

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 1, 2007

9:05 a.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator Gary Stevens, Vice Chair
Senator Hollis French
Senator Lyda Green
Senator Con Bunde

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."

MOVED CSSB 19(STA) OUT OF COMMITTEE

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."

MOVED CSSB 20(STA) OUT OF COMMITTEE

SENATE BILL NO. 45

"An Act relating to murder in the first degree."

MOVED CSSB 45(STA) OUT OF COMMITTEE

SENATE BILL NO. 36

"An Act relating to sentencing for the commission of certain offenses influenced by alcohol and to the offense of consumption of alcohol in violation of sentence."

SCHEDULED BUT NOT HEARD

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
01/22/07 (S) Heard & Held
01/22/07 (S) MINUTE(JUD)
01/24/07 (S) JUD AT 1:30 PM BUTROVICH 205
01/24/07 (S) Moved CSSB 19(JUD) Out of Committee
01/24/07 (S) MINUTE(JUD)
01/26/07 (S) JUD RPT CS 5DP NEW TITLE
01/26/07 (S) DP: FRENCH, HUGGINS, WIELECHOWSKI,
THERRIAULT, MCGUIRE
01/30/07 (S) STA AT 9:00 AM BELTZ 211
01/30/07 (S) -- Rescheduled to 02/01/07 --
02/01/07 (S) STA AT 9:00 AM 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
01/22/07 (S) Heard & Held
01/22/07 (S) MINUTE(JUD)
01/24/07 (S) JUD AT 1:30 PM BUTROVICH 205
01/24/07 (S) Moved CSSB 20(JUD) Out of Committee
01/24/07 (S) MINUTE(JUD)
01/26/07 (S) JUD RPT CS 2DP 3AM SAME TITLE
01/26/07 (S) DP: FRENCH, MCGUIRE
01/26/07 (S) AM: HUGGINS, WIELECHOWSKI, THERRIAULT
01/30/07 (S) STA AT 9:00 AM BELTZ 211
01/30/07 (S) -- Rescheduled to 02/01/07 --
02/01/07 (S) STA AT 9:00 AM BELTZ 211

BILL: SB 45

SHORT TITLE: PEACE OFFICER CONVICTED OF MURDER

SPONSOR(S): SENATOR(S) OLSON

01/16/07 (S) PREFILE RELEASED 1/12/07

01/16/07 (S) READ THE FIRST TIME - REFERRALS
01/16/07 (S) STA, JUD
01/25/07 (S) STA AT 9:00 AM BELTZ 211
01/25/07 (S) Heard & Held
01/25/07 (S) MINUTE(STA)
01/30/07 (S) STA AT 9:00 AM BELTZ 211
01/30/07 (S) -- Rescheduled to 02/01/07 --
02/01/07 (S) STA AT 9:00 AM BELTZ 211

WITNESS REGISTER

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

POSITION STATEMENT: Answered questions regarding SB 19 and 20.

DAN WAYNE, Attorney
Legal Services Division
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding SB 19 and 20.

JOHN FARLEIGH, representing himself
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of strong ethics legislation.

STUART THOMPSON
Ketchikan and Wasilla, Alaska

POSITION STATEMENT: Spoke in favor of strong ethics legislation.

WALT MONEGAN, Commissioner
Department of Public Safety
Juneau, AK 99811-1200

POSITION STATEMENT: Spoke in support of amendments to SB 45.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding SB 45.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the Senate State Affairs Standing Committee meeting to order at 9:05:28 AM. Senators Green, French, Stevens, Bunde, and McGuire were present.

SB 19-EXEC. BRANCH ETHICS:INTERESTS & ACTIONS

CHAIR MCGUIRE announced SB 19 to be up for consideration. The committee was working from CSSB 19(JUD).

9:07:14 AM

DAVE JONES, Senior Assistant Attorney General, Civil Division, Opinions, Appeals, and Ethics, Department of Law, said everyone is after the same goal of improving the executive branch ethics act and other disclosure and ethics requirements. He said Governor Palin has introduced a bill, HB 109, which addresses the same issue in Section 8. He said the governor's bill deals strictly with a \$5,000 standard and doesn't have the percentage requirement for interest in a business as does the amended version of SB19. He said the issue came up in the Senate Judiciary Standing Committee.

9:08:37 AM

SENATOR FRENCH asked what lines he is referring to.

CHAIR MCGUIRE passed around the governor's bill, SB 64.

MR. JONES said he is referring to SB 19, pages 1 and 2, lines 12 to 20.

CHAIR MCGUIRE surmised that Mr. Jones wants a simple dollar figure rather than a percentage limit.

9:09:54 AM

MR. JONES said the lines in SB 19 that refer to percentages are lines 8, 11, and 12 on page 2.

CHAIR MCGUIRE said members of the judiciary committee expressed concern about having only a dollar amount, and she asked why the administration prefers not to use a percentage standard.

MR. JONES said a dollar amount is enough to consider whether a public officer's interest is significant. Using a percentage standard, "we could have one percent of a \$1,000 venture, which would be a \$10 interest, and I'm not sure that's going to help us in getting toward the ultimate goal." One of the consequences of the amendment is that on lines 5 and 6 of page 2, a controlling interest in a business is disqualifying if the

controlling interest has a fair market value of \$5,000 or more, he said. But on lines 8, 9, 11, and 12, a one percent interest in a business, whether the value is \$1 or \$1 million, would be disqualified. He said a person could be disqualified under those lines, but under lines 5 and 6, a person would be disqualified by only a controlling interest of \$5,000 or more.

[9:12:42 AM](#)

SENATOR FRENCH said the point is well taken and asked for the historical reason for the percentage standard in the bill.

MR. JONES said he can only speculate. Some folks may believe that a one percent interest is easier to measure because there may be times when it is difficult to assess the dollar value of an interest. But, Mr. Jones said, it may be even more difficult to determine the percentage value, especially for various values and types of stock and stock options.

[9:14:29 AM](#)

CHAIR MCGUIRE recalled Representative Gara's point that in a high value stock, like Exxon Mobile, a one percent interest would be worth well more than \$5,000. She noted that an either/or provision works because sometimes the percentage value gives more information than the dollar figure.

SENATOR STEVENS asked if the value is the current value or the value at the time of purchase.

MR. JONES said current value is used because that is relevant, and that is how the public would perceive it.

[9:15:50 AM](#)

SENATOR STEVENS said it would be easier to figure the dollar value.

SENATOR BUNDE said he is supportive of the public being informed and aware of potential conflicts. He suggested that the vagaries of the stock market can make a person could go in and out of compliance as the value of the stock changes.

[9:16:42 AM](#)

MR. JONES said that is certainly possible, and it is also true for a percentage of ownership when shares are sold or issued.

SENATOR BUNDE asked about dealing in futures, which could vary more than \$5000 over a period of 24 hours. He said he is not dealing in those and doubts that it would apply to him, but he

expressed concern for people who fall into inadvertent ethics violations.

SENATOR FRENCH said owning one percent of an insignificant company may not be realist. How many small companies issue stock, "and how many executive branch employees actually own shares in a company that is basically valueless and then take action respecting that business?" Conversely, there is a likelihood of owning one percent of a local real estate LLC or a local tourism or restaurant business. He said all would agree that a person should not take official action affecting that investment while in state office. Mr. Jones' point is good, but having both [percentage and dollar standard] will "capture it."

[9:19:16 AM](#)

MR. JONES said the provision is in SB 64 on page 6, lines 24 to 26. He continued:

What we propose, there, is a presumption that stock or other ownership interest is insignificant if it's less than \$5,000 in value. The advantage of a presumption is that it deals with both those situations where a business interest really is significant and those situations where, even though the value of that interest may currently be less than \$5,000, the official action that the officer is taking has the potential to really increase the value of that interest. For example, if I have a \$4,000 interest and I can take action that will increase the value of that interest to \$40,000, this presumption allows us, under the ethics act, to address that situation by saying: OK, even though it's under \$5,000 now, because this would stand to benefit you so dramatically, you may not, consistent with the ethics act, take official action on that matter.

CHAIR MCGUIRE asked how that would play out. If there is no disclosure, how would it be found out?

[9:21:19 AM](#)

MR. JONES said it would be the same process as is currently followed, including self-reporting and reporting by others.

[9:21:40 AM](#)

CHAIR MCGUIRE closed testimony and offered Amendment 1, labeled 25-LS0160\K.2, Wayne, as follows:

Page 1, line 2, following "**interest;**":

Insert "**prohibiting certain persons from engaging in activity as lobbyists;**"

Page 2, following line 20:

Insert a new bill section to read:

"* **Sec. 2.** AS 39.52.180(d) is amended to read:

(d) A former governor, lieutenant governor, [OR] head or deputy head of a principal department in the executive branch, chair of a state board or commission which has the authority to adopt regulations, or employee of the Office of the Governor in a policy-making position 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 or deputy head, chair of a state board or commission which has the authority to adopt regulations, or employee of the Office of the Governor in a policy-making position, 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."

Renumber the following bill section accordingly.

Page 2, following line 26:

Insert a new bill section to read:

"* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Section 2 of this Act applies to a person who leaves state service on or after the effective date of sec. 2 of this Act."

SENATOR FRENCH objected.

CHAIR MCGUIRE said Amendment 1 would prohibit "certain persons from engaging in activities as lobbyists." It expands that law to apply to a deputy head, "and that's come from Governor Palin herself." A deputy head can be fairly high up in negotiations on certain issues, so it is not a bad provision, she stated. She said she is expanding it to include chairs of state boards or commissions that have the authority to adopt regulations or to an employee of the office of governor in a policy-making position. She noted an incident six years ago surrounding the

Regulatory Commission of Alaska (RCA) when the chair went immediately into the private sector as a highly paid CEO of one of the phone companies. "It rubbed a lot of people wrong, again, it's the appearance of it. I'm not here to say it was real or not, but it was the appearance of it that bothered people." A chair of a regulatory authority may even have more power than a lieutenant governor or a deputy head, she stated.

[9:24:12 AM](#)

SENATOR STEVENS asked who would be covered.

CHAIR MCGUIRE said she could get a list, but it is narrowed down so not all boards and commissions are included. Hairdressers and barbers would not be included, but only those that have the authority to adopt regulations, including the RCA. She wasn't sure about the railroad.

[9:24:55 AM](#)

DAN WAYNE, Attorney, Legal Services Division, Legislative Affairs Agency, said he has been looking at who has the power to adopt regulations. He said many boards and commissions do, including those of limited entry, real estate, fisheries, game, psychologists and psychological associates, and examiners. He learned that some directors have the power to adopt regulations, like the director of the insurance division. He said he is trying to figure out a way to exclude commissions and boards that mainly perform licensing functions.

[9:26:17 AM](#)

SENATOR FRENCH asked if the amendment would fix the aforementioned scenario with the RCA.

SENATOR GREEN said the person went to work for someone she had previously regulated.

SENATOR FRENCH noted that Amendment 1 only prohibits lobbying.

[9:27:24 AM](#)

CHAIR MCGUIRE said the language covers lobbying, which can include lobbying the board that regulates the industry. A telephone company would lobby the RCA, she explained.

SENATOR STEVENS said it goes back to the issue of definition. Someone who serves the on the Board of Fish might not be allowed to work for a fishing company, he said. He cautioned the committee about denying legitimate opportunities to make a living.

9:29:25 AM

SENATOR BUNDE said this is not a lifetime prohibition; it requires someone to sit out for one year, and that may allow some of those close personal relationships to cool. A year isn't that long for a person with talent and experience.

9:30:02 AM

SENATOR GREEN referred to the Agriculture Conservation Board. She was told that the legislature could not approve the governor's appointments because of their fiduciary responsibility. There is another level of boards that adopts regulations and has control over money, she noted.

CHAIR MCGUIRE said there is a broader discussion as to whether working for a company is allowed, but the amendment says a chair with significant power can't engage as a lobbyist for one year. People will still be able to go work for a fisheries company after serving on the Board of Fish, but they just can't be a lobbyist to lobby the very board they just chaired in a policy role for one year. "You don't want to have a situation where the appearance or reality is that somebody is using that year as an opportunity to curry favor to steer regulating-writing authority, decision making or negotiations in a direction of somebody who they will ultimately benefit from privately."

9:32:57 AM

SENATOR STEVENS asked why the language should stop at the chair, and not the members, like the members of the Board of Regents. They all have enormous power, he stated.

MR. WAYNE said the rest of AS39.52.180 doesn't show up in the bill, but it says that a public officer who leaves state service may not represent or advise for compensation regarding a matter that was under consideration by the administrative unit served by that public officer for two years. He said that seems to address the person who left the RCA to work for a utility company. "Although it doesn't talk about lobbying," he said. He stated that he doesn't know why the amendment language is limited to the heads of the boards. In response to Senator Green, he said he thinks the language could say that boards and commissions that fall under AS 08.01.010 would be excluded from the provision, because that is a chapter that deals with centralized licensing. It doesn't include things like limited entry, fisheries, and the regulatory board. But it includes licensing boards, like nursing, pharmacy, big game commercial services, dental services, "and things of that nature."

CHAIR MCGUIRE said that is the chapter under centralized licensing.

9:36:18 AM

SENATOR STEVENS asked if Mr. Jones is saying that a member of the RCA would have less opportunity for mischief than the chair.

MR. WAYNE said he is not saying that, but obviously the chair has a different type of authority and some may say it is greater. But other members, including a person with the swing vote, can have tremendous power.

9:37:13 AM

CHAIR MCGUIRE offered an amendment to Amendment 1 that will "exempt those boards and commissions under AS 08.01.010 in centralized licensing." She said that includes boards like veterinarian examiners, concert promoters, and midwives. She said, "So I'll do it as a conforming amendment and give you the latitude to put it where you think is appropriate." Hearing no objection, Amendment 1 to Amendment 1 carried.

SENATOR FRENCH offered a second amendment to Amendment 1. "It looks as if we're capturing the governor, lieutenant governor, commissioners, now deputy commissioners." He said he would like to add division directors because many of them, particularly in oil and gas, the Department of Environmental Conservation, and with tax or revenue duties "just carry enormous amounts of power over industries that they're regulating and to let them turn around and come back as lobbyists immediately, I think strikes many folks as being a little too close." The person may be able to get a job in private industry using knowledge gained in the public, but to come back in the halls and lobby a month later "is a little too close," he explained.

9:39:30 AM

CHAIR MCGUIRE saw no objection, therefore Amendment 2 to Amendment 1 carried.

SENATOR STEVENS maintained his objection to Amendment 1, as amended.

SENATOR GREEN said executive directors of boards "are far more powerful than the chair." The executive director sets out the agenda and determines what is on the calendar.

CHAIR MCGUIRE said it is up to the committee, but perhaps that should be another amendment after Amendment 1. A roll call vote was taken on Amendment 1. Senators French, Green, Bunde, Stevens, and Chair McGuire all voted in favor; therefore, Amendment 1, as amended, carried.

[9:41:23 AM](#)

CHAIR MCGUIRE asked if the executive directors of these boards and commissions should be included in the legislation.

SENATOR FRENCH said he needs more information about who the individuals are and if they are state employees.

CHAIR MCGUIRE asked if there is any statutory reference to that.

MR. WAYNE said he is looking it up.

SENATOR GREEN said executive directors are generally hired by the boards.

[9:42:48 AM](#)

CHAIR MCGUIRE asked if all boards get an executive director.

SENATOR GREEN said she didn't know but some are handled through the division and many have a single executive director. "This may be going way deeper than we want to go, particularly without testimony," she noted.

CHAIR MCGUIRE said the bill goes to the Senate Finance Committee and the issue could be explored prior to that hearing. It would give Mr. Wayne time to consider it as well.

SENATOR FRENCH moved SB 19, as amended, from committee with individual recommendations and accompanying fiscal notes. There being no objection, CSSB19(STA) moved out of committee.

The committee took and at-ease from 9:44 to 9:47.

SB 20-LEGISLATIVE DISCLOSURES

[9:47:09 AM](#)

CHAIR MCGUIRE announced the consideration of SB 20.

JOHN FARLEIGH, Anchorage, said he is a fourth-generation Alaskan, and he is speaking for himself. He said his testimony addresses the ethics of any policy maker, legislative or

executive, and not just a specific bill. He said testifiers mention their length of residency in Alaska, implying that an opinion is more valuable for those who have been in Alaska longer, but "I personally don't subscribe to that theory." But he noted a recent television news interview of a young couple who had just moved to Alaska and had used the term "back home," referring to where they came from. "For me, as a fourth-generation Alaskan, this is back home; I have no other home."

MR. FARLEIGH said he is deeply embarrassed that the federal government has to clean up Alaska's mess. He noted that there have been obvious signs for years "about things that didn't seem right, and yet nothing was done" until the FBI came to investigate the legislature. "It's embarrassing to me as an Alaskan that we're viewed as a corrupt state." He said it is time to change that. Any policy maker should be held to a high standard, and even the appearance of impropriety needs to be dealt with. "We need to be able to trust our government," he stated. He said that suggestions reported in the news sound good, including not allowing legislative spouses to be lobbyists, but it should be expanded to any immediate family member because they are all possible conduits for bribes and should be under scrutiny. His son noticed the warning on a movie he watched last night that a person could spend five years in jail for copying a movie. He said his son then asked why a politician who breaks the law could be fined only \$5,000. "If our policy makers sell us out for their own benefit, there ought to be significant penalties," including six-figure fines and jail time for egregious violations, he opined.

[9:51:26 AM](#)

MR. FARLEIGH said the fines are not adequate to dissuade policymakers from operating for their own benefit instead of the benefit of all Alaskans.

CHAIR MCGUIRE said she appreciated the testimony.

STUART THOMPSON, Ketchikan and Wasilla, said he represents only himself, and he appreciates the help from Senator French's office. He noted that he had a 4.5-minute statement regarding all ethics legislation, including SB 20. He told the committee that lawmakers are not inherently evil, but they are humans who need support to resist temptations that appeal to their imperfections. He said the natural imperfections of people are why government is even necessary. "How to govern the governors is what defines the form of government; in other words, a form of government is any design for minimizing corruption and poor

administration by those wielding government powers," he stated. He said that makes the conceptual understandings of the constitutions, and their philosophical foundations, the most powerful resource for dealing with political corruption, "short of the supreme being." He suggested that lawmakers use the following wisdom of Socrates: inadequate comprehension of a subject's key words prevents the affected person from understanding the subject well enough to constructively apply it. He said the dictionary provides five easy definitions for "corrupt."

[The testimony was interrupted by a busy signal.]

9:54:10 AM

CHAIR MCGUIRE said a copy of Mr. Thompson's testimony is in the committee packet, "so it will be included into the public record indelibly."

9:54:29 AM

CHAIR MCGUIRE closed public testimony on SB 20. She offered Amendment 1, labeled 25-LS0161\M.4, Wayne, as follows:

Page 1, lines 1 - 2:

Delete **"of information about certain income received as compensation for personal services"**

Page 1, following line 5:

Insert a new bill section to read:

"* Section 1. AS 24.60 is amended by adding a new section to article 2 to read:

Sec. 24.60.115. Disclosure required of a legislator, legislative employee or public member of the committee after final day of service. A person serving as a legislator, legislative employee, or public member of the committee shall, not later than 90 days after the person's final day of service, file a disclosure of every matter that was subject to disclosure under this chapter while the person was serving."

Page 1, line 6:

Delete **"Section 1"**

Insert **"Sec. 2"**

Renumber the following bill sections accordingly.

Page 2, following line 21:

Insert a new bill section to read:

"* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Section 1 of this Act applies to a person serving as a legislator who leaves service on or after the effective date of this Act, and to a person who is not a legislator but served as a legislator between April 9, 2006, and the effective date of this Act.

(b) A person who is not a legislator on the effective date of this Act but who served as a legislator between April 9, 2006, and the effective date of this Act shall make the disclosure required by AS 24.60.115, added by sec. 1 of this Act, within 90 days after the effective date of this Act."

Renumber the following bill section accordingly.

CHAIR MCGUIRE said Amendment 1 closes a loophole that appears to be in statute. A lawmaker has to disclose any income over \$1000, and the amendment makes it clear that during the time after a lawmaker is defeated or not running again, the reporting is still required. She said she didn't know how it has been done in the past, but this closes the gap and makes it clear that "you can't spend your last year in office...doing what you want...as a legislator and then not disclosing that income received." The more controversial part of the amendment (taken from the governor's bill) is the inclusion of legislative employees. The amendment is not controversial on the whole but requiring legislative employees to be subject to the same financial disclosures as members might be, she noted.

[9:57:14 AM](#)

SENATOR GREEN said employees should not be in the bill. She asked who "the public member of the committee," as listed in line 9, refers to.

SENATOR FRENCH said he believes that refers to the five public members of the Select Committee on Ethics.

[9:57:50 AM](#)

SENATOR STEVENS asked about the reporting schedule for legislators.

CHAIR MCGUIRE said a legislator reports on March 15 and it covers the preceding fiscal year, so members who are on the

fourth year of a four-year term, "they're no longer a lawmaker." She said she thinks it's been unclear, as reported by the ethics advisor, because some members report and some don't. It would clarify that all members, even if they have left office, are required to report.

SENATOR FRENCH said it also closes the gap in early January prior to the swearing in of new members that has been outside the disclosure requirements.

[9:59:22 AM](#)

SENATOR STEVENS said there is often a special session in November, so why not leave the March 15 reporting date, rather than 90 days after a person's final day? He said he understands the testimony, but there is a real onus on a legislator to keep all of these reporting dates in mind.

[10:00:31 AM](#)

CHAIR MCGUIRE said it doesn't cover 90 days after serving, it is saying that, no later than 90 days after the final day of service, the person must file. For example, a lawmaker that was defeated this year would have been holding office right up to January 16, and "what we want to do is say that the disclosure is going to go all the way up until that day, so ... on the fifth or sixth of January, while you are still technically ... a member of the legislature, [you couldn't] get some kind of lucrative contract and then use this loophole to fail to disclose it."

SENATOR STEVENS said the disclosure would still be on March 15.

SENATOR FRENCH said the last day of the session is not the operative date; it is the last day that one is officially in office. He said he is trying to get all the reporting requirements lined up to one date.

[10:02:22 AM](#)

DAN WAYNE, Attorney, Legal Services Division, Legislative Affairs Agency, said the select committee on legislative ethics looked at whether legislators should report for that tail end of their term. Up until recently there has been advice that they need not, because statute states that a provision of the code does not apply to former legislators, unless it specifically states that it does. So, the code was interpreted as not requiring them to report. The ethics committee came out with an advisory opinion that the statute does require former legislators and employees to report just like everybody else with respect to anything that happened while they were serving.

But the misleading language still exists. An advisory opinion is not the same thing as a statute.

MR. WAYNE said the amendment covers the 30 days before the end of the regular session to the beginning of the next regular session. So everything is reported on March 15. Some people were not reporting thinking they didn't have to because they were leaving office. This statute would say that all of those people, in that time period between the two sessions, would have 90 days from the time of leaving service to file that report, he said.

SENATOR BUNDE said it is 90 days after leaving service and not related to the session. He noted an occasion of a legislator coming to Juneau and being sworn in and getting an office allowance and then resigning. That's not ethical, but people do leave service at other times other than when their replacement is sworn in. A person could resign midterm, he stated.

[10:07:53 AM](#)

SENATOR FRENCH asked who is a legislative employee.

MR. WAYNE said anyone who is on the state payroll in the legislature and who is not a legislator.

MR. WAYNE said it includes pages, legislative staff, legislative legal services, and everyone in the building he works in.

[10:09:16 AM](#)

CHAIR MCGUIRE said the amendment was designed to close the gap, and the drafter took it right out of Governor Palin's bill.

SENATOR FRENCH moved Amendment 1 to Amendment 1 to strike legislative employee from lines 8 and 10.

SENATOR BUNDE objected. He said a page will likely not become a lobbyist, but a chief of staff may be of concern. He asked if that person is already required to make a financial disclosure.

[10:10:27 AM](#)

CHAIR MCGUIRE said the committee doesn't want to go backward.

SENATOR FRENCH said this is not about being a lobbyist but an annual financial disclosure of all investments. It may be worthy of a separate discussion for the type of legislative employee with tremendous influence, but this is about annual disclosures for all legislative employees, "and I need to be convinced."

SENATOR BUNDE said it is not something that needs to be pursued.

CHAIR MCGUIRE said legislative employees are now required to report close economic associations as to roommates or campaign work. She asked if removing legislative employees from the amendment will take away anything that is now on the books.

[10:12:14 AM](#)

MR. WAYNE said he needs to clear up the confusion. The governor's bill and SB 20 without the amendment are only talking about financial disclosures under AS 24.60.200. Legislative employees are not currently required to make those, he added. The loophole allowing people to avoid disclosures during the gap between sessions was relevant to everyone including employees. He noted the economic association and gift disclosures.

CHAIR MCGUIRE said so "this amendment is not changing the statute with respect to what legislative employees are required to disclose...what it's doing is saying that whatever those disclosures are, as outlined in Title 24, they remain, but we're going to close the gap for them as well."

[10:13:48 AM](#)

MR. WAYNE said he couldn't have said it any better.

DAVE JONES, Senior Assistant Attorney General, Civil Division, Opinions, Appeals, and Ethics, Department of Law, said SB 64 addresses this issue in Section 3, page 3, lines 7-11. "In the governor's bill we did not extend the disclosure requirements to legislative employees, but merely to the legislative director."

MR. WAYNE said the way he read the governor's bill is it only dealt with the financial disclosure requirements of AS 24.60.200, and he assumes that was why legislative employees were not added, because they are not listed under the disclosure requirement. But the governor is also addressing the loophole and leaving legislative employees out. What he drafted would do the same thing, but it would also close the loophole with respect to reporting requirements under other sections by legislative employees. "Since the legislative director is a legislative employee..."

[10:15:34 AM](#)

SENATOR FRENCH withdrew his amendment to Amendment 1.

SENATOR STEVENS withdrew his objection. Hearing no further objections, Amendment 1 carried.

CHAIR MCGUIRE asked about the spousal lobbying provision, "and I think it probably is a good one; I just don't know how to draft it on the fly." She asked for help from Mr. Wayne.

10:16:30 AM

MR. WAYNE said he couldn't come up with it "on the fly."

CHAIR MCGUIRE moved Amendment 2, labeled 25-LS0161\M.3, Wayne, as follows:

Page 1, line 4, following "**Act**":

Insert "**relating to the applicability of the Legislative Ethics Act;**"

Page 1, following line 5:

Insert a new bill section to read:

"* **Section 1.** AS 24.60.020(a) is amended to read:

(a) Except as otherwise provided in this subsection, this chapter applies to a member of the legislature, to a legislative employee, and to public members of the committee. This chapter does not apply to

(1) a former member of the legislature or to a person formerly employed by the legislative branch of government unless **a** [THE] provision **of this chapter** specifically states that it applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature."

Page 1, line 6:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

MR. WAYNE noted the wording problem in the applicability section of the Legislative Ethics Act that caused some to think that former legislators didn't have to report for the last half of the year. Amendment 2 just changes "the provision" to "a provision of this chapter," he stated. "So if you read this together with the amendment that just passed about disclosures required of former legislators, and so forth...the amendment that just passed would be the provision of the chapter that specifically states that the whole chapter is applicable to everybody, regardless of whether they're serving or not."

[10:18:03 AM](#)

CHAIR MCGUIRE said it is a technical amendment.

SENATOR FRENCH withdrew his objection. Hearing no further objections, Amendment 2 carried.

The committee took an at-ease from 10:18:15 to [10:18:43 AM](#).

[10:18:47 AM](#)

CHAIR MCGUIRE said there is no time to consider spousal lobbying, and it can be worked on before the bill goes to the Senate Finance Committee.

SENATOR FRENCH moved SB 20, as amended, with attached fiscal notes from committee with individual recommendations.

SENATOR BUNDE objected in order to comment. He said the legislature listened to an ethics expert and one of his points was to try to "do this as a single bill and not a piecemeal. I would just note that we appear to be ignoring his advice." He removed his objection.

[10:19:38 AM](#)

SENATOR GREEN said the man also said an omnibus bill failed under its own weight. "So there are a lot of ways to get to the solution on this."

SENATOR FRENCH said he can't resist echoing that. "I think today's proceeding really is a perfect example of why you need several small bills moving through the system, because as you add provisions, you weigh them down and it just makes it more difficult to actually get the bill to the finish line."

[10:20:15 AM](#)

CHAIR MCGUIRE announced that, hearing no further objections, CSSB 20(STA) passes out of committee with individual recommendations and attached fiscal notes.

SB 45-PEACE OFFICER CONVICTED OF MURDER

CHAIR MCGUIRE announced SB 45 to be up for consideration. She said previous discussions centered on the color of authority. She noted Amendment 1 with Senator Olson's name attached. She added her own and Senator French's name to it. Amendment 1, labeled 25-LS0183\A.1, Luckhaupt, is as follows:

Page 2, line 9:

Delete "was on duty at the time of"

Insert "used the officer's authority as a peace officer to facilitate"

CHAIR MCGUIRE said Amendment 1 gets at what she thinks was agreed by the committee unanimously, which was to clarify that the bill is not just for a peace officer committing murder, but for one who uses the color of authority to do so. Hearing no objection, Amendment 1 carried.

SENATOR BUNDE moved Amendment 2, as follows:

Page 2

Line 9 delete (5)

and add (5) "the court finds clear and convincing evidence that the defendant as a peace officer abused his or her duty and authority at the time of the murder."

CHAIR MCGUIRE objected.

The committee took an at-ease from [10:22:05 AM](#) to [10:23:12 AM](#).

SENATOR BUNDE explained his amendment. He said "this is a very egregious case, and we certainly don't want to see anything like this happen again." However, he wants the bill to "do no harm" and not have "unintended consequences when a police officer has to face that life-changing decision as to whether to use deadly force." Commissioner Monegan described what goes through a person's mind, he said. The amendment "would not reduce the attempt to make sure that police officers don't abuse" their color of authority. "But it also may reduce that additional millisecond pause that a police officer might have to review in his mind before he does make the decision to use deadly force and inhibit him from doing his job as he ought to do it."

[10:25:23 AM](#)

CHAIR MCGUIRE suggested that Senator Bunde's amendment would nullify the previous amendment, because it is another way of saying it. "So your language would say, instead, the court finds clear and convincing evidence that the defendant, as a peace officer, abused his or her authority at the time of the murder. So you're putting in a standard: clear and convincing." She asked what the current standard is and if it is beyond a reasonable doubt.

SENATOR FRENCH said that for a sentencing provision he believes that one has to prove every element beyond a reasonable doubt.

CHAIR MCGUIRE surmised therefore that clear and convincing is a lower standard. "It's unusual."

The committee took and at-ease from [10:26:35 AM](#) to [10:27:33 AM](#).

CHAIR MCGUIRE said everyone is trying to get at the same goal.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, said Senator Bunde's amendment is included in Amendment 1, which has been adopted. She said she would prefer to just use the word "authority" and not "duty and authority." She added that it is important to include the term "facilitate" because Matt Owen [the peace officer who committed murder] used his authority to get the victim in the car. At a certain point he wasn't on duty, she noted. Current statute states that factual findings in Title 12 have to be proved by a preponderance of evidence, unless certain things occur. "You could put it...under paragraph 3, and you should probably also...add it in the sentencing procedure statutes, which say: preponderance of the evidence unless...for example, some aggravating factor we have to prove by clear and convincing evidence. And it is true, that at this point, since we are dealing with maximums, Blakely doesn't apply."

[10:29:39 AM](#)

CHAIR MCGUIRE said that preponderance of the evidence is a lower standard than "clear and convincing," so if "clear and convincing" were added, it would mean that the prosecution must meet a higher threshold to show that a peace officer abused authority. "Why would we want to do that?" she asked.

MS. CARPENETI said, "For the reasons expressed by Senator Bunde." She said the state would need to prove it by a higher standard. Preponderance is 51 percent, and clear and convincing is a little higher.

SENATOR BUNDE said, "We do currently use it in the torture, and, again, as someone has to make that life-changing decision of whether to use deadly force or not...we don't add additional burdens to the police officer while still punishing those..." He then asked if Ms. Carpeneti was familiar with other officers committing murder while on duty.

[10:30:58 AM](#)

MS. CARPENETI said this is first such case in 50 years of statehood. She noted that these sentencing factors apply only after someone is found guilty of murder in the first degree.

CHAIR MCGUIRE said in the case of Sonya Ivanoff there was a separate trial on the torture, and the statute already read "by clear and convincing evidence," so that was met. She then stated that she was confusing two cases. "In this case, you got 99 years. The law wasn't on the books, so there was no standard of proof. If there had been a law on the books, and it had been difficult to get the mandatory 99, and the law had read 'clear and convincing evidence', do you believe you would have been able to meet that standard?"

MS. CARPENETI said she could ask the prosecutor. She said that case had no mandatory maximum, "and we were able to prove by no particular standard of proof that the court should impose the maximum, for the reasons that are really inherent in the purposes of the bill."

[10:33:00 AM](#)

WALT MONEGAN, Commissioner, said he supports Amendment 2 while striking out the word "duty." That would resolve his concern of creating another hesitation [in an officer's decision to use deadly force]. He wanted a clear distinction from being a police officer and being a predator. He noted that the officer deserved the sentence he got, "I just don't want to cause that hesitation."

CHAIR MCGUIRE said there is a way to get at the same idea. Working with the adopted amendment, insert, on page 2, line 9, (before the new language) "the court finds by clear and convincing evidence that the defendant used the officer's authority as a peace officer to facilitate". So Senator Bunde's amendment would be to insert: the court finds by clear and convincing evidence that the defendant.

[10:35:14 AM](#)

SENATOR BUNDE asked if he should withdraw Amendment 2 and offer Amendment 2a.

CHAIR MCGUIRE said yes. Amendment 2a has been offered, she said, as follows:

Page 2, line 9:

Insert: **"the court finds by clear and convincing evidence that the defendant"**

SENATOR FRENCH said it would now read:

"the court finds by clear and convincing evidence that the defendant is a peace officer who used the officer's authority as a peace officer to facilitate..."

10:36:30 AM

CHAIR MCGUIRE said that is better. Hearing no objections, Amendment 2a carried.

SENATOR STEVENS moved Amendment 3, labeled 25-LS0183\A.2, Luckhaupt, as follows:

Page 1, following line 2:

Insert a new bill section to read:

"* Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the Sonya Ivanoff Act."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 2, line 13:

Delete "Section 1"

Insert "Section 2"

Hearing no objection, Amendment 3 carried.

SENATOR GREEN asked about using the term "law" instead of "act".

SENATOR FRENCH said these specifically-named titles have recently been taken out of the law. He said he always votes to take them out of the law, and he will object for consistency.

10:38:10 AM

CHAIR MCGUIRE said it has already carried, so Senator French will need to offer another amendment.

SENATOR FRENCH said he will not make an issue of it.

CHAIR MCGUIRE said there was a healthy debate in the Senate Judiciary Standing Committee, and she suspects the issue will come up again.

SENATOR GREEN moved SB 45, as amended, from committee with individual recommendations and accompanying fiscal notes.

SENATOR BUNDE reiterated that it was an egregious case and not common for this to happen, and he hopes it won't happen again. He noted that the bill is a thoughtful reaction, and not a knee-jerk reaction.

CHAIR MCGUIRE heard no further objections, so CSSB 45(STA) moved out of committee.

The Senate State Affairs Standing Committee meeting was adjourned at [10:39:55 AM](#).