

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

Anchorage, Alaska
November 15, 2005
10:14 a.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Nancy Dahlstrom
Representative Pete Kott

COMMITTEE CALENDAR

DISCUSSION OF ETHICS LEGISLATION INCLUDING SB 187, SB 186,
SB 127, AND HB 194

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of
ethics legislation.

JOYCE ANDERSON, Ethics Committee Administrator
Select Committee on Legislative Ethics
Alaska State Legislature
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to
questions during discussion of ethics legislation.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [10:14:17 AM](#). Representatives McGuire, Anderson, Coghill, and Gara were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

DISCUSSION OF ETHICS LEGISLATION INCLUDING SB 187, SB 186, SB 127, AND HB 194

[10:15:11 AM](#)

CHAIR MCGUIRE relayed that the committee would be conducting a work session to formulate ideas about an ethics bill that could be used as a vehicle during the upcoming session, and characterized the senate bills as having set the stage for discussion during the interim. She indicated that it is important to let the public know that the issue of ethics is important to the legislature, particularly in light of the "Gregg Renkes situation."

REPRESENTATIVE GARA said:

My personal view on the ethics situation is that this all came out of the "Gregg Renkes affair": ... he owned ... \$100,000 worth of KFx stock and the question was whether or not he should have been negotiating a deal that involved KFx. And what came out of it were two opinions, one from Tom Daniel for the "ethics board," one from Bob Bundy for the governor. Both of them said ... the one thing that "we" think "you" need to change is to explain to people what is a "significant interest" ... and therefore you have to disqualify yourself from action on a matter, and what's ... an "insignificant interest" and [therefore]... you don't have to disqualify yourself. And [so] ... the question was whether ... Gregg Renkes's stock ownership was considered significant or not, and the law was not particularly clear.

So Senator French and I have filed [legislation] - he has a Senate companion bill [SB 127], mine is HB 194. We said, let's just deal with that one shortcoming in the law - let's not address these other issues about open meetings and closed meetings and ... penalties on people who file ethics complaints - ... let's just deal with the one issue that I think we all probably agree ... needs to be addressed. And so what other

states do is ... they draw a bright line, generally: it's an insignificant interest if it's, let's say, less than \$5,000, or let's say, less than \$10,000. And there can be good debate about which one of those numbers we should pick, but I think we should just deal with that issue.

REPRESENTATIVE GARA opined that they should clarify the issue of ownership and institute a [bright line]. Using as a hypothetical example proposed minimum wage legislation, he indicated that the law ought to be clear that although a person who has an interest in a business and therefore has a general interest in such legislation could work on that legislation, he/she should not be working on a contract involving his/her business.

CHAIR McGUIRE relayed that she's spent time during the interim discussing this issue with constituents. She added:

We have a citizen-based legislature, we want legislators to work - at least that has been the desire of the public so far - and yet, inevitably, conflicts can arise when you do work outside the legislature with the things you do inside. And I think it's worthy of discussion - how you handle those conflicts. The way it works now, a member will state that conflict in a committee or on the floor and then ask to be recused from voting, and the response is always, "No, we object to that and we'd like you to vote." I wonder if there is more that could or should be done in that area.

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REPRESENTATIVE GARA acknowledged that perhaps the legislature could create a bill that deals with both executive [branch] ethics and legislative ethics, and said he agrees with Chair McGuire's comments that legislators need to have work outside of the legislature. However, the public begins asking questions regarding ethics when legislators do consulting work for businesses that have interest in legislation. He suggested that the committee consider developing legislation that requires legislators to disclose, in detail, what they do for a particular business, rather than simply restricting what kind of work legislators can engage in outside of his/her legislative duties. He indicated that some language regarding the legislative ethics issue has already been crafted, and opined

that legislators ought to be required to simply state, on an hour-by-hour basis - what they do [as consultants]; such disclosure would let the public know whether legislators are doing work unrelated to their legislative duties.

REPRESENTATIVE GARA, in response to questions, said he would leave it up to the committee to decide whether it wanted to create a separate bill specifically to address that issue. He offered his understanding that currently, if [a legislator] has a consulting contract, the law requires the legislator to list the amounts he/she is paid by the companies he/she provides services to but is not required to detail what those services consisted of. He suggested that a timesheet format could be instituted to address this situation, and that such would add a lot of integrity to the system. He indicated that he could support something like that.

REPRESENTATIVE ANDERSON said, "Sure."

CHAIR McGUIRE surmised that some methodology could be devised to show a reasonable member of the public what a legislator is getting paid to do as a consultant. She expressed a desire to address both legislative ethics and executive branch ethics, and to do so via the institution of a bright line. A person could have the best of intentions, but without a concrete bright line, he/she could still be guilty of an ethics violation. Furthermore, with a bright line in place, disclosure and transparency would be more meaningful to the public.

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REPRESENTATIVE COGHILL acknowledged that transparency is a good thing, but cautioned against establishing too high a standard of accountability because doing so could create a burden. A person might do something that the public does not approve of without that action being unethical. For example, with regard to a contract, a person might take an action that is self serving but not unethical, action that is merely the result of bad judgment. Via a transparent methodology, the public would be able to consider the question of whether a person's actions were desirable. He cautioned against robbing the citizens of Alaska of their ability to make judgments regarding a person's actions.

REPRESENTATIVE COGHILL remarked that a person needs to be held accountable for underhanded actions, but opined that having to account for one's actions on an hourly basis could be tremendously burdensome. He cautioned against simply assuming

that all of a person's actions are the result of bad judgment, and said he is reluctant to put a dollar figure on [what would constitute a significant interest], particularly since a particular action could be unethical even though it only has an impact on one's insignificant interests. He also pointed out that a "blind trust" could involve \$100 million, for example - certainly a significant interest - and that there might be ways to manipulate a blind trust containing that much money without such manipulation being considered unethical. He concluded by expressing a reluctance to put a dollar figure on "unethical."

REPRESENTATIVE ANDERSON complimented Representative Gara for being responsive and proactive [on the issue of executive branch ethics], and surmised that the public wants further definitions and delineations with regard to what would constitute a conflict. He suggested that public officials do have apprehension regarding potential conflicts, proper disclosure, and suspected impropriety. He opined that there should be both accountability and fairness, and said he hopes [the committee can create legislation] that will provide "a bright line test" for legislators, candidates, and others, so that the public won't be faced with the same situation as occurred regarding Gregg Renkes.

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REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, suggested that a timesheet methodology could be very time consuming and may not actually tell the public anything. She indicated that the law should be clarified so that members of the public will be able to decide for themselves whether someone has behaved in an unethical fashion.

CHAIR MCGUIRE said she would have staff work with Legislative Legal and Research Services to research the issue of what is done in other states that have citizen legislatures and develop for the committee a matrix of what other states allow and require with regard to potential conflicts of interest. She relayed, for example, that she'd heard that in one state, a [legislator] could actually abstain from voting.

JOYCE ANDERSON, Ethics Committee Administrator, Select Committee on Legislative Ethics, Alaska State Legislature, spoke next in response to comments. [Her initial comments were indiscernible.] She said the Select Committee on Legislative Ethics had requested a legal opinion from Brent R. Cole - outside legal counsel for the Select Committee on Legislative

Ethics - on the section of [SB 187] that pertained to uniform rules. The committee has been able to research up to Section 7 of the bill, and has come up with some suggestions and points to research further, particularly for the section pertaining to advisory opinions because it is a little bit unclear with regard to what the process is after discussion by the Select Committee on Legislative Ethics.

MS. ANDERSON relayed that the Select Committee on Legislative Ethics is not in favor of the proposed \$5,000 [civil penalty] in Section 3 of SB 187. Currently, because of a recent change, the Select Committee on Legislative Ethics is required to dismiss a complaint if it is made public; she said that the Select Committee on Legislative Ethics feels that this requirement has probably helped the process because now the public is aware of the fact that the committee is required to dismiss complaints that have been made public. However, this requirement, should the Select Committee on Legislative Ethics have to act on it, won't preclude either the committee itself or another individual from filing the complaint.

MS. ANDERSON mentioned that member's packets should contain a sectional analysis of SB 187 that she prepared, and that this analysis includes additional comments by Legislative Legal and Research Services.

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REPRESENTATIVE GRUENBERG - member, Select Committee on Legislative Ethics - asked Ms. Anderson to comment on issues that have captured the attention of the Select Committee on Legislative Ethics. He posited that in addition to being a growing and changing subject, the issue of ethics is of great and constant interest to the public. Furthermore, the issue of ethics is one that public officials in all branches of government face at all times and is one that must be constantly changed in order to address a changing array of factual data.

REPRESENTATIVE GRUENBERG suggested that it is time to address the subject of ethics, both for the legislature and for the executive branch. He indicated that some consideration has been given to the concept of establishing an ethics training program for the legislature, though any such a program may not be ready to institute until 2007. He relayed that the Select Committee on Legislative Ethics is putting together legislation to address technical problems and language that has caused the committee some concern; for example, the phrase, "matters of legislative

concern" is one that is used with regard to whether a legislator is allowed accept certain dollar amounts or certain types of gifts, but the phrase is currently undefined.

MS. ANDERSON indicated that the term "legislative purpose" also raises the same type of concerns.

REPRESENTATIVE GRUENBERG said that other issues of concern pertain to disclosures, particularly regarding stocks and stock options.

MS. ANDERSON confirmed that the Select Committee on Legislative Ethics is having a bill drafted that is intended to address issues that the committee has concern about. In addition to the aforementioned, for example, the legislation being drafted proposes to deal with issues such as: including in the legislative ethics code the complaint process pertaining to the Office of Victims' Rights (OVR); adding language pertaining to the disclosures included in the [legislative] journal; changing the terms of office for public members of the Select Committee on Legislative Ethics so that only two positions come open at one time; and addressing other more technical points that have been overlooked over the course of time.

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REPRESENTATIVE GRUENBERG noted that there is the legislative ethics Act, the executive branch ethics Act, and the financial disclosure Act under the Alaska Public Offices Commission (APOC). He suggested that the all of the committees and agencies working on the issues of ethics - the House Judiciary Standing Committee, the House State Affairs Standing Committee, the Select Committee on Legislative Ethics, and the Alaska Public Offices Commission - should try to consider all of the proposed bills together and hold hearings on them so that all of the issues that have arisen could be addressed.

CHAIR MCGUIRE remarked that it may be appropriate for all of the committees dealing with the issue of ethics to meet jointly, that having inconsistency between the aforementioned three acts could be a recipe for disaster, and that her understanding is that very few states have a legislatively created ethics committee.

MS. ANDERSON clarified that the State of Washington has recently set up its ethics committee similar to Alaska and may have actually modeled the legislation that governs that committee on

Alaska's statutory language; one other state may also have a similar ethics committee consisting of both public and legislative members. In response to a comment, she said that the Select Committee on Legislative Ethics may have some further suggestions forthcoming with regard to issues it would like to see addressed in proposed combined ethics legislation. She mentioned that in her part-time position as Ethics Committee Administrator, she sometimes feels overwhelmed and overworked; therefore, it would be nice to have a contract person on call to help her with her duties.

MS. ANDERSON noted that one of the changes proposed via SB 187 pertains to the complaint process and confidentiality issues raised during the handling of complaints, and said that those sections of statute need clarification and/or a change in order. She also offered her belief that the advisory opinion section [of current statute and SB 187] needs clarification with regard to the fact that even if confidentiality is not waived by the person requesting the opinion, the opinion is eventually made public but is cleansed of any identifying information; advisory opinions are used as precedence and so must eventually be made public.

CHAIR MCGUIRE read a portion of proposed new language from Section 6 of SB 187: "The opinion may not be released unless all persons who are required to be provided with the opinion consent in writing to the release of the opinion."

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MS. ANDERSON said she is not sure why that language is in the bill, particularly since an advisory opinion is generally requested by the person who is contemplating taking a specific action, and thus would not concern any other person. She pointed out that advisory opinions are formal and binding, and can be used as precedent, whereas informal advice from the Select Committee on Legislative Ethics cannot be used as such.

REPRESENTATIVE GARA said that Section 6 of SB 187 troubles him because it proposes to expand the number of people who can keep a complaint confidential.

MS. ANDERSON clarified, however, that Section 6 pertains to advisory opinions, not complaints. In response to a further question, she explained that the only one who can request an advisory opinion is someone who is contemplating taking certain actions; advisory opinion requests are not accepted from a

person who wants an opinion regarding actions another person is taking or is contemplating taking. She said that in her experience she has never encountered an advisory opinion request that pertained to more than one individual - that individual being the requestor. So, again, she is not sure why that language is being included in the bill.

CHAIR McGUIRE surmised that releasing advisory opinions to the public provides for consistency.

MS. ANDERSON characterized advisory opinions as educational tools.

REPRESENTATIVE GRUENBERG asked whether the executive branch currently has an ethics committee.

MS. ANDERSON said she didn't know.

REPRESENTATIVE GRUENBERG suggested that perhaps the House Judiciary Standing Committee should consider establishing a standing executive branch ethics committee that would be adequately staffed and funded and contain public members.

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[Representative Wilson made comments that were indiscernible.]

REPRESENTATIVE GRUENBERG provided information regarding the Commission on Judicial Conduct (CJC).

REPRESENTATIVE WILSON suggested that perhaps such a committee as Representative Gruenberg is suggesting could simply share the Select Committee on Legislative Ethics' staff.

REPRESENTATIVE GRUENBERG opined that the staff should not be shared because the legislature and the executive branch each have their own type of ethics issues that arise.

REPRESENTATIVE COGHILL noted that doing so could also raise a separation of powers issue. He suggested that before attempting to establish such a committee for the executive branch, it might be good for the House Judiciary Standing Committee to learn what the personnel board already does as a matter of practice.

CHAIR McGUIRE said she would follow up on that point.

REPRESENTATIVE GARA indicated that he would prefer not to pursue the changes proposed via SB 187 and would instead prefer to pursue changes that would address the issues arising from the "Gregg Renkes matter" and do so quickly. He said he worries that addressing several subjects will delay the process of establishing a solution to the "Gregg Renkes issue." He offered his understanding that currently, ownership of stock or of a business that one's working on a matter of is only unethical if one intends to benefit oneself or a friend though not if the amount owned is insignificant. He opined that there should be some dollar amount that defines what's considered insignificant.

REPRESENTATIVE GARA then referred to a proposed amendment, which he said would pertain to legislative ethics [original punctuation provided]:

Insert a new section in AS 24.60 to read:

Any person subject to this chapter who has a consulting contract must detail what substantive work the person is doing for the contract. These reports should detail in increments no greater than one hour what work was done on what specific issue. These reports should be filed with Legislative Ethics every 30 days for the duration of the contract."

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REPRESENTATIVE GARA suggested that they should address situations in which legislators consult for a company that has interest in legislation before the legislature. This issue could be addressed in a couple of ways, he remarked, one way being to simply say a legislator can't accept a contract consulting job regarding legislative issues, and the other way being to simply require the legislator to disclose, in detail, exactly what he/she is being paid for. He offered his understanding that individuals who do consulting work on a contract basis have to provide the companies/entities they work for with detailed hourly billing anyway, and therefore requiring legislators who do contract consulting to provide details about what they're doing to earn their consulting fees won't create a further burden. He reiterated that he wants to address the issue of disclosure.

REPRESENTATIVE GARA referred to SB 187, and said that he didn't think that people should be penalized for filing an ethics complaint or speaking to one's spouse or neighbor about that

ethics complaint. He said he also didn't think that legislators should be exempt from the provisions of the open meetings rules and the ethics rules just because those rules might end up being in conflict with any forthcoming Uniform Rules. He concluded by saying that he thinks the committee should keep any forthcoming committee bill on ethics focused on the issues of what constitutes an ethics violation, what constitutes an insignificant interest, and simplifying the [disclosure] filing process.

CHAIR MCGUIRE indicated that the committee and committee staff would work during the remainder of the interim to come up with a couple of committee substitute (CS) alternatives that will address both the issues of executive branch ethics and legislative branch ethics. She mentioned that she has asked for information from the National Conference of State Legislatures (NCSL) on these issues. She opined that ensuring that the process is transparent to the public, and that lawmakers understand what the rules and boundaries are, are important issues. She asked members to provide committee staff with suggestions for language, so that these issues can be addressed at the beginning of session.

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REPRESENTATIVE GRUENBERG, in response to comments, noted that the executive ethics Act contains a provision regarding "blind trusts."

REPRESENTATIVE GARA, also in response to comments, recalled that the House State Affairs Standing Committee, in discussing HB 194, expressed a preference for a \$10,000 threshold, and offered his understanding that the way a "blind trust" works is that simply putting one's investments in a blind trust doesn't alleviate potential conflict of interest issues, since not knowing exactly how much one has invested in a particular company or enterprise doesn't change the fact that one has an interest in that company or enterprise.

CHAIR MCGUIRE posed the questions of how they could determine whether someone takes an action or doesn't take an action with the intention of financially benefiting himself/herself or another person, and of how a public official could invest in certain stocks without being in fear of the consequences of benefiting from that investment.

REPRESENTATIVE GARA opined that it should be permissible to invest in a mutual fund and not directly into specific stocks, but acknowledged that it might not be possible to pass a law saying what stocks a public official can own.

REPRESENTATIVE COGHILL said such a law would trouble him greatly, and reiterated his earlier comments regarding transparency, disclosure, specific dollar amounts, and accountability. He added that one should not be able to file a false report of an ethics violation without being held accountable, but opined that the language in SB 187 regarding this type of potential slander is in the wrong place.

MS. ANDERSON remarked that statute already says it's a crime to make a false accusation to the Select Committee on Legislative Ethics.

CHAIR McGUIRE asked Ms. Anderson to provide the committee with information regarding all the recourses - both criminal and civil - one can take if he/she feels that someone has abused the process.

MS. ANDERSON, in response to a question, acknowledged that much of the recourse available is civil.

REPRESENTATIVE COGHILL pointed out that the conduct in a civil matter and the conduct in a criminal matter are different.

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CHAIR McGUIRE suggested that perhaps they should authorize the Select Committee on Legislative Ethics to exact a fine if it feels that a complaint has been filed fraudulently or with malice, and it would then be up to the Select Committee on Legislative Ethics to decide whether its processes were being used merely as a political tool/weapon.

REPRESENTATIVE GARA offered his understanding that one of the provisions in SB 187 would punish someone for saying something true about somebody, and characterized this as very different from punishing someone for saying something false; he surmised that this difference is what is causing legislators and members of the Select Committee on Legislative Ethics to question that provision.

CHAIR McGUIRE concurred.

[Representative Wilson made comments that were indiscernible.]

REPRESENTATIVE GRUENBERG warned that providing the Select Committee on Legislative Ethics, or a committee like it, with the authority to exact a substantial fine from someone could raise constitutional issues regarding free speech and the delegation of powers. In cases involving ethics violations, he remarked, the Select Committee on Legislative Ethics should focus on the merits of the case and not on the possible underlying motivation of the person filing the complaint.

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REPRESENTATIVE COGHILL pointed out, however, that there are situations in which the intent of filing a complaint is to injure someone's character, and again reiterated that those who file complaints for that reason should be held accountable. He said he is concerned about good due process, and about the right to face one's accuser, adding that he would prefer to address this issue from the perspective of ensuring good due process.

REPRESENTATIVE GRUENBERG noted that the right to face one's accuser applies in situations involving crimes against a person and prosecution by the state; however, in administrative hearings involving legislative ethics violations, it is the public that is allegedly wronged and so the person filing the complaint is doing it on behalf of the public which in turn is represented in the persona of Select Committee on Legislative Ethics staff.

REPRESENTATIVE COGHILL indicated that he still has concerns that an ethics violation charge could discredit a person to the point that he/she isn't ever able to pursue a [political] career again.

REPRESENTATIVE ANDERSON said he wants people to feel that they can call attention to violations, but he also feels that the current system has been abused.

CHAIR MCGUIRE referred to SB 187, and said that it is a fundamental right for a citizen to be able to speak freely and question the actions of elected officials, and that such should be the first principal that's recognized - the right of Alaskan citizens to question, openly, their government and the people who make up the government. However, there should also be some thought and care given to those that are accused. One solution that she and others have discussed, she relayed, is that of

requiring those that file ethics complaints to swear under penalty of perjury that the facts they are presenting are true to their knowledge. Such a requirement would make the average citizen take a long hard look at his/her actions. Perhaps, too, a person filing a complaint could be required to disclose whether he/she is working on behalf of a political party. This would be disclosure similar to what some have suggested that legislators do with regard to investments or contract consulting work; simply disclose all the details and let the public decide.

REPRESENTATIVE ANDERSON mentioned that newspapers disclose affiliation information about a person submitting letters to the editor.

CHAIR MCGUIRE offered her belief that the sponsor of SB 187 was merely concerned that one shouldn't be able to use the Select Committee on Legislative Ethics and its process as political weapons, and suggested that perhaps the sponsor simply went a little bit too far. The question of how shall the legislature address the issue of the Select Committee on Legislative Ethics being used as a political weapon still remains.

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REPRESENTATIVE GRUENBERG asked Ms. Anderson whether ethics complaints are filed under oath.

MS. ANDERSON said that complaint forms are signed under oath and they contain a statement that the person signing the form believes the facts to be true. With regard to Representative Coghill's concern, she relayed that according to both statute and an attorney general's opinion, the subject of a complaint does have the option of questioning the complainant, though the legal opinion does put restrictions on what questions can be asked. For example, the questions must pertain to the issue of whether the person believes the facts to be true and why he/she believes them to be true, and cannot be questions pertaining to the possible motivations for filing the complainant.

MS. ANDERSON then relayed that she would be providing the committee with a copy of the complaint form. In response to further comments and questions, she pointed out that the Select Committee on Legislative Ethics is prohibited from accepting complaints during a campaign period, which is defined as the 90 days before an election.

CHAIR McGUIRE noted that those running for office often start making campaign-type decisions well before the official campaign period begins.

REPRESENTATIVE GRUENBERG predicted that if the issue becomes one of determining what a complainant's motivations are, it could result in problems.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 11:56 a.m.