

Original sponsor(s): Rules/Legislative Ethics

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 451 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act relating to conduct of legislators, legis-
7 lative employees, former legislators and legislative
8 employees, and to the Select Committee on Legislative
9 Ethics."

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

11 * Section 1. AS 24.45.121 is amended by adding a new subsection to
12 read:

13 (c) A former member of the legislature may not engage in
14 activity as a lobbyist before the legislature for a period of one year
15 after the former member has left the legislature.

16 * Sec. 2. AS 24.60.020(a) is amended to read:

17 (a) Except as otherwise provided in this subsection, this chap-
18 ter applies to a member of the legislature and to a person employed by
19 the legislative branch of government. This chapter does not apply to

20 (1) a former member of the legislature or to a person
21 formerly employed by the legislative branch of government unless the
22 provision specifically states that it [SO] applies;

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

25 (3) a person employed by the legislative branch of govern-
26 ment whose position is established below Range 15 [18] of the state
27 salary schedule established in AS 39.27.011(a).

28 * Sec. 3. AS 24.60.030 is repealed and reenacted to read:

29 Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom

1 this chapter applies may not have a conflict of interest. A person
2 has a conflict of interest when the person

3 (1) uses public office for private advancement or gain;

4 (2) takes or withholds official action or exerts official
5 influence that could substantially benefit or harm a financial matter
6 in which the person has a direct or indirect private interest;

7 (3) solicits or accepts a benefit beyond that which may
8 accrue uniformly to members of the profession, occupation, or group to
9 which the person belongs, or to the public at large;

10 (4) wilfully discloses, or knowingly uses, for personal
11 gain or the gain of another, information that by law is not available
12 to the public and that the person acquired in the course of official
13 duties;

14 (5) uses state funds or state property, except property
15 under lease from the state, for private advancement or gain; or

16 (6) knowingly uses or authorizes the use of the facilities
17 of a public office, including office space, stationery, postage,
18 office machines and equipment, vehicles, and official publications, or
19 knowingly uses or authorizes the use of state-paid employees, with the
20 intent to affect a candidate or campaign for elective office.

21 (b) Notwithstanding (a) of this section, a person covered by
22 this chapter does not have a conflict of interest if, as to a specific
23 matter, there is no substantial impropriety or appearance of improp-
24 riety because

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

26 (2) the person's authority is relatively far removed from
27 an 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 offi-

1 cial action.

2 * Sec. 4. AS 24.60 is amended by adding a new section to read:

3 Sec. 24.60.035. PROHIBITED FUND RAISING. (a) A member of the
4 legislature may not accept money from an event held within the capital
5 city during a legislative session if a substantial purpose of the
6 event is either to raise money on behalf of the member for campaign
7 purposes or to raise money for state legislative political purposes.

8 (b) Members of the legislature elected to represent the capital
9 city are exempt from the prohibitions of (a) of this section.

10 * Sec. 5. AS 24.60.080(a) is amended to read:

11 (a) A person to whom this chapter applies may not solicit,
12 accept, or receive, directly or indirectly, a gift worth \$100 or more
13 [IN ANY AMOUNT], whether in the form of money, services, a loan,
14 travel, entertainment, hospitality, promise, or other form, or gifts
15 from the same person worth less than \$100 that in a calendar year
16 aggregate to \$100 or more in value [UNDER CIRCUMSTANCES IN WHICH IT
17 COULD REASONABLY BE INFERRED THAT THE GIFT IS INTENDED TO INFLUENCE
18 THE PERFORMANCE OF OFFICIAL DUTIES, ACTIONS, OR JUDGMENT].

19 * Sec. 6. AS 24.60.080(c) is amended to read:

20 (c) Notwithstanding (a) [(b)] of this section, it is not a
21 violation of this section for a person to whom this chapter applies to
22 accept

23 (1) hospitality, other than hospitality described in (4) of
24 this subsection

25 (A) with incidental transportation at the residence of
26 a person; or

27 (B) at a social event or meal;

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

1 (3) food or foodstuffs indigenous to the state that are
2 shared generally as a cultural or social norm;

3 (4) travel and hospitality primarily for the purpose of
4 obtaining information on matters of legislative concern;

5 (5) gifts from the family of the person; or

6 (6) gifts that are not connected with the recipient's
7 legislative status.

8 * Sec. 7. AS 24.60.080(d) is amended to read:

9 (d) A person to whom this chapter applies who accepts a gift
10 under (c)(4) or (6) of this section [OF TRAVEL AND HOSPITALITY PRI-
11 MARILY FOR THE PURPOSE OF OBTAINING INFORMATION ON MATTERS OF LEGISLA-
12 TIVE CONCERN] shall disclose the gift if it has a value of \$100 or
13 more. The disclosure must include the name and occupation of the
14 person making the gift and the approximate value of the gift. Each
15 gift required to be disclosed under this subsection shall be disclosed
16 within 30 days of the receipt of the gift in the journal of the appro-
17 priate body or, if the legislature is not in session, to the commit-
18 tee. The committee shall maintain a public record of the disclosure
19 it receives and shall forward the disclosure to the appropriate house
20 for inclusion in the journal by the fifth day of the next regular
21 session.

22 * Sec. 8. AS 24.60.080 is amended by adding a new subsection to read:

23 (f) Notwithstanding (a) of this section, a person to whom this
24 chapter applies may accept a gift of property worth \$100 or more,
25 other than money, from a foreign government or from an official of a
26 foreign government if the person accepts the gift on behalf of the
27 legislature. The person shall, within 60 days of receiving the gift,
28 deliver the gift to the legislative council, which shall determine the
29 appropriate disposition of the gift.

1 * Sec. 9. AS 24.60 is amended by adding a new section to read:

2 Sec. 24.60.085. HONORARIA PROHIBITED. (a) A person to whom
3 this chapter applies may not accept a payment of money or anything of
4 value for an appearance or speech by the person, except that the
5 person may accept payment of actual and necessary travel expenses
6 incurred by the person in making the appearance or speech.

7 (b) Notwithstanding (a) of this section, a person to whom this
8 chapter applies may accept a payment for an appearance or speech if
9 the appearance or speech is not connected with the person's legisla-
10 tive status.

11 * Sec. 10. AS 24.60.090(a) is amended to read:

12 (a) A spouse or a dependent of [AN INDIVIDUAL OTHER THAN A
13 SPOUSE WHO IS RELATED TO] a member of the legislature may not be
14 employed in the house in which the legislator is a member, by an
15 agency of the legislature established under AS 24.20, or in either
16 house during the interim between sessions. A spouse or a dependent of
17 [AN INDIVIDUAL WHO IS RELATED TO] an employee of the legislature may
18 not be employed in a position over which the employee has supervisory
19 authority. In this subsection, "interim between sessions" means the
20 period beginning on the eighth day after the legislature adjourns from
21 a regular session, and ending eight days before the date that the
22 legislature shall convene under AS 24.05.090 ["AN INDIVIDUAL WHO IS
23 RELATED TO" MEANS A CHILD, STEPCHILD, HUSBAND, WIFE, MOTHER, FATHER,
24 SISTER, OR BROTHER].

25 * Sec. 11. AS 24.60.100 is amended to read:

26 Sec. 24.60.100. REPRESENTATION. (a) A person to whom this
27 chapter applies may not represent [WHO REPRESENTS] another person for
28 compensation before an agency, board, or commission of the state, or
29 before an officer or employee of an agency, board, or commission of

1 the state, where the representation is in connection with

2 (1) the purchase, sale, rental, or lease of real property,
3 goods, or services, from or to a state agency, board, or commission;

4 (2) a proceeding relating to rate making;

5 (3) the adoption or repeal of a regulation having the force
6 of law;

7 (4) the obtaining of a grant or loan from a state agency,
8 board, or commission; or

9 (5) an application for a license, certificate, or other
10 form of authorization to conduct an activity for which authorization
11 from a state agency, board, or commission is necessary.

12 (b) Notwithstanding (a) of this section, a person to whom this
13 chapter applies may represent another person for compensation before
14 an agency, board, or commission of the state when the agency, board,
15 or commission is acting in a quasi-judicial capacity and the state is
16 not a real party in interest to the proceeding.

17 (c) When representation is permitted, a person to whom this
18 chapter applies who represents another person for compensation before
19 an agency, board, or commission of the state, or before an officer or
20 employee of an agency, board, or commission, shall disclose the name
21 of the person represented, the subject matter of the representation,
22 and the body before which, or the person before whom, the representa-
23 tion is to take place in the journal of the appropriate body or if the
24 legislature is not in session to the committee. The committee shall
25 maintain a public record of the disclosure and forward the disclosure
26 to the respective house for inclusion in the journal by the fifth day
27 of the session.

28 * Sec. 12. AS 24.60 is amended by adding a new section to read:

29 Sec. 24.60.105. LEGISLATIVELY FINANCED TRAVEL. A person to whom

1 this chapter applies who is traveling on legislative business paid for
2 by legislative funds must receive approval in writing in advance of
3 the person's trip if the trip involves less than four hours of legis-
4 lative business, excluding travel time. This requirement does not
5 apply if the travel is for the purpose of attending a meeting of a
6 committee of the legislature. The approval shall be obtained from

7 (1) the speaker of the house, or the speaker's designee, if
8 the person is a member or employee of the house or an employee of a
9 member or a committee of the house;

10 (2) the president of the senate, or the president's desig-
11 nee, if the person is a member or employee of the senate, or an em-
12 ployee of a member or a committee of the senate;

13 (3) the executive director of the Legislative Affairs
14 Agency, or the director's designee, for employees of that agency;

15 (4) the director of the legislative finance division, or
16 the director's designee, for employees of that division;

17 (5) the director of the legislative audit division, or the
18 director's designee, for employees of that division;

19 (6) the director of the Legislative Research Agency, or the
20 director's designee, for employees of that agency; or

21 (7) the ombudsman, or the ombudsman's designee, for employ-
22 ees of the ombudsman's office.

23 * Sec. 13. AS 24.60.130(a) is amended to read:

24 (a) There is established as a permanent interim committee within
25 the legislative branch of state government the Select Committee on
26 Legislative Ethics.

27 * Sec. 14. AS 24.60.130(b) is amended to read:

28 (b) The committee consists of 11 [NINE] members, in two sub-
29 committees, as follows:

1 (1) the senate subcommittee consists of three members of
2 the senate, appointed by the president of the senate with the concur-
3 rence by roll call vote of two-thirds of the full membership of the
4 senate; and

5 (2) the house subcommittee consists of three members of the
6 house, appointed by the speaker of the house with the concurrence by
7 roll call vote of two-thirds of the full membership of the house; and

8 (3) five [THREE] public members who are selected by the
9 Chief Justice of the Alaska Supreme Court and who are ratified by
10 two-thirds of the full membership of the senate and two-thirds of the
11 full membership of the house, shall serve on both the full committee
12 and each subcommittee.

13 * Sec. 15. AS 24.60.130(i) is amended to read:

14 (i) A quorum of the full [A] committee established under this
15 section consists of at least three legislative members and at least
16 three public members [A MAJORITY OF THE MEMBERS OF THE COMMITTEE]. A
17 quorum of a subcommittee established under this section consists of at
18 least two legislative members and at least three public members [A
19 MAJORITY OF THE MEMBERS OF THE SUBCOMMITTEE. NOTWITHSTANDING THE
20 PROVISIONS OF THIS SUBSECTION, A COMMITTEE DOES NOT HAVE A QUORUM
21 UNLESS THREE LEGISLATIVE MEMBERS ARE PRESENT AND A SUBCOMMITTEE DOES
22 NOT HAVE A QUORUM UNLESS TWO LEGISLATIVE MEMBERS ARE PRESENT].

23 * Sec. 16. AS 24.60.130 is amended by adding a new paragraph to read:

24 (j) The committee is not subject to AS 44.62.310 - 44.62.312, to
25 the procurement provisions adopted by the legislative council under
26 AS 36.30.020, and to the Uniform Rules of the Alaska State Legislature
27 to the extent that those provisions would prevent the committee from
28 complying with the confidentiality provisions of this chapter. The
29 committee may adopt rules to implement this subsection.

1 * Sec. 17. AS 24.60.160 is amended to read:

2 Sec. 24.60.160. ADVISORY OPINIONS. The committee shall issue an
3 advisory opinion [WITHIN 30 DAYS] on the request of a person to whom
4 the chapter applies or a person elected to the legislature who at the
5 time of election is not a member of the legislature as to whether the
6 facts and circumstances of a particular case constitute a violation of
7 ethical standards. The committee shall issue the advisory opinion
8 within 30 days of receiving the request if the request is received
9 during the first 100 days of the legislative session, or within 60
10 days of the request if the request is received at any other time. The
11 [30-DAY] period for issuing an opinion may be extended by the commit-
12 tee [FOR NOT MORE THAN AN ADDITIONAL 10 DAYS] if the person requesting
13 the opinion consents. The opinion issued is binding on the committee
14 in any subsequent proceedings concerning the facts and circumstances
15 of the particular case unless material facts were omitted or misstated
16 in the request for the advisory opinion. Except as provided in this
17 chapter an advisory opinion is confidential but shall [MAY] be made
18 public if a written request by the person who requested the opinion is
19 filed with the committee.

20 * Sec. 18. AS 24.60.170 is repealed and reenacted to read:

21 Sec. 24.60.170. PROCEEDINGS BEFORE THE COMMITTEE. (a) The
22 committee shall consider a complaint alleging a violation of this
23 chapter if the alleged violation occurred within five years of the
24 date that the complaint is filed with the committee and, when the
25 subject of the complaint is a former member of the legislature, the
26 complaint is filed within one year of the subject's departure from the
27 legislature. The committee shall not consider a complaint filed
28 against a person employed by the legislative branch of government
29 after the person has terminated legislative service. The committee

1 may also initiate complaints on its own motion, subject to the same
2 time limitations. The time limitations of this subsection do not bar
3 proceedings against a person who intentionally prevents discovery of a
4 violation of this chapter.

5 (b) A complaint may be initiated by any person. The complaint
6 must be in writing and signed under oath by the person making the
7 complaint. The committee shall upon request provide a form for a
8 complaint to a person wishing to file a complaint. The committee
9 shall immediately provide a copy of the complaint to the person who is
10 the subject of the complaint.

11 (c) When the committee receives a complaint under (a) of this
12 section, it shall determine whether the allegations of the complaint,
13 if true, constitute a violation of this chapter. If the committee
14 determines that the allegations, if proven, would not give rise to a
15 violation, or if the committee's lack of jurisdiction is apparent on
16 the face of the complaint, the committee shall dismiss the complaint,
17 and shall notify the complainant and the subject of the complaint of
18 the dismissal.

19 (d) If the committee determines that some or all of the alle-
20 gations of a complaint, if proven, would constitute a violation of
21 this chapter, or if the committee has initiated a complaint, the
22 committee shall investigate the complaint, on a confidential basis.
23 Before beginning an investigation of a complaint not initiated by the
24 committee, the committee shall adopt a resolution defining the scope
25 of the investigation. A copy of this resolution shall be provided to
26 the complainant and to the subject of the complaint. As part of its
27 investigation, the committee shall afford the subject of the complaint
28 an opportunity to explain the conduct alleged to be a violation of
29 this chapter.

1 (e) If the committee determines after investigation that there
2 is not probable cause to believe that the subject of the complaint has
3 violated this chapter, the committee shall dismiss the complaint. The
4 committee may also dismiss portions of a complaint if it finds no
5 probable cause to believe that the subject of the complaint has vio-
6 lated this chapter as alleged in those portions. The committee shall
7 issue a decision explaining its dismissal. A copy of the dismissal
8 order and decision shall be sent to the complainant and to the subject
9 of the complaint. Notwithstanding (1) of this section, a dismissal
10 order and decision is open to inspection and copying by the public.

11 (f) If the committee investigation determines that a probable
12 violation of this chapter exists that may be corrected by action of
13 the subject of the complaint and that does not warrant sanctions other
14 than correction, the committee may issue an opinion recommending
15 corrective action. This opinion shall be provided to the complainant
16 and to the subject of the complaint, and is open to inspection by the
17 public. The subject of the complaint may comply with the opinion or
18 may request a hearing before the committee under (h) of this section.
19 After the hearing the committee may amend or affirm the opinion.

20 (g) If the subject of a complaint fails to comply with an opin-
21 ion issued under (f) of this section, or if the committee determines
22 after investigation that there is probable cause to believe that the
23 subject of the complaint has committed a violation of this chapter
24 that may require sanctions instead of or in addition to corrective
25 action, the committee shall formally charge the person. The charge
26 shall be served on the person charged, in a manner consistent with the
27 service of summons under the rules of civil procedure, and a copy of
28 the charge shall be sent to the complainant. The person charged may
29 file a responsive pleading to the committee admitting or denying some

1 or all of the allegations of the charge.

2 (h) If the committee has issued a formal charge under (g) of
3 this section, and if the person charged has not admitted the alle-
4 gations of the charge, the committee shall schedule a hearing on the
5 charge. The hearing shall be scheduled for a date more than 20 days
6 after service of the charge on the person charged, unless the person
7 agrees to an earlier hearing date. At the hearing, the person charged
8 shall have the right to appear personally before the committee, to
9 subpoena witnesses and require the production of books or papers
10 relating to the proceedings, to be represented by counsel, and to
11 cross-examine witnesses. A witness shall testify under oath. The
12 committee is not bound by the rules of evidence but the committee's
13 findings must be based upon clear and convincing evidence. Testimony
14 taken at the hearing shall be recorded and evidence shall be main-
15 tained.

16 (i) Following the hearing, the committee shall issue a decision
17 stating whether or not the subject of the complaint violated this
18 chapter, and explaining the reasons for the determination. The com-
19 mittee's decision may also indicate whether the subject cooperated
20 with the committee in its proceedings. If the committee finds a
21 violation, or lack of cooperation by the subject, the decision shall
22 recommend what sanctions, if any, the committee believes are appropri-
23 ate. If there has not been a hearing because the person charged
24 admitted to the allegations of the charge, the committee shall issue a
25 decision outlining the facts of the violation and containing a sanc-
26 tions recommendation.

27 (j) If the committee issues a decision finding that a member of
28 the legislature has violated a provision of this chapter or that the
29 member has failed to cooperate with the committee, it shall refer the

1 decision to the presiding officer of the house of the legislature to
2 which the member belongs. The legislature shall act on the decision
3 as it considers appropriate.

4 (k) If the committee issues a decision finding that an employee
5 of the legislative branch of government has violated a provision of
6 this chapter, or that the employee has failed to cooperate with the
7 committee, it shall refer the decision to the chair of the legislative
8 council. The legislative council shall act on the decision as it
9 considers appropriate.

10 (l) Proceedings of the committee relating to complaints before
11 it are confidential until the committee determines that there is
12 probable cause to believe that a violation of this chapter has oc-
13 curred. The complaint and all documents produced or disclosed as a
14 result of the committee investigation are confidential and not subject
15 to inspection by the public, except that the committee may transmit a
16 report of its investigation, including documents disclosed by the
17 investigation, to a law enforcement agency, including the Alaska
18 Public Offices Commission. All meetings of the committee before the
19 determination of probable cause are closed to the public. The confi-
20 dentiality provisions of this subsection may be waived by the subject
21 of the complaint.

22 (m) All documents issued by the committee after a determination
23 of probable cause to believe that the subject of a complaint has
24 violated this chapter, including an opinion recommending corrective
25 action under (f) of this section and a formal charge under (g) of this
26 section, are subject to public inspection. All hearings of the com-
27 mittee under (h) of this section are open to the public, and all
28 documents presented at a hearing, and all motions filed in connection
29 with the hearing, are subject to inspection by the public. Deliber-

1 ations of the committee following a hearing, deliberations on motions
2 filed by the subject of a charge under (g) of this section, and delib-
3 erations concerning appropriate sanctions are confidential.

4 (n) The committee shall dismiss a complaint against a person
5 employed by the legislative branch of government if the person termi-
6 nates legislative service. The committee may in its discretion
7 dismiss a complaint against a former member of the legislature whether
8 the complaint was filed before or after the former member departed
9 from the legislature.

10 (o) A committee member or member of the committee staff who
11 divulges information concerning a proceeding, except as permitted by
12 this chapter, is guilty of a class A misdemeanor.

13 * Sec. 19. AS 24.60 is amended by adding a new section to read:

14 Sec. 24.60.175. EMPLOYMENT DISCRIMINATION GRIEVANCES. (a) A
15 person employed or formerly employed by the legislative branch of
16 government may file a grievance with the committee alleging a viola-
17 tion of AS 18.80.220 by the person's employer or former employer. The
18 committee shall adopt procedures concerning the filing, the investiga-
19 tion, the mediation, and the hearing of grievances under this subsec-
20 tion. In adopting procedures, the committee shall consider regula-
21 tions of the office of equal employment opportunity adopted under
22 AS 44.19.443 and shall protect the confidentiality of grievances.

23 (b) In accordance with the procedures established under (a) of
24 this section the committee may

- 25 (1) provide for mediation of a grievance;
26 (2) dismiss a grievance without prejudice; or
27 (3) after a hearing, make appropriate recommendations
28 concerning a grievance to the president of the senate, the speaker of
29 the house, or the head of the legislative agency where the grievant is

1 or was employed.

2 (c) This section does not diminish existing rights under state
3 or federal law relating to employment discrimination.

4 (d) In this section, "committee" means the legislative members
5 of the house subcommittee when the grievant is or was employed by a
6 member or a committee of the house, the legislative members of the
7 senate subcommittee when the grievant is or was employed by a member
8 or a committee of the senate, and the legislative members of the full
9 committee when the grievant is or was an employee of an agency of the
10 legislature.

11 * Sec. 20. AS 39.50.090(c) is amended to read:

12 (c) A public official may not represent a client before a state
13 agency for a fee. However, this prohibition does not apply to a
14 person to whom AS 24.60 applies, to a municipal officer, or to a chair
15 [CHAIRMAN] or member of a state commission or board except with regard
16 to representation before that commission or board; this exception from
17 the general prohibition does not apply to one whose service on the
18 commission or board constitutes the person as a full-time state
19 employee under this title.

20 * Sec. 21. AS 24.60.060, 24.60.080(b), and 24.60.120 are repealed.