

Offered: 5/2/83
Referred: Judiciary

Original sponsor: Rules/Legislative Reform

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 257 (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 legislative standards of conduct
7 and establishing a Legislative Ethics Commission; and
8 providing for an effective date."

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

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

11 CHAPTER 60. STANDARDS OF CONDUCT.

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

27 Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
28 member of the legislature, to a person employed by a member of the
29 legislature, and to a permanent or temporary employee of an agency of

1 the legislature. This chapter does not apply to

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

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

8 (3) a person employed by a member of the legislature or an
9 employee of an agency of the legislature whose compensation is below
10 Step A, Range 18 of the state salary schedule established in AS 39.-
11 27.011(a).

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

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

21 (b) A conflict of interest exists when a person to whom this
22 chapter applies has discretion to take or withhold official action or
23 exert influence which could substantially benefit or harm a financial
24 matter in which the person has a direct or indirect private interest.

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

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

29 (2) the person's authority is relatively far removed from

1 any official action that could reasonably be affected by the potential
2 conflict of interest, provided that no attempt has been made to remove
3 the appearance of impropriety by delegating responsibility for offi-
4 cial action.

5 (d) A conflict does not exist if no benefit or detriment accrues
6 to a person to whom this chapter applies beyond that which accrues
7 uniformly to members of the profession, occupation or group to which
8 the person belongs, or to the public at large.

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

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

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

24 (b) A member of the legislature or a person employed by a member
25 of the legislature may enter into or have an interest in a state
26 contract not obtained through competitive bidding if the ethics com-
27 mission determines that the person did not improperly exercise influ-
28 ence in obtaining the contract.

29 (c) An employee of an agency of the legislature established

1 under AS 24.20 may not be a party to a contract with the state.

2 (d) In this section, "direct or indirect financial benefits"
3 means income, profits or other financial benefits resulting from a
4 state contract or lease, without regard to whether the person is a
5 named party to the contract or lease, and without regard to whether
6 the income, profits or other financial benefits inure to the person as
7 a partner, shareholder, investor, agent, employee, consultant, or
8 joint venturer of the contractor.

9 (e) If a person to whom this chapter applies is a party to or
10 has an interest in a state contract or a contract with a political
11 subdivision of the state, the person shall furnish a copy of the
12 contract to the Chief Clerk of the House of Representatives or the
13 Secretary of the Senate. Notice of the filing shall be published in
14 the supplemental journal.

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

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

28 (c) Upon application for a state loan by a person to whom this
29 chapter applies, other than loans described in (a) of this section,

1 the lending agency must send a copy of the application to the Alaska
2 Public Offices Commission, which will incorporate the material into
3 the applicant's financial disclosure statement, if the applicant is
4 required to file a disclosure statement. All records relating to a
5 state loan to a person to whom this chapter applies may be disclosed
6 to the ethics commission.

7 (d) Each February 1, each state loan agency must deliver a
8 listing of all outstanding loans to persons to whom this chapter
9 applies, except for loans described in (a) of this section to the
10 presiding officer of each house. The list must include the name of
11 the person, the date of issuance and current status of the loan. The
12 list shall be published in the supplemental journal.

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

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

23 (g) For purposes of this section "state program" means a program
24 in which tangible assets of the state or a right to use tangible
25 assets of the state are transferred from the state to a private per-
26 son.

27 Sec. 24.60.060. CONFIDENTIAL INFORMATION. A person to whom this
28 chapter applies may not wilfully disclose or knowingly use for per-
29 sonal gain or for the personal gain of another, information that h

1 law is not available to the public and that the person acquired in the
2 course of official duties.

3 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A
4 person to whom this chapter applies shall disclose in writing to the
5 commission the formation or maintenance of a close economic associa-
6 tion involving a financial matter valued at more than \$1,000 with

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

11 (2) legislators;

12 (3) a public official in another branch, if the public
13 official is required to file a financial disclosure statement under
14 AS 39.50.

15 (b) A person to whom this chapter applies may not form or main-
16 tain a close economic association involving a substantial financial
17 matter with a lobbyist as defined in AS 24.45.181 who is not a member
18 of the immediate family of the person.

19 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
20 applies may not solicit a gift in any amount, or accept or receive,
21 directly or indirectly, a gift having aggregate value in excess of
22 \$100 from a person, whether in the form of money, services, a loan,
23 travel, entertainment, hospitality, or other form, under circumstances
24 in which it may reasonably be inferred that the gift is intended to
25 influence the person in the performance of the duties of the person or
26 is intended as a reward for an official action or inaction by the
27 person.

28 (b) It is not a gift under this section if a person to whom this
29 chapter applies accepts

1 (1) hospitality within the state including meals, lodging
2 or transportation;

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

5 (3) an invitation to attend a meal or social event; or

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

7 (c) The commission may establish additional policies that limit
8 the extent to which persons to whom this chapter applies may accept
9 the benefits set out in (b)(2) of this section.

10 Sec. 24.60.090. NEPOTISM. (a) An individual who is related to
11 a member of the legislature may not be employed in the house in which
12 the legislator is a member, by an agency of the legislature estab-
13 lished under AS 24.20, or in the other house during the interim be-
14 tween sessions. An individual who is related to an employee of the
15 legislature may not be employed in a position over which the employee
16 has supervisory authority. In this subsection, "an individual who is
17 related to" means a child, husband, wife, mother, father, sister,
18 brother, or a permanent member of the legislator's household.

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

22 Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as
23 provided in this section, a member of the legislature or a person
24 employed by an agency of the legislature established under AS 24.20
25 may not represent another person for compensation before a court,
26 agency, board, or commission of the state unless acting in their
27 official capacity.

28 (b) A qualified member of the legislature may represent a client
29 in a criminal action before a court of the state or in a civil action

1 where the state is not a party.

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

5 (d) Disqualification under this section of an attorney who is a
6 member of the legislature does not disqualify a law firm in which the
7 legislator is a member.

8 (e) A person to whom this chapter applies may represent another
9 person for compensation if the ethics commission determines the
10 representation will not involve improper influences.

11 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
12 who knowingly has or has been notified of a conflict of interest shall
13 immediately

14 (1) resign the position;

15 (2) divest the interest that has resulted in the conflict
16 or potential conflict; or

17 (3) disclose the conflict of interest in the journal of the
18 appropriate body or if the legislature is not in session to the com-
19 mission which shall maintain a public record of the disclosure and
20 forward the disclosure to the respective house for inclusion in the
21 journal for the first day of the session.

22 Sec. 24.60.120. RETALIATION. Retaliation for filing an ethics
23 complaint with or for providing truthful testimony to the commission
24 or to a publicly constituted investigatory body constitutes a viola-
25 tion of legislative ethics.

26 Sec. 24.60.130. EMPLOYMENT OF FORMER MEMBERS AND EMPLOYEES. A
27 former member of the legislature to the extent not prohibited by art.
28 II, sec. 5 of the Constitution of the State of Alaska and a former
29 employee of the legislature may accept employment with an agency of

1 the state or with a municipality of the state and may engage in lobby-
2 ing on the termination of service as a member of the legislature or as
3 a person employed by the legislature. A former member of the legis-
4 lature and a former employee of the legislature may not use confi-
5 dential information obtained from the earlier service except for the
6 benefit of the state.

7 Sec. 24.60.140. STATE PROPERTY AND FUNDS. A person to whom this
8 chapter applies may not use state property or funds for private gain.

9 Sec. 24.60.150. LEGISLATIVE ETHICS COMMISSION. (a) There is
10 established within the legislative branch of the state government the
11 Legislative Ethics Commission.

12 (b) The commission consists of seven members appointed as fol-
13 lows:

14 (1) one member of the senate appointed by the president of
15 the senate with the concurrence by roll call vote of three-fourths of
16 the full membership of the senate;

17 (2) one member of the house appointed by the speaker of the
18 house with the concurrence by roll call vote of three-fourths of the
19 full membership of the house;

20 (3) the president of the senate shall appoint to the com-
21 mission two public members who are citizens of the United States and
22 residents of the state with the concurrence by roll call vote of two-
23 thirds of the full membership of the senate;

24 (4) the speaker of the house of representatives shall
25 appoint to the commission two public members who are citizens of the
26 United States and residents of the state with the concurrence by roll
27 call vote of two-thirds of the full membership of the house;

28 (5) one public member shall be a former legislator of the
29 state who is appointed by the other members of the commission.

1 (c) No more than four members of the commission may be members
2 of the same political party or residents of the same borough or of the
3 unorganized borough.

4 (d) The members of the commission shall elect a chair and vice-
5 chair and may elect other officers. Those members of the commission
6 who are members of the legislature may not serve as chair or vice-
7 chair.

8 (e) The term of office of a public member of the commission is
9 three years from February 1 of the year of appointment and until a
10 successor is appointed and qualifies. A legislator appointed to the
11 commission may not serve beyond the expiration of the legislative term
12 of office. The public members first appointed by each presiding
13 officer have terms of two years and three years as designated by the
14 presiding officer.

15 (f) A public member of the commission may not

16 (1) hold or seek elective office;

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

19 (3) lobby.

20 (g) A vacancy on the commission shall be filled under (b) of
21 this section for the balance of the term.

22 (h) The commission may contract for professional services and
23 may employ staff as it considers necessary. A member of the commis-
24 sion may not serve on the staff of the commission.

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

1 the commission if the legislator is receiving travel expenses and per
2 diem as a legislator.

3 Sec. 24.60.160. DUTIES OF THE COMMISSION. The commission may

4 (1) recommend legislation to the legislature that the
5 commission considers desirable or necessary to promote and maintain
6 high standards of ethical conduct in government;

7 (2) may subpoena witnesses with the concurrence of the
8 president of the senate, the speaker of the house, or of the house or
9 senate, may administer oaths, and take testimony relating to matters
10 before the commission, and may, with the concurrence of the president
11 of the senate, the speaker of the house, or of the house or senate,
12 require the production for examination of any books or papers relating
13 to any matter under investigation before the commission; and shall

14 (3) adopt procedures to facilitate the receipt of inquiries
15 and prompt rendition of its opinions and procedural rules to protect
16 the rights of any persons who may be involved or affected by actions
17 of the commission; which prescribe the procedure of the commission and
18 the types of evidence the commission will receive;

19 (4) publish semi-annual summaries of decisions, advisory
20 opinions and informal advisory opinions, with sufficient deletions in
21 the summaries to prevent disclosing the identity of the persons in-
22 volved in decisions or opinions that have remained confidential.

23 Sec. 24.60.170. ADVISORY OPINIONS. The commission shall issue
24 an advisory opinion on the written request of a person to whom the
25 chapter applies as to whether the facts and circumstances of a partic-
26 ular case constitute a violation of ethical standards. If an advisory
27 opinion is not issued within 30 days after the request is filed with
28 the commission, the facts and circumstances of the particular case do
29 not constitute a violation of the ethical standards. The commission

1 may extend this period for a period of 30 days by vote of five members
2 of the commission if additional time is necessary to complete the
3 opinion, with written notice to the person who requested the opinion.
4 The opinion issued is binding on the commission and in any subsequent
5 proceedings under this chapter concerning the facts and circumstances
6 of the particular case unless material facts were omitted or misstated
7 in the request for the advisory opinion. Except as provided in this
8 chapter an advisory opinion is confidential but may be made public at
9 the written request of the person who requested the opinion.

10 Sec. 24.60.180. COMPLAINTS. (a) The commission may initiate,
11 receive and consider complaints alleging a violation of this chapter.

12 (b) Before the commission may exercise power authorized in (c)
13 of this section, the commission shall by resolution, supported by a
14 majority vote of the full membership of the commission, define the
15 nature and scope of the inquiry.

16 (c) The commission may investigate a violation of this chapter
17 in a proceeding begun within four years after the alleged violation
18 occurs and within one year after termination of state service. Noth-
19 ing in this subsection bars proceedings against a person who by fraud
20 prevents discovery of a violation of this chapter. A proceeding is
21 commenced by the filing of a complaint with the commission. No com-
22 plaint, other than a complaint initiated by five or more members of
23 the commission may be received within a period of 60 days preceding a
24 state primary or general election.

25 (d) A complaint shall be in writing and signed under oath by the
26 person making the complaint. A complaint may also be initiated by
27 three or more members of the commission. The commission shall notify
28 in writing each person against whom a complaint is received and afford
29 the person an opportunity to explain the conduct alleged to be a

1 violation of this chapter. If the commission determines that a com-
2 plaint does not contain allegations of facts sufficient, if the al-
3 leged facts are treated as true, to constitute a violation of this
4 chapter the commission may summarily dismiss the complaint.

5 (e) The commission shall investigate the charges filed under
6 this section and issue an advisory opinion to the person alleged to
7 have violated a provision of this chapter. The commission shall
8 investigate all complaints on a confidential basis. If the advisory
9 opinion indicates a probable violation, the person against whom the
10 complaint was made may request a formal opinion or comply with the
11 advisory opinion. If the person fails to comply with the advisory
12 opinion or if a majority of the members of the commission determine
13 that there is probable cause for belief that a violation of this
14 chapter has occurred, the commission shall file a complaint against
15 the person charged with a violation of this chapter and the complaint
16 and statement of the alleged violation shall be personally served on
17 the person charged. The alleged violator has 20 days after service of
18 the complaint and statement to respond in writing to the commission.

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

1 and substantial evidence. Testimony taken at the hearing shall be re-
2 corded and evidence shall be maintained. The testimony and evidence
3 is available only to the commission and its staff and to the person
4 charged with a violation of this chapter. If the person charged with
5 the violation of a provision of this chapter requests a copy of the
6 transcript of testimony, the copy shall be furnished by the commission
7 without charge.

8 (g) A decision of the commission shall be in writing and signed
9 by four or more members of the commission. Each decision of the
10 commission must be accompanied by a written order of the commission
11 determining that a violation of this chapter exists or does not exist.
12 The order is confined to this determination. This order is a public
13 record.

14 (h) If the commission issues a decision finding that a member of
15 the legislature has violated a provision of this chapter or that a
16 legislator has declined or failed to cooperate with the commission, it
17 shall refer the decision to the presiding officers of the legislature.
18 The decision shall contain a statement of the facts determined to
19 constitute the violation or the failure to cooperate and may contain
20 recommendations concerning any penalties the legislature may lawfully
21 impose including imposition of civil penalties in an amount not to
22 exceed \$25,000, required divesture of the interest, repaying profits,
23 censure, removal from committee assignments, termination of legisla-
24 tive privileges, or expulsion. The commission shall make the decision
25 public 30 days after the referral. Days during which the legislature
26 is not in session may not be counted in determining the 30-day period.
27 The legislature shall act on the decision as it considers appropriate.

28 (i) If four members of the commission agree to a decision that a
29 former member of the legislature or an employee or a former employee

1 of a legislator or of an agency of the legislature has violated a
2 provision of this chapter, the commission shall issue a public state-
3 ment of its decision 30 days after the date of the decision. The
4 legislature shall act on the decision as it considers appropriate. In
5 the case of an employee the action may include suspension, demotion,
6 or dismissal. The employee is entitled to a hearing before final
7 action is taken.

8 (j) A commission member or member of the commission staff who
9 divulges information concerning a charge before the filing of a com-
10 plaint by the commission, except as permitted by this chapter, is
11 guilty of a class A misdemeanor.

12 Sec. 24.60.190. DEFINITION. In this chapter, "commission" means
13 the Legislative Ethics Commission.

14 * Sec. 2. Section 24.60.150 and sec. 24.60.160 enacted in sec. 1 of
15 this Act take effect immediately in accordance with AS 01.10.070(c).