

MINUTES

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

SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN SENATOR LORENTS GROSFIELD**, on
February 11, 1995, at 12:00 PM

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 136

Mr. Petesch handed out **EXHIBIT 1**. He made the changes which were ambiguous in current law. The second sheet refers to the Department of Administration Personnel Division developing model rules of conduct and providing employees with a pamphlet summarizing the ethics code. That is an amendment to an existing provision of law which is new (4). The last section deals with the revision of the disclosure requirements to conform the statute with existing form.

CHAIRMAN GROSFIELD referring to page 1, stated that part of the definition clarification eliminate the judiciary.

Mr. Petesch explained that it does, but doesn't. He moved the exclusion from public officer to the exclusion from state agency. The reason is that the Constitution provides for a Judicial Standards Commission which is charged with adopting a code of judicial ethics and enforcing it for the judiciary. There would also be a separation of powers problem with trying to enforce statutory ethics provisions on the judiciary. He clarified the constitutional provisions.

CHAIRMAN GROSFIELD referred to Section 2, the department shall provide employees with this pamphlet. We have 14,000 state employees. That would mean a significant cost.

Mr. Petesch commented there certainly would be some cost. The model rules for agencies to adopt will have to be published in the Administrative Register as proposed and then agencies will have to adopt them as part of their organizational rules. Each agency will incur some costs. The cost is \$35 per page in the register and there would be at least 5 pages of the model rule. The second sentence pertains to education of employees. A pamphlet need not be extensive and could be handed out to employees as they are newly hired. All current employees would be provided a copy.

SENATOR BARTLETT asked if there should be language to include that the department shall provide training to employees during orientation or regular professional development courses offered periodically.

Mr. Petesch commented the language states they "can" provide training. Perhaps this should be mandated. Section B, (1) (b) talks about foster and development of programs for training, safety, health, counseling, welfare, discipline, etc. That is where the existing training program is statutorily authorized. By adding model rules of conduct, they could certainly handle training under existing authority.

SENATOR ECK questioned providing for informal advisory opinions under the personnel section.

Mr. Petesch commented the committee had not discussed assigning that to the personnel division.

SENATOR BARTLETT stated she would add explicit language in Section B referring to ethical guidelines so it is clear that this could be added to their ongoing program.

Mr. Petesch commented that in Section C they took the existing statute which requires disclosure by elected officials and added "members of quasi-judicial board, department director, and person occupying a position of division administrator or higher" would cover high level employees.

CHAIRMAN GROSFIELD questioned who should be placed under that umbrella.

Mr. Jacobson stated that when the Ethics Commission dealt with this issue, it had a very difficult time determining how low to go because there are certain administrators who do not set policy. They chose the language "grade 18 or higher designated by the agency as substantial policymaking". Using the words "director" or "deputy director" may work and then let the agency decide.

CHAIRMAN GROSFIELD commented that deputy director and director are political appointees. As you get to division administrator, you would be talking about someone who has been with the state for a long time. After they have been working for 18 years or so, they may have a problem with having to disclose and may think twice about whether or not they want to continue in that job. They may have some family holdings that could present a problem.

Mr. Petesch commented this would go to "each individual and each member of the individual's immediate family". Immediate family would be spouse and minor children. A thought to consider regarding division administrator is that some agencies have eliminated what they call "deputy director". In some reorganizations, political appointees are no longer called deputy directors. Revenue has two or three people this would cover. With the size of some of the agencies which will be created this session, there will be more deputy directors than there currently are.

CHAIRMAN GROSFIELD asked who would be included as "political appointee".

SENATOR BARTLETT commented this would be "exempt staff".

Mr. Petesch stated those people would not always be political appointees. There is a list of exempt positions. Each agency then gets four who would be included in the list. Many of the exempt positions are used to fill hard to retain positions rather than political appointee positions.

SENATOR ECK suggested using "department director and those that he or she would designate who make public policy." This would be different in each department.

CHAIRMAN GROSFIELD questioned how a department director would deal with that type of language. If there was an ethics violation by a bureau chief who was not designated as a policy maker, it would then come back as a problem for the director. He would have violated the ethics rule by not requiring a disclosure statement. Department directors may feel that they would have to cover everyone.

Mr. Jacobson commented that the Ethics Commission felt that the director should be covered and also high level exempt staff. For example, there are a few people in the governor's office and attorney general's office who need to be covered. High level would mean a grade 18 and higher in the various elected official's offices. Specifically, this would be getting at people like Judy Browning, Doug Mitchell, Dennis Taylor, Dave Hunter, those are the types of people who would be required to file disclosure statements. There is a good argument to be made to include the administrators. The Ethics Commission decided they should be designated by the agency and approved by the

Commission, this would cover the concern with the director's responsibility to designate policymakers.

SENATOR BARTLETT questioned how strongly the Commission members felt that other employees beyond department directors needed to file disclosure statements.

Mr. Jacobson stated the Commission had mixed feelings about how far this should reach.

CHAIRMAN GROSFIELD stated the options would be: (1) department director, or (2) high level exempt staff as designated by the director or public officer.

The consensus was to use the term "director".

CHAIRMAN GROSFIELD commented another issue would be the timing. Currently this is handled prior to December 15 and refers to officials elect. What about candidates? Do we want to know this before the election?

SENATOR ECK stated the person who is filing ought to know ahead of time what he needs to disclose. Also, that might be the time the public may want to look at it as well.

CHAIRMAN GROSFIELD commented he remembered winning the election and then later receiving the form in the mail which he knew nothing about. It could be required along with filing to run for office. It gets a little confusing for a member of a quasi-judicial board. Should this be required at the time they are nominated by the governor.

Mr. Argenbright commented he would think candidates should probably disclose upon filing for office.

SENATOR BARTLETT stated she would prefer to see this handled similarly to the filing made with the Commissioner of Political Practices which is five days after becoming a candidate.

Mr. Argenbright stated they require filing with his office within five days of expending or receiving money on a campaign. Once they receive the form from the candidate they send the packet of information dealing with requirements for reporting.

SENATOR ECK stated the disclosure form could be given when the person files with the secretary of state.

SENATOR BAER commented it might be best to leave this the way it is currently handled for elected officials. A candidate is not an elected official. He believed it would be best to leave the mechanism in place the way it is now for candidates. He doesn't see a conflict.

SENATOR BISHOP commented it would give voters a chance to eliminate a conflict if they have one.

SENATOR BAER stated he would not object to making his disclosure at the time he filed for office.

The committee decided to leave the disclosure at the time of filing for office.

CHAIRMAN GROSFIELD commented that once the person is elected, he or she would disclose on December 15, every two years.

Mr. Petesch stated there should be a provision which would state that a person is not required to file more than one form in two years.

CHAIRMAN GROSFIELD next questioned the procedure for board members and department directors.

SENATOR ECK believed disclosure should be required when an individual is nominated.

Mr. Petesch commented that directors do not apply because they are patronage positions.

SENATOR BARTLETT believed disclosing should occur when they assumed the duties of the position. The governor appoints people to high level boards when the legislature is not in session. They could have served 18 months or two years before their confirmation is submitted to the Senate.

Mr. Petesch commented it could read "for those positions at the earlier of nomination or assumption of office." This would apply to quasi-judicial boards and department directors. This would be biannual filing for everyone. Referring to the following page, **Mr. Petesch** commented that he put the reporting requirements on the existing form into a narrative form. Real property allowed for general description rather than the legal description.

SENATOR BISHOP asked how the committee felt about the \$1,000 threshold.

SENATOR BARTLETT commented she would hate to see the committee retreat from the current standard of ethics. Raising the threshold may send the wrong signal.

Mr. Petesch stated that 5-7-213(2)(b) referred to current income regardless of whether it was present or past employment.

SENATOR ECK commented a source of income may not be from employment. Her income is primarily from investments and rentals.

Mr. Petesch stated that rentals are covered in (c).

Mr. Argenbright commented that this form is considered a business disclosure and would not include current salary.

Mr. Petesch commented that (b) as written would require the person to report that salary but not the amount. If you are a public employee, that amount is public information.

SENATOR BARTLETT stated that if this language is used, the commissioner should rewrite the instructions for the form because this is confusing language.

SENATOR ECK commented that there is no mention of loans.

CHAIRMAN GROSFIELD believed the \$1000 threshold was low.

Mr. Petesch commented that the \$1000 has never been in statute. It has always been in the disclosure form. A former commissioner believed that "ownership interest" or "financial interest" meant \$1000. The form was adopted in 1979.

CHAIRMAN GROSFIELD commented that the number could be raised to \$5,000 or \$10,000 but to also add a check off system as follows: (1) would be over \$5,000; (2) would be over 20% of expected income for the next year; and (3) 20% or more of the assets of the company. Using this concept would make the form more meaningful.

SENATOR ECK stated SB 115, page 16, lines 14-20, addressed a similar concept. Page 17 deals with debts and loans which were set at \$1,000. She felt this should be changed to \$10,000.

Mr. Jacobson agreed that raising the threshold to \$10,000 and indicating the percentage of ownership would drop out the minor things. SB 115 is much more restrictive.

SENATOR BAER commented he did not wish to include any further reporting than in current requirements. He doesn't have a problem with reporting percentages.

CHAIRMAN GROSFIELD clarified they would leave the threshold at \$10,000, indicate whether the interest accounted for 20% of expected annual income, or the interest is in excess of 20% of the value of the business. He then asked the committee their position on loans. In a loan situation, the person who was owed the money would have a hold on the person owing the money.

SENATORS BAER and NELSON would rather not address loans.

SENATOR ECK commented they could state "unsecured" loans.

{Tape: 1; Side: B}

Mike Pichette commented that when using the term fiduciary in a conflict of interest situation, this should not be limited to a for-profit association. On the appointment to judicial boards if someone is an officer of some other interest group which is non-profit, it may raise a conflict situation.

SENATOR ECK suggested using the term corporation.

Mr. Petesch commented it would then read, "for each entity not already listed to disclose whether the individual or a member of the individual's immediate family is a director of a for-profit or non-profit corporation."

CHAIRMAN GROSFIELD asked if director went far enough.

Mr. Petesch suggested using the term "officer".

CHAIRMAN GROSFIELD asked what current law would be regarding gifts.

Mr. Petesch commented that Section 2-2-104(1)(b)(i) used the words "tend to improperly influence". Subsection (b) used the words "substantial value or substantial economic benefit tantamount to a gift:".

CHAIRMAN GROSFIELD commented that lobbyists disclose anything over \$25. He thought that could be raised to \$50.

Mr. Jacobson commented that the Ethics Commission had a tough time with gifts. Their range was \$100 to \$0. The \$25 was keyed off the lobbyists statute. To someone who has significant holdings a \$100 ticket to a game would not mean much. To a person barely getting by, this would be more significant. They used the words "anything of value" and gave it a dollar amount.

CHAIRMAN GROSFIELD turned to the section on nepotism.

SENATOR BAER commented if they lessened the reach of nepotism, they would be diluting the current standard of ethics.

CHAIRMAN GROSFIELD stated they had earlier agreed to exempt pages, other legislative staff, and election judges.

Mr. Petesch commented the current statute has a list of exempted positions. These would be added.

SENATOR ECK felt there would be criticism of exempting legislative staff.

SENATOR NELSON commented there was a bill in the last session which gave a hiring preference to people who had served during the legislative session.

Mr. Petesch stated that was the RIF pool. It gave a rehiring preference to session staff. That was removed in the special session.

SENATOR BAER commented they exempted people who were relatives of school employees if the entire board unanimously voted to approve it. That is questionable as well.

CHAIRMAN GROSFIELD referred to item no. 4 on issues list -- District officials status should be clarified: state office elected from a district or county/state subdivision offices.

Mr. Petesch explained there were two issues involved. The first was to define district office. That was necessary for SB 115 which referred to a statewide district. The question then arose whether this should be applied to local subdivisions, i.e., county commissioner or conservation districts.

CHAIRMAN GROSFIELD questioned whether they wanted to include counties.

Mr. Petesch stated this dealt with SB 115 explicitly.

SENATOR BAER commented there is existing statute on this. His bill added in disciplinary action and a civil penalty for people who violate ethical standards. He changed the gender language and added that a person on the county level shall disclose and eliminate the interest creating the appearance of impropriety. The last sentence is what they need to deal with. Should they fully disclose or fully disclose and eliminate. There is no other application to local government. It should be considered in our code as they currently are.

CHAIRMAN GROSFIELD asked if SB 115 covered local government.

Mr. Jacobson stated it did not. He prepared amendments which would (1) permit them to file voluntary disclosure statements which is under current law and (2) would have the Ethics Commission suggest or provide model ordinances for the local governments and let them adopt these at their will. This would give them local control and would not dictate to them.

SENATOR BAER felt attention should be given to local government. There are good local governments as well as very corrupt local governments. If we leave this at voluntary disclosure, why have disclosure at all. If there is a situation which creates an appearance of impropriety, they should be required to disclose anything which applies to that situation. Eliminating it might be a little to strong. If we do not have enforcement on a state level, it will not be enforced at all.

CHAIRMAN GROSFIELD commented this was 2-2-131.

SENATOR NELSON stated she agreed that this needs more force. County officials would like to have some guidelines. They would like to go to the law book and see what is expected of them.

CHAIRMAN GROSFIELD commented that public officer or public employee is everyone except a legislator. The requirement is that they would have to file a disclosure in writing to the secretary of state. He asked Mr. Jacobson if that ever happens.

Mr. Jacobson stated very few disclosure statements are made. The proposed amendment he prepared would put disclosure at the local level and they would file with the clerk and recorder. The biggest problem would be the lack of consensus among local governments. This would include county entities, city entities and school boards. The Commission believed that the way to kill this bill fast would be add local governments. It would require a significant amount of work with those groups to come up with language that would work given the significant differences in their operations.

CHAIRMAN GROSFIELD commented that the current statute also refers to public officers which would include everyone up to department directors.

SENATOR BAER stated that was stricken from his bill. It states: "The member shall disclose and eliminate the interest creating the appearance of impropriety."

Mr. Petesch commented that 2-2-131 as written used the term "financial interest". This deals with awarding of contracts or bids. This is the only place it would have implications as current law provides. This refers to absolute conflict where you have a personal financial interest in awarding a contract or bid.

CHAIRMAN GROSFIELD suggested it should be made mandatory and indicate that that is in fact what it refers to. This would apply to state agencies as well.

Mr. Petesch stated that the public bidding statutes do require abstaining. This is confusing to people.

SENATOR BAER believed that is why it was stricken in the first place because it did create a confusion. They are making reference to many other things which could create the appearance of impropriety.

Mr. Petesch commented SB 136 went far beyond what the former statute was limited to. You had to have an explicit financial interest.

CHAIRMAN GROSFIELD commented SB 115 repeals 2-2-131 and since it is taken care of elsewhere, it would be best to repeal it.

Mr. Petesch commented that quasi-judicial boards do not award contracts but they may award a permit where this would come into play.

SENATOR BAER stated SB 136 does not repeal it. It eliminates it from application to 2-2-125.

Mr. Petesch commented that if they left the definition of financial interest, it should be mandatory.

SENATOR BAER stated it should be mandatory.

CHAIRMAN GROSFIELD clarified that 2-2-131 would be made mandatory and it would explain what it applies to including permits. Since a board member is not a public officer, they should be included.

Mr. Petesch stated the definition of public officer currently would be "elected". The quasi-judicial board members would not be covered because they are not employees nor are they elected.

Mr. Jacobson stated that in SB 115 this is taken care of in different ways as to what can or cannot be done. Disclosure covers that and prohibitions deal with that. If the committee stays with existing law, the committee will have to make things fit.

SENATOR BAER stated that is what should be done instead of just repeal existing law as SB 115 does. The committee only needs to modify existing law to fit the needs. SB 115 seems to be much broader than existing law and it also expands new areas which are not even present in existing law which are burdensome.

SENATOR ECK felt the Ethics Commission which came up with SB 115 spent a lot of time being both specific and broad.

CHAIRMAN GROSFIELD commented that this is a major decision which the committee needs to make. They need to wait until **SENATOR BARTLETT** is present when they address the issue.

Mr. Jacobson commented that double dipping is something which both bills address.

CHAIRMAN GROSFIELD commented this was addressed in SB 136 on page 2. He stated this only deals with the time that the legislature is in regular or special session.

SENATOR BAER stated they could not ask someone to give up their regular public salary all year to serve in the legislature four months out of the year. This should only apply to the time that they actually serve in the legislature and are away from their regular duties.

CHAIRMAN GROSFIELD questioned if salary only referred to cash or included retirement and medical benefits.

Mr. Petesch stated that salary does not include benefits. When a public employee is elected to a legislative position, the public employee is given the option of retaining their current benefit. In the case of a teacher, they are given the option of maintaining membership in the teachers retirement system and making the contributions which would be made from their legislative position to the teachers retirement system. If they are not a member of the retirement system, they can join PERS and then later convert those benefits to one or the other. The benefit package is clearly covered. The issue on salaries is whether they could use other benefits such as leave time which would include comp time or annual leave. Those are salaried. You are being paid your wage for the time you are absent.

SENATOR BAER commented it was not his intention to reach that far. He did not want to affect benefits. The only thing he wanted to address was the actual paycheck.

Mr. Jacobson stated he put together some language on this. It goes beyond the question of double dipping as a legislator. It would be a new section called "Limitations of public employees receiving compensation from more than one state job activity." It would go on to state that no public employee may receive salaries from holding two separate state employment positions unless those employment activities do not overlap for the hours being compensated. This section does not prohibit an employee from receiving income for the use of accrued annual leave or comp time during the period of overlapping employment. This will not only deal with people serving in the legislature but also agencies which share employees. Another possibility would be an agency wherein an employee would want to work in the legislature during the session on staff, this would prohibit that situation.

CHAIRMAN GROSFIELD stated it would not prohibit the practice, it would just prohibit double dipping.

Mr. Jacobson stated it would not prohibit proofreaders hired by the Legislative Council who come in at night and worked another five or six hours in the evening after completing their state job. This would not prohibit that practice. The only difference would be if a person came in at 4:00 on their agency time. They could do that if they took comp time or annual leave.

Mr. Petesch stated they could incorporate a reference to it in 2-2-104.

CHAIRMAN GROSFIELD stated that was very clear.

SENATOR BARTLETT commented there was some prohibition against having more than one full time equivalent job with the state. It would be limited to 40 hours a week. She thought there might be some labor law violations if the proofreader was not paid overtime for the proofreading job.

Mr. Petesch commented they had interpreted overtime laws to mean that because of the separation of branches and jobs, that that person is not entitled to overtime. It has only happened in a couple of instances and has never been challenged. If they worked in executive branch agencies they are required to pay overtime.

SENATOR BAER stated his only concern was with a person simultaneously holding two jobs, only being at one, and being paid for both.

SENATOR NELSON asked if **SENATOR BAER'S** problem was because we are dealing with tax dollars.

SENATOR BAER stated if it doesn't involve public funds and public revenues, he has no concern. He is concerned with public money and how it is spent.

Mr. Petesch stated they could not prohibit a private entity from paying someone while attending the legislature. That usually refers to a contractual matter. You can regulate public employment but not private in that regard.

SENATOR ECK commented that it might be disclosed. If a corporation pays a legislator his or her full salary while the person serves in the legislature, maybe that should be disclosed.

Mr. Jacobson stated there were a couple of other things this did not address. People who work for the federal government who are also in the legislature. There are benefits people may be receiving which could be construed as double dipping also. There are exceptions to the Hatch Act.

Mr. Petesch stated that legislators have the option of serving for no salary. A high ranking state employee would be able to serve as a legislator for no salary. No one has ever taken advantage of that. You would only be paid by one entity.

CHAIRMAN GROSFIELD stated they needed to chose a vehicle to use. They could use SB 115 or SB 136 or recommend a substitute bill. His sense is that they have backed off extensively from items in SB 115. Examples being the disclosure, fiscal note, and commission. He believes the committee is looking at something more simple and limited as to subject matter.

SENATOR BISHOP stated that the fiscal impact would not work in this session.

SENATOR BARTLETT stated if they used SB 115 as a vehicle, after committee amendments were adopted a revised fiscal note would be prepared. The new fiscal note should not be a barrier. There are areas which they have not made decisions on which are covered in SB 115 explicitly and covered only implicitly in SB 136. She feels it is premature to make this decision.

SENATOR BISHOP stated SB 115 is a roadblock financially.

Mr. Jacobson stated that he feels very strongly about the work of the Commission. They dealt with the whole package. The enforcement and advisory opinions need to be dealt with and will come with a price tag regardless of what is decided. He has discussed with Commissioner Argenbright the possibility of going with a package which would reduce the cost significantly by having a separate Ethics Commission and letting them deal with the issues of advisory opinions and enforcement. The education side has been put into the Department of Administration Personnel Division. If the committee stays with SB 115 and takes the Commissioner of Campaign Practices out of the enforcement side, the price tag for the fiscal note could be reduced in half. If this does not contain enforcement and advisory opinions, there will be no ethics act.

{Tape: 2; Side: A}

CHAIRMAN GROSFIELD commented that they have added in the three or four pages which they started off this meeting with. They have added in the local government section. The issues they have to deal with are: gifts, voting or not voting in conflict situations, advisory opinions, enforcement, and use of public resources to influence political issues.

CHAIRMAN GROSFIELD asked for suggestions on disclosing a conflict and then voting or not voting. The Senate rules state that they must vote on everything. Should that be changed in the situation of a conflict of interest. If defined narrowly, a direct personal conflict would occur rarely. There is also the issue of a public employee legislator voting on an issue which would affect him. It would come down to how personally it affects the legislator as opposed to whether it affects the legislator as a class.

SENATOR BAER stated he had no intent on restricting the farmer who would be voting on an agricultural bill. A teacher is a public employee, and that teacher votes on a bill with the knowledge that most of the funding would be used for employee salary raises. Eighty percent or more of funds are applied in that manner. Public employee legislators should be held to a higher standard of duty than non-public employee legislators. This is a problem. Reality has to be considered. It is a citizen legislature.

CHAIRMAN GROSFIELD commented that while 80% is for salaries, it is not true that 80% of a vote on an educational funding bill is for salary increase. A teacher may be voting on whether they would be voting for more teachers to cover extra students.

SENATOR BARTLETT stated she and **SENATOR BAER** discussed the difference between the mandatory abstention from voting. If there is a conflict, any legislator would have to abstain from voting. A situation where there is a mandatory disclosure of a conflict and then a voluntary decision on whether or not to vote made by the individual legislator, would require a rules change in the Senate to allow a voluntary abstention if the individual is present when the vote is taking place. They both agreed that a mandatory abstention from voting because of a conflict of interest is not going to meet enough acceptance within the Senate to be approved. There are real concerns about this from other Senators.

SENATOR BISHOP commented on the situation when **SENATOR BENEDICT** disclosed his conflict of interest during a floor session.

SENATOR BARTLETT responded this went to another issue of when the legislator is a member of a class. When that particular bill came to second reading, it involved a sizeable class. At this time, it seemed appropriate for him to participate on the debate and to vote. He had disclosed. When it went back to committee, the class was narrowed and a much smaller group then voted on it. She was uncomfortable with the fact that he voted on it.

SENATOR BAER stated there would not have been a conflict situation under his bill unless he was a public employee. He questioned whether the disclosure should be voluntary or mandatory.

CHAIRMAN GROSFIELD commented that under current disclosure, **SENATOR BENEDICT** would have disclosed this conflict upon filing for office. Is that adequate disclosure? He sees a problem with having 25 ranchers get up and disclose during a floor session.

Mr. Petesch stated that under Senate rule, there was no question that **SENATOR BENEDICT** was required to vote. Rather than creating a new committee to deal with these things, it may be that the disclosure could be made anywhere the vote is being taken and the body could determine whether that person votes or not. In that way, the issue is removed from the individual and left with the body. In a committee, this person may need to vote to have a decision. He has disclosed, if the body makes him vote he has done everything he can do in regard to the conflict situation.

CHAIRMAN GROSFIELD stated that he was uncomfortable with letting the body decide who could vote. He believed partisanship could create problems.

Mike Pichette stated he would like the term "class" clarified. He also referred to amended SB 136, page 3, line 21, regarding the double negative. (This was addressed earlier.)

Mr. Petesch stated that **SENATOR BAER'S** bill did mention presenting the facts of a conflict situation to a committee.

CHAIRMAN GROSFIELD commented that might work; however, a joint Ethics Committee would not work. If there was a four person Ethics Committee with two from each party. They could then decide whether he could vote or not vote.

SENATOR BAER stated that the legislator could certainly bring this up prior to session. They could look at the bills and see how they would be voting. This should be taken care of prior to third reading.

SENATOR BARTLETT commented the person could disclose the conflict at the second reading stage. The committee would then be signaled that they would need to resolve the situation before the next day's third reading vote.

CHAIRMAN GROSFIELD clarified that current rule states the senator shall vote on everything. That rule could stand unless someone appeals to the Ethics Committee on a specific vote. This would presume that every senator would vote unless this issue is raised. The Ethics Committee could then make a quick decision.

SENATOR BAER stated there would have to be a change in the Senate rules. The rules will have to be bent a little.

SENATOR NELSON stated that this should be something which the legislator should be able to disclose. You would then be excused from voting.

CHAIRMAN GROSFIELD referred to an article he read wherein a bill passed 22-19 with 9 abstentions. Those nine could have swayed it any way. They were not representing their constituents. They were not doing their duty as a legislator. The other problem is that when there is an abortion bill, there will be a lot of people who come up with a conflict.

SENATOR NELSON stated that in the House, they do not take a walk. Conflict needs to be defined.

SENATOR BAER stated that if you have an identifiable conflict, the rules should allow you to abstain. This should not allow legislators who don't want to take a position on a tough issue to abstain.

Mr. Petesch commented that there have been physicians serving in the legislature before. If you were a physician and part of your practice was to perform abortions and there was a bill to prohibit abortion, would you be allowed to vote?

SENATOR NELSON stated if a physician handled abortions, this would relate back to money issues.

Mr. Petesch commented the physician would have a financial interest in that bill.

SENATOR BAER stated that if he said he had a conflict of interest and that he could not vote, the Senate could rule that he had to. That would be untenable.

CHAIRMAN GROSFIELD stated they would not be doing the process a service if everyone became too nervous about conflicts.

Mike Pichette commented that the person could be excused from voting but forced to announce how he would have voted.

Mr. Jacobson stated the Ethics Commission looked at the size of the class. The class should be very small to give you justification for not voting. They felt it would be best to let the Rules Committee develop the language of the best way to handle it. If you decide what the parameter is, it could then be given to the Rules Committee to deal with at the next legislative session.

SENATOR BAER commented that most of the problems arise with public employee legislators and that was looped out of SB 115.

CHAIRMAN GROSFIELD asked if the committee wanted a different disclosure for legislators who are paid by public dollars. A pay plan which includes a raise would be a large class. You may have five or six people in the Senate who would be directly affected.

SENATOR BISHOP stated he had no problem with a public employer or a teacher voting on a teacher salary bill. We are a citizen legislature.

CHAIRMAN GROSFIELD questioned whether teachers could vote on increased pay for teachers or if state employees could vote on increased pay for state employees.

SENATOR NELSON stated that if they were talking about a pay increase for state employees and there were five in the Senate and the vote carried by three or four, that is when fingers start pointing.

SENATOR BAER commented that in the 93 Legislature over 30% of the legislature was directly connected to schools.

SENATOR BISHOP believed that should be a campaign issue.

SENATOR BAER stated the way to look at class is to determine how broad the class is and how many votes will actually be affected. If there are three or four people in that class but the vote difference is 15 votes apart, you do not have a significant impact.

SENATOR NELSON commented it is hard to pinpoint the funding for schools. Education funding is broadly spread out to help education, students, teachers, and so on. She can see the

connection of a state employee voting on state employee increases.

SENATOR BARTLETT stated she has a problem with the state employee conflict. She represents a district which has a lot of state employees. Half of her district is represented by Representative Ewer who is a state employee. Representative Grimes district has a number of state employees in it. She would want this limited to the individual. When people are in the legislature they are concerned about the people they are representing. Legislators are looking at what the needs of the state are and what can be done within those constraints.

SENATOR BAER does not believe that the legislators are the serious problem. The area where the serious problem arises is public employees who abuse their positions using public time, funds and resources to promote a political ideology.

CHAIRMAN GROSFIELD clarified that they have suggested that both Houses have an Ethics Committee.

Mr. Petesch stated they could statutorily require committees.

CHAIRMAN GROSFIELD continued that both Houses must have an Ethics Committee made up of equal representation from both parties. The purpose of the Ethics Committee is to come up with restrictive parameters for a legislator either to abstain or vote on a bill. As far as the public employee is concerned, they should be treated the same as everyone else. If something is very direct, legislators could disclose the conflict and ask the Ethics Committee to be let off the hook.

SENATOR NELSON stated this should be tied to a pecuniary interest.

CHAIRMAN GROSFIELD stated that current statute referred to financial interest and this should be restricted to the same. The only time there is a conflict is if it is very direct and personal.

Mr. Petesch commented that it would be a combination of a restrictive class and a direct financial impact.

Mr. Jacobson stated that SB 115, Section 7, describes what the committee has been discussing. The first subsection discusses what a public official or public employee can't do and then (2) creates the exception which is the profession, occupation or class. The only modification would be to refine the size of the class. It would have to be everything but a very small class. (4) could state the legislature shall establish a bipartisan Ethics Committees and adopt rules governing conduct of members.

{Tape: 2; Side: B}

Mike Pichette commented he had a problem with (3) because the definition section defines a business associate as a corporation in which you have more \$1,000 worth of stock. The use of the words business and associate in this same sentence might be broadening this class again.

SENATOR BAER believed the current code does not differ very much from the language in SB 115.

Mr. Petesch referred to 13-35-226, (3), and stated that there is more ethics legislation than is apparent from looking at the ethics code. The one item this doesn't address is public employees using public time to address legislation being considered. This talks about support for political committees, nomination for office or passage of a ballot issue. This does not deal with legislation during the session.

SENATOR BAER commented that his bill deals with that and **Mr. Argenbright** needs something substantial to enforce these things which apparently does not exist. SB 136, page 4, Section 4 deals with this.

Mr. Petesch commented the current ethical statute in the ethics code talks about private business purposes. **SENATOR BAER** takes some of the concept of this campaign provision and puts it into the ethics provision and then strengthens it.

Mr. Argenbright stated that he had a number of complaints filed which deal with school district people trying to influence the outcome of ballot issues of a voted levy. He has always interpreted trying to influence in a very narrow way. It has to be a very direct attempt to influence. Where people in the communities get upset is when the teachers stand up in front of the class and explain that the sky will fall in. The elected trustees cannot be muzzled in terms of what they say and they direct their local school superintendent distribute information about the situation. The question is, is that influencing the outcome of a ballot issue or is that merely providing information to the public about their schools.

SENATOR BAER said that would not be a tough situation if his bill goes into effect. He read from a fax sent to him by a teacher on the school fax machine on school time urging him to vote "no" on SB 180 and "yes" on HB 268. This is a violation even under current standards. His bill gives guidelines to act on these things without any ambiguity.

CHAIRMAN GROSFIELD asked what would be in (3), Title 13, which is not in SB 136.

Mr. Petesch commented that the only item would be that the section is not intended to restrict the right of a public employee to personal political views.

SENATOR BAER stated public employees can do so on their own time but not when they are on the job. They cannot use public facilities, materials and time. When they leave the job at 5:00, they can do whatever they please.

Mr. Petesch commented that the current statute does not address legislation and the legislature. It talks about ballot issues. That is a large void. **SENATOR BAER** directly covers that issue. He discusses properly incidental to something else required by law. Departments register certain people as lobbyists. If you are requested by a legislator or committee to testify, that would be incidental to your duties. If you are on your own time and not being compensated, that would still be permissible.

SENATOR NELSON asked how this would relate to school superintendents. They are paid their regular salary and then paid mileage and per diem.

SENATOR BAER stated that his education bill was scheduled for a day when school had been let out and teachers were in Helena for a convention. If they had been excused for that day and were not supposed to be on the job and choose to be here to testify they are within their rights. They all were excused. He is looking for the superintendent who decides to leave his job and testify or lobby on a school issue when he should have been at their job that day.

CHAIRMAN GROSFIELD commented that people frequently come in and say they work for a state agency; however, they appear on their own time and speak on their own behalf. A school superintendent may have been sent by a school board so that would be part of their job. He asked how Montana school boards would affect legislation? They now have an association and they pay into it, all tax dollars. Without them, how will that interest be represented?

SENATOR BAER stated his bill probably does not cover that. It doesn't prohibit that. He has a problem with a school board paying \$5,000 in public funds to the Montana School Board Association and the Association sending a paid lobbyist with that money to influence political decisions.

CHAIRMAN GROSFIELD commented that his bill states use of public resources to pay in any way a lobbyist to influence political decisions. All of the Montana School Board Association funds are public resources.

SENATOR NELSON questioned how the legislature would get their message if they did not have someone over here.

SENATOR BAER commented the Montana School Board Association is a private organization. It is not a government entity. School boards can relate their messages to the legislators. They can send a fax any time they want on their own time.

CHAIRMAN GROSFIELD stated another group would be MACO. The distinction between MACO and MSBA is that MACO is funded by public money; however, county commissioners are paid.

SENATOR BAER stated that Judy Browning worked on his bill for quite a while and she suggested a lot of the language especially 2-2-121(2)(g)(i) authorized by law; or (ii) properly incidental to another activity required or authorized by law. That provides pretty open ended language for county commissioners.

CHAIRMAN GROSFIELD commented he is uncomfortable with limiting MACO's ability to function in this process. Something would be lost in the process if MACO, the School Boards Association, and the school administrators were excluded from participation in the process. That is an interest which needs to be represented.

SENATOR BAER stated that there should be some language to exclude those important functions.

SENATOR NELSON stated that when the School Board Association has a lobbyist here who speaks for the 500 plus districts, it pulls it all together. We cannot expect the school boards in the small communities to be on top of how everyone feels. A paid lobbyist can convey all the feelings of the school boards to the legislature. It is important to have someone lobby for them who is very knowledgeable on the stances which they took at their convention.

CHAIRMAN GROSFIELD commented this refers to class. A group of school boards put together a single effort. He suggest excluding legislative political decisions in 2-2-121(2)(h).

Mr. Petesch commented that MACO, School Boards, League of Cities and Towns are all extremely active on ballot issues.

CHAIRMAN GROSFIELD commented it does not bother him to have an association approach legislators. It doesn't bother him to have a county commissioner present either.

Mr. Petesch stated the amendments soften the initial language. Subsection (h) is still an absolute prohibition against the types of quasi-public associations.

CHAIRMAN GROSFIELD questioned (h) using public resources to subsidize the media.

SENATOR BAER believed that meant paid advertisement.

Mr. Jacobson commented that the type of lobbying being discussed is individual or collective. SB 115, Section 5, simply says may not use public funds, time, personnel, facilities, or equipment for political or campaign activity. This does not talk about influencing a vote. There should be a reference back to personal gain. He believed that **SENATOR BAER** and those concerned about

this feel that school teachers are going to personally gain or lose as the result of a vote on an election as compared to the collective conscience of the people. If this was tied into personal gain, that would be the key. The groups who come in and provide information or describe what is best for their offices do not have a personal gain.

SENATOR BAER stated that political ideologies are just as important as personal gains. It is a very much broader situation than just a direct personal gain.

Mr. Petesch stated personal gain would probably not work as a measure. It would not be any more proper for him to use state time and facilities to urge a vote on a school levy than it is for a teacher. He would not have a personal gain but it would not be proper conduct.

Mr. Jacobson commented it could be worded to say personal gain or personal position.

CHAIRMAN GROSFIELD stated that in **Mr. Petesch's** example he wasn't talking about position. He was just talking about wrongful use of state time.

Mr. Petesch commented that as far as using public resources, SB 136 amendments on 2-2-121(2)(g) would be used and there may be some language referring to incidental to the office. Superintendent of Public Instruction has some duties to promote public education. Is speaking against a proposed ballot issue on a property tax freeze, because of the impact it will have on education, properly incidental of promoting education? Half will say it is incidental and half will say it is a blatant misuse of the position. In (h) the decision is to change "subsidize in any way" to "compensation" and to carve out an exception for certain quasi-public organizations which represent groups of public entities.

SENATOR NELSON questioned when the groups are carved out in (h), will there be anyone left?

Mr. Petesch commented this would prohibit the Legislative Council from donating money for hiring a lobbyist. The Legislative Council would be prohibited from taking out an ad in the case of the legislative reorganization issue being a ballot issue. They could all individually contribute from their own pockets to do so, but they could not use Council funding. The only other groups up here would be private.

SENATOR BAER suggested deleting (h) entirely; however, he is strongly opposed to exempting the Montana School Board Association.

CHAIRMAN GROSFIELD stated they could delete (h) and have (g) remain in the same form.

Mr. Petesch thought there would still be the argument that they are allowing the use of public funds for persuading political decisions without a specific authorized use by law.

CHAIRMAN GROSFIELD stated that for a local school board, they would have to specifically authorize on a record of their meeting the use of taxpayer money to send home the brochure attempting to influence the levy.

SENATOR BAER stated it should not be authorized.

Mr. Petesch commented that the schools may have some language in statute which authorizes them to belong to an association.

Mr. Argenbright stated that school trustees have the authority to extend the school budget. They negotiate with staff and approve every bill paid by the school. As elected officials they have the duty to supervise the expenditure of that budget.

SENATOR ECK commented that school boards could send out a voter information pamphlet with pros and cons.

SENATOR BAER stated U. S. Supreme Court in Boyd v. United States stated: "In our ----- the constitutional commitment to free elections, guarantees an electoral process free of partisan intervention by the current holders of government authority or the current holders of the public treasury." That case is 100 years old and still stands. We are getting far afield on the real context.

CHAIRMAN GROSFIELD stated he agreed to a point but that he is troubled by going too far.

SENATOR BAER quoted U.S. Supreme Court Justice Brennan, "Partisan use of public funds in an election would violate the first amendment to the U. S. Constitution made applicable to the states by the Due Process Clause of the Fourteenth Amendment."

CHAIRMAN GROSFIELD suggested accepting all of Section 4, of SB 136 with the exception of (h). **SENATOR BAER** would be free to offer (h) as an amendment. Subsection g states supplies cannot be used for any political action unless it is properly incidental. That should address faxes and letters sent home with children.

SENATOR NELSON felt that (g)(ii) was vague.

Mr. Jacobson stated that language is identical to Section 5 of SB 115.

CHAIRMAN GROSFIELD stated that Section 5 had problems with collective bargaining and professional responsibility obligations.

Mr. Petesch stated that 121 applies to locals, state employees and legislators.

SENATOR BAER stated the (i) and (ii) is language which Judy Browning said would take care of the fears of the committee as well as many executive department employees who felt they may be constrained from testifying at committee hearings. Beth Baker is very satisfied with the language.

SENATOR BARTLETT asked for clarification regarding state agencies, county or city, lobbying the legislature in relation to (g).

CHAIRMAN GROSFIELD stated that **Mr. Petesch** believes there is language in the school law which authorizes school boards to join associations.

SENATOR BARTLETT referred to "affecting a political decision" in (g) and believed that the decisions in the legislature would be political decisions.

Mr. Petesch commented the amendments create some flexibility there. Paying dues is authorized by law. If the association uses the dues to lobby, it would have to be properly incidental to another activity such as protecting county budgets would be properly incidental to county government.

SENATOR BARTLETT asked if legislators would have to request that someone from a state agency attend a hearing.

Mr. Petesch stated if the person is registered as a lobbyist there would be no problem. Ms. Browning and Ms. Baker felt this language authorized them to perform their functions.

CHAIRMAN GROSFIELD commented that a state employee has to be listed as a lobbyist to come over here on a regular basis. The governor's office has wanted to be pretty limiting in that. He suggested the committee look at enforcement. Section 4 has specific penalties in it.

SENATOR BARTLETT referring to Section 4, (5), stated that she does not have a clear idea of what disciplinary action is contemplated. Who would take the disciplinary action? Under what circumstances would disciplinary action occur? How would a civil penalty be assessed?

Mr. Petesch commented that disciplinary action would be handled by the employing agency. Civil penalty could be a complaint filed with the Commissioner to be imposed administratively and subject to appeal to court or this could be clarified to state who has standing to bring a complaint in district court for the penalty. The criminal penalty is county attorney enforcement.

SENATOR BARTLETT had concerns about the enforcement mechanisms. They are susceptible to abuse and harassment of public officials. If there is a group that decides that a particular officeholder has a conflict of interest and if a civil case could be brought by any citizen in the state of Montana against that officeholder, that officeholder could be plagued with a series of civil cases until the courts decided to dismiss as frivolous. They do not dismiss the first or second time a case is brought. .

SENATOR BAER suggest putting the English rule of prevailing party collects attorney fees from the nonprevailing party. That would eliminate frivolous complaints.

Mr. Jacobson stated the issue of enforcement almost needs a separate commission. A well-funded group not concerned about having to pay opposing attorney fees could devastate a person. There could be a situation of attacking a legislator during the session which would paralyze that legislator by the process of going to court. Filing the action and starting the process could cause severe harm, then the person could dismiss the action. There wouldn't be much in attorneys fees at that point. They felt it was necessary to have an independent person to get rid of the things which were malicious in nature, frivolous or otherwise causing problems to people. An independent entity will cost money.

SENATOR BAER stated it could be changed to a criminal penalty subject to the county attorney or give it to Commissioner Argenbright to make that decision. We cannot pay \$600,000 for a government bureaucracy to handle this.

SENATOR BISHOP commented that when he was up here in 86 a lawsuit was filed against him. He had to hire an attorney to handle it and it cost him \$12,000. Perhaps a legislator could be exempt during the session.

Mr. Petesch stated there is legislative immunity for legislative acts.

SENATOR BISHOP commented courts can grant sanctions against the attorney for bringing a frivolous suit.

SENATOR BARTLETT stated there are a number of local government officials around the state who are dealing with these types of situations right now. They have to make time in their day to deal with these situations. Even a frivolous case requires a response. Frequently in governmental instances there are administrative procedures which can take the place of a court action. That is an aspect of SB 115 which appeals to her. She would like to have the committee discuss a commission which would deal with ethics allegations.

SENATOR ECK commented that one of the things which affects the Commissioner is the right to request an investigation of one's own conduct, page 25, Section 39.

SENATOR BAER stated whether you have a commission or an administrative agency the net result is going to be either civil penalties by way of a civil suit or prosecution by the county attorney or the attorney general. We will have to provide penalties for violations of the law. A long drawn out administrative procedure will probably result in the same thing if the person has violated the law.

Mr. Petesch stated that they may want to have these violations filed with the Commissioner as a contested case and give him the authority to impose the penalty at which point an appeal from that is limited in review. The review of a contested case is to whether there was an error of the law or whether procedures were violated. There is a presumption that the agency decision is correct and you are limited to the record established at the agency level. You are not allowed to bring in new evidence.

CHAIRMAN GROSFIELD posed the scenario wherein there was a complaint which went to the Commissioner, what are the options for the Commissioner at that point?

Mr. Petesch commented the Commissioner would act as a hearings officer, a mini court. There are procedures set up clearly in statute to be followed at a contested case hearing such as Rules of Evidence, representation, etc. The Commissioner would hire a hearings office to act on the case. The time requirement is no more than six months. The normal time period is less than that.

SENATOR BAER commented they could still be appealed to the district court without a trial de novo.

Mr. Petesch commented you cannot have a trial de novo, you are limited to the record established at the administrative level. The agency pays the costs of the hearing. Absent appeal, the cost could be assessed against the person filing the complaint or the violating official.

Mr. Argenbright stated that his worst fear is shortage of staff. If he is required to hold contested hearings and if he had the ability to level a civil penalty to take care of some of the violations, this could work. He has to first go to the county attorney who usually does not want to take the case. He does not have any budget for prosecution. He is trying to deal with all the complaints and violations of campaign practices. If this would be an added responsibility for his office, he would need some resources to be able to handle it.

CHAIRMAN GROSFIELD believed that he would contract with a hearings officer who would handle all the work. There should be

no impact on the Commissioner's Office other than whatever the hearings officer is doing.

Mr. Petesch commented that was correct; however, there would be some record keeping involved. The primary cost of the contested case would be the hearings officer and the transcript.

SENATOR BAER stated that if this law is enacted, there should not be as many violations. It will be a good deterrent. The education aspect will also be helpful.

Mr. Jacobson commented that he felt there still needs to be a balance of politics in a Ethics Commission. They would have a small staff which would handle complaints, investigations, and prosecution. This would reduce the fiscal note by one half. He wasn't sure if this allowed someone to file a contested case on their own behalf against some party to the complaint. It would be better to have a staff which initially investigated the complaint and then made the determination of whether or not to prosecute. In that situation, the safeguards would be built in to investigate your own activities and you would also be able to get rid of frivolous complaints and complaints based upon political mischief. That is a way to solve the enforcement problem and reduce the cost.

CHAIRMAN GROSFIELD was still concerned with the fiscal note. Cutting \$600,000 down to \$300,000 would still leave the note too large. The legislature would have to decide if there was a big enough problem to require a \$300,000 solution. His sense is that the legislature will say there is not. All the enforcement would then be deleted and all that would be left to the bill would be a voluntary situation. He would like to see something in between the voluntary approach and the fiscal note.

Mr. Jacobson commented that in all likelihood there would be SWATCAP funds, which is money that can be captured from the federal government. There may be some political disagreement over the funding source; however; you could mitigate the amount of money which would come from the general fund. Ethics laws which are going to work will have to be paid for and this would be a way to mitigate it. The revised fiscal note would be approximately \$125,000 to \$250,000, which could be offset against a considerable amount of SWATCAP funds. SWATCAP is money which the federal government provides for essential governmental functions.

Mr. Argenbright commented that I-118 calls for changes in his staff and his initial request to cover this has been cut in half. His original request was for 4 FTEs and was approximately \$200,000.

CHAIRMAN GROSFIELD asked the committee's consensus on going ahead with the administrative procedures along with **SENATOR BAER's** idea

of the English rule and to have this handled through the Commissioner's Office.

SENATOR NELSON commented that without enforcement there is no point to the bill.

CHAIRMAN GROSFIELD stated the penalty section would look different, but the thresholds would be okay.

Mr. Petesch commented that "disciplinary action" applied to a public employees.

CHAIRMAN GROSFIELD questioned if county officials should be handled by the administrative process through Mr. Argenbright's office.

The committee felt that would be very cumbersome. The decision was made to leave the county officials with the local court system.

Mr. Petesch commented there was no enforcement mechanism in current law for county officials. Locals are not covered in SB 115. There could be language to state that a city or county shall establish an administrative procedure for dealing with violations.

SENATOR NELSON stated they are subject to recall.

SENATOR ECK felt that language would be an unfunded mandate.

{Tape: 3; Side: A}

CHAIRMAN GROSFIELD suggested accepting Section 5 of SB 136 if the words "and eliminate" were stricken.

SENATOR BARTLETT commented that the disciplinary action is geared toward employees and does not affect officers. The language could read "disciplinary action and/or a civil penalty of not less than". There would be no other way to capture elected officials other than civil penalties.

CHAIRMAN GROSFIELD recapped that they have dealt with all the issues on his list with exception of advisory opinions, definitions, role of commissioner, and gifts. They would also have to decide on a vehicle. The definitions he would like to see included are private interest and public duty.

Mr. Petesch stated they need to define a "public employee".

SENATOR BARTLETT had a question on Section 4 of SB 136. She felt "representations" should be added.

Mr. Petesch commented this is partly covered in 2-2-104(l)(b)(ii), accept something tantamount to a gift which a reasonable person should know is primarily for the purpose of rewarding him for official action taken. This could be amended to say "or because of his official position".

Mr. Petesch commented that within the framework, it could be provided that state employees may seek advisory opinions from the agency. Legislators have ethics committees. High level employees could go to the agency for advisory opinions.

CHAIRMAN GROSFIELD commented that the Department of Administration would handle training and develop a brochure. If there was a conflict, an employee or director could go to the Department of Justice Personnel Division.

SENATOR ECK commented that one of the problems with ethics is that the county attorneys have refused to take these cases.

Mr. Jacobson stated advisory opinions provided by each agency would create a lot of inconsistency. The only place for any consistency would be the attorney general. Somewhere down the road there may be a political attorney general and this could create problems.

Mr. Petesch stated that within agencies there would be divergent results.

Mr. Jacobson stated that even in agencies where the person could go to the attorney, if the director were to lean on the attorney for a result, the attorney would either have to quit or come up with something which would make the director happy.

SENATOR ECK suggested a pared down commission which could be either attached to the Commissioner's Office or separate. Most state agencies use at least a couple of hundred thousand dollars a year for advisory committees which have no appropriations. SRS probably spent \$300,000 to \$400,000 on their health care planning committee. The Department of Commerce has had many, many advisory committees. For every program which is established, the department sets up an advisory committee and somehow it is funded out of their own money. This is for the public. This bill will not be accepted as a viable code of ethics unless it has some enforcement.

CHAIRMAN GROSFIELD asked if the administrative appeal, a hearing officer through the Commissioner of Campaign Practices Office, would be political.

SENATOR ECK felt that would be perceived as part of the judicial system. The hearing officer idea is a good idea.

Mr. Petesch commented they could contract for advisory opinions, but there would be costs there too. There could be a provision

wherein an agency could seek an advisory opinion from Commissioner Argenbright who could contract for it and then the agency would have to pay for the cost of issuing the opinion.

SENATOR BARTLETT stated they needed to spend time on gifts. She wanted to revisit postemployment restrictions in SB 115 and existing law. Another section in SB 115 she wanted the committee to look at was actions taken while negotiating for employment.

ADJOURNMENT

Adjournment: The meeting adjourned at 5:15 p.m.



SENATOR LORENTS GROSFIELD, Chairman



JUDY J. KEINTZ, Secretary

LG/jjk

ROLL CALL

SENATE COMMITTEE JUDICIARY SUBCOMMITTEE

DATE 2/11/95

ETHICS SB 115 SB 136

[illegible]

Attach to each day's minutes

Section A. Section 2-2-102, MCA, is amended to read:

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

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

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

(3) "Employee" means any temporary or permanent employee:

(a) of the state or any subdivision thereof of the state; or
~~member of the judiciary, including~~

(b) a member of a board, commission, or committee; and

(c) except a legislator and an employee under contract to
the state.

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

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

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

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

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

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

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

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

(i) the state;

(ii) the legislature and its committees;

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

(iv) the university system; and

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

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

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

{ Internal References to 2-2-102:

5-11-203 }

Section B. Section 2-18-102, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2."

{Internal References to 2-18-102: None.}

Section C. Section 5-7-213, MCA, is amended to read:

"5-7-213. Disclosure by elected officials. (1) (a) Prior to December 15 of each even-numbered year, each elected official, ~~or~~ official-elect, member of a quasi-judicial board, department director, and person occupying a position or division administrator or higher shall file with the commissioner a business disclosure statement on a form provided by the commissioner.

(2) The statement ~~shall~~ must provide the following

information:

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

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

(c) each business, firm, corporation, partnership, other business or professional entity or trust in which the individual or a member of the individual's immediate family hold an interest the value of which is greater than \$1000; and

(d) all real property other than a personal, residence, in which the individual or the individual's immediate family hold an interest, the value of which is greater than \$1000. Real property may be described by general description. For this purpose "immediate family" includes the individual's spouse and minor children only.

(2) ~~No such~~ An individual may assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until ~~such the~~ statement has been filed.

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

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

{ Internal References to 5-7-213: None. }