE COMMISSIONER MAY ADOPT RULES TO CARRY OUT THE RESPONSIBILITIES AND
22 DUTIES ASSIGNED BY THIS PART.

23
24 NEW SECTION. Section 16. Administrative appeal. (1) The ethics commission shall provide a
25 hearing on the record, when requested in writing by a party to an issue that has been decided by the
26 commissioner of political practices. The appeal must be requested within 60 days of a decision by the
27 commissioner.

28 (2) The hearing is limited to matters contained in the record established before the commissioner.
29 The commission may affirm, modify, or reverse a decision of the commissioner.

30 (3) A decision is rendered when signed by three or more commission members subscribing to the

1 decision and must be issued within 30 calendar days after submission of the request for an opinion.

2 (4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award
3 costs and fees to the prevailing party.

4

5 **NEW SECTION. Section 17. Ethics commission.** (1) There is an ethics commission attached to
6 the office of the commissioner of political practices for administrative purposes only.

7 (2) The commission consists of five members. The members are appointed in the same manner
8 as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as
9 provided in subsection (6) of this section. A member of the commission must be a citizen of the United
10 States and a resident of Montana. A member of the commission may not be a:

11 (a) public official;

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

14 (c) candidate;

15 (d) lobbyist or lobbyist's principal; or

16 (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

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

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

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

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

22 (d) Two members shall serve terms of 4 years.

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

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

25 (5) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall
26 appoint a successor.

27 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than
28 that of the original appointing authority, the majority or minority leader in the same house who is of the
29 same political party as the appointing authority that made the original appointment of the commissioner
30 whose position is vacated shall appoint the successor.

1 (6) The presiding officer and vice presiding officer of the commission must be elected by a majority
2 of the members of the commission. The presiding officer and vice presiding officer shall serve in those
3 positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission.
4 The vice presiding officer presides in the absence or disability of the presiding officer.

5 (7) A member of the commission may not receive a salary but is entitled to expenses as provided
6 in Title 2, chapter 18, part 5.

7
8 **NEW SECTION. Section 18. Meetings -- quorum.** The ethics commission shall meet at the call of
9 the presiding officer or a majority of its members when an appeal from a decision of the commissioner of
10 political practices UNDER THIS PART is requested. A quorum consists of three or more members. An
11 affirmative vote of three or more members is necessary for the issuance of a decision.

12
13 **NEW SECTION. Section 19. Prohibition on political activity by commission members.** A member
14 of the ethics commission may not participate in political activity or in a political campaign during the term
15 of office. A member of the commission may not:

- 16 (1) make a financial contribution to a candidate;
17 (2) make a financial contribution to a political committee; or
18 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

19
20 **NEW SECTION. Section 20. Prohibition on lobbying activity.** A member of the ethics commission
21 may not be a registered lobbyist or participate in lobbying activities that would require the individual to
22 register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are
23 permitted under state law.

24
25 **NEW SECTION. Section 21. Enforcement for local government.** (1) Except as provided in
26 subsection (5), a person alleging a violation of this part by a local government officer or local government
27 employee shall notify the county attorney of the county where the local government is located. The county
28 attorney shall request from the complainant or the person who is the subject of the complaint any
29 information necessary to make a determination concerning the validity of the complaint.

- 30 (2) If the county attorney determines that the complaint is justified, the county attorney may bring

1 an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county
2 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal
3 charges against the officer or employee.

4 (3) If the county attorney declines to bring an action under this section, the person alleging a
5 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more
6 than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees
7 against the person bringing the charges if the court determines that a violation did not occur or against the
8 officer or employee if the court determines that a violation did occur. The court may impose sanctions if
9 the court determines that the action was frivolous or intended for harassment.

10 (4) The employing entity of a local government employee may take disciplinary action against an
11 employee for a violation of this part.

12 (5) (a) A local government may establish a three-member panel to review complaints alleging
13 violations of this part by officers or employees of the local government. The local government shall
14 establish procedures and rules for the panel. The members of the panel may not be officers or employees
15 of the local government. The panel shall review complaints and may refer to the county attorney
16 complaints that appear to be substantiated.

17 (b) In a local government that establishes a panel under this subsection, a complaint must be
18 referred to the panel prior to making a complaint to the county attorney.

19 (6) For purposes of this section, "local government" means a county, an incorporated city or town,
20 a consolidated government, or a school district.

21
22 **NEW SECTION. Section 22. Repealer.** Section 2-2-132, MCA, is repealed.

23
24 **NEW SECTION. Section 23. Codification instruction.** [Sections 14 through ~~22~~ 21] are intended
25 to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part
26 1, apply to [sections 14 through ~~22~~ 21].

27
28 **NEW SECTION. Section 24. Code commissioner instruction.** The code commissioner shall
29 renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

1 **NEW SECTION.** **Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5

6 **NEW SECTION.** **Section 26. Effective date.** [This act] is effective July 1, 1995.

7

-END-

Free Conference Committee
on SB 136
Report No. 1, April 12, 1995

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 136, met and considered:

SB 136 in its entirety

We recommend that SB 136 (reference copy as amended - salmon) be amended as follows:

1. Page 2, line 18.

Following: "money"

Strike: ", " through "value,"

2. Page 3, line 2.

Following: "(3)"

Insert: "(a)"

Following: "SUBSTANTIAL"

Insert: "substantial"

Following: "VALUE"

Insert: "means a gift with a value of \$50 or more for an individual. (b) The term"

3. Page 3, line 3.

Strike: "(A)"

Insert: "(i)"

Renumber: subsequent subsections

4. Page 3, line 13.

Strike: "(I)"

Insert: "(A)"

Renumber: subsequent subsections

5. Page 5, line 1.

Following: "±"

Insert: "(ii) legislators, involving legislative acts, is provided for in [section 14] and for all other acts is provided for in [sections 15 and 16];"

Renumber: subsequent subsection

6. Page 5, line 14.

Following: "of ~~substantial~~"

Insert: "substantial"

Strike: "AN"

Insert: "a substantial"

7. Page 7, line 29.

ADOPT

REJECT

SB 136
FCCR #1

840857CC.SPV

Following: "MAY"
Insert: ", subject to legislative rule,"

8. Page 8, line 20.
Following: "direct"
Insert: "and distinctive"

9. Page 9, lines 25 and 26.
Following: "practices" on line 25
Strike: remainder of line 25 through "." on line 26
Insert: "persuading or affecting a political decision unless the use is:
(a) authorized by law; or
(b) properly incidental to another activity required or authorized by law, such as the function of an elected public official, the official's staff, or the legislative staff in the normal course of duties."

10. Page 15, line 30.
Following: "practices."
Insert: "The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint."

And that this Free Conference Committee report be adopted.

For the Senate:

Baer

Chair

Grosfield

Eck

Amd. Coord.

Sec. of Senate

For the House:

Denny

Chair

Forbes

Cocchiarella

1 SENATE BILL NO. 136

2 INTRODUCED BY BAER, KEENAN, BENEDICT, BURNETT, DENNY, MOHL, HARGROVE, BRAINARD,
 3 EMERSON, MESAROS, JORE, JENKINS, CRISMORE, ESTRADA, KEATING, FORBES, PECK,
 4 COCCHIARELLA, PAVLOVICH, MURDOCK, BOHARSKI, VICK, WISEMAN, GREEN, MOLNAR,
 5 HARRINGTON, MERCER, GRINDE, MCKEE, TAYLOR, AHNER, MILLS, L. SMITH, MARTINEZ, OHS,
 6 SLITER, T. NELSON, STOVALL, SIMON, LARSON, R. JOHNSON, WELLS, MCGEE, KITZENBERG, ELLIS,
 7 TREXLER, FUCHS, CLARK, BARNHART, SQUIRES, TUSS, ELLINGSON, SHEA, MENAHAN, RYAN,
 8 SWANSON, CAREY, TROPILA, ELLIOTT, J. JOHNSON, WENNEMAR, HURDLE, HEAVY RUNNER,
 9 HOLLAND, MCCULLOCH, MASOLO, BOHLINGER, LYNCH, JACOBSON, FORRESTER, CHRISTIAENS,
 10 L. NELSON, JERGESON, COLE, MILLER, BROOKE, WELDON, VAN VALKENBURG, FRANKLIN,
 11 PIPINICH, SPRAGUE, HARDING, FOSTER, HARP, GROSFIELD, BISHOP, HOLDEN

12 BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

13
 14 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS;
 15 CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE
 16 INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO ~~REFRAIN FROM VOTING ON CERTAIN~~
 17 VOTE ON ALL MATTERS AS PROVIDED IN LEGISLATIVE RULES; PROHIBITING PROVIDING
 18 REQUIREMENTS FOR A PUBLIC EMPLOYEE WHO IS A LEGISLATOR FROM RECEIVING BOTH SALARIES
 19 WHILE SERVING IN THE LEGISLATURE, PUBLIC OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE
 20 PUBLIC SALARY FOR OVERLAPPING HOURS OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND
 21 PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR
 22 FUNDS TO PROMOTE POLITICAL IDEOLOGY OR TO INFLUENCE A POLITICAL ISSUE; AND FOR ANY
 23 POLITICAL OR CAMPAIGN ACTIVITY PERSUADING OR AFFECTING A POLITICAL DECISION UNLESS THE
 24 USE IS AUTHORIZED BY LAW OR PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR
 25 AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC OFFICIALS AND
 26 EMPLOYEES; PROVIDING FOR EDUCATION AND TRAINING ON ETHICAL MATTERS; PROVIDING
 27 ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS; PROVIDING THAT FILING TAX RETURNS IS AN
 28 ETHICAL REQUIREMENT; CREATING AN ETHICS COMMISSION TO PROVIDE REVIEW OF ETHICS
 29 DECISIONS IN CASES INVOLVING STATE OFFICERS AND STATE EMPLOYEES; AMENDING SECTIONS
 30 2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112, 2-2-121, AND 2-2-125, 2-2-131, 2-2-302,

1 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING SECTION 2-2-132, MCA; AND PROVIDING AN
 2 EFFECTIVE DATE."

3
 4 WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of
 5 prohibiting conflict between public duty and private interest for members of the Legislature and for all state
 6 and local government officers and employees; and

7 ~~WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana~~
 8 ~~Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.~~

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 (Refer to First Reading Bill)

12 Strike everything after the enacting clause and insert:

13
 14 **Section 1.** Section 2-2-102, MCA, is amended to read:

15 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

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

18 (2) "Compensation" means any money, ~~thing of substantial value,~~ or economic benefit conferred
 19 on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or
 20 another.

21 ~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision~~
 22 ~~thereof or member of the judiciary, including a member of a board, commission, or committee except a~~
 23 ~~legislator and an employee under contract to the state.~~

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

26 ~~(a) an ownership interest in a business;~~

27 ~~(b) a creditor interest in an insolvent business;~~

28 ~~(c) an employment or prospective employment for which negotiations have begun;~~

29 ~~(d) an ownership interest in real or personal property;~~

30 ~~(e) a loan or other debtor interest; or~~

- 1 ~~(f) a directorship or officership in a business.~~
- 2 (3) (A) "GIFT OF SUBSTANTIAL SUBSTANTIAL VALUE" MEANS A GIFT WITH A VALUE OF \$50
- 3 OR MORE FOR AN INDIVIDUAL.
- 4 (B) THE TERM DOES NOT INCLUDE:
- 5 (A)(I) A GIFT THAT IS NOT USED AND THAT, WITHIN 30 DAYS AFTER RECEIPT, IS RETURNED
- 6 TO THE DONOR OR DELIVERED TO A CHARITABLE ORGANIZATION OR THE STATE AND THAT IS NOT
- 7 CLAIMED AS A CHARITABLE CONTRIBUTION FOR FEDERAL INCOME TAX PURPOSES;
- 8 (B)(II) FOOD AND BEVERAGES CONSUMED ON THE OCCASION WHEN PARTICIPATION IN A
- 9 CHARITABLE, CIVIC, OR COMMUNITY EVENT BEARS A RELATIONSHIP TO THE PUBLIC OFFICER'S OR
- 10 PUBLIC EMPLOYEE'S OFFICE OR EMPLOYMENT OR WHEN THE OFFICER OR EMPLOYEE IS IN
- 11 ATTENDANCE IN AN OFFICIAL CAPACITY;
- 12 (C)(III) EDUCATIONAL MATERIAL DIRECTLY RELATED TO OFFICIAL GOVERNMENTAL DUTIES;
- 13 (D)(IV) AN AWARD PUBLICLY PRESENTED IN RECOGNITION OF PUBLIC SERVICE; OR
- 14 (E)(V) EDUCATIONAL ACTIVITY THAT:
- 15 (A) DOES NOT PLACE OR APPEAR TO PLACE THE RECIPIENT UNDER OBLIGATION;
- 16 (B) CLEARLY SERVES THE PUBLIC GOOD; AND
- 17 (C) IS NOT LAVISH OR EXTRAVAGANT.
- 18 ~~(5)(3)~~ (3) "Official act" or "official action" means a vote, decision, recommendation, approval,
- 19 disapproval, or other action, including inaction, ~~which that~~ involves the use of discretionary authority.
- 20 (4) "Private interest" means an interest held by an individual ~~or the individual's spouse or minor~~
- 21 children that is:
- 22 (a) an ownership interest in a business;
- 23 (b) a creditor interest in an insolvent business;
- 24 (c) an employment or prospective employment for which negotiations have begun;
- 25 (d) an ownership interest in real property;
- 26 (e) a loan or other debtor interest; or
- 27 (f) a directorship or officership in a business.
- 28 (5) "Public employee" means:
- 29 (a) any temporary or permanent employee of the state or any subdivision of the state;
- 30 (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with

1 rulemaking authority; and

2 (c) a person under contract to the state.

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

5 (7) (a) "State agency" includes:

6 (i) the state;

7 (ii) the legislature and its committees;

8 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

9 (iv) the university system; and

10 (v) all independent commissions and other establishments of the state government ~~except the~~
11 ~~courts.~~

12 (b) The term does not include the judicial branch.

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

15

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

17 "**2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public
18 trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers,
19 legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the
20 individual's duties for the benefit of the people of the state.

21 (2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary~~ the
22 person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary~~
23 ~~under 72-34-106, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject to the
24 penalties provided in this part for abuse of ~~his~~ the public's trust. ~~The county attorney of the county where~~
25 ~~the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys~~
26 ~~collected in such actions shall be paid to the general fund of the aggrieved agency.~~

27 (3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of
28 any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the
29 transgression of any of which is ~~not, as such,~~ a violation of ~~fiduciary duty~~ must be avoided.

30 (4) (a) The enforcement of this part for:

1 (i) state officers, LEGISLATORS, and STATE employees is provided for in [sections 16 and 17 15
 2 AND 16];

3 (iii) legislators is provided for in [section 15 14];

4 (II) LEGISLATORS, INVOLVING LEGISLATIVE ACTS, IS PROVIDED FOR IN [SECTION 14] AND FOR
 5 ALL OTHER ACTS IS PROVIDED FOR IN [SECTIONS 15 AND 16];

6 (iii)(II)(III) local government officers and employees is provided for in [section 22 21].

7 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action
 8 must be deposited in the general fund of the unit of government."

9

10 **Section 3.** Section 2-2-104, MCA, is amended to read:

11 **"2-2-104. Rules of conduct for all public officers, legislators, and public employees.** (1) Proof of
 12 commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ the
 13 actor's public duty. A public officer, legislator, or public employee may not:

14 ~~(a) disclose or use confidential information acquired in the course of his official duties in order to~~
 15 ~~further substantially his personal economic interests; or~~

16 (A) DISCLOSE OR USE CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF OFFICIAL
 17 DUTIES IN ORDER TO FURTHER SUBSTANTIALLY THE INDIVIDUAL'S PERSONAL ECONOMIC INTERESTS;

18 OR

19 ~~(b)(B)~~ (B) accept a gift of ~~substantial~~ SUBSTANTIAL value or ~~a substantial~~ AN A SUBSTANTIAL
 20 economic benefit tantamount to a gift:

21 ~~(i)(c)(I)~~ (I) ~~which that~~ which ~~that~~ would tend improperly to influence a reasonable person in ~~his~~ the person's
 22 position to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

23 ~~(ii)(b)(D)(II)~~ (II) ~~which he that the person~~ which ~~that~~ a reasonable person in ~~his~~ that position
 24 should know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official
 25 action ~~he has~~ taken.

26 (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest
 27 substantially lower than the commercial rate then currently prevalent for similar loans and compensation
 28 received for private services rendered at a rate substantially exceeding the fair market value of ~~such~~ the
 29 services. Campaign contributions reported as required by statute are not gifts or economic benefits
 30 tantamount to gifts.

1 (3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may
 2 not receive salaries from two separate public employment positions that overlap for the hours being
 3 compensated, unless:

4 (i) the public officer, legislator, or public employee reimburses the public entity from which the
 5 employee is absent for its costs in THE SALARY PAID FOR performing the function from which the officer,
 6 legislator, or employee is absent; or

7 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by
 8 the amount of salary received from the other public employer in order to avoid duplicate compensation for
 9 the overlapping hours.

10 (b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving
 11 income from the use of accrued leave or compensatory time during the period of overlapping employment.

12 (C) IN ORDER TO DETERMINE COMPLIANCE WITH THIS SUBSECTION (3), A PUBLIC OFFICER,
 13 LEGISLATOR, OR PUBLIC EMPLOYEE SUBJECT TO THIS SUBSECTION (3) SHALL DISCLOSE THE
 14 AMOUNTS RECEIVED FROM THE TWO SEPARATE PUBLIC EMPLOYMENT POSITIONS TO THE
 15 COMMISSIONER OF POLITICAL PRACTICES."

16
 17 **Section 4.** Section 2-2-105, MCA, is amended to read:

18 "**2-2-105. Ethical ~~principles~~ requirements for public officers and public employees.** (1) The
 19 ~~principles requirements~~ in this section are intended as ~~guides to rules of conduct,~~ and ~~do not constitute~~
 20 ~~violations as such constitute a breach~~ of the public trust and public duty of office or employment in state
 21 or local government.

22 (2) ~~A EXCEPT AS PROVIDED IN SUBSECTION (4), A public officer or public employee should~~ may
 23 not acquire an interest in any business or undertaking ~~which he~~ that the officer or employee has reason to
 24 believe may be directly and substantially affected to its economic benefit by official action to be taken by
 25 his ~~the officer's or employee's~~ agency.

26 (3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the
 27 voluntary termination of ~~his~~ office or employment, obtain employment in which ~~he~~ the officer or employee
 28 will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was
 29 directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules
 30 of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,

1 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active
2 participant.

3 (4) WHEN A PUBLIC EMPLOYEE WHO IS A MEMBER OF A QUASI-JUDICIAL BOARD OR
4 COMMISSION OR OF A BOARD, COMMISSION, OR COMMITTEE WITH RULEMAKING AUTHORITY IS
5 REQUIRED TO TAKE OFFICIAL ACTION ON A MATTER AS TO WHICH THE PUBLIC EMPLOYEE HAS A
6 CONFLICT CREATED BY A PERSONAL OR PRIVATE INTEREST THAT WOULD DIRECTLY GIVE RISE TO
7 AN APPEARANCE OF IMPROPRIETY AS TO THE PUBLIC EMPLOYEE'S INFLUENCE, BENEFIT, OR
8 DETRIMENT IN REGARD TO THE MATTER, THE PUBLIC EMPLOYEE SHALL DISCLOSE THE INTEREST
9 CREATING THE CONFLICT PRIOR TO PARTICIPATING IN THE OFFICIAL ACTION.

10 ~~(4)(5)~~ A public officer or public employee ~~should~~ may not:

11 ~~(a)~~ perform an official act directly and substantially affecting a business or other undertaking to its
12 economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a
13 competing firm or undertaking; ~~or~~

14 ~~(b) disclose or use confidential information acquired in the course of official duties in order to~~
15 ~~substantially further the officer's or employee's private interests."~~

16
17 **Section 5.** Section 2-2-111, MCA, is amended to read:

18 "2-2-111. **Rules of conduct for legislators.** Proof of commission of any act enumerated in this
19 section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty.

20 A legislator may not:

21 (1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation
22 provided by statute, for promoting or opposing the passage of legislation;

23 (2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's
24 services by the use of ~~his~~ the office."

25
26 **Section 6.** Section 2-2-112, MCA, is amended to read:

27 "2-2-112. **Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this
28 section are intended ~~only~~ as ~~guides to~~ rules for legislator conduct, and ~~do not constitute~~ do not constitute violations ~~as such~~
29 constitute a breach of the public trust of legislative office.

30 (2) A legislator has a responsibility to the legislator's constituents to participate in all matters

1 ~~affecting the constituents~~ AS REQUIRED IN THE JOINT RULES OF THE LEGISLATURE. A legislator
 2 concerned with the possibility of a conflict ~~should~~ MAY briefly present the facts to the committee of that
 3 house that is assigned the determination of ethical issues. The committee shall advise the legislator as to
 4 whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions
 5 of subsection (5). The legislator ~~shall~~ MAY, SUBJECT TO LEGISLATIVE RULE, vote on ~~the~~ AN issue ON
 6 WHICH THE LEGISLATOR HAS A CONFLICT, after disclosing the interest.

7 ~~(2)(3)~~ When a legislator must is required to take official action on a legislative matter as to which
 8 ~~he~~ the legislator has a conflict created by a personal or ~~financial~~ private interest ~~which that~~ that would be
 9 directly ~~and substantially affected by~~ give rise to an appearance of impropriety as to the legislator's
 10 influence, benefit, or detriment in regard to the legislative matter, ~~he should consider disclosing or~~
 11 eliminating the legislator shall disclose the interest creating the conflict ~~or abstaining from~~ prior to
 12 participating in the official action, as provided in subsections (2) and (5) and the joint rules of the
 13 legislature. In making ~~his a~~ a decision, ~~he should~~ the legislator shall ~~further~~ consider:

14 (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

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

17 (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition
 18 of the matter; and

19 (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family
 20 benefit could arise from the legislator's participation.

21 ~~(3)(4)~~ A conflict situation does not arise from legislation or legislative duties affecting the ~~entire~~
 22 membership of a profession, occupation, or class.

23 ~~(4)(5)~~ If a A legislator elects to shall disclose ~~the an~~ an interest creating ~~the a~~ a conflict, ~~he shall do so~~
 24 as provided in the ~~joint~~ rules of the legislature. A legislator who is a member of a profession, occupation,
 25 or class affected by legislation is not required to disclose an interest unless the class contained in the
 26 legislation is so narrow that the vote will have a direct AND DISTINCTIVE personal impact on the legislator.
 27 A legislator may seek a determination from the appropriate committee provided for in [section 45 14]."

28
 29 **Section 7.** Section 2-2-121, MCA, is amended to read:

30 **"2-2-121. Rules of conduct for state public officers and state public employees.** (1) Proof of

1 commission of any act enumerated in ~~this section~~ subsection (2) is proof that the actor has breached his
2 ~~fiduciary~~ a public duty.

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

4 (a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for his
5 the officer's or employee's private business purposes;

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

9 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or
10 other economic benefit from ~~his~~ the officer's or employee's agency;

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

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

16 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
17 with a person whom ~~he~~ the officer or employee regulates in the course of his official duties without first
18 giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

19 (3) ~~(a) A public officer or public employee may not use public time, facilities, equipment, supplies,~~
20 ~~personnel, or funds for any political or campaign activity persuading or affecting a political decision unless~~
21 ~~the use is:~~

22 ~~(i) authorized by law; or~~

23 ~~(ii) properly incidental to another activity required or authorized by law, such as the function of an~~
24 ~~elected public official, the official's staff, or the legislative staff in the normal course of duties.~~

25 ~~(b) Subsection (3)(a) does not prohibit an elected public official from issuing public statements~~
26 ~~concerning matters within the scope of the official's office. However, a document that is published~~
27 ~~pursuant to this subsection (3) and that is aimed at supporting or opposing a political committee, a~~
28 ~~candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce~~
29 ~~the document. The statement must meet the specifications described in 18-7-306, and the costs must be~~
30 ~~estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed~~

1 ~~with the commissioner of political practices. THIS SUBSECTION DOES NOT APPLY TO THE~~
 2 ~~PREPARATION OF OFFICIAL VOTER INFORMATION PAMPHLETS. PERSUADING OR AFFECTING A~~
 3 ~~POLITICAL DECISION UNLESS THE USE IS:~~

4 ~~(A) AUTHORIZED BY LAW; OR~~

5 ~~(B) PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW, SUCH~~
 6 ~~AS THE FUNCTION OF AN ELECTED PUBLIC OFFICIAL, THE OFFICIAL'S STAFF, OR THE LEGISLATIVE~~
 7 ~~STAFF IN THE NORMAL COURSE OF DUTIES.~~

8 ~~(4) (a) A state employee shall notify the employee's immediate supervisor that a potential conflict~~
 9 ~~of interest exists~~ MAY NOT PARTICIPATE IN A PROCEEDING when AN ORGANIZATION OF WHICH THE
 10 EMPLOYEE IS AN OFFICER OR DIRECTOR IS:

11 ~~(i)(A) an organization of which the employee is a member is involved in a proceeding before the~~
 12 ~~employing agency that is within the scope of the employee's job duties; or~~

13 ~~(ii)(B) the employee is a member of or affiliated with any organization attempting to influence a~~
 14 ~~local, state, or federal proceeding in which the employee represents the state.~~

15 ~~(b) The employee's supervisor shall make the disclosed information available to an interested~~
 16 ~~person upon the person's request.~~

17 (5) A state officer or state employee may not engage in any activity, including lobbying, as defined
 18 in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the
 19 officer's or employee's job duties. THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT AN
 20 OFFICER OR EMPLOYEE FROM PERFORMING CHARITABLE FUNDRAISING ACTIVITIES IF APPROVED BY
 21 THE EMPLOYEE'S SUPERVISOR OR AUTHORIZED BY LAW.

22 ~~(3)(6)~~ A department head or a member of a quasi-judicial or rulemaking board may perform an
 23 official act notwithstanding the provisions of subsection (2)(e) if his participation is necessary to the
 24 administration of a statute and if he the person complies with the ~~voluntary~~ disclosure procedures under
 25 2-2-131.

26 ~~(4)(7)~~ Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
 27 unless ~~he~~ the member is also a full-time state public employee.

28 (8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon
 29 conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the
 30 county jail for not more than 6 months, or by both. A civil proceeding under [section ~~46~~ 15] or [section

1 22 21] does not preclude an action under this subsection."

2

3 **Section 8.** Section 2-2-125, MCA, is amended to read:

4 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission
5 of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ a public duty
6 subjecting the actor to disciplinary action by the employing entity.

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

8 (a) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business
9 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~
10 duties; or

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

14 (3) A Notwithstanding the provisions of subsection (2), a member of the governing body of a local
15 government may perform an official act ~~notwithstanding this section~~ when ~~his~~ the member's participation
16 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he complies with the voluntary~~
17 ~~disclosure procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of
18 impropriety."

19

20 **Section 9.** Section 2-2-131, MCA, is amended to read:

21 **"2-2-131. ~~Voluntary disclosure~~ Disclosure.** A public officer or public employee ~~may~~ shall, prior to
22 acting in a manner ~~which~~ that may impinge on ~~his fiduciary~~ public duty, including the award of a permit,
23 contract, or license, disclose the nature of ~~his~~ the private interest ~~which~~ that creates the conflict. ~~He~~ The
24 public officer or public employee shall make the disclosure in writing to the secretary of state, listing the
25 amount of ~~his financial~~ private interest, if any, the purpose and duration of ~~his~~ the person's services
26 rendered, if any, and the compensation received for the services or ~~such~~ other information ~~as~~ that is
27 necessary to describe ~~his~~ the interest. If ~~he~~ the public officer or public employee then performs the official
28 act involved, ~~he~~ the officer or employee shall state for the record the fact and summary nature of the
29 interest disclosed at the time of performing the act."

30

1 **Section 10.** Section 2-2-302, MCA, is amended to read:

2 **"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions --**
3 **publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of
4 any board, bureau, or commission or employee at the head of a department of this state or any political
5 subdivision of this state to appoint to any position of trust or emolument any person related or connected
6 by consanguinity within the fourth degree or by affinity within the second degree.

7 (2) The provisions of this section and 2-2-303 do not apply to:

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

9 (b) school district trustees if all the trustees, with the exception of any trustee who is related to
10 the person being appointed and who must abstain from voting for the appointment, approve the
11 appointment of a person related to a trustee;

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

14 (d) the renewal of an employment contract of a person who was initially hired before the member
15 of the board, bureau, or commission or the department head to whom ~~he~~ the person is related assumed the
16 duties of the office;

17 (e) the employment of election judges; or

18 (f) the employment of pages or temporary session staff by the legislature.

19 (3) Prior to the appointment of a person referred to in subsection (2), the school district trustees
20 shall give written notice of the time and place of their intended action. The notice must be published at
21 least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in
22 which the school district is located."
23

24 **Section 11.** Section 2-18-102, MCA, is amended to read:

25 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided
26 by law or collective bargaining agreement, the department shall:

27 (a) encourage and exercise leadership in the development of effective personnel administration
28 within the several agencies in the state and make available the facilities of the department to this end;

29 (b) foster and develop programs for recruitment and selection of capable persons for permanent,
30 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,

1 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation
 2 for productivity and retention in permanent status;

3 (c) foster, develop, and promote job sharing in agencies;

4 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
 5 policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

6 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
 7 state service;

8 (f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform
 9 any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts
 10 1 and 2.

11 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
 12 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
 13 that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards
 14 established by the department.

15 (3) The department shall develop and issue personnel policies for the state. Adequate public notice
 16 ~~shall~~ must be given to all interested parties of proposed changes or additions to the personnel policies
 17 before the date they are to take effect. If requested by any of the affected parties, the department shall
 18 schedule a public hearing on proposed changes or additions to the personnel policies before the date they
 19 are to take effect.

20 (4) The department shall develop model rules of conduct for all state employees based upon the
 21 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
 22 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
 23 rules appropriate to the specific circumstances of the agency."

24
 25 **Section 12.** Section 5-7-213, MCA, is amended to read:

26 **"5-7-213. Disclosure ~~by elected officials.~~** (1) (a) Prior to December 15 of each even-numbered
 27 year, each elected official, ~~or official-elect member of a quasi-judicial board or commission,~~ or department
 28 director shall file with the commissioner a business disclosure statement on a form provided by the
 29 commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this
 30 subsection (1)(a) during the same period.

1 **(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of**
 2 **the time that the candidate files for office, file a business disclosure statement with the commissioner on**
 3 **a form provided by the commissioner.**

4 **(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)**
 5 **is required to file the business disclosure statement at the earlier of the time of submission of the person's**
 6 **name for confirmation or the assumption of the office.**

7 **(2) The statement shall must provide the following information:**

8 **(a) the name, address, and type of business of such the individual and each member of such the**
 9 **individual's immediate family;**

10 **(b) each present or past employing entity from which benefits, including retirement benefits, are**
 11 **currently received by the individual and each member of the individual's immediate family;**

12 **(c) each business, firm, corporation, partnership, and other business or professional entity or trust**
 13 **in which the individual or a member of the individual's immediate family holds an interest;**

14 **(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual or a**
 15 **member of the individual's immediate family is an officer or director, regardless of whether or not the entity**
 16 **is organized for profit;**

17 **(e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and**

18 **(f)(E) all real property, other than a personal residence, in which the individual or a member of the**
 19 **individual's immediate family holds an interest. Real property may be described by general description. For**
 20 **this purpose "immediate family" includes the individual's spouse and minor children only.**

21 **(2)(3) No such An individual may not assume or continue to exercise the powers and duties of the**
 22 **office to which that individual has been elected or appointed until such the statement has been filed as**
 23 **provided in subsection (1).**

24 **(3)(4) The commissioner shall make such the business disclosure statements available to any**
 25 **individual upon request.**

26 **(5) For purposes of this section, "immediate family" means the individual's spouse and minor**
 27 **children."**

28
 29 **Section 13. Section 13-35-226, MCA, is amended to read:**

30 **"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in**

1 paying his employees the salary or wages due them, to include with their pay the name of any candidate
 2 or any political mottoes, devices, or arguments containing threats or promises {express or implied},
 3 calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an
 4 employer to exhibit in a place where his the employer's workers or employees may be working any handbill
 5 or placard containing any threat, promise, notice, or information that, in case any particular ticket or
 6 political party, organization, or candidate is elected, work in his the employer's place or establishment will
 7 cease, in whole or in part, or will be continued or increased; his the employer's place or establishment will
 8 be closed; the salaries or wages of his the workers or employees will be reduced or increased; or other
 9 threats or promises {express or implied}, intended or calculated to influence the political opinions or actions
 10 of his the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals,
 11 and public officers and employees.

12 (2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or
 13 oppose any political committee, the nomination or election of any person to public office, or the passage
 14 of a ballot issue.

15 (3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the
 16 nomination or election of any person to public office, or the passage of a ballot issue while on the job or
 17 at his the place of employment. However, ~~nothing in~~ subject to 2-2-121, this section is not intended to
 18 restrict the right of a public employee to express his personal political views.

19 (4) Any person who violates the provisions of this section shall be fined an amount not to exceed
 20 \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate
 21 offense."

22

23 ~~**NEW SECTION. Section 14. Filing tax returns.** (1) It is the responsibility of legislators, public~~
 24 ~~officers, and public employees to determine on an annual basis whether they are required to file tax returns~~
 25 ~~with the state of Montana and to file a complete return in a timely manner, if required.~~

26 ~~(2) The department of revenue shall provide to the commissioner of political practices information~~
 27 ~~necessary to determine compliance with this section, whether or not the information is confidential. The~~
 28 ~~commissioner of political practices shall keep the information confidential unless it is necessary to prove~~
 29 ~~that a violation of this section has occurred.~~

30

1 **NEW SECTION. Section 14. Ethics committees.** (1) Each house of the legislature shall establish
2 an ethics committee. The committee must consist of two members of each political party. The committees
3 may meet jointly. Each committee shall educate members concerning the provisions of this part concerning
4 legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The
5 joint committee may consider matters affecting the entire legislature.

6 (2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for
7 enforcement of the provisions of this part concerning legislators.

8
9 **NEW SECTION. Section 15. Enforcement for state officers, LEGISLATORS, and state employees.**
10 (1) (a) A person alleging a violation of this part by a state officer, LEGISLATOR, or state employee may
11 file a complaint with the commissioner of political practices. THE COMMISSIONER DOES NOT HAVE
12 JURISDICTION FOR A COMPLAINT CONCERNING A LEGISLATOR IF A LEGISLATIVE ACT IS INVOLVED
13 IN THE COMPLAINT. The commissioner shall request any information necessary to make a determination
14 from the complainant or the person who is the subject of the complaint and may issue subpoenas.

15 (b) Unless the complaint is referred to the county attorney under subsection (1)(c), the
16 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
17 4, part 6. The commissioner shall issue a decision based upon the record established before the
18 commissioner.

19 (c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner
20 shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

21 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may
22 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was
23 committed by a state employee, the commissioner may also recommend that the employing agency
24 discipline the employee. The commissioner may assess the costs of the proceeding against the person
25 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
26 employee if the commissioner determines that a violation did occur.

27 (3) The decision of the commissioner may be appealed to the ethics commission as provided in
28 [section ~~47~~ 16].

29 **(4) EXCEPT FOR RECORDS MADE PUBLIC IN THE COURSE OF A HEARING, A COMPLAINT AND**
30 **RECORDS OBTAINED OR PREPARED BY THE COMMISSIONER IN CONNECTION WITH AN INVESTIGATION**

1 OR COMPLAINT ARE NOT OPEN FOR PUBLIC INSPECTION. THE COMMISSIONER'S DECISION ISSUED
 2 AFTER A HEARING IS A PUBLIC RECORD OPEN TO INSPECTION.

3 (5) THE COMMISSIONER MAY ADOPT RULES TO CARRY OUT THE RESPONSIBILITIES AND
 4 DUTIES ASSIGNED BY THIS PART.

5
 6 NEW SECTION. Section 16. Administrative appeal. (1) The ethics commission shall provide a
 7 hearing on the record, when requested in writing by a party to an issue that has been decided by the
 8 commissioner of political practices. The appeal must be requested within 60 days of a decision by the
 9 commissioner.

10 (2) The hearing is limited to matters contained in the record established before the commissioner.
 11 The commission may affirm, modify, or reverse a decision of the commissioner.

12 (3) A decision is rendered when signed by three or more commission members subscribing to the
 13 decision and must be issued within 30 calendar days after submission of the request for an opinion.

14 (4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award
 15 costs and fees to the prevailing party.

16
 17 NEW SECTION. Section 17. Ethics commission. (1) There is an ethics commission attached to
 18 the office of the commissioner of political practices for administrative purposes only.

19 (2) The commission consists of five members. The members are appointed in the same manner
 20 as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as
 21 provided in subsection (6) of this section. A member of the commission must be a citizen of the United
 22 States and a resident of Montana. A member of the commission may not be a:

23 (a) public official;

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

26 (c) candidate;

27 (d) lobbyist or lobbyist's principal; or

28 (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

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

- 1 (a) One member shall serve a term of 1 year.
- 2 (b) One member shall serve a term of 2 years.
- 3 (c) One member shall serve a term of 3 years.
- 4 (d) Two members shall serve terms of 4 years.
- 5 (4) An individual may not serve more than two consecutive terms as a member of the commission.

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

7 (5) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall
8 appoint a successor.

9 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than
10 that of the original appointing authority, the majority or minority leader in the same house who is of the
11 same political party as the appointing authority that made the original appointment of the commissioner
12 whose position is vacated shall appoint the successor.

13 (6) The presiding officer and vice presiding officer of the commission must be elected by a majority
14 of the members of the commission. The presiding officer and vice presiding officer shall serve in those
15 positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission.
16 The vice presiding officer presides in the absence or disability of the presiding officer.

17 (7) A member of the commission may not receive a salary but is entitled to expenses as provided
18 in Title 2, chapter 18, part 5.

19

20 **NEW SECTION. Section 18. Meetings -- quorum.** The ethics commission shall meet at the call of
21 the presiding officer or a majority of its members when an appeal from a decision of the commissioner of
22 political practices UNDER THIS PART is requested. A quorum consists of three or more members. An
23 affirmative vote of three or more members is necessary for the issuance of a decision.

24

25 **NEW SECTION. Section 19. Prohibition on political activity by commission members.** A member
26 of the ethics commission may not participate in political activity or in a political campaign during the term
27 of office. A member of the commission may not:

- 28 (1) make a financial contribution to a candidate;
- 29 (2) make a financial contribution to a political committee; or
- 30 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

1 **NEW SECTION. Section 20. Prohibition on lobbying activity.** A member of the ethics commission
2 may not be a registered lobbyist or participate in lobbying activities that would require the individual to
3 register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are
4 permitted under state law.

5
6 **NEW SECTION. Section 21. Enforcement for local government.** (1) Except as provided in
7 subsection (5), a person alleging a violation of this part by a local government officer or local government
8 employee shall notify the county attorney of the county where the local government is located. The county
9 attorney shall request from the complainant or the person who is the subject of the complaint any
10 information necessary to make a determination concerning the validity of the complaint.

11 (2) If the county attorney determines that the complaint is justified, the county attorney may bring
12 an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county
13 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal
14 charges against the officer or employee.

15 (3) If the county attorney declines to bring an action under this section, the person alleging a
16 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more
17 than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees
18 against the person bringing the charges if the court determines that a violation did not occur or against the
19 officer or employee if the court determines that a violation did occur. The court may impose sanctions if
20 the court determines that the action was frivolous or intended for harassment.

21 (4) The employing entity of a local government employee may take disciplinary action against an
22 employee for a violation of this part.

23 (5) (a) A local government may establish a three-member panel to review complaints alleging
24 violations of this part by officers or employees of the local government. The local government shall
25 establish procedures and rules for the panel. The members of the panel may not be officers or employees
26 of the local government. The panel shall review complaints and may refer to the county attorney
27 complaints that appear to be substantiated.

28 (b) In a local government that establishes a panel under this subsection, a complaint must be
29 referred to the panel prior to making a complaint to the county attorney.

30 (6) For purposes of this section, "local government" means a county, an incorporated city or town,

1 a consolidated government, or a school district.

2

3 NEW SECTION. **Section 22. Repealer.** Section 2-2-132, MCA, is repealed.

4

5 NEW SECTION. **Section 23. Codification instruction.** [Sections 14 through ~~22~~ 21] are intended
6 to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part
7 1, apply to [sections 14 through ~~22~~ 21].

8

9 NEW SECTION. **Section 24. Code commissioner instruction.** The code commissioner shall
10 renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

11

12 NEW SECTION. **Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

16

17 NEW SECTION. **Section 26. Effective date.** [This act] is effective July 1, 1995.

18

-END-