

Introduced: 2/13/81
Referred: State Affairs

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 HOUSE BILL NO. 153

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to ethics in government and estab-
7 lishing the Legislative Commission on Governmental
8 Ethics; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that it is
11 essential in the conduct of public business that state officials and state
12 employees hold the respect and confidence of the people. State officials
13 and state employees need to avoid conduct which violates the trust that the
14 people have placed in them or which creates a justifiable impression among
15 the public that the public trust is being violated. To ensure and preserve
16 public confidence, persons serving in government should have the benefit of
17 specific standards to guide their conduct. In order to strengthen the faith
18 and confidence that the governmental process reflects the will of the people
19 and that each state official considers and makes decisions affecting the
20 public according to the best interests of the public, the Legislative Commis-
21 sion on Governmental Ethics is established.

22 * Sec. 2. AS 24 is amended by adding a new chapter to read:

23 CHAPTER 60. LEGISLATIVE COMMISSION ON GOVERNMENTAL ETHICS.

24 Sec. 24.60.010. LEGISLATIVE COMMISSION ON GOVERNMENTAL ETHICS.

25 The Legislative Commission on Governmental Ethics is established in the
26 legislative branch of the state government.

27 Sec. 24.60.020. MEMBERSHIP OF THE COMMISSION. (a) The presiding
28 officer and the floor leaders of the two major political parties in
29 each house of the legislature shall each nominate one member of the

1 commission during January of an even-numbered year. The nominations
2 made under this subsection are subject to confirmation by the members
3 of the house in which the nominations were made.

4 (b) The members of the commission nominated and confirmed under
5 (a) of this section shall by a vote of at least five members elect a
6 seventh member who is the presiding officer of the commission.

7 (c) The presiding officer and the members of the commission serve
8 a term of two years and until a successor is appointed or elected and
9 qualifies.

10 Sec. 24.60.030. QUALIFICATIONS OF MEMBERS OF THE COMMISSION. (a)
11 The members of the commission shall be persons of recognized judgment,
12 probity, and objectivity. A person may not be nominated or confirmed
13 to the commission who

14 (1) is a member of the legislature;

15 (2) was a member of the previous legislature;

16 (3) was a declared candidate for a federal, state, or municip-
17 al elective position within the two years before nomination; or

18 (4) holds an elective federal, state, or municipal office.

19 (b) A member of the commission may not participate in a matter
20 involving the member.

21 Sec. 24.60.040. AUTHORITY OF THE COMMISSION. (a) The commission
22 may on request advise a state official or state employee whether his
23 personal circumstances and his official duties may constitute a viola-
24 tion of the provisions of AS 15.13, AS 24.45, or AS 39.50.

25 (b) The commission may accept a complaint which alleges a viola-
26 tion of the provisions of AS 15.13, AS 24.45, or AS 39.50.

27 Sec. 24.60.050. ADVISORY OPINIONS. (a) A request for an advisory
28 opinion shall be filed with the commission and be signed by the state
29 official or state employee requesting the advisory opinion.

1 (b) In reviewing a request for an advisory opinion and in prepar-
2 ing the opinion, the commission may investigate the matters raised in
3 the request.

4 (c) The advisory opinion of the commission shall be sent to the
5 state official or state employee who requested the opinion. If the
6 state official or state employee who requested the advisory opinion is
7 in the executive branch of the state government, a copy of the opinion
8 shall be sent to the head of the department employing the state official
9 or state employee. If the state official or state employee who re-
10 quested the opinion is in the legislative branch of the state govern-
11 ment, a copy of the opinion shall be sent to the presiding officer of
12 the house to which the member belongs and the rules committee of that
13 house or to the head of the agency or office in the legislative branch
14 who employs the state official or state employee. If the state official
15 or state employee who requested the opinion is in the judicial branch
16 of the state government, a copy of the opinion shall be sent to the
17 chief justice of the supreme court and to the administrative director
18 of courts.

19 (d) The commission records involving a request for an advisory
20 opinion are public records on the issuance by the commission of its
21 advisory opinion.

22 Sec. 24.60.060. COMPLAINTS. (a) A person may file with the
23 commission a verified complaint which alleges facts constituting a
24 violation by a state official or state employee. A copy of the com-
25 plaint shall be sent by the commission to the person alleged to have
26 committed the violation. The complaint filed under this section is
27 confidential.

28 (b) A person who is the subject of a complaint may present infor-
29 mation relative to the complaint to the commission and may review and

1 make copies of the evidence in the files of the commission relating to
2 the charges against him.

3 (c) The commission shall conduct a preliminary investigation to
4 determine whether the facts stated in the complaint constitute a viola-
5 tion. If the commission determines that the facts alleged in the
6 complaint do not constitute a violation or that the allegations in the
7 complaint are not substantially accurate, the complaint shall be dis-
8 missed and the person filing the complaint and the person against whom
9 the violation is alleged shall be advised. The complaint and the
10 records of the investigation conducted under this subsection remain
11 confidential.

12 (d) When the commission tentatively determines after a preliminary
13 investigation that the complaint states facts that may constitute a
14 violation, it shall advise the person against whom the violation is
15 alleged of its tentative determination and offer him an opportunity to
16 present information in his own behalf. The complaint, the records of
17 the investigation conducted under this subsection, and the tentative
18 determination of the commission remain confidential.

19 (e) If, after a review of evidence presented by a state official
20 or state employee, the commission continues to believe that a violation
21 occurred, it shall advise the state official or state employee of its
22 tentative determination and advise him of his right to a public hearing.
23 The complaint, the records of the investigation, and the deliberations
24 of the commission conducted under this subsection, including the tenta-
25 tive determination, remain confidential.

26 (f) If a hearing is held, the commission shall present its wit-
27 nesses or evidence and permit the person tentatively determined to have
28 committed a violation to present witnesses or evidence in his behalf.

29 (g) The commission shall consider the evidence presented at the

1 hearing, determine whether it believes that a violation occurred, and
2 issue its final determination.

3 (h) A complaint under this section and the results of the investi-
4 gation are public records on the issuance by the commission of its
5 determination.

6 (i) A tentative determination of the commission under (d) or (e)
7 of this section and a final determination of the commission under (g)
8 of this section shall be made on the affirmative vote of at least four
9 members of the commission.

10 (j) If the commission determines that a violation was committed
11 by a member of the legislature, a copy of the determination shall be
12 sent to the presiding officer of the house to which the member belongs
13 and to the rules committee of that house. If the commission determines
14 that a violation was committed by an elected or appointed official or a
15 state employee, a copy of the report shall be sent to the head of the
16 department in which the official or state employee serves.

17 Sec. 24.60.070. PUBLICATION OF OPINIONS AND DETERMINATIONS.
18 Within a reasonable amount of time after the commission reports its
19 advisory opinion or final determination to a state official or state
20 employee, it may present its opinion or determination to the governor
21 and the attorney general, the legislature, and the public. The commis-
22 sion shall include with a determination a reply made by the state
23 official or state employee.

24 Sec. 24.60.080. PROCEDURES. (a) The commission may issue sub-
25 poenas, administer oaths, hold hearings, and conduct investigations.

26 (b) In conjunction with (a) of this section, the commission may
27 compel the attendance of witnesses and production of papers, books,
28 records, accounts, documents, and testimony, and may have the disposi-
29 tion of witnesses taken in a manner prescribed by court rule or law for

1 the taking of depositions in civil actions when consistent with the
2 powers and duties assigned to the commission by this chapter.

3 (c) Subpoenas may be issued and shall be served in the manner
4 prescribed by AS 44.62.430 and court rule. The failure, refusal, or
5 neglect of a person to obey a subpoena is punishable as contempt in the
6 manner prescribed by law or court rule. The superior court may compel
7 obedience to the commission's subpoena in the same manner as prescribed
8 for obedience to a subpoena issued by the court.

9 Sec. 24.60.090. HEARINGS. A person against whom a violation is
10 charged shall be afforded due process protections including the right
11 to be represented by counsel, the right to call and examine witnesses,
12 the right to introduce exhibits, and the right to cross-examine the
13 witnesses of the commission. All witnesses shall be sworn. The com-
14 mission is not bound by the rules of evidence but its findings shall be
15 based on competent and substantial evidence.

16 Sec. 24.60.100. COSTS AND ATTORNEY FEES. If the commission
17 determines that a verified complaint filed with the commission is
18 groundless and without reasonable foundation, the commission may, in
19 its discretion, order the person who filed the complaint to pay the
20 reasonable costs and attorney fees incurred by the person charged with
21 a violation.

22 Sec. 24.60.110. MEETINGS. The commission shall meet no less
23 often than every three months and shall meet at the call of the presid-
24 ing officer.

25 Sec. 24.60.120. COMPENSATION, TRAVEL, AND PER DIEM. Members of
26 the commission are entitled to compensation of \$50 a day while attend-
27 ing commission meetings and to travel and per diem authorized by law
28 for state officials and employees under AS 39.20.160.

29 Sec. 24.60.130. PENALTIES. (a) A member or an employee of the

1 commission who divulges information made confidential by a provision of
2 this chapter is guilty of a class A misdemeanor.

3 (b) A person who knowingly files a false complaint with the
4 commission is guilty of a class A misdemeanor.

5 Sec. 24,60.200. DEFINITIONS. In this chapter,

6 (1) "commission" means the Legislative Commission on Govern-
7 mental Ethics;

8 (2) "violation" means an allegation of facts involving a
9 state official or state employee which describe a violation of AS 15.13,
10 AS 24.45, or AS 39.50.

11 * Sec. 3. AS 39.50.090 is repealed and reenacted to read:

12 Sec. 39.50.090. PROHIBITED ACTS. (a) A public official may not
13 use his official position or office for the primary purpose of obtain-
14 ing financial gain for himself, or his spouse, child, parent, or
15 business with which he is associated or owns stock.

16 (b) A person may not offer or pay to a public official, and a
17 public official may not solicit or receive money for legislative advice
18 or assistance, or for advice or assistance given in the course of the
19 official's public employment or relating to his public employment.
20 This prohibition does not apply to a chairman or member of a state
21 commission or board or municipal officer if the subject matter of the
22 legislative advice or assistance is not related directly to the func-
23 tion of the commission, board, or municipal body served by the munic-
24 ipal officer; this exception from the general prohibition does not apply
25 to a person whose service on a state commission or board makes him a
26 full-time state employee under this title.

27 (c) A public official may not represent a client before a state
28 agency for a fee. This prohibition does not apply to a municipal
29 officer, or chairman or member of a state commission or board except

1 with regard to representation before his own commission or board; this
2 exception from the general prohibition does not apply to a person whose
3 service on the commission or board makes him a full-time state employee
4 under this title.

5 (d) A public official or employee may not directly or indirectly
6 accept a gift, favor, service, employment, or an offer of a gift,
7 favor, service, or employment, or other thing of value which he knows
8 or has reason to know is offered to influence his official action.

9 (e) A public official or employee may not take official action
10 that directly affects a business, partnership, firm, or corporation in
11 which he has an interest or in which he stands to derive a monetary
12 gain or to avoid a monetary loss.

13 (f) A public official or employee may not use information which
14 he receives in the course of his official duties which is not generally
15 available to members of the public for his financial gain.

16 (g) A public official or employee may not seek a financial
17 interest, including employment, which he has reason to believe will be
18 directly affected by his official action or the action of the agencies
19 he serves.

20 (h) A public official does not have an interest in legislation
21 under this section if no benefit or detriment accrues to him beyond
22 that which accrues uniformly to the members of the profession, occupa-
23 tion, or group affected by the legislation.

24 (i) The provisions of this section do not apply to a purchase or
25 contract under competitive bidding practices if the public official or
26 employee takes no part in the preparation of the specifications or the
27 determinations of the state agency with regard to the transaction.

28 (j) Violation of this section is a class A misdemeanor.

29 (k) In this section, "public official" includes, in addition to

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the persons specified in AS 39.50.200(a)(1), chairmen and members of all commissions and boards created by statute or administrative action as agencies of the state.

(1) No municipal officer may represent a client for a fee before the municipal body which he serves.

* Sec. 4. This Act takes effect July 1, 1981.