

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

JOINT COMMITTEE ON ETHICS

Call to Order: By CHAIRMAN JOHN G. HARP, on March 14, 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: MERGING OF SB 115, SB 136,
HB 362, HB 410, HB 571.

Discussion: REP. VICKI COCCHIARELLA referred to the issue of
disclosure and reported they had done an informal survey of 53
members of the House of Representatives. One-third had agreed
with the Senate, disclosure should be made and the legislator
should still vote.

CHAIRMAN JOHN HARP reported SEN. FRED VAN VALKENBURG and he had
discussed whether the intent was according to the rules or
official actions dealing with members of the legislature and
whether to go ahead and vote. He asked Greg Petesch if Section B
clarified that.

Greg Petesch said Section B provided the legislator had the
responsibility to the legislator's constituents to participate in
all matters affecting the constituents. It provided a legislator
concerned with the possibility of conflict should present a brief
statement to the Ethics Committee of their House. The Committee

should advise the legislator regarding disclosure, and then the legislator would vote on the issue.

REP. COCCHIARELLA stated she was unsure how a conflict would be processed through the Ethics Committee during floor session.

CHAIRMAN HARP stated if the situation arose there would be a standing Ethics Committee in both the House and the Senate. The legislator could simply tell a member of the Committee there was a potential conflict and express concern. The bill could be passed for the day to allow the issue to go before the Ethics Committee, or if there was no conflict the legislator could simply go ahead and vote.

SEN. LINDA NELSON asked if there was a purpose for disclosing before God and everybody versus just disclosing to a committee just to have it on record that a conflict occurred.

CHAIRMAN HARP stated he would prefer disclosure to a committee but there were times the bills moved too quickly to guarantee disclosure would only occur before a committee or a standing committee. Some disclosure would have to occur in the Committee of the Whole action. He reiterated a legislator who was a member of an occupation or class affected by legislation was not required to disclose an interest unless the legislation was so narrow that the vote would have a direct personal impact on that legislator. He suggested the Committee turn their attention to dual-status employment.

Greg Petesch stated the particular language contained optional methods of prohibiting compensation for overlapping hours. The first allowed the public employee to reimburse the public entity for their cost to perform the job in the person's absence. The other option was to reduce the salary from one employer by the amount received from the other employer to avoid duplicate compensation. He explained a person could receive a portion of both salaries not in excess of the greater of the two salaries. The Subcommittee's provision that provided for use of compensatory or leave time to be used for salary purposes was retained. He expounded if he had three weeks of vacation coming and took vacation from one public entity to come to work as a legislator, he could draw his vacation pay and his legislative pay for the same period of time. He added professions or occupations which earned compensatory time rather than overtime, would be allowed to use compensatory time and receive the salary from both places.

CHAIRMAN HARP stated public employees would reimburse the employing entity, dollar for dollar, for the entity's cost and a public employee had the option to choose the greater salary.

SEN. VAN VALKENBURG agreed the language would cover problems the public perceived as being double dipping while at the same time allowing people who had public employment and retained the

compensation from that job to reimburse the employer for the cost of temporary replacement.

CHAIRMAN HARP summarized the section would conform educational and local government employees to what the public employees and most state employees were currently required to do.

Greg Petesch reported state employees could accumulate two times the annual accrual rate of vacation. That was the maximum that could be carried on the books at any time. Compensatory time varied between the Executive Branch employees and other branch employees. Executive branch employees could carry up to 150 hours over a fiscal period before losing it. An employee could have 240 hours of vacation leave and 150 hours of compensatory time. Certain employments allowed over 300 hours of leave time. **Greg Petesch** referred to nepotism and reported **SEN. DOROTHY ECK'S** Bill, SB 115, contained a new section that was almost verbatim current law. **SEN. LARRY BAER'S** Bill, SB 136, did not address the nepotism issue. The Subcommittee had added two exceptions to nepotism; one for the employment of election judges and one for the employment of pages or temporary session staff for the legislature.

Greg Petesch stated SB 115 prohibited gifts, meals etc. above \$25.00. Current law referred to substantial value and SB 136 did not address the issue. The Subcommittee defined substantial value as \$50 and the substance of what types of gifts were prohibited was on pages four and five of the Subcommittee report. The \$25 limit in SB 115 was the lobbyist disclosure amount. The Subcommittee felt that was too low to constitute substantial value so they incorporated \$50.

REP. ROSE FORBES stated several people thought \$50 was substantial. A meal could be \$25 and a gift could be \$50.

Greg Petesch stated existing law simply referred to substantial value. He added the Subcommittee also created an exception to that area for educational material or activities. The Subcommittee provided an enforcement mechanism. A gift in violation of the provision could be reported to the governing body of the employing entity and the governing body could order the person who received the gift to pay restitution in the amount of the gift.

SEN. VAN VALKENBURG said there were some instances where gifts were presented that were certainly worth more than \$25 or even \$50. He had received a print, not a painting, from the Fish & Game Wardens Association and the framing alone was probably worth over \$100. He addressed **REP. FORBES** and noted she had only served two months but if she served for six or eight years, somebody would probably want to give her something and she would probably, at that time, think "I'm worth it".

Garth Jacobson, Secretary of State, stated the basic concept was gifts from lobbyists who were trying to influence votes. That was the reason for the dollar amount. A gift from a group or person after the fact really didn't matter but during the session it might tend to influence the vote. He stated that was where the dollar limit should be decided.

Greg Petesch stated there were two places where gifts could not be accepted. One was where it was intended to influence a reasonable person in the discharge of their duties and the other was situations where the person should know the gift was primarily for the purpose of rewarding that person for official action taken.

SEN. VAN VALKENBURG stated there should be no limit on that situation. He contended there should be a way for people to express appreciation to somebody who worked for them and not have it construed as a bribe.

REP. FORBES stated it all came back to public perception.

CHAIRMAN HARP asked if there was any interest in staying with current law and amending it to a \$50 limit.

REP. COCCHIARELLA stated she had a problem. She had made a presentation to the Beekeepers as a State Fund person and at the end they presented the group with a basket of all kinds of different bee products. Under that section of law, would that mean they should not have accepted the gift.

Greg Petesch stated a presentation on safety may not have been considered official action. The concept of official action was a vote, issuing a permit, carrying a bill, vetoing a bill and voting on a rate increase.

REP. COCCHIARELLA asked if, after carrying a bill for a group of people, they sent a bouquet of roses that were worth more than \$50, would that fit under the section? **Greg Petesch** stated under current law substantial value was not defined.

CHAIRMAN HARP asked the Committee to suggest a dollar amount.

SEN. VAN VALKENBURG offered \$250.

REP. FORBES asked if the section could be separated having \$25 for meals and \$50 for gifts. **SEN. NELSON** asked what the purpose would be of separating the section. **REP. FORBES** replied it had been discussed and many people felt \$50 was too much.

REP. DENNY asked what the public's perception would be if gifts of \$250 were allowed.

CHAIRMAN HARP suggested leaving current law in place. He asked **SEN. NELSON** if she would support that. She replied she would

support \$50. **CHAIRMAN HARP** suggested current law be used and define substantial gifts as \$50.

SEN. VAN VALKENBURG expressed opposition to the provision.

REP. COCCHIARELLA said she did not believe the public was aware of current law and contended if the public understood current law there would not be a public perception problem.

SEN. NELSON asked if the Committee wanted to try a higher amount. **CHAIRMAN HARP** suggested defining the dollar amount at \$50 would cause the public to say "see every legislator over there was getting \$100 every time he went out to eat, he gets pictures and everything". He noted SB 136 did not change current law but SB 115 did and the Subcommittee had tried to meld both bills together. He stated the Committee had every right to decide current law was sufficient and leave substantial undefined.

SEN. VAN VALKENBURG thought the important thing was reporting what was given to public officials. The public could then decide if the item was really affecting that legislator or public officials actions.

CHAIRMAN HARP concluded they would stay with current law.

Greg Petesch asked if they wanted to keep the Subcommittee's exemption of educational materials and activities? **CHAIRMAN HARP** assumed the Committee would agree on keeping the educational gifts. **SEN. NELSON** stated they would not have to address the educational issue since they had not changed current law.

Greg Petesch stated SB 115 prohibited certain public contracts by public officers and employees and limited involvement in matters that represented others before state agencies. Senate Bill 136 changed the current law prohibition to apply to legislators. Current law had some restrictions in Section 22-2-201. The bill dealt with awarding and being interested in a contract. It stated members of the legislature, state, cities, town officers etc, may not be interested in any contract made by them in their official capacity. It defined contract and what being interested applied to. It would not include contracts where public bidding was required. He added the Subcommittee Bill contained a provision that applied to public officers or public employees engaging in a substantial financial transaction for their private business with a person whom they inspected or supervised. Current law prohibited assisting a person for a fee in getting a contract, license, or etc. Insider trading or using one's position to influence a decision for personal benefit or for someone else's benefit for a fee was also prohibited in current law.

SEN. VAN VALKENBURG noted the definition of public employee in the Subcommittee's bill included an employee under contract from the state. There would be a lot of people under contract who

would be subjected to the Rules of Conduct under that definition.

CHAIRMAN HARP said it was his understanding the definition was current law.

Greg Petesch referred to the bottom of page 1 and the top of page 2 of the Subcommittee Bill. The stricken definition of employee was an employee under contract with the state; the problem with the definition was it's ambiguity. He noted in front of that clause it said "including a member of a board, commission, or committee except a legislator". The Subcommittee determined that was who they intended to include. It was addressed in current law.

CHAIRMAN HARP suggested they incorporate SB 136 and add legislators to the restrictions.

Greg Petesch said SB 115 prohibited the use of an office for personal or political activities unless the activities were incidental to the function of the office. It contained an exception to permit limited nongovernmental activities and legislative exceptions established in Joint Rules. Essentially, it let legislators decide for legislators what would apply. Senate Bill 136 prohibited the use of an office for political purposes unless incidental to the office. It excluded legislators from the provision because their job was political by nature. Current law prohibited use of a state office for private business purposes and public employees were not allowed to campaign while on the job. He suggested **REP FORBES'** Bill and **REP. PAVLOVICH'S** Bill be considered on the issue.

CHAIRMAN HARP asked **Mr. Petesch** to briefly use the Subcommittee's Bill as the reference point and explain how HB 410 and HB 362 may or may not fit into the proposal.

Greg Petesch noted the Subcommittee expanded the prohibition of the public time and facility to include time, facilities, equipment, personnel, or funds for political or campaign activities that persuaded or affected political decisions. There were exceptions for activities authorized by law or properly incidental to another activity required or authorized by law. The exception specifically included the functions of the Governor, the Governor's staff or the legislative staff in the normal course of their duties. **REP. FORBES'** Bill amended a section of the election laws concerning unlawful acts of employers and employees in doing that. The Subcommittee amended this section and subject to the provisions he had just articulated. It also clarified that a document published to support or oppose certain issues must include a written statement disclosing the cost of producing the document and had to meet the specification on public printing disclosures. Her bill defined public official and public employee as including all local government, school districts, and special districts created as governmental entities. **Greg Petesch** explained **REP. PAVLOVICH'S**

Bill amended the same section of law but required notice of potential conflict of interest to a supervisor for members of a group in a proceeding before the individual. In instances of a contested case or a similar case, if an employee was a member of the group that was involved, the employee would have to disclose that membership to their supervisor who would determine partiality. It also prohibited engaging in any activity, including lobbying, on behalf of an organization, while engaged in performing job duties. An employee may not lobby on state time for an entity of which they were a member.

REP. FORBES explained they had difficulty wording her bill to reflect their intentions on public funds. One of the first concerns was they did not want to the Governor to be prohibited from issuing a statement. The problem was by closing the door on the use of public funds, time, equipment and supplies and then allowing an exception for certain people, like the Governor to issue a statement, just opened the door again. She had met with Commissioner Argenbright and he had expressed difficulty in enforcement because people were utilizing the exceptions to take advantage. They claimed it was within the scope of their job. The Committee needed to specify who decided if a particular use was within the scope of a specific job or if the activity would influence someone. She asked **Commissioner Argenbright** for suggestions.

Commissioner Argenbright stated that he had not come up with any ideas. If the person put out informational fliers about potential impacts on a voted levy for the school district it would be hard to convincing the person that they were not acting within the scope of what they were elected to do. He noted public employees' use of public resources was pretty clear. However, in terms of elected officials and what was political activity would be hard to define.

REP. DENNY stated a school district should put out campaign information for the levy and disclose that it was paid for by the district. He contended there were legitimate uses of government money in regards to ballot issues.

REP. FORBES stated the disclosure on fliers and etc. should include information regarding who or what entity incurred the cost. She reported taxpayers were highly frustrated because their tax dollars should not be spent to influence their decision. She cited several examples and stated the issue was not just ballot issues but influencing the outcome of any type of political process.

CHAIRMAN HARP suggested they include the section regarding publishing where the money came from in the Subcommittee Bill. He stated he understood **REP. FORBES'** concern if the purpose was strictly for a political decision those disclosures should be met.

Greg Petesch stated the Subcommittee addressed that issue for state officers and state employees by adding a provision to allow the person alleging a violation to bring an informal contested case proceeding in front of the Commissioner. The Commissioner would be allowed to impose a civil penalty and recommend disciplinary action. It also allowed the Commissioner to assess the cost of the proceeding against the person bringing the charges if the violation did not occur or against the person committing the violation if it was found the violation did occur. If the decision was appealed to District Court the section provided for court costs and fees to the prevailing party.

CHAIRMAN HARP suggested they use the section in HB 362 and do away with all the formal contested proceedings.

Greg Petesch stated the issue the Subcommittee tried to address was if the violation was a misdemeanor, the county attorneys were responsible for enforcement and the Subcommittee decided to allow a civil remedy as opposed to just a strict criminal penalty.

SEN. VAN VALKENBURG said they should leave the enforcement in one place. They could authorize the Commissioner of Political Practices to adopt rules that would set up enforcement mechanisms at the local level. The rules would be essentially uniform and applicable to the entire state. There would be enforcement at the local level and the Commissioner of Political Practices would enforce it at the state level.

Greg Petesch said for local officers and employees the Subcommittee provided a civil penalty of not less than \$50 or more than \$100 and left the decision of how to impose the penalty with the local jurisdiction.

SEN. VAN VALKENBURG stressed the importance of clarifying in the law that a government official or government body had the responsibility to enforce the law rather than leaving the possibility that citizen lawsuits could attempt to get civil penalties imposed.

REP. FORBES said she wanted whoever was the enforcing body to be at the Commissioner's Office so they could make a rule. She wanted the Commissioner to be able to make a decision. She stated the Commissioner had some real challenges in trying to make decisions on a lot of issues.

Commissioner Ed Argenbright stated he was concerned about the perception that there was something in statute that people had to obey and the notion of the disclosure in terms of the cost. He thought that provision would go a long way toward alleviating the concerns that seemed to exist. He cautioned if the enforcement was not specified his current staff may not be sufficient to enforce the provisions. He suggested his office may need an attorney on staff with some ability to follow through with the provision.

CHAIRMAN HARP stated the language of the Subcommittee regarding public employees involving political decisions was not affected.

REP. FORBES reiterated there should be disclosure of whose dollars were spent.

SEN. VAN VALKENBURG responded to **REP. FORBES** and suggested the word "public" be inserted in front of "costs". He added the word "Governor" should be stricken and "elected Executive Branch Officials" or "elected officials" inserted. He didn't want it perceived so narrowly as just including the Governor.

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CHAIRMAN HARP stated the Committee agreed on the issues regarding the Subcommittee's provisions for public employees involvement in political decisions. They were adding additional language on the right to know on HB 362. He suggested the Committee address enforcement. He reiterated the Commissioner's concern that if it was left somewhat vague he was going to need more people. He stated there were two different avenues. One dealing with the local officials, or local government, and the other dealing with state officers. He related state level violations would go through a District Court procedure if the Commissioner decided there was a violation.

Greg Petesch clarified if the person appealed the Commissioner's determination, the appeal would go to District Court. The Commissioner's proceedings were kept as informal as state law allowed thus the wording "informal contested case". That allowed some leeway in evidence standards and would normally be conducted by a hearings officer.

Garth Jacobson mentioned there was a third approach to consider. SB 115 had a separate Ethics Commission, which contained a balance of political interest, which would be the judicature entity making these determinations. There wouldn't be arguments that politics played one side or another. The matters were highly charged political matters, particularly allegations of misusing an office for political purpose; a person's career, politically and personally, could be ruined. He suggested they consider the enforcement structure in SB 115. He suggested reduction of the cost of SB 115 could be accomplished by deleting the Commission of Campaign Practices and make it an Ethics Commission.

REP. FORBES stated if someone was abusing the Commission they could put a stiff fine or penalty to cover the cost of needing the Commission. She addressed Commissioner Argenbright's concern and need for two more FTE's and suggested they find a funding source.

CHAIRMAN HARP asked **Garth Jacobson** how many members were on the Commission in SB 115 and if there was any staff that oversaw the

Advisory Committee or the Commission itself? **Garth Jacobson** replied the present scheme would have five people. The first four would be selected by the leadership of each House and those four would select the fifth. The Commission would be a very part-time Commission, meeting once a month or as needed. He stated there would be one or two staff positions. The fiscal note indicated there was one Executive Director and possibly one or two other staff members. If a very small role was expected, the staff people could serve as the prosecution if necessary.

CHAIRMAN HARP summarized the Committee's choices. They could establish a new commission with one to three FTE's. They could add possibly one attorney to **Commissioner Argenbright's** staff or they could allow **Commissioner Argenbright** to continue with his current staff and determine violations, perhaps contracting for a hearing officer, and allow the local county attorneys to handle the violations in the local government entities. He cautioned each time an FTE was added in state government a computer, filing cabinet, etc, were necessary. By the time all was done, it would cost \$25,000. Normally, by the time you get done with that FTE it's \$50,000-\$100,000.

Greg Petesch said the question was what to do when it was determined a violation had occurred. He stated current law did not provide penalties.

REP. DENNY said the Subcommittee language had appropriate penalties.

CHAIRMAN HARP asked if the Subcommittee had tried to avoid adding additional staff? **REP. DENNY** said he was aware of a couple of cases **Commissioner Argenbright** worked on where a citizen had come forth with a complaint and a big raft of papers. He thought allowing that opportunity would also allow the Commissioner to recover costs.

CHAIRMAN HARP asked **Commissioner Argenbright** what his needs would be?

Commissioner Argenbright asked how many cases would there be and would they have to travel to different areas. Hearing these kinds of complaints or cases could involve a lot of people. The consequence of a civil penalty would reduce the number of cases.

CHAIRMAN HARP stated they would allow him to overspend his budget amount and then recognize what the problem was rather than give additional FTE'S at the present time.

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Commissioner Argenbright said, in the Appropriations Committee, in order to implement I- 118 it appeared there would be some FTE increase so there would be some adjustments.

CHAIRMAN HARP concluded Commissioner Argenbright did not need an additional FTE. There had always been supplementals before and could be again.

SEN. BAER stated the most important thing to keep in mind was to set some very definitive guidelines so there were no ambiguities as to how a person should act in a particular situation. Once that was established statutorily the public and the people affected would be in tune with it.

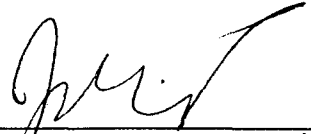
CHAIRMAN HARP stated if the Commissioner needed any FTE'S for I-118, and the public had supported it, the legislature would respond to the need.

Greg Petesch referred to the limitation on post-employment activities. **Greg Petesch** stated there were other issues involved. Specified people may not, within twelve months, take direct advantage of things they did while employed. There were three different issues involved. Current law on contracting with someone stated 6 months. Lobbying during the session following termination was an open time frame. The 12 month provision was applied to taking advantage of what the employee dealt with rather than the ambiguous provision in current law.

Greg Petesch added that the next thing on the agenda was a big issue, disclosure. He added the three issues, not on the chart, that the Subcommittee dealt with were education, advisory opinions, and enforcement. He outlined what the Subcommittee had done in those areas.

ADJOURNMENT

Adjournment: CHAIRMAN HARP adjourned the meeting at 7:05 p.m.



SEN. JOHN G. HARP, Chairman



FREDELLA D. HAAB, Secretary

JGH/fdh

DATE March 14, 1995

SENATE COMMITTEE ON Ethics

BILLS BEING HEARD TODAY: SB 115, 136, HB 3410, 371
HB 362

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Check One

Name	Representing	Bill No.	Support	Oppose
Amy Pfeifer	Self + other employees	SB 115 SB 136		
J.V. Bennett	Mont PERC	All	✓	

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PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY