

HB

451

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 451

Revise Legislative Ethics Law

Received January 29, 1990
by the Rules Committee by Request of the Select
Committee on Legislative Ethics

Heard February 14, 1990
Heard February 27, 1990
Heard February 28, 1990
Heard March 1, 1990
Passed out March 1, 1990
Rescinded Action March 7, 1990
Heard March 7, 1990
Heard March 13, 1990

CSHB 451 (SA) Adopted March 13, 1990

Passed Out of Committee March 13, 1990
3 Do Pass
2 No Recommendation

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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 2, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 451

HOUSE BILL NO. 451

REVISE LEGISLATIVE ETHICS LAW

"An Act relating to conduct of legislators, legislative employees, former legislators and legislative employees, and to the Select Committee on Legislative Ethics."

RECOMMENDATIONS:

- be replaced with CSHB451(SA) the same title
 a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note LAA
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

[Signature]

[Signature]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]
Chairman's Signature

Item 2

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to conduct
of legislators, legislative employees...
Sponsor: House Rules Committee
Requestor: House State Affairs

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components: Council and Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	0	0	0	0	0
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

NO FISCAL IMPACT

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Pamela Stoops

Phone: 465-3850
Date: 2/9/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren W. Endicott

Date: 2/9/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

Item 3



Official Business

Alaska State Legislature

Select Committee on Legislative Ethics

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: Rep. Red Boucher, Chairman
House State Affairs Committee

FROM: Rep. Mike Davis, Chairman *Mike*
Select Committee on Legislative Ethics

DATE: February 1, 1990

SUBJECT: Ethics Bill

I am writing to request a hearing for HB 451, relating to conduct of legislators and legislative employees, before the State Affairs Committee.

During several years of work with the current ethics statute, the Select Committee on Legislative Ethics has identified areas which it believes need revision. The goal of HB 451 bill is to improve committee procedures and reinforce public confidence in the legislative process.

A copy of the bill and a sectional analysis are attached. I would be glad to discuss the legislation with you at your convenience. -

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 30, 1990

SUBJECT: Ethics reform bill (HB 451)

TO: Representative Mike Davis
Chair, Select Committee on Legislative Ethics

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

At your request, here is a section-by-section analysis of HB 451, the bill reforming AS 24.60, the legislative ethics law.

Section 1 provides that legislators may not lobby the legislature for one year after they leave office.

Section 2 gathers in one place the conflicts of interest prohibited by current law and spread throughout AS 24.60. It does not add any new prohibitions, and retains, in subsection (b), the current provision that an act is not a conflict of interest if a person's actions affected only insignificant interests or if the person's authority is far removed from any official action that could reasonably be affected by the potential conflict.

Section 3 broadens the current restriction on legislators' holding fundraisers in Juneau during the session. Such fundraisers are now permitted when the legislator is running for non-legislative office (governor, Congress, mayor); Section 3 would bar them. The section also eliminates the exception that allowed Juneau legislators to hold fundraisers during the session.

Sections 4, 5 and 6 modify the gift section of the ethics code. Section 4 allows gifts of up to \$100 to be accepted, rather than the previous ceiling of \$50. Section 5 permits acceptance of gifts of over \$100 when the gift has no connection with the recipient's legislative status. Under Section 6, gifts of this nature would have to be disclosed, just as gifts of travel and hospitality currently must be.

Representative Mike Davis

Page 2

January 30, 1990

Section 7 adds a ban on honoraria (but not on the receipt of travel and hospitality expenses) to give a speech or make an appearance. The section makes an exception where the speech or appearance is not related to the person's legislative status (for instance, where a doctor-legislator received a fee to discuss a medical subject before a medical association). An advisory opinion of the ethics committee in 1987 found that a legislator could not accept an honorarium; Section 5 codifies this opinion.

Section 8 provides that no person covered by the ethics code may represent a client for compensation before a state agency, board, or commission, or before an employee or officer of an agency, board, or commission.

Section 9 formally establishes the ethics committee as a permanent interim committee.

Section 10 provides that the Open Meetings Act, the legislative procurement rules and the legislature's Uniform Rules do not apply to the ethics committee to the limited extent that those statutes and rules would conflict with the confidentiality requirements of the ethics law.

Section 11 extends the time requirements for the ethics committee to issue advisory opinions in response to advisory opinion requests.

Section 12 overhauls the process by which the ethics committee handles complaints. It streamlines existing procedures, and makes one major change: proceedings of the ethics committee, and opinions issued by the committee, would become public after the committee as a result of its investigation into a complaint finds probable cause to believe that the subject of a complaint has violated the ethics law. The section also allows the committee to consider alleged violations occurring within five years before the filing of a complaint, instead of the current two years. It further requires the committee to dismiss a complaint against a legislative employee who leaves legislative service, and gives the committee discretion to dismiss a complaint against a former legislator.

Section 13 repeals three sections of existing law that have been recodified elsewhere.

JBG:pl
WKP1/065

Item 4

Alaska State Legislature

3111 C STREET
ANCHORAGE, ALASKA 99503
561-7626

WHILE IN SESSION:
P.O. Box V
STATE CAPITOL
JUNEAU, ALASKA 99811
465-2435



CHAIR
SPECIAL COMMITTEE ON TOURISM

STATE AFFAIRS COMMITTEE
LABOR AND COMMERCE COMMITTEE

MILITARY & VETERANS' AFFAIRS
HEALTH AND SOCIAL SERVICES
BUDGET SUBCOMMITTEES

Representative David Finkelstein

January 31, 1990

TO: Rep. Red Boucher, Chairman
House State Affairs Committee

FR: David Finkelstein *[Signature]*

RE: HB 451, the ethics reform bill

RECEIVED
FEB 01 1990

I wanted to offer a couple of suggestions for issues that I think should be addressed in a committee substitute for this bill:

- 1) A prohibition is needed on legislative employees engaging in political activities on state time or using state property. Common sense tells us that this is wrong, but a recent House Ethics Committee decision appears to condone it. Political activities could be defined to include any activities which primarily serve to help or hurt the prospects of a candidate for public office, rather than address public policy.
- 2) A similar prohibition is needed on legislators engaging in political activities while using state property. The House Ethics Committee's previous ruling indicates that many activities are acceptable which clearly aid or harm candidates. The idea of legislators and their staffs using their state offices to investigate, harrass, promote, or otherwise affect political candidates is unacceptable.
- 3) A standard needs to be set for a minimum level of legislative activity necessary to qualify for state-reimbursed travel. A recent decision by the Senate Ethics Committee indicates that any amount of legislative activity is sufficient to justify state-paid travel. A standard like the four-hour minimum for interim per-diem payments would help correct this situation.

If you have any questions please let me know.

DISTRICT THIRTEEN

CREEKSIDE • ELMENDORF AIR FORCE BASE • ELMRICH • MOUNTAIN VIEW • NUNAKA VALLEY • PTARMIGAN • RUSSELL JACK • WONDER PARK



Item 5



Official Business

Alaska State Legislature

Select Committee on Legislative Ethics

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: All Representatives

FROM: Rep. Mike Davis, Chairman
Select Committee on Legislative Ethics

DATE: January 29, 1990

SUBJECT: Ethics bill

This morning, the attached Ethics Committee bill will be introduced in the House and Senate.

During several years of work with the current ethics statute, the Select Committee on Legislative Ethics has identified areas which it believes need revision. The goal of the bill is to improve committee procedures and reinforce public confidence in the legislative process.

This legislation:

- increases the statute of limitations from 2 to 5 years;
- opens certain committee proceedings to the public;
- prohibits former legislators from lobbying for one year;
- modifies the gift section and raises the ceiling to \$100;
- prevents legislators and staff from representing private clients before state agencies; and
- streamlines the process for handling complaints.

A strong and workable ethics law benefits both the legislature and the public. The committee invites your ideas and support in this bipartisan effort.



Alaska State Legislature

Select Committee on Legislative Ethics

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

February 12, 1990

SUBJECT: Ethics reform bill (HB 451)

TO: Representative H.A. "Red" Boucher
Chair, House State Affairs

FROM: Representative Mike Davis, Chair
Select Committee on Legislative Ethics

HB 451, the bill to reform the legislative ethics law (AS 24.60), contains many sections. Some make substantial changes in the law, and others simply make technical changes. Rather than presenting you with a sectional analysis of the bill, I thought it would be more useful to highlight a few parts of the bill that make major changes to the law.

Complaint procedure. In my opinion, the most important part of HB 451 is the part that overhauls AS 24.60.170, the statute setting out the procedure by which the ethics committee hears complaints. Section 12 of the bill partially opens the process to public scrutiny. Currently the entire process is held behind closed doors, even the hearing that takes place after the committee has found probable cause to believe that an ethics violation has occurred. Only the final opinion, finding the subject of a complaint innocent or guilty, is public. I believe that the closed nature of the process is the main reason that elements of the press and public view ethics committee proceedings as whitewashes. I think that if more of the process were open to the public, the press and public would realize that the ethics committee is doing its job thoroughly and conscientiously.

On the other hand, the ethics committee in crafting this bill realized the unfairness that can result if baseless complaints are aired in public. Therefore, the committee sought to balance the competing interests of the public and the subject of a complaint by providing that complaints, initial committee proceedings, and investigations be private, but that after a finding of probable cause to believe a vio-

lation has occurred proceedings are open to the public. According to the ethics committee's counsel, the ethics laws of the vast majority of states draw precisely this line: complaint proceedings are confidential until probable cause determination, then are open to the public thereafter. Note that, under this approach, if an investigation does not establish probable cause to believe that a violation occurred, the matter does not become public. Note also that the subject of a complaint always has the right to waive confidentiality and request that all proceedings be open to the public (except for committee deliberations).

In addition to this partial opening of the process, Section 12 streamlines the complaint process, which the committee has found to be unnecessarily cumbersome. I am attaching a flow chart outlining the way the process would work if this bill is passed.

Statute of limitations. Currently the ethics committee has no jurisdiction to investigate or hear any matters that occurred more than two years before a complaint is filed with, or initiated by, the committee. On several occasions this two-year limit has prevented the committee from examining matters that were clearly appropriate subjects for committee inquiry. The committee is recommending in this bill (also in Section 12) a five-year statute of limitations. That is the same statute of limitations as applies to criminal prosecutions in the state, except for murder.

One-year ban on lobbying by ex-legislators. Section 1 of HB 451 would forbid former members of the legislature from lobbying the legislature for compensation during the year after they leave office. A similar ban was just enacted by Congress at the federal level as part of the 1989 ethics reform act there. The ethics committee felt that legislators who have just left office might be in a position to disproportionately influence their former colleagues. While the committee was not aware of any past problems in this area, it felt, as Congress apparently did, that this prohibition would improve the public perception of the legislature. Note that this section would not prohibit a former legislator from lobbying the legislature without pay or from lobbying the executive branch, and would not in any way restrict a former legislative aide or employee.

Ban on representation. Section 8 of the bill would prohibit all individuals covered by the ethics code from representing

Representative H. A. "Red" Boucher

Page 3

February 12, 1990

clients for compensation before agencies, boards or commissions of the state, and before employees of agencies, boards and commissions. The section would ban both representation of clients during adversarial proceedings of agencies and "administrative lobbying" of state officers and employees. It would not affect representation in courts. There is currently a ban on this sort of representation in AS 39.50.-090(c) for legislators and a few high-level legislative employees; Section 8 extends this ban to all legislative employees Range 18 and above.

Gifts. Sections 4, 5 and 6 clarify the gifts section of the ethics law, AS 24.60.080. The sections raise, from \$50 to \$100, the value of a gift that a person covered by the code can accept; allow a person to accept a gift of any size if the gift has no connection to the person's legislative status (e.g., a wedding gift from an old friend) or if the gift is given by a foreign government while the recipient is traveling on business in that country; and require recipients of most gifts worth over \$100 to disclose the gifts in the journal. These changes were made because existing law was somewhat confusing.

Honoraria. Section 7 would ban a person covered by the code from accepting an honorarium for a speech or appearance, although the person could accept reasonable travel, food, and lodging expenses. An advisory opinion of the ethics committee found that honoraria were improper under existing law, but the committee wanted to codify that advisory opinion. The U.S. House of Representatives recently accepted a ban on honoraria for its members.

Fundraisers. Section 3 of HB 451 broadens the current ban on fundraisers in Juneau during the session. Such fundraisers are now prohibited for legislators seeking reelection, or seeking election to another position in the legislature. Section 3 would broaden the ban to fundraisers for any office - legislative, gubernatorial, congressional, municipal. The section also eliminates the current exception on the ban for Juneau legislators.

If you have any questions about HB 451, please do not hesitate to contact me.

MD:JG:mi
wkmi6/041

Enclosure

ETHICS COMMITTEE COMPLAINT PROCESS

COMPLAINT FILED OR INITIATED BY COMMITTEE (CONFIDENTIAL); SENT TO SUBJECT OF COMPLAINT

INITIAL CONSIDERATION

→ COMPLAINT DISMISSED IF NOT PROCEDURALLY CORRECT, OR IF COMPLAINT ON ITS FACE DOES NOT ALLEGE VIOLATION OF ETHICS LAW, OR IF LACK OF JURISDICTION (E.G. STATUTE OF LIMITATIONS) IS APPARENT; COMMITTEE MAY ISSUE CONFIDENTIAL STATEMENT, SENT TO COMPLAINANT & SUBJECT

ALLEGATIONS OF COMPLAINT, IF TRUE, WOULD CONSTITUTE ETHICS LAW VIOLATION; COMMITTEE ADOPTS CONFIDENTIAL RESOLUTION ON SCOPE OF INVESTIGATION, SENT TO COMPLAINANT & SUBJECT

INVESTIGATION

→ COMPLAINT DISMISSED IF INVESTIGATION DOES NOT ESTABLISH PROBABLE CAUSE TO BELIEVE THAT SUBJECT VIOLATED ETHICS LAW; COMMITTEE MAY ISSUE CONFIDENTIAL STATEMENT EXPLAINING DISMISSAL, SENT TO COMPLAINANT & SUBJECT

INVESTIGATION ESTABLISHES PROBABLE CAUSE TO BELIEVE VIOLATION EXISTS

→ IF VIOLATION MINOR, COMMITTEE ISSUES PUBLIC OPINION FINDING PROBABLE CAUSE & RECOMMENDING CORRECTIVE ACTION; IF SUBJECT COMPLIES, PROCEEDINGS END

IF PROBABLE VIOLATION MAY WARRANT SANCTIONS, OR IF SUBJECT DOES NOT UNDERTAKE RECOMMENDED CORRECTIVE ACTION

FORMAL CHARGE ISSUED; PUBLIC DOCUMENT SENT TO COMPLAINANT & SUBJECT

SUBJECT ADMITS ALLEGATIONS OF CHARGE

SUBJECT DENIES SOME OR ALL ALLEGATIONS OF CHARGE

MEETING OF COMMITTEE TO DETERMINE SANCTIONS (CONFIDENTIAL)

PUBLIC HEARING (DELIBERATIONS CONFIDENTIAL)

→ IF ALLEGATIONS NOT PROVEN, COMPLAINT DISMISSED; COMMITTEE MAY ISSUE PUBLIC DECISION EXPLAINING DISMISSAL

ALLEGATIONS PROVEN

FINAL DISPOSITION; IF SANCTIONS FOUND WARRANTED, RECOMMENDATIONS SENT TO SENATE PRESIDENT, HOUSE SPEAKER OR LAA EXEC. DIRECTOR. RECOMMENDATIONS ARE PUBLIC.

NOTE: IF COMPLAINT IS AGAINST LEGISLATIVE EMPLOYEE, AND EMPLOYEE QUILTS, COMPLAINT IS DISMISSED AT ANY STAGE. IF COMPLAINT IS AGAINST FORMER LEGISLATOR, OR IS AGAINST LEGISLATOR WHO QUILTS OR WHOSE TERM EXPIRES (AND IS NOT RE-ELECTED), COMMITTEE MAY AT ITS DISCRETION DISMISS COMPLAINT.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 30, 1990

SUBJECT: Ethics reform bill (HB 451)

TO: Representative Mike Davis
Chair, Select Committee on Legislative Ethics

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

At your request, here is a section-by-section analysis of HB 451, the bill reforming AS 24.60, the legislative ethics law.

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Section 2 gathers in one place the conflicts of interest prohibited by current law and spread throughout AS 24.60. It does not add any new prohibitions, and retains, in subsection (b), the current provision that an act is not a conflict of interest if a person's actions affected only insignificant interests or if the person's authority is far removed from any official action that could reasonably be affected by the potential conflict.

Section 3 broadens the current restriction on legislators' holding fundraisers in Juneau during the session. Such fundraisers are now permitted when the legislator is running for non-legislative office (governor, Congress, mayor); Section 3 would bar them. The section also eliminates the exception that allowed Juneau legislators to hold fundraisers during the session.

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Section 7 adds a ban on honoraria (but not on the receipt of travel and hospitality expenses) to give a speech or make an appearance. The section makes an exception where the speech or appearance is not related to the person's legislative status (for instance, where a doctor-legislator received a fee to discuss a medical subject before a medical association). An advisory opinion of the ethics committee in 1987 found that a legislator could not accept an honorarium; Section 5 codifies this opinion.

Section 8 provides that no person covered by the ethics code may represent a client for compensation before a state agency, board, or commission, or before an employee or officer of an agency, board, or commission.

Section 9 formally establishes the ethics committee as a permanent interim committee.

Section 10 provides that the Open Meetings Act, the legislative procurement rules and the legislature's Uniform Rules do not apply to the ethics committee to the limited extent that those statutes and rules would conflict with the confidentiality requirements of the ethics law.

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Section 13 repeals three sections of existing law that have been recodified elsewhere.

Foreign Gifts

6-1634Ed
Gaguine

A M E N D M E N T /

OFFERED IN THE HOUSE

BY REP. M.DAVIS

TO: HB 451

Page 3, line 14, following 'person_i':

Insert "or"

Page 3, lines 15 - 17:

Delete all material.

Renumber the following paragraph accordingly.

Page 3, line 22:

Delete ", (6), or (7)"

Insert "or (6)"

Page 4, following line 4:

Insert a new bill section to read:

"* Sec. 7. AS 24.60.080 is amended by adding a new subsection to read:

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

Renumber the following bill sections accordingly.

Cumulative gifts

6-1634Es
Gaguine

AMENDMENT 2

OFFERED IN THE HOUSE

BY REP. M. DAVIS

TO: HB 451

Page 2, line 24, following "form":

Insert ", or gifts from the same person worth less than \$100 that in a calendar year aggregate to \$100 or more in value"

Fundraising by Juvenile Legislators

6-1634Ec
Gaguine

A M E N D M E N T 3

OFFERED IN THE HOUSE

BY REP. M. DAVIS

TO: HB 451

Page 2, line 15, after "RAISING.":

Insert "(a)"

Page 2, following line 19:

Insert a new subsection to read:

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

Dismissal orders made public

b-1634Eb
Gaguine

A M E N D M E N T 4

OFFERED IN THE HOUSE

BY REP. M.DAVIS

TO: HB 451

Page 7, line 14:

Delete "may"

Insert "shall"

Page 7, line 17, following "complaint.":

Insert "Notwithstanding (1) of this section, a dismissal order and decision is open to inspection and copying by the public."

Representation

Section 6 contains four alternatives on the representation question. Alternative A is derived from Representative Goll's original version of HB 150. This version does not just reinstate AS 39.50.090(c) as to legislators; it extends the representation prohibition to all persons covered by AS 24.60. I deleted the part in HB 150 stating that legislators may appear before courts, because, as I mentioned at the meeting, I don't think anyone has ever suggested that they can't under current law.

Alternative B would just reinstate AS 39.50.090(c), and would bar representation by legislators and a handful of senior legislative agency employees. Alternative C would bar representation for all persons covered by AS 24.60, but would allow them to represent clients for compensation before adversarial hearings of administrative agencies where the state is not a party. Alternative D would expand the exclusion of C to all adversarial hearings, whether or not the state is a party.

* Sec. 6. Alternative A. AS 24.60.100 is amended to read:

Sec. 24.60.100. REPRESENTATION PROHIBITED. A person to whom this chapter applies may not represent [WHO REPRESENTS] another person for compensation before an agency, board, or commission of the state, or before an officer or employee of the agency, board, or commission of the state [SHALL DISCLOSE THE NAME OF THE PERSON REPRESENTED, THE SUBJECT MATTER OF THE REPRESENTATION, AND THE BODY BEFORE WHICH THE REPRESENTATION IS TO TAKE PLACE IN THE JOURNAL OF THE APPROPRIATE BODY OR IF THE LEGISLATURE IS NOT IN SESSION TO THE COMMITTEE. THE COMMITTEE SHALL MAINTAIN A PUBLIC RECORD OF THE DISCLOSURE AND FORWARD THE DISCLOSURE TO THE RESPECTIVE HOUSE FOR INCLUSION IN THE JOURNAL BY THE FIFTH DAY OF THE SESSION].

* Sec. 6. Alternative B. AS 24.60.100 is amended to read:

Sec. 24.60.100. REPRESENTATION. A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state, or before an officer or employee of an agency, board, or commission of the state, and who is not prohibited from this representation by AS 39.50.090, shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legisla-

ture is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

* Sec. 6. Alternative C. AS 24.60.100 is amended to read:

Sec. 24.60.100. REPRESENTATION. A person to whom this chapter applies may not represent [WHO REPRESENTS] another person for compensation before an agency, board, or commission of the state, or before an officer or employee of an agency, board, or commission of the state, except that representation is permitted when the agency, board, or commission is acting in a quasi-judicial manner and the state is not the adverse party. When representation is permitted, the person representing another person shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

* Sec. 6. Alternative D. AS 24.60.100 is amended to read:

Sec. 24.60.100. REPRESENTATION. A person to whom this chapter applies may not represent [WHO REPRESENTS] another person for compensation before an agency, board, or commission of the state, or before an officer or employee of an agency, board, or commission of the state, except that representation is permitted when the agency, board, or commission is acting in a quasi-judicial manner. When representation is permitted, the person representing another person shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

Alaska State Legislature

3111 C STREET
ANCHORAGE, ALASKA 99503
561-7626

WHILE IN SESSION:
P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
465-2435

Representative David Finkelstein

January 22, 1990

CHAIR
SPECIAL COMMITTEE ON TOURISM

STATE AFFAIRS COMMITTEE
LABOR AND COMMERCE COMMITTEE

MILITARY & VETERANS' AFFAIRS
HEALTH AND SOCIAL SERVICES
BUDGET SUBCOMMITTEES

TO: Rep. Mike Davis, Chair
Ethics Committee

FR: David Finkelstein 

RE: Ethics reform bill

I wanted to offer a couple of suggestions for issues that I think should be addressed in this bill. I will be in the State Affairs Committee while your hearing is going on tomorrow, otherwise I would come and testify in person.

1) A prohibition is needed on legislative employees engaging in political activities on state time or using state property. Common sense tells us that this is wrong, but a recent House Ethics Committee decision appears to condone it. Political activities could be defined to include any activities which primarily serve to help or hurt the prospects of a candidate for public office, rather than address public policy.

2) A similar prohibition is needed on legislators engaging in political activities while using state property. The House Ethics Committee's previous ruling indicates that many activities are acceptable which clearly aid or harm candidates. The idea of legislators and their staffs using their state offices to investigate, harrass, promote, or otherwise affect political candidates is unacceptable.

3) A standard needs to be set for a minimum level of legislative activity necessary to qualify for state-reimbursed travel. A recent decision by the Senate Ethics Committee indicates that any amount of legislative activity is sufficient to justify state-paid travel. A standard like the four-hour minimum for interim per-diem payments would help correct this situation.

The public perception of our legislative ethics review system is not very positive at present. I believe that the problem is a lack of clear standards in some areas for the committee to enforce. I look forward to your ideas on possible remedies.

DISTRICT THIRTEEN

CREEKSIDE • ELMENDORF AIR FORCE BASE • ELMRICH • MOUNTAIN VIEW • NUNAKA VALLEY • PTARMIGAN • RUSSIAN JACK • WONDER PARK

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 Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.020. APPLICABILITY.

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

(1) a former member of the legislature or to a person formerly employed by the legislative branch of government unless the provision specifically states that it so applies;

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

(3) a person employed by the legislative branch of government whose position is established below Range 18 of the state salary schedule established in AS 39.27.011(a).

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature or a person employed by the legislative branch of government. They do not supersede or repeal provisions of the criminal laws of the state.

(Sec. 1 ch 36 SLA 1984; secs. 2, 3 ch 113 SLA 1986; am sec. 1 ch 67 SLA 1988)

Sec. 24.60.030. CONFLICTS OF INTEREST.

(a) A person to whom this chapter applies may not use public office for private advancement or gain.

(b) A conflict of interest exists when a person to whom this chapter applies takes or withholds official action or exerts official influence that could

substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(c) Conflicts of interest are prohibited but there is not a conflict of interest if, as to a specific matter, there is no

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

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

(e) [Repealed, sec. 8 ch 167 SLA 1988.]

(f) It is a conflict of interest for a member of the legislature to accept money from an event held within the capital city during the session if a substantial purpose of the event is to raise money on behalf of the member for state legislative campaign purposes or for other state legislative political purposes.

(g) Members of the legislature elected to represent the capital city are exempt from the requirements of (f) of this section.

(Sec. 1 ch 36 SLA 1984; am sec. 27 ch 85 SLA 1988; am sec. 8 ch 167 SLA 1988)

Sec. 24.60.040. CONTRACTS OR LEASES.

(a) A person to whom this chapter applies may not be a party to or have an interest in a state contract or lease unless the contract or lease is let through competitive sealed bidding under AS 36.30 (State Procurement Code) or the total annual amount of the state contract or lease is \$1,000 or less, or is a standardized contract or lease which was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation or group. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits.

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

(Sec. 1 ch 36 SLA 1984; am sec. 24 ch 106 SLA 1986; am sec. 4 ch 113 SLA 1986)

Sec. 24.60.045. HAZARDOUS WASTE CONTRACTS.

A legislative staff member may not solicit or receive a contract concerning hazardous waste from a state agency or department other than the legislature

during the interim following a session in which the person worked. This section applies to legislative staff members Range 18 or higher. In this section "hazardous waste" has the meaning given in AS 46.03.900.

(Sec. 10 ch 77 SLA 1984)

Sec. 24.60.050. STATE PROGRAMS AND LOANS.

(a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan

- (1) is generally available to members of the public;
- (2) is subject to fixed eligibility standards; and
- (3) requires minimal discretion in determining qualification.

(b) The committee shall annually review state programs and state loans and publish a list of programs and loans that, in the view of the committee,

- (1) meet the standards of (a) of this section;
- (2) do not meet the standards of (a) of this section.

(c) Each February 1, each person to whom this chapter applies shall deliver to the division of legislative audit a report of each participation by the person in a state program or receipt of a state loan as of January 15 of that year for a program or loan listed in (b)(2) of this section. The division of legislative audit shall prepare an appropriate report for the presiding officer of each house that lists the name of the person and kind of program participation or loan. The lists shall be published in the supplemental journals before February 15.

(d) Each person to whom this chapter applies who begins participation in a state program or who receives a loan listed under (b)(2) of this section after January 15 of each year shall deliver a report of the program or loan to the committee within 30 days after the participation in the state program or receipt of a state loan begins. The report shall be published in the appropriate supplemental journal if received by the committee during the regular session of the legislature. Each report filed with the committee under this subsection is open to the public.

(e) Each record of a state agency relating to participation in a state program or receipt of a state loan by a person to whom this chapter applies may be disclosed to the committee and to the division of legislative audit.

(f) The committee shall annually identify the program and loans to be audited by the division of legislative audit during the following year, including the scope of the audit. The division of legislative audit shall prepare a report to the committee on the audit of the participation in state programs and the receipt of loans from the state by persons to whom this chapter applies. The report to the committee is confidential until it is released by the committee.

(g) In this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a person to whom this chapter applies.

(Sec. 1 ch 36 SLA 1984; am sec. 5 ch 113 SLA 1986; am sec. 2 ch 167 SLA 1988)

Sec. 24.60.060. CONFIDENTIAL INFORMATION.

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.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS.

A person to whom this chapter applies shall disclose in the journal of the appropriate body or if the legislature is not in session to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session, the formation or maintenance of a close economic association involving a substantial financial matter with

- (1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;
- (2) legislators;
- (3) a public official who is required to file a financial disclosure statement under AS 39.50 and is not an appointed municipal officer;
- (4) a registered lobbyist;
- (5) a person to whom this chapter applies who is employed by the legislative branch of government if the close economic association is with a legislator.

(Sec. 1 ch 36 SLA 1984; sec. 6 ch 113 SLA 1986)

Sec. 24.60.080. GIFTS.

(a) A person to whom this chapter applies may not solicit, accept, or receive, directly or indirectly, a gift in any amount, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) Except as provided in (c) of this section, the receipt of a gift worth \$50 or more by a person to whom this chapter applies is prohibited.

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

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

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

(B) at a social event or meal;

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

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

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

(5) gifts from the family of the person.

(d) A person to whom this chapter applies who accepts a gift of travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern shall disclose the gift if it has a value of \$100 or more. The disclosure must include the name and occupation of the person making the gift and the approximate value of the gift. Each gift required to be disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift in the journal of the appropriate body or, if the legislature is not in session, to the committee. The committee shall maintain a public record of the disclosure it receives and shall forward the disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular session.

(e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(Sec. 1 ch 36 SLA 1984; am sec. 3 ch 167 SLA 1988)

Sec. 24.60.090. NEPOTISM.

(a) A spouse or an individual other than a spouse who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in either house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother, father, sister, or brother.

(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided.

(c) For purposes of this section, a legislator is not an employee of the legislature.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.100. REPRESENTATION.

A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

(Sec. 1 ch 36 SLA 1984; sec. 7 ch 113 SLA 1986)

Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST.

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

- (1) resign the conflicting position;
- (2) divest the interest that has resulted in the conflict or potential conflict; or
- (3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session but disclosure does not remove the conflict of interest.

(Sec. 1 ch 36 SLA 1984; am sec. 8 ch 113 SLA 1986)

Sec. 24.60.120. STATE PROPERTY AND FUNDS.

A person to whom this chapter applies may not use state property, except property under lease from the state, or state funds for private gain.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.130. SELECT COMMITTEE ON LEGISLATIVE ETHICS.

(a) There is established within the legislative branch of state government the Select Committee on Legislative Ethics.

(b) The committee consists of nine members, in two subcommittees, as follows:

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

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

(3) three public members who are selected by the Chief Justice of the Alaska Supreme Court and who are ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house, shall serve on both the full committee and each subcommittee.

(c) No more than two legislative members of each subcommittee may be members of the same political party or the same organizational caucus.

(d) The members of each subcommittee shall elect a chair who must be a member of the legislature. The chair selected by the senate subcommittee

shall chair the full committee beginning the first day of the regular session in odd-numbered years and the chair selected by the house subcommittee shall chair the full committee beginning the first day of the regular session in even-numbered years.

(e) Except as provided in this subsection, a vacancy on the committee shall be filled under (b) of this section. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the first regular session of a legislature or during the interim between regular sessions of that legislature serves without concurrence or ratification through the 10th day of the second regular session of the legislature. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the second regular session of a legislature or during the interim after the second regular session without concurrence or ratification through the convening of the first regular session of the next legislature.

(f) The committee or a subcommittee may contract for professional services and may employ staff as it considers necessary.

(g) Each member serves for the duration of the legislature during which the member is appointed.

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an advisory opinion requested by the member. If the legislature is in session when a legislative member is disqualified under this subsection, the presiding officer of that member's house shall, with the concurrence by roll call vote of two-thirds of the full membership of that house, appoint another member from that house to act as a member of the committee in the proceeding. If the legislature is not in session when a legislative member is disqualified, the presiding officer of the house of which the disqualified legislator is a member shall appoint another member from that house, with a recorded concurrence of a majority vote of the subcommittee of that house, to act as a member of the committee in the proceeding.

(i) A quorum of a committee established under this section consists of a majority of the members of the committee. A quorum of a subcommittee established under this section consists of a majority of the members of the subcommittee. Notwithstanding the provisions of this subsection, a committee does not have a quorum unless three legislative members are present and a subcommittee does not have a quorum unless two legislative members are present.

(Sec. 1 ch 36 SLA 1984; am secs. 9, 10 ch 113 SLA 1986; am secs. 4 - 6 ch 167 SLA 1988)

Sec. 24.60.140. AUTHORITY OF THE COMMITTEE.

(a) The senate subcommittee has authority over proceedings concerning conduct by a member or former member of the senate or a person employed by a member or a committee of the senate.

(b) The house subcommittee has authority over proceedings concerning the conduct by a member or former member of the house or a person employed by a member or a committee of the house.

(c) The full committee has authority

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

(2) to review any matter arising under this chapter that would result in action being required by both houses of the legislature; and

(3) to issue advisory opinions under AS 24.60.160.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.150. DUTIES OF THE COMMITTEE.

(a) The committee shall

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

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

(b) The committee may

(1) recommend legislation to the legislature the committee 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 committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee.

(Sec. 1 ch 36 SLA 1984; am sec. 11 ch 113 SLA 1986)

Sec. 24.60.160. ADVISORY OPINIONS.

The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies or a person elected to the legislature who at the time of election is not a member of the legislature as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended by the committee for not more than an additional 10 days if the person requesting the opinion consents. The opinion issued is binding on the committee in any subsequent proceedings 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 a written request by the person who requested the opinion is filed with the committee.

(Sec. 1 ch 36 SLA 1984; am sec. 12 ch 113 SLA 1986)

Sec. 24.60.170. PROCEEDINGS BEFORE THE COMMITTEE.

(a) The committee may initiate, receive and consider complaints

alleging a violation of this chapter.

(b) The committee may investigate a violation of this chapter in a proceeding begun within two 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 intentionally prevents discovery of a violation of this chapter.

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

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

A complaint shall be in writing and signed under oath by the person making the complaint. A complaint, other than a complaint initiated by at least two-thirds of the members of the committee, may not be filed within a period of 60 days preceding a state primary or general election. Each proceeding pending before the committee on the 60th day preceding a state primary or general election is stayed until certification of the election unless the proceeding is based on a complaint initiated by at least two-thirds of the members of the committee or, on a complaint initiated by a person who is not a member of the committee, if two-thirds of the members of the committee direct the continuation of the proceeding. The committee shall notify in writing a person against whom a complaint has been filed of a stay of the proceeding. If the person objects in writing to the stay the proceedings shall continue.

(e) The committee 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 committee 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 committee may summarily dismiss the complaint.

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

(g) If the committee determines that a probable violation exists that may be corrected by action of the person and that does not warrant sanctions other than correction, the opinion shall recommend corrective action. The person against whom the complaint was made may comply with the opinion or may request a hearing before the committee. After the hearing the committee may amend or affirm the opinion.

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

(i) The committee may set a time and place for a hearing before the committee with a minimum of 10 days notice to the complainant, if any, and to the person charged with a violation of this chapter. A representative of the

committee 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. Each witness shall testify under oath. Hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The committee is not bound by the rules of evidence but the committee's findings must be based upon competent and substantial evidence. Testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence are available only to the committee and its staff 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 committee without charge.

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

(k) If the committee 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 committee, 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 may contain recommendations concerning any penalties the legislature may lawfully impose. The committee shall make the decision public 30 days after the referral. The legislature shall act on the decision as it considers appropriate.

(l) If the majority of the members of the committee agree to a decision that a former member of the legislature or an employæ or a former employee of the legislative branch of government has violated a provision of this chapter, the committee 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 final action is taken.

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

(Sec. 1 ch 36 SLA 1984; am sec. 13 ch 113 SLA 1986; am sec. 7 ch 167 SLA 1988)

Sec. 24.60.180. COOPERATION BY STATE AGENCIES.

Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the committee or a subcommittee by providing information and assistance, including disclosure of financial material and other records relating to a potential violation of this chapter.

(Sec. 1 ch 36 SLA 1984)

Sec. 24.60.190. DEFINITIONS.

In this chapter

(1) "committee" means the Select Committee on Legislative Ethics or where appropriate, the applicable subcommittee;

(2) "person employed by the legislative branch of government" means a person who is employed by

(A) an individual legislator;

(B) a legislative body, including a legislative committee; or

(C) an agency of the legislature established under AS 24.20 and AS 24.55.

(Sec. 1 ch 36 SLA 1984; am sec. 14 ch 113 SLA 1986)

Item 6

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1990

SUBJECT: Sectional analysis of CSHB 451 ()
(Work Order 6-1634J)

TO: Representative H.A. "Red" Boucher
Chair, State Affairs Committee

FROM: John B. Gaguine *JBG*
Legislative Counsel

At your request, here is a section-by-section analysis of CSHB 451 (), Work Order 6-1634J. This is the proposed committee substitute for HB 451 (the ethics reform bill prepared by the ethics committee) that was produced by a subcommittee of the State Affairs Committee chaired by Representative Finkelstein.

Section 1 provides that legislators may not lobby the legislature for one year after they leave office.

Section 2 makes the ethics code applicable to all legislative employees at Range 16 and above, instead of the current Range 18 and above.

Section 3 gathers in one place the conflicts of interest prohibited by current law and spread throughout AS 24.60. It adds one new prohibition, found in paragraph (a)(6), that would bar the knowing use of a person's office or staff to affect a campaign for elective office. The section retains, in subsection (b), the current provision that an act is not a conflict of interest if a person's actions affected only insignificant interests or if the person's authority is far removed from any official action that could reasonably be affected by the potential conflict.

Section 4 broadens the current restriction on legislators' holding fundraisers in Juneau during the session. Such fundraisers are now permitted when the legislator is running for non-legislative office (governor, Congress, mayor); Section 4 would bar them.

CSHB 451 ()
SUBJECT: JUNEAU
JUNEAU EXCEPTED

February 27, 1990

Sections 5, 6, 7 and 8 modify the gift section of the ethics code. Section 5 allows gifts of up to \$100 to be accepted, rather than the current ceiling of \$50, and specifies that a person covered by the code cannot accept a series of gifts worth less than \$100 from the same person in a calendar year when the aggregate value of those gifts would exceed \$100. Section 6 permits acceptance of gifts of over \$100 when the gift has no connection with the recipient's legislative status. Under Section 7, gifts of this nature would have to be disclosed, just as gifts of travel and hospitality currently must be. Finally, Section 8 would allow acceptance of gifts worth over \$100 from a foreign government, but only if those gifts were accepted on behalf of the legislature and turned over to the legislative council for appropriate disposition.

Section 9 adds a ban on honoraria (but not on the receipt of travel and hospitality expenses) to give a speech or make an appearance. The section makes an exception where the speech or appearance is not related to the person's legislative status (for instance, where a doctor-legislator received a fee to discuss a medical subject before a medical association). An advisory opinion of the ethics committee in 1987 found that a legislator could not accept an honorarium; Section 9 codifies this opinion.

Section 10 provides that no person covered by the ethics code may represent a client for compensation before a state agency, board, or commission, or before an employee or officer of an agency, board, or commission, when the client is seeking certain objectives or the agency, board or commission is dealing with certain matters. The section provides an exception to this prohibition when the agency, board or commission is acting in a quasi-judicial capacity and the state is not a real party in interest to the proceeding. When representation is allowed, Section 10 retains the provision of current law that the representation must be disclosed.

Section 11 adds a new provision to the ethics code requiring that when legislative travel, other than to attend a committee meeting, will result in legislative business taking up less than four hours, the person travelling must obtain written approval for the trip in advance from the speaker of the house, the president of the senate, or the head of a legislative agency.

Section 12 formally establishes the ethics committee as a permanent interim committee.

Sections 13 and 14 increase the number of public members on the ethics committee and the two subcommittees from three to five, and provide that for a quorum of either the full committee or the house and senate subcommittee three public members must be present.

Section 15 provides that the Open Meetings Act, the legislative procurement rules and the legislature's Uniform Rules do not apply to the ethics committee to the limited extent that those statutes and rules would conflict with the confidentiality requirements of the ethics law.

Section 16 extends the time requirements for the ethics committee to issue advisory opinions in response to advisory opinion requests.

Section 17 overhauls the process by which the ethics committee handles complaints. It streamlines existing procedures, and makes one major change: proceedings of the ethics committee, and opinions issued by the committee, would become public after the committee as a result of its investigation into a complaint finds probable cause to believe that the subject of a complaint has violated the ethics law. (If the committee dismisses a complaint after investigation, without finding probable cause to go to a hearing, the committee would issue a public opinion explaining the dismissal.) The section also allows the committee to consider alleged violations occurring within five years before the filing of a complaint, instead of the current two years. It further requires the committee to dismiss a complaint against a legislative employee who leaves legislative service, and gives the committee discretion to dismiss a complaint against a former legislator.

Section 18 amends AS 39.50 (the conflict-of-interest initiative applicable to legislators, judges, and top executive branch officials) to clarify that the general prohibition against representation found in AS 39.50.090(c) is superseded by the representation provision of AS 24.60.100.

Section 19 repeals three sections of existing law that have been recodified elsewhere.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 1, 1990

SUBJECT: Sectional analysis of CSHB 451 (State Affairs)
TO: Representative Mike Davis
Chair, Select Committee on Legislative Ethics
FROM: John B. Gaguine *JBG*
Legislative Counsel

At your request, here is a section-by-section analysis of CSHB 451 (State Affairs). This committee substitute differs considerably from HB 451.

Section 1 provides that the spouses of legislators may not lobby the legislature and that former legislators may not lobby the legislature for one year after they leave office.

Section 2 makes the ethics code applicable to all legislative employees at Range 15 and above, instead of the current Range 18 and above.

Section 3 gathers in one place the conflicts of interest prohibited by current law and spread throughout AS 24.60. It adds one new prohibition, found in paragraph (a)(6), that would bar the knowing use of a person's office or staff to affect a candidate or a campaign for elective office. The section retains, in subsection (b), the current provision that an act is not a conflict of interest if a person's actions affected only insignificant interests or if the person's authority is far removed from any official action that could reasonably be affected by the potential conflict.

Section 4 broadens the current restriction on legislators' holding fundraisers in Juneau during the session. Such fundraisers are now permitted when the legislator is running for non-legislative office (governor, Congress, mayor); Section 4 would bar them.

Sections 5, 6, 7 and 8 modify the gift section of the ethics code. Section 5 allows gifts of up to \$100 to be accepted,

rather than the current ceiling of \$50, and specifies that a person covered by the code cannot accept a series of gifts worth less than \$100 from the same person in a calendar year when the aggregate value of those gifts would exceed \$100. Section 6 permits acceptance of gifts of over \$100 when the gift has no connection with the recipient's legislative status. Under Section 7, gifts of this nature would have to be disclosed, just as gifts of travel and hospitality currently must be. Finally, Section 8 would allow acceptance of gifts worth over \$100 from a foreign government or from an official of a foreign government, but only if those gifts were accepted on behalf of the legislature and turned over to the legislative council for appropriate disposition.

Section 9 adds a ban on honoraria (but not on the receipt of travel and hospitality expenses) to give a speech or make an appearance. The section makes an exception where the speech or appearance is not related to the person's legislative status (for instance, where a doctor-legislator received a fee to discuss a medical subject before a medical association). An advisory opinion of the ethics committee in 1987 found that a legislator could not accept an honorarium; Section 9 codifies this opinion.

Section 10 provides that no person covered by the ethics code may represent a client for compensation before a state agency, board, or commission, or before an employee or officer of an agency, board, or commission, when the client is seeking certain objectives or the agency, board or commission is dealing with certain matters. The section provides an exception to this prohibition when the agency, board or commission is acting in a quasi-judicial capacity and the state is not a real party in interest to the proceeding. When representation is allowed, Section 10 retains the provision of current law that the representation must be disclosed.

Section 11 adds a new provision to the ethics code requiring that when legislative travel, other than to attend a committee meeting, will result in legislative business taking up less than four hours, the person travelling must obtain written approval for the trip in advance from the speaker of the house, the president of the senate, or the head of a legislative agency.

Section 12 formally establishes the ethics committee as a permanent interim committee.

Sections 13 and 14 increase the number of public members on the ethics committee and the two subcommittees from three to five, and provide that for a quorum of either the full committee or the house and senate subcommittee three public members must be present.

Section 15 provides that the Open Meetings Act, the legislative procurement rules and the legislature's Uniform Rules do not apply to the ethics committee to the limited extent that those statutes and rules would conflict with the confidentiality requirements of the ethics law.

Section 16 extends the time requirements for the ethics committee to issue advisory opinions in response to advisory opinion requests.

Section 17 overhauls the process by which the ethics committee handles complaints. It streamlines existing procedures, and makes one major change: proceedings of the ethics committee, and opinions issued by the committee, would become public after the committee as a result of its investigation into a complaint finds probable cause to believe that the subject of a complaint has violated the ethics law. (If the committee dismisses a complaint after investigation, without finding probable cause to go to a hearing, the committee would issue a public opinion explaining the dismissal.) The section also allows the committee to consider alleged violations occurring within five years before the filing of a complaint, instead of the current two years. It further requires the committee to dismiss a complaint against a legislative employee who leaves legislative service, and gives the committee discretion to dismiss a complaint against a former legislator.

Section 18 provides that an employee or former employee of a legislator, a committee or a legislative agency may bring an employment discrimination grievance to the ethics committee. The section instructs the committee to adopt procedures for the filing, investigation, mediation and hearing of such grievances. It empowers the committee, after a hearing, to make recommendations about the grievance to the appropriate official. The section does not require an employee or former employee to go to the ethics committee before filing a complaint with the Human Rights Commission or filing a lawsuit. Finally, the section provides that when the ethics committee is acting on an employment discrimination grievance, only the legislative members take part.

Representative Mike Davis
Page 4
March 1, 1990

Section 19 amends AS 39.50 (the conflict-of-interest initiative applicable to legislators, judges, and top executive branch officials) to clarify that the general prohibition against representation found in AS 39.50.090(c) is superseded by the representation provision of AS 24.60.100.

Section 20 repeals three sections of existing law that have been recodified elsewhere.

JBG:pi
WKP2/117

ALTERNATE VERSIONS: AS 24.60.100

Under current law, AS 39.50.090(c) prohibits public officials from representing clients before state agencies for a fee. AS 24.60.100, however, requires a legislator who represents a client before a state agency for a fee to disclose the matter to the legislature. The statutes have been construed as allowing a legislator to represent clients before a state agency for a fee so long as the representation is disclosed.

Section 8 of HB 451 amends AS 24.60.100, part of the Legislative Ethics Act, to expressly bar representation by legislators or staff of another person for compensation before a state agency. Representation before a court is allowed. This change brings the Legislative Ethics Act into conformity with the general conflict of interest statutes in Title 39.

The Select Committee on Legislative Ethics was given four alternative provisions to deal with the conflict between AS 24.60.100 and AS 39.50.090(c). The alternatives are:

- A) Bar representation in all proceedings by legislators and employees of legislative agencies (which would include all legislative staff);
- B) Bar representation in all proceedings before state agencies by legislators and a handful of specifically identified senior public officials as listed in the general conflict of interest statutes (AS 39.50.200[8]);
- C) Bar representation except for adjudicative ("quasi-judicial") proceedings where the state is not a party;
- D) Bar representation except for adjudicative proceedings, without regard to whether the state is a party. (Massachusetts does this.)

Other alternatives include:

- E) Bar representation which falls within the scope of the Lobbying Act (*i.e.*, appearances before public hearings and other public proceedings would be exempted, per AS 24.45.161(a)(1)(B));
- F) Bar representation for purposes of obtaining a state grant, license, loan or other benefit other than entitlements. (New York does this.);

- G) Bar representation in rule making proceedings. (This is essentially the converse of allowing representation in adjudicative proceedings.);
- H) Bar representation except before named agencies, such as the Workers Compensation Board or the Human Rights Commission. (New Jersey and Connecticut do this.)

The various alternatives contain two variables: who is covered, and what kinds of proceedings are covered. As to "who", the choice is between all persons covered by the Legislative Ethics Act (all legislators and employees of legislative agencies, which would include all staff), and all persons covered under the general conflict of interest statutes (all "public officials", which includes legislators and a specified list of senior government officials). As to "what", there is a much broader array of options, as can be seen from a review of the list above.

b. Example / Checklist Contact Sheet

reached for wed, Feb 14

LEGISLATIVE SPONSOR: House State Affairs

TC DATE/DAY: Files, Feb 12

Pub. Hear Work Ses. Inv. Hear

TIME: 8:30 AM - 10 AM

LEGISLATIVE REFERENCE: HB 451

JUNEAU ROOM: Cap 102

SUBJECT: Revised Ethics

BRIDGE: _____

(leg) Law

OF PORTS: _____

CONTACT: Ann PH: 4963

DATE TAKEN/BY: 2/12 Jeanine

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

- Anchorage
- Barrow *
- Bethel
- Delta Junction *
- Dillingham *
- Fairbanks
- Glennallen *
- Juneau
- Ketchikan
- Kodiak
- Kotzebue
- Mat-Su
- Nome
- Petersburg *
- Sitka
- Soldotna
- Valdez *

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

OFFNETS: Irene Peyton
479-2864

2/14 - won't be dialing in per Katherine

CHAIRING SITE: Juneau

CHAIRPERSON: Boucher

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

SPECIAL INSTRUCTIONS

bridge - 562-2882 for 2/14
~~562-2867~~ - to call 7:15 AM
collect

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 29, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 451

HOUSE BILL NO. 451

REVISE LEGISLATIVE ETHICS LAW

"An Act relating to conduct of legislators, legislative employees, former legislators and legislative employees, and to the Select Committee on Legislative Ethics."

RECOMMENDATIONS:

- be replaced with CSHB 451(SA) the same title
 have attached amendment(s) a new title
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
 zero fiscal note LAA
 zero with analysis _____

- fiscal note(s) _____
 zero fiscal note(s) _____
 zero fn/analysis _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]

Chairman's Signature

A M E N D M E N T

TO: CSHB 451()

Page 13, following line 26:

Insert a new bill section to read:

"* Sec. 18. AS 24.60 is amended by adding a new section to read:

Sec. 24.60.175. EMPLOYMENT DISCRIMINATION GRIEVANCES. (a) A person employed or formerly employed by the legislative branch of government may file a grievance with the committee alleging a violation of AS 18.80.220 by the person's employer or former employer. The committee shall adopt procedures concerning the filing, the investigation, the mediation, and the hearing of grievances under this subsection. In adopting procedures, the committee shall consider regulations of the office of equal employment opportunity adopted under AS 44.19.443 and shall protect the confidentiality of grievances.

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

- (1) provide for mediation of a grievance;
- (2) dismiss a grievance without prejudice; or
- (3) after a hearing, make appropriate recommendations

concerning a grievance to the president of the senate, the speaker of the house, or the head of the legislative agency where the grievant is or was employed.

(c) This section does not diminish existing rights under state

or federal law relating to employment discrimination."

Renumber the following bill sections accordingly.