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1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 257 (Judiciary) am H

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 except for AS 24.60.080. This chapter
29 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 the legislature or an employee of
8 an agency of the legislature whose compensation is below Step A, Range
9 18 of the state salary schedule established in AS 39.27.011(a).

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

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

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

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

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

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

1 the appearance of impropriety by delegating responsibility for offi-
2 cial action.

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

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

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

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

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

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

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

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

24 Sec. 24.60.040. CONTRACTS OR LEASES. (a) A person to whom this
25 chapter applies may not be a party to or have an interest in a state
26 contract or lease unless the contract or lease is let under AS 37.-
27 05.230 or the total annual amount of the state contract or lease is
28 \$1,000 or less. A person has an interest in a state contract or lease
29 under this section if the person receives direct or indirect financial

1 benefits.

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

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

16 (b) In determining whether a conflict of interest exists with
17 respect to a state program or to a state loan other than those de-
18 scribed in (a) of this section, because a person to whom this chapter
19 applies may be in a position to influence the loan agency, the commit-
20 tee must consider, but is not limited to, the adequacy of existing
21 administrative procedures for granting and reviewing loans to persons
22 to whom this chapter applies.

23 (c) Upon application for a state loan by a person to whom this
24 chapter applies, other than loans described in (a) of this section,
25 the person shall send a notice of the application to the Alaska Public
26 Offices Commission, which will incorporate the notice into the appli-
27 cant's financial disclosure statement, if the applicant is required to
28 file a disclosure statement or if the applicant is not required to
29 file a disclosure statement will place the notice in a legislative

1 employee loan file that is open to the public.

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

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

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

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

22 Sec. 24.60.070. GIFTS. (a) A person to whom this chapter
23 applies may not solicit a gift in any amount, or accept or receive,
24 directly or indirectly, a gift in excess of \$100, whether in the form
25 of money, services, a loan, travel, entertainment, hospitality, or
26 other form, under circumstances in which it may reasonably be inferred
27 that the gift is intended to influence the person in the performance
28 of the duties of the person or is intended as a reward for an official
29 action by the person.

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

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

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

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

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

12 Sec. 24.60.080. NEPOTISM. (a) An individual who is related to
13 a member of the legislature may not be employed in the house in which
14 the legislator is a member, by an agency of the legislature estab-
15 lished under AS 24.20, or in the other house during the interim be-
16 tween sessions. An individual who is related to an employee of the
17 legislature may not be employed in a position over which the employee
18 has supervisory authority. In this subsection, "an individual who is
19 related to" means a child, adopted child, stepchild, husband, wife,
20 mother, father, sister, brother, or a member of the same household.

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

24 Sec. 24.60.090. REPRESENTATION BY LEGISLATORS. (a) Except as
25 provided in this section, a member of the legislature or a person
26 employed by an agency of the legislature established under AS 24.20
27 may not represent another person for compensation before an agency,
28 board, or commission of the state.

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

- 1 (1) an action before a court of the state; or
2 (2) a matter that was pending at the time a person to whom
3 this chapter applies assumes office or is employed.

4 Sec. 24.60.100. ACTION ON A CONFLICT OF INTEREST. A legislator
5 who knowingly has a conflict of interest or has been notified of a
6 conflict of interest shall immediately

- 7 (1) resign the conflicting position;
8 (2) divest the interest that has resulted in the conflict
9 or potential conflict; or

10 (3) disclose the conflict of interest in the journal of the
11 appropriate body or if the legislature is not in session to the com-
12 mittee; the committee shall maintain a public record of the disclo-
13 sure and forward the disclosure to the respective house for inclusion
14 in the journal for the first day of the session.

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

18 Sec. 24.60.120. SELECT COMMITTEE ON LEGISLATIVE ETHICS. (a)
19 There is established within the legislative branch of the state gov-
20 ernment the Select Committee on Legislative Ethics.

21 (b) The committee consists of seven members appointed as fol-
22 lows:

23 (1) the president of the senate shall appoint one member to
24 the committee from the senate with the concurrence by roll call vote
25 of three-fourths of the full membership of the senate;

26 (2) the speaker of the house of representatives shall
27 appoint one member to the committee from the house of representatives
28 with the concurrence by roll call vote of three-fourths of the full
29 membership of the house;

1 (3) the president of the senate shall appoint to the com-
2 mittee two persons who are citizens of the United States and residents
3 of the state with the concurrence by roll call vote of two-thirds of
4 the full membership of the senate;

5 (4) the speaker of the house of representatives shall
6 appoint to the committee two persons who are citizens of the United
7 States and residents of the state with the concurrence by roll call
8 vote of two-thirds of the full membership of the house;

9 (5) one member of the committee shall be a former legisla-
10 tor of the state who is appointed by the other members of the commit-
11 tee.

12 (c) No more than four members of the committee may be members of
13 the same political party or residents of the same borough or of the
14 unorganized borough.

15 (d) The members of the committee shall elect a chair and
16 vice-chair and may elect other officers. Those members of the commit-
17 tee who are members of the legislature may not serve as chair or
18 vice-chair.

19 (e) The term of office of a public member of the committee is
20 four years from February 1 of the year of appointment and until a
21 successor is appointed and qualifies. A legislator appointed to the
22 committee may not serve beyond the expiration of the legislative term
23 of office. A committee member may not serve more than one full term.

24 (f) A member of the committee may not

25 (1) hold or seek elective office;

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

28 (3) lobby.

29 (g) The provisions of (f) of this section do not apply to the

1 members of the committee appointed under (b)(1) and (2) of this sec-
2 tion.

3 (h) A vacancy on the committee shall be filled under (b) of this
4 section for the balance of the term.

5 (i) The committee may contract for professional services and may
6 employ staff as it considers necessary. A member of the committee may
7 not serve on the staff of the committee.

8 (j) A member of the committee receives no compensation for
9 service on the committee. Members of the committee are entitled to
10 travel expenses and per diem authorized by law for members of boards
11 and commissions under AS 39.20.180, but a member of the committee who
12 is a legislator is not entitled to travel expenses and per diem from
13 the committee if the legislator is receiving travel expenses and per
14 diem as a legislator.

15 Sec. 24.60.125. ELECTRONIC RECORDING. A person to whom this
16 chapter applies may not electronically record a communication by a
17 public official without the knowledge of the public official unless
18 the recording is of a public meeting that is normally recorded.

19 Sec. 24.60.130. DUTIES OF THE COMMITTEE. The committee shall

20 (1) adopt regulations to facilitate the receipt of in-
21 quiries and prompt rendition of its opinions;

22 (2) recommend legislation to the legislature the committee
23 considers desirable or necessary to promote and maintain high stand-
24 ards of ethical conduct in government;

25 (3) subpoena witnesses, administer oaths, and take tes-
26 timony relating to matters before the committee, and may require the
27 production for examination of any books or papers relating to any
28 matter under investigation before the committee;

29 (4) publish semi-annual summaries of decisions, advisory

1 opinions and informal advisory opinions, with sufficient deletions in
2 the summaries to prevent disclosing the identity of the persons in-
3 volved in the decisions or opinions which have remained confidential.

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 (1) 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 by
21 providing information and assistance, including disclosure of finan-
22 cial material and other records relating to a potential violation of
23 this chapter.

24 Sec. 24.60.170. DEFINITION. In this chapter, "'committee' means
25 the Select Committee on Legislative Ethics".

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

27 Sec. 11.56.205. FALSE ACCUSATION. (a) A person commits the
28 crime of false accusation if the person knowingly or intentionally
29 initiates a false complaint with the Select Committee on Legislative

1 Ethics established in AS 24.60.

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

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

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