

MINUTES

MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION

JOINT COMMITTEE ON ETHICS

**Call to Order:** By CHAIRMAN JOHN G. HARP, on March 16, 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)  
Sen. Linda J. Nelson (D)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** Rep. Rose Forbes (R)  
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: SB 115, SB 116  
HB 362, HB 410, HB 571

HEARING ON HB 410

Opening Statement by Sponsor:

**REP. BOB PAVLOVICH, H.D. 37, Butte**, explained HB 410 had been extensively amended in the House State Administration Committee. It was an Ethics Bill. The bill provided if someone had a problem with an employee of a state agency, that person could request, from the employee's supervisor, what organizations the employee belonged to. He reported some of the public was having trouble obtaining permits for mining operations from certain departments which employed people who held membership in special interest groups.

Proponents' Testimony:

**John Fitzpatrick, Pegasus Gold Corporation**, stated he supported HB 410 as introduced. He had lived in Helena approximately 20 years. He came to Helena to work for the State of Montana and had spent about 6 1/2 years with the Department of Natural Resources and subsequently with the Governor's Office. He suggested that from time to time the work that was being conducted by people in the hallways in the buildings in the Capital complex was influenced, to a great extent, by personal agendas or affiliations. One of the defects that he saw in ethics legislation and the current Ethic Laws in the State of Montana were they tended to define conflict of interest in financial terms. He submitted there was just as important an area of conflict of interest in the ideological realm. He stated in some cases conducting activities on behalf of the State was strictly affected by affiliations outside of government.

**Mr. Fitzpatrick** related one of the first instances he experienced with this, occurred about five years previous. He was contacted by a consultant from Denver who showed him some testimony that had been submitted on a mine application in the State of Idaho. It was submitted by an individual who was an employee of the Montana Department of State Lands. In the opening statement of his testimony he went to great lengths to talk about his affiliation and his employment with the Department of State Lands. The part that he found most interesting was, in terms of leaving an opportunity to contact him, he listed his State Lands telephone number. This was a classic example an individual who had an interest in another project but was quite willing to deal with that particular issue using state telephones and perhaps state time. That individual subsequently appeared in another case when he was invited by some environmental groups to testify against a water right that Pegasus Gold Corporation was applying for in the State of New Mexico. It was brought to the attention of the management of the Department of State Lands. They subsequently informed the employee he was free to go to New Mexico, but he had to take annual leave and had to pay for his own airline ticket. That individual now works for the Department of Health. Department of Health employees have had their names on letterhead for Trout Unlimited in the Blackfoot area and that organization had denounced the proposed project in Lincoln. He was not trying to suggest this was a problem that affected all state employees. He thought it was a problem that needed to be addressed in the code so people who were bringing projects, particularly to regulatory agencies, had an opportunity to know who they were dealing with in the department.

**Cary Hegreberg, Executive Vice President of the Montana Wood Products Association**, stated the current debate on natural resource issues was like an athletic event. To put it bluntly, they were tired of public employees whose personal agenda interfered with their professional judgement. He cited the State Wildlife Fish biologists who were actively involved with

environmental groups who routinely opposed, appealed, and litigated timber sales. He related a recent incident where three employees of the Department of Fish, Wildlife and Parks filed an affidavit with the District Court in Great Falls in support of a lawsuit against the United State Forest Service timber sale. Although they filed the affidavits as individuals, each of them cited their credentials as Fish, Wildlife and Parks employees despite the fact that the agency itself filed no official action. Interestingly enough one of the plaintiffs in the law suit was arrested by the enforcement division of Fish, Wildlife and Parks shortly after the lawsuit was filed and charged with poaching elk. Elk security was a major issue cited by one of the biologists who filed the affidavit with the District Court. Did those three individuals pay membership to any organization opposing or litigating that timber sale? He contended the public had a right to know if the employees were affiliated with some of the same organizations who were filing lawsuits against that federal action.

**Mr. Hegreberg** cited a more troublesome situation that occurred the previous week and was still unfolding in the Capital. A State Fisheries Biologist, employed by the Fish, Wildlife and Parks, distributed a memo to members of the Governor's Bull Trout Round Table Scientific Group, **EXHIBIT 1**. This was a subgroup of the group the Governor appointed. The troubling aspect of the situation was the science group, last week, succeeded convincing the Round Table itself to contact the Governor expressing "concern" with the list of proposed legislation. He noted the Bull Trout Round Table consisted almost entirely of public agency employees with a few conservation groups and one representative from the private sector. The public record of the last meeting of the Bull Trout Round Table, who generated the letter to the Governor, in **EXHIBIT 1**, showed that when an observer of the public asked Bull Trout Round Table members if they had indeed read the legislation in question, the answer was "no". They still took it upon themselves to write a letter to the Governor of Montana expressing concern over the legislation. Conveniently, opponents to those bills were now waving that letter around in legislative hearings as though it had some sort of credibility. In reality, it was written by people who hadn't even read the legislation to which the letter referred. He wondered how these government professionals would conduct an objective and pure review of scientific research. He stated it was a known fact that EPA employees served on the Montana Environmental Information Center Board of Directors, as referenced in the editorials that **REP. PAVLOVICH** passed around. He was not sure how that would impact state employees but the public had a right to know that state employees, who were charged with serving as objective, fair administrators of public policy, had a personal agenda that may affect their professional judgement.

**Mr. Hegreberg** referred to the last page of **EXHIBIT 1**, an amendment for the Committee's consideration. He stated it would

more adequately reflect some of the concerns of the public. The amendment would broaden the bill to apply to state agency employees who would be commenting or trying to impact decisions on local or federal issues.

**Dave Owens, Montana Chamber of Commerce**, stated they supported HB 410. He stated the changes that had been made had helped narrow their focus. The reason they were interested in this kind of legislation went back to something that **John Fitzpatrick** said, "We have written a lot of laws about conflict of interests and they all deal with fiduciary conflicts." He stated that was driven home when the idea of a stakeholder and issue were brought into that issue. The term "stakeholder" was being broadened and he suggested that the issues broaden right along with it. He stated he knew discussions on the record could help down the road and he was not necessarily critical. He referred to page 2, line 10 where the issue had been narrowed down to "things that are within the scope of the employee's job duties". His concern was that it may have gone from being too broad to being so narrow no one would ever figure out what was and wasn't somebody's job description. He didn't think it was too large a net to ask public employees if they had an agenda or if they had an interest. He contended if these people were asked to list the groups they belonged to, two things would be found. One, there would be a mix; it wasn't just an environmental group, there were some very conservative memberships who had a stake was well. Second, it would be found that 99% of the people were just as they portrayed. Regulation was necessary because there was a marginal group that was tainting the abilities of everybody else.

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**Candace Torgerson, Montana Cattlemen's Association, Montana Stock Growers, Montana Wool Growers, and Agricultural Preservation Association** viewed HB 410 as an attempt to get some reality into the public's relations with government. She cited, as an example, State Fish Biologists often testified on issues in situations that involved agricultural water. They came across as neutral unbiased parties representing the government when in reality these employees were sometimes members of extremist wildlife groups or supported extremist groups of other kinds. HB 410 would help put the state employee's testimony into the correct perspective.

**Stan Bradshaw** representing **Jim Jenson, Environmental Information Center** supported HB 410, as written. They thought it was written in a way that got at the issue of conflict reported by the other proponents while at the same time protected people's fundamental privacy rights. He urged the Committee not to adopt additional amendments containing the provisions suggested by **Cary Hegreberg**. The amendment would restrict the activities of state employees outside their job. He stated HB 410 was properly drawn in a way to deal with legitimate concerns; anything beyond that would

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invite intrusion into people's right of privacy and the right of personal association.

Opponents' Testimony:

**J. V. Bennett, Mont PIRG**, reading testimony from **Deborah Smith, Common Cause, EXHIBIT 2**, and offered her amendments **EXHIBIT 3**. He stated **Mont PIRG** concurred with **Common Causes'** stance on HB 410.

**David Hemion, Montana Association of Churches**, an organization which represented eight of Montana's largest Christian denominations. They opposed HB 410 because it created intimidation of individuals' liberties. He reported many churches were professing doctrines of concern for the deterioration of the environment; many churches had taken positions against gambling; many churches had positions regarding care for the poor, the infirm, the prisoners, and children. Would being a member of a church holding such positions create a conflict of interest? The churches were concerned that HB 410 created a chilling intimidation of the freedom of religion and the exercise of individual liberties. It was arguably unconstitutional and they urged the Committee to save the expense and time of taking the matter to the courts by voting HB 410 down.

Questions From Committee Members and Responses:

**SEN. FRED VAN VALKENBURG** asked if membership in a political party would be the kind of an organization that had to be disclosed. **REP. PAVLOVICH** stated it would not apply to a political party. The target was employees of state government and other entities.

**SEN. VAN VALKENBURG** asked if membership in a church would be something that needed to be disclosed. **REP. PAVLOVICH** said there was a separation between church and state. He stated he was a Catholic and he could care less who knew he was a Catholic. He didn't see where the church played a part in this.

**SEN. LINDA NELSON** asked **REP. PAVLOVICH** how he felt about the amendments offered by **Common Cause** and the **Wood Products Association**? **REP. PAVLOVICH** stated he would oppose the Common Cause amendment but would leave the Wood Products Amendment to the discretion of the Committee. He wondered how many people belonged to an organization that did not have a financial interest. He was a member of the Elks. That was an organization but he had no financial interest, he just paid his dues. He was also a member of the American Legion. All those different organizations, he saw where financial interest had no bearing on this at all.

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**CHAIRMAN JOHN HARP** asked **Dave Hemion** to ponder HB 410 and the people who offered the bill were people who were involved in a

proceeding before the employing agency. He was trying to think of a church where they had a lot of church members or associations that would be involved with those agencies that the person was actually employed with. That would be pretty unusual most of the time, wouldn't it? Did church groups normally come in on environmental issues?

**David Hemion** said they did. The **Montana Association of Churches** had adopted positions on issues ranging from the environment, farm families, children's rights, and there was a broad doctrine. It stemmed from the beliefs of the members surrounding what was taught in the gospels regarding how to live out that message. When a person lived out their faith, they professed those teachings and they held to those teachings. Those churches had spoken out on issues that they had found of relevance spiritually.

**CHAIRMAN HARP** addressed **Common Cause, J. V. Bennett** and speculated it was alright if he had a philosophical difference on an opinion but if he had a financial interest that was where the conspiracy fell into place.

**J. V. Bennett** replied he would not go as far as saying conspiracy but **CHAIRMAN HARP'S** comment was their concern. The two groups he represented felt that people had beliefs. If they didn't have beliefs they wouldn't want them as public employees because they would be brain dead. A professional should be able to separate out their own personal beliefs and what was required of them in their job. Some people felt their beliefs strongly enough to join an association or organization that lobbied around those beliefs and would guide them in making decisions. People ought to be able to separate their personal beliefs from what was required of them as professionals. They were concerned about when money started coming into play, because people could get tempted away from even their beliefs if there was enough money involved. There was a real concern when there was a financial stake. Someone could be tempted away from not only their own belief system, but from their Code of Professional Conduct as well.

**SEN. VAN VALKENBURG** asked **Stan Bradshaw** to comment on the amendments offered by **Cary Hegreberg**. **Stan Bradshaw** stated his initial reaction was not quite correct. He was not sure he liked it having read it, but he would stand corrected on what his initial appreciation was.

**CHAIRMAN HARP** asked **J. V. Bennett** if money was the problem. **Common Cause** contended money was the problem with conflict of interest and control. The different associations and trade groups talked about the influence of people who were employed by certain agencies. Doing something because a person felt it was the right thing to do was alright with **Common Cause**. But if the person had \$1 or \$2 in that group then all of a sudden they were a corrupted individual. **Common Cause** concentrated too much on

strictly financial disclosures and did not look at philosophical differences or trying to persuade public opinions based on personal findings?

**J. V. Bennett** stated he thought they were looking at the larger picture. One or two dollars he didn't think would make a difference. The Committee had quite a bit of trouble identifying a dollar amount for substantial value on gifts and he was not sure what that dollar amount was. For him, \$1000 was a lot of money. For someone else, maybe not. He was not quite sure where that dollar amount should be. He did agree with some of the proponents that there was some improper action in some of the cases and it sounded like there were cases where employees were using the position of their office as a way to influence public policy in an inappropriate way. He didn't think their beliefs or their philosophical bias was something that overall caused a problem. People were guided by their beliefs and those beliefs differed and that was what the whole legislative forum was about.

**SEN. NELSON** stated it was very strange that the **Association of Churches** was in opposition to HB 410. **David Hemion** stated the **Association of Churches** had been around for over twenty years. In order for any position to be adopted by the **Association of Churches** it required the unanimous consent of all the denominations involved. That was accomplished through a committee process, a general assembly with six or seven delegates from each denomination. All of the positions taken were a unanimous expression of opinion.

**SEN. NELSON** thought it would really limit the amount of input to testify. She was a Lutheran, and so she had to disclose that she was a Lutheran and they knew Lutherans had certain beliefs, that would color things. Was that the Association's point. **David Hemion** stated that as he read the bill over again and pondered **CHAIRMAN HARP'S** question, he admitted it did narrow it down some. He stated their initial opposition had been to anything that intimidated people from holding beliefs and acting on them. He would have to concede that point. He thought the overall point he was testifying on was to prevent the intimidation that this bill suggested.

**Closing by Sponsor:**

**REP. PAVLOVICH** related he lived in a community that was Catholic. They had 11 Catholic churches in Anaconda, all built with gambling money. He could remember the church going to the bars and saying they needed \$50,000 to build a church and there was never a question asked, they got the money. Now they came in and opposed his gambling bills. There was a conflict of interest. The legislators were sent to Helena to represent their people but everyone of the legislators that sat in the legislature had a conflict of interest and everybody knew that they did. There were a lot of tavern owners that he represented from his community and he was a former tavern owner. He represented their

industry and he voted for their industry because he believed in it. He was not going to sit on the House floor and not vote and claim it was a conflict of interest because he had to represent the people in his community. All legislators had the same problem. Simply stated a state officer or state employee may not engage in any activity, including lobbying. The information was available to anyone interest but they could not demand it, they were just requesting it.

**Discussion:** **CHAIRMAN HARP** summarized for the Committee they had major decisions to make regarding recording of financial interests, education, advisory opinion and enforcement.

**SEN. VAN VALKENBURG** stated HB 410 did not seem too bad in its current form.

**CHAIRMAN HARP** asked **Greg Petesch** what section would HB 410 be amended into their working papers? **Greg Petesch** stated they would leave in 2-2-121 of Section E.

**CHAIRMAN HARP** asked if there was any interest in the amendments offered.

**SEN. VAN VALKENBURG** stated the amendment offered by Wood Products Association seemed reasonable to him. All it required was notification to the supervisor that there was a potential conflict of interest if the person was there representing the state.

**Motion/Vote:** **SEN. VAN VALKENBURG** MADE THE MOTION TO ADOPT THE PROVISIONS OF HB 410, WITH THE AMENDMENT PROPOSED BY **CARY HEGREBERG**, WOOD PRODUCTS ASSOCIATION, INTO THE WORKING DRAFT OF THE BILL. The motion CARRIED UNANIMOUSLY.

**Greg Petesch** asked the Committee to consider the revised section he handed out that dealt with dual-salaries, addressing the testimony heard the previous night.

**CHAIRMAN HARP** asked the Committee if they would support amending the new provision into their working draft.

**Motion/Vote:** **SEN. VAN VALKENBURG** MADE THE MOTION TO AMEND THE SECTION IN THE WORKING DRAFT. The motion CARRIED UNANIMOUSLY.

**Greg Petesch** stated the education issue was pretty straight forward. **SEN. BAER'S** Bill, SB 136, did not address education on ethics but there were extensive education provisions in **SEN. ECK'S** Bill, SB 115, Section 33, that provided for establishing an education program for state officers and employees to be handled by the Advisory Commission established in her bill. The Subcommittee in the Senate provided that the Department of Administration was to adopt Model Rules of Conduct, based upon the provisions of the Ethics Laws, and provide a pamphlet summarizing those provisions to employees. In addition, each

state agency was directed to adopt Model Rules of Conduct appropriate to their agency because the Subcommittee decided there would be some variance between agencies. The Rules of Conduct for a Department of Justice employee may be different than the Rules of Conduct for a Department of Administration employee.

**REP. VICKI COCCHIARELLA** asked Greg Petesch if this only applied to state employees. There was no provision for other public employees or any one else.

**Greg Petesch** stated the Subcommittee decided to leave local government employees up to local government as to how they wanted to educate their employees. The pamphlets that dealt with Rules of Conduct summarizing the Title 2, Chapter 2, was where the Rules of Conduct for local government employees were contained. The Subcommittee's decision was to allow each local government to handle education.

**REP. COCCHIARELLA** said she knew the State Fund recently went through a gigantic process of adopting ethical standards and Rules of Conduct. What would happen when rules existed that were broader or narrower. She suggested it would be better to add language to the bill advising agencies they should adopt some rules and let the agencies do that.

**Greg Petesch** reported what the Subcommittee discussed was that guidelines for state employees would vary widely from agency to agency. The State Fund, as she had indicated, recently adopted quit an extensive code. The Subcommittee's decision was that since the Ethics Laws were extensively revised for state employees, model rules would be helpful for every agency and under the provisions actions, like the State Fund had taken, would already be covered in the Rules of Conduct for their specific agencies. The State Fund may have to modify their code to what the legislature had done during the session, but they would have largely already complied.

**CHAIRMAN HARP** asked what kind of mandate they were placing on the Department of Administration. He wondered if the Department of Administration was aware of the mandate. **Greg Petesch** replied **SEN. SUE BARTLETT**, from the Subcommittee, had talked to the Department about how the provision would be implemented and there would be some cost involved.

**SEN. VAN VALKENBURG** stated it seemed logical that the Commissioner of Political Practices would be the one handling these model rules. Why had the Subcommittee placed the responsibility with the Department of Administration.

**Greg Petesch** explained the Subcommittee chose them because they were the State's Personnel Officer and they dealt with orientation for employees and the provision could be incorporated as part of the orientation.

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**CHAIRMAN HARP** wondered about the cost of adding the responsibility to the Department of Administration. There would be a cost of man hours and paperwork. He noted it would be a one time cost.

**REP. COCCHIARELLA** noted the process would have to be redone each time the legislature modified the law.

**SEN. VAN VALKENBURG** stated they could tell Lois Menzies at 8:00 that they wanted to know by Monday afternoon what the cost of doing this would be.

**CHAIRMAN HARP** stressed he also wanted to know how many man hours would be tied up with people sitting and going through the orientation. **Greg Petesch** noted the orientation was for new state employees. The Subcommittee's decision was that the pamphlet would be given to them. That was how the personnel division worked.

**CHAIRMAN HARP** stated it should be for all employees. The old employees had worked under the rules and environment and what the legislature was doing was cleansing the system to make it ethical. All employees should be included if the legislature really believed in what they were doing.

**SEN. NELSON** stated she felt they would have access or they would be given the pamphlet and that was where the cost was going to be.

**REP. COCCHIARELLA** noted the provision said each state agency would adopt the model Rules of Conduct and additional rules appropriate to the circumstances of the agency. That would require more than a pamphlet. There was time involved and she knew the State Fund polled and questioned and worked up their Code of Conduct with every employee. The State Fund had a key group that worked on the code but there was input from all employees and it took three or four months. **SEN. NELSON** stated it probably would take some time to develop at first but once it was in place it would not be too cumbersome.

**CHAIRMAN HARP** asked **Garth Jacobson** if this was a big part of SB 115. **Garth Jacobson, Secretary of State's Office**, stated it was. All the testimony received in their committee was the key component to education. The reason for education was they could set all the parameters but basically ethics didn't mean anything until a climate was created where people felt it was important. He noted the State Fund had just gone through the process and other departments had varying degrees of codes. The whole idea was to set the minimum framework. The SB 115 proposal was to do that through the Ethics Commission where the Commission would handle all of the details and ensure there was a consistent message given and assist every department and local government if they requested it.

**CHAIRMAN HARP** asked **Mr. Jacobson** if he had a rundown on what the different departments, like State Fund, had as far as internal agency policy. **Garth Jacobson** stated they initially surveyed all of the departments and asked them what they did in that area and it came across all over the map.

**CHAIRMAN HARP** asked who would be the gatekeeper. Who would go to the State Fund and say their rules met the standard or did not meet the standard. **Greg Petesch** stated that the model rules were based upon the concept the Department of Justice had put out for agency procedure. Those were general guidelines and every agency who had rulemaking authority under MAPA or hearing authority under MAPA had to adopt the model rules as a beginning point. That was the same thought that went into the Subcommittee's action. Everybody should adopt the model rules that the Department would come up with and that would largely be what the law said with some clarification and examples. Each agency could do what the State Fund did for their own specific instances. It depended on the type of function the agency had.

**REP. COCCHIARELLA** stated she supported the rules for education the state employees had to comply with. She noted the managerial staff at the State Fund had signed off on the Code of Conduct by the members of the Collective Bargaining Unit had not. Everyone knew about it but the only people required to sign were supervisors. **Greg Petesch** stated he believed that was a condition of employment under Collective Bargaining. He stated one would have to look at what was contained in the State Fund's rules to determine why they had not asked their Collective Bargaining Unit to endorse it. It may be because there was a Bargaining Agreement in place that didn't allow them to require it at that time. It may be a bargaining item next time depending on how extensive the rules were. That was the issue each agency would have to face.

**CHAIRMAN HARP** asked the Committee to move on to the issue of advisory opinions.

**Greg Petesch** said SB 115 had an extensive provision for advisory opinions contained in Section 26. The Subcommittee came up with a less extensive advisory concept and that was in two places. One said each agency shall provide a mechanism for the employees of that agency to request advisory opinions from the agency concerning ethical issues. The Subcommittee also inserted a new section, Section 19 of the Subcommittee Report, that dealt with advisory opinions from an Ethics Advisory Commission. The Advisory Commission that the Subcommittee created had a less extensive role than the role provided in SB 115. The advisory opinions, issued by the group, under the Subcommittee's proposal, would be limited to a state officer who was an elected official or department director concerned about their own conduct and seeking guidance; or a state employee concerned about the conduct of the department director; or a state officer requesting an opinion concerning the conduct of a state employee if the agency

was unable to resolve the issue. Those are the three limited circumstances the Subcommittee provided for Ethics Advisory Opinions outside of an agency.

**CHAIRMAN HARP** noted the advisory opinions had not been adopted into the Committee's Working Draft. The Subcommittee had used the concept but only in those limited functions. **Greg Petesch** replied that was correct. He summarized SB 115 provided for the Commission to do advisory opinions when requested by a public official or employee, a former public official or employee, or a person personally and directly involved in the matter in which an opinion was sought.

**SEN. VAN VALKENBURG** asked why advisory opinions were necessary. There were no structures for advisory opinions as to whether a person was polluting a stream or inspecting meat properly. The law just prohibited certain conduct and if the conduct was violated the law was violated. Why was ethics such that there had to be an advisory opinion as opposed to just prohibitions on conduct. **CHAIRMAN HARP** suggested advisories were a warning signal without the enforcement. **Greg Petesch** stated the purpose of advisory opinions was for situations when a person was unsure whether something was proper or not. The person could go to an impartial entity and get guidance. **Garth Jacobson** stated the nature of it was if there was a fuzzy area, ethics would be it. Given the fact that the legislature had grappled with these issues so much, advisory opinions were part of the process of educating a person and the flip side of that was perhaps to give a person the opportunity to avoid a situation that their future conduct might make illegal. If a person was concerned about it, they could avoid it. There was another issue--confidentiality. In SB 115 there were two types of advisory opinions. If it were an Informal Advisory Opinion, where a person could call and pose a question, there would not be any public disclosure. A Formal Advisory Opinion would probably be done for the purpose of exonerating a person or at least justifying whatever actions were taken to avoid the person being tried and convicted by the press. That was part of an agenda for anyone requesting an advisory opinion asking if they could do a certain thing and if they could they would be cleared of any potential wrong doing when they went forward and did it. He stated those were the primary purposes of an advisory opinion. He knew that the press objected to the idea of any confidentiality of advisory opinions and they certainly would be vocal about it down the road.

**REP. MATT DENNY** stated that if all the person was asking for was an advisory opinion was it necessary to convene five people and have an elaborate selection process when there was a Commissioner of Political Practices who could probably talk to them over the phone and be done with it.

**CHAIRMAN HARP** asked if they could call Commissioner Argenbright and say they had a problem.

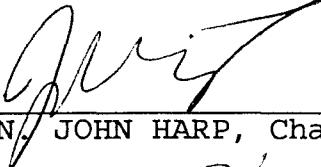
**Greg Petesch** stated the Subcommittee struggled with who to give the authority to. One of the key provisions of the Commission was that it was a requirement, by its makeup, to be nonpartisan and he knew that was a concern. That was why SB 115 drafted a commission. He knew a lot of the Senate Subcommittee's advice was to avoid, at any cost, political ethics advice and that was why the Commission was created with a limited function, to reduce fiscal impact, and to avoid political advisory opinions.

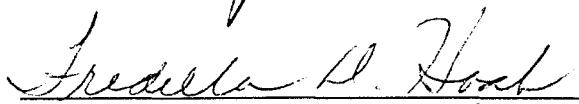
**CHAIRMAN HARP** stated the Subcommittee never adopted the Commission aspect of SB 115. It was internally within the agencies where this would take place. **Greg Petesch** said for employees and for public officials the Subcommittee did create a similar Commission with a very limited role and that was Section 19 of the Subcommittee's Bill. That was one of the three limited instances where a state officer could inquire about the officer's own conduct and where an employee of that officer could inquire about that officer's conduct.

**REP. COCCHIARELLA** stated she thought to be advisory it had to be someone who was accessible all the time to make it worthwhile. It couldn't be a Commission that was called to Helena once a month because decisions were made hourly and daily that may need some advice.

ADJOURNMENT

Adjournment: CHAIRMAN HARP adjourned the meeting at 7:00 p.m.

  
SEN. JOHN HARP, Chairman

  
FREDELLA D. HAAB, Secretary

JGH/fdh

8/2/95  
3/6/95  
NO. 1

3/16/95  
HB416

3/6/95

TO: Bull Trout Scientific Committee

FROM: Chris Clancy

I talked to staffers at the Water Quality Bureau, Fish, Wildlife and Parks, and Department of State Lands and asked them the implications of the following bills. I did not use any information from advocacy groups in this process. Based on the information provided by these professionals, the following bills seem to be in conflict with bull trout recovery. There may be others, but I do not have time to follow them all.

HB301

Dept. of State Lands would be required to cut 50 Million board feet of timber annually from state owned timber lands. One important reason they do not cut that much now is that they take into account cumulative watershed effects, so they mitigate for surrounding land practices. If this bill passes they will have to be more aggressive in their timber harvest. This bill would make their policy for mitigation more difficult.

Bull trout are dependent on healthy watersheds, and impairment would have negative impacts to bull trout populations.

HB 263

Dept. of State Lands would have to manage their lands for maximum income to the State. DSL would have less flexibility to protect fisheries resources like they did when they made it policy not to harvest timber in SM2's and to review and fix any grazing problems in bull trout streams.

SB 331

Changes the water quality standard for metals in streams from total recoverable metals to dissolved. This means than instead of acidifying the samples and extracting the ecologically available metals for analysis, the samples would be filtered and analyzed. Typically, this would mean some relaxation of the standard for metals. Metals in the sediments would not be included in the standard. Even though metals that are in particulate are not available, they can bioaccumulate through invertebrates, etc.

Since we have identified mining as a high threat this is in direct conflict to bull trout recovery.

HB 411 -

Any Army Corps of Engineers 404 permits that are covered under the nationwide permit would automatically receive a 401 permit from the state. The 401 review process is how WQB analyzes a project for its impact to water quality. If this bill passes many projects that the water quality bureau reviews now would be exempt if a nationwide 404 permit was received. Many projects in the state receive nationwide permits from the Corps of Engineers but are then scrutinized by the state for water quality purposes. Primarily small headwater streams and wetlands would be affected.

Again, bull trout are dependent on clean water, exempting projects from review by the state conflicts with bull trout recovery and a state managed process.

Should we recommend as an immediate action that the Governor veto these bills if they are passed in their present form? Please get back to me today. My phone number is 363-7165, and my FAX is 363-7105. If you have comments, please write them on your FAX.

What do you think of general wording that says that any bills that will lower water quality standards, or cause land use changes that will negatively impact water quality should be reviewed for their impacts on bull trout. If they will potentially impact bull trout, they should be vetoed.

HB 192 - Local watershed council

3/10/95

TO: Bull Trout Restoration Group

FROM: Bull Trout Scientific Group

The Scientific Group has reviewed the implications of the following bills by discussing their content with staff of the Water Quality Bureau, Dept. of State Lands, and Fish, Wildlife and Parks and feels that they are in conflict with bull trout restoration.

The group was split on what to recommend to the Restoration Group. Generally, half of the scientific group recommends that the Governor veto these bills if they reach his desk in their present form. The other half suggest that we inform the restoration team of the problems with the bills and they decide what to recommend to the Governor.

Any other bills that will lower water quality standards, or cause land use changes that negatively impact water quality or aquatic habitat should be reviewed for their impact on bull trout. If they will potentially have negative impacts they should be dealt with in a similar fashion as the following bills.

#### HB201

Dept. of State Lands would be required to cut 50 Million board feet of timber annually from state owned timber lands. One important reason DSL does not cut that much now is that they take into account cumulative watershed effects, so they mitigate for surrounding land practices. If this bill passes, they will have to be more aggressive in their timber harvest. This bill would make their policy for mitigation more difficult.

Bull trout are dependent on healthy watersheds, and impairment would have negative impacts to bull trout populations.

#### HB 263

Dept. of State Lands would have to manage their lands for maximum income to the State. DSL would have less flexibility to protect fisheries resources like they did when they made it policy not to harvest timber in SMZ's and to review and fix any grazing problems in bull trout streams.

#### SB 331

Changes the water quality standard for metals in streams from total recoverable metals to dissolved. This means than instead of acidifying the samples and extracting all of the ecologically available metals for analysis, the samples would be filtered and analyzed. Typically, this would mean some relaxation of the standard for metals. Metals in the sediments would not be included in the standards. Even though metals that are in particulate are

not available, they can bioaccumulate through invertebrates, etc.

Since we have identified mining as a high threat in some drainages this is in direct conflict to bull trout recovery.

#### HB 411

Any Army Corps of Engineers 404 permits that are covered under the nationwide permit would automatically receive a 401 permit from the state. The 401 review process is how WQB analyzes projects for their impacts to water quality. If this bill passes, projects that the water quality bureau reviews now would be exempt if a nationwide 404 permit was received. Many projects in the state receive nationwide permits from the Corps of Engineers but are then scrutinized by the state for water quality purposes.

Again, bull trout are dependent on clean water, exempting projects from review by the state conflicts with bull trout recovery and a state managed process.

EXHIBIT 1  
DATE 3-16-95  
HB 410

**Montana Department  
of  
Fish, Wildlife & Parks**



Carry  
For your  
Information  
Ronald

P.O. Box 200701  
Helena, MT 59620-0701  
(406) 444-3186  
FAX: (406) 444-4952  
March 9, 1995

Governor Racicot  
Room 204, State Capitol  
P.O. Box 200801  
Helena, MT 59620-0801

Dear Governor Racicot:

As the group you charged with developing a recovery strategy for bull trout, we are aware of a number of bills pending before the Legislature which may affect our work.

We today forward to you a memo prepared by our Scientific Group which expresses concern over four bills which may adversely impact bull trout recovery. In addition, Montana Fish, Wildlife & Parks has informed us that HB 192 may constrain our ability to work with local watershed groups in developing watershed recovery strategies. There may be other bills which will affect, positively or negatively, bull trout restoration.

We do not have the time to fully investigate each of these bills, nor do we have a structure which makes it easy to either oppose or support specific legislation. We all recognize, however, that the work of the Legislature may affect our ability to successfully complete a bull trout recovery plan. Given this, we hope that you will take your goals for bull trout recovery fully into account as you consider the merits of the laws being passed by this Legislature.

Sincerely,

*Jeffrey D. W. Hask*  
FOR / Larry Peterman, Chairman  
Bull Trout Restoration Team

/ss



**Plum Creek Timber Company, L.P.**

Flathead Unit

2050 Highway 2 West P.O. Box 8990

Kalispell, MT 59904-1990

406/755-1498

March 9, 1995

The Honorable Marc Racicot  
Governor  
The State of Montana  
State Capitol Building  
Helena, Montana 59620

Dear Governor Racicot:

As a member of your Bull Trout Restoration Team, I want to share my opinion on the comments regarding pending legislation forwarded to you by the Team from our Science Group.

Based on the conversation at the Restoration Team meeting, I do not believe that either the Science Group or the Team itself have sufficient information on which to base their concerns with pending legislation. I believe that more detailed and accurate information regarding the legislation is available from the various state agencies that have evaluated these bills.

Plum Creek remains committed to working towards constructive solutions based on sound scientific analysis to recover bull trout, as evidenced by our participation on the Restoration Team as well as our research and actions on the ground.

Sincerely,

A handwritten signature in black ink that reads "W. J. Parson".

Bill Parson  
Director of Operations

EXHIBIT 1  
DATE 3-16-95  
HB 410

Proposed amendment to

HB410

Submitted by Montana Wood Products Association

P. 2 line 11

Strike the period after "duties."

Insert: " , or when the employee is a member of, or affiliated with, any organization attempting to influence a local, state, or federal proceeding in which the employee represents the state."

#2  
March 16 1995  
HB 410

HB 410, THIRD READING COPY, AS AMENDED  
TESTIMONY OF MONTANA COMMON CAUSE  
MARCH 16, 1995

Mr. Chairman and Members of the Joint Select Committee on Ethics:

HB 410, as amended, directs State employees to disclose their memberships in organizations involved in a proceeding before the employing agency that is within the scope of the employee's job duties. The bill also prohibits a State public officer or employee from acting on behalf of any such organization while the officer or employee is engaged in performing his or her job duties.

Montana Common Cause supports the passage of strong ethics legislation, including the mandatory disclosure of potential conflicts of interest by State legislators, public officers and public employees. Because HB 410 in its current form does not address the most important conflicts of interest, i.e., those involving financial interests, but rather addresses only membership in organizations, which may or may not present financial conflicts for a state employee, Common Cause opposes the bill in its current form. In addition, Common Cause believes that the current bill impermissibly impinges on an individual's constitutionally protected rights of privacy and freedom of association.

Common Cause would support the bill if our proposed amendments were adopted. In essence, these amendments offer the following changes:

- Substitute the phrase "an entity in which the officer or employee has a financial interest" in each place where the current phrase "an organization of which the (officer or) employee is a member" appears (page 2, lines 9 and 15-16).
- Require the employee's supervisor to make available disclosed potential conflicts of interest to any person upon request, rather than to any interested person upon request. The public, and not just certain individuals, is entitled to know about potential conflicts of interest of a financial nature. It is the perception of monied corruption in State government, not the personal beliefs of State employees, that should be addressed in the bill.

Common Cause notes that the financial disclosures required in the Senate Judiciary Subcommittee's bill address financial conflicts of interest for legislators, for elected and other high level public officials, such as appointed Department Directors or Board members, and for some State employees. Common Cause believes that its suggested amendments offer a balanced approach between the concerns of public employees who maintain that detailed financial disclosure requirements would be inappropriately applied to them and the right of the public to be assured that public employees are making decisions based on the merits, not on the effect that such decisions will have on their pocketbooks. As amended by Common Cause, HB 410 would allow the rights of privacy of State employees to take

Montana Common Cause Testimony, HB 410

March 16, 1995

Page 2

precedence over the public right to know, *except* in areas where the employee was presented, in the course of his or her job duties, with a potential financial conflict. In other words, a State employee would only have to make disclosures in situations where the employee's financial interests might impede his or her ability to make an impartial decision on the merits; upfront and complete financial disclosures would not be required of State employees.

Finally, Common Cause believes that requiring mandatory disclosure by a State employee of organizational memberships under any circumstances would present an unlawful invasion into protected constitutional rights of privacy and freedom of association. The chilling effect of such disclosures would be to inhibit, or even prohibit, a State employee from belonging to an organization whose mission the employee supports. Nor would the threat of mandatory disclosure, along with the accompanying reluctance to join certain organizations, prevent the employee from continuing to hold the same beliefs that would cause the employee to join a particular organization to begin with -- for example, an employee of DSL or DHES could be a devout environmentalist, but would be inhibited by the proposed disclosure provision of HB 410 from joining environmental groups if the employee believed that disclosure of such memberships would subject him or her to ostracism or harassment.

By limiting the scope of HB 410 to disclosure of financial interests, the State would be acting within its clear constitutional authority to regulate the adverse effects of money in the political process, in much the same way that the State regulates lobbying expenditures and campaign financing. We urge the Committee to adopt our proposed amendments to HB 410, and then to incorporate HB 410 with the remainder of the Committee's recommended ethics legislation.

Respectfully submitted,

MONTANA COMMON CAUSE

  
By: Deborah S. Smith

3/16/95

*Rebuked*

NO. HB  
3-16-95  
#B410

PROPOSED AMENDMENTS TO HB 410  
THIRD READING COPY, AS AMENDED  
INTRODUCED BY MONTANA COMMON CAUSE

1. Page 2, line 9

Following: "an"

Strike: "organization of which the employee is a member"

Insert: "entity in which the employee has a financial interest"

2. Page 2, lines 12, 13

Following: "to", line 12

Strike: "an interested", line 13

Insert: "any"

3. Page 2, line 15

Following: "an"

Strike: "organization"

Insert: "entity"

4. Page 2, line 16

Following: "to"

Strike: "of which the officer or employee is a member"

Insert: "in which the officer or employee has a financial interest"

DATE 3-16-95

SENATE COMMITTEE ON Joint Ethics Select

BILLS BEING HEARD TODAY: all-

9

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
J.V. Bennett	MontPIRG	HB410	X	
John F. Farnsworth	Pegasus 60/11	HB410	X	
David Henrian	MT Assoc. of Chambers	HB410		✓
CANDACE TOGGERSON	MT Stockgrowers, MT Wool Growers	HB410	X	
	Agricultural Producers MT Cattlemen's Assoc.	HB410	X	X
Bob Williams	MT Mining Assoc.	410	X	
Russ McDonald	MOT			
Cary Hegreberg	MT Wood Prod.	410	X	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY