

## **MINUTES**

### **MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION**

#### **FREE CONFERENCE COMMITTEE ON SENATE BILL 136**

**Call to Order:** By **CHAIRMAN LARRY BAER**, on April 11, 1995, at 5:10 p.m.

#### **ROLL CALL**

**Members Present:**

Sen. Larry L. Baer, Chairman (R)  
Rep. Matt Denny, Vice-Chairman (R)  
Sen. Lorents Grosfield (R)  
Sen. Dorothy Eck (D)  
Rep. Vicki Cocchiarella (D)

**Members Excused:** Rep. Rose Forbes (R) proxy to Rep. Matt Denny

**Members Absent:** none.

**Staff Present:** Greg Petesch, Legislative Council  
Tina Price, Secretary

**Discussion:** **CHAIRMAN LARRY BAER** stated he believed the best approach would be to first go over the House Standing Committee Report Amendments.

**SEN. LORENTS GROSFIELD** suggested the committee deal with amendments to the bill first and return to amendments to the title afterwards.

**CHAIRMAN BAER** referred to Page 2, Line 18 where substantial had been stricken. He explained the Senate Subcommittee had inserted substantial and had also included the \$50 figure. He reported \$50 had been stricken by the Joint Select Committee and substantial had been deleted by the House Rules Committee. He stated the words being stricken had been an issue on the Senate floor.

**SEN. DOROTHY ECK** stated she thought the problem had been regarding gifts, Page 2, line 18 dealt with compensation. She did not have a problem striking substantial as it related to compensation.

**CHAIRMAN BAER** reported he had discussed the issue with **SEN. VAN VALKENBURG** who had a substantial problem with the issue. **CHAIRMAN BAER** stated he was neutral on the particular issue but

reinserting "substantial" and possibly "exceeding \$50" would go a long way in reaching agreement on the bill for many people.

**REP. MATT DENNY** clarified there were two issues; the definition of compensation and the definition of what types of gifts were not allowed. In his opinion compensation would be any money or thing of value. He could not see what the problem with the omission of substantial as far it related to compensation.

**CHAIRMAN BAER** reported there had been some paranoia even a cup of coffee would be considered illegal. **REP. DENNY** asked if a cup of coffee would be a gift or compensation. **CHAIRMAN BAER** replied it could be considered either way.

**SEN. GROSFIELD** referred to the concept of substantial value and asked where the term compensation appeared throughout the bill. **Greg Petesch** replied Section 2-2-111 was the statutorial reference for legislators which appeared on Page 7, section 5, (1) of the reference copy of the bill. He reported the Speaker had offered the amendment to strike "substantial" in the House Rules Committee. He explained the Speaker had noted the way the bill read would have made it legal to sell a vote for \$10.

**SEN. GROSFIELD** asked how compensation on page 7, line 15 was different from a gift. **Greg Petesch** stated a gift could be after-the-fact. A legislator could not accept any type of compensation, other than their salary, for supporting or opposing legislation. Gifts could be accepted for past actions taken. He cited an example of a legislator carrying a bill for an interest group and stated it would be illegal to collect compensation for that.

**CHAIRMAN BAER** expressed compensation for official duty needed to be distinguished from a gift for past performance.

**SEN. ECK** noted under the definition of a gift there was a list of items that would not be considered gifts of substantial value. She reminded the committee the bill had originally stated a gift of substantial value means a gift of less than \$25 and the amount had been amended to \$50. She stated having a specific amount makes people more comfortable about accepting a cup of coffee. She referred to page 5, lines 15-24 and noted a gift would have to tend to improperly influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties. She further noted (D), lines 17-19 were primarily existing law. She alleged people were not aware of existing law; that section would effectively mean a lobbyist could not take everyone who voted for his bill out to dinner because it would be a reward for service.

**CHAIRMAN BAER** stated the problem was in trying to define to what extent a gift would influence a persons official action. He suggested if "substantial" and "\$50" were reinserted the definition would be clear and questions in people's minds as to what kind of gift are unacceptable would be alleviated.

**SEN. GROSFIELD** stated he had a copy of the bill as the Senate Judiciary Subcommittee on Ethics had amended it. He reported the committee spent a lot of time on SB 136 and the bill then went to the appointed Joint Committee. He stated in the Judiciary Subcommittee's version of the bill the definition said "substantial value means an amount equal to or greater than \$50 for an individual." He believed that definition made sense and took away some of the subjectivity. Without a fairly objective definition, several question come up regarding a cup of coffee or meeting with a few people who are interested in a bill over lunch. It leaves room for the question would that be a gift or would it be compensation. He insisted a clear definition of substantial value would clarify the uncertainties.

**SEN. ECK** suggested the definition could be added to amendment 4 on the House Rules Committee amendments. It could read "substantial value means....." and then add "a gift of substantial value does not include...."

**REP. DENNY** stated the definition seemed clear on amendment 4 stating "a gift does not include food and beverages consumed on an occasional participation...." He suggested that exception could be widen. He resisted inserting \$50 because it left room to wonder would \$40 then be okay. He explained in setting a number of \$50 a \$40 gift wouldn't be considered unethical and that would leave a loophole in the law. He added the Rules Committee was concerned about leaving the loophole.

**CHAIRMAN BAER** reported the Senate had great difficulty with the loss of the word substantial. **SEN. VAN VALKENBURG** had some real concerns about the omission. He understood the House's concern about substantial being included in the definition of compensation; no one should receive any compensation for services rendered as a legislator. He added the definition of a gift was a totally different area and asked the Committee to keep that in the proper concept. He asked if the Committee wished to alter the definition of compensation.

**SEN. ECK** claimed the Committee should deal with defining substantial value and asked **SEN. GROSFIELD** to read the definition of substantial value from Judiciary Subcommittee's version of the bill. He read "substantial value means an amount equal to or greater than \$50 for an individual".

**CHAIRMAN BAER** suggested that definition should be considered because of the concerns over any type of compensation, a cigarette, candy bar, cup of coffee, etc. Adding \$50 would clarify that substantial did not include anything under \$50. The original amount was \$25. **Greg Petesch** stated \$25 had been chosen to coincide with the lobbyist reporting threshold. **REP. DENNY** stated in the area of compensation the bill stated "compensation means any money, a thing of value or economic benefit". He did not see how substantial in that definition would make a difference because of the economic benefit wording. **CHAIRMAN**

**BAER** suggested the wording could be used in conjunction with **SEN. GROSFIELD'S** recommendation that the amount of \$50 be used to alleviate peoples fears of appearing to accept compensation for receiving a minor gift or a dinner.

**SEN. ECK** reasoned the Committee could strike "a thing of value" from the definition. She explained food and beverages would not fall under "any money or economic benefit". Compensation is considered to be pay; only a very large gift could be considered compensation.

**REP. DENNY** stated he did not think striking "thing of value" would create a problem in the House.

**Motion/Vote:** **SEN. ECK MADE THE MOTION TO STRIKE "THING OF VALUE" ON PAGE 2, LINE 18, OF THE SALMON BILL. The motion CARRIED UNANIMOUSLY.**

**Discussion:** **SEN. GROSFIELD** asked at what point a gift would be considered an economic benefit. **Greg Petesch** replied a gift was probably unlikely to be considered an economic benefit in most circumstances. The gift would have to have an incredibly substantial value to be considered an economic benefit, i.e. a gift of shares of stock, etc.

**CHAIRMAN BAER** stated there would still be a burden of proof to show the gift was given in return for services rendered. That qualification would separate compensation from the gift section for other purposes.

**SEN. GROSFIELD** stated if \$50 were included in the definition of a gift than a gift of greater value may be considered an economic benefit. **SEN. ECK** referred to page 3, line 2, and suggested inserting "a gift of substantial benefit means a gift in the amount equal to or greater than \$50" and proceed to define what it does not include. **REP. COCCHIARELLA** argued the \$50 amount did not make the definition any clearer. She reported often committee chairs or a person carrying a bill received something like a piece of artwork. She wondered how a legislator was to determine the value of a gift, were they expected to ask or were they to turn down any gift they guessed might have a \$50 value.

**REP. DENNY** reminded the committee an award publicly presented in recognition of public service would not be considered a gift. **REP. COCCHIARELLA** asked what about a \$65 bouquet of flowers sent from a group that a legislator carried a bill for. **SEN. ECK** stated that would not be included and she read from the bill "a gift of substantial value does not include an award publicly presented..." **REP. DENNY** suggested "or thing" could be inserted after "award" which would include art objects, gavels and bouquets presented publicly.

**SEN. GROSFIELD** agreed adding "or thing" would be a good idea. The award wording gave the impression the item had to be along

the lines of a plaque. **REP. COCCHIARELLA** asked if publicly presented would include a gift that showed up on a legislator's desk or arrived in the mail. **CHAIRMAN BAER** suggested striking "publicly". **REP. DENNY** noted that would leave the bill where you could drive a truck through it. **CHAIRMAN BAER** stated the Committee could nitpick the bill forever and still not have satisfactory language. He added some discretion would have to be left to the Ethics Committees of both Houses and the Commissioner of Political Practices, Mr. Argenbright.

**SEN. GROSFIELD** speculated when SB 136 passed the groups who were sending the flowers would realize they would have to back off. He explained the bill had originally had an amount of \$25, to coincide with the lobbyist reporting threshold from 1982. The amount of \$50 was chosen based on the \$25 plus inflation.

**Motion:** **SEN. GROSFIELD MADE THE MOTION TO ADD "MEANS A GIFT WITH A VALUE OF \$50 OR MORE FOR AN INDIVIDUAL" AS (A) ON PAGE 3, LINE 2.**

**Discussion:** **REP. DENNY** stated the whole point of the bill was to prevent a public officer, legislator, or public employee from accepting a gift that would tend to improperly influence them to depart from their duties or a gift that they knew a reasonable person would feel was a reward for official action taken. He explained to him that meant the point was to not accept gifts regardless of their value. He referred to the concern raised on the Senate floor regarding items, gavels, food taken in meetings, etc. He argued the operative thing was not the value of gifts but whether the gift would tend to improperly influence the individual. He insisted defining the amount would open the door for accusations that the gifts were influencing people; he stated it would be better not to have the accusations at all. **CHAIRMAN BAER** stated not specifying an amount would make anyone with flowers on their desk suspect. **REP. DENNY** stated the public's concern was not about flowers. **CHAIRMAN BAER** asked **REP. DENNY** if he really thought a legislator would be influenced by a gift of less than \$50. **REP. DENNY** stated he didn't think the public was concerned about flowers and gavels. The problem he had was defining a point, like \$50, under which a gift was okay. **CHAIRMAN BAER** stated failing to further define a gift with a dollar amount could mean a lobbyist couldn't give a legislator a cup of coffee. **REP. DENNY** argued that would be permitted unless a cup of coffee would improperly influence the person; he did not foresee anyone claiming a cup of coffee would improperly influence a vote. **CHAIRMAN BAER** reported there was much concern over the issue on the Senate floor. **SEN. ECK** suggested the legislators were not aware of the section referred to improper influence. **REP. DENNY** stated it was pointed out on the House floor by **REP. KADAS** that regardless of the gift it had to influence the person or be a reward for service to be illegal. **CHAIRMAN BAER** asked how the determination would be made. **REP. DENNY** stated Commissioner Argenbright would examine the complaint.

**CHAIRMAN BAER** stated he still felt a minimum criteria should be established for a gift. Without a minimum criteria Commissioner Argenbright could be dealing with frivolous complaints.

**Debbie Smith, Common Cause**, stated setting a dollar amount would not authorize acceptance of gifts up to that amount because it would be a violation of 2-2-103 Violation of Public Trust. She added not setting a dollar amount would open the door for the acceptance of gifts over the amount. The public was not concerned about the amount of the gift, they were concerned about the amount of influence the gifts had upon the legislator's vote. **SEN. GROSFIELD** clarified that she supported the setting of a dollar amount. **Ms. Smith** stated that was correct.

**Mike Pichette, Montana Power Company**, suggested changing the bill to read "may not accept a gift with a value in excess of \$50" and strike the qualifications in lines 15, 16, 17, and 18. He stated it would be safe to assume a gift of less than \$50 would not influence anyone. He alleged the bill should read a gift of more than \$50 was unacceptable no matter what category it fell into.

**Ed Argenbright, Commissioner of Political Practices**, expressed from the perspective of being able to better do his job the more definitively the terms were defined the less subjective the judgement would be.

**Garth Jacobson, Secretary of State's Office**, reported the issue had been extensively dealt with in the Ethics Commission. The Commission felt the dollar amount would provide a definitive guideline for the people charged with enforcing the law. Leaving poorly defined terms would leave the door open for a whole array of opinions. He further noted in its current form the bill would preclude dinners paid for by lobbyists because they were not public events. He concluded setting a limit and allowing anything under that limit to be acceptable would be the best approach; without a limit it would be impossible to define.

**Vote:** **SEN. GROSFIELD'S** motion **CARRIED WITH REP. DENNY VOTING NO.**

**Motion/Vote:** **SEN. GROSFIELD MADE THE MOTION TO REINSERT "SUBSTANTIAL" ON PAGE 5, LINE 14.** The motion **CARRIED UNANIMOUSLY.**

**Discussion:** **REP. DENNY** stated there had been concerns about accepting a gavel. **SEN. ECK** noted gavels were usually publicly presented.

**CHAIRMAN BAER** referred to page 3, line 15 "is not lavish or extravagant". He asked how that would interact with the changes the Committee had made. **SEN. GROSFIELD** stated he was comfortable with that language. He perceived page 3, line 15 as applying to an educational activity in another town and the question would be were the accommodations lavish or extravagant. Were the

accommodations at the country club with an on call chauffeur or was the event a straightforward business trip. **CHAIRMAN BAER** suggested some of the discretion should be left to Commissioner Argenbright. **REP. COCCHIARELLA** stated one issue that had come up was accommodations that would be lavish and extravagant to one person may not be to another. **CHAIRMAN BAER** stated the circumstances had to be considered. The motel may be more lavish and extravagant than the individual would normally use but was the individuals accommodations in the penthouse or the presidential suite. **Mr. Petesch** referred to subsection and stated all of those criteria had to be met to constitute a violation.

**CHAIRMAN BAER** referred to amendment #5 on page 3, line 18 and reported some people felt that provision went too far in including immediate members of the family. **REP. DENNY** stated that was a whole issue in itself; there were people living with life partners, people who have parents or close cousins living with them, what would be the cut off point.

**SEN. ECK** recalled at one point the bill had included the members of the individual's household. **SEN. ECK** clarified the current disclosure requirement included the spouse.

**SEN. GROSFIELD** asked why Page 5 line 1 had been amended. **Greg Petesch** reported **REP. KADAS'** logic had been legislators should be subject to the same civil penalties and procedures for complaints in front of Commissioner Argenbright that other state officers were subjected to.

**SEN. GROSFIELD** stated the next amendment was on Page 5, lines 12 and 13. **Greg Petesch** explained the amendment on page 5, lines 12 and 13 changed the language to include legislators with public officers and employees. **Commissioner Argenbright** commented expanding his enforcement responsibilities to include legislators would greatly increase the workload and number of complaints to his office thus creating an added expense. **REP. COCCHIARELLA** agreed with Commissioner Argenbright the cost would be greatly increased and added she had tried to strip the amendment on the House Floor for that reason. She did not feel legislators should be treated differently than other officers and employees but she was concerned about the flood of complaints to the Commissioner's office during legislative sessions because a person may hear something on the floor or in committee they disagree with. She noted legislators were protected under the Constitution against those sorts of complaints but that would not control the number of complaints filed.

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**REP. DENNY** stated was in favor of the amendment. He interpreted the public concern stemmed from a belief that legislators are burying ethics problems in Ethics Committees and there was never any resolution to the problems. The additional costs to the

Commissioners Office would be worth the assurance to the public. **REP. COCCHIARELLA** noted if the provision was considered worthwhile the legislature would have to fund the Commissioner's office accordingly. **REP. DENNY** agreed and added the elimination of the disclosure requirements of 1100 board members would provide a certain amount of the funding. **REP. COCCHIARELLA** compared the ethics bill was like many other pieces of legislation which were passed and but were never enforced because the legislature failed to appropriate money to get the job done. **REP. DENNY** noted **REP. COCCHIARELLA** was assuming there would be a flood of complaints; there may not be. **CHAIRMAN BAER** was not convinced there would be a flood of complaints. He stated he believed the result of the new ethics laws would be many people acting carefully not to embarrass themselves by breaking the rules. He suggested the legislature wait until next session to see how the ethics laws had affected the Commissioner of Political Practice's Office instead of assuming there would be a flood of complaints. **SEN. GROSFIELD** asked if what types of complaints **REP. COCCHIARELLA** was referring to, lobbyists, members of the public, or other legislators. **REP. COCCHIARELLA** stated she could see potential for multiple complaints based on someone disagreeing with a statement on the floor or in committee. She felt the bill should be changed to provide that during legislative sessions ethical matters should be dealt with through the Ethics Committees. She explained an amendment to that effect would eliminate the distraction factor of frivolous complaints.

**SEN. ECK** suggested limiting referrals to Commissioner Argenbright to not include complaints made during the legislative session. **REP. COCCHIARELLA** stated the Constitution currently provided for immunity during session. **SEN. GROSFIELD** assumed the constitutional immunities would still apply unless there was an obvious and real ethical violation. **Greg Petesch** stated there was a question of whether the delegation of jurisdiction to the Commissioner would in effect be a waiver of speech and debate clause immunity. He explained under current law speech and debate clause immunity attached for any legislative act. He further explained under SB 136 immunity would potentially be waived because legislators were the ones delegating the authority to the Commissioner. **SEN. ECK** clarified the immunity did not apply to someone filing a complaint regarding campaign practices while the legislature was session. **Mr. Petesch** stated that was correct because campaigning was not a legislative act. **SEN. GROSFIELD** stated waiver of legislative immunity was not the intent of the bill. He suggested an amendment should be drafted to exclude legislative acts from the delegation of authority to protect the constitutional immunity. **REP. DENNY** asked what the amendment would exclude and wondered if it would exclude gifts. **Mr. Petesch** stated the bill specifically stated gifts for legislative acts. **REP. DENNY** clarified the amendment would provide that during the session complaints could not be brought to the Commissioner. He noted the bill in section 14 stated the legislature was responsible for endorsement of the provisions of the parts concerning legislators. He reasoned by default,

without any changes to the bill, during the session complaints would have to go to the Ethics Committee. **Greg Petesch** stated that was incorrect. Current law provided anyone could bring a complaint to the Commissioner under sections 15 and 16 and SB 136 stated enforcement for legislators was provided in sections 15 and 16. **Mr. Petesch** stated inserting an exception for legislative acts would at least create another hurdle to overcome with the Commissioner and the Commissioner could determine whether or not a legislative act was involved. He was unsure of how to word the exception but suggested on page 4, line 29 "except in matters involving a legislative act" could be inserted.

**Motion/Vote:** SEN. GROSFIELD MADE THE MOTION TO AMEND PAGE 4, LINE 29 TO EXEMPT LEGISLATIVE ACTS. The motion CARRIED UNANIMOUSLY.

**Discussion:** CHAIRMAN BAER referred the change from should to may on page 7, lines 25-29. He stated the Senate was not willing to give up their rules whereby they are required to vote on all issues. He suggested reinserting "joint rules". **REP. DENNY** explained there seemed to be some confusion on the issue; "joint" had been stricken to allow the Senate to continue to require a vote on all issues. **Mr. Petesch** explained the bill's present form would allow both Houses to operate under their current rules with the additional determination of when a conflict of interest arose. **SEN. GROSFIELD** referred to lines 29 and 30 and asked if under SB 136 the Senate could pass a stricter rule and enforce it. **Mr. Petesch** believed the that was correct. He clarified the lines regarded permissive voting after the disclosure of a conflict. **REP. DENNY** suggested inserting on line 30 "the legislator may, subject to the legislative rules, vote..." would clear up the confusion.

**Motion/Vote:** REP. DENNY MADE THE MOTION TO INSERT ON PAGE 7, LINE 29, "SUBJECT TO LEGISLATIVE RULE". The motion CARRIED UNANIMOUSLY.

**Discussion:** CHAIRMAN BAER referred to page 9 amendments 15, 16, 17, & 18. **Garth Jacobson** stated the exclusions were added to acknowledge there might be instances where certain activities could be combined. He gave an example of the Governor going to Jordan to speak to the Rotary Club and agreeing to speak to the Pachyderm Club while he was in town. He stated the test would be if the event was simply incidental to the trip he already planned. If the campaign purpose was the primary reason for the trip it would not be permitted. **CHAIRMAN BAER** noted the bill originally stated "political or campaign activity" but the House struck political. **REP. DENNY** stated the reasoning for the change was the difficulty in defining a political activity. There was the question if attending a committee hearing would be a political activity and would therefore have to be done on his own time. He added there were many public officials whose jobs could be considered political. He noted the other issue was the

disclosure of costs on a document. He summarized the bill had said an elected public official couldn't use public money or time to print the information but then made the exception that the public official could use public resources if the materials were stamped with the costs. He stated in effect the exception cancelled out the intent. **CHAIRMAN BAER** declared lines 19-25 superseded the intent of the bill and legitimized the very acts they had attempted to prohibit. He noted simply printing the cost to the taxpayers of producing the pamphlet did not solve the problem.

**SEN. ECK** state she believed it was important to allow a public official to issue a public statement concerning matters within the scope of the official's office. She insisted public official's should not be prohibited from issuing statements regarding their office. **REP. DENNY** explained the official would not be prohibited from making a statement, they would simply be prohibited from making the statement on public time if it concerned a campaign issue. **SEN. ECK** posed the situation of a ballot issue for streets and roads and the mayor was asked to make a speech on the issue and asked if the mayor would be allowed to make the speech. **REP. DENNY** replied the mayor could if it was done on his own time. **SEN. ECK** asked if the mayor's office could distribute a fact sheet. **REP. DENNY** stated the public did not believe that was a proper use of public funds since public funds are not available to fund the opposition. **CHAIRMAN BAER** stated the problem came from public officials issuing statements which did not contain factual information and in some instances the statements were threatening. He stated allowing an exclusion via a disclosure of the cost of producing the material would do substantial damage to the intent of the bill. The goal was to prevent people from using public time and resources to express their own ideologies. **SEN. ECK** asked if a legislator was carrying a bill and wanted to prepare a fact sheet or charts and graphs, they would be prohibited from doing so because the opposition could not. **REP. DENNY** an opposing legislator would have access to the same resources. **CHAIRMAN BAER** clarified the particular section of the bill only applied to public officers and employees, not to legislators. **REP. DENNY** reiterated the bill in its current form only applied to campaign activities. **SEN. ECK** argued a mayor's duty included bringing information to the public. **CHAIRMAN BAER** stated a public official using his position to influence an election with personal ideologies violated first amendment rights according to some supreme court judges. He stated using public resources to express personal views was wrong and needed to be prohibited. He added allowing lines 19-25 to be reinserted in the bill would completely contravene the entire intent.

**SEN. GROSFIELD** referred to the first sentence on lines 19 and 20 and wondered if that sentence could be reinserted with the insertion of the word "oral" before public statement. He argued mailings cost money but oral statements did not. **CHAIRMAN BAER** and **REP. DENNY** agreed that would be acceptable. **REP.**

**COCCHIARELLA** stated the issue would need to be clarified because a press release may be considered an oral statement but was often issued on paper. **REP. DENNY** stated the intent was public money would not be used for campaign purposes. **SEN. ECK** asked what the Governor's options would be during a campaign period if he wanted to issue a press release. Would he have to leave his office and building. **REP. DENNY** replied that would be one option or a member of his campaign committee could come to his office and take dictation of his oral statement and issue it as a press release. **CHAIRMAN BAER** stated the issue was campaign activity and he did not feel a public official had any position to say anything on the job that would affect any campaign activity on a ballot issue. He stated the whole crux of the matter was the influence by people who have elected or appointed power and are abusing it. **SEN. GROSFIELD** reported during the last session the sales tax issue was being heard in the Taxation Committee. The Governor, being a proponent of tax reform, came to the taxation hearings and testified. Was that the sort of activity the Committee wished to prohibit. **CHAIRMAN BAER** stated that sort of activity was authorized by law and properly incidental. **REP. DENNY** added the activity was a political activity and would not be subject to the restrictions. **Greg Petesch** clarified an act was not considered campaigning until the issue qualified for the ballot. **SEN. ECK** gave a supposition. The legislature approved a Tax Reform Task Force and some of the members of the Task Force were public officials. The Task Force came up with a recommendation for an initiative to implement the findings of the study. Would the members of the Task Force who were public officials be allowed to give public speeches regarding the Task Force and recommended initiative. **CHAIRMAN BAER** stated at the point the findings of the study became a ballot issue the speeches would then become campaigning. Coming before a legislative committee would be totally different from going out to the public on public time and using public resources to support or oppose campaign activity leading to a ballot measure. He added reinserting line 19 and 20 as **SEN. GROSFIELD** proposed and would be opening the door for public officials to continue the abuse of their positions.

**Motion:** **SEN. GROSFIELD** MADE THE MOTION TO REINSERT ON PAGE 9, LINE 14 BEGINNING WITH "PERSUADING" THROUGH THE END OF LINE 18.

**Discussion:** **Greg Petesch** asked if that would include the stricken "political or". **SEN. GROSFIELD** replied it would not.

**REP. DENNY** asked if the intent was to allow an elected public official to issue a statement. **SEN. ECK** replied if the statement were incidental to another activity. **CHAIRMAN BAER** explained the language was specifically inserted to exempt the Governor and his staff, the executive department, from any legal problems in testifying before legislative committees.

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**Vote:** SEN. GROSFIELD'S motion CARRIED WITH CHAIRMAN BAER VOTING NO.

**Discussion:** CHAIRMAN BAER referred to lines 19-25 and asked the committee if they wished to make any changes. SEN. ECK stated a public statement would be covered if it was properly incidental. She noted the situation would require a judgement call each time.

SEN. ECK referred to the inserted language "this subsection does not apply to the preparation of official voter information pamphlets". REP. DENNY commented the section should be modified to read "as authorized by (MCA)" to specify exactly what the bill referred to. REP. COCCHIARELLA asked if SB 136 would limit a local government from issuing a voter pamphlet where proponents and opponents views were expressed. Greg Petesch stated there was no provision for voter pamphlets by local governments under current law. Garth Jacobson stated the only provision was to allow local governments to issue an explanation sheet for changes in public government. He added some local governments provided information but it was not authorized by law. REP. DENNY stated his concern was the local government pamphlets would not necessarily present the opposition's point of view and would therefore, circumvent that portion of the law. REP. COCCHIARELLA stated perhaps the line could read "unless both sides are presented". Mr. Petesch noted the whole sentence may be moot because of the reinsertion of "properly incidental to another activity required or authorized by law"; the pamphlets were required by law.

**Motion/Vote:** SEN. ECK MADE THE MOTION TO STRIKE PAGE 9, LINE 25 BEGINNING WITH "THIS SUBSECTION" THROUGH LINE 26. The motion CARRIED UNANIMOUSLY.

**Discussion:** SEN. GROSFIELD asked Debbie Smith about page 9, line 27 and 28. Ms. Smith stated, even as amended, the section was unconstitutional. The bill had a severability clause which provided if it was challenged in court the defeated section could be stricken.

CHAIRMAN BAER referred to page 13, line 16. SEN. ECK stated she believed some quasi-judicial boards should disclose. She stressed the members of certain boards were responsible for major decisions. Mr. Petesch informed the Committee the House had attempted to address the issue in REP. ANDERSON'S floor amendment. He stated the members were not required to file the D-1 form but there were required to disclose. SEN. ECK noted prior to being appointed the board members underwent investigation by the legislature. She added the Governor had become more sensitive to investigating prior to making appointments.

SEN. GROSFIELD stated the next amendment was page 13, line 27. REP. COCCHIARELLA referred to page 13, line 27 and noted the bill reduced a requirement legislators were already subject to when

filing a D-1. She cautioned lightening a requirement could raise an issue. **REP. DENNY** pointed out they may be lightening one requirement but at the same time additional items were required. **CHAIRMAN BAER** reported there had been much discomfort on including the family. **SEN. GROSFIELD** stated for the record the only section contained in current law was subsection c on page 14. **REP. COCCHIARELLA** stated that was true according to statutory law by the requirements on page 13, line 27 was disclosure they were currently required to give on their D-1 forms.

**Motion:** **SEN. ECK** MADE THE MOTION TO LEAVE "OR A MEMBER OF THE INDIVIDUALS IMMEDIATE FAMILY" ON LINE 2, PAGE 14.

**Discussion:** **CHAIRMAN BAER** asked Commissioner Argenbright to confirm that the disclosure was a current requirement. **Commissioner Argenbright** state the Judiciary Subcommittee investigated and found that the D-1 requirements exceeded current law. **SEN. GROSFIELD** referred to page 13, line 26 "the statement shall provide the following information: name, address, and type of business of the individual and each member of the individuals immediate family". He clarified that was current law. Reinserting the language on line 2 would add the requirement of disclosure of professional entities and trusts. He stated that would extend beyond current law but if the language was not inserted on line 4 or line 7 the requirement would not be expanded to additional areas.

**REP. DENNY** wondered if the point was to disclose information about grandma. He stated under the definition if he lived with someone they would not be included in the disclosure. **SEN. GROSFIELD** suggested **SEN. ECK** include in her motion reinserting lines 15 and 16 since they were current law.

**SEN. ECK** withdrew her motion and explained unless the section were completely redone it did not make much sense to simply disclose. She suggested on page 13, line 27, the name, address, and type of business of the individual and each member of the immediate family should be included. **CHAIRMAN BAER** stated the requirement was current law which had been deleted. He noted putting the language back in would make a lot of people happy. **SEN. ECK** noted the extent of the disclosure was merely disclosing who the immediate family was. **REP. DENNY** stated he had no problem with the concept but believed line 15 should be modified to read "spouse or life partner".

**Motion:** **SEN. ECK** MADE THE MOTION TO REINSERT PAGE 13, LINES 27 & 28, AND REINSERT ON PAGE 14, LINE 15 & 16.

**Motion:** **REP. DENNY** MADE A SUBSTITUTE MOTION TO REINSERT PAGE 13, LINES 27 & 28 , AND REINSERT PAGE 14, LINES 15 & 16 ADDING "OR LIFE PARTNER" AFTER SPOUSE.

**Discussion:** REP. DENNY explained he did not understand why married couples should have to disclose when couple who choose not to have a contract are not required to disclose.

**Vote:** REP. DENNY'S substitute motion FAILED WITH SENATORS BAER AND GROSFIELD VOTING NO.

**Vote:** SEN. ECK'S original motion FAILED WITH REPRESENTATIVES FORBES AND DENNY VOTING NO.

**Discussion:** SEN. GROSFIELD stated the next amendment was on page 15, lines 28 & 29. Greg Petesch informed the committee the speech and debate immunity, legislative acts immunity, would need to be reinserted on this section.

**Motion/Vote:** SEN. GROSFIELD MADE THE MOTION TO INSERT THE LEGISLATIVE ACTS IMMUNITY CLAUSE. The motion CARRIED UNANIMOUSLY.

**Discussion:** SEN GROSFIELD asked for Ms. Smith's input on amendment #30. Debbie Smith stated on the second part of the amendment, allowing the Commissioner to adopt rules, seemed to be a fine idea. She agreed he may have occasion to need rules to flush out the body of the act. She referred to (4), line 17, and stated that would safeguard important privacy interests. She could see the potential for someone to abuse the process by filing frivolous complaints and damaging someone's reputation. She suggested the committee clarify whether the information would become public in the event of an appeal. The records made public after a hearing may not be everything that goes up on appeal. The legislature may want to clarify which information was open for public inspection in the event of an appeal. CHAIRMAN BAER stated it was essential to comply with existing open meeting law which places the discretion of whether or not the public's right to know exceeds the right of personal privacy with whomever was in charge of the hearing. He added the appeal should be consistent with the hearing. Ms. Smith noted, as written, it was not consistent. Ordinarily an administrative appeal record was public but subsection (4) stated everything was not public. Mr. Petesch stated once the appeal point was reached the issue would go to District Court and everything would be public. Ms. Smith stated she did not understand why a provision could not be made to ensure the privacy of certain document in the event of a court case. Garth Jacobson noted the issue was the protection of the integrity of the investigation process. Once the issue went to hearing all information would be disclosed and become a part of public record. He added if the matter kept appealing up the ladder the person appealing would in effect waive their right to privacy. Mr. Petesch noted the intent was if the Commissioner investigated and found no basis and dismissed the complaint, the public would have no right to know the unsubstantiated allegations. If the Commissioner found the complaint substantiated then the public may have the right to know. If the person bringing the complaint appealed the charged individual

would have the Commissioner's determination that there was no basis for the complaint as some sort of protection.

**SEN. ECK** asked **Commissioner Argenbright** if he foresaw a concern with phone calls seeking clarification of the ethics rules. She asked if the bill should state the Commissioner may offer informal advisory opinions or may refer requests to the Commission. **Commissioner Argenbright** replied he was more concerned that the funding for SB 136 was insufficient to provide enough staff time to deal with the ethics issues.

**REP. DENNY** referred to page 18, line 10 and explained the intent was to clarify the Ethics Commission would not meet on appeals of issues not included in SB 136.

**SEN. GROSFIELD** advised **Mr. Argenbright** not to expect his fiscal situation to improve before the end of the session. He asked if there were issues in SB 136 which should be considered to alleviate the burden on the Commissioner's Office. **Commissioner Argenbright** stated because of the numbers of the people affected by SB 136 the potential for frivolous complaints was enormous. He added his approach had been if the legislature was going to pass SB 136 they needed to also fund it. He reported he would do the best he could in enforcing the bill but with inadequate funding he did not anticipate everyone being well served by SB 136. **CHAIRMAN BAER** reiterated the process was highly experimental and the best approach would be to wait and see how much of a fiscal burden was produced. He added after some time was taken to see how many complaints were generated by SB 136 the legislature would have a better idea of how much funding was necessary. **REP. COCCHIARELLA** stated the legislature was guilty of passing legislation session after session and failing to provide the funding to make the legislation work. She suggested the bill should be postponed until the legislature was truly committed to the bill and was willing to fund it accordingly. She contended each agency could monitor its own ethics rather than place the burden on the Commissioner's Office. She argued it was unethical to pass a bill without funding rendering it unenforceable. **REP. DENNY** reported there was \$200,000 in HB 2 for SB 136. **SEN. ECK** noted the Ethics Bill was no more underfunded than any other program.

**SEN. GROSFIELD** asked **Mr. Argenbright** if a delayed effective date for the Ethics Commission would help. **SEN. ECK** believed having the Commission named and in place would make a difference in public perception. She added the fact that there was an Ethics Commission would give the perception that the state was serious about ethics. **CHAIRMAN BAER** agreed the statutory changes alone and the education provided in SB 136 would be a strong deterrent to ethical violations.

**SEN. GROSFIELD** referred to page 8, lines 18-20 regarding a class that would be so narrow as to have a personal impact. He contended it was not defined specifically enough for legislators

to understand when they were required to disclose. **Greg Petesch** explained the intent was not to preclude ranchers from voting on livestock issues. So long as the class included all ranchers there would be no conflict of interest. He added at the point the issue became a tax break for an exotic species of livestock raised by only a handful of individuals in the state, and a legislator happened to be one of the ranchers affected there would then be a conflict of interest. **SEN. ECK** speculated the Senate and House Rules would further define the requirements and procedures for disclosure. **SEN. GROSFIELD** expressed concern that depending on how a class was described it could become very narrow. **Mr. Petesch** referred to lines 15 and 16 of existing law for guidance. The bill read a conflict did not arise from legislation affecting the membership of a profession, occupation or class. **SEN. ECK** stated the matter of disclosure should not be a concern. There was no risk in disclosing at the point a legislator even suspects their situation may be more affected than others in a class.

*{Tape: 2; Side: B}*

**Greg Petesch** stated the Committees had been incorporated by reference into the bill to allow them to determine for the body the types of disclosure they felt was necessary. **CHAIRMAN BAER** noted the disclosure provision was current law, SB 136 simply narrowed the class. **Mr. Petesch** stated the intent of the Joint Committee was because they were requiring a legislator to vote and represent their constituent's interests the Joint Committee wanted disclosure of direct personal impacts from legislation. **Greg Petesch** reiterated the language was not drafted to prohibit a legislator from carrying legislation they are knowledgeable of. **SEN. GROSFIELD** stated his concerns stemmed from the word "direct" on line 20. He questioned if that was the proper word. He alleged many pieces of legislation could have a direct personal impact whether the class was narrow or broad. He suggested the word "distinctive" be inserted. He explained distinctive would suggest the legislation would have to impact the legislator differently than others in the class. **SEN. ECK** suggested inserting "greater than other members of his class". **CHAIRMAN BAER** reiterated the worst consequence would be disclosure and the legislator would still be allowed to vote. **SEN. GROSFIELD** reminded the committee there was enforcement provisions in SB 136. He was concerned that the point of required disclosure was unclear. At what point was a class narrow? Was it 20 people? 27½ people? He wondered how a legislator was supposed to know when it was time to disclose. **SEN. GROSFIELD** asked where was a legislator required to disclose, in committee or on the floor. **Greg Petesch** stated disclosure in front of the Committee of the Whole would be on record and the legislator would also need to disclose in Committee. **SEN. GROSFIELD** clarified he did not mind disclosing he just wanted to be clear where and when to disclose. **Mr. Petesch** stated a blanket disclosure could be done at the beginning of the session and filed with the Secretary of the

Senate. SEN. ECK noted in reviewing legislation a legislator would know if there was potential for a conflict.

Motion/Vote: SEN. GROSFIELD MADE THE MOTION THAT PAGE 8, LINE 20 AFTER "DIRECT" INSERT "AND DISTINCTIVE". The motion CARRIED UNANIMOUSLY.

Motion/Vote: SEN. GROSFIELD MADE THE MOTION THAT THE CONFERENCE COMMITTEE REPORT BE ADOPTED. The motion CARRIED WITH REP. COCCHIARELLA VOTING NO.

ADJOURNMENT

Adjournment: CHAIRMAN BAER adjourned the meeting at 7:55 p.m.

  
\_\_\_\_\_  
SENATOR LARRY BAER, Chairman

  
\_\_\_\_\_  
TINA PRICE, Secretary

LB/tp



REPRESENTATIVE ROSE FORBES

HOUSE SEAT # 56

**NOTICE OF FREE CONFERENCE COMMITTEE MEETING**

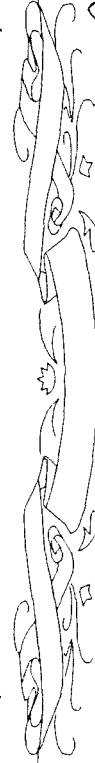
SP-136

The FREE CONFERENCE COMMITTEE ON ~~SB-39~~ will meet on TUESDAY, April 11, 1995 at  
UPON ADJOURNMENT OF SENATE in Room 437.

April 11, 1995 -- 3:37pm

JUDY KEINTZ, Secretary

Phone: 4797



Rose Forbes - Pray Vote to Matt Darnay

Free Conference Committee  
on SB 136  
Report No. 1, April 12, 1995

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 136, met and considered:

SB 136 in its entirety

We recommend that SB 136 (reference copy as amended - salmon) be amended as follows:

1. Page 2, line 18.

Following: "money"

Strike: ", " through "value, "

2. Page 3, line 2.

Following: "(3)"

Insert: "(a)"

Following: "SUBSTANTIAL"

Insert: "substantial"

Following: "VALUE"

Insert: "means a gift with a value of \$50 or more for an individual. (b) The term"

3. Page 3, line 3.

Strike: "(A)"

Insert: "(i)"

Re-number: subsequent subsections

4. Page 3, line 13.

Strike: "(I)"

Insert: "(A)"

Re-number: subsequent subsections

5. Page 5, line 1.

Following: "±"

Insert: "(ii) legislators, involving legislative acts, is provided for in [section 14] and for all other acts is provided for in [sections 15 and 16];"

Re-number: subsequent subsection

6. Page 5, line 14.

Following: "of ~~substantial~~"

Insert: "substantial"

Strike: "AN"

Insert: "a substantial"

7. Page 7, line 29.

ADOPT

REJECT

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Following: "MAY"  
Insert: ", subject to legislative rule,"

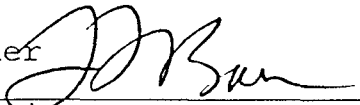
8. Page 8, line 20.  
Following: "direct"  
Insert: "and distinctive"

9. Page 9, lines 25 and 26.  
Following: "practices" on line 25  
Strike: remainder of line 25 through "." on line 26  
Insert: "persuading or affecting a political decision unless the use is:  
(a) authorized by law; or  
(b) properly incidental to another activity required or authorized by law, such as the function of an elected public official, the official's staff, or the legislative staff in the normal course of duties."

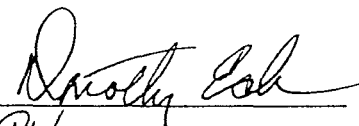

10. Page 15, line 30.  
Following: "practices."  
Insert: "The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint."

And that this Free Conference Committee report be adopted.


For the Senate:

Baer   
Chair

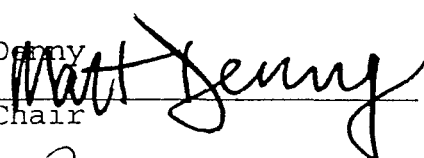
Grosfield  
\_\_\_\_\_

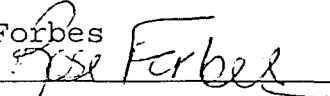
Eck   


Amd. Coord.

  
Sec. of Senate

For the House:

Denny   
Chair

Forbes 

Cocchiarella  
\_\_\_\_\_



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 136  
Representative Kadas

April 8, 1995 9:55 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 136 (third reading copy -- blue).

Signed: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read "Kadas".

*Representative Kadas*

And, that such amendments to Senate Bill 136 read as follows:

AMEND HOUSE COMMITTEE ON RULES STANDING COMMITTEE REPORT DATED  
APRIL 6, 1995 AS FOLLOWS:

1. Amendment No. 4 in the insert  
Following: "Gift of"  
Strike: "substantial"

AND THAT SENATE BILL NO. 136, THIRD READING COPY, BE FURTHER  
AMENDED AS FOLLOWS:

2. Page 4, line 26.  
Following: "of"  
Strike: "substantial"  
Strike: "a substantial"  
Insert: "an"

3. Page 7, line 5.  
Strike: "joint"

4. Page 7, line 17.  
Strike: "joint"

-END-

ADOPT

72 21

REJECT

SB 136

HOUSE

810955CW.Hbk



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 136  
Representative Anderson

April 8, 1995 12:41 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 136 (third reading copy -- blue).

Signed: *Shirley W. Anderson*  
Representative Anderson

And, that such amendments to Senate Bill 136 read as follows:

1. Page 5, line 24.

Strike: "A"

Insert: "Except as provided in subsection (4), a"

2. Page 6.

Following: line 3

Insert: "(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action."

Renumber: subsequent subsection

-END-

ADOPT

REJECT

SB 136

HOUSE

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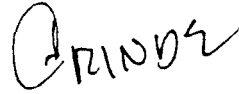


## HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Rules report that Senate Bill 136 (third reading copy -- blue) be concurred in as amended.

Signed:   
Larry Grinde, Chair

Carried by: Rep. Denny

And, that such amendments read:

1. Title, line 17.

Strike: "ALL"

Following: "MATTERS"

Insert: "AS PROVIDED IN LEGISLATIVE RULES"

2. Title, lines 22 through 24.

Strike: "POLITICAL OR" on line 22

Following: "ACTIVITY" on line 22

Strike: remainder of line 22 through "LAW" on line 24

3. Page 2, line 17.

Strike: "substantial"

4. Page 3, line 1.

Following: page 2

Insert: "(3) "Gift of substantial value" does not include:

(a) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(b) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in

Committee Vote:  
Yes 11, No 1.

SB 136  
HOUSE

an official capacity;

(c) educational material directly related to official governmental duties;

(d) an award publicly presented in recognition of public service; or

(e) educational activity that:

(i) does not place or appear to place the recipient under obligation;

(ii) clearly serves the public good; and

(ii) is not lavish or extravagant."

Renumber: subsequent subsections

5. Page 3, lines 3 and 4.

Following: "individual" on line 3

Strike: remainder of line 3 through "children" on line 4

6. Page 4, line 14.

Following: "officers"

Insert: ", legislators,"

Following: "and"

Insert: "state"

7. Page 4, line 15.

Strike: subsection (ii) in its entirety

Renumber: subsequent subsection

8. Page 4, line 25.

Following: "~~or~~"

Insert: "(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests;"

Renumber: subsequent subsections

9. Page 5, line 18.

Insert: "(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices."

10. Page 6, lines 4 and 5.

Strike: ":" on line 4 through "(a)" on line 5

11. Page 6, line lines 7 through 9.

Following: "undertaking" on line 7

Strike: remainder of line 7 through "interests" on line 9

12. Page 6, line 25.

Strike: "JOINT"

13. Page 6, line 26.

Strike: "should"

Insert: "may"

14. Page 6, line 29.

Strike: "shall"

Insert: "may"

Following: "on"

Strike: "the"

Insert: "an"

Following: "issue"

Insert: "on which the legislator has a conflict,"

15. Page 8, line 12.

Strike: "(a)"

16. Page 8, lines 13 through 24.

Strike: "political or" on line 13

Following: "activity" on line 13

Strike: remainder of line 13 through "." on line 24

Insert: ". This subsection does not apply to the preparation of  
official voter information pamphlets."

17. Page 8, lines 25 and 26.

Strike: "(a)" on line 25

Following: "employee" on line 25

Strike: remainder of line 25 through "exists" on line 26

Insert: "may not participate in a proceeding"

18. Page 8, line 27.

Strike: "(i)"

Insert: "(a)"

Renumber: subsequent subsection

19. Page 9, lines 1 and 2.

Strike: subsection (b) in its entirety

20. Page 12, line 13.

Following: "official"

Strike: "."

Strike: "member of a quasi-judicial board or commission."

21. Page 12, lines 24 and 25.

Following: "individual" on line 24

Strike: remainder of line 24 thorough "family" on line 25

22. Page 12, line 27.

Strike: "and" through "family"

23. Page 12, line 29.

Strike: "or" through "family"

24. Page 12, line 30 through page 13, line 1.

Following: "individual" on line 30

Strike: remainder of line 30 through "family" on line 1

25. Page 13, line 3.

Strike: "(e)" through "i."

Renumber: subsequent subsection

26. Page 13, lines 4 and 5.

Following: "individual" on line 4

Strike: remainder of line 4 through "family" on line 5

27. Page 13, lines 12 and 13.

Strike: subsection (5) in its entirety

28. Page 14, line 25.

Following: "officers"

Insert: ", legislators,"

29. Page 14, line 26.

Following: "officer"

Insert: ", legislator,"

30. Page 15, line 14.

Insert: "(4) Except for records made public in the course of a hearing, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are not open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

31. Page 17, line 1.

Following: "practices"

Insert: "under this part"

-END-

## SENATE BILL NO. 136

INTRODUCED BY BAER, KEENAN, BENEDICT, BURNETT, DENNY, MOHL, HARGROVE, BRAINARD,  
EMERSON, MESAROS, JORE, JENKINS, CRISMORE, ESTRADA, KEATING, FORBES, PECK,  
COCCHIARELLA, PAVLOVICH, MURDOCK, BOHARSKI, VICK, WISEMAN, GREEN, MOLNAR,  
HARRINGTON, MERCER, GRINDE, MCKEE, TAYLOR, AHNER, MILLS, L. SMITH, MARTINEZ, OHS,  
SLITER, T. NELSON, STOVALL, SIMON, LARSON, R. JOHNSON, WELLS, MCGEE, KITZENBERG, ELLIS,  
TREXLER, FUCHS, CLARK, BARNHART, SQUIRES, TUSS, ELLINGSON, SHEA, MENAHAN, RYAN,  
SWANSON, CAREY, TROPILA, ELLIOTT, J. JOHNSON, WENNEMAR, HURDLE, HEAVY RUNNER,  
HOLLAND, MCCULLOCH, MASOLO, BOHLINGER, LYNCH, JACOBSON, FORRESTER, CHRISTIAENS,  
L. NELSON, JERGESON, COLE, MILLER, BROOKE, WELDON, VAN VALKENBURG, FRANKLIN,  
PIPINICH, SPRAGUE, HARDING, FOSTER, HARP, GROSFIELD, BISHOP, HOLDEN

BY REQUEST OF THE JOINT COMMITTEE ON ETHICS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING ETHICS;  
CHANGING ETHICAL GUIDELINES INTO REQUIREMENTS; REQUIRING LEGISLATORS TO DISCLOSE  
INTERESTS RAISING THE APPEARANCE OF IMPROPRIETY AND TO ~~REFRAIN FROM VOTING ON CERTAIN~~  
VOTE ON ALL MATTERS AS PROVIDED IN LEGISLATIVE RULES; PROHIBITING PROVIDING  
REQUIREMENTS FOR A PUBLIC EMPLOYEE WHO IS A LEGISLATOR FROM RECEIVING BOTH SALARIES  
WHILE SERVING IN THE LEGISLATURE, PUBLIC OFFICER, OR LEGISLATOR TO RECEIVE MORE THAN ONE  
PUBLIC SALARY FOR OVERLAPPING HOURS OF EMPLOYMENT; PROHIBITING PUBLIC OFFICERS AND  
PUBLIC EMPLOYEES FROM USING PUBLIC TIME, EQUIPMENT, FACILITIES, SUPPLIES, PERSONNEL, OR  
FUNDS TO PROMOTE POLITICAL IDEOLOGY OR TO INFLUENCE A POLITICAL ISSUE; AND FOR ANY  
POLITICAL OR CAMPAIGN ACTIVITY PERSUADING OR AFFECTING A POLITICAL DECISION UNLESS THE  
USE IS AUTHORIZED BY LAW OR PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR  
AUTHORIZED BY LAW; RESTRICTING EMPLOYMENT BY CURRENT AND FORMER PUBLIC OFFICIALS AND  
EMPLOYEES; PROVIDING FOR EDUCATION AND TRAINING ON ETHICAL MATTERS; PROVIDING  
ENFORCEMENT PROVISIONS FOR ETHICS VIOLATIONS; PROVIDING THAT FILING TAX RETURNS IS AN  
ETHICAL REQUIREMENT; CREATING AN ETHICS COMMISSION TO PROVIDE REVIEW OF ETHICS  
DECISIONS IN CASES INVOLVING STATE OFFICERS AND STATE EMPLOYEES; AMENDING SECTIONS  
2-2-102, 2-2-103, 2-2-104, 2-2-105, 2-2-111, 2-2-112, 2-2-121, AND 2-2-125, 2-2-131, 2-2-302,

1 2-18-102, 5-7-213, AND 13-35-226, MCA; REPEALING SECTION 2-2-132, MCA; AND PROVIDING AN  
2 EFFECTIVE DATE."

3  
4 WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of  
5 prohibiting conflict between public duty and private interest for members of the Legislature and for all state  
6 and local government officers and employees; and

7 ~~WHEREAS, Title 2, chapter 2, part 1, MCA, implementing Article XIII, section 4, of the Montana~~  
8 ~~Constitution, dilutes the spirit, purpose, and intent of the constitutional mandate.~~

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 (Refer to First Reading Bill)

12 Strike everything after the enacting clause and insert:

13  
14 **Section 1.** Section 2-2-102, MCA, is amended to read:

15 **"2-2-102. Definitions.** As used in this part, the following definitions apply:

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

18 (2) "Compensation" means any money, thing of substantial value, or economic benefit conferred  
19 on or received by any person in return for services rendered or to be rendered by ~~himself~~ the person or  
20 another.

21 ~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision~~  
22 ~~thereof or member of the judiciary, including a member of a board, commission, or committee except a~~  
23 ~~legislator and an employee under contract to the state.~~

24 ~~(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which~~  
25 ~~is:~~

26 ~~(a) an ownership interest in a business;~~

27 ~~(b) a creditor interest in an insolvent business;~~

28 ~~(c) an employment or prospective employment for which negotiations have begun;~~

29 ~~(d) an ownership interest in real or personal property;~~

30 ~~(e) a loan or other debtor interest; or~~

1 ~~(f) a directorship or officership in a business.~~

2 (3) "GIFT OF SUBSTANTIAL VALUE" DOES NOT INCLUDE:

3 (A) A GIFT THAT IS NOT USED AND THAT, WITHIN 30 DAYS AFTER RECEIPT, IS RETURNED TO  
4 THE DONOR OR DELIVERED TO A CHARITABLE ORGANIZATION OR THE STATE AND THAT IS NOT  
5 CLAIMED AS A CHARITABLE CONTRIBUTION FOR FEDERAL INCOME TAX PURPOSES;

6 (B) FOOD AND BEVERAGES CONSUMED ON THE OCCASION WHEN PARTICIPATION IN A  
7 CHARITABLE, CIVIC, OR COMMUNITY EVENT BEARS A RELATIONSHIP TO THE PUBLIC OFFICER'S OR  
8 PUBLIC EMPLOYEE'S OFFICE OR EMPLOYMENT OR WHEN THE OFFICER OR EMPLOYEE IS IN  
9 ATTENDANCE IN AN OFFICIAL CAPACITY;

10 (C) EDUCATIONAL MATERIAL DIRECTLY RELATED TO OFFICIAL GOVERNMENTAL DUTIES;

11 (D) AN AWARD PUBLICLY PRESENTED IN RECOGNITION OF PUBLIC SERVICE; OR

12 (E) EDUCATIONAL ACTIVITY THAT:

13 (I) DOES NOT PLACE OR APPEAR TO PLACE THE RECIPIENT UNDER OBLIGATION;

14 (II) CLEARLY SERVES THE PUBLIC GOOD; AND

15 (III) IS NOT LAVISH OR EXTRAVAGANT.

16 ~~(5)(3)~~ "Official act" or "official action" means a vote, decision, recommendation, approval,  
17 disapproval, or other action, including inaction, ~~which~~ that involves the use of discretionary authority.

18 (4) "Private interest" means an interest held by an individual ~~or the individual's spouse or minor~~  
19 ~~children~~ that is:

20 (a) an ownership interest in a business;

21 (b) a creditor interest in an insolvent business;

22 (c) an employment or prospective employment for which negotiations have begun;

23 (d) an ownership interest in real property;

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

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

26 (5) "Public employee" means:

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

28 (b) a member of a quasi-judicial board or commission or of a board, commission, or committee with  
29 rulemaking authority; and

30 (c) a person under contract to the state.

1 (6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any  
2 elected officer of any subdivision of the state.

3 (7) (a) "State agency" includes:

4 (i) the state;

5 (ii) the legislature and its committees;

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

7 (iv) the university system; and

8 (v) all independent commissions and other establishments of the state government except the  
9 courts.

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

11 (8) "State officer" includes all elected officers and directors of the executive branch of state  
12 government as defined in 2-15-102."

13  
14 **Section 2.** Section 2-2-103, MCA, is amended to read:

15 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public  
16 trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers,  
17 legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the  
18 individual's duties for the benefit of the people of the state.

19 (2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary~~ the  
20 person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary~~  
21 ~~under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject to the  
22 penalties provided in this part for abuse of ~~his~~ the public's trust. ~~The county attorney of the county where~~  
23 ~~the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys~~  
24 ~~collected in such actions shall be paid to the general fund of the aggrieved agency.~~

25 (3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of  
26 any of which is, ~~as such,~~ a violation of ~~fiduciary~~ public duty, and various ethical principles, the  
27 transgression of any of which ~~is not, as such,~~ a violation of fiduciary duty must be avoided.

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

29 (i) state officers, LEGISLATORS, and STATE employees is provided for in [sections 16 and 17 15  
30 AND 16];

~~(ii) legislators is provided for in [section 15 14];~~

~~(iii) (II) local government officers and employees is provided for in [section 22 21].~~

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

**Section 3.** Section 2-2-104, MCA, is amended to read:

**"2-2-104. Rules of conduct for all public officers, legislators, and public employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ the actor's public duty. A public officer, legislator, or public employee may not:

~~(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or~~

(A) DISCLOSE OR USE CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF OFFICIAL DUTIES IN ORDER TO FURTHER SUBSTANTIALLY THE INDIVIDUAL'S PERSONAL ECONOMIC INTERESTS;

~~(b)(B) accept a gift of substantial value or a substantial AN economic benefit tantamount to a gift: (i)(a)(C) which that would tend improperly to influence a reasonable person in his the person's position to depart from the faithful and impartial discharge of his the person's public duties; or~~

~~(ii)(b)(D) which he that the person knows or which that a reasonable person in his that position should know under the circumstances is primarily for the purpose of rewarding him the person for official action he has taken.~~

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of ~~such the~~ services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for its costs in THE SALARY PAID FOR performing the function from which the officer, legislator, or employee is absent; or

1 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by  
2 the amount of salary received from the other public employer in order to avoid duplicate compensation for  
3 the overlapping hours.

4 (b) Subsection (3)(a) does not prohibit a public officer, legislator, or public employee from receiving  
5 income from the use of accrued leave or compensatory time during the period of overlapping employment.

6 (C) IN ORDER TO DETERMINE COMPLIANCE WITH THIS SUBSECTION (3), A PUBLIC OFFICER,  
7 LEGISLATOR, OR PUBLIC EMPLOYEE SUBJECT TO THIS SUBSECTION (3) SHALL DISCLOSE THE  
8 AMOUNTS RECEIVED FROM THE TWO SEPARATE PUBLIC EMPLOYMENT POSITIONS TO THE  
9 COMMISSIONER OF POLITICAL PRACTICES."

10  
11 **Section 4.** Section 2-2-105, MCA, is amended to read:

12 **"2-2-105. Ethical ~~principles~~ requirements for public officers and public employees.** (1) The  
13 ~~principles~~ requirements in this section are intended as ~~guides to~~ rules of conduct, and ~~do not constitute~~  
14 ~~violations as such~~ constitute a breach of the public trust and public duty of office or employment in state  
15 or local government.

16 (2) ~~A EXCEPT AS PROVIDED IN SUBSECTION (4), A public officer or public employee should~~ may  
17 not acquire an interest in any business or undertaking ~~which he~~ that the officer or employee has reason to  
18 believe may be directly and substantially affected to its economic benefit by official action to be taken by  
19 ~~his~~ the officer's or employee's agency.

20 (3) A public officer or public employee ~~should~~ may not, within the 12 months following the  
21 voluntary termination of ~~his~~ office or employment, obtain employment in which ~~he~~ the officer or employee  
22 will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was  
23 directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules  
24 of general application, ~~which he~~ that the officer or employee actively helped to formulate and applications,  
25 claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active  
26 participant.

27 (4) WHEN A PUBLIC EMPLOYEE WHO IS A MEMBER OF A QUASI-JUDICIAL BOARD OR  
28 COMMISSION OR OF A BOARD, COMMISSION, OR COMMITTEE WITH RULEMAKING AUTHORITY IS  
29 REQUIRED TO TAKE OFFICIAL ACTION ON A MATTER AS TO WHICH THE PUBLIC EMPLOYEE HAS A  
30 CONFLICT CREATED BY A PERSONAL OR PRIVATE INTEREST THAT WOULD DIRECTLY GIVE RISE TO

1 AN APPEARANCE OF IMPROPRIETY AS TO THE PUBLIC EMPLOYEE'S INFLUENCE, BENEFIT, OR  
2 DETRIMENT IN REGARD TO THE MATTER, THE PUBLIC EMPLOYEE SHALL DISCLOSE THE INTEREST  
3 CREATING THE CONFLICT PRIOR TO PARTICIPATING IN THE OFFICIAL ACTION.

4 ~~(4)(5)~~ A public officer or public employee ~~should~~ may not:  
5 ~~(a)~~ perform an official act directly and substantially affecting a business or other undertaking to its  
6 economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a  
7 competing firm or undertaking; ~~or~~  
8 ~~(b) disclose or use confidential information acquired in the course of official duties in order to~~  
9 ~~substantially further the officer's or employee's private interests."~~

11 **Section 5.** Section 2-2-111, MCA, is amended to read:

12 **"2-2-111. Rules of conduct for legislators.** Proof of commission of any act enumerated in this  
13 section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty.

14 A legislator may not:

15 (1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation  
16 provided by statute, for promoting or opposing the passage of legislation;

17 (2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's  
18 services by the use of ~~his~~ the office."

20 **Section 6.** Section 2-2-112, MCA, is amended to read:

21 **"2-2-112. Ethical ~~principles~~ requirements for legislators.** (1) The ~~principles~~ requirements in this  
22 section are intended ~~only as guides to~~ rules for legislator conduct, ~~and do not constitute violations as such~~  
23 constitute a breach of the public trust of legislative office.

24 (2) A legislator has a responsibility to the legislator's constituents to participate in all matters  
25 ~~affecting the constituents~~ AS REQUIRED IN THE JOINT RULES OF THE LEGISLATURE. A legislator  
26 concerned with the possibility of a conflict ~~should~~ MAY briefly present the facts to the committee of that  
27 house that is assigned the determination of ethical issues. The committee shall advise the legislator as to  
28 whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions  
29 of subsection (5). The legislator ~~shall~~ MAY vote on ~~the~~ AN issue ON WHICH THE LEGISLATOR HAS A  
30 CONFLICT, after disclosing the interest.

1       ~~(2)(3)~~ When a legislator ~~must~~ is required to take official action on a legislative matter as to which  
 2       ~~he the legislator~~ has a conflict created by a personal or ~~financial~~ private interest ~~which that~~ would be  
 3       directly ~~and substantially affected by~~ give rise to an appearance of impropriety as to the legislator's  
 4       influence, benefit, or detriment in regard to the legislative matter, he should consider disclosing or  
 5       eliminating the legislator shall disclose the interest creating the conflict or abstaining from prior to  
 6       participating in the official action, as provided in subsections (2) and (5) and the joint rules of the  
 7       legislature. In making ~~his a~~ a decision, ~~he should~~ the legislator shall further consider:

8               (a) whether the conflict impedes ~~his~~ the legislator's independence of judgment;

9               (b) the effect of ~~his~~ the legislator's participation on public confidence in the integrity of the  
 10       legislature; and

11              (c) whether ~~his~~ the legislator's participation is likely to have any significant effect on the disposition  
 12       of the matter; and

13              (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family  
 14       benefit could arise from the legislator's participation.

15       ~~(3)(4)~~ A conflict situation does not arise from legislation or legislative duties affecting the entire  
 16       membership of a profession, occupation, or class.

17       ~~(4)(5)~~ ~~If a~~ A legislator ~~elects to~~ shall disclose the an interest creating the a conflict, ~~he shall do so~~  
 18       as provided in the ~~joint~~ rules of the legislature. A legislator who is a member of a profession, occupation,  
 19       or class affected by legislation is not required to disclose an interest unless the class contained in the  
 20       legislation is so narrow that the vote will have a direct personal impact on the legislator. A legislator may  
 21       seek a determination from the appropriate committee provided for in [section 15 14]."

22  
 23       Section 7. Section 2-2-121, MCA, is amended to read:

24       "2-2-121. Rules of conduct for state public officers and state public employees. (1) Proof of  
 25       commission of any act enumerated in ~~this section~~ subsection (2) is proof that the actor has breached ~~his~~  
 26       fiduciary a public duty.

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

28              (a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for ~~his~~  
 29       the officer's or employee's private business purposes;

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

1 purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official  
2 duties;

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

5 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic  
6 benefit from any ~~state~~ agency;

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

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

13 (3) ~~(a)~~ A public officer or public employee may not use public time, facilities, equipment, supplies,  
14 personnel, or funds for any political or campaign activity persuading or affecting a political decision unless  
15 the use is:

16 (i) authorized by law; or

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

19 (b) Subsection (3)(a) does not prohibit an elected public official from issuing public statements  
20 concerning matters within the scope of the official's office. However, a document that is published  
21 pursuant to this subsection (3) and that is aimed at supporting or opposing a political committee, a  
22 candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce  
23 the document. The statement must meet the specifications described in 18-7-306, and the costs must be  
24 estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed  
25 with the commissioner of political practices. THIS SUBSECTION DOES NOT APPLY TO THE  
26 PREPARATION OF OFFICIAL VOTER INFORMATION PAMPHLETS.

27 (4) ~~(a)~~ A state employee shall notify the employee's immediate supervisor that a potential conflict  
28 of interest exists MAY NOT PARTICIPATE IN A PROCEEDING when AN ORGANIZATION OF WHICH THE  
29 EMPLOYEE IS AN OFFICER OR DIRECTOR IS:

30 (i)(A) an organization of which the employee is a member is involved in a proceeding before the

1 employing agency that is within the scope of the employee's job duties; or

2 ~~(iii)(B) the employee is a member of or affiliated with any organization attempting to influence a~~  
3 local, state, or federal proceeding in which the employee represents the state.

4 ~~(b) The employee's supervisor shall make the disclosed information available to an interested~~  
5 person upon the person's request.

6 (5) A state officer or state employee may not engage in any activity, including lobbying, as defined  
7 in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the  
8 officer's or employee's job duties. THE PROVISIONS OF THIS SUBSECTION DO NOT PROHIBIT AN  
9 OFFICER OR EMPLOYEE FROM PERFORMING CHARITABLE FUNDRAISING ACTIVITIES IF APPROVED BY  
10 THE EMPLOYEE'S SUPERVISOR OR AUTHORIZED BY LAW.

11 ~~(3)(6)~~ A department head or a member of a quasi-judicial or rulemaking board may perform an  
12 official act notwithstanding the provisions of subsection (2)(e) if his participation is necessary to the  
13 administration of a statute and if he the person complies with the voluntary disclosure procedures under  
14 2-2-131.

15 ~~(4)(7)~~ Subsection (2)(d) does not apply to a member of a board, commission, council, or committee  
16 unless he the member is also a full-time state public employee.

17 (8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon  
18 conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the  
19 county jail for not more than 6 months, or by both. A civil proceeding under [section ~~4-6~~ 15] or [section  
20 ~~22~~ 21] does not preclude an action under this subsection."

21  
22 **Section 8.** Section 2-2-125, MCA, is amended to read:

23 **"2-2-125. Rules of conduct for local government officers and employees.** (1) Proof of commission  
24 of any act enumerated in this section is proof that the actor has breached his fiduciary a public duty  
25 subjecting the actor to disciplinary action by the employing entity.

26 (2) An officer or employee of local government may not:

27 (a) engage in a substantial financial transaction for his the officer's or employee's private business  
28 purposes with a person whom he the officer or employee inspects or supervises in the course of his official  
29 duties; or

30 (b) perform an official act directly and substantially affecting to its economic benefit a business or

1 other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is  
2 engaged as counsel, consultant, representative, or agent.

3 (3) ~~A Notwithstanding the provisions of subsection (2), a member of the governing body of a local~~  
4 ~~government may perform an official act notwithstanding this section when his~~ the member's participation  
5 is necessary to obtain a quorum or otherwise enable the body to act, ~~if he complies with the voluntary~~  
6 ~~disclosure procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of  
7 impropriety."

8  
9 **Section 9.** Section 2-2-131, MCA, is amended to read:

10 **"2-2-131. ~~Voluntary disclosure~~ Disclosure.** A public officer or public employee ~~may~~ shall, prior to  
11 acting in a manner ~~which~~ that may impinge on ~~his fiduciary~~ public duty, including the award of a permit,  
12 contract, or license, disclose the nature of ~~his~~ the private interest ~~which~~ that creates the conflict. ~~He~~ The  
13 public officer or public employee shall make the disclosure in writing to the secretary of state, listing the  
14 amount of ~~his financial~~ private interest, if any, the purpose and duration of ~~his~~ the person's services  
15 rendered, if any, and the compensation received for the services or ~~such~~ other information ~~as~~ that is  
16 necessary to describe ~~his~~ the interest. If ~~he~~ the public officer or public employee then performs the official  
17 act involved, ~~he~~ the officer or employee shall state for the record the fact and summary nature of the  
18 interest disclosed at the time of performing the act."

19  
20 **Section 10.** Section 2-2-302, MCA, is amended to read:

21 **"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions --**  
22 **publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of  
23 any board, bureau, or commission or employee at the head of a department of this state or any political  
24 subdivision of this state to appoint to any position of trust or emolument any person related or connected  
25 by consanguinity within the fourth degree or by affinity within the second degree.

26 (2) The provisions of this section and 2-2-303 do not apply to:

27 (a) a sheriff in the appointment of a person as a cook or an attendant;

28 (b) school district trustees if all the trustees, with the exception of any trustee who is related to  
29 the person being appointed and who must abstain from voting for the appointment, approve the  
30 appointment of a person related to a trustee;

1 (c) a school district in the employment of a person as a substitute teacher who is not employed  
2 as a substitute teacher for more than 30 consecutive school days; or

3 (d) the renewal of an employment contract of a person who was initially hired before the member  
4 of the board, bureau, or commission or the department head to whom ~~he~~ the person is related assumed the  
5 duties of the office;

6 (e) the employment of election judges; or

7 (f) the employment of pages or temporary session staff by the legislature.

8 (3) Prior to the appointment of a person referred to in subsection (2), the school district trustees  
9 shall give written notice of the time and place of their intended action. The notice must be published at  
10 least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in  
11 which the school district is located."  
12

13 **Section 11.** Section 2-18-102, MCA, is amended to read:

14 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided  
15 by law or collective bargaining agreement, the department shall:

16 (a) encourage and exercise leadership in the development of effective personnel administration  
17 within the several agencies in the state and make available the facilities of the department to this end;

18 (b) foster and develop programs for recruitment and selection of capable persons for permanent,  
19 seasonal, temporary, and other types of positions and for the improvement of employee effectiveness,  
20 including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation  
21 for productivity and retention in permanent status;

22 (c) foster, develop, and promote job sharing in agencies;

23 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the  
24 policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

25 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the  
26 state service;

27 (f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform  
28 any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts  
29 1 and 2.

30 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the

1 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided  
2 that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards  
3 established by the department.

4 (3) The department shall develop and issue personnel policies for the state. Adequate public notice  
5 ~~shall~~ must be given to all interested parties of proposed changes or additions to the personnel policies  
6 before the date they are to take effect. If requested by any of the affected parties, the department shall  
7 schedule a public hearing on proposed changes or additions to the personnel policies before the date they  
8 are to take effect.

9 (4) The department shall develop model rules of conduct for all state employees based upon the  
10 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the  
11 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional  
12 rules appropriate to the specific circumstances of the agency."

13  
14 **Section 12.** Section 5-7-213, MCA, is amended to read:

15 "5-7-213. **Disclosure by elected officials.** (1) (a) Prior to December 15 of each even-numbered  
16 year, each elected official, ~~or official elect member of a quasi-judicial board or commission, or department~~  
17 director shall file with the commissioner a business disclosure statement on a form provided by the  
18 commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this  
19 subsection (1)(a) during the same period.

20 (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of  
21 the time that the candidate files for office, file a business disclosure statement with the commissioner on  
22 a form provided by the commissioner.

23 (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b)  
24 is required to file the business disclosure statement at the earlier of the time of submission of the person's  
25 name for confirmation or the assumption of the office.

26 (2) The statement ~~shall~~ must provide the following information:

27 (a) the name, address, and type of business of ~~such~~ the individual ~~and each member of such the~~  
28 ~~individual's immediate family;~~

29 (b) each present or past employing entity from which benefits, including retirement benefits, are  
30 currently received by the individual and each member of the individual's immediate family;

1 (c) each business, firm, corporation, partnership, and other business or professional entity or trust  
2 in which the individual ~~or a member of the individual's immediate family~~ holds an interest;

3 (d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual ~~or a~~  
4 ~~member of the individual's immediate family~~ is an officer or director, regardless of whether or not the entity  
5 is organized for profit;

6 ~~(e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and~~  
7 ~~(f)(E) all real property, other than a personal residence, in which the individual ~~or a member of the~~~~  
8 ~~individual's immediate family holds an interest. Real property may be described by general description. For~~  
9 ~~this purpose "immediate family" includes the individual's spouse and minor children only.~~

10 ~~(2)(3) No such~~ An individual may not assume or continue to exercise the powers and duties of the  
11 office to which that individual has been elected or appointed until ~~such~~ the statement has been filed as  
12 provided in subsection (1).

13 ~~(3)(4)~~ The commissioner shall make ~~such~~ the business disclosure statements available to any  
14 individual upon request.

15 ~~(5) For purposes of this section, "immediate family" means the individual's spouse and minor~~  
16 ~~children."~~

17  
18 **Section 13.** Section 13-35-226, MCA, is amended to read:

19 **"13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in  
20 paying ~~his~~ employees the salary or wages due them, to include with their pay the name of any candidate  
21 or any political mottoes, devices, or arguments containing threats or promises ~~{express or implied}~~,  
22 calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an  
23 employer to exhibit in a place where ~~his~~ the employer's workers or employees may be working any handbill  
24 or placard containing any threat, promise, notice, or information that, in case any particular ticket or  
25 political party, organization, or candidate is elected, work in ~~his~~ the employer's place or establishment will  
26 cease, in whole or in part, or will be continued or increased; ~~his~~ the employer's place or establishment will  
27 be closed; the salaries or wages of ~~his~~ the workers or employees will be reduced or increased; or other  
28 threats or promises ~~{express or implied}~~, intended or calculated to influence the political opinions or actions  
29 of ~~his~~ the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals,  
30 and public officers and employees.

1 (2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or  
2 oppose any political committee, the nomination or election of any person to public office, or the passage  
3 of a ballot issue.

4 (3) ~~No~~ 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  
6 at his the place of employment. However, ~~nothing in subject to 2-2-121~~, this section is not intended to  
7 restrict the right of a public employee to express his personal political views.

8 (4) Any person who violates the provisions of this section shall be fined an amount not to exceed  
9 \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate  
10 offense."

11  
12 ~~NEW SECTION. Section 14. Filing tax returns. (1) It is the responsibility of legislators, public~~  
13 ~~officers, and public employees to determine on an annual basis whether they are required to file tax returns~~  
14 ~~with the state of Montana and to file a complete return in a timely manner, if required.~~

15 ~~(2) The department of revenue shall provide to the commissioner of political practices information~~  
16 ~~necessary to determine compliance with this section, whether or not the information is confidential. The~~  
17 ~~commissioner of political practices shall keep the information confidential unless it is necessary to prove~~  
18 ~~that a violation of this section has occurred.~~

19  
20 NEW SECTION. Section 14. Ethics committees. (1) Each house of the legislature shall establish  
21 an ethics committee. The committee must consist of two members of each political party. The committees  
22 may meet jointly. Each committee shall educate members concerning the provisions of this part concerning  
23 legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The  
24 joint committee may consider matters affecting the entire legislature.

25 (2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for  
26 enforcement of the provisions of this part concerning legislators.

27  
28 NEW SECTION. Section 15. Enforcement for state officers, **LEGISLATORS**, and state employees.

29 (1) (a) A person alleging a violation of this part by a state officer, LEGISLATOR, or state employee may  
30 file a complaint with the commissioner of political practices. The commissioner shall request any

1 information necessary to make a determination from the complainant or the person who is the subject of  
2 the complaint and may issue subpoenas.

3 (b) Unless the complaint is referred to the county attorney under subsection (1)(c), the  
4 commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter  
5 4, part 6. The commissioner shall issue a decision based upon the record established before the  
6 commissioner.

7 (c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner  
8 shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

9 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may  
10 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was  
11 committed by a state employee, the commissioner may also recommend that the employing agency  
12 discipline the employee. The commissioner may assess the costs of the proceeding against the person  
13 bringing the charges if the commissioner determines that a violation did not occur or against the officer or  
14 employee if the commissioner determines that a violation did occur.

15 (3) The decision of the commissioner may be appealed to the ethics commission as provided in  
16 [section ~~17~~ 16].

17 (4) EXCEPT FOR RECORDS MADE PUBLIC IN THE COURSE OF A HEARING, A COMPLAINT AND  
18 RECORDS OBTAINED OR PREPARED BY THE COMMISSIONER IN CONNECTION WITH AN INVESTIGATION  
19 OR COMPLAINT ARE NOT OPEN FOR PUBLIC INSPECTION. THE COMMISSIONER'S DECISION ISSUED  
20 AFTER A HEARING IS A PUBLIC RECORD OPEN TO INSPECTION.

21 (5) THE COMMISSIONER MAY ADOPT RULES TO CARRY OUT THE RESPONSIBILITIES AND  
22 DUTIES ASSIGNED BY THIS PART.

23  
24 NEW SECTION. Section 16. Administrative appeal. (1) The ethics commission shall provide a  
25 hearing on the record, when requested in writing by a party to an issue that has been decided by the  
26 commissioner of political practices. The appeal must be requested within 60 days of a decision by the  
27 commissioner.

28 (2) The hearing is limited to matters contained in the record established before the commissioner.  
29 The commission may affirm, modify, or reverse a decision of the commissioner.

30 (3) A decision is rendered when signed by three or more commission members subscribing to the

1 decision and must be issued within 30 calendar days after submission of the request for an opinion.

2 (4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award  
3 costs and fees to the prevailing party.  
4

5 **NEW SECTION. Section 17. Ethics commission.** (1) There is an ethics commission attached to  
6 the office of the commissioner of political practices for administrative purposes only.

7 (2) The commission consists of five members. The members are appointed in the same manner  
8 as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as  
9 provided in subsection (6) of this section. A member of the commission must be a citizen of the United  
10 States and a resident of Montana. A member of the commission may not be a:

11 (a) public official;

12 (b) public employee, except as the fifth member, who must be chosen by consensus of the other  
13 members;

14 (c) candidate;

15 (d) lobbyist or lobbyist's principal; or

16 (e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

17 (3) A member of the commission serves a term of 4 years. However, the initial members of the  
18 commission shall serve the following terms:

19 (a) One member shall serve a term of 1 year.

20 (b) One member shall serve a term of 2 years.

21 (c) One member shall serve a term of 3 years.

22 (d) Two members shall serve terms of 4 years.

23 (4) An individual may not serve more than two consecutive terms as a member of the commission.

24 A member of the commission continues in office until a successor is appointed and has qualified.

25 (5) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall  
26 appoint a successor.

27 (b) If at the time that a vacancy occurs the appointing authority is of a different political party than  
28 that of the original appointing authority, the majority or minority leader in the same house who is of the  
29 same political party as the appointing authority that made the original appointment of the commissioner  
30 whose position is vacated shall appoint the successor.

1 (6) The presiding officer and vice presiding officer of the commission must be elected by a majority  
2 of the members of the commission. The presiding officer and vice presiding officer shall serve in those  
3 positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission.  
4 The vice presiding officer presides in the absence or disability of the presiding officer.

5 (7) A member of the commission may not receive a salary but is entitled to expenses as provided  
6 in Title 2, chapter 18, part 5.  
7

8 **NEW SECTION. Section 18. Meetings -- quorum.** The ethics commission shall meet at the call of  
9 the presiding officer or a majority of its members when an appeal from a decision of the commissioner of  
10 political practices UNDER THIS PART is requested. A quorum consists of three or more members. An  
11 affirmative vote of three or more members is necessary for the issuance of a decision.  
12

13 **NEW SECTION. Section 19. Prohibition on political activity by commission members.** A member  
14 of the ethics commission may not participate in political activity or in a political campaign during the term  
15 of office. A member of the commission may not:

- 16 (1) make a financial contribution to a candidate;  
17 (2) make a financial contribution to a political committee; or  
18 (3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.  
19

20 **NEW SECTION. Section 20. Prohibition on lobbying activity.** A member of the ethics commission  
21 may not be a registered lobbyist or participate in lobbying activities that would require the individual to  
22 register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are  
23 permitted under state law.  
24

25 **NEW SECTION. Section 21. Enforcement for local government.** (1) Except as provided in  
26 subsection (5), a person alleging a violation of this part by a local government officer or local government  
27 employee shall notify the county attorney of the county where the local government is located. The county  
28 attorney shall request from the complainant or the person who is the subject of the complaint any  
29 information necessary to make a determination concerning the validity of the complaint.

- 30 (2) If the county attorney determines that the complaint is justified, the county attorney may bring

1 an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county  
2 attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal  
3 charges against the officer or employee.

4 (3) If the county attorney declines to bring an action under this section, the person alleging a  
5 violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more  
6 than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees  
7 against the person bringing the charges if the court determines that a violation did not occur or against the  
8 officer or employee if the court determines that a violation did occur. The court may impose sanctions if  
9 the court determines that the action was frivolous or intended for harassment.

10 (4) The employing entity of a local government employee may take disciplinary action against an  
11 employee for a violation of this part.

12 (5) (a) A local government may establish a three-member panel to review complaints alleging  
13 violations of this part by officers or employees of the local government. The local government shall  
14 establish procedures and rules for the panel. The members of the panel may not be officers or employees  
15 of the local government. The panel shall review complaints and may refer to the county attorney  
16 complaints that appear to be substantiated.

17 (b) In a local government that establishes a panel under this subsection, a complaint must be  
18 referred to the panel prior to making a complaint to the county attorney.

19 (6) For purposes of this section, "local government" means a county, an incorporated city or town,  
20 a consolidated government, or a school district.

21  
22 **NEW SECTION.** **Section 22. Repealer.** Section 2-2-132, MCA, is repealed.

23  
24 **NEW SECTION.** **Section 23. Codification instruction.** [Sections 14 through ~~22~~ 21] are intended  
25 to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part  
26 1, apply to [sections 14 through ~~22~~ 21].

27  
28 **NEW SECTION.** **Section 24. Code commissioner instruction.** The code commissioner shall  
29 renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.  
30

1        **NEW SECTION.** **Section 25. Severability.** If a part of [this act] is invalid, all valid parts that are  
2        severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
3        applications, the part remains in effect in all valid applications that are severable from the invalid  
4        applications.

5  
6        **NEW SECTION.** **Section 26. Effective date.** [This act] is effective July 1, 1995.

7                                -END-