

HOUSE CS FOR CS FOR SENATE BILL NO. 89(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/8/12

Referred: Judiciary

Sponsor(s): SENATOR COGHILL

A BILL

FOR AN ACT ENTITLED

1 **"An Act clarifying that a legislator or legislative employee is allowed to accept certain**
2 **compassionate gifts; allowing legislators and legislative employees who are representing**
3 **persons in an administrative hearing to contact hearing officers and attempt to influence**
4 **the outcome of the hearing if they are professionals licensed in the state, and allowing**
5 **legislators and legislative employees who are not professionals licensed in the state to**
6 **contact hearing officers for the purpose of influencing the outcome of the hearing in**
7 **certain instances; requiring the Select Committee on Legislative Ethics*to maintain a**
8 **public record of certain ethics disclosures made by legislators and legislative employees;**
9 **prohibiting a public member of the Select Committee on Legislative Ethics from**
10 **disclosing confidential information without authorization; clarifying the ethics**
11 **disclosure requirements for tickets to or gifts in connection with charity events;**
12 **amending disclosure deadlines under the Legislative Ethics Act; relating to requests to**

1 refrain from disclosure under the Legislative Ethics Act; relating to the applicability of
 2 certain provisions of the Legislative Ethics Act to certain legislative employees,
 3 volunteers, and interns; establishing a seat for an alternate public member on the Select
 4 Committee on Legislative Ethics; clarifying the requirements related to participation by
 5 alternate public members and alternate legislative members in the proceedings of the
 6 committee; amending the definition of 'legislative employee' in the Legislative Ethics
 7 Act; and repealing a procedure for appointment of alternate legislative members."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * **Section 1.** AS 24.60.030(a) is amended to read:

10 (a) A legislator or legislative employee may not

11 (1) solicit, agree to accept, or accept a benefit other than official
 12 compensation for the performance of public duties; this paragraph may not be
 13 construed to prohibit lawful solicitation for and acceptance of campaign contributions,
 14 solicitation or acceptance of contributions for a charity event, as defined in
 15 AS 24.60.080(a)(2)(B), or the acceptance of a gift [LAWFUL GRATUITY] under
 16 AS 24.60.075 or 24.60.080 [AS 24.60.080];

17 (2) use public funds, facilities, equipment, services, or another
 18 government asset or resource for a nonlegislative purpose, for involvement in or
 19 support of or opposition to partisan political activity, or for the private benefit of
 20 [EITHER] the legislator, legislative employee, or another person; this paragraph does
 21 not prohibit

22 (A) limited use of state property and resources for personal
 23 purposes if the use does not interfere with the performance of public duties and
 24 either the cost or value related to the use is nominal or the legislator or
 25 legislative employee reimburses the state for the cost of the use;

26 (B) the use of mailing lists, computer data, or other information
 27 lawfully obtained from a government agency and available to the general
 28 public for nonlegislative purposes;

1 (C) the legislative council, notwithstanding AS 24.05.190, from
2 designating a public facility for use by legislators and legislative employees for
3 health or fitness purposes; when the council designates a facility to be used by
4 legislators and legislative employees for health or fitness purposes, it shall
5 adopt guidelines governing access to and use of the facility; the guidelines may
6 establish times in which use of the facility is limited to specific groups;

7 (D) a legislator from using the legislator's private office in the
8 capital city during a legislative session, and for the 10 days immediately before
9 and the 10 days immediately after a legislative session, for nonlegislative
10 purposes if the use does not interfere with the performance of public duties and
11 if there is no cost to the state for the use of the space and equipment, other than
12 utility costs and minimal wear and tear, or the legislator promptly reimburses
13 the state for the cost; an office is considered a legislator's private office under
14 this subparagraph if it is the primary space in the capital city reserved for use
15 by the legislator, whether or not it is shared with others;

16 (E) a legislator from use of legislative employees to prepare
17 and send out seasonal greeting cards;

18 (F) a legislator from using state resources to transport
19 computers or other office equipment owned by the legislator but primarily used
20 for a state function;

21 (G) use by a legislator of photographs of that legislator;

22 (H) reasonable use of the Internet by a legislator or a legislative
23 employee except if the use is for election campaign purposes;

24 (I) a legislator or legislative employee from soliciting,
25 accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable
26 organization in a state facility;

27 (J) a legislator from sending any communication in the form of
28 a newsletter to the legislator's constituents, except a communication expressly
29 advocating the election or defeat of a candidate or a newsletter or material in a
30 newsletter that is clearly only for the private benefit of a legislator or a
31 legislative employee; or

1 (K) full participation in a charity event approved in advance by
2 the Alaska Legislative Council;

3 (3) knowingly seek, accept, use, allocate, grant, or award public funds
4 for a purpose other than that approved by law, or make a false statement in connection
5 with a claim, request, or application for compensation, reimbursement, or travel
6 allowances from public funds;

7 (4) require a legislative employee to perform services for the private
8 benefit of the legislator or employee at any time, or allow a legislative employee to
9 perform services for the private benefit of a legislator or employee on government
10 time; it is not a violation of this paragraph if the services were performed in an
11 unusual or infrequent situation and the person's services were reasonably necessary to
12 permit the legislator or legislative employee to perform official duties;

13 (5) use or authorize the use of state funds, facilities, equipment,
14 services, or another government asset or resource for the purpose of political fund
15 raising or campaigning; this paragraph does not prohibit

16 (A) limited use of state property and resources for personal
17 purposes if the use does not interfere with the performance of public duties and
18 either the cost or value related to the use is nominal or the legislator or
19 legislative employee reimburses the state for the cost of the use;

20 (B) the use of mailing lists, computer data, or other information
21 lawfully obtained from a government agency and available to the general
22 public for nonlegislative purposes;

23 (C) storing or maintaining, consistent with (b) of this section,
24 election campaign records in a legislator's office;

25 (D) a legislator from using the legislator's private office in the
26 capital city during a legislative session, and for the 10 days immediately before
27 and the 10 days immediately after a legislative session, for nonlegislative
28 purposes if the use does not interfere with the performance of public duties and
29 if there is no cost to the state for the use of the space and equipment, other than
30 utility costs and minimal wear and tear, or the legislator promptly reimburses
31 the state for the cost; an office is considered a legislator's private office under

1 this subparagraph if it is the primary space in the capital city reserved for use
 2 by the legislator, whether or not it is shared with others; or

3 (E) use by a legislator of photographs of that legislator.

4 * **Sec. 2.** AS 24.60.030(i) is amended to read:

5 (i) A [EXCEPT FOR SUPPLYING INFORMATION REQUESTED BY THE
 6 HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH
 7 AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN
 8 RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR
 9 THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE
 10 THE FINAL DECISION IN THE CASE, A] legislator or legislative employee may
 11 not attempt to influence the outcome of an administrative hearing by directly or
 12 indirectly contacting or attempting to contact the hearing officer assigned to the
 13 hearing or the individual, board, or commission with authority to make the final
 14 decision in the matter [CASE] unless [THE]

15 (1) the legislator or legislative employee is representing another
 16 person for compensation subject to AS 24.60.100 and as a professional who is
 17 licensed in the state;

18 (2) the contact is made in the presence of all parties to the hearing or
 19 the parties' representatives while the legislator or legislative employee is acting as a
 20 party or a witness in the matter or responding to a question asked of the
 21 legislator or legislative employee by the hearing officer, individual, board, or
 22 commission and the contact is made a part of the record; or

23 (3) the contact is inadvertent and ex parte and the [(2)] fact and
 24 substance of the contact are [IS] promptly disclosed by the legislator or legislative
 25 employee to all parties to the hearing and [THE CONTACT IS] made a part of the
 26 record.

27 * **Sec. 3.** AS 24.60.030 is amended by adding a new subsection to read:

28 (j) In this section, "administrative hearing" means a quasi-judicial hearing
 29 before an agency; "administrative hearing" does not include an informal conference or
 30 review held by an agency before a final decision is issued or a rate-making proceeding
 31 or other nonadjudicative public hearing.

1 * **Sec. 4.** AS 24.60.050(c) is amended to read:

2 (c) A legislator or legislative employee who participates in a program or
3 receives a loan that is not exempt from disclosure under (a) of this section shall file
4 with the committee by the date required under AS 24.60.105 a disclosure stating the
5 amounts of the loans outstanding or benefits received during the preceding calendar
6 year from nonqualifying programs. If the committee requests additional information
7 necessary to determine the propriety of participating in the program or receiving the
8 loan, it shall be promptly provided. The committee shall **maintain the disclosure as a**
9 **public record and promptly forward the information contained in the disclosure**
10 [PROMPTLY COMPILE A LIST OF THE STATEMENTS INDICATING THE
11 LOANS AND PROGRAMS AND AMOUNTS AND SEND IT] to the presiding
12 officer of each house who shall have it published in the supplemental journals on or
13 before the next regularly scheduled publication of ethics disclosures. If a legislator or
14 legislative employee asks the committee to keep any part of the disclosure confidential
15 and a quorum of the committee determines by vote of a majority of committee
16 members that making the entire disclosure public would cause an unjustifiable
17 invasion of personal privacy, the committee may elect to publish only the fact that a
18 person has participated in the program and the amount of benefit that the unnamed
19 person received. The committee shall maintain the disclosure of the name of the
20 person as confidential and may only use the disclosure in a proceeding under
21 AS 24.60.170. If the disclosure becomes part of the record of a proceeding under
22 AS 24.60.170, the disclosure may be made public as provided in that section.

23 * **Sec. 5.** AS 24.60.060(a) is amended to read:

24 (a) A legislator, [OR] legislative employee, **or public member of the**
25 **committee** may not knowingly make an unauthorized disclosure of information that is
26 made confidential by law and that the person acquired in the course of official duties.
27 A person who violates this section is subject to a proceeding under AS 24.60.170 and
28 may be subject to prosecution under AS 11.56.860 or another law.

29 * **Sec. 6.** AS 24.60.080(a) is amended to read:

30 (a) Except as otherwise provided in this section, a legislator or legislative
31 employee may not

(1) solicit, accept, or receive, directly or indirectly, a gift worth \$250 or more, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same person worth less than \$250 that in a calendar year aggregate to \$250 or more in value;

(2) solicit, accept, or receive a gift with any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist, except

(A) food or beverage for immediate consumption;

(B) a contribution to a charity event, ~~[FROM ANY PERSON AT ANY TIME, AND] tickets to [FOR] a charity event, and [AT ANY TIME, EXCEPT THAT TICKETS TO OR] gifts to which the tickets may entitle the bearer; however, under this subparagraph a legislator or legislative employee may not solicit, accept, or receive from the same lobbyist, an immediate family member of the lobbyist, or a person acting on behalf of the lobbyist, tickets to a charity event, gifts to which the tickets may entitle the bearer, or both, that in a calendar year aggregate to \$250 or more in value~~ [RECEIVED AT A CHARITY EVENT UNDER THIS SUBPARAGRAPH ARE SUBJECT TO THE CALENDAR YEAR LIMIT ON THE VALUE OF GIFTS RECEIVED BY A LEGISLATOR OR LEGISLATIVE EMPLOYEE IN (1) OF THIS SUBSECTION]; in this subparagraph, "charity event" means an event the proceeds of which go to a charitable organization with tax-free status under 26 U.S.C. 501(c)(3) and that the Alaska Legislative Council has approved in advance; the tickets may entitle the bearer to admission to the event, to entertainment, to food or beverages, or to other gifts or services in connection with [INVOLVED IN] the charity event;

(C) a gift that is unconnected with the recipient's legislative status and is from a member of the legislator's or legislative employee's immediate family;

(D) a gift delivered on the premises of a state facility and accepted on behalf of a recognized nonpolitical charitable organization; or

1 (E) a compassionate gift under AS 24.60.075.

2 * **Sec. 7.** AS 24.60.080(c) is amended to read:

3 (c) Notwithstanding (a)(1) of this section, it is not a violation of this section
4 for a person who is a legislator or legislative employee to accept

5 (1) hospitality, other than hospitality described in (4) of this
6 subsection,

7 (A) with incidental transportation at the residence of a person;
8 however, a vacation home located outside the state is not considered a
9 residence for the purposes of this subparagraph; or

10 (B) at a social event or meal;

11 (2) discounts that are available

12 (A) generally to the public or to a large class of persons to
13 which the person belongs; or

14 (B) when on official state business, but only if receipt of the
15 discount benefits the state;

16 (3) food or foodstuffs indigenous to the state that are shared generally
17 as a cultural or social norm;

18 (4) travel and hospitality primarily for the purpose of obtaining
19 information on matters of legislative concern;

20 (5) gifts from the immediate family of the person; in this paragraph,
21 "immediate family" means

22 (A) the spouse of the person;

23 (B) the person's domestic partner;

24 (C) a child, including a stepchild and an adoptive child, of the
25 person or of the person's domestic partner;

26 (D) a parent, sibling, grandparent, aunt, or uncle of the person;

27 (E) a parent, sibling, grandparent, aunt, or uncle of the person's
28 spouse or the person's domestic partner; and

29 (F) a stepparent, stepsister, stepbrother, step-grandparent, step-
30 aunt, or step-uncle of the person, the person's spouse, or the person's domestic
31 partner;

(6) gifts that are not connected with the recipient's legislative status;

(7) a discount for all or part of a legislative session, including time immediately preceding or following the session, or other gift to welcome a legislator or legislative employee who is employed on the personal staff of a legislator or by a standing or special committee to the capital city or in recognition of the beginning of a legislative session if the gift or discount is available generally to all legislators and the personal staff of legislators and staff of standing and special committees; this paragraph does not apply to legislative employees who are employed by the Legislative Affairs Agency, the office of the chief clerk, the office of the senate secretary, the legislative budget and audit committee, the office of victims' rights, or the office of the ombudsman;

(8) a gift of legal services in a matter of legislative concern and a gift of other services related to the provision of legal services in a matter of legislative concern;

(9) a gift of transportation from a legislator or a legislative employee to a legislator or a legislative employee if the transportation takes place in the state on or in an aircraft, boat, motor vehicle, or other means of transport owned or under the control of the donor; this paragraph does not apply to travel described in (4) of this subsection or travel for political campaign purposes; or

(10) a contribution to a charity event, a ticket to a charity event, or a gift in connection with a charity event [FROM ANY PERSON AT ANY TIME]; in this paragraph, "charity event" has the meaning given in (a)(2)(B) of this section.

* Sec. 8. AS 24.60.080(d) is amended to read:

(d) A legislator or legislative employee who accepts a gift under (c)(4) of this section that has a value of \$250 or more or a ticket to a charity event or gift in connection with a charity event under (c)(10) of this section that has a value of \$250 or more shall disclose to the committee, within 60 [30] days after receipt of the gift, the name and occupation of the donor and the approximate value of the gift. A legislator or legislative employee who accepts a gift under (c)(8) of this section that the recipient expects will have a value of \$250 or more in the calendar year shall disclose to the committee, within 30 days after receipt of the gift, the name and

1 occupation of the donor, a general description of the matter of legislative concern with
 2 respect to which the gift is made, and the approximate value of the gift. The committee
 3 shall maintain a public record of the disclosures it receives relating to gifts under
 4 (c)(4), (c)(8), (c)(10), and (i) of this section and shall forward the disclosures to the
 5 appropriate house for inclusion in the journal. The committee shall forward to the
 6 Alaska Public Offices Commission copies of the disclosures concerning gifts under
 7 (c)(4), (c)(8), (c)(10), and (i) of this section that it receives from legislators and
 8 legislative directors. A legislator or legislative employee who accepts a gift under
 9 (c)(6) of this section that has a value of \$250 or more shall, within 30 days after
 10 receiving the gift, disclose to the committee the name and occupation of the donor and
 11 a description of the gift. The committee shall maintain disclosures relating to gifts
 12 under (c)(6) of this section as confidential records and may only use, or permit a
 13 committee employee or contractor to use, a disclosure under (c)(6) of this section in
 14 the investigation of a possible violation of this section or in a proceeding under
 15 AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the record
 16 of a proceeding under AS 24.60.170, the confidentiality provisions of that section
 17 apply to the disclosure.

18 * **Sec. 9.** AS 24.60.080(h) is amended to read:

19 (h) A legislator, a legislative committee other than the Select Committee on
 20 Legislative Ethics, or a legislative agency may accept a gift of (1) volunteer services
 21 for legislative purposes so long as the person making the gift of services is not
 22 receiving compensation from another source for the services, or (2) the services of a
 23 legislative intern [TRAINEE] who is participating in an educational program
 24 approved by the committee if the services are used for legislative purposes. The
 25 committee shall approve training under a program of the University of Alaska and
 26 training under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998).

27 * **Sec. 10.** AS 24.60.105 is amended by adding a new subsection to read:

28 (d) A person may submit a written request to refrain from making a disclosure
 29 that is required by this chapter if making the disclosure would violate state or federal
 30 law, including the United States Constitution and the Constitution of the State of
 31 Alaska, or a rule, adopted formally by a trade or profession, that state or federal law

requires the person to follow. The committee shall approve or deny the request, or require further justification from the person making the request. At the request of the committee or a person authorized to act on behalf of the committee, a person who seeks to refrain from making a disclosure under this subsection shall provide the committee with justification in writing, and the committee may review the written justification to determine whether it is sufficient.

* **Sec. 11.** AS 24.60.112 is repealed and reenacted to read:

Sec. 24.60.112. Applicability to legislative interns. A legislative intern shall be considered to be a legislative employee for purposes of compliance with AS 24.60.030 - 24.60.039, 24.60.060, 24.60.080, 24.60.085, 24.60.155, 24.60.158 - 24.60.170, 24.60.176, and 24.60.178. If a person believes that a legislative intern has violated the provisions of one of those sections, the person may file a complaint under AS 24.60.170. The provisions of AS 24.60.170 apply to the proceeding.

* **Sec. 12.** AS 24.60.130(h) is amended to read:

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an employee whose work is supervised by the member or an advisory opinion requested by the member. If a regular legislative member of the committee is disqualified under this subsection from participating in a proceeding involving a complaint, the member's alternate shall be designated under AS 24.60.131 [(n) OF THIS SECTION].

* **Sec. 13.** AS 24.60.130(o) is amended to read:

(o) Notwithstanding (h) [AND (n)] of this section and AS 24.60.131, if a complaint before the committee alleges a violation of this chapter by a group of legislators that includes a legislative member of the committee and that member's alternate, the member and alternate member are disqualified from serving on the committee with regard to the complaint. If the two disqualified members of the committee are members of the majority organizational caucus, the presiding officer of the house in which the two disqualified members serve shall appoint from that house an alternate to serve with regard to the complaint. If one of the two disqualified legislative members of the committee is not a member of the majority organizational caucus, the leader of the minority organizational caucus with the greatest number of

1 members shall appoint from that house an alternate to serve with regard to the
 2 complaint. If a complaint alleges a violation of this chapter that includes all legislative
 3 members of the majority organizational caucus of one house, the presiding officer of
 4 that house shall appoint from the other house an alternate to serve with regard to the
 5 complaint. If the complaint alleges a violation of this chapter that includes all
 6 legislative members of a minority organizational caucus of one house, the leader of
 7 that minority organizational caucus shall appoint from the other house an alternate to
 8 serve with regard to the complaint.

9 * **Sec. 14.** AS 24.60 is amended by adding a new section to read:

10 **Sec. 24.60.131. Alternate members.** (a) When appointing members of the
 11 legislature to serve on the committee under AS 24.60.130(b), the speaker of the house
 12 of representatives or the president of the senate, as appropriate, shall appoint an
 13 alternate member for each regular member. The alternate member shall have the same
 14 qualifications for appointment to the committee as the regular member for whom the
 15 alternate stands as alternate. The alternate member's appointment is subject to
 16 confirmation as required for appointment of the regular member.

17 (b) When selecting public members to serve on the committee under
 18 AS 24.60.130(b), the Chief Justice of the Alaska Supreme Court shall select one
 19 alternate public member. The alternate public member's selection is subject to
 20 ratification as required for selection of the regular public members.

21 (c) Subject to (d) of this section, if a regular member of the committee or a
 22 subcommittee is unable to participate in a proceeding other than a proceeding under
 23 AS 24.60.170, the chair of the committee or subcommittee that holds the proceeding
 24 shall designate the regular member's alternate to participate in place of the regular
 25 member at the proceeding, and the alternate shall participate for the duration of that
 26 proceeding unless the alternate is unable to participate.

27 (d) If a regular member of the committee or a subcommittee or an alternate
 28 member appointed under (a) or (b) of this section participates at the commencement of
 29 a proceeding under AS 24.60.170, the member shall participate for the duration of the
 30 proceeding unless the member is disqualified under AS 24.60.130(h) or is unable to
 31 continue participating. If the participating member is disqualified under

AS 24.60.130(h) or becomes unable to participate, the chair of the committee or subcommittee that holds the proceeding shall designate the member's alternate to participate in place of the member for the duration of the proceeding unless the alternate is disqualified or is unable to participate.

(e) If both a regular legislative member and that member's alternate appointed under (a) of this section are not available to participate at the commencement of a proceeding under AS 24.60.170 because they are disqualified under AS 24.60.130(h), the presiding officer of the house in which the two members serve shall appoint from that house an alternate and designate that alternate to participate in the proceeding; however, if the two members who are not available to participate are not members of the majority organizational caucus, the leader of the minority organizational caucus with the greatest number of members shall appoint from that house an alternate and designate that alternate to participate in the proceeding.

(f) A designation under (c) - (e) of this section shall be treated as confidential to the same extent that the identity of the subject of a complaint is required to be kept confidential.

* **Sec. 15.** AS 24.60.990(a)(11) is amended to read:

(11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who are hourly employees who perform functions that are incidental to legislative functions, [INCLUDING SECURITY, MESSENGER, MAINTENANCE, AND PRINT SHOP EMPLOYEES,] and other employees designated by the committee;

* **Sec. 16.** AS 24.60.130(n) is repealed.