

Offered: 5/13/83
Referred: Judiciary and Finance

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1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 362 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to standards of conduct of legisla-
7 tors and legislative employees and establishing a
8 Legislative Ethics Commission; and providing for an
9 effective date."

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

11 * Section 1. AS 24 is amended by adding a new chapter to read:

12 CHAPTER 60. STANDARDS OF CONDUCT.

13 Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legisla-
14 ture finds that it is essential in the conduct of public business that
15 legislators hold the respect and confidence of the people. Legisla-
16 tors must avoid conduct that even appears to violate the trust the
17 people have placed in them. To ensure and preserve public confidence,
18 legislators should have the benefit of specific standards to guide
19 their conduct. Article II, sec. 12, Constitution of the State of
20 Alaska grants to each house of the legislature the power to judge the
21 qualifications of its members. It is the purpose of this Act to
22 establish standards of conduct for state legislators and legislative
23 employees and to establish the Legislative Ethics Commission to con-
24 sider alleged violations of this chapter and to render advisory opin-
25 ions to persons affected by this chapter.

26 Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
27 member of the legislature, to a person employed by a member of the
28 legislature, and to a permanent or temporary employee of an agency of
29 the legislature. This chapter does not apply to

1 (1) a former member of the legislature or to a person
2 formerly employed by a member of the legislature or an agency of the
3 legislature unless the provision specifically states that it so ap-
4 plies;

5 (2) a person elected to the legislature who at the time of
6 election is not a member of the legislature;

7 (3) a person employed by a member of the legislature or an
8 employee of an agency of the legislature whose compensation is below
9 Step A, Range 18 of the state salary schedule established in AS 39.-
10 27.011(a).

11 (b) The provisions of this chapter specifically repeal the
12 provisions of the common law relating to legislative conflict of
13 interest that may apply to a member of the legislature, a person
14 employed by a member of the legislature, or to a permanent or tempo-
15 rary employee of an agency of the legislature. They do not supersede
16 or repeal provisions of the criminal laws of the state.

17 Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom
18 this chapter applies may not use public office for private advancement
19 or gain.

20 (b) A conflict of interest exists when a person to whom this
21 chapter applies takes or withholds official action or exerts influence
22 that could substantially benefit or harm a financial matter in which
23 the person has a direct or indirect private interest.

24 (c) Conflicts of interest are prohibited but there is not a
25 conflict of interest if, as to a specific matter, there is no substan-
26 tial impropriety or appearance of impropriety because

27 (1) the person's interest is relatively insignificant;

28 (2) the person's authority is relatively far removed from
29 any official action that could reasonably be affected by the potential

1 conflict of interest, provided that no attempt has been made to remove
2 the appearance of impropriety by delegating responsibility for offi-
3 cial action.

4 (d) A conflict exists if benefits accrue to a person to whom
5 this chapter applies beyond that which may accrue uniformly to members
6 of the profession, occupation or group to which the person belongs, or
7 to the public at large.

8 (e) It is not a conflict of interest under this section if a
9 person to whom this chapter applies accepts

10 (1) hospitality at another person's residence within the
11 state, including meals, lodging or transportation;

12 (2) discounts that are generally available to the public or
13 a large class of persons to which the person belongs;

14 (3) an invitation to attend a meal or social event that
15 does not exceed \$100 in value received by the person for each meal or
16 event;

17 (4) food and foodstuffs indigenous to the state that are
18 generally shared as a cultural or social norm; or

19 (5) gifts from the person's family.

20 (f) The commission may with approval of the legislature estab-
21 lish additional policies that limit the extent to which persons to
22 whom this chapter applies may accept the benefits set out in (e) of
23 this section.

24 (g) It is a conflict of interest for a member of the legislature
25 who does not represent the City and Borough of Juneau to accept money
26 from an event held within the City and Borough of Juneau during the
27 session if a substantial purpose of the event is to raise money on
28 behalf of the member for state legislative campaign purposes or for
29 other state legislative political purposes.

1 Sec. 24.60.040. CONTRACTS. (a) A person to whom this chapter
2 applies may not be a party to or have an interest in a state contract
3 unless the contract is let by competitive bidding under AS 37.05.230
4 or the total annual amount of the state contract is \$1000 or less. A
5 person has an interest in a state contract under this section if the
6 person receives direct or indirect financial benefits.

7 (b) In this section, "direct or indirect financial benefits"
8 means income, profits or other financial benefits under a state con-
9 tract, without regard to whether the income, profits or other finan-
10 cial benefits ensue to the person as a partner, shareholder, investor,
11 agent, employee, consultant, or joint venturer of the contractor.

12 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of
13 interest for a person to whom this chapter applies to participate in a
14 state program or to receive a loan from the state if the program or
15 loan is generally available to members of the public, is subject to
16 fixed eligibility standards, and minimal discretion is exercised in
17 determining qualification.

18 (b) In determining whether a conflict of interest exists with
19 respect to a state program or to a state loan other than those de-
20 scribed in (a) of this section, because a legislator may be in a
21 position to influence the loan agency, the commission must consider,
22 but is not limited to, the adequacy of existing administrative proce-
23 dures for granting and reviewing loans to legislators.

24 (c) Upon application for a state loan by a person to whom this
25 chapter applies, other than loans described in (a) of this section,
26 the lending agency shall send a copy of the application to the Alaska
27 Public Offices Commission, which will incorporate the material into
28 the applicant's financial disclosure statement, if the applicant is
29 required to file a disclosure statement. All records relating to a

1 state loan to a person to whom this chapter applies may be disclosed
2 to the ethics commission.

3 (d) Each February 1, each loan agency shall publish a listing of
4 all outstanding loans to persons to whom this chapter applies, except
5 for loans described in (a) of this section. The list must include the
6 name of the person, the date of issuance and current status of the
7 loan.

8 (e) State agencies that have authority to grant loans shall
9 adopt regulations that establish separate procedures for granting and
10 reviewing loans to a person to whom this chapter applies. However,
11 the regulations need not govern loans described in (a) of this sec-
12 tion.

13 (f) The division of legislative audit shall annually review
14 state loans granted to or held by persons to whom this chapter applies
15 to determine whether appropriate procedures were observed in granting
16 or reviewing the loans. The division shall report its findings to the
17 commission by April 1.

18 (g) For purposes of this section "state program" means a program
19 in which tangible assets of the state or a right to use tangible
20 assets of the state are transferred from the state to a private per-
21 son.

22 Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of
23 interest if a person to whom this chapter applies wilfully discloses,
24 or knowingly uses, for personal gain or for the personal gain of
25 another, information that by law is not available to the public and
26 that the person acquired in the course of official duties.

27 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. A person to
28 whom this chapter applies shall disclose in the journal of the appro-
29 priate body or if the legislature is not in session to the commission,

1 which shall maintain a public record of the disclosure and forward the
2 disclosure to the respective house for inclusion in the journal for
3 the first day of the session, the formation or maintenance of a close
4 economic association involving a substantial financial matter with

5 (1) a supervisor who has responsibility or authority,
6 either directly or indirectly, over the person's employment, including
7 preparing or reviewing performance evaluations, or granting or approv-
8 ing pay raises or promotions;

9 (2) legislators;

10 (3) a public official in another branch, if the public
11 official is required to file a financial disclosure statement under
12 AS 39.50;

13 (4) a registered lobbyist who is not a member of the imme-
14 diate family of the person.

15 Sec. 24.60.080. GIFTS. A person to whom this chapter applies
16 may not solicit a gift, or accept or receive, directly or indirectly,
17 a gift, whether in the form of money, services, a loan, travel, enter-
18 tainment, hospitality, or other form, if the gift was intended as a
19 reward for an official action by the person. A gift of travel and
20 hospitality received by a member of the legislature in obtaining
21 information on matters of legislative concern is not prohibited by
22 this section.

23 Sec. 24.60.090. NEPOTISM. (a) A relative of a member of the
24 legislature may not be employed in the house in which the legislator
25 is a member, by an agency of the legislature established under
26 AS 24.20, or in the other house during the interim between sessions.
27 An individual who is related to an employee of the legislature may not
28 be employed in a position over which the employee has supervisory
29 authority. In this subsection, "an individual who is related to"

1 means a child, adopted child, stepchild, husband, wife, mother,
2 father, sister, brother, or a member of the same household.

3 (b) For purposes of this section an individual is not employed
4 if no compensation is received from the state for the services pro-
5 vided.

6 Sec. 24.60.100. REPRESENTATION. A person to whom this chapter
7 applies who represents another person for compensation before an
8 agency, board, or commission of the state shall disclose the name of
9 the person represented, the subject matter of the representation, and
10 the body before which the representation is to take place in the
11 journal of the appropriate body or if the legislature is not in ses-
12 sion to the commission. The commission shall maintain a public record
13 of the disclosure and forward the disclosure to the respective house
14 for inclusion in the journal for the first day of the session.

15 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
16 who knowingly has a conflict of interest or has been notified of a
17 conflict of interest shall immediately

18 (1) resign the conflicting position;

19 (2) divest the interest that has resulted in the conflict
20 or potential conflict; or

21 (3) disclose the conflict of interest in the journal of the
22 appropriate body or if the legislature is not in session to the com-
23 mission; the commission shall maintain a public record of the disclo-
24 sure and forward the disclosure to the respective house for inclusion
25 in the journal for the first day of the session.

26 Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this
27 chapter applies may not use state property except property under lease
28 from the state or funds for private gain.

29 Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is

1 established within the legislative branch of the state government the
2 Legislative Ethics Commission.

3 (b) The commission consists of seven members appointed as fol-
4 lows:

5 (1) the president of the senate shall appoint one member to
6 the commission from the senate with the concurrence by roll call vote
7 of three-fourths of the full membership of the senate;

8 (2) the speaker of the house of representatives shall
9 appoint one member to the commission from the house of representatives
10 with the concurrence by roll call vote of three-fourths of the full
11 membership of the house;

12 (3) the president of the senate shall appoint to the com-
13 mission two persons who are citizens of the United States and resi-
14 dents of the state with the concurrence by roll call vote of two-
15 thirds of the full membership of the senate;

16 (4) the speaker of the house of representatives shall
17 appoint to the commission two persons who are citizens of the United
18 States and residents of the state with the concurrence by roll call
19 vote of two-thirds of the full membership of the house;

20 (5) one member of the commission shall be a former legisla-
21 tor of the state who is appointed by the other members of the commis-
22 sion.

23 (c) No more than four members of the commission may be members
24 of the same political party or residents of the same borough or of the
25 unorganized borough.

26 (d) The members of the commission shall elect a chair and vice-
27 chair and may elect other officers. Those members of the commission
28 who are members of the legislature may not serve as chair or vice-
29 chair.

1 (e) The term of office of a public member of the commission is
2 four years from February 1 of the year of appointment and until a
3 successor is appointed and qualifies. A legislator appointed to the
4 commission may not serve beyond the expiration of the legislative term
5 of office. A commission member may not serve more than one full term.

6 (f) A member of the commission may not
7 (1) hold or seek elective office;
8 (2) be an officer of a political party, political commit-
9 tee, or group; or
10 (3) lobby.

11 (g) The provisions of (f) of this section do not apply to the
12 members of the commission appointed under (b)(1) and (2) of this
13 section.

14 (h) A vacancy on the commission shall be filled under (b) of
15 this section for the balance of the term.

16 (i) The commission may contract for professional services and
17 may employ staff as it considers necessary. A member of the commis-
18 sion may not serve on the staff of the commission.

19 (j) A member of the commission receives no compensation for
20 service on the commission. Members of the commission are entitled to
21 travel expenses and per diem authorized by law for members of boards
22 and commissions under AS 39.20.180, but a member of the commission who
23 is a legislator is not entitled to travel expenses and per diem from
24 the commission if the legislator is receiving travel expenses and per
25 diem as a legislator.

26 Sec. 24.60.140. DUTIES OF THE COMMISSION. The commission shall

27 (1) adopt regulations to facilitate the receipt of inquir-
28 ies and prompt rendition of its opinions;

29 (2) recommend legislation to the legislature the commission

1 considers desirable or necessary to promote and maintain high stan-
2 dards of ethical conduct in government;

3 (3) subpoena witnesses, administer oaths, and take testi-
4 mony relating to matters before the commission, and may require the
5 production for examination of any books or papers relating to any
6 matter under investigation before the commission;

7 (4) publish semi-annual summaries of decisions, advisory
8 opinions and informal advisory opinions, with sufficient deletions in
9 the summaries to prevent disclosing the identity of the persons in-
10 volved in the decisions or opinions which have remained confidential.

11 Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue
12 an advisory opinion on the request of a person to whom the chapter ap-
13 plies as to whether the facts and circumstances of a particular case
14 constitute a violation of ethical standards. If an advisory opinion
15 is not issued within 30 days after the request is filed with the
16 commission, the facts and circumstances of the particular case do not
17 constitute a violation of the ethical standards. The opinion issued
18 or considered issued is binding on the commission in any subsequent
19 proceedings concerning the facts and circumstances of the particular
20 case unless material facts were omitted or misstated in the request
21 for the advisory opinion. Except as provided in this chapter an
22 advisory opinion is confidential but may be made public if a written
23 request by the person who requested the opinion is filed with the
24 commission.

25 Sec. 24.60.160. PROCEEDINGS BEFORE THE COMMISSION. (a) The
26 commission may initiate, receive and consider complaints alleging a
27 violation of this chapter.

28 (b) The commission may investigate a violation of this chapter
29 in a proceeding begun within four years after the alleged violation

1 occurs and within one year after termination of state service. Noth-
2 ing in this subsection bars proceedings against a person who inten-
3 tionally prevents discovery of a violation of this chapter.

4 (c) Before the commission may exercise power authorized in this
5 section, the commission shall by resolution supported by a majority
6 vote of the full membership of the commission, define the nature and
7 scope of the inquiry. The commission shall investigate all complaints
8 on a confidential basis.

9 (d) A proceeding is commenced by the filing of a complaint with
10 the commission. A complaint may be initiated by a private person or
11 by three or more members of the commission. A complaint shall be in
12 writing and signed under oath by the person making the complaint. No
13 complaint, other than a complaint initiated by five or more members of
14 the commission, may be received within a period of 60 days preceding a
15 state primary or general election. All proceedings pending before the
16 commission on the 60th day preceding a state primary or general elec-
17 tion are stayed unless the proceedings are based on a complaint initi-
18 ated by five or more members of the commission. No further action may
19 be taken in the stayed proceeding until the legislature next convenes
20 in regular session.

21 (e) The commission shall notify in writing each person against
22 whom a complaint is received and afford the person an opportunity to
23 explain the conduct alleged to be a violation of this chapter. If the
24 commission determines that a complaint does not contain allegations of
25 facts sufficient, if the alleged facts are treated as true, to consti-
26 tute a violation of this chapter, the commission may summarily dismiss
27 the complaint.

28 (f) The commission shall investigate the charges filed under
29 this section and issue an advisory opinion to the person alleged to

1 have violated a provision of this chapter.

2 (g) If the commission determines that a probable violation
3 exists that may be corrected by action of the person and that does not
4 warrant sanctions other than correction, the advisory opinion shall
5 recommend corrective action. The person against whom the complaint
6 was made may comply with the opinion or may request a hearing before
7 the commission. After the hearing the commission may amend or affirm
8 the advisory opinion.

9 (h) If the person fails to comply with the advisory opinion or
10 if a majority of the members of the commission determine that there is
11 probable cause for belief that a violation of this chapter that may
12 not be corrected under (g) of this section has occurred, the commis-
13 sion shall formally charge the person. The charge and statement of
14 the alleged violation shall be personally served on the person
15 charged. The alleged violator has 20 days after service of the charge
16 and statement to respond in writing to the commission.

17 (i) The commission may set a time and place for a hearing before
18 the commission with notice to the complainant, if any, and to the
19 person charged with a violation of this chapter. A representative of
20 the commission and the person charged with a violation of this chapter
21 shall have an opportunity to be heard, to subpoena witnesses and
22 require the production of books or papers relating to the proceedings,
23 to be represented by counsel, and to have the right of cross-examina-
24 tion. Each witness shall testify under oath. Hearings are closed to
25 the public unless the person charged with a violation of this chapter
26 requests an open hearing. The commission is not bound by the rules of
27 evidence but the commission's findings must be based upon competent
28 and substantial evidence. Testimony taken at the hearing shall be re-
29 corded and evidence shall be maintained. The testimony and evidence

1 are available only to the commission and its staff and to the person
2 charged with a violation of this chapter. If the person charged with
3 the violation of a provision of this chapter requests a copy of the
4 transcript of testimony, the copy shall be furnished by the commission
5 without charge.

6 (j) A decision of the commission shall be in writing and signed
7 by the majority of the members of the commission. Each decision of
8 the commission must be accompanied by a written order of the commis-
9 sion determining that a violation of this chapter exists or does not
10 exist. The order is confined to this determination. This order is a
11 public record.

12 (k) If the commission issues a decision finding that a member of
13 the legislature has violated a provision of this chapter or that a
14 legislator has declined or failed to cooperate with the commission, it
15 shall refer the decision to the presiding officers of the legislature.
16 The decision shall contain a statement of the facts determined to
17 constitute the violation or the failure to cooperate and may contain
18 recommendations concerning any penalties the legislature may lawfully
19 impose. The commission shall make the decision public 30 days after
20 the referral. Days during which the legislature is not in session may
21 not be counted in determining the 30-day period. The legislature
22 shall act on the decision as it considers appropriate.

23 (l) If the majority of the members of the commission agree to a
24 decision that a former member of the legislature or an employee or a
25 former employee of a legislator or of an agency of the legislature has
26 violated a provision of this chapter, the commission shall issue a
27 public statement of its decision 30 days after the date of the deci-
28 sion. The legislature shall act on the decision as it considers
29 appropriate. In the case of an employee the action may include

1 suspension, demotion, or dismissal. The employee is entitled to a
2 hearing before final action is taken.

3 (m) A commission member or member of the commission staff who
4 divulges information concerning a proceeding, except as permitted by
5 this chapter, is guilty of a class A misdemeanor.

6 Sec. 24.60.170. COOPERATION BY STATE AGENCIES. Each agency of
7 the executive branch of state government shall, to the extent permit-
8 ted by state or federal law, cooperate fully with the commission by
9 providing information and assistance, including disclosure of finan-
10 cial material and other records relating to a potential violation of
11 this chapter.

12 Sec. 24.60.180. DEFINITIONS. In this chapter,

13 (1) "commission" means the Legislative Ethics Commission;

14 (2) "person employed by a member of the legislature" means
15 a person who is employed by an individual legislator or by a legisla-
16 tive body other than an agency of the legislature established under
17 AS 24.20 whose duties include assistance to a legislator or legisla-
18 tive body in the performance of legislative functions.

19 * Sec. 2. Section 24.60.130 and sec. 24.60.140 enacted in sec. 1 of
20 this Act take effect immediately in accordance with AS 01.10.070(c).