

HOUSE BILL NO. 329

INTRODUCED BY R. BRODEHL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A STATE EMPLOYEE IS PROHIBITED FROM LOBBYING ON STATE TIME ON STATE AGENCY POLICY MATTERS BEFORE A LEGISLATIVE STANDING COMMITTEE; AND AMENDING SECTIONS 2-2-121, 2-2-136, AND 5-7-102, MCA."

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

NEW SECTION. **Section 1. Prohibition on lobbying by state employee.** A state employee is prohibited from lobbying on state time in an official capacity for the state agency by which the employee is employed on any policy matter. A state employee may lobby in an official capacity on budget matters before a legislative appropriations or finance and claims committee. The state employee may provide informational testimony from a state agency perspective on policy matters before a legislative standing committee. Enforcement of this section must be conducted by the presiding officer of a legislative committee.

Section 2. 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) is proof that the actor has breached a public duty.

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

(a) subject to subsection ~~(7)~~ (8), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

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

(e) 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,

1 consultant, representative, or agent; or

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

5 (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public
6 time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political
7 committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the
8 use is:

9 (i) authorized by law; or

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

12 (b) As used in this subsection (3), "properly incidental to another activity required or authorized by law"
13 does not include any activities related to solicitation of support for or opposition to the nomination or election of
14 a person to public office or political committees organized to support or oppose a candidate or candidates for
15 public office. With respect to ballot issues, properly incidental activities are restricted to:

16 (i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the
17 impact of passage or failure of a ballot issue on state or local government operations;

18 (ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of
19 law governing public meetings of the local board of trustees, including the resulting dissemination of information
20 by a board of trustees or a school superintendent or a designated employee in a district with no superintendent
21 in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended
22 for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the
23 electors.

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

26 (4) (a) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any
27 advertisement or public service announcement in a newspaper, on radio, or on television that contains the
28 candidate's name, picture, or voice except in the case of a state or national emergency and then only if the
29 announcement is reasonably necessary to the candidate's official functions.

30 (b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel,

1 or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on
2 radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or
3 national emergency if the announcement is reasonably necessary to the state officer's official functions or in the
4 case of an announcement directly related to a program or activity under the jurisdiction of the office or position
5 to which the state officer was elected or appointed.

6 (5) A public officer or public employee may not participate in a proceeding when an organization, other
7 than an organization or association of local government officials, of which the public officer or public employee
8 is an officer or director is:

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

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

13 (6) A public officer or public employee may not engage in any activity, including lobbying, as defined in
14 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of
15 which the public officer or public employee is a member while performing the public officer's or public employee's
16 job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing
17 charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized
18 by law.

19 (7) A state employee, as defined in 5-7-102, is prohibited from lobbying on policy matters on behalf of
20 a state agency by which the employee is employed to the extent provided in [section 1].

21 ~~(7)~~(8) A listing by a public officer or a public employee in the electronic directory provided for in
22 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this
23 section. The public officer or public employee may not make arrangements for the listing in the electronic directory
24 during work hours.

25 ~~(8)~~(9) A department head or a member of a quasi-judicial or rulemaking board may perform an official
26 act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a
27 statute and if the person complies with the disclosure procedures under 2-2-131.

28 ~~(9)~~(10) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
29 unless the member is also a full-time public employee.

30 ~~(10)~~(11) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local

1 government from performing an official act when the member's participation is necessary to obtain a quorum or
2 to otherwise enable the body to act. The member shall disclose the interest creating the appearance of
3 impropriety prior to performing the official act."

4
5 **Section 3.** Section 2-2-136, MCA, is amended to read:

6 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
7 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
8 employee may file a complaint with the commissioner of political practices. ~~The, except that the~~ commissioner
9 does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint
10 or for a complaint involving a state employee lobbying the legislature in violation of [section 1]. The commissioner
11 also has jurisdiction over complaints against a county attorney that are referred by a local government review
12 panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The
13 commissioner may request additional information from the complainant or the person who is the subject of the
14 complaint to make an initial determination of whether the complaint states a potential violation of this part.

15 (b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of
16 this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint
17 states a potential violation of this part. If the issues presented in a complaint have been addressed and decided
18 in a prior decision and the commissioner determines that no additional factual development is necessary, the
19 commissioner may issue a summary decision without holding an informal contested case hearing on the
20 complaint.

21 (c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a
22 potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint
23 as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record
24 established before the commissioner.

25 (2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this
26 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
27 \$1,000.

28 (b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may
29 impose an administrative penalty of not less than \$500 or more than \$10,000.

30 (c) If the violation was committed by a state employee, the commissioner may also recommend that the

1 employing state agency discipline the employee. The employing entity of a state employee may take disciplinary
2 action against an employee for a violation of this part, regardless of whether the commissioner makes a
3 recommendation for discipline. The commissioner may assess the costs of the proceeding against the person
4 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
5 employee if the commissioner determines that a violation did occur.

6 (3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of
7 this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

8 (4) Except for records made public in the course of a hearing held under subsection (1) and records that
9 are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the
10 commissioner in connection with an investigation or complaint are confidential documents and are not open for
11 public inspection. The complainant and the person who is the subject of the complaint shall maintain the
12 confidentiality of the complaint and any related documents released to the parties by the commissioner until the
13 commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing,
14 the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and
15 any related documents must be open for public inspection. The commissioner's decision issued after a hearing
16 is a public record open to inspection.

17 (5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm
18 that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects
19 and status of the case.

20 (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
21

22 **Section 4.** Section 5-7-102, MCA, is amended to read:

23 **"5-7-102. Definitions.** The following definitions apply in this chapter:

24 (1) "Appointed state official" means an individual who is appointed:

25 (a) to public office in state government by the governor or the chief justice of the Montana supreme court
26 and who is subject to confirmation by the Montana senate;

27 (b) by the board of regents of higher education to serve either as the commissioner of higher education
28 or as the chief executive officer of a campus of the Montana university system; or

29 (c) by the board of trustees of a community college to serve as president.

30 (2) "Business" means:

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

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

(3) "Commissioner" means the commissioner of political practices.

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

(5) "Elected federal official" means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.

(6) "Elected local official" means an elected officer of a county, a consolidated government, an incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.

(7) (a) "Elected state official" means an individual holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to public service commissioners and district court judges. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a statewide office but who has not yet been sworn in.

(b) The term does not include a legislator or a state employee who is not elected or appointed to fill an elected position.

(8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal official and an individual who has been elected to a tribal office but who has not yet been sworn in.

(9) "Individual" means a human being.

(10) "Legislator" means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.

(11) (a) "Lobbying" means:

1 (i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature
2 or legislators; and

3 (ii) the practice of promoting or opposing official action of any public official or the legislature.

4 (b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed
5 by a public official, an elected local official, an elected federal official, or an elected tribal official while acting in
6 an official governmental capacity.

7 (12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

8 (b) Lobbyist does not include:

9 (i) an individual acting solely on the individual's own behalf;

10 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have
11 personal contact involving lobbying with a public official or the legislature on behalf of the lobbyist's principal; or

12 (iii) an individual who receives payments from one or more persons that total less than the amount
13 specified under 5-7-112 in a calendar year.

14 (c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to
15 communicate with public officials or the legislature.

16 (13) (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or
17 to be made of money, property, or anything of value:

18 (i) to a lobbyist to influence legislation or official action by an elected local official, a public official, or the
19 legislature;

20 (ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement
21 for lobbying expenses; or

22 (iii) in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct
23 payment of expenses incurred at the request or suggestion of the lobbyist.

24 (b) The term does not include payments or reimbursements for:

25 (i) personal and necessary living expenses; or

26 (ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

27 (14) "Person" means an individual, corporation, association, firm, partnership, state or local government
28 or subdivision of state or local government, or other organization or group of persons.

29 (15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to
30 5-7-208.

(16) (a) "Public official" means an elected state official or an appointed state official acting in an official capacity for state government or a legislator.

(b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(17) "State employee" means a temporary or permanent employee of the state, a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority, or a person under contract to the state.

~~(17)~~(18) "Unprofessional conduct" means:

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

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

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

(i) promising financial support; or

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

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

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 5, chapter 7, part 1, and the provisions of Title 5, chapter 7, part 1, apply to [section 1].

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