

1 _____ BILL NO. _____
 2 INTRODUCED BY _____
 (Primary Sponsor)
 3 BY REQUEST OF THE COMMISSIONER OF POLITICAL PRACTICES
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING ETHICS ENFORCEMENT AND REQUIREMENTS
 6 AS THEY PERTAIN TO MEMBERS OF CERTAIN BOARDS, COMMISSIONS, AND COMMITTEES; AND
 7 AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-136, AND 2-2-144, MCA."
 8

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

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

12 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

- 13 (1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any
 14 other individual or organization carrying on a business, whether or not operated for profit.
- 15 (2) "Compensation" means any money or economic benefit conferred on or received by any person in
 16 return for services rendered or to be rendered by the person or another.
- 17 (3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.
- 18 (b) The term does not include:
 - 19 (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to
 20 a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax
 21 purposes;
 - 22 (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or
 23 community event bears a relationship to the public officer's or public employee's office or employment or when
 24 the officer or employee is in attendance in an official capacity;
 - 25 (iii) educational material directly related to official governmental duties;
 - 26 (iv) an award publicly presented in recognition of public service; or
 - 27 (v) educational activity that:
 - 28 (A) does not place or appear to place the recipient under obligation;

1 (B) clearly serves the public good; and

2 (C) is not lavish or extravagant.

3 (4) "Local government" means a county, a consolidated government, an incorporated city or town, a
4 school district, or a special district.

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

7 (6) "Private interest" means an interest held by an individual that is:

8 (a) an ownership interest in a business;

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

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

11 (d) an ownership interest in real property;

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

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

14 (7) "Public employee" means:

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

16 (b) any temporary or permanent employee of a local government;

17 (c) a state or local member of a quasi-judicial board or commission or of a board, commission, or
18 committee with rulemaking authority; and

19 (d) a person under contract to the state.

20 (8) "Public information" has the meaning provided in 2-6-1002.

21 (9) (a) "Public officer" includes any state officer and any elected officer of a local government.

22 (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.

23 (10) "Special district" means a unit of local government, authorized by law to perform a single function
24 or a limited number of functions. The term includes but is not limited to conservation districts, water districts,
25 weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer
26 districts, and transportation districts. The term also includes any district or other entity formed by interlocal
27 agreement.

28 (11) (a) "State agency" includes:

- 1 (i) the state;
- 2 (ii) the legislature and its committees;
- 3 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
- 4 (iv) the university system; and
- 5 (v) all independent commissions and other establishments of the state government.
- 6 (b) The term does not include the judicial branch.
- 7 (12) "State officer" includes all elected officers and directors of the executive branch of state
- 8 government as defined in 2-15-102."

9

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

11 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust,
12 created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public
13 employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of
14 the people of the state.

15 (2) A public officer, legislator, or public employee whose conduct departs from the person's public
16 duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the
17 public's trust.

18 (3) This part sets forth various rules of conduct, the transgression of any of which is a violation of
19 public duty, and various ethical principles, the transgression of any of which must be avoided.

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

21 (i) state officers, legislators, and state employees, members of state quasi-judicial boards or
22 commissions, and members of state boards, commissions, or committees with rulemaking authority is provided
23 for in 2-2-136;

24 (ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for
25 in 2-2-136;

26 (iii) local government officers and, local government employees, members of local government quasi-
27 judicial boards or commissions, and members of local government boards, commissions, or committees with
28 rulemaking authority is provided for in 2-2-144.

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

3

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

5 **"2-2-136. Enforcement for state officers, legislators, ~~and state employees,~~ and members of**
 6 **state board, commission, or committee -- referral of complaint involving county attorney.** (1) (a) A
 7 person alleging a violation of this part by a state officer, legislator, ~~or~~ member of a state quasi-
 8 judicial board or commission, or member of a state board, commission, or committee with rulemaking authority
 9 may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction
 10 for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also
 11 has jurisdiction over complaints against a county attorney that are referred by a local government review panel
 12 pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). If a complaint is
 13 filed against the commissioner or another individual employed in the office of the commissioner, the complaint
 14 must be resolved in the manner provided for in 13-37-111(5).

15 (b) The commissioner may request additional information from the complainant or the person who is
 16 the subject of the complaint to make an initial determination of whether the complaint states a potential violation
 17 of this part.

18 (c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of
 19 this part, or does not contain sufficient allegations to enable the commissioner to determine whether the
 20 complaint states a potential violation of this part.

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

24 (2) (a) If the commissioner determines that the complaint states a potential violation of this part, the
 25 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4,
 26 part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision
 27 and the commissioner determines that no additional factual development is necessary, the commissioner may
 28 issue a summary decision without holding an informal contested case hearing on the complaint.

1 (b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the public.
 2 Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the informal
 3 contested case proceeding are presumed to be public information.

4 (c) The commissioner shall issue a decision based on the record established before the
 5 commissioner. The decision issued after a hearing is public information open to inspection.

6 (3) (a) Except as provided in subsection (3)(b), if the commissioner determines that a violation of this
 7 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
 8 \$1,000.

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

11 (c) If the violation was committed by a state employee, the commissioner may also recommend that
 12 the employing state agency discipline the employee. The employing entity of a state employee may take
 13 disciplinary action against an employee for a violation of this part, regardless of whether the commissioner
 14 makes a recommendation for discipline.

15 (d) The commissioner may assess the costs of the proceeding against the person bringing the
 16 charges if the commissioner determines that a violation did not occur or against the officer or employee if the
 17 commissioner determines that a violation did occur.

18 (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter 4,
 19 part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

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

22

23 **Section 4.** Section 2-2-144, MCA, is amended to read:

24 **"2-2-144. Enforcement for local government.** (1) Except as provided in subsections (5) and (6), a
 25 person alleging a violation of this part by a local government officer or local government employee, member of
 26 a local government quasi-judicial board or commission, or member of a local government board, commission,
 27 or committee with rulemaking authority shall notify the county attorney of the county where the local
 28 government is located. The county attorney shall request from the complainant or the person who is the subject

1 of the complaint any information necessary to make a determination concerning the validity of the complaint.

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

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

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

14 (5) (a) A local government may establish a three-member panel to review complaints alleging
15 violations of this part by ~~officers or employees of the local government~~ a local government officer, local
16 government employee, member of a local government quasi-judicial board or commission, or member of a local
17 government board, commission, or committee with rulemaking authority. The local government shall establish
18 procedures and rules for the panel. The members of the panel may not be ~~officers or employees of the local~~
19 ~~government~~ a local government officer, local government employee, member of a local government quasi-
20 judicial board or commission, or member of a local government board, commission, or committee with
21 rulemaking authority. The panel shall review complaints and may refer to the county attorney complaints that
22 appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the
23 commissioner of political practices and the complaint must then be processed by the commissioner pursuant to
24 2-2-136.

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

27 (6) If a local government review panel has not been established pursuant to subsection (5), a person
28 alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political

1 practices pursuant to 2-2-136."

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