

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### JOINT COMMITTEE ON ETHICS

**Call to Order:** By CHAIRMAN JOHN G. HARP, on March 22, 1995, at 4:30 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:	Merging of Ethics Bills into SB 136
Executive Action:	SB 136 DO PASS AS AMENDED
	SB 362 TABLED
	HB 410 TABLED
	SB 115 TABLED
	HB 571 TABLED

**Discussion:** CHAIRMAN JOHN HARP asked if the Committee had a chance to look at the amendment to the local government law enforcement.

**REP. VICKI COCCHIARELLA** stated she wanted the record to show, in regard to page 5--reimbursement of salaries, that they were not taking away health insurance benefits. All that was required under that section was that reimbursement be made to address the cost issue involved. Several people had expressed concern to her about the health insurance and other benefits.

**Greg Petesch** stated subsection 4, bottom of page 5, top of page 6, applied only to salaries. Subsection 4 made it clear that the public and the people may not receive salaries from two public entities. The amendment did not address benefits, retirement participation, or anything other than salaries.

**CHAIRMAN HARP** stated, in regard to concerns about the local government level of enforcement, they had found a tentative solution to address concerns about frivolous complaints and concerns about the public being able to bring complaints. He proposed to bring in a local government three member panel to review complaints and violations that may be in disagreement with the county attorney or appeal to the county attorneys.

**Greg Petesch** explained the three member panel was entirely optional for local governments. If they chose to use it, it would be a screening citizen group to refer to the county attorney.

**REP. RAY PECK** asked if they chose to use the panel would that create another step between the county attorney and the complaint. **Greg Petesch** said county jurisdictions opting for the screening panel could possibly keep some frivolous or harassing complaints from being brought to the county attorney's office and relieve some of the burden off the county attorney.

**SEN. FRED VAN VALKENBURG** suggested they specify the county attorney would bring the action to district court. It was a serious enough event that it should be heard in a court of record--district court.

**REP. MATT DENNY** stated if a citizen brought a complaint to the panel and that panel did not refer the complaint to the county attorney, the county attorney would have never had the opportunity to decline to bring the complaint to court. Therefore, would the citizen not have the opportunity to bring civil action.

**Greg Petesch** stated that subsection 3 did not say that they could prohibit the person from going to the county attorney. It simply said that in a jurisdiction that had a screening panel a person would have to go to the panel before going to the county attorney. If the panel felt it was justified and the panel recommended it to the county attorney, he would likely pursue it. If he didn't, he knew three citizen had already looked at it and did not think anything was wrong. It was one of the ways to take some of the effort off the county attorney if the local government chose to do so.

**SEN. VAN VALKENBURG** asked **Greg Petesch** to insert the definition of local government.

**Greg Petesch** stated it could be added and he had considered it. The rest of the bill which addressed a public officer and

employee, referred to any subdivision of the state; that was about as broad a definition as there was. That could be a mosquito control district, rodent district, conservation district, etc. He suggested if they were going to adopt that concept they needed to go into the section on page 12 and 13, concerning the enforcement for local government. On page 13 they would take out the remainder of the inserted first sentence and add a reference to the section on page 4 where they had added the new subsection 4 that clarified who state officers and employees were. For legislators it was subsection 15, and for local government officers and employees it would be in the new section. He asked what definition the Committee wanted to use.

*{Tape: 1; Side: 1; Approx. Counter: 10.6}*

**REP. PECK** suggested the definition should be broad. **Greg Petesch** suggested using incorporated cities, towns, counties, and school districts for this purpose. The county could handle all of the little districts that may be created. **REP. DENNY** asked if that would include the alternative forms? **Greg Petesch** said they would also include those.

**SEN. VAN VALKENBURG** stated ethics really didn't have anything to do with the law. Ethics was something that was a higher calling than the law. He had asked the University System to look at the working draft. He handed out letters prepared by **LeRoy Schramm, EXHIBIT 1**, who was the Chief Legal Counsel. On page 10, section 2 (a), a public officer or a public employee may not use public time, facilities, equipment, supplies, personnel or funds for the officers or employees private business purposes. Actually **Greg Petesch** made a change in there since the last draft of this bill. Previously it said for private business purposes and **SEN. VAN VALKENBURG** thought it should say for the officers or employees private business. That probably solved that particular problem. There were lots of times when the University System rented out facilities for private business purposes. In addition one of the things he was concerned about was the effect it would have on research projects that were done in connection with University Systems and private businesses. The other thing the University System was very much concerned about would apply to page 11 of the working draft. Public officers or public employees cannot use public time, equipment and supplies for any political or campaign activity persuading or effecting a political decision. The MSU Extension Service did a whole series of reports last year on the ballot issues. The Bureau of Business and Economic Research did polling, surveys and various research project that were often times directed at political issues. **REP. DENNY** noted, in the draft copy, it said unless the use was properly incidental to another capacity required. He suggest in a case like the local government center and the polling, the restriction wouldn't pertain. **REP. PECK** said he thought the concerned was with the word "aim". What if they just struck "aim at", Page 11 sub B. **SEN. VAN VALKENBURG** said they needed more than that. He wondered if the intention was to prohibit the University System from

basically advocating adoption of the 6 mill levy every ten years when it was out on the ballot.

**CHAIRMAN HARP** replied unless it was authorized by law. Currently that was the law. **SEN. VAN VALKENBURG** stated the law was that it had to be voted on every ten years and 1998 was when it was coming up for a vote again.

**CHAIRMAN HARP** asked if it was the U of M Foundation? **REP. PECK** replied the 6 mill levy was not supported by public dollars. It was foundation dollars. **SEN. VAN VALKENBURG** replied he was unsure. He suggested 3 (a) sub 2 be changed to properly incidental to another activity required or authorized by law such as the fund action of an elected public official, the official staff, or appointed body such as the Board of Regents.

**CHAIRMAN HARP** stated he didn't see any problems with the bill as it was written. This was a very sensitive area to one of the main purposes behind the bill. The Subcommittee did a pretty good job and they had changed the bill somewhat. He urged the Committee to leave the bill as it was.

**REP. COCCHIARELLA** asked if they could change the word "aim" to something like "solely intended to support or oppose"? **CHAIRMAN HARP** said it might make it clearer. **Greg Petesch** stated the sentence would read "and that supports or opposes a political committee or candidate". **REP. ROSE FORBES** stated many times they did not come out and say support or oppose but rather insinuated strongly. She stated that was why the word "aim" was used.

*{Tape: 1; Side: 1; Approx. Counter: 21.0}*

**REP. DENNY** stated the Subsection applied to the elected public official issuing public statements. **Greg Petesch** clarified the Subsection referred to a printed document.

**SEN. VAN VALKENBURG** asked if a television commercial would be considered a printed document. **REP. FORBES** suggested they should amend the bill and add "any type of advertising" so they couldn't do it on television either. **REP. DENNY** asked what the cost was for the Governor or OPI going on television and making a statement?

**REP. PECK** noted if it were in the scope of their official office that limited it down.

**CHAIRMAN HARP** suggested they frame the motion and the debate from the previous night. He informed **REP. PECK** they had an issue dealing with a civil matter and a criminal matter. **SEN. VAN VALKENBURG** wanted to exclude the criminal section out of the bill, page 12, subsection 9. The motion was still open.

**SEN. VAN VALKENBURG** stated they were creating confusion if they had alternative civil or criminal penalties. They didn't have a

great deal of evidence at that point that there were serious violations. He stated justified criminal penalties added an extra burden to enforcement to have to prove beyond a reasonable doubt that someone committed an offense and there would be additional costs associated with imposing jail sentences. They already had a number of criminal laws that covered the most important and serious violations that occurred like bribery, theft, and things of that nature. They did not need criminal penalties for ethics. Civil penalties, which include civil fines, were only subject to a burden of proof of a preponderance of evidence and did not involve jury trials, only judicial decision making or decision making by the Commissioner of Political Practices. That was the appropriate way of dealing with the enforcement.

**CHAIRMAN HARP** said there was a 4 - 3 vote on **SEN. VAN VALKENBURG'S** motion to remove the criminal penalties. He asked **REP. PECK** if he had any other questions.

**REP. PECK** asked to hear from the side who believed the criminal penalties should be left in. **REP. FORBES** stated it went back to why they were dealing with ethics legislation; the perception of the public. The public wanted them to come out with an Ethics Bill that had some meat in it, that sent a message if a person violated ethics they would have to pay. The more it was watered down, the more they were going to have outcry from the public when they were done.

**REP. PECK** asked **Greg Petesch** if the provision were removed, and a misdemeanor took place, would the prosecutor or the county attorney go to another section of the law that would have somewhat similar language? **Greg Petesch** replied in the enforcement mechanisms, amendment subsection 2, the last sentence, if the county attorney determined that the complaint alleged a criminal violation the county attorney shall bring criminal charges. The bill also provided, in the amendment, for state employees if the complaint filed with the Commissioner of Political Practices indicated a criminal violation he shall stay his action and refer it to the proper county attorney. If there was a criminal violation under current law, those things **SEN. VAN VALKENBURG** mentioned, then there were criminal penalties for them but not for just a violation of this part.

**REP. PECK** stated his vote would be to leave it in. He voted no on the motion. **CHAIRMAN HARP** stated that with a 4 - 4 vote the **MOTION FAILED**.

**CHAIRMAN HARP** explained the way the bill was drafted, at the request of the Joint Committee on Ethics, they could use a House Bill, Senate Bill or a Joint Committee on Ethics Bill. He knew that **SEN. LARRY BAER** had expressed some interest with his bill and he knew that **REP. FORBES** had some interest in ethics and had introduced a bill. He had no interest in carrying an ethics

bill. He asked if there was an interest between **SEN. BAER** and **REP. FORBES** to carry a bill in the Senate and in the House.

**REP. FORBES** stated a Committee Bill would be more appropriate.

**SEN. VAN VALKENBURG** stated he didn't think they could do a Committee Bill at that point. He noted they were beyond the time period where a Committee Bill could be requested.

**Greg Petesch** stated that was normally true but his understanding was that bills referred to that committee were excluded from the time frame.

**SEN. VAN VALKENBURG** stated his preference was to put their version into a House Bill that was sufficiently broad titled. The reason was it would have another hearing, pursuant to the agreement of the Senate leadership, in front of the Senate Judiciary Committee. That would take a little while to do, probably two or three days. If it passed the Senate it would go back to the House for concurrence of the Senate amendments to the bill and by then they would be getting down to the end of the session.

**SEN. BAER** suggested maybe **SEN. AL BISHOP** should speak but they had made a resolution in Senate Judiciary Committee and they all agreed, unanimously, they would recommend to the Joint Committee that **SEN. DOROTHY ECK** act as a joint sponsor to the bill, not cosponsors but joint sponsors, and present the bill to the Senate Judiciary Committee.

*{Tape: 1; Side: 1; Approx. Counter: 33.2}*

**REP. FORBES** asked if she could be a joint sponsor. **SEN. ECK** said the bill was their Committee Bill and she thought it was appropriate for one of the committee members to sponsor it. She stated she would be willing to do whatever they wanted her to do.

**CHAIRMAN HARP** noted **REP. FORBES'** Bill was incorporated into the Committee's Bill as was **REP. PAVLOVICH'S**.

**Greg Petesch** reported House Bills did not have broad titles as the Senate Bills did. If they chose one of the Senate Bills that had a broad enough title and the bills were both taken from Judiciary Committee and so the bill could be returned there immediately. That would expedite the process a little.

**SEN. BISHOP** stated the deal in the Senate Judiciary was that it was to be a Senate Bill and return to the Judiciary Committee. The vote had been unanimous.

**Greg Petesch** stated that the members of the Joint Committee who wanted to add to the sponsors could make the motion to add them and do the forms they normally did.

**CHAIRMAN HARP** asked how quick the committee's bill could be put together. **Greg Petesch** stated that he would, with whatever bill they chose, amend the title and strike everything after the enacting clause and the body of the Committee Bill would be inserted. It would essentially be a bill that looked like the draft and after the Senate Judiciary acted on it they would have a second reading copy in normal bill form.

**CHAIRMAN HARP** said they could then get the signatures on the bill at that time.

**Greg Petesch** stated they could get the add sponsor document done on a motion on the floor the following day. They could report the Joint Committee Bill out of Committee early the following day.

**SEN. VAN VALKENBURG** asked if the Senate Judiciary Subcommittee had used SB 136. **SEN. BISHOP** suggested they use **SEN. BAER'S** SB 136. **CHAIRMAN HARP** asked if it would reflect the work of the Subcommittee also. **Greg Petesch** said it would be a substitute bill since those bills all came to the Joint Committee.

**CHAIRMAN HARP** stated he hoped they could get **REP. PAVLOVICH**, **REP. FORBES**, and **REP. HARPER** to sign the Joint Committee's Bill.

#### EXECUTIVE ACTION ON SB 136

Motion/Vote: **REP. COCCHIARELLA** MADE THE MOTION TO USE SB 136 AS THE VEHICLE FOR THE JOINT COMMITTEE BILL. The motion CARRIED UNANIMOUSLY.

#### EXECUTIVE ACTION ON HB 362

Motion/Vote: **REP. FORBES** MADE THE MOTION TO TABLE HB 362. The motion CARRIED UNANIMOUSLY.

#### EXECUTIVE ACTION ON HB 410

Motion/Vote: **SEN. LINDA NELSON** MADE THE MOTION TO TABLE HB 410. The motion CARRIED UNANIMOUSLY.

#### EXECUTIVE ACTION ON SB 115

Motion/Vote: **SEN. VAN VALKENBURG** MADE THE MOTION TO TABLE SB 115. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 571

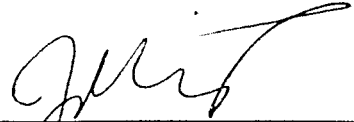
Motion/Vote: REP. COCCHIARELLA MADE THE MOTION TO TABLE HB 571.  
The motion CARRIED UNANIMOUSLY.

Discussion: CHAIRMAN HARP told REP. FORBES she should get a form because the bill had never been reported out of a committee. They could still have sponsors. He hoped REP. FORBES would carry the bill in the House.




ADJOURNMENT

Adjournment: CHAIRMAN HARP adjourned the meeting at 5:15 p.m.



SEN. JOHN G. HARP, Chairman



FREDELLA D. HAAB, Secretary

JGH/fdh



THE MONTANA UNIVERSITY SYSTEM

2500 BROADWAY

HELENA, MONTANA 59620-3101

(406) 444-6570 FAX (406) 444-1469

SL  
#1  
March 22, 1995  
SB 136

COMMISSIONER OF HIGHER EDUCATION

OFFICE OF LEGAL COUNSEL

March 22, 1995

Bob Frazier  
The University of Montana-Missoula  
Missoula, MT 59812

Dear Bob:

At your request I have reviewed the draft copy of the merged ethics bill dated 6:53 AM, 3-21-95. My comments follow the order in which the sections at issue appear in the bill.

- A. Page 5, Subsection 4(a). The prohibition that no public employee may hold two positions with overlapping hours is no doubt well intended and reasonable at first glance. However, some agencies might share an employee with another agency, each agency listing the employee on its job roster as a partial FTE, but the employee's work is not easily allocated hour by hour to one agency or the other. Such an arrangement might violate the literal wording of the statute. Also, with salaried public employees (rather than employees paid by the hour) the overlapping hours concept does not work. For example, if a city manager were salaried by a city (and theoretically on duty 24 hours a day) no unit of the University System could hire the manager to teach even a night class in local government.
- B. Pages 9 and 10, Subsection (2)(a). This section now could be read as placing an absolute prohibition on the use of state facilities for private business uses. Where the prior law only prohibited an employee from using public facilities for "his" private business, the new language appears to broaden this section, perhaps unintentionally. For example, if Pfizer Corp. wanted to give MSU-Bozeman a combination grant/contract to do some specific research project such an arrangement might run afoul of the new wording. If Montana Power Company wanted to rent the Montana Tech gymnasium for a stockholder meeting, the new language could be read to prevent it. I could go on and on with numerous examples. The main problem seems to be that the new language fails to recognize that there are times when it is legitimate for private business to use state facilities. I don't think the drafter intended this, and the new ambiguity is caused by the deletion of "his" at the top of page 10.
- C. Page 10, Subsection 3(a). The prohibition on use of state resources for an activity "affecting" a political decision makes this section so broad that it conceivably covers every kind of act. Such vague statutes are often judged constitutionally infirm for either vagueness or overbreadth. The problem with a broad word like "affecting" is that it

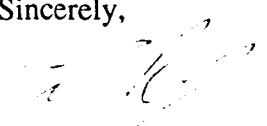
Bob Frazier  
March 22, 1995  
Page 2

covers activities such as conducting a public opinion poll or analyzing the cost of a public policy proposal; both of which our campus faculty have done for decades. The question then becomes under this new language whether such activities are "authorized by law." While we might argue that such activities are implicit in the concept of a university, I expect that some might use this new language to argue otherwise.

- D. Page 11, Subsection (b). The use of the term "aimed" creates an ambiguity in this section. Use of such a word makes the applicability of the statute depend on the official's state of mind rather than on what is actually said in the document in question.

Finally, while I am not a specialist in 1st Amendment law, it certainly seems to me that Sec. 4a, p.11 has some potential to infringe on or chill a person's constitutional right of freedom of association.

Sincerely,



LeRoy H. Schramm  
Chief Legal Counsel

LHS:jb

# Draft Copy

Printed 7:01 am on March 22, 1995

#2  
3/22/95  
#SB136  
LCethic

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

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

By Request of the joint committee on ethics

A Bill for an Act entitled: "An Act WORKING DRAFT ON ETHICS-2."

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

Section 1. Section 2-2-102, MCA, is amended to read:

"2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of substantial value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself the person or another.

~~(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.~~

~~(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:~~

~~(a) an ownership interest in a business;~~

~~(b) a creditor interest in an insolvent business;~~

# Draft Copy

Printed 7:01 am on March 22, 1995

~~(c) an employment or prospective employment for which negotiations have begun;~~

~~(d) an ownership interest in real or personal property;~~

~~(e) a loan or other debtor interest; or~~

~~(f) a directorship or officership in a business.~~

~~(5)(3)~~ "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(4) "Private interest" means an interest held by an individual or the individual's spouse or minor children that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Public employee" means:

(a) any temporary or permanent employee of the state or any subdivision of the state;

(b) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(c) a person under contract to the state.

(6) "Public officer" includes any state officer ~~except a legislator or member of the judiciary~~ or any elected officer of any subdivision of the state.

# Draft Copy

Printed 7:01 am on March 22, 1995

EXHIBIT 2  
DATE 3-22-95  
SB 136

(7) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government ~~except the courts.~~

(b) The term does not include the judicial branch.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

{ Internal References to 2-2-102:  
5-11-203x }

**Section 2.** Section 2-2-103, MCA, is amended to read:

"2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public trust, created by the confidence ~~which~~ that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out ~~his~~ the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from ~~his fiduciary~~ the person's public duty is liable to the people of the state ~~as a trustee of property, is liable to a beneficiary under 72-34-105, and shall suffer such other liabilities as a private fiduciary would suffer~~ is subject

# Draft Copy

Printed 7:01 am on March 22, 1995

~~to the penalties provided in this part for abuse of his the public's trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.~~

(3) ~~The following sections set~~ This part sets forth various rules of conduct, the transgression of any of which is, ~~as such,~~ a violation of fiduciary public duty, and various ethical principles, the transgression of any of which ~~is not, as such,~~ a violation of fiduciary duty must be avoided.

(4)(a) The enforcement of this part for:

(i) state officers and employees is provided for in [sections 16 and 17];

(ii) legislators is provided for in [section 15];

(iii) local government officers and employees is provided for in [ ].

(b) Any money collected in the actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

*{Internal References to 2-2-103: None.}*

Section 3. 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 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



# Draft Copy

Printed 7:01 am on March 22, 1995

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

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

# Draft Copy

Printed 7:01 am on March 22, 1995

EXHIBIT 2  
DATE 3-22-95  
SB 136

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 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 5.** 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

# Draft Copy

Printed 7:01 am on March 22, 1995

solicit a contract for ~~his~~ the legislator's services by the use of ~~his~~ the office."

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

Section 6. 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) 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.

~~(2)(3)~~ 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 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 (2) 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)(4)~~ A conflict situation does not arise from legislation  
or legislative duties affecting the ~~entire~~ membership of a  
profession, occupation, or class.

~~(4)(5)~~ 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 15]."

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

# Draft Copy

Printed 7:01 am on March 22, 1995

Section 7. 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~~ the officer's or employee's 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 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 an elected public official, 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) and that is aimed at 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

# Draft Copy

Printed 7:01 am on March 22, 1995

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

(9) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be

# Draft Copy

Printed 7:01 am on March 22, 1995

EXHIBIT 2  
DATE 3-22-95  
SB 136

punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under subsection (8) or [section 16] does not preclude an action under this subsection."

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

**Section 8.** Section 2-2-125, MCA, is amended to read:

"2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary a public duty subjecting the actor to disciplinary action by the employing entity and a civil penalty of not less than \$50 or more than \$1,000.

(2) An officer or employee of local government may not:

(a) 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; or

(b) 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.

(3) A Notwithstanding the provisions of subsection (2), a member of the governing body of a local government may perform an official act notwithstanding this section when his the member's participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure



# Draft Copy

Printed 7:01 am on March 22, 1995

~~procedures under 2-2-131~~ The member shall disclose the interest creating the appearance of impropriety."

{ Internal References to 2-2-125: None. }

Section 9. Section 2-2-131, MCA, is amended to read:

"2-2-131. ~~Voluntary disclosure~~ Disclosure. A public officer or public employee ~~may shall~~, prior to acting in a manner which may impinge on ~~his fiduciary~~ public duty, including the award of a permit, contract, or license, disclose the nature of ~~his the~~ private interest ~~which that~~ creates the conflict. ~~He~~ The public officer or public employee shall make the disclosure in writing to the secretary of state, listing the amount of ~~his financial~~ private interest, if any, the purpose and duration of ~~his the~~ person's services rendered, if any, and the compensation received for the services or ~~such~~ other information ~~as that~~ is necessary to describe ~~his the~~ interest. If ~~he the~~ public officer or public employee then performs the official act involved, ~~he the officer or employee~~ shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act."

{ Internal References to 2-2-131:  
2-2-121 2-2-125 }

Section 10. 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 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

# Draft Copy

Printed 7:01 am on March 22, 1995

county in which the school district is located."

{Internal References to 2-2-302:

49-2-303x            49-3-201x}

Section 11. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration -- general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made ~~thereunder~~ under parts 1 and 2 and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies ~~thereunder~~ under parts 1 and 2 and perform any other lawful acts

which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that ~~such~~ the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state. Adequate public notice shall must be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency."  
{ Internal References to 2-18-102: None. }

Section 12. Section 5-7-213, MCA, is amended to read:

"5-7-213. ~~Disclosure by elected officials.~~ (1) (a) Prior to December 15 of each even-numbered year, each elected official, or

# Draft Copy

Printed 7:01 am on March 22, 1995

official-elect member of a quasi-judicial board or commission, or department director shall file with the commissioner a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time the candidate files for office, file a business disclosure statement with the commissioner on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement shall must provide the following information:

(a) the name, address, and type of business of such the individual and each member of such the individual's immediate family;

(b) each present or past employment from which benefits, including retirement benefits, are currently received by the individual and each member of the individual's immediate family;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual or a member of the individual's immediate family holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual or a member of the individual's immediate family is an officer or director, regardless of whether or not the entity is organized for profit;

(e) a brief description of the purpose of an entity described in subsections (2)(c) and (2)(d); and

(f) all real property, other than a personal residence, in which the individual or a member of the individual's immediate family holds an interest. Real property may be described by general description. For this purpose "immediate family" includes the individual's spouse and minor children only.

~~(2)(3)~~ No such An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until ~~such~~ the statement has been filed as provided in subsection (1).

~~(3)(4)~~ The commissioner shall make ~~such~~ the business disclosure statements available to any individual upon request.

(5) For purposes of this section, "immediate family" means the individual's spouse and minor children."

{Internal References to 5-7-213: None.}

Section 13. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1)  
It is unlawful for any employer, in paying his employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises ~~(express or implied)~~, calculated

# Draft Copy

Printed 7:01 am on March 22, 1995

or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where ~~his~~ the employer's workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected, work in ~~his~~ the employer's place or establishment will cease, in whole or in part, or will be continued or increased; ~~his~~ the employer's place or establishment will be closed; the salaries or wages of ~~his~~ the workers or employees will be reduced or increased; or other threats or promises ~~(express or implied)~~ intended or calculated to influence the political opinions or actions of ~~his~~ the employer's workers or employees. This section ~~shall apply~~ applies to corporations, individuals, and public officers and employees.

(2) ~~No~~ A person may not attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) ~~No~~ A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at ~~his~~ the place of employment. However, ~~nothing in subject to 2-2-121,~~ this section is not intended to restrict the right of a public employee to express ~~his~~ personal political views.

(4) Any person who violates the provisions of this section

shall be fined not to exceed \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense."

{Internal References to 13-35-226: None.}

NEW SECTION. Section 14. Filing tax returns. (1) It is the responsibility of legislators, public officers, 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.

NEW SECTION. Section 15. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. The committee must consist of two members of each political party. The committees may meet jointly. Each committee shall educate members concerning the provisions of Title 2, chapter 2, part 1, concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana



# Draft Copy

Printed 7:01 am on March 22, 1995

constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

NEW SECTION. Section 16. Enforcement for state officers and state employees. (1)(a) A person alleging a violation of this part by a state officer or state employee may file a complaint with the commissioner of political practices. The commissioner shall request any information necessary to make a determination from the complainant or the person who is the subject of the complaint and may issue subpoenas.

(b) Unless the complaint is referred to the county attorney under subsection (1)(c), the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative 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.

(3) The decision of the commissioner may be appealed to the ethics commission as provided in [section 17].

NEW SECTION. Section 17. Administrative appeal. (1) The ethics commission shall provide a hearing on the record, when requested in writing by a party to an issue that has been decided by the commissioner of political practices. The appeal must be requested within 60 days of a decision by the commissioner.

(2) The hearing is limited to matters contained in the record established before the commissioner. The commission may affirm, modify, or reverse a decision of the commissioner.

(4) An decision is rendered when signed by three or more commission members subscribing to the decision and must be issued within 30 calendar days after submission of the request for an opinion.

(5) 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.

NEW SECTION. Section 18. Ethics commission. (1) There is an ethics commission attached to the office of the commissioner of political practices for administrative purposes only.

(2) The commission consists of five members. The members are appointed in the same manner as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as provided in subsection (6). A member of the commission

# Draft Copy

Printed 7:01 am on March 22, 1995

must be a citizen of the United States and a resident of Montana.

A member of the commission may not be a:

(a) public official;

(b) public employee, except as the fifth member, who must be chosen by consensus of the other members;

(c) candidate;

(d) lobbyist or lobbyist's principal;

or

(e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

(3) A member of the commission serves a term of 4 years. However, the initial members of the commission shall serve the following terms:

(a) One member shall serve a term of 1 year.

(b) One member shall serve a term of 2 years.

(c) One member shall serve a term of 3 years.

(d) Two members shall serve terms of 4 years.

(4) An individual may not serve more than two consecutive terms as a member of the commission. A member of the commission continues in office until a successor is appointed and has qualified.

(5)(a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall appoint a successor.

(b) If at the time that a vacancy occurs the appointing authority is of a different political party than that of the original appointing authority, the majority or minority leader in the same house and of the same political party as the appointing

authority that made the original appointment of the commissioner whose position is vacated shall appoint the successor.

(6) The presiding officer and vice presiding officer of the commission must be elected by a majority of the members of the commission. The presiding officer and vice presiding officer shall serve terms of 1 year and may be reelected. The presiding officer presides at meetings of the commission. The vice presiding officer presides in the absence or disability of the presiding officer.

(7) A member of the commission may not receive a salary but is entitled to expenses as provided in Title 2, chapter 18, part 5.

NEW SECTION. Section 19. Meetings -- quorum. The ethics commission shall meet at the call of the presiding officer or a majority of its members when an appeal from a decision of the commissioner of political practices is requested. A quorum consists of three or more members. An affirmative vote of three or more members is necessary for the issuance of an opinion.

NEW SECTION. Section 20. Prohibition on political activity by commission members. A member of the ethics commission may not participate in political activity or in a political campaign during the term of office. A member of the commission may not:

- (1) make a financial contribution to a candidate;
- (2) make a financial contribution to a political committee;

or

# Draft Copy

Printed 7:01 am on March 22, 1995

(3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

NEW SECTION. Section 21. Prohibition on lobbying activity. A member of the ethics commission may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are permitted under state law.

NEW SECTION. Section 22. {standard} Repealer. Section 2-2-132, MCA, is repealed.

{Internal References to 2-2-132: None.}

NEW SECTION. Section 23. {standard} Codification instruction. [Sections 14 through 21] are intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to [sections 14 through 21].

NEW SECTION. Section 24. Code commissioner instruction. The code commissioner shall renumber section 5-7-213 as an integral part of Title 2, chapter 2, part 1.

NEW SECTION. Section 25. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act]

# Draft Copy

Printed 7:01 am on March 22, 1995

EXHIBIT 2  
DATE 3-22-95  
SB 136

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 26. {standard} Effective date. [This act] is effective July 1, 1995."

-END-

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

DATE 3/22/95 4:30  
SENATE COMMITTEE ON Ethics Select  
BILLS BEING HEARD TODAY: all bills

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<del>George Z. ...</del>				

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY