



**Montana Legislative Services Division**  
**Legal Services Office**

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PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

March 2, 2021

**TO: Representative Skees, Chairman House Rules Committee**

**FR: Todd M. Everts, Chief Legal Counsel**

**RE: Process for the Regulation of Conduct and Discipline of Members of the House of Representatives**

Per your request, set out in Appendix A are the constitutional, statutory, and legislative rules provisions applicable to the regulation of conduct and discipline of members of the House of Representatives. I have also included applicable Mason's Manual provisions.

To summarize, under the Montana Constitution, the full body of the House is the ultimate arbiter with respect to regulating conduct and discipline of its members. Pursuant to Article V, section 10(1), of the Montana Constitution, the House of Representatives "*may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.*"

The House Rules are not a model of clarity on the process of adjudicating the expulsion or punishment of its members. In fact, there is a substantial void in the rules regarding the appropriate adjudication mechanisms (both as it relates to the appropriate House committee and the body of the House) in expelling or punishing members. It is clear that under Mason's Manual, a committee has no power to punish its members for disorderly conduct, but may notify the body for its action (Section 619(1), Mason's Manual (2020)). The House Rules require the House Rules Committee and the House Ethics Committee to report disciplinary recommendations to the body of the House.

There is nothing in the House Rules referencing due process considerations for a member involved in a disciplinary or expulsion proceeding. There is little guidance in Mason's Manual with respect to due process afforded a member in a legislative disciplinary and expulsion proceeding.

My advice is that the House generally, and the House Rules Committee or the

House Ethics Committee specifically, follow the basic principals of due process. The ultimate tenant of due process is that a House member who is the subject of a disciplinary or expulsion action be treated fairly. This includes setting out the due process rules of the proceedings and establishing the criteria of what constitutes "good cause" under the Montana Constitution. This also includes the member being provided adequate notice, the opportunity to be heard and present testimony, and that a fair decision making process is established.

There are three discipline process options available in the House, depending on circumstances and the issues alleged:

### **1. Questions of Order and Privilege.**

Pursuant to H10-20, the Speaker has the authority for order, decorum, and the interpretation and enforcement of the House Rules:

***H10-20. Speaker's duties.** (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.*

*(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.*

Under H20-20, the Speaker decides all questions of order and privilege, subject to appeal:

***H20-20. Questions of order and privilege -- appeal -- restrictions -- definitions.** (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative, seconded by two representatives, to the House for determination by majority vote. The question on appeal is, "Shall the decision of the chairman be sustained?"*

*(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.*

*(3) Questions of order and privilege, in order of precedence, are:*

*(a) those affecting the collective rights, safety, dignity, and integrity of the*

*House; and*

*(b) those affecting the rights, reputation, and conduct of individual representatives.*

*(4) A member may not address the House on a question of privilege between the time:*

*(a) an undebatable motion is offered and the vote is taken on the motion;*

*(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or*

*(c) a motion to lay on the table is offered and the vote is taken on the motion.*

*(5) (a) "Parliamentary inquiry" means a request for information regarding some procedure concerning some questions before the house.*

*(b) "Questions of order and privilege" means those questions as provided for in subsection (3) that enforce the House rules, maintain the order of the House, and protect the integrity, rights, and privileges of the House and its members.*

It should be noted that H30-50(15) sets out the privileges each member of a committee is entitled to:

*(15) The privileges of committee members include the following:*

*(a) to participate freely in committee discussions and debate;*

*(b) to offer motions;*

*(c) to assert points of order and privilege;*

*(d) to question witnesses upon recognition by the chairman;*

*(e) to offer any amendment to any bill; and*

*(f) to vote, either by being present or by proxy if authorized pursuant to subsection (9), using a standard form or through the vice chairman or minority vice chairman.*

## **2. Potential Violation of the House Rules When Speaking on the House Floor or Otherwise.**

Pursuant to H20-80, the following process applies for a member that potentially violates the House Rules when speaking on the House floor or otherwise:

***H20-80. Violation of rules -- procedure -- appeal. (1) If a member, in***

*speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.*

*(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.*

*(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.*

*(4) If a member is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the House that the member be censured or be subject to other action. Censure consists of an official public reprimand of a member for inappropriate behavior. The House shall act upon the recommendation of the Committee.*

### **3. Potential Code of Ethics Violations Involving a House Member.**

The House Rules are void of any direction regarding the process for adjudicating an ethics complaint made against a House member. The House has defaulted to the Code of Ethics statutory provisions and the Senate Rules regarding processing and adjudicating ethics issues.

Section 2-2-135, MCA, provides for the House Ethics Committee:

***2-2-135. Ethics committees.** (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.*

*(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.*

The House Rules establish the House Ethics Committee and set out the subject matter areas of the committee:

**H30-10. House standing committees -- appointments -- classification. (1)**

(a) (i) *The Speaker shall determine the total number of members and after good faith consultation with the minority leader shall, with the approval of the House by a majority vote, appoint the chairs, vice chairs, and members to the standing committees.*

(ii) *A change by the Speaker of a standing committee appointment or the filling of a vacancy must be approved by the House by a majority vote.*

(b) *The minority leader shall designate a minority vice chair for each standing committee.*

(2) *The standing committees of the House are as follows: . . .*

(d) *on call committees:*

(i) *Ethics; (emphasis added)*

**House Rules Appendix**

(1) *Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows: .*

*..*  
**Ethics:** *Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.*

House and Joint Rules provide direction regarding conflict of interest under the Code of Ethics:

**JR 10-60. Conflict of interest.** *A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs.*

**H50-200. Voting -- conflict of interest -- present by electronic means. (1)**  
*The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.*

(2) *The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.*

(3) *The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.*

(4) *A member who is present shall vote unless the member has disclosed a*

*conflict of interest to the House.*

*(5) A member may be present for a vote by electronic means.*

In the past, when an ethics complaint has been filed in the House, the House has directly referred that complaint to the Ethics Committee. Outside of the direct referral of an ethics complaint to the Ethics Committee, the House has followed the Senate Rules regarding the process and purview of the House Ethics Committee:

***S30-160. Ethics Committee.*** *(1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or the Legislator Conduct Panel or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. Except for a referral from the Legislative Conduct Panel, the issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.*

*(2) The matters that may be referred to the Ethics Committee are:*

*(a) a violation of:*

*(i) 2-2-103;*

*(ii) 2-2-104;*

*(iii) 2-2-111;*

*(iv) 2-2-112; or*

*(v) Joint Rule 10-85;*

*(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or*

*(c) any other violation of law by a Senator while acting in the capacity of Senator.*

*(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.*

*(4) A Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.*

## APPENDIX A

### Montana Constitutional Provisions

**Article V, Section 10. Organization and procedure.** (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

**Article XIII, Section 4. Code of ethics.** The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

### House Rules

**H10-20. Speaker's duties.** (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the

members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, visual displays, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals, subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief officer of the House, with authority for all House employees.

(7) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(8) Upon request of the Minority Leader, the Speaker will submit a request for a fiscal note on any bill.

**H20-20. Questions of order and privilege -- appeal -- restrictions --**

**definitions.** (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative, seconded by two representatives, to the House for determination by majority vote. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House;



and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

(5) (a) "Parliamentary inquiry" means a request for information regarding some procedure concerning some questions before the house.

(b) "Questions of order and privilege" means those questions as provided for in subsection (3) that enforce the House rules, maintain the order of the House, and protect the integrity, rights, and privileges of the House and its members.

**H20-50. Dilatory motions or questions -- appeal.** The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House for a determination by majority vote.

**H20-80. Violation of rules -- procedure -- appeal.** (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebtable.

(3) If the decision of the House is in favor of the member called to order, the

member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the House that the member be censured or be subject to other action. Censure consists of an official public reprimand of a member for inappropriate behavior. The House shall act upon the recommendation of the Committee.

**H30-20. Chairman's duties.** (1) The principal duties of the chairman of standing or select committees are to:

- (a) preside over meetings of the committee and to put all questions;
- (b) except as provided in H30-40(3)(b) and H30-50(3)(b), schedule all bills assigned to committee for a hearing prior to 3 legislative days before the applicable transmittal deadline for the bill as provided in Joint Rule 40-200;
- (c) maintain order and decide all questions of order subject to appeal to the committee;
- (d) supervise and direct staff of the committee;
- (e) have the committee secretary keep the official record of the minutes;
- (f) sign reports of the committee and submit them promptly to the Chief Clerk;
- (g) appoint subcommittees to perform on a formal or an informal basis as provided in subsection (2); and
- (h) inform the Speaker of committee activity.

(2) With the exception of the House Appropriations subcommittees, a subcommittee of a standing committee may be appointed by the chairman of the committee. The chairman of the standing committee shall appoint the chairman of the subcommittee.

**H30-40. Meetings -- purpose -- notice -- minutes.** (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

H30-50. Procedures -- absentee or proxy voting -- member privileges. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent. The chairman shall attempt to not schedule Senate bills while the Senate is in session.

(3) (a) Subject to H30-60 and subsection (3)(b), the committee shall act on each bill in its possession and that has had a hearing prior to the last legislative day before the applicable transmittal deadline for the bill as provided in Joint Rule 40-200:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) Except as provided in subsection (3)(c), at the written request of the sponsor made at least 48 hours prior to a scheduled hearing, a bill may be withdrawn by the sponsor without a hearing. A bill may not be reported from a committee without a hearing.

(c) A bill may not be withdrawn by the sponsor after a hearing.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar. A tie vote in a standing committee on the question of a recommendation to the whole House on a matter before the committee, for example on a question of whether a bill is recommended as "do pass" or "do not pass", does not result in the matter passing out to the whole House for consideration without recommendation.

(6) In reporting a measure out of committee, a committee shall include in its report:

- (a) the measure in the form reported out;
- (b) the recommendation of the committee;
- (c) an identification of all substantive changes; and
- (d) a fiscal note, if required and available.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the House that are formally adopted when the committee report is accepted by the House.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting. Standing and select committees may by a majority vote of the committee authorize members to vote by proxy if absent, while engaged in other legislative business or when excused by the presiding officer of the committee due to illness or an emergency. Authorization for absentee or proxy voting must be reflected in the committee minutes.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) (a) Except as provided in subsection (13)(b), legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(b) The House Appropriations committee may request the drafting and introduction of legislation by a majority vote of all of the members of the committee.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy if authorized pursuant to subsection (9), using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

**H30-60. Public testimony -- decorum -- time restrictions.** (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is allowed only at the discretion of the chairman.

**H70-50. Interpreting rules -- appeal.** The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

## **Code of Ethics as Applied to Legislators**

**2-2-135. Ethics committees.** (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

**2-2-101. Statement of purpose.** The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

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

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

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

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

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not

claimed as a charitable contribution for federal income tax purposes;

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

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

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

(v) educational activity that:

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

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

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

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

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

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

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

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

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

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

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

(d) a person under contract to the state.

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

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

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

(10) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes



but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

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

- (i) the state;
- (ii) the legislature and its committees;
- (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
- (iv) the university system; and
- (v) all independent commissions and other establishments of the state government.

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

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

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

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

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

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

- (i) state officers, legislators, and state employees is provided for in 2-2-136;
- (ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;
- (iii) local government officers and employees is provided for in 2-2-144.

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

**2-2-104. Rules of conduct for public officers, legislators, and public**

**employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

**2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; or

(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision.

**2-2-112. Ethical requirements for legislators.** (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:

- (a) whether the conflict impedes the legislator's independence of judgment;
- (b) the effect of the legislator's participation on public confidence in the

integrity of the legislature;

(c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and

(d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.

(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Ethics Joint Rules**

**10-60. Conflict of interest.** A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs.

### **Ethics Senate Rules**

**S30-20. Standing committees -- classification.** (1) The standing committees of the Senate are as follows:

(d) on-call committees:

(i) Ethics;

**S30-160. Ethics Committee.** (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or the Legislator Conduct Panel or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. Except for a referral from the Legislative Conduct Panel, the issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112; or

(v) Joint Rule 10-85;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

(4) A Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.

### **Ethics House Rules**

**H30-10. House standing committees -- appointments -- classification.** (1) (a) (i) The Speaker shall determine the total number of members and after good faith consultation with the minority leader shall, with the approval of the House by a majority vote, appoint the chairs, vice chairs, and members to the standing committees.

(ii) A change by the Speaker of a standing committee appointment or the filling of a vacancy may be approved by the House by a majority vote.

(b) The minority leader shall designate a minority vice chair for each standing committee.

(2) The standing committees of the House are as follows:

(d) on call committees:

(i) Ethics;

**H50-200. Voting -- conflict of interest -- present by electronic means.** (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

(5) A member may be present for a vote by electronic means.

## **House Rules Appendix**

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

**Ethics:** Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

## **Official Misconduct Statutory Requirements**

**45-7-401. Official misconduct.** (1) A public servant commits the offense of

official misconduct when in an official capacity the public servant commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in an official capacity that the public servant knows is forbidden by law;

(c) with the purpose to obtain a personal advantage or an advantage for another, performs an act in excess of the public servant's lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward that the public servant knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court has exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from office without pay pending final judgment. Upon final judgment of conviction, the public servant shall permanently forfeit the public servant's office. Upon acquittal, the public servant must be reinstated in office and must receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect an impeachment or removal.

## **Mason's Manual**

### **Sec. 561. Power of Legislatures to Discipline Members**

1. A legislative body has the right to regulate the conduct of its members and may discipline a member as it deems appropriate, including reprimand, censure or expulsion.

2. A state legislative body possesses inherent powers of self-protection.



3. What ever is spoken in the house is subject to the censure of the house.
4. A member who is abasent without leave of the house may be found to be in contempt and may be punished as the house may direct.
5. The right of a house to compel the atendance of absent members is usually quaranteed by the constitution. In order to compel attendance, members may be arrested and, when arrested, they continue in custody of the arresting officer until discharged by the house.
6. The constitutional power of a house to arrest and comple the attendance of members is not confined to the time when a call is in effect nor to when there is no quorum. To deprive a house of its power to compel the attendance of any or all members would destroy its function as a legislative body. The majority of the members of a house may compel the presence of all members.
7. When a member is absent during the session and a sufficient excuse is not rendered, thos present may take steps necessary to scure the member's attendance and may suspend the member from service of the house for a given period. They also may inflict such cnesure or pecuniary penalty as may be deemed just.

### **Sec. 562. Right of Legislatures to Expel Members**

1. Forty-five constitutions (including Montana) provide that each house, with the concurrence of two-thirds of all the members elected, may expel a member.
2. If these constitutional provisions were omitted and there were no other constitutional limitations, the power to expel would nevertheless exist and could be exercised by a majority. The only effect of the constitutional provisions is to make the concurrence of two-thirds of the members elected necessary to expel a member. In all other respects, the power is absolute.
3. A house, in passing upon the question of expelling a member, has the power to adopt any porcedure and to change it at any time without notice.
4. Adequate notice, formal charges and a public hearing with the right to cross-examine witnesses have been helf necessary components of procedural due

procedural due process that must be afforded to a member prior to expulsion.

5. The oath of each individual member of a house, and that member's duty under it to act conscientiously for the general good is the only safeguard to the fellow members against an unjust and causeless expulsion. This is the only practical rule that can be adopted as to those unrestricted governmental powers that are necessary to the exercise of governmental functions and that must be lodged somewhere. Each branch of government is necessarily vested with some power that is beyond the supervision of any other branch, and in such cases the only protection against abuse is the conscience of the individual in whom the power is vested.

6. Whether federal due process or equal protection considerations are applicable to expulsion may depend upon whether the member of the body has a liberty or property interest in the office held.

7. When a house has expelled a member in the mode prescribed by the constitution, its action is not generally considered to be a deprivation of office without due process of law, within the meaning of the 14th Amendment of the U.S. Constitution. The sovereign power that created the office can prescribe the terms upon which it is to be held and the conditions under which it can be taken away.

8. The provision for disfranchisement of a member upon conviction for crime has no effect upon the power to expel members, nor does expulsion operate as a bill of attainder in violation of state or federal constitutions.

9. The constitutional provision that relates to expulsion of members deal only with expulsion for misconduct.

10. A member of a state legislature may resign. The member's resignation shall be tendered to office or body having power to order a new election and to the chief legislative officer of the respective house.

#### **Sec. 564. Investigation of Charges Against Members**

1. The judiciary violates the separation of powers doctrine if it seeks to prohibit or

control a legislative body's disciplinary proceeding against a member or the scope of any investigation preparatory for the disciplinary hearing.

2. When a charge of bribery, corruption or misconduct is made against members of a house, the house has power to investigate the charge and to summon the person making the charge before its bar as a witness and to commit that person for contempt for refusing to testify without sufficient legal cause. This power does not admit doubt, and a house, in following this course, in no respect exceeds its jurisdiction.

3. When charges of bribery are made by any person against members of either house of the legislature, without giving their names, and a resolution is adopted by the house to which the members accused are said to belong, reciting the charge and resolving to investigate it, and witnesses are summoned before it, an issue is made within the meaning of the statute against perjury.

4. The appointment of a committee by a house with power to investigate charges of bribery made against members of that body, does not preclude the house from afterwards summoning the witnesses and making the investigation before the bar of the house.

5. A common understanding or belief concerning improper conduct of a member is sufficient ground for the house to proceed by inquiry concerning the member and even to make an accusation.

### **Sec. 619. Committees Cannot Discipline Members**

1. A committee has no power to punish its members for disorderly conduct, but may notify the body for its action.

2. The absence of members from committee meetings may be brought to the attention of the body.

3. When a committee is charged with an inquiry and finds that one of its members is involved, it cannot take action against that member, It must make a special report to the body, which may take action concerning that member or give special authority to the committee to investigate concerning the member.