

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on February 4, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused:

Members Absent: Rep. Mary Caferro (D)

Staff Present: Sheri Heffelfinger, Legislative Branch
Cynthia A. Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp markers follow testimony.

Committee Business Summary:

Hearing & Date Posted: HB 383, 1/25/2005; HB 386,
1/25/2005; HB 263, 1/25/2005
Executive Action: HB 241

HEARING ON HB 383**Opening Statement by Sponsor:**

REP. DAVID WANZENRIED (D), HD 97, opened the hearing on **HB 383**, a bill which would revise ethics law. **REP. WANZENRIED** stated he is introducing HB 383 at the request of Governor Schweitzer. **REP. WANZENRIED** suggested ethics and public service should be discussed openly and completely without making anyone feel uneasy. **REP. WANZENRIED** submitted proposed amendment HB038302.ash and explained the intent of HB 383 is to provide restrictions on people who serve state government in the executive branch and public office, both as an official and an employee, and legislators. HB 383 would provide a "cooling-off period" between the time a person leaves public service in state government and when that person can begin to lobby. Under existing law, there is a 12-month "cooling-off period" before an employee of state government can seek employment in a field directly related to their previous position. HB 383 does not change this provision. The legislation will, however, provide a 24-month "cooling-off period" for public officials and personal staff appointed by public officials or the Public Service Commission (PSC). **REP. WANZENRIED** stated the amendment clarifies that a related field would include lobbying. **REP. WANZENRIED** suggested it would serve the public well to discuss the standards of behavior and standards of expectation before something happens.

EXHIBIT (sth28a01)

Proponents' Testimony:

Brian Schweitzer, Governor of the State of Montana, depicted HB 383 as non-partisan. **Governor Schweitzer** noted the current ethics statutes were written and approved in 1995. **Governor Schweitzer** provided a football analogy of the current statute to explain the problem with the current law. **Governor Schweitzer** believed the current law applies to almost nobody. **Governor Schweitzer** read a recent newspaper article from Laurel which suggested the need for elected officials to remain neutral in order to make decisions objectively. **Governor Schweitzer** thought a 24-month cooling off period is reasonable. **Governor Schweitzer** challenged the members of the committee to determine who the current ethical code would apply to. **Governor Schweitzer** thought the legislature should make it clear to their constituents that the decisions of the legislators are being made on what is best for Montana as a whole and not what is best for a special interest group. **Governor Schweitzer** thanked the committee for its hard work and urged the committee to move HB 383 forward.

{Tape: 1; Side: A; Approx. Time Counter: 9.1 - 21}

Bob Ream, Chairman of the Montana Democratic Party, believed the perception may be greater than the reality. **Mr. Ream** recalled the intent in 1995 was that people not take employment that presents itself as a result of their public service. **Mr. Ream** thought precautions should be taken to prevent even the perception of misconduct.

Opponents' Testimony:

Ron Devlin, lobbyist for Northwestern Energy (NWE) and appearing as a private individual, believed the proposed legislation would apply to him. **Mr. Devlin** lost a primary election and his supporters asked him to go to Helena and keep an eye out for their interests. **Mr. Devlin** reminded the committee of the difficulties that can arise when a person is trying to serve in the legislature. **Mr. Devlin** charged that legislators already have a "cooling-off period," since the legislature only meets for 90 days every 24 months, and a new legislator does not officially take over until he/she is sworn in.

{Tape: 1; Side: B}

Mr. Devlin testified that he did not feel he had an unfair advantage as a lobbyist because he had served in the Montana Legislature.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. DEE BROWN, HD 3, HUNGRY HORSE, asked Hal Harper, Chief Policy Advisor to Governor Schweitzer, if Governor Schweitzer believed HB 383 goes far enough, or if the legislation should include agency personnel being paid by taxpayer money who are regular unpaid lobbyists. **Mr. Harper** believed HB 383 would be inclusive of the group identified by REP. BROWN.

REP. BROWN was curious how many people from Governor Schweitzer's staff are former lobbyists. **Mr. Harper** responded that he was not aware of anyone that was a former lobbyist. **REP. BROWN** asked Mr. Harper to supply information to the committee if it is determined some of Governor Schweitzer's staff are former lobbyists. **Mr. Harper** agreed to share that information with the committee.

REP. ROBIN HAMILTON, HD 92, MISSOULA, directed Mr. Harper to Page 3, Exhibit 1, and noted the legislation is not a categorical

prohibition on taking a job for 24 months. **REP. HAMILTON** noted that he is an educator, but he is not sitting on an education committee or sponsoring legislation connected with education. If he lost his next election, **REP. HAMILTON** wondered if he could accept a position as a lobbyist for the Montana Education Association (MEA). **REP. WANZENRIED** explained how **REP. HAMILTON** would be prohibited by the amendment from accepting a position as a lobbyist for MEA.

REP. SUE DICKENSON, HD 25, GREAT FALLS, directed the Committee to the language on Page 2, Lines 1 through 5, and asked if a public employee only had to disclose his interest but could still serve on a board or commission following his public service. **REP. WANZENRIED** clarified that the language is current law and would not be changed by the proposed legislation. **REP. DICKENSON** asked **REP. WANZENRIED** if he believes the restrictions should also apply to boards and commissions. **REP. WANZENRIED** responded the legislation should probably apply to the boards and commissions too, and he noted Governor Schweitzer's policy of not appointing lobbyists to those types of positions.

{Tape: 1; Side: B; Approx. Time Counter: 7.1 - 9.1}

REP. BERNIE OLSON, HD 10, LAKESIDE, explained under the current system, Mr. Devlin would not be able to lobby for four years. **Mr. Devlin** explained a legislator's term of office ends when the new person is sworn in, so it would end up being four years. **REP. B. OLSON** wondered how effective a person would be having been out of the system for four years. **Mr. Devlin** suggested familiarity with the system and personal relationships are characteristics of an effective lobbyist. **Mr. Devlin** noted as time passes, the number of personal relationships will diminish.

REP. JOAN ANDERSEN, HD 59, FROMBERG, noted that lobbyists can also represent groups of people and asked if HB 383 would limit those groups from finding the most knowledgeable, best person to represent their interests. **REP. WANZENRIED** replied it would to the extent those persons are officials or personal staff in the executive branch or the Public Service Commission, and former legislators.

CHAIRMAN JENT noticed the bill provides for a 24-month prohibition for public officers and a 12-month prohibition for public employees and requested confirmation from **REP. WANZENRIED** that was his intention. **REP. WANZENRIED** confirmed that was correct.

REP. ANDERSEN asked for specific examples of when a former legislator has started lobbying and betrayed the trust of the

people of Montana. **REP. WANZENRIED** could not give a specific example, but noted the bill does not argue that lobbyists are unethical, and noted the issue has to do with access to decision makers and providing a level playing field.

REP. WILLIAM JONES, HD 9, BIGFORK, asked if there was a place in statute that defines who is considered an elected official. Specifically, **REP. JONES** asked if the law would pertain to an elected school board member.

Ann Brodsky, Chief Legal Counsel, Governor's Office, referred **REP. JONES** to § 2-2-102. It was noted that section appears on Exhibit 1. **REP. JONES** thought about soil conservation districts and school boards, and wondered how many people the bill would actually cover. **Ms. Brodsky** noted those people were already covered by existing law.

REP. B. OLSON noted the amendment would require elected officials to come under the 24-month restriction. **CHAIRMAN JENT** pointed out that a special district is defined as a unit of local government and would include conservation districts. **Ms. Brodsky** added that is current law. **CHAIRMAN JENT** stated the prohibition for public officers would be changed from 12-months to 24-months by the bill. **Ms. Brodsky** agreed.

{Tape: 1; Side: B; Approx. Time Counter: 20.1 - 28}

REP. JONES asked if the Governor's office would be in favor of exempting local boards and officials from the legislation.

{Tape: 2; Side: A}

Mr. Harper replied that the Governor's intent is that the legislation apply to situations where people use the benefits they have been given and use them in a way that draws into question exactly who they are working for.

REP. ANDERSEN asked about other states with similar statutes and asked if the committee could have copies of those statutes. **REP. ANDERSEN** was particularly interested in laws that apply to other western states. **Mr. Harper** agreed to make that information available to the committee.

Closing by Sponsor:

REP. WANZENRIED argued that the 1995 law is only a good start. **REP. WANZENRIED** asked the committee to remember the restriction would only apply to people after they leave. **REP. WANZENRIED**

noted the legislation is intended to raise the standard to a higher level.

HEARING ON HB 386

Opening Statement by Sponsor:

REP. JOHN SINRUD (R), HD 67, opened the hearing on **HB 386**, a bill revising the laws governing the Commissioner of Political Practices. **REP. SINRUD** explained the bill would insulate the Office of Political Practices from potential mayhem from elected officials that may want to cause harm to the Office of Political Practices. **REP. SINRUD** reviewed HB 386 with the committee.

Proponents' Testimony:

Kandi Matthew-Jenkins, representing Montana families, testified that she supports anything that would tighten up the Office of Political Practices and make it run more efficiently, so elections in Montana could be more up-front, ethical and honest.

Opponents' Testimony: None.

Informational Testimony:

Gordy Higgins, Commissioner of Political Practices, offered to be available for any questions.

Questions from Committee Members and Responses:

REP. B. OLSON noted a person cannot serve as Commissioner if they have been a candidate or may not hold a public office for two years. **REP. OLSON** wondered what would happen in the situation where a candidate runs and loses the election. **REP. SINRUD** replied that candidate still cannot serve, and explained the legislation seeks to remove the potential for paybacks within the Office of Political Practices.

CHAIRMAN JENT made a historical reference to the firing of Archibald Cox in the Nixon Administration and stated he has always thought it was an anomaly that the Governor could both appoint and fire without any judicial review.

REP. SINRUD identified the importance of making Montana politics clean.

CHAIRMAN JENT asked Commissioner Higgins if he agreed that subsection (2) of § 5 sets forth the reason the Governor may terminate the Commissioner of Political Practices. **Commissioner**

Higgins agreed the provision was needed to protect a host of interests.

REP. HAMILTON asked about the rationale for changing the prohibition from serving after a term of commissioner from five years to two years. **REP. SINRUD** explained five years is a long time to wait after serving as the commissioner and suggested two years is more appropriate.

Closing by Sponsor:

REP. SINRUD believed the bill shows ethical value, and stated it is important that if a member of the public believes they have an issue, that they have a place they can go and get a fair, honest review of their complaint.

(Rep. A. Olson left the meeting)

HEARING ON HB 263

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on HB 263, which would provide for a formal complaint process for state agencies. **REP. LANGE** stated HB 263 is about making sure the public gets justice, and that state agencies act the way they are intended. **REP. LANGE** submitted a copy of the Complaint Resolution Policy for the Youth Court Act and explained the policy was used as a model for HB 263.

EXHIBIT (sth28a02)

REP. LANGE spoke about his participation on the Law and Justice Interim Committee (LJIC) and his knowledge of an incident which occurred to a youth in the Youth Court system. A recommendation was made to the Supreme Court that a parent should be educated on how to file a complaint and the process that will occur once the complaint is filed. In addition, the Supreme Court Administrator's Office should develop policy in regard to complaints made against Youth Court staff. In the meantime, LJIC heard allegations from the public against one particular state agency. In reviewing the allegations, the LJIC found the department did not have a formal complaint process.

REP. LANGE explained the confusion in the fiscal note because many state departments have a complaint process against other departments or agencies, but do not have a process to handle complaints against itself.

{Tape: 2; Side: B}

REP. LANGE spoke about how the Governor must defend the actions of the agency and the cost to taxpayers for defending those lawsuits.

REP. LANGE submitted a proposed amendment to HB 263, which was requested by the Public Service Commission (PSC).

EXHIBIT (sth28a03)

REP. LANGE summarized the purpose of the legislation is about the ability for the public to file a complaint against an agency for its action, or lack of action. **REP. LANGE** made one final note that the deadline would be better if it was set at 45 days rather than 90 days.

Proponents' Testimony:

Kandi Matthew-Jenkins, Missoula, is an advocate for families falsely accused of abuse and neglect. **Ms. Matthew-Jenkins** believed this legislation could have saved the state a substantial amount of money over the years. **Ms. Matthew-Jenkins** expressed concern about the agencies performing the investigations. **Ms. Matthew-Jenkins** expressed her hope that the final version of the complaint form will request adequate information. **Ms. Matthew-Jenkins** noted the complaint forms should be adapted; so people who are low-income and/or uneducated will be able to complete the forms. **Ms. Matthew-Jenkins** closed by citing to a recent child protection case verdict in California where the family was awarded \$10 million.

{Tape: 2; Side: B; Approx. Time Counter: 11.1 - 15.2}

David Martin, Montana Newspaper Association and Lee Enterprises, testified as a proponent of HB 263.

Bonnie Adee, Mental Health Ombudsman, works with a very narrow area of the population and receives and investigates complaints. **Ms. Adee** suggested it would be very helpful to have a process in place prior to people asking her to become involved. **Ms. Adee** noted that licensed mental health facilities and community mental health facilities have a universal complaint process. **Ms. Adee** agreed that some people would have difficulty following through with the complaint process. **Ms. Adee** worked on the case identified by **REP. LANGE** and stated a formal complaint process would have been very helpful. **Ms. Adee** explained how having a complaint process changes behaviors.

Melissa Worthan, Missoula, suggested it is very important that people have a system that works and where a complaint can be filed without fear of retaliation or intimidation.

Opponents' Testimony:

Steve Bender, Deputy Director of the Department of Administration, testified as a weak opponent to HB 263. **Mr. Bender** submitted written testimony and a proposed amendment to HB 263.

EXHIBIT (sth28a04)

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. BROWN wanted to know if HB 263 addressed similar issues identified by SEN. McGEE, where people sign their name and relinquish their rights to private information. **REP. LANGE** was not sure what issue **REP. BROWN** was referring to. **REP. BROWN** asked **REP. LANGE** to discuss privacy issues concerning minors and other classes of people such as the mentally ill. **REP. LANGE** believed the information that was placed on the complaint form by someone who did not have the proper authorization could not be made public. **REP. LANGE** stated there is legal precedent supporting the complaint process as written, and that the process is constitutional.

REP. BROWN expressed her nervousness about having a newspaper testify in support of a bill that does not address due process. **REP. LANGE** stated the public has the right to know whether an agency is doing its job, but noted the personal rights of any minor or victim should not be revealed.

REP. BROWN asked if the form would become a public document once it is signed against an agency and becomes part of the public record. **REP. LANGE** replied it would become public record and stated that he believed it should become public record. **REP. LANGE** suggested that is exactly the reason why the Supreme Court crafted the Youth Court policy the way it did. **REP. LANGE** noted the Youth Court policy has worked perfectly and has not resulted in any lawsuits.

Ms. Matthew-Jenkins explained confidentiality laws provide for the ability of a guardian to authorize the release of information.

{Tape: 3; Side: A}

Ms. Matthew-Jenkins also noted that in public records only the child's initials are used.

REP. B. OLSON asked if remedies are spelled out in code. **REP. LANGE** expounded on available remedies and stated the agency will have to explain its actions and numerous complaints would be indicative of an agency not doing its job. **REP. LANGE** thought the penalty would be that the agency would be forced to fix the problem because of public knowledge and accountability to the director or a higher official. **REP. LANGE** was not familiar with the disciplinary procedure for each agency, but cited the end result could be termination of an employee.

Mr. Bender explained that if there is a disciplinary process already in rule, that process would be used. **Mr. Bender** believed a uniform complaint process would be a good idea with clarification of how the process would be applied.

REP. DICKENSON recalled a number of lawsuits being brought against the state because agencies were not following rules. **REP. DICKENSON** wanted to know specifically how HB 263 would help avoid litigation under those circumstances. **Mr. Bender** explained that if there is a complaint process already defined in administrative rule, that complaint process would be used.

REP. DICKENSON expressed concerns about frivolous complaints and asked what safeguards would be employed so state employees do not have to respond over and over again to complaints from the same individuals. **REP. LANGE** thought in most cases the agency is correct and can explain its decision to the complainant. **REP. LANGE** suggested there could be a mechanism placed in the bill to deal with repetitive frivolous complaints, but urged caution in dealing with the complaints because the same complaint from numerous individuals could be legitimate.

REP. MALCOLM had questions about the second proposed amendment in Exhibit 4, and noted the proposed law is not meant to provide a complaint process for consumers. **REP. LANGE** stated that was correct since there is already a process in place. **REP. LANGE** addressed the technical comments on the fiscal note.

Ms. Matthew-Jenkins recalled a joint resolution in the last session which would have assisted indigents in the complaint process.

Closing by Sponsor:

REP. LANGE closed the hearing and stated he would be available for questions. **REP. LANGE** stated Ms. Heffelfinger has a very good background on the issue. **REP. LANGE** stated the LJIC was so

wrapped up in the public defender issue, it decided not to bring HB 263 as a committee bill.

{Tape: 3; Side: A; Approx. Time Counter: 18.7 - 20.1}
(Caferro leaves the meeting.)

EXECUTIVE ACTION ON HB 241

Ms. Heffelfinger submitted proposed amendments HB024101.ash and HB024102.ash. **Ms. Heffelfinger** also submitted the current law regarding compensation for expenses.

[EXHIBIT\(sth28a05\)](#)

[EXHIBIT\(sth28a06\)](#)

[EXHIBIT\(sth28a07\)](#)

Motion: REP. MALCOLM moved that HB 241 DO PASS.

Motion: REP. JACOBSON moved that HB 241 BE AMENDED (HB024101.ash).

{Tape: 3; Side: B}

Discussion:

Ms. Heffelfinger reviewed amendment HB024101.ash with the committee.

CHAIRMAN JENT summarized the amendment would make the Lieutenant Governor the Director of the Commission, and the Office of Budget and Program Planning (OBPP) would staff the Commission.

REP. JACOBSON wondered if the OBPP has adequate staff. **CHAIRMAN JENT** explained the sponsor and the Governor's Office had worked together on the amendments and stated, therefore, that he assumed OBPP does have adequate staff.

REP. B. OLSON noted the Governor had \$400,000 in his budget, and that the fiscal note called for \$300,000. **REP. B. OLSON** recalled that both sets of money would not be required.

REP. BROWN stated there is a fiscal note, but an amended fiscal note would not be available until the bill goes to the floor for debate. **REP. JACOBSON** noted the fiscal note would be greatly reduced by the amendment. **CHAIRMAN JENT** suggested the Commission would be similar to an interim committee.

REP. JOAN ANDERSEN, HD 59, FROMBERG, recalled there would be four members appointed by the Governor and wanted to know if that was still part of the amendment. **Ms. Heffelfinger** agreed language

should be inserted on Page 1, Line 19, which would require the Governor to appoint four members. **Ms. Heffelfinger** requested this amendment be included within HB02401.ash. **REP. ANDERSEN** clarified it would be a nine-member commission made up of two members of the House, two members of the Senate, four members appointed by the Governor, and the Lieutenant Governor would act as Chairman.

REP. MALCOLM stated he would like to see four members from the House and four members from the Senate. **REP. BROWN** agreed and stated the amendment narrows one part of the Commission, while expanding another part.

Substitute Motion: **REP. MALCOLM** made a substitute motion TO SEGREGATE NOS. 2, 3, and 4 FROM HB024101.ash.

Vote: Motion carried unanimously by voice vote with **REP. A. OLSON** and **REP. CAFERRO** voting aye by proxy.

REP. DICKENSON requested clarification that the Lieutenant Governor must be reimbursed for his expenses because he is a state officer. **Ms. Heffelfinger** confirmed that is the case.

CHAIRMAN JENT explained that the committee is now addressing the amendment without the portion that was segregated. This would include four members from the House, four from the Senate, and the Lieutenant Governor. In addition, there will be no new staff, and the Lieutenant Governor will act as the Commission Chairman.

Vote: Motion to adopt HB024101.ash as segregated carried 15-1 by voice vote with **REP. MACLAREN** voting no and **REP. A. OLSON** and **REP. CAFFERO** voting aye by proxy.

Motion: **REP. DICKENSON** moved that HB 241 BE AMENDED (HB024102.ash).

Discussion:

Ms. Heffelfinger explained HB024102.ash would add the legislative auditor as an *ex officio*, non-voting member to the Commission.

REP. B. OLSON recalled that the auditor could be at the meeting anyway, and that the amendment was not necessary. **REP. JACOBSON** agreed the Legislative Auditor could be available at any time. **REP. JACOBSON** expressed concern that the amendment would mandate that the Legislative Auditor attend all meetings. **REP. JACOBSON**

suggested the Legislative Auditor's participation should be on a as-needed basis.

REP. JACOBSON suggested the bill could be modified on the floor to include language that the Auditor could participate as requested. **REP. BROWN** did not believe any language was necessary since the Auditor already serves at the request of the Legislature.

Vote: Motion failed 2-14 by voice vote with **REP. JONES** voting aye, and **REP. A. OLSON** voting aye by proxy, and **REP. CAFERRO** voting no by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 23.9 - 31.1}

{Tape: 4; Side: A}

Motion: **REP. HENDRICK** moved that HB 241 DO PASS AS AMENDED.

Discussion:

REP. BROWN wondered if the Department of Administration or the Executive Branch would take care of what is mentioned on the January 13, 2005, fiscal note where four staff are going to be required and the salary of an executive director would be cabinet level. **Ms. Heffelfinger** stated the executive director and staff were eliminated, although **Ms. Heffelfinger** noted the Senate could amend the legislation.

Vote: Motion failed 8-8 by roll call vote with **REP. DICKENSON**, **REP. EATON**, **REP. HAMILTON**, **REP. HENRY**, **REP. JACOBSON**, **REP. JENT**, and **REP. SMALL-EASTMAN** voting aye, and **REP. CAFERRO** voting aye by proxy and **REP. A. OLSON** voting no by proxy.

ADJOURNMENT

Adjournment: 11:12 A.M.

REP. LARRY JENT, Chairman

CYNTHIA PETERSON, Secretary

LJ/cap

Additional Exhibits:

EXHIBIT ([sth28aad0.PDF](#))