

SENATE BILL NO. 150

INTRODUCED BY B. BENNETT

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ETHICS LAWS FOR PUBLIC OFFICIALS AND PUBLIC EMPLOYEES; REVISING ETHICS COMPLAINT CONFIDENTIALITY PROVISIONS AND PROCEDURES; PROHIBITING A PUBLIC OFFICER OR PUBLIC EMPLOYEE FROM PERMITTING ANOTHER TO USE CERTAIN PUBLIC TIME, MATERIALS, AND FUNDS IN CERTAIN POLITICAL CAMPAIGNS; AND AMENDING SECTIONS 2-2-102, 2-2-121, AND 2-2-136, MCA."

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

**NEW SECTION. Section 1. Complaint -- confidentiality.** (1) A complaint filed under this part alleging a violation by an elected public officer is public information open to inspection.

(2) (a) If a complaint is filed under this part alleging a violation by a public employee or an unelected public officer, the complaint and related documents are confidential and may not be considered open for inspection.

(b) The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the enforcement officer until the enforcement officer issues an initial decision as to whether the complaint states a potential violation of this part.

(c) The person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this section. If a waiver is filed with the enforcement officer, the complaint and any related documents are public information open to inspection.

(3) If a complaint alleges a violation under this part by more than one person and at least one person is an elected public officer and at least one person is a public employee or an unelected public officer, the enforcement officer must release the portions of the complaint that relate to the elected public officer as provided by subsection (1) and must maintain the confidentiality of the portions of the complaint relating to the public employee or unelected public officer as provided by subsection (2). A complainant shall likewise maintain the confidentiality of the complaint and any related documents concerning the public employee or unelected public officer as provided by subsection (2).

(4) For the purposes of this section, the following definitions apply:



1 (a) "Elected" means chosen by vote or acclamation or appointed to a vacancy in an otherwise elected  
2 position.

3 (b) "Enforcement officer" means:

4 (i) the commissioner of political practices for actions brought under 2-2-136 or 2-2-144(6);

5 (ii) except as provided in subsection (4)(b)(i) or (4)(b)(iii), the county attorney for actions brought under  
6 2-2-144; and

7 (iii) if a local government has established a three-member panel pursuant to 2-2-144(5), the  
8 three-member panel for actions brought under 2-2-144.

9 (c) "Unelected" means appointed to or employed in a position not subject to election.

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11 **Section 2.** 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 other  
14 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 a  
20 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 community  
23 event bears a relationship to the public officer's or public employee's office or employment or when the officer  
24 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;

29 (B) clearly serves the public good; and

30 (C) is not lavish or extravagant.

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

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

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

6 (a) an ownership interest in a business;

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

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

9 (d) an ownership interest in real property;

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

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

12 (7) "Public employee" means:

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

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

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

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

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

19 ~~(8)~~(9) (a) "Public officer" includes any state officer and any elected officer of a local government.

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

21 ~~(9)~~(10) "Special district" means a unit of local government, authorized by law to perform a single function  
22 or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed  
23 management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer  
24 districts, and transportation districts. The term also includes any district or other entity formed by interlocal  
25 agreement.

26 ~~(10)~~(11) (a) "State agency" includes:

27 (i) the state;

28 (ii) the legislature and its committees;

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

30 (iv) the university system; and

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

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

3 ~~(11)~~(12) "State officer" includes all elected officers and directors of the executive branch of state  
4 government as defined in 2-15-102."

5

6 **Section 3.** Section 2-2-121, MCA, is amended to read:

7 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any  
8 act enumerated in subsection (2) is proof that the actor has breached a public duty.

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

10 (a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the  
11 officer's or employee's private business purposes;

12 (b) engage in a substantial financial transaction for the officer's or employee's private business purposes  
13 with a person whom the officer or employee inspects or supervises in the course of official duties;

14 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other  
15 economic benefit from the officer's or employee's agency;

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

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

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

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

28 (i) authorized by law; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government  
24 from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise  
25 enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to  
26 performing the official act."  
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28 **Section 4.** Section 2-2-136, MCA, is amended to read:

29 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**  
30 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state

1 employee may file a complaint with the commissioner of political practices. The commissioner does not have  
2 jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The  
3 commissioner also has jurisdiction over complaints against a county attorney that are referred by a local  
4 government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to  
5 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the  
6 commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5).

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

10 ~~(b)(c)~~ The commissioner may dismiss a complaint that is frivolous, does not state a potential violation  
11 of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the  
12 complaint states a potential violation of this part. ~~If the issues presented in a complaint have been addressed and  
13 decided in a prior decision and the commissioner determines that no additional factual development is necessary,  
14 the commissioner may issue a summary decision without holding an informal contested case hearing on the  
15 complaint.~~

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

19 ~~(c)(2)(a)~~ (a) ~~Except as provided in subsection (1)(b), if~~ If the commissioner determines that the complaint  
20 states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the  
21 complaint as provided in Title 2, chapter 4, part 6. ~~The commissioner shall issue a decision based upon the record  
22 established before the commissioner. However, if the issues presented in a complaint have been addressed and  
23 decided in a prior decision and the commissioner determines that no additional factual development is necessary,  
24 the commissioner may issue a summary decision without holding an informal contested case hearing on the  
25 complaint.~~

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

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

1           ~~(2)~~(3) (a) Except as provided in subsection ~~(2)~~(3)~~(b)~~ (b), if the commissioner determines that a violation  
2 of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more  
3 than \$1,000.

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

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

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

13          ~~(3)~~(4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter  
14 4, part 7, of this title; after a hearing, a dismissal, or a summary decision issued pursuant to ~~subsection (1)(b)~~ this  
15 section.

16          ~~(4) Except for records made public in the course of a hearing held under subsection (1) and records that~~  
17 ~~are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the~~  
18 ~~commissioner in connection with an investigation or complaint are confidential documents and are not open for~~  
19 ~~public inspection. The complainant and the person who is the subject of the complaint shall maintain the~~  
20 ~~confidentiality of the complaint and any related documents released to the parties by the commissioner until the~~  
21 ~~commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing,~~  
22 ~~the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and~~  
23 ~~any related documents must be open for public inspection. The commissioner's decision issued after a hearing~~  
24 ~~is a public record open to inspection.~~

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

28          ~~(6)~~(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this  
29 part."  
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