

Introduced: 4/15/83
Referred: State Affairs and
Judiciary

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

1 IN THE SENATE

2

SENATE BILL NO. 257

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:

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CHAPTER 60. STANDARDS OF CONDUCT.

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

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Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
member of the legislature, to a person employed by a member of the
legislature, and to a permanent or temporary employee of an agency of
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 has discretion to take or withhold official action or
22 exert influence which could substantially benefit or harm a financial
23 matter in which 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 does not exist if no benefit or detriment accrues
5 to a person to whom this chapter applies beyond that which accrues
6 uniformly to members of the profession, occupation or group to which
7 the person belongs, or to the public at large.

8 Sec. 24.60.040. CONTRACTS. (a) A person to whom this chapter
9 applies may not be a party to or have an interest in a state contract
10 unless the contract is let by competitive bidding under AS 37.05.230
11 or the total annual amount of the state contract is \$1000 or less. A
12 person has an interest in a state contract under this section if the
13 person receives direct or indirect financial benefits. A person has
14 an interest in a state contract under this section if the contract is
15 awarded to

16 (1) a firm, corporation, or association that has assets in
17 excess of \$5,000,000 and in which the person has an ownership interest
18 greater than 10 percent or that has assets of \$5,000,000 or less and
19 in which the person has an ownership interest greater than 25 percent;
20 or

21 (2) a partnership in which the person is a partner.

22 (b) In this section, "direct or indirect financial benefits"
23 means income, profits or other financial benefits under a state con-
24 tract, without regard to whether the person is a party to the con-
25 tract, and without regard to whether the income, profits or other
26 financial benefits inure to the person as a partner, shareholder,
27 investor, agent, employee, consultant, or joint venturer of the con-
28 tractor.

29 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of

1 interest for a person to whom this chapter applies to participate in a
2 state program or to receive a loan from the state if the program or
3 loan is generally available to members of the public, is subject to
4 fixed eligibility standards, and minimal discretion is exercised in
5 determining qualification.

6 (b) In determining whether a conflict of interest exists with
7 respect to a state program or to a state loan other than those de-
8 scribed in (a) of this section, because a legislator may be in a
9 position to influence the loan agency, the ethics commission must
10 consider, but is not limited to, the adequacy of existing administra-
11 tive procedures for granting and reviewing loans to legislators.

12 (c) Upon application for a state loan by a person to whom this
13 chapter applies, other than loans described in (a) of this section,
14 the lending agency must send a copy of the application to the Alaska
15 Public Offices Commission, which will incorporate the material into
16 the applicant's financial disclosure statement, if the applicant is
17 required to file a disclosure statement. All records relating to a
18 state loan to a person to whom this chapter applies may be disclosed
19 to the commission.

20 (d) Each February 1st, each loan agency must publish a listing
21 of all outstanding loans to persons to whom this chapter applies,
22 except for loans described in (a) of this section. The list must
23 include the name of the person, the date of issuance and current
24 status of the loan.

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

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

6 (g) For purposes of this section "state program" means a program
7 in which tangible assets of the state or a right to use tangible
8 assets of the state are transferred from the state to a private per-
9 son.

10 Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of
11 interest if a person to whom this chapter applies discloses or uses
12 for personal gain or for the personal gain of another, information
13 that by law is not available to the public and that the person ac-
14 quired in the course of official duties.

15 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A
16 person to whom this chapter applies shall disclose to the commission
17 the formation or maintenance of a close economic association involving
18 a substantial financial matter with

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

23 (2) legislators;

24 (3) a public official in another branch, if the public
25 official is required to file a financial disclosure statement under
26 AS 39.50.

27 (b) It is a prohibited conflict of interest for a person to whom
28 this chapter applies to form or maintain a close economic association
29 involving a substantial financial matter with a lobbyist who is not a

1 member of the immediate family of the person.

2 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
3 applies may not solicit a gift in any amount, or accept or receive,
4 directly or indirectly, a gift in excess of \$100, whether in the form
5 of money, services, a loan, travel, entertainment, hospitality, or
6 other form, under circumstances in which it may reasonably be inferred
7 that the gift is intended to influence the person in the performance
8 of the duties of the person or is intended as a reward for an official
9 action by the person.

10 (b) It is not a conflict of interest under this section if a
11 person to whom this chapter applies accepts

12 (1) hospitality at another person's residence, including
13 meals, lodging or ground or water transportation;

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

16 (3) an invitation to attend a meal or social event that
17 does not exceed \$100 in value received by the person for each meal or
18 event and that does not in the aggregate exceed \$250 in value during
19 the calendar year from one person; or

20 (4) gifts from the person's immediate family.

21 (c) The commission may establish policies that limit the extent
22 to which persons to whom this chapter applies may accept the benefits
23 set out in (b)(2) of this section, or that require public officials to
24 turn over the benefits to the agency.

25 Sec. 24.60.090. NEPOTISM. (a) An individual who is related to
26 a member of the legislature may not be employed in the house in which
27 the legislator is a member, by an agency of the legislature estab-
28 lished under AS 24.20, or in the other house during the interim be-
29 tween sessions. An individual who is related to an employee of the

1 legislature may not be employed in a position over which the employee
2 has supervisory authority. In this subsection, "an individual who is
3 related to" means a child, husband, wife, mother, father, sister,
4 brother, or a permanent member of the legislator's household.

5 (b) An individual is not employed if no compensation is received
6 from the state for the services provided.

7 Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as
8 provided in this section, a member of the legislature or a person
9 employed by an agency of the legislature established under AS 24.20
10 may not represent another person for compensation before an agency,
11 board, or commission of the state.

12 (b) A member of the legislature may represent a client in

13 (1) an action before a court of the state; or

14 (2) a matter which was pending at the time a person to whom
15 this chapter applies assumes office or is employed.

16 (c) A legislator cannot avoid a conflict of interest under this
17 section by waiving compensation for representing another person under
18 circumstances where compensation would ordinarily be expected.

19 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
20 who has a conflict of interest shall immediately

21 (1) resign the position;

22 (2) divest the interest that has resulted in the conflict
23 or potential conflict; or

24 (3) disclose the conflict of interest in the journal of the
25 appropriate body or if the legislature is not in session to the com-
26 mission which shall maintain a public record of the disclosure and
27 forward the disclosure to the respective house for inclusion in the
28 journal for the first day of the session.

29 Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this

1 chapter applies may not use state property or funds for private gain
2 or campaign purposes.

3 Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is
4 established within the legislative branch of the state government the
5 Legislative Ethics Commission.

6 (b) The commission consists of seven members appointed as fol-
7 lows:

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

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

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

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

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

26 (c) No more than four members of the commission may be members
27 of the same political party or residents of the same borough or of the
28 unorganized borough.

29 (d) The members of the commission shall elect a chair and vice-

1 chair and may elect other officers. Those members of the commission
2 who are members of the legislature may not serve as chair or vice-
3 chair.

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

9 (f) A member of the commission may not

10 (1) hold or seek elective office;

11 (2) be an officer of a political party, political commit-
12 tee, or group; or

13 (3) lobby.

14 (g) The provisions of (f) of this section do not apply to the
15 members of the commission appointed under (b)(1) and (2) of this
16 section.

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

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

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

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

1 (1) adopt regulations to facilitate the receipt of
2 inquiries and prompt rendition of its opinions;

3 (2) recommend legislation to the legislature the commission
4 considers desirable or necessary to promote and maintain high stan-
5 dards of ethical conduct in government;

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

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

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

28 Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate,
29 receive and consider complaints alleging a violation of this chapter.

1 (b) Before the commission may exercise power authorized in (c)
2 of this section, the commission shall by resolution, supported by a
3 vote of three members of the commission, define the nature and scope
4 of the inquiry.

5 (c) The commission may investigate a violation of this chapter
6 in a proceeding begun within four years after the alleged violation
7 occurs and within one year after termination of state service. Noth-
8 ing in this subsection bars proceedings against a person who by fraud
9 prevents discovery of a violation of this chapter. A proceeding is
10 commenced by the filing of a complaint with the commission. No com-
11 plaint, other than a complaint initiated by five or more members of
12 the commission may be received within a period of 60 days preceding a
13 state primary or general election.

14 (d) A complaint shall be in writing and signed under oath by the
15 person making the complaint. A complaint may also be initiated by
16 three or more members of the commission. The commission shall notify
17 in writing each person against whom a complaint is received and afford
18 the person an opportunity to explain the conduct alleged to be a
19 violation of this chapter. If the commission determines that a com-
20 plaint does not contain allegations of facts sufficient, if the al-
21 leged facts are treated as true, to constitute a violation of this
22 chapter the commission shall summarily dismiss the complaint.

23 (e) The commission shall investigate the charges filed under
24 this section and issue an advisory opinion to the person alleged to
25 have violated a provision of this chapter. The commission shall
26 investigate all complaints on a confidential basis. If the advisory
27 opinion indicates a probable violation, the person against whom the
28 complaint was made may request a formal opinion or comply with the
29 advisory opinion. If the person fails to comply with the advisory

1 opinion or if a majority of the members of the commission determine
2 that there is probable cause for belief that a violation of this
3 chapter has occurred, the commission shall file a complaint against
4 the person charged with a violation of this chapter and the complaint
5 and statement of the alleged violation shall be personally served on
6 the person charged. The alleged violator has 20 days after service of
7 the complaint and statement to respond in writing to the commission.

8 (f) The commission may set a time and place for a hearing with
9 notice to the complainant, if any, and to the person charged with a
10 violation of this chapter. A representative of the commission and the
11 person charged with a violation of this chapter shall have an oppor-
12 tunity to be heard, to subpoena witnesses and require the production
13 of books or papers relating to the proceedings, to be represented by
14 counsel, and to have the right of cross-examination. Each witness
15 shall testify under oath. The hearings are closed to the public
16 unless the person charged with a violation of this chapter requests an
17 open hearing. The commission is not bound by the rules of evidence
18 but the commission's findings must be based upon competent and sub-
19 stantial evidence. The testimony taken at the hearing shall be re-
20 corded and evidence shall be maintained. The testimony and evidence
21 is available only to the staff of the commission and to the person
22 charged with a violation of this chapter. If the person charged with
23 the violation of a provision of this chapter requests a copy of the
24 transcript of testimony, the copy shall be furnished by the commission
25 without charge.

26 (g) A decision of the commission shall be in writing and signed
27 by four or more members of the commission. Each decision of the
28 commission must be accompanied by a written order of the commission
29 determining that a violation of this chapter exists or does not exist.

1 The order is confined to this determination. This order is a public
2 record.

3 (h) If the commission issues a decision that a member of the
4 legislature has violated a provision of this chapter or that a legis-
5 lator has declined or failed to cooperate with the commission, it
6 shall refer the decision to the presiding officers of the legislature.
7 The decision shall contain a statement of the facts determined to
8 constitute the violation or the failure to cooperate and may contain
9 recommendations concerning any penalties the legislature may lawfully
10 impose including imposition of civil penalties in an amount not to
11 exceed \$25,000, divestment of the interest, repaying profits, censure,
12 removal from committee assignments, termination of legislative privi-
13 leges, or expulsion. The commission shall make the decision public 30
14 days after the referral. Days during which the legislature is not in
15 session may not be counted in determining the 30-day period. The
16 legislature shall act on the decision as it considers appropriate.

17 (i) If four members of the commission agree to a decision that a
18 former member of the legislature or an employee or a former employee
19 of a legislator or of an agency of the legislature has violated a
20 provision of this chapter, the commission shall issue a public state-
21 ment of its decision 30 days after the date of the decision. The
22 legislature shall act on the decision as it considers appropriate. In
23 the case of an employee the action may include suspension, demotion,
24 or dismissal.

25 (j) A commission member or individual who divulges information
26 concerning a charge before the filing of a complaint by the commis-
27 sion, except as permitted by this chapter, is guilty of misuse of
28 confidential information under AS 11.56.860.

29 Sec. 24.60.170. DEFINITION. In this chapter, "commission" means

1 the Legislative Ethics Commission.

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