

SENATE ETHICS, ELECTIONS, AND CAMPAIGN FINANCE COMMITTEE

March 16, 1993 Hearing Room B 3:00 p.m. Tapes 26 and 27
MEMBERS PRESENT: Senator Grattan Kerans, Chair Senator Neil Bryant
Senator Joan Dukes Senator Dick Springer MEMBERS EXCUSED: Senator Rod
Johnson STAFF PRESENT: Annette Talbott, Committee Counsel Tamara
Brickman, Committee Assistant MEASURES CONSIDERED: Public Hearing and
Work Session SB 159 Public Hearing SB 111

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006 CHAIR KERANS: Calls meeting to order at 3:14 P.M.

PUBLIC HEARING ON SB 159 AND SB 111 WITNESSES: MARC OVERBECK, Legislative Aide to Governor Barbara Roberts DON DOLE, Chair, Oregon Government Ethics Commission PAT HEARN, Executive Director, Oregon Government Ethics Commission ROLLIE WISB ROCK, Chief of Staff, Oregon State Treasurer's Office

008 MARC OVERBECK, Legislative Aide to Governor Barbara Roberts: Testifies in support of SB 159 and SB 111, and discusses issues in these bills. (EXHIBIT H) 059 CHAIR KERANS: Asks Mr. Overbeck to expand his remarks on honoraria. 062 OVERBECK: Discusses the issue of honoraria pay, with Chair Kerans. Continues testimony regarding SB 159 and SB 111. (EXHIBIT H) 104 CHAIR KERANS: Comments on Mr. Overbeck's statements. 122 DON DOLE, Chair, Oregon Government Ethics Commission: Reviews testimony and concepts regarding SB 159 and SB 111. (EXHIBIT G) Senate Ethics, Elections, and Campaign Finance Committee March 16, 1993 - Page 2

182 DOLE: Discusses, with Chair Kerans, his testimony regarding Page 18, line 11 of SB 159. Requests that the word "may" be left and the commission which would give the "authority to reduce (penalties) on good cause." (EXHIBIT G, p. 2) 212 DOLE: Discusses, with Chair Kerans, page 18, line 17 of SB 159. Refers to his testimony. The concept of the use of the word relative with regards to Statements of Economic Interest (SEIs). Suggests to "go to family members, define it broadly enough to cover what we want." Asks what would be done about a "brother who you haven't spoken to in 10 or 15 years." (EXHIBIT G, p. 3) 224 CHAIR KERANS: Comments that discussion has taken place regarding "members of the family who reside with." Comments that he wants the definition to refer to people who are in the household related by blood or marriage. 238 DOLE: Comments that the commission has already established a consent calendar by rule. Referring to page 3 of his testimony. (EXHIBIT G) 240 DOLE: Refers to page 31, line 1, subsection (c), comments that the commission has taken care of the "protective order" by rule, and proposes different language. (EXHIBIT G, p.3) Discusses the subject of honoraria and whether "prizes" are considered honoraria. 283 CHAIR KERANS: Continues discussion on honoraria and emoluments.

297 DOLE: Suggests a change in SB 111 which would allow the commission to charge "reasonable fees for attendance and participation" of educational programs. (EXHIBIT G, p. 4)

319 SEN. BRYANT: Asks Mr. Dole if the other commissioners would be interested in reviewing the information and making additional comments regarding SB 111 and SB 159. 320 DOLE: Comments that they were given the opportunity to do so. 328 CHAIR KERANS: Comments that he wants to mark the bill up and that action won't be taken until next week. 345 PAT HEARN, Executive Director, Oregon Government Ethics Commission: Clarifies that all seven members of the Ethics Commission received the amendments, there were no adverse statements only a few questions for clarification. 357 CHAIR KERANS: Closes the public hearing on SB 159 and SB 111.

WORK SESSION ON SB 159

368 CHAIR KERANS: Begins the work session by referring to the 159-5 amendments. Asks Ms. Talbott about the cross reference "so that changes ORS 244.260 are automatically caught up in Chapter 171, as opposed to having to remember to do two stitchings." 379 ANNETTE TALBOTT, Committee Counsel: Replies to Chair Kerans by explaining that practically it would make no difference. Comments that it could easily be cross reference to Chapter 244. The only difference would be that under Chapter 171 it would apply only to lobbyists and certain public officials,

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whereas in Chapter 244 the investigatory language only applies to public officials.

394 CHAIR KERANS: Asks if further amendments to ORS 244.260 would "highlight the fact there is companion or parallel language...it would be known to the commission and the Legislature."

398 TALBOTT: "Certainly."

401 CHAIR KERANS: Suggests leaving section 2 in order to give notice to the lobbyists, who register, of what their requirement is.

421 HEARN: "We need to take the guess work out of this and make sure people know where to go and where to find it." 425 CHAIR KERANS: Comments that he believes in notification to the lobbyists. "Take section 2 as far as the notice and repeating the language here."

439 TALBOTT: Comments that section 1 should read "Sections 2 and 6 are added to and made a part of." 451 CHAIR KERANS: "So ordered."

452 TALBOTT: Discusses the clarity of the word "its" on line 17 and suggests that the language "the Commission's own instigation" would be clearer. 460 CHAIR KERANS: Asks for objection to using the language "the Commission's own". Hearing no objection "so ordered." 464 HEARN: Discusses an issue regarding line 16 which begins with "must also be notified in advance if a motion to." Suggests inserting after the word "if" the following language "an issue that may give rise to." Due to the possibility that an issue may not necessarily be discussed at a meeting.

488 TALBOTT: Comments that the same language that appears when as an amendment to ORS 244.260.

496 CHAIR KERANS: Comments that the language suggested by Mr. Hearn is even stronger.

035 TALBOTT: Comments that on page 2, subsection 2 lines 12-24, there is no need to change the language which provides clarification. "It does divide up what powers the commission has during the preliminary review phase...during the investigatory phase they have the authority to issue subpoenas and compel attendance of witnesses."

044 CHAIR KERANS: Discusses that the language reflects what the committee's "earlier consensus was." 047 HEARN: Comments that for clarification the word "inquiry" was inserted specifically in relation to the preliminary review phase. . . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Ethics, Elections, and Campaign Finance Committee March 16, 1993 - Page 4

055 TALBOTT: Discusses page 3 lines 18-24. The language clarifies when an investigation by the commission would be suspended. Asks whether the committee wants the commission to suspend its investigation or toll the time. The language is written "so that both the time limit would toll and the commission's inquiry would be suspended." 070 CHAIR KERANS: "So we would suspend the time limit on lines 18 and 19, and where do we suspend the...?"

072 TALBOTT: "As well as the commission's inquiry is suspended in this part, it says inquiry cause it's the preliminary review phase on lines 18 and 19."

075 CHAIR KERANS: "The question is do we want to do both?"

077 HEARN: Comments that the reason would be that "a criminal investigation may get under way at a point when the commission already has enough information or material or doesn't need any of the information or material that is part of the criminal review in order for it to finish its preliminary review investigation." Comments that the "impetus for this is that sometimes we need information that is not available to us because it is being held confidentially during a Grand Jury proceeding." 096 TALBOTT: Clarifies the discussion between Mr. Hearn and Chair Kerans by stating that if the commission had access to information and felt like it could proceed then there would be no need to toll the time. However, if the commission did not have access to the information it would both toll the time and suspend its inquiry go ahead if unable to gain access. Asks whether the committee wants to give that discretion to the commission. 104 CHAIR KERANS: Clarifies the issue regarding whether the commission should have discretion in this area. 117 HEARN: Comments that the commission would officially notify the party(s) involved that the case was being "stopped." 119 CHAIR KERANS: Discusses that this "might be worthwhile."

122 DOLE: Asks what the definition of a criminal proceeding is and when it ends.

124 TALBOTT: Responds to Mr. Dole and explains that the definition of pending is the process of actively investigating or seeking or preparing to seek an indictment.

128 DOLE: "Once an indictment is in place we still don't have trouble investigating with some prosecutors an indictment before a conviction."

134 SEN. BRYANT: Comments that prior to the trial on the criminal matter the defendant probably would not talk to the commission.

135 DOLE: Discusses that prior to the trial the commission would have trouble but after the trial it was just a matter of getting a copy of the transcript. Comments that he thinks that it what is happening in the one presently pending.

137 CHAIR KERANS: "So we've got a hole in that at any rate."

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138 DOLE: Comments that the committee needs to make the decision, but that it would probably work best if the commission had the authority to make the decision.

142 CHAIR KERANS: Asks Sen. Bryant if he sees any problem giving the commission the power to make the decision to go ahead and pursue the civil matter in a case in which there has been an indictment but no trial yet. 148 HEARN: Comments that he does not have a problem with that because the standards "of evidence between what they need and what we need are so far apart, that frankly I don't see how whatever finding the commission could make could possibly impugn them." 157 CHAIR KERANS: Discusses that the time limit needs to be suspended while a pending criminal investigation or matter of indictment has been delivered if there is not enough information for the commission to proceed. Questions whether the committee wants to allow the commission the option to proceed if it had the ability to proceed either during a pending criminal investigation or after an indictment has been delivered. 168 SEN. BRYANT: Discusses the concept of a fair trial for the person being charged, and the person being charged should have the choice of whether an ethics investigation should proceed. 174 CHAIR KERANS: Asks if the party(s) can agree to suspend the time limits. 176 HEARN: "The parties may waive. " 178 TALBOTT: Explains that the problem is that the commission could not do it on their own. 180 CHAIR KERANS: "Can I unilaterally do that?" 181 DOLE: Explains that the commission has the current authority to postpone the investigation based on the request of the party in a pending criminal investigation.

186 SEN. BRYANT: Comments that he is not concerned with Mr. Dole's sensitivity to that request, but to future commissions.

189 TALBOTT: Discusses that one option would be to put it at either the party' or the commission's request "leave it so that it's either or."

193 DOLE: Comments that he believes the intention originally was to give the commission the authority to suspend in "very narrow circumstances."

198 HEARN: Suggests to make a suspension mandatory for the time limits and the investigation unless the party(s) stipulate otherwise.

213 TALBOTT: Comments that she believes the suggestion by Mr. Hearn would work well in regards to the policy position. "That would be only

in regards to the pending criminal investigation not if a court enjoins the commission from continuing." 219 CHAIR KERANS: "How do we state that?"

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221 DOLE: "As I understood when we reach that juncture we would stop the investigation unless the public official asked that it proceed."
224 HEARN: "He may not ask, we might call and ask him the point is to get agreement." 228 TALBOTT: "Unless the party(s) stipulate otherwise. " Discusses Sen. Bryant's concern with the "same facts" language. Comments that the language changed to "the underlying facts or conduct" in this draft which makes it not quite so narrow. Discusses the term "defense" as found on page 5, line 25, Ms. Talbott comments that Mr. Hearn requests the language to be made clearer. "This language was picked up from the false swearing definition where you have an opportunity to retract what you've said, so it's based on a criminal statute." Seeks comment on what the committee actually means by the word "defense." (EXHIBIT C) 252 CHAIR KERANS: "I think it's a defense."
254 DOLE: "The way the libel statutes read where the newspaper can get out from underneath it by printing a retraction." 258 CHAIR KERANS: Comments that the current law's intent is that which Mr. Dole stated, and it is the way he would want it to be read in this application to the ethics code. 261 HEARN: Suggests the language be written to make it clear that the matter is disposed of if a retraction occurs.
265 TALBOTT: Discusses that procedurally it should be the subject of complaint, and the person who is the subject of the complaint would have to present a defense that he/she has retracted it, and the commission would then have the authority to dismiss the complaint "based on the defense." 270 DOLE: "I think that the commission, by rule, is going to have to define what is an adequate retraction and that once that was brought as a defense and uncontradicted it would just dismiss the proceedings. It's an absolute defense." 277 CHAIR KERANS: "Let's say that."

278 HEARN: Comments that this is what he meant by his suggestion to make it clearer to the reader that it is an "absolute defense."

281 CHAIR KERANS: "So that the lobbyist who reads this knows what his or her obligations are and that they have a method to correct a wrong and be absolved from any sanctions." 287 SEN. DUKES: Asks if this means that a lobbyist can come before a committee swear to falsehoods, and when the session ends and that person is a subject of a complaint say that he/she was wrong. 291 CHAIR KERANS: Directs Sen. Dukes' attention to page 5, line 29 to explain the situation. (EXHIBIT C)

302 SEN. DUKES: "This simply allows them the chance to get out in the hallway rethink what they've done and come back in and correct it."

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307 TALBOTT: Asks Mr. Dole if he has a specific suggestion for

language.

309 DOLE: Responds to Ms. Talbott and explains that he doesn't have a problem with the language he just wanted to know the intent.

311 TALBOTT: "You would have to, in terms of a factual matter, decide whether or not what they said was a true retraction in a timely fashion and all that." 314 DOLE: Comments that he thinks the committee has to

define that by rule. 318 TALBOTT: Discusses Mr. Doles suggestion for page 6, lines 25-27 which would make that opinion language mirror ORS 244.280 subsection 1's safe harbor language. (EXHIBIT G, pp. 1-2)

332 DOLE: "My suggestion was don't put it in 171 put it as a part of 244.280 which already deals with the formal published opinions and safe harbor rules. My language would put it in 244." 344 CHAIR KERANS:

"How do we tell lobbyists that they have the opportunity to get advisory opinions?" 345 DOLE: "Same as public officials have under 244. I have no problem adding the word lobbyist to it as persons. " 348 TALBOTT:

Discusses that if the committee has no problem with that then subsection 2 needs to be deleted. 353 HEARN: "If we are going to keep them distinct and separate, just as we discussed on page 1I would encourage you to

continue to do that. I really think it's only fair for those people that are subject to these laws." 369 TALBOTT: Asks what the committee's preference is. 371 CHAIR KERANS: Comments that he would parallel it.

"Let's go ahead and add to 171 here in this sub 2 pick up the language we find in 244.280 subsection 1 and make it conform to lobbyist."

379 TALBOTT: "I believe you also want the subsection 3, the safe harbor that they have an opportunity to rely on. " 380 DOLE: "What he is suggesting is that you are picking all of 244.280 up and moving it but changing the statutory references in 244.280." 383 TALBOTT: "He just said subsection 1, but you want all of it." 384 DOLE: "Oh no. I want subsection 3. That's the one I really called your attention to. You don't have it there because it's..."

388 TALBOTT: "Under your ethics code chapter you do have reference."

400 CHAIR KERANS: "Simply pick up that and put it down. I agree." Asks for any objection hearing none "let's go ahead and we'll include that."

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406 DOLE: Discusses, with Ms. Talbott, that he thinks lines 28 and 29 on page 6 "are surplusage if you look at Chapter 244." (EXHIBIT C)

415 TALBOTT: Responding to Chair Kerans, explains that lines 28 and 29 permits the commission to adopt rules to carry out that one section, and the lines could be removed because it is in Chapter 244 419 CHAIR

KERANS: Asks that lines 28 and 29 from page be deleted. 422 TALBOTT: "We would also delete the current subsection 2 and just use the language that's in 280 (ORS 244.280)." 424 DOLE: "Well I think you would want

to delete (Subsection) 2 and then pick up 280 (ORS 244.280). Modifying it to use the word lobbyists." 427 TALBOTT: Discusses that the actual

conflict of interest is the same as the potential conflict of interest except the actual conflict says "would be to the private pecuniary benefit" and the potential conflict says "could be." (EXHIBIT C)

438 HEARN: Comments that the reasoning behind defining an actual conflict of interest as opposed to a potential is to clarify the existing statute for the many public officials he has spoken with

concerning this matter. The existing statute uses the language potential conflict of interest as a situation which "would be a benefit" and it also does not permit a "public official to vote if otherwise prohibited from doing so." 469 SEN. DUKES: Asks if there is a definition of "relatives" somewhere.

482 TALBOTT: Discusses that "relative" is defined on page 9 to be a broader definition.

TAPE 26, SIDE B

037 TALBOTT: Discusses the issue that concerned Mr. Dole when trying to apply this list to those required to file a Statement of Economic Interest (SEI); Mr. Dole suggested that it might not be necessary for relatives (especially estranged) to list all their business dealing. Suggests that an option would be to revert back to the member of the household definition for the SEIs only. Comments that the committee could expand members of household to include certain people or any people who reside with the public official.

057 DOLE: "Relatives living in the same household definition I'd have no trouble with at all."

058 CHAIR KERANS: "I think that is what we ought to do. Restore the language on lines 16 and 17 and say the children of either or other relative who reside with the public official." 062 TALBOTT: Explains to Mr. Dole that the Lines bracketed on lines 16 and 17 will be restored. Discusses that on page 8, line 26, "family members" was substituted in place of "relatives" because "relatives" is now defined. "It appeared that you would want gifts from someone whose related to you to be broader than just the definition of relatives. You now have three different terms that refer to some kind of relation, you have relatives which is defined on page 9, member of the household which is defined, and then family members which is not defined; it's suppose to be the broadest of the references because you really don't want to prohibit public officials from getting gifts from people who are related to them." (EXHIBIT C)

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085 CHAIR KERANS: Makes a clarifying statement regarding gifts in relation to line 26, page 8. Comments on "members of household" in regards to the SKI and "relative" in relation to conflicts of interest. (EXHIBIT C) 102 HEARN: Comments that he is not sure a third definition needs to be added. Suggests taking the definition of "relative" and call that "family members" then leave the other "relative" alone. "The other relative is in the current statute and is not defined."

118 DOLE: "I think you need a third definition If a person's grandparent was in the essence making estate planning gifts of substantial sums of money they wouldn't be excluded under your concept because grandparents are not a relative under that definition. That is not an impossible transaction."

129 CHAIR KERANS: "We could do blood or marriage, adopted, or etcetera.

Adopted under laws of this or any other state it gets pretty complicated."

131 TALBOTT: "I believe the need is to make it as broad as possible. Much broader than relative, much broader than member of household."

135 CHAIR KERANS: Suggest leaving line 26 on page 8 as found with the understanding that it is as broad as can be interpreted. Discusses the amendments to line 16 and 17 on page 9. Discusses the term "relative" as defined in relation to conflict of interest. (EXHIBIT C) 140 TALBOTT: Discusses that conforming changes will be made in ORS 244.060 and 244.070.

142 DOLE: Asks if line 16 will be put back into the draft and if "relative living in the household" will be used in reference to the SKI.

144 TALBOTT: "Correct."

145 SEN. DUKES: Asks whether her child's godfather, who is a lobbyist, can still give gifts to her child.

154 HEARN: Discusses that current law does not provide an exemption for a person such as a godfather.

160 CHAIR KERANS: Comments that as long as the gift is under \$100 than it is "OK."

167 TALBOTT: Refers to page 10, line 13. Discusses the suggestion made by Lynn Rosik, Assistant Attorney General. Ms. Rosik, suggests repeating the language on lines 10 and 11 "delete public and insert official position or office. ..so that it would read but for the public official's holding of the official position or office. " Suggests for clarity on line 14 the word "or" should be stricken, and "put for the public official or the public official's relative."

181 CHAIR KERANS: Asks for objection. Hearing none states "we'll do that." 182 TALBOTT: Discusses lines 19 and 20 the suggestion is to delete the bolded material "attempt to solicit or receive or, basically. ..solicit is an attempt. " Comments that same problem occurs on line 22 of page 11, "an attempt to offer something is basically an offer."

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192 CHAIR KERANS: Without hearing any objection Chair Kerans approves the changes to strike the bolded material on page 10, lines 19 and 20, and on page 11, lines 18 and 22. (EXHIBIT C) 194TALBOTT: Discusses that on pages 11 and 12 the deleted material is the campaign contribution issues which are being transferred over to the Secretary of State. Comments that page is the "revolving door statute." (EXHIBIT C)

208 ROLLIE, WISB ROCK, Chief of Staff, State Treasurer's Office: Comments that the Treasurer's office is concerned with the SB 159-6 amendments, page 1, line 24. (EXHIBIT D) 218 CHAIR KERANS: "What's the difference between that and what we've got in Section 10?"

219 TALBOTT: "Section 10 adds the Deputy Attorneys General or Assistant Attorneys General, as well as the State Treasurer, Chief Deputy State Treasurer. The dash sixes also add the reference to...public officials responsible for negotiating or letting public

contracts or investing public funds."

226 CHAIR KERANS: "You want to address yourself to the dash six amendments line 24...?"

228 WISB ROCK: "Yes."

229 CHAIR KERANS: "You're OK on the revolving door."

WISB ROCK: "Yes. We are OK on the revolving door for the Treasurer and the Deputy Treasurer."

237 CHAIR KERANS: "Before we proceed the Chair is going to recommend that we tighten that much further. Let's find out if we can cure your problem." Discusses with Ms. Talbott the change which would reflect a public official who negotiated and let public contracts, and invested public funds as opposed to "held a position responsible." Comments that this should make it narrower. 248 WISB ROCK: Comments that there is agreement on including the State Treasurer and Deputy Treasurer in the statute; however, there is no agreement on including staff (primarily investment officers) because they would be precluded from taking position in the work force of their chosen profession from which they have been recruited and trained in. 265 CHAIR KERANS: "What if we were to strike sub A and leave B, and then sub paragraphs A,B, and C? So they go to work for Morgan Guarantee who says I have an offer you can't refuse, and they in fact do not refuse the offer... but they can't come back during that period and lobby, try to influence the agency, or disclose confidential information. Would that be alright?"

274 WISB ROCK: "Yes."

275 CHAIR KERANS: Comments that the committee will take the solution under advisement. Returns the work session to SB 159-5, Section 10, page 13. (EXHIBIT C) 287 SEN. BRYANT: Asks if Phil Lemon, the City Attorney for Eugene, would he be violating Subsection 2 by being "here to watch their legislative interests." (EXHIBIT C) _ _ ., These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Ethics, Elections, and Campaign Finance Committee March 16,1993 - Page 11

293 TALBOTT: Comments that Mr. Lemon was not an Assistant or Deputy Attorney General; therefore, he would not be violating the section. Discusses that she spoke with Marla Ray from the Attorney General's office to make them aware of this amendment. The Attorney General's Office said they would consider the amendments for purposes of taking a position. (EXHIBIT C) 305 CHAIR KERANS: Directs Committee Counsel to report to the committee the decision of the Attorney General's office which has been given a week to respond. 310 TALBOTT: Addresses that the "insurance commissioner" has been deleted in the revolving door because the position is the same as the Director of Department of Insurance and Finance under current law. Comments that the "Supervisor of the Savings and Loan, Credit Union, and Consumer Finance Section, there is a higher up person in that division and it's the Division of Finance and Corporate Securities." Asks the committee if it wants to include the "higher up person" or the Supervising Examiner? 331 CHAIR KERANS: Comments that the division head should be included, but asks Ms. Talbott to report what the reaction is from the division. Addresses the issue of reorganization and the possible need for a conforming

amendment. 340 TALBOTT: Discusses Mr. Hearn's suggestion regarding SEIs. The Director of the Lottery has been included in the "revolving door statute" and should also be required to file an SKI. The suggestion is to add to the list on page 15 the Director of the Lottery. (EXHIBIT C) 349 CHAIR KERANS: Without hearing any objection from the committee adds the Director of the Lottery to the list of those required to file a SKI. 356 CHAIR KERANS: Discusses the addition of lines 8, 9, and 10 on page 16. Comments that this was added as a "midway point between having no notice over that level of government." Asks for a report from the committee on what the opinion is on the addition of this group. (EXHIBIT C) 394 DOLE: Discusses the subject of taking out the "provision where counties who did not vote" there are no major metropolitan communities excluded. 410 TALBOTT: Discusses the issue of adding the lottery commission to the list of those required to file a SKI; the Lottery Director does have its own chapter requiring it to comply with ORS Chapter 244, placing it in this bill would add it to Chapter 244 instead of having a separate reference. Add that it would also be the same for the Lottery Commission. Discusses page 18, line 11 and whether the committee wanted to give discretion to the commission of whether to impose the daily penalty. (EXHIBIT C)

438 CHAIR KERANS: Discusses that the committee believes the word "may" to mean "discretionary based upon the circumstances may impose all of the penalty for each day or tote up the entire penalty and then waive some portion of it or in some cases of error all of it. How much per day?" Addresses that the overall civil penalty is currently \$1,000.00.

473 DOLE: Comments that he has no problem with \$5.00/day. "The real key is how may days do they get to respond?"

480 CHAIR KERANS: "On line 6, 5 business days?"

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488 TALBOTT: Asks Mr. Hearn if days under statute are "construed to be calendar days."

491 HEARN: "It is calendar."

493 CHAIR KERANS: Specifies 5 business days.

498 DOLE: Asks the committee allow person 10 business days to comply.

TAPE 27, SIDE B

038 CHAIR KERANS: Agrees with Mr. Dole's suggestion for 10 business days to comply. "So on the sixteenth day it costs you five bucks?"

042 DOLE: "Actually it would be longer than that because by the time you process it to get that date." Comments that he has no problem with \$5.00 a day penalty.

047 CHAIR KERANS: "The question is do we want to then underbid your maximum penalty?"

050 TALBOTT: Comments that the Attorney General's office is concerned that there be specificity of when the penalty would be attached. "They can't just attach some amount arbitrarily until the maximum penalty amount has accrued. So they have to wait that long for someone whose continued to file."

058 CHAIR KERANS: "That's what we understand we're doing. It's a mechanical process to reach the maximum you can waive some or all of it...so it's \$5.00 a day, maximum \$1000.00."

062 SEN. DUKES: Asks if the commission knows if a person has not filed an SKI within the five days of the date required to file the SKI.

067 HEARN: Responds to Sen. Dukes and explains that the commission does know but currently does not take immediate action.

070 SEN. DUKES: Continues the discussion on the number of days given to a person to comply with the requirement to file an SKI.

076 DOLE: "They're going to get a notice from his (Mr. Hearn's) office that says that you didn't file and if you don't have one filed by 10 days from this date you will then begin to assess a penalty."

082 SEN. DUKES: Comments that she sees the requirement as a "reel tight time" and asks if the commission wants it to be that tight.

091 DOLE: Comments that the grace periods are the decision of the committee. 093 SEN. DUKES: Discusses the time line in regards to the administrative issues of sending out the notices.

102 HEARN: Discusses the issue of the commission meeting the time lines. Comments that he reads the bill to mean a person has 10 days to comply from the date the commission sends out the notice, not 5 days from the date the SKI is to be filed.

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118 SEN. DUKES: "Can we simply add after days, from the date of the notice?" 120 CHAIR KERANS: "Let's do that. Give the public official 10 days from the date of the notice to comply with the requirements of this section." 124 CHAIR KERANS: Responding to Mr. Dole's Suggestion, agrees to 15 days from the date of the notice, instead of 10 days.

130 TALBOTT: Discusses Sections 12 and 13, which deal with the SKI. "This would be the place where you would restore the "member of household" language and delete the bolded "relative" language. Discusses Mr. Hearn's suggestion of exempting the person's primary residence from the listing of the real property. 139 CHAIR KERANS: Asks the committee members what they think and comments that he thinks it would be fine. 140 HEARN: Discusses the issue regarding the disclosure of the primary residence. 144 CHAIR KERANS: "That would be on page 19, sub 5 add an exemption for the principal residence of the public official." (EXHIBIT C) 148 HEARN: Comments that the commission would still be required to provide a notice or a person's opportunity to a hearing prior to imposing a penalty. 156 TALBOTT: Discusses page 21, which deals with the conflict of interest clarification in regards to actual versus potential conflicts. Subsection 1 except for the deleted material would leave current language the way it is. Subsection 2 is

added as a member of the Legislative Assembly has its own rules in each chamber to address conflicts of interest. A judge in current law would have to remove themselves based on a potential conflict of interest. Subsection 3 is directed at public officials, other than the other ones already enumerated, who would have to give notice to their appointing authority. Comments that the intent was to clarify that a person guided by this statute would have to declare a potential conflict as he/she does now, but when met with an actual conflict of interest the person would have to refrain from "participating in the debate and from voting on the issue;" however, on page 22, lines 6-10, a public official would be allowed to vote if his/her vote was required to meet a quorum requirement. (EXHIBIT C)

191 CHAIR KERANS: Addresses the issue that there is still a lack of clarity and would like to amend it further. Comments that beyond the quorum requirement the problem lies with the fact "you may not have enough members...to take action. " At that point you need to add additional language that says if there is such a case then a member/s may vote sufficient to decide the matter at issue." 201 TALBOTT: Discusses the fact the official would be in "attendance" purposes of a quorum, but the public official could vote only if his/her vote was necessary to meet the required number for voting purposes. 209 CHAIR KERANS: "Members or member would be permitted to vote if their vote is necessary to decide the matter at issue." 222 DOLE: Asks Ms. Talbott to look at the language on line 9. Comments that the language is confusing where it reads "the public official may attend the meeting." (EXHIBIT. C) - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. - Senate Ethics, Elections, and Campaign Finance Committee March 16,1993 - Page 14

228 TALBOTT: Discusses that a distinction would have to be made that a public official can attend for quorum purposes, but the person would be allowed to vote only if her/his vote was needed for the purposes of meeting the number required to decide an issue. Discusses with Mr. Dole that concept of the public official to "attend" the meeting would be deleted for c12 iflcation. 239 SEN. BRYANT: Asks if there would be a problem with the public official asking a "question or two" if the public official has an actual conflict of interest prohibiting her/him from participating in the discussion or debate. 243 HEARN: Comments that the advice the commission gives is that the person may not participate at all "simply because participation, even discussion, can be influential." 254 DOLE: Discusses the issue of the public official participating as a citizen rather than an official member of the body. Comments that he does not believe this to be participating in the discussion or debate. 265 HEARN: Discusses a case in which an individual participated from the audience and not as an official member, but was brought in by the commission because "even from the audience was influential, and the reason was (the person) had more background material and could be more persuasive than the common Joe." 272 CHAIR KERANS: "What we mean is someone sitting passively in the back responding to questions if someone starts asking that person questions." 277 SEN. DUKES: "Is there a part of this section that says you may not vote?" 279 CHAIR KERANS: "This is it. We are adding on lines 4, 5, and 6 refrain in participating in any discussion or debate or voting on the issue." 271 SEN. DUKES: Asks if district elected officials who have conflicts of interest and are not permitted to vote on an issue are denying representation to members of her/his district on that issue. Comments that it would be different from prohibiting an official elected

at-large from voting. Asks if there were three people on a commission or board who declared an actual conflict of interest if one of the people could vote. 310 CHAIR KERANS: Responding to Sen. Dukes' explains that one or more of the members would be allowed to vote in order to get a sufficient amount of votes to decide the matter. 319 SEN. DUKES: Asks how it would be determined for someone to vote first if there was more than one person who declared an actual conflict of interest.

325 CHAIR KERANS: Comments that the committee would leave it up to the commission to provide advice or guidelines for situations involving more than one member of a commission or board who declares an actual conflict of interest on one particular issue.

329 SEN. DUKES: Asks why all of the officials with an actual conflict of interest would be not be able to vote as opposed to one person being allowed. 337 DOLE: Comments that the issue of not voting is only in regards to actual conflicts of interest and not potential conflicts of interest. "There is an exception called a class exception, so if the issue is in your ward in the city and it's a matter of major concern then you don't have a conflict of interest because there is a class

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exception to the conflict of interest rule, but if the issue is to pave or to build a street to your front door and nobody eles's...then I think your right to represent your constituents has to be second with that actual conflict of interest."

351 SEN. DUKES: "Have you not just disenfranchised your group of people?"

353 DOLE: Explains that when a person gets outside a class and stands to benefit substantially there is an actual conflict of interest and the person should not be permitted to vote.

361 SEN. DUKES: Discusses with Mr. Dole and Mr. Hearn a situation regarding the widening of Highway 101 and people being told there was a conflict of interest; therefore, not allowing those people to vote. DOLE: Explains that would "clearly be a class." 383 CHAIR KERANS: Comments that the committee will continue the work session on SB 159 on Thursday, March 18. 398 CHAIR KERANS: Adjourns the meeting at 5:03 p.m.

Submitted by: Reviewed by: Tamara Brickman Annette Talbott
Assistant Counsel . EXHIBIT LOG A - Preliminary Staff Measure Summary
on SB 159-5 - Committee Staff - 2 pages B - SB 159-3 Amendments -
Committee Staff- 4 pages C - SB 159-5 Amendments - Committee Staff- 33
pages D - SB 159-6 Amendments - Committee Staff- 2 pages E - Preliminary
Staff Measure Summary on SB 111-3 - Committee Staff - 1 page F - SB
111-3 Amendments - Committee Staff - 4 page G - Statement of Donald A.
Dole - Donald Dole - 4 pages H - Testimony on SB 111 & 159 - Marc
Overbeck - 5 pages - These minutes contain materials which paraphrase
and/or summarize statements made during this session. Only text enclosed
in quotation marks repon a speaker's exact words. For complete contents
of the proceedings, please refer to the tapes. -