

**MINUTES OF THE
ETHICS INTERIM COMMITTEE**

Wednesday, October 21, 2009 – 9:00 a.m. – Room 450 State Capitol

Members Present:

Sen. Sheldon L. Killpack, Senate Chair
Rep. John Dougall, House Chair
Sen. Patricia W. Jones, Senate Cochair
Rep. Rebecca Chavez-Houck, House Cochair
Rep. Tim M. Cosgrove
Rep. Brad L. Dee
Rep. Kevin S. Garn
Rep. Brian S. King
Rep. Bradley G. Last
Rep. Carol Spackman Moss
Sen. Ross I. Romero
Sen. Dennis E. Stowell

Members Absent:

Sen. Scott K. Jenkins
Sen. Karen Mayne
Sen. Scott D. McCoy
Sen. John L. Valentine

Staff Present:

Michael E. Christensen, Director
John L. Fellows, General Counsel
Eric N. Weeks, Deputy General Counsel
Chelsea Barrett, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Task Force Business

Chair Dougall called the meeting to order at 9:05 a.m.

Sen. McCoy was excused from the meeting.

2. Presentation and Discussion of Selection of the House Ethics Committee - Rep. Neil A. Hansen

Rep. Neil Hansen distributed and presented 2010 General Session draft legislation, "Joint Rules on the Selection of Ethics Committee Members." He explained the main provisions of the draft legislation, which include amending the Joint Rules to change procedures for appointing members of the House Ethics Committee, providing that four committee members be chosen by the Speaker of the House from eight nominees submitted by the House Minority Leader and four be chosen by the reverse process, and providing that the committee select the committee chair from the majority party and the co-chair from the minority party.

Chair Dougall inquired why the draft legislation only pertains to the House of Representatives.

Rep. Hansen noted that the Senate has their own authority to create ethics procedures.

3. Ethics Committee Process - Outline of Proposed Legislation

Mr. Weeks distributed "Overview of Revised Senate and House Ethics Complaint Process." He explained that the draft proposal was prepared by staff at the direction of the Committee and that it consolidates requests and discussion from the last several months of meetings. He outlined the membership requirements, accountability of the members, and the powers of the independent ethics commission and ethics committees.

Rep. Chavez-Houck inquired why different staff is designated for the House and Senate in the proposal.

Mr. Weeks explained that combining the House and Senate staff is a policy decision and could be considered by the Committee.

The Committee discussed combining the House and Senate into one joint independent ethics commission.

Chair Dougall explained that the draft would be revised to combine and make one commission for both the House and Senate.

Mr. Weeks outlined the ethics complaints process in the document. He explained that a legislator is subject to an ethics complaint for violating a provision of the Code of Official Conduct, conviction of a crime involving moral turpitude, or entering a plea of guilty, a plea of no contest, or a plea in abeyance to a crime involving moral turpitude. He addressed the filing process and details as outlined in the document.

The Committee discussed the possibility of expanding the requirements of who may file an ethics complaint and changing the filing requirement of an ethics violation to 60 days, instead of 90 as proposed.

Mr. Fellows noted the potential constitutional issues of not involving at least one legislator in the initial filing of a legislative ethics complaint.

Rep. King commented that the process of who may file an ethics complaint, as the proposal outlines, is more narrow than in the current law. Sen. Romero, Rep. King, and Rep. Garn expressed that personal first-hand knowledge on an ethics violation is an important stipulation when considering the validity of an issue.

Sen. Romero recommended a two person requirement for filing a complaint, with at least one of the person's residing in the accused legislator's district. He also addressed concerns with the potential negative ramifications for the legislator involved with bringing an ethics violation forward.

Rep. King responded to Mr. Fellows' comment regarding possible constitutionality issues of not involving at least one legislator when filing a complaint. He explained that he believes this would not be an issue.

Mr. Weeks proceeded to review the remainder of the document.

Rep. Cosgrove inquired about the privacy level of a formal ethics complaint as outlined in the proposal. Mr. Weeks explained that any proceedings through the initial screening process by the independent ethics commission is presumed to be private. Mr. Fellows added the potential issues with the Legislature enforcing a requirement for confidentiality in an ethics process.

Chair Dougall recommended adding the requirement that the Speaker, plus the House Majority and Minority Leaders, and the President, plus the Senate Minority and Majority Leaders, be informed of any potential ethics violation brought forth.

Rep. Garn recommended revising the draft proposal to prepare draft legislation for committee consideration at the November meeting.

The Committee's recommendations for revisions in the draft proposal based on the discussion include:

1. To enact that an ethics complaint against a legislator may be filed by two or more members of the House of Representatives, for a complaint against a Representative; two or more members of the Senate, for a complaint against a Senator; or two or more registered voters, provided that at least one of the complainants has first-hand knowledge of the alleged violation or violations plead in the complaint.
2. To establish that complaints may not be filed in the 60-day period, before a regular primary election or a regular general election in which the accused legislator is a candidate.
3. To require that complaints be filed with the chair of the Ethics Committee for the Senate, if the respondent is a Senator; or the chair of the House of Representatives, if the respondent is a Representative.

The Committee's points for additional consideration in the draft proposal include:

1. Further discussion on the clear and convincing evidence standard.
2. Further discussion about whether or not a complaint should be summarily dismissed if an ethics complaint is made public during the period that the independent ethics commission is reviewing the complaint.

Chair Dougall explained that the recommendations and considerations will be included in the draft legislation to be further discussed, along with additional ideas, by the Committee at the next meeting.

4. Other Items / Adjourn

MOTION: Sen. Romero moved to adjourn the meeting. The motion passed unanimously with Sen. Jones absent for the vote.

Chair Dougall adjourned the meeting at 11:10 a.m.