

HOUSE BILL NO. 586
INTRODUCED BY J. BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ETHICS LAWS TO ALLOW LEGISLATORS, PUBLIC OFFICERS, AND PUBLIC EMPLOYEES TO SERVE ON THE GOVERNING BOARD OF A NONPROFIT EDUCATIONAL ENTITY THAT IS DESIGNED TO ASSIST IN TRAINING LEGISLATORS, PUBLIC OFFICERS, OR PUBLIC EMPLOYEES; AMENDING SECTIONS 2-2-105, 2-2-111, 2-2-121, AND 3-5-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-2-105, MCA, is amended to read:

"2-2-105. Ethical requirements for public officers and public employees. (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) (a) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(b) Subsection (2)(a) does not prevent a public officer or public employee from serving on the governing board of a nonprofit educational entity that is designed to assist in training legislators, public officers, or public employees.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant. This subsection does not apply to an entity described in subsection (2)(b).

(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.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking."

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

"2-2-111. Rules of conduct for legislators. (1) Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

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

~~(2)~~(b) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office.

(2) Subsection (1) may not be construed to prohibit a legislator from serving on the governing board of an entity described in 2-2-105(2)(b)."

Section 3. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2)(a) is proof that the actor has breached a public duty.

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

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

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

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

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

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

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

(b) Subsection (2)(a) may not be construed to prohibit a public officer or public employee from serving on the governing board of an entity described in 2-2-105(2)(b) or from voting on issues before the governing body of that entity.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

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

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) ~~A~~ Except as provided in subsection (2)(b), a public officer or public employee may not participate in a proceeding when an organization of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(5) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

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

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

(8) Subsections ~~(2)(b)~~ (2)(a)(ii) and ~~(2)(e)~~ (2)(a)(v) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 4. Section 3-5-601, MCA, is amended to read:

"3-5-601. Court reporters -- appointment -- oath -- employment status. (1) The judge of a district court may appoint a reporter for the court who is an officer of the court and holds office at the pleasure of the appointing judge. The court reporter shall take the constitutional oath of office and file it with the clerk of court. In districts where there are two or more judges, each judge may appoint a reporter. The judge shall direct the performance of the court reporter's duties.

(2) Court reporter services may be provided by a court reporter appointed:

- (a) as a state employee foregoing transcription fees;
- (b) as a state employee retaining transcription fees; or
- (c) as an independent contractor.

(3) A court reporter appointed under subsection (2)(a) or (2)(b) is subject to classification and compensation as determined by the judicial branch personnel plan adopted under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

(4) (a) If a court reporter is appointed under subsection (2)(a), the state shall provide all equipment and supplies for the reporter's use. Any transcription fees paid for the reporter's transcription services must be forwarded to the department of revenue for deposit in the state general fund.

(b) If a court reporter is appointed under subsection (2)(b), the state shall provide equipment and supplies for the reporter's use, except that the reporter shall provide and maintain all equipment and supplies for performance of transcription duties unless equipment is shared as provided in subsection (5). A reporter may not receive overtime for time spent on preparation of transcripts for which the reporter retains fees. The reporter shall retain all transcription fees paid for the reporter's transcription services.

(c) A court reporter appointed under subsection (2)(c) shall contract with the judicial branch as an independent contractor. The reporter shall provide and maintain the reporter's necessary equipment and supplies, retain all transcription fees paid for the reporter's transcript preparation services, and maintain professional liability insurance and workers' compensation coverage.

(5) A court reporter may use state-owned equipment under policies adopted by the district court council under 3-1-1602 to avoid duplication of equipment costs. Use of shared equipment under this subsection is not a violation of 2-2-121(2)(a)(i)."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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