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COMMITTEE REPORT

SENATE

FURTHER:

57410

Date: 5/12/52

Mr. President:

The Committee on REVENUE has had 5

consideration of the bill (S. 2000) and has the honor to report the same to the Senate with the following recommendations:

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for S. 2000 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

John H. ...

SB 257: ANALYSIS BY SECTION

BY MARK HIGGINS
APRIL 24, 1983

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SB 257: Analysis by Section

By Mark Higgins

April 24, 1983

I Sec. 24.60.010 LEGISLATIVE FINDINGS AND PURPOSE

Commentary: The language in this section is generally good. However, as the new chapter will apply to employees of the legislature as well as legislators, I would amend it as follows:

- a) Lines 15-19 are amended to read: Legislators and legislative employees must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators and legislative employees should have the benefit of specific standards to guide their conduct.
- b) Further Amendment: To the end of this section add the following sentence. " This chapter shall be liberally construed to promote high standards of ethical conduct in the legislature."

The addition of this sentence would provide the commission and courts latitude in interpreting whether or not a situation violates the intent of the law, even if it does not specifically violate the letter of the law.

Traditionally, ethics laws are defined broadly to allow reasonable application of general principles to specific situations. This clause is designed for that purpose and has proven to be a valuable aid to the application and enforcement of ethics legislation. It is especially useful to the courts when a commission decision is appealed based on the language of the law.

II Sec. 24.60.020 APPLICABILITY

- a) Sub. Sec. (b) is amended to read: {Lines 11-12}

The provisions of this chapter {specifically repeal} supercede the provisions of the common law relating to legislative conflict of . . .

- b) {Lines 15-16}: {They do not...} Nothing in this chapter shall exempt any person from applicable provisions of any other laws of this state.

Commentary: It is not possible to repeal common law. In addition, this subsection, (b), is probably unnecessary as specific law always supercedes general law.

III Sec. 24.60.030 CONFLICTS OF INTEREST

- a) Sub. Sec. (a) is amended to read: A person to whom this chapter applies may not use public office for private advancement or gain, or for the advancement or gain of the person's immediate family, or an organization with which the person is associated.
- b) Sub. Sec. (b) is amended to read: A conflict of interest is deemed to exist {exists} when a person to whom this chapter applies has discretion to take or withhold official action or exist influence which could substantially benefit or harm a financial matter which the person, the person's immediate family, or an organization with which the person is associated with has a direct or indirect private interest.
- c) Sub. Sec. (c) is repealed and replaced with: (c) A person to whom this chapter applies shall not acquire financial interests in any business or other undertaking which the person has reason to believe may be directly involved in official action to be taken by the person.
- d) Sub. Sec. (d) is repealed and replaced with: (c) from the bill as written.
- c) Need to add (e): (d) as bill is written.

Commentary: The proposed amendments are fairly self explanatory. The suggested added provision (c) is common to ethics legislation and is intended to prohibit self-dealing conduct such as was possibly demonstrated in the Isabelle Pass situation of last session. This clause is intended to draw a distinction between existing conflicts which, in a state with as small a population as Alaska, often can not be avoided and the intentional establishment of a conflict by a public official for the purpose of private gain.

The key phrases in this clause are "directly involved" and "official action". These should and can be carefully defined. A legislator would not as a result of this clause be prohibited from acquiring a business or financial interest which at some point in the future may be affected by the legislators vote. A vote would not constitute "direct involvement" or "official action" as intended by the clause.

However, a legislator could not, if this clause is adopted, acquire a financial interest and then as a function of his or her official position direct the state to transact with that business interest.

IV Sec. 24.60.040 CONTRACTS

Commentary: The wording of the prohibitions established in this section is good and most areas are sufficiently covered to prevent self-dealing by public officials. The requirement of open-competitive bidding on substantive contracts should substantially enhance the public perception of legislative integrity.

Further, because of these specific guidelines, public officials will enjoy the same privileges as the general public in regard to State contracts. This is an important consideration given the part time nature of Alaska's "citizen" legislature and given the level of State involvement in the economy.

Other comments on Sec. 24.60.040:

- a) Does the definition of "contract" include leases? Some states specifically reference leases as well as contracts (eg - Wisconsin).
- b) Does a person have an interest "indirectly" if an immediate family member or associated organization qualifies under Subsection (A)? If not, perhaps wording should be added similar to suggested amendments to Sec. 24.60.030 (CONFLICTS OF INTEREST).
- c) The definition of "an interest in a state contract" as defined in (a) is perhaps too generous. Maybe a straight 10% figure should be adopted.

Some states, like Hawaii for example, qualify restrictions on state contracts based on a "controlling interest" which is defined as: "an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty percent."

- d) Sole Source Contracts: the bill as written does not include a provision allowing the State to circumvent the open-bidding requirement when it is in the best interest of the State to do so. Sole source contracting, is an important consideration in Alaska, where conditions often dictate special requirements or time limitations.

Recommended Wording: (From Hawaii Statute 84-15(a))

"A State agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract has been awarded through an open, public process. A State agency may, however, enter into such contract without resort to a competitive

bidding process when, in the judgment of the agency, the property or services should not, in the public interest, be acquired through competitive bidding; provided that written justification for the non-competitive award of such contract shall be made a matter of public record and shall be filed with the state ethics commission at least ten days before such contract is entered into." (emphasis added).

c) Need Section on Contract Voidability:

The bill as written has no provision for voiding contracts joined in violation of this chapter. Contract voidability is an important provision and I would recommend the following wording (from: Hawaii 84-16):

"In addition to any other penalty provided by law, any contract entered into by the State in violation of this chapter is voidable on behalf of the state; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The Attorney General shall have the authority to enforce this provision.

V Sec. 24.60.050 STATE LOANS

There are several questions regarding this section which will be addressed in relation to the subsection they fall under.

- A) Sub. Sec. (C): Requires lending agencies to send a copy of any application for loan not covered by (a) of the section to the Alaska Public Offices Commission. the APOC is to incorporate the material into the applicant's financial disclosure statement. The material may be disclosed to the ethics commission.

Commentary: This subsection raises several considerations:

- 1) What type of loan would not be subject to procedures outlined in (a) of this section? If there are such loans, is it desirable that state officials have access to them?
- 2) The bill as written states no time frame/limit within which the lending agency must submit the application to APOC. while this could probably be handled by regulation, it would be better to state it clearly in the statute.

- 3) Legislative employees are not required to file disclosure statements. Yet this chapter will apply to them as well as to legislators. What procedure is to be followed when they apply for a loan covered by this section?
- 4) APOC as receptor of loan application: A major problem relates to the assignment of APOC as receptor of the loan application. Financial disclosure statements required by AS 39.50.120 are not nearly as revealing as most loan applications. Individuals covered by this chapter would undoubtedly protest that their privacy would be jeopardized if the APOC had access to more intimate personal financial data than is currently required under present disclosure laws.

Further, records maintained by the APOC are open to public inspection. Given the requirement of confidentiality of investigation under all sections of this chapter, it would be contradictory to allow public inspection of official's loan applications, as would be the case if they were filed with the APOC.

Proposed Solution:

Given that most loans, if not all, would fall into sub category (a) of this section and realizing that any that did not should be carefully scrutinized if they involve a public official, I would recommend that the APOC not be assigned receptor of loan applications as defined in (C). The APOC has no jurisdiction in any other section of this chapter and would perform no function other than storage of the loan applications. Given the privacy issue which would be raised if the APOC is included, I would offer the following amendment to subsection (C).

Require that:

- a) each loan which falls into category (C) be reviewed by the division of legislative audit before it is approved;
- b) in reviewing the loan application, the division of legislative audit could request from the APOC any financial disclosure data contained in the applicant's file;
- c) If after reviewing the loan application, the division of legislative audit found cause to suspect that the loan would violate the intent of the chapter, it would refer the application and all relevant documentation to the ethics commission for review;

- d) The ethics commission would be required to render an opinion regarding the appropriateness of the loan within a specified time. If no opinion was rendered within the specified time, it would be deemed that the application did not violate the intent of the chapter.

If adopted, this amendment would further assure the public that legislators and legislative employees would be carefully scrutinized when applying for state funds where discretion is exercised in determining qualifications. Given the small size of Alaska's legislature and given that few loans would fall into such a "discretionary" category, the above suggested procedure would not prove unjustifiably burdensome.

- B) Sub. Sec. (d): states that loan agencies shall annually publish a listing of all outstanding loans except for loans described in (a).

Question: Where do they publish the list? Shouldn't they be required to send a copy of the list to either the division of legislative audit or the ethics commission, or both?

- C) Sub. Sec. (e): Given the fact that the ethics commission will be the ultimate judge of conflicts involving state loans to persons covered by this chapter, wouldn't it be advisable to require state agencies to submit a proposed regulation for commission review or approval before it is implemented. Such a procedure would ensure the establishment of adequate administrative procedures and would limit commission rulings to whether or not these procedures were followed.

- D) Sub. Sec. (F): What action is to be taken by the commission if the loans are in violation of the chapter? Are they voidable? Can the state sue for recovery of funds and damages? What about innocent third parties?

VI Sec. 24.60.060 CONFIDENTIAL INFORMATION

Amend to: It is a conflict of interest if a person to whom this chapter applies discloses or uses for personal gain or for the personal gain of another person or organization, information that by law or practice is not available to the public and that the person acquired in the course of official duties.

Commentary: These amendments are fairly self-explanatory. By adding the words "or practice", the law would be substantially tightened. Such wording was strongly recommended by the executive director of Hawaii's Ethics Commission.

VII Sec. 24.60.070 INTERESTS BETWEEN PUBLIC OFFICIALS

This section as written is less restrictive than many state's statutes regarding financial dealings between public officials. But given the special conditions in Alaska, it is probably sufficient. I would, however, offer the following amendments:

- 1) Amend (a) to: A person to whom this chapter applies shall disclose in writing to the commission . . .
- 2) Amend (a)2 to: {legislators} another person to whom this chapter applies.
- 3) Amend (b) to: . . . involving a substantial financial matter with a lobbyist, as defined by AS 24.45.181, who is not a member of the immediate family of the person.

VIII Sec. 24.60.080 GIFTS

- A) Amend (a) to: A person to whom this chapter applies may not solicit a gift in any amount, or accept or receive, directly or indirectly, a gift having an aggregate value in excess of one hundred dollars (\$100) in any calendar year from any person or organization, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action or inaction, by the person.

Commentary: This amendment would prevent a person or organization from giving an official several gifts, each of an individual value less than \$100, but with a combined value in excess of \$100.

- B) Amend Sub. Sec. (b), to read: hospitality from another person at {another} that person's residence, including meals, lodging or ground or water transportation;

Commentary: This amendment would tighten the wording of this clause and would prevent a person or organization from skirting the intent of the gift provision by offering an official "hospitality" at a commercial lodge or guide service, etc.

For example, if this subsection is adopted as written, a person or organization could pay for a public officials trip or stay ("hospitality") at a commercial lodge, if the owner of the lodge ("another person") resided there, even though the person or organization funding the trip had no association with the residence. This amendment would prevent that.

- C) Amend (b)3 to read: an invitation to attend a meal or social event that does not exceed \$100 in value received by the person for each meal or event and that does not in the aggregate exceed \$250 in value during the calendar year form one person or organization; or
- D) Sub. Sec. needed: (d) No person or organization may offer or give to a public official to whom this chapter applies, directly or indirectly, any gift which the public official is prohibited from accepting pursuant to subsection (a) of this section.

Commentary: The addition of this clause, which is contained in many state's gift provisions, would make the giver or offerer of an illegal gift equally liable with the official who accepts it.

VIX Sec. 24.60.090 NEPOTISM

Question: What is the definition of "a permanent member of the legislators household"? Is this legally definable?

Most states are grappling with the problem of how to include "live-in lovers" in their laws. But will this clause accomplish that adequately? Would renters be considered "permanent members"?

X Sec. 24.60.100 REPRESENTATION BY LEGISLATORS

Amend subsection (a) to read: Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20 may not represent another person or organization for compensation before an agency, board, or commission of the State.

Commentary on sub. sec. (b):

- 1) How does sub. sec. (b) interface with AS 39.50.090(C)? Are they mutually compatible?
- 2) Are Alaskan courts considered State agencies? If not, then (b) is unnecessary, as the usual rule in ethics legislation is that courts are not generally considered to be agencies of the State. Consequently, this section would implicitly not have representation before a court by a person covered by this chapter.
- 3) Subsection needed? (d) This section does not apply to representation by a person covered by this chapter if that person is acting in his or her official capacity.

XI Sec. 24.60.110 ACTION ON A CONFLICT OF INTEREST

Commentary: This section seems unusually brief and fails to address employees of the legislature who are faced with a conflict of interest. As this section is extremely important to the chapter, I would recommend that it be re-written as follows:

- a) A person covered by this chapter, who in the discharge of official duties, is involved or about to be involved in any matter that could result in a conflict of interests on his or her part shall:
- 1) Divest the interest that has resulted in the conflict or potential conflict; or
 - 2) Prepare a written statement describing such matter and the nature of the possible conflict of interest and
 - a) in the case of a legislator, deliver copies of the statement to the commission and the presiding officer of the appropriate body of the legislature, who shall cause such statement to be printed in the journal of the appropriate body or if the legislature is not in session, shall request that the commission maintain a public record of such statement which shall subsequently be included in the journal for the first day of the following session. Upon request of the legislator, the presiding officer of the appropriate body, shall excuse the legislator from votes, deliberations and other actions in regard to such matter; or
 - b) in the case of an employee of the legislature covered by this chapter, deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another, or if the employee has no immediate superior, he or she shall take such steps as the commission shall prescribe or advise to remove himself or herself from influence over actions and decisions on the matter.

XII Sec. 24.60.120 STATE PROPERTY AND FUNDS

Amend to read: A person to whom this chapter applies may not use state property or funds for private gain or for the gain of others or for campaign purposes.

XIII Sec. 24.60.130 LEGISLATIVE ETHICS COMMISSION

Commentary: This section looks pretty good. A few questions:

- A) Sub. Sec. (e) states: "A commission member may not serve more than one full term." Does this mean four years, or a term "unit"? In other words, could someone who was appointed to fill a vacancy, serve the remainder of the term of the person who's vacancy they were filling, plus another full term, or could they just serve for the remainder of the term?
- B) There is no provision for staggering the terms of the initial appointees to the commission. Such a practice is common when forming a commission and is intended to provide continuity on the commission and also prevent any one member from dominating the commission for a long periods of time.

Recommended Wording: e) the term of office of a public member of the commission is five {four} years from February 1 of the year of appointment and until a successor is appointed and qualifies, except that the members first appointed shall be appointed for terms of office of one, two, three, four, and five years, respectively, and until their successors have been appointed and have qualified.

I suggested increasing the term of service to five years so that no commission member's term of office would coincide with a legislator who appointed him or her, as could be the case with Senate approval and a four year term.

XIV Sec. 24.60.140 DUTIES OF THE COMMISSION

No comments other than that I would recommend that the commission be required to publish annual rather than semi-annual summaries of its decisions and opinions. Annual publications would be consistent with most states and would reduce the bureaucratic requirements of the commission.

XV Sec. 24.60.150 ADVISORY OPINIONS

Amend to read: {Lines 19-20} The opinion issued or considered issued, until amended or revoked, is binding on the commission and in any . . .

Commentary: This amendment would allow the commission to change or revise a decision if facts are brought to light, which in good faith were not known at the issuance or non-issuance of the opinion.

XVI Sec. 24.60.160 COMPLAINTS

Questions:

- 1) How long will evidence be maintained?
- 2) Should not the evidence gathered be available to the Attorney General as well as staff and the commission in the event a referral is recommended?
- 3) Is a referral to the Attorney General possible, desirable for legislators who violate this chapter? employees of the legislature?

XVII Sec. 24.60.170 DEFINITIONS

Commentary: The definitions sections is an essential component of any ethics statute, both for citizen comprehension and court interpretation. This bill's definition section is grossly inadequate.

The following terms need to be defined:

"official action", "relatively insignificant", "relatively far removed", "close economic association", "substantial financial matters", "campaign purposes", "competent and substantial evidence", "state agency", and "organization" (if suggested amendments are adopted).

XVIII OTHER SECTIONS NOT INCLUDED WHICH COULD BE CONSIDERED

- 1) Joint and Several Liability: eg - "If two or more persons are responsible for any violation, they shall be jointly and severally liable." (Calif. statute).
- 2) Referral to the AG: eg - "The commission shall refer to the Attorney General violations of the law which in its opinion merit prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation."
- 3) Severability of Chapter: eg - "If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the valid applications."
- 4) Honorariums and Fees Section

M. Matthew Higgins

1 IN THE SENATE

2 SENATE BILL NO. 1277

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 For an Act entitled: "An Act relating to standards of conduct of
6 legislators and legislative employees and es-
7 tablishing a Legislative Ethics Commission; and
8 providing for an effective date."

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

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

11 CHAPTER 60. STANDARDS OF CONDUCT.

12 *NO PROBLEM* Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legisla-
13 ture finds that it is essential in the conduct of public business that
14 legislators hold the respect and confidence of the people. Legisla-
15 tors must avoid conduct that even appears to violate the trust the
16 people have placed in them. To ensure and preserve public confidence,
17 legislators should have the benefit of specific standards to guide
18 their conduct. Article II, sec. 12, Constitution of the State of
19 Alaska grants to each house of the legislature the power to judge the
20 qualifications of its members. It is the purpose of this Act to
21 establish standards of conduct for state legislators and legislative
22 employees and to establish the Legislative Ethics Commission to
23 consider alleged violations of this chapter and to render advisory
24 opinions to persons affected by this chapter.
25

26 Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a
27 member of the legislature, to a person employed by a *Legislative Capital*
28 legislature, and to a permanent or temporary employee of an agency of
29 the legislature. This chapter does not apply to

(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
3 applies;

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

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

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

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

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

22 *Judge ment* (1) the person's interest is relatively insignificant;
23 *calls*

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

29 (d) A conflict exists if benefits accrue to a person to whom
this chapter applies beyond that which may accrue uniformly to members

1 of the profession, occupation or group to which the person belongs, or
2 to the public at large.

3 Sec. 24.60.040. CONTRACTS. (a) A person to whom this chapter
4 applies may not be a party to or have an interest in a state contract
5 unless the contract is let by competitive bidding under AS 37.05.230
6 or the total annual amount of the state contract is \$1000 or less. A
7 person has an interest in a state contract under this section if the
8 person receives direct or indirect financial benefits. A person has
9 an interest in a state contract under this section if the contract is
10 awarded to *(RAY NO Sole source for legislature.)*

11 (1) a firm, corporation, or association that has assets in
12 excess of \$5,000,000 and in which the person has an ownership interest
13 greater than 10 percent or that has assets of \$5,000,000 or less and
14 in which the person has an ownership interest greater than 25 percent;
15 or

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

17 (b) In this section, "direct or indirect financial benefits"
18 means income, profits or other financial benefits under a state
19 contract, without regard to whether the income, profits or other
20 financial benefits inure to the person as a partner, shareholder,
21 investor, agent, employee, consultant, or joint venturer of the
22 contractor.

23 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of
24 interest for a person to whom this chapter applies to participate in a
25 state program or to receive a loan from the state if the program or
26 loan is generally available to members of the public, is subject to
27 fixed eligibility standards, and minimal discretion is exercised in
28 determining qualification.

29 (b) In determining whether a conflict of interest exists with

1 respect to a state program or to a state loan other than those de-
2 scribed in (a) of this section, because a legislator may be in a
3 position to influence the loan agency, the ethics commission must
4 consider, but is not limited to, the adequacy of existing administra-
5 tive procedures for granting and reviewing loans to legislators.

6 (c) Upon application for a state loan by a person to whom this
7 chapter applies, other than loans described in (a) of this section,
8 the lending agency must send a copy of the application to the Alaska
9 Public Offices Commission, which will incorporate the material into
10 the applicant's financial disclosure statement, if the applicant is
11 required to file a disclosure statement. All records relating to a
12 state loan to a person to whom this chapter applies must be disclosed
13 to the commission upon request.

14 (d) Each February 1st, each loan agency must publish a listing
15 of all outstanding loans to persons to whom this chapter applies,
16 except for loans described in (a) of this section. The list must
17 include the name of the person, the date of issuance and current
18 status of the loan.

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

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

29 (g) For purposes of this section "state program" means a program

1 in which tangible assets of the state or a right to use tangible
2 assets of the state are transferred from the state to a private
3 person.

4 *Insert* Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of
5 interest if a person to whom this chapter applies willfully discloses,
6 or knowingly uses, for personal gain or for the personal gain of
7 another, information that by law is not available to the public and
8 that the person acquired in the course of official duties.

9 *ok* Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A
10 person to whom this chapter applies shall disclose to the commission
11 the formation or maintenance of a close economic association involving
12 a substantial financial matter with

13 *Insert somewhere.*
14 (1) a supervisor who has responsibility or authority,
15 either directly or indirectly, over the person's employment, including
16 preparing or reviewing performance evaluations, or granting or approv-
17 ing pay raises or promotions;

18 (2) legislators;

19 (3) a public official in another branch, if the public
20 official is required to file a financial disclosure statement under
21 AS 39.50. *Registered*

22 *Delete* (4) *AA LOBBIST* It is a prohibited conflict of interest for a person to whom
23 this chapter applies to form or maintain a close economic association
24 involving a substantial financial matter with a lobbyist who is not a
25 member of the immediate family of the person.

26 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
27 applies may not solicit a gift in any amount, or accept or receive,
28 directly or indirectly, whether in the form of money, services, a
29 loan, travel, entertainment, hospitality, or other form, under circum-
stances in which it may reasonably be inferred that the gift

1 influenced the person in the performance of the duties of the person
2 or was intended as a reward for an official action by the person.

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

5 > (1) hospitality at another person's residence ~~within the~~ ^{Delete}
6 state, ~~including meals, lodging~~ ^{Delete} ~~[or ground or water]~~ transportation;

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

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

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

13 (c) The commission may establish additional policies that limit
14 the extent to which persons to whom this chapter applies may accept
15 the benefits set out in this section.

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

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

26 (1) an action before a court of the state; or

27 (2) a matter which was pending at the time a person to whom
28 this chapter applies assumes office or is employed.

29 (c) A legislator cannot avoid a conflict of interest under this

1 section by waiving compensation for representing another person under
2 circumstances where compensation would ordinarily be expected.

3 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
4 who knowingly has, or has been notified of a conflict of interest,
5 shall immediately

6 (1) resign the conflicting position;

7 (2) divest the interest that has resulted in the conflict
8 or potential conflict; or

9 (3) disclose the conflict of interest in the journal of the
10 appropriate body or if the legislature is not in session to the
11 commission which shall maintain a public record of the disclosure and
12 forward the disclosure to the respective house for inclusion in the
13 journal for the first day of the session.

14 Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this
15 chapter applies may not use state property or funds for private gain.

16 Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is
17 established within the legislative branch of the state government the
18 Legislative Ethics Commission.

19 (b) The senate commission consists of five members and the house
20 commission consists of seven members to be appointed as follows:

21 (1) the president of the senate shall appoint three members
22 to the commission from the senate with the concurrence by roll call
23 vote of three-fourths of the full membership of the senate;

24 (2) the speaker of the house of representatives shall
25 appoint five members to the commission from the house of representa-
26 tives with the concurrence by roll call vote of three-fourths of the
27 full membership of the house;

28 (3) the commissioner of administration and the commissioner
29 of public safety or their designees shall serve as ex-officio members

1 on both the senate and house commissions;

2 (4) The attorney general or his designee shall also serve
3 as an ex-officio member and provide such legal aid and assistance as
4 may be requested.

5 (c) No more than two members of the legislative members of the
6 senate commission, or three legislative members of the house com-
7 mission may be members of the same political party.

8 (d) The members of the commission shall elect a chair and
9 vice-chair and may elect other officers.

10 (e) A vacancy on the commission shall be filled under (b) of
11 this section for the balance of the term.

12 (f) The commission may contract for professional services and
13 may employ staff as it considers necessary.

14 (g) A member of the commission receives no compensation for
15 service on the commission. Members of the commission are entitled to
16 travel expenses and per diem authorized by law for members of boards
17 and commissions under AS 39.20.130.

18 Sec. 24.60.140. DUTIES OF THE COMMISSION. The commission shall

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

21 (2) recommend legislation to the legislature the commission
22 considers desirable or necessary to promote and maintain high stan-
23 dards of ethical conduct in government;

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

28 (4) publish semi-annual summaries of decisions, advisory
29 opinions and informal advisory opinions, with sufficient deletions in

1 the summaries to prevent disclosing the identity of the persons
2 involved in the decisions or opinions which have remained confi-
3 dential.

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

18
19 Sec. 24.60.160. COMPLAINTS. (a) The commission may initiate,
20 receive and consider complaints alleging a violation of this chapter.

21 (b) Before the commission may exercise power authorized in (c)
22 of this section, the commission shall be resolution, supported by a
23 vote of a majority of a commission, define the nature and scope of the
24 inquiry.

25 (c) The commission may investigate a violation of this chapter
26 in a proceeding begun within four years after the alleged violation
27 occurs and within one year after termination of state service.
28 Nothing in this subsection bars proceedings against a person who by
29 fraud prevents discovery of a violation of this chapter. A proceeding
is commenced by the filing of a complaint with the commission. No

1 complaint, other than a complaint initiated by a majority of the
2 members of a commission may be received within a period of 60 days
3 preceding a state primary or general election.

4 (d) A complaint shall be in writing and signed under oath by the
5 person making the complaint. A complaint may also be initiated by a
6 majority of the members of a commission. The commission shall notify
7 in writing each person against whom a complaint is received and afford
8 the person an opportunity to explain the conduct alleged to be a
9 violation of this chapter. If the commission determines that a
10 complaint does not contain allegations of acts sufficient, if the
11 alleged facts are treated as true, to constitute a violation of this
12 chapter a commission shall summarily dismiss the complaint.

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

27 (f) A commission may set a time and place for a hearing with
28 notice to the complainant, if any, and to the person charged with a
29 violation of this chapter. A representative of a commission and the

1 person charged with a violation of this chapter shall have an oppor-
2 tunity to be heard, to subpoena witnesses and require the production
3 of books or papers relating to the proceedings, to be represented by
4 counsel, and to have the right of cross-examination. Each witness
5 shall testify under oath. The hearings are closed to the public
6 unless the person charged with a violation of this chapter requests an
7 open hearing. A commission is not bound by the rules of evidence but
8 a commission's findings must be based upon competent and substantial
9 evidence. The testimony taken at the hearing shall be recorded and
10 evidence shall be maintained. The testimony and evidence is available
11 only to the staff of a commission and to the person charged with a
12 violation of this chapter. If the person charged with the violation
13 of a provision of this chapter requests a copy of the transcript of
14 testimony, the copy shall be furnished by a commission without charge.

15 (g) A decision of a commission shall be in writing and signed by
16 a majority of the members of a commission. Each decision of a commis-
17 sion must be accompanied by a written order of the commission de-
18 termining that a violation of this chapter exists or does not exist.
19 The order is confined to this determination. This order is a public
20 record.

21 (h) If a commission issues a decision that a member of the
22 legislature has violated a provision of this chapter or that a legis-
23 lator has declined or failed to cooperate with the commission, it
24 shall refer the decision to the presiding officers of the legislature.
25 The decision shall contain a statement of the facts determined to
26 constitute the violation or the failure to cooperate and may contain
27 recommendations concerning any penalties the legislature may lawfully
28 impose including imposition of civil penalties in an amount not to
29 exceed \$25,000, divestment of the interest, repaying profits, censure,

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1 removal from committee assignments, termination of legislative privi-
2 leges, or expulsion. The commission shall make the decision public
3 30 days after the referral. Days during which the legislature is not
4 in session may not be counted in determining the 30-day period. The
5 legislature shall act on the decision as it considers appropriate.

6 (i) If a majority of the members of a commission 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 commission shall issue a
10 public statement of its decision 30 days after the date of the de-
11 cision. The legislature shall act on the decision as it considers
12 appropriate. In the case of an employee the action may include
13 suspension, demotion, or dismissal.

14 (j) A commission member or individual who divulges information
15 concerning a charge before the filing of a complaint by the com-
16 mission, except as permitted by this chapter, is guilty of misuse of
17 confidential information under AS 11.56.360.

18 Sec. 24.60.170. DEFINITION. In this chapter, "commission" means
19 the Legislative Ethics Commission of each house of the legislature.

20 * Sec. 2. Section 24.60.130 and Sec. 24.60.140 enacted in sec. 1 of
21 this Act take effect immediately in accordance with AS 01.10.070(c).
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SUMMARY OF CHANGES MADE IN SENATOR RAY'S PROPOSED COMMITTEE SUBSTITUTE
FOR SB 257

Sec. 24.60.030(b) was changed as follows:

A conflict of interest exists when a person to whom this chapter applies (HAS DISCRETION TO TAKE OR WITHOLD) takes or witholds official action or exerts influence which could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

The purpose of the change is to make sure that only the actual taking or withholding of official action, or exertion of influence, constitutes a conflict of interest. Merely having discretion to do so should not suffice.

Sec. 24.60.030(d) was changed as follows:

A conflict (DOES NOT EXIST) exists if (NO) benefits (OR DETRIMENT) accrue(S) to a person to whom this chapter applies beyond that which (ACCRUES) may accrue uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

The purpose of this change is to clarify the meaning of the subsection. Again, the basic intent is to only include the actual, rather than the potential, accrual of benefits within the definition of conflict of interest.

Sec. 24.60.040(b) was changed as follows:

In this section, "direct or indirect financial benefits" means income, profits or other financial benefits under a state contract, (WITHOUT REGARD TO WHETHER THE PERSON IS A PARTY TO THE CONTRACT, AND) without regard to whether the income profits or other financial benefits (ENSUE) inure to the person as a partner, agent, employee, consultant, or joint venturer of the contractor.

The purpose of this change is _____

Sec. 24.60.060 was changed as follows:

It is a conflict of interest if a person to whom this chapter applies willfully discloses or knowingly uses for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties.

The purpose of this section is to make sure that inadvertant disclosure or use of "confidential" information does not constitute a conflict. This would apply, for example, to a situation where while discussing a topic of interest with a

constituent, a legislator inadvertantly discloses information which may be construed as being "confidential."

Sec. 24.60.080(a) was changed as follows:

A person to whom this chapter applies may not solicit a gift in any amount, or accept or receive, directly or indirectly, (A GIFT IN EXCESS OF \$100,) whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, under circumstances in which it may reasonably be inferred that the gift (IS INTENDED TO INFLUENCE) influenced the person in the performance of the duties of the person or (IS) was intended as a reward for an official action by the person.

The purpose of this change is to: (1) eliminate the \$100 minimum requirement for the solicitation of gifts; and (2) only prohibit the actual influencing of a person, rather than to make the intent of the person giving the gift controlling.

Sec. 24.60.080(b) was changed as follows:

It is not a conflict of interest under this section if a person to whom this chapter applies accepts

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

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

(3) an invitation to attend a meal or social event that does not exceed \$100 in value received by the person for each meal or event (AND THAT DOES NOT IN THE AGGRAGATE EXCEED \$250 IN VALUE DURING THE CALENDAR YEAR FROM ONE PERSON); or

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

The purpose of this change is to: (1) not expressly exempt the acceptance of hospitality at another's out of state residence as a conflict; and (2) eliminate the aggregate \$250 per calendar year requirement for meals and social events which would be highly impractical, if not impossible, to keep an accurate accounting of.

Sec. 24.60.080(c) was changed as follows:

The commission may establish additional policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in ((B)(2) OF) this section (,OR THAT REQUIRE PUBLIC OFFICIALS TO TURN OVER THE BENEFITS TO THE AGENCY).

The purpose of this change is to: (1) clarify that the policies the commission is authorized to establish are additional; (2) clarify or authorize that the commission can establish such additional policies in regard to all parts of 24.60.080 dealing with gifts; and (3) eliminate the "Amigo fare" language about requiring public officials to turn over benefits to the agency because said language is superflous and confusing.

Sec. 24.60.090 was changed by deleting the entire subsection (b), which read as follows:

(AN INDIVIDUAL IS NOT EMPLOYED IF NO COMPENSATION IS RECEIVED FROM THE STATE FOR THE SERVICES PROVIDED.)

The purpose of this change is to include the voluntary services of related persons within the prohibition against nepotism.

Sec. 24.60.100 was changed by deleting the entire subsection (a)--It should be noted, however, that Sen. Ray's proposed CS inadvertantly failed to include the number or title of this section and also failed to change the lettering of the 2 remaining subsections, which should be listed as subsections (a) and (b).

The purpose of this change is to only specify what types of action a member of the legislature can represent a client in and to provide that performing prohibited services for free will not avoid a conflict.

Sec. 24.60.110 was changed, in pertinent part, as follows:

A legislator who knowingly has, or has been notified of a conflict of interest, shall immediately

(1) resign the conflicting position;

...

The purpose of this change is to: (1) make sure that the section only applies to actual conflicts of which the person is aware; and (2) specify and clarify that the person will only be required to resign the conflicting position.

Sec. 24.60.120 was changed as follows:

A person to whom this chapter applies may not use state property or funds for private gain (OR CAMPAIGN PURPOSES).

This change is self-explanatory.

Sec. 24.60.130 was changed by completely revising the entire section dealing with the composition, functions, powers, etc. of the Legislative Ethics Commission. A detailed analysis of these changes, and the reasons therefor, is beyond the scope of this summary.

It should also be noted that the changes made in this section, especially the creation of two separate commissions instead of one, necessitated grammatical changes, such as the use of the word "a" instead of "the," in subsequent sections. These grammatical changes, when not accompanied by substantive ones, will not be included in this summary.

Sec. 24.60.150 was changed by deleting the following language in the last sentence of said section:

Except as provided in this chapter an advisory opinion is confidential (BUT MAY BE MADE PUBLIC IF A WRITTEN REQUEST BY THE PERSON WHO REQUESTED THE OPINION IS FILED WITH THE COMMISSION).

This change is self-explanatory.

Secs. 24.60.160 and 24.60.170 contain non-substantive changes necessitated by the rewriting of the section dealing with the composition, function, etc. of the Legislative Ethics Commission.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
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MEMORANDUM

TO: Sen. Bill Ray, Chair
Senate Judiciary Committee

FROM: Mary Levan, P.A. to Sen. Eliason *Mary Levan*

DATE: May 4, 1983

RE: SB 257, Legislative Standards of Conduct

Sen. Eliason is out of town on legislative business this week, and will be unable to attend today's committee hearing on SB 257. He has a copy of the State Affairs CS for SB 257 with him which he has been reviewing. Yesterday he called his office and asked that we relay to your committee his concern that the State Affairs CS has overlooked an area that ought to be addressed.

Sen. Eliason's concern is with the subject of political fundraisers held during the legislative session. In light of the statement of findings in SB 257 which states the importance of avoiding conduct that even appears to violate the public trust, Sen. Eliason feels that fundraisers, particularly those to raise funds for individual legislators' campaigns, need to be dealt with in this bill. He wanted this matter brought to the committee's attention, and hopes that the Judiciary Committee will consider it in their deliberations on the measure.