

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 44.11.701 through 44.11.711)	AMENDMENT
and ARM 44.12.204 pertaining to)	
continuing service accounts and the)	NO PUBLIC HEARING
payment threshold--inflation)	CONTEMPLATED
adjustment for lobbyists)	

TO: All Concerned Persons

1. The Commissioner of Political Practices proposes to amend the above-stated rules.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on December 12, 2024, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

44.11.701 DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this subchapter:

(1) through (3) remain the same.

(4) "~~Constituent services account~~" "Continuing service account" means an account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter.

(5) and (6) remain the same.

(7) "Leaves public office" means that an eligible elected official ceases to occupy the public office for which a ~~constituent services account~~ continuing service account has been established. The term does not include an eligible elected official who is re-elected to the same public office.

(8) remains the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.702 DISPOSAL OF SURPLUS CAMPAIGN FUNDS AND PROPERTY

(1) through (5) remain the same.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ARM 44.11.703, the provisions of this rule, and the rules in this chapter.

(a) through (c) remain the same.

(d) Surplus campaign funds, including surplus campaign funds deposited in a ~~constituent services account~~ continuing service account and any interest accrued as provided in ARM 44.11.710, may only be disbursed as follows:

(i) through (iii) remain the same.

(iv) an eligible elected official may transfer the funds to a ~~constituent services account~~ continuing service account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter;

(v) through (8) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-220, 13-37-240, 13-37-402, MCA

44.11.703 PERSONAL BENEFIT (1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a ~~constituent services account~~ continuing service account, that benefit a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

(2) Surplus campaign funds or ~~constituent services account~~ continuing service account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) the candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or ~~constituent services account~~ continuing service account funds received by the group or organization;

(b) the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or ~~constituent services account~~ continuing service account funds received by the organization; and

(c) remains the same.

(3) Surplus campaign funds or ~~constituent services account~~ continuing service account funds may be donated to a government entity under ARM 44.11.702, even if the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) the candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family does not control how the government entity spends the surplus campaign funds or ~~constituent services account~~ continuing service account funds received;

(b) the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or ~~constituent services account~~ continuing service account funds received; and

(c) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

44.11.704 APPLICABILITY OF RULES (1) All of the rules in this chapter apply to a ~~constituent services account~~ continuing service account established by an eligible elected official under Title 13, chapter 37, part 4, MCA, and 13-37-240, MCA, on or after May 14, 2007.

(2) and (3) remain the same.

(4) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, ~~constituent account~~ continuing service account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) through (d) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.11.705 ELIGIBLE ELECTED OFFICIALS (1) An individual elected to any of the following public offices may transfer surplus campaign funds to a ~~constituent services account~~ continuing service account created under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter:

(a) through (j) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.11.706 PROHIBITIONS (1) The following prohibitions apply to a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM 44.11.702 and 44.11.703, and the rules in this chapter:

(a) remains the same.

(b) Only surplus campaign funds as defined in ARM 44.11.702 may be deposited in a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in ARM 44.11.710. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office into a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA;

(ii) solicit or receive cash or anything of monetary value for deposit in a ~~constituent services account~~ continuing service account or to provide constituent services; or

(iii) remains the same.

(c) A ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, may only be used to provide constituent services.

(d) ~~Constituent services account~~ Continuing service account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM 44.11.702, and 44.11.703, and the rules in this chapter. ~~Constituent services account~~ Continuing service account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

~~(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in ARM 44.11.709.~~

~~(f)~~(e) ~~Constituent services account~~ Continuing service account funds may not be contributed to another ballot issue or candidate campaign, including the eligible elected official's own future campaign.

(2) Subsections (1)(d) and ~~(1)(f)~~(e) apply to:

(a) and (b) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.11.707 AUTHORIZED EXPENDITURES (1) A ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be used to pay for the following expenses incurred to provide constituent services:

(a) through (h) remain the same.

(2) ~~Constituent services account~~ Continuing service account funds may be used to pay travel, meal, and lodging expenses subject to the following:

(a) through (c) remain the same.

(3) If ~~constituent services account~~ continuing service account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with ~~constituent account~~ continuing service account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with ~~constituent account~~ continuing service account funds must be disbursed as provided in ARM 44.11.702.

(4) If ~~constituent services account~~ continuing service account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies

used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in ARM 44.11.709. Any reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes ~~constituent services account~~ continuing service account funds to be used or expended in violation of the prohibitions in ARM 44.11.702, 44.11.703, and 44.11.706, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) ~~Constituent services account~~ Continuing service account funds may not be used to pay:

(a) through (f) remain the same;

(g) the cost of entertaining constituents or any other individual or person.

However, nothing in this subsection prohibits an eligible elected official from using ~~constituent services account~~ continuing service account funds to pay for food or drink provided at a publicly announced or publicly advertised meeting held for the general purpose of allowing constituents to participate in a public discussion of matters of interest to the constituents or an eligible elected official. The expenditures for food and drink at such a meeting must not be lavish or extravagant; and

(h) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.11.708 OPENING AN ACCOUNT (1) An eligible elected official may establish a ~~constituent services account~~ continuing service account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, by filing a completed ~~constituent services account~~ continuing service account form provided by the commissioner. The form shall require an eligible elected official to disclose and provide, as a minimum, the following:

(a) the name and elective office held by the eligible elected official establishing the ~~constituent services account~~ continuing service account;

(b) remains the same;

(c) the full name, mailing address, and telephone number that appears on the ~~constituent services account~~ continuing service account;

(d) remains the same;

(e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the ~~constituent services account~~ continuing service account;

(f) the full name, mailing address, and telephone number of the financial institution at which the ~~constituent services account~~ continuing service account has been established;

(g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the ~~constituent services account~~ continuing service account;

(h) the amount of surplus campaign funds being deposited in the ~~constituent services account~~ continuing service account;

(i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's ~~constituent services account~~ continuing service account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM 44.11.702; and

(j) and (2) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.11.709 RECORDS AND REPORTING (1) An eligible elected official who establishes a ~~constituent services account~~ continuing service account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ARM 44.11.711. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued through the end of the calendar quarter on which the quarterly report is due.

(2) and (3) remain the same.

(4) An eligible elected official must maintain the following additional written documentation for each expenditure from a ~~constituent services account~~ continuing service account:

(a) through (e) remain the same.

(5) An eligible elected official may establish only one ~~constituent services account~~ continuing service account and no secondary depositories or subaccounts may be established. An eligible elected official may only have one ~~constituent services account~~ continuing service account open at a time, ~~and while a campaign account is open no expenditures shall be made from the constituent services account established pursuant to 13-37-401 and 13-37-402, MCA.~~

(6) All records and reports that must be filed or maintained under the rules in this chapter must be retained by the eligible elected official for a period of ~~four~~ two years after the ~~constituent services account~~ continuing service account is closed.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.11.710 INTEREST PAID ON ACCOUNTS (1) Interest paid on a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be received and used to provide constituent services if:

(a) the interest is deposited directly into the ~~constituent services account~~ continuing service account;

(b) and (c) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.711 CLOSING AN ACCOUNT – DISBURSEMENT OF SURPLUS ACCOUNT FUNDS (1) An eligible elected official must close a ~~constituent services account~~ continuing service account within 120 days after leaving public office as defined in ARM 44.11.701. The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a ~~constituent services account~~ continuing service account pursuant to ARM 44.11.702. The closing report must also disclose the date on which the payment was made to each contributor or entity.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASON: The Commissioner of Political Practices is amending ARM 44.11.701 through 44.11.711 to reflect the changes made legislatively by the 2023 Montana Legislature pertaining to the name of continuing service accounts (via House Bill 493), allowing elected officials to make expenditures from an established account even when the official has an open campaign account (via House Bill 387), and to reflect a change in the amount of time candidates must preserve continuing service account records from four years to two years (via House Bill 947).

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2023 and 2024~~ is ~~\$2,900~~ 2025 and 2026 is \$3,000.

AUTH: 5-7-111, MCA
IMP: 5-7-112, MCA

REASON: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying-related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov, and must be received no later than 5:00 p.m., December 20, 2024.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Scott Cook at the above address no later than 5:00 p.m., December 20, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 38 persons based on the 380 lobbyists who registered to lobby in 2023-2024.

7. The commissioner maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Commissioner of Political Practice's website at politicalpractices.mt.gov or through the Secretary of State's website at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the commissioner has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Scott Cook
Scott Cook
Rule Reviewer

/s/ Chris Gallus
Chris Gallus
Commissioner

Certified to the Secretary of State November 12, 2024.