

MINUTES

MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on March 27, 1995, at  
8:00 AM

ROLL CALL

**Members Present:**

Sen. Bruce D. Crippen, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Larry L. Baer (R)  
Sen. Sharon Estrada (R)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Linda J. Nelson (D)

**Members Excused:** Sen. Lorents Grosfield (R)

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Council  
Judy Keintz, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 136  
Executive Action:

HEARING ON SB 136

Opening Statement by Sponsor:

SENATOR LARRY BAER, Senate District 38, Bigfork, presented SB 136. Article XIII, Section 4, of the State Constitution states, "The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees." It says shall, not may. It says prohibiting, not compromising. It expressly prohibits conflict between public duty and private interest. The product of this bill reflects that intent while keeping well in mind the nature of our citizen legislature and our desire to avoid discouraging people from any walk of life

from seeking legislative office. Perception of the public, as to the integrity and the honesty of their representatives and employees, is important to us. By creation of this bill, we express our dedication to the satisfaction of our constituents. This bill is the proud result of many bipartisan legislators from both Houses who sacrificed many hours seeking a quality product. It is well conceived and carefully derived. It is born from the sense of objectivity and fairness of dedicated legislators who truly care about public responsibility, perception and confidence. Therefore, in addition to conduct of legislatures they have carefully addressed the improper use of public resources for private or political use and have provided for enforcement through sensible civil and criminal sanctions. However, a chilling effect upon public employees has been carefully avoided by conscientious application of these rules in a practical and equitable manner that protects the public. By way of this bill, the legislature is certifying their willingness to hear and address the public concerns on ethical conduct by elected and publicly employed or appointed persons. This bill is a reasonable alternative to far more drastic measures taken by some other states and the federal government under the Hatch Act. In future legislative sessions, this bill may be further amended, polished and refined as we deem necessary to enhance and ensure the faith of Montanans in our dignity, honesty and integrity.

**Proponents' Testimony:**

**SENATOR DOROTHY ECK, Senate District 15, Bozeman,** stated that when she appeared before the committee earlier she felt that this bill would require a lot of work and review. The committee has come up with legislation which is understandable and has workable enforcement. It could be strengthened in some places; however, the document as is can go forward.

**REPRESENTATIVE ROSE FORBES, House District 42, Great Falls,** commented that she served on the Select Committee on Ethics. A lot of hard work went into putting together this compromise piece of legislation.

**Debbie Smith, Common Cause,** stated their support of the ethics bill. There are parts of the bill she would like the committee to reexamine. The parts of the bill that she believes represent model legislation would be the provision for proving model rules for legislators, public officers and employees so that people know beforehand what is or isn't ethical. There are also very fine provisions for enforcement of violations of those rules against public officers and employees. The other disclosure provisions should ideally be more flushed out. The provisions of HB 410 have been worked into this bill. HB 410 was a bill which required disclosure of membership interests in organizations by public employees when those employees were involved in proceeding in their professional capacity and in which an organization of which they are a member is also involved. The ethics bill as written would say that in a situation where a public employee is

a member of an organization and that organization becomes involved in a contested case proceeding, the employee would have to disclose to his or her supervisor that he or she is a member of that organization. If any interested person asks the supervisor, the supervisor must disclose the membership. This is a blatant violation of people's right to privacy under the First Amendment and the comparable provision of the Montana Constitution. The reason is that in order for the state to limit someone's ability of free speech, freedom of association, or right of privacy there needs to be a compelling state interest and the regulation needs to be so narrowly drawn as to affect only that interest. In this case the state has a very valid reason for insuring that adjudications before state agencies are fairly adjudicated. This statute is not narrowly defined to insuring fairness. This broadly requires disclosure of membership in organizations that may take a position contrary to the permit applicant. This does not advance the state's interest. This language is found on pages 8, line 25 through page 9, line 2. The Select Committee amended several parts of the subcommittee bill which they would like to see placed back in the bill. This would be the definition of substantial value concerning gifts. They would also request that the subcommittee provisions on detailed disclosure of specific financial interests over a certain dollar or percentage amount be placed back in the bill. They would like to see the revolving door prohibition, the prohibition on lobbying in the next regular session of the legislature by a legislator currently serving, also be placed back in the bill. While there is a very good mechanism set up in the bill for ethics committees in the legislature, she asked that the committee consider whether those committees be given enforcement powers similar to the powers which the Commissioner of Political Practices has to enforce the act against public officers and employees. Public officers and employees are subject to enforcement penalties but legislators are not. This bill represents a good step in the right direction.

**Don Waldron, Montana Rural Education Association,** stated he attended several of the Select Committee meetings. There were some things which were compromised and he congratulated the people who worked on the bill. He asked for one change on page 5, line 11, that would strike the word "cost" and insert the word "salary".

**J. V. Bennett, Montana Public Interest Research Group,** stated they share the same concerns as Common Cause in incorporating the language from HB 410. They believe it is unconstitutional and creates a situation which may discourage people from being involved in public service. A professional should be able to put aside his or her own beliefs. Simply because they are a member in some organization does not mean that they are going to compromise their professional discretion, nor does it mean that they pull the party line which that organization believes. They would also like to see a dollar amount put on substantial value for gifts. They also feel the disclosure requirements should be

fleshed out a little more. It would be unclear under the present bill whether the income for different sources was significant. They also feel that enforcement for legislators is important. To the public it would seem fair that legislators have the same kind of enforcement as public officials and employees have.

**Ed Argenbright, Commissioner of Political Practices,** commented that he sat through hours of meetings with both the subcommittee and the select committee. He stated he presides over the smallest agency in state government. He and two other people handle the campaign finance disclosure, register lobbyists, oversee political practices, accept complaints during campaigns and file disclosure for elected officials. Under Initiative 118, they will be dealing with additional restrictions on campaign finance disclosure, contributions and expenditures and their duties will be significantly increased. With the responsibilities that are a part of this bill, he implored the committee to provide the resources necessary to carry through on ethics legislation. This bill addresses between 11,000 to 15,000 people. They are in the process of developing the fiscal note. The hotline for the Legislative Auditor has had hundreds of calls. There will probably be five complaints per month. Two may go to a hearing which will require the legal resources to conduct the hearing. The additional staff and the resources necessary to do a good job is a critical factor. At one point he believed that having his enforcement decisions reviewed by an ethics commission would be a good idea. He has consulted with his attorneys. His past experience included holding numerous hearings and he was the final authority there. He believes that leaving the final authority in his office would be cost effective and also that the appointment of the commissioners to the ethics commission has a problem associated with the separation of powers. The procedure in the bill for appointing those commissioners is a procedure which is based on the procedure for legislative reapportionment. Members are appointed by the leadership of the legislature. This would get into having that process appoint commissioners for an ethics commission which would be an executive branch activity. They probably should be a gubernatorial appointment. He would also like to have rulemaking authority. His current rulemaking authority deals with the submission of complaints in the area of political practices. Often times those complaints are of a frivolous nature and he has a procedure whereby they can be dismissed. Under this legislation, he is not sure how that would work. He also requested legislative guidance on when the personal information should become available in a complaint. When a complaint is filed with his office dealing with an ethics issue, at what point does the information become public? He would liken that to a complaint before a licensure board. Often times those complaints are made, but are never made public because of the great potential for personal damage.

**Eric Feaver, Montana Education Association,** spoke in support of SB 136. He believes this bill will be amended through the years.

On page 5, lines 10 through 12, the word "cost" is very vague. On page 12, Section 12, since members of quasi-judicial boards and commissions will be disclosing, he questioned whether they should be disclosing every economic interest they, their spouse or minor child may have. These boards would be boards such as The Teachers Retirement System, The Board of Public Education, The Board of Personnel Appeals, etc., and this will have a chilling effect upon people who would be willing to serve on those boards. People who have expertise are likely to have some economic interests which they may not choose to share with the universe. This is a matter of privacy. To be as pure as the driven snow is not something we are ever going to find in a Montanan. Also, in Section 18, Ethics Commission, he questioned whether there could be an Ethics Commission which could look like the one suggested. The exclusion of members seems to be more broad than it really needs to be. Section 20 is also overbroad. He does not know how we could have a commission which would be so above the realm of politics. Perhaps people who are involved in the realm of politics in which these issues are boiling ought to be on the commission. Section 22 states that all local governments could appoint panels to assist them in the review of complaints against those local governments. Each panel would be its own entity. There could be multiple conclusions coming out of the same community over very similar issues or disputes.

**Garth Jacobson, Secretary of State's Office,** stated he served on the Ethics Advisory Commission which prepared SB 115. He spoke in support of SB 136. It hasn't been since 1977 that anything has happened in this area. It took 18 months of work by the Ethics Advisory Council, 30 to 40 hours of work by the Subcommittee, and several sessions by the Select Committee to come up with this legislation. We are on the verge of having some meaningful ethics laws in Montana.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions From Committee Members and Responses:**

**SENATOR STEVE DOHERTY,** referring to the definition of private interest, stated he could not find any intimation of any interest which an individual may have in regard to a public contract with the state. This would include all of public works, grazing leases, etc.

**SENATOR BAER** stated under the definition of public employee, (c) would include a person under contract with the state.

**SENATOR DOHERTY** asked if a person who owned an interest in a subchapter S corporation or a small family corporation would have to disclose?

**SENATOR BAER** stated that under current law if a person had a major business interest or ownership in a corporation, he or she would be required to disclose that under the current form. This bill only requires to disclose that there is an interest. It does not ask for an amount.

**SENATOR DOHERTY**, referring to pages 8 and 9 which dealt with memberships to organizations, asked **Ms. Smith** what her proposed amendment to that section would be?

**Ms. Smith** stated she would recommend striking (4). She believed (5) should stand. Subsection 5 prohibits state officers or state employees, while they are acting in their capacity, from lobbying on behalf of the organization in which they are a member. The disclosure may subject some employees and officers to harassment while doing nothing to ensure the integrity of the process which the state is trying to protect.

**SENATOR DOHERTY** asked why a member of a non-profit organization should be required to disclose?

**Ms. Smith** stated she did not see a problem with that type of disclosure because the public is entitled to know what that individual stands for. That is useful information for the electorate. She would object to disclosure of organizational memberships where the person is not a board member.

**SENATOR MIKE HALLIGAN** stated that if he was a board member of a non-profit group which made a decision to take an action against the state, would that potentially create a conflict which would require disclosure to a supervisor?

**Ms. Smith** answered that page 9, (5) includes that a state officer or employee is prohibited in engaging in activities on behalf of an organization while performing the officer's or employee's duties.

**SENATOR HALLIGAN** asked **Mr. Feaver** what area he was referring to in his testimony?

**Mr. Feaver** answered he was referring to the entire section. In particular, on line 11 the reference to "member of a quasi-judicial board or commission . . . shall file with the commissioner . . ." Also, line 25 refers to a member of the individual's immediate family.

**SENATOR DOROTHY ECK** commented that the model bill from which SB 115 was drafted had almost any appointed person to all the advisory boards requiring disclosure. This was changed to quasi-judicial because those boards make important decisions. There have been arguments back and forth about spouses. The decision was made to include spouses. She has discussed this with people who work with ethics and feel that it is important to have the

spouse included. This is especially important for candidates. She feels that a simple disclosure form can be created.

**Mr. Jacobson** stated that SB 115 had a significant amount of disclosure required. The subcommittee tried to parallel existing law in regard to the disclosure statements required by the Commissioner of Political Practices. The people who would have to disclose, would be those people who were in key decision making positions, which may be subject to influence. This would include the high level policy makers on boards, the elected officials, and the high level officials in state government.

**SENATOR LINDA NELSON** stated that Section 20 referred to members only during their term of office. A person would have to put their political activity on hold for four years. She asked **Mr. Argenbright** if he is restricted from donating to candidates, etc.?

**Mr. Argenbright** stated that he was not aware of any restrictions in the law. He stated he does not contribute or attend political functions. He is prohibited from seeking elective office for a five year period after leaving his current position.

**SENATOR REINY JABS** asked what conflict a commission member may have by making a contribution to a candidate?

**SENATOR BAER** stated the purpose of the new section would be to create a commission which would oversee any complaints or any violations which are alleged. In order to do that with the proper discretion, any appearance of impropriety by a commission member must be avoided. They must divest themselves of any interest in any person who might come before the committee in order to come to an objective decision.

**SENATOR JABS** stated he is a rancher who leases land from the Crow Indian Reservation. They recently put a minimum on the price of the land. He was asked to write a letter protesting the higher rates. If he wrote a letter with his letterhead as a Senator and signed as a Senator would he be violating anything?

**SENATOR BAER** stated he was not sure about the interaction between MCA and Tribal law. He stated that unless he was in a position of authority regarding the ethics commission or something else involved in this bill, he would only be exercising his constitutional right to expression.

**CHAIRMAN BRUCE CRIPPEN** stated that if he was representing constituents, that would be okay.

**SENATOR RIC HOLDEN** asked **SENATOR BAER** to clarify line 24 on page 6.

SENATOR BAER stated it was his understanding that that particular language was in reference to a Senator's obligation to vote in the Senate.

SENATOR HOLDEN stated he did not read it as pertaining to voting while in the Senate. Line 24 reads "A legislator has a responsibility to the legislator's constituents to participate in all matters affecting the constituents."

SENATOR BAER stated this language makes reference only to specific duties and requirements of legislators.

SENATOR HALLIGAN asked if the committee looked at additional funding?

SENATOR BAER stated he was not a member of the Select Committee. He was present at the meetings and felt they were being very prudent as to what type of a mechanism would be set up. A fiscal note should be forthcoming.

Closing by Sponsor:

SENATOR BAER commented that the bill is a very well drafted bipartisan effort by both parties and both Houses of the legislature. This bill is a beginning to real assertion of ethical conduct in Montana. He believed the public would appreciate the efforts.

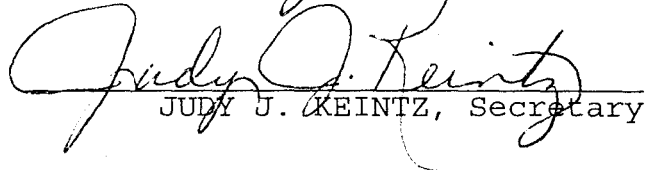


ADJOURNMENT

**Adjournment:** The meeting adjourned at 9:15 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman



JUDY J. KEINTZ, Secretary

BC/jjk



DATE 3/27/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 136

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
J.V. Bennett	Mont. PIRG	136	X	
Dore Waldron	Mont. Bus. & Econ. MREA	136	X	
Ed Augenbright	Com. Pol. Practices	136		

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY