

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Ethics and Disclosure Act amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to government ethics; amending and
2 establishing definitions and procedures for the Ethics and
3 Disclosure Act; expanding the scope of the Act to include
4 local governmental entities, the judicial branch and
5 additional state employees; amending offenses and penalties
6 of the Ethics and Disclosure Act; amending financial
7 disclosure requirements; and providing for an effective
8 date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 9-13-102(a)(xii)(intro), (xv), by
13 creating new paragraphs (xvii) through (xxi) and by

1 renumbering (xvii) as (xxii), 9-13-104, 9-13-105(a),
2 (b)(intro) and (ii) and (c), 9-13-106(a)(intro) and (b), 9-
3 13-107, 9-13-108(a)(iii) and (b) and 9-13-109(a) and (b)
4 are amended to read:

5

6 **9-13-102. Definitions.**

7

8 (a) As used in this article:

9

10 (xii) "Public employee" means any ~~of the~~
11 ~~following state employees:~~ employee or at-will contract
12 employee of a state entity or local office;

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14 *****
15 *****

16 **STAFF COMMENT**

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18 "State entity" and "local office" are terms currently
19 defined in the Ethics and Disclosure Act. The definition
20 for "state entity" is amended in this bill draft. The
21 definition for "local office" follows:

22

23 (vii) "Local office" means the offices of county
24 commissioner, county treasurer, county assessor, county
25 clerk, county sheriff, county coroner, district attorney,
26 county attorney, clerk of the district court, mayor and
27 member of the council of a municipality, member of the
28 board of trustees of a community college district or a
29 school district and member of a joint powers board or
30 special district. As used in this paragraph "special
31 district" means any special district specified under W.S.
32 22-29-103(a) and any other corporate district authorized to

1 be formed as a political subdivision under the laws of this
2 state;

3
4 The Committee may wish to consider whether a definition of
5 "at-will contract employee" is necessary to include in the
6 Ethics and Disclosure Act. For state employees, an at-will
7 contract employee is one whose position is created by the
8 governor exercising his authority under W.S. 9-2-
9 1022(a)(xi)(F)(VI) and for which the position is granted
10 continued authorization through the enactment of the state
11 budget.

12
13 Given the changes in this bill draft to include local
14 employees, the Committee may wish to consider whether the
15 definition of "public member" should be amended to include
16 those members appointed to local boards, commissions, and
17 councils.

18
19 Finally, the Committee may wish to consider the breadth of
20 employees, public members, and public officials who should
21 be covered under the Ethics and Disclosure Act. Compare
22 Bretz v. City of Center Line, 276 N.W.2d 617, 618 (Mich.
23 Ct. App. 1979) (holding that a city's anti-nepotism policy
24 was unconstitutionally overbroad because the policy
25 prohibited any hiring that created an immediate family
26 relationship with another employee of any public body),
27 with Sioux City Police Officers Ass'n v. City of Sioux
28 City, 495 N.W.2d 687, 697 (Iowa 1993) (holding that a
29 city's anti-nepotism policy—one that prohibited employees
30 from working in the same department if the employee had a
31 familial or spousal relationship with another employee in
32 that department—was not unconstitutionally overbroad).

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37 (xv) "State entity" means a state agency, state
38 office, department, division, bureau, board, commission or
39 council of the state, including the legislature, any court
40 or agency in the judicial branch and the Wyoming community

1 development authority; ~~and Wyoming science, technology and~~
2 ~~energy authority. The term does not include a court or an~~
3 ~~agency in the judicial branch;~~

4
5 (xvii) "Judicial branch" means any court or
6 agency in the judicial branch;

7
8 (xviii) "Judicial officer" means any supreme
9 court justice, district judge, circuit judge, chancery
10 court judge, district court commissioner and magistrate;

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14 STAFF COMMENT
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16 The Committee may wish to consider whether the judicial
17 branch and, in particular, judicial officers should be
18 subject to the Ethics and Disclosure Act. Under the Wyoming
19 Constitution, the Commission on Judicial Conduct and Ethics
20 is responsible for considering complaints of judicial
21 misconduct made against judicial officers and may
22 discipline or recommend discipline of a judicial officer.
23 Wyo. Const. art. 5, § 6. The Wyoming Supreme Court (or, if
24 necessary, a special supreme court) has the authority to
25 suspend or remove a judicial officer upon being charged or
26 convicted of certain crimes or for willful misconduct or
27 conduct prejudicial to the administration of justice, among
28 other things. Id.

29
30 Inclusion of the judicial branch may raise separation-of-
31 powers concerns. The Wyoming Supreme Court has stated that
32 the "Wyoming Supreme Court makes the initial determination
33 whether to impose discipline on a judicial officer." Neely

1 v. Wyo. Comm'n on Judicial Conduct & Ethics, 2017 WY 25, ¶
2 57, 390 P.3d 728, 747 (Wyo. 2017).

3
4 Research revealed no case concerning a judicial officer or
5 employee and the Ethics and Disclosure Act (likely because
6 the act expressly does not apply to them). But at least one
7 state has held that the provisions of its governmental-
8 ethics act that related to judges were unconstitutional as
9 violating the separation of powers. Cusack v. Howlett, 254
10 N.E.2d 506, 512 (Ill. 1969). The provisions in Cusack
11 concerned the legislature's authority to establish a
12 legislative committee to review potential judicial
13 impropriety. Another state has noted that the judicial
14 branch (specifically, the state's supreme court) has "an
15 inherent and implied power" to govern the ethics of all
16 members of the judiciary. See In re Kading, 235 N.W.2d 409,
17 412-13 (Wis. 1975).

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22 (xix) "Personal or private interest" means an
23 interest that is direct and immediate as opposed to
24 speculative and remote and that provides a greater benefit
25 or a lesser detriment than it does for a large or
26 substantial group or class of persons who are similarly
27 situated;

28
29 (xx) "Private benefit" means the receipt of a
30 gift by the public official, judicial officer, public
31 member or public employee and the receipt of the gift
32 resulted from taking action or inaction or his holding that
33 office;

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9-13-104. Nepotism.

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(xxi) "Salaried employment" means an employment relationship under which the employee is compensated, at least in part, by payment of a specified dollar amount for a specified period of service;

~~(xvii)~~(xxii) "This act" means W.S. 9-13-101 through 9-13-109.

(a) No public official, judicial officer, public member or public employee shall advocate or cause the employment, appointment, promotion, transfer or advancement of a family member to an office or position of ~~the state, a county, municipality or a school district~~ a local office, state entity or the judicial branch. ~~A public official, public member or public employee shall not supervise or manage a family member who is in an office or position of the state, a county, municipality or school district.~~

(b) A public official, judicial officer, public member or public employee, acting in his official capacity, shall

1 not participate in his official responsibility or capacity
2 regarding a matter relating to the employment or discipline
3 of a family member.

4

5 (c) A public official, judicial officer, public member
6 or public employee shall not supervise or manage a family
7 member who is in an office or position of a local office,
8 state entity or the judicial branch, unless the family
9 member began employment in the local office, state entity
10 or judicial branch before the public official, judicial
11 officer, public member or public employee began supervising
12 or managing the family member.

13

14 **9-13-105. Misuse of office.**

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16 (a) A public official, judicial officer, public member
17 or public employee shall not use public funds, time,
18 personnel, facilities or equipment for his private benefit
19 or that of another unless the use is authorized by law.

20

21 (b) A public official, judicial officer, public member
22 or public employee shall not use public funds, time,

1 personnel, facilities or equipment for political or
2 campaign activity unless the use is:

3

4 (ii) Properly incidental to another activity
5 required or authorized by law and the public official,
6 judicial officer, public employee or public member
7 allocates and reimburses the governmental entity for any
8 additional costs incurred for that portion of the activity
9 not required or authorized by law.

10

11 (c) A public official, judicial officer, public
12 employee or public member shall not disseminate to another
13 person official information which the public official,
14 judicial officer, public employee or public member obtains
15 through or in connection with his position, unless the
16 information is available to the general public or unless
17 the dissemination is authorized by law.

18

19 **9-13-106. Official decisions and votes.**

20

21 (a) A public official, judicial officer, public member
22 or public employee shall not make an official decision or
23 vote on an official decision if the public official,

1 judicial officer, public member or public employee has a
2 personal or private interest in the matter or obtains or
3 stands to obtain a private benefit from the matter. In
4 determining whether he has a personal or private interest
5 in a matter the public official shall recognize the
6 importance of his right to represent his constituency and
7 shall abstain from voting only in clear cases of a personal
8 or private interest ~~as defined in this subsection or a~~
9 private benefit. A public official or public member shall
10 not vote to give money or any direct financial benefit to
11 himself except for tax reductions affecting the general
12 public. ~~For the purposes of this section, a personal or~~
13 ~~private interest:~~

14

15 (b) A public official, judicial officer, public member
16 or public employee described by subsection (a) of this
17 section shall abstain from voting on the decision and from
18 making any official decision in the matter. The public
19 official's, judicial officer's, public member's or public
20 employee's abstention from voting must be recorded in the
21 governmental entity's official records.

22

1 **9-13-107. Actions taken while negotiating for**
2 **employment.**

3

4 A public official, judicial officer, public member or
5 public employee may not vote or take an official action in
6 a matter affecting a person with whom the public official,
7 judicial officer, public member or public employee is
8 negotiating for prospective employment.

9

10 **9-13-108. Disclosure required.**

11

12 (a) Not later than January 31 annually, each of the
13 state's five (5) elected officials and each member of the
14 Wyoming legislature shall file a financial disclosure form
15 with the secretary of state. The form shall be signed by
16 the elected official or legislator filing it and under a
17 certification that it is accurate. Except as otherwise
18 provided in this subsection, the financial disclosure form
19 shall contain the following information current as of
20 January 15 of that year:

21

22 (iii) A list of all state entities the person, or
23 the person's business enterprise in which the person owns

1 ten percent (10%) or more interest, has a contract with for
2 services and supplies in an amount greater than five
3 thousand dollars (\$5,000.00). The list shall include all
4 contracts subject to this paragraph entered into by the
5 elected official or legislator on and after January 15 of
6 the prior year. For each contract, this list shall include
7 the name and address of the business enterprise, if
8 applicable, and state entity, the type and description of
9 the contract and the effective date and term of the
10 contract. ~~For purposes of this paragraph "state entity" as~~
11 ~~defined in W.S. 9-13-102(a)(xv) shall include a court or an~~
12 ~~agency in the judicial branch.~~

13

14 (b) Forms may be submitted by facsimile transmission
15 under the same terms and conditions specified for campaign
16 reports under W.S. 22-25-106. ~~For the purposes of this~~
17 ~~section, "salaried employment" means an employment~~
18 ~~relationship under which the employee is compensated, at~~
19 ~~least in part, by payment of a specified dollar amount for~~
20 ~~each month, or longer period, of service.~~

21

22 **9-13-109. Penalties.**

23

1 (a) Any person, public official, public member,
2 judicial officer or public employee who violates this act
3 is guilty of a misdemeanor punishable upon conviction by a
4 fine of not more than one thousand dollars (\$1,000.00).

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8 STAFF COMMENT

9

10 In light of the use of the broad term "person" in W.S. 9-
11 13-109(a) above, the Committee may wish to consider whether
12 it is necessary to include a list of specific persons
13 covered under the act (or, alternatively, whether "person"
14 should be stricken from the subsection).

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19 (b) Violation of any provision of this act constitutes
20 sufficient cause for termination of a public employee's
21 employment or for removal of a public official, judicial
22 officer or public member from his office or position in
23 accordance with law.

24

25 **Section 2.** W.S. 9-13-102(a)(xii)(A) through (E), 9-13-
26 103(b) and 9-13-106(a)(i) and (ii) are repealed.

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30 STAFF COMMENT

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2 The bill draft repeals the following provisions:

3
4 First, W.S. 9-13-102(a)(xii)(A) through (E) list the five
5 types of public employees who currently are covered by the
6 Ethics and Disclosure Act:

7
8 **9-13-102. Definitions.**

9
10 (a) As used in this article:

11
12 (xii) "Public employee" means any of the
13 following state employees:

14
15 ~~(A) The attorney general and the director of~~
16 ~~any department of the executive branch appointed by the~~
17 ~~governor under W.S. 9-2-1706, or the director of any~~
18 ~~legislative agency;~~

19
20 ~~(B) The chief executive officer of any~~
21 ~~separate operating agency under W.S. 9-2-1704(d), except~~
22 ~~those listed in paragraphs (d)(vi) and (x) of that section;~~

23
24 ~~(C) To the extent the incumbent in the~~
25 ~~position serves at the pleasure of persons listed in~~
26 ~~subparagraphs (A) and (B) of this section, administrators~~
27 ~~of department or agency divisions, and deputy directors of~~
28 ~~departments;~~

29
30 ~~(D) Commissioners of the public service~~
31 ~~commission and members of the state board of equalization;~~

32
33 ~~(E) Deputies and administrators of divisions~~
34 ~~within the offices of state elected officials under W.S. 9-~~
35 ~~2-1704(a). The positions, in the governor's office, of~~
36 ~~chief of staff, attorney for intergovernmental affairs and~~
37 ~~chief of policy are included within this subparagraph.~~

38
39 Next, W.S. 9-13-103(b) defines "private benefit"; this
40 definition is moved to W.S. 9-13-102 (the definitions
41 section) in this bill draft:

42
43 **9-13-103. Use of title and prestige of public office.**
44

~~(b) As used in this section, "private benefit" means the receipt by the public official, public member or public employee of a gift which resulted from his holding that office.~~

Third, W.S. 9-13-106(a)(i) and (ii) define "personal or private interest"; this definition has also been moved to W.S. 9-13-102 in this bill draft.

9-13-106. Official decisions and votes.

(a) A public official, public member or public employee shall not make an official decision or vote on an official decision if the public official, public member or public employee has a personal or private interest in the matter. In determining whether he has a personal or private interest in a matter the public official shall recognize the importance of his right to represent his constituency and shall abstain from voting only in clear cases of a personal or private interest as defined in this subsection. A public official or public member shall not vote to give money or any direct financial benefit to himself except for tax reductions affecting the general public. For the purposes of this section, a personal or private interest:

~~(i) Is, with respect to the public official, public employee or public member, an interest which is direct and immediate as opposed to speculative and remote; and~~

~~(ii) Is an interest that provides the public official, public employee or public member, a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated.~~

Section 3. This act is effective July 1, 2021.

(END)