

HOUSE BILL NO. 396

INTRODUCED BY M. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A PUBLIC EMPLOYEE OR UNELECTED PUBLIC OFFICER FROM USING THE AUTHORITY OF THE PERSON'S POSITION TO SUPPORT OR OPPOSE POLITICAL COMMITTEES, CANDIDATES, OR BALLOT ISSUES; PROVIDING EXCEPTIONS; AND AMENDING SECTION 2-2-121, MCA."

WHEREAS, the legitimate role of public employees in their taxpayer-funded role in providing useful information and testimony is fully acknowledged, but the lobbying and advocacy role of public servants using their publicly funded position is a source of growing concern in our democratic society; and

WHEREAS, common citizens who lack the easy access to legislative proceedings enjoyed by onsite public employees feel increasingly crowded out of the process; and

WHEREAS, government should be primarily influenced by the citizens it serves rather than the positions and job titles created by government; and

WHEREAS, the Legislature wishes to encourage greater citizen involvement, influence, and trust in the lawmaking process.

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

Section 1. 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), 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;



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

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

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

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

13 (i) authorized by law; or

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

16 (b) Except as provided in subsection (3)(c) and this subsection (3)(b), a public employee or unelected
17 public officer may not use the authority of the person's position to secure support for or opposition to a political
18 committee, the nomination or election of a person to public office, or the passage of a ballot issue unless the use
19 is authorized by law or properly incidental to another activity required or authorized by law. Activity prohibited
20 under this subsection (3)(b) includes wearing a uniform or official insignia identifying the person's office or position
21 in a solicitation of support or opposition to a political committee, the nomination or election of a person to public
22 office, or the passage of a ballot issue. A public employee or unelected public officer may not identify the public
23 employee's or unelected public officer's title in a solicitation of support or opposition to a political committee, the
24 nomination or election of a person to public office, or the passage of a ballot issue unless the public employee
25 or unelected public officer is a candidate for election and the statement relates to the candidate's own campaign.
26 Nothing in this subsection (3)(b) may be construed to prevent a candidate from identifying the candidate's title
27 or experience in the candidate's own campaign for nomination or election.

28 ~~(b)(c)~~ As used in this subsection (3), "properly incidental to another activity required or authorized by law"
29 does not include any activities related to solicitation of support for or opposition to the nomination or election of
30 a person to public office or political committees organized to support or oppose a candidate or candidates for

1 public office. With respect to ballot issues, properly incidental activities are restricted to:

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

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

10 ~~(e)~~(d) This subsection (3) is not intended to restrict the right of a public officer or public employee to
11 express personal political views.

12 ~~———— (d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer
13 appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or
14 officer's official highway patrol uniform.~~

15 ~~———— (ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the
16 solicitation of support for or opposition to any political committee, the nomination or election of any person to
17 public office, or the passage of a ballot issue.~~

18 (4) (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for any
19 advertisement or public service announcement in a newspaper, on radio, or on television that contains the
20 candidate's name, picture, or voice except in the case of a state or national emergency and then only if the
21 announcement is reasonably necessary to the candidate's official functions.

22 (b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel,
23 or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on
24 radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or
25 national emergency if the announcement is reasonably necessary to the state officer's official functions or in the
26 case of an announcement directly related to a program or activity under the jurisdiction of the office or position
27 to which the state officer was elected or appointed.

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

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

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

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

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

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

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

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

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