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THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB No. 257
 Title An act relating to standards of conduct of legislators and legislative
~~REQUESTED BY~~ employees and establishing a Legislative Ethics Commission
 Requested by: Senate State Affairs Date: April 19, 1983

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected Legislative Affairs Agency
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		-0-				
200 TRAVEL		44.1				
300 CONTRACTUAL		50.0				
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		94.1				

FUNDING (Thousands of Dollars)

GENERAL FUND		94.1				
FEDERAL FUNDS		-0-				
OTHER (Specify Source)		-0-				

POSITIONS

None

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

SEE ATTACHMENT

IV. DATE April 20, 1983 PREPARED BY *Wally Harrison* Director, Adm'n. Svcs.
 AGENCY Legislative Affairs Agency
 Original: Legislative Finance PHONE 465-2850
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

Fiscal Note for Senate Bill No. 257:

III ANALYSIS:

There are no guidelines in the bill for amount or level of staff or for amounts of travel and per diem. It is necessary, therefore, to establish a set of assumptions on which to build a fiscal note.

Using input from various legislators who worked on the bill, I have made the following assumptions:

Assumption 1: There will be no permanent staff at this time. Personal services and professional services will be contracted as needed; therefore, no office space or equipment will be needed. The commission will determine how the central files are to be kept.

Personal Services Contracts	20.0
Professional Services Contracts	20.0
Other Contractual Services	10.0
	<u>50.0</u>

Assumption 2: To establish a good average for travel costs, I have hypothetically assumed that the Commission is to be made up of members living in Nome, Bethel, Fairbanks, Anchorage, Kodiak, Juneau, Ketchikan, and will travel coach fare: 3 roundtrips to Juneau; 4 roundtrips to Anchorage; and 5 roundtrips to Fairbanks for meetings. There will be no more than an average of three days per month of travel and per diem for meetings. There be no more than an average of one meeting per month.

Per Diem -----	\$18,720
Travel -----	\$25,385
TOTAL Trvl/PD	<u>\$44,105</u>

Assumption 3: Additional costs, if any, for reports or copies made by other agencies for the Commission will be absorbed in that agency's operation budget.

Assumption 4: The Legislative Affairs Agency print shop can print the semi-annual summaries of decisions and advisory opinions.

April 28, 1983

M E M O

TO: Members, Senate State Affairs Committee
FROM: Vic Fischer
RE: SB 257: definition of conflict of interest

In the course of our work on this important bill I've come to the conclusion that, with one exception, it will leave our committee as a workable statute, meeting both the public interest and the requirements of legislators and their staffs.

The exception is this bill's definition of conflict of interest. This concept is the keystone of this bill, and can, I think, be tightened up.

The following language is based closely on the concept used in Maryland and North Carolina, where instead of a conflict being vaguely defined as "where the private interests and public interest of a legislator are in conflict" they directly link the concept with the problem that it creates, and say that a conflict of interest exists when a legislator's private interest "tend to impair his or her independence of judgement."

I submit the following proposed language for your consideration.

Deletion of Sec. 24.50.030(b) through (d) which commenced on line 20, page 2 through line 7, page 3, and substitution of a new subsection. The new subsection would read:

(b) A conflict of interest does not exist under this

chapter and there is no duty to disclose a conflict of interest if the benefit or detriment received by a person to whom this chapter applies is not different from that shared by all residents of the state or by all members of a large group or class of residents of the state.

(c) If the benefit or detriment received by a person to whom this chapter applies is not shared or is shared only by a small group or class of residents of the state, then a conflict of interest may exist.

(d) A personal interest of a person to whom this chapter applies conflicts with the public interest if it tends to impair the independence of judgment of the member of the legislature or the person employed by a member of the legislature.

(e) If a person to whom this chapter applies acts on a legislative matter in which a personal interest may exist, the person shall consider whether the personal interest will tend to impair the independence of judgment of the person.

(f) If the member of the legislature determines that an actual conflict of interest exists, or receives an advi-

sory opinion finding that a conflict of interest exists, the member of the legislature shall declare the interest on the floor or in committee, ask to be permitted not to vote, take no further legislative action on the matter and file a written statement on the conflict of interest with the ethics commission within 48 hours of the determination that a conflict of interest exists. If a person employed by a member of the legislature or a permanent or temporary employee of an agency of the legislature determines that an actual conflict of interest exists, the person shall file a written statement with the ethics commission within 48 hours of the determination that a conflict of interest exists and may not participate further in the matter. The person may divest the interest, place the interest in a blind trust or resign the position.

Following line 7, page 3, insert the following:

Sec. 24.60. ____ . PRESUMED CONFLICTS OF INTEREST. (a)

A member of the legislature shall take no further legislative action on the matter and request permission to

abstain from voting, and a person to whom this chapter applies may not undertake other official duties where the person

(1) has an interest that is direct and different from the interest of a member of the public in an activity that would receive a benefit or detriment from proposed legislation or official duties; and

(2) is a participant in a close economic association with an individual or person who the member of the legislature or an employee of the legislature knows

(A) has a direct interest in a business activity that will receive a benefit or detriment directly by the proposed legislation or official duties;

(B) is a lobbyist or has employed a lobbyist;

(3) solicits, accepts, or agrees to accept a gift as defined in AS 24.50.080, loan, or payment in an aggregate amount during a single calendar year of more than \$100 from

an individual or person with an interest in a business activity that would receive a benefit by or share a detriment from proposed legislation or official duties.

(b) Notwithstanding (a) of this section, a member of the legislature may vote on proposed legislation or engage in other official duties prescribed in (a) of this section if the legislator files a sworn statement with the commission. The statement shall describe the circumstances of the apparent conflict and shall state that the apparent conflict will not prevent a fair and objective consideration of the proposed legislation or official duties by the member of the legislature. This statement shall be published in the supplemental journal.

(c) If the member of the legislature files a statement under (b) of this section or if the member of the legislature requests an advisory opinion on an apparent or presumed conflict, the commission may issue an opinion concerning the propriety of the proposed action by the member of the legislature.

(d) A disclosure to the Public Offices Commission under AS 39.50.020 does not constitute compliance with the

requirements of disclosure of a conflict of interest under this section or AS 24.60.300.

(e) The acceptance by a member of the legislature of campaign contributions that are reported under AS 15.13 does not create a conflict of interest.

(f) As used in this section, "close economic association" means, as related to a person to whom this chapter applies, partners, associates, employers and employees in business and professional enterprises, corporations in which the person owns capital stock in excess of \$5,000, and a corporation of which a member of the legislature or a person employed by a member of the legislature is an officer, director, or agent.

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



April 20, 1983
7:00 pm

Room 504, Capitol

MEMBERS PRESENT:

Senator Vic Fischer, Chair
Senator Sturgulewski
Senator Kelly

ALSO PRESENT:

Senator Faiks
Representative Phillips

TELECONFERENCE:

All LIO Sites Notified and On Line
5-day Rule Waived for This Meeting on April 18

SB 257 Legislative Standards of Conduct

Senator Fischer made opening comments, pointing out that although this bill had been the subject of extensive hearings of the special Joint Committee for Legislative Reform, this was the first opportunity the public had to comment on the bill.

Peggy Muller, Soldotna, representing the League of Women Voters testified that she thought that appointed officials should be included in the bill. She stated that the public didn't have much confidence in politicians.

Representative Phillips stated that legislation would be introduced in the future which would cover non-legislative elected officials and other public officials. He pointed out that Alaska has a part-time, citizen legislature which demanded that legislators be able to earn a living outside of state government.

Scott Sterling, Fairbanks, testified that he liked the bill but thought that it should address campaign financing and PACs. He and Senator Faiks discussed whether the common law could be repealed. He also questioned some of the terms in the bill as ambiguous, disagreed with the nepotism policy, and felt that the commission should be bound by the rules of evidence.

Senator Fischer said that he thought that any contract between the state and a legislator creates a conflict of interest.

Representative Phillips defended the nepotism policy on the grounds

that Juneau was "one company town." Senator Fischer said that nepotism is generally bad, but was frequently used as a tool to keep down women.

Senator Kelly discussed the effect that the Homan case had on the legislature.

Gail Stolz, AKPIRG, read a statement by that organization's director, Maureen Kennedy. The statement was generally critical of the efforts of the joint committee, and that the joint committee had failed to address the issue of budget reform.

John Dirkin, Anchorage, wanted the bill to be more specific in including the "public trust doctrine." He also wanted the bill to cover all state and municipal employees.

Senator Faiks pointed out that 33 other states had taken similar approaches to the one embodied in this bill.

Sheri Jacobus, Anchorage, representing the FREE committee of the Anchorage Woman's club testified that their position was that the legislature should go more slowly toward adopting this type of legislation to allow everyone to digest the contents of the legislation. She commented that the bill was complicating the situation and suggested that the bill was not fair to legislators.

Darlene Holt, Anchorage, testified that she did not think that there would be enough public comment on the bill.

Theda Pitman, APOC, Anchorage, promised to send detailed comments on the bill.

There being no further public comment the meeting was adjourned at 8:20 pm.

by
Fischer
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ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



21
April 14, 1983
3:00 pm

Butrovich Room
Capitol

MEMBERS PRESENT:

Senator Vic Fischer, Chair
Senator Sturgulewski
Senator Kelly

ALSO PRESENT:

Senator Faiks

SB 257 Legislative Standards of Conduct

Senator Fischer made opening remarks.

Peg Kehrer, representing herself, made a number of specific suggestions and comments on the bill, and gave the committee a written list of her suggested changes. She was also concerned about the application of confidential information provisions to former legislators and employees.

Ron Lorensen, Office of the Attorney General, testified that the 30-day limitation on issuing advisory opinions is too restrictive. He said that the AG's office is working on a conflict of interest bill for the executive and judicial branches.

Senator Faiks said that the AG doesn't have a draft of this legislation because early drafting attempts were focused on developing a system for all public officials. She gave a summary of legislative ethics statutes in other states.

Senator Sturgulewski asked if the issue of legislative immunity was addressed in this bill. Senator Fischer said that it was not, and Ron Lorensen gave some legal background on the issue.

Senator Fischer presented a list of topics in the bill which he thought should be addressed by the committee. The topics on the list were covered in order and much general discussion followed.

The meeting adjourned at 4:30 pm. Attached is Senator Fischer's discussion document.

by
Lewis Schwager
Aide

April 21, 1983 in Senate State Affairs Committee

ISSUES TO BE ADDRESSED ON LEGISLATIVE ETHICS BILL SB 257

- P1 L16 APPEARANCES OF IMPROPRIETY
Should they be banned?
Or should we suggest that appearances only should be avoided.
- P2 L 9 WHO SHOULD BE INCLUDED
Is this group too wide, too narrow?
What about the Range 18 cutoff.
- P2 L17 CONFLICTS OF INTEREST
What about this definition?
Is it too ambiguous?
What about the definition that a "conflict of interest" exists when a personal interest conflicts with the public interest to the point where the member's independence of judgement is impaired?
- P3 L8 CONTRACTS
Is the public interest protected by competitive bidding?
What about after the contract is let and performance is being assessed?
Ownership interest: is this formula adequate. Too high?
What about setting a low fixed dollar value and allowing the commission to allow permission for people to have contracts if the person did not or will not improperly exercise influence in obtaining the contract?
Should we require publication in the Journal of the of all state or municipal contracts?
- P3 L29 - LOANS
- P5 L14 INTERESTS BETWEEN OFFICIALS
Is "substantial financial matter" satisfactory or should we set a dollar value?
- P6 L16 GIFTS
Do you agree with the amounts and approach of section (3)?
- P6 L25 NEPOTISM
Objection to the provision allowing spouses to work in the other house during session was raised at the hearing last night. Do you support this provision?
- P7 L12 REPRESENTATION
Do you agree that a lawyer-legislator can represent a

client in a civil suit where the state is a party.
How about the provision on L14 where representation can continue if the matter was pending before the person took office or accepted the job.

- P7 L19 ACTION ON CONFLICT
What should a legislator do if he or she finds themselves in a clear conflict situation?
Should a legislator vote if a conflict exists?
- P7 L3 THE ETHICS COMMISSION
Do you agree with the composition of the commission as provided?
Should there be a single commission with outside members, a joint committee just of legislators, two committees with legislators and outside members?
How should these people be selected?
- P10 L6 SUBPOENA POWER
If the commission/committee is not purely legislative, should it have independent subpoena power without the need for approval. Should the commission get their subpoena power through AS 24.25.010.
- P11 L6 STATUTE OF LIMITATIONS
Should there be a limit on how far back the commission may inquire?
- P13 L10 PENALTIES
Is this list of penalties complete?
- P13 L12 INTRODUCTION OF RESOLUTION
This bill ends the process with a decision and recommendations in the hands of one of the presiding officers. This requires some individual to decide to introduce a resolution or take some other action. One suggestion that was made was to give the commission the ability to introduce bills through the rules committee "by request."
- P13 L24 EMPLOYEE PENALTIES
Should the commission decision about an employee be submitted to the presiding officer or to the chair of the Rules Committee?
Should the employee be entitled to a hearing before final action is taken?

SB 257: THE PROCESS OF ADJUDICATION

NOTE: SB 257 uses some labels for the different documents in this process that are confusing. We suggest a change in nomenclature and have prepared this chart with the new names. The names used in the bill are in parentheses.

ADVISORY OPINION

- requested by person
- if complete disclosure made and if advice followed is binding on further action under this section
- if the terms of the advisory opinion complied with
===NO FURTHER ACTION===
- if advisory opinion not followed

COMPLAINT

- may come from anyone. must be in writing signed under oath
- allegations must have occurred within four years or within one year of termination of state service
- person against whom made is notified and afforded an opportunity to explain
- commission determines if all allegations, when taken as true, constitute a violation of complaint. If not ===DISMISS===
- commission defines nature and scope of investigation
- commission makes confidential investigation, may subpoena witnesses, take oaths, and require production of books and papers

PRELIMINARY OPINION (advisory opinion)

- if no violation is found
===NO FURTHER ACTION, OPINION MAY BE MADE PUBLIC===
- if a violation is found, the person may be offered a recommended course of action which will take care of the problem. person may comply with the recommendation of the preliminary opinion or may request a

FORMAL OPINION.

- if a majority of the members determine that there is probable cause for belief that a violation of the chapter the commission shall file charges

CHARGES (a complaint)

- must be personally served on person
- person has 20 days to respond in writing to the commission
- commission sets time and place for hearing
- person charged has right to be heard, subpoena witnesses and documents, be represented by counsel and have the right to cross examine witnesses testifying under oath.
- hearings closed to public unless requested by person accused
- no formal rules of evidence, evidence must be competent and substantial
- testimony only available to commission and staff and person charged

DECISION

- shall be in writing and signed by four or more members
- accompanied by a SUMMARY DECISION (written order) which is made public at once
- decision is referred to the presiding officer of person's body
- contains statement of the facts making up the violation and recommendations concerning penalties
- made public 30 days after referral.

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



April 27, 1983
7.10 pm

Butrovich Room
Capitol

MEMBERS PRESENT

Senator Vic Fischer
Senator Sturgulewski
Senator Kelly
Senator Rodey

ALSO PRESENT

Senator Kerttula
Senator Faiks

SB 257 - Legislative Standards of Conduct

Discussion generally took up at the place where consideration of the bill ended at the previous hearing. The same work document, which is attached to the April 21 meeting notes, was the basis for discussion.

Lewis Schnaper explained a memorandum from Billy Berrier containing a number of changes to the bill suggested by staff and others.

Senator Fischer started discussion of the bill at page 7 line 12 of SB 257.

Senator Faiks explained the history of the section "Representation by Legislators."

Senator Sturgulewski stated that she was concerned with a potential conflict of interest where a legislator represents a client where the state is a party.

Senator Faiks said that she wants to leave this provision loose enough so that lawyers can continue to practice their profession.

Senator Fischer opened discussion on the section on actions after a conflict has been discovered. Extensive general conversation followed.

Senator Faiks explained the rationale for this section. She said that abstaining from voting on a conflict may produce a result which benefits the legislator with the conflict, as defeat of the measure may be in the person's best interest.

Senator Sturgulewski asked whether "resign the position" meant the legislator's office. Senator Faiks said that this was what was

intended.

Senator Fischer discussed page 9 line 29, "Duties of the Commission. A general discussion followed. Proposed commission subpoena powers were discussed, with the committee deciding to require legislative approval of the commission's subpoena powers in the same manner as now required for legislative committees.

Senator Fischer opened the discussion of advisory opinions. After some discussion the committee decided to have language drafted allowing the time period to be extended by a more-than-majority vote of the commission.

Senator Fischer opened meeting to general discussion of the bill. A number of changes were made to be incorporated into a CS. Senator Ray's proposed amendments were introduced, with a number of them being adopted for the CS.

Senator Fischer designated Senator Kelly to act as temporary vice-chair in Senator Ray's absence for the remainder of the meeting.

The meeting was adjourned by Senator Kelly at 9.10 pm.

by
David Dye
committee Aide

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



April 28, 1983
3:00 p.m.

Butrovich Room
Capitol Bldg.

Members Present:

Senator Vic Fischer, Chair
Senator Bill Ray, Vice Chair
Senator Pat Rodey
Senator Tim Kelly
Senator Arliss Sturgulewski

AGENDA

SB 265--Permits for games of chance

SB 257--Legislative conduct

SB 265--Permits for games of chance

Senator Rodey, who had been appointed as a subcommittee of one to consider this bill, proposed a committee substitute.

Don Bullock, hearing examiner for the Department of Revenue testified in support of the committee substitute. Mr. Bullock drafted much of the committee substitute and he explained the new provisions to the committee.

Senator Ray suggested that the definition of "activity" be amended to mean an event of no more than 3 day duration rather than 24 hours. The committee accepted this amendment by consensus.

General discussion ensued concerning what was meant by the term "personal gain" in a provision which prohibits the same by anyone operating an activity allowed by this legislation.

Senator Kelly asked if a political part could operate these gambling activities. Mr. Bullock said "yes."

Mr. Bullock said that the intent of this bill is to limit the abuses which have been associated with other forms of the legalized gambling in Alaska such as bingo.

The committee discussed various ways these activities could be limited to those organizations who had conducted such activities prior to some date in the past (grandfather rights). It was pointed out that organizations which had refrained from conducting such activities because of their questionable legality would be penalized by grandfather rights.

Senator Ray moved and asked unanimous consent that 1) the various amendments be incorporated into the committee substitute; 2) that the committee adopt the revised committee substitute; and, 3) that the committee substitute pass from committee with individual recommendations. There was no objection.

SB 257--Legislative Conduct

Lewis Schnaper aide to Senator Fischer presented to the committee a memorandum containing a number of changes suggested to the bill. Billy Berrier of Legislative Legal Services was present to assist the committee. Mr Schnaper explained the different suggested amendments for approval by the committee. A copy of this memorandum and a mark-up of the bill keyed to the memo is attached.

Senator Sturgulewski raised a number of questions concerning legislative contracts, using her own business situation as an example. Many of her concerns were satisfied by an examination of what contracts would be covered, and the fact that contracts entered into by competitive bid are allowed to legislators.

The committee discussed the formula to determine what an allowable interest was for a legislator in a non-bid contract. After considerable discussion the committee decided to use the formula in the bill. Discussion proceeded on the change memo.

Considerable discussion was had of the various suggested changes. The majority of the suggested changes were adopted by the committee and made part of the committee CS for the bill.

The committee then considered a document entitled "Suggested Cleanup of Adjudication Section." Bill Berrier opposed considering the changes in this document, as he thought that up to a week's work might be required to satisfactorily adjust this section. At the committee's request he said that he would work up suggested new language.

The committee decided to forward the bill to the Judiciary Committee without the changes suggested in the adjudication sections in an effort to move the bill toward the floor. A letter will be sent to the Judiciary Committee suggesting that this area needs further attention.

Senator Fischer placed a document regarding a substitute definition of "conflict of interest" before the Committee. After brief discussion the committee did not adopt this suggested change.

Senator Kelly moved and asked unanimous consent to adopt the committee substitute and move it from committee with individual recommendations. No objection.

The meeting was adjourned at 5.50 pm.

by

David Dye
Committee Aide

Sen Ray's

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:

emph. on 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 inadvertently discloses information which may be construed as being "confidential."

Sec. 24.60.080(a) was changed as follows:

NO X 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

OK (1) hospitality within the state 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.

April 28, 1983

TO: Members, Senate State Affairs Committee
FROM: Vic Fischer, Chair
RE: Ethics Committees

At our meeting last night I told the committee that I would bring language setting up separate ethics committees, as suggested by Senator Ray. The following language may serve as a point of departure for your considerations.

ARTICLE . ETHICS COMMITTEES.

Sec. 24.60.200. ETHICS COMMITTEES ESTABLISHED.

(a) An ethics committee of the senate and an ethics committee of the house of representatives are established as permanent committees of the legislature.

(b) Each ethics committee shall provide the particular house of the legislature and its members with guidance on legislative standards of conduct through the establishment of substantive and procedural guidelines, the issuance of advisory opinions, and the investigation of complaints of violations of legislative standards of conduct by members of the legislature and by persons employed by a member of the legislature.

(c) Nothing in this chapter authorizes the referral by the presiding officer of legislation to an ethics committee at a regular or special session of the legislature.

Sec. 24.60.210. MEMBERSHIP. The ethics committee of the senate is composed of three members of the senate appointed by the president of the senate and the ethics committee of the house of representatives is composed of five members of the house of representatives appointed by the speaker of the house. The membership of each committee shall include at least one member from each of the two major political parties represented in that house. The appointing authority in each house shall announce the appointment of members of each committee within 15 days after the convening of the first regular session of each legislature.

Sec. 24.60.220. TERM OF MEMBERSHIP. A member serves for the duration of the legislature in which the member is appointed and a member reelected to office or serving a term of office extending into the next succeeding legislature may continue to serve until a successor is appointed.

Sec. 24.60.230. VACANCIES. If a vacancy occurs in the membership of an ethics committee the presiding

Acceptable
9/6 3/4 of bill

officer shall fill the vacancy within 30 days. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy occurs among the appointed member of a committee, the remaining committee members shall appoint a new member. A member of the legislature appointed to fill a vacancy shall be a member of the same political party as the member vacating the seat, if possible.

Sec. 24.60.240. STAFF. (a) Each ethics committee may hire and determine the compensation of staff of the committee. Staff members serve at the direction and at the pleasure of the ethics committee.

(b) Staff shall maintain the integrity of the functions and services of each ethics committee by refraining from joining or supporting any partisan political organization, faction or activity that would tend to undermine the essential nonpartisan nature of their functions and services. The provisions of this section do not restrict staff from expressing private opinion, registering or voting.

Sec. 24.60.250. MEETING OF THE ETHICS COMMITTEE. Each ethics committee shall meet as necessary during a legislative session and during the interim and it may meet at the request of its chair or of three members of the committee.

Sec. 24.60.260. QUORUM. A quorum of the ethics committee consists of three members and the vote of three members is required to adopt a motion, determination, or advisory opinion of the ethics committee.

ARTICLE . DEFINITIONS.

Sec. 24.60.900. DEFINITIONS. In this chapter,
(2) "ethics committee" means the ethics committee of the house of the legislature to which the member of the legislature or the member employing a person belongs.

April 28, 1983

M E M O

TO: Members, Senate State Affairs Committee
FROM: Vic Fischer
RE: SB 257: definition of conflict of interest

In the course of our work on this important bill I've come to the conclusion that, with one exception, it will leave our committee as a workable statute, meeting both the public interest and the requirements of legislators and their staffs.

The exception is this bill's definition of conflict of interest. This concept is the keystone of this bill, and can, I think, be tightened up.

The following language is based closely on the concept used in Maryland and North Carolina, where instead of a conflict being vaguely defined as "where the private interests and public interest of a legislator are in conflict" they directly link the concept with the problem that it creates, and say that a conflict of interest exists when a legislator's private interest "tend to impair his or her independence of judgement."

I submit the following proposed language for your consideration.

Deletion of Sec. 24.50.030(b) through (d) which commenced on line 20, page 2 through line 7, page 3, and substitution of a new subsection. The new subsection would read:

(b) A conflict of interest does not exist under this

chapter and there is no duty to disclose a conflict of interest if the benefit or detriment received by a person to whom this chapter applies is not different from that shared by all residents of the state or by all members of a large group or class of residents of the state.

(c) If the benefit or detriment received by a person to whom this chapter applies is not shared or is shared only by a small group or class of residents of the state, then a conflict of interest may exist.

(d) A personal interest of a person to whom this chapter applies conflicts with the public interest if it tends to impair the independence of judgment of the member of the legislature or the person employed by a member of the legislature.

(e) If a person to whom this chapter applies acts on a legislative matter in which a personal interest may exist, the person shall consider whether the personal interest will tend to impair the independence of judgment of the person.

(f) If the member of the legislature determines that an actual conflict of interest exists, or receives an advi-

sory opinion finding that a conflict of interest exists, the member of the legislature shall declare the interest on the floor or in committee, ask to be permitted not to vote, take no further legislative action on the matter and file a written statement on the conflict of interest with the ethics commission within 48 hours of the determination that a conflict of interest exists. If a person employed by a member of the legislature or a permanent or temporary employee of an agency of the legislature determines that an actual conflict of interest exists, the person shall file a written statement with the ethics commission within 48 hours of the determination that a conflict of interest exists and may not participate further in the matter. The person may divest the interest, place the interest in a blind trust or resign the position.

Following line 7, page 3, insert the following:

Sec. 24.60.____. PRESUMED CONFLICTS OF INTEREST. (a)
A member of the legislature shall take no further legislative action on the matter and request permission to

abstain from voting, and a person to whom this chapter applies may not undertake other official duties where the person

(1) has an interest that is direct and different from the interest of a member of the public in an activity that would receive a benefit or detriment from proposed legislation or official duties; and

(2) is a participant in a close economic association with an individual or person who the member of the legislature or an employee of the legislature knows

(A) has a direct interest in a business activity that will receive a benefit or detriment directly by the proposed legislation or official duties;

(B) is a lobbyist or has employed a lobbyist;

(3) solicits, accepts, or agrees to accept a gift as defined in AS 24.50.080, loan, or payment in an aggregate amount during a single calendar year of more than \$100 from

an individual or person with an interest in a business activity that would receive a benefit by or share a detriment from proposed legislation or official duties.

(b) Notwithstanding (a) of this section, a member of the legislature may vote on proposed legislation or engage in other official duties prescribed in (a) of this section if the legislator files a sworn statement with the commission. The statement shall describe the circumstances of the apparent conflict and shall state that the apparent conflict will not prevent a fair and objective consideration of the proposed legislation or official duties by the member of the legislature. This statement shall be published in the supplemental journal.

(c) If the member of the legislature files a statement under (b) of this section or if the member of the legislature requests an advisory opinion on an apparent or presumed conflict, the commission may issue an opinion concerning the propriety of the proposed action by the member of the legislature.

(d) A disclosure to the Public Offices Commission under AS 39.50.020 does not constitute compliance with the

requirements of disclosure of a conflict of interest under this section or AS 24.60.300.

(e) The acceptance by a member of the legislature of campaign contributions that are reported under AS 15.13 does not create a conflict of interest.

(f) As used in this section, "close economic association" means, as related to a person to whom this chapter applies, partners, associates, employers and employees in business and professional enterprises, corporations in which the person owns capital stock in excess of \$5,000, and a corporation of which a member of the legislature or a person employed by a member of the legislature is an officer, director, or agent.

4/28/83

Sen Vic Fischer

SUGGESTED CLEANUP OF ADJUDICATION SECTION

Sec. 24.60.150. ADVISORY OPINIONS.. The

commission shall issue an advisory opinion on the
written request of a person to whom the chapter applies, or
may issue an advisory opinion at the request of any person, as to
 whether the facts and circumstances of a particular case constitute
 a violation of ethical standards. If an advisory opinion is not
 issued within 30 days after the request is filed with the
 commission [PROVISION FOR EXTENSION OF TIME IN 30-DAY
INCREMENTS BY FIVE VOICES OF THE COMMISSION], the facts and
 circumstances of the particular case do not constitute a
 violation of the ethical standards. The opinion issued ~~or~~
~~considered~~ issued is binding on the commission and in
 any subsequent proceedings under this chapter concerning the
 facts and circumstances of the particular case unless material
 facts were omitted or misstated in the request for the advisory
 opinion. Except as provided in this chapter an advisory
 opinion is confidential but may be made public ~~if~~
~~written~~ requested by the person who requested the
~~opinion is filed with the commission.~~ at the written

request of the person who requested the opinion.

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

(d) A complaint shall be in writing and signed /
under oath by the person making the complaint. ~~A complaint~~
~~initiated by three or more members of the~~
~~commission.~~ The commission shall notify in writing each
person against whom a complaint is received and afford the
person an opportunity to explain the conduct alleged to
be a violation of this chapter. If the commission
determines that a complaint does not contain allegations
of facts sufficient, if the alleged facts are treated as
true, to constitute a violation of this chapter the
commission ~~shall~~ may summarily dismiss the complaint.

(b) Before the commission may exercise power
authorized in (c) of this section, the commission shall by
resolution, supported by a vote of three members of the
commission, define the nature and scope of the inquiry.

(c) The commission may investigate a violation of
this chapter in a proceeding begun within four years after
the alleged violation occurs and within one year after

termination of state service. Nothing in this subsection bars proceedings against a person who ~~by fraud~~ prevents discovery of a violation of this chapter. ~~All proceedings~~
~~initiated~~ ~~is considered by the filing of a complaint with the~~
~~commission~~ No complaint, other than a complaint ~~initiated~~ approved by five or more members of the commission may be received within a period of 60 days preceding a state primary or general election.

(e) The commission shall investigate ~~the~~ ~~charges~~ complaints accepted ~~filed~~ under this section and issue an ~~advisory~~ ~~opinion~~ opinion to the person alleged to have violated a provision of this chapter. The commission shall investigate all complaints on a confidential basis. If the ~~advisory~~ opinion indicates a probable violation and makes recommendations to mitigate the situation complained about,, the person against whom the complaint was made may ~~request a~~ ~~formal~~ ~~inquiry~~ ~~or~~ comply with the recommendations of the ~~advisory~~ opinion. If the person fails to comply with the ~~advisory~~ opinion or if a majority of the members of the commission determine that

/ there is probable cause for belief that a violation of this chapter has occurred, the commission shall file a commission complaint against the person charged with a violation of

this chapter and the commission complaint and statement of the alleged

violation shall be personally served on the person charged. The alleged violator has 20 days after service of the commission complaint ~~and statement~~ to respond in writing to the commission.


(f) The commission may set a time and place for a hearing before the commission with notice to the complainant, if any, and to the

person charged with a violation of this chapter. A representative of the commission and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. [RIGHT OF WITNESS TO SUBPOENA

WITNESSES SHALL BE THROUGH THE COMMITTEE'S RIGHT, WHICH COMES THROUGH THE LEGISLATURE] Each witness shall testify under

oath. The hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The commission is not bound by the rules of evidence but the commission's findings must be based upon competent and substantial evidence. The commission must follow its Rules of Procedure. The testimony

taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence is available only to the staff of the commission to the Attorney

 General at the discretion of the commission, and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the commission without charge.

(g) A decision of the commission shall be in writing contain a finding of facts and conclusions of law and be signed by four or more members of the commission. Each decision of the commission must be accompanied by a ~~written order~~ summary decision of the commission

determining that a violation of this chapter exists or does not exist. The ~~order~~ summary decision is confined to this determination.

This ~~order~~ summary decision is a public record.

(h) If the commission issues a decision finding that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the commission, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation or the failure to cooperate and ~~they~~ shall contain recommendations concerning any

penalties the legislature may lawfully impose including imposition of civil penalties in an amount not to exceed \$25,000, divestment of the interest, repaying profits, censure, removal from commission assignments, termination of legislative privileges; or expulsion. The commission shall make the decision public 30 days after the referral. Days during which the legislature is not in session may not be counted in determining the 30-day period. The legislature shall act on the decision as it considers appropriate.

(i) If four members of the commission agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the commission shall issue a public statement

of its decision 30 days after the date of the decision.

/ The legislature shall act on the decision as it considers appropriate. In the case of an employee the action may include suspension, demotion, or dismissal. The employee is entitled to a hearing before any final action is taken

information under AS 11.56.860.

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1983

SUBJECT: Suggested changes to SB 257

TO: Senator Vic Fischer
Chairman, Senate State Affairs Committee

FROM: Billy G. Berrier 
Director
Division of Legal Services

You have requested a listing of the changes you suggested to SB 257.

1. A change in the title to insert the word "legislative" between the words "to" and "standards" on line 6, page 1 and to delete the phrase "of legislators and legislative employees" on lines 6 and 7.
2. On line 16, page 1, delete the word "must" and substitute the word "should".
3. On page 1, line 16, following the word "legislators" add "and legislative employees".
4. On page 1, line 25, following the period add "This chapter shall be ~~strictly~~ construed to promote high standards of ethical conduct in the legislature."
5. Deletion of the word "repeal" on line 11, page 2 and substitution of the word "supersede" referring to provisions of the common law.
6. On page 3, lines 8, 9, 10, 11, 12 and 14, following the word "contract" add "or lease".
7. A change to Sec. 24.60.040(a)(1) on page 3, lines 16 to 20, changing the subsection which now reads:

(1) a firm, corporation, or association that has assets in excess of \$5,000,000 and in which the person

April 28, 1983

has an ownership interest greater than 10 percent or that has assets of \$5,000,000 or less and in which the person has an ownership interest greater than 25 percent; or

to read:

(1) a firm, corporation or association in which the person has an ownership interest valued at more than \$5,000.

8. Insertion of a new Sec. 24.60.040(b) and (c) following line 21, page 3, which reads:

(b) A member of the legislature or a person employed by a member of the legislature may enter into or have an interest in a state contract not obtained through competitive bidding if the ethics commission determines that the person did not improperly exercise influence in obtaining the contract.

(c) An employee of an agency of the legislature established under AS 24.20 may not be a party to a contract with the state.

and renumber the existing (b) as (d).

9. Deleting the word "under" on line 23, page 3, and inserting the term "resulting from" and adding the word "named" between the words "a" and "party" on line 24.

10. Insertion of a new Sec. 24.60.040(e) which reads:

(e) If a person to whom this chapter applies is a party to or has an interest in a state contract or a contract with a political subdivision of the state, the person shall furnish a copy of the contract to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Notice of the filing shall be published in the supplemental journal.

11. On line 9, page 4, insert the word "state" between the words "the" and "loan".

12. On line 10, page 4, insert the words "consideration of" between the words "to," and "the".

13. On line 19, page 4, insert the word "ethics" between the words "the" and "commission".
14. On line 20, page 4, insert the word "state" between the words "each" and "loan" and delete the words "publish" and substitute the word "deliver".
15. On line 22, page 4, delete the period following the word section and insert the phrase "to the presiding officer of each house."
16. On line 24, page 4, following the period insert "The list shall be published in the supplemental journal."
17. On lines 10 and 11, on page 5, delete "It is a conflict of interest if a person to whom this chapter applies discloses or uses" and insert "A person to whom this chapter applies may not disclose or use".
18. On page 5, line 11, following the word "applies insert "willfully" and following the word "or" insert "knowingly".
(Ray)
19. On page 5, line 16, following the word "disclose" add "in writing".
20. On page 7, lines 18 and 19 insert:
 - (d) Disqualification under this section of an attorney who is a member of the legislature does not disqualify a law firm in which the legislator is a member.
21. On line 18, page 5, delete the word "substantial" and following the word "matter" insert "valued at more than \$1,000".
22. On lines 27 and 28, page 5, delete "It is a prohibited conflict of interest for a person to whom this chapter applies to form" and insert "A person to whom this chapter applies may not form".
23. On page 5, line 29, following the word "lobbyist" add "as defined in AS 24.45.181".
24. On page 6, line 4, following the word "gift" delete "in excess of \$100" and insert "having an aggregate value in excess of \$100 in a calendar year from a person."

25. On line 10, page 6, delete "conflict of interest" and insert "gift".

26. On page 6, lines 3, 4, and 7 following the word "gift" add "or promise of a gift".

27. On page 6, line 9, following the word "action" add "or inaction".

28. On page 6, line 12, following the word "hospitality" delete the words "at another" and insert "from another person at that person's".

29. On page 6, lines 12 and 13, delete all language and insert "hospitality within the state including meals, lodging or transportation". (Ray)

30. On lines 16 through 18, page 6 delete "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 for the calendar year from one person."

31. On page 6, line 21, following the word "establish" insert "additional" and on lines 23 and 24, delete "or that require public officials to turn over the benefits to the agency." (Ray)

32. On line 5, page 7, insert "for the purpose of this section" between the words "employed" and "if". On page 7, line 10, delete the word "an" and insert "a court,".

33. On page 7, line 11, following the word "state" add "unless acting in their official capacity".

34. On lines 12 through 15, page 7, delete all material and insert

(b) A qualified member of the legislature may represent a client in a criminal action before a court of the state or in a civil action where the state is not a party.

35. On page 7, line 20, delete the word "has" and insert "knowingly has or has been notified of" and on line 21, following the word "the" insert "conflicting". (Ray)

36. Following line 28, page 7, insert a new section to read:

Sec. 24.60.110. RETALIATION. Retaliation for filing an ethics complaint with or for providing truthful testimony to the commission or to publicly constituted investigatory body constitutes a violation of legislative ethics.

37. Following the above insertion, insert a new section to read:

Sec. 24.60.115. EMPLOYMENT OF FORMER MEMBERS AND EMPLOYEES. A former member of the legislature and a former employee of the legislature may accept employment with an agency of the state or with a municipality of the state and may engage in lobbying ~~immediately~~ on the termination of service as a member of the legislature or as a person employed by a member of the legislature. A former member of the legislature and a former employee of the legislature may not use confidential information obtained from the earlier service except for the benefit of the state.

38. On lines 8 and 9 of page 8, delete "The president of the senate shall appoint one member to the commission from the senate" and insert "one member of the senate appointed by the president of the senate"; on lines 11 and 12, page 8, delete "the speaker of the house of representatives shall appoint one member to the commission from the house of representatives" and insert "one member from the house of representatives appointed by the speaker of the house".

39. On lines 16 and 20, page 8, delete the word "persons" and insert "public members"; and on line 23, delete "member of the commission shall be" and insert "public member who is a".

40. On page 9, line 5, delete the word "four" and insert "five".

41. On line 6, page 9, following the period, insert "The public members first appointed by each presiding officer have terms of two years and ~~two~~ ^{three} years as designated by the presiding officer."

42. On page 9, line 8, following the period delete "A commission member may not serve more than one full term."

43. On line 9, page 9, between the words "a" and "member" insert "public"; on lines 14 through 16 delete all language.

44. on line 29, page 9 through line 13, page 10, delete Sec. 24.60.140 and insert:

Sec. 24.60.140. DUTIES OF THE COMMISSION. The commission may:

(1) recommend legislation to the legislature that the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(2) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission, and may require the production for examination of any books or papers relating to any matter under investigation before the commission; and shall

(3) adopt rules to facilitate the receipt of inquiries and prompt rendition of its opinions and procedural rules to protect the rights of any persons who may be involved or affected by actions of the commission;

(4) publish semi-annual summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in decisions or opinions that have remained confidential.

45. On page 10, line 1, following the word "adopt" delete the word "regulations" and insert "procedures". On page 10, line 2, following the word "opinion" insert "which prescribe the procedure of the commission and the types of evidence the commission will receive".

46. On page 10, line 6, following the word "witnesses" insert "with the concurrence of the president of the senate or the speaker of the house" and on line 7, following the word "may" insert ", with the concurrence of the president of the senate or the speaker of the house,".

47. On line 15, page 10, between the words "the" and "request" insert "written".

April 28, 1983

48. On line 16, page 10, between the words "applies" and "as" insert "or may issue an opinion at the written request of any person".

49. On line 20, page 10, following the period, insert "The commission may extend this period for a period of 30 days by a vote of five members of the commission if additional time is necessary to complete the opinion by written notice to the person who requested the opinion."

50. On line 21, page 10, delete "or considered issued."

51. On page 10, line 21, following the word "commission" add "until amended or revoked".

52. On line 22, page 10, between the words "proceeding" and "concerning" insert "under this chapter".

53. On lines 25 through 27, page 10, delete "if a written request by the person who requested the opinion is filed with the commission." and insert "at the written request of the person who requested the opinion."

54. On page 11, line 3, delete "vote of three members" and insert "majority vote of the full membership of the commission".

55. On line 11, page 11, between "initiated" and "by" insert "or approved".

56. On lines 15 and 16, page 11, delete "A complaint may also be initiated by three or more members of the commission."

57. On line 22, page 11, delete "shall" and substitute "may".

58. On lines 24, 26, and 29, page 11, delete "advisory".

59. On line 29, page 11, delete the second "advisory" following the word "the".

60. On line 3, page 12, following the word "file" delete "complaint" and substitute "charges"; on line 4, delete "charged with a violation of this chapter" and insert "alleged to have committed".

61. On line 8, page 12, following the word "hearing" insert "before the commission".

62. On line 15, page 12 and on line 19, delete the word "the".

63. On line 21, page 12, delete "staff of the commission" and insert "commission and its staff".

64. On page 12, line 21, following the word "commission" delete the word "and" and insert a comma; on line 22 following the word "chapter" insert "and, at the discretion of the commission, to the Attorney General".

65. On line 26, page 12, between the words "shall" and "be" insert "contain findings of fact and conclusions of law and shall".

66. On line 28, page 12 and on line 1, page 13, delete "order" and insert "summary decision" in both occurrences.

67. On line 3, page 13 between the word "decision" and the word "that" insert "finding".

68. On page 13, line 10, delete "divestment" and insert "required divestiture".

69. On line 22, page 13, delete "legislature" and insert "decision shall be delivered to the Rules Committee which".

70. On line 24, page 13, following the period insert "The employee is entitled to a hearing before final action is taken."

71. On page 13, line 25; delete the word "individual" and insert "or a member of the commission staff".

72. On page 13, lines 27 and 28, delete "misuse of confidential information under as 11.56.080" and insert "a class A misdemeanor and may be sentenced to a definite term of imprisonment of not more than one year".

--SENATE STATE AFFAIRS COMMITTEE--
MARKUP OF 4/27 PROPOSED CHANGES

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

1 IN THE SENATE

2

SENATE BILL NO. 257

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

①

6 For an Act entitled: "An Act relating to ^{legislative} standards of conduct ~~of legisla-~~
7 ~~tors and legislative employees~~ and establishing a
8 Legislative Ethics Commission; and providing for an
9 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 ^{AND LEGISLATORS SHOULD} ~~employe~~ ^② ~~tors must~~ avoid conduct that even appears to violate the trust the
17 ^③ 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 Legislative Ethics Commission to con-
24 sider alleged violations of this chapter and to render advisory opin-
25 ions to persons affected by this chapter. ^④ liberal construction

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

1 (1) a former member of the legislature or to a person
2 formerly employed by a member of the legislature or an agency of the
3 legislature, unless the provision specifically states that it so ap-
4 plies;

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

7 (3) a person employed by a member of the legislature or an
8 employee of an agency of the legislature whose compensation is below
9 Step A, Range 18 of the state salary schedule established in AS 39.-
10 27.011(a).

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

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

20 ~~(b) A conflict of interest exists when ^{DEFINE} whom this~~
21 ~~chapter applies has discretion to take or withhold official action or~~
22 ~~exert influence which could substantially benefit or harm a financial~~
23 ~~matter in which the person has a direct or indirect private interest.~~

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

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

28 (2) the person's authority is relatively far removed from

29 ~~any official action that could reasonably be affected by the potential~~

1 ~~conflict of interest, provided that no attempt has been made to remove~~
2 the appearance of impropriety by delegating responsibility for offi-
3 cial action.

REMOVED
CONFLICT INTEREST

4 (d) A conflict does not exist if no benefit or detriment accrues
5 to a person to whom this chapter applies beyond that which accrues
6 uniformly to members of the profession, occupation or group to which
7 ~~the person belongs, or to the public at large.~~

9
ADD

8 Sec. 24.60.040. CONTRACTS. (a) A person to whom this chapter
9 applies may not be a party to or have an interest in a state contract,
10 unless the contract ^{OR LEASE} is let by competitive bidding under AS 37.05.230
11 or the total annual amount of the state contract ^{OR LEASE} is \$1000 or less. A ⁷
12 person has an interest in a state contract ^{OR LEASE} under this section if the
13 person receives direct or indirect financial benefits. A person has
14 an interest in a state contract ^{OR LEASE} under this section if the contract is
15 awarded to

16 (1) a firm, corporation, or association ~~that has assets in~~
17 excess of \$5,000,000 and in which the person has an ownership interest
18 greater than ^{\$5,000} 10 percent ~~or that has assets of \$5,000,000 or less and~~
19 ~~in which the person has an ownership interest greater than 25 percent;~~
20 or

4
ADD

21 (2) a partnership in which the person is a partner.
22 (b) In this section, "direct or indirect financial benefits"
23 means income, profits or other financial benefits ¹¹ ^{RESULTING FROM} ~~under~~ a state con-
24 tract, without regard to whether the person is a ^{NAMED} party to the con-
25 tract, and without regard to whether the income, profits or other
26 financial benefits inure to the person as a partner, shareholder,
27 investor, agent, employee, consultant, or joint venturer of the con-
28 tractor.

10
Add

12 Add Requires abolition of existence of state or local gov't contract

29 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of

1 interest for a person to whom this chapter applies to participate in a
2 state program or to receive a loan from the state if the program or
3 loan is generally available to members of the public, is subject to
4 fixed eligibility standards, and minimal discretion is exercised in
5 determining qualification.

6 (b) In determining whether a conflict of interest exists with
7 respect to a state program or to a state loan other than those de-
8 scribed in (a) of this section, because a legislator may be in a
9 position to influence the ^{STATE (13)} loan agency, the ethics commission must
10 consider, but is not limited to, ^{CONSIDERATION OF (14)} the adequacy of existing administra-
11 tive procedures for granting and reviewing loans to legislators.

12 (c) Upon application for a state loan by a person to whom this
13 chapter applies, other than loans described in (a) of this section,
14 the lending agency must send a copy of the application to the Alaska
15 Public Offices Commission, which will incorporate the material into
16 the applicant's financial disclosure statement, if the applicant is
17 required to file a disclosure statement. All records relating to a
18 state loan to a person to whom this chapter applies may be disclosed
19 to the ^{ethics} commission (15)

20 (d) Each February 1st, each ^{STATE (16)} loan agency must ^{deliver} ~~publish~~ a listing
21 of all outstanding loans to persons to whom this chapter applies,
22 except for loans described in (a) of this section. ⁽¹⁷⁻¹⁸⁾ The list must
23 include the name of the person, the date of issuance and current
24 status of the loan. ^{to the presiding office of each house of the legislature publication in the Journal}

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

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

6 (g) For purposes of this section "state program" means a program
7 in which tangible assets of the state or a right to use tangible
8 assets of the state are transferred from the state to a private per-
9 son.

10 Sec. 24.60.060. CONFIDENTIAL INFORMATION. ~~It is a conflict of~~
11 ~~interest if~~ ^{MAY NOT} A person to whom this chapter applies ^{discloses} or uses 19
12 for personal gain or for the personal gain of another, information
13 that by law is not available to the public and that the person ac-
14 quired in the course of official duties. ^{(20) OR PRACTICE}

15 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. ^(a) A
16 person to whom this chapter applies shall disclose ^{IN WRITING} to the ⁽²¹⁾ commission
17 the formation or maintenance of a close economic association involving
18 a ~~substantial~~ financial matter ^{VALUED AT OVER \$1,000} with 22

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

23 (2) legislators;

24 (3) a public official in another branch, if the public
25 official is required to file a financial disclosure statement under
26 AS 39.50.

27 (b) ~~It is a prohibited conflict of interest for~~ ^A a person to whom
28 this chapter applies ^{MAY NOT} to form or maintain a close economic association 23
29 involving a substantial financial matter with a lobbyist ^{(24) AS DEFINED 24.25.1(b)} who is not a

1 member of the immediate family of the person.

2 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
3 applies may not solicit ^{(27) or a promise of a gift} a gift, in any amount, or accept or receive,
4 directly or indirectly, ^{(29) having an aggregate value in excess of \$100 in a calendar year from a person} a gift, ~~in excess of \$100~~, whether in the form
5 of money, services, a loan, travel, entertainment, hospitality, or
6 other form, under circumstances in which it may reasonably be inferred
7 that the gift ^{or a promise} is intended to influence the person in the performance
8 of the duties of the person or is intended as a reward for an official
9 ^{(29) OR INACTION} action by the person.

10 (b) It is not a ~~conflict of interest~~ ^{GIFT (26)} under this section if a
11 person to whom this chapter applies accepts

12 (1) ^{(29) of not more than 4 consecutive days} hospitality at ~~another~~ person's residence, including
13 meals, lodging or ground or water transportation; ^{(30) from another person at that person's}

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

16 (3) an invitation to attend a meal or social event; ~~that~~
17 ~~does not exceed \$100 in value received by the person for each meal or~~
18 ~~event and that does not in the aggregate exceed \$250 in value during~~
19 ~~the calendar year from one person; or~~ ⁽³¹⁾

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

21 (c) The commission may establish policies that limit the extent
22 to which persons to whom this chapter applies may accept the benefits
23 set out in (b)(2) of this section, or that require public officials to
24 turn over the benefits to the agency.

25 Sec. 24.60.090. NEPOTISM. (a) An individual who is related to
26 a member of the legislature may not be employed in the house in which
27 the legislator is a member, by an agency of the legislature estab-
28 lished under AS 24.20, or in the other house during the interim be-
29 tween sessions. An individual who is related to an employee of the

1 legislature may not be employed in a position over which the employee
2 has supervisory authority. In this subsection, "an individual who is
3 related to" means a child, husband, wife, mother, father, sister,
4 brother, or a permanent member of the legislator's household.

5 (b) An individual is ^{(32) FOR THE PURPOSES OF THIS SECTION} not employed if no compensation is received
6 from the state for the services provided.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

VF
POUCH Y . STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 27, 1983

SUBJECT: Suggested changes to SB 257

TO: Senator Vic Fischer
Chairman, Senate State Affairs Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have requested a listing of the changes you suggested to SB 257.

1. A change in the title to insert the word "legislative" between the words "to" and "standards" on line 5, page 1 and to delete the phrase "of legislators and legislative employees" on lines 6 and 7.
2. On line 16, page 1, delete the word "must" and substitute the word "should".
3. On page 1, line 16, following the word "legislators" add "and legislative employees".
4. On page 1, line 25, following the period add "This chapter shall be liberally construed to promote high standards of ethical conduct in the legislature."
5. Deletion of the word "repeal" on line 11, page 2 and substitution of the word "supersedes" referring to provisions of the common law.
6. Deletion of Sec. 24.50.030(b) through (d) which commenced on line 20, page 2 through line 7, page 3, and substitution of a new subsection. The new subsection would read:

(b) A conflict of interest does not exist under this chapter and there is no duty to disclose a conflict of interest if the benefit or detriment received by a person to

whom this chapter applies is not different from that shared by all residents of the state or by all members of a large group or class of residents of the state.

(c) If the benefit or detriment received by a person to whom this chapter applies is not shared or is shared only by a small group or class of residents of the state, then a conflict of interest may exist.

(d) A personal interest of a person to whom this chapter applies conflicts with the public interest if it tends to impair the independence of judgment of the member of the legislature or the person employed by a member of the legislature.

(e) If a person to whom this chapter applies acts on a legislative matter in which a personal interest may exist, the person shall consider whether the personal interest will tend to impair the independence of judgment of the person.

(f) If the member of the legislature determines that an actual conflict of interest exists, or receives an advisory opinion finding that a conflict of interest exists, the member of the legislature shall declare the interest on the floor or in committee, ask to be permitted not to vote, take no further legislative action on the matter and file a written statement on the conflict of interest with the ethics commission within 48 hours of the determination that a conflict of interest exists. If a person employed by a member of the legislature or a permanent or temporary employee of an agency of the legislature determines that an actual conflict of interest exists, the person shall file a written statement with the ethics commission within 48 hours of the determination that a conflict of interest exists and may not participate further in the matter. The person may divest the interest, place the interest in a blind trust or resign the position.

7. On page 1, lines 8, 9, 10, 11, 12 and 14, following the word "contract" add "or lease".

8. A change to Sec. 24.60.040(a)(1) on page 3, lines 16 to 20, changing the subsection which now reads:

(1) a firm, corporation, or association that has assets in excess of \$5,000,000 and in which the person has an ownership interest greater than 10 percent or

that has assets of \$5,000,000 or less and in which the person has an ownership interest greater than 25 percent; or

to read:

(1) a firm, corporation or association in which the person has an ownership interest valued at more than \$5,000.

9. Following line 7, page 3, insert the following:

Sec. 24.60. ____ . PRESUMED CONFLICTS OF INTEREST. (a) A member of the legislature shall take no further legislative action on the matter and request permission to abstain from voting, and a person to whom this chapter applies may not undertake other official duties where the person

(1) has an interest that is direct and different from the interest of a member of the public in an activity that would receive a benefit or detriment from proposed legislation or official duties; and

(2) is a participant in a close economic association with an individual or person who the member of the legislature or an employee of the legislature knows

(A) has a direct interest in a business activity that will receive a benefit or detriment directly by the proposed legislation or official duties;

(B) is a lobbyist or has employed a lobbyist;

(3) solicits, accepts, or agrees to accept a gift as defined in AS 24.50.080, loan, or payment in an aggregate amount during a single calendar year of more than \$100 from an individual or person with an interest in a business activity that would receive a benefit by or share a detriment from proposed legislation or official duties.

(b) Notwithstanding (a) of this section, a member of the legislature may vote on proposed legislation or engage in other official duties prescribed in (a) of this section if the legislator files a sworn statement with the

MIKE MILLER

commission. The statement shall describe the circumstances of the apparent conflict and shall state that the apparent conflict will not prevent a fair and objective consideration of the proposed legislation or official duties by the member of the legislature. This statement shall be published in the supplemental journal.

(c) If the member of the legislature files a statement under (b) of this section or if the member of the legislature requests an advisory opinion on an apparent or presumed conflict, the commission may issue an opinion concerning the propriety of the proposed action by the member of the legislature.

(d) A disclosure to the Public Offices Commission under AS 39.50.020 does not constitute compliance with the requirements of disclosure of a conflict of interest under this section or AS 24.60.300.

(e) The acceptance by a member of the legislature of campaign contributions that are reported under AS 15.13 does not create a conflict of interest.

(f) As used in this section, "close economic association" means, as related to a person to whom this chapter applies, partners, associates, employers and employees in business and professional enterprises, corporations in which the person owns capital stock in excess of \$5,000, and a corporation of which a member of the legislature or a person employed by a member of the legislature is an officer, director, or agent.

10. Insertion of a new Sec. 24.60.040(b) and (c) following line 21, page 3, which reads:

(b) A member of the legislature or a person employed by a member of the legislature may enter into or have an interest in a state contract not obtained through competitive bidding if the ethics commission determines that the person did not improperly exercise influence in obtaining the contract.

(c) An employee of an agency of the legislature established under AS 24.20 may not be a party to a contract with the state.

and renumber the existing (b) as (d).

11. Deleting the word "under" on line 23, page 3, and inserting the term "resulting from" and adding the word "named" between the words "a" and "party" on line 24.

12. Insertion of a new Sec. 24.60.040(e) which reads:

(e) If a person to whom this chapter applies is a party to or has an interest in a state contract or a contract with a political subdivision of the state, the person shall furnish a copy of the contract to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Notice of the filing shall be published in the supplemental journal.

13. On line 9, page 4, insert the word "state" between the words "the" and "loan".

14. On line 9, page 4, insert the words "consideration of" between the words "to" and "the".

15. On line 19, page 4, insert the word "ethics" between the words "the" and "commission".

16. On line 20, page 4, insert the word "state" between the words "each" and "agency" and delete the words "publish" and substitute the word "deliver".

17. On line 22, page 4, delete the period following the word section and insert the phrase "to the presiding officer of each house."

18. On line 24, page 4, following the period insert "The list shall be published in the supplemental journal."

19. On lines 10 and 11, on page 5, delete "It is a conflict of interest if a person to whom this chapter applies" and insert "A person to whom this chapter applies may not disclose or use".

20. On page 5, line 13, following the word "law" add "or by practice".

21. On page 5, line 6, following the word "disclose" add "in writing".

22. On line 18, page 5, delete the word "substantial" and following the word "matter" insert "valued at more than \$1,000".
23. On lines 22 and 28, page 5, delete "It is a prohibited conflict of interest for a person to whom this chapter applies to form" and insert "A person to whom this chapter applies may not form".
24. On page 5, line 29, following the word "lobbyist" add "as defined in AS 24.45.181".
25. On page 6, line 4, following the word "gift" delete "in excess of \$100" and insert "having an aggregate value in excess of \$100 in a calendar year from a person."
26. On line 10, page 6, delete "conflict of interest" and insert "gift".
27. On page 6, lines 3, 4, and 7 following the word "gift" add "or promise of a gift".
28. On page 6, line 9, following the word "action" add "or inaction".
29. On line 12, page 6, following the word "hospitality" insert "of not more than four consecutive days".
30. On page 6, line 12, following the word "hospitality" delete the words "at another" and insert "from another person at that person's".
31. On lines 16 through 19, page 6 delete "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 for the calendar year from one person."
32. On line 5, page 7, insert "for the purpose of this section" between the words "employed" and "if".

P. 6 Gifts - The \$100 limit should be cumulative from one source.

line 12-13 Limit this to in-state hospitality and include air transport.

P. 7 line 12 - *Don't limit employee-lawyer more than legislator-lawyer.*
P. 7, line 19 - 28 I am disturbed that this not only does not deal with the

current practice of almost automatic excusing a conflict of interest before a vote on the floor, but it doesn't even mention this current practice. If Alaska really is the only state where this is done, then the practice should be looked at very carefully. I think there probably are times when very substantial conflicts are present and the legislator will not resign or divest, but should not be allowed to vote or work on the area of conflict.

Line 24 - add Immediately disclose in the journal

✓ P. 11 line 12 - replace "received" with "acted upon" - I don't think you can help receiving a complaint.

14

Line/You should assure that complaints can be anonymous unless there is a very good reason not to. *NO state does this.*

✓ Line 20-25 Very confusing - It would seem that you have to add language about reasonable doubt *or minimal investigation* as to the sufficiency of the facts to constitute a violation if the result of this first review is to summarily dismiss the complaint.

✓ Line 27 - if the advisory opinion indicates no probable violation, the complaint is dropped? *- may the complainant ask for a formal opinion of legislator con.?*

P. 13 line 13-15 Is there any way to avoid the case of a commission decision being made public and then the legislator or employee having to wait up to 8 months for a legislative decision?

"may" is too unclear.

✓ line 23 - You should give the employee the option of divestment, not just loss of job.

line 25 - does penalty for divulging info. apply to legislators? What if the press, for example has a separate source of information, or does not know a complaint is being investigated?

line 28 - Add language about referral of information to Attorney General - Fischerp.12

General comment - It seems the action in case of a conflict for employees is not well thought out. I wonder if the employee situation is well thought out in other sections as well.

4/21/83

Outline of testimony by Peg Kehrer on SB 257, "Conflict of Interest"

I will go page by page, noting areas I find incomplete, confusing, or with which I disagree.

P. 2, line 1-4 Nowhere in the bill do I find provisions which specifically state that they apply to former members or employees of the legislature.

I believe some of these provisions, especially that on use of confidential information, should apply to former members and employees for a period of time, at least.

~~Also, I wonder if this might imply that a case gun might not be dropped once a person was out of office, or had left a job.~~

P.2, line 11-15 This repeals common law for all employees, even those it does not then cover in line 9 above. (below salary range Step A, Range 18)

Also, I, as a member of the public, don't know the significance of that salary level, and that information would color my thinking about the scope of this law re; employees.

P.3, line 4-7 "detriment would accrue" Also, I believe the words "profession, occupation, or group" are way to broad. A legislator in a very specialized profession could literally pass legislation just to benefit that very small group. Eliminate those words. Add some that would apply only to large groups,.

P. 3, line 21 - Add "officer, director, agent" language of Fischer bill. (p. 5)

P. 3 More on contracts - I would think a legislator could give up the benefit of any state contracts during their term, the same with a well paid employee.

Perhaps language about "blind trusts" or withdrawing from control of the firm or corporation could be added for the duration of the person's term, or employment.

P. 4 Loans - I would prefer language which also prohibited application for loans for a period of time (perhaps one year) after a discretionary loan program had been created or changed in such a way to include this particular applicant when they were not included before.

P.5, line 18 "substantial" financial matter - the one time I think this needs more definition. Does it apply to a one time sale or exchange, or only to ongoing associations? (Lin 27-line of of next page - wrong implication)

1 chapter applies may not use state property or funds for private gain
2 or campaign purposes.

3 Sec. 24.60.130. LEGISLATIVE ETHICS COMMISSION. (a) There is
4 established within the legislative branch of the state government the
5 Legislative Ethics Commission.

6 (b) The commission consists of seven members appointed as fol-
7 lows:

8 (1) the president of the senate shall appoint one member to
9 the commission from the senate with the concurrence by roll call vote
10 of three-fourths of the full membership of the senate;

11 (2) the speaker of the house of representatives shall
12 appoint one member to the commission from the house of representatives
13 with the concurrence by roll call vote of three-fourths of the full
14 membership of the house;

15 (3) the president of the senate shall appoint to the com-
16 mission two persons who are citizens of the United States and resi-
17 dents of the state with the concurrence by roll call vote of two-
18 thirds of the full membership of the senate;

19 (4) the speaker of the house of representatives shall
20 appoint to the commission two persons who are citizens of the United
21 States and residents of the state with the concurrence by roll call
22 vote of two-thirds of the full membership of the house;

23 (5) one member of the commission shall be a former legisla-
24 tor of the state who is appointed by the other members of the commis-
25 sion.

26 (c) No more than four members of the commission may be members
27 of the same political party or residents of the same borough or of the
28 unorganized borough.

29 (d) The members of the commission shall elect a chair and vice-

indiv. Legist. Firm

1 legislature may not be employed in a position over which the employee
2 has supervisory authority. In this subsection, "an individual who is
3 related to" means a child, husband, wife, mother, father, sister,
4 brother, or a permanent member of the legislator's household.

5 (b) An individual is not employed if no compensation is received
6 from the state for the services provided.

7 Sec. 24.60.100. REPRESENTATION BY LEGISLATORS. (a) Except as
8 provided in this section, a member of the legislature or a person
9 employed by an agency of the legislature established under AS 24.20
10 may not represent another person for compensation before an agency,
11 board, or commission of the state.

12 (b) A member of the legislature may represent a client in
13 (1) an action before a court of the state; or
14 (2) a matter which was pending at the time a person to whom
15 this chapter applies assumes office or is employed.

16 (c) A legislator cannot avoid a conflict of interest under this
17 section by waiving compensation for representing another person under
18 circumstances where compensation would ordinarily be expected.

19 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
20 who has a conflict of interest shall immediately

21 (1) resign the position;
22 (2) divest ^{the} ~~the~~ interest ~~that has resulted~~ in the conflict
23 or potential conflict; or
24 (3) ^{immediately} ~~disclose~~ disclose the conflict of interest in the journal of the
25 appropriate body or if the legislature is not in session to the com-
26 mission which shall maintain a public record of the disclosure and
27 forward the disclosure to the respective house for inclusion in the
28 journal for the first day of the session.

29 Sec. 24.60.120. STATE PROPERTY AND FUNDS. A person to whom this

*cumulative
from one
source*

1 member of the immediate family of the person.

2 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
3 applies may not solicit a gift in any amount, or accept or receive,
4 directly or indirectly, a gift in excess of \$100, whether in the form
5 of money, services, a loan, travel, entertainment, hospitality, or
6 other form, under circumstances in which it may reasonably be inferred
7 that the gift is intended to influence the person in the performance
8 of the duties of the person or is intended as a reward for an official
9 action by the person.

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

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

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

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

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

21 (c) The commission may establish policies that limit the extent
22 to which persons to whom this chapter applies may accept the benefits
23 set out in (b)(2) of this section, or that require public officials to
24 turn over the benefits to the agency.

25 Sec. 24.60.090. NEPOTISM. (a) An individual who is related to
26 a member of the legislature may not be employed in the house in which
27 the legislator is a member, by an agency of the legislature estab-
28 lished under AS 24.20, or in the other house during the interim be-
29 tween sessions. An individual who is related to an employee of the

*exempt
in-state
dorms
& hospit.*

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

6 (g) For purposes of this section "state program" means a program
7 in which tangible assets of the state or a right to use tangible
8 assets of the state are transferred from the state to a private per-
9 son.

10 Sec. 24.60.060. CONFIDENTIAL INFORMATION. It is a conflict of
11 interest if a person to whom this chapter applies discloses or uses
12 for personal gain or for the personal gain of another, information
13 that by law is not available to the public and that the person ac-
14 quired in the course of official duties.

15 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. (a) A
16 person to whom this chapter applies shall disclose to the commission
17 the formation or maintenance of a close economic association involving
18 a substantial financial matter with

*one-time
or ongoing*

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

23 (2) legislators;

24 (3) a public official in another branch, if the public
25 official is required to file a financial disclosure statement under
26 AS 39.50.

27 (b) It is a prohibited conflict of interest for a person to whom
28 this chapter applies to form or maintain a close economic association
29 involving a substantial financial matter with a lobbyist who is not a

1 interest for a person to whom this chapter applies to participate in a
2 state program or to receive a loan from the state if the program or
3 loan is generally available to members of the public, is subject to
4 fixed eligibility standards, and minimal discretion is exercised in
5 determining qualification.

6 (b) In determining whether a conflict of interest exists with
7 respect to a state program or to a state loan other than those de-
8 scribed in (a) of this section, because a legislator may be in a
9 position to influence the loan agency, the ethics commission must
10 consider, but is not limited to, the adequacy of existing administra-
11 tive procedures for granting and reviewing loans to legislators.

12 (c) Upon application for a state loan by a person to whom this
13 chapter applies, other than loans described in (a) of this section,
14 the lending agency must send a copy of the application to the Alaska
15 Public Offices Commission, which will incorporate the material into
16 the applicant's financial disclosure statement, if the applicant is
17 required to file a disclosure statement. All records relating to a
18 state loan to a person to whom this chapter applies may be disclosed
19 to the commission.

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

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

1 conflict of interest, provided that no attempt has been made to remove
2 the appearance of impropriety by delegating responsibility for offi-
3 cial action.

4 (d) / conflict does not exist if no benefit or detriment ^{would} accrues
5 to a person to whom this chapter applies beyond that which accrues
6 uniformly to members of the profession, occupation or group to which
7 the person belongs, or to the public at large.] ?

8 Sec. 24.60.040. CONTRACTS. (a) A person to whom this chapter
9 applies may not be a party to or have an interest in a state contract
10 unless the contract is let by competitive bidding under AS 37.05.230
11 or the total annual amount of the state contract is \$1000 or less. A
12 person has an interest in a state contract under this section if the
13 person receives direct or indirect financial benefits. A person has
14 an interest in a state contract under this section if the contract is
15 awarded to

16 (1) a firm, corporation, or association that has assets in
17 excess of \$5,000,000 and in which the person has an ownership interest
18 greater than 10 percent or that has assets of \$5,000,000 or less and
19 in which the person has an ownership interest greater than 25 percent;
20 or

21 (2) a partnership in which the person is a partner. *limited. vs. gen'l* *officer, director, or agent of a corp.*

22 (b) In this section, "direct or indirect financial benefits"
23 means income, profits or other financial benefits under a state con-
24 tract, without regard to whether the person is a party to the con-
25 tract, and without regard to whether the income, profits or other
26 financial benefits inure to the person as a partner, shareholder,
27 investor, agent, employee, consultant, or joint venturer of the con-
28 tractor.

29 Sec. 24.60.050. STATE LOANS. (a) It is not a conflict of

use of confid info should apply

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

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

7 (3) a person employed by a member of the legislature or an
8 employee of an agency of the legislature whose compensation is below
9 Step A, Range 18 of the state salary schedule established in AS 39.-
10 27.011(a).

not concerned by bill common law

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

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

20 (b) A conflict of interest exists when a person to whom this
21 chapter applies has discretion to take or withhold official action or
22 exert influence which could substantially benefit or harm a financial
23 matter in which the person has a direct or indirect private interest.

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

- 27 (1) the person's interest is relatively insignificant;
28 (2) the person's authority is relatively far removed from
29 any official action that could reasonably be affected by the potential

Introduced: 4/15/83
Referred: State Affairs and
Judiciary

Ron Lorenson

BY THE RULES COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

1 IN THE SENATE

2 SENATE BILL NO. 257

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 Legislative Ethics Commission; and providing for an
9 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 ^{regain} hold the respect and confidence of the people. Legisla-
16 tors ^{should} ~~must~~ avoid conduct that even ~~appears~~ violates 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 Legislative Ethics Commission to con-
24 sider alleged violations of this chapter and to render advisory opin-
25 ions to persons affected by this chapter.

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

April 21, 1983 in Senate State Affairs Committee

ISSUES TO BE ADDRESSED ON LEGISLATIVE ETHICS BILL SB 257

- ✓ P1 L16 APPEARANCES OF IMPROPRIETY
Should they be banned?
Or should we suggest that appearances only should be avoided.
- ✓ P2 L 9 WHO SHOULD BE INCLUDED
Is this group too wide, too narrow?
What about the Range 18 cutoff.
- ✓ P2 L17 CONFLICTS OF INTEREST
What about this definition?
Is it too ambiguous?
What about the definition that a "conflict of interest" exists when a personal interest conflicts with the public interest to the point where the member's independence of judgement is impaired?
- ✓ P3 L8 CONTRACTS
Is the public interest protected by competitive bidding?
What about after the contract is let and performance is being assessed?
Ownership interest: is this formula adequate. Too high?
What about setting a low fixed dollar value and allowing the commission to allow permission for people to have contracts if the person did not or will not improperly exercise influence in obtaining the contract?
Should we require publication in the Journal of the ,
of all state or municipal contracts?
- ✓ P3-L29 - LOANS
- ✓ P5 L14 INTERESTS BETWEEN OFFICIALS
Is "substantial financial matter" satisfactory or should we set a dollar value?
- ✓ P6 L16 GIFTS
Do you agree with the amounts and approach of section (3)?
- ✓ P6 L25 NEPOTISM
Objection to the provision allowing spouses to work in the other house during session was raised at the hearing last night. Do you support this provision?
- P7 L12 REPRESENTATION
Do you agree that a lawyer-legislator can represent a

client in a civil suit where the state is a party.
How about the provision on L14 where representation can continue if the matter was pending before the person took office or accepted the job.

✓ P7 L19

ACTION ON CONFLICT

What should a legislator do if he or she finds themselves in a clear conflict situation?

Should a legislator vote if a conflict exists?

8 P8 L3

THE ETHICS COMMISSION

Do you agree with the composition of the commission as provided?

Should there be a single commission with outside members, a joint committee just of legislators, two committees with legislators and outside members?

How should these people be selected?

✓ P10 L6

SUBPOENA POWER

If the commission/committee is not purely legislative, should it have independent subpoena power without the need for approval. Should the commission get their subpoena power through AS 24.25.010.

P11 L6

STATUTE OF LIMITATIONS

Should there be a limit on how far back the commission may inquire?

P13 L10

PENALTIES

Is this list of penalties complete?

P13 L12

INTRODUCTION OF RESOLUTION

→ This bill ends the process with a decision and recommendations in the hands of one of the presiding officers. This requires some individual to decide to introduce a resolution or take some other action. One suggestion that was made was to give the commission the ability to introduce bills through the rules committee "by request."

P13 L24

EMPLOYEE PENALTIES

Should the commission decision about an employee be submitted to the presiding officer or to the chair of the Rules Committee?

Should the employee be entitled to a hearing before final action is taken?

SB 257: THE PROCESS OF ADJUDICATION

NOTE: SB 257 uses some labels for the different documents in this process that are confusing. We suggest a change in nomenclature and have prepared this chart with the new names. The names used in the bill are in parentheses.

ADVISORY OPINION

- requested by person
- if complete disclosure made and if advice followed is binding on further action under this section
- if the terms of the advisory opinion complied with
===NO FURTHER ACTION===
- if advisory opinion not followed

COMPLAINT

- may come from anyone, must be in writing signed under oath
- allegations must have occurred within four years or within one year of termination of state service
- person against whom made is notified and afforded an opportunity to explain
- commission determines if all allegations, when taken as true, constitute a violation of complaint. If not ===DISMISS===
- commission defines nature and scope of investigation
- commission makes confidential investigation, may subpoena witnesses, take oaths, and require production of books and papers

PRELIMINARY OPINION (advisory opinion)

- if no violation is found
===NO FURTHER ACTION, OPINION MAY BE MADE PUBLIC===
- if a violation is found, the person may be offered a recommended course of action which will take care of the problem. person may comply with the recommendation of the preliminary opinion or may request a

April 21, 1983 in Senate State Affairs Committee

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ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



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FORMAL OPINION.

- if a majority of the members determine that there is probable cause for belief that a violation of the chapter the commission shall file charges

CHARGES (a complaint)

- must be personally served on person
- person has 20 days to respond in writing to the commission
- commission sets time and place for hearing
- person charged has right to be heard, subpoena witnesses and documents, be represented by counsel and have the right to cross examine witnesses testifying under oath.
- hearings closed to public unless requested by person accused
- no formal rules of evidence, evidence must be competent and substantial
- testimony only available to commission and staff and person charged

DECISION

- shall be in writing and signed by four or more members
- accompanied by a SUMMARY DECISION (written order) which is made public at once
- decision is referred to the presiding officer of person's body
- contains statement of the facts making up the violation and recommendations concerning penalties
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P. 6 Gifts - The \$100 limit should be cumulative from one source.

line 12-13 Limit this to in-state hospitality and include air transport.

P. 7 line 12 - *don't limit employee-lawyer more than legislator lawyer.*
P. 7, line 19 - 28 I am disturbed that this not only does not deal with the

current practice of almost automatic excusing a conflict of interest before a vote on the floor, but it doesn't even mention this current practice. If Alaska really is the only state where this is done, then the practice should be looked at very carefully. I think there probably are times when very substantial conflicts are present and the legislator will not resign or divest, but should not be allowed to vote or work on the area of conflict.

Line 24 - add Immediately disclose in the journal

P. 11 line 12 - replace "received" with "acted upon" - I don't think you can help receiving a complaint.

14

Line/You should assure that complaints can be anonymous unless there is a very good reason not to.

Line 20-25 Very confusing - It would seem that you have to add language about reasonable doubt ^{or minimal investigation} as to the sufficiency of the facts to constitute a violation if the result of this first review is to summarily dismiss the complaint.

Line 27 - if the advisory opinion indicates no probable violation, the complaint is dropped? - *may the complainant ask for a formal opinion of legislator con.?*

P. 13 line 13-15 Is there any way to avoid the case of a commission decision being made public and then the legislator or employee having to wait up to 8 months for a legislative decision?

"may" is too unclear.

line 23 - You should give the employee the option of divestment, not just loss of job.

line 25 - does penalty for divulging info. apply to legislators? What if the press, for example has a separate source of information, or does not know a complaint is being investigated?

line 28 - Add language about referral of information to Attorney General - Fischerp.12

General comment - It seems the action in case of a conflict for employees is not well thought out. I wonder if the employee situation is well thought out in other sections as well.

Outline of testimony by Peg Kehrer on SB 257, "Conflict of Interest"

I will go page by page, noting areas I find incomplete, confusing, or with which I disagree.

P. 2, line 1-4 Nowhere in the bill do I find provisions which specifically state that they apply to former members or employees of the legislature.

I believe some of these provisions, especially that on use of confidential information, should apply to former members and employees for a period of time, at least.

~~Also, I wonder if this might imply that a case begun might not be dropped once a person was out of office, or had left a job.~~

P.2, line 11-15 This repeals common law for all employees, even those it does not then cover in line 9 above. (below salary range Step A, Range 18)

Also, I, as a member of the public, don't know the significance of that salary level, and that information would color my thinking about the scope of this law re; employees.

P.3, line 4-7 "detriment would accrue" Also, I believe the words "profession, occupation, or group" are way to broad. A legislator in a very specialized profession could literally pass legislation just to benefit that very small group. Eliminate those words. Add some that would apply only to large groups,.

P. 3, line 21 - Add "officer, director, agent" language of Fische. bill. (p. 5)

P. 3 More on contracts - I would think a legislator could give up the benefit of any state contracts during their term, the same with a well paid employee.

Perhaps language about "blind trusts" or withdrawing from control of the firm or corporation could be added for the duration of the person's term, or employment.

P. 4 Loans - I would prefer language which also prohibited application for loans for a period of time (perhaps one year) after a discretionary loan program had been created or changed in such a way to include this particular applicant when they were not included before.

P.5, line 18 "substantial" financial matter - the one time I think this needs more definition. Does it apply to a one time sale or exchange, or only to ongoing associations? (Lin 27-line of of next page - wrong implication)

1 chair and may elect other officers. Those members of the commission
2 who are members of the legislature may not serve as chair or vice-
3 chair.

4 (e) The term of office of a public member of the commission is
5 four years from February 1 of the year of appointment and until a
6 successor is appointed and qualifies. A legislator appointed to the
7 commission may not serve beyond the expiration of the legislative term
8 of office. A commission member may not serve more than one full term.

9 (f) A member of the commission may not

10 (1) hold or seek elective office;

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

13 (3) lobby.

14 (g) The provisions of (f) of this section do not apply to the
15 members of the commission appointed under (b)(1) and (2) of this
16 section.

17 (h) A vacancy on the commission shall be filled under (b) of
18 this section for the balance of the term.

19 (i) The commission may contract for professional services and
20 may employ staff as it considers necessary. A member of the commis-
21 sion may not serve on the staff of the commission.

22 (j) A member of the commission receives no compensation for
23 service on the commission. Members of the commission are entitled to
24 travel expenses and per diem authorized by law for members of boards
25 and commissions under AS 39.20.180, but a member of the commission who
26 is a legislator is not entitled to travel expenses and per diem from
27 the commission if the legislator is receiving travel expenses and per
28 diem as a legislator.

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

procedures

1 (1) adopt ~~regulations~~ to facilitate the receipt of
2 inquiries and prompt rendition of its opinions;

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

*Subj to
approval*

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

10 (4) publish semi-annual summaries of decisions, advisory
11 opinions and informal advisory opinions, with sufficient deletions in
12 the summaries to prevent disclosing the identity of the persons in-
13 volved in the decisions or opinions which have remained confidential.

*if not
in conflict!*

14 Sec. 24.60.150. ADVISORY OPINIONS. The commission shall issue
15 an advisory opinion on the request of a person to whom the chapter
16 applies as to whether the facts and circumstances of a particular case
17 constitute a violation of ethical standards. If an advisory opinion
18 is not issued within 30 days after the request is filed with the
19 commission, the facts and circumstances of the particular case do not
20 constitute a violation of the ethical standards. The opinion issued
21 or considered issued is binding on the commission and in any subse-
22 quent proceeding concerning the facts and circumstances of the par-
23 ticular case unless material facts were omitted or misstated in the
24 request for the advisory opinion. Except as provided in this chapter
25 an advisory opinion is confidential but may be made public if a
26 written request by the person who requested the opinion is filed with
27 the commission.

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

1 (b) Before the commission may exercise power authorized in (c)
2 of this section, the commission shall by resolution, supported by a
3 vote of ^{majority} three members of the commission, define the nature and scope
4 of the inquiry.

5 (c) The commission may investigate a violation of this chapter
6 in a proceeding begun within four years after the alleged violation
7 occurs ~~or~~ ^{within one year after termination of state service.} Noth-
8 ing in this subsection bars proceedings against a person who by fraud
9 prevents discovery of a violation of this chapter. A proceeding is
10 commenced by the filing of a complaint with the commission. No com-
11 plaint, other than a complaint initiated by five or more members of
12 the commission may be ^{accepted} received within a period of 60 days preceding a
13 state primary or general election.

14 (d) A complaint shall be in writing and signed under oath by the
15 person making the complaint. A complaint may also be initiated by
16 three or more members of the commission. The commission shall notify
17 in writing each person against whom a complaint is received and afford
18 the person an opportunity to explain the conduct alleged to be a
19 violation of this chapter. If the commission determines that a com-
20 plaint does not contain allegations of facts sufficient, if the al-
21 leged facts are treated as true, to constitute a violation of this
22 chapter the commission shall ^{may} summarily dismiss the complaint.

23 (e) The commission shall investigate the charges filed under
24 this section and issue an advisory opinion to the person alleged to
25 have violated a provision of this chapter. The commission shall
26 investigate all complaints on a confidential basis. If the advisory
27 opinion indicates a probable violation, the person against whom the
28 complaint was made may request a formal opinion or comply with the
29 advisory opinion. If the person fails to comply with the advisory

1 opinion or if a majority of the members of the commission determine
2 that there is probable cause for belief that a violation of this
3 chapter has occurred, the commission shall file a complaint against
4 the person charged with a violation of this chapter and the complaint
5 and statement of the alleged violation shall be personally served on
6 the person charged. The alleged violator has 20 days after service of
7 the complaint and statement to respond in writing to the commission.

8 (f) The commission may set a time and place for a hearing with
9 notice to the complainant, if any, and to the person charged with a
10 violation of this chapter. A representative of the commission and the
11 person charged with a violation of this chapter shall have an oppor-
12 tunity to be heard, to subpoena witnesses and require the production
13 of books or papers relating to the proceedings, to be represented by
14 counsel, and to have the right of cross-examination. Each witness
15 shall testify under oath. The hearings are closed to the public
16 unless the person charged with a violation of this chapter requests an
17 open hearing. The commission is not bound by the rules of evidence
18 but the commission's findings must be based upon competent and sub-
19 stantial evidence. The testimony taken at the hearing shall be re-
20 corded and evidence shall be maintained. The testimony and evidence
21 is available only to the staff of the commission and to the person
22 charged with a violation of this chapter. If the person charged with
23 the violation of a provision of this chapter requests a copy of the
24 transcript of testimony, the copy shall be furnished by the commission
25 without charge.

26 (g) A decision of the commission shall be in writing and signed
27 by four or more members of the commission. Each decision of the
28 commission must be accompanied by a written order of the commission
29 determining that a violation of this chapter exists or does not exist.

1 The order is confined to this determination. This order is a public
2 record.

3 (h) If the commission issues a decision that a member of the
4 legislature has violated a provision of this chapter or that a legis-
5 lator has declined or failed to cooperate with the commission, it
6 shall refer the decision to the presiding officers of the legislature.
7 The decision shall contain a statement of the facts determined to
8 constitute the violation or the failure to cooperate and may contain
9 recommendations concerning any penalties the legislature may lawfully
10 impose including imposition of civil penalties in an amount not to
11 exceed \$25,000, divestment of the interest, repaying profits, censure,
12 removal from committee assignments, termination of legislative privi-
13 leges, or expulsion. The commission shall make the decision public ^{within} 30
14 days after the referral. Days during which the legislature is not in
15 session may not be counted in determining the 30-day period. The
16 legislature shall act on the decision as it considers appropriate.

17 (i) If four members of the commission agree to a decision that a
18 former member of the legislature or an employee or a former employee
19 of a legislator or of an agency of the legislature has violated a
20 provision of this chapter, the commission shall issue a public state-
21 ment of its decision 30 days after the date of the decision. The
22 legislature shall act on the decision as it considers appropriate. In
23 the case of an employee the action may include ^{divest} suspension, demotion,
24 or dismissal. ~~divestment of interest~~

25 (j) A commission member ^{or} individual who divulges information
26 concerning a charge before the filing of a complaint by the commis-
27 sion, except as permitted by this chapter, is guilty of misuse of
28 confidential information under AS 11.56.860.

29 Sec. 24.60.170. DEFINITION. In this chapter, "commission" means

complaint?

prior restraint

referring to AG,
SB 25

1 the Legislative Ethics Commission.

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

RAY

PROPOSED CS

BY THE ETHICS COMMITTEE
BY REQUEST OF THE
SPECIAL COMMITTEE
ON LEGISLATIVE REFORM

IN THE SENATE

FOR SENATE BILL NO. 257

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

For an Act entitled: "An Act relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission; and providing for an effective date."

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

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

CHAPTER 60. STANDARDS OF CONDUCT.

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this Act to establish standards of conduct for state legislators and legislative employees and to establish the Legislative Ethics Commission to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

Sec. 24.60.020. APPLICABILITY. (a) This chapter applies to a member of the legislature, to a person employed by a member of the legislature, and to a permanent or temporary employee of an agency of 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 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.

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

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

28 (d) A conflict exists if benefits accrue to a person to whom
29 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 larg .

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

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

17 (2) legislators;

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

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

25 Sec. 24.60.080. GIFTS. (a) A person to whom this chapter
26 applies may not solicit a gift in any amount, or accept or receive,
27 directly or indirectly, whether in the form of money, services, a
28 loan, travel, entertainment, hospitality, or other form, under circum-
29 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
6 state, including meals, lodging 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 ^{THREE} ~~five~~ members and the house
20 commission consists of ^{FIVE} ~~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 39.20.180.

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

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

24 (c) The commission may investigate a violation of this chapter
25 in a proceeding begun within four years after the alleged violation
26 occurs and within one year after termination of state service.
27 Nothing in this subsection bars proceedings against a person who by
28 fraud prevents discovery of a violation of this chapter. A proceeding
29 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,

Outline of testimony by Peg Kehrer on SB 257, "Conflict of Interest"

I will go page by page, noting areas I find incomplete, confusing, or with which I disagree.

P. 2, line 1-4 Nowhere in the bill do I find provisions which specifically state that they apply to former members or employees of the legislature.

I believe some of these provisions, especially that on use of confidential information, should apply to former members and employees for a period of time, at least.

~~Also, I wonder if this might imply that a case begun right not be dropped once a person was out of office, or had left a job.~~

P.2, line 11-15 This repeals common law for all employees, even those it does not then cover in line 9 above. (below salary range Step A, Range 18)

Also, I, as a member of the public, don't know the significance of that salary level, and that information would color my thinking about the scope of this law re; employees.

P.3, line 4-7 "detriment would accrue" Also, I believe the words "profession, occupation, or group" are way too broad. A Legislator in a very specialized profession could literally pass legislation just to benefit that very small group. Eliminate those words. Add some that would apply only to large groups,.

P. 3, line 21 - Add "officer, director, agent" language of Fischer bill. (p. 5)

P. 3 More on contracts - I would think a legislator could give up the benefit of any state contracts during their term, the same with a well paid employee.

Perhaps language about "blind trusts" or withdrawing from control of the firm or corporation could be added for the duration of the person's term, or employment.

P. 4 Loans - I would prefer language which also prohibited application for loans for a period of time (perhaps one year) after a discretionary loan program had been created or changed in such a way to include this particular applicant when they were not included before.

P.5, line 18 "substantial" financial matter - the one time I think this needs more definition. Does it apply to a one time sale or exchange, or only to ongoing associations? (Lin 27-line of of next page - wrong implication)

P. 6 Gifts - The \$100 limit should be cumulative from one source.

line 12-13 Limit this to in-state hospitality and include air transport.

P. 7 line 12 - *Don't limit employee-lawyer more than legislator-lawyer.*
P. 7, line 19 - 28 I am disturbed that this not only does not deal with the

current practice of almost automatic excusing a conflict of interest before a vote on the floor, but it doesn't even mention this current practice. If Alaska really is the only state where this is done, then the practice should be looked at very carefully. I think there probably are times when very substantial conflicts are present and the Legislator will not resign or divest, but should not be allowed to vote or work on the area of conflict.

Line 24 - add Immediately disclose in the journal

P. 11 line 12 - replace "received" with "acted upon" - I don't think you can help receiving a complaint.

14

Line/You should assure that complaints can be anonymous unless there is a very good reason not to.

Line 20-25 Very confusing - It would seem that you have to add language about reasonable doubt *or minimal investigation* as to the sufficiency of the facts to constitute a violation if the result of this first review is to summarily dismiss the complaint.

Line 27 - if the advisory opinion indicates no probable violation, the complaint is dropped? - *may the complainant ask for a formal opinion of legislator con.?*

P. 13 line 13-15 Is there any way to avoid the case of a commission decision being made public and then the legislator or employee having to wait up to 8 months for a legislative decision?

"may" is too unclear.

line 23 - You should give the employee the option of divestment, not just loss of job. ↗

line 25 - does penalty for divulging info. apply to legislators? What if the press, for example has a separate source of information, or does not know a complaint is being investigated?

line 28 - Add language about referral of information to Attorney General - Fischerp.12

General comment - It seems the action in case of a conflict for employees is not well thought out. I wonder if the employee situation is well thought out in other sections as well.

COMMITTEE REPORT
SENATE

4/15/83

FURTHER: Judiciary

Date: 4-28-83

Mr. President:

The Committee on State Affairs has had SB 257

Relating to standards of conduct of legislators and legislative employees and establishing a Legislative Ethics Commission; and eff. date.

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 _____ same title
 new title
- and recommends do pass
- 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:

do pass

CHAIRMAN