

**MINUTES**

**MONTANA SENATE  
54th LEGISLATURE - REGULAR SESSION**

**SUBCOMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN SENATOR LORENTS GROSFIELD**, on  
February 9, 1995, at 11:00 AM

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield Chair (R)  
Sen. Larry L. Baer (R)  
Sen. Sue Bartlett (D)  
Sen. Al Bishop, (R)  
Sen. Linda J. Nelson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Greg Petesch, Legislative Council  
Judy Keintz, Committee Secretary

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

**Subcommittee Business Summary:**

Meeting: SB 115, SB 136

**CHAIRMAN LORENTS GROSFIELD** handed out a list of issues, **EXHIBIT 1** and also a guide prepared by the Secretary of State's Office, **EXHIBIT 2**. He asked if anyone noticed omissions on the issues sheet. He stated the emphasis behind SB 115 is education. This is sporadic under current law.

**SENATOR BAER** suggested having a seminar at the beginning of each legislative session which would emphasize ethics.

**Greg Petesch** commented that at the beginning of this session, **REPRESENTATIVE BOLLINGER** and **SENATOR BLAYLOCK** both spoke on ethical concerns for legislators. Their discussion was a general philosophical approach.

**SENATOR ECK** believed a good way to handle education was through advisory opinions. This was struck down in current law because of vagueness of current statute.

**CHAIRMAN GROSFIELD** asked for suggestions on education for state employees and county employees.

**SENATOR BAER** commented that this could be handled by an inexpensive pamphlet.

**SENATOR BARTLETT** commented there were a couple of sections in SB 115, page 23, which dealt with publication of information. This would cover both elected officials and employees.

**Garth Jacobson** stated that the logic behind the Ethics Commission was to have a centralized location. It is extremely important to have one message. If there is a pamphlet or an education outreach program, it needs to be coordinated amongst all the agencies and anyone else this will touch.

**Mr. Petesch** commented that the Department of Administration, Personnel Division has a training division which offers courses for state employees. There is a mandatory two hour orientation provision for new state employees. Ethics could be incorporation as part of that program.

**CHAIRMAN GROSFIELD** stated that one of the major roles of the Commission is education. A big part of the fiscal note comes from the Commission. He believes that presenting an ethics bill to this legislative session with a fiscal note of this size would jeopardize it. This would be a new bureaucracy split between an Ethics Commission and the Commissioner of Political Practices. He is not convinced that it is necessary to have a commission to deal with this issue. We haven't had a huge problem in Montana. If you have a scandal, the net result of that is either an initiative or a legislative overreaction.

**SENATOR ECK** commented she discussed this with Judy Browning and she stated they were in support of the bill. She suggested that if the fiscal note was the problem, they might combine the commissions and have a Commissioner on Ethics and Campaign Practices. This person should not be appointed by the governor but appointed the way legislative leadership is appointed. They are already asking for a substantial increase in budget because of their new campaign practice initiative. They are asking for an attorney for that project and we are asking for another attorney here.

**SENATOR GROSFIELD** questioned if this would include the legislature or also public employees. He also asked what current law states regarding this topic.

**Mr. Petesch** commented there were no guidelines for the Secretary of State to act.

**Mr. Jacobson** stated the Secretary of State was designated as the entity to provide advisory opinions. The scheme in the late 70s was that that was where the Commissioner of Campaign Practices activities occurred as well. They spun off the Commissioner of Campaign Practices in 76 or 78 and created a separate office. They left that activity with the Secretary of State's Office.

After Jim Waltemire was elected and forced into preparing some advisory opinions and then set up an ethics committee, it was found unconstitutional. There was both politics and interplay involved. The fact is the entire ethics advisory opinion side of this was out. An elected official should not issue advisory opinions because of the potential political mischief which could occur. That is where the independent body would be important. A big problem with all of this is politics making determinations. Congress has failed in dealing with their ethical issues.

**SENATOR BAER** asked how one could avoid politics.

**Mr. Jacobson** commented that they set up the Ethics Commission in the same manner as the Reapportionment Commission was set up. They have two Democrats and two Republicans and the fifth person was agreed to by both sides. If there is an arbitration structure, the fifth person, who will be the deciding vote, needs to be a person that both parties can trust. In that formula, you recognize that politics exists but you let them have a fair arbitrator which everyone agrees with.

**SENATOR BAER** commented that when he talked to Judy Browning and she helped prepare some of the provisions in his bill, she expressed a concern for the enormity of the bureaucracy that would be created under SB 115. She didn't address the cost or expense but they were concerned about creating a huge new machine which is not needed. As the outline states, you state there are provisions in SB 115 for advisory opinions and none in SB 136. He stated that he made reference in SB 136 to forming ethics committees for the legislature. There is one in the House right now which could be conformed to the desired use here. There could be one created in the Senate to approach ethical questions brought to them by legislators. When it comes to anyone outside the legislature, that is not addressed in SB 136. A very large, expensive bureaucracy is unneeded. There must be some way to insert this into an existing program such as the Commission on Political Practices. We have to put politics out of mind because no matter what is done there will be the potential for politics. It needs to be made as equitable, fair and unbiased as possible, but there is no way to rule out politics because it will always be there.

**CHAIRMAN GROSFIELD** asked how the Ethics Committee in the House is made up.

**Mr. Petesch** stated it is a standing committee in the House. It is evenly balanced politically with four or six members which was just established this session. They were set up to hear the ethics legislation in the House and to issue advice or address matters which arise during the session.

**SENATOR ECK** commented that she had a discussion with Judy Browning and they decided they could have an advisory council to whatever office was set up and maybe have one person from the

House Ethics Committee and one from the Senate Ethics Committee, two people from government, possibly one being an official and one being an employee, and two members of the public. That kind of a structure would not involve a lot of cost. Ms. Browning felt the Commissioner should be selected in a nonpartisan way. They might run into some real problems in trying to remove the Commissioner.

**Mr. Jacobson** suggested that following that line of thought a possibility would be to take the Commissioner of Campaign Practices out of the prosecution business in this instance and drop the full FTE in the fiscal note and let it operate with three or four people. That would reduce the fiscal impact by one half. That would clearly make this much more palatable. It is extremely important to have the political balance. When they set up the Ethics Commission they recognized one of the things which **SENATOR BAER** is concerned about and that is having public employees participating in the decision making process of what is ethical or not. They permit only one person to be a public employee at any level of government. Those four people would be strictly independent with the fifth person potentially being a public employee.

**SENATOR ECK** stated that would be better than what she mentioned before where everyone would be a public employee with exception of two citizens.

**Mr. Jacobson** commented they wanted people who were totally divorced from any contact with exception of the fifth person. They recognize that there may be someone in that pool of people that might be a public employee but the majority of the committee would have to be totally independent. The structure itself was very carefully thought out. If the prosecution side was put back into that commission and the staff that they would hire, there would be a need for a few safeguards to assure that the commission acted independent of the staff. A model could be set up which would greatly diminish the cost of this. They wanted to have separate entities involved in the prosecution and adjudication; however, safeguards could effectuate this which would then reduce the fiscal note by one half.

**SENATOR BARTLETT** asked the Commissioner if his office was administratively attached to some other entity in state government.

**Mr. Argenbright** answered they are administratively attached to the Secretary of State only for office space. They approve the office space for the Commissioner but other than that they are completely independent.

**SENATOR BARTLETT** commented this would be a part of the statute. Administratively attached is a mechanism so there is not a proliferation of departments and yet they can still get budget

requests in which flow mechanically but they are autonomous in terms of functions.

**CHAIRMAN GROSFIELD** asked **Mr. Argenbright** who would handle the appeal of one of his decisions.

**Mr. Argenbright** explained that in campaigns, an official complaint is filed with his office. If it appears to have allegations which are sustainable, he accepts it and with the help of the Attorney General's Office they use an investigator or the Assistant Attorney General Jim Scheier. Often times the complaints are frivolous and do not have allegations with a basis. Those are sent back as frivolous.

**SENATOR BAER** stated he liked that process. He sees the problem arising when **Mr. Argenbright** has to deal with something which is not definitive to him in the statute. He can't make a decision because the legislature has not provided him enough specificity on what the violation entails and what he should do about it. What he does now is a good, fiscally economic way to handle ethics and he cannot see why that shouldn't continue. The problem is giving the Commissioner something to work with.

**SENATOR BISHOP** asked whose budget is used for the investigator from the Attorney General's Office.

**Mr. Argenbright** commented that he pays by the hour to the Attorney General's Office. His budget this time was \$6,000. He has had to ask for supplemental money.

**CHAIRMAN GROSFIELD** stated that the Commissioner did not deal with public employees.

**Mr. Argenbright** affirmed that the only complaints he deals with now are those associated with a campaign violation or the allegation of improper lobbyist behavior.

**CHAIRMAN GROSFIELD** commented that SB 115 does not deal with lobbying.

**Mr. Jacobson** stated they dealt with lobbyists insofar as gifts. They stay with current law when it comes to lobbyists.

**SENATOR ECK** commented that most states have a section on campaign finance procedures, one on lobbyists, and one on ethics.

**Mr. Petesch** commented that was the way the model was originally set.

**SENATOR BAER** commented that in 143, page 4, line 24, he does address the proper use of public resources to supplement or subsidize in any way a lobbyist, the media or any other method of influence intended to persuade or affect a political decision.

**CHAIRMAN GROSFIELD** stated that the concept of advisory opinions or enforcement would work with a commission but that has the fiscal note implications. Another way would be to operate the way we do now where the Commissioner takes care of candidates and lobbyists and the various departments take care of their own complaints. Public officers would be left out. Who would be included in "public officers"? Would this be a department director?

**SENATOR BARTLETT** commented this would be persons elected statewide.

**CHAIRMAN GROSFIELD** questioned how that is taken care of under current law.

**Mr. Jacobson** commented by vote in November or recall. But recall is almost impossible to figure out.

**SENATOR ECK** commented it is dealt with in criminal law.

**SENATOR BARTLETT** commented that most of the real enforcement is going on through that avenue. There have been two or three instances at state government levels within the last year or two.

**CHAIRMAN GROSFIELD** stated that that would probably be the case anyway. Criminal violations would be taken care of.

**Mr. Petesch** commented that would be the egregious cases.

**Mr. Jacobson** stated that a lot of these accusations are easy to make. That is one of the advantages of having the ability to call an investigation yourself. Right now the only thing available is the press and you have about 15 minutes to respond to the complaint made against you and the next several months are spending backfilling. It is not a very fair process.

**CHAIRMAN GROSFIELD** commented that the Department of Administration has a required two hour course but would not have a process which would deal with advisory opinions. How would a bureau chief find the necessary information on some activity? Would he go to the legal counsel for that department?

**Mr. Petesch** affirmed that was the usual method. They would look at the current statutes and explain what the guideline stated.

**Mr. Jacobson** stated that in State Lands a few years ago there was someone moonlighting representing developers to obtain an RIT grant. They had a real problem with that situation. Eventually the person quit. There was no way for the department to tell the employee he could not continue with moonlighting.

**CHAIRMAN GROSFIELD** questioned why they could not use current law which states that an employee could not use his position to influence a decision.

**Mr. Petesch** commented that would apply to 2-2-104 and 2-2-105. The problem with the enforcement mechanism is that you have breached your fiduciary duty. The agency proposed disciplinary action at which point the employee quit and went into private business. That is the only method of enforcement. Under fiduciary duty there is no monetary gain as compared to a trustee breaching his fiduciary duty to an estate.

**CHAIRMAN GROSFIELD** questioned what the penalty would be for a breach of fiduciary.

**Mr. Petesch** commented that you would have to repay the breach. The state wasn't out any money. He was moonlighting and using knowledge. How do you put a price on knowledge?

**CHAIRMAN GROSFIELD** stated that both bills deal in penalties of \$50 to \$1000 fines. That would be a penalty which would be available.

**Mr. Argenbright** commented that his experience as State Superintendent was that you had very knowledgeable people who would get a federal grant or have an area of expertise and then would do consulting on the side. He believes it would take a lot of effort to give people advisory opinions because this happens quite frequently.

**SENATOR NELSON** stated a lot of this would be found out after the fact.

**Mr. Jacobson** commented that is where education and providing advisory opinions would help. Once people are sensitized that they may have a problem and are then provided with the opportunity to find out what the conflicts may be, you have solved part of the problem.

**Mr. Petesch** stated that ethics concerns vary from agency to agency. He has had to deal with an egregious situation one time. He gave the individual a short notice to have his resignation on his desk or he would be fired. He advised him that he could pursue wrongful discharge if he felt he had a case. There are different methodologies and no guidelines for the administrators to act.

**Mr. Jacobson** stated that Mr. Seacat didn't tell him what the 30 violations within the last year have been. The violations were where there couldn't be any prosecution or anything done but he felt there was a significant need for ethics reform. On the surface we don't see many examples of problems. You have to have some sort of due process as well as confidentiality. People must be protected against malicious prosecution. The unfortunate

circumstance is that it takes money to handle ethics enforcement. If this is handled on a piecemeal basis, you run the risk of being stuck with a real mess.

**CHAIRMAN GROSFIELD** commented that as it stands there is no requirement for any agency to have a code of ethics.

**Mr. Jacobson** stated they are all under the umbrella of the statutes, when they get into ticklish situations there is confusion. SB 115 would give them recourse if the situation becomes a matter beyond what can be handled as a personnel matter. They would probably establish this within a personnel process as to what would happen. If they needed to, the complaint could be turned over to the Ethics Commission to decide.

**CHAIRMAN GROSFIELD** stated that if the Ethics Commission were to find against the person that person would appeal anyway.

**Mr. Jacobson** stated it could be appealed, but it would provide a major safeguard of protection against a wrongful discharge case. If the Ethics Commission were to make a finding that the person ought to be dismissed and be fined, it could still be appealed to the district court in a MAPA proceeding. The only thing they would do would be to determine whether or not there was some improper aspect of the procedure.

**SENATOR BARTLETT** commented that the court's role is much more restricted than if he were taking the case directly into district court. The court has to take the record which came out of the administrative procedure and they cannot go beyond that. They just look at whether the procedural process was followed.

**Mr. Jacobson** stated that without an administrative process, in a court proceeding you would end up with two to three years of discovery. In Flathead County you cannot get a court date for a civil action until spring of 96. This would fester for a long time before a ruling was handed down.

**SENATOR ECK** stated she would have a problem expanding criminal law to cover everything they had been talking about.

**SENATOR BAER** questioned what the deterrent would be without penalties.

**SENATOR NELSON** stated that every agency should have an ethical code to follow. If this was developed within the agency, that would be a beginning. People would be made knowledgeable of what could or couldn't be done and this may stop some of the problems.

**SENATOR BAER** commented that the agency chief, or whoever he would appoint, would be in charge of learning the ethics code and being there in an advisory position for the rest of the staff. That should not entail a costly process.



**SENATOR BARTLETT** stated that she preferred having the Personnel Division establish an overall guideline for all state agencies so that they all were operating on the same standards of conduct in this area. It should cover situations unique to the specific agency. It should be consistent for all state employees regardless of which agency they worked for. The university system would be outside of that. There would need to be a requirement that the university system would have the Commissioner's Office or whoever would be in educational governance would establish that for all the units.

**CHAIRMAN GROSFIELD** suggested that the Department of Administration could develop all the rules which all agencies would be required to adopt. The rules per agency may require some changes from the model rules to deal with their unique situation. The model rules would be based on the statutory framework which we have regarding ethics. He wasn't sure whether the agencies should handle advisory opinions.

**SENATOR BARTLETT** commented she would see this dealing with different categories of people and what may fit with one group procedurally won't necessarily procedurally fit with another. Public officers and statewide officials would be one group. Legislators are a group. Public employees would involve some consideration of high level versus all others. Local government officers would be a group and employees would be a group. Public employees would have the avenue of the Personnel Division and the adoption of the model rules. The rules of conduct could apply to public officers but problems in this area would be different from other public employees.

**CHAIRMAN GROSFIELD** commented if the governor or the secretary of state had a question about some activity, they would be able to go to their chief attorney for legal advice. That would be the same for any agency.

**Mr. Petesch** stated the problem would be that the attorney would be hired by that person. If he is told what he doesn't want to hear, there may be a problem.

**Mr. Jacobson** commented that another problem would be the ticklish situations. There are state employees who have political stripes as well as many who don't. When there is a change in administration, the first thing the new administration wants to do is eliminate the pockets of resistance. One way this can be done is by identifying different things to eliminate people. Departments can be combined or ethics violations could be found to shame or eliminate them. The Department of Personnel would be staffed with people who think the same way as the administration. Then you have a political monster. This may only happen every 20 years, but when it does happen there is a very ugly model out there.

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**SENATOR BARTLETT** suggested having the Personnel Department fulfill a part of the education function and removing the need for additional staff to do that which would thereby reduce the fiscal note. That is not enforcement. Enforcement needs to be addressed.

**CHAIRMAN GROSFIELD** asked about advisory opinions.

**SENATOR BARTLETT** stated it would be ideal if they could be handled within existing departmental structures; however, some of the departments are very small. There are people in the same department who have strong personality conflicts. It gets a little close to home.

**SENATOR ECK** stated she received a good letter from someone from the military department who was complaining that within parts of state government you have a group of people who ignore good ethical principles. That also happens within the legislature as well.

**CHAIRMAN GROSFIELD** stated that if there is a good educational function, it should take care of a good percentage of the need for advisory opinions. If we also have an ethical code for reference, the employee could go to the Attorney General's Office for advice. This would address the problem of the attorney being in the same agency as the person seeking advice.

**SENATOR BARTLETT** commented that there needs to be an outside enforcement mechanism for the serious issues and possibly have the Personnel Division adopt model rules for all of state government except the university system. This would provide for consistency across agencies. If there is a place identified to go for advisory opinions and to lodge complaints which is handled across agencies and across levels of employment, this will lead to consistency because the same set of people would be working in the area and developing a record.

**SENATOR ECK** stated that what is being suggested is that we could take care of most of the issues within the legislature and within the agencies. The number of referrals to a state commission, whether we have a joint commission or not, would be fewer and the costs would be less.

**SENATOR NELSON** commented we could have a hotline.

**CHAIRMAN GROSFIELD** clarified that he senses everyone is concerned about the fiscal note. **SENATOR BARTLETT** proposed a way to take care of part of the problem within current structure of government and budget.

**SENATOR BARTLETT** commented she wasn't sure that the Personnel Division would agree with her in terms of current budget.

**SENATOR ECK** commented that she was sure that ethics is already a part of their mission. They do handle some training.

**SENATOR BARTLETT** commented this would not be a simple rulemaking process. They would have to devote staff resources to developing these kinds of rules. That means taking them away from other functions which they are charged with doing. They may need a half time attorney as well.

**CHAIRMAN GROSFIELD** asked if the legislature should be handled by the Personnel Division, the Commissioner, or Legislative Council?

**SENATOR BARTLETT** commented that there are real separation of powers issues and this would need to stay within the legislative structure.

**SENATOR BAER** stated that the legislature's appointed respective committees could handle ethics for the legislature. If they feel there is a severe violation, they could turn the problem over to the Attorney General. This could be handled very prudently in the respective legislative committees.

**SENATOR NELSON** commented that perhaps a joint House/Senate Ethic Committee could be on call.

**CHAIRMAN GROSFIELD** believed that there would be a question which might involve both houses. This could be set up to include an eight committee person in the House and a six or eight person committee in the Senate. This would be like the Joint Rules Committee. Would it be necessary to have a separate Ethics Committee or could the Rules Committee handle this?

**SENATOR BARTLETT** commented that the Rules Committee as currently structured, would not be acceptable as an ethics committee. It is and should be partisan.

**SENATOR GROSFIELD** clarified that the committee is interested in further addressing education within current budget as much as possible in terms of the Department of Administration Personnel Division developing model rules which all agencies would be required to adopt in some form and develop informational pamphlets. It has been suggested that the legislature have standing ethics committees in both Houses which would do the same thing for the legislature.

**SENATOR NELSON** stated she was comfortable with that. Regarding the legislature, she doesn't see the need for a separate group in the House and a separate group in the Senate.

**SENATOR BAER** commented it could be joint with half the people appointed by respective majorities and the other half appointed by respective minorities.

**CHAIRMAN GROSFIELD** referred to the filing of disclosure statements, the timing, the level of disclosure as well as the content. Elected officials currently report on the form provided by the Commissioner. Current law is the least restrictive. The form sent out by the Commissioner might go beyond the authority in the current law. This form has been around for a long time. SB 136 does not deal with disclosure. SB 115 deals with a significant amount of disclosure.

**SENATOR NELSON** commented she believed people did not mind stating where their money came from; however, they sure do not want to get into specific amounts.

**SENATOR BAER** agreed and stated that current law is adequate. Perhaps the Commissioner could work on the form to conform with current law. This is a big thing for most people.

**CHAIRMAN GROSFIELD** commented that in SB 115 the disclosure went to high level employees as well as boards and commissions and all elected officials. He believed there to be a real policy issue as to whether anyone would serve on a board with all the disclosure requirements.

**SENATOR ECK** questioned if people would mind disclosing if the amounts were left out. She believed the important part would be the nature of the person's holdings and the source of their income instead of the amount.

**CHAIRMAN GROSFIELD** questioned how much information is needed. What is the purpose of this information? If he owned \$1100 of IBM stock, which would be an insignificant percent of IBM and also owned \$1100 of Jack's Conoco, which happened to be 25% of the business, there would be a different implication applied to each \$1100 holding. Are we only looking at majority interests?

**SENATOR BARTLETT** commented they may not care if it is IBM; however, they may care about Montana Power, Micron, or a canola plant.

**SENATOR ECK** commented if an attorney had 50% of his or her income from Burlington Northern that should be reported.

**SENATOR BAER** suggested things which would not directly or significantly affect the membership in a profession, occupation or class could also be used for disclosure. If the person does not significantly own something which could be affected by way of his or her actions, it should not be included in the disclosure.

**SENATOR BISHOP** asked **Mr. Argenbright** how many people looked at the disclosure statements in the last year.

**Mr. Argenbright** stated it would be less than five from his personal knowledge. He discussed this with his staff and they

commented that the press looks at the disclosure statements when they are due.

**Mr. Jacobson** stated the reporting statements sensitize people toward the potential conflicts of interest. Securities can be handled two ways. They could be reported by percentage of ownership in a business or by amount of your holdings. If you have \$200,000 to \$300,000 of IBM stock and the IBM representative testifies on some legislation, he probably would get your attention. The way to eliminate the things which really do not matter is to determine either a dollar amount or a percentage of your income and also a percentage of ownership of the business. Using words like "substantial" can be difficult to interpret. That is why straight dollar amounts are helpful.

**SENATOR BAER** stated the need to report in conjunction with the duty to disclose a potential conflict of interest goes hand in hand. The duty of financial disclosure up front should probably be lessened because of the duty to later disclose if a conflict arises.

**SENATOR ECK** stated the advantage of disclosing up front is that it makes you think about your conflicts. It is also out there on the record.

**CHAIRMAN GROSFIELD** stated the current form which **Mr. Argenbright** has is filed after election once every two years. An investor who is trading the market would have a portfolio which changed daily. To state that it needs to be updated as it changes, would be very burdensome to someone who makes his living that way. On the other hand, once every two years may have no relationship to what you may own during a special session.

**SENATOR ECK** stated that if a benefit was passed to some industry and then legislators bought their stock there would be a problem.

**CHAIRMAN GROSFIELD** said that would refer to class again. Most of the legislation affects classes instead of specific individuals.

**SENATOR ECK** commented that when she spoke to Judy Browning she did not agree with the decision not to disclose the spouse's holdings.

**SENATOR BAER** commented he has a problem with disclosures prior to a conflict situation arising. It should be kept to a minimum. If the legislator becomes involved in a situation, they should know if there is a possible conflict and disclose at that time.

**CHAIRMAN GROSFIELD** asked if the current form offends him.

**SENATOR BAER** stated he had reservations. He filled it out as requested but had to call for some guidance. Anything beyond that form would be a problem.

**SENATOR BISHOP** asked how the disclosure part of SB 115 was developed.

**SENATOR ECK** commented it came out of the model rule.

**Mr. Jacobson** stated they worked with the Model Act. It has extensive reporting requirements. The theory is that if you are a public official, you show all to the public. They backed off considerably but did leave in a fair amount. One person on the commission was very adamant about disclosure and was persuasive to other members. The commission had extensive discussion as to right of privacy versus public right to know. The press treats anything a person does as public information. A public official has waived his defenses against the press. What it comes down to is identifying your personal interests.

**CHAIRMAN GROSFIELD** asked **SENATOR NELSON** if the current form seems to be adequate?

**SENATOR NELSON** felt the form was too "nosey". It asks for too many specifics which is probably more than people want to know.

**CHAIRMAN GROSFIELD** asked about disclosure for board members and high level public employees. Currently only elected officials are required to disclose. He questioned a disclosure form for directors.

**SENATOR ECK** commented that during the last administration the governor might have been better off by finding out more before he appointed people. Most governors do that. There are always complaints about high level appointees, whether they are appointed for their ability or because of their connections.

**CHAIRMAN GROSFIELD** agreed but also believed that the governor paid the consequences for not getting better disclosure. He would not have a problem using the same disclosure form for high level state employees as is used by legislators. He was not sure where they should be stored.

**SENATOR ECK** stated that quasi-judicial boards are like legislators.

**SENATOR BARTLETT** stated that department directors go through a confirmation process. That doesn't always come up with enough information. She has some hesitation in this area because there can be difficulty in getting people to accept those jobs. The more that is added in, the more disincentive is built into taking the office. Certain boards should make disclosures because they do make policymaking decisions.

**CHAIRMAN GROSFIELD** clarified that as far as disclosure, everyone seemed to be comfortable with the current statement for legislators except clarification is needed. He questioned if the \$1000 limit should be raised?

**SENATOR BARTLETT** commented she would hate to see that raised because it would be seen as a retreat from the level of current ethics.

**CHAIRMAN GROSFIELD** asked the committee if they were interested in disclosure for boards and commissions.

**SENATOR NELSON** stated the same disclosure form as legislators have would not be anymore burdensome on them than it is on legislators.

**SENATOR BAER** agreed with using the same disclosure form.

**CHAIRMAN GROSFIELD** asked about disclosure for political appointees which would be director and associate director.

**Mr. Petesch** commented they were classified under statute as exempt positions within an agency.

**CHAIRMAN GROSFIELD** stated they should come up with a tool to help the State Ad Committee make a decision and also the tool wherein the person would disclose up front.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 1:00 p.m.



SENATOR LORENTS GROSFIELD, Chairman



JUDY J. KEINTZ, Secretary

LG/jjk





ISSUES IDENTIFIED FOR ETHICS SUBCOMMITTEE

- (1) Education function concerning ethics in government.
- (2) Gifts:
  - (a) 5-7-208(5) requires \$25 for purposes of lobbying  
-- \$25 amount was established in 1980;
  - (b) add criteria in 2-2-104(1)(b)(i)? (gifts that tend to improperly influence)
- (3) Disclosure statements: filing and timing.
- (4) District officials status should be clarified: state office elected from a district or county/state subdivision offices.
- (5) Nepotism - clarify status of pages, other legislative session staff, elections judges, etc.
- (6) Clarify "Gain of another" page 8, line 13. Clarify exemption on lines 14 and 15. Clarify lines 26 and 27.
- (7) "Conflict of interest" disclose conflict and vote or not vote.
- (8) Level of financial disclosure. Content -- applicability (who is required to file). Current law v. political practices form v. SB 115
- (9) Role of commission: education, advisory opinions, enforcement.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
<p>General conflict of interest prohibitions in decisions making actions</p>	<p>Section 7 prohibits voting or participation when person has direct foreseeable pecuniary interests in matter. Excludes matters in which person is a member of a class of people. Leg. creates its own rules.</p>	<p>2-2-112 provides guidelines for leg to not participate when matter directly affects personal or financial interest. Other officials prohibited from participating in matters if they have financial interest in matter. 23-7-203 prohibits members of the legislative liaison to state lottery from owing gambling devices.</p>	<p>Strict prohibition from participating in any matter that legislator or family to fourth degree in has financial interest in. Legislature creates ethics committees to deal with conflict of interest matters. Section 3.</p>
<p>Use of office title for personal gain. Section</p>	<p>Section 8 (6) Prohibits the use of title or prestige of office to obtain anything of value.</p>	<p>Legislators may not use office to obtain employment or contract. 2-2-111(2)</p>	<p>No change from existing law.</p>
<p>Prohibition from state employee from receiving two salaries at the same time for being a legislator and state employment</p>	<p>Does not address this issue. No change from existing law.</p>	<p>No specific provision. Handled by the agencies individually as a personnel matter. State law required all employers permit employees to attend leg</p>	<p>Prohibits double dipping of public employee serving in the leg. Does not address federal employees. Section 1.</p>
<p>Use of confidential information for personal gain</p>	<p>Generally prohibited in matters such as fraud or collusion in public contract or receipt of gifts. Section 8 and 9</p>	<p>Prohibits use of confidential info for person gain 2-2-103(1)(a)</p>	<p>No change from existing law.</p>
<p>Personal interest in public in Contracts</p>	<p>Extensive prohibition found in Section 9, exceptions made for competitive bid or auction bidding</p>	<p>Similar provisions found in 2-2-201 et seq.</p>	<p>No change from existing law.</p>
<p>Nepotism</p>	<p>Very similar to existing law. Section 4.</p>	<p>Prohibition against hiring or promoting the family members to the 4 consanguinity. Some exclusions. Section 2-2-301 et seq</p>	<p>No change from existing law.</p>
<p>Prohibitions against gifts from lobbyists, and others</p>	<p>Prohibits gifts or meals over \$25 if part of influencing a vote (generally prohibit lobbyist from making gifts over 25 per occasion). Can not receive "anything of value" that can be construed as influencing an official act. Section 8</p>	<p>Prohibits substantial gifts that would tend to improperly influence a reasonable person. 2-2-104</p>	<p>No change from existing law.</p>

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Outside employment restrictions	<p>Limitations on public contracts. Section 9. Prohibits or limits involvement in matters of representing others before state agencies. Section 6. Limits regulating one's own business. Section 7.</p>	<p>Similar to SB 115. Contracts 2-2-201, Prohibitions on representation 2-2-121(2)(c)(d), limits regulating one's own business 2-2-121(2)(b)</p>	<p>Adds legislators to these restrictions regarding representing others. Section 4.</p>
Misuse of office for personal or political purposes	<p>Prohibits use of office for personal or political activities unless incidental to function of office. Certain exception may permit limited non-governmental activities. Permits legislative exceptions established in joint rule. Section 5.</p>	<p>May not use state office for private business purposes. 2-2-121. Public employees may not campaign while on the job. 13-35-226.</p>	<p>Prohibits use of office for political purposes unless it is incidental to the office. Excludes legislators, Section 4. This section adds to existing law.</p>
Limitation of post-employment activities	<p>Creates limitations in dealing with former agency or gov. depending on the level of employment. Post-employment restrictions generally last 1 year. Legislators prohibited from lobbying for one year after the expiration of their term of office. Section 11</p>	<p>Officer or employee should not get involved with matter he was directly involved with during employment for months following employment. 2-2-105(3)</p>	<p>Same as existing law but specifies 12 month period to not having any involvement</p>
Reporting of financial interests	<p>Requires extensive reporting requirements for state public officials, high level employees, public member boards, consultants to contacts, and candidates. Sections 13 - 15 Gifts with an aggregate value over \$500 would have to be reported. Would not report meals etc received from Lobbyists.</p>	<p>Requires reporting of limited business information by state public officials and their families 5-7-213. Permits voluntary conflict of interest disclosures 2-2-131. Lobbyist principle required to report certain expenditures of public officials 5-7-208.</p>	<p>No change from existing law.</p>

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Restrictions against representing others before gov. agencies	Prohibits representing anyone before other state agencies by public officials and high level public employees. Other employees may not represent another before their own agency. Legislators would be restricted from representing others before state agencies during session. Legislators could do constituent representation. Section 6	Prohibits state employees and officers from representing others for a fee before their own or a contingent fee other state agencies. 121(1)(c)(d)	Adds legislators to this restriction. Section 4.
Education of regarding matters of ethical conduct.	Provides for establishing an education program for state officers and employees. Section 33.	No provision for education	No change from existing law.
Ethics advisory opinions.	Provides for ethics advisory opinions by ethics commission. Provides for confidentiality for informal opinions. Section 26	No advisory opinions available because section 2-2-132 found unconstitutional.	No change from existing law.
Enforcement provisions.	Provides for the Commissioner of Campaign Practices to investigate and prosecute ethics violation complaints. The Ethics Commission would adjudicate the cases and issue orders. Criminal matters referred to county attorney or attorney general. Sections 36-44	Enforcement performed by county attorney using trust law 72-34-105 as the basis for initiating an action. Section 2-2-103. Criminal matters handled by county attorney or attorney general.	Leaves existing law as is but adds criminal violation for violations of 2-2-121. Provides civil penalties but does not specify if that is tied to county attorney prosecution or agency action.
Sanctions for violations.	Penalties include civil fines up to \$2,000 per offence and recommendations for disciplinary action by agency or appropriate authority. Also permits loss of pension and other employment benefits upon conviction of office related felony. Section 44, 47 No change in criminal violations.	Violation of 72-34-105 would probable provide that the benefit of the gain would have to be returned or the contract would be voided. Criminal statutes would result in fine or imprisonment.	Civil penalty between \$50 to \$1,000. Criminal penalty between \$50 to \$1,000, 6 mo jail time. Section 4. Adds penalties for local government ethics violations.

Activity or action	SB 115	Current Law 2-2-101 et seq	. SB 136
Protection against malicious prosecution.	Provides for fine for malicious complaints and potential payment of other party attorney fees. Section 3	Common law tort malicious prosecution.	Attorney fees available from losing party for legislative conflict of interest violations. Section 3 Statute not clear if this suggest that citizen suits possible. Otherwise common law malicious prosecution tort possible.
Treatment of local governments	Leaves existing law the same	Local gov. officers and employees generally prohibited from having a financial interest in a matter they inspect supervise or perform an official act affecting their financial interest. 2-2-125	Adds local government officials and employees to treatment similar to state employees and officers.
Confidentiality of investigations	Investigations would be confidential until concluded. Section 30.	No provision	No provision
Negotiation for future employment while serving in office or employment.	Section 10 prohibits altering actions in order to obtain future employment	Requires notification of supervisor to negotiate with potential employee that person regulates. Section 2-2-121(f)	No change from existing law
Right to call investigation on one's conduct	Section 39 permits an individual the right to have an investigation on one's own conduct.	No provision	No provision