

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

February 26, 2007

1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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 13

SHORT TITLE: BAN CONSULTING CONTRACTS WITH LEGISLATORS

SPONSOR(S): SENATOR(S) STEVENS

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

WITNESS REGISTER

Senator Gary Stevens
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Sponsor of SB 13

Joyce Anderson, Administrator
Select Committee on Legislative Ethics

PO Box 101468

Anchorage, AK 99510

POSITION STATEMENT: Commented on Version \M of SB 13

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:33:03 PM](#). Present at the call to order were Senator Huggins, Senator McGuire, Senator Therriault, Senator Wielechowski, and Chair French.

SB 13-BAN CONSULTING CONTRACTS WITH LEGISLATORS

CHAIR FRENCH announced the consideration of SB 13 and asked for a motion to adopt Version M committee substitute (CS).

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SENATOR HUGGINS made a motion to adopt CS for SB 13, labeled 25-LS0106\M, as the working document.

SENATOR THERRIAULT objected for discussion purposes.

CHAIR FRENCH explained that the bill achieves the sponsor's goal and also includes suggestions from the ethics committee. Those suggestions could have been included in any ethics bill moving through the body, he stated.

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SENATOR GARY STEVENS, sponsor of SB 13, thanked the chair for working with him and doing "the right job." He restated his original principle, which is that a legislator should not get a consulting job because he or she is a legislator. "People should not be trading on the fact that someone is a legislator and getting something that is unavailable to others." That criterion is met in Section 6, he said.

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SENATOR THERRIAULT questioned whether it is really clear that the prohibition is against being hired and receiving a salary for consulting work. He asked if this would prohibit a group from reimbursing a legislator for travel expenses for going somewhere to give a talk.

SENATOR STEVENS said from the start it was clear that the devil is in the details, but the idea is that people should not be getting compensated a second time for work that they are doing as legislators.

CHAIR FRENCH noted the packet of definitions for legislative, administrative, and political action to make it clear what is and what is not being prohibited. Legislators are paid by the State of Alaska to carry out the primary mission of effecting changes in the law. No one should pay legislators a separate salary to do that for personal and private interests. "We're here on behalf of the public," he said.

In certain instances legislators may appear in front of an administrative agency seeking a decision under the law as it stands. That is a separate idea, though, and there is no intention to interfere with or change that.

Speaking to Senator Therrriault's hypothetical situation, he said SB 13 would not prevent a legislator from going somewhere and speaking before a group and he thought there is already a separate ethics rule against legislators receiving speaking fees. Traveling with a group or traveling to a meeting would not be covered here because the legislator is not seeking or introducing legislation on behalf of the particular group. "You're just going to learn what they have to offer," he said.

SENATOR STEVENS suggested that the committee substitute will "reestablish the bond of trust between the legislature and the public so that they will honor this institution as much as those of us who are devoting many years of our lives to it."

SENATOR THERRIAULT asked if the ethics committee submitted suggested language or just a list of ideas for the CS.

CHAIR FRENCH said the ethics committee brought ideas, which were submitted to the legislative drafters.

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CHAIR FRENCH highlighted the sectional analysis.

Section 1 prohibits distribution of a legislative newsletter within 30 days preceding an election. If a legislator wants to communicate with voters in that time period, he or she should do so with campaign moneys and not with state moneys. The ethics committee has tried to get this into statute in the last several years and this was an opportunity to accommodate that, he said.

SENATOR MCGUIRE asked if that isn't it already in statute.

JOYCE ANDERSON, Administrator, Select Committee on Legislative Ethics, explained that there is something in statute prohibiting use of state funds in the 90 days preceding an election. That has to do with things like using the state print shop to send out communications. However, it does not prohibit a legislator from sending out a newsletter at any time during the year if the legislator's personal or poet account funds are used to pay for it.

SENATOR McGUIRE said she thought there already was a prohibition so it is good to clarify the point.

SENATOR THERRIAULT read from Section 1, (a)(2)(K) and asked if a legislator could send out a newsletter using personal or poet account funds; they are not public funds.

MS. ANDERSON replied her interpretation of the language is that it does not stipulate what funds. It simply prohibits sending a newsletter during the 30 days preceding a state election. "It would prohibit you from using personal funds or poet funds because you couldn't send it out at all," she said.

CHAIR FRENCH read the following:

(a) A legislator of legislative employee may not
(2) use public funds, ... ; this paragraph
does not prohibit
(K) a legislator from sending any
communication in the form of a newsletter to the legislator's
constituents, unless
(i) the communication is sent
during the 30-day period immediately preceding a state
election;

CHAIR FRENCH said he can see it both ways so he would like to hear from the drafter to make sure the right result is achieved.

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SENATOR THERRIAULT said certainly there could be a higher degree of prohibition on the use of public funds than personal funds, but he wants to know exactly what would be allowed as far as personal funds are concerned.

SENATOR McGUIRE said there are two separate issues. The first, which is clear, is that public funds should not be used to send a newsletter out during a campaign season. The second issue is whether a communication can be sent 30 days preceding an

election using private funds. You might want to reserve that right, she said, because she could imagine something happening in a district during that time that would require an immediate response.

SENATOR THERRIAULT recalled that this last summer he sent notices out to certain neighborhoods reminding residents about local Department of Transportation road projects. He enclosed preaddressed postcards and suggested that now was the time to comment on how traffic would be routed and the scope of the project. "I would think that no matter whether we're in a campaign season or not, you still have those types of things that are coming and going all the time," he said.

CHAIR FRENCH said legislative communications are acceptable at any time, but legislative newsletters are a little different. They are an update that legislators use to advertise accomplishments and to let constituents know about the legislator's priorities. It doesn't particularly matter when those goes out.

CHAIR FRENCH asked the committee to think about that section to make sure that it is "distinguishing between necessary legislative communications - those funded with your own personal money and then those funded with public money on a less timely basis."

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CHAIR FRENCH said Section 2 tracks current practice. It clarifies that disclosures by legislators and legislative employees must be filed in writing and forwarded to the respective houses for publication.

MS. ANDERSON said although this is current practice the language is missing from the statutes. The addition will synchronize the language with other disclosure language that is in statute.

CHAIR FRENCH asked if Section 2 references the Select Committee on Legislative Ethics and if the context makes it clear where it will fall in the statute.

MS. ANDERSON said yes.

SENATOR THERRIAULT asked what particular disclosure it talks about.

MS. ANDERSON said it is a disclosure that deals with contracts and leases through the state.

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CHAIR FRENCH said Section 3 replaces the words "written report" with the word "disclosure" to make the language consistent with other sections of the statute. Also it amends language to change publication requirements from "within three weeks after the filing date" to the next regular publication.

MS. ANDERSON said this disclosure also deals with state programs and loans. All the other disclosures talk about when the next regular publication is made so this aligns the language with other disclosure sections.

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CHAIR FRENCH said Section 4 adds the Office of Victims' Rights to the list of employees that are not eligible for special discounts given to legislators and legislative staff to make their stay during the session more affordable.

MS. ANDERSON explained that Legislative Affairs Agency, the Office of the Chief Clerk, the Office of the Senate Secretary, Legislative Budget and Audit, and the Office of the Ombudsman are not eligible. The ethics committee thought it appropriate to also include the Office of Victims' Rights to that list.

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CHAIR FRENCH said Section 5 makes another conforming amendment to provisions concerning legislator and legislative employee disclosures.

MS. ANDERSON explained that this section simply makes the language consistent with other sections. It deals with disclosing two kinds of gifts. One is related to travel for a legislative purpose and the other is any type of gift.

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CHAIR FRENCH said Section 6 is the heart of the bill. Referencing the definitions for administrative, legislative, and political action that had been distributed, he said the bill uses the definition of "administrative action" from Section 24.45.171 as follows:

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance,

modification, rejection, or postponement by any state agency of any rule or regulation, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act);

CHAIR FRENCH said the idea is that it means shaping rules in conformance with the Administrative Procedure Act. It does not mean seeking a decision from or appearing in front of. It is about changing the rules to prohibit individuals from being paid to come to Juneau to change the rules on behalf of an outside client.

MS. ANDERSON advised that there is a definition for administrative action in the ethics code in AS 24.60.990 (a)(1). She suggested that if the committee wants to use a different definition it should be mentioned in this particular section.

CHAIR FRENCH replied his intention is to tighten the language in Section 6 so there is no question about what is being adopted and which definition is being referenced.

SENATOR THERRIAULT asked if an attorney who is a legislator would be prohibited from engaging in the kind of activity outlined in the definition.

CHAIR FRENCH said the short answer is yes. If a legislator is employed by a client to shape a regulation, it looks like he or she is being paid to change the law. That is too close to the line; legislators are elected and paid to shape and change the law in the public's interest.

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SENATOR MCGUIRE said she would like to work with the ethics committee to develop a set of practical guidelines. If Alaska wants a citizen legislature and legislators are in Juneau to wear different hats, she questioned how they put the hats on and take them off in a way that is documented, makes sense, is transparent to the public, and comports with the spirit of this law.

CHAIR FRENCH said it would be helpful to get some hypothetical or real-life scenarios and asked Ms. Anderson if the ethics committee had considered doing that.

MS. ANDERSON said she does have examples of questions related to being a legislator and having a conflict of interest with regard

to outside employment. She agreed to add to those examples and said the committee would definitely want to provide that to legislators to provide guidelines.

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SENATOR HUGGINS asked if a legislator who has a family member who is a workers compensation attorney would be precluded from working on that kind of legislation.

MS. ANDERSON said she didn't believe there would be a conflict unless the legislator tried to influence a decision, but the question is too broad to give a more direct answer. "As usual with ethics it is a factual situation that you're working on that has a lot of components to it," she said.

CHAIR FRENCH asked if this law would prohibit a legislator that was an attorney who specialized in corkers' comp cases from representing a client before the workers' comp commission.

MS. ANDERSON said she is familiar with the definition for administrative action in the ethics code, but not with this definition so she would rather not say.

CHAIR FRENCH said that exception (A) clearly states that administrative action does not include "a proceeding or an action to determine the rights or duties of a person under existing statutes, ..." Therefore, if he were to represent an injured client before the workers' comp commission on the issue of whether or not he was hurt on the job, that would be a determination of his client's rights under existing statutes. Clearly, that is not what we are trying to prohibit, he said.

Under the same scenario he would be prohibited from trying to influence a legislative committee to change the worker's comp laws arguing that they are unfair. That's the difference, he said.

SENATOR McGUIRE said therein lies the rub. Using examples from workers' comp and from fisheries, she said that the idea of a citizen legislature is to have people that have done these things. But there should be a system so that people don't get themselves in trouble and yet are able to contribute meaningfully in making policy in the state.

CHAIR FRENCH said when a fisherman legislator is working on fish laws he or she is being paid by the state to change the law. During summer fishing season that legislator is being paid to

fish and that is the difference. "It's not as if you can't ever combine your area of expertise with the legislature. You have to be able to do that," he emphasized.

SENATOR HUGGINS said it makes him nervous to think he can help craft a law and then go to his occupation and benefit from that. "I won't buy into that one at all," he asserted.

CHAIR FRENCH said the observation is fair, but he did not see how that could that be prevented. He urged caution before saying a fisherman can not be involved in making fish law changes.

SENATOR HUGGINS said he did not agree with the example of going to fish and benefiting from the law. In fact he would do the opposite.

SENATOR McGUIRE said this is why California went to a professional legislature. In that system the decision to serve as a legislator is similar to going on a mission or sabbatical. It is a life choice that comes with consequences and benefits. A person chooses to be a public servant for a set period in exchange for the ability to practice law, be a doctor, or a fisherman. It's a social experiment to try to combine a career with the concept of servant leadership, she said.

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SENATOR WIELECHOWSKI pointed out that a small business person is affected by many legislative decisions including workers' compensation rates, health insurance rates, and minimum wage increases. He asked if this law would be saying that a small business person could not participate when those issues are involved.

CHAIR FRENCH said the short answer is no. When legislators are working in the capitol building they are being paid by the state to make changes to the laws. When legislators leave the building and go back to their business, they are paid to operate that business. Although the two are related, they are still distinct in ways that most people understand.

There is no conflict for a restaurateur to also be a legislator. There would be a conflict if he or she were hired by a restaurant association to defeat the minimum wage increase. Clearly that would be an ethical violation and a violation of this law. What we are trying to prohibit is legislators being hired to effect public policy changes, he stated.

SENATOR McGUIRE said the larger philosophical question is the problem. It is not uncommon to have constituents come to her house so she isn't sure there is a line distinguishing between being in Juneau and being home.

CHAIR FRENCH acknowledged that the observation is fair, but he was using the capital metaphorically.

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SENATOR HUGGINS commented that legislators have to assume that the public is viewing them as officials even when they are working in their profession and not as a legislator. That is the major skew in the ethics of conduct, he said.

CHAIR FRENCH urged caution. If a legislator is a contractor that successfully bids on a state building, there will be a question of whether the bid was successful because it was the best bid or because he or she also happened to be the co-chair of the finance committee.

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CHAIR FRENCH said the next definition, which comes from AS 24.45.171, is "legislative action." It reads as follows:

(9) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor;

SENATOR WIELECHOWSKI asked for clarification that the intent is not to prohibit a legislator who is an attorney from practicing in private practice to research bills.

CHAIR FRENCH acknowledged that the term "research" might need to be modified.

SENATOR HUGGINS noted the definition of "immediate family" and asked if it hadn't been expanded beyond spouse and dependent children of an individual.

MS. ANDERSON said the ethics code has two different definitions of immediate family. The definition under AS 24.60.080(k) is quite expansive while the other definition includes just the spouse or domestic partner and any dependent children living with the individual.

CHAIR FRENCH said the committee had the more narrow definition.

SENATOR HUGGINS questioned whether the committee wanted to expand the definition.

CHAIR FRENCH suggested he might have that conversation with Ms. Anderson.

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CHAIR FRENCH said the final definition for the committee to take up is "political action," which comes from AS 24.60.990. It is with respect to the things legislators get paid to do.

(13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;

CHAIR FRENCH clarified that the statute would prohibit legislators from getting paid to do those things. A number of legislators engage in those activities outside the capitol building, but not for compensation.

CHAIR FRENCH asked the members to give Section 6 and the definitions particular thought and consideration. There is time to further tighten the definitions before the hearing on Thursday, he said.

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CHAIR FRENCH said Section 7 requires all disclosures to be filed within 30 days of the beginning of the interest or association.

MS. ANDERSON explained that the ethics committee made the recommendation because it would be more consistent and easier to administer if 30 days applied to all the disclosure dates.

SENATOR McGUIRE said she would like that and it would be better yet if APOC filings were aligned as well.

CHAIR FRENCH said the ethics committee had a good idea, but including APOC might be more filing than a person is ready to do on any given day.

SENATOR THERRIAULT referenced travel to the energy conference and asked if the disclosure requirement for receiving a benefit for legislative purpose is 30 days.

MS. ANDERSON said that is correct; travel disclosures are always due within 30 days. The bill brings all the other disclosures into alignment with that timeframe.

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CHAIR FRENCH said Section 8 allows the chair of the ethics committee to designate an alternate legislative member to attend a meeting if the regular member is unable to attend. Currently the alternate member only serves if the regular member has a conflict.

MS. ANDERSON said this will make ethics committee business more timely. The ethics committee has five public members and four legislative members and a quorum requires three public members and two legislative members to be present. There have been times that a meeting had to be rescheduled because legislative members had conflicting commitments.

SENATOR THERRIAULT you asked if the committee wanted the power to seat the alternate or any other legislator.

MS. ANDERSON replied it would be to seat the alternate.

CHAIR FRENCH further clarified that the alternate legislative member would already have been named to the ethics committee through the normal legislative process.

MS. ANDERSON agreed.

SENATOR THERRIAULT explained that his confusion came about because the sectional analysis talks about "an" alternate legislative member rather than "the" alternate.

CHAIR FRENCH acknowledged the explanation.

SENATOR WIELECHOWSKI asked if that power doesn't already exist.

MS. ANDERSON elaborated that the alternate is seated only if the regular member has a conflict. Also, the regular member could not sit on the committee if he or she is the one requesting the advisory opinion, is the subject of a complaint, or has information about a complaint. Legislative legal had issued an opinion stating that the committee does not have the authority to seat the alternate when there is not a quorum.

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CHAIR FRENCH said Section 9 deletes the requirement for semi-annual publication of decisions and advisory opinions; it provides for annual publication. Public decisions have been published annually since 1999 and advisory opinions have been published annually since 1995, he stated.

SENATOR McGUIRE asked if this is relative to the ethics advisories that come out every month or so.

MS. ANDERSON said no, the newsletters will continue to be published on a bi-monthly or monthly basis depending on need. This refers to the annual publication of formal binding advisory opinions and public decisions. She noted that the ethics committee issues public decisions after a complaint has been filed.

SENATOR HUGGINS commented this does not appear to be tightening measure.

MS. ANDERSON replied the bi-monthly newsletter would contain the decisions that have been issued, but they would not be published until the annual publication.

SENATOR HUGGINS opined that this reduces communication.

CHAIR FRENCH asked if it is correct that the ethics committee would publish half as often.

MS. ANDERSON said yes, but the recommendation was made because some years there has been just one advisory opinion issued. If the numbers increase in years to come there would be a need for more a semi-annual publication.

CHAIR FRENCH restated that this brings the statute into conformity with practice. If the volume increases in years to come, the legislature could call for more frequent publication.

MS. ANDERSON agreed.

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CHAIR FRENCH said Section 10 clarifies the language to make it clear that advisory opinions will be issued with sufficient deletions to prevent disclosing the identity of the person requesting the opinion as well as any other persons named in the request.

MS. ANDERSON explained that individuals who request advisory opinions specify whether the request is confidential or not. Section 10 is clean-up language to make sure that if confidentiality is requested the advisory opinion is issued with deletions to prevent disclosure of the identities of the people involved. It also clarifies that deliberations would be confidential.

SENATOR HUGGINS asked for verification that he could request an advisory opinion and ask that it be made public.

MS. ANDERSON said confidentiality may be waived.

CHAIR FRENCH asked if it is correct that nothing about that has been changed.

MS. ANDERSON said that is correct.

CHAIR FRENCH said that Section 11 adds language to clarify the appointing authorities for the victims' advocate and the employees of Office of Victims' Rights. When the ethics committee determines an employee has violated standards of conduct, the ethics committee forwards the findings to the appointing authority.

MS. ANDERSON said this is clean-up language. It adds reference to the Office of Victims' Rights since it is under the legislative umbrella and subject to the ethics code.

CHAIR FRENCH said Section 12 clarifies that legislators appointed under AS 15.40, public members of the ethics committee, and legislative directors must file disclosures within 30 days of their initial appointment.

MS. ANDERSON said both the ethics committee and APOC recommended this provision because current statute does not address disclosures for legislators, public members of the ethics committee, or legislative directors that are appointed after financial disclosures are due on March 15.

CHAIR FRENCH asked if the reference to "a legislator" means one who is appointed to the ethics committee.

MS. ANDERSON replied it applies to a legislator who is appointed to fill a vacancy.

CHAIR FRENCH asked if this simply addresses the notion that it was not clear when newly appointed legislators should have to file their first disclosure.

MS. ANDERSON said that is correct.

SENATOR WIELECHOWSKI asked for a definition of legislative director.

MS. ANDERSON explained that the directors of the Legislative Affairs Agency, Legislative Budget and Audit, Legislative Finance, and Legislative Legal and Research Services are considered legislative directors. They must file financial disclosures.

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CHAIR FRENCH said Section 13 adds language to clarify that the Legislative Council will be notified if the victims' advocate fails to file reports. This updates the statutes to take into account that the Office of Victims' Rights is under the legislative umbrella.

Section 14 provides an immediate effective date.

[2:35:45 PM](#)

CHAIR FRENCH stated his intention to take the bill up again on Thursday with tighter language on Section 6.

SENATOR THERRIAULT asked for an opinion on the Section 1 issue of using office or private funds to communicate with constituents within 30 days preceding an election and if it is constitutional.

CHAIR FRENCH suggested that a legislative communication falls short of a newsletter.

SENATOR MCGUIRE said email ought to be included because some legislators send out electronic newsletters.

CHAIR FRENCH agreed.

MS. ANDERSON recommended the committee review AS 24.60.030(c). Inserting that section could deal with those issues, she said.

SENATOR THERRIAULT removed his objection to the motion to adopt Version M as the working document.

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 [2:38:44 PM](#).