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Referred: Rules

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1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 HOUSE CS FOR 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 and to a permanent or temporary employee of  
28 an agency of the legislature. This chapter does not apply to

29 (1) a former member of the legislature or to a person

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

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

6 (3) a person employed by the legislature or an employee of  
7 an agency of the legislature whose compensation is below Step A, Range  
8 18 of the state salary schedule established in AS 39.27.011(a).

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

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

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

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

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

26 (2) the person's authority is relatively far removed from  
27 any official action that could reasonably be affected by the potential  
28 conflict of interest, provided that no attempt has been made to remove  
29 the appearance of impropriety by delegating responsibility for

1 official action.

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

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

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

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

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

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

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

18 (f) The committee may with approval of the legislature establish  
19 additional policies that limit the extent to which persons to whom  
20 this chapter applies may accept the benefits set out in (e) of this  
21 section.

22 (g) It is a conflict of interest for a member of the legislature  
23 to accept money from an event held within the City and Borough of  
24 Juneau during the session if a substantial purpose of the event is to  
25 raise money on behalf of the member for state legislative campaign  
26 purposes or for other state legislative political purposes.

27 Sec. 24.60.040. CONTRACTS OR LEASES. (a) A person to whom this  
28 chapter applies may not be a party to or have an interest in a state  
29 contract or lease unless the contract or lease is let under

1 AS 37.05.230 or the total annual amount of the state contract or lease  
2 is \$1,000 or less. A person has an interest in a state contract or  
3 lease under this section if the person receives direct or indirect  
4 financial benefits.

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

10 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of  
11 interest for a person to whom this chapter applies to participate in a  
12 state program or to receive a loan from the state if the program or  
13 loan is generally available to members of the public, is subject to  
14 fixed eligibility standards, and minimal discretion is exercised in  
15 determining qualification. The committee shall issue a list of those  
16 state programs and loans from the state that it considers to meet the  
17 standards of this paragraph within 30 days after the effective date of  
18 this Act. It shall annually issue a revised list.

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

25 (c) Upon application for a state loan by a person to whom this  
26 chapter applies, other than loans described in (a) of this section,  
27 the person shall send a notice of the application to the Alaska Public  
28 Offices Commission, which will incorporate the notice into the appli-  
29 cant's financial disclosure statement, if the applicant is required to

1 file a disclosure statement or if the applicant is not required to  
2 file a disclosure statement will place the notice in a legislative  
3 employee loan file that is open to the public.

4 (d) Each February 1, each lending agency that receives more than  
5 50 percent of its funding from state funds must deliver a listing of  
6 all outstanding loans to persons to whom this chapter applies, except  
7 for loans described in (a) of this section, to the presiding officer  
8 of each house. The list must include the name of the person, the date  
9 of issuance and current status of the loan. The list shall be pub-  
10 lished in the supplemental journal.

11 (e) The division of legislative audit shall annually review  
12 state loans granted to or held by persons to whom this chapter applies  
13 to determine whether loan conditions imposed by the lending agency are  
14 being enforced. The division shall report its findings to the commit-  
15 tee by April 1.

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

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

25 Sec. 24.60.070. GIFTS. (a) A person to whom this chapter  
26 applies may not solicit a gift in any amount, or accept or receive,  
27 directly or indirectly, a gift in excess of \$100, whether in the form  
28 of money, services, a loan, travel, entertainment, hospitality, or  
29 other form, under circumstances in which it may reasonably be inferred

1 that the gift is intended to influence the person in the performance  
2 of the duties of the person or is intended as a reward for an official  
3 action by the person.

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

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

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

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

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

15 Sec. 24.60.080. NEPOTISM OR COMMON LAW STATUS. (a) An  
16 individual who is related to a member of the legislature or living  
17 within common law status or marriage arrangement or sexual partners  
18 may not be employed in the house in which the legislator is a member,  
19 by an agency of the legislature established under AS 24.20, or in the  
20 other house during the interim between sessions. An individual who is  
21 related to an employee of the legislature may not be employed in a  
22 position over which the employee has supervisory authority. In this  
23 subsection, "an individual who is related to" means a child, adopted  
24 child, stepchild, husband, wife, mother, father, sister, brother, or a  
25 member of the same household.

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

29 Sec. 24.60.090. REPRESENTATION BY LEGISLATORS. (a) Except as

1 provided in this section, a member of the legislature or a person  
2 employed by an agency of the legislature established under AS 24.20  
3 may not represent another person for compensation before an agency,  
4 board, or commission of the state.

5 (b) A member of the legislature may represent a client in  
6 (1) an action before a court of the state; or  
7 (2) a matter that was pending at the time a person to whom  
8 this chapter applies assumes office or is employed.

9 Sec. 24.60.100. ACTION ON A CONFLICT OF INTEREST. A legislator  
10 who knowingly has a conflict of interest or has been notified of a  
11 conflict of interest shall immediately

12 (1) resign the conflicting position;  
13 (2) divest the interest that has resulted in the conflict  
14 or potential conflict; or

15 (3) disclose the conflict of interest in the journal of the  
16 appropriate body or if the legislature is not in session to the com-  
17 mittee; the Rules Committee of each house shall maintain a record open  
18 to the public of the disclosure and forward the disclosure to the  
19 respective house for inclusion in the journal for the first day of the  
20 session.

21 Sec. 24.60.110. STATE PROPERTY AND FUNDS. A person to whom this  
22 chapter applies may not use state property except property under lease  
23 from the state or funds for private gain.

24 Sec. 24.60.120. SELECT COMMITTEE ON LEGISLATIVE ETHICS. (a)  
25 There is established within the legislative branch of state government  
26 the Select Committee on Legislative Ethics.

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

29 (1) the senate subcommittee consists of three members of

1 the senate, appointed by the president of the senate with the concur-  
2 rence by roll call vote of three-fourths of the full membership of the  
3 senate; and

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

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

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

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

13 (f) The committee or a subcommittee may contract for profes-  
14 sional services and may employ staff as it considers necessary to  
15 investigate a complaint and to recommend action by the legislature.  
16 The authority of the committee or subcommittee to contract for profes-  
17 sional services or to employ staff is expressly limited to those times  
18 it is actively addressing a complaint.

19 Sec. 24.60.130. AUTHORITY OF THE COMMITTEE. (a) The senate  
20 subcommittee has authority over proceedings concerning conduct by a  
21 member or former member of the senate or a person employed by a member  
22 or a committee of the senate.

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

26 (c) The full committee has authority

27 (1) over proceedings concerning the conduct by an employee  
28 of an agency of the legislature;

29 (2) to review any matter arising under this chapter that

1 would result in action being required by both houses of the legisla-  
2 ture; and

3 (3) to issue advisory opinions under AS 24.60.140.

4 Sec. 24.60.140. ADVISORY OPINIONS. The committee shall issue an  
5 advisory opinion within 30 days on the request of a person to whom the  
6 chapter applies as to whether the facts and circumstances of a partic-  
7 ular case constitute a violation of ethical standards. The opinion  
8 issued or considered issued is binding on the committee in any subse-  
9 quent proceedings concerning the facts and circumstances of the par-  
10 ticular case unless material facts were omitted or misstated in the  
11 request for the advisory opinion. Except as provided in this chapter  
12 an advisory opinion is confidential but may be made public if a writ-  
13 ten request by the person who requested the opinion is filed with the  
14 committee.

15 Sec. 24.60.150. PROCEEDINGS BEFORE THE COMMITTEE. (a) The  
16 committee may initiate, receive and consider complaints alleging a  
17 violation of this chapter.

18 (b) The committee may investigate a violation of this chapter in  
19 a proceeding begun within one year after the alleged violation occurs  
20 and within one year after termination of state service. Nothing in  
21 this subsection bars proceedings against a person who intentionally  
22 prevents discovery of a violation of this chapter.

23 (c) Before the committee may exercise power authorized in this  
24 section, the committee shall by resolution supported by a majority  
25 vote of the full membership of the committee, define the nature and  
26 scope of the inquiry. The committee shall investigate all complaints  
27 on a confidential basis.

28 (d) A proceeding is commenced by the filing of a complaint with  
29 the committee. A complaint may be initiated by any person. A

1 complaint shall be in writing and signed under oath by the person  
2 making the complaint. No complaint, other than a complaint initiated  
3 by a majority of the members of the committee, may be received within  
4 a period of 60 days preceding a state primary or general election.

5 (e) The committee shall notify in writing each person against  
6 whom a complaint is received and afford the person an opportunity to  
7 explain the conduct alleged to be a violation of this chapter. If the  
8 committee determines that a complaint does not contain allegations of  
9 facts sufficient, if the alleged facts are treated as true, to consti-  
10 tute a violation of this chapter, the committee may summarily dismiss  
11 the complaint.

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

15 (g) If the committee determines that a probable violation exists  
16 that may be corrected by action of the person and that does not war-  
17 rant sanctions other than correction, the advisory opinion shall  
18 recommend corrective action. The person against whom the complaint  
19 was made may comply with the opinion or may request a hearing before  
20 the committee. After the hearing the committee may amend or affirm  
21 the advisory opinion.

22 (h) If the person fails to comply with the advisory opinion or  
23 if a majority of the members of the committee determine that there is  
24 probable cause for belief that a violation of this chapter that may  
25 not be corrected under (g) of this section has occurred, the committee  
26 shall formally charge the person. The charge and statement of the  
27 alleged violation shall be personally served on the person charged.  
28 The alleged violator has 20 days after service of the charge and  
29 statement to respond in writing to the committee.

1           (i) The committee may set a time and place for a hearing before  
2 the committee with a minimum of 10 days' notice to the complainant, if  
3 any, and to the person charged with a violation of this chapter. A  
4 representative of the committee and the person charged with a vio-  
5 lation of this chapter shall have an opportunity to be heard, to  
6 subpoena witnesses and require the production of books or papers  
7 relating to the proceedings, to be represented by counsel, and to have  
8 the right of cross-examination. Each witness shall testify under  
9 oath. Hearings are closed to the public unless the person charged  
10 with a violation of this chapter requests an open hearing. The com-  
11 mittee is not bound by the rules of evidence but the committee's  
12 findings must be based upon competent and substantial evidence.  
13 Testimony taken at the hearing shall be recorded and evidence shall be  
14 maintained. The testimony and evidence are available only to the  
15 committee and its staff and to the person charged with a violation of  
16 this chapter. If the person charged with the violation of a provision  
17 of this chapter requests a copy of the transcript of testimony, the  
18 copy shall be furnished by the committee without charge.

19           (j) A decision of the committee shall be in writing and signed  
20 by the majority of the members of the committee. Each decision of the  
21 committee must be accompanied by a written order of the committee de-  
22 termining that a violation of this chapter exists or does not exist.  
23 The order is confined to this determination. This order is a public  
24 record.

25           (k) If the committee issues a decision finding that a member of  
26 the legislature has violated a provision of this chapter or that a  
27 legislator has declined or failed to cooperate with the committee, it  
28 shall refer the decision to the presiding officers of the legislature.  
29 The decision shall contain a statement of the facts determined to

1 constitute the violation or the failure to cooperate and may contain  
2 recommendations concerning any penalties the legislature may lawfully  
3 impose. The committee shall make the decision public 30 days after  
4 the referral. The legislature shall act on the decision as it con-  
5 siders appropriate.

6 (l) If the majority of the members of the committee agree to a  
7 decision that a former member of the legislature or an employee or a  
8 former employee of a legislator or of an agency of the legislature has  
9 violated a provision of this chapter, the committee shall issue a  
10 public statement of its decision 30 days after the date of the deci-  
11 sion. The legislature shall act on the decision as it considers  
12 appropriate. In the case of an employee the action may include sus-  
13 pension, demotion, or dismissal. The employee is entitled to a hear-  
14 ing before final action is taken.

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

18 Sec. 24.60.160. COOPERATION BY STATE AGENCIES. Each agency of  
19 the executive branch of state government shall, to the extent permit-  
20 ted by state or federal law, cooperate fully with the committee or a  
21 subcommittee by providing information and assistance, including dis-  
22 closure of financial material and other records relating to a poten-  
23 tial violation of this chapter.

24 Sec. 24.60.170. DEFINITION. In this chapter, "committee" means  
25 the Select Committee on Legislative Ethics or where appropriate, the  
26 applicable subcommittee.

27 \* Sec. 2. AS 11.56 is amended by adding a new section to read:

28 Sec. 11.56.205. FALSE ACCUSATION. (a) A person commits the  
29 crime of false accusation if the person knowingly or intentionally

1        initiates a false complaint with the Select Committee on Legislative  
2        Ethics established in AS 24.60.

3                (b) False accusation is a class C felony.

4        \* Sec. 3. Nothing in this Act applies to conduct which occurred before  
5        the effective date of the Act and the committee established by this Act has  
6        no jurisdiction over any alleged violation which occurred before the effec-  
7        tive date of this Act.

8        \* Sec. 4. Section 24.60.120 and sec. 24.60.130 enacted in sec. 1 of  
9        this Act take effect immediately in accordance with AS 01.10.070(c).