

Senate Bill 89 -
(SB 89)
- Version K -
“An Act relating
to the Legislative
Ethics Act; and
providing for an
effective date.”

PREPARED BY CHAD
HUTCHISON

SENATE MAJORITY OFFICE



To be clear: This bill does not repeal the majority of the ethics legislation (House Bill 44) (2018) passed last year.

The following remains intact:

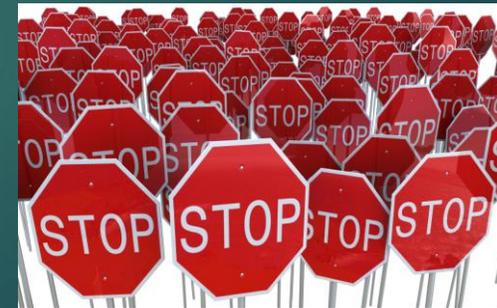
- ▶ Prohibitions on expenditures and contributions by foreign-influenced corporations and foreign nationals in state elections.
- ▶ Limitations on member travel.
- ▶ Per diem restrictions.
- ▶ The Legislative Council's ability to adopt policy on per diem and moving expenses.
- ▶ Lobbyist restrictions on buying food and beverages for members or staff.
- ▶ Gift restrictions to members.

What this bill does:

Simply aims to reset the conflict provisions to the way they were prior to House Bill 44 (HB44) (2018), by eliminating the unconstitutional language added in 2018.

Noteworthy: How many Constitutional Issues Have Emerged Because of the Conflict Provisions of HB44 (2018)?

- ▶ Alaska Constitution - Article II – Legislature - Diminishment of Core Legislative Functions and Representation
 - ▶ Example: Successful miners can't talk or meet ("official action") about mining legislation in private. In addition, the miner can't carry legislation. Successful commercial fishermen/women can't talk about commercial fishing in private. The fishermen/women can't carry legislation.
- ▶ Alaska Constitution – Article I, Sections 1, 5, & 6
 - ▶ Article 1, Section 1 – “Equal Rights”
 - ▶ Article 1, Section 5 – “Freedom of Speech”
 - ▶ Article 1, Section 6 – “Freedom to Assemble and Petition”



Constitutional Issues - Continued

- ▶ Federal Constitution - First Amendment – Fundamental Right
 - ▶ Freedom of Speech for legislator and constituents
 - ▶ Right to assemble
 - ▶ Right to petition the government for redress
- ▶ Federal Constitution - Fourteenth Amendment
 - ▶ Life, **liberty**, and property
 - ▶ “Substantive component”

Section 1 amends AS 24.60.030(e).

- ▶ How does it exist under HB 44 (2018)?
 - ▶ Currently, a legislator can only take official action on an alleged “conflicted bill” in public discussion or debate (including in committee and on the floor).
 - ▶ In addition, the legislator is “conflicted” if the subject matter is connected to the legislator (or the legislator’s immediate family) if the legislator (or the immediate family) made over \$10,000 in the immediate 12-month period.
 - ▶ The practical result?
 - ▶ No private meetings about the “conflicted” subject matter.
 - ▶ A severe restriction on official action, in multiple forms (drafting of legislation, discussion, etc.)
 - ▶ A vast “net” of “conflict” because of the extension to the immediate family.
 - ▶ See Advisory Opinion 18 05 for more information.

What are the proposed changes?

- ▶ The language is returned to the language used before 2018, prior to the passage of HB 44.
 - ▶ This includes the following:
 - ▶ The language is returned to “unless required by the Uniform Rules of the Alaska State Legislature.”
 - ▶ Passages that restrict legislator advocacy to only narrow avenues of public discussion or debate are eliminated.
 - ▶ The language re: “immediate family” is eliminated.
 - ▶ The income threshold of “\$10,000” for the “preceding 12-month period” is removed.

Section 2 - Amends AS 24.60.030(g)

- ▶ How does it exist under HB 44 (2018)?
 - ▶ Currently, conflicts (which are expanded) have to be declared in the committee process and the floor.
 - ▶ Conflicts are expanded to “financial interests” of a business, investment, real property, lease, or other enterprise. There is an expansion to measuring the “interest” against “the general public.”
 - ▶ The practical result?
 - ▶ Discussion on relevant issues is severely restricted.
 - ▶ Conflicts will have to be declared in the committee process. If there is an alleged “conflict,” there are legitimate concerns about passing otherwise viable legislation from the committee because members would be barred from private discussion on certain topics.
 - ▶ A broadening of the “scope of conflict” cast a “wide net.”

What are the proposed changes?

- ▶ Conflicts have to be declared before voting on the question in committee. All other unconstitutional restrictions are removed.
- ▶ “Financial interest” is being changed to back to “equity or ownership interest.”
- ▶ “General public” is being returned to “substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region.”

Section 3 simply repeals AS 24.60.030(j)(2) and 24.60.990(a)(6).

AS 24.60.030(j)(2) says:

“substantially benefit or harm” means the effect on the person’s financial interest is greater than the effect on the financial interest of the general public of the state.

- ▶ This language is being removed.
 - ▶ Reasoning:
 - ▶ Clarifies uncertainty.
 - ▶ Fairly easily, a legislator can have an alleged “substantial” “financial interest” in a specific area that’s greater than most of the general public of the state. The spectrum is wide as it can pertain to businesses, investments, real property, leases, or, broadly, other enterprises.
 - ▶ Since the language of “general public” in AS 24.60.030(g) is being changed back to “substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region,” this passage is appropriate for removal.

Section 3 - Continued

- ▶ AS 24.60.990(a)(6) says:

“financial interest” means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.

- ▶ This language is being removed.

- ▶ Reasoning:

- ▶ Since the language of “financial interest” is being changed in AS 24.60.030(g) back to “equity or ownership interest,” this provision is being removed.

Section 4

- ▶ Section 4 makes the act effective immediately.

This clarification attempts to find the right balance.

- ▶ High moral and ethical standards among public servants in the legislative branch are essential to government trust, respect, and confidence of the people of this state. See Advisory Opinion 19-01. See also AS 24.60.010(1).
- ▶ Right of members to represent their constituencies is of such major importance that members should be barred from their constitutionally required representative duties only in clear cases of personal enrichment.
 - ▶ Members are encouraged to review Uniform Rule 34(b), *Mason's Manual of Legislative Procedure* at sections 241, 522, 560, Advisory Opinion 2004-02, Advisory Opinion 2008-01, Advisory Opinion 2011-05, and Advisory Opinion 2013-01 for interpretations of conflict prior to 2018.



QUESTIONS?