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Referred: Rules

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1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 257 (Judiciary)
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 Select Committee on Legislative Ethics; and providing
9 for an 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 Select Committee on Legislative Ethics
24 to consider alleged violations of this chapter and to render advisory
25 opinions 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 committee may with approval of the legislature establish
21 additional policies that limit the extent to which persons to whom
22 this chapter applies may accept the benefits set out in (e) of this
23 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 committee 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 committee.

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 committee 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
29 appropriate body or if the legislature is not in session to the

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

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

10 (2) legislators;

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

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

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

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

1 authority. In this subsection, "an individual who is related to"
2 means a child, adopted child, stepchild, husband, wife, mother,
3 father, sister, brother, or a member of the same household.

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

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

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

19 (1) resign the conflicting position;

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

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

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

1 Sec. 24.60.130. SELECT COMMITTEE ON LEGISLATIVE ETHICS. (a)
2 There is established within the legislative branch of state government
3 the Select Committee on Legislative Ethics.

4 (b) The committee consists of six members, in two subcommittees,
5 as follows:

6 (1) the senate subcommittee consists of three members of
7 the senate, appointed by the president of the senate with the concur-
8 rence by roll call vote of three-fourths of the full membership of the
9 senate; and

10 (2) the house subcommittee consists of three members of the
11 house, appointed by the speaker of the house with the concurrence by
12 roll call vote of three-fourths of the full membership of the house.

13 (c) No more than two members of each subcommittee may be members
14 of the same political party.

15 (d) The members of each subcommittee shall elect a chair, who
16 shall co-chair meetings when the committee meets in full.

17 (e) A vacancy on the committee shall be filled under (b) of this
18 section.

19 (f) The committee or a subcommittee may contract for profes-
20 sional services and may employ staff as it considers necessary.

21 Sec. 24.60.140. AUTHORITY OF THE COMMITTEE. (a) The senate
22 subcommittee has authority over proceedings concerning conduct by a
23 member or former member of the senate or a person employed by a member
24 or a committee of the senate.

25 (b) The house subcommittee has authority over proceedings con-
26 cerning the conduct by a member or former member of the house or a
27 person employed by a member or a committee of the house.

28 (c) The full committee has authority

29 (1) over proceedings concerning the conduct by an employee

1 of an agency of the legislature;

2 (2) to review any matter arising under this chapter that
3 would result in action being required by both houses of the legisla-
4 ture; and

5 (3) to issue advisory opinions under AS 24.60.150.

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

20 Sec. 24.60.160. PROCEEDINGS BEFORE THE COMMITTEE. (a) The
21 committee may initiate, receive and consider complaints alleging a
22 violation of this chapter.

23 (b) The committee may investigate a violation of this chapter in
24 a proceeding begun within four years after the alleged violation
25 occurs and within one year after termination of state service. Noth-
26 ing in this subsection bars proceedings against a person who inten-
27 tionally prevents discovery of a violation of this chapter.

28 (c) Before the committee may exercise power authorized in this
29 section, the committee shall by resolution supported by a majority

1 vote of the full membership of the committee, define the nature and
2 scope of the inquiry. The committee shall investigate all complaints
3 on a confidential basis.

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

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

23 (f) The committee shall investigate the charges filed under this
24 section and issue an advisory opinion to the person alleged to have
25 violated a provision of this chapter.

26 (g) If the committee determines that a probable violation exists
27 that may be corrected by action of the person and that does not war-
28 rant sanctions other than correction, the advisory opinion shall
29 recommend corrective action. The person against whom the complaint

1 was made may comply with the opinion or may request a hearing before
2 the committee. After the hearing the committee may amend or affirm
3 the advisory opinion.

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

12 (i) The committee may set a time and place for a hearing before
13 the committee with notice to the complainant, if any, and to the
14 person charged with a violation of this chapter. A representative of
15 the committee and the person charged with a violation of this chapter
16 shall have an opportunity to be heard, to subpoena witnesses and
17 require the production of books or papers relating to the proceedings,
18 to be represented by counsel, and to have the right of cross-examina-
19 tion. Each witness shall testify under oath. Hearings are closed to
20 the public unless the person charged with a violation of this chapter
21 requests an open hearing. The committee is not bound by the rules of
22 evidence but the committee's findings must be based upon competent and
23 substantial evidence. Testimony taken at the hearing shall be re-
24 corded and evidence shall be maintained. The testimony and evidence
25 are available only to the committee and its staff and to the person
26 charged with a violation of this chapter. If the person charged with
27 the violation of a provision of this chapter requests a copy of the
28 transcript of testimony, the copy shall be furnished by the committee
29 without charge.

1 (j) A decision of the committee shall be in writing and signed
2 by the majority of the members of the committee. Each decision of the
3 committee must be accompanied by a written order of the committee de-
4 termining that a violation of this chapter exists or does not exist.
5 The order is confined to this determination. This order is a public
6 record.

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

18 (l) If the majority of the members of the committee agree to a
19 decision that a former member of the legislature or an employee or a
20 former employee of a legislator or of an agency of the legislature has
21 violated a provision of this chapter, the committee shall issue a
22 public statement of its decision 30 days after the date of the deci-
23 sion. The legislature shall act on the decision as it considers
24 appropriate. In the case of an employee the action may include sus-
25 pension, demotion, or dismissal. The employee is entitled to a hear-
26 ing before final action is taken.

27 (m) A committee member or member of the committee staff who
28 divulges information concerning a proceeding, except as permitted by
29 this chapter, is guilty of a class A misdemeanor.

1 Sec. 24.60.170. COOPERATION BY STATE AGENCIES. Each agency of
2 the executive branch of state government shall, to the extent permit-
3 ted by state or federal law, cooperate fully with the committee or a
4 subcommittee by providing information and assistance, including dis-
5 closure of financial material and other records relating to a poten-
6 tial violation of this chapter.

7 Sec. 24.60.180. DEFINITIONS. In this chapter,

8 (1) "committee" means the Select Committee on Legislative
9 Ethics or where appropriate, the applicable subcommittee;

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

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