



May 4, 2020

Joint Judiciary Interim Committee

RE: Proposed Improvements to the Wyoming Ethics and Disclosure Act

Dear Chairman Nethercott, Chairman Kirkbride, and members of the Joint Judiciary Interim Committee:

As requested, here is the Equality State Policy Center's proposal for improving the Wyoming Ethics and Disclosure Act.

We believe the language in 9-13-106 of this law can be strengthened for the benefit of Wyoming citizens and the Legislature. The language in this section deals most directly with "conflict of interests."

Below is our proposed starting point for improving 9-13-106. Thank you for considering these recommendations.

The proposed language in red is largely based on Alabama state statutes, which we feel provide a good foundation for rethinking Wyoming's law. Below these proposed changes, I have also included statutory language from several other states that might be helpful in your deliberations.

Sincerely,

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Wyoming Ethics and Disclosure Act | Current Law with Proposed Changes in Red:

9-13-106. Official decisions and votes.

(a) A public official, public member or public employee shall not make an official decision or vote on an official decision if the public official, public member or public employee has a personal or private interest in the matter. In determining whether he has a personal or private interest in a matter the public official shall recognize the importance of his right to represent his constituency and shall abstain from voting only in clear cases of a personal or private interest as defined in this subsection. A public official or public member shall not vote to give money or any direct financial benefit to himself except for tax reductions affecting the general public. ~~For the purposes of this section, a personal or private interest:~~

~~(i) Is, with respect to the public official, public employee or public member, an interest which is direct and immediate as opposed to speculative and remote; and~~

~~(ii) Is an interest that provides the public official, public employee or public member, a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated.~~

~~(b) A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. Exclusions: A loan or financial transaction made or conducted in the ordinary course of business; An occasional nonpecuniary award publicly presented by an organization for performance of public service; Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement~~

is made by the state; Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(c) A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, firm, partnership, proprietorship, or any other business entity of any kind or character which is directly affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, firm, partnership, proprietorship, or any other business entity of any kind or character which is directly affected by proposed or pending legislation.

(b d) A public official, public member or public employee described by subsection (a) of this section shall abstain from voting on the decision and from making any official decision in the matter. The public official's, public member's or public employee's abstention from voting must be recorded in the governmental entity's official records.

(c e) This section shall not be construed to supersede W.S. 15-9-220, 16-6-118 or 16-9-203(f). Those provisions shall control to the extent inconsistent with this section.

Proposed Changes Described:

1. DELETE THE LAST SENTENCE IN (a): For the purposes of this section, a personal or private interest:

2. DELETE ALL OF (i) and (ii) and replace with the following language (based on Alabama Code § 36-25-1 and § 36-25-1):

(b) A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. Exclusions: A loan or financial transaction made or conducted in the ordinary course of business; An occasional nonpecuniary award publicly presented by an organization for performance of public service; Payment of or reimbursement for actual and necessary expenditures for travel

and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state; Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(c) A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is directly affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is directly affected by proposed or pending legislation.

3. Re-letter the remainder of this section for conformity.

Entirety of the Alabama Code germane to this proposal, for reference:

2006 Alabama Code - Section 36-25-5 — Use of official position or office for personal gain.

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

(b) Unless prohibited by the Constitution of Alabama of 1901, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances, resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her duties as a public official. A member of a legislative body

may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest.

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

(d) No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.

(f) A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation.

(Acts 1973, No. 1056, p. 1699, §3; Acts 1975, No. 130, p. 603, §1; Acts 1995, No. 95-194, p. 269, §1; Act 2000-797, p. 1895, §1.)

Examples from Other States that Might Be Worth Considering:

Wisconsin:

The conflict of interest prohibition applies to conduct that, and is therefore defined as, a legislator "taking any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest." Wis. Stat. Ann. § 19.46.

South Carolina:

A conflict of interest may exist if a legislator makes, participates in making, or attempts to use public office "to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest." S.C. Code Ann. § 8-13-700.

Montana:

Conflicts of interest may occur when a legislator's "personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter." Mont. Code Ann. § 2-2-112.

North Dakota:

A conflict of interest occurs if a legislator "has a direct and substantial personal or pecuniary interest in a matter before that... [legislative body]." N.D. Cent. Code Ann. § 44-04-22.

Kentucky:

Definitions of a conflict of interest include: a personal or private interest in any measure or bill proposed or pending before the General Assembly (Ky. Const. § 57); using influence as a member of the General Assembly in any matter which involves a substantial conflict between personal interest and duties in the public interest (Ky. Rev. Stat. Ann. § 6.731); using official position or office to obtain financial gain for oneself, family members, or associated businesses (id.); using official position to secure or create privileges, exemptions, advantages, or treatment for oneself or others in contravention of the public interest (id.); using public resources for private gain, unless authorized by law (id.); using public resources for partisan political campaign activity (id.).

Arkansas:

A conflict of interest may exist if a legislator "is required to take an action in the discharge of his or her official duties that may affect his or her financial interest or cause financial benefit or detriment to him or her, or a business in which he or she is an officer, director, stockholder owning more than 10% of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the public." Ark. Code Ann. § 21-8-803.

Georgia:

"Conflict of interest" means an individual has multiple interests and uses his or her official position to exploit, in some way, his or her position for his or her own direct, unique, pecuniary, and personal benefit." Ga. Code Ann. § 45-10-90.

Illinois:

Illinois prescribes a four-factor test to determine whether a conflict of interest exist, referred to as a "conflict situation." The four factors are: "a. whether a substantial threat to his independence of judgment has been created by the conflict situation; b. the effect of his participation on public confidence in the integrity of the legislature; c. whether his participation is likely to have any significant effect on the disposition of the matter; d. the need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature." 5 Ill. Comp. Stat. Ann. 420/3-202.

Indiana:

A public servant commits "conflict of interest" if he or she "knowing or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant." "Pecuniary interest" means an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of" the public servant or a dependent." Ind. Code Ann. § 35-44.1-1-4.

Maine:

"A conflict of interest includes: A. When a Legislator or a member of the Legislator's immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise that would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation; B. When a Legislator or a member of the Legislator's immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in an entity affected by proposed legislation and the Legislator knows or reasonably should know that the purpose of the donor in making the gift is to influence the Legislator in the performance of the Legislator's official duties or vote or is intended as a reward for action on the Legislator's part; C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator; D. Appearing for, representing or advocating on behalf of another before the Legislature, unless without compensation and for the benefit of a citizen; E. When a Legislator or a member of the Legislator's immediate family accepts or engages in employment that could impair the Legislator's judgment, or when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator or a member of the Legislator's immediate family with intent to influence the performance of the Legislator's official duties, or when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community; and F. When a Legislator or a member of the Legislator's immediate family has an interest in legislation relating to a profession, trade,

business or employment in which the Legislator or a member of the Legislator's immediate family is engaged and the benefit derived by the Legislator or a member of the Legislator's immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment." Me. Rev. Stat. tit. 1, § 1014.

New Mexico:

A conflict of interest is the use of powers or resources of public office to "obtain personal benefits or pursue private interests," as opposed to using those powers or resources "only to advance the public interest." N.M. Stat. Ann. § 10-16-3.

South Dakota:

A conflict of interest may exist if a public officer has an interest in or derives a direct benefit from any contract 1) with the state agency to which the public officer is attached for reporting or oversight purposes that requires the expenditure of government funds; 2) with the state that requires the approval of the authority, board, or commission and the expenditure of government funds; or 3) with a political subdivision of the state if the political subdivision approves the contract and is under the regulatory oversight of the authority, board, or commission, or the agency to which the authority, board, or commission is attached for reporting or oversight purposes. S.D. Codified Laws § 3-23-1.