

1 SENATE BILL NO. 254

2 INTRODUCED BY G. HERTZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE USE OF PUBLIC FUNDS FOR LOBBYING;
5 PROHIBITING POLITICAL SUBDIVISIONS, JUDICIAL OFFICERS, AND SCHOOL DISTRICTS FROM
6 EXPENDING PUBLIC FUNDS FOR CERTAIN LOBBYING ACTIVITIES; PROVIDING A DEFINITION; AND
7 AMENDING SECTIONS 2-2-121 AND 7-1-111, MCA."

8
9 WHEREAS, the First Amendment of the United States Constitution and Article II, section 7, of the
10 Montana Constitution protect freedom of speech and freedom of expression; and

11 WHEREAS, those valued freedoms include the right to employ one's own resources to lobby and
12 otherwise seek to influence government policy; and

13 WHEREAS, the United States Supreme Court has held that those freedoms also include the right to be
14 free from forced contributions to this activity; and

15 WHEREAS, in addition to violating the spirit of the guarantees in the United States and Montana
16 Constitutions, a practice in which some may lobby with public funds while their opponents are limited to their
17 own resources creates an unfair distortion in the policymaking process that can result in poor policy decisions;
18 and

19 WHEREAS, Thomas Jefferson stated that "[t]o compel a man to furnish funds for the propagation of
20 ideas he disbelieves and abhors is sinful and tyrannical"; and

21 WHEREAS, the Legislature fully respects the constitutional right of public agencies and employees to
22 employ their own resources to lobby for their preferred policies, but also fully respects the right of those who
23 disagree not to have their resources diverted for these purposes.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
27 NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Restriction on
28 Use of Public Funds for Lobbying by Political Subdivisions Act".

1

2 **NEW SECTION. Section 2. Definition.** "Political subdivision" means a school district or a local
3 government unit, including but not limited to a county, city, or town established under the authority of Article XI,
4 section 1 or 6, of the Montana constitution.

5

6 **NEW SECTION. Section 3. Prohibitions on use of public funds for lobbying -- injunctive and**
7 **other relief for violation.** (1) Political subdivisions and judicial officers as defined in 1-1-202 may not spend
8 public funds to:

9 (a) hire or contract with an individual for the purpose of lobbying as defined in 5-7-102; or

10 (b) pay a nonprofit state association or organization that:

11 (i) primarily represents political subdivisions; and

12 (ii) hires or contracts with an individual for the purpose of lobbying as defined in 5-7-102.

13 (2) A political subdivision or a judicial district may spend public funds to provide a public officer or
14 judicial officer, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other
15 expenses incurred in lobbying on behalf of the political subdivision or the judiciary.

16 (3) (a) If a political subdivision or a judicial officer engages in an activity prohibited by subsection
17 (1), a taxpayer or a resident of the political subdivision is entitled to appropriate injunctive relief to prevent
18 further activity prohibited by subsection (1) and further payment of public funds related to that activity.

19 (b) If a judicial officer engages in an activity prohibited by subsection (1), a taxpayer or a resident
20 living in the jurisdiction of the judicial officer is entitled to appropriate injunctive relief to prevent further activity
21 prohibited by subsection (1) and further payment of public funds related to that activity.

22 (c) A taxpayer or a resident who prevails in an action under this section is entitled to recover from
23 the political subdivision or the judicial officer the taxpayer's or the resident's reasonable attorney fees and costs
24 incurred in bringing the action.

25 (4) This section does not prohibit a full-time employee of a nonprofit state association or
26 organization that primarily represents political subdivisions of this state from:

27 (a) providing legislative services, including services related to bill tracking, bill analysis, and
28 legislative alerts;

1 (b) communicating directly with a member of the legislature to provide information; or

2 (c) testifying as an informational witness before a legislative committee.

3

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

5 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of
6 any act enumerated in subsection (2) is proof that the actor has breached a public duty.

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

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

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

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

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

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

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

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

26 (b) A state officer may not use or permit the use of public time, facilities, equipment, state
27 letterhead, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service
28 announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice

1 except in the case of a state or national emergency if the announcement is reasonably necessary to the state
2 officer's official functions or in the case of an announcement directly related to a program or activity under the
3 jurisdiction of the office or position to which the state officer was elected or appointed.

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

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

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

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

17 (b) A public officer may lobby on behalf of the officer's political subdivision and may receive, in
18 accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in
19 lobbying on behalf of the political subdivision.

20 (c) A judicial officer may lobby on behalf of the judicial officer's political subdivision and may
21 receive, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses
22 incurred in lobbying on behalf of the judicial district.

23 (6) A listing by a public officer or a public employee in the electronic directory provided for in 30-
24 17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this
25 section. The public officer or public employee may not make arrangements for the listing in the electronic
26 directory during work hours.

27 (7) A department head or a member of a quasi-judicial or rulemaking board may perform an official
28 act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a

1 statute and if the person complies with the disclosure procedures under 2-2-131.

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

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

8

9 **Section 5.** Section 7-1-111, MCA, is amended to read:

10 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
11 exercising the following:

12 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
13 exercise of an independent self-government power;

14 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject
15 to those provisions, it may exercise any power of a public employer with regard to its employees;

16 (3) any power that applies to or affects the public school system, except that a local unit may
17 impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and
18 shall exercise any power that it is required by law to exercise regarding the public school system;

19 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of
20 public convenience and necessity pursuant to Title 69, chapter 12;

21 (5) any power that establishes a rate or price otherwise determined by a state agency;

22 (6) any power that applies to or affects any determination of the department of environmental
23 quality with regard to any mining plan, permit, or contract;

24 (7) any power that applies to or affects any determination by the department of environmental
25 quality with regard to a certificate of compliance;

26 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
27 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
28 months' imprisonment, or both, except as specifically authorized by statute;

- 1 (9) any power that applies to or affects the right to keep or bear arms;
- 2 (10) any power that applies to or affects a public employee's pension or retirement rights as
- 3 established by state law, except that a local government may establish additional pension or retirement
- 4 systems;
- 5 (11) any power that applies to or affects the standards of professional or occupational competence
- 6 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;
- 7 (12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to
- 8 or affects Title 75, chapter 7, part 1, or Title 87;
- 9 (13) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when
- 10 that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is
- 11 provided in Title 70, chapters 24, 25, and 33; or
- 12 (b) any power to deviate from or add to the exclusive application of the provisions of:
- 13 (i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;
- 14 (ii) residential tenants' security deposit law in Title 70, chapter 25; or
- 15 (iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.
- 16 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;
- 17 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
- 18 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
- 19 may enter into a cooperative agreement with the department of agriculture concerning the use and application
- 20 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
- 21 government from adopting or implementing zoning regulations or fire codes governing the physical location or
- 22 siting of fertilizer manufacturing, storage, and sales facilities.
- 23 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production,
- 24 processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or
- 25 vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local
- 26 government from adopting or implementing zoning regulations or building codes governing the physical location
- 27 or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or
- 28 distribution facilities.

1 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,
2 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
3 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
4 communications commission of the United States;

5 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio
6 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a
7 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,
8 "technician" or higher class, issued by the federal communications commission of the United States;

9 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,
10 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a
11 highway that is under the jurisdiction of an entity other than the local government unit;

12 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in
13 relation to a wildfire;

14 (21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition,
15 sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(4);

16 (22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in
17 accordance with 7-1-116;

18 (23) any power to require an employer, other than the local government unit itself, to provide an
19 employee or class of employees with a wage or employment benefit that is not required by state or federal law;

20 (24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and
21 any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-
22 5-121(2)(c)(iv);

23 (25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in
24 16-11-313(1);

25 (26) any power to control the amount of rent charged for private residential or commercial property.
26 Private residential property does not include property in which the local government unit has a property interest
27 or in which the local government unit has an interest through a housing authority.

28 (27) any power to require additional licensing when the state is the original issuer of the license;

(28) any power to prohibit or impede the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider;

4 (29) any power to prohibit the purchase or use of any fuel derived from petroleum, including but not
5 limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools,
6 or commercial and residential appliances that burn or transport petroleum fuels; or

7 (30) any power to require that buildings be constructed to have solar panels or wiring, batteries, or
8 other equipment for solar panels or electric vehicles; or

9 (31) any power to expend funds in violation of [section 3]."

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11 NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 3] are intended to be
12 codified as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [sections 1
13 through 3].

14 - END -