

HOUSE BILL NO. 167

INTRODUCED BY J. COHENOUR

BY REQUEST OF THE LEGISLATIVE COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT EXEMPT STAFF FOR LEGISLATIVE LEADERSHIP MAY USE PUBLIC TIME, FACILITIES, EQUIPMENT, SUPPLIES, PERSONNEL, OR FUNDS TO SUPPORT NONELECTION POLITICAL CAUCUS ACTIVITY REGARDING LEGISLATIVE BUSINESS; AMENDING SECTION 2-2-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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;

(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, consultant, representative, or agent; or

(f) 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

1 notification to the officer's or employee's supervisor and department director.

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

6 (i) authorized by law; or

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

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

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

15 ~~(B)~~ in the case of a school district, as defined in Title 20, chapter 6, compliance with the  
16 requirements of law governing public meetings of the local board of trustees, including the resulting  
17 dissemination of information by a board of trustees or a school superintendent or a designated employee in a  
18 district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors.

19 Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond  
20 issue or levy submitted to the electors.

21 (ii) It is a properly incidental activity for personal staff of legislative leadership who are exempt as  
22 provided in 2-18-104 to support nonelection political caucus activity involving legislative business in the normal  
23 course of duties as directed by legislative leadership.

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

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

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

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

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

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

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

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

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

27          (7)     A listing by a public officer or a public employee in the electronic directory provided for in 30-  
28 17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this

1 section. The public officer or public employee may not make arrangements for the listing in the electronic  
2 directory during work hours.

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

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

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

12

13 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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