

MINUTES
SENATE FINANCE COMMITTEE
February 7, 2007
9:00 a.m.

CALL TO ORDER

Co-Chair Bert Stedman convened the meeting at approximately.

PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Charlie Huggins, Vice Chair
Senator Joe Thomas
Senator Fred Dyson
Senator Kim Elton

Also Attending: SENATOR HOLLIS FRENCH; DAVE JONES, Senior Assistant Attorney General, Opinions, Appeals and Ethics Section, Civil Division, Department of Law;

Attending via Teleconference: From an offnet location: DAN WAYNE, Legal Counsel, Division of Legal and Research Services, Legislative Affairs Agency.

SUMMARY INFORMATION

SB 19-EXEC. BRANCH ETHICS:INTERESTS & ACTIONS

The Committee heard from the sponsor, the Division of Legal and Research Services and the Department of Law. The bill was held in Committee.

SB 20-LEGISLATIVE DISCLOSURES

The Committee heard from the sponsor. The bill was held in Committee.

#SB19

[9:01:32 AM](#)

CS FOR SENATE BILL NO. 19(STA)

"An Act relating to a public officer's taking official action regarding, or influencing, a matter in which the public officer has a personal or financial interest; prohibiting certain persons from engaging in activity as lobbyists; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Stedman indicated that a committee substitute would be prepared on this legislation for consideration at a later hearing.

[9:02:17 AM](#)

SENATOR HOLLIS FRENCH, Sponsor, testified that this legislation pertains to ethics of the Executive Branch. The intent is to provide perimeters for financial interests held by certain State employees in which action by that employee could impact those interests.

[9:03:50 AM](#)

Senator French outlined the bill, noting that the provisions of Section 1 outline the actions of a public officer that would not constitute a violation of public trust with regard to a personal or financial interest in the matter in which the action was taken. Section 1 would repeal and reenact AS 39.52.011(b).

[9:04:56 AM](#)

Senator French gave an example of a public officer who owns stock in the IBM Corporation valued at \$1 million. This officer would be expected to recuse him or herself from making decisions regarding the purchase of personal computers (PC) by the State. Conversely, decisions on the purchase of Apple Macintosh (Mac) computers would be permitted.

[9:05:49 AM](#)

Senator French spoke to the language of subparagraph (2) of AS 39.52.110(b), reading into the record the conditions in which a personal or financial interest would not constitute a violation.

[9:05:58 AM](#)

Senator French pointed out that Alaska Permanent Fund public officers are charged with making investment decisions intending to increase the earnings of the Fund. These officers likely receive dividends from the Fund and therefore benefit from investment decisions, but because their investment decisions are made for the "public good", their activities are permitted.

Senator French also exemplified a public officer who also resides in Delta Junction and is responsible for decisions regarding the location of a pipeline. This officer would be allowed to participate in consideration of Delta Junction as a location because all residents of the community would benefit. However, if the officer attempted to route the pipeline directly through his property, such actions would be a violation.

[9:07:18 AM](#)

Senator French shared that the language of subparagraph (B) of AS 39.52.110(b)(2), "personal interest is insignificant" would remain unchanged from existing statute because the provision could not easily be detailed.

[9:07:53 AM](#)

Senator French characterized the provisions of subparagraph (C) as "the real meat of the" committee substitute. This language listed the disqualifying business interests. These items were "self explanatory."

[9:09:04 AM](#)

Senator French then spoke to the provisions of Section 2, which pertained to the transfer from the public sector to the private sector, specifically lobbying by former public officers. This language would increase the State positions subject to the restrictions. Current statute limited the activities of former governors, lieutenant governors and "head of a principal department in the executive branch." The proposed language would extend the restrictions to apply to deputy commissioners, division directors, employees of the Office of the Governor who

are in a decision making position and chairs of a State board or commission that has authority to adopt regulations.

Senator French noted that those meeting this criterion would be prohibited from engaging in activity as a lobbyist for period of one year after leaving service in the qualifying position.

Senator French emphasized this ban would apply to all lobbying activities, regardless of whether the topic coincided with matters the former public officer engaged in while in State service. Another provision would prohibit lobbying for a period of two years on matters in which a former public officer was involved.

[9:10:52 AM](#)

Senator French stated that the Section 3 would insert language to AS 39.52.960(14) to broaden the definition of "official action" to include "performance of any duties in the course and scope of a public official's employment, including review, advice, participation, assistance, or another kind of involvement regarding a matter". The situation involving former attorney general Greg Renkes, brought attention to the difficulty in determining official action under existing statute.

[9:11:33 AM](#)

Co-Chair Stedman noted the use of "public officers" and "public officials" in the language of the bill. He asked the difference between the two and whether the use of both was inconsistent.

[9:12:40 AM](#)

Senator French deferred to the Department of Law. He surmised the two terms were synonymous but was unsure.

[9:13:25 AM](#)

DAN WAYNE, Legislative Legal Counsel, Division of Legal and Research Services, Legislative Affairs Agency, testified via teleconference from an offnet location in Juneau that the term "public officer" is defined in AS 39.52.200 of the Executive Branch Ethics Act as "public employee, member of a board or commission and a State officer designated by the governor to act

as trustee." "Public employee" is also defined as "permanent, probationary, seasonal, temporary, provisional or nonpermanent employees of an agency in the classified, partially exempt, or exempt service." This does not include governor, lieutenant governor and some other positions. Conversely, "public officers" are comprehensively listed in AS 39.50.200 as high ranking elected or appointed officials and includes, judicial officers, appointed or elected municipal officers, governor, lieutenant governor, department heads, members of the board of trustees and the executive director of the Alaska Permanent Fund Corporation, and chairs and members of a State commissioned board. Further listing of 58 State commissioned boards is provided and generally relates to those boards and commissions that have authority to adopt regulations. The Alaska State Council on the Arts, the Board of Parole, the Board of Fisheries, the Board of Game and the Commission on Postsecondary Education are some examples.

[9:17:43 AM](#)

Co-Chair Stedman asked if this legislation was consistent in its use of the term "public officer".

[9:17:45 AM](#)

Mr. Wayne responded that efforts are made for consistency within a bill, but that language of a bill may not necessarily be consistent with the chapter in which it affects. The use of the two terms would be a "policy call" of the Legislature, as the meanings differ from each other.

[9:18:40 AM](#)

Co-Chair Stedman cited subsections (a) and (d) of Sec. 39.52.180. Restrictions on employment after leaving state service., which reads as follows.

(a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding,

application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

...

(d) A former governor, lieutenant governor, or head of a principal department in the executive branch may not engage in activity as a lobbyist under AS 24.45 for a period of one year after leaving service as the governor, lieutenant governor, or department head, as appropriate. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission.

Co-Chair Stedman was unsure that the provision of subsection (d) would not "trump" the provision of (a) thereby allowing former public officers to "get around" the restrictions imposed by the first subsection.

[9:19:35 AM](#)

Senator French agreed to this assumption. The provision of subsection (d) was a "more powerful ... blanket prohibition" than that of subsection (a). Subsection (a) applied to broader activities than just lobbying, as it would prohibit former public officers from capitalizing on decisions or actions made while in State service. For example, a former public official who, in that capacity, made a decision in awarding a contract to one company over another should not be allowed to accept employment from the successful company. Such occurrence could give the appearance of a "payback".

[9:22:02 AM](#)

Co-Chair Stedman indicated he would further review the matter, as he was unsure "that this isn't one of those issues where there's some maneuverability."

[9:22:15 AM](#)

Co-Chair Stedman next inquired about limitations on lobbying activities by former legislative staff.

9:22:28 AM

Senator French noted the legislation before the Committee pertained to the Executive Branch and suggested for clarity sake that the discussion be limited to Executive Branch officials at this time.

9:23:05 AM

Co-Chair Stedman acquiesced, emphasizing that the matter of legislative employees must be addressed.

9:23:17 AM

Senator Dyson asked if consideration was given to situations in which holdings of a public officer were assigned to a "blind trust" for the period of time that the officer was in public service. He wanted to know if influence over the previously acquired "wealth and position" of a public official could be removed to allow that official to undertake public service "with integrity."

9:24:21 AM

Senator French responded that permitting such activities would be a "pure policy call" that he would "leave to the wisdom of the Committee". He advised against allowing for blind trusts in these situations. Blind trusts transfer administration and management of assets to an entity other than the holder of those assets to prevent the holder from making policy decisions that could affect the valuation of the assets. Continuing with the earlier mentioned example of a public official who holds IBM stocks worth \$1 million, he stated that control over management of those stocks could be relinquished, but the official would still reasonably assume that a competent stock broker would not trade away those stocks. Therefore, the official would maintain an allegiance to IBM. The official must decide whether to be an IBM stockholder or take official action on matters pertaining to computer companies.

Senator Dyson posed a scenario of a public official considering oil recovery actions, a technician suggesting a pulp extraction method patented by a certain company, and the official realizing he or she owns stock in that company.

[9:26:33 AM](#)

Senator French stressed that the public official must avoid taking official action with respect to the company. The State employs thousands of people and at least one of those people would be capable of making a decision on the oil recovery issue.

[9:27:35 AM](#)

Senator Elton asked about the use of the term "principal department" in Section 2.

[9:28:02 AM](#)

Senator French deferred to the Division of Legal and Research Services.

[9:28:26 AM](#)

Mr. Wayne was unsure if the term was defined in statute.

[9:29:05 AM](#)

Senator Elton, using himself as an example, shared that he participates in the State's Supplement Benefits System (SBS) and also owns mutual funds. He asked that if he were a public officer whether he would be required to total his holdings in a company from both accounts and recuse himself from actions pertaining to that company if the assets exceeded \$1,000.

[9:29:55 AM](#)

Senator French answered that he would. However, mutual fund assets are typically commingled and a "positive charge" of impropriety would be difficult to levy.

[9:30:43 AM](#)

Senator Dyson divulged that he has specifically instructed his stockbroker to not apprise him of the identity of his assets to avoid being influenced by these holdings.

[9:31:19 AM](#)

Senator French advised that a determination of a violation would be based on "strict liability" with no "knowledge element" considered. A public officer either owns or does not own a financial interest. This legislation is not directed to "state of mind."

[9:31:50 AM](#)

Mr. Wayne agreed.

[9:32:17 AM](#)

Mr. Wayne returned to Senator Elton's inquiry regarding "principal department". The term is contained in Article 3 of the Alaska Constitution.

[9:33:15 AM](#)

Senator Dyson understood the implication would be that the manager of his investment accounts would be required to notify him "instantly" to inform him of any changes of stock ownership.

[9:33:45 AM](#)

Senator French affirmed. He qualified that the Office of the Governor could be asked the number of employees who would make decisions on a daily basis affecting stocks.

[9:34:14 AM](#)

Senator Dyson noted a violation of public trust would not occur unless the provisions of subparagraph (1) and all of the provisions of subparagraph (2) of AS 39.52.110(b) apply. He questioned the possibility that a public officer could fail to comply with any number of the conditions but if as few as one condition was met, that officer would be considered "innocent". Instead the two provisions should be cumulative.

[9:34:53 AM](#)

Senator French admitted this issue had been discussed extensively and that the language of Section 1 was deemed appropriate. A decision made by a public official holding a significant stock investment in a company would not violate public trust if that action did not affect the stock price.

[9:36:01 AM](#)

Senator Dyson told of a report issued by the Better Government Association, which ranks state's performance relating to integrity and corruption [copy not provided]. The State of Alaska is ranked 23rd of the 50 states. Specifically compliance with the federal Freedom of Information Act was judged to be poor. Additionally, the US Department of Justice ranked Alaska sixth in terms of corruption.

Senator Dyson suggested that the efforts to improve ethics legislation might not be "attacking the real heart of issues" or that more should be considered.

[9:37:51 AM](#)

DAVE JONES, Senior Assistant Attorney General, Opinions, Appeals and Ethics Section, Civil Division, Department of Law, testified that Governor Palin had introduced legislation to also address ethics. Some of the issues included in her bill were also included in SB 19.

Mr. Jones outlined the provisions of SB 19, as previously done by Senator French.

Mr. Jones stated that the language of AS 39.52.110(b)(2)(C)(i), amended in Section 1, would disqualify a member of the Executive Branch from actions relating to a business if that member held a controlling interest in the business valued at over \$5,000. Subparagraph (iii) provided that stock options valued over \$5,000 or equal to one percent or more of the total value of the business would also be a disqualifier.

Mr. Jones commented that the provisions of Section 1 would address issues pertaining to business interests. The legislation proposed by the Governor, SB 64, contains different language but is intended to achieve the same result.

[9:40:19 AM](#)

Mr. Jones continued that Section 2 relates to restrictions on lobbying activities. Current statute applied to the positions of governor, lieutenant governor and heads of departments. Governor Palin, in the legislation she had offered, proposed to extend

the restrictions to apply to deputy commissioner positions and other policy-making positions.

[9:40:59 AM](#)

Mr. Jones remarked that he was in agreement with Mr. Wayne regarding the difference between public officials and public officers. The Department of Law had been consistent in the use of the two terms, which do not have the same meaning.

[9:42:07 AM](#)

Mr. Jones addressed the question regarding the difference between the restrictions provided for in Sec. 24.45.121(a) and (d). The provision of subsection (a) was a "general restriction" that would apply to all public employees and would prohibit former employees for lobbying activities pertaining to matters in which employees participated in for two years after leaving public service. The provision of subsection (d) would prohibit all lobbying activities for a period of one year, but currently only applied to former governors, lieutenant governors and commissioners.

[9:43:32 AM](#)

Mr. Jones shared that he had participated in similar discussions as Senator French indicated regarding the use of "or" rather than "and" in the list of restrictions imposed in Sec. 39.52.110 (b). Mr. Jones reached the same conclusion that the language is appropriate.

[9:43:50 AM](#)

Senator Elton asked if under the Governor's proposal whether the executive director of the Alaska Housing Finance Corporation (AHFC) making multi-million dollar financial decisions on behalf of the corporation would be prohibited from lobbying for a financial management company if that company was involved in the aforementioned decisions.

[9:44:30 AM](#)

Mr. Jones answered that the lobbying restrictions would not apply to the former director of the AHFC unless the lobbying was

for matters in which the former officer was "personally and substantially involved" during tenure at the AHFC.

[9:44:56 AM](#)

Senator Elton surmised therefore that lobbying restrictions would only apply to financial transactions that may have already occurred. Potential future transactions would not be subject to the prohibition.

[9:45:17 AM](#)

Mr. Jones replied, "I don't think that would be the only situation. It would have to be a matter with which they dealt during their State services personally and substantially." He pointed out, "That may only well occur only when the transaction's already completed; but I suspect there may be situations in which the transaction is ongoing when the State service ends."

[9:45:47 AM](#)

Senator Elton stated that this issue should be addressed.

[9:45:56 AM](#)

Co-Chair Hoffman noted the witness pointed out the increase in the number of positions in which the restrictions would apply. Co-Chair Hoffman asked if Governor Palin supported or opposed this expansion.

[9:46:23 AM](#)

Mr. Jones could not speak to the Office of the Governor position on the matter.

[9:46:36 AM](#)

Co-Chair Hoffman requested an answer to his question before the Committee took action on the bill.

[9:46:45 AM](#)

Mr. Jones assured he would see to it.

[9:47:18 AM](#)

Co-Chair Stedman ordered the bill HELD in Committee.

#SB20

[9:47:24 AM](#)

CS FOR SENATE BILL NO. 20(STA)

"An Act relating to disclosures by legislators, legislative employees, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; relating to the applicability of the Legislative Ethics Act; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

[9:47:51 AM](#)

Senator French, sponsor of the bill, testified that it relates to disclosure that legislators and legislative employees provide to the public of "what we're doing to earn a living outside the capitol, who we're working for, how much they're paying us and what amounts of effort we're having to put out to gain that employment."

[9:48:38 AM](#)

Senator French characterized the inserted language "of this chapter" to AS 24.60.020(a), in Section 1 as "clean up" suggested by the Department of Law.

[9:48:48 AM](#)

Senator French stated that Section 2 proposes a new statute section to Article 2: AS 24.60.115. Disclosure required of a legislator, legislative employee or public member of the committee after the final day of service. This provision was intended to address past confusion of when a departed legislator must file the final disclosure. Currently, a question existed as to whether a final report must be filed after a legislator left service.

[9:50:26 AM](#)

Senator French informed that Section 3 would amend AS 24.60.200. Financial disclosure by legislators, public members of the committee, and legislative directors., in part to extend the reportable income to include dividend income in excess of \$1,000 received from a limited liability company as compensation for personal services. Additionally disclosure must include the nature of services performed "with sufficient description to make clear to a person of ordinary understanding the specific services performed"; "the approximate total number of hours that have been spent or will be spent performing the services" and "the amount of income received from the source."

[9:51:32 AM](#)

Senator French explained that this would provide information about the "amount of effort" the legislator or legislative employee invested to earn the contract. A contract in the amount of \$20,000 in which only ten hours were worked would "raise questions"; however, 40 hour weeks at a compensation rate consistent with the profession of the service provided in the contract would be "understandable."

[9:52:31 AM](#)

Senator French continued that this section would provide for the amount of income permitted from one source. Previous rules pertaining to income from sources "known to have legislative business" would be "put by the wayside". A legislator or legislative employee would not be required to report whether the person or company which gave them money was a lobbyist or had business before the legislature. Instead, the amount of money received would be reported.

[9:53:11 AM](#)

Senator French concluded with Section 4, which defines to whom this legislation would apply. The provisions of Section 2 would apply to a person serving as a legislator who left service on or after the effective date of the act and to a person who served as a legislator between April 2006 and the effective date of the act.

[9:53:51 AM](#)

Co-Chair Stedman directed attention to the reporting requirement by a legislator who had dividend income in excess of \$1,000 from a limited liability corporation. He remarked that the public should be aware of any "wealth creation" in excess of \$1,000, whether from a dividend, or stock options, deferred compensation or other "mechanism that they may imbed in that limited liability company".

[9:54:59 AM](#)

Senator French agreed that the intent was disclosure so long as Alaska has a "citizen legislature". He deferred to Co-Chair Stedman's greater financial experience to specify the methods of achieving the wealth. This legislation was intended to address matters that had occurred in the past.

[9:55:52 AM](#)

Co-Chair Stedman would review the matter to avoid providing an "opportunity" for financial gain without disclosure.

[9:56:22 AM](#)

Senator Elton understood that most businesses operating in Alaska are limited liabilities. He asked if other types of business formations exist in the state.

[9:56:56 AM](#)

Senator French deferred to legal experts. He defined income in excess of \$1,000 to include "almost everything". However, it was learned that income from a limited liability company was not specified.

[9:57:32 AM](#)

Senator Huggins recalled that the original version of this bill included a provision addressing professional licenses.

[9:57:51 AM](#)

Senator French affirmed, noting that the exemption provision was removed in the Senate Judiciary Committee substitute.

[9:58:02 AM](#)

Senator Huggins supported the deletion. He predicted however, that the deletion could be onerous.

[9:58:15 AM](#)

Senator French stated that the issue could be "delicate" with respect to some professions. The amended language would require legislators to "expose" all of their clients, including those legislators who earn income as a doctor, a lawyer or an investment advisor. Concern had been expressed about whether an attorney, for example, should be exposing some clients and the amount of money received from each client. Some clients seek professional services that they may not want known publicly.

Senator French had decided that if a person chose to become a legislator, that person may be restricted in the types of cases or clients accepted. He shared that he would likely not undertake extensive patent cases, as the client and amount of money collected would be made public.

Senator French qualified that an exemption could be considered for physicians under the provisions of Hippocratic Oath statutes.

[10:00:58 AM](#)

Senator Huggins reiterated that he supported the removal of the professional license exemption. Licenses are issued for 38 professions, one of which relates to "performing arts" and "promoters of events". Holders of such licenses should not assume that income garnered from that profession should be exempt from disclosure.

[10:01:41 AM](#)

Senator Dyson asked if consideration had been given to expanding the list of service providers for which confidentiality of client information would be allowed.

Senator French requested an example of a type of service.

[10:02:09 AM](#)

Senator Dyson shared that his wife was a mental health counselor who refused to divulge information about her clients. Also a previous legislator was an insurance provider who chose to stop issuing large policies to avoid disclosure requirements.

[10:03:00 AM](#)

Senator French stressed that physicians are governed by "explicit protections" in federal law regarding disclosure of clients and client information. Information about a lawyer's clients is made public in the form of court filings. He understood that some seeking legal consultation could want that to remain private. A legislator practicing law could inform potential clients of the disclosure requirements, and could subsequently "lose some business". However, more disclosure is better.

[10:04:36 AM](#)

Senator Dyson posed a scenario of a legislator involved in a mountain guiding business with his son. He asked if disclosure would be required if the business were paid \$1,000 by a client.

Senator French answered in the affirmative.

Senator Dyson then asked if the business guided clients into the Chugiak State Park and if an issue relating to the park were before the legislature whether the legislator would be required to declare an interest in the matter.

[10:05:39 AM](#)

Senator French responded that such requirement is provided for in existing law.

[10:06:15 AM](#)

Senator French stressed the importance that legislators disclose their income sources. He informed that he owns rental property and would be required to disclose all tenants, the rental income received from each tenant and the amount of time spent in administering and maintaining each unit.

[10:07:05 AM](#)

Co-Chair Stedman ordered the bill HELD in Committee.

AT EASE [10:07:38 AM](#)

#

ADJOURNMENT

Co-Chair Bert Stedman adjourned the meeting at [10:09:41 AM](#)