

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### SUBCOMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN SENATOR LORENTS GROSFIELD**, on  
February 4, 1995, at 9:45 AM

#### ROLL CALL

**Members Present:**

Sen. Lorents Grosfield Chair (R)  
Sen. Larry L. Baer (R)  
Sen. Sue Bartlett (D)  
Sen. Al Bishop, (R)  
Sen. Linda J. Nelson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Greg Petesch, Legislative Council  
Judy Keintz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Subcommittee Business Summary:**

Meeting: SB 115, SB 13

**CHAIRMAN GROSFIELD** stated the subcommittee will be dealing with SB 115 and SB 136, the two ethics bills which have been proposed this session. He suggested the committee review both bills and the current law to identify the issues which need to be addressed. SB 115 is 36 pages long with 58 sections. It repeals everything in the current ethics statute with exception of the local government sections. SB 136 amends some sections in the current ethics statute.

**Greg Petesch** explained the current code of ethics was adopted in 1977. It was based on NCSL materials which suggested three areas for ethics legislation: ethical guidelines for public officers and employees, lobbyist disclosure, and campaign practices. Montana adopted all of the above. The ethical laws we have are based on the concept of public trust and fiduciary duties. There are two types of statutes for each type of entity. There are statutes which govern legislatures, public officials, public employees and local government officials. Neither of the bills addresses local government. The statutes have two sets of guidelines. One set is called "rules of conduct", which are mandatory and provide that a violation of the rules of conduct is

a breach of fiduciary duty and that the actor is liable in the same manner as a fiduciary. There is a problem with enforcing fiduciary duty responsibility. If you are a trustee and you violate the trust document there is usually a monetary benefit to someone and you can recover against the trustee for the same. In a public setting, there is no monetary benefit unless the official has an interest in a contract. That could be the area which has prevented action in this part of the code. The second part of each statute is a set of ethical principles which are intended only as guidelines to help people conduct their affairs. There are no penalties attached whatsoever. The litigation in this area has centered around attempts to implement some method of enforcement. Secretary of State Jim Waltermire attempted to create a commission that would be similar to what is established in Senator Eck's bill. It was struck down as being outside the authority granted to the secretary of state under this statute. The secretary of state's only duty under this statute would be to issue advisory opinions which would not be binding in any way. At the hearing on SB 115, **Garth Jacobson, Legal Counsel to the Secretary of State**, explained the district court decision and Judge Bennett's opinion which stated that there was no state mechanism to enforce this statute. Any enforcement under the current statutes is through the county attorney. The penalty is breach of a fiduciary duty as a trustee. Unless there is a contract of money involved, there is no recovery against the official.

**CHAIRMAN GROSFIELD** questioned whether the current law had been changed since 1977. **Mr. Petesch** answered that it had not.

**CHAIRMAN GROSFIELD** asked for clarification of the local government statutes which were not being repealed, 2-2-125. **Mr. Petesch** explained that **SENATOR ECK'S** bill did not address local government. **SENATOR BAER'S** bill amends 2-2-125. There are two sections governing local government which are not repealed in **SENATOR ECK'S** bill. SB 115 leaves local governments untouched.

**SENATOR ECK** commented they had an amendment prepared to deal with those sections. The two sections left untouched by her bill were 125 and 103.

## **Section 2. Purpose -- intent.**

**CHAIRMAN GROSFIELD** asked **Mr. Petesch** to explain the difference between the purpose and intent in current law and the purpose and intent in SB 115. **Mr. Petesch** commented SB 115 had a more explicit purpose statement. SB 115 addresses education which is not addressed in current law. The distinctions are stated in current law; some standards apply to everyone while some standards apply to the different categories of officials due to the nature of their duties. SB 115 specifically promotes education of public officials.

**Mr. Jacobson** commented the key to this act is the educational part. They had testimony from many people who stated conduct could not be legislated, however, people could be educated regarding proper behavior. The education part of this bill is the driving force behind the entire act.

**SENATOR BAER** stated the new Section 2, which states that the Constitution prohibits conflict between public duty and private interest, is contradicted by a subsequent section in the bill. On page 2, line 3, states "(a) a public official or public employee be independent and impartial;" and a subsequent section provides exceptions to that. Line 5, "(c) a public official or public employee not use public office to obtain private benefits," is also contradicted. Line 6 makes it more broad and restricted and also contradicts subsequent sections. This is the main area where his bill conflicts with SB 115. He disagrees with the comment that you cannot legislate conduct. He feels we must legislate conduct. Why do we have a crime code? Conduct must conform with our Constitution which we have sworn in our oath of office to defend and protect.

### **Section 3. Definitions.**

**CHAIRMAN GROSFIELD** asked what "anything of value" would not include. **Mr. Jacobson** commented that anything of value keys into other sections which reference receipt of something. The exceptions explain what has been permitted. A gift is not an item that is less than \$25. Page 3, line 12 states "(b) Anything of value does not include:". A personalized plaque or trophy is not included. Food and beverage or entertainment with a value of \$25 or less is not included. The Commission tried to recognize the reality of the world. Page 4, line 4, deals with educational activities not otherwise stated above. This would permit an organization to send a legislator to view something which would provide him with information on upcoming legislation.

**SENATOR BARTLETT** questioned what "printed informational promotional" material would include. **Mr. Jacobson** commented that could be anything a lobbyist might give a legislature such as videos, booklets, educational materials, etc.

**CHAIRMAN GROSFIELD**, referring to page 5, lines 24 to 26, asked if a legislator received a significant gift from a girlfriend or best friend, would that need to be declared. **Mr. Jacobson** stated a legislator is permitted to accept a gift as long as it is not an attempt to influence that legislator on some type of action he would be taking. There is a \$500 aggregate limit before the gifts need to be reported. **CHAIRMAN GROSFIELD** further questioned if a female legislator received a \$1500 engagement ring, would that be reported on the disclosure? **Mr. Jacobson** commented the logic behind the gift reporting is to sensitize people that receiving gifts creates problems. They tried to set a threshold amount. The \$25 or less gift is simply ignored.

**SENATOR ECK** commented that this will cause a good deal of confusion. They are looking at gifts only from the perspective of those being given with the intent to influence on matters which would concern the person's political job. Section 8 deals with this.

**CHAIRMAN GROSFIELD** asked **Mr. Petesch** if there was anything in current law regarding gifts. **Mr. Petesch** stated there was not. **Mr. Jacobson** commented that lobbyist disclosure requirements dealt with gifts under \$25. Section 5-7-208 talks about reporting each separate item of \$25 or more benefit to any public official when payment was made for the purpose of lobbying.

**CHAIRMAN GROSFIELD** questioned when that section was adopted. **Mr. Jacobson** stated it was enacted in 1980. **CHAIRMAN GROSFIELD** further questioned what would be the 1995 equivalent of the 1980 \$25 bill? The comment was that it might be approximately double.

**SENATOR BISHOP** commented that the commission which was being set up could give an advanced opinion on any matters which might pose a problem. If public officials are educated to what may be a problem, they could then ask the commission.

**CHAIRMAN GROSFIELD** commented that current law refers to "anything of value" which would be quite a bit less than \$25. **Mr. Petesch** stated that in current law the definition of compensation would cover this matter. Compensation means anything of value. It prohibits a legislator from accepting any compensation, other than wages, for promoting or opposing a piece of legislation. If you carry a bill for an organization and they give you flowers, you are probably in violation of the current statute, Section 2-2-111 (1). **CHAIRMAN GROSFIELD** questioned 2-2-104(1)(b). **Mr. Petesch** explained that that specific provision applied to everyone: officers, employers, legislators, etc. It refers to substantial value. Substantial value is in the eye of the beholder. The specific legislative prohibition is on promoting or opposing passage of legislation.

**CHAIRMAN GROSFIELD** commented that SB 115 deals with specific numbers for gifts. Current law does not. Does it make sense to have specific numbers? The state of Wisconsin has passed an ethics bill which goes down to a cup of coffee.

**SENATOR BAER** commented that there is a vast array of situations which could apply to the implication of a conflict. His son-in-law owns an auto dealership in Helena. If they take him and his wife to dinner, would that have to be reported? There might be a bill somewhere in the legislature which would affect auto dealers. SB 115 is much more specific than current law.

**SENATOR ECK** stated that under SB 115 he would be okay because the gift was from his son-in-law. She questioned if that was prohibited under current law. **Mr. Petesch** answered that under current law that would be permitted because a reasonable person

would not think it was a reward or influence. **CHAIRMAN GROSFIELD** further questioned the situation if the person offering the dinner was his son's friend or another auto dealer. **Mr. Jacobson** commented it would change the situation under both SB 115 and current law. Under SB 115 it would have to be reported. However, you do not report anything being received from a lobbyist because that is already reported. **CHAIRMAN GROSFIELD** questioned the situation wherein his constituents, which are friends of his at home, drove to Helena to visit their senator and then took his family to dinner. **Mr. Jacobson** stated the meal would have to be reported if it was more than \$25. The reason they picked \$25 was because the average Montanan would view a \$25 meal as a good meal. The committee had a lot of disagreement when setting the number at \$25. **CHAIRMAN GROSFIELD** further questioned if his portion of the meal was only \$24, would he report it? **Mr. Jacobson** stated he would not have to report it. Each person is treated separately. The logic is that there are certain things not worth reporting.

**SENATOR BARTLETT** commented that the underlying issue here is to draw a bill that gives clear enough guidelines so that people can reasonably be expected to know when they are crossing a line without making it difficult for people to carry on their personal lives. This bill should not make serving in public office or being a public employee unattractive due to the additional reporting and disclosure.

**SENATOR BAER** commented that when creating an ethics bill there is a vast array of assumptions which have to be taken under consideration. Perhaps if we made things more permissible under the low water line we would not have to make assumptions as to what is ethical. SB 115 is fine, however, it needs a little fine tuning.

**SENATOR ECK** commented that in reference to gifts perhaps it would be best to add the language in 2-2-104(i) "which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties;". It may not be strict but it would make one think.

**CHAIRMAN GROSFIELD** asked in what context "associated" was used in the bill. **Mr. Jacobson** explained that tries to tie in business interests which might create a conflict of interest. The conflict of interest section would deal with business associates, Section 7. If you have some interest in a business and that business is contracted with the state, there could be a conflict of interest.

**SENATOR ECK** stated the difference in her bill is that the disclosure statement would have to be filed at the time of filing for the office.

**SENATOR BARTLETT** asked if the words "district office" meant a state level district office? **Mr. Jacobson** stated the intent was

only to have state officials. **CHAIRMAN GROSFIELD** felt that, as worded, the bill included subdivisions of state government. **Mr. Petesch** stated that county commissioners are elected from districts in some counties. Clarification may be necessary to make sure the bill is talking about statewide districts. **CHAIRMAN GROSFIELD** questioned a conservation district being a subdivision of state government. **Mr. Petesch** stated any local government is a subdivision of the state.

**SENATOR BARTLETT** stated that in using the term district offices, the bill addresses the candidates who file with the secretary of state's office. That would need to be made clear in the bill.

**SENATOR ECK** stated these people would not file disclosure statements.

**CHAIRMAN GROSFIELD** questioned why they are not including county level officials. **Mr. Jacobson** commented that at the local level this information isn't crucial. The Commission also wanted to reduce the number of reports filed. They only wanted to deal with the people making statewide policy and let the local governments deal with their own issues.

**SENATOR ECK** commented that **SENATOR BAER's** bill included local government and she felt the commission could help local governments establish their own rules. She is concerned about repealing all sections of the ethics statute and leaving the local government section out there by itself.

**SENATOR BAER** stated that ethical considerations should be applied to local governments as well. It should apply to everyone. **SENATOR ECK** commented that we should state that they have these duties, however, they should write their own rules.

**CHAIRMAN GROSFIELD** questioned if stepchild or foster child would be included in family members. **Mr. Jacobson** stated that (b) stated "a member of an individual's household" so that would cover the above.

**SENATOR ECK** commented that she was uncomfortable with the family members dealing with fourth degree relatives. **Mr. Petesch** stated that the nepotism statute was amended in 1991 to clarify the school district concerns. Degrees of consanguinity or affinity were not addressed. Those definitions have been in place for a long time. Defining nepotism by degrees of consanguinity or affinity is traditional and is largely tied to the appearances of impropriety of appointing a relative or an in-law to a position or hiring one. This is a public policy decision. The reason it was addressed for school districts is that a person might already be hired and working at a school and then their spouse or in-law was elected to a trustee position. The person then had to lose their job. Also in small communities there was a lot of difficulty finding people to fill positions.

**CHAIRMAN GROSFIELD** questioned how this would apply to legislative pages. **SENATOR BARTLETT** also had concerns with election judges. Counties with small populations do not have enough people to staff the polling places. **Mr. Petesch** stated that when a son is appointed as a page there is no question that you are bestowing political patronage by reason of relationship rather than merit. **CHAIRMAN GROSFIELD** questioned whether SB 115, in dealing with nepotism, adopted the fourth degree as in current law. **Mr. Jacobson** stated that it did.

**CHAIRMAN GROSFIELD** asked for clarification of "high-level employee". **Mr. Jacobson** stated that was an important concept. This would refer to directors, deputy directors, and others who have a significant amount of influence in policymaking. They are required to fill out disclosure reports and have greater restrictions on post employment activities and representing others before state agencies. Greater restrictions are placed on higher-level employees than is placed on average state employees. **CHAIRMAN GROSFIELD** questioned who would be included in the words "with substantial policymaking authority". **Mr. Jacobson** stated that each agency could designate whomever they felt had significant policymaking authority. This would probably include grade 18 or above. This may include administrators and possibly a bureau chief. **CHAIRMAN GROSFIELD** questioned whether it should be applied only to political employees. **Mr. Jacobson** stated that sometimes a classified position might have significant policymaking authority. Political employees could mean the governor's secretary. She would not be making high level policy decisions. **SENATOR ECK** asked if attorneys were policymaking employees. **Mr. Jacobson** stated there may be a few, the rest serve the purpose of whomever they are working for. The director of each department identifies the people who fit in that category.

**SENATOR ECK** stated that "public member" would not mean someone on an advisory committee it would be mean someone on a decision making committee. **CHAIRMAN GROSFIELD** questioned if any board members were compensated. **Mr. Jacobson** stated they were compensated for travel and some per diem. **Mr. Petesch** commented that if you are getting reimbursed for expenses that is not compensation.

**Mr. Jacobson** commented that a consultant would also be required to report financial disclosure statements. A consultant is a person who is basically contracted by the state to assist in a contracting process. **SENATOR BARTLETT** questioned why some kinds of consultants would be left out. **Mr. Jacobson** explained the only issue a consultant dealing with contracts is dealing with is a financial issue. **SENATOR BARTLETT** stated there are consultants hired to carry out various stages of permitting processes which have a direct impact on whether or not a permit gets issued. She would see this as just as significant as a consultant who is helping with a contract bidding procedure. **CHAIRMAN GROSFIELD** also stated that the Board of Health may have a consultant

hydrologist assist them in rulemaking. **Mr. Jacobson** stated those items could be added in. **Mr. Petesch** stated when dealing with consultants, they would have to be sensitive to the issue of privacy. Does doing business with the state override the person's privacy interest?

**CHAIRMAN GROSFIELD** asked for clarification of a subcontractor. **SENATOR BARTLETT** stated that if you have a contract and cannot within your own business take care of one aspect of that, you hire a subcontractor. **CHAIRMAN GROSFIELD** questioned when a consultant would not be contractor. **Mr. Petesch** stated that a consultant, as defined currently, only deals with awarding of bids. The consultant is pre-contractor and contractor is the person who the consultant decides should get the contract.

#### Section 4. Nepotism.

**Mr. Jacobson** stated this is current law. **SENATOR ECK** commented that they might look at the monetary reward involved or create a list of exceptions. **SENATOR NELSON** stated the legislature is ripe with nepotism during the sessions. **SENATOR ECK** stated it serves a purpose of getting staff that would be difficult to find. **SENATOR NELSON** stated there is no point in enacting a law and flying in the face of it. **CHAIRMAN GROSFIELD** listed categories to include pages, elective judges, as well as staff of the senate and house. **SENATOR ECK** suggested using the term "temporary". **Mr. Jacobson** stated there is a problem with temporary positions if they slide into permanent positions. The positions being defined are political patronage positions. There are also positions which cannot be filled because no one wants the job. **SENATOR ECK** stated that it might be separated out to address the situations where the pool of applicants is so small that you need to use relatives. **Mr. Petesch** stated that in order to be safe the positions would need to be listed. Limiting it by time or compensation would create areas which would be overlooked. **SENATOR NELSON** felt that applicants for the legislative staff would be plentiful. **Mr. Petesch** also stated that half the school kids in Helena would love to be pages. **SENATOR NELSON** felt that secretaries and rostrum positions could be filled without taking relatives to do so. **Mr. Petesch** stated there was no question that that was the case. **SENATOR BAER** stated this should deal with the length of employment and amount of compensation.

#### Section 5. Misuse of Office

**SENATOR ECK** felt that SB 136 addressed misuse of office. **Mr. Petesch** stated that SB 115 contained items which are not in current law. SB 136 is much more explicit than current law in setting forth time, facilities, and equipment. SB 115 differs from current law in that Section 5 is limited to private gain or gain of another. SB 115 is more explicit in misuse of office for political types of uses. Legislators are supposed to represent their constituents. **SENATOR BAER** stated that his problem with page 8, line 20 is that it is extremely vague and over broad and



it could negate the intentions to prohibit this type of conduct. If you put total discretion in a state entity to adopt any rule they wish to proceed on, you are placing the fox in charge of the chicken pen. On line 14, he objects to the collective bargaining agreement language. He also objects to the words "required for professional responsibility obligations". Why should public funds pay for attorneys to attend 15 hours of continuing legal education every year? **Mr. Jacobson** stated collective bargaining agreements permit certain employees to serve in grievance matters which may not be directly related to the duty of their position. Labor needs to have designees in grievance matters. The professional responsibility requirements was primarily focused on pro bono work. **SENATOR BAER** stated that if attorneys are doing pro bono work they are giving of themselves. Why should they be compensated for pro bono efforts? That contradicts the idealism of pro bono. If you intend certain specific items, they should be included in the text of the bill. The language in the bill is so vague and over broad that it covers almost anything which could be done in a discretionary fashion. **Mr. Jacobson** stated that for state attorneys to participate in pro bono work, they would have to leave the office and find some other place to work. For state attorneys to even participate in pro bono work, the only place they have any facilities to work would be their office. Even if they took the time as comp time or annual leave, under this language, they would be prohibited from pro bono work unless there was an exclusion for them. **SENATOR BAER** stated that they should be specific in their attention to that situation. The language here would not narrow that particular use, it would be wide open for many other uses that wouldn't be appropriate. **Mr. Jacobson** stated it was intended to be a minimal exception with the state agencies making the rules. **SENATOR BAER** stated that this is "trust me" language. He and his constituents are not willing to do that. He understands what they are trying to do and he agrees with those specific situations, however, that needs to be clearly written into the law. **SENATOR ECK** stated that it would be okay to strike everything after "bargaining agreement". They would then have to deal with (3). **SENATOR BARTLETT** stated she was concerned that there was no definition for the term "public benefit activities". Should there be an ethics commission which would be charged with responsibilities under this bill. They could come up with the rules which would make better sense than spelling it out in the law itself. They may also determine what the threshold for a gift would be. Instead of putting \$25 into the law, let the ethics commission establish what that amount should be. It is easier for them to keep pace with inflation than for the legislature to change the statute when necessary. This is the only place in the bill where the words "public benefit activities" appears and it seems there is a need for a little more guidance. Current law, 2-2-121(2), addresses this issue. What is the difference in SB 115 and this section? It is pretty specific about what is inappropriate. **Mr. Jacobson** answered that current law includes a lot of things which may not fit into misuse of office. Some of the provisions are elsewhere in the bill. **SENATOR BAER** stated that if this section

of current law is repealed, under public benefit activities we should list, define and enumerate the activities which we feel are permissible.

**SENATOR BARTLETT** stated she is concerned with Section 6, page 8, lines 26 and 27. We need to state that when you run for the legislature you need to be aware that you have to provide for someone to take over your representation of others during a session. **SENATOR ECK** stated she is a member of a local group involved in planning of social service systems and the Human Services Committee has been working with that issue. She hasn't testified. If people couldn't be there she may want to testify. **SENATOR NELSON** stated she represented a constituent at a SRS hearing. **SENATOR BAER** stated new Section 5 could have some broad language to exempt some of these situations. Using specificity may solve some of the problems. **Mr. Jacobson** stated that page 9, (2)(b) permits legislators to do this as long as they were uncompensated. **Mr. Petesch** stated that Section 6, (1)(b) is designed for attorneys. This should be broadened. If a legislator has a client who has a contested case before an agency that is just as important as appearing in court for that client. It could read that a legislator who is an attorney may represent another person before a state entity during the session. You cannot schedule when that contested case is set. SB 115 states that you can appear in court, but does not mention an agency hearing. **SENATOR BAER** stated this would cover preexisting obligations which were in effect prior to the legislator's coming to the legislature. **Mr. Jacobson** stated they were concerned with the possibility of holding an agency hostage for a favorable determination. **SENATOR BARTLETT** stated that there are other occupations in which people represent others as a part of their regular work responsibilities who are in the same situations as attorneys would be. A union official has a legal statutory responsibility to provide representation for people who are members of his union and can be charged with failure to represent if that representation is not provided. CPAs may face the same problems. **Mr. Petesch** stated that 121 dealt with this to a small degree. It is a serious issue. Legislators need to earn a living outside of the legislature.

#### **Section 7. Conflicts of interest in votes, deliberations, and discussions.**

**CHAIRMAN GROSFIELD** asked for comments on teachers voting on education issues, the rancher voting on ag issues, etc. **SENATOR ECK** stated the taxpayer voting on taxes. **Mr. Jacobson** stated the decision of the committee was that participation in all these matters was acceptable with the exception of a situation where that bill would directly benefit the legislator personally in a very limited scope. For example, if the state decided to purchase Senator Towe's antique car collection, he could not participate in that vote or try to influence in any way what would happen with that. We have a citizen part time legislature which relies on the expertise these legislators bring to their

position and it is assumed their interest will be discounted by the other people who might disagree with them. **CHAIRMAN GROSFIELD** stated that (3) on page 10 pulled family members into it which would go to the grandchild and grandfather. He posed the situation wherein he was on the long range planning subcommittee and they were dealing with a grant to the museum in Livingston in which his father donated time as a senior citizen, would he have to remove himself from voting on that motion? A specific motion on that specific grant is in the subcommittee budget. The subcommittee passes it and it then goes to the full subcommittee report for the section. The section then comes to the floor and the whole floor votes on it. Finally, all the sections are put together and the whole floor votes on the entire bill. His father is a part time paid employee at the museum. At what point does he need to remove himself from voting? **Mr. Jacobson** stated there originally was language stating that if you had a direct interest in a particular section, you could not participate. That was taken out so the legislature could define this in a more clear fashion. They felt it should be worked up through the joint rules as to where the cutoff is. Initially they thought that the best way to deal with that would be to not vote on any matter that deals with the individual's department. If he had been elected to the legislature, he would still be working for the secretary of state. He would not be able to vote on that one subpart of the budget bill. The Commission did not put that language in because they felt the legislature may want more flexibility. In regard to the earlier matter, the deciding factor would be if the language specifically states that this museum should get "x" number of dollars or whether it generally makes an appropriation for the purpose of funding museums throughout the state of Montana. If it is a general appropriation, the legislator could vote on that matter. If it were specific to that one facility, the legislator would need to exclude himself. **SENATOR ECK** stated that vote would be very important in the process because there are not very many people on that committee. This could be best addressed in legislative rules because depending on how legislature organizes itself, they could write one rule for subcommittees and another for second reading.

**SENATOR NELSON** stated the subcommittee works on the general budget for the museums and then it is brought to full appropriations. **CHAIRMAN GROSFIELD** stated then the legislator would have to refrain from voting in the first instance. **SENATOR BARTLETT** stated that in long range planning, they first voted on a specific grant. Next, they voted on the bill as amended in the subcommittee. Even before you are out of subcommittee you may have a very specific vote. You will have a vote on the bill in its entirety as amended that includes that grant. You would have two votes in subcommittee that need to be dealt with. The full appropriations could have a vote which affected the grant. **CHAIRMAN GROSFIELD** stated that our current rules state that the legislator must vote but if there is a conflict you have to disclose it. Under our current rules, in his museum example he

would declare the conflict on the first vote, then he would vote. Does he declare the conflict all the way through? **Mr. Petesch** stated that the current rule provides that the legislator is to disclose the fact to the house to which you are member. **CHAIRMAN GROSFIELD** stated that would need to be declared on the floor and also before the legislator voted in subcommittee. **Mr. Petesch** stated if **CHAIRMAN GROSFIELD** had a son employed by the conservation district and **CHAIRMAN GROSFIELD** was sitting on the subcommittee hearing the water grant bills and there is one in for that conversation district, he would have to disclose at that point. **CHAIRMAN GROSFIELD** asked for discussion on disclosure and voting versus disclosure and removing yourself from the process. **SENATOR NELSON** mentioned the situation wherein she might have a daughter who worked for the state and the state pay increase comes up. Does she need to disclose that and not vote on it? It could be looked at not only affecting her daughter but also a whole number of state workers. **SENATOR ECK** stated she was a member of a class.

**SENATOR BAER** stated the Constitution prohibits any conflict between public duty and private interest. It doesn't say any substantial interest. It doesn't say any reasonably foreseeable interest. It doesn't exempt any class or profession. It prohibits conflict of interest between public duty and private interest. The Constitution exists. Unless we amend the State Constitution to suit our needs, we still have to deal with that. We took an oath of office to uphold and defend our Constitution. When he read the first draft of the commission's report, he sent the Commission a letter expressing his disdain for their obvious attempt to circumvent the intention of the Constitution as applied to public employees. He did not get a response. He then discovered it was a nine member commission, seven of which were public employees. He feels that we have to strike a reasonable compromising approach to the specific language of the Constitution. As far as page 9, line 25, (1) reasonably foreseeable direct benefit needs to be defined. Subsection 2 is an attempt to exclude public employees from the mandate which has been directed by the Constitution. In talking about profession, occupation or class, there is still a reasonably foreseeable benefit discussed in (1). **CHAIRMAN GROSFIELD** asked **Mr. Petesch** if he recollected the constitutional implications of the current rule. **Mr. Petesch** stated that it states the legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees. The rule has been in the rules as long as he can remember. He does not recall any changes being made to that rule. The rule has been interpreted by the Rules Committees as (2) is written. You do not need to refrain from a vote as long as you are member of the class and do not have a specific personal interest. **CHAIRMAN GROSFIELD** stated the rule states that legislators need to disclose but then must vote. The Constitution seems to suggest that you can't participate. **Mr. Petesch** stated that in instances where you have a personal direct benefit, you should not be allowed to vote. **CHAIRMAN GROSFIELD**

asked how far that personal direct benefit goes. If he is a state employee and the pay plan comes up which involves a raise, he would still be a member of that class. **Mr. Petesch** stated that under the rules as interpreted, a state employee would not be prohibited from voting on that issue because they are a member of a class. There are very few instances where an individual would directly, personally benefit by a bill, because Montana does not allow special legislation. The question of whether the class distinction is proper or not becomes difficult in some instances. An example would be an attorney. All bills could be a subject of their practice. They would have more interest in all bills than a farmer or rancher would have in all bills. All lawyers should not be prohibited from serving in the legislature. Defining special interest is a problem because of the Montana restriction on special legislation. **SENATOR BAER** stated that what **Mr. Petesch** was referring to is current statutory law. It is a very subjective application at very best. It does not comply with the specific language of the Constitution. If this were challenged in a court of law, it would be very interesting to think of the possibilities. What has happened is that society has acquiesced in this thing for 22 years and allowed this subjective interpretation to exist without bringing suit or any other objection to the courts or the legislature. The public is no longer ignorant and they longer acquiesce because of the many problems which have arisen from this statutory subjective interpretation. Last night he was informed that there will be a citizens initiative on ethics anyway. What they want is to exclude all public employees from the legislature. They are angry. There will be some action taken on this. The major problem in ethics regarding public employees is not with legislators. It is the problem of public employees using public time, public materials and public funds to pursue political endeavors and ideologies. What we are talking about here is predominately legislators. It also applies to other public employees. He feels there is the problem of constitutional language. Look at the problem with "equal" regarding school equalization funding. That has only cost a billion dollars. How do we reconcile the specific unambiguous language of the Constitution as compared with the statutory subjective interpretation which really suits our needs but doesn't comply with the Constitution. There has been no attempt by the Ethics Commission to meet with him to work this thing out.

**SENATOR ECK** stated that during the constitutional convention they were more concerned about the influence of the big industries over the legislature. Legislators were absolutely controlled by industry. They were not considering that public employees had some other ax to grind. It was a different climate. To state that a legislator cannot vote on anything where they may have some conflict of interest would mean not voting on very many tax measures. You couldn't vote on an appropriation bill which set salaries. During one of the sessions there was a strong feeling that legislators should disclose but still vote. The Rules Committee decided a legislator could fill out a form and add to

it any bill where they had a conflict of interest. They could still announce the conflict on the floor. The advantage of the form is that it would be on public record and it would be available for the public to see. This is something that should be done by rules. It would be difficult to put into the law.

**SENATOR BAER** stated that if the Constitution did not intend what it said, why wasn't it modified and amended to correct itself to adhere to what **SENATOR ECK** has said. It is our supreme law of the state. Strict compliance with the Constitution as it is read, creates an untenable situation. To completely go the other direction and subvert its intent to allow public employees to do wrongful things because they are a member of a class or an occupation is really going too far in the opposite direction. This is a republic. Majority vote which created this statute is wrong. There is no reference to democracy in our Constitution. If this is a constitutional republic, then we have to go by a majority rule as long as we comply with the law. There has been a grave injustice done by our statutory subjective interpretation which probably had a conflict of interest situation present in itself when it took place.

**SENATOR BARTLETT** questioned the use of the words "public duty" and "private interest", could there be degrees of private interest. **SENATOR BAER** stated he does not know how to interpret the Constitution other than the actual strict interpretation which we are required to approach in a legal fashion. It is a severe problem which hasn't come to a head for 22 years. Now we have to address the problem because of public acknowledgement and public recognition of many of the violations which have taken place which the public feels is in contradiction of our constitutional language. This is the biggest job of our legislative session.

**CHAIRMAN GROSFIELD** asked if the code of ethics adopted in 1977 was in direct response to this constitutional provision. **Mr. Petesch** stated it was. This provision of the Constitution is very explicit. It is not self executing. It is a directive to the legislature to enact a statute. In order for this to have meaning the legislature has to act. This is a specific provision of the Constitution which by its own terms cannot be self executing. **CHAIRMAN GROSFIELD** stated that this provision was not in the previous Constitution. It talks about three things: members of the legislature, state officers and employees, and local officers and employees. Apparently the 1977 legislature felt that it implemented that provision of the Constitution. It states that the legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees. **Mr. Jacobson** stated that when the constitutional convention people dealt with this they had a lot of disagreement. They were trying to key it off of specific things which were in the old Constitution which prohibited interests in contracts and very specific instances where you have a direct conflict. As far

as the commission went, they did consider **SENATOR BAER'S** letter. They were concerned about identifying one class of individuals who were to be treated separately from any other class of individuals. They were afraid that if they treated state employees differently from any other class that would be an unfair treatment. Some people would treat them differently anyway. They tried to treat everyone even handedly. With regard to legislative matters, they specifically delegated that authority back to the legislature. They didn't want to get into that territory. Two former legislators served on the commission and knew the attitude and territory of the legislature. As far as prohibiting any public employees from participating in the legislature, the feeling was that that prohibition should not exist. The commission disagreed with **SENATOR BAER** in that regard.

**SENATOR BAER** questioned that he proposed that no public employee serve in the legislature.

**CHAIRMAN GROSFIELD** suggested they deal with private interest. This states the legislature shall provide a code of ethics. That implies to him that the legislature is going to come up with some definitions. In the statute that was passed, they do not define public duty or private interest. It would have been appropriate for them to do so. It seems logical to define private interest along the lines that our rule does or along the lines in which it has been interpreted which talks about class versus specific private interest. If private interest is defined as anything to your benefit, you get close to the situation where a significant number of legislators are not going to be able to vote on most bills. In the House they allow the members to abstain. The Senate does not. Sometimes the member will happen not to be in the room when the vote comes up. He feels the legislator should be responsible to vote on all issues. That is the only way a legislator can represent the people he serves. It does not make public policy sense to have an income tax bill come up and have 5 people voting. By not voting on an issue, the legislator's constituents are deprived of their representation with respect to that issue. The legislator should be obligated to disclose that he has a conflict. The situation would arise where not even a majority of the legislature votes on an issue. There are states which do this.

**SENATOR BAER** commented that his strict interpretation of the Constitution is realistically untenable. SB 115's liberal interpretation is unethical regarding legislators. There are many instances where this has been abused. Perhaps we cannot accomplish the goals on ethics which we hope to accomplish in one session. It may take two or three sessions. **SENATOR BAER** feels that his recommendations were not considered by the Commission appointed by the Secretary of State. He reemphasizes that seven of the ten members of the Commission were public employees. Four of them were government lawyers, three were teachers, and one was a lobbyist. He can't see a sincere and objective determination

from people who are so representative of the public employee sector.

**Section 7. Conflicts of interest in votes, deliberations, and discussions.**

**CHAIRMAN GROSFIELD** asked **Mr. Jacobson** about the Commission's discussion regarding the narrow issue of legislators voting on official decisions. **Mr. Jacobson** stated that their overlying theme was the "reasonably foreseeable direct benefit" would be something that would mean there was money involved and the direct linkage could be seen. They then excluded out classes and other items. If a legislator voted on a tax measure, it means money in or out of his or her pocket. They basically left it up to the legislature and then to the Ethics Commission. Public officials, other than legislators, would be dealing with contracts. **CHAIRMAN GROSFIELD** questioned the procedure wherein a legislator is dealing with an issue which would have a direct impact on the legislator or his family. The rules state that they should declare but that they must vote. SB 115 states that the legislator should not vote. **Mr. Jacobson** stated that the legislator has to file a financial disclosure statement and this would identify conflicts. The only area where the legislator is specifically prohibited from voting would involve a narrow scope of activities. **CHAIRMAN GROSFIELD** questioned the policy implication of committees such as long range planning which has only five members voting. **Mr. Jacobson** stated there was discussion on the Commission that everyone should vote on everything because legislators are elected by the voters and it is their obligation to do so. Other members of the Commission felt there should be more restrictions in participation. The compromise the Commission reached was that the legislator should vote most of the time with the exception of a very limited number of things.

**SENATOR ECK** questioned if the subcommittee wanted to limit the profession, occupation or class. **CHAIRMAN GROSFIELD** questioned how far class would reach. He commented that **SENATOR BAER** is uncomfortable with using class at all. **CHAIRMAN GROSFIELD** asked **SENATOR BAER** about the scenario where they would end up with a vote which would be 19-3 as the senate decision on a bill. **SENATOR BAER** stated that would be a problem. The example he gets frequently is the public school teacher who serves as a legislator and votes on a funding bill that would give increased funding to the school districts with the knowledge that about 80% of the money that goes to the school districts would increase his or her salary specifically. This language would exclude them from a conflict of interest for voting on that measure. "Reasonably foreseen", they know it is going to happen and they are not precluded from voting. He is willing to work with the language so they can satisfy some of the people. **SENATOR ECK** stated that the same situation would be with the pay plan. **SENATOR NELSON** commented the pay plan is for the next legislature. **CHAIRMAN GROSFIELD** questioned if anyone would be



able to vote on SENATOR KLAMPE'S bill to give legislators \$100 a month. SENATOR BAER stated they would all be on equal ground. SENATOR BARTLETT stated that would also be true of teachers.

SENATOR BARTLETT stated she represents public employees because her district is in Helena. Her sister is a public employee. When she votes on a state pay plan she is voting a pay increase for her sister, however, she is also representing a host of constituents. SENATOR BAER stated they may have to exclude the efforts here in regard to legislators entirely. A lot of people will not like that. Legislators are special people who come here to do a special job. How else can they perform their job?

**Section 8. Restraints on solicitation or acceptance of gifts and gratuities.**

Mike Pichette, Montana Power Company, questioned existing conflicts between (1) and (6). Page 10, line 15, says no person can give anything of value which can reasonably be inferred . . . Page 11, line 17, says they may not receive anything of value unless they can show by clear and convincing evidence that . . . Mr. Jacobson stated that (1) refers to receiving any gifts to effect an official act such as a vote on a bill. Subsection 6 identifies lending the title or privilege of your office to someone. Mike Cooney was approached by an entity which was interested in goodwill trips to Russia. If he would be the official host, they would take him along on the trip and business people from Montana would be able to get contracts from Russia. The press was very unfavorable based on the fact that he was lending the prestige of his office for this trip. Subsection 6 would specifically prohibit that sort of thing from happening. Commercials would be prohibited. Perhaps the language could be clearer. CHAIRMAN GROSFIELD questioned the terms "clear and convincing evidence" which are usually used in a courtroom situation. To whom would the public official be showing clear and convincing evidence. Mr. Jacobson stated ultimately it would be the Ethics Commission. The individual could ask before he got involved. CHAIRMAN GROSFIELD questioned the Governor doing news spot for candidates. Mr. Jacobson stated the intent was commercial business purposes and not political. The political side would be acceptable. SENATOR ECK stated they dealt with that in another section. It would be alright in the candidate's front yard or away from his office so that state facilities were not being used. SENATOR BAER commented that both of the bills make reference to the use of public time, facilities, equipment, etc., for any political campaign activity is prohibited unless authorized by law or properly incidental to another activity required or authorized by law. His bill also says, "such as the function of the governor, legislators, or their staffs in the normal course of their duties." Mr. Jacobson stated this refers to getting something of value. If you help the candidates get elected, you are not being compensated.

**SENATOR BARTLETT** referred to (7). The words "any elected official" are quite broad. Senators Baucus or Burns might be raising campaign funds during a legislative session. The Congressional people keep hands off the legislative process. The intent must be on state or district candidates where that may influence a vote. **SENATOR BAER** stated many organizations contribute to political candidates and have lobbyists that try to influence our decisions. Special interest groups will not be able to contribute to a candidate if they have anyone in their organization who lobbies in Helena. **SENATOR BARTLETT** commented they were only limited during a legislative session. **CHAIRMAN GROSFIELD** questioned a special session falling in September of an election year.

**SENATOR ECK** also referred to the section where the public official cannot ask for anything of value.

**Section 9. Private interests by public official or public employee in public contracts.**

**SENATOR BARTLETT** stated they may want to look at lines 29 and 30 wherein a former public official or former public employee may not within six months following the termination of their employment contract with or be employed by an employer who contracts with the state involving matters with which the former public official was directly involved during public employment. In general, she agrees with that. She is concerned about attorneys. The person who headed the Tort Claims Division went into a private law firm in Helena and is now contracted to handle the prison riot cases. He has a particular area of specialty and knowledge in relation to the prison because of his service. There may be instances where the state would receive poorer representation if there is a six month window. There are times when that would work to the disadvantage of the public interest. In some instances that would also pose a barrier to a public employee who is going into private practice. **SENATOR ECK** also commented that state agencies may wish to reduce the number of FTEs and take an employee back on a contract basis. **CHAIRMAN GROSFIELD** questioned where SB 115 differed from current law regarding this section. **Mr. Jacobson** stated they were pretty much the same except SB 115 was taken from the Model Act instead of the existing statute. The same concepts were to be included. **CHAIRMAN GROSFIELD** asked how we are dealing with that issue now. It is current law. **Mr. Jacobson** stated that we are probably ignoring it. **Mr. Petesch** commented there was litigation where the contract auditors for local governments from the Department of Commerce formed a company and ended up with the jobs. The people who were denied the jobs challenged and it is still in litigation. The public is aware of this situation. The allegation was raised also in a matter involving science and technology by the Finance Committee recently.

**Section 11. Postemployment restriction.**

**Mr. Petesch** commented that postemployment restriction was questioned at the hearing by an attorney. He commented that Leo Berry, who is an attorney, was a department director. For a year, he could not have been involved in natural resource. The department director usually terminates because the other party has taken control. That is an issue for attorneys. **CHAIRMAN GROSFIELD** commented that is not only a problem for attorneys. Karen Fagg was the director of a department and now she is with an engineering firm which has permits pending with that department. **SENATOR BARTLETT** also questioned page 14, (4), "for a period of 1 year after the later of: (a) the date of leaving office; or (b) the date of expiration of the term of office . . ." If she resigned a year before her term expired, it would effectively be a two-year prohibition. **Mr. Jacobson** stated that if a person were planning to get into the lobbying business after leaving office, they would not be able to lobby the group of people they would be most familiar with. Even though there would be a two-year period, they focused on the actual term of office. That language came from the Model Act. **Mr. Petesch** stated the models he looked at based this type of provision on prohibiting the legislator from voting right and getting rewarded with a high paying job.

**SENATOR BAER** stated SB 115 supersedes everything currently in the ethics statutes. 2-2-105(3), "A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment." He questioned whether that was deleted or if it was still in SB 115. **Mr. Jacobson** stated that they tried to identify different levels of participation in government. If you are a regular employee, you can't be involved with anything you were directly involved with for a period of one year. The higher up the ladder you go, the less things you could be involved with because of your ability to influence those you had personal contacts with. Instead of using difficult language, they set limitations. SB 115 is more specific than existing law. **Mr. Petesch** referred to the last sentence of (3). This involves people who are writing rules in agencies, reviewing applications for permits, reviewing claims, involved in litigation, or a hearing officer. It prohibits you from quitting work and representing the other side. It aims at insider trading. A violation is a guide to conduct. You shouldn't do it. SB 115 would make it a requirement. **Mr. Petesch** stated that a legislator could not lobby until the third successive session. His term runs through the next session. The year after takes care of the second succeeding session. He could not be a lobbyist until the third succeeding session. Prohibition against being a lobbyist principle, raises a constitutional issue about freedom of speech and association. **Mr. Jacobson** stated that addressed the situation wherein a legislator finishes the term of his or her office and then becomes a director of a department and then lobbies on behalf of that department. They are really not privately benefiting from

the legislative experience. The question is whether you are gaining privately, personal interest versus public duty, or is your experience being added on to the general benefit of the public. **SENATOR ECK** commented that the person may have been offered the job because of a vote in the previous session. **SENATOR BARTLETT** commented they might be interested in raising their retirement which would be a direct and concrete personal benefit.

### **Section 13. Personal financial disclosure.**

**CHAIRMAN GROSFIELD** stated the bill requires a fairly comprehensive financial statement of a person. It also includes some information on spouse and dependents as well as detailed information on loans, lobbyists, business associates, etc.

**Mr. Jacobson** commented that the idea of financial disclosure serves the purpose of sensitizing people of potential conflict of interests they might have. It also provides public information about the activities of that individual. The public would know more about the candidate. The gift reporting sensitizes the people reporting about the need to be careful about what gifts they accept. The Commission kept in mind privacy issues. They dropped out all the spousal reporting except for the gifts and lobbying.

**CHAIRMAN GROSFIELD** commented that this would be an annual report by legislators, public officials, public members, high-level public employees and consultants. He questioned if public members meant board members. This would be Board of Health, Board of Barbers, Board of Architects, Board of Cosmetologists, but not advisory councils. **Mr. Jacobson** stated this would impact the Commissioner of Political Practices as far as filing all these reports. **CHAIRMAN GROSFIELD** questioned how many annual reports would be involved. **Mr. Jacobson** stated that the people who file for office would involve 200 to 300 people. Elected officials on the off years would amount to 150. This would include 60 judges. The boards and commissions would equal 300 to 400. Adding in the public employees he thought the number would be close to 1000.

**SENATOR BAER** questioned what financial interest would need to be disclosed. **SENATOR NELSON** stated financial information which was private in nature was not required. She questioned what was considered "private in nature". **Mr. Jacobson** commented that would be personal property items. It would mean anything that is personal to you or private to the person like household items, jewelry, tea sets. **CHAIRMAN GROSFIELD** felt this would require a significant amount of record keeping. **SENATOR NELSON** stated she wouldn't have a problem with some of the personal disclosure items if the person was running for secretary of state or state auditor, however, she has a problem with a citizen legislator having to disclose all this information. **CHAIRMAN GROSFIELD**

stated this applies to public officials or high level employees so it would not only apply to legislators.

**CHAIRMAN GROSFIELD** questioned whether real property would be reported at appraised or market value. **Mr. Jacobson** stated the amount should be the assessed value used by the Department of Revenue. **CHAIRMAN GROSFIELD** commented that a ranch which would be assessed at productive value would have nothing to do with market value.

**SENATOR ECK** suggested that it might be more important to know what the source of income was rather than the amount. She stated that **Mr. Argenbright** stated that hardly anyone looks at these documents.

**Mr. Jacobson** commented that most of the language comes from the Model Act. **CHAIRMAN GROSFIELD** questioned the privacy implications. He felt this resulted in the publication of his 1040 in the newspaper. He questioned if this was constitutional. **Mr. Jacobson** stated it was constitutional insofar as you have the public right to know versus private interest. A person who assumes a role of serving in government forfeits a certain right of privacy. Under the original Model Act you would make that disclosure for all your family interests.

**SENATOR BAER** commented that the law stated the public's right to know must substantially exceed the right of personal privacy and the burden of proof is upon the government agency concerned to show that. He feels that legislators might decide not to return if they have to disclose too much.

**CHAIRMAN GROSFIELD** asked **Mr. Argenbright** about the statutory authority for Form D-1. **Mr. Argenbright** stated the D-1 was filled out by elected officials. They have the authority to keep them from accepting office if it is not completed. They had a number of complaints regarding the business disclosure information.

**Mr. Jacobson** commented that Section 5-7-213 states the disclosure statement shall provide the name, address, and type of business of such individual and each member of such individual's immediate family. If it is not filed the individual is out of office. The commissioner shall make this information available to the public. **CHAIRMAN GROSFIELD** wondered if that included stocks and bonds.

**Mr. Argenbright** stated that the business interests included listing the business, firm, corporation, partnership, or other business or professional entity or trust in which you, your spouse or minor children hold an ownership interest valued at \$1,000 or more in current fair market value. Ownership of any equity, security or evidence of indebtedness in a corporation or other entity is a "business interest" within the meaning of the Act. He then went on to list items not included, **EXHIBIT 1**.

**CHAIRMAN GROSFIELD** commented that stocks and bonds are included. The companies are listed but not the value.

**Debbie Smith, Common Cause**, stated that Common Cause would not care about the size of the mortgage but they would like to know the categories of assets the individual have an interest in. **CHAIRMAN GROSFIELD** asked if Form D-1 would be sufficient. **Ms. Smith** stated there were things in SB 115 which are more specific than Form D-1 which would be good to have. What is important to address in this legislation is information that will satisfy the public that ethical issues aren't being breached.

**SENATOR BISHOP** commented that if there are already complaints regarding filing Form D-1, the information being requested in SB 115 would be a nightmare. There will be good people who will never be back at the legislature.

**SENATOR ECK** commented that filing every other year would make more sense than filing each year. **Mr. Jacobson** stated the reason for filing every year is because financial positions change. **SENATOR ECK** commented for legislators that would not make any difference. **Mr. Petesch** commented that the Form D-1 is filed every even numbered year. **CHAIRMAN GROSFIELD** stated the statute does not go into the detail on the form. The rule went beyond the authority granted in the statute. **Mr. Argenbright** stated the rule had been in place for a long time.

**SENATOR ECK** questioned whether they would want the commissioner to publish summaries.

**CHAIRMAN GROSFIELD** questioned whether the fiscal note was for the Office of the Commissioner of Political Practices. **Mr. Argenbright** stated they took a conservative view when they worked on the fiscal note, **EXHIBIT 2**.

**CHAIRMAN GROSFIELD** stated the Commission would be a five person commission. **Mr. Jacobson** commented that the Commission would be set up identical to the Reapportionment Commission. Politics cannot be ignored. The leader of each party in each house would pick one person. The four people selected pick the fifth person. They will not be compensated. There would be nine or ten meetings a year. They would decide tricky issues. The Ethics Commission would be the body which would adjudicate the matters. The Commissioner on Political Practices serves as the prosecutor and recipient of all the filings that would be made. The person who investigates and receives the complaint would not be the same person who decides your fate. The other important function of the Ethics Commission would be advisory opinions and education.

**CHAIRMAN GROSFIELD** commented that this bill would be high profile. The Ethics Commission may need to be a full time commission. **SENATOR ECK** stated the Secretary of State handled advisory opinions. **Mr. Jacobson** stated there would also be an executive director and two support staff who would be able to answer questions. A formal opinion would have to be approved by the Commission. **CHAIRMAN GROSFIELD** questioned who would decide when an informal decision would be adequate. **Mr. Jacobson** stated formal opinions would be in writing and available for the public

to review. The name of the individual and some specific information might be deleted. An informal advisory opinion is confidential and would not be available to the public. The person requesting the opinion would make the decision.

**Mr. Petesch** explained the House Ethics Committee is established to act as a review board. If there was an allegation regarding conflict of interest, the House Ethics Committee would give guidance to the body on these type of issues. **Mr. Jacobson** commented that the deferral of these items to the legislature is so that they could resolve the matters themselves. Matters such as conflict of interest and misuse of office would not be reviewed by the Ethics Commission itself, but internally by the legislature. **Mr. Jacobson** explained the three purposes of the Commission would be education, advisory opinions and enforcement.

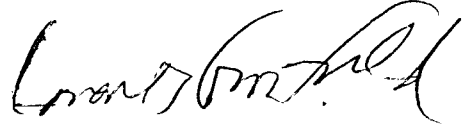
**Mr. Petesch** commented that the statute provides for the Secretary of State to issue advisory opinions. **CHAIRMAN GROSFIELD** questioned if they currently receive requests for advisory opinions. **Mr. Jacobson** explained that Judge Bennett's opinion completely eliminated that situation. He stated that he gives informal advice, however, it has no binding effect. He would explain to people that advisory opinions are not a function of his office. After advising people of this, he would walk them through his understanding of the matter.

**CHAIRMAN GROSFIELD** asked about current ethics policy regarding education. He questioned if department heads are briefed on ethical considerations. **Mr. Jacobson** stated it is piecemeal by agency. The Montana Operating Manual System (MOMS) has some information which describes conflict of interest matters to be avoided. There is not a comprehensive program in place.

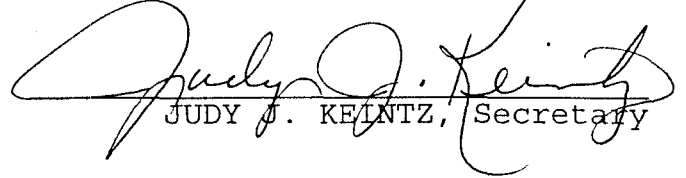
**SENATOR ECK** stated that for several years she has tried to encourage Common Cause, the League of Women Voters, the Bar Association and others to get together and have some workshops on ethics education. She has been disappointed that no one has gone ahead with this matter.

ADJOURNMENT

Adjournment: The meeting adjourned at 3:30 p.m.



SENATOR LORENTS GROSFIELD, Chairman



JUDY J. KEINTZ, Secretary

LG/jjk





SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1  
DATE 2/4/95  
BY SB 115 SB 136

## INSTRUCTIONS

LINE 1 — Self-explanatory. This disclosure statement must be filed by (1) public officials holding a state office filled by a statewide vote of all the electors of Montana, (2) those holding a state district office, including legislators, public service commissioners and district court judges and (3) officials-elect who will take office in January after a general election.

LINE 2 — Self-explanatory. Please describe office fully (for example, Representative, District 99).

LINE 3 — This statement must be filed on or before December 15 of each even-numbered year. It will cover business/financial interests as of December 1 of that year. An elected official may not assume office or continue in the duties of the office until the statement is filed. Statements should be filed with the Commissioner of Political Practices, P.O. Box 202401, Helena, MT 59620, telephone (406) 444-2942.

LINE 4 — Self-explanatory.

LINE 5 — Business Interests. List each business, firm, corporation, partnership, or other business or professional entity or trust in which you, your spouse or minor children hold an ownership interest valued at \$1,000 or more at current fair market value. Ownership of any equity, security or evidence of indebtedness in a corporation or other entity is a "business interest" within the meaning of the Act, as is a partnership or sole-proprietorship interest in a professional firm or any other entity. A beneficiary interest in a trust is an "interest" within the meaning of the Act. NOT INCLUDED in the meaning of "business interest" and therefore not reportable are interests of the following nature:

(a) any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal automobiles or household furnishings;

(b) cash surrender value of any insurance policy or annuity;

(c) bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

(d) securities issued by any government or political subdivision.

Valuation of business interests is not required; it is only necessary to disclose the fact that the interest exists and is \$1,000 or more at current fair market value. A description of the interest shall be included (lines 5a, 5b, 5c) so that the identity of the owner and the nature of the interest is reasonably clear.

LINE 6 — Real Property. An "ownership interest" includes a fee, life estate, joint or common tenancy, leasehold, beneficial interest (through a trust), mineral or royalty interest or an option to purchase if the current fair market value of the interest is \$1,000 or more. It is not necessary to disclose a personal residence, but one residence may be excluded for each official who files and one for any member of the immediate family who does not reside with the official. Each parcel of real property shall be listed separately. While valuation of the property is not required (it need only be listed if its value is \$1,000 or more), a description of both the property and the nature of the interest must be included. A legal or other description is required to identify the property. The nature of the property should be described on line 6a—for example, farm, ranch, vacation home, commercial or residential property, raw land held for investment, etc. If the property is held by or through a corporation or other business interest which is disclosed on line 5, it need not be listed in this part. The goal here is to make the nature of the property and interest reasonably clear.

LINE 7 — Certification. Statements made on this form are subject to the civil and criminal penalty provisions of section 5-7-305, MCA.



THE STATE OF MONTANA

**COMMISSIONER OF POLITICAL  
PRACTICES**

P.O. BOX 202401  
1205 EIGHTH AVENUE  
HELENA, MONTANA 59620-2401  
PHONE: (406) 444-2942  
FAX: (406) 444-1643

FOR OFFICE USE ONLY

TO BE FILED BY  
**ELECTED OFFICIALS  
and  
OFFICIALS-ELECT**

FORM

**D-1**

Rev. 7/93

SEE INSTRUCTIONS ON REVERSE SIDE  
PLEASE TYPE OR PRINT CLEARLY IN INK

**BUSINESS DISCLOSURE STATEMENT**

1. NAME		2. OFFICE		3. DATE OF THIS STATEMENT	
4. PRESENT OR PAST EMPLOYMENT FROM WHICH BENEFITS, INCLUDING RETIREMENT ALLOWANCES, ARE CURRENTLY RECEIVED BY OFFICIAL, SPOUSE, OR MINOR CHILDREN:					
NAME OF RECIPIENT		SOURCE OF COMPENSATION OR BENEFITS			
5. LIST EACH BUSINESS, FIRM, CORPORATION, PARTNERSHIP, OR OTHER BUSINESS OR PROFESSIONAL ENTITY OR TRUST IN WHICH YOU, YOUR SPOUSE, OR MINOR CHILDREN HOLD AN INTEREST IN A VALUE GREATER THAN \$1,000 (SEE DETAILED INSTRUCTIONS ON REVERSE SIDE)					
5a. NAME OF FIRM OR ENTITY		5b. OWNER AND NATURE OF INTEREST		5c. PRINCIPAL PLACE OF BUSINESS (city and state; if a trust, name of trustee.)	
6. LIST ALL REAL PROPERTY (OTHER THAN A PERSONAL RESIDENCE) IN WHICH YOU, YOUR SPOUSE OR MINOR CHILDREN HOLD AN INTEREST (FEE, LIFE ESTATE, LEASEHOLD, OPTION TO PURCHASE, MINERAL OR ROYALTY INTEREST, BENEFICIAL INTEREST) IF IT IS NOT HELD THROUGH OR BY AN ENTITY LISTED IN PART (5) ABOVE, IF THE VALUE OF THE INTEREST IS \$1,000 OR MORE (SEE DETAILED INSTRUCTIONS ON REVERSE SIDE).					
6a. NATURE OF PROPERTY (ranch, residential or investment property, etc.)		6b. BY WHOM OWNED AND NATURE OF INTEREST (fee, option, etc.)		6c. LEGAL OR OTHER SUFFICIENT DESCRIPTION (use additional sheets if necessary)	
7. I certify that the above statements are true and correct to the best of my knowledge.					
Signature				Date	

EXHIBIT NO. 2

## STATE OF MONTANA - FISCAL NOTE

DATE 2/4/95

Fiscal Note for SB0115, as introduced

SB 115 - 136

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing ethics provisions to govern the conduct of executive and legislative branch officials and employees.

ASSUMPTIONS:Secretary of State's Office:

1. The Ethics Commission will be a separate agency administratively attached to the Secretary of State's Office for purposes of centralizing administrative functions only. Administrative functions to be handled by the Secretary of State's Office will be limited to payroll, accounting, and computer network services. The Secretary of State's Office shall have no role in the management or decision making of the Ethics Commission.
2. As a general function of government, the Ethics Commission should begin as a general fund entity. However, the Ethics Commission should consider applying for funding under the Statewide Cost Allocation Plan (SWCAP) for its continuing operation to abate future general fund expenditures.
3. The effective date of the bill is October 1, 1995. The Ethics Commission staff will be employed for nine months of fiscal 1996 and will include 1.00 FTE Grade 18 executive director and 2.00 FTE Grade 9 administrative support positions.
4. Operating expenses for commission members and the staff include telephone charges, travel reimbursement, office rent, publication expenses, and routine office expenses. Equipment expenses include personal computers, a printer, computer software, office furniture, and a facsimile machine.

Commissioner of Political Practices:

5. Additional responsibilities required by this bill include collecting, filing, and reviewing for compliance all statements of financial interests at various required times with some "floating" dates. Statements of financial interests would be required for elected officials, high-level state employees, and individuals nominated to become a public official or public employee, "public members" appointed to "a noncompensated, part-time position on a board, commission, or council", and consultants entering into a contractual relationship with the state or a political subdivision if the consultant or a member of the household of the consultant has an economic interest.
6. Formal investigation and prosecution of complaints of violation of the ethics code would include assessing technical violation penalties, acceptance of complaints, holding hearings, and following the rules of the Montana Administrative Procedures Act. In addition, prosecution of alleged violations before the Montana Ethics Commission would be extensive.
7. The effective date of the bill is October 1, 1995. Additional staff that will be employed for nine months during fiscal 1996 include 1.00 FTE Grade 18 attorney, 1.00 FTE Grade 14 investigator, 1.00 FTE Grade 12 secretary, and 1.00 FTE Grade 9 administrative clerk.
8. Operating expenses include contracted services for hearings officers, telephone charges, training, and routine office expenses.
9. Office remodeling costs of \$17,016 will be incurred in fiscal 1996 to accomodate the additional FTE. Purchases of personal computers, printers, and office equipment in fiscal 1996 will amount to \$15,300. (continued)

(Continued)

Dave Lewis 1-20-95  
DAVE LEWIS BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Dorothy Eck 1/21/95  
DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0115, as introduced

SB 115

(continued)

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
<u>Ethics Commission:</u>	<u>Difference</u>	<u>Difference</u>
FTE	2.25	3.00
Personal Services	65,100	87,103
Operating Expenses	33,919	37,604
Equipment	<u>17,855</u>	<u>2,093</u>
Total	116,874	126,800
Funding:		
General Fund (01)	116,874	126,800

Commissioner Political Practices:

FTE	3.00	4.00
Personal Services	92,580	123,873
Operating Expenses	36,056	25,387
Equipment	<u>15,300</u>	<u>0</u>
Total	143,936	149,260
Funding:		
General Fund (01)	143,936	149,260

Revenues:

General Fund - copying fees (01)	1,000	2,000
----------------------------------	-------	-------

Net Impact:

General Fund (01)	(259,810)	(274,060)
-------------------	-----------	-----------

DATE 2-4-95

SENATE COMMITTEE ON Judiciary Sub Committee

BILLS BEING HEARD TODAY: SB 115 SB 136

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Pete Joseph	MFT	SB 115/136		
Deborah Smith	Common Cause	"		
Ed Augenlicht	Com. Pol Practices	"		
Mike Pichette	MT Power Co	"		
Garth Jacobson	Sec to State	"		

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY