

1 *House* BILL NO. *394*

2 INTRODUCED BY *GRINDE Roney Beaudry Menden Rose Jahnke*
3 *Knox Silliman Hollander Kernan Anderson ORR Curtiss*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING LOBBYING BY STATE AGENCIES; REQUIRING *Cobb*
5 APPROVAL BY THE GOVERNOR AND NOTICE TO THE LEGISLATIVE FINANCE COMMITTEE BEFORE A
6 STATE AGENCY MAY ENGAGE IN FEDERAL LOBBYING; REQUIRING NOTICE TO THE LEGISLATIVE *Booker*
7 FINANCE COMMITTEE BEFORE A STATE AGENCY MAY LOBBY THE STATE LEGISLATURE; REQUIRING *Smith*
8 ACTION AND REPORTS BY THE LEGISLATIVE AUDITOR; AND AMENDING SECTION 5-7-102, MCA."

9 *Storall Bergerson DENNY Hollings Mark Waters Miller Bantled*
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Bitney Oks Bannard*

11 *Rehner Silliman Ketyerberg McFee Wells Simpkins Folsom*
12 *Soft Sullivan*

NEW SECTION. Section 1. Federal lobbying by state agencies -- approval of governor and notice
13 required -- notice of state lobbying required -- definitions. (1) Except as otherwise provided by this section,
14 a state employee, public official, or other person may not engage in lobbying for hire of the U. S. congress
15 or an agency of the United States on behalf of a state agency unless the lobbying has been approved in
16 writing by the governor and written notice has been given to the legislative finance committee pursuant
17 to subsection (2).

- 18 (2) The notice to the legislative finance committee required by subsection (1) must:
- 19 (a) contain a detailed description of:
- 20 (i) the purpose of the lobbying;
- 21 (ii) the method by which the lobbying will be carried out; and
- 22 (iii) the period of time over which the lobbying will be carried out;
- 23 (b) identify the amount and source of funding for the lobbying;
- 24 (c) estimate the number of personnel needed for the lobbying and the amount of time required for
- 25 each individual;
- 26 (d) specify whether the personnel identified pursuant to subsection (2)(c) are public employees,
- 27 whether full or part time, temporary or permanent, or are independent contractors lobbying for hire; and
- 28 (e) include a copy of the written approval of the governor required by subsection (1).

29 (3) Before engaging in lobbying for hire of the legislature, through a state employee, public official,
30 or other person, a state agency shall give written notice of the lobbying to the legislative finance



1 committee. The notice must include those matters provided in subsection (2), except the approval of the
2 governor provided in subsection (2)(e), as those matters pertain to lobbying for hire of the legislature.

3 (4) Subsections (1) through (3) do not apply to:

4 (a) lobbying for hire when specifically required by state or federal law;

5 (b) lobbying as defined by 5-7-102(6)(b);

6 (c) a state employee or public official who engages in lobbying on the employee's or official's own
7 behalf while in a leave status or without receiving compensation or reimbursement of any kind;

8 (d) lobbying by an elected official, employee, or independent contractor of a political subdivision,
9 school district, or special taxing or use district;

10 (e) a member or staff member of the legislature or the U.S. congress; or

11 (f) written or oral testimony given before a committee or other body of the legislature or the U.S.
12 congress by a state employee, public official, or other person on behalf of a state agency.

13 (5) The following definitions supplement the definitions provided in 5-7-102 and apply to this
14 section:

15 (a) "Agency of the United States" means a department, office, bureau, commission, board,
16 authority, or other program of the United States.

17 (b) "Lobbying" includes the following practices when engaged in by a state employee, public
18 official, or other person on behalf of a state agency:

19 (i) the practice of requesting, encouraging, organizing, or promoting other persons to engage in
20 lobbying;

21 (ii) the development or design of a proposal or program intended to be implemented through
22 legislation; or

23 (iii) lobbying a member or staff member of the legislature or the U.S. congress.

24 (c) "Lobbying for hire" includes lobbying by an individual who is reimbursed only for the individual's
25 living and travel expenses, which together are less than \$1,000 in a calendar year.

26 (d) "State agency" means a department, division, office, bureau, commission, board, or other entity
27 of state government, including the university system.

28 (e) "State employee" means an employee of a state agency.

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30 **NEW SECTION. Section 2. Legislative auditor to review lobbying expenses in audits of state**

1 **agencies.** The legislative auditor shall, in the course of regular audits of state agencies, review reports,
2 agency records, and other documents, including reports made by the commissioner pursuant to 5-7-207
3 and reports filed with the commissioner pursuant to 5-7-208, to determine compliance with [section 1].
4 The legislative auditor shall report the determinations to the legislative audit committee created by 5-13-201
5 and provide a copy of those determinations to the legislative fiscal division created by 5-12-301.

6

7 **Section 3.** Section 5-7-102, MCA, is amended to read:

8 **"5-7-102. Definitions.** ~~The~~ Unless the context requires otherwise and subject to [section 1], in this
9 chapter, the following definitions apply in this chapter:

10 (1) "Business" means:

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

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

16 (2) "Commissioner" means the commissioner of political practices.

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

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

22 (5) "Individual" means a human being.

23 (6) "Lobbying" means:

24 (a) the practice of promoting or opposing the introduction or enactment of legislation before the
25 legislature or the members of the legislature by a person other than a member of the legislature or a public
26 official; and

27 (b) the practice of promoting or opposing official action by any public official.

28 (7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a
29 principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an
30 individual is reimbursed only for his personal living and travel expenses, which together are less than

1 \$1,000 ~~per~~ in a calendar year, that individual is not considered to be lobbying for hire.

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

3 (b) Lobbyist does not include:

4 (i) an individual acting solely on ~~his~~ the individual's own behalf; or

5 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have
6 personal contact involving lobbying with a public official on behalf of ~~his~~ the individual's principal.

7 (c) ~~Nothing in this~~ This section deprives ~~deprives~~ does not deprive an individual who is not lobbying for hire
8 of the constitutional right to communicate with public officials.

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

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

12 (a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or
13 reimbursement for expenses, excluding personal living expenses; or

14 (b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited
15 to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

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

18 (12) "Principal" means a person who employs a lobbyist.

19 (13) "Public official" means an individual, elected or appointed, acting in ~~his~~ an official capacity for
20 the state government. The term does not include those acting in a judicial or quasi-judicial capacity or
21 performing ministerial acts.

22 (14) "Unprofessional conduct" means:

23 (a) violating any of the provisions of this chapter;

24 (b) instigating action by a public official for the purpose of obtaining employment;

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

27 (i) promising financial support; or

28 (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a
29 principal, or a legislator; or

30 (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official

1 matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

2

3 NEW SECTION. **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
4 as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [sections 1 and
5 2].

6

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0394, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill regulating lobbying by state agencies, and requiring approval by the Governor and notice to the Legislative Finance Committee before a state agency may engage in federal lobbying.

ASSUMPTIONS:

1. The additional time required to request approval and notify the legislature, can be absorbed by all line agencies.
2. The Governor's Office would require .25 FTE (grade 12) to receive, track and respond to the requests for approval. The FTE cost would be \$6,900 in FY99, and because the bill's effective date is October 1, 1997, the FY98 cost would be \$5,200. Operating expenses of \$2,500/year would also be needed.

FISCAL IMPACT:

Expenditures:


	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Governor's Office:		
FTE	.19	.25
Personal services	\$5,200	\$6,900
Operating expense	<u>2,500</u>	<u>2,500</u>
Total	\$7,700	\$9,400

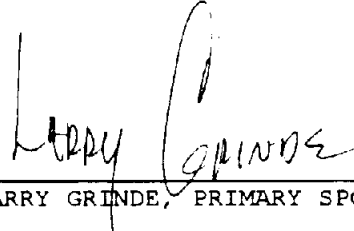
Funding:

General fund (01)	\$7,700	\$9,400
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TECHNICAL NOTES:

If the Judiciary is one of the agencies included in this bill and, therefore, they have to request permission from the Governor, this may pose a separation of power issue.


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


LARRY GRINDE, PRIMARY SPONSOR DATE

Fiscal Note for HB0394, as introduced

HB 394

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4 STOVALL, BERGMAN, DENNY, BOHLINGER, MASOLO, WALTERS, MILLS, BANKHEAD, WISEMAN,
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11 STATE AGENCY MAY ENGAGE IN FEDERAL LOBBYING; REQUIRING NOTICE TO THE LEGISLATIVE
12 FINANCE COMMITTEE BEFORE A STATE AGENCY MAY LOBBY THE STATE LEGISLATURE; REQUIRING
13 ACTION AND REPORTS BY THE LEGISLATIVE AUDITOR; AND AMENDING SECTION 5-7-102, MCA."

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

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17 NEW SECTION. **Section 1. Federal lobbying by state agencies -- approval of governor and notice**
18 **required -- notice of state lobbying required -- RESTRICTIONS -- definitions.** (1) Except as otherwise
19 provided by this section, a state employee, public official, or other person may not engage in lobbying for
20 hire of the U. S. congress or an agency of the United States on behalf of a state agency unless the lobbying
21 has been approved in writing by the governor OR OTHER APPROPRIATE ELECTED STATE OFFICER and
22 written notice has been given to the legislative finance committee pursuant to subsection (2).

23 (2) (A) The notice to the legislative finance committee required by subsection (1) must:

24 ~~(a)~~(I) contain a detailed description of:

25 ~~(i)~~(A) the purpose of the lobbying;

26 ~~(ii)~~(B) the method by which the lobbying will be carried out; and

27 ~~(iii)~~(C) the period of time over which the lobbying will be carried out;

28 ~~(b)~~(II) identify the amount and source of funding for the lobbying;

29 ~~(c)~~(III) estimate the number of personnel needed for the lobbying and the amount of time required
30 for each individual;

1 ~~(d)~~(IV) specify whether the personnel identified pursuant to subsection ~~(2)(e)~~ (2)(A)(III) are public
 2 employees, whether full or part time, temporary or permanent, or are independent contractors lobbying for
 3 hire; and

4 ~~(e)~~(V) include a copy of the written approval of the governor required by subsection (1).

5 (B) THE NOTICE AND INFORMATION UNDER SUBSECTION (2)(A) MAY BE SUPPLEMENTED UPON
 6 COMPLETION OF A LOBBYING ACTIVITY.

7 (3) Before engaging in lobbying for hire of the legislature, through a state employee, public official,
 8 or other person, a state agency shall give written notice of the lobbying to the legislative finance
 9 committee. The notice must include those matters provided in subsection (2), except the approval of the
 10 governor provided in subsection ~~(2)(e)~~ (2)(A)(V), as those matters pertain to lobbying for hire of the
 11 legislature. UNLESS LICENSED PURSUANT TO 5-7-103, A STATE EMPLOYEE MAY NOT USE STATE TIME,
 12 EQUIPMENT, SUPPLIES, OR FACILITIES TO SUPPORT OR OPPOSE STATE OR FEDERAL LEGISLATION OR
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 18 behalf while in a leave status or without receiving compensation or reimbursement of any kind;

19 (d) lobbying by an elected official, employee, or independent contractor of a political subdivision,
 20 school district, or special taxing or use district;

21 (e) a member or staff member of the legislature, THE JUDICIARY, or the U.S. congress; or

22 (f) written or oral testimony given before a committee or other body of the legislature or the U.S.
 23 congress by a state employee, public official, or other person on behalf of a state agency.

24 (5) The following definitions supplement the definitions provided in 5-7-102 and apply to this
 25 section:

26 (a) "Agency of the United States" means a department, office, bureau, commission, board,
 27 authority, or other program of the United States.

28 (b) "Lobbying" includes the following practices when engaged in by a state employee, public
 29 official, or other person on behalf of a state agency:

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1 lobbying;

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3 legislation; or

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5 (c) "Lobbying for hire" includes lobbying by an individual who is reimbursed only for the individual's
6 living and travel expenses, which together are ~~less than~~ \$1,000 OR MORE in a calendar year.

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11 **NEW SECTION.** **Section 2. Legislative auditor to review lobbying expenses in audits of state**
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13 agency records, and other documents, including reports made by the commissioner pursuant to 5-7-207
14 and reports filed with the commissioner pursuant to 5-7-208, to determine compliance with [section 1].
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19 **"5-7-102. Definitions.** ~~The~~ Unless the context requires otherwise and subject to [section 1], in this
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27 (2) "Commissioner" means the commissioner of political practices.

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1 the electors of Montana or a state district office, including but not limited to legislators, public service
2 commissioners, and district court judges. The term "official-elect" also applies to the offices.

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4 (6) "Lobbying" means:

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11 (7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a
12 principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an
13 individual is reimbursed only for his personal living and travel expenses, which together are less than
14 \$1,000 per in a calendar year, that individual is not considered to be lobbying for hire.

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

16 (b) Lobbyist does not include:

17 (i) an individual acting solely on ~~his~~ the individual's own behalf; or

18 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have
19 personal contact involving lobbying with a public official on behalf of ~~his~~ the individual's principal.

20 (c) ~~Nothing in this~~ This section deprives does not deprive an individual who is not lobbying for hire
21 of the constitutional right to communicate with public officials.

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

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

25 (a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or
26 reimbursement for expenses, excluding personal living expenses; or

27 (b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited
28 to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

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

1 (12) "Principal" means a person who employs a lobbyist.

2 (13) "Public official" means an individual, elected or appointed, acting in ~~his~~ an official capacity for
3 the state government. The term does not include those acting in a judicial or quasi-judicial capacity or
4 performing ministerial acts.

5 (14) "Unprofessional conduct" means:

6 (a) violating any of the provisions of this chapter;

7 (b) instigating action by a public official for the purpose of obtaining employment;

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

10 (i) promising financial support; or

11 (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a
12 principal, or a legislator; or

13 (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official
14 matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."
15

16 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
17 as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [sections 1 and
18 2].

19 -END-

1 HOUSE BILL NO. 394

2 INTRODUCED BY GRINDE, RANEY, BEAUDRY, MESAROS, ROSE, SIMON, AHNER, KNOX, SLITER,
3 HOLLAND, KEENAN, ANDERSON, ORR, CURTISS, COBB, BOOKOUT-REINICKE, SMITH,
4 COCCHIARELLA, STOVALL, BERGMAN, DENNY, BOHLINGER, MASOLO, WALTERS, MILLS,
5 BANKHEAD, WISEMAN, LAWSON, GRADY, BITNEY, OHS, BRAINARD, REHBEIN, ELLIS, KITZENBERG,
6 MCGEE, WELLS, SIMPKINS, FELAND, MENAHAN, SOFT, QUILICI, DOWELL, HEAVY RUNNER, MOOD,
7 ADAMS, SCHMIDT, WILSON

8
9 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING LOBBYING BY STATE AGENCIES; ~~REQUIRING~~
10 ~~APPROVAL BY THE GOVERNOR, BOARD OF REGENTS, OR OTHER APPROPRIATE ELECTED STATE~~
11 ~~OFFICIAL AND NOTICE TO THE LEGISLATIVE FINANCE COMMITTEE BEFORE A STATE AGENCY MAY~~
12 ~~ENGAGE IN FEDERAL LOBBYING;~~ REQUIRING NOTICE TO THE LEGISLATIVE FINANCE COMMITTEE
13 ~~BEFORE WHEN A STATE AGENCY MAY LOBBY~~ LOBBIES THE STATE LEGISLATURE; PROVIDING THAT
14 DEPARTMENT DIRECTORS, STATE EMPLOYEES, AND APPOINTED PUBLIC OFFICIALS MAY NOT ENGAGE
15 IN LOBBYING FOR HIRE WITHOUT A LICENSE ISSUED BY THE COMMISSIONER OF POLITICAL
16 PRACTICES; PROVIDING FOR AN ADMINISTRATIVE PENALTY AND ADMINISTRATIVE ENFORCEMENT;
17 REQUIRING ACTION AND REPORTS BY THE LEGISLATIVE AUDITOR; AND AMENDING SECTION 5-7-102,
18 MCA."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 NEW SECTION. Section 1. Federal lobbying LOBBYING by state agencies -- approval of governor
23 and notice required -- notice of state lobbying required -- RESTRICTIONS -- LICENSURE REQUIRED --
24 definitions. (1) Except as otherwise provided by this section, a state employee, public official, or other
25 person may not engage in lobbying for hire of the U. S. congress or an agency of the United States on
26 behalf of a state agency unless the lobbying has been approved in writing by the governor, BOARD OF
27 REGENTS, OR OTHER APPROPRIATE ELECTED STATE OFFICER and written notice has been given to the
28 legislative finance committee pursuant to subsection (2) EXCEPT AS OTHERWISE PROVIDED BY THIS
29 SECTION, A STATE AGENCY EMPLOYING A DIRECTOR, A STATE EMPLOYEE WHO IS NOT AN ELECTED
30 PUBLIC OFFICIAL, OR OTHER PERSON WHO IS NOT AN ELECTED PUBLIC OFFICIAL TO ENGAGE IN

1 LOBBYING FOR HIRE ON BEHALF OF THE AGENCY SHALL, IN ADDITION TO OTHER APPLICABLE
 2 REPORTING REQUIREMENTS OF THIS CHAPTER, GIVE NOTICE TO THE LEGISLATIVE FINANCE
 3 COMMITTEE AS REQUIRED BY SUBSECTION (2). THE NOTICE MUST BE PROVIDED TO THE LEGISLATIVE
 4 FISCAL DIVISION ON THE 15TH OF EACH MONTH DURING A LEGISLATIVE SESSION TO REPORT
 5 LOBBYING EXPENDITURES BY THE AGENCY FOR THE PREVIOUS MONTH AND AT THE END OF EACH
 6 CALENDAR QUARTER IF THE LEGISLATURE IS NOT IN SESSION TO REPORT LOBBYING EXPENDITURES
 7 FOR THAT CALENDAR QUARTER. THE LEGISLATIVE FISCAL DIVISION SHALL PROVIDE COPIES OF THE
 8 REPORTS TO THE LEGISLATIVE FINANCE COMMITTEE.

9 (2) (A) The notice to the legislative finance committee required by subsection (1) must:

10 ~~(a)(I)~~ contain a detailed description of:

11 ~~(i)(A)~~ the purpose of the lobbying;

12 ~~(ii)(B)~~ the method by which the lobbying ~~will be~~ HAS BEEN carried out; and

13 ~~(iii)(C)~~ the period of time over which the lobbying ~~will be~~ HAS BEEN carried out;

14 ~~(b)(II)~~ identify the amount and source of funding for the lobbying;

15 ~~(c)(III)~~ estimate the number of personnel ~~needed~~ USED for the lobbying and the amount of time
 16 required for each individual;

17 ~~(d)(IV)~~ specify whether the personnel identified pursuant to subsection ~~(2)(c)~~ (2)(A)(III) are public
 18 employees, whether full or part time, temporary or permanent, or are independent contractors lobbying for
 19 hire; and

20 ~~(e)(V)~~ include a copy of the written approval ~~of the governor~~ required by subsection (1).

21 (B) THE NOTICE AND INFORMATION UNDER SUBSECTION (2)(A) MAY BE SUPPLEMENTED UPON
 22 COMPLETION OF A LOBBYING ACTIVITY.

23 (3) ~~Before engaging in lobbying for hire of the legislature, through a state employee, public official,~~
 24 ~~or other person, a state agency shall give written notice of the lobbying to the legislative finance~~
 25 ~~committee. The notice must include those matters provided in subsection (2), except the approval of the~~
 26 ~~governor provided in subsection (2)(c) (2)(A)(V), as those matters pertain to lobbying for hire of the~~
 27 ~~legislature. UNLESS LICENSED PURSUANT TO 5-7-103, A DIRECTOR OR A STATE EMPLOYEE WHO IS~~
 28 NOT AN ELECTED PUBLIC OFFICIAL MAY NOT USE STATE TIME, EQUIPMENT, SUPPLIES, OR FACILITIES
 29 TO SUPPORT OR OPPOSE STATE OR FEDERAL LEGISLATION OR URGE OTHERS TO SUPPORT OR
 30 OPPOSE STATE OR FEDERAL LEGISLATION.

1 (4) Subsections (1) through (3) do not apply to:

2 (a) lobbying for hire when specifically required by state or federal law;

3 (b) lobbying as defined by 5-7-102(6)(b);

4 (c) A DIRECTOR OR a state employee ~~or~~ WHO IS NOT AN ELECTED public official who engages
5 in lobbying on the employee's or official's own behalf while in a leave status or without receiving
6 compensation or reimbursement of any kind;

7 (d) lobbying by an elected official, employee, or independent contractor of a political subdivision,
8 school district, or special taxing or use district;

9 (e) a member or staff member of the legislature, OR THE JUDICIARY, ~~or the U.S. congress;~~ or

10 (f) written or oral testimony given before a committee or other body of the legislature ~~or the U.S.~~
11 ~~congress~~ by a DIRECTOR, A state employee WHO IS NOT AN ELECTED PUBLIC OFFICIAL, ~~public official,~~
12 or other person WHO IS NOT AN ELECTED PUBLIC OFFICIAL on behalf of a state agency.

13 (5) The following definitions supplement the definitions provided in 5-7-102 and apply to this
14 section:

15 (a) ~~"Agency of the United States" means a department, office, bureau, commission, board,~~
16 ~~authority, or other program of the United States.~~ "DIRECTOR" HAS THE MEANING GIVEN IN 2-15-102.

17 (b) "Lobbying" includes the following practices when engaged in by a DIRECTOR, A state employee
18 WHO IS NOT AN ELECTED PUBLIC OFFICIAL, ~~public official,~~ or other person WHO IS NOT AN ELECTED
19 PUBLIC OFFICIAL on behalf of a state agency:

20 (i) the practice of requesting, encouraging, organizing, or promoting other persons to engage in
21 lobbying; OR

22 (ii) the development or design of a proposal or program intended to be implemented through
23 legislation; ~~or~~

24 ~~(iii) lobbying a member or staff member of the legislature or the U.S. congress.~~

25 (c) "Lobbying for hire" includes lobbying by an individual who is reimbursed only for the individual's
26 living and travel expenses, which together are ~~less than~~ \$1,000 OR MORE in a calendar year.

27 (d) "State agency" means a department, division, office, bureau, commission, board, or other entity
28 of state government, including the university system.

29 (e) "State employee" means an employee of a state agency.

30

1 **NEW SECTION. Section 2. Legislative auditor to review lobbying expenses in audits of state**
 2 **agencies.** The legislative auditor shall, in the course of regular audits of state agencies, review reports,
 3 agency records, and other documents, including reports made by the commissioner pursuant to 5-7-207
 4 and reports filed with the commissioner pursuant to 5-7-208, to determine compliance with [section 1].
 5 The legislative auditor shall report the determinations to the legislative audit committee created by 5-13-201
 6 and provide a copy of those determinations to the legislative fiscal division created by 5-12-301.

7
 8 **Section 3.** Section 5-7-102, MCA, is amended to read:

9 **"5-7-102. Definitions.** ~~The~~ Unless the context requires otherwise and subject to [section 1], in this
 10 chapter, the following definitions apply ~~in this chapter~~:

11 (1) "Business" means:

12 (a) a holding or interest whose fair market value is greater than \$1,000, in a corporation,
 13 partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding
 14 company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit,
 15 but does not include nonprofit organizations; and

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

17 (2) "Commissioner" means the commissioner of political practices.

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

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

23 (5) "Individual" means a human being.

24 (6) "Lobbying" means:

25 (a) the practice of promoting or opposing the introduction or enactment of legislation before the
 26 legislature or the members of the legislature by a person other than a member of the legislature or a public
 27 official; and

28 (b) the practice of promoting or opposing official action by any public official.

29 (7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a
 30 principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an

1 individual is reimbursed only for ~~his~~ personal living and travel expenses, which together are less than
 2 \$1,000 ~~per~~ in a calendar year, that individual is not considered to be lobbying for hire.

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

4 (b) Lobbyist does not include:

5 (i) an individual acting solely on ~~his~~ the individual's own behalf; or

6 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have
 7 personal contact involving lobbying with a public official on behalf of ~~his~~ the individual's principal.

8 (c) ~~Nothing in this~~ This section does not deprive ~~deprives~~ does not deprive an individual who is not lobbying for hire
 9 of the constitutional right to communicate with public officials.

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

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

13 (a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or
 14 reimbursement for expenses, excluding personal living expenses; or

15 (b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited
 16 to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

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

19 (12) "Principal" means a person who employs a lobbyist.

20 (13) "Public official" means an individual, elected or appointed, acting in ~~his~~ an official capacity for
 21 the state government. The term does not include those acting in a judicial or quasi-judicial capacity or
 22 performing ministerial acts.

23 (14) "Unprofessional conduct" means:

24 (a) violating any of the provisions of this chapter;

25 (b) instigating action by a public official for the purpose of obtaining employment;

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

28 (i) promising financial support; or

29 (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a
 30 principal, or a legislator; or

1 (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official
2 matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

3
4 NEW SECTION. SECTION 4. ADMINISTRATIVE PENALTY AND PROCEEDING. IN ADDITION TO
5 THE PENALTIES PROVIDED IN 5-7-305, THE COMMISSIONER MAY SEEK AN ADMINISTRATIVE PENALTY
6 OF NOT LESS THAN \$50 OR MORE THAN \$1,000 FOR A VIOLATION OF [SECTION 1]. THE PENALTY
7 MUST, UNLESS COLLECTED EARLIER BY SETTLEMENT, BE DETERMINED AND COLLECTED BY A
8 HEARING HELD PURSUANT TO THE CONTESTED CASE PROCEDURES OF THE ADMINISTRATIVE
9 PROCEDURE ACT. THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

10
11 NEW SECTION. Section 5. Codification instruction. [Sections 1 and, 2, AND 4] are intended to
12 be codified as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to
13 [sections 1 and, 2, AND 4].

14 -END-

1 HOUSE BILL NO. 394

2 INTRODUCED BY GRINDE, RANEY, BEAUDRY, MESAROS, ROSE, SIMON, AHNER, KNOX, SLITER,
 3 HOLLAND, KEENAN, ANDERSON, ORR, CURTISS, COBB, BOOKOUT-REINICKE, SMITH,
 4 COCCHIARELLA, STOVALL, BERGMAN, DENNY, BOHLINGER, MASOLO, WALTERS, MILLS,
 5 BANKHEAD, WISEMAN, LAWSON, GRADY, BITNEY, OHS, BRAINARD, REHBEIN, ELLIS, KITZENBERG,
 6 MCGEE, WELLS, SIMPKINS, FELAND, MENAHAN, SOFT, QUILICI, DOWELL, HEAVY RUNNER, MOOD,
 7 ADAMS, SCHMIDT, WILSON

8
 9 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING LOBBYING BY STATE AGENCIES; ~~REQUIRING~~
 10 ~~APPROVAL BY THE GOVERNOR, BOARD OF REGENTS, OR OTHER APPROPRIATE ELECTED STATE~~
 11 ~~OFFICIAL AND NOTICE TO THE LEGISLATIVE FINANCE COMMITTEE BEFORE A STATE AGENCY MAY~~
 12 ~~ENGAGE IN FEDERAL LOBBYING; REQUIRING NOTICE TO THE LEGISLATIVE FINANCE COMMITTEE~~
 13 ~~BEFORE WHEN A STATE AGENCY MAY LOBBY LOBBIES~~ THE STATE LEGISLATURE; PROVIDING THAT
 14 ~~DEPARTMENT DIRECTORS, STATE EMPLOYEES, AND APPOINTED PUBLIC OFFICIALS MAY NOT ENGAGE~~
 15 ~~IN LOBBYING FOR HIRE WITHOUT A LICENSE ISSUED BY THE COMMISSIONER OF POLITICAL~~
 16 ~~PRACTICES; PROVIDING FOR AN ADMINISTRATIVE PENALTY AND ADMINISTRATIVE ENFORCEMENT;~~
 17 REQUIRING ACTION AND REPORTS BY THE LEGISLATIVE AUDITOR; AND AMENDING SECTION 5-7-102,
 18 MCA."

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
 22 NEW SECTION. Section 1. ~~Federal lobbying~~ LOBBYING by state agencies -- ~~approval of governor~~
 23 ~~and notice required~~ -- notice of state lobbying required -- RESTRICTIONS -- LICENSURE REQUIRED --
 24 definitions. (1) ~~Except as otherwise provided by this section, a state employee, public official, or other~~
 25 ~~person may not engage in lobbying for hire of the U. S. congress or an agency of the United States on~~
 26 ~~behalf of a state agency unless the lobbying has been approved in writing by the governor, BOARD OF~~
 27 ~~REGENTS, OR OTHER APPROPRIATE ELECTED STATE OFFICER and written notice has been given to the~~
 28 ~~legislative finance committee pursuant to subsection (2)~~ EXCEPT AS OTHERWISE PROVIDED BY THIS
 29 SECTION, A STATE AGENCY EMPLOYING A DIRECTOR, A STATE EMPLOYEE WHO IS NOT AN ELECTED
 30 PUBLIC OFFICIAL, OR OTHER PERSON WHO IS NOT AN ELECTED PUBLIC OFFICIAL TO ENGAGE IN

1 LOBBYING FOR HIRE ON BEHALF OF THE AGENCY SHALL, IN ADDITION TO OTHER APPLICABLE
 2 REPORTING REQUIREMENTS OF THIS CHAPTER, GIVE NOTICE TO THE LEGISLATIVE FINANCE
 3 COMMITTEE AS REQUIRED BY SUBSECTION (2). THE NOTICE MUST BE PROVIDED TO THE LEGISLATIVE
 4 FISCAL DIVISION ON THE 15TH OF EACH MONTH DURING A LEGISLATIVE SESSION TO REPORT
 5 LOBBYING EXPENDITURES BY THE AGENCY FOR THE PREVIOUS MONTH AND AT THE END OF EACH
 6 CALENDAR QUARTER IF THE LEGISLATURE IS NOT IN SESSION TO REPORT LOBBYING EXPENDITURES
 7 FOR THAT CALENDAR QUARTER. THE LEGISLATIVE FISCAL DIVISION SHALL PROVIDE COPIES OF THE
 8 REPORTS TO THE LEGISLATIVE FINANCE COMMITTEE.

9 (2) (A) The notice to the legislative finance committee required by subsection (1) must:
 10 ~~(a)(I)~~ contain a detailed description of:
 11 ~~(i)(A)~~ the purpose of the lobbying;
 12 ~~(ii)(B)~~ the method by which the lobbying ~~will be~~ HAS BEEN carried out; and
 13 ~~(iii)(C)~~ the period of time over which the lobbying ~~will be~~ HAS BEEN carried out;
 14 ~~(b)(III)~~ identify the amount and source of funding for the lobbying;
 15 ~~(c)(III)~~ estimate the number of personnel ~~needed~~ USED for the lobbying and the amount of time
 16 required for each individual;
 17 ~~(d)(IV)~~ specify whether the personnel identified pursuant to subsection ~~(2)(c)~~ (2)(A)(III) are public
 18 employees, whether full or part time, temporary or permanent, or are independent contractors lobbying for
 19 hire; and
 20 ~~(e)(V)~~ include a copy of the written approval ~~of the governor~~ required by subsection (1).

21 (B) THE NOTICE AND INFORMATION UNDER SUBSECTION (2)(A) MAY BE SUPPLEMENTED UPON
 22 COMPLETION OF A LOBBYING ACTIVITY.

23 ~~(3) Before engaging in lobbying for hire of the legislature, through a state employee, public official,~~
 24 ~~or other person, a state agency shall give written notice of the lobbying to the legislative finance~~
 25 ~~committee. The notice must include those matters provided in subsection (2), except the approval of the~~
 26 ~~governor provided in subsection (2)(c) (2)(A)(V), as those matters pertain to lobbying for hire of the~~
 27 ~~legislature. UNLESS LICENSED PURSUANT TO 5-7-103, A DIRECTOR OR A STATE EMPLOYEE WHO IS~~
 28 ~~NOT AN ELECTED PUBLIC OFFICIAL MAY NOT USE STATE TIME, EQUIPMENT, SUPPLIES, OR FACILITIES~~
 29 ~~TO SUPPORT OR OPPOSE STATE OR FEDERAL LEGISLATION OR URGE OTHERS TO SUPPORT OR~~
 30 ~~OPPOSE STATE OR FEDERAL LEGISLATION.~~

- 1 (4) Subsections (1) through (3) do not apply to:
- 2 (a) lobbying for hire when specifically required by state or federal law;
- 3 (b) lobbying as defined by 5-7-102(6)(b);
- 4 (c) A DIRECTOR OR a state employee ~~or~~ WHO IS NOT AN ELECTED public official who engages
- 5 in lobbying on the employee's or official's own behalf while in a leave status or without receiving
- 6 compensation or reimbursement of any kind;
- 7 (d) lobbying by an elected official, employee, or independent contractor of a political subdivision,
- 8 school district, or special taxing or use district;
- 9 (e) a member or staff member of the legislature, OR THE JUDICIARY, ~~or the U.S. congress;~~ or
- 10 (f) written or oral testimony given before a committee or other body of the legislature ~~or the U.S.~~
- 11 ~~congress~~ by a DIRECTOR, A state employee WHO IS NOT AN ELECTED PUBLIC OFFICIAL, ~~public official,~~
- 12 or other person WHO IS NOT AN ELECTED PUBLIC OFFICIAL on behalf of a state agency.
- 13 (5) The following definitions supplement the definitions provided in 5-7-102 and apply to this
- 14 section:
- 15 (a) ~~"Agency of the United States" means a department, office, bureau, commission, board,~~
- 16 ~~authority, or other program of the United States~~ "DIRECTOR" HAS THE MEANING GIVEN IN 2-15-102.
- 17 (b) "Lobbying" includes the following practices when engaged in by a DIRECTOR, A state employee
- 18 WHO IS NOT AN ELECTED PUBLIC OFFICIAL, ~~public official,~~ or other person WHO IS NOT AN ELECTED
- 19 PUBLIC OFFICIAL on behalf of a state agency:
- 20 (i) the practice of requesting, encouraging, organizing, or promoting other persons to engage in
- 21 lobbying; OR
- 22 (ii) the development or design of a proposal or program intended to be implemented through
- 23 legislation; ~~or~~
- 24 ~~(iii) lobbying a member or staff member of the legislature or the U.S. congress.~~
- 25 (c) "Lobbying for hire" includes lobbying by an individual who is reimbursed only for the individual's
- 26 living and travel expenses, which together are ~~less than~~ \$1,000 OR MORE in a calendar year.
- 27 (d) "State agency" means a department, division, office, bureau, commission, board, or other entity
- 28 of state government, including the university system.
- 29 (e) "State employee" means an employee of a state agency.
- 30

1 **NEW SECTION.** **Section 2. Legislative auditor to review lobbying expenses in audits of state**
2 **agencies.** The legislative auditor shall, in the course of regular audits of state agencies, review reports,
3 agency records, and other documents, including reports made by the commissioner pursuant to 5-7-207
4 and reports filed with the commissioner pursuant to 5-7-208, to determine compliance with [section 1].
5 The legislative auditor shall report the determinations to the legislative audit committee created by 5-13-201
6 and provide a copy of those determinations to the legislative fiscal division created by 5-12-301.

7
8 **Section 3.** Section 5-7-102, MCA, is amended to read:

9 **"5-7-102. Definitions.** ~~The~~ Unless the context requires otherwise and subject to [section 1], in this
10 chapter, the following definitions apply in this chapter:

11 (1) "Business" means:

12 (a) a holding or interest whose fair market value is greater than \$1,000, in a corporation,
13 partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding
14 company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit,
15 but does not include nonprofit organizations; and

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

17 (2) "Commissioner" means the commissioner of political practices.

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

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

23 (5) "Individual" means a human being.

24 (6) "Lobbying" means:

25 (a) the practice of promoting or opposing the introduction or enactment of legislation before the
26 legislature or the members of the legislature by a person other than a member of the legislature or a public
27 official; and

28 (b) the practice of promoting or opposing official action by any public official.

29 (7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a
30 principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an

1 individual is reimbursed only for ~~his~~ personal living and travel expenses, which together are less than
2 \$1,000 ~~per~~ in a calendar year, that individual is not considered to be lobbying for hire.

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

4 (b) Lobbyist does not include:

5 (i) an individual acting solely on ~~his~~ the individual's own behalf; or

6 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have
7 personal contact involving lobbying with a public official on behalf of ~~his~~ the individual's principal.

8 (c) ~~Nothing in this~~ This section does not deprive an individual who is not lobbying for hire
9 of the constitutional right to communicate with public officials.

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

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

13 (a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or
14 reimbursement for expenses, excluding personal living expenses; or

15 (b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited
16 to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

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

19 (12) "Principal" means a person who employs a lobbyist.

20 (13) "Public official" means an individual, elected or appointed, acting in ~~his~~ an official capacity for
21 the state government. The term does not include those acting in a judicial or quasi-judicial capacity or
22 performing ministerial acts.

23 (14) "Unprofessional conduct" means:

24 (a) violating any of the provisions of this chapter;

25 (b) instigating action by a public official for the purpose of obtaining employment;

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

28 (i) promising financial support; or

29 (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a
30 principal, or a legislator; or

1 (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official
2 matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official.”

3

4 NEW SECTION. SECTION 4. ADMINISTRATIVE PENALTY AND PROCEEDING. IN ADDITION TO
5 THE PENALTIES PROVIDED IN 5-7-305, THE COMMISSIONER MAY SEEK AN ADMINISTRATIVE PENALTY
6 OF NOT LESS THAN \$50 OR MORE THAN \$1,000 FOR A VIOLATION OF [SECTION 1]. THE PENALTY
7 MUST, UNLESS COLLECTED EARLIER BY SETTLEMENT, BE DETERMINED AND COLLECTED BY A
8 HEARING HELD PURSUANT TO THE CONTESTED CASE PROCEDURES OF THE ADMINISTRATIVE
9 PROCEDURE ACT. THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

10

11 NEW SECTION. Section 5. Codification instruction. [Sections 1 ~~and~~ 2, AND 4] are intended to
12 be codified as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to
13 [sections 1 ~~and~~ 2, AND 4].

14

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