

HOUSE BILL NO. 412

INTRODUCED BY D. BEDEY

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE CODE OF ETHICS; EXPANDING THE PROHIBITION ON THE USE OF PUBLIC RESOURCES FOR POLITICAL PURPOSES; EXPANDING PORTIONS OF THE CODE OF ETHICS TO JUDICIAL OFFICERS; PROHIBITING THE USE OF THE GREAT SEAL OR OFFICIAL STATE LETTERHEAD FOR CERTAIN COMMUNICATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-121, 2-2-136, AND 13-35-226, MCA."

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

NEW SECTION. Section 1. Use of public resource for political purposes. (1) Except as provided

in subsection (2), a judicial officer, public officer, legislator, or public employee may not use or permit the use of public time, facilities, equipment, state letterhead, 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:

- (a) authorized by law; or
- (b) properly incidental to another activity required or authorized by law, such as the function of a judicial officer, public officer, legislator, or public employee in the normal course of duties.

(2) As used in subsection (1), "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:

- (a) the activities of a judicial officer, public officer, legislator, or public employee related to determining the impact of passage or failure of a ballot issue on state or local government operations;
- (b) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a

1 district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors.

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

4 (3) Subsection (1) is not intended to restrict the right of a judicial officer, public officer, legislator, or
5 public employee to express personal political views.

6 (4) (a) If the public officer or public employee is a Montana highway patrol chief or highway patrol
7 officer appointed under Title 44, chapter 1, the term "equipment" as used in subsection (1) includes the chief's
8 or officer's official highway patrol uniform.

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

12 (5) A judicial officer, public officer, legislator, or public employee that violates this section may also
13 be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

14

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

16 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

17 (1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any
18 other individual or organization carrying on a business, whether or not operated for profit.

19 (2) "Compensation" means any money or economic benefit conferred on or received by any
20 person in return for services rendered or to be rendered by the person or another.

21 (3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.

22 (b) The term does not include:

23 (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered
24 to a charitable organization or the state and that is not claimed as a charitable contribution for federal income
25 tax purposes;

26 (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or
27 community event bears a relationship to the public officer's or public employee's office or employment or when
28 the officer or employee is in attendance in an official capacity;

1 (iii) educational material directly related to official governmental duties;

2 (iv) an award publicly presented in recognition of public service; or

3 (v) educational activity that:

4 (A) does not place or appear to place the recipient under obligation;

5 (B) clearly serves the public good; and

6 (C) is not lavish or extravagant.

7 (4) "Judicial officer" includes all judicial officers, justices, district court judges, and judges of the
8 judicial branch of state government.

9 (4)(5) "Local government" means a county, a consolidated government, an incorporated city or town,
10 a school district, or a special district.

11 (5)(6) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval,
12 or other action, including inaction, that involves the use of discretionary authority.

13 (6)(7) "Private interest" means an interest held by an individual that is:

14 (a) an ownership interest in a business;

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

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

17 (d) an ownership interest in real property;

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

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

20 (7)(8) "Public employee" means:

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

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

23 (c) a member of a quasi-judicial board or commission or of a board, commission, or committee
24 with rulemaking authority; and

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

26 (8)(9) "Public information" has the meaning provided in 2-6-1002.

27 (9)(10) (a) "Public officer" includes any state officer and any elected officer of a local government.

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

1 ~~(10)~~(11) "Special district" means a unit of local government, authorized by law to perform a single
2 function or a limited number of functions. The term includes but is not limited to conservation districts, water
3 districts, weed management districts, irrigation districts, fire districts, community college districts, hospital
4 districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by
5 interlocal agreement.

6 ~~(11)~~(12) (a) "State agency" includes:

7 (i) the state;

8 (ii) the legislature and its committees;

9 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

10 (iv) the university system; and

11 (v) all independent commissions and other establishments of the state government.

12 (b) The term does not include the judicial branch.

13 (13) "State letterhead" means an electronic or written document that contains the great seal of the
14 state provided for in 1-1-501 or purports to be a document from the state, a state agency, or a local
15 government.

16 ~~(12)~~(14) "State officer" includes all elected officers and directors of the executive branch of state
17 government as defined in 2-15-102."
18

19 **Section 3.** Section 2-2-103, MCA, is amended to read:

20 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust,
21 created by the confidence that the electorate reposes in the integrity of judicial officers, public officers,
22 legislators, and public employees. A judicial officer, public officer, legislator, or public employee shall carry out
23 the individual's duties for the benefit of the people of the state.

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

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

- 1 (4) (a) The enforcement of this part for:
- 2 (i) judicial officers, state officers, legislators, and state employees is provided for in 2-2-136;
- 3 (ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided
- 4 for in 2-2-136;
- 5 (iii) local government officers and employees is provided for in 2-2-144.
- 6 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action
- 7 must be deposited in the general fund of the unit of government."

8

9 **Section 4.** Section 2-2-121, MCA, is amended to read:

10 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of

11 any act enumerated in subsection (2) is proof that the actor has breached a public duty.

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

13 (a) subject to subsection ~~(7)~~ (6), use public time, facilities, equipment, state letterhead, supplies,

14 personnel, or funds for the officer's or employee's private business purposes;

15 (b) engage in a substantial financial transaction for the officer's or employee's private business

16 purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

17 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or

18 other economic benefit from the officer's or employee's agency;

19 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic

20 benefit from any agency;

21 (e) perform an official act directly and substantially affecting to its economic benefit a business or

22 other undertaking in which the officer or employee either has a substantial financial interest or is engaged as

23 counsel, consultant, representative, or agent; or

24 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,

25 with a person whom the officer or employee regulates in the course of official duties without first giving written

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

27 ~~(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use or~~

28 ~~permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or~~

1 ~~opposition to any political committee, the nomination or election of any person to public office, or the passage of~~
2 ~~a ballot issue unless the use is:~~

3 ~~(i) authorized by law; or~~

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

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

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

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

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

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

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

26 ~~(4)(3)~~ (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for
27 any 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

1 announcement is reasonably necessary to the candidate's official functions.

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

8 ~~(5)~~(4) A public officer or public employee may not participate in a proceeding when an organization,
9 other than an organization or association of local government officials, of which the public officer or public
10 employee is an officer or director is:

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

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

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

21 ~~(7)~~(6) A listing by a public officer or a public employee in the electronic directory provided for in 30-
22 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
24 directory during work hours.

25 ~~(8)~~(7) 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)~~(8) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee

1 unless the member is also a full-time public employee.

2 ~~(10)(9)~~ Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local
3 government from performing an official act when the member's participation is necessary to obtain a quorum or
4 to otherwise enable the body to act. The member shall disclose the interest creating the appearance of
5 impropriety prior to performing the official act."
6

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

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

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

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

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

26 (2) (a) If the commissioner determines that the complaint states a potential violation of this part,
27 the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter
28 4, part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision

1 and the commissioner determines that no additional factual development is necessary, the commissioner may
2 issue a summary decision without holding an informal contested case hearing on the complaint.

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

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

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

11 (b) If the commissioner determines that a violation of ~~2-2-121(4)(b)(3)(b)~~ has occurred, the
12 commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

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

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

20 (4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter
21 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

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

24

25 **Section 6.** Section 13-35-226, MCA, is amended to read:

26 "**13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in
27 paying employees the salary or wages due them, to include with their pay the name of any candidate or any
28 political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or

1 intended to influence the political opinions or actions of the employees.

2 (2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees
3 may be working any handbill or placard containing:

4 (a) any threat, promise, notice, or information that, in case any particular ticket or political party,
5 organization, or candidate is elected:

6 (i) work in the employer's place or establishment will cease, in whole or in part, or will be
7 continued or increased;

8 (ii) the employer's place or establishment will be closed; or

9 (iii) the salaries or wages of the workers or employees will be reduced or increased; or

10 (b) other threats or promises, express or implied, intended or calculated to influence the political
11 opinions or actions of the employer's workers or employees.

12 (3) A person may not coerce, command, or require a public employee to support or oppose any
13 political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

14 (4) A public employee may not solicit support for or opposition to any political committee, the
15 nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the
16 place of employment. However, subject to 2-2-121 and [section 1], this section does not restrict the right of a
17 public employee to perform activities properly incidental to another activity required or authorized by law or to
18 express personal political views.

19 (5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by
20 the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125."

21
22 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an
23 integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [section 1].

24
25 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
27 the part remains in effect in all valid applications that are severable from the invalid applications.

28 - END -