

August 2, 2016

*Via Electronic mail and U.S.P.S.*

Senator Philip Nicholas  
Senate President  
Wyoming State Senate  
C/O Legislative Services Office  
Jonah Business Center  
Cheyenne, Wyoming 82001

Re: Ethics Complaint against Senator Eli Bebout (R-Riverton), President of the Senate Philip Nicholas, the 2016 members of the Senate Rules Committee, and Governor Mead

Dear Senator Nicholas:

This letter constitutes a formal ethics complaint against Senator Eli Bebout for violation of Article 3 Section 46 of the Wyoming Constitution, Wyoming Statutes, and Senate Ethics Rules. As described in this Complaint, this letter will also constitute a formal ethics complaint against you, the President of the Senate, and the members of the Senate Rules Committee for failure to enforce applicable ethics provisions in the Wyoming Constitution, Wyoming Statutes, and the Senate Rules. This also serves as a complaint against Governor Mead for collaborating with a state senator in the awarding of contracts totaling over \$26 million dollars.

This letter does not contain accusations of wrong doing, but, sets forth facts demonstrating that ethics investigations are warranted.

## **1. APPLICABLE LAW**

### ***Wyoming Constitution***

Article 3, Section 46 of the Wyoming Constitution provides as follows:

#### **§46. Interested member shall not vote.**

A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member and shall not vote thereon.

### ***Wyoming Statutes***

Wyo. Stat. §6-5-106(a) provides, unless the public servant discloses the nature and extent of his pecuniary interest and does not participate on the consideration and vote of thereon, a public servant commits an offense if he receives a pecuniary benefit from the letting of any contract.

Wyo. Stat. § 9-13-106 provides that a public official shall not make an official decision or vote on an official decision on which the public official has a personal or private interest unless the official abstains from voting and no official shall vote to give money or any direct financial benefit to himself except for tax reductions affecting the public generally.

Wyo. Stat. §16-6-118(a) provides that it is unlawful for any person holding office by election to become interested directly or indirectly, in his own name or in the name of any other person or corporation, in any contract, or the performance of any work upon which the official may be called upon to vote.

### ***Rules of the Senate***

Section 14-7 of the Senate Rules provides that a member who has a personal or private interest in any bill proposed or pending before the Senate shall disclose the interest to the members of the Senate at the time of the initial consideration during the committee of the whole or at the time of introduction during the budget session. Disclosure of the conflict must be entered in the Daily Journal.

Section 23-1 of the Senate Rules provides that a member who has a personal or private interest in any bill proposed or pending before the legislature shall disclose the interest at the time of the initial consideration during Committee of the Whole and shall not vote thereon.

### ***Joint Rules***

Section 22-1(a) of the Joint Rules (Senate and House Joint Rules) provides that any ethics complaints shall be received by the President of the Senate from any person concerning misconduct of a member of the Wyoming Senate for the initiation of an ethics investigation and action. Misconduct is specifically defined to include each of the provisions summarized above in this Complaint.

### ***Federal Law***

This complaint does not include possible violations of federal law.

## **II. PECUNIARY INTEREST OF SENATOR BEBOUT**

Senator Bebout, through his company, Nucor, Inc., has had interest in many state contracts through the Department of Environmental Quality using Abandoned Mine Lands (AML) funds paying that company over twenty six million (\$26,000,000) dollars since 2011. Those contracts include the following:

### ***Contracts Where Conflict of Interest May Exist***

Contract 17.6A was signed on June 9, 2011 and was for the amount of **\$2,458,150**.

Change order 1 added \$1,398,450 and time extension of 80 days on 10/6/2010

**Total Contractual Amount \$3,856,600.00**

Contract 17.6A-? was signed on April 20, 2012 and had change order number 1 added to it and totaled to the amount of **\$4,186,660.00**.

Change order 2 added \$1,021,904 and time extension of 60 days on 9/18/2012.

**Total Contractual Amount \$5,208,564.00 and 270 days**

Contract 17.6A-6 was signed on April 16, 2013 and was for the amount of **\$2,358,675**.

Contract 17.6A-7 was signed on May 13, 2013 and was for the amount of **\$3,116,988.75**.

Contract 17.6A-8 was signed on June 2, 2014 and was for the amount of **\$2,393,665**.

Change order 1 added \$290,000  
 Change order 2 added time extension of 90 days  
 Change order 3 added \$2,440,057 and time extension of 30 days  
 Change order 4 added \$2,604,425 and time extension of 160 days  
 Change order 5 added \$1,660,623.45 and time extension of 160 days

**Total Contractual Amount \$9,388,770.45**

Contract 17.6A-10 was signed on September 17, 2014 and was for the amount of \$934,200 and 90 days.

Change order 3 added \$804,650 and time extension of 90 days  
 Change order 4 added \$761,600 and time extension of 120 days

**Total Contractual Amount \$2,500,450 and 300 days**

Contract 17.32-3 was signed on March 9, 2015 and was for the amount of **\$300,000** and continues until December 2016.

<b>Contract Total with Change Orders</b>	<b>Amount</b>
17.6A	\$3,856,600.00
17.6A-?	\$5,208,564.00
17.6A-6	\$2,358,675.00
17.6A-7	\$3,116,988.75
17.6A-8	\$9,388,770.45
17.6A-10	\$2,500,450.00
17.32-3	\$300,000.00
<b>Grand Total</b>	<b>\$26,730,048.20</b>

These contracts added up to **\$26,730,048.20** and one contract (Contract No. 17.32-3) continues into the current biennium. There can be no argument that Nucor had a current contract in place while the Senator was participating and voting on AML funding. Additionally, Nucor has applied for and been awarded at least one contract during the 2016 legislative session.

Change orders for these contracts were not competitively bid and these change orders add up to more than \$8 million for the biennium ending June 30, 2016.

This is not all of the money that had been contracted with Nucor over the time that they had been doing business with DEQ. A Riverton Ranger article quoted Senator Bebout as having said Nucor received over 25 contracts over a longer period of time.

Records from the State Auditor's Office indicate that Nucor has received \$28,872,568.71 since July 30, 2010. Senator Bebout's company received AML monies before, during, and after the 2016 legislative session where he voted on SF0040, the AML bill.

### **III. ELECTED HAS VOTED ON LEGISLATION FOR WHICH HE HAD A PECUNIARY INTEREST**

### ***Voting While Interested in Contracts***

The Digest of SF-0040 (2016) has documented that Senator Bebout voted “Aye” on introduction contrary to the Senate rules and Article 3 Section 46 of the Wyoming Constitution. He proposed an amendment in the Senate, it was approved, and he voted in favor of the amendment. He voted “Aye” in third reading of the bill in the Senate. The bill went to the house and amendments were added concerning a remediation project of Bitter Creek in Rock Springs. The bill was then sent back to the Senate for concurrence. The Senate concurrence vote failed with him voting “Nay.” The Senate then assigned Joint Conference Committee (JCC) with the Senator as a member of that committee on March 1, 2016. Amendments were made in JCC and then adopted by the Senate with the Senator voting “Aye.”

Overall in the 2016 Legislative session, an elected acted on the AML bill in the following ways:

- Voted 6 times on the bill in recorded votes, was excused on one recorded vote.
- Served on the Joint Conference Committee.
- Sponsored Amendments to the bill.

### ***Admissions***

On the final morning of the 2016 session, after the final vote on SF0040 (2016), the Senator declared that he might have a conflict because he was a contractor for several agencies. He improperly claimed that, according to Attorney General Opinion No. 97-004 issued in 1997, he was part of a “class of citizens” with the same interest, and therefore had no conflict. The Senate adjourned for a short time to convene a meeting of the Rules Committee and decided unanimously that there was no conflict, stating that the Senator represents a “class of persons” and, therefore, was not required to declare a conflict.

This vote of the Rules Committee does not preclude the fact that a clear violation of Article 3, Section 46 of the Wyoming Constitution, Wyoming Statutes, and Senate Ethics Rules has occurred. Through his company, the Senator is a single contractor having an interest in the contracts to be funded by the measures he was voting on. He has received change orders without competitive bidding of over \$8,000,000 in the current biennium starting July 1, 2014 ending June 30, 2016. He cannot declare a conflict of interest on the last day of the session and cure his failure to disclose the conflict and failure to abstain from voting on legislation in which he had a direct financial interest. A “class” of persons, for which no direct pecuniary interest would be found, as defined by Attorney General Opinion 97-004, means a benefit or detriment to “a large or substantial group or class of persons similarly situated.” A class is not defined as one or a few. Contracts for remediation of underground mines that are filled with grout have only been awarded to two companies in recent history, Nucor and Hayward Baker.

Senator Nicholas and the Rules Committee appear to be assisting in or condoning Senator Bebout’s violation of the Wyoming Constitution, Wyoming Statutes, and the Senate Rules by failing to examine these potential violations. Anyone with a conflict must declare their conflict upon introduction of the bill before the Senate and must not vote on the bill. Senator Bebout may have violated not only Article 3, Section 46 of the Wyoming Constitution, but Wyoming Statutes and Senate Rules and also his oath of office. Violating the oath of office may result in the legislator being removed from office and restricts him from ever holding elected office in Wyoming.

In the event the Wyoming Attorney General’s Office pursues this complaint then it must be noted that the Governor as well as the Attorney General have a role in approval of contracting for the needs of the state and possible conflicts may exist requiring independent counsel.

#### **IV. APPLICATION OF CONSTITUTIONAL PROVISION, STATUTORY PROVISIONS AND ETHICS RULES**

The question is, did Senator Bebout violate Art. 3, Section 46 of the Wyoming Constitution by failing to disclose his interest in millions of dollars of AML contracts at the time AML funding legislation was pending? Did Senator Bebout then not only vote on the legislation, but serve on the Joint Conference Committee and offer amendments on the same legislation? This needs close examination. Likewise, he may have violated Wyo. Stat. § 6-5-106(a), 9-13-106, and 16-6-118(a) by failing to disclose his financial interest in government contracts upon which he was voting, and by holding such contracts. This Complaint presents strong evidence that must be examined concerning the voting of Senator Bebout on AML funding while receiving financial benefit before, during and after his voting and serving on the Joint Conference Committee concerning this legislation.

I would also like to know whether Senator Bebout, as a member of the Senate Rules Committee, participated in the consideration of whether he had a conflict of interest. If he did, that would constitute another conflict of interest.

#### **V. REQUESTED ACTION**

Because you, Senator Nicholas, are personally involved I ask you to appoint independent counsel. The Senate must initiate an investigation into this matter and take all action required by the Senate Ethics Rules, Wyoming Constitution, and Wyoming statutes up to, and including, removal from office of not only Senator Bebout but those who were complicit in covering up this violation of these provisions. To this end, because members of the Senate Ethics Committee are also members of the Rules Committee, and because you, Senator Nicholas, are personally involved in the actions at issue, I ask that you appoint independent counsel to conduct a thorough investigation into these matters without restriction on the independent counsel, and, without restriction on the findings and recommendations of the independent counsel. The findings and recommendations of the independent counsel should be made available for the public and if there are violations of the constitution and Wyoming Statutes, the findings and recommendations should be forwarded to the proper authorities for action against the Senator(s) involved.

This Complaint is being copied to the Attorney General for review and appropriate action.

Very truly yours,

Jennifer Young/Goshen  
Jeff Raney Precinct Committeeman/Campbell  
Vincent Naumu Precinct Committeeman/Campbell  
Leah Naumu Precinct Committeewoman/Campbell  
On behalf of the citizens of Wyoming

cc: Peter Michael, Wyoming Attorney General