

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 22, 2007

1:34 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 19

"An Act relating to a public officer's taking official action regarding a matter in which the public officer has a financial interest; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."

HEARD AND HELD

SENATE BILL NO. 20

"An Act relating to disclosure to the Alaska Public Offices Commission of information about certain income received as compensation for personal services by legislators, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 13

"An Act prohibiting a legislator from providing consulting services to a person in the private sector or agreeing to accept consulting fees from a person in the private sector."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 19

SHORT TITLE: EXEC. BRANCH ETHICS: INTERESTS & ACTIONS

SPONSOR(S): SENATOR(S) FRENCH, ELTON, MCGUIRE, WIELECHOWSKI, THOMAS, HUGGINS

01/16/07 (S) PREFILE RELEASED 1/5/07
01/16/07 (S) READ THE FIRST TIME - REFERRALS
01/16/07 (S) JUD, STA, FIN
01/22/07 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 20

SHORT TITLE: LEGISLATIVE DISCLOSURES
SPONSOR(s): SENATOR(s) FRENCH, ELTON, MCGUIRE, WIELECHOWSKI,
THOMAS, HUGGINS

01/16/07 (S) PREFILE RELEASED 1/5/07
01/16/07 (S) READ THE FIRST TIME - REFERRALS
01/16/07 (S) JUD, STA, FIN
01/22/07 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 13

SHORT TITLE: BAN CONSULTING CONTRACTS WITH LEGISLATORS
SPONSOR(s): SENATOR(s) STEVENS

01/16/07 (S) PREFILE RELEASED 1/5/07
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WITNESS REGISTER

DAVID JONES, Assistant Attorney General
Department of Law
Civil Division
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Testified on SB 19

DON ROBERTS,
Kodiak, AK
POSITION STATEMENT: Testified on SB 19

DAN WAYNE
Legal and Research Services Division
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Drafter of SB 19

BROOKE MILES, Executive Director
Alaska Public Offices Commission (APOC)

Department of Administration
PO Box 110200
Juneau, AK 99811-0200
POSITION STATEMENT: Commented on SB 20

SENATOR GARY STEVENS
Alaska State Capitol
Juneau, AK
POSITION STATEMENT: Sponsor of SB 13

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:34:01 PM](#). Present at the call to order were Senator McGuire Senator Therriault Senator Huggins Senator Wielechowski and Chair French.

SB 19-EXEC. BRANCH ETHICS:INTERESTS & ACTIONS

CHAIR HOLLIS FRENCH announced SB 19 to be up for consideration and asked for a motion to adopt Version M committee substitute (CS), labeled 25-LS0160\M.

[1:35:02 PM](#)

SENATOR CHARLIE HUGGINS so moved. There being no objection, CSSB 19, Version M, was before the committee.

CHAIR FRENCH explained that the bill, relating to executive branch ethics, rewords AS 39.52.110(b). The idea is to prohibit an executive branch employee from taking official action on behalf of his or her personal investments and benefiting from that action through the use of their official position. On page 2, line 2, subparagraph (C)(i) through (viii) lays out the different ways an employee would be prohibited from taking official action.

Section 2 expands the definition of "official action" to better capture executive branch employees' day-to-day work and clarify that the activities mean official action with respect to an investment the employee may have in an outside business.

[1:37:47 PM](#)

CHAIR FRENCH related that the current subsection (a) lays out the general duty of a public officer and the new subsection (b) lays out a series of exceptions. The exception in paragraph (1) states that if the action or influence is insignificant or it would have a conjectural effect, then it is not a violation.

Chair French hypothesized that an executive branch employee could own and take action on \$1 million in IBM stock without violating the law because the action would have an insignificant or conjectural effect on the value of that stock.

Likewise, the exception outlined in paragraph (2)(A) says that if the public officer's personal or financial interest is generally owned by the public, then it is not a violation to take action on that investment. Thus, a public official who takes action to increase the size of his or her Permanent Fund dividend would also increase the size of all other dividend recipients. Similarly, if a public officer were to take an action to route the gas pipeline close to his or her home, it would effectively increase the value of all homes in the area so the action would not run afoul of the law.

On page 2, line 1, paragraph (2)(B) lays out an exception if the public officer's personal interest is insignificant. Chair French noted that definition is probably not perfect, but it would be difficult to do better.

On page 2, line 2, paragraph (2)(C) addresses financial interest with respect to a business. He noted that that particular section, which has the subheadings (i) through (viii) has been problematic in the past.

CHAIR FRENCH asked Mr. Jones to comment on the bill.

[1:40:54 PM](#)

DAVID JONES, Assistant Attorney General, Civil Division, Department of Law (DOL), said he hadn't seen Version M so his comments would be directed to the original bill.

MR. JONES expressed concern with the percentage ownership standard saying it could be difficult to calculate a one percent interest given the variety of stock classifications. He argued that, in terms of ethics, the significant interest standard is preferable. It won't matter to the DOL or to the public whether the interest amounts to one percent or 50 percent; what matters is whether or not the interest is significant. He suggested that the \$5,000 standard would be a better measure than the one percent ownership standard.

MR. JONES posed the hypothetical situation of funding a child's lemonade stand and noted that because he has a 100 percent interest in the stand he would be prohibited from taking action to benefit that child's business even though his investment

might only have been \$50. He argued that it's not the percentage ownership that matters to the public; it's whether it's a significant interest and it seems that the \$5,000 standard would be preferable, he said.

CHAIR FRENCH asked if he had language to suggest if he was proposing that the standard be listed in something other than dollar terms. He noted that the significance standard had been removed in SB 19 because it wasn't defined very well and created problems two years ago.

MR. JONES clarified that he was suggesting that a flat dollar measure is preferable to the either or standard, which is either a dollar amount or a one percent interest in the value of a company.

CHAIR FRENCH used the lemonade stand example and asked why it would ever be valued at more than \$5,000.

MR. JONES replied it would not.

CHAIR FRENCH questioned how someone could run afoul of the statute if it was written as proposed.

MR. JONES acknowledged that there probably wouldn't be stock in a lemonade stand, but if a person owned a controlling interest in the lemonade stand or more than one percent of the value of the stand, then that would seem to run afoul of subparagraph (2)(B) and (2)(C)(i) and (ii), on page 2, lines through 19.

CHAIR FRENCH asked if his concern could be addressed if language was adopted in sub-subparagraph (i) on page 2, line 5 to say that the controlling interest in the business is worth more than \$10,000.

MR. JONES agreed that would make sense, but he'd also like the reference to one percent interest in a business in sub-subparagraphs (ii) and (iii) to be deleted so there is just a dollar standard.

CHAIR FRENCH asked if it is difficult to value some businesses and relayed that he was reluctant to simply toss out the percentage of ownership standard.

MR. JONES theorized that for some businesses there would always be some difficulty in determining valuation. But the process is further complicated if a percentage valuation is required. For

example, would stock options be included or excluded from the percentage interest calculation. Although it wouldn't always be simple, a flat dollar figure would always be simpler.

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SENATOR LESIL McGUIRE said the concern she has with removing the percentage relates to options to buy and to new or speculative companies where the valuation hasn't been established. Someone could use his or her official title to steer activity in a direction to gain substantial personal benefit, but not be measured by the \$5,000 measure.

MR. JONES acknowledged that is possible, but the root of the trouble is substantiality and using the one percent measure might not achieve the goal. A flat dollar figure is more likely to achieve the goal, he said.

1:49:10 PM

CHAIR FRENCH asked Mr. Jones to send proposed language to his office so the committee could make a reasoned decision.

MR. JONES agreed to suggest language and further advised that he would comment on the CS on Wednesday.

1:50:16 PM

SENATOR BILL WIELECHOWSKI asked whether his comments were on behalf of the administration.

MR. JONES said yes.

SENATOR WIELECHOWSKI asked if the administration supports the bill with the amendment he is suggesting.

MR. JONES replied he is not authorized to indicate the Governor's position on the bill. He is authorized to speak on the effects of the bill as well as any enforcement challenges.

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DON ROBERTS, a Kodiak citizen, introduced himself and said when he began preparing his testimony about ethics he came to the conclusion that this is more about fairness in the decision making process and helping legislators and others avoid conflict-of-interest situations that are likely to be encountered.

Having done advocacy work for eight or nine years he has determined that the whole system is unfair in that a single

person can't be heard above the din of money and power. He suggested the committee look at how an average person can influence legislation before the law is enacted instead of finding out about a new law after the fact. The problem isn't that legislators are unethical; it's more that they are unfair. Finally, he asked that borough and city governments to be included because there are problems at that level as well.

CHAIR FRENCH recognized the bill drafter.

[1:54:34 PM](#)

DAN WAYNE, Legislative Counsel, Legal and Research Services Division, Legislative Affairs Agency, introduced himself.

SENATOR GENE THERRIAULT referenced page 2 and questioned the need for the language in subparagraph (B) because the language in subparagraphs (A) and (C) seems to encapsulate it all.

MR. WAYNE responded he couldn't say. Subparagraph (B) has a function, but it might work without it.

SENATOR THERRIAULT referenced page 2, line 8 and suggested inserting language about "fair market value" since the term "value" is somewhat subjective.

MR. WAYNE replied any term relating to value is somewhat subjective. Using total value leaves it to the person who is trying to comply with the law to make an interpretation or get an opinion from the Personnel Board. Then if a complaint is lodged the Personnel Board would make an interpretation just as it does for any subjective question.

SENATOR THERRIAULT commented he would like to screw that kind of thing down as tightly as possible.

He questioned why page 2, line 14, shouldn't be any officer in the business rather than just an elected officer. Finally, he noted that page 2, line 5, talks about owning a controlling interest and he would suggest that that could be subjective as well.

SENATOR THERRIAULT said he highlighted those issues because some needed to be more specific and another needed a broader interpretation.

CHAIR FRENCH asked if he was musing or did he have specific language to suggest.

SENATOR THERRIAULT said he was musing, but he believes the committee should be more specific in how to place value. Fair market value can be tracked if the company is publicly traded and assets of a business can be appraised based on a fair market valuation. With regard to an elected officer, he said it should be any officer, elected or not.

CHAIR FRENCH questioned whether that wouldn't be captured by the language on page 2, line 19, which addresses an employee of the business. He questioned whether a person could be an officer without being an employee.

SENATOR THERRIAULT replied an employee is different and implies remuneration of some sort. Using his family business as an example, he said he doesn't believe that "employee of the business" would automatically sweep everyone in.

[2:00:02 PM](#)

SENATOR WIELECHOWSKI advised that the definition of "business" includes for profit and non-profit businesses.

MR. WAYNE noted that that definition was used in drafting the bill.

CHAIR FRENCH addressed Senator Therriault's first question and read the definition of "personal interest" into the record to demonstrate that it's a little broader than financial interest.

Sec. 39.52.960. Definitions.

(18) "personal interest" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

SENATOR THERRIAULT agreed.

[2:01:42 PM](#)

SENATOR WIELECHOWSKI added that subparagraph (B) on page 2 is a catch all. The other provisions wouldn't necessarily apply to non-profits, but subparagraph (B) would capture them.

CHAIR FRENCH hypothesized that a Boys and Girls Club board member could drive a state decision to steer money to that club

and said that they aren't deriving any personal gain, but it still isn't right.

CHAIR FRENCH announced he would set SB 19 aside and the proposed amendments would be reviewed on Wednesday.

SB 20-LEGISLATIVE DISCLOSURES

[2:02:40 PM](#)

CHAIR HOLLIS FRENCH announced SB 20 to be up for consideration and read the following sponsor statement into the record:

SB 20 is a simple bill designed to clarify Alaska Public Offices Commission (APOC) reporting requirements for legislators and other public officials.

Under the current legislative ethics code a public official must disclose the nature of any work performed as personal services for which compensation greater than \$1,000 is received. SB 20 simply adds language to the existing statute to require the filer to provide a substantive description of what was done for the contract, as well as the approximate number of hours spent.

The public has repeatedly appealed for more substantive disclosures, and SB 20 provides the increased degree of openness they are calling for. This will assure the public that the compensation public officials receive for outside work does not conflict in any way with their public duties, without unduly burdening citizen legislators who perform legitimate duties outside of the public realm.

The clarification the bill provides will also help APOC fulfill its mission of encouraging the public's confidence in their elected and appointed officials.

CHAIR FRENCH related that on page 2, lines 3 and 4 add dividend income received from a limited liability company to the types of income that must be reported. Also page 2, lines 6 through 9 add the requirement that the services performed must be described such that a person of ordinary understanding is able to grasp what was done, outside the Legislature, in exchange for the money that was received. Page 2, lines 10 and 11 require reporting the number of hours spent performing the service. That

way the public is able to cross-reference and thereby decide whether the remuneration is market based. Finally, page 2, line 12 outlines that the amount of income received from the source must be disclosed if the recipient is a legislator or a legislative director.

Section 2 adds a definition for "professional license" to mean one that is required for a profession regulated by a state or the federal government. Lists of such professions are published and readily available.

Basically, the disclosure is increased so that anyone who reads the statement is able to determine what the legislator is doing in exchange for the money that he or she is receiving outside the Legislature.

CHAIR FRENCH recognized Brooke Miles and noted that she was available to answer questions.

[2:05:20 PM](#)

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC), said she did not have anything to add to the bill overview and reminded members that it is not the commission's policy to support or oppose legislative changes. However, everyone appreciates when there is an effort to codify clarification to existing language that has been difficult to interpret. This measure does just that, she said.

Section 1 makes it clear that dividend income from a limited liability company must be reported on the legislative financial disclosure statement. It also clarifies that when a legislator or a legislative director receives income from a professional service, a detailed description of the services must be provided. She noted the zero fiscal note and said the measure would make it easier for APOC administer.

[2:07:01 PM](#)

CHAIR FRENCH said he had two questions. First, he questioned whether it might be useful to set a threshold, such as \$1,000, for disclosing dividend income from a limited liability company.

MS. MILES said she presumed the threshold would be \$1,000 since Alaska voters established the \$1,000 threshold for legislative disclosure in the 2006 primary.

CHAIR FRENCH said he would prepare an amendment to address that point.

He asked Ms. Miles to explain the "unless clause" on page 2, lines 8 and 9 that provides an exception if the services require issuance of a state or federal professional license.

MS. MILES related that some services, such as analyst or consultant, are broadly defined and the idea is to make more information available to the public in those broader areas of self employment. The intent is not to add requirements for professions that already report payments in excess of \$1,000.

CHAIR FRENCH summarized that if the work that is done is pursuant to a state license, then no further description of the services provided is necessary. However, if the services fall in the broader realm of consultant, advisor, or analyst, then there is need for a more complete description of what is done for the money.

MS. MILES agreed.

[2:10:44 PM](#)

SENATOR GENE THERRIAULT asked Ms. Miles to comment on the fact that on page 2, paragraphs (2)(A),(B), and (C) disclose the basic information, but do nothing to address whether or not the compensation is outrageous.

MS. MILES agreed that the bill does not place control on that issue, but a section of the legislative ethics laws speaks to employment being commensurate to the amount paid. APOC has the disclosure and provides the information for the public so the hours that are reported would provide a useful tool to the Legislative Ethics Committee in the event that a complaint is filed. She advised that Joyce Anderson could better address that question.

SENATOR THERRIAULT said understanding how this section works with the other section may satisfy that concern, but the public might still find the disclosed information upsetting.

CHAIR FRENCH closed public testimony and announced he would hold SB 20 until Wednesday. He noted that he would prepare an amendment to page 2, lines 3 and 4 and Senator Therriault might offer one as well.

At ease from [2:13:44 PM](#) to [2:16:47 PM](#)

SB 13-BAN CONSULTING CONTRACTS WITH LEGISLATORS

2:16:55 PM

CHAIR HOLLIS FRENCH announced SB 13 to be up for consideration.

SENATOR GARY STEVENS, Sponsor, described SB 13 as a simple straightforward bill. It prohibits legislators from providing consulting services to anyone in the private sector or accepting consulting fees from anyone in the private sector.

Noting the newspaper accounts of legislators who may have been consultants and may discredit the Legislature, he said his goal is to protect the image of an institution that is approaching its 50th year. To accomplish that there must be a bond of trust with the public.

SENATOR STEVENS related that it has been difficult to establish a definition for "consultant" and although he was very clear about what he wanted to accomplish when he began writing the bill, he was unsure whether he had achieved his goal. Nonetheless, the conversation is worthwhile and hopefully the committee will flesh the idea out in either this bill or another. Now is the time to confront the issue of ethics and get some meaningful legislation on the books.

SENATOR STEVENS said he took no particular ownership in the bill and the suggestion for an omnibus bill may or may not work. In conclusion he said the bill is simply: "An Act prohibiting a legislator from providing consulting services to a person in the private sector or agreeing to accept consulting fees from a person in the private sector." That's all it does, he said.

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CHAIR FRENCH noted his earlier conversation with the sponsor regarding a definition for consultant and said two synonyms that come to mind are "advisor" and "analyst". If this bill were to pass, he could imagine that APOC filings would begin to reflect those services. Parenthetically he agreed with the thrust of the bill because legislators should not trade on their office. Expertise, special knowledge, or business acumen may be exercised outside the capitol building, but how would you handle those synonyms, he questioned.

SENATOR STEVENS responded he worked with the bill drafter to come up with a definition of what is and isn't included and he has been unable to find a workable definition in state regulation. Nonetheless, he asked the committee not to water it down or create loopholes by saying an analyst or advisor is okay

because that would weaken the bill. The reality is that the activity is either allowed or it isn't. When a person is considering whether or not to run for a legislative office, then they ought to decide whether they want to do one job or the other.

As long as the state has citizen law makers there will be fewer people who are available to serve because of the financial struggle. It's not his goal to change the system, but the rules about crossing the line to become an advisor must be very clear.

[2:23:22 PM](#)

SENATOR GENE THERRIAULT asked if he had discussed with legislative legal the notion of prohibiting any business that would entail providing services that are outside the person's specific training or professional expertise. He suggested there ought to be a way to cast the net broadly and still let people conduct private business.

[2:25:10 PM](#)

SENATOR STEVENS said he had no objection to expanding the bill, but the test question ought to be whether the legislator would have gotten the job if he or she was not a member of the Legislature. The problem is how to write that into the law.

SENATOR THERRIAULT responded an economist who is also a legislator is required to disclose to APOC payments in excess of \$1,000 and the time spent for that remuneration. The public will be able to determine whether the pay is commensurate with the profession. It's the terms "consultant" and "advisor" that are murky. The remuneration for that work can be astronomical and cause the general public concern.

[2:27:07 PM](#)

SENATOR STEVENS said he couldn't agree more, but the problem is in the details. He questioned how you tell when an economist legislator is hired for his or her professional expertise and not for their legislative experience.

[2:27:25 PM](#)

SENATOR CHARLIE HUGGINS asked what a legislator's status would be if he or she was a consultant before becoming a legislator if SB 13 were to pass.

SENATOR STEVENS replied the individual would need to make a choice between being a legislator and being a consultant.

SENATOR HUGGINS remarked that the committee would ultimately need to determine whether or not it's legal to ban someone from pursuing his or her profession while serving as a legislator.

SENATOR STEVENS replied he, as a retired university professor, cannot teach for remuneration while he is serving as a legislator.

SENATOR HUGGINS commented on a conversation he had regarding professional licensing and business conduct. It's what the person does with the license and the compensation that makes the difference.

[2:30:26 PM](#)

SENATOR BILL WIELECHOWSKI said he can see two issues regarding consulting services. The first is legislators receiving exorbitant fees for providing services that they may or may not be qualified to do. The second is legislators helping others with the legislative process. He questioned what other states are doing.

[2:31:28 PM](#)

SENATOR STEVENS questioned whether it makes any difference if the fees received are exorbitant if the activity is wrong. As far as legislators helping others with the legislative process, they already do that as part of the job.

[2:32:21 PM](#)

SENATOR LESIL MCGUIRE advised that California decided to have professional law makers address these same ethical issues. Although the tradeoff is huge for some individuals, the decision is that if you want to be a public servant then other economic opportunities are on hold.

Two hypothetical examples come to mind, she said. First, suppose a legislator has a professional license as a real estate agent and he or she works for a politically active company. Even though the licensee isn't performing the day to day work as a realtor, she questioned what might happen or what the perception might be if a piece of legislation were introduced that would have a tremendous financial impact on that realty company.

The second example involves a company vice-president, which is a position that can be a catchall and include many or few different duties and titles. There certainly could be an instance where someone is promoted to vice-president of Company A with full knowledge that he or she will be in Juneau for most

of the year. That might be very acceptable from the company's standpoint and the business might function very well without the vice-president doing any day to day work.

She assured members she isn't casting aspersions and she doesn't disagree with the thrust of the bill, but the deeper question is whether or not you want citizen law makers. If the answer is yes then how do you handle the real conflicts that aren't always apparent.

There's always a tradeoff and the public understands that, but whatever your title there's always someone who can do the job as well or better simply because they're at work and doing the job rather than also serving as a legislator. We have to decide where to draw the line, but it's bigger than just consulting, she said.

[2:37:09 PM](#)

SENATOR STEVENS agreed that many people consult, advise, and analyze in their daily job so it's difficult to parse what they may be doing as part of the job and what they may be doing as a legislator. Although it seemed simple at the onset, there really is no simple solution. Adding exceptions creates loopholes and the law would lose its teeth. But changing to professional law makers as California has done, wouldn't necessarily guarantee ethical behavior either.

[2:38:14 PM](#)

SENATOR THERRIAULT remarked those concerns support the suggestion that this issue could be dealt with under an umbrella. The language in SB 20 would address the example of the real estate agent. If the person really did the work of an active realtor, then the time spent and the monetary gain would be disclosed under the language proposed in SB 20.

SENATOR McGUIRE pointed out that she used the example of the real estate agent because there is an exception for state or federal professional licenses.

SENATOR THERRIAULT said perhaps that language ought to be added to the statute.

CHAIR FRENCH advised that the committee would revisit SB 20 on Wednesday.

SENATOR STEVENS commented that adding to the reporting requirements is an option and it ought to be very clear what the

requirements are, but something is very wrong if we get caught up in nit-picking and we miss the big picture.

[2:41:00 PM](#)

CHAIR FRENCH found no further questions or testimony and closed public testimony.

SENATOR THERRIAULT noted that he had an email to distribute to the committee. It was from Mr. Metcalfe and was related to the topic of ethics.

[2:42:06 PM](#)

CHAIR FRENCH announced he would hold SB 13 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:42:21 PM](#).