

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### JOINT COMMITTEE ON ETHICS

Call to Order: By CHAIRMAN JOHN G. HARP, on March 20, 1995, at  
5:00 p.m.

#### ROLL CALL

**Members Present:**

Sen. John G. Harp, Chairman (R)  
Rep. Ray Peck, Vice Chairman (D)  
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:** None.

**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 136  
HB 362, HB 420, HB 571

**Discussion:** CHAIRMAN JOHN HARP stated House Bill 410 had been  
amended into the working draft and he wanted to discuss  
disclosure and some amendments.

Greg Petesch said the disclosure provisions in SEN. DOROTHY ECK'S  
Bill, SB 115, were contained essentially in Sections 13 and 15.  
It required extensive reporting for state public officials, high  
level public employees, public board members, consultants under  
contract and candidates. SEN. LARRY BAER'S Bill, SB 136 did not  
address financial disclosure. The Subcommittee reduced the  
reporting requirements from SB 115 and amended pages 16 - 18 of  
the Subcommittee draft. The current statutes regarding  
disclosures were amended to add disclosure by members of quasi-  
judicial boards or commissions, department directors and  
candidates for a statewide office or state office elected from a  
district. The Subcommittee varied the timing of that disclosure

so the candidates would have to make disclosure within five days of filing for office rather than after elected because the Subcommittee felt the public may be interested at the time the person ran for state office.

**Mr. Petesch** explained the Subcommittee amended the reporting requirements to reflect more accurately the statute authorizing the D-1 form that the Commissioner of Political Practices had adopted. The Subcommittee decided the form was broader than the existing statute and amended the statute to be more in line with the form. They added some reporting requirements to the current statutes which were business entities from which the value received was greater than \$10,000 or from which the person received 20% or more of their income. They required the disclosure of a directorship in an entity in which the individual or a member of the individual's immediate family was an officer or a director whether or not the entity was organized for profit. They took the financial provision and added a public interest disclosure. For example, if a person were a director in the Montana Association of Electrical Contractors, they would be required to report that, even if it was a nonprofit entity.

**Greg Petesch** explained the amendment essentially reflected the Subcommittee's action but removed the designation of amounts of income from sources. It just required the reporting of employment or business from which the income was received without requiring disclosure of the percentages or amounts. The other items contained in the Subcommittee's disclosure requirements would be maintained. He mentioned the Subcommittee clarified real property could be described by general description, instead of a full legal description of the property. A person could say a ranch in Chouteau County.

**CHAIRMAN HARP** wanted to make it very clear that he was the person offering the amendment. He explained he could see some real problems in trying to define the value of \$10,000 or trying to tell an individual what 20% or more of his expected annual individual income or a person who owned 20% of some value. He knew it was discussed for some length in the Senate Republican group, particularly if a person were a rancher not knowing how their income might fluctuate from one year to the next. Also, trying to find out what those dollars would be to clarify if in fact correct information was given. The Commissioner, at some point, would get access to income tax records to verify if somebody brought that issue up. He stated with the amendment the language would be very close to the Subcommittee's without the percentages and dollar amounts. He noted the other day they had a public employee that came and spoke who had a problem with this section. He didn't think it was just the private sector who had a problem with it. He stated he had a very personal problem with this and he wanted it very clear and the record to show that this was a concern that he had. People who owned small businesses risked a lot of time to dedicate themselves to public service to serve in the legislature. He had seen a lot of good legislators

lose businesses while serving in the Legislature. He stated the provision could hurt people who wanted to serve in the Legislature in the future. He stated it had no effect on him because his service in the Legislature was coming to an end. He was thinking more of the people who would serve behind him to make sure that they did get a citizen's legislature and that people weren't offended by the reporting amounts. This was the only part he felt fairly strongly about, and wanted to be sure the record stated that.

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**REP. ROSE FORBES** agreed with **CHAIRMAN HARP**. As a business owner also, she knew the sacrifices that business owners made when they served and campaigned. She stated some of the wording was definitely a deterrent for people who were self employed. The intent was good but it actually did the reverse of what the intent was and deterred good people from wanting to get involved and serve.

**SEN. FRED VAN VALKENBURG** agreed with **CHAIRMAN HARP**, that a dollar amount, or even worse a percentage amount, could be a real problem for people to pursue office although it probably would be a problem for Republicans more than Democrats. He stated there was an important need to require people to disclose ownership, regardless of value, in business so they would have a disclosure as to each business, firm, corporation, partnership, or other interest which the member or a member of the individual's immediate family held an interest.

**CHAIRMAN HARP** stated when values were tied into, the values may tie into different types of trusts, mutual funds, or being more specific where the intent was to be more general.

**Greg Petesch** reported the Subcommittee had added the types of income. For example, stock ownership in excess of \$10,000 was different. If \$10,000 of IBM corporation was owned, a person would be required to report that but was it important to their type of business. There was a fine line that he was trying to clarify for the Committee.

**CHAIRMAN HARP** reiterated **SEN. VAN VALKENBURG'S** question of needing to expand the scope.

**SEN. VAN VALKENBURG** stated it certainly made it clearer. He insisted they needed some combination that was in the bill. **SEN. VAN VALKENBURG** told Commissioner Argenbright he was surprised to learn, in the course of a discussion, that there really was no statutory authority for the requirement on the D-1 form for the listing of ownership interests in various things such as stocks. He asked the Commissioner what his predecessor relied upon in asking for that information? **Commissioner Argenbright** stated the closest he could come was that the form was done by rule. He thought the form had been used for a long time and the

instructions were on the back of the form. **SEN. VAN VALKENBURG** wondered what the statutory authority was for the adoption of such a rule because he couldn't find it. **Commissioner Argenbright** stated that his staff and he had always considered that to be business disclosure. It was a business disclosure form and got to the question of what business interests people had. They had not required people to list where their salaries came from; that was not "business disclosure".

**Greg Petesch** stated the authority for the rule under the rule's history was the section they were amending. The Subcommittee's concern, when they started looking at the form, was that the rule appeared to be beyond the scope of the statute. The initial concern of the Subcommittee was what the people were already disclosing, even though it was in excess of what was statutorily contemplated and had been for years.

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**SEN. VAN VALKENBURG** said his concern about the issue was if it was something they had been doing, whether there was authority to require it or not, and they passed a provision out of Committee that did not require that anymore it would be perceived as weakening the current law. He stated they had enough problems with the whole business without being perceived as weakening current law.

**CHAIRMAN HARP** said if they looked at the current statutes the amendment would strengthen current law. He suggested the Committee might want to adopt the rule into statute as the Subcommittee did. He reiterated he had a particular problem with the percentages and dollar amount.

**SEN. VAN VALKENBURG** did not want to adopt the percentages and the dollar amount but he did want to adopt the sentence that said a person had to disclose each business firm, corporation, partnership, or other business or professional entity or trust in which the individual or individual's immediate family held an interest.

**CHAIRMAN HARP** said that was alright with him. His concern was the dollar amount and percentages because they could fluctuate from year to year.

**REP. MATT DENNY** agreed. The only problem he saw was, for example, he owned 13 shares of a company. That was a very small thing but he was listing it on his disclosure statement. Now all of a sudden he could be perceived as owning 10,000 shares because the form didn't list amounts. Did one share of a company count and if so, did mutual funds and similar items count. **CHAIRMAN HARP** stated the D-1 form indicated anything greater than \$1000 was to be disclosed. **REP. DENNY** stated perhaps they should have a threshold beyond which they reported.

**SEN. LINDA NELSON** reported the Subcommittee had discussed that issue and that was why they added the guidelines.

**CHAIRMAN HARP** asked why put down the amount of shares owned in the company. Anybody who had any lick of sense knew that ten shares wasn't going to influence anyone's decision making in the aeronautics business as far as Boeing went. **REP. DENNY** said that was what he would do but he didn't want to make it overly cumbersome for things that didn't matter.

**Greg Petesch** said the Subcommittee had talked a little bit about the issue. He noted disclosing ten shares was an absolute dollar value disclosure also, if anyone wanted to look it up. **REP. DENNY** said if the statute didn't require disclosure of the ten shares, it would be up to the individual.

**CHAIRMAN HARP** stated there was no magic number, it was the general belief that he either agreed with a threshold or he didn't. It was just like making a bill retroactive or deciding what a tax measure would take effect, there were always going to be winners and losers. He didn't have any particular problem with **SEN. VAN VALKENBURG'S** proposal of adding to the disclosure amendment.

**SEN. NELSON** wondered where the threshold would be and what would they use for a guideline.

**CHAIRMAN HARP** stated the way he read the bill was, if a person had any interest it would be disclosed.

**SEN. VAN VALKENBURG** stated that under **CHAIRMAN HARP'S** amendment there was no dollar amount on real property. The Subcommittee had \$1000 on real property.

**SEN. HARP** stated he was getting away from that. They had no problem disclosing what their interests were - both real, personal and financial. They were just not going to get into the dollar amount and the percentages. There had to be something that was private.

**Motion/Vote:** THE MOTION WAS MADE TO ADOPT THE AMENDMENT. The motion CARRIED 7-1 with **SEN. NELSON** VOTING NO.

**CHAIRMAN HARP** asked if the Committee wanted to discuss the cost to administer the bill for public employees in regard to the Subcommittee's educational provision.

**Greg Petesch** said the personnel division of the Department of Administration supplied an estimate of the costs. The estimate included the adoption of model rules and the printing of a brochure summarizing the Ethics Code for all public employees. The total cost of that program would be \$4015, excluding staff time. **CHAIRMAN HARP** asked if there was an estimate on the cost of staff time and did the costs include just new state employees.

**Greg Petesch** stated the model rules would apply to everyone. They had talked about orientation that could include the information for new hires but the pamphlet would be provided for everyone. **Greg Petesch** noted that the assumptions in the last paragraph were correct; this would not cover local government employees or nepotism statutes because that was a somewhat different issue.

**SEN. VAN VALKENBURG** asked if the estimate included the cost for individual departments to adopt rules that would be specific to the department. **CHAIRMAN HARP** noted that each department may have its own unique set of circumstances as far as ethical procedures or interests.

**Greg Petesch** stated SB 115 dealt with advisory opinions in Section 16. Existing law did not cover that issue. The Subcommittee provided two types of advisory opinions. Each agency would provide a mechanism for the employees of that agency to request opinions from the agency concerning ethical issues. The Subcommittee Bill also provided state officers, who would be department heads and elected officials, could request advisory opinions from an Ethics Commission, attached to the Commissioner of Political Practices Office. State employees concerned with the conduct of a state official could request opinions from them so that they wouldn't be going to their own agency if they were concerned about what their boss was doing. SB 115 had all of the advisory opinions coming through the Ethics Commission.

**CHAIRMAN HARP** asked how hard it would be for the employees of that agency, that were in question, also issuing these advisory opinions. He stated the Subcommittee did that because they excluded the Commission from SB 115 but practically speaking, how would that work for a state employee. **Greg Petesch** stated the concerns expressed over that issue were that they would get different opinions between agencies. There might be political influence on the opinions depending on who the head of the agency was.

**CHAIRMAN HARP** asked if the Committee wanted to leave it as recommended by the Subcommittee. If they excluded it, what avenue would state employees have as far as getting advice to determine what they should or should not do. That was the purpose behind the provision.

**REP. DENNY** asked if there was an estimated cost for the Advisory Committee. **Greg Petesch** said the Commission was included in the Subcommittee Bill, but the Subcommittee did not get a specific fiscal amount because the bill was never adopted anywhere. The idea expressed in the Subcommittee was that they greatly reduced the cost of this by limiting who would have access to it and the Subcommittee thought they could probably do some of this through conference calls. The Committee would not have to meet frequently. He stated the Subcommittee's effort was to mitigate the fiscal cost of SB 115.

**REP. VICKI COCCHIARELLA** asked about the section that was unconstitutional. **Greg Petesch** explained that section provided that the Secretary of the State may provide advisory opinions on ethics. Secretary of State Waltermire attempted to create a Commission on Ethics and Judge Bennett, in a District Court Decision, in Lewis & Clark County, struck down that section as overly broad. It was not enforceable and there was no methodology for opinions. Judge Bennett had characterized the statute as vague and wished the Secretary of State good luck.

**REP. COCCHIARELLA** asked how far SB 115 had moved from the statute that was struck down. She wondered if it would face a court challenge.

**Greg Petesch** stated advisory opinions were a major portion of SB 115 and the Commission was a standing commission with a full time staff. There was a great deal of guidelines for ethic opinions, including what was confidential and what could be disclosed.

**SEN. NELSON** said if there was going to be advisory opinions at all, what the Subcommittee Bill contained was about as minimal as it could get.

**SEN. VAN VALKENBURG** stated they should not have advisory opinions. They should have Ethical Rules and people should either obey them or be subject to enforcement for their failure to obey them. There wasn't an advisory opinion as to all kinds of other things, particularly criminal law. A person couldn't call up the Advisory Commission and find out if they did this were they stealing from somebody that day or not.

**CHAIRMAN HARP** explained if they excluded the opinions, they were just assuming that the rules and the statutes would address the issues regardless of the advisory opinions.

**SEN. VAN VALKENBURG** stated there was a cottage industry out there that wanted to get involved in telling them all how to behave ethically and that industry was counting on the fact that they could go to the Ethics Advisory Commission to seek advice.

**REP. DENNY** suggested they reconsider a provision to allow people to consult the Commissioner of Political Practices.

**CHAIRMAN HARP** asked if the Commissioner received many calls. **Commissioner Argenbright** said they got hundreds of calls relative to political practices during campaigns and, given the circumstances, he would say that they were looking at a lot of additional work and they would be creating a monster in the Commissioners Office. **REP. DENNY** contended having an Ethics Advisory Commission attached to the Office of Political Practices would be more of a monster.

**SEN. VAN VALKENBURG** said some additional personnel would be needed in the Commissioner's Office or wherever the enforcement

was placed. It could not be done with existing personnel. He had considerable doubt it was necessary to create the Ethics Advisory Commission unless there was more evidence of ethical violations.

**CHAIRMAN HARP** referred to Initiative 118, dealing with changes in campaign laws, and asked Commissioner Argenbright if HB 2 provided additional personnel to his office. **Commissioner Argenbright** replied his request, which was before the Committee, to implement Initiative 118 was cut in half so apparently there was staff attached to implementing. I-118 was going to double the number of election cycles his office dealt with. They were picking up additional responsibilities in the area of surplus campaign funds usage and were looking at additional projected amounts of record keeping for political party contributions. The additional responsibilities would strain existing staff.

**CHAIRMAN HARP** suggested Commissioner Argenbright tell the Senate Finance and Claims Committee the Ethics Select Committee had just passed out a bill and after reviewing it he would need one additional FTE to comply with the new law. **Commissioner Argenbright** said he had given a good deal of thought to the ethics provisions and the minimum needed staff would be a full time attorney. He thought the Commissioner's Office, when it was established back in the seventies, had a full time attorney and some support. He stated they were going to have significant increases in responsibilities. **CHAIRMAN HARP** noted with he got one additional FTE, now he would have two. Assuming they would take the advisory opinion out and disclosures were pretty well taken care of, most of the major items had pretty well worked themselves out, he wondered if one additional FTE, an attorney, would satisfy the ethics recommendation.

**Commissioner Argenbright** said when an attorney was obtained they would need support for that attorney as well. **CHAIRMAN HARP** said he had two out of I-118, what were they for. **Commissioner Argenbright** said they were essentially the people who would do the record keeping. They would check the reports and do the filing. He said his worst fear was that the responsibilities were going to be there without the resources.

**REP. DENNY** asked if the lawyer would be available for ethical advisory opinions. **CHAIRMAN HARP** said if they included opinions, Commissioner Argenbright would be asking for three people. They had eliminated about \$50,000 in cost by taking that one section on opinions out. **REP. COCCHIARELLA** asked if the attorney would be handling opinions. **Greg Petesch** stated that they adopted an informal contested case procedure in the Commissioner's Office for alleged violations of use of public resources for political activities. He was assuming the attorney would be the hearing officer for those contested cases. That was one thing they had added to the Commissioner's Office.



**CHAIRMAN HARP** asked if the rest of it was pushed onto the County Attorney. **Greg Petesch** stated that was true for the local government people.

**SEN. AL BISHOP** said the advisory opinion was a horrendous amount of expense. He supported taking it out.

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**Motion/Vote:** THE MOTION WAS MADE TO STRIKE ADVISORY OPINIONS FROM STATE AGENCIES ON ETHICAL ISSUES. The motion CARRIED UNANIMOUSLY.

**Discussion:** **REP. DENNY** asked if the motion eliminated the Ethics Commission? **CHAIRMAN HARP** stated the Commission had never been included in the Committee's Draft Bill.

**SEN. VAN VALKENBURG** thought **REP. DENNY'S** question raised an important point. He agreed, by virtue of what they just did, they had stricken the Commission. He stated they needed to discuss the issue of how the provisions would be enforced and how they would leave all the enforcement in the hands of one individual - the Commissioner of Political Practices. He thought that was a proper role for an Ethics Commission. He stated it could be a very inexpensive board that would meet four times a year at the most. He noted from time to time people would disagree with what the Commissioner's decisions and as in an quasi-judicial setting, they ought to have a chance to go to a higher body, an Ethics Committee.

**CHAIRMAN HARP** asked if that person couldn't go to the Legislature every two years through their elected official if there was a problem. He warned creating the Commission would drive up costs.

**REP. FORBES** asked if the Commissioner made a ruling an individual didn't agree with who would they appeal to. **Commissioner Argenbright** noted there was always the appeal to the court system.

**CHAIRMAN HARP** stated if it were the District Court that would be a great expense.

**SEN. VAN VALKENBURG** stated if it were an ethics decision, that was the end of the line. It wouldn't go into the court system from there. **REP. RAY PECK** argued it would if definite harm could be shown.

**CHAIRMAN HARP** stated that Commissioner Argenbright had said if a person did not agree with his decision they could go to District Court.

**SEN. VAN VALKENBURG** asked if Commissioner Argenbright was referring to the Administrative Procedure Act appeal process.

**SEN. VAN VALKENBURG** stated his suggestion was not an Advisory Committee; it was an appeal. He clarified it was an Ethics Commission that had the authority to overrule the Commissioner of Political Practices.

**REP. COCCHIARELLA** favored the proposal. She stated there were groups that had decisions made against them and as a result they went to the press and raised hell with whoever the Commissioner was at the time, because they didn't have another step to take. She stated providing a place to reaffirm the initial decision was good for the process and would help eliminate those people who participated in the process from making someone else the target of their frustration or anger.

**REP. PECK** asked Commissioner Argenbright what he would make a decision on. Would it be written submissions only? **Commissioner Argenbright** replied they worked with the Attorney General's Office and used an investigator. He used one of the attorneys to assist in Statements of Findings. **REP. PECK** asked if it was a thorough evaluation of the complaint? **Commissioner Argenbright** replied that was correct.

**REP. DENNY** asked who would have standing to appeal. **SEN. VAN VALKENBURG** said the Commission could decide who would have standing. He suggested, at a minimum, they give someone who had a ruling that was adverse to them the right to appeal. The Ethics Bill dealt with civil penalties and the Commissioner was imposing a civil penalty or the Commission could make the Commissioner merely recommend a decision.

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**Garth Jacobson, Secretary of State's Office**, stated basically what **SEN. VAN VALKENBURG** was recommending made perfect sense. They would be splitting the prosecution from the judiciary and that was the basic model they had for the judicial system. There was prosecutory discretion, whether or not to pursue some sort of claim against somebody or decide what to do and that was covered with Commissioner Argenbright's process of evaluating claims on the political side. He stated it made perfect sense to have an Ethics Commission that met infrequently. He strongly recommended a political balance in the Commission to eliminate the problem of political opinions.

**CHAIRMAN HARP** noted the Subcommittee came up with an Ethics Advisory Commission of five members. **Greg Petesch** explained the makeup of the Commission was modeled on the Commission in SB 115 which was modeled on the Reapportionment Commission.

**CHAIRMAN HARP** reported it identified who those people may or may not be. **REP. PECK** noted it didn't say much about their authority.

**Greg Petesch** said the Commission, as established in the Subcommittee, was for the limited purpose of giving advisory opinions to state officers. If the Committee wanted the Commission to do something else, the structure was there. The bill restricted political activities and lobbying by Commission members.

**REP. DENNY** stated if they were going to have a Commission he favored an Appeal Commission which only met when someone disagreed with the Commissioner's Decision.

**CHAIRMAN HARP** asked if they were to go with a three member Appeal Commission that met three or four times a year would they need additional staff. He had to defend this at some point in the process and if he supported the bill, then he had to fund it.

**SEN. VAN VALKENBURG** asked what kind of staff the Board of Health and the Board of Natural Resources had. **Greg Petesch** replied the Board's generally contracted with agency legal services for their staffing needs from the Department of Justice. They had the same review function that **SEN. VAN VALKENBURG** suggested. A decision of the department could be appealed to the Board.

**Commissioner Argenbright** stated he had not dealt with the ethics issues and when they started talking about the kinds of questions that were going to be coming, he thought they were extremely important. Somebody who was merely charged with some ethical violation could have their career wiped out. It was extremely important and it was difficult for him to say how his staff could handle this.

**SEN. BISHOP** said some of the matters had to be dealt with quickly. They would not be worth anything to anybody three or four months down the line. He wondered how the Committee planned to accomplish that without spending some money. **REP. DENNY** said under this model the Commissioner would issue the opinion applying the immediacy that was necessary. **SEN. BISHOP** stated the appeal process would place a hold on the opinion like any appeal.

**CHAIRMAN HARP** wondered if there was another way to use the hearing officer or anyway they could contract from the Department of Justice or the Department of Administration for an attorney on an as needed basis.

**Commissioner Argenbright** reported that was what they currently did. He had to ask for a supplemental because of the number of complaints over the last election cycle and given the additional responsibilities it seemed it would be very easy to justify a full time attorney.

**Deborah Smith, Common Cause**, stated one cost savings mechanism they could employ was to have an appeal assigned to a review of the records created before the Commissioner so they would have

the petition of the person asking about an ethics violation and then the Commissioner's reasoning and decision and then if that person wanted to appeal they would go to the Ethics Commission based on just those documents and perhaps they could avoid the need for lawyers. It could be the Commission who had legal questions of whether there was a violation but at least there would not be a trial of all the issues again.

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**Greg Petesch** noted, depending on what the Committee decided to do with the issue, it may drive what they did with civil or criminal penalties in some other sections of the Subcommittee draft; they were related issues. The misuse of public time and facilities for political purposes was the one area they addressed for enforcement and they may need to reconsider it.

**CHAIRMAN HARP** stated they would leave the enforcement side alone until the next meeting. He stated the Committee agreed on having a Standing Ethics Committee in both the House and the Senate allowing the legislators to disclose prior to voting.

**Greg Petesch** stated it would not be a statutorily Standing Committee. It would be a requirement to establish the Committees through the legislative rules.

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**Greg Petesch** said the Subcommittee had amended the existing laws to remove references to fiduciary duties and how the former provision was enforced to track the constitutional directive to provide for a Code of Ethics preventing conflict between public duty and private interest. Wherever fiduciary duty existed the Subcommittee substituted public duty. Since public duty would no longer be enforced as a trust, wherever the term financial interest appeared they substituted private interest and defined that in the manner that financial interest was defined. That was something the Committee could adopt. It conformed the statute to the Constitutional Directive.

**THE COMMITTEE ADOPTED THAT PROVISION OF THE SUBCOMMITTEE'S BILL.**

**Greg Petesch** stated the Subcommittee wrote the definition of public employee to clarify what was a confusing definition of existing law. He noted **SEN. VAN VALKENBURG** had suggested the Committee make a determination whether they wanted to treat someone under contract as an employee or not. The Subcommittee voted to treat them as an employee.

**CHAIRMAN HARP** noted he had some concern with that as did **SEN. VAN VALKENBURG**. He reported he had been told in a meeting that definition was existing law and maybe that wasn't as clear as he thought it was. **Greg Petesch** agreed the existing definition was ambiguous and confusing.

**CHAIRMAN HARP** said there were many people, considered private sector or a private interest group, who could be included as a public employee contracting with the state that would fall under both those definitions at the same time.

**SEN. VAN VALKENBURG** said adding the definition of contracted services to the scope of the definition of employee, someone who was under contracted services was not going to work. There should be an Ethical Code for those who were under contracted services but it should not be the same one that applied to public employees.

**REP. COCCHIARELLA** stated a public employee and a person under contract shouldn't have a different standard. Why should contractors be able to do whatever they wanted and not have to comply with the same code as someone sitting next to them or the same code they had worked under before they retired and came back under contract.

**REP. DENNY** stated that this would only apply to the contractor's public duty. If it were only 10% of their time they still performed a public duty or had a public duty.

**REP. FORBES** stated the definition should be left in.

**SEN. VAN VALKENBURG** noted if they left it in then it should be changed to say "a person under contract to the State" rather than "an employee under contract to the State".

**Greg Petesch** noted they had deleted the definition of substantial value that was in the draft also.

**SEN. VAN VALKENBURG** stated that he was not present for the entire presentation by **Jeff Miller, Department of Revenue**, regarding an unethical act of failing to file an income tax or any other requirement like that.

**Jeff Miller** read from the Federal Code of Ethics and referred to employees being required to satisfy, in good faith, their obligation as citizens including all justified financial obligations especially those of federal, state and local taxes that were imposed by law. The kind of language that they talked about contained the same general notion that people were required to become aware of and file all taxes that were due. He offered an amendment, **EXHIBIT #1**.

**Greg Petesch** stated that the existing tax confidentiality statutes prohibited the disclosure of individual return information. The disclosure under this subsection would be limited to whether someone had filed.

**REP. COCCHIARELLA** asked if the **Department of Revenue** was going to take the list of public employees and public officials and check to see if all public employees and public officials had filed

their tax returns. Who would the list go to when the Department of Revenue was done. **Jeff Miller, Department of Revenue**, reported it was their present practice to cross reference public employee lists to make sure they filed. It was a condition of employment in the **Department of Revenue**. In the event that they found one that did not file they followed normal practice and notified the person informing them they had information that the person should have filed and asked why they didn't. The point of it was, that the employees were allowed due process and if the Department got no response to the solicitation they sent another one. If they got no response to that solicitation, they estimated based on the best information, generally federal information. In the event that the Department could not collect or secure a return in response to the estimate, that in turn would be handled by due process. An initial notice, a final notice, and if the final notice was not responded to, they would file a warrant and at that point if they had not gotten an adequate response and satisfied the debt, it was then a matter of public record. At that point, the department would use the ethics provision to file a complaint against a public employee or elected official. In every instance due process was paramount and they would continue to follow that.

**REP. FORBES** asked if the Department was referring to an individual's personal tax return or their business tax returns. If a person was a stockholder in a corporation of which they were employed were they responsible for the actions of the corporation. **Jeff Miller** replied they would not be responsible unless the person was entrusted with both the authority and the responsibility of filing payroll taxes. In that instance the law was presently written to say that a person could be held individually liable. But in the scenario that **REP. FORBES** described, a person could not be held directly accountable or responsible. The Department was referring to the person's obligation to understand their particular filing obligations.

**REP. COCCHIARELLA** asked if that was cause for firing a person in the Department of Revenue and was that what happened to the general public. **Jeff Miller** stated that he would fire the individual. He didn't know if that happened in the general public.

**SEN. VAN VALKENBURG** said that if a person worked in a department store and ran up hundreds of dollars on their credit card at that store and didn't pay the bill it was likely the department store would decide they no longer needed that employee.

**Jeff Miller** stated it was an issue of public trust and that was the very definition of where the ethics bill started. A person employed in the arena, whether they were elected or employed, must be held to a high standard, maybe a higher standard. The public's tax dollars were how public employees got paid and the people were paying on a voluntary basis. He noted how important that voluntary compliance was and the public trust in that

process. 95% of the taxes he collected were brought in because people were willing to pay on the confidence that their neighbor was paying. That should not be undermined and if it was then they would play hell to get the confidence back.

**REP. COCCHIARELLA** said if the Committee was going to adopt the income tax filing provision then she would recommend also adding the requirement that a public employee or public official must be up to date on their child support payments. She stated that was equally, if not more, important than making sure a person was paying their taxes.

**Jeff Miller** stated the proposed amendment talked about filing the return, not necessarily being up to date on payment. In instances where people were not able to pay, the Department set up payment arrangements and charged interest. That was a business reality; not everybody could afford to pay when things were due so they tried to work with those people. He stated **REP. COCCHIARELLA** made a good point. When they start drawing lines, where do they draw them and where do they stop. He admitted there were other things that were very serious. He submitted that the income tax filing was something that applied to everyone.

**REP. DENNY** noted the definition of public employer was confusing. He asked were legislators fell in the Subcommittee Bill. Were they state officers or public employees. He noted there were a couple of paragraphs where legislators were neither public officials or public employees and therefore the amendment would exempt legislators from having to file. **Greg Petesch** explained when the Subcommittee dealt with a legislator, they specifically articulated a legislator. Under the existing definition of public officer and the existing definition of state officer, legislators were not included.

**REP. DENNY** stated if they adopted the amendment they should have it apply to legislators also.

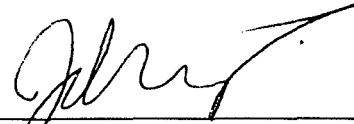
**REP. COCCHIARELLA** moved to include a child support requirement.

**SEN. ECK** stated there were many laws on child support. She suggested perhaps child support should be something required to be disclosed. **SEN. VAN VALKENBURG** noted only officials were required to file disclosure forms, public employees were not.

**REP. COCCHIARELLA** stated she would drop the child support issue.

ADJOURNMENT

Adjournment: CHAIRMAN HARP adjourned the meeting at 7:03 p.m.



SEN. JOHN G. HARP, Chairman



FREDELLA D. HAAB, Secretary

JGH/fdh



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Insert: "NEW SECTION. Section 10. Filing tax returns. (1) It is the responsibility of public officials and public employees to determine on an annual basis whether they are required to file tax returns with the state of Montana and to file a complete return in a timely manner, if required.

(2) The department of revenue shall provide to the commissioner of political practices information necessary to determine compliance with this section, whether or not the information is confidential. The commissioner of political practices shall keep the information confidential unless necessary to prove that a violation of this section has occurred."

Renumber: subsequent sections

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LCethic

\*\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of \*\*\*\*\*

A Bill for an Act entitled: "An Act ."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-104, MCA, is amended to read:

"2-2-104. Rules of conduct for ~~all~~ public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached ~~his fiduciary~~ the actor's public duty. A public officer, legislator, or public employee may not:

~~(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or~~

~~(b)~~ accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

~~(i)~~(a) ~~which that~~ would tend improperly to influence a reasonable person in ~~his~~ the person's position to depart from the faithful and impartial discharge of ~~his~~ the person's public duties; or

~~(ii)~~(b) ~~which he that the person~~ knows or ~~which that~~ a reasonable person in ~~his~~ that position should know under the circumstances is primarily for the purpose of rewarding ~~him~~ the person for official action ~~he has~~ taken.

(2) An economic benefit tantamount to a gift includes

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without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of ~~such~~ the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(4) (a) Except as provided in subsection (4) (b), a legislator, public officer, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the legislator, public officer, or public employee reimburses the public entity from which the employee is absent for it's costs in performing the function from which the legislator, officer, or employee is absent; or

(ii) the legislator, public officer's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (4) (a) does not prohibit a legislator, public officer, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment."

{Internal References to 2-2-104: None.}

Section 2. Section 2-2-105, MCA, is amended to read:

"2-2-105. Ethical principles requirements for public

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officers and public employees. (1) The ~~principles~~ requirements in this section are intended as ~~guides to~~ rules of conduct, and ~~do not constitute violations as such~~ constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) A public officer or public employee ~~should~~ may not acquire an interest in any business or undertaking ~~which he~~ that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by ~~his~~ the officer's or employee's agency.

(3) A public officer or public employee ~~should~~ may not, within ~~the~~ 12 months following the voluntary termination of ~~his~~ office or employment, obtain employment in which ~~he~~ the officer or employee will take direct advantage, unavailable to others, of matters with which ~~he~~ the officer or employee was directly involved during ~~his~~ a term of office or during employment. These matters are rules, other than rules of general application, ~~which~~ he that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which ~~he~~ the officer or employee was an active participant.

(4) A public officer or public employee ~~should~~ may not:

(a) perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when ~~he~~ the officer or employee has a substantial ~~financial~~ personal interest in a competing firm or undertaking;  
or

(b) disclose or use confidential information acquired in the

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course of official duties in order to substantially further the officer's or employee's private interests."

{Internal References to 2-2-105: None.}

**Section 3.** Section 2-2-111, MCA, is amended to read:

"2-2-111. **Rules of conduct for legislators.** Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached ~~his fiduciary~~ the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except ~~his~~ the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for ~~himself~~ the legislator or solicit a contract for ~~his~~ the legislator's services by the use of ~~his~~ the office."

{Internal References to 2-2-111: None.}

**Section 4.** Section 2-2-112, MCA, is amended to read:

"2-2-112. **Ethical principles requirements for legislators.**

(1) The ~~principles requirements~~ in this section are intended only as ~~guides to rules for~~ legislator conduct, and ~~do not constitute violations as such~~ constitute a breach of the public trust of legislative office.

(2) When a legislator ~~must~~ is required to take official action on a legislative matter as to which ~~he~~ the legislator has a conflict created by a personal or ~~financial~~ private interest which ~~that~~ would be directly and substantially affected by give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative

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matter, ~~he should consider disclosing or eliminating the~~  
legislator shall disclose the interest creating the conflict ~~or~~  
~~abstaining from prior to participating in~~ the official action,  
as provided in subsections (4) and (5) and the joint rules of the  
legislature. In making ~~his a~~ decision, ~~he should the~~ legislator  
shall further consider:

(a) whether the conflict impedes ~~his~~ the legislator's  
independence of judgment;

(b) the effect of ~~his~~ the legislator's participation on  
public confidence in the integrity of the legislature; ~~and~~

(c) whether ~~his~~ the legislator's participation is likely to  
have any significant effect on the disposition of the matter; ~~and~~

(d) whether a pecuniary interest is involved or whether a  
potential occupational, personal, or family benefit could arise  
from the legislator's participation.

(3) A conflict situation does not arise from legislation or  
legislative duties affecting the entire membership of a  
profession, occupation, or class.

(4) ~~If a~~ A legislator ~~elects to~~ shall disclose the an  
interest creating the a conflict, ~~he shall do so~~ as provided in  
the joint rules of the legislature. A legislator who is a member  
of a profession, occupation, or class affected by legislation is  
not required to disclose an interest unless the class contained  
in the legislation is so narrow that the vote will have a direct  
personal impact on the legislator. A legislator may seek a  
determination from the appropriate committee provided for in  
[section 14].

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(5) A legislator has a responsibility to the legislator's constituents to participate in all matters affecting the constituents. A legislator concerned with the possibility of a conflict should briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (4). The legislator shall vote on the issue after disclosing the interest."

{Internal References to 2-2-112: None.}

Section 5. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for state public officers and state public employees. (1) Proof of commission of any act enumerated in ~~this section~~ subsection (2) is proof that the actor has breached ~~his fiduciary~~ a public duty.

(2) A state public officer or a state public employee may not:

(a) use state public time, facilities, equipment, supplies, personnel, or funds ~~or equipment~~ for ~~his~~ private business purposes;

(b) engage in a substantial financial transaction for ~~his~~ the officer's or employee's private business purposes with a person whom ~~he~~ the officer or employee inspects or supervises in the course of ~~his~~ official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit

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from ~~his~~ the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any ~~state~~ agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which ~~he~~ the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom ~~he~~ the officer or employee regulates in the course of ~~his~~ official duties without first giving written notification to ~~his~~ the officer's or employee's supervisor and department director.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for any political or campaign activity persuading or affecting a political decision unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of the elected public officials, the official's staff, or the legislative staff in the normal course of their duties.

(b) Subsection (3) (a) does not prohibit an elected public official from issuing public statements concerning matters within the scope of the official's office. However, a document that is published pursuant to this subsection (3) (b) and that is aimed at



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supporting or opposing a political committee, a candidate, or a ballot issue must include a written statement disclosing the public costs incurred to produce the document. The statement must meet the specifications described in 18-7-306, and the costs must be estimated based on the factors listed in 18-7-307. Documentation of the cost of publication must be filed with the commissioner of political practices.

(4) (a) A state employee shall notify the employee's immediate supervisor that a potential conflict of interest exists when:

(i) an organization of which the employee is a member is involved in a proceeding before the employing agency that is within the scope of the employee's job duties; or

(ii) 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.

(b) The employee's supervisor shall make the disclosed information available to an interested person upon the person's request.

(5) A state officer or state employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization of which the officer or employee is a member while engaged in performing the officer's or employee's job duties.

(3)(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the

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provisions of subsection (2)(e) if his participation is necessary to the administration of a statute and if he the person complies with the voluntary disclosure procedures under 2-2-131.

(4)(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he the member is also a full-time state public employee.

(8) A person alleging a violation of this section by a state officer or state employee may bring an informal contested case proceeding, as provided in Title 2, chapter 4, part 6, before the commissioner of political practices. If the commissioner determines that a violation has occurred, the commissioner may impose a civil penalty of not less than \$50 or more than \$1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing agency discipline the employee. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur. If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award costs and fees to the prevailing party.

(9) A local government officer or employee violating this section is subject to a civil penalty of not less than \$50 or more than \$1,000.

(10) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by

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imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under subsection (8) or (9) does not preclude an action under this subsection."

{Internal References to 2-2-121: None.}

Section 6. Section 2-2-302, MCA, is amended to read:

"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions -- publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days; ~~or~~

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or

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commission or the department head to whom ~~he~~ the person is related assumed the duties of the office;

(e) the employment of election judges; or

(f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located."

{Internal References to 2-2-302:  
49-2-303x            49-3-201x}

-END-

{Gregory J. Petesch  
Director, Legal Division  
Montana Legislative Council  
(406) 444-3064}

DATE March 20, 1995

SENATE COMMITTEE ON Ethics

BILLS BEING HEARD TODAY: merging of all bills

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Chris Imhoff	League of Women voters of MT	SB 115 SB 136		
Ed Argonbright	Can Pol Practices			
J.V. Bennett	Mont PIRG	All		
Debbie Smith	Common Cause	~		
Don Waldron	MREA	All		

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY