

1 SENATE BILL NO. 128  
2 INTRODUCED BY J. ELLSWORTH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT EXEMPT STAFF OF LEGISLATIVE  
5 LEADERSHIP MAY ASSIST LEGISLATORS IN EXPRESSING OPINIONS ON STATEWIDE BALLOT ISSUES;  
6 AMENDING SECTION 2-2-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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10 **Section 1.** Section 2-2-121, MCA, is amended to read:

11 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of  
12 any act enumerated in subsection (2) is proof that the actor has breached a public duty.

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

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

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

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

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

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

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

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

1 permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or  
2 opposition to any political committee, the nomination or election of any person to public office, or the passage of  
3 a ballot issue unless the use is:

4 (i) authorized by law; or

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

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

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

13 (ii) the activities of personal staff of legislative leadership who are exempt as provided in 2-18-104,  
14 related to assisting legislators in expressing opinions on a statewide ballot issue involving an initiative,  
15 referendum, or constitutional amendment;

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

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

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

27 (ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the  
28 solicitation of support for or opposition to any political committee, the nomination or election of any person to

1 public office, or the passage of a ballot issue.

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

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

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

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

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

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

25 (7) A listing by a public officer or a public employee in the electronic directory provided for in 30-  
26 17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this  
27 section. The public officer or public employee may not make arrangements for the listing in the electronic  
28 directory during work hours.

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

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

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

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

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