

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### JOINT COMMITTEE ON ETHICS

Call to Order: By CHAIRMAN JOHN HARP, on March 9, 1995, at 5:30 p.m.

#### ROLL CALL

**Members Present:**

Sen. John G. Harp, Chairman (R)  
Sen. Al Bishop (R)  
Rep. Vicki Cocchiarella (D)  
Rep. Matt Denny (R)  
Rep. Rose Forbes (R)  
Sen. Linda J. Nelson (D)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** Rep. Ray Peck, Vice Chairman (D)

**Members Absent:** none.

**Staff Present:** Greg Petesch, Legislative Council  
Fredella Haab, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB 571

#### HEARING ON HOUSE BILL 571

**Opening Statement by Sponsor:**

REP. HAL HARPER, H.D. 52, Helena, stated he had reviewed SEN. LARRY BAER'S Bill, SB 136 and he liked some of the mandatory aspects of the bill. He had always been bothered by the choice given to dispose of a conflict simply by proceeding to vote. He reported he had participated, to a small degree, with John Vincent's Interim Committee, on the draft of SEN. DOROTHY ECK'S Bill, SB 115.

REP. HARPER stated HB 571 was introduced to try to establish a workable code of ethics and was followed by a recommendation by Greg Petesch's Through the Magnifying Glass, an analysis of our ethics laws. House Bill 571 was separated into two parts following a recommendation on the Rules of Conduct that applied to all public officers, legislators, and public employees. In

response to the recommendation, one section applied to public officers and employees, and the other to all legislators. The language used was to ensure that no one would accept something that would sway their vote. Originally when the bill was introduced there was a \$50 limit. General language was used to try to define how the Code of Ethics could be violated. It could be interpreted as a bribe or a gift used to influence judgement if confidential information or a gift of any substantial economical benefit was used in a way, which violated that Code of Ethics, to benefit one's personal interests. Reimbursement was allowed for reasonable food, traveling, lodging and other expenses.

**REP. HARPER** continued when a legislator had taken official action on a matter with a potential conflict of interest, due to a financial interest directly and substantially affected, the legislator would either disclose, eliminate the interest, or abstain from the official action. He contended eliminating the conflict would be the best approach, next would be to abstain. He cautioned the Committee to give extra scrutiny to that particular part of the bill. The conflict did not arise when voting as a member of a class in circumstances where the interest would not receive or be singled out of the class for benefits. He pointed out that would include both negative and positive benefits resulting from negative action that would affect competitors. He noted that provision was more clearly outlined in **SEN. ECK'S** bill. The rules mirrored the law saying consider the situation and decide what action to take.

**REP. HARPER** contended the people of Montana were capable of drafting and passing a bill making it incredibly difficult for legislators to do their job. They would make it almost impossible for a legislator to spend any productive time with a lobbyist since meals paid for by lobbyists would be prohibited. He stated that was the reason legislator lobbyists were very valuable and usually very effective. He noted very few former legislators were lobbying for interests that they were consistently voting against. There was some degree of connection between the way a legislator operated and the person they eventually lobbied for. The bill stated a legislator could not become a lobbyist for two years after he/she left the Legislature.

The fact that Montana's legislature was composed of citizen legislators raised not only the possibility but the probability that conflicts of interests would occur often. He urged the Committee to consider events in other states in the last two decades. More than 10 times as many prosecutions had been made and convictions obtained against local officials including legislators. The reason for the increase was passage of tighter and stricter Ethics Laws. He argued the problem was not public perception. He contended the Committee understood very well the difference between perception and the symbolism of passing an Ethics Bill as it related to the reality of living day to day.

He urged the Committee to consider the concepts in HB 571 but urged primary consideration be given to SB 115.

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**Proponents' Testimony:**

**Garth Jacobson, Secretary of State's Office**, reported he had served on the Ethics Advisory Commission and rose in support of HB 571. He supported all legislation that would provide meaningful, enforceable, and reasonable ethics legislation for the State of Montana.

**Debbie Smith, Common Cause**, stated they supported HB 571 and **REP. HARPER'S** suggestion that his bill and the strong points of all the bills be molded together.

**Jeff Miller, Department of Revenue**, said he wanted the ethics project to come forward without deleting any activity that was important to any unethical standard. He encouraged including the filing of income tax returns.

**J. V. Bennett, Montana Public Interest Research Group (PIRG)** reported PIRG was very interested in ethics legislation and felt it was an important step in the governmental process.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

**SEN. LINDA NELSON** asked **REP. HARPER** what his definition of substantial was. **REP. HARPER** responded "substantial" had been used because it was hard to nail down a dollar figure. He suggested a loan for a house or business at a low interest rate would be a substantial benefit. **SEN. NELSON** said substantial had different meanings to different groups of people with varying degrees of wealth. She wondered what constituted reasonable food, travel, lodging, and other expenses. She noted honorariums were not mentioned. **REP. HARPER** stated those weaknesses in HB 571 were the reason he favored **SEN. ECK'S** bill. Her bill specifically outlined a person's ability to accept expenses but not an honorarium.

**REP. MATT DENNY** referred to the three choices: to disclose, to eliminate, or to abstain from voting, which was different in the two Houses. The right of members to represent their constituency was of such major importance that members should not be barred from voting on matters of direct personal interest, except in clear cases where the matter was particularly personal. He asked **REP. HARPER** how he felt about complete disclosure as well as voting. **REP. HARPER** stated the answer lied in the narrowness of

the class. A bill that gave a legislator an unfair competitive edge over competitive businesses in the legislator's area would be in violation of that act. The classes were pretty narrow. What needed to be dealt with was the narrowness of the class and if the legislator would be treated any differently than other members of that class.

*{Tape: 1; Side: 1; Approx. Counter: 30.7; Comments: .}*

**REP. DENNY** stated that the Representatives of the House were elected every two years and were very close to the people they represented. He asked **REP. HARPER** what the positive effect would be on public perception if members were to stand and disclose their interest and then proceed to vote. **REP. HARPER** stated under current law that would be satisfactory and conflict could not be alleged if the conflict was disclosed prior to voting. He noted it had been a common misconception that legislators were required to vote on every issue placed before them. He thought the public would be better satisfied if legislators disclosed their interests.

**REP. VICKI COCCHIARELLA** asked **Jeff Miller** to elaborate on his comments regarding income taxes. **Jeff Miller** stated this was an excellent opportunity to affirm the public trust and the reason he had risen was because there were currently mechanisms in the law. He thought it would be an excellent opportunity and it was not unprecedented. Federal statutes, policies and regulations stated it was a requirement for employees of the federal sector to abide by both state and federal laws in meeting financial obligations, especially filing tax returns. **REP. COCCHIARELLA** stated the issue was something a candidate should consider before being elected. **Jeff Miller** noted everyone was entitled to a mistake or an omission. The individuals were contacted and told there was a discrepancy and given an opportunity to remedy the situation or offer an explanation. They would be given the full due process. In instances where the Revenue Department's requests were ignored, the Department would then have options available. The violation would only be filed after the person was unsuccessfully solicited by the Department.

**Closing by Sponsor:**

**REP. HARPER** reported most states that had gotten serious about ethics had an Ethics Committee. He noted the Commission was included on one of the other bills. The Commission was one of the fairest and most impartial ways to enforce ethics. The Ethics Committee would be chosen the same way Commissioner Argenbright was. He thought there should be a provision whereby someone who made a mistake in judgement could correct that judgement. He contended the prevailing problem with the legislature was the lack of public faith and confidence. The important thing was to convince the public that the legislature was going to handle the problem. Without ethics legislation

there would be no way to establish the level of trust needed to direct the state today and into the future.

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**Discussion:**

**Greg Petesch** stated the bill required disclosure of conflict of interest by public officers, state officers, and state employees. An employee who issued permits or ruled on a permit involving an organization posing a potential conflict of interest, would be required to disclose membership in that organization to the supervisor.

**Greg Petesch** referred to a chart, made by the Secretary of the State's Office, and reported the Subcommittee had used the chart in the Senate Judiciary Committee in identifying the issues. The Subcommittee's substitute bill addressed, in some manner, nearly every item in the left hand column as an activity or an action. The question was did the Committee want different types of disclosure requirements for public officers, public employees, legislators, local government officers and employees. Various bills and current laws all dealt with the issues in a different manner. There was a wide range of permissive disclosure in the current law but SB 136 mandated disclosure. Senate Bill 115 prohibited participation when there was a direct foreseeable monetary interest.

**SEN. NELSON** asked how far they would go in disclosing. She noted SB 136 went along the line of nepotism. **CHAIRMAN JOHN HARP** stated the discussion was about direct disclosure, such as himself as a legislator. The person affected was the person making the vote.

**Greg Petesch** stated in the Subcommittee Bill that was the section that referred to membership in a class, profession or occupation, becoming so narrow that it would have a direct personal impact on the legislator.

**CHAIRMAN HARP** asked if the section needed to be amended to adopt the Subcommittee's narrow classification of conflict of interest and add that all members were expected to vote after they had declared their conflict of interest.

**Greg Petesch** stated it currently provided for Joint Rules and could easily be amended to say Legislative Rules. That would allow each House to make the distinction, as it currently did, where the Senate required the legislators to vote after disclosing and the House allowed the member to abstain. Amending the provision to say the Rules of the Legislature rather than the Joint Rules would allow the current system to function, but with guidance for members. He stated the Subcommittee had talked at some length about the two different systems in place and decided to leave the decision to the rules.

**REP. COCCHIARELLA** wondered if it should be a Joint Committee so decisions were applied the same to members of both Houses.

*{Tape: 1; Side:2; Approx. Counter: 3.4}*

**Greg Petesch** stated the Subcommittee provided for a separate, non- partisan committee in each House and allowed the membership and size to be determined by each House as long as it was bipartisan. The bill provided if a legislator was concerned that the class was narrowing they would go to the Committee and make a brief presentation to that body. The Committee would give advice as to whether disclosure was necessary.

**REP. ROSE FORBES** asked what would happen if a member noticed a conflict during floor session. **CHAIRMAN HARP** suggested the member could pass the bill for the day. **REP. FORBES** agreed.

**Greg Petesch** stated another option would be to have an informal meeting in the back of the chambers on a bill or if the bill was being amended and the class was becoming narrower as the floor action proceeded perhaps a 15 minute recess could be taken at a member's request.

**REP. COCCHIARELLA** recalled **CHAIRMAN HARP** had said there was agreement on the issue and now they were talking about one House doing one thing and one House doing another. **CHAIRMAN HARP** stated he felt there was general agreement on Tuesday to disclose and then vote. If the class was so narrow in focus, based on the Subcommittee's definition, a legislator could bring their concerns to the Ethics Committee, but they would still be required to vote. He stated without objection, would the Committee allow Mr. Petesch to add the provision into Section 2-2-112 from the Subcommittee's action.

**Greg Petesch** stated the next item was the use of an elected office for personal gain. He reported current law prohibited the use of an elected office to obtain employment or a contract. **SEN. ECK'S** Bill went beyond that and said the title or prestige of an office could not be used to obtain anything of value. That provision may deal with the honorarium issue raised by **SEN. NELSON**. The Subcommittee Bill dealt with the issue in the same manner as current law.

**Garth Jacobson** stated he wanted to explain the purpose of SB 115 in regard to the issue. He explained about six years previous the Secretary of State was offered a trip to Russia to lead a tour lending the prestige of the office to the process. There was nothing in Montana law prohibiting the trip but the Secretary of State did not go. That was the situation they had attempted to address.

**Greg Petesch** referred to the prohibition of public employees receiving dual salaries during the time spent serving as a legislator. Current law had no provision for this. **SEN. ECK'S**

bill did not address the issue and **SEN. BAER'S** bill, as introduced, had an absolute prohibition upon receiving dual salaries during session. The Subcommittee allowed the use of compensatory or other leave time. It contained prohibition for dual salaries unless the hours being compensated for did not overlap or if leave or compensatory time was being used toward the period of overlapping employment.

**CHAIRMAN HARP** stated there was a question about the university professors who attended an Interim Committee. **SEN. FRED VAN VALKENBURG** suggested the section be amended to apply only when the legislature was in session.

**CHAIRMAN HARP** asked if there was any way a person could have overlapping compensation where the person would reimburse the appropriate unit of government allowing them to continue to serve. **Greg Petesch** stated the current law allowed legislators to serve for no salary but still receive per diem travel expenses. **CHAIRMAN HARP** noted there would be a one day loss of potential revenue. **Greg Petesch** stated the current law would allow salary to be received for the one day that did not have overlapping hours on the other job if the individual so chose.

**REP. COCCHIARELLA** asked about the Collective Bargain Agreements and referred to the issue Mr. Natelson raised where a teacher would get paid at the legislature and at the school and then they would be reimbursed and pay their substitute teachers.

**SEN. VAN VALKENBURG** alleged most people serving in the legislature, who were employed outside the public sector, continued to receive income from their jobs during the legislative session. Some legislators were able to work out something with their employers where they would continue to receive income as long as they were covering their employer's expenses--making sure that the job went on while they were gone.

**CHAIRMAN HARP** asked if there were two standards; one for the public sector and one for the private sector. **SEN. VAN VALKENBURG** replied under the proposal there was a difference between public and private sector. **CHAIRMAN HARP** noted the issue had been in the Senate because of one individual Senator who continued to receive a salary from his corporation. He cautioned they were setting the stage for legislatures for the next decade. How would they be able to live and survive in the environment? A person could not live on a legislators salary. He clarified he was not complaining about his wages, but he did have a hard time zeroing in on the public sector for their livelihood and their environment.

**REP. FORBES** noted one of the differences was whether taxpayer's dollars were being utilized for this supplemental issue. She stated it was not necessarily fair but if a public employee wanted to serve in an office they would have to make the decision

based on the conditions. Every legislator had to make that decision when running for office.

**REP. COCCHIARELLA** stated as a public employee she was very careful about phone calls, and even pieces of paper. Public employees were always under scrutiny in both arenas; additional pressure in that area was not necessary. Most employers appreciated an employee who was a legislator.

**REP. DENNY** reported the public perception was that teacher legislators came to Helena and voted themselves raises, and etc. The perception of the public was teachers were doing this and being paid by both entities.

**CHAIRMAN HARP** said the area they were dealing with was teachers or anyone involved with local government. He asked the Representatives to check with the House to find out how other school districts were handling the situation.

**REP. DENNY** stated legislators in the private sector should be asked whether they would be in favor of mandatory leave. He reported he was on leave from his job and received no compensation. **REP. DENNY** suggested if the public sector was to be held to the requirement of mandatory leave, then perhaps everyone ought to be.

**CHAIRMAN HARP** stated there were many legislators in the Senate who were self-employed. He stated that would be the dilemma they would face with the ethics issue. That was the distinction between public and private sectors. He was thinking more of the people who served the legislature and after they left what was best for the state. **SEN. VAN VALKENBURG** suggested the section be amended to say the public employee may not receive two salaries unless he or she fully reimburses the governmental entity for the full cost of employing an individual to work on the legislator's behalf while serving in the Legislature.

**REP. COCCHIARELLA** stated it was the public perception that the public employees were getting two salaries.

**SEN. NELSON** asked, if in that instance, would she be required to reimburse the entity even though they had not hired a temporary replacement. **CHAIRMAN HARP** noted she was a state employee. The issue they were trying to address was the effect of the changes on teachers and local government employees. **REP. COCCHIARELLA** stated if that standard was to be used, the state employees who did not receive their benefits while on legislative leave needed to be considered.

**REP. COCCHIARELLA** and **SEN. VAN VALKENBURG** declared they did not receive health benefits while serving in the Legislature.

**REP. COCCHIARELLA** stated she received legislative health benefits but those benefits did not include sick leave accumulation or




other related benefits. She noted that was a negative aspect which did not occur in the public sector and possibly not in the local government or school district level.

**Greg Petesch** referred to confidential information for personal gain. He explained SB 115 had a general prohibition against using confidential information where areas of fraud or collusion could occur. Current law had a general prohibition on using or disclosing confidential information for personal gain. Senate Bill 136 did not address the issue.

ADJOURNMENT

Adjournment: CHAIRMAN HARP adjourned the meeting at 7:10 p.m.

  
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SEN. JOHN HARP, Chairman  
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FREDELLA D. HAAB, Secretary

JGH/fdh

## CHAPTER 6

### REPORTS OF STATE OFFICERS

## SECTION.

59-601 — 59-613. [Repealed.]

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59-601 — 59-607. Reports of state officers. [Repealed.]

Compiler's notes. These sections, which comprised S.L. 1899, p. 432, §§ 1, 2; am. 1903, p. 149, §§ 1-3; am. R.C., §§ 279, 281; reen. C.L., §§ 279, 281; reen. R.C. & C.L., §§ 280, 281a, 281b; C.S., §§ 411-415; I.C.A.,

§§ 57-601 — 57-605; am. 1935, ch. 43, §§ 4-6; am. 1955, ch. 98, § 1, p. 220, regarding reports of state officers and state boards of control, were repealed by S.L. 1957, ch. 175, § 7, p. 339.

59-608 — 59-611. Reports of state officers. [Repealed.]

Compiler's notes. These sections which comprised 1957, ch. 175, §§ 1-4, p. 339; am.

1959, ch. 302, §§ 1-3, p. 653 were repealed by S.L. 1978, ch. 17, § 1.

59-612. Forwarding of reports to librarian of congress. [Repealed.]

Compiler's notes. This section which comprised S.L. 1957, ch. 175, § 5, p. 339, concerning forwarding of reports to Librarian of Con-

gress, was repealed by S.L. 1959, ch. 302, § 4, p. 653.

59-613. Penalty for violation of provisions. [Repealed.]

Compiler's notes. This section which comprised 1957, ch. 175, § 6, p. 339 was repealed by S.L. 1978, ch. 17, § 1.

## CHAPTER 7

### ETHICS IN GOVERNMENT

## SECTION.

59-701. Short title.

59-702. Policy and purpose.

59-703. Definitions.

59-704. Required action in conflicts.

## SECTION.

59-704A. Noncompensated public official — Exception.

59-705. Civil penalty.

59-706. [Repealed.]

**59-701. Short title.** — This act shall be known and may be cited as the "Ethics in Government Act of 1990." [I.C., § 59-701, as added by 1990, ch. 329, § 2, p. 903.]

Compiler's notes. Former § 59-701, which comprised 1915, ch. 10, § 1, p. 40; reen. C.L., § 281g; C.S., § 416; I.C.A., § 57-701; am. 1959, ch. 26, § 1, p. 55, was repealed by S.L. 1990, ch. 329, § 1.

The words "this act" refer to S.L. 1990, ch. 329, which is compiled as §§ 59-701 — 59-705.

## DECISIONS UNDER PRIOR LAW

## ANALYSIS

Associates in office.  
 Degrees of kindred.  
 Inapplicable to highway district officers.  
 Officers excluded.

**Associates in Office.**

"Associates in office" are those who are united in action, who have a common purpose, who share the responsibility or authority and among whom is reasonable equality, those who are authorized by law to perform the duties jointly or as a body, as boards or councils under the law. *Barton v. Alexander*, 27 Idaho 286, 148 P. 471, 1917D Ann. Cas. 729 (1915).

**Degrees of Kindred.**

Degrees of kindred are computed according to the rules of the civil law as provided in § 14-106 (since repealed). *Barton v. Alexander*, 27 Idaho 286, 148 P. 471, 1917D Ann. Cas. 729 (1915).

**Inapplicable to Highway District Officers.**

While anti-nepotism law was made applicable to executive, legislative, judicial, ministerial, or other officer of state or district, county, city or other "municipal subdivision of state" including "road districts" it did not apply to commissioners or other officers of

highway districts. *Ex parte Rogers*, 56 Idaho 521, 57 P.2d 342 (1936).

**Officers Excluded.**

Irrigation, drainage, improvement and school districts do not come within the provisions of this chapter, not being municipal subdivisions of the state. *Barton v. Alexander*, 27 Idaho 286, 148 P. 471, 1917D Ann. Cas. 729 (1915).

Commandant of the soldiers' home is not an associate in office of the board of trustees of the soldiers' home. *Barton v. Alexander*, 27 Idaho 286, 148 P. 471, 1917D Ann. Cas. 729 (1915).

**Collateral References.** 63A Am. Jur. 2d, Public Officers and Employees, §§ 319-323. 67 C.J.S., Officers, §§ 27-33, 51, 89.

Agreements conditional upon obligor securing public office. 45 A.L.R. 1399.

Statement by candidate regarding salary or fees of office, as bribery. 106 A.L.R. 493.

Acts of others in bribing voters as chargeable to candidate for office for purpose of disqualifying him for office. 118 A.L.R. 182.

Validity and construction of enactments requiring public officers or candidates for office to disclose financial conditions and relationships. 37 A.L.R.3d 1338; 22 A.L.R.4th 237.

Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service. 11 A.L.R.4th 826.

**59-702. Policy and purpose.** — It is hereby declared that the position of a public official at all levels of government is a public trust and it is in the public interest to:

(1) Protect the integrity of government throughout the state of Idaho while at the same time facilitating recruitment and retention of personnel needed within government;

(2) Assure independence, impartiality and honesty of public officials in governmental functions;

(3) Inform citizens of the existence of personal interests which may present a conflict of interest between an official's public trust and private concerns;

(4) Prevent public office from being used for personal gain contrary to the public interest;

(5) Prevent special interests from unduly influencing governmental action; and

(6) Assure that governmental functions and policies reflect, to the maximum extent possible, the public interest. [I.C., § 59-702, as added by 1990, ch. 329, § 2. p. 903.]

Compiler's notes. Former § 59-702, § 57-702, was repealed by S.L. 1990, ch. 329, which comprised 1915, ch. 10, § 2, p. 41; § 1. reen. C.L., § 281h; C.S., § 417; I.C.A.,

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**59-703. Definitions.** — For purposes of this chapter:

(1) "Administrative action" means any decision on, or proposal, consideration, enactment, defeat, or making of any rule, regulation, rate-making proceeding or policy action or nonaction by a governmental body or any other policy matter which is within the official jurisdiction of the governmental body.

(2) "Business" means any undertaking operated for economic gain, including, but not limited to, a corporation, partnership, trust, proprietorship, firm, association or joint venture.

(3) "Business with which a public official is associated" means any business of which the public official or member of his household is a director, officer, owner, partner, employee or holder of stock over five thousand dollars (\$5,000) or more at fair market value.

(4) "Conflict of interest" means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated, unless the pecuniary benefit arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or class required by law as a prerequisite to the holding by the person of the office or position;

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;

(c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;

(d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree.

(5) "Economic gain" means increase in pecuniary value from sources other than lawful compensation as a public official.

(6) "Governmental entity" means:

(a) The state of Idaho and all agencies, commissions and other governmental bodies of the state; and

(b) Counties and municipalities of the state of Idaho, all other political subdivisions including, but not limited to, highway districts, planning and zoning commissions or governmental bodies not specifically mentioned in this chapter.

(7) "Members of a household" mean the spouse and dependent children of the public official and/or persons whom the public official is legally obligated to support.

(8) "Person" means an individual, proprietorship, partnership, association, trust, estate, business trust, group or corporation, whether operated for profit or not, and any other legal entity, or agent or servant thereof, or a governmental entity.

(9) "Public office" means any position in which the normal and usual duties are conducted on behalf of a governmental entity.

(10) "Public official" means any person holding public office in the following capacity:

(a) As an elected public official meaning any person holding public office of a governmental entity by virtue of an elected process, including persons appointed to a vacant elected office of a governmental entity, excluding members of the judiciary; or

(b) As an elected legislative public official meaning any person holding public office as a legislator; or

(c) As an appointed public official meaning any person holding public office of a governmental entity by virtue of formal appointment as required by law; or

(d) As an employed public official meaning any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultive basis. [I.C., § 59-703, as added by 1990, ch. 329, § 2, p. 903.]

Sec. to sec. ref. This section is referred to in § 18-1359.

**59-704. Required action in conflicts.** — A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion. In order to determine whether a conflict of interest exists relative to any matter within the scope of the official functions of a public official, a public official may seek legal advice from the attorney representing that governmental entity or from the attorney general or from independent counsel. If the legal advice is that no real or potential conflict of interest exists, the public official may proceed and shall not be subject to the prohibitions of this chapter. If the legal advice is that a real or potential conflict may exist, the public official:

(1) If he is an elected legislative public official, he shall disclose the nature of the potential conflict of interest and/or be subject to the rules of the body of which he/she is a member and shall take all action required under such rules prior to acting on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such

failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue. EXHIBIT 1

(2) If he is an elected state public official, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall file such statement with the secretary of state prior to acting on the matter. A public official may seek legal advice from the attorney representing that agency or from the attorney general or from independent counsel. The elected public official may then act on the advice of the agency's attorney, the attorney general or independent counsel. DATE 3-9-95  
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(3) If he is an appointed or employed state public official, he shall prepare a written statement describing the matter to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney general or from the attorney representing that agency. The public official may then act on the advice of the attorney general, the agency's attorney or independent counsel.

(4) If he is an elected public official of a county or municipality, he shall disclose the nature of a potential conflict of interest prior to acting on a matter and shall be subject to the rules of the body of which he/she is a member and take all action required by the rules prior to acting on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue. The public official may obtain an advisory opinion from the attorney general or the attorney for the county or municipality or from independent counsel. The public official may then act on the advice of the attorney general or attorney for the county or municipality or his independent counsel.

(5) If he is an appointed or employed public official of a county or municipality, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney for the appointing authority, or, if none, the attorney general. The public official may then act on the advice of the attorney general or attorney for the appointing authority or independent counsel.

(6) Nothing contained herein shall preclude the executive branch of state government or a political subdivision from establishing an ethics board or commission to perform the duties and responsibilities provided for in this chapter. Any ethics board or commission so established shall have specifically stated powers and duties including the power to:

(a) Issue advisory opinions upon the request of a public official within its jurisdiction;

(b) Investigate possible unethical conduct of public officials within its jurisdiction and conduct hearings, issue findings, and make recommendations for disciplinary action to a public official's appointing authority;

(c) Accept complaints of unethical conduct from the public and take appropriate action. [I.C., § 59-704, as added by 1990, ch. 329, § 2, p. 903.]

Sec. to sec. ref. This section is referred to in § 67-5252.

**59-704A. Noncompensated public official — Exception.** — When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18-1361A, Idaho Code. [I.C., § 59-704A, as added by 1992, ch. 121, § 3, p. 398.]

Compiler's notes. Section 2 of S.L. 1992, ch. 121 is compiled as § 59-209.

Opinions of Attorney General. The specific provisions of § 33-507 which prohibit a member of the board of trustees of a school

district from having a pecuniary interest in any contract pertaining to the maintenance or conduct of the school district takes precedence over the general conflict of interest law found in this section. OAG 93-10.

**59-705. Civil penalty.** — (1) Any public official who intentionally fails to disclose a conflict of interest as provided for in section 59-704, Idaho Code, shall be guilty of a civil offense, the penalty for which may be a fine not to exceed five hundred dollars (\$500), provided that the provisions of this subsection shall not apply to any public official where the governmental entity on which said official serves has put into operation an ethics commission or board described in section 59-704(6), Idaho Code.

(2) The penalty prescribed in subsection (1) of this section does not limit the power of either house of the legislature to discipline its own members, nor limit the power of governmental entities, including occupational or professional licensing bodies, to discipline their members or personnel. A violation of the provisions of this chapter shall not preclude prosecution and conviction for any criminal violation that may have been committed. [I.C., § 59-705, as added by 1990, ch. 329, § 2, p. 903.]

**59-706. Allowance of claims of ineligible.** [Repealed.]

Compiler's notes. This section which comprised I.C., § 59-706, as added by 1990, ch.

329, § 2, p. 903, was repealed by S.L. 1990, ch. 328, § 5, p. 899.



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CENTENNIAL LEGISLATURE

THE STATE OF IDAHO

SECOND REGULAR SESSION — 1990

## IN THE HOUSE OF REPRESENTATIVES

## HOUSE RESOLUTION NO. 7

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

## A HOUSE RESOLUTION

PROVIDING FOR THE AMENDMENT OF HOUSE RULE 38 AND FOR THE ADOPTION OF A NEW HOUSE RULE 76 TO PROVIDE A CODE OF ETHICS FOR MEMBERS OF THE HOUSE OF REPRESENTATIVES.

Be It Resolved by the House of Representatives of the State of Idaho:

WHEREAS, the House of Representatives deems it necessary and desirable to adopt rules to provide a code of ethics for members of the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED by the members of the House of Representatives, assembled in the Second Regular Session of the Centennial Idaho Legislature, that Rule 38 of the Rules of the House of Representatives be amended, and that Rule 76 of the Rules of the House of Representatives be adopted, as follows:

## RULE 38

Members must Vote.--(1) Except as provided in subsection (3), every member present within the bar of the House shall vote on any question put, unless excused by the House by majority vote of the members present.

(2) When a member casts his vote, unless he is paired pursuant to Rule 41, he must be in his seat on the floor of the House and remain seated until the roll call is announced.

(3) A member has the right to vote upon all questions before the House and to participate in the business of the House and its committees and, in so doing, the member is presumed to act in good faith and in the public interest. If a member's personal interest in the issue under consideration conflicts with the public's interest, the member's legislative activities can be subject to limitations, unless such conflicts are disclosed to the presiding officer or to the body. Upon disclosure of any such conflict, the member may vote upon any question or issue to which the conflict relates, unless the member requests to be excused.

## RULE 76

Committee on Ethics.--(1) The Speaker shall receive written, signed complaints from any person concerning misconduct involving legislative duties by a member of the House including, but not limited to, the alleged violation of the Rules of the House of Representatives and the provisions of applicable law. Whenever such a complaint is received, the Speaker shall appoint a committee on ethics of seven members, consisting of four majority party members, and three minority party members. The majority party members of the committee shall be selected from among the chairmen of committees of reference of the House. The minority party members of the committee shall be selected, after considering recommendations made by the minority leader, from among the members of the House who are senior in service and experience. The Speaker shall

1 designate the chairman and vice chairman of the committee from among its mem-  
2 bers.

3 (2) The committee shall notify the person against whom the complaint was  
4 brought and shall provide such person with a copy of the complaint. The person  
5 complained against may submit a written answer to the committee. The committee  
6 shall make a preliminary investigation of the complaint. If, after investiga-  
7 tion, the committee determines no violation has occurred, the complaint shall  
8 be dismissed. If, after investigation, the committee determines probable cause  
9 exists that a violation may have occurred, the committee shall so notify the  
10 person complained against. Such person may request a hearing before the com-  
11 mittee, before which he shall be entitled to appear, present evidence, cross-  
12 examine witnesses, and be represented by counsel. The committee shall have the  
13 power to take testimony under oath and to issue subpoenas and subpoenas duces  
14 tecum in the manner provided in Section 67-407, Idaho Code.

15 (3) All proceedings of the committee shall be governed by the provisions  
16 of Section 67-2345, Idaho Code.

17 (4) The committee may make appropriate recommendations to the House of  
18 Representatives based upon the investigations conducted and hearings held pur-  
19 suant to this rule. In the case of a member of the House, the committee may  
20 recommend dismissal of the charges, reprimand, censure, or expulsion. Expul-  
21 sion of a House member shall require the affirmative vote of two-thirds of the  
22 members elected to the House, as provided by Section 11 of Article III of the  
23 Constitution. Reprimand or censure of a member shall require the affirmative  
24 vote of a majority of the members elected to the House. Action of the House  
25 pursuant to this rule is final and not subject to court review.

26 (5) The committee may retain such counsel and may hire such investigators  
27 as it deems necessary for the performance of its duties under this rule. All  
28 expenditures incurred pursuant to this subsection (5) shall be approved by the  
29 Speaker and paid by vouchers and warrants drawn as provided by law from appro-  
30 priations made to the Legislative Account.

31 (6) The committee may adopt rules of procedure for the orderly conduct of  
32 committee meetings, investigations and hearings, which rules shall be consis-  
33 tent with this rule and other applicable rules and statutes.

34 (7) If the written signed complaint concerns misconduct of the Speaker,  
35 then the duties of the Speaker in this rule shall be the duties of the major-  
36 ity floor leader.

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LEGISLATURE OF THE STATE OF IDAHO  
CENTENNIAL LEGISLATURE

SECOND REGULAR SESSION - 1990

## IN THE SENATE

## SENATE RESOLUTION NO. 107

## BY JUDICIARY AND RULES COMMITTEE

## A SENATE RESOLUTION

PROVIDING FOR THE AMENDMENT OF SENATE RULE 39 AND FOR THE ADOPTION OF A NEW  
SENATE RULE 53 TO PROVIDE A CODE OF ETHICS FOR MEMBERS OF THE SENATE.

Be It Resolved by the Senate of the State of Idaho:

WHEREAS, the Senate deems it necessary and desirable to adopt rules to  
provide a code of ethics for members of the Senate.

NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled in  
the Second Regular Session of the Centennial Idaho Legislature, that Rule 39  
of the Rules of the Senate be amended, and that Rule 53 of the Rules of the  
Senate be adopted, as follows:

## RULE 39

Voting. - (A) Every Senator, when a question is put, being present and in  
his seat, shall vote. Any Senator upon a reasonable cause stated may move to  
be excused from voting. Such motion is undebatable and requires a two-thirds  
vote. No Senator may vote unless present and in his seat nor may he vote for  
the first time on any question inconsistent with his position as a moving  
party or as openly stated in debate. All Senators reporting present under a  
Call of the Senate must, after the call is lifted, remain within the Senate  
Chamber and vote on the question for which the Senate was called unless  
excused as herein provided.

Under no circumstance shall a roll call, once ordered, be interrupted  
except to explain a vote under the provisions of Mason's Manual of Legislative  
Procedure, Section 528, or call to or for order.

Voting excused. - (B) A request to be excused from voting shall not be in  
order unless made before the Senate divides or the roll call is begun.

Roll Call Vote. - (C) Ayes and nays shall not be ordered or recorded  
except upon final passage of bills, joint resolutions, motions for expenditure  
of public monies or incurring obligations therefor, motions requiring a two-  
thirds majority vote, or upon request of any Senator with at least two other  
Senators rising in support thereof; provided, no roll call vote shall be per-  
mitted in the Committee of the Whole Senate under any circumstances.

Division of the Senate. - (D) When any question shall be put to determina-  
tion by voice vote and there be any reasonable doubt as to the prevailing  
vote, the Chair shall first state that "The Chair is in doubt" before announc-  
ing the final result. At any time before announcement of the final result, any  
Senator may request a division of the Senate whereupon the vote shall be  
determined by those favoring the ayes standing, followed by those favoring the  
nays standing. A request for a roll call vote may be made before announcement

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1 of the result of the division of the Senate.

2 Explanation of Vote. - (E) Any Senator may explain his vote when his name  
3 is called upon a roll call vote, provided he has not participated in debate,  
4 and provided further that such explanation shall not exceed one minute dura-  
5 tion.

6 What Constitutes Debate. - (F) Making an inquiry or suggestion, or asking  
7 or answering a question is not debate, unless in the discretion of the Presi-  
8 dent persistent questioning constitutes abuse of this exception whereupon the  
9 Senator involved shall be so advised by the Chair.

10 Change of Vote. - (G) Any Senator may change his vote before the decision  
11 of a question shall have been announced by the Chair but no explanation for  
12 such change shall be permitted.

13 Right to Vote. - (H) A Senator has the right to vote upon all questions  
14 before the Senate and to participate in the business of the Senate and its  
15 committees and, in so doing, the Senator is presumed to act in good faith and  
16 in the public interest. If a Senator has a conflict of interest under applica-  
17 ble law, such conflict must be disclosed to the presiding officer in writing  
18 or to the body. Upon disclosure of any such conflict, the Senator may vote  
19 upon any question or issue to which the conflict relates, unless the Senator  
20 requests to be excused.

21 RULE 53

22 Committee on Ethics. - (A) The President Pro Tempore shall receive writ-  
23 ten, signed complaints from any person concerning the alleged violation of the  
24 Rules of the Senate or the provisions of applicable law by a member of the  
25 Senate. Whenever such a complaint is received, the President Pro Tempore shall  
26 appoint a committee on ethics of six members, consisting of a chairman and  
27 five members, three of whom must be appointed with the concurrence of the  
28 minority leader.

29 (B) The committee shall notify the person against whom the complaint was  
30 brought and shall provide such person with a copy of the complaint. The person  
31 complained against may submit a written answer to the committee. The committee  
32 shall make a preliminary investigation of the complaint. If, after investiga-  
33 tion, the committee determines no violation has occurred, the complaint shall  
34 be dismissed. If, after investigation, the committee determines probable cause  
35 exists that a violation may have occurred, the committee shall so notify the  
36 person complained against. Such person may request a hearing before the com-  
37 mittee, before which he shall be entitled to appear, present evidence, cross-  
38 examine witnesses, and be represented by counsel. The committee shall have the  
39 power to take testimony under oath and to issue subpoenas and subpoenas duce-  
40 tecum in the manner provided in Section 67-407, Idaho Code.

41 (C) All proceedings of the committee shall be governed by the provisions  
42 of Section 67-2345, Idaho Code.

43 (D) The committee may make recommendations to the Senate based upon the  
44 investigations conducted and hearings held pursuant to this rule.

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tee may recommend dismissal of the charges, reprimand, censure, or expulsion. Expulsion of a Senate member shall require the affirmative vote of two-thirds of the members elected to the Senate, as provided by Section 11 of Article III of the Constitution. Reprimand or censure of a member shall require the affirmative vote of a majority of the members elected to the Senate. Action of the Senate pursuant to this rule is final and not subject to court review.

(E) The committee may retain such counsel and may hire such investigators as it deems necessary for the performance of its duties under this rule, or may request an advisory opinion from the Attorney General. All expenditures incurred pursuant to this subsection (E) shall be approved by the President Pro Tempore and paid by vouchers and warrants drawn as provided by law from appropriations made to the Legislative Account.

(F) The committee may adopt rules of procedure for the orderly conduct of committee meetings, investigations and hearings, which rules shall be consistent with this rule and other applicable rules and statutes.

(G) If the written signed complaint concerns misconduct of the President Pro Tempore, then the duties of the President Pro Tempore in this rule shall be the duties of the majority floor leader.

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RS24307

LEGISLATURE OF THE STATE OF IDAHO  
CENTENNIAL LEGISLATURE SECOND REGULAR SESSION - 1990

## IN THE SENATE

## SENATE RESOLUTION NO. 108

## BY JUDICIARY AND RULES COMMITTEE

## 1 A SENATE RESOLUTION

2 PROVIDING FOR THE AMENDMENT OF SENATE RULE 53, AS ADOPTED BY THE SENATE OF THE  
3 SECOND REGULAR SESSION OF THE CENTENNIAL IDAHO LEGISLATURE, TO PROVIDE  
4 THAT COMPLAINTS CONCERNING A MEMBER OF THE SENATE BE SUBMITTED BY A SENA-  
5 TOR.

6 Be It Resolved by the Senate of the State of Idaho:

7 WHEREAS, the Senate deems it necessary and desirable to amend Rule 53,  
8 which provides a code of ethics for members of the Senate.

9 NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled in  
10 the Second Regular Session of the Centennial Idaho Legislature, that Rule 53  
11 of the Rules of the Senate be amended, as follows:

## 12 RULE 53

13 Committee on Ethics. - (A) The President Pro Tempore shall receive writ-  
14 ten, signed complaints from any person senator concerning the alleged viola-  
15 tion of the Rules of the Senate or the provisions of applicable law by a mem-  
16 ber of the Senate. Whenever such a complaint is received, the President Pro  
17 Tempore shall appoint a committee on ethics of six members, consisting of a  
18 chairman and five members, three of whom must be appointed with the concur-  
19 rence of the minority leader.

20 (B) The committee shall notify the person against whom the complaint was  
21 brought and shall provide such person with a copy of the complaint. The person  
22 complained against may submit a written answer to the committee. The committee  
23 shall make a preliminary investigation of the complaint. If, after investiga-  
24 tion, the committee determines no violation has occurred, the complaint shall  
25 be dismissed. If, after investigation, the committee determines probable cause  
26 exists that a violation may have occurred, the committee shall so notify the  
27 person complained against. Such person may request a hearing before the com-  
28 mittee, before which he shall be entitled to appear, present evidence, cross-  
29 examine witnesses, and be represented by counsel. The committee shall have the  
30 power to take testimony under oath and to issue subpoenas and subpoenas duce  
31 tecum in the manner provided in Section 67-407, Idaho Code.

32 (C) All proceedings of the committee shall be governed by the provision  
33 of Section 67-2345, Idaho Code.

34 (D) The committee may make recommendations to the Senate based upon the  
35 investigations conducted and hearings held pursuant to this rule. The commit-  
36 tee may recommend dismissal of the charges, reprimand, censure, or expulsion.  
37 Expulsion of a Senate member shall require the affirmative vote of two-third  
38 of the members elected to the Senate, as provided by Section 11 of Article II

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1 mative vote of a majority of the members elected to the Senate. Action of the  
2 Senate pursuant to this rule is final and not subject to court review.

3 (E) The committee may retain such counsel and may hire such investigators  
4 as it deems necessary for the performance of its duties under this rule, or  
5 may request an advisory opinion from the Attorney General. All expenditures  
6 incurred pursuant to this subsection (E) shall be approved by the President  
7 Pro Tempore and paid by vouchers and warrants drawn as provided by law from  
8 appropriations made to the Legislative Account. "

9 (F) The committee may adopt rules of procedure for the orderly conduct of  
10 committee meetings, investigations and hearings, which rules shall be consis-  
11 tent with this rule and other applicable rules and statutes.

12 (G) If the written signed complaint concerns misconduct of the President  
13 Pro Tempore, then the duties of the President Pro Tempore in this rule shall  
14 be the duties of the majority floor leader.

SR108

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Dakota*

3-1A-1

PUBLIC OFFICERS AND EMPLOYEES

Source: SL 1985, ch 15, § 13; 1992, ch 60, § 2.

**Commission Note.**

Section 2 of chapter 60 of the 1992 Session Laws changed the term "city" to "first class municipality" and "second class municipality"

and changed the term "town" to "third class municipality". Section 2 also substituted "municipality" for "city or town" if the class of the municipality was not specified. The code commission has implemented this act in this section.

**CHAPTER 3-1A**

**OFFICERS' STATEMENTS OF FINANCIAL INTEREST**

**Section**

- 3-1A-1. Definition of terms.
- 3-1A-2. Additions and corrections filed on assumption of elective state office.
- 3-1A-3. Statements required of appointive state officers.
- 3-1A-4. Additions and corrections filed on assumption of elective local office.
- 3-1A-5. Forms provided — Value not required — Verification — Open to public inspection.
- 3-1A-6. Violation as misdemeanor or petty offense.

**CROSS-REFERENCES**

Candidates for public office, statements of financial interest required of, §§ 12-25-27 to 12-25-34.

**3-1A-1. Definition of terms.** As used in this chapter, unless the context otherwise requires:

- (1) "Any member of his immediate family" means a spouse or minor children living at home;
- (2) "Close economic interest" means any enterprise that, in the calendar year preceding filing of a statement under this chapter, contributes either more than ten percent of or more than two thousand dollars, to the gross income of the family which shall include the individual required to file the statement and any member of his immediate family, or an enterprise in which such individual or any member of his immediate family control more than ten percent of the capital or stock;
- (3) "Enterprise" means any business or economic relationship;
- (4) "Statement of financial interest" means a description of the type of financial activity and the nature of the association with the enterprise as provided in subdivision (1) of this section.

Source: SL 1974, ch 121, § 1.

**Collateral References.**

Officers and Public Employees ⇐ 110.  
63A Am Jur 2d, Public Officers and Employees, §§ 36, 39, 202, 207.

Validity and construction of enactments requiring public officers or candidates for office to disclose financial condition and relationships, 22 ALR 4th 237.



**3-1A-2. Additions and corrections filed on assumption of elective state office.** Persons assuming the office of Governor, lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, commissioner of school and public lands, public utilities commissioner, Supreme Court justice, circuit court judge, and state legislator shall, within fifteen days thereafter, file a statement setting forth additions and corrections, if any, to their previous statement of financial interest filed pursuant to § 12-25-28 or 12-25-29.

Source: SL 1974, ch 121, § 5.

**3-1A-3. Statements required of appointive state officers.** All gubernatorial appointees which require senate confirmation shall file with the secretary of state a statement of financial interest prior to said confirmation.

Source: SL 1974, ch 121, § 6.

cerning gubernatorial nominee upon submission of nomination to the Senate, § 1-7-9.

**Cross-References.**

Information required to be submitted con-

**3-1A-4. Additions and corrections filed on assumption of elective local office.** Each person assuming the office of county commissioner, school board member of a school district with a total enrollment of more than two thousand students, or commissioner, councilman or mayor in municipalities of the first class, shall within fifteen days thereafter file a statement setting forth the additions and corrections to the previous statement of financial interest filed pursuant to § 12-25-30, if any.

Source: SL 1974, ch 121, § 7; 1977, ch 68, § 13; 1992, ch 60, § 2.

and changed the term "town" to "third class municipality". Section 2 also substituted "municipality" for "city or town" if the class of the municipality was not specified. The code commission has implemented this act in this section.

**Commission Note.**

Section 2 of chapter 60 of the 1992 Session Laws changed the term "city" to "first class municipality" and "second class municipality"

**3-1A-5. Forms provided — Value not required — Verification — Open to public inspection.** The secretary of state shall prescribe and provide forms for the reporting of close economic interest. The value of a close economic interest need not be reported. Each individual filing a statement of financial interest shall subscribe to an oath or affirmation verifying the contents of such statement. All statements of financial interest shall be open to public inspection.

Source: SL 1974, ch 121, §§ 8 to 10.

3-1A-6

PUBLIC OFFICERS AND EMPLOYEES

**3-1A-6. Violation as misdemeanor or petty offense.** Any person who violates any of the provisions of this chapter commits a petty offense, provided, however, that any person intentionally violating any of the provisions of this chapter is guilty of a Class 2 misdemeanor.

Source: SL 1974, ch 121, § 11; 1980, ch 24, § 32.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

Petty offense procedure, Chapter 23-1A.

## CHAPTER 3-2

### DEPUTIES AND ASSISTANTS

#### Section

- 3-2-1. Appointment of deputy to be in writing — Revocation — Filing.
- 3-2-2. Dual offices to be avoided in appointment of deputies.
- 3-2-3. Oath required of deputies and assistants.
- 3-2-4. Bond required of deputies and assistants.

**3-2-1. Appointment of deputy to be in writing — Revocation — Filing.** The appointment of every deputy must be in writing and shall be revocable in writing at the pleasure of the principal, and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal.

Source: SL 1872-3, ch 49, § 1; 1874-5, ch 27, § 37; PoIC 1877, ch 6, § 1; CL 1887, § 1397; SL 1891, ch 108, § 1; RPoIC 1903, § 1816; RC 1919, § 7045; SDC 1939, § 48.0401.

#### Failure to File Appointment.

Service of process by deputy sheriff was valid, even though deputy was mere de facto officer due to his failure to file appointment and oath of office as required by law. *Williamson v. Lake County* (1903) 17 SD 353, 96 NW 702.

#### Judicial Officers.

Court has inherent power to appoint a deputy clerk of courts and county is liable for compensation of the deputy. *White v. Hughes County* (1896) 9 SD 12, 67 NW 555.

#### Opinions of Attorney General.

Age or sex of deputy county officer, no statutory limitation, Report 1917-18, p.411.

Clerk of courts, appointment of deputy with-

out consent of county commissioners, Report 1919-20, p.366.

County treasurer, appointment of second deputy, Report 1919-20, p.368.

Register of deeds, deputy may be a minor, Report 1931-32, p.473.

Secretary of water and natural resources may, under this chapter, appoint a deputy who may sign vouchers under the Omnibus Water Development Acts of 1982 and 1983, Opinion No. 83-30.

#### Collateral References.

Officers and Public Employees ⇌ 47, 48, 105, 118.

63A Am Jur 2d, Public Officers and Employees, §§ 567-577.

67 CJS, Officers and Public Employees, §§ 209, 277-280.

Negligent or wrongful acts of deputies or assistants, liability of clerk of court, county clerk, or surety on bond for, 71 ALR 2d 1140.