

MINUTES

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

SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN SENATOR LORENTS GROSFIELD**, on
February 14, 1995, at 11:20 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 136

The committee members had earlier been provided a copy of
Amendments to SB 136, First Reading Copy.

CHAIRMAN GROSFIELD referring to page 2, private interest,
commented the only place those words appear is in the disclosure
dealing with contracts.

Mr. Petesch commented they also appear in the statement of public
trust. There are one or two instances where they are used to
match constitutional language.

CHAIRMAN GROSFIELD asked why personal property is included.

Mr. Petesch stated it was in the existing definition of financial
interest.

CHAIRMAN GROSFIELD felt that personal property was excluded.

Mr. Petesch stated personal property was excluded from the disclosure statement. He agreed to exclude personal property from the definitions.

CHAIRMAN GROSFIELD stated that when referring to "public employee" meaning a member of a board, commission or committee, they were referring to quasi-judicial boards only. His questioned whether the Fish and Game Commission was a quasi-judicial board. He felt this may have to read quasi-judicial boards or commissions.

SENATOR BARTLETT stated that executive reorganization work also referred to quasi-legislative. She asked if there were any quasi-legislative boards which are not also quasi-judicial. Every board with rulemaking authority or policy authority also hear contested cases.

Mr. Petesch stated most of those boards would not have the rulemaking authority. The Board of Crime Control is not a quasi-judicial board. They adopt rules but most of these rules are relative to grants.

SENATOR BARTLETT questioned if that was a board which should be pulled in.

CHAIRMAN GROSFIELD stated it would be correct to use the language "quasi-judicial board or commission" or "board or commission with rulemaking authority".

Mr. Petesch stated that would pick up all the professional and occupational licensing boards. Most of those are quasi-judicial, but not all.

CHAIRMAN GROSFIELD commented they used "public employee", "public officer" and "state officer". He asked where a legislator would fit in.

Mr. Petesch explained that wherever a legislator fits in, the language states legislator specifically.

SENATOR BARTLETT, referring to quasi-judicial and rulemaking boards, believed they might fit better into the definition for state officer, which is limited to elected officers and directors of the executive branch of state government. She believes that would make a difference in terms of page 6 and the disciplinary action for violating an ethical requirement. Currently the board people are under the public employee definition and on page 6, line 2, "A public employee who violates this section is subject to disciplinary action by the employee's employer . . ." She believed a board member could not be subject to disciplinary action. A public officer is subject to a civil penalty. She believed boards might fit better under the definition of state officer.

Mr. Petesch commented that when rulemaking authority was added, they used disclosure for state officers. All the boards with rulemaking would then be required to file disclosure statements also.

SENATOR BARTLETT stated that was not her intent. She further questioned the definition of public employee (c) an employee under contract to the state. She believed that to be a contradictory phrase because if a person is under contract that person is not an employee.

Mr. Petesch stated "an employee" could be changed to read "a person".

CHAIRMAN GROSFIELD, referring to page 4, line 2, questioned if there was a penalty for violating (a).

Mr. Petesch stated there was no penalty attached.

SENATOR BARTLETT stated the section which talks about gifts is rules of conduct for public officers, legislators, and public employees. On page 9, section 121, there are additional rules of conduct for public officers and public employees. This does not specify legislators but legislators show up in the text in that section thus (a) could be moved to section 2-2-121.

CHAIRMAN GROSFIELD asked if the committee wanted a penalty for (a), such as \$50 to \$1000 administrative penalty.

The committee agreed they did want a penalty.

SENATOR BARTLETT stated that the rest of that section is about gifts and (a) probably should be in a different section which already has a penalty.

SENATOR NELSON, referring to page 5, line 2, asked if "lavish or extravagant" had been identified.

CHAIRMAN GROSFIELD commented that would be up to the Commissioner.

CHAIRMAN BARTLETT asked if there was an identification of what constitutes a political subdivision of the state. People ask if local government includes schools, fire districts, etc.

Mr. Petesch commented political subdivisions have not been defined but typically any subdivision of the state is anything lower than the state level which has governmental power. This would be counties, cities, towns, school districts, conservation districts, etc. They are subdivisions of the state because their authority to exist comes from the state.

SENATOR NELSON stated that when they say they cannot receive two salaries, they are usurping local control.

Mr. Petesch clarified they cannot receive two salaries from two governmental units for the same time. This has been restricted so it is the same hours of employment.

SENATOR NELSON stated that if a school teacher has negotiated with his own school board that he could receive some salary while he is in the legislature, he couldn't.

Mr. Petesch stated they would affect existing contracts, but a future contract would not be allowed.

SENATOR BAER stated that he had some difficulty with this originally in trying to determine whether this was an ethical consideration. He discussed it with SENATOR ECK and they decided it is an ethical consideration and it should be in the bill. It only affects the actual salary and not benefits.

SENATOR BARTLETT stated that she would be more comfortable if that could be limited to state employees, having two salaries during the same period of time. She felt their discussions were addressing state employees.

CHAIRMAN GROSFIELD, referring to page 6, commented they were giving a heavier penalty to a public employee than they were giving to a public officer. It seemed they ought to be equal or the officer's penalty should be harsher than the public employee. He suggested striking disciplinary action. He assumed there would be some indirect consequences within the agency anyway.

SENATOR BAER commented they could add disciplinary action to the public officer.

CHAIRMAN GROSFIELD asked how there could be disciplinary action by the employee's employer in regard to a person like the governor.

SENATOR BARTLETT questioned whether there needed to be any civil penalty for a public employee if they are subject to disciplinary action. Someone may pay out \$1000 if they could keep their job.

CHAIRMAN GROSFIELD stated they could change this to \$50 and not more than \$500. For a public officer have \$200 and not more than \$1000.

SENATOR NELSON, referring to (3), asked about employees who specialized in a department.

CHAIRMAN GROSFIELD commented that his sense of that issue is that if they open that door, they would be opening a flood gate. This does not only apply to lawyers.

SENATOR BARTLETT commented that was another substantive issue she would like to raise in the committee.

SENATOR BISHOP commented that he agrees with **SENATORS BARTLETT and NELSON**. This is very important to these employees. They are not using inside information. They are using some expertise they have gained.

Mr. Petesch stated that the provision in existing law which lets people out is the exemption in the sentence that these matters are rules other than rules of general application. If they are rules applied to everyone, the person is not prohibited in actively participating in them, because he knows them well. For example, child enforcement rules apply to everyone. Everyone who has a child support enforcement debt or owes child support, is subject to the same rules. Rules of general application would let that individual out. This should not prohibit an attorney leaving the Child Support Enforcement Division from practicing family law.

SENATOR NELSON, referring to the bottom of page 6, (2), believed that it should read "a conflict created by personal or financial interest" rather than "private interest".

Mr. Petesch commented they changed the defined term from financial interest to private interest in order to conform with the constitutional requirement for public duty versus private interest.

CHAIRMAN GROSFIELD, referring to page 8, (5), questioned the wording "the committee shall determine whether the legislator". This deals with the Ethics Committee within the houses. Do they want the committee to determine that or do they want the committee to advise the legislator whether the legislator should participate in the action. Should the committee advise?

The committee decided to use the word "advise".

CHAIRMAN GROSFIELD, referring to page 9, Section 7, questioned why the title line didn't list legislator when it is discussed in the text. He was troubled with (2)(a) which referred to a legislator not using public time, facility, or equipment for private business purposes. He needs to call his foreman at home to see how the business is going while he is in Helena. The rules state they can at least use the phone. He is troubled by including legislator in (2).

SENATOR NELSON believed there could be an exception for legislators during legislative session.

Mr. Petesch stated the area dealing with legislators is (e) and (g). He could take legislator out of (2). Subsections (e) and (g) would apply to everyone. The rest would only apply to public officers and employees.

SENATOR BARTLETT commented there is an entire section which deals with conduct of legislators and this could be limited to officers

and employees and put those provisions from this which affect legislators into either 111 or 112.

SENATOR ECK questioned how this applied to university personnel.

Mr. Petesch stated university personnel are state employees. This provision is being expanded to local government employees.

SENATOR BARTLETT referred to the Commissioner being able to assess the cost of a contested case proceeding against the losing party. She had intended that to be permissive but not required in absolutely all cases. **SENATOR BARTLETT** also referred to page 9, (b), which talks about engaging in a substantial financial transaction. Substantial financial transaction has not been identified.

Mr. Petesch commented that "substantial value" has been defined as something of \$50 or more. That was in relation to gifts. The wording could state a "financial transaction of substantial value" and that would have a \$50 threshold.

CHAIRMAN GROSFIELD believed that a substantial financial transaction would be more than \$50. He then referred to page 16, "each state agency shall adopt the model rules of conduct and shall provide a mechanism". He believed that there should be discretion for a state agency which adopts these model rules of conduct. He would add in: "Each state agency shall adopt the model rules of conduct and such additional rules as may be appropriate for the specific circumstances of the agency."

SENATOR BARTLETT referred to (1)(b) wherein a candidate would file a business disclosure at the time the candidate files for office. She believed it would make more sense if it is within five days after filing for office. At the time that you file, you would get the business disclosure file which you would fill out and it would have to be turned in within five days after.

CHAIRMAN GROSFIELD asked **Mr. Argenbright** if the five day limitation was by rule or by law.

Mr. Argenbright stated it was by rule.

Mr. Petesch stated it would be law now.

CHAIRMAN GROSFIELD suggested changing it to not less than 10 days.

SENATOR BARTLETT commented that they do not have to file the business disclosure now. Anyone who has not already filed their campaign committee report, which is the establishment of their campaign committee with the Commissioner, is required to do that within five days after filing. That is what she is trying to conform with.

CHAIRMAN GROSFIELD referred to page 17, (d) "all real property other than a personal residence". He thought that should read, "all real property other than a personal residence and adjacent land". He asked why it was important to disclose real property at all?

SENATOR BARTLETT commented that if the person owned 14 rental units in addition to a home that would be important to disclose.

CHAIRMAN GROSFIELD referred to (c)(i) "the value of which is greater than \$1000". Is \$1000 the right threshold?

Mr. Petesch stated he could take out the value. The thought is that you can have an easement, which is an interest in real property. You can also have a license in real property and that may be around \$1000.

CHAIRMAN GROSFIELD commented that (c) states he must list each business, firm, corporation, etc. He might list Joe's, Inc. No one knows this business. This could read, "for each entity listed under (c) or (d) a brief description of the purpose of the entity should be provided."

SENATOR BARTLETT had a question regarding advisory opinions on page 22. Everything in the bill states they are confidential; however, this states "unless the person whose affairs are involved discloses the opinion." There may be other people in the opinion who do not waive this privacy.

CHAIRMAN GROSFIELD suggested a period after the word confidential.

SENATOR BARTLETT stated they do not address any conditions in relation to anyone else named in the opinion. It could state that the identity of the person requesting the opinion is confidential unless the person whose affairs are involved discloses the opinion.

Mr. Petesch commented the thought is that if he is the subject of an advisory opinion whether it is brought by his request or someone else's, it exonerates him. He may want to make it public. If it chastises the person, it can only be released through his own efforts.

SENATOR BARTLETT stated she would be satisfied if it is an advisory opinion about her and she decides to make it public, she is still obligated not to release the names of other people involved in that opinion. They could do so if they choose to do so. She would have to respect the privacy of other people and not release their identity.

Mr. Petesch stated he could add that a person making an advisory opinion public must protect the confidentiality of everyone unless the person releases.

SENATOR BARTLETT further stated that the technical point on page 21 about the presiding officer of the commission being elected by a majority of the members. She thinks that may be in conflict with 5-1-102, which is how reapportionment is handled. Two and two are appointed and then they select the fifth. That statute specifies that the fifth member is the chair. Page 19 (2) the language states that the members are appointed in the same manner as prescribed in 5-1-102.

CHAIRMAN GROSFIELD commented they may wish to decide among themselves who would be the chair. It may make it harder to find someone to serve on this commission if they knew that they would automatically be the chair.


Mr. Petesch stated they only stated how the members were chosen. The specific provision on electing their chairman would govern.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:25 p.m.



SENATOR LORENTS GROSFIELD, Chairman



JUDY J. KEINTZ, Secretary

LG/jjk

