

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 12, 2007

1:36 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Bill Wielechowski

**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."

MOVED CSSB 13(JUD) OUT OF COMMITTEE

SENATE BILL NO. 64

"An Act relating to the requirement for candidates, groups, legislators, public officials, and other persons to submit reports electronically to the Alaska Public Offices Commission; relating to disclosures by legislators, public members of the Select Committee on Legislative Ethics, legislative directors, public officials, and certain candidates for public office concerning services performed for compensation and concerning certain income, gifts, and other financial matters; requiring legislators, public members of the Select Committee on Legislative Ethics, legislative directors, public officials, and municipal officers to make certain financial disclosures when they leave office; relating to insignificant ownership interest in a business and to gifts from lobbyists for purposes of the Alaska Executive Branch Ethics Act; relating to certain restrictions on employment after leaving state service for purposes of the Alaska Executive Branch Ethics Act; and providing for an effective date."

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)  
02/26/07 (S) JUD AT 1:30 PM BELTZ 211  
02/26/07 (S) Heard & Held  
02/26/07 (S) MINUTE(JUD)  
03/12/07 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 64

SHORT TITLE: DISCLOSURES & ETHICS  
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/26/07 (S) READ THE FIRST TIME - REFERRALS  
01/26/07 (S) JUD, STA, FIN  
02/08/07 (S) JUD AT 3:30 PM BUTROVICH 205  
02/08/07 (S) Heard & Held  
02/08/07 (S) MINUTE(JUD)  
02/12/07 (S) JUD AT 1:30 PM BELTZ 211  
02/12/07 (S) Heard & Held  
02/12/07 (S) MINUTE(JUD)  
03/12/07 (S) JUD AT 1:30 PM BELTZ 211

**WITNESS REGISTER**

David Jones, Senior Assistant Attorney General  
Civil Division  
Opinions, Appeals, and Ethics  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Commented on SB 13 and provided information on SB 64

Brooke Miles, Executive Director  
Alaska Public Offices Commission (APOC)  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Answered questions on SB 64

**ACTION NARRATIVE**

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at [1:36:00 PM](#). Present at the call to order were Senator Therriault, Senator Huggins, Senator McGuire, and Chair French.

**SB 13-BAN CONSULTING CONTRACTS WITH LEGISLATORS**

[1:36:25 PM](#)

CHAIR FRENCH announced the consideration of SB 13. He highlighted the two opinions from legal services addressing aspects of SB 13 that were raised during the previous hearing. The first order of business, he said, is to adopt Version \K committee substitute (CS) as the working document.

SENATOR HUGGINS motioned to adopt CSSB 13(JUD), labeled 25-LS0106\K, as the working document.

CHAIR FRENCH announced that without objection, Version \K CS is before the committee. He recapped that the first question centers on language in Section 1 and whether it would prohibit a legislator from communicating with constituents by newsletter or other means if the communication is paid for by private funds or from a poet account. Basically, the opinion says no, but an important footnote highlights that there are separate legal restrictions on the management and use of poet funds that may affect the publication of newsletters. Thus, the real issue is the use of office account or public funds for those communications.

The second question relates to the definition of "legislative action" and "administrative action." The issue is whether the prohibition on performing legislative action or administrative action includes researching a bill. The example asked whether a legislator/lawyer who researches a bill would be doing legislative action and therefore subject to an ethics violation claim. "The gist of the opinion is essentially no; that it wouldn't be an Ethics Act violation," he stated.

[1:40:01 PM](#)

SENATOR MCGUIRE referenced the question and asked if the 30-day prohibition refers to a general election or a primary election.

CHAIR FRENCH replied he would take it to be either 30 days before a primary election or 30 days before a general election.

SENATOR MCGUIRE asked if "a state election" is clear enough.

CHAIR FRENCH said in his opinion it is clear, but he would defer to the committee.

SENATOR McGUIRE asked if he is saying that it is 30 days before the primary followed by a gap and then 30 days before the general election.

CHAIR FRENCH replied this law reads that way.

[1:41:46 PM](#)

CHAIR FRENCH summarized an email he received from former Alaska State Senator Drue Pearce expressing concern that the phrase "and for one year thereafter" on page 7, line 13, would have prohibited her from leaving state employment and going to work for the federal government. That is not what we are intending, he emphasized.

CHAIR FRENCH motioned to delete "and for one year thereafter" from page 7, line 13.

SENATOR THERRIAULT recapped that former Senator Pearce is serving as the federal pipeline coordinator for which there is tremendous benefit to the State of Alaska. She wants to make sure that changing jobs as she did would not be preempted in the future.

CHAIR FRENCH said the global notion and the real idea behind Section 6, which is the heart of the bill, is to keep legislators from wearing two hats while in the legislature. Taking that phrase out doesn't weaken the bill, he stated.

[1:44:17 PM](#)

SENATOR HUGGINS said although he doesn't disagree, he questions the potential abuses. [Example was not audible.]

CHAIR FRENCH recapped the prohibitions against lobbying immediately after leaving the legislature and voting to increase a particular salary in anticipation of moving into that position.

SENATOR THERRIAULT offered the view that the state has benefited from former Senator Pearce's change in employment and it would not be wise to strike the bill so tightly that the same thing could not occur in the future.

[1:46:18 PM](#)

CHAIR FRENCH, finding no further discussion or objection, announced that Amendment 1 is adopted.

CHAIR FRENCH reminded members that Section 6 is the idea behind the original version of the bill. The rest of the provisions stem from suggestions made by the Select Committee on Legislative Ethics. He noted that Joyce Anderson and Brooke Miles are available to answer questions.

[1:47:18 PM](#)

SENATOR MCGUIRE suggested that it would be helpful if legislators could reference a matrix showing the kinds of work that can be done while in office and the kinds of work that can be done one year after leaving office.

SENATOR THERRIAULT referenced Section 6 and asked hypothetically if the Republican Party could pay him to be a campaign coordinator in an upcoming election or would he be preempted from taking the job for pay because it is political action.

CHAIR FRENCH said his glancing read of the statute is that it would be problematic for a legislator to accept paid political work outside the capitol.

SENATOR THERRIAULT agreed that "We shouldn't have the second master for the same work that we're elected to do." But clearly, he argued, the state is not paying me and the people did not elect me to coordinate campaigns.

CHAIR FRENCH asked if there were other questions or comments on Senator Therriault's observation.

SENATOR HUGGINS suggested the committee ask for an opinion.

SENATOR THERRIAULT questioned why "political action" is included because the state doesn't pay legislators for political action.

SENATOR THERRIAULT stated for the record that the party has never paid him to perform that function.

CHAIR FRENCH announced a brief at ease to look up the definition of "political."

[1:52:48 PM](#)

CHAIR FRENCH read the following:

AS 24.60.990

(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 said getting paid to support a candidate, getting paid as a political consultant, and getting paid to run a campaign would be prohibited under this provision. "At some level your concern suggests a limitation on a person's right to earn a living outside the building." He stated his preference to leave that in, but he would submit to the will of the committee.

SENATOR McGUIRE stated agreement with the chair, but she wanted to make sure that "compensation" in that section means for money.

[1:55:12 PM](#) at ease

[1:55:48 PM](#)

DAVID JONES, Assistant Attorney General, Department of Law, read the following definition:

AS 24.60.990(a)

(4) "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

CHAIR FRENCH found no other areas of concern and asked for the will of the committee.

[1:56:48 PM](#)

SENATOR McGUIRE motioned to report CSSB 13, Version \K, as amended today, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH, finding no objection, announced that CSSB 13(JUD) moves from committee.

[1:57:32 PM](#) at ease

**SB 64- DISCLOSURES & ETHICS**

[1:59:02 PM](#)

CHAIR FRENCH announced the consideration of SB 64 and asked for a motion to adopt Version \E committee substitute.

SENATOR HUGGINS motioned to adopt CSSB 64, labeled 25-GS1059\E, as the working document.

CHAIR FRENCH provided an overview of the bill as follows:

Section 1 requires electronic filing for campaigns - for governor now, for initiatives now, and for legislators beginning in May 2009.

Section 2 requires electronic filing for legislative financial disclosures beginning in July 2008.

Section 3 brings the disclosure level for public employees down to the same \$1,000 level as for legislators.

Section 4 requires electronic filing for executive branch financial disclosures beginning in July 2007.

Section 5 adds five boards of directors to the list of individuals who must file disclosures.

Section 6 deals with the presumption with respect to gifts given by a lobbyist to an executive branch employee.

[2:00:58 PM](#)

CHAIR FRENCH noted that Mr. Jones and Ms. Miles are available to answer questions.

CHAIR FRENCH asked Mr. Jones to explain what Section 6(a) does and the distinctions it draws.

DAVID JONES, Assistant Attorney General, Department of Law, explained that subsection (a) "would establish a presumption that any gift from a lobbyist is intended to influence the official duties, actions, or judgment of the executive branch official receiving the gift or that official's immediate family member." There is an exception if the person receiving the gift is an immediate family member of the lobbyist. That exception was established to avoid prohibiting a lobbyist from giving a gift to a family member who happens to also be a member of the executive branch.

Currently the rule is that a gift to an executive branch member is prohibited if it would be reasonable to infer that the gift is intended to influence performance of official duties, actions, or judgment. Because it is not a clear bright-line test, the current statute also requires that executive branch members report any gift that exceeds \$150 in value if the gift was given as a result of the executive branch member's official position or if that executive branch member has the authority to take official action affecting the gift giver.

The governor's proposal for lobbyists is to establish a presumption that any gift given to an executive branch member is intended to influence that executive branch member. Because it is a presumption it allows designated ethics supervisors to grant exceptions where circumstances indicate that a reasonable person could not infer that the gift is intended to influence official judgment.

SENATOR THERRIAULT asked which kind of lobbyist is swept in under the definition in AS 24.45.041. He suggested that the public is probably more concerned about fulltime contract lobbyists.

MR. JONES replied this would apply to both fulltime professional lobbyists and the representational lobbyists because they are required to register with the Alaska Public Offices Commission (APOC). Although volunteer lobbyists may register, it is not a requirement so this would not apply. Under the current wording the provision applies only to lobbyists who are required to register.

SENATOR THERRIAULT asked about the difference between a volunteer lobbyist and a representational lobbyist.

MR. JONES said he believes that the distinction is that volunteers represent entities as lobbyists only in public meetings. Representational lobbyists can meet one-on-one with legislators outside the realm of public meetings.

[2:07:58 PM](#)

CHAIR FRENCH asked Ms. Miles if she agrees with the previous interpretation.

BROOKE MILES, Executive Director, Alaska Public Offices Commission (APOC) explained that contract lobbyists are paid professionals who are required to register before engaging in lobbying activities. Another type of professional lobbyist

includes individuals for whom lobbying is only a part of what they do for an employer. They are only required to register if they spend more than 10 hours in any 30 day period lobbying. A representational lobbyist is an individual who does not receive salary and does not receive a fee, but whose expenses are paid for in whole or in part by the entity that she/he is representing as a lobbyist. Those individuals are required to register, but they are not required to submit lobbyist reports. Finally, the volunteer lobbyist is an individual who represents him or herself to the legislature and is not paid by anyone else and is not subject to the reporting and other lobbying restrictions regarding political activities.

CHAIR FRENCH recapped that contract lobbyists and representational lobbyists both are required to register under AS 24.45.041. Volunteer lobbyists are not required to register under that statute.

CHAIR FRENCH mentioned the de minimis rule and the idea that some gifts or gratuities are so small that they are unworthy of consideration. Examples include borrowing someone's cell phone when the plane lands in Sitka rather than Juneau, sharing a cab ride to downtown Juneau when the plane arrives at midnight, giving someone a magazine after reading it, or buying someone a cup of coffee. He questioned whether there shouldn't be a level below which it isn't worth worrying about.

MR. JONES replied he believes there are instances in which it would not be reasonable to assume that the gift is intended to influence. That is the advantage of a presumption rather than a bright-line rule, he said. The difficulty is that the executive branch member would need to report the small gratuity and get a ruling from the designated ethics supervisor.

"On the other hand if we create a bright line de minimis test - say \$5, \$10 - how is the public going to feel when every time a lobbyist wants to talk to me a lobbyist pulls me aside and takes me out to Starbucks and buys me a \$5 or \$10 cup of coffee?" He questioned whether that would enhance the public's confidence in the executive branch and said that is the reason for using the presumption. Although it could be a difficulty for anyone who commonly receives small gratuities from lobbyists, it's more important to enhance the public's faith in the integrity of public officials.

CHAIR FRENCH asked if anyone would be the wiser if a report isn't made - either under the current law or as proposed here.

MR. JONES agreed no one would know.

CHAIR FRENCH said he is trying to be alert to possible harassment of executive branch employees because of what he perceives to be de minimis exchanges of social interaction rather than attempts to curry favor. He conceded that there is merit in erring on the side of caution.

[2:14:53 PM](#)

MR. JONES provided a personal example of sharing a cab with a lobbyist to demonstrate that he always exercises caution and pays his own way.

SENATOR McGUIRE used a hypothetical example of a baby shower for the wife of a deputy commissioner who receives a gift from the wife of a lobbyist. She asked how that would work.

MR. JONES clarified that the provision addresses gifts from someone who is required to register as a lobbyist; it does not apply to gifts from an immediate family member of a lobbyist. The reference to an immediate family member is "to an immediate family member of the person receiving the gift." The other reference to immediate family members is the exception when the lobbyist is an immediate family member of the person receiving the gift.

MR. JONES posed a hypothetical example in which the lobbyist gives the baby shower gift. In most circumstances it would be unreasonable to infer that the intent of the gift is to influence official action, he stated. "So the person receiving the gift reports it or if the person receiving it is an immediate family member of the executive branch member, that member reports it and gets an approval from the designated supervisor and it's covered."

[2:18:51 PM](#)

CHAIR FRENCH recapped that the proposed rules would require an executive branch member to report, refuse, or seek an opinion before receiving a gift from a lobbyist.

MR. JONES agreed.

CHAIR FRENCH questioned why the president of Company X could buy a cup of coffee for an executive branch member without the public coming to the same conclusion that it is intended to influence action. Why pick on lobbyists, he asked.

MR. JONES replied it's recognition of reality. Lobbyists are in the business of influencing administrative or legislative action. Unless circumstances indicate otherwise, the presumption is that they are doing what they are doing as part of their job.

CHAIR FRENCH suggested that the public would come to the same conclusion about the president of Company X when he/she is handing out cups of coffee at the airport.

MR. JONES said in circumstances where it's clear that the intent is to influence official action, the executive branch official should simply decline the gift regardless of value.

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CHAIR FRENCH highlighted the opinions issued regarding the previous administration's use of the jet and asked Mr. Jones if the problem stems from the law not being written tightly enough or from the former governor's interpretation of how the executive branch can use state equipment.

MR. JONES expressed the view that the law doesn't need to be tightened. With regard to the second question he said "I don't want to prejudge a case that may or may not come to us in the attorney general's office."

CHAIR FRENCH asked him not to misunderstand the question; he was not leading him in that direction. Referencing AS 39.52.120(a)(6) he asked where the 50 percent rule comes in. That is the statute that prohibits the use of state equipment for partisan political purposes.

MR. JONES said there isn't a 50 percent rule; he suspects the reference is to the primary purpose rule that he applied in his 2006 opinion.

CHAIR FRENCH asked him to explain how the two intersect.

MR. JONES said he doesn't think a percentage-based standard works in terms of determining the purpose of a trip. For example, as a lawyer he might go to Fairbanks for the primary purpose of attending a ten minute hearing. While he's in Fairbanks he might also go to the university or the museum so there is a personal benefit, but the primary purpose of the trip is the ten minute court hearing. He acknowledged that writing the analysis in the 2006 opinion was difficult. It reads in part:

It is important to apply careful judgment in determining the primary purpose of a trip. Indiscriminant use of state aircraft for trips combining official duties and partisan political activities will risk both violating the Ethics Act, and inviting public criticism.

He suggested that in some ways the main point of the opinion may have been lost. The question was whether it is okay to use state aircraft for partisan political purposes. The answer is no, but an official could engage in partisan political activities as a subsidiary activity if the trip truly is for state business.

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CHAIR FRENCH suggested that the committee would need to give that careful consideration because he isn't sure the public would make a meaningful distinction.

CHAIR FRENCH highlighted how difficult it is for legislators to keep their personal and political lives out of the capitol building and so he questions whether the same de minimis standard shouldn't apply here for the governor.

MR. JONES responded there is a de minimis rule in the Ethics Act for executive branch members other than the governor and lieutenant governor. In part, AS 39.52.120(d) reads as follows:

(d) ... A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning.

This does not apply to the governor or the lieutenant governor because they aren't under the same leave system as other executive branch officials. Everything they do is presumed to be related to their official duties.

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SENATOR THERRIAULT recapped that other executive branch members have the ability to make a clear distinction between official and other activity. But the governor is in the same situation as legislators. There is no leave-bank to draw from to take a half day off.

MR. JONES pointed out that even though he has the ability to take personal leave to participate in partisan political politics on that hypothetical Fairbanks trip, the primary purpose of his trip did not change. He was there on state duty to attend the court hearing.

CHAIR FRENCH conceded there may not be a way to establish a rule that separates the different hats a governor wears. But he questions how the people would recapture that lost value when a state resource is used to do politicking when it was done at state treasury expense.

MR. JONES explained that in those circumstances APOC has indicated that the campaign should pay for the portion that is attributable to the political activity at a commercially reasonable rate within a commercially reasonable time.

CHAIR FRENCH asked him to speak to the value question because the commercially reasonable rate for even a first-class commercial ticket doesn't begin to compare in value to a ride in the state jet or a private corporate jet.

MR. JONES said there the two ways of analyzing costs. One way is the cost to the state and the other is the benefit to the recipient. Under the first method it makes sense to look at the actual cost of supplying the jet. The other method - the benefit to the recipient - looks at the alternatives and asks what benefit the campaign avoided incurring because the governor was flying on state aircraft.

CHAIR FRENCH asked which definition is currently used.

MR. JONES replied the current method is based on the benefit to the recipient and so it's based on what the alternative would have cost.

[2:36:14 PM](#)

MR. JONES referenced the opinion he wrote and the considerations that went into the conclusion and reminded the committee that the rules in the Ethics Act apply from the top to the bottom. He emphasized the importance of applying rules that will apply across the board because a decision to be harsh with the governor has implications on others.

CHAIR FRENCH asked if the document that is stamped "confidential" has had confidentiality waived.

MR. JONES clarified that the former administration waived confidentiality right away on his 2006 opinion. In that opinion he referred to a 2004 opinion on the use of the state's aircraft and just last week the Palin Administration waived confidentiality for that.

[2:38:06 PM](#)

SENATOR THERRIAULT asked about the chair's comment about whether it is appropriate to fly on a corporate jet and asked if he was referring to trips such as the recent tour of the Southeast Alaska Intertie Project.

CHAIR FRENCH said no. He was thinking about an apple to apple comparison of candidates who are made a gift of travel or invited to travel on corporate jets going from campaign spot to campaign spot. Compare that with a governor using a state aircraft to go from campaign spot to campaign spot. "I don't think either one's acceptable. They should both be reported the same and the monetary value of each should be reported - or paid back if it's a state aircraft - so that it's fair."

SENATOR THERRIAULT responded if he were to do that as an elected official it would have to be for a legislative purpose and it would have to be disclosed. He asked if he is referring to a new candidate.

SENATOR FRENCH said he's referring to campaigning. A person could be running for reelection and going out to tour the Pebble Mine, for example. That is a legislative purpose and it's fair. However if someone is flying you in a personal jet from one city to another for campaign purposes then that full value should be reported.

SENATOR THERRIAULT said as an elected official he is prohibited from taking that benefit. It is a gift with no legislative purpose and if he is in an election cycle that would be a disallowed corporate contribution.

CHAIR FRENCH agreed and said he is simply bringing up examples of things that sometimes occur.

SENATOR MCGUIRE said she didn't know if the current administration intends to continue the policy of benefit to the recipient, but there are other ways of evaluating corporate jet travel.

MR. JONES responded he did not know if the current administration would continue on that basis, which has been the practice for many years.

MR. JONES said that another way of dealing with cost allocation when the governor goes someplace to conduct state business and also has a campaign activity to conduct would be to require two trips - one on state aircraft and one on commercial. That, to some extent, would limit the governor's availability to perform other state duties so there would be some cost to the state.

MR. JONES said the point is to bring people back to a level playing field so that there isn't a benefit to the person from using state resources for partisan political activities. Although that is particularly true with respect to the governor, the governor's interests do diverge somewhat from the rest of the executive branch. Sometimes there may be security reasons or requirements for the governor to take state aircraft or to use state vehicles that would not apply to other executive branch officials.

[2:44:18 PM](#)

SENATOR McGUIRE mentioned the recent memo from the governor and expressed the view that the chair responded appropriately. Quality is important when crafting these policies, she said, and the process can't be rushed. Also, she believes that the governor will do a good job of thinking through how she wants to craft new policies in the future that may not be represented in this bill today.

SENATOR McGUIRE said on the issue of state jet travel she believes that the practicality issue is compelling for using a percentage approach.

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SENATOR HUGGINS asked if the National Guard Helicopter that is operating under Title 10 should be considered.

MR. JONES said he would need additional time to think that over, but presumably the governor would only use a National Guard helicopter for state business.

SENATOR HUGGINS added that when the helicopter is operating under Title 10 it is federal and otherwise it is state property.

SENATOR THERRIAULT asked Mr. Jones to comment on his amendment from last week and whether it might be added to SB 64. The idea

is that a person who is convicted of a felony ethics breach would lose his/her governmental contributions to their pension from the date of the bad act.

2:49:06 PM

MR. JONES said he hadn't discussed that with the legislative director. He conceded that would be difficult to argue with the principle, but there could be difficulties associated with the details.

CHAIR FRENCH asked if he had an amendment to offer today.

SENATOR THERRIAULT replied the language he has is not drafted to the committee substitute for SB 64.

CHAIR FRENCH announced that he would carry SB 64 over to the next hearing. That would give members time to review the new packet and bring forward other provisions.

There being no further business to come before the committee, Chair French adjourned the meeting at 2:50:25 PM.