

1 HOUSE BILL NO. 412

2 INTRODUCED BY D. BEDEY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE CODE OF ETHICS; EXPANDING  
5 AND CLARIFYING THE PROHIBITION ON THE USE OF PUBLIC RESOURCES FOR POLITICAL  
6 PURPOSES; REVISING THE DEFINITION OF "GIFT OF SUBSTANTIAL VALUE"; EXPANDING PORTIONS  
7 OF THE CODE OF ETHICS TO JUDICIAL OFFICERS; PROHIBITING THE USE OF THE GREAT SEAL OR  
8 OFFICIAL STATE LETTERHEAD FOR CERTAIN COMMUNICATIONS; PROVIDING DEFINITIONS;  
9 AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-121, 2-2-136, AND 13-35-226, MCA."

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

12  
13 NEW SECTION. Section 1. Use of public ~~resource~~ resources for political purposes. (1) Except  
14 as provided in subsection (2) this section, a judicial officer, public officer, legislator, or public employee may not  
15 use or permit the use of public time, facilities, equipment, state letterhead, supplies, personnel, or funds to  
16 solicit support for or opposition to any political committee, the nomination or election of any person to public  
17 office, or the passage of a ballot issue unless the use is:

- 18 (a) authorized by law; ~~or~~  
19 (b) properly incidental to another activity required or authorized by law, such as the function of a  
20 judicial officer, public officer, legislator, or public employee in the normal course of duties; or  
21 (c) reasonably considered to be also available to the public.

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

- 26 (a) the activities of a judicial officer, public officer, legislator, or public employee related to  
27 determining the impact of passage or failure of a ballot issue on state or local government operations;

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

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

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

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

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

17 (6) Legislators are allowed limited use of public time, facilities, equipment, state letterhead,  
18 supplies, and personnel to:

19 (a) respond to inquiries or comments from the public, media, or government agencies;

20 (b) express opinions in any media or platform, including online and on social media; and

21 (c) publicly support or oppose statewide ballot issues or the nomination of a person to a public  
22 office.

23

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

25 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

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

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- 1           (2)     "Compensation" means any money or economic benefit conferred on or received by any  
2 person in return for services rendered or to be rendered by the person or another.
- 3           (3)     (a) "Gift of substantial value" means a gift with a value of ~~\$50~~ \$100 or more for an individual.  
4           (b)     The term does not include:  
5           (i)     a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered  
6 to a charitable organization or the state and that is not claimed as a charitable contribution for federal income  
7 tax purposes;  
8           (ii)    food and beverages consumed on the occasion when participation in a charitable, civic, or  
9 community event bears a relationship to the public officer's or public employee's office or employment or when  
10 the officer or employee is in attendance in an official capacity;  
11          (iii)   educational material directly related to official governmental duties;  
12          (iv)    an award publicly presented in recognition of public service; or  
13          (v)     educational activity that:  
14          (A)     does not place or appear to place the recipient under obligation;  
15          (B)     clearly serves the public good; and  
16          (C)     is not lavish or extravagant.  
17          (4)     "Judicial officer" includes all judicial officers, justices, district court judges, and judges of the  
18 judicial branch of state government.
- 19          ~~(4)~~(5)   "Local government" means a county, a consolidated government, an incorporated city or town,  
20 a school district, or a special district.
- 21          ~~(5)~~(6)   "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval,  
22 or other action, including inaction, that involves the use of discretionary authority.
- 23          ~~(6)~~(7)   "Private interest" means an interest held by an individual that is:  
24          (a)     an ownership interest in a business;  
25          (b)     a creditor interest in an insolvent business;  
26          (c)     an employment or prospective employment for which negotiations have begun;  
27          (d)     an ownership interest in real property;

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

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

3 ~~(7)~~(8) "Public employee" means:

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

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

6 (c) a member of a quasi-judicial board or commission or of a board, commission, or committee

7 with rulemaking authority; and

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

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

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

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

12 ~~(10)~~(11) "Special district" means a unit of local government, authorized by law to perform a single

13 function or a limited number of functions. The term includes but is not limited to conservation districts, water

14 districts, weed management districts, irrigation districts, fire districts, community college districts, hospital

15 districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by

16 interlocal agreement.

17 ~~(11)~~(12) (a) "State agency" includes:

18 (i) the state;

19 (ii) the legislature and its committees;

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

21 (iv) the university system; and

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

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

24 (13) "State letterhead" means an electronic or written document that contains the great seal of the

25 state provided for in 1-1-501 or purports to be a document from the state, a state agency, or a local

26 government.

27 ~~(12)~~(14) "State officer" includes all elected officers and directors of the executive branch of state

1 government as defined in 2-15-102."

2

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

4 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust,  
5 created by the confidence that the electorate reposes in the integrity of judicial officers, public officers,  
6 legislators, and public employees. A judicial officer, public officer, legislator, or public employee shall carry out  
7 the individual's duties for the benefit of the people of the state.

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

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

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

14 (i) judicial officers, state officers, legislators, and state employees is provided for in 2-2-136;

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

17 (iii) local government officers and employees is provided for in 2-2-144.

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

20

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

22 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of  
23 any act enumerated in subsection (2) is proof that the actor has breached a public duty.

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

25 (a) subject to subsection (~~7~~) (6), use public time, facilities, equipment, state letterhead, supplies,  
26 personnel, or funds for the officer's or employee's private business purposes;

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

1 opinions or actions of the employer's workers or employees.

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

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

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

11

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

14

15 COORDINATION SECTION. Section 8. Coordination instruction. (1) If both House Bill No. 167 and  
16 [this act] are passed and approved and if House Bill No. 167 contains a section that amends 2-2-121(3)(b) to  
17 include a new subsection (3)(b)(ii), then the section in House Bill No. 167 amending 2-2-121 is void, and  
18 [section 1 of this act] is amended to include a new subsection (3) that must read as follows:

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

22 (2) If Senate Bill No. 128 and [this act] are passed and approved and if Senate Bill No. 128  
23 contains a section that amends 2-2-121(3)(b) to include a new subsection (3)(b)(ii), then the section in Senate  
24 Bill No. 128 amending 2-2-121 is void, and [section 1 of this act] is amended to include a new subsection (2)(c)  
25 that must read as follows:

26 "(c) the activities of personal staff of legislative leadership who are exempt as provided in 2-18-104  
27 related to assisting legislators in expressing opinions on a statewide ballot issue involving an initiative,

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1 referendum, or constitutional amendment."  
2

3 NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
5 the part remains in effect in all valid applications that are severable from the invalid applications.

6 - END -

AMENDED