
SB
415

SENATE FINANCE COMMITTEE REPORT

DATE: 5/1 /90 FURTHER: _____

DATE TURNED INTO OFFICE: 5/4/90

The Finance Committee considered SB 415

Relating to conduct of legislators, legislative employees, former legislators and legislative employees, and to the Select Committee on Legislative Ethics.

and recommended:

[✓] replace with _____ CS SB 415 (Fin) [✓] same title
[ ] or adopt _____ CS _____ [ ] new title
[ ] technical title change (HB only)

[ ] attached amendment(s)
[ ] _____ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

[ ] further referral to _____

ATTACHES NEW FISCAL NOTE(S):

2 [✓] fiscal note(s) Dept/Date:
SOS/LAA 193.5
APOC 184.5

[ ] zero fiscal note(s) _____

[ ] appropriation-no fiscal note

APPROVES PREVIOUS:

[ ] fiscal note(s) Dept/Date: _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS:

only with delayed effective date included

with delayed effective dates

1. _____

OTHER RECOMMENDATIONS:

Jack Ward (NoRec)

Do Not Pass

Paul Fisher Do Not pass with legislative pay raise and without legislative findings & Ethical Principles

2. _____

Co-Chairs: Signatures and Recommendations

ONLY WITH DELAYED EFFECTIVE DATE INCLUDED

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 415 (Fin) (a)
PUBLISH DATE: 5/4/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Act establishing a Legislative ethics commission
Sponsor: Senator Pourchot
Requestor: Senate Finance

Agency Affected: Legislative Affairs Agency
BRU: Legislative Council

Components: Council and Subcommittees
Legislative Ethics Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	85.0					
TRAVEL	36.0					
CONTRACTUAL	24.0					
SUPPLIES	3.0					
EQUIPMENT	20.5					
Publication	20.0					
Phones, Postage	5.0					
MISCELLANEOUS						
TOTAL OPERATING	193.5	*	*	*	*	*
CAPITAL	0					
REVENUE	0					

FUNDING: (Thousands of Dollars)

GENERAL FUND	193.5					
FEDERAL FUNDS						
OTHER						
TOTAL	193.5					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note funds the commission from January 1, 1991 through June 30, 1991.

*Funding in suceeding years will be included in the legislative budget.

Prepared by: Senator Rick Uehling, Co-chairman
Division: Senate Finance Committee
Phone: 465-4821
Date: May 4, 1990

Approved by Commissioner:
Agency:
Date:

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ____ of ____

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 415
PUBLISH DATE: 5/1/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act establishing a legislative ethics commission
Sponsor: Sen. Pourchot
Requestor: Senate Finance

Agency Affected: Dept. of Administration
BRU: AK Public Offices Commission

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	150.4	151.2	155.7	160.2	164.9	170.0
TRAVEL	3.5	0	2.0	0	0	0
CONTRACTUAL	16.3	16.3	16.3	16.3	16.3	16.3
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	8.0	0	0	0	0	0
LAND & STRUCTURES	6.3	6.3	6.3	6.3	6.3	6.3
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	184.5	173.8	180.3	182.8	187.5	192.6
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	184.5	173.8	180.3	182.8	187.5	192.6
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	184.5	173.8	180.3	182.8	187.5	192.6

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached narrative.

Prepared by: Karla Forsythe, Executive Director
Phone: 276-4176
Division: Alaska Public Offices Commission
Date: 5/3/90

Approved by Commissioner: Rodman Wilson, Vice-Chair (Acting Chair)
Date: 5/3/90
Agency: Alaska Public Offices Commission

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Changes in CSSB 415 (Fin) have no fiscal impact. This fiscal note is appropriate. 5/4/90

CSSB 415 Narrative

This bill includes several provisions which will create new prohibitions on campaign finance activity by legislative candidates and lobbyists. The Alaska Public Offices Commission will administer the provisions and will investigate and adjudicate alleged violations.

The campaign finance provisions prohibit misuse of campaign contributions, prohibit improper disbursement of surplus campaign funds, and restrict the time period during which funds may be raised. The lobbying provisions prohibit lobbyists from using state property or resources, and from becoming actively involved in campaign management or fundraising.

The commission anticipates it will incur startup costs as it prepares to assume its duties in administering these provisions. Staff time will have to be spent revising forms, manuals, and training materials, and preparing proposed regulation changes for commission review. All of these tasks must be accomplished at the same time that staff is handling the largest election cycle in the agency's history, since the provisions take effect November 6, 1990. Existing staff cannot undertake these startup activities while processing work generated by the election, so new positions must be filled as soon as possible. Printing and distribution costs for new materials could be absorbed with existing funds, since the commission reprints and distributes materials annually.

The commission also will receive ongoing requests for advice about interpretation of the law, including questions such as whether a planned campaign expenditure is permissible, and whether a loan is "bona fide" and therefore can be retired from surplus campaign funds. Staff will also be required to respond to increased questions from local candidates due to confusion over which set of rules apply to them. Staff will need extra funds in FY 93 (the first election during which candidates must comply with the law) to travel to locations throughout the state to conduct training seminars to help candidates comply with the new provisions.

The commission anticipates several new complaints annually alleging that a legislative candidate or a lobbyist has violated one or more of these prohibitions. Potential complaints include allegations that campaign funds have been used for a candidate's personal benefit, that a candidate has knowingly paid more than fair market value for campaign goods or more than fair market wages to family members, that a legislator has solicited contributions outside the prescribed time period, and that a lobbyist is not observing the new fundraising restrictions. The commission anticipates that one complaint annually will proceed to public hearing before the commission, the expense of which cannot be absorbed from funds currently budgeted.

8 6 9

The commission will need to hold a hearing in FY 91 to work on regulatory changes. The expenses of such a hearing are not funded within the current budget.

In order to meet the mandates of the new law, the commission will need to add one professional staff member (Associate Coordinator - Range 18) and one prarprofessional staff member (Paralegal - Range 16) to absorb the ongoing advice and complaint investigation workload. Because the one secretary/receptionist in the Anchorage office cannot absorb additional telephone, front counter, filing and typing tasks which will result from the increased workload, the commission also will need an additional secretary (Range 10). In order to investigate complaints about lobbyists, the single staff member in the Juneau office will required half-time clerical help throughout the year, to free her time for advice to lobbyists about application of the law to their activities, and for investigatory factfinding.

The commission's current office space in Anchorage is too small to house these new positions. Modest-sized space is available across the hall from the Anchorage office, which with minor remodeling could be made functional. The new positions will also need a total of two new computers, two desks and chairs, and telephones.

A detailed breakdown of the costs associated with administration and enforcement of this bill is attached.

Actual Costs FY91

Personnel:	Range 18A	$37,548		
	Range 16A	$32,580		
	Range 10A	$22,140		
	PT Range 08A	$10,122		
Benefits Rate:	.286			
Insurance Rate:	$386.19			
Travel:	1 regulations hearing & candidate training		$3500	
Hearings	legal fees		$12,000	
	witness fees		$ 250	
	subpoenas		$ 3,000	
	transcripts		$ 1,000	
	total		$16,250	
Equipment:	Computer (2)		$6244	
	Desk & Chair (2)	$1200		
	Phone Equipment		$ 200	
	Phone Installation		$ 300	
Office Space :	521 square feet		x $1.00	$6252

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 415 (Leg Ethics)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act establishing a legislative ethics commission..."
Sponsor: Legislative Ethics
Requestor: Senate Finance

Agency Affected: Department of Law
BRU: Prosecution, Legal Services

Components: Prosecution - OSPA
Legal Services - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director — Phone: 465-3672
Division: Administrative Services — Date: May 3, 1990

Richard L. Pegues /FOR

Approved by Commissioner: Douglas B. Baily, Attorney General — Date: May 3, 1990
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 415 (Leg. Ethics)

The committee substitute for SB 415 establishes a comprehensive statutory framework to govern the conduct of legislators and employees of the legislature. Implementation and administration of the proposed Act, known as the Legislative Ethics Act of 1990, would be the responsibility of the Legislative Ethics Commission, which would be established in the legislative branch of government.

Although the bill contains numerous provisions that carry criminal penalties, it is not anticipated that these provisions will cause a fiscal impact for the Department of Law. First, the ethics commission will also be responsible for providing extensive education programs for legislators and legislative employees to prevent unethical conduct. Second, past criminal violations in this area have been rare, and therefore it does not appear that the proposed Act would require additional prosecution resources.

Only one part of the Act assigns new duties to the attorney general and this part, proposed AS 24.61.575, gives the attorney general the discretionary power to independently bring civil or criminal actions relating to ethics violations, regardless of the outcome or settlement of a charge before the ethics commission. Because of the broad authority given to the commission to regulate ethical conduct, the attorney general's intervention in this arena should be infrequent.

The Act would also permit a private citizen to make a written request that the attorney commence a civil action under the attorney general's authority to bring independent actions. It is impossible to predict the number of times that such requests might be made. At some point, if these requests become numerous, it may become necessary for the legislature to provide additional civil legal resources to the department to handle these requests.

Offered: 5/5/90
Referred: Rules

6-2007G

Original sponsor(s): SEN. POURCHOT/Select Committee on Legislative Ethics

IN THE SENATE BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 415 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a legislative ethics commission and standards of conduct for legislators, candidates for the legislature, and legislative employees, former legislators and employees, and lobbyists; requiring financial disclosures by legislators, candidates for the legislature, and certain legislative employees; amending legislators' compensation and allowances; and providing for an effective date."

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

* Section 1. SHORT TITLE. This Act may be known as the Legislative Ethics Act of 1990.

* Sec. 2. AS 24 is amended by adding a new chapter to read:

CHAPTER 61. LEGISLATIVE ETHICS ACT OF 1990.

ARTICLE 1. PURPOSE AND LEGISLATIVE FINDINGS.

Sec. 24.61.010. PURPOSE. This chapter is enacted to

(1) assure the integrity of representative government and sustain the confidence and trust of the people of this state in their representatives, the legislature as a whole, and the legislative process;

(2) provide a comprehensive and unified statement of the ethical principles, considerations, and obligations inherent in the public trust theory of government service and establish specific standards of conduct to ensure that those entrusted with public authority avoid conduct that might undermine the people's respect for

the legislature; and

(3) establish a positive, effective, and comprehensive ethics program that is clear, practical, and fair.

Sec. 24.61.015. LEGISLATIVE FINDINGS. The legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to the conduct of fair, open, and responsive representative government;

(2) the people of this state need and deserve a legislature led by outstanding public servants whose devotion and commitment to pursuing the public interest through established democratic processes outweigh any competing personal or political considerations;

(3) state government relies heavily on part-time citizen public servants; it is, therefore, essential to attract talented and principled people willing to provide their time and energy to the state, often with substantial personal and financial sacrifices;

(4) the best way to attract the right people is to ensure that the government is respected for its honesty and integrity and that the rules governing their conduct during and after leaving public service are as clear, fair, and complete as possible; the rules, however, should not impose unreasonable or unnecessary burdens that will discourage citizens from entering or staying in government service;

(5) the political culture of the state is the product of a unique blend of history, geography, climate, population, and ethnic influences that must be taken into account in the development of rules and standards regulating the conduct of legislators, legislative employees, and those who work regularly with the legislature;

(6) the state's commitment to the notion of a citizen

legislature requires that legislators be drawn from all parts of society; they cannot and should not be without personal and financial interests in the decisions and policies of government, and they are expected and permitted to earn outside income;

(7) as a result of the state's small population and close sense of community, most legislators and legislative employees have a network of relationships in and outside the legislature that creates potential conflicts of interest;

(8) the state's vast size requires frequent travel, usually by air, which increases the expense and burden of public service;

(9) the state's cultural diversity is reflected in gift-giving and hospitality customs that may clash with standards prohibiting acceptance of gratuities;

(10) it is important to preserve the vitality of the state's culture and citizen involvement by assuring that standards of conduct acknowledge real and practical needs of individual legislators and legislative employees without compromising vital universal notions of public service ethics, including the principle that public office is a public trust;

(11) upon taking the oath of office, legislators enter into a special trust with the people of the state involving extraordinary powers and equally extraordinary legal and moral obligations; one aspect of these obligations requires that those entrusted with public authority unfailingly demonstrate that they are worthy of the public's respect and are devoted to maintaining the absolute integrity of government;

(12) effective democratic government depends on the willingness of the people to exercise responsible citizenship by voluntary compliance with laws and by active participation in the democratic

process; when the public's trust in and respect for government is high, citizens are more likely to fully participate by voting, becoming better informed, and becoming more active in public debate and discourse in a way that engenders civic pride and makes government more representative, more responsive, and more effective;

(13) unethical or illegal behavior by a legislator or legislative employee tends to diminish the stature of the legislature and produce cynicism that erodes public confidence in government; thus, all who serve the legislature have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates;

(14) the principles of public service ethics pervading this chapter view the ethical obligations of public servants in a positive way; high standard of conduct and specific regulations to enforce them are not driven by negative assumptions about the character of those who serve government, but as expressions of the need for clarity and uniformity about the higher duties of public service and the noble dimension of democracy;

(15) no code of conduct, however comprehensive, can anticipate all situations in which the principles and standards apply, nor can it prescribe behaviors that are appropriate to those situations; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment;

(16) legislators and legislative employees who are committed to the ethical principles embodied in the public trust concept of government must exercise considerable discretion and judgment so as to adhere to the spirit of the rules and laws; in exercising this judgment it is essential to recognize that an act is not ethical simply

because it is legal and that conduct is not proper simply because it is permissible;

(17) legislative decisions must be made in a context of clashing interests; the growing effect of state laws and regulations creates incentives for competing special interests to seek to influence the election and policy-making processes through organized advocacy and through the use of campaign contributions;

(18) the cost of running for office has risen dramatically in recent years; as a result, many public officials, including legislators, spend an increasing amount of time negotiating with special interests in a way that may unduly enlarge the voice and power of those interests;

(19) legislators and legislative employees must be extremely cautious and circumspect about accepting a gratuity or favor, especially from persons or entities that have a substantial interest in their legislative, administrative, or political actions; even where there is a genuine personal friendship, the acceptance of personal benefits from those who could gain advantage by influencing official actions raises suspicions that tend to undermine public trust;

(20) therefore, the state needs a comprehensive ethics program that responds to the challenges of the contemporary political climate, preserves and protects the integrity of the legislative process, and respects the needs of those who serve the legislature.

ARTICLE 2. STANDARDS OF CONDUCT.

Sec. 24.61.100. MISUSE OF OFFICE FOR PRIVATE GAIN: GENERAL PRINCIPLE. Inherent in the concept that public office is a public trust is the principle that legislators and legislative employees refrain from using or attempting to use their government position to attain

(1) personal financial gain, other than official legislative compensation;

(2) benefits, advantages, or privileges not available to the public at large, either for themselves, members of their immediate families, or their friends; or

(3) political advantages where the use of office is inconsistent with the obligation to use public office only to advance the public interest.

Sec. 24.61.110. IMPROPER BENEFIT FROM PERFORMANCE OF PUBLIC DUTIES. (a) A legislator or legislative employee may not solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties. This subsection may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions or the acceptance of a lawful gratuity under AS 24.61.350. A person who violates this subsection is guilty of receiving unlawful gratuities under AS 11.56.120 and is subject to civil sanctions under AS 24.61.560(a).

(b) A legislator or legislative employee may not accept anything of value under circumstances where the legislator or legislative employee knows or reasonably should know that it is offered with the intent to influence legislative, administrative, or political action. A person who violates this subsection is guilty of receiving a bribe under AS 11.56.110 and is subject to civil sanctions under AS 24.61.-560(a). In this subsection, "anything of value" has the meaning given to "benefit" in AS 11.56.130.

Sec. 24.61.120. DUTY TO REPORT IMPROPER OFFERS. (a) Legislators and legislative employees who receive an offer of anything of value that reasonably appears to have been intended to improperly influence legislative, administrative, or political action, shall

reject the offer and inform the person that there may be a violation of bribery laws.

(b) If the attempt to improperly influence is clear, the person receiving the offer shall report it to law enforcement authorities.

(c) A person who violates this section is subject to the civil sanctions authorized under AS 24.61.560(a).

Sec. 24.61.130. MISUSE OF STATE PROPERTY AND RESOURCES FOR PRIVATE GAIN OR PERSONAL ADVANTAGE. (a) A legislator or legislative employee may not use public funds, facilities, equipment, mailing lists, computer data, services, or any other government asset or resource for a nongovernmental purpose or for the private gain or advantage of either the legislator, legislative employee, or another person. This subsection does not prohibit (1) the occasional and limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties, the cost or value related to the use is so nominal that reimbursement procedures would not be justified, and the use does not create the appearance of impropriety or improper influence; or (2) the use of mailing lists, computer data, or other information lawfully obtained from a government agency and available to the public for nongovernmental purposes. A person who violates this subsection is subject to civil sanctions under AS 24.61.560(a) and may be prosecuted for theft under AS 11.46.

(b) A legislator or legislative employee may not seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for compensation, reimbursement, or travel allowances from public funds. A person who violates this subsection is subject to civil sanctions under AS 24.61.560(a) and may

be subject to criminal penalties under another law.

(c) A legislator or legislative employee may not require at any time or authorize on government time a legislative employee to perform personal services or assist in a private activity on government time except in unusual and infrequent situations where the person's service is reasonably necessary to permit the legislator or legislative employee to perform official duties. A person who violates this subsection is subject to civil sanctions under AS 24.61.560(a) and may be subject to criminal penalties under another law.

Sec. 24.61.140. MISUSE OF STATE PROPERTY AND RESOURCES FOR POLITICAL PURPOSES. (a) It is the intent of this section to ensure that public resources, including funds, facilities, and personnel are used only for the good of the public at large and not to further partisan campaign purposes or to influence the outcome of an election; that elections are fair and open and not distorted by the use of public resources to the advantage of individual candidates; and that taxpayers are not forced to subsidize the campaign of an incumbent legislator.

(b) A legislator or legislative employee may not use or authorize the use of public funds, facilities, equipment, mailing lists, computer data, services, or another government asset or resource for the purpose of political fund raising, campaigning, or influencing an election. This subsection does not prohibit the use of mailing lists, computer data, or other public information lawfully obtained from a government agency and available to the general public for nongovernmental purposes. A person who violates this subsection may be prosecuted for theft under AS 11.46.

(c) A legislative employee may not on government time assist in political party activities, campaigning, fund raising, or other

partisan or personal political activities. A legislator may not require an employee to perform an act in violation of this subsection.

(d) The legislative council shall adopt policies relating to a legislator's use of public funds for the production of newsletters or similar publications for distribution to the legislator's constituents. The policies must address the form and content of these publications.

(e) Unless superseded by policies relating to the use of government resources for political purposes developed by the legislative council and adopted by the commission as regulations under AS 24.61.-160, the following prohibitions apply:

(1) a legislator may not use or authorize the use of public funds, property, personnel, or other resources to produce, print, photocopy, publish, broadcast, or otherwise disseminate material primarily intended to influence an election; this provision applies to newsletters and other constituent correspondence that by their nature, content, timing, or use are intended to influence an election, even if the materials do not make a specific reference to the election, but does not apply to newsletters and other constituent correspondence that express the legislator's opinions or views on issues before the legislature, or that describe the legislator's votes, legislative proposals, or other legislative action.

(2) unless approved by the commission, public funds may not be used to print or distribute a mass mailing from or about a legislator who is a candidate for reelection to the legislature or another state office during the period beginning 60 days before the primary election in which the legislator is a candidate, and ending the day after a general or special election in which the legislator is a candidate;

(3) a legislator, or another person on behalf of the legislator, or a campaign committee of the legislator, may not solicit or accept or authorize the solicitation or acceptance of, a campaign contribution in a facility or office ordinarily used to conduct state government business; this provision applies to telephone conversations, personal meetings, and solicitations by mail; if an unsolicited contribution is offered it shall be refused or returned promptly; if an unsolicited contribution is received in the mail, or a lawfully solicited contribution is misdirected to an office ordinarily used to conduct state business, if otherwise lawful it may be accepted but it may not be processed in that office and it shall be delivered promptly to an appropriate location.

(f) Except for a person who violates (e)(1) of this section or a regulation adopted under AS 24.61.160 that supersedes (e)(1) of this section and whose conduct may be prosecuted as theft under AS 11.46, a person who violates (c) or (e)(1) - (3) of this section or a regulation adopted under AS 24.61.160 that supersedes (e)(1) - (3) of this section is guilty of a class A misdemeanor.

(g) In addition to criminal penalties, a person who violates (b), (c), or (e)(1) - (3) of this section or a regulation relating to (b), (c), or (e)(1) - (3) of this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.150. OBLIGATION OF SUBORDINATES TO REFUSE TO PERFORM IMPROPER TASKS. (a) A legislative employee who knows or reasonably should know that the employee has been asked to perform a personal or political task in violation of AS 24.61.100 - 24.61.450 shall refuse to perform the task.

(b) If a legislator or legislative employee with supervisory authority persists in requesting or demanding that a legislative

employee perform prohibited tasks, or if reprisals are threatened or sanctions imposed as a result of the refusal to perform prohibited tasks, the legislative employee subjected to the requests, threats, or sanctions shall report the matter to the commission.

(c) A person who violates this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.160. REGULATIONS CONCERNING USE OF PUBLIC RESOURCES. (a) The legislative council shall develop and recommend for adoption by the commission detailed regulations relating to the use of government property, resources, and personnel. The legislative council shall annually review the regulations and recommend necessary changes to the commission.

(b) If the legislative council fails to make recommendations for the adoption or modification of regulations under (a) of this section, the commission shall develop and adopt the regulations on its own initiative.

Sec. 24.61.180. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN OR PERSONAL ADVANTAGE. (a) A legislator or legislative employee may not use or aid, induce, cause, or encourage others to use, the authority, title, official letterhead, or prestige of the legislator's or legislative employee's office for the benefit of the legislator or legislative employee.

(b) A legislator or legislative employee may not solicit or accept anything of value under terms and conditions where the compensation is not commensurate with the services performed or where a reasonable person would believe that the authority, title, or prestige of office had been exploited.

(c) A legislator or legislative employee may not endorse commercial products by agreeing to use official letterhead or the

legislator's or employee's title in paid advertisements, unless the endorsement is for a public purpose and the person receives no compensation.

(d) Nothing in this section may be construed to prohibit appropriate uses of official letterhead. The legislative council shall adopt a written definition of "official letterhead" and its appropriate uses, which must include, but are not limited to, letters of recommendation for employment, scholarships, fellowships, internships, entry into educational institutions, appointments to boards or commissions, and honorary awards.

(e) Nothing in this section may be construed to prohibit the use of a legislator's official title as a part of a political campaign or political endorsement.

(f) A person who violates this section is subject to civil sanctions under AS 24.61.560(a) in addition to appropriate criminal penalties under another law.

Sec. 24.61.190. POST-SERVICE RESTRICTIONS TO PREVENT MISUSE OF PUBLIC OFFICE BY FORMER LEGISLATORS. (a) A former legislator may not, during the next regular session after leaving office, act as a lobbyist in seeking to influence a

(1) legislator or legislative employee to take or withhold legislative, administrative, or political action; or

(2) state agency, public official, or employee to take or withhold official action

(b) A former legislator, within one year after leaving office, may not solicit or accept anything of value under terms and conditions where the compensation by reasonable objective standards is not commensurate with the services performed or where a reasonable person would believe that the stature of office had been exploited.

(c) A person who violates of this section is guilty of a class A misdemeanor and is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.200. PROPER USES OF CAMPAIGN FUNDS. Campaign funds may be used only to advance the interests of the campaign. Campaign funds may be properly expended for an otherwise lawful purpose intended to influence voters to elect or reelect the legislative candidate to the legislature including, but not limited to: payment of staff and consultants; rental of space and rental or purchase of equipment for a campaign office; purchase of media time and space; design work; printing of campaign materials; postage; taking polls and interpreting them; telephone installation and usage; costs of distribution of materials; advertising in organizational and club bulletins or other brochures; inscribed promotional materials, including buttons, pencils, pens, and items of clothing; necessary travel and related expenses for the candidate and members of the candidate's staff or immediate family provided that the travel and lodging are directly related to attempts to raise campaign funds or influence voters; victory and thank you celebrations; newsletters and mass mailings promoting the candidate; and payment of attorney fees and other legal expenses incurred in the defense of a civil, criminal, or administrative action arising directly out of the conduct of the campaign or election process or out of the performance of activities within the scope of a candidate's legislative duties.

Sec. 24.61.205. PROHIBITED USES OF CAMPAIGN FUNDS. (a) A candidate for the legislature may not

(1) use funds raised and designated as campaign funds for the personal benefit of the candidate or another person, or for payment of attorney fees and other legal expenses arising from civil, criminal, or administrative actions based on conduct not directly

related to the campaign or official duties;

(2) convert surplus campaign funds or interest earned on campaign funds to personal income;

(3) seek or claim a tax deduction or other economic benefit for surplus funds disbursed to a charity under law.

(b) A legislative candidate may not borrow from campaign funds or loan them to another person or group.

(c) A legislative candidate, or another person on behalf of the legislative candidate, or a campaign committee of the legislative candidate, may not knowingly pay more than the fair market value for goods or services purchased for the campaign.

(d) Campaign funds may not be paid to a member of the candidate's immediate family as an employee or for goods or services provided to the campaign unless the amounts paid do not exceed the fair market value of the goods or services provided.

(e) Except for funds received or postmarked before a general or special election, a legislative candidate, and a committee related to the election, may not accept campaign contributions. A post-election contribution must be returned.

(f) A legislative candidate and a committee controlled by a legislative candidate may not use campaign funds to make a contribution to another candidate running for office or to a committee supporting or opposing a candidate for office.

(g) Campaign funds may not be used to pay fines or other monetary penalties or costs assessed against a candidate by a court or other body, unless the fine, penalty, or cost is assessed as a result of proscribed actions by a member or employee of a campaign committee or another person acting on behalf of the candidate under circumstances where the candidate did not know of or have reason to know of

those actions.

Sec. 24.61.210. DISBURSEMENT OF SURPLUS CAMPAIGN FUNDS. (a) If a legislative candidate ceases to be a candidate or if there remains a balance in the account of the candidate or a committee controlled by the candidate after the date of the election, unexpended funds in excess of the amount allowed under (b) of this section may only be used as provided in of this subsection or to pay for a victory or thank you party. Within 60 days after the end of the candidacy or the election, unexpended funds shall be

(1) used to retire bona fide loans supported by written documentation including loans made to a campaign by the legislative candidate or a member of the candidate's immediate family provided that all other outstanding loans are paid first;

(2) returned on a pro rata basis to those who have made contributions in excess of $100 in the aggregate a year;

(3) donated to the general fund of the state or of a municipality;

(4) donated to one or more organizations that qualify as charitable organizations under 26 U.S.C. 501(c)(3) provided that the charity is not one that is controlled by the candidate or a member of the candidate's immediate family or in which the candidate or a member of the candidate's immediate family is personally involved as a director, trustee, member of the board, officer, or other position of responsibility;

(5) transferred to an ongoing political account controlled by the candidate, but only in the amounts and according to the requirements set out in (b) of this section; or

(6) transferred, in an amount not to exceed $1,000, to a house legislative office account, or $2,000 to a senate legislative

office account, for expenditures qualifying as business expenses under 26 U.S.C. 162.

(b) A maximum of $2,500 for candidates for the house and $5,000 for candidates for the senate of surplus campaign funds may be transferred to an ongoing political account controlled by the candidate.

(c) Funds carried over under (b) of this section may be expended for any political purpose for which campaign funds can otherwise properly be used, but they may not be used for a campaign for an office other than the state legislature.

Sec. 24.61.220. PAYMENT OF LEGAL EXPENSES; LEGAL DEFENSE FUNDS. (a) A legislative candidate, legislator, or legislative employee may establish a legal defense fund to assist with the payment of attorney fees and other costs arising from the legislator's or employee's defense of a civil, criminal, or administrative action brought against the legislator or employee. Contributions to a legal defense fund that meet the requirements of this section are not subject to the restrictions in AS 24.61.350.

(b) A legislative candidate, legislator, or legislative employee who wishes to establish a legal defense fund account shall file a statement of organization for the legal defense fund with the commission. The statement of organization must identify the specific civil, criminal, or administrative proceeding or proceedings for which the legal defense fund is established.

(c) The legal defense fund shall establish a single account at an office of a financial institution located in the state. A donation to the candidate, legislator, or legislative employee for legal expenses shall be deposited into that account if the donation meets the requirements of (d) of this section.

(d) Only a donation that is specifically designated by the donor

as being for the legal defense fund and is made payable to the legal defense fund may be deposited in the legal defense fund account. A donation that the recipient believes is intended for the legal defense fund but that does not meet the requirements of this subsection shall be returned to the donor.

(e) Expenditures from the legal defense fund account may be made only for legal costs directly related to the civil, criminal, or administrative proceeding or proceedings for which the legal defense fund is established. Expenditures from the legal defense fund account may not be used to pay or reimburse fines, penalties, judgments, or settlements in connection with a criminal prosecution or a civil or administrative action in which the legislative candidate, legislator, or legislative employee is found to have committed, or admits to having committed a violation of the law.

(f) Surplus funds remaining in the legal defense fund account after the proceeding or proceedings for which the account is established have concluded may not be used for another purpose. These funds shall, within six months after the conclusion of the proceeding or proceedings, be

(1) returned to donors on a pro rata basis as to contributions in excess of $100 in the aggregate;

(2) donated to the state or to a municipality; or

(3) donated to a charitable organization that meets the requirements of AS 24.61.210(a)(4).

(g) This section constitutes the sole means for legislators and legislative employees to solicit or accept donations for legal costs that may not be paid from campaign funds under AS 24.61.202. Except for AS 24.61.240(b) and (c), the provisions of this chapter relating to the solicitation and acceptance of campaign funds apply to the

solicitation and acceptance of contributions to a legal defense fund established under this section. The commission may adopt regulations limiting the dollar amount of contributions under this section and shall adopt regulations requiring the disclosure of donors to a legal defense fund.

(h) Funds received from fund-raising events must be clearly designated in advance as either for campaign purposes or for the legal defense fund and all proceeds shall be dealt with as required by this chapter.

(i) A person who violates this section is guilty of a class A misdemeanor and is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.230. COERCION. (a) A legislator may not, directly or by authorizing another to act on the legislator's behalf, state or imply that the legislator's consideration of an issue, cause, or piece of legislation, or the legislator's willingness to meet with a person, is dependent on the person making a campaign contribution, donating to a cause favored by the legislator, or providing a thing of value to the legislator.

(b) A legislator may not directly, or by authorizing another to act on the legislator's behalf,

(1) agree to, or threaten to take or withhold a legislative, administrative, or political action, including but not limited to support or opposition to a bill, employment, nominations, and appointments, as a result of a person's decision to provide or not provide a political contribution;

(2) state or imply that the legislator will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution.

(c) Unless the conduct violates a provision of AS 11 and the

person is subject to prosecution under that provision, a person who violates (a) or (b) of this section is guilty of a class A misdemeanor.

(d) In addition to criminal penalties, a person who violates this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.240. FUND RAISING LIMITATIONS. (a) Because the process of campaign fund raising involves activities that take great amounts of time and energy and that tend to place legislators in situations rife with the potential for conflicts of interest, it is the intent of this section that fund raising should be limited in ways that permit legislators to concentrate their attention on public matters.

(b) A legislator may not, either directly, through a campaign committee, or other means, solicit or accept a campaign contribution or a promise or pledge to make a contribution while the legislature is in regular session, nor may a legislator solicit campaign funds or host a campaign fund-raising event for another person while the legislature is in session. This subsection does not prevent fundraising activity for a charitable organization if the activity does not violate AS 24.61.230.

(c) A legislator or a candidate for the legislature may not, either directly, through a campaign committee, or other means, solicit or accept a campaign contribution or a promise or pledge to make a contribution relating to candidacy for the legislature in an election other than a special election under AS 15.40 except during the following periods:

(1) legislators, and other incumbent elected public officials intending to run for the legislature, may raise funds from June 1 until December 31 in the year before the year of an election in

which they intend to be a candidate, and from June 1 through the general election in November in the year of the election; in this paragraph, "public official" means a person required to file a campaign disclosure statement under AS 15.13;

(2) candidates for the legislature who are not in public office at the time of their candidacy may raise funds from June 1 in the year before the year of an election in which they intend to be a candidate through the general election in November in the year of the election.

(d) This section does not prohibit a legislator from making an otherwise lawful contribution or from attending an otherwise lawful fund-raising activity at any time.

Sec. 24.61.245. ENFORCEMENT OF CAMPAIGN FUND PROVISIONS. The Alaska Public Offices Commission shall enforce AS 24.61.205, 24.61.210, and 24.61.240. A person who believes that AS 24.61.205, 24.61.210, or 24.61.240(b) or (c) has been violated may file a complaint under AS 15.13.120(d) with the Alaska Public Offices Commission, which shall handle the complaint in the same manner as a complaint alleging a violation of AS 15.13. The penalties for a violation of AS 24.61.205, 24.61.210, and 24.61.240(b) and (c) are those set out in AS 15.13.120(a). In addition, if the Alaska Public Offices Commission determines after a hearing under AS 15.13.120(d), or if a legislator admits, that the legislator violated or caused, induced, aided, or encouraged a violation of AS 24.61.205, 24.61.210, or 24.61.240(b) and (c), the legislator is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.255. FINANCIAL CONFLICTS OF INTEREST DEFINED. A financial conflict of interest exists when a person or a member of that person's immediate family has substantial financial interests

that may be materially affected by an official action or decision they might make. The interest must be so substantial and the potential effect on that interest must be so material that a reasonable person is likely to believe that the ability of the person with the financial interest to make an objective, fair, and impartial professional judgment will be impeded by self-interest. It is not a conflict of interest as to a specific matter if

(1) the person's economic interest is not substantial;

(2) the person's authority in relation to the interest is such that an action or decision is not likely to materially affect the financial interest; or

(3) the economic effect an official action or decision might have on a person's private financial interests is no greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

Sec. 24.61.260. SUBSTANTIAL INTEREST IN LEGISLATIVE, ADMINISTRATIVE, OR POLITICAL ACTION DEFINED. Persons, including governmental entities, have a substantial interest in legislative, administrative, or political action if they

(1) seek employment in the legislative branch or a government agency or in a private organization in which a legislator or legislative employee is likely to have, or reasonably appears to have, the ability to influence an employment decision;

(2) will be directly and substantially affected, either financially or personally, by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region;

(3) have or seek contracts in excess of $10,000 annually

for goods or services with the legislature or with an agency of state government;

(4) are lobbyists;

(5) employ lobbyists; or

(6) represent, with or without compensation, a person or organization described in (1) - (5) of this section.

Sec. 24.61.265. CLOSE ECONOMIC ASSOCIATION DEFINED. "Close economic association" refers to a financial relationship between two or more persons that creates economic interests in a legislator or legislative employee that either (1) conflict with public duties and the obligation to exercise objective independent judgment; or (2) create the appearance that the person may have access to confidential information or otherwise receive favored treatment regarding public actions. "Close economic association" includes, but is not limited to, relationships involving compensation as an employee, agent, representative, counselor, adviser, or consultant, including professional services provided by a lawyer or a financial planner to a client; a financial interest resulting from an investment, business enterprise, or interest in real property as a partner, investor, associate, or major stockholder; a landlord and tenant or co-tenants sharing housing expenses; a debt, loan, or loan guarantee; or another relationship in which a legislator or legislative employee has a substantial economic involvement with another person. In this section, "person" includes governmental entities.

Sec. 24.61.270. DEALING WITH FINANCIAL CONFLICTS. Except in the relatively few cases in which certain transactions or relationships are prohibited by this chapter or where divestiture may be ordered by the commission, conflicts of interest are dealt with primarily as a matter of required public disclosure and voluntary restraint.

Sec. 24.61.290. RESTRICTED RELATIONSHIPS: NEPOTISM. (a) A member of the immediate family of a legislator may not be employed for compensation

(1) in the house of which the legislator is a member during the legislative session;

(2) in either house in the interim between legislative sessions;

(3) by an agency of the legislature established under AS 24.20; or

(4) by the commission, whether for compensation or not, at any time.

(b) A member of the immediate family of a legislative employee may not be employed for compensation in a position over which the employee has supervisory authority.

(c) In cases where a member of the immediate family of a legislator or legislative employee is uniquely qualified to perform a task, or another extraordinary circumstance exists under which it would be in the state's interest to waive the limitation of this section, an exemption may be sought from the commission.

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

(e) A person who violates this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.300. RESTRICTED RELATIONSHIPS: LOBBYISTS, LEGISLATORS, LEGISLATIVE CANDIDATES, AND LEGISLATIVE ASSISTANTS. (a) A legislator or a legislative candidate may not solicit or knowingly permit a lobbyist to actively engage in fund-raising activities for a legislative campaign or for a legal expense fund under AS 24.61.220, which activities include (1) serving as a campaign manager or direc-

tor; (2) serving as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee; (3) hosting a fund-raising event. This subsection may not be construed as prohibiting a lobbyist from making personal contributions to or personally advocating on behalf of a candidate. A legislator or a legislative candidate may not seek to evade the purposes of this subsection by soliciting or knowingly permitting a member of a business entity retained to lobby, or an employee of a lobbyist to perform similar fund-raising services.

(b) Legislators and legislative assistants who have a close economic association with a lobbyist shall make a written disclosure of the association in confidence to the commission. The disclosure shall be made during the first week of each session. If a legislator or legislative assistant is not in office or employed during the first week of the session, or if the association did not exist during the first week of the session, the disclosure shall be made within 30 days after taking office or being employed or the creation of the association.

(c) The written disclosure must state the name of the persons involved, the nature of the association, and a brief narrative of the matters the legislator or legislative assistant is working on that could create an actual conflict of interest. If the commission requests additional information necessary to determine whether the nature of the association creates a conflict of interest, it shall be promptly provided.

(d) The commission shall make a determination as to whether the association creates a conflict of interest that warrants restrictions or disclosure. After making the determination, the commission may elect to

(1) keep the matter confidential;

(2) recommend some restriction in the activities; or

(3) order full or partial disclosure in the journal of the appropriate body.

(e) A legislator or legislative assistant may not provide personal services for compensation for or on behalf of a lobbyist or a business entity retained to lobby, and may not have a financial interest in a business that receives a substantial part of its income from lobbyists and business entities retained to lobby.

(f) A person who violates this section is subject to civil sanctions under AS 24.61.560(a) and other penalties authorized under AS 24.45 (regulation of lobbying).

Sec. 24.61.310. RESTRICTED RELATIONSHIPS: BOARD MEMBERSHIPS AND OTHER PUBLIC OFFICES. (a) A legislator may not serve on a governing or advisory board of a nongovernmental organization that regularly has a substantial interest in the legislative, administrative, and political actions of the legislator.

(b) A legislative assistant may not serve in a position that requires confirmation by the legislature. A legislative assistant may serve on a board of an organization, including a governmental entity, that regularly has a substantial interest in the legislative activities of the assistant, if the assistant discloses the board membership to the commission. A legislative assistant may not, as part of the assistant's employment, be personally involved in an issue or take a specific action that directly relates to an organization of which the assistant is a board member.

(c) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative assistant may seek a waiver of a provision of this section or a modified order from the commission.

(d) A person who violates this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.320. RESTRICTED FINANCIAL INTERESTS. (a) Unless required by the Uniform Rules of the Alaska State Legislature, a legislator or legislative employee may not participate in legislative, administrative, or political action if the legislator or legislative employee has an equity or ownership interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect of the action on that interest is greater than the effect on a substantial class of persons to which the legislator or legislative employee belongs as a member of a profession, occupation, industry, or region.

(b) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver of the provisions of this section.

(c) A person who violates this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.330. RESTRICTED ACTIVITIES AS AN ATTORNEY OR REPRESENTATIVE. (a) A legislator or legislative assistant may not for compensation represent, as an advocate, advisor, or consultant, a person in a matter involving an agency, board, or commission of the state, unless the agency, board, or commission is acting quasi-judicially and there is no reasonable basis to conclude that the side represented by the legislator or legislative assistant has an unfair advantage. This provision does not prohibit an attorney from representing a client in a judicial action or prevent a legislator or legislative assistant from representing personal interests in an otherwise proper proceeding. This subsection may not be construed to permit compensated representation for purposes of obtaining or retain-

ing a state or local license, permit, franchise, grant, loan, or other benefit, whether or not other parties contending for the benefit are represented, unless the granting of the benefit is a purely ministerial matter requiring little or no discretion.

(b) This section may not be construed to prohibit a legislator or legislative assistant from informally advising a constituent about the procedures or appropriateness of bringing an action against the state or a local government. If a legislator or legislative assistant in an otherwise proper manner advises a constituent or another in an action against the state or a local government or before a state or local government agency, the legislator or legislative assistant may not reveal confidential information.

(c) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative assistant may seek a waiver of a provision of this section.

(d) A person who violates (a) of this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.340. RESTRICTED TRANSACTIONS: INTEREST IN STATE CONTRACTS OR LEASES. (a) A legislator, a legislative assistant, or a member of the immediate family of a legislator or legislative assistant may not be a party to, or have a financial interest in, a state contract or lease unless the contract or lease is permitted under (b), (c), or (d) of this section.

(b) A contract is permissible if the contract is let through competitive sealed bidding under AS 36.30 (State Procurement Code) and the legislator or legislative assistant files a statement with the commission before the contract is executed certifying under penalty of unsworn falsification that the legislator or legislative assistant did not have (1) access to confidential information that reasonably could

provide an advantage; or (2) discussions or contacts with state officials involved in letting the contract about the contract that could influence the decision. The statement must also specify the nature of the legislator's or legislative assistant's personal or immediate family interest, including the percentage or share of profits that will be realized. If the commission requests additional information necessary to determine the priority of the award of the contract, it shall be promptly provided. If the commission believes the nature or circumstances of the contract raise impermissible conflicts of interest, it may recommend that the contract be voided or that restrictions be placed on the contractor. The statement filed by the legislator or legislative assistant regarding the contract shall be made part of the public record and published in the journal of the appropriate house.

(c) A contract or lease is permissible if the total amount of the contract or lease over the course of a year is less than $1,000 and it was let under circumstances that do not raise a substantial question of improper influence.

(d) A contract or lease is permissible if it is a standardized contract or lease that was developed under publicly adopted regulations or procedures and is generally available to the public at large or to members of a profession, occupation, or group to which the legislator, legislative assistant, or member of the legislator's or assistant's immediate family belongs.

(e) A legislator or legislative assistant may not receive anything of value to procure or advocate for a contract with state or local government.

(f) A legislator, legislative assistant, or former legislator or legislative assistant, within one year of leaving legislative service, may not seek or accept a contract with a person that does a substan-

tial portion of its business with the state for goods or personal services concerning a matter on which the legislator or legislative assistant participated personally and substantially within the last year of service.

(g) A person who violates this section is subject to civil sanctions under AS 24.61.560(a) and may be subject to criminal penalties under another law.

Sec. 24.61.345. PARTICIPATION IN GENERAL STATEWIDE PROGRAMS PERMISSIBLE. (a) A legislator or legislative employee may, without disclosure to the commission, participate in a statewide benefit program or receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed, objective eligibility standards, and requires minimal discretion in determining qualification.

(b) The commission shall review annually state programs and state loans and publish a list of programs and loans, designating which ones meet the standards of (a) of this section.

(c) A legislator or legislative employee who participates in a program or receives a loan that is not exempt from disclosure under (a) of this section shall file a written report with the commission by the first Monday in February of each year stating the amounts of the loans or other benefits received during the preceding calendar year from nonqualifying programs. If the commission requests additional information necessary to determine the propriety of participating in the program or receiving the loan, it shall be promptly provided. The commission shall promptly compile a list of the statements indicating the loans and programs and amounts and send it to the presiding officer of each house who shall have it published in the supplemental journals within three weeks of the filing date.

(d) If loan proceeds or other program benefits are received from nonqualifying programs or loans after January 15, the legislator or legislative employee shall file a statement with the commission within 30 days after the beginning of participation in the state program or receipt of proceeds from the state loan. If the commission receives the statement while the legislature is in session, it shall promptly forward the statement to the chief clerk of the house or the secretary of the senate, as appropriate, who shall cause it to be published in the supplemental journal. If the commission receives a statement while the legislature is not in session, it shall forward the statement to the chief clerk of the house or the secretary of the senate for publication when the legislature next convenes.

(e) If the commission determines that the nature and circumstances under which the legislator or legislative employee received a state benefit or loan raises an appearance of impropriety or was in fact the result of unfair or improper influence it shall be treated as a violation of this section. In addition, the commission shall report the violation to the attorney general for action under other civil or criminal laws.

(f) The commission shall annually recommend to the Legislative Budget and Audit Committee the programs and loans to be audited by the division of legislative audit during the following year, including the scope of the audit. The records of the relevant state agencies shall be made available to the division of legislative audit. The division of legislative audit shall prepare a report to the Legislative Budget and Audit Committee on its findings. The report is confidential until it is released by the committee.

(g) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver

of this section.

(h) A person who violates this section is subject to civil sanctions under AS 24.61.560(a) and may be subject to criminal penalties under another law.

Sec. 24.61.350. RESTRICTED TRANSACTIONS: GRATUITIES. (a) A legislator or legislative employee may not accept or receive, directly or indirectory, a benefit as a gratuity from a person except as provided in this section. Notwithstanding the provisions of (c) and (d) of this section, this section does not permit the acceptance of a benefit in any amount if the acceptance of the benefit would violate AS 24.61.110(b).

(b) A legislator or legislative employee may accept gratuities in the form of personal gifts, free or subsidized travel, tickets to entertainment or sporting events, unsolicited subscriptions to publications, lodging, pens, calendars, candy, fruit baskets, flowers, or any other benefit, provided that the aggregate value in a calendar year may not exceed $100 from a single source except as provided in this subsection. The following benefits may be accepted as gratuities without regard to $100 limit and they need not be reported except as noted:

(1) gifts from immediate family members;

(2) birthday, wedding, anniversary, and similar ceremonial gifts if the donor does not have a substantial interest in the legislative, administrative, or political action of the recipient;

(3) unsolicited tokens or awards of appreciation or recognition with a value of more than $100 in the form of a plaque, trophy, clock, watch, desk item, wall memento, or similar item if the award has been approved by the commission upon a finding that the gift does not create an impermissible conflict of interest;

(4) food or foodstuffs indigenous to the state that are shared generally as a cultural or social norm, and meals and beverages provided and consumed at social or fund-raising events, conferences, or professional meetings, at a restaurant or club, or as part of personal hospitality at the residence or place of business of the host; gratuities under this paragraph with a value of more than $100 shall be reported on financial disclosure forms; this paragraph may not be construed to exclude from the $100 limit gifts of packaged liquor, wine, or foodstuffs, nor does it exclude from the $100 limit the acceptance of a restaurant meal not consumed with the person providing the gift;

(5) a gift presented by a representative of a foreign government that is worth more than $100 may be accepted only on behalf of the legislature and must be turned over within 60 days to the presiding officer of either house for purposes of displaying the gift in public areas of the Capitol or other appropriate public location or being sold at auction, the proceeds to go to charity or the general fund;

(6) reasonable and necessary expenses, including reimbursement for travel and related food and lodging, when they are incidental to a trip paid for by a government agency or a nonprofit educational, charitable, or political institution for governmental or educational purposes; the commission shall adopt regulations implementing this paragraph, including regulations relating to the payment of expenses for the members of a person's immediate family;

(7) hospitality including overnight lodging, food, and beverages at the residence or second home of the host provided the host is present, or, if the host is not present, the person is staying as a house-sitter; if the host has a substantial interest in the

legislative, administrative, or political actions of the recipient, a stay with a value of more than $100 shall be reported on financial disclosure forms; this paragraph may not be construed to permit the use, other than as a house-sitter in a residence or a second home, of a summer home, company retreat, resort facility, condominium or apartment, or other lodging where the host is not personally present or, regardless of the presence of the host, the purpose is to provide the legislator or legislative employee with a paid or subsidized vacation or similar benefit; the host may use customary and usual means of transportation to transport the legislator or legislative employee to the host's residence or the place of a social event;

(8) leave donated under AS 39.20.245(b);

(9) the portion of a student loan forgiven under former AS 14.43.120(j).

(c) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver of a provision of this section under AS 24.61.530.

(d) A person who violates this section is subject to civil sanctions under AS 24.61.560(a) and may be subject to prosecution under AS 11.56.120 (receiving unlawful gratuities).

Sec. 24.61.360. RESTRICTIONS ON EARNED INCOME: OUTSIDE EMPLOYMENT AND HONORARIA. (a) A legislator or legislative assistant may not seek, accept, or retain employment, including as an advisor or consultant, that

(1) is likely to involve the disclosure or use of confidential information acquired in the course of legislative service;

(2) is likely to involve the legislator or assistant acting as a representative in a matter that makes use of the authority, prestige, or title associated with legislative office;

(3) involves payments that by reasonable objective standards are not commensurate with the services rendered and appear to involve a premium as a result of the legislator's or legislative assistant's position in the legislature;

(4) is likely to require the legislator or legislative assistant, under conflict of interest and disqualification requirements, to refrain from taking legislative, administrative, or political actions in an undue number of situations;

(5) will require the legislator or legislative assistant to act as a lobbyist; or

(6) will require the legislator or legislative assistant to compromise another ethical or legal duty.

(b) A legislator or legislative assistant may not receive compensation for personal services from a state entity other than the legislature except as specifically provided in this chapter or approved by the commission. A legislator or legislative assistant is not precluded by this subsection from earning compensation at a state-funded school or university, provided that influence was not used to obtain the position.

(c) A legislator or legislative assistant who accepts otherwise permissible employment with a person that has a substantial interest in legislative, administrative, or political actions is subject to special disclosure provisions under AS 24.61.405 and shall avoid conduct that would lead a reasonable person to believe that the legislator or legislative assistant is unable or unwilling to exercise independent, objective, and impartial judgment in considering matters that affect the interests of the legislator's or legislative assistant's employer.

(d) A legislator or legislative assistant may not seek or accept

an honorarium from a person or entity that has a substantial interest in legislative, administrative, or political action. This subsection does not prevent a legislator or legislative assistant from accepting an honorarium from a governmental entity outside of the state, from a university other than the University of Alaska, or from another nonprofit educational or civic institution, provided that the amount paid is reasonable and commensurate with the services performed and that the circumstances under which the services are to be performed do not create a conflict of interest or appearance of impropriety. Honoraria shall be reported on required disclosure forms. Under other provisions of this chapter, a legislator or legislative assistant is permitted to accept travel and related expenses incurred as the result of an otherwise permissible activity.

(e) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative assistant may seek a waiver of a provision of this section under AS 24.61.530.

(f) A person who violates this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.380. IMPROPER INTERFERENCE WITH THE INDEPENDENT JUDGMENT OF OTHERS ON BEHALF OF CONSTITUENTS. (a) A legislator, either directly or indirectly, should not interfere with the ability or willingness of a state or municipal government body, official, or employee to make official decisions or take appropriate actions on the merits, based on independent objective judgment.

(b) A legislator may not directly use or appear to use political influence in a way that is likely to cause a public official to consider inappropriate factors in exercising public authority. Acts either intended to or likely to be construed as enticement, tradeoffs, ingratiation, threats, intimidation, or coercion are improper.

A legislator may not directly and improperly interfere with or seek to influence

(1) the outcome or substantive findings of an adjudicatory proceeding of a governmental regulatory body;

(2) a decision regarding the commencement, scope, or termination of an investigatory process of a governmental agency; or

(3) an action of a governmental agency concerning the granting or revocation of a license, permit, franchise, or similar entitlement.

(c) This section may not be construed to prevent a legislator from

(1) ensuring that a constituent is being treated fairly according to established rules and procedures;

(2) making inquiries about the status of a matter or helping a constituent get a benefit or service that the legislator believes the constituent is entitled to as a matter of right;

(3) openly advocating the position of constituents on the merits, provided that no effort is made to influence the decision making process by express or implied political pressure in matters involving discretionary decisions of administrative bodies that will have direct and significant economic or social effect on the legislator's district; or

(4) exercising vigilant oversight with respect to the policies, regulations, procedures, and implementation practices of an agency, provided that the oversight activities are conducted through the normal committee processes of the legislature and that the focus is on the policies, procedures, and practices of the agency and not the handling of a particular matter.

(d) A person who violates (b) of this section is subject to

civil sanctions under AS 24.61.560(a) and may be subject to criminal penalties under another law.

Sec. 24.61.390. CONFLICT OF INTEREST DISCLOSURE: STATEMENT OF PURPOSE. The purpose of financial disclosure by legislators, candidates for the legislature, and legislative assistants is to

(1) discourage legislators and legislative assistants from acting on a private or business interest in the performance of a public duty;

(2) assure that legislators and legislative assistants exercise their legislative function free of the influence of undisclosed private or business interests;

(3) develop public confidence in persons seeking or holding legislative office, enhance the dignity of the legislature, and make it attractive to citizens who are motivated to public service;

(4) develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who hold public office; and

(5) provide the public the financial disclosure required to meet the purposes listed in (1) - (4) of this section while preserving the maximum amount of privacy to legislators, candidates for the legislature, and legislative assistants.

Sec. 24.61.400. CONFLICT OF INTEREST DISCLOSURE BY LEGISLATORS, CANDIDATES FOR THE LEGISLATURE, AND LEGISLATIVE ASSISTANTS; "CATEGORY A" AND "CATEGORY B" INCOME SOURCES DEFINED. (a) A legislator, a candidate for the legislature, and a legislative assistant shall disclose financial interests that would cause a reasonable person to believe that the legislator's, candidate's, or legislative assistant's objectivity and ability to exercise independent judgment in the public interest have been adversely affected by those interests.

(b) A legislator, a candidate for the legislature, and a legislative assistant shall file with the commission the reports required under AS 24.61.400 - 24.61.410. A candidate for the legislature, including an incumbent legislator, shall file the reports at the time required under AS 15.25.030 or 15.25.180. In addition, legislators and legislative assistants shall file annual reports on or before April 15. The commission shall adopt filing guidelines and develop forms that are compatible with financial disclosure forms required to be filed with the Alaska Public Offices Commission under AS 39.50.030.

(c) A legislator, a candidate for the legislature, and a legislative assistant shall disclose to the commission the information required under AS 24.61.405 and 24.61.410 and the guidelines and regulations adopted by the commission under (b) and (d) of this section, on the sources and amounts of outside income received by them, their spouses, and their dependent children, except that disclosure of the amount of income received by a legislator's or assistant's spouse or dependent children is not required. If the spouse or dependent child receives income from a category A source, the legislator or legislative assistant shall file a statement with the commission stating that (1) all the funds earned by the spouse or dependent child were reasonable payments for services actually rendered, and (2) employment of the spouse or dependent child was not related to any attempt to influence or do any favor for the legislator or legislative assistant. A legislator, candidate for the legislature, or legislative assistant shall also report the information relating to income and assets that a public official is required to report under AS 39.-50.030.

(d) The commission shall adopt regulations relating to the definitions of category A and B income and the reporting requirements

imposed by AS 24.61.400 - 24.61.410. The regulations must include provisions that distinguish between income received for personal services, income received from the ownership of property, income received directly by the legislator, candidate for the legislature, or legislative assistant, and income received by an entity in which the legislator, candidate, or legislative assistant has an ownership interest. The regulations may exclude from category A income, income from sources such as interest on deposit accounts in regulated financial institutions.

(e) In AS 24.61.400 - 24.61.410,

(1) "category A source" means a person who is known or reasonably should be known to have a substantial interest in legislative, administrative, or political actions; the legislature or an agency of the legislature is not a category A source;

(2) "category B source" means a person who does not, or is not known to fall within category A;

(3) "income" means benefits received, in the form of monetary compensation or another thing of value.

Sec. 24.61.405. REPORTING CATEGORY A INCOME. (a) As to income received from category A sources, a person required under AS 24.61.400 to report shall file with the commission a statement that must include,

(1) as to all income received as compensation for services in excess of $100, the name and address of the source, a brief statement describing the nature of the services performed including sufficient detail to permit the commission to determine whether the nature of the work created or would create a conflict of interest, and the amount paid;

(2) as to each gratuity received and required to be reported under AS 24.61.350(c)(4) and (7), the name and address of the person providing the gratuity, a brief description of its nature, and a good faith statement of its fair market value; if exact values are not known, and cannot be found out without undue hardship or expense, reasonable good faith estimates are acceptable;

(3) the name and address of the source and the cash value of reimbursement for expenses aggregating more than $100 in the reporting period;

(4) as to each loan or loan guarantee yielding loan proceeds of $100 or more in the reporting period and the lender or guarantor is a person with a substantial interest in legislative, administrative, or political actions, the name and address of the person making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a written loan agreement exists;

(5) if the source of a reported benefit is a corporation, other than a publicly traded corporation, the name of its parent corporation, if any, and names of its top corporate officers;

(6) if the source of a reported benefit is a partnership or association doing business under a fictitious name, the names of the principals; and

(7) other information required under regulations of the commission.

(b) The commission shall review category A statements to determine whether an impermissible conflict exists or would exist and whether special orders or restrictions are required.

(c) Category A statements are public records and shall be made

available for public inspection.

(d) In extraordinary situations, a legislator, a candidate for the legislature, or a legislative assistant may seek a waiver of a provision of this section under AS 24.61.530.

Sec. 24.61.410. REPORTING CATEGORY B INCOME. (a) A person required under AS 24.61.400 to report shall file a statement listing the items in AS 24.61.405(a) that the person has received from a category B source, except that the person shall disclose only those income sources providing benefits worth $1,000 or more. The person is not required to report the amount of income from a reportable source. As to gratuities, the requirements of AS 24.61.350(c)(4) and (7) control, but apply to a candidate for the legislature as to disclosure requirements only.

(b) The commission shall review category B statements to determine whether an impermissible conflict exists or would exist, whether special orders or restrictions are required, and whether the statements shall be considered to be public records and made available for public inspection.

(c) If the person filing a statement under this section is a legislator, or a candidate for the legislature, the statement is presumptively public, which means that it will be made part of the public record unless the legislator or candidate submitting it requests that it be kept confidential, states the reasons for the request, and the commission finds that no valid public purpose would be advanced by publication.

(d) If the person filing a statement under this section is a legislative assistant, the statement is presumptively confidential, which means that it shall be kept confidential unless the commission determines that the public benefit in disclosure substantially

outweighs the individual's interest in privacy.

Sec. 24.61.415. REPORTING OBLIGATIONS OF EMPLOYERS OF LEGISLATORS AND LEGISLATIVE ASSISTANTS. (a) A person who has provided compensation for personal services to a legislator or legislative assistant and who qualifies as a category A source under AS 24.61.400(e) shall file a report to the commission concerning the compensation paid. The report must contain all information required by the commission.

(b) The commission shall adopt regulations prescribing the times at which a report under (a) of this section must be filed, and the information that the report must contain. The regulations must provide that the report include a brief narrative of the nature of the employment relationship with the legislator or legislative assistant, the terms of compensation, and the amount paid during the reporting period.

(c) Legislators and legislative assistants shall ensure that persons who have provided compensation to them for personal services have the necessary forms and are informed of the obligation to file a report under this section. At the time of filing the report the person filing shall provide a copy to the legislator or legislative assistant.

Sec. 24.61.420. PROHIBITED CONDUCT RELATING TO DISCLOSURES. (a) A person required to make a disclosure under AS 24.61.100 - 24.61.420 may not knowingly make a false or deliberately misleading or incomplete disclosure to the commission, or file a disclosure after a deadline set by this chapter or by a regulation adopted by the commission under AS 24.61.160.

(b) A person who violates this section is guilty of a class A misdemeanor and is subject to civil sanctions under AS 24.61.560(a).

(c) In addition to the sanctions in (b) of this section, if the commission finds that a candidate for the legislature, including an incumbent legislator, has committed a substantial violation of this section, the commission shall notify the lieutenant governor. The lieutenant governor shall return the candidate's filing fee and shall remove the candidate's name from the filing records. In this subsection "substantial violation" includes the refusal or failure to make a filing required under AS 24.61.400 - 24.61.410.

Sec. 24.61.430. ACCOUNTABILITY: OPENNESS AND OVERSIGHT. (a) Legislators shall abide by AS 44.62.310 - 44.62.312 (open meetings law) and, to the greatest extent reasonably possible, exercise the authority of their offices openly so that the public is informed about governmental decisions and can hold them accountable for their actions.

(b) A person who violates this section is subject to an administrative sanction under AS 24.61.560(b).

Sec. 24.61.440. ACCOUNTABILITY: SELF-POLICING, WHISTLE BLOWING, AND PROTECTION OF WHISTLE BLOWERS. (a) Legislators and legislative employees shall maintain the integrity and trustworthiness of government by taking whatever steps are necessary to prevent unethical practices, unlawful conduct, corruption, mismanagement, improper use of public funds, danger to public safety, or another abuse of public position, authority, or resources.

(b) Legislators and legislative employees who have a good faith belief that the public interest requires the disclosure of governmental policies or actions thought to be unlawful or improper should reveal their information to appropriate authorities.

(c) A legislator or legislative employee may not, directly or indirectly, subject a person who reports to the commission or another

government entity conduct the person reasonably believes is a violation of this chapter or any other state law, to reprisal, retaliation, harassment, discrimination, or ridicule. A legislative employee who is discharged, disciplined, involuntarily transferred, or otherwise penalized by a legislator or another legislative employee in violation of this subsection may

(1) bring a complaint before the commission; and

(2) bring a separate civil action in the courts seeking damages, payment of back wages, reinstatement, or other relief.

(d) In addition to the special civil liability under (c)(2) of this section, a person who violates this section is subject to civil sanctions under AS 24.61.560(a).

Sec. 24.61.450. DUTY TOWARD COLLEAGUES AND SUBORDINATES. (a) A legislator or legislative employee may not engage in acts of discrimination in violation of AS 18.80.220.

(b) A person who violates this section is subject to the administrative sanctions authorized under AS 24.61.560(b), and may be subject to liability under another criminal law or civil action arising from the conduct.

ARTICLE 3. LEGISLATIVE ETHICS COMMISSION.

Sec. 24.61.500. LEGISLATIVE ETHICS COMMISSION ESTABLISHED. (a) The Legislative Ethics Commission is established in the legislative branch of government. The commission consists of nine members, selected as follows:

(1) two members appointed jointly by the president of the senate and the senate minority leader;

(2) two members appointed jointly by the speaker of the house and the house minority leader;

(3) two members appointed by the supreme court; and

(4) three members selected by majority vote of the members appointed under (1) - (3) of this subsection.

(b) Commissioners serve staggered terms of five years. A commissioner is eligible for reappointment; however, a commissioner may not serve more than two consecutive five-year terms. A commissioner whose term has expired continues in office until a successor has been appointed and certified.

(c) A vacancy on the commission is filled in the same manner as the original appointment to that seat on the commission. A vacancy shall be filled within 30 days after the vacancy occurs.

(d) The commission shall elect a chair and a vice-chair, who serve a term of two years. An officer may not hold the same office for more than two consecutive terms. The vice-chair shall act as chair in the absence of the chair.

(e) A commissioner may not be a legislator, a legislative employee, an elected or appointed official required to make conflict-of-interest disclosures under AS 39.50, an officer of a political party, a candidate for public office, or a registered lobbyist.

Sec. 24.61.502. CERTIFICATION; LEGISLATIVE DECERTIFICATION OR REMOVAL FROM OFFICE. (a) Upon appointment, a person appointed to the commission shall execute a written oath that includes the following undertaking:

I will solemnly perform the duties of this office in a manner that is consistent with both the letter and spirit of the Alaska Legislative Ethics Act and I shall conform my own conduct to the provisions therein. I acknowledge the obligation and need to interpret and apply all its provisions, and the ethical principles that underlie them, vigorously, promptly, fairly, and

in good faith. All my actions, decisions, and votes on matters relating to my duties will be made purely on the merits, objectively, independently, and without political, regional, or ideological partisanship.

Upon executing the oath, an appointee shall be certified as a commissioner and is immediately considered to have begun serving the appointed term.

(b) Within 45 days after certification, a commissioner may be decertified by a majority vote of both houses of the legislature, if the legislature is in session, or by a two-thirds vote of the members of the legislative council if the legislature is not in session. If decertified, the commissioner is disqualified and that seat on the commission is vacant.

(c) A commissioner may be removed from office by a vote of two-thirds of both houses of the legislature for good cause, including substantial neglect of duty, inability to discharge the powers and duties of office, violation of this chapter, gross misconduct, or conviction of a felony.

Sec. 24.61.504. MEETINGS; COMPENSATION. (a) The commission shall meet at the call of the chair or a majority of the commissioners. The commission shall meet at least once every three months.

(b) Six commissioners constitute a quorum. A vote of the majority of the commissioners appointed is required for official action of the commission.

(c) The commission may meet by teleconference.

(d) Commissioners shall receive compensation of $175 for each day in which they attend or participate in a commission meeting of at least one hour in length, either in person or by teleconference. The chair shall receive an additional stipend of $500 a year. The commis-

sion shall develop and implement policies consistent with those employed by other state commissions for the reimbursement of travel costs and the payment of per diem under AS 39.20.180.

(e) The commission shall comply with AS 44.62.310 - 44.62.312 (open meetings law).

Sec. 24.61.506. EXECUTIVE DIRECTOR AND STAFF. (a) The commission shall hire an executive director and determine the director's salary. The executive director serves at the pleasure of the commission.

(b) The executive director may employ and determine the compensation of necessary employees, subject to the budget approved by the commission. The executive director may, subject to the approval of the commission, contract for services when those services are temporary or specialized in nature, or it is in the best interest of the state.

(c) Subject to the approval of the commission, the executive director may employ or contract with legal counsel to manage, direct, and prosecute cases under this chapter.

(d) If the commission determines that an investigation is necessary and that the investigation cannot be efficiently, promptly, or adequately handled by commission staff, the executive director shall nominate a special investigator to be appointed upon approval by the commission. The executive director shall maintain a list of individuals qualified to serve as a special investigator by virtue of their experience, reputation, likely availability, willingness to serve, and freedom from conflicts of interest.

(e) The executive director and employees of the commission are in the exempt service under AS 39.25.110.

Sec. 24.61.508. APPLICABILITY OF CHAPTER TO COMMISSIONERS AND

EMPLOYEES; OTHER RESTRICTIONS. (a) Commissioners and employees of the commission, including persons employed or under contract as legal counsel or special investigators, are subject to this chapter and shall be held accountable to the same standards and requirements, including disclosure, as legislative assistants.

(b) A commission employee, including a person who provides personal services under a contract with the commission, may not be a legislator, a legislative employee, an elected or appointed official of another governmental entity, an officer of a political party, a candidate for public office, or a registered lobbyist.

(c) In addition to the requirements of this chapter, a commissioner, employee of the commission, or person under contract to provide personal services to the commission may not

(1) participate in political management or in a political campaign during the person's term of office, employment, or contract;

(2) participate in the campaign of, attend campaign fund raising events for, or make a financial contribution to

(A) a candidate for the legislature;

(B) an incumbent legislator or legislative employee who is a candidate for another public office; or

(C) a person running for another office against an incumbent legislator or legislative employee;

(3) participate in lobbying activities that would require the person to register as a lobbyist except as required to inform the legislature concerning legislation requested by the commission or other matters related to the commission; or

(4) take an action or make a statement that is likely to cause a reasonable person to believe that the commissioner, employee, or other person is not impartial or independent or is otherwise unable

to properly perform public duties.

(d) A violation or alleged violation of (b) or (c) of this section shall be treated as any other violation of this chapter and shall be dealt with by the commission accordingly. During the pendency of a complaint against a commissioner, commission employee, or commission contractor, the person complained against may not participate in official action of the commission.

(e) Commissioners and the executive director are subject to the disclosure requirements of this chapter.

Sec. 24.61.510. GENERAL POWERS AND DUTIES OF THE COMMISSION. (a) The commission shall

(1) administer the provisions of this chapter;

(2) authorize and train its staff to give informal or written advice regarding the spirit and requirements of this chapter;

(3) on request or its own initiative, issue formal written advisory opinions on specific situations or clarify a provision of this chapter;

(4) consider requests for, and grant or deny, exemptions from the provisions of this chapter;

(5) investigate and adjudicate complaints and recommend disciplinary actions to the legislature;

(6) authorize research in the field of legislative ethics and carry out the educational programs that are required by this chapter and additional programs it considers necessary to effectuate the policy and purposes of this chapter;

(7) prepare and distribute an ethics manual to legislators, legislative employees, and registered lobbyists as provided in this chapter;

(8) mail by certified mail a copy of this chapter to a

candidate for the legislature upon the receipt of notice of the candidate's declaration of candidacy under AS 15.25.030 or petition under AS 15.25.150;

(9) prepare a biennial report to the legislature summarizing its activities over the previous two years, evaluating the effectiveness of this chapter in accomplishing its stated purposes, and recommending legislative reforms it thinks necessary to improve the administration of this chapter and to better advance its goals.

(b) The commission may

(1) adopt regulations as required under specific provisions of this chapter and to interpret and implement this chapter; in adopting regulations, the commission shall follow procedures that are consistent with AS 44.62 (Administrative Procedure Act);

(2) perform the other acts, duties, and functions necessary to properly administer this chapter, consistent with law and the purpose of this chapter.

Sec. 24.61.515. OFFICES; BUDGET. The legislative council shall provide suitable office space and equipment for the commission. The commission shall submit a budget for each fiscal year to the finance committees of the legislature and shall annually submit an estimated budget to the governor for information purposes in preparation of the state operating budget.

Sec. 24.61.520. INFORMAL NONBINDING ADVICE. The commission shall authorize and train its staff to give oral advice and provide a written informal nonbinding advice letter to persons seeking guidance as to the spirit or legal requirements of this chapter, provided that the advice is given with the express stipulations that

(1) the opinions given are not necessarily those of the commission; and

(2) although the advice is given in good faith, the person seeking the advice relies on it at the person's own risk because it is not binding upon the commission.

Sec. 24.61.525. FORMAL BINDING ADVISORY OPINIONS. (a) The commission may issue a formal written advisory opinion on its own initiative, on the request of a person to whom this chapter applies, or on the request of a person elected to the legislature who at the time of election is not a member of the legislature.

(b) Requests for written advisory opinions shall be in writing and must set out with reasonable specificity the facts and circumstances of a real or hypothetical case.

(c) The commission shall expeditiously determine whether to issue an advisory opinion addressing the issues raised.

(d) An opinion shall be issued by official action of the commission. The vote of each commissioner participating in the opinion shall be indicated on the opinion and it shall be forwarded to the person requesting it and made a part of the public records of the commission.

(e) Written formal advisory opinions issued by the commission are binding on the commission in a subsequent proceeding concerning the facts and circumstances of the particular case. If, however, any fact determined by the commission to be material was omitted or misstated in the request, the commission is not bound by the opinion.

(f) The commission may review, withdraw, or elaborate on a previously issued advisory opinion.

(g) Under normal circumstances, the commission shall issue its opinion within 30 days of receiving the request, if the request is received during the first 100 days of the legislative session, or within 60 days of the request if the request is received at another

time. The period for issuing an opinion may be shortened or extended by the chair when that action is considered necessary or appropriate to meet the goals of this chapter.

(h) The commission and all commission employees shall keep confidential the identity of the requester and all information conveyed orally or in writing relating to the request, unless the requester authorizes the commission to make public the requester's identity or the information conveyed.

(i) Advisory opinions issued by the commission are public records. If the requester of the opinion has not waived confidentiality under (h) of this section, the advisory opinion shall be written so that the identity of the requester cannot be ascertained.

Sec. 24.61.527. USE OF INFORMATION SUBMITTED WITH REQUEST FOR ADVICE. The commission may not bring a complaint against a person based upon information voluntarily given to the commission by the person in connection with a good faith request for advice under AS 24.61.520 or 24.61.525, and may not use that information against the person in a proceeding under AS 24.61.545 or 24.61.550. This subsection does not preclude the commission from acting on a complaint concerning the subject of a person's request for advice if the complaint is brought by another person, or if the complaint arises out of conduct taking place after the advice is requested, and does not preclude the commission from using information or evidence obtained from an independent source, even if that information or evidence was also submitted with a request for advice.

Sec. 24.61.530. EXEMPTIONS PROCESS. (a) In situations in which principles of fundamental fairness are best served by exempting certain individuals or acts from specified provisions of this chapter, the commission may grant full or partial exemptions.

(b) The commission shall provide a simple form for petitions for exemptions. A petition must include

(1) the name and address of the petitioner;

(2) relevant provisions involved in the exemption request;

(3) essential facts on which an exemption is requested;

(4) specific nature of the exemption sought;

(5) anticipated unfair or unreasonable consequences that would result from a failure to grant the petition; and

(6) a certification that the petitioner verifies under penalty of unsworn falsification that the facts stated are true to the best of the petitioner's knowledge.

(c) The commission may, by official action, grant an exemption upon a finding that the petitioner, by a preponderance of the evidence, has shown that the

(1) harm caused by strict application of this chapter substantially outweighs the benefit of its enforcement in the particular situation;

(2) application of the regulation or provision under the circumstances presented would be inconsistent with the spirit and purpose of the regulation or provision or of this chapter as a whole; or

(3) purposes of this chapter and the public interest will be best served by granting the applicant an exemption.

(d) The commission may request or permit the appearance of the petitioner before the commission, in person or by teleconference, and hold hearings regarding the exemption request.

(e) Unless a shortened or expanded time is considered necessary or appropriate by the commission, decisions on petitions for exemptions shall be made within 30 days after filing the petition. Unless

the petitioner consents, extensions of time ordered by the commission may not exceed an additional 60 days.

Sec. 24.61.535. INITIATING INVESTIGATORY AND ADJUDICATORY PROCESSES. (a) It is the purpose of this section to assure that complaints provide sufficient information on which to proceed, yet not be so complex or burdensome that the requirements unduly discourage or screen out valid good faith complaints.

(b) A complaint may be initiated by any person or by the commission on its own motion.

(c) The commission shall provide a simple form for complaints. A complaint must include

(1) the name and address of the complainant;

(2) a statement of the facts known or believed to be true that form the basis of the complaint and the sources of the information, including the approximate dates of the acts alleged and names and addresses of persons with personal knowledge of the facts alleged; and

(3) a certification that the complainant verifies under penalty of unsworn falsification that the facts stated are true to the best of the complainant's knowledge and that the complainant knows that it is a crime under AS 11.56.805 to intentionally initiate a false complaint.

(d) Unless the chair of the commission concludes that immediate notification would prejudice a preliminary investigation or subject the complainant to an unreasonable risk, a copy of the complaint shall be sent to the person charged with misconduct within two working days. If the matter is to be kept from the respondent for more than 10 days, a majority of the commission must approve and indicate the conditions under which the respondent will be informed of the complaint.

(e) Until a preliminary finding on the validity of a complaint has been properly made, the existence and substance of a complaint shall be kept confidential except that all members of the commission and necessary staff may be informed about it.

(f) Upon receiving a complaint, commission staff shall review it for formal sufficiency within five days of filing. If the complaint is unsigned or otherwise deficient on its face it shall be returned to the complainant with a statement of the nature of the deficiency.

(g) Once a complaint has been determined to be formally sufficient, commission staff shall evaluate the complaint and advise the chair as to its opinion as to whether it states a valid complaint that should be investigated. If the executive director is a member of the bar, the executive director may provide the advice. Otherwise, the executive director shall appoint a duly qualified legal counsel to assist in making the determinations required under this subsection. To be valid, the complaint must allege

(1) facts that, if true, establish a violation of a provision of this chapter for which civil or administrative sanctions are authorized;

(2) that the conduct providing the basis of the complaint has occurred

(A) within five years of the complaint; or

(B) if the person charged with misconduct intentionally concealed or otherwise sought to prevent discovery of the relevant facts within one year of the discovery of the relevant facts and within eight years of the complaint; and

(3) that the person charged with misconduct is either a legislator or legislative employee at the time of the filing of the complaint or was a legislator or legislative employee within one year

of the filing.

(h) Within 20 days after the filing of the complaint, or within 45 days if the chair of the commission certifies additional time is required, a determination shall be made on the substantive validity of the complaint. If the chair concludes that there is no substantial reason to question the opinion of staff as to the validity of a complaint, the complaint shall either be dismissed or certified for further consideration in accordance with the opinion. The chair or a commissioner, however, may request a hearing on the validity of the complaint at a meeting of the commission.

(i) If a complaint is dismissed because of invalidity, it shall be returned to the complainant with a notice of dismissal stating in detail the reason for dismissal. If the commission finds that the complaint was frivolous, malicious, or was filed in bad faith, it shall so state in the notice of dismissal. If the commission finds that the complaint alleges violations outside the scope of this chapter, it shall so state and forward the complaint to the appropriate enforcement body for disposition. A copy of the notice of dismissal shall be sent to the respondent. The notice of dismissal is a public record.

(j) If the commission concludes that some or all of the allegations of the complaint, if proven, would constitute a violation of this chapter, or if the commission has initiated the complaint, the complaint shall be certified and a factual investigation shall commence. The record of certification for further consideration is confidential subject to subsequent actions that may make it part of the public record.

Sec. 24.61.540. INVESTIGATIONS. (a) Investigation into ethics charges shall be undertaken in a manner that assures the public of an

impartial and comprehensive review, is fair to the respondent, and that elicits the information the commission needs to make a decision.

(b) Before commencing an investigation, the commission shall adopt a written resolution defining the scope of the investigation, a copy of which shall be supplied to both the complainant and the respondent. If, during the investigation, additional facts are discovered that justify an expansion of the investigation and the possibility of additional charges beyond those alleged in the complaint, the resolution shall be amended accordingly with copies sent to the complainant and the respondent. The resolution, and the fact that an investigation has been undertaken, shall be kept confidential by the commission except that, upon inquiry, the commission may verify that it is investigating a complaint along with a statement that no finding of probable cause has been made and that no adverse inference of impropriety or guilt should be drawn from the decision to investigate. Additional facts concerning the nature or results of the investigation may not be revealed except as provided in AS 24.61.545 after a determination of probable cause has been made.

(c) A legislator or a legislative employee may request in writing that the commission investigate charges of impropriety made against the legislator or legislative employee. The request must state with specificity the nature of the investigation requested. If the commission agrees to undertake an investigation, the investigation is not necessarily limited in scope by the request and, once begun, it shall be handled as any other investigation, with the person requesting the investigation formally treated as a respondent.

(d) A preliminary investigation is conducted by the commission staff, and if the commission determines it is necessary, outside counsel and investigators. The purpose of the preliminary inves-

tigation is to determine whether there is probable cause to proceed with a full adjudicatory hearing.

(e) The person conducting the preliminary investigation may order a hearing and subpoena witnesses and documents, conduct depositions under oath, require the participation of the respondent, and issue interrogatories to be answered under oath. An oral or written statement, whether incriminatory or exculpatory, may not be considered in the investigator's report unless made under oath. The respondent shall be given an adequate opportunity to provide testimonial and documentary evidence.

(f) Upon completion of the investigation, a confidential report summarizing the evidence, evaluating its credibility, and detailing findings on each of the allegations investigated shall be submitted to the commission along with recommendations as to whether the complaint, or a portion of it, should be dismissed or whether the matter should proceed to the full hearing stage. The report shall be prepared so as to exclude unreliable information and uncorroborated and irresponsible allegations. The investigator's notes, records of interviews, and other investigatory matter considered unreliable or unduly prejudicial by the commission shall remain confidential.

Sec. 24.61.545. PROBABLE CAUSE DETERMINATION. (a) The commission shall consider the investigator's report in closed session and determine whether substantial credible evidence exists to believe that it is probable that a violation of a provision of this chapter for which civil or administrative sanctions are authorized has occurred.

(b) If the commission does not find that substantial credible evidence exists to warrant a full adjudicatory hearing, it shall dismiss the complaint and so notify the complainant with a notice of dismissal stating in detail the reason for dismissal. If the commis-

sion finds that the charges were frivolous, malicious, made in bad faith, or that, in its opinion the respondent should be exonerated of the charges, it shall so state in the notice of dismissal. If the commission finds that the evidence supports violations outside the scope of this chapter, it shall so state and forward the complaint and its report to the appropriate enforcement body for disposition.

(c) A copy of the notice of dismissal shall be sent to the respondent. The notice of dismissal and the investigator's report containing findings and recommendations, but not the underlying investigatory materials, shall be made public unless the commission determines that this would unfairly prejudice either the respondent or complainant. This subsection may not be construed to prevent either the complainant or respondent from making the notice of dismissal and the report public.

(d) If the commission finds that substantial credible evidence exists establishing probable cause that a violation of a provision of this chapter for which civil or administrative sanctions are authorized has occurred, it shall serve on the respondent in a manner consistent with the service of summons under the rules of civil procedure, a formal charge stating the specific allegations and a proposed hearing date.

(e) The hearing may not be scheduled to commence sooner than 20 days after service of the formal charge on the respondent. If the respondent requests an earlier hearing date, the commission may, but is not required to, consent. The commission shall, upon request, grant the respondent reasonable additional time to prepare a defense. The respondent may file a responsive pleading admitting or denying the various allegations.

(f) The commission may suspend further proceedings if the re-

spondent acknowledges the violation and agrees to corrective actions and sanctions considered appropriate by the commission. If the commission suspends the proceedings or dismisses the charges as a result of a negotiated settlement, the terms and conditions of the settlement and the reasons for entering into the agreement shall be stated in a written report that shall be sent to the complainant and made part of the public record.

(g) Upon determining that probable cause exists to conduct a full adjudicatory hearing, the commission shall make public the investigator's report containing findings and recommendations, but not the underlying investigatory materials.

Sec. 24.61.550. ADJUDICATORY HEARING. (a) A formal hearing on ethics charges against a respondent shall be conducted in a manner that inspires confidence in the integrity and objectivity of the process and demonstrates full consideration for the rights and reputation of the respondent.

(b) An adjudicatory hearing shall be before a hearing board composed of the commission chair and four commissioners appointed by the chair. If the chair cannot attend all hearing sessions without undue inconvenience, the vice-chair shall serve in the chair's place. If neither the chair nor the vice-chair is available, the chair shall appoint another commissioner. Appointments to hearing boards shall be rotated among the commissioners.

(c) The chair, vice-chair, or a commissioner designated by the chair, as appropriate, shall preside at the hearing. The executive director or other legal counsel designated by the commission may attend and advise and counsel the hearing board.

(d) An adjudicatory hearing shall be public under AS 44.62.310. A hearing may not be held by teleconference. Except as expressly

provided in this chapter, procedures shall be consistent with hearing procedures under AS 44.62.330 - 44.62.630. Upon request, the presiding commissioner may issue reasonable discovery and protective orders in a manner consistent with Rule 26 of the Alaska Rules of Civil Procedure.

(e) A hearing board may

(1) administer oaths and affirmations and subpoena individuals, including the respondent, to testify or to submit to written interrogatories under oath;

(2) compel the production of documentary or tangible evidence;

(3) pay witnesses the same fees and mileage reimbursements paid in similar circumstances by the courts of the state;

(4) seek enforcement of subpoenas by written application of the commission to the superior court.

(f) The respondent may

(1) appear before the hearing board and submit testimony or other evidence;

(2) personally, or through counsel, subpoena, examine and cross-examine witnesses, raise objections, and make arguments;

(3) exercise the pretrial discovery procedures available in civil actions.

Sec. 24.61.555. FINDINGS AND RECOMMENDATIONS. (a) Within 10 days after the completion of a hearing, the hearing board shall vote on each charge to determine whether it was established by clear and convincing evidence, and shall prepare a written opinion along with recommendations, if any. A vote of three commissioners is required to find a violation and approve an opinion.

(b) As to each charge on which the evidence was found to be

insufficient to establish a violation, the hearing board shall include its findings in its written opinion. If the board finds that the charges were frivolous, malicious, made in bad faith, or that, in its opinion the respondent should be exonerated of the charges, it shall so state in its opinion. The respondent's reasonable legal fees should be paid in full from public funds if the respondent is exonerated.

(c) As to each charge on which the evidence was found to be sufficient to establish a violation, the hearing board shall include its findings of fact and law in its written opinion, along with recommendations as to appropriate sanctions.

Sec. 24.61.560. CIVIL SANCTIONS. (a) When a hearing board considers the appropriate recommended sanctions to be included in its opinion, it shall give due consideration to the purposes of this chapter, the nature of the violation, and other circumstances that are included in the hearing record. The board may recommend, either singly or in combination,

(1) a civil penalty of not more than $5,000 for each offense, or twice the amount improperly gained by the misconduct, whichever is greater;

(2) divestiture of specified assets or withdrawal from specified associations;

(3) detailed disclosure, with or without additional periodic reporting requirements;

(4) suspension from legislative employment, with or without pay;

(5) restitution or reimbursement;

(6) suspension of pay until orders are complied with;

(7) probationary status;

(8) a written reprimand;

(9) censure, including a recommendation that a legislator censured may not serve as a chair or co-chair on a legislative committee for the remainder of the legislator's current term in office;

(10) expulsion of a legislator or dismissal of a legislative employee;

(11) payment of costs related to the investigation and adjudication of the charge;

(12) another sanction fashioned to achieve the purposes of this chapter.

(b) When a provision of this chapter provides for the imposition of administrative sanctions under this subsection, the commission may recommend any of the civil sanctions set out in (a) of this section except sanctions under (a)(1) and (10).

(c) If the commission finds that a violation of AS 24.61.100 - 24.61.450 contributed substantially to the enactment of legislation or to other legislative action, the commission may recommend to the presiding officer of each house that the legislation be repealed or amended or that the other legislative action be rescinded or modified.

Sec. 24.61.565. RECOMMENDATIONS TO THE LEGISLATURE WHERE VIOLATOR IS A LEGISLATOR. (a) If the person found to have violated this chapter is or was a member of the legislature, the hearing board's recommendations shall be forwarded by the chair of the commission to the presiding officer of the appropriate house of the legislature.

(b) If the legislature is in session, the entire house shall determine the sanctions, if any, that are to be imposed. The vote shall be taken within 10 legislative days of receipt of the commission's recommendations.

(c) If the legislature is not in session or is not within 30

days of convening in regular session, the presiding officer may request a special session under AS 24.05.100 to put the matter to a vote. If expulsion is recommended, a special session should be convened.

(d) Except in the case of expulsion, which requires a two-thirds vote, all other sanctions shall be determined by a majority vote of the full house.

(e) In determining the sanctions, if any, to impose, the legislature should scrupulously observe the rule of nonpartisanship. It should not retry the basic facts nor question the hearing board's findings of fact. The only issue before it should be the determination of the appropriate sanction assuming the validity of the board's findings.

Sec. 24.61.570. RECOMMENDATIONS WHERE VIOLATOR IS A LEGISLATIVE EMPLOYEE. If the person found to have violated this chapter is or was a legislative employee, the hearing board's recommendations shall be forwarded to the appropriate appointing authority which shall, as soon as is reasonably possible, determine the sanctions, if any, to be imposed. The appointing authority may not question the hearing board's findings of fact. The appointing authority shall assume the validity of the board's findings, and determine and impose the appropriate sanctions.

Sec. 24.61.575. ACTIONS BY THE ATTORNEY GENERAL. (a) The attorney general may independently bring civil or criminal actions relating to violations under this chapter regardless of the outcome or settlement of a charge before the commission, provided that (1) the attorney general may not bring an independent civil action under this chapter if the provision violated is subject only to administrative sanctions under AS 24.61.560(b); and (2) the cumulative civil penal-

ties imposed for a violation may not exceed the amount that could be imposed in an action before the commission. This subsection does not prohibit the attorney general from bringing an action under another civil or criminal law.

(b) A citizen may make a written request that the attorney general commence a civil action authorized under (a) of this section against a person for a violation of this chapter.

Sec. 24.61.580. WAIVER OF CONFIDENTIALITY. The commission may publicly respond to a statement or interpretation made concerning the contents of an advisory opinion or decision it has issued or is purported to have issued. A person who requests an advisory opinion and makes that fact public is considered to have waived the confidentiality of the person's identity.

ARTICLE 4. LEGISLATIVE ETHICS EDUCATION PROGRAM.

Sec. 24.61.700. ETHICS EDUCATION PROGRAM. The commission shall oversee and develop the following components of a comprehensive ethics education program:

(1) publish an ethics education manual;

(2) establish an education advisory committee; and

(3) design and implement a legislative orientation training course, a current issues and applications seminar, and a lobbyist training course.

Sec. 24.61.710. ETHICS EDUCATION MANUAL. (a) The commission shall prepare and publish a legislative ethics manual, which must contain all ethics statutes, regulations, and related information, including detailed explanations of technical and specific legal requirements as well as the underlying purposes and ethical principles that comprise the spirit of the requirements. The manual must include realistic examples with recommended actions, as well as questions and

answers regarding common problems and situation

(b) The commission shall issue a revised and updated version of the manual no later than 30 days after the commencement of each legislature.

(c) The manual shall be distributed to all legislators, legislative employees, and registered lobbyists. The manual shall also be available to the public.

Sec. 24.61.720. EDUCATION ADVISORY COMMITTEE. (a) The commission chair shall appoint five members to an education advisory committee, that shall include at least two members of the commission, a legislator, and a legislative employee. The education advisory committee may also include an Alaskan expert in the field of ethics.

(b) The education advisory committee shall oversee the implementation of, and recommend the content for, the following ethics education programs:

(1) legislative orientation training course;

(2) current issues and applications seminar;

(3) lobbyist ethics course; and

(4) commission and commission staff training course.

Sec. 24.61.730. LEGISLATIVE ORIENTATION TRAINING COURSE. (a) The commission shall conduct a legislative orientation training course. The course shall be offered in January of each year. A legislator and a legislative employee shall attend and complete the first course offered after their initial election, appointment, or hiring date.

(b) The education advisory committee shall determine the specific content of the course, and it shall cover the ethics laws, internal rules and policies, as well as the technical and specific legal requirements that legislators and legislative employees must follow.

The course shall also cover the underlying purposes and ethical principles of all ethics laws, internal rules and policies, and other related regulations. The course shall highlight the principles of public service ethics and the intent of ethics laws, including their application to practical situations.

(c) The commission shall offer separate sessions of the course for legislators and for legislative employees, and shall offer as many sessions as necessary to accommodate the number of people required to take the course.

Sec. 24.61.740. CURRENT ISSUES AND APPLICATIONS SEMINAR. (a) The commission shall conduct a current issues and applications seminar in January of each odd-numbered year. The seminar is mandatory for all legislators and legislative employees who have previously completed the legislative ethics orientation training course.

(b) The specific content of the seminar shall be determined by the education advisory committee, and shall include an overview of all new substantive changes in the laws in the form of amendments, revisions, and new ethics advisory opinions. The seminar shall include discussions on problem solving skills, practical ethical issues likely to confront a legislator or legislative employee, and the underlying principles of public service ethics.

(c) The commission shall offer separate sessions of the seminar for legislators and for legislative employees, and shall offer as many sessions as necessary to accommodate the number of people required to take the seminar.

Sec. 24.61.750. LOBBYIST ETHICS COURSE. (a) Lobbyists shall complete a lobbyist ethics course conducted by the commission as a condition of registering as a lobbyist under AS 24.45. A person who first engages in activities requiring the person to register as a

lobbyist either before the commission has offered the ethics course for that year, or after the ethics course has been offered for that year, may be authorized by the commission to conditionally register under AS 24.45 unless the person reasonably should have known that the person was likely to engage in lobbying activities and could have attended the most recent ethics course. A person with a conditional registration must successfully complete the next ethics course offered or the registration shall be revoked.

(b) The specific content of the ethics course shall be determined by the education advisory committee, and shall include a review of all ethics statutes, the rules and regulations relating to appropriate lobbyist conduct, and the principles of public service ethics.

(c) The commission shall certify to the Alaska Public Offices Commission the names of persons successfully completing the ethics course, including persons taking the course under (d) of this section.

(d) Lobbyists shall repeat the ethics course at least once every three years and the commission shall update the course accordingly.

(e) At the commission's discretion, lobbyists may be charged reasonable fees to attend the training course.

Sec. 24.61.760. ADMINISTRATIVE PROVISIONS. (a) The commission shall assure the continued implementation, improvement, and modification of the ethics education programs. The commission shall develop procedures to assure the attendance of, and course completion by, all legislators, legislative employees, and lobbyists.

(b) The commission shall assure the attendance of legislative employees who are not in and cannot travel to Juneau by offering the programs by teleconference. When a teleconference connection is unavailable, the commission shall distribute video tapes to the employees or arrange to have them travel to a site where a live or

teleconference course is available.

(c) The commission may recommended sanctions, including suspension of pay and dismissal of legislative employees, disciplinary action for legislators, and revocation of lobbyist registrations, upon any legislator, legislative employee, or lobbyist who fails to complete the ethics education requirements within a reasonable amount of time, as determined by the commission.

(d) The commission shall supply the presiding officer of each house with the names of those legislators and legislative employees who have not complied with the ethics education requirements.

(e) The commission shall offer all of the education programs at appropriate times and locations and shall provide adequate notice of them.

(f) The commission may grant an exemption from the requirements of AS 24.61.730 - 24.61.750 upon a showing of good cause for the exemption.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 24.61.900. RELATIONSHIP TO COMMON LAW AND OTHER LAWS. (a) The provisions of this chapter specifically replace, supersede, and where necessary repeal provisions of the common law relating to legislative conflict of interest.

(b) This chapter does not exempt a person from applicable provisions of another law unless the law is expressly superseded or incompatibly inconsistent with specific provisions of this chapter.

Sec. 24.61.910. APPLICABILITY. (a) Unless otherwise specifically stated, the provisions of this chapter apply to legislators and legislative employees.

(b) Certain specified provisions apply to former members of the legislature, candidates for the legislature, former legislative em-

ployees, persons who have transactions with legislators or legislative employees, and lobbyists.

Sec. 24.61.920. PRINCIPLE OF STRICT COMPLIANCE. In imposing civil or administrative sanctions, the commission and the legislature shall hold legislators and legislative employees strictly to the provisions and spirit of this chapter. Except in extraordinary circumstances, legislators and employees may not assert a lack of knowledge or understanding as a defense to a charge of misconduct.

Sec. 24.61.930. MENTAL STATE REQUIRED FOR CRIMINAL ACTIONS. When a provision of this chapter is made subject to criminal penalties, unless the provision specifically provides for another mental state, the defendant in a criminal prosecution must be shown to have acted with criminal negligence, as that term is defined in AS 11.81.-900(a). AS 11.81.610(c) applies to this section.

Sec. 24.61.940. MAINTENANCE OF DOCUMENTS. Documents filed with or produced by the commission as public records shall be retained for at least six years.

Sec. 24.61.950. COOPERATION OF OTHERS. If the commission requests their cooperation, a state agency, official, employee, or a person whose conduct is regulated by this chapter shall cooperate with the commission. An individual shall make information reasonably related to an investigation available to the commission on written request. The commission may request and shall receive from every officer, department, division, board, agency, commission, house of the legislature, or other agency of the state, cooperation and assistance in the performance of its duties.

Sec. 24.61.960. CONFIDENTIALITY. A person subject to the provisions of this chapter may not knowingly make an unauthorized disclosure of confidential information acquired in the course of official

duties. A person who violates this section is subject to civil sanctions under AS 24.61.560(a) and may be subject to prosecution under AS 11.56.860 or another law.

Sec. 24.61.990. DEFINITIONS. In this chapter,

(1) "administrative action" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use;

(2) "anything of value," "benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be an advantage, of worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for;

(A) "anything of value," "benefit," or "thing of value" includes but is not limited to

(i) money;

(ii) products or merchandise;

(iii) works of art or collectibles;

(iv) stocks, bonds, notes, or options;

(v) an interest in real property;

(vi) contracts or a promise of a future interest in a contract;

(vii) an interest or a promise of a future interest in a business;

(viii) meals, beverages, or lodging;

(ix) transportation;

(x) services, including loaned employees;

(xi) loans, loan guarantees, co-signing;

(xii) forgiveness of a debt;

(xiii) discounts or rebates not extended to the public generally;

(xiv) preferential treatment;

(xv) tickets or admissions;

(xvi) free or discounted use of office facilities;

(xvii) loan of office equipment;

(xviii) radio or television time;

(xix) promise or offer of present or future employment;

(xx) use of autos, boats, apartments, or other recreational or lodging facilities;

(xxi) intangible rights such as a cause of action;

(xxii) licenses, patents, copyrights, or an interest in them;

(xxiii) any other item, tangible or intangible, having economic value;

(B) "anything of value," "benefit," or "thing of value" does not include

(i) an item listed in AS 24.61.350(b);

(ii) campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support;

(iii) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction;

(iv) grants under AS 37.05.316 to named recipients;

(3) "charitable organization" means an organization that qualifies for a federal tax exemption under 26 U.S.C. 501(c)(3);

(4) "close economic association" has the meaning given in AS 24.61.265;

(5) "commission" means the Legislative Ethics Commission;

(6) "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but excluding reimbursement for actual expenses incurred by a person;

(7) "confidential information" means information that has been classified confidential by law;

(8) "exonerate" means to free from a charge or the imputation of guilt, or to prove blameless;

(9) "financial conflict of interest" has the meaning given in AS 24.61.255;

(10) "honorarium" means anything of value, other than reimbursement of travel expenses, given to a person for making a speech, panel presentation, personal appearance, or similar activity;

(11) "immediate family" means the spouse, parents, including parents-in-law, children, including a stepchild and an adoptive child, and siblings of a person;

(12) "intent to influence legislative, administrative, or political action" means that an act, including the offering or conferring of a thing of value to a public official, is done with the intent to induce the official to do or refrain from doing an act;

(13) "knowingly" has the meaning given in AS 11.81.900;

(14) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution,

report, nomination, or other matter affected by legislative action or inaction;

(15) "legislative assistant" means a legislative employee whose assigned duties involve the exercise of substantial discretion and judgment; it does not include employees who perform purely clerical or ministerial functions; the legislative council shall propose policies relating to the interpretation of this definition, and the commission shall consider the adoption of these guidelines as regulations under AS 24.61.160;

(16) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes members and staff of the commission; it does not include individuals who perform functions that are incidental to legislative functions, such as security, messengers, maintenance, and print shop employees; for purposes of this paragraph, "regular or substantial" means work that is expected to involve, or does involve, at least 400 hours in a calendar year or 300 hours during a regular legislative session; the legislative council shall propose policies relating to the interpretation of this definition, and the commission shall consider the adoption of these guidelines as regulations under AS 24.61.160;

(17) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171(8)(A), but does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;

(18) "local government" means a municipality, a municipal

school district, or a regional educational attendance area;

(19) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to intervening on behalf of constituents with a government agency, endorsing, and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;

(20) "reasonably should know" means that, under the circumstances, a reasonable person would know a fact;

(21) "registered lobbyist" means a person who is required to register under AS 24.45.041;

(22) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

(23) "substantial interest in legislative, administrative, or political action" has the meaning given in AS 24.61.260.

* Sec. 3. AS 11.56.805(a) is amended to read:

(a) A person commits the crime of false accusation if the person knowingly or intentionally initiates a false complaint with the [SELECT COMMITTEE ON] Legislative Ethics Commission established under AS 24.61 [IN AS 24.60].

* Sec. 4. AS 15.25.030(b) is amended to read:

(b) A person filing a declaration of candidacy under this section other than for a state legislative office shall simultaneously file with the director a statement of income sources and business interests that complies with the requirements of AS 39.50. A person filing a declaration of candidacy for state legislative office shall

simultaneously file with the director a disclosure statement that complies with the requirements of AS 24.61.400 - 24.61.410.

* Sec. 5. AS 15.25.030(c) is amended to read:

(c) An incumbent public official other than a legislator who has a current statement of income sources and business interests on file with the Alaska Public Offices Commission, or an incumbent legislator who has a current disclosure statement on file with the Legislative Ethics Commission, is not required to file a statement of income sources and business interests or a disclosure statement with the declaration of candidacy under (b) of this section.

* Sec. 6. AS 15.25.180(b) is amended to read:

(b) A person filing a nominating petition under this section other than for a state legislative office shall also file with the director a statement of income sources and business interests that complies with the requirements of AS 39.50 within 30 days of filing the petition. A person filing a nominating petition for state legislative office shall file with the director a disclosure statement that complies with the requirements of AS 24.61.400 - 24.61.410 within 30 days of filing the petition.

* Sec. 7. AS 15.25.180(c) is amended to read:

(c) An incumbent public official other than a legislator who has a current statement of income sources and business interests on file with the Alaska Public Offices Commission, or an incumbent legislator who has a current disclosure statement on file with the Legislative Ethics Commission, is not required to file a statement of income sources and business interests or a disclosure statement with the declaration of candidacy under (b) of this section.

* Sec. 8. AS 24.10.100 is amended to read:

Sec. 24.10.100. SALARY OF LEGISLATORS. The annual [MONTHLY]

salary for each member of the legislature is $40,000 [EQUAL TO STEP A, RANGE 10 OF THE SALARY SCHEDULE IN AS 39.27.011(a) FOR JUNEAU]. The president of the senate and the speaker of the house of representatives are each entitled to an additional $500 a year during tenure of office.

* Sec. 9. AS 24.10.105 is repealed and reenacted to read:

Sec. 24.10.105. LEGISLATIVE PER DIEM. (a) A member of the legislature is entitled to receive per diem at the short-term rate

(1) during a legislative session if the legislator is not living in the legislator's place of permanent residence during the session; or

(2) while on committee business or other legislative business in a place that is not the legislator's place of permanent residence.

(b) A legislator is entitled to receive per diem at the long-term rate during a legislative session if the legislator is living in the legislator's place of permanent residence during the session.

(c) In this section,

(1) "long-term rate" means the long-term per diem rate for a state employee established in regulations adopted by the commissioner of administration under AS 39.20.160;

(2) "short-term rate" means the short-term per diem rate for a state employee established in regulations adopted by the commissioner of administration under AS 39.20.160.

* Sec. 10. AS 24.10.110 is repealed and reenacted to read:

Sec. 24.10.110. LEGISLATIVE OFFICE ALLOWANCE. (a) A legislator may be reimbursed for the lawful expenses of maintaining a legislative office to supplement resources generally provided to legislators by the legislature and its agencies. Expenses eligible for reimbursement

under this section include those incurred in a district office or an office in the capital city.

(b) Expenses that may be paid with public funds under AS 24.61 (Legislative Ethics Act) are presumed to be lawful.

(c) A representative from a single-representative district may voucher up to $6,000 a year under this section. A representative from a two-representative district and a senator from a single-senator district may voucher up to $7,000 a year under this section. A senator from a two-senator district may voucher up to $9,000 a year under this section. Vouchers shall be processed under AS 24.10.120 and policies adopted by the legislative council consistent with 26 U.S.C. 162.

(d) Notwithstanding (b) of this section, expenses related to newsletters may not be paid under this section. The legislative council shall adopt guidelines under which each legislator may prepare and distribute two newsletters a year that comply with AS 24.61. The guidelines must be consistent with AS 24.61 and regulations under that chapter adopted by the Legislative Ethics Commission and must provide for the payment of expenses for the newsletters from appropriations to the legislature.

* Sec. 11. AS 24.10.130 is amended by adding a new subsection to read:

(b) During each regular session of the legislature, a member of the legislature may be reimbursed for up to two round trip tickets from Juneau to a city in the district from which the legislator was elected. A trip paid for under this subsection may be for a personal, family, business, or constituent purpose. This section does not apply to travel as a part of a legislative committee or subcommittee or for other official business of the legislature.

* Sec. 12. AS 24.40.020 is amended to read:

Sec. 24.40.020. CONTINUANCE IN A CRIMINAL PROCEEDING WHERE

DEFENDANT [, DEFENSE ATTORNEY] OR WITNESS IS A MEMBER OF THE LEGISLATURE. Upon a showing that [THE ATTORNEY OF RECORD AT THE TIME OF THE DEFENDANT'S FIRST APPEARANCE IN THE COURT OF RECORD OR] a principal witness or a party in a criminal proceeding is a member of the legislature and that the legislature is in session or that a legislative interim committee of which the legislator is a member is meeting or is to meet within the next seven days, the defendant is entitled to a reasonable continuance of the date of trial until at least 15 days after the legislative session or interim committee meeting. However, a continuance for this reason may [SHALL] not exceed 30 days after recess of the legislature or interim committee. A continuance may not be granted for any longer time than it is affirmatively proved the ends of justice require.

* Sec. 13. AS 24.40.031 is amended to read:

Sec. 24.40.031. POSTPONEMENT OF CIVIL PROCEEDINGS WHEN A PARTY [OR ATTORNEY] IS A MEMBER OF THE LEGISLATURE. When it appears that a party [OR AN ATTORNEY OF RECORD OF A PARTY] to a civil action is a member of the legislature of this state [,] and that the legislature is in session, the action shall be continued until 10 days after the legislature has adjourned, unless the party [OR ATTORNEY] upon the call of the action for trial waives the benefit of this section. When it appears that a party [OR AN ATTORNEY OF RECORD OF A PARTY] to a civil action is a member of the Alaska Legislative Council, the Legislative Budget and Audit Committee, or one of their subcommittees, the action shall be continued when the legislative council, budget and audit committee, or the subcommittee, as the case may be, is holding a meeting, unless the party [OR ATTORNEY] upon the call of the action for trial waives the benefit of this section. When it is necessary to file a brief or memorandum of law in an action that [WHICH] has been

continued under the provisions of this section, the action shall be continued for a time sufficient to prepare and file the brief or memorandum.

* Sec. 14. AS 24.45.041(a) is amended to read:

(a) Before engaging in lobbying, a lobbyist shall file a registration statement on a form prescribed by the commission. The commission may not accept the form for filing unless the lobbyist's name has been certified to the commission by the Legislative Ethics Commission under AS 24.61.750(c).

* Sec. 15. AS 24.45.041(f) is amended to read:

(f) Each lobbyist shall renew the registration annually by filing a new registration statement together with a new authorization to act as a lobbyist before engaging in lobbying. The lobbyist also shall file any reports or statements the lobbyist has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied with and unless the Legislative Ethics Commission has certified the lobbyist's name to the commission under AS 24.61.750(c) and the lobbyist has complied with AS 24.61.750(e).

* Sec. 16. AS 24.45.041 is amended by adding a new subsection to read:

(g) Notwithstanding (a) and (f) of this section, a lobbyist whose name has not been certified to the commission under AS 24.61.-750(c) may conditionally register or renew a registration under this section if authorized by the Legislative Ethics Commission under AS 24.61.750(a).

* Sec. 17. AS 24.45.121(a) is amended to read:

(a) A lobbyist may not

(1) engage in any activity as a lobbyist before registering under AS 24.45.041;

(2) do anything with the intent of placing a public official under personal obligation to the lobbyist or to the lobbyist's employer;

(3) intentionally deceive or attempt to deceive any public official with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislative measure for the purpose of thereafter being employed to secure its defeat;

(5) cause a communication to be sent to a public official in the name of any fictitious person or in the name of any real person, except with the consent of that person;

(6) accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action;

(7) serve as a member of a state board [,] or commission [,] if the lobbyist's employer may receive direct economic benefit from a decision of that board or commission;

(8) use state property or resources in the conduct of the lobbyist's business;

(9) serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fundraising committee, host a fundraising event, or otherwise engage actively in the fundraising activity of a legislative campaign or for a legal defense fund under AS 24.61.220 if the lobbyist has registered during the calendar year; this paragraph does not apply to a representational lobbyist as defined in the regulations of the Alaska Public Offices Commission, and does not prohibit a lobbyist from making personal contributions to or personally advocating on behalf of a

candidate.

* Sec. 18. AS 39.25.110 is amended by adding a new paragraph to read:

(30) executive director and staff of the Legislative Ethics Commission.

* Sec. 19. AS 39.50.020 is amended to read:

Sec. 39.50.020. REPORT OF FINANCIAL AND BUSINESS INTERESTS. (a) A judicial officer, commissioner, chair [CHAIRMAN] or member of a state commission or board specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, a person appointed as assistant to the governor, and a municipal officer, shall file a statement giving income sources and business interests, under oath and on penalty of perjury, within 30 days after taking office as a public official. Candidates for governor and lieutenant governor [STATE ELECTIVE OFFICE] shall file such a statement with the director of elections at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating petition, or within 30 days of becoming a candidate by any other means. Candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that a previously accepted filing fee be returned and the candidate's name removed from the filing records. A statement shall also be filed by public officials no later than April 15 or 15 days after the person files a federal income tax return in each following year, whichever comes first. Persons who, on or after December 11, 1974, were members of boards or commissions not named in AS 39.50.200(b) are not required to

file financial statements.

(b) The governor, lieutenant governor, [MEMBERS OF THE LEGISLATURE,] judicial officers, each commissioner, head or deputy head of, or director of a division within, a department in the executive branch, assistant to the governor or chair [CHAIRMAN] or member of a commission or board required to report under this chapter, shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor and [,] lieutenant governor [, AND THE LEGISLATURE] shall file the statement under AS 15.25.030 or 15.25.180. Municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

* Sec. 20. AS 39.50.200(a)(8) is amended to read:

(8) "public official" means a judicial officer, [A MEMBER OF THE LEGISLATURE, THE FISCAL ANALYST OF THE LEGISLATIVE FINANCE DIVISION, THE LEGISLATIVE AUDITOR OF THE LEGISLATIVE AUDIT DIVISION, THE EXECUTIVE DIRECTOR OF THE LEGISLATIVE AFFAIRS AGENCY AND THE DIRECTORS OF THE DIVISIONS WITHIN THE LEGISLATIVE AFFAIRS AGENCY,] the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division, a department in the executive branch, an assistant to the governor, chair [CHAIRMAN] or member of a state commission or board, the executive director of the Alaska Tourism Marketing Council, and each appointed or elected municipal officer;

* Sec. 21. AS 39.52.910(a) is amended to read:

(a) Except as specifically provided, this chapter applies to all public officers within executive-branch agencies, including members of boards or commissions. This chapter does not apply to a former public

officer of an executive-branch agency unless a provision specifically states that it so applies. This chapter does not apply to legislators covered by AS 24.61 [AS 24.60].

* Sec. 22. AS 24.55.310, AS 24.60, AS 39.50.025, and 39.50.120 are repealed.

* Sec. 23. INITIAL COMMISSION APPOINTMENTS. Notwithstanding AS 24.61.-500(b), as added by sec. 2 of this Act, the terms of the members initially appointed to the Legislative Ethics Commission are as follows:

(1) one of the members appointed by each of the senate and the house of representatives and one of the members appointed by the Legislative Ethics Commission, determined by lot, serve terms of five years;

(2) one member appointed by the supreme court and one of the members appointed by the Legislative Ethics Commission determined by lot, serve terms of four years;

(3) one of the members appointed by each of the senate and the house of representatives and one of the members appointed by the Legislative Ethics Commission, determined by lot, serve terms of three years;

(4) the third member appointed by the Legislative Ethics Commission serves a term of two years.

* Sec. 24. TRANSITIONAL PROVISIONS RELATING TO VIOLATIONS OF FORMER AS 24.60. Notwithstanding the repeal of AS 24.60 by sec. 22 of this Act, in addition to the provisions of AS 24.61, as added by sec. 2 of this Act, the Legislative Ethics Commission may consider complaints alleging violations of AS 24.60 that occurred prior to July 1, 1991, and for which proceedings have not been commenced or concluded prior to July 1, 1991. For the purpose of this section, the Legislative Ethics Commission shall follow the procedures established under AS 24.61, but may not recommend a sanction or penalty not authorized under former AS 24.60.

* Sec. 25. TRANSITIONAL PROVISIONS RELATING TO REPRESENTATION OF OTH-

ERS. Notwithstanding AS 24.61.330, as added by sec. 2 of this Act, a legislator or legislative assistant who is subject to AS 24.61.330 may, until January 1, 1992, represent a person in a proceeding that would otherwise be prohibited under AS 24.61.330 if the legislator or legislative assistant promptly files a statement with the Legislative Ethics Commission that includes the name of the client, an identifying name or number of the action, a brief description of the nature of the action, and the amount of compensation received or anticipated relating to the representation. The statement shall be published in the journal of the appropriate house. If information contained in the statement changes, a supplemental statement shall be filed every 90 days until the matter is completed or January 1, 1992, at which time the representation must be terminated. The representation may continue beyond January 1, 1992, if the legislator or legislative assistant applies for, and the Legislative Ethics Commission grants, an exemption to the termination date under AS 24.61.530, as added by sec. 2 of this Act. In this section, "legislative assistant" has the meaning given in AS 24.61.990, as added by sec. 2 of this Act.

* Sec. 26. AS 24.61.200 - 24.61.220, 24.61.240, and 24.61.245, as added by sec. 2 of this Act, take effect November 6, 1990.

* Sec. 27. AS 24.61.160, 24.61.400(d), 24.61.500 - 24.61.720, and 24.-61.990, as added by sec. 2 of this Act, and sec. 23 of this Act take effect January 1, 1991.

* Sec. 28. Except as provided in secs. 26 and 27 of this Act, this Act takes effect July 1, 1991.

SFC Secy
Copy

5/3/90
C

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 2, 1990

SUBJECT: CSSB 415(JLE) - Suggested Changes

TO: Senator Pat Pourchot

FROM: David R. Dierdorff
Revisor of Statutes

You have asked that I carefully review CSSB 415(JLE) to determine whether further changes are necessary or desirable for technical reasons or internal consistency. I have the following suggestions:

1) On page 2, line 3, I believe "ethical" should be deleted and replaced by "ethics".

2) Article 1, AS 24.61.010 - 24.61.060, is a general statement of principles and goals. There are no sanctions for violating these provisions. They are set out, according to the preamble (AS 24.61.020), to provide guidance for those who wish to take the high road and to assist in interpreting the standards of conduct. Consequently, the provisions of AS 24.61.025 - 24.61.060 should not be couched in terms of "shall" do this or "may not" do that, as many of them are, but, rather, as "should" do's and "should not" do's. They are guidelines, not directives. (Arguably, they belong in the Guidelines and Commentary rather than the codified law of the state.)

3) I note that there is no sanction, civil or criminal, for a violation of AS 24.61.140(e)(4) (page 14, lines 4 - 9). I know that this was a deliberate decision, based in part on the questionable constitutionality of the provision. Given the lack of an enforcement tool, the provision should either be dropped or rewritten as a "should not" rather than a "may not."

4) On page 14, line 23, the reference to "24.61.460" should be changed to "24.61.450".

5) On page 16, line 10, delete "member" and insert "person".

6) On page 16, line 26, delete "Legislators" and insert "A former legislator".

7) On page 17, line 10, delete "office or". (Legislative assistants don't "hold office," they are employees.)

8) On page 20, line 8, delete "(1) - (5) of". This reference should have been expanded to include new (6), but the reference to paragraphs is unnecessary in any event, because it includes the entire subsection.

9) On page 23, line 6, delete "fundraising" and insert "fund-raising". When used as an adjective, the dictionary tells us that this is a hyphenated word. Otherwise, it is two words.

10) AS 24.61.230(c)(3) and (4), on page 24, lines 7 - 12, appear to be either overly broad or misplaced. This section deals with coercion and focuses primarily on actions based on whether a person did or did not make a political contribution to the legislator or to a cause favored by the legislator. The questioned paragraphs deal with (A), in the case of paragraph (3), conspiracies to evade all requirements of the chapter, and (B), in the case of paragraph (4), the acceptance of prohibited contributions. Assuming that the paragraphs are drafted as intended, they should be moved to a new section or sections. I question the breadth of (3) in any event. It should be narrowed to refer to evasions of Article 2 only -- that is, limited to those provisions for which sanctions are provided. Finally, to the extent that violations of (4) could include violations of provisions enforced by APOC under AS 24.61.245, the interaction of AS 24.61.230 and 24.61.245 needs to be carefully reviewed. It is not clear to me from the bill that such review has taken place.

11) On page 24, line 19, delete "FUNDRAISING" and insert "FUND RAISING".

12) On page 24, lines 20 and 23, delete "fundraising" and insert "fund raising".

13) On page 25, line 2, delete "fundraising" and insert "fund-raising".

14) On page 25, line 25, delete "fund raising" and insert "fund-raising".

15) On page 28, line 20, delete "banned" and insert "prohibited".

16) On page 29, line 5, after "nature of" insert "close".

17) As drafted, AS 24.61.290 (Nepotism), page 29, permits a member of a legislator's immediate family to be employed by a legislative agency. I assume that the legislature is aware of that and concurs, but wanted to raise the issue in the event it had been overlooked. (Mr. Josephson was not aware of the complicated legislative staffing pattern we have woven in Alaska.)

18) On page 30, lines 5, 8, 9, and 15, delete "fundraising" and insert "fund-raising".

19) On page 32, lines 6 - 7, the waiver language should be changed to read "waiver of a provision of this section under AS 24.61.530" to be consistent with other similar provisions.

20) On page 33, line 22, after "waiver of" insert "a provision of" and after "section" insert "under AS 24.61.530".

21) On page 33, lines 23 - 24, delete "the" and delete "authorized" to conform to other, identical provisions.

22) On page 35, line 24, delete "qualifications stated" and insert "the standards of (a) of this section". This is recommended for clarity.

23) On page 37, line 6, after "of" insert "a provision of" and after "section" insert "under AS 24.61.530".

24) I would urge further revision of AS 24.61.350 (Gratuities). I am concerned that the last sentence of (b) (page 37, line 29, through page 38, line 3) needs better exposure. Also, its location within (b) could create the impression that the exceptions listed in (c) somehow override the provisions of the last sentence of (b) as well as the $100 limit. Because (b) contains both prohibitions and exceptions to one of those prohibitions, subsequent references to it can be confusing (e.g., the language in (c)(4) that uses the phrase "exclude from the coverage of (b) of this section" -- what part of (b) is excluded?). The problem in

(c)(4) can be cleared up easily, by substituting "the $100 limit" for "the coverage", but the general clarity of (b) would be improved by rewriting (b), and the first part of (c) to read:

> (b) A legislator or legislative employee may not accept or receive, directly or indirectly, a benefit as a gratuity from a person except as provided in this section. Notwithstanding the provisions of (c) and (d) of this section, this section does not permit the acceptance of a benefit in any amount if the acceptance of the benefit would violate AS 24.61.110(b).
>
> (c) A legislator or legislative employee may accept gratuities in the form of personal gifts, free or subsidized travel, tickets to entertainment or sporting events, unsolicited subscriptions to publications, lodging, pens, calendars, candy, fruit baskets, flowers, or any other benefit, provided that the aggregate value in a calendar year may not exceed $100 from a single source except as provided in this subsection. The following benefits may be accepted as gratuities without regard to the $100 limit and they need not be reported except as noted:

Then existing (c)(1) - (9) would be set out, with the following changes:

> In (4), on page 38, lines 23 and 25, delete "coverage of (b) of this section" and insert "$100 limit".
>
> In (5), rewrite page 38, lines 28 - 29 to read "government that is worth more than $100 may be accepted only on behalf of the legislature and must be turned over within 60 days". This is a change I would make even if no other changes are made in AS 24.61.350.

25) On page 40, line 3, delete "this section" and insert "a provision of this section under AS 24.61.530".

26) On page 42, line 12, after "waiver of" insert "a provision of" and after "this section" insert "under AS 24.61.-530".

27) The definition of category A income in AS 24.61.400(e) (page 46, lines 23 - 28) is broader than the reporting requirements require. Compare that definition ("all benefits

received" from certain persons) with the types of income that must be reported under AS 24.61.405 (a)(1) - (4). The definition really should be of "category A source" (and "category B source"). On page 47, line 3, the catchline of AS 24.61.405 should be rewritten to read "REPORTING INCOME FROM CATEGORY A SOURCES" and the word "all" should be deleted. On page 48, line 16, the catchline for AS 24.61.410 should be similarly rewritten.

28) On page 60, line 1, following "with a" insert "good faith" and on line 5 delete "good faith" to correct a drafting error made in the CS.

29) AS 24.61.970, added to this CS, has real validity only if the Guidelines and Commentary is adopted by the legislature. If this provision stays in, it is important that the Guidelines and Commentary be carefully reviewed to ensure that it reflects the content of the version of the bill that is enacted. If this provision is not included, and the Guidelines and Commentary is adopted as, in essence, a legislative letter of intent, the effect of that adoption would be the same as the inclusion of this section. The danger is that if the legislature rejects the Guidelines and Commentary, but retains AS 24.61.970, the commission will be directed to follow something a majority of the legislature could not accept.

If I can be of further assistance, please advise.

DRD:pl
WKP4/107

cc: Senator Johne Binkley
Senator Rick Uehling
Representative Mike Davis

5/3/90 am

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 3, 1990

SUBJECT: CSSB 415(JLE) - Additional Change

TO: Senator Pat Pourchot

FROM: David R. Dierdorff
Revisor of Statutes

After further review, I believe that it is necessary for AS 24.61.110(b), page 10, lines 3 - 9, to be amended. #30 Without this amendment, there will be a direct conflict between AS 24.61.110(b) and AS 24.61.350 (whether or not the changes I suggested for the latter section are adopted) and the conflict between the conduct prohibited by AS 24.61.-110(b) and that prohibited by AS 11.56.110 (receiving a bribe), which I have pointed out before, will continue.

The problem is in the definition of "anything of value" for the ethics Act. That definition excludes items that are "listed in AS 24.61.350(c)". Thus, even if offered for an improper purpose (and, therefore, not acceptable under AS 24.61.350(b)), the items are excluded from the operation of AS 24.61.110(b). While the matter might be solved by changing the definition, the better solution is to change AS 24.61.110(b). The reason for that is that the proposed change will also resolve the conflict between that subsection and AS 11.56.110 pointed out in an earlier memo to Senator Faiks.

The change I think you should consider is to add a sentence to AS 24.61.110(b) to read:

> In this subsection, "anything of value" has the meaning given to "benefit" in AS 11.56.130.

The definition incorporated by that reference is:

> "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, but does not include

(1) political campaign contributions reported in accordance with AS 15.13;

(2) concurrence in official action in the cause of legitimate compromise between public servants; or

(3) support, including a vote, solicited by a public servant or offered by any person in an election.

I apologize for not including this in my memo of May 2.

DRD:pl:gc
WKP4/111

cc: Senator Johne Binkley
Senator Rick Uehling
Representative Mike Davis

Recd in Pourchot's office
5/4/90 10:15 Am

5/4 1 90 pm
6-2007 Me.
Dierdorff
JD 3 - Adopted

A M E N D M E N T

OFFERED IN THE SENATE BY SEN. POURCHOT

TO: CSSB 415 (Legislative Ethics)

Page 45, line 4, through page 49, line 12:

Delete all material.

"Sec. 24.61.400. CONFLICT OF INTEREST DISCLOSURE BY LEGISLATORS AND LEGISLATIVE ASSISTANTS; "CATEGORY A" AND "CATEGORY B" INCOME SOURCES DEFINED. (a) A legislator, a candidate for the legislature, and a legislative assistant shall disclose financial interests that would cause a reasonable person to believe that the legislator's, candidate's, or legislative assistant's objectivity and ability to exercise independent judgment in the public interest have been adversely affected by those interests.

(b) A legislator, a candidate for the legislature, and a legislative assistant shall file with the commission the reports required under AS 24.61.400 - 24.61.410. A candidate for the legislature, including an incumbent legislator, shall file the reports at the time required under AS 15.25.030 or 15.25.180. In addition, legislators and legislative assistants shall file annual reports on or before April 15. The commission shall adopt filing guidelines and develop forms that are compatible with financial disclosure forms required to be filed with the Alaska Public Offices Commission under AS 39.50.030.

(c) A legislator, a candidate for the legislature, and a legislative assistant shall disclose to the commission the information

required under AS 24.61.405 and 24.61.410 and the guidelines and regulations adopted by the commission under (b) and (d) of this section, on the sources and amounts of outside income received by them, their spouses, and their dependent children, except that disclosure of the amount of income received by a legislator's or assistant's spouse or dependent children is not required. If the spouse or dependent child receives income from a category A source, the legislator or legislative assistant shall file a statement with the commission stating that (1) all the funds earned by the spouse or dependent child were reasonable payments for services actually rendered, and (2) employment of the spouse or dependent child was not related to any attempt to influence or do any favor for the legislator or legislative assistant. A legislator, candidate for the legislature, or legislative assistant shall also report the information relating to income and assets that a public official is required to report under AS 39.50.030.

(d) The commission shall adopt regulations relating to the definitions of category A and B income and the reporting requirements imposed by AS 24.61.400 - 24.61.410. The regulations must include provisions that distinguish between income received for personal services, income received from the ownership of property, income received directly by the legislator, candidate for the legislature, or legislative assistant, and income received by an entity in which the legislator, candidate, or legislative assistant has an ownership interest. The regulations may exclude from category A income, income from sources such as interest on deposit accounts in regulated

financial institutions.

(e) In AS 24.61.400 - 24.61.410,

(1) "category A source" means a person who is known or reasonably should be known to have a substantial interest in legislative, administrative, or political actions; the legislature or an agency of the legislature is not a category A source;

(2) "category B source" means a person who does not, or is not known to fall within category A;

(3) "income" means benefits received, in the form of monetary compensation or another thing of value.

Sec. 24.61.405. REPORTING CATEGORY A INCOME. (a) As to income received from category A sources, a person required under AS 24.61.400 to report shall file with the commission a statement that must include,

JB Adopted

(1) as to all income received as compensation for services, ~~regardless of the amount,~~ in excess of $100 the name and address of the source, a brief statement describing the nature of the services performed including sufficient detail to permit the commission to determine whether the nature of the work created or would create a conflict of interest, and the amount paid; Withdrawn JB this section shall not require a level of disclosure that would violate professional ethics.

(2) as to each gratuity received and required to be reported under AS 24.61.350(c)(4) and (7), the name and address of the person providing the gratuity, a brief description of its nature, and a good faith statement of its fair market value; if exact values are not known, and cannot be found out without undue hardship or expense, reasonable good faith estimates are acceptable;

(3) the name and address of the source and the cash value of reimbursement for expenses aggregating more than $100 in the reporting period;

(4) as to each loan or loan guarantee yielding loan proceeds of $100 or more in the reporting period and the lender or guarantor is a person with a substantial interest in legislative, administrative, or political actions, the name and address of the person making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a written loan agreement exists;

(5) if the source of a reported benefit is a corporation, other than a publicly traded corporation, the name of its parent corporation, if any, and names of its top corporate officers;

(6) if the source of a reported benefit is a partnership or association doing business under a fictitious name, the names of the principals; and

(7) other information required under regulations of the commission. new language Dierdorff

(b) The commission shall review category A statements to determine whether an impermissible conflict exists or would exist and whether special orders or restrictions are required.

(c) Category A statements are public records and shall be made available for public inspection.

(d) In extraordinary situations, a legislator, a candidate for the legislature, or a legislative assistant may seek a waiver of a

provision of this section under AS 24.61.530.

Sec. 24.61.410. REPORTING CATEGORY B INCOME. (a) A person required under AS 24.61.400 to report shall file a statement listing the items in AS 24.61.405(a) that the person has received from a category B source, except that the person shall disclose only those income sources providing benefits worth $1,000 or more. The person is not required to report the amount of income from a reportable source. As to gratuities, the requirements of AS 24.61.350(c)(4) and (7) control, but apply to a candidate for the legislature as to disclosure requirements only.

(b) The commission shall review category B statements to determine whether an impermissible conflict exists or would exist, whether special orders or restrictions are required, and whether the statements shall be considered to be public records and made available for public inspection.

(c) If the person filing a statement under this section is a legislator, or a candidate for the legislature, the statement is presumptively public, which means that it will be made part of the public record unless the legislator or candidate submitting it requests that it be kept confidential, states the reasons for the request, and the commission finds that no valid public purpose would be advanced by publication.

(d) If the person filing a statement under this section is a legislative assistant, the statement is presumptively confidential, which means that it shall be kept confidential unless the commission determines that the public benefit in disclosure substantially

outweighs the individual's interest in privacy."

5/4/90
Failed

AMENDMENTS TO SENATE BILL 415 (ETHICS) BY FISCHER

#16 Page 76, Sec. 24.61.755 Add New Section to Read:

Sec. 24.61.755. Media Correspondent Training Course.

(a) Any Correspondent of the Media that is covering the Alaska State Legislature in the State Capitol during the legislative session, shall have completed the media correspondent training course conducted by the commission as a condition of being allowed to use the legislative press room in the State Capitol Building.

(b) The specific content of the training course shall be determined by the education advisory committee, ~~and shall include a review of all ethics statutes and shall include~~ a mandatory reading of ~~Ethics, easier said than done, Ethics & Journalism, 1989, volume 2, Number 2, published by the Josephson Institute.~~

(c) The commission shall certify to the Alaska Public Offices Commission the names of persons successfully completing the media correspondent training course, including persons taking the course under (a) of this section.

5/4/93
Failed

AMENDMENTS TO SENATE BILL 415 (ETHICS) **BY FISCHER**

#17 Page 85, Line ~~24~~ 25. Delete "40,000", add "49,680"

5/4/90
Failed

Amendments to SB 415 By Fischer

#22 Page 85, Line ~~1~~ 25, Delete "40,000".

5/4/90
withdrawn

AMENDMENTS TO SENATE BILL 415 (ETHICS) BY FISCHER

#1 Add all elected municipal and school district officials under the same requirements as legislators and legislative assistants.

o

975

SB 415
5/3/90
MAY 2 1990
B

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3820

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 2, 1990

SUBJECT: Sectional analysis of CSSB 415 (Legislative Ethics)

TO: Senator Johne Binkley
Senator Rick Uehling
Co-Chairs, Senate Finance Committee

FROM: John B. Gaguine JBG
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. This is especially true in the case of a piece of legislation as lengthy and complex as HB 596.

Section 1 gives the act a title, the Legislative Ethics Act of 1990.

Section 2 establishes a new legislative ethics code, AS 24.61, as follows:

Article 1 contains legislative findings and purpose and eight general principles to be followed in interpreting the law. The article notes, in AS 24.61.020, that these principles are "broader and more philosophical than the standards of conduct and, therefore, not amenable to strict enforcement." Nevertheless, the principles "shall be regarded as an integral part" of the law. The principles are:

1. Good faith commitment to advance the purpose of the ethics laws

2. Nonpartisanship - consideration of ethics matters only on their merits

3. Public trust - duty to avoid perception that legislators are acting for selfish motives

4. Public interest - duty to avoid putting narrow interests over general public good

5. Accountability to public

6. Representative democracy - duty to avoid abuse of procedural powers and arbitrary use of authority

7. Respectability - duty not to discredit legislature and not to treat others unfairly

8. Independent judgment, free from conflicts of interest and both real and perceived improper influences

Article 2 contains the specific standards of conduct that must be followed. All apply to legislators; most apply to legislative aides in positions of influence; some apply to most legislative employees and to candidates for the legislature. Nearly all are subject to penalties that may be imposed by the legislature, including heavy fines, censure and expulsion (or, in the case of a legislative employee, termination). Many violations can also be prosecuted as Class A misdemeanors, or deal with conduct that is criminal under a Title 11 statute. The standards of conduct are as follows:

- AS 24.61.110 prohibits the acceptance of anything of value in connection with the performance of legislative duties

- AS 24.61.120 imposes a duty on persons to report improper offers to influence

- AS 24.61.130 prohibits the use of state property, staff and resources for private gain or personal advantage

- AS 24.61.140 prohibits the use of state property, staff, and resources for political purposes, and includes a ban on mass mailings near an election and on solicitation and acceptance of campaign contributions in a state office.

- AS 24.61.150 imposes an obligation on legislative employees to refuse to perform improper tasks

- AS 24.61.170 prohibits the use of nonpublic (so-called "inside") and confidential information for private gain

- AS 24.61.180 prohibits a legislator for using his or her title or prestige for private gain or personal advantage, and includes a ban on use of the title in commercials

- AS 24.61.190 bans former legislators and aides, for a period of one year after leaving legislative service, from lobbying the legislature, and bans certain key legislators from administratively lobbying in connection with matters or agencies over which they had influence

- AS 24.61.205 prohibits the use of campaign funds for personal purposes (including legal fees not connected to the campaign or public office), loans and contributions to another group (e.g., to another candidate), inflated campaign expenses, and the payment of fines, and bars post-election campaign contributions

- AS 24.61.210 restricts the use of surplus campaign funds to retiring loans, returning contributions to contributors on a pro rata basis, donating them to the state, a municipality, or a charity, and, within monetary limits, transferring them to an ongoing political account or office expense account

- AS 24.61.220 authorizes a legal defense fund to defend against specific charges, including ethics charges, and prohibits the acceptance of funds for legal defense except as provided in the section

- AS 24.61.230 prohibits withholding or threatening to withhold legislative action in order to obtain campaign funds or gifts

- AS 24.61.240 prohibits fund-raising by a legislator during legislative sessions and restricts it to certain time periods for both legislators and challengers

- AS 24.61.290 prohibits nepotism in a manner similar to current AS 24.60.090

- AS 24.61.300 restricts the participation of lobbyists in political campaigns, requires disclosure of close economic associations with lobbyists, and restricts employment of legislators or aides by lobbyists and lobbying groups

- AS 24.61.310 prohibits legislators from serving on governing or advisory boards of nongovernmental entities with substantial interests in legislation, requires aides serving on such boards to disclose their membership, and prohibits aides from serving on most elected local government boards and in state positions requiring legislative confirmation

- AS 24.61.320 prevents a legislator or aide from participating in governmental action when he or she has a substantial financial interest involved

- AS 24.61.330 restricts representation for compensation by legislators and aides before state courts and agencies; it allows such representation in certain quasi-judicial hearings

- AS 24.61.340 restricts the ability of legislators, legislative aides, and their family members from entering into state contracts or leases other than those competitively bid, of a small amount, or standardized; the section is similar to current AS 24.60.040

- AS 24.61.345 authorizes legislators and legislative employees to participate in general statewide programs; the section is similar to current AS 24.60.050

- AS 24.61.350 prohibits, with certain exceptions, the solicitation or receipt of single gifts worth $100 or more or gifts from a single source whose aggregate value is $100 or more; the section is similar to current AS 24.60.080 as the ethics committee proposed to modify it, with one major exception: a legislator or legislative employee would no longer be allowed to have travel on matters on legislative concern paid by a nongovernmental entity with a substantial interest in the legislator's or employee's activities

- AS 24.61.360 prohibits legislators and legislative employees from accepting outside employment that would create conflicts of interest or that involves inappropriately high payment for the work done, and from accepting most offers of honoraria (other than reimbursement of travel expenses)

- AS 24.61.380 prohibits improper influence on decisions by other government officials and bodies, but does not prohibit constituent "casework" or the exercise of legislative oversight

- AS 24.61.390 - 24.61.420 establish income disclosure requirements, in some ways considerably broader than the APOC-administered requirements under AS 39.50; the requirements distinguish between income derived from sources with interest in legislation (amounts must be disclosed and sources without such interest (amounts need not be disclosed)

- AS 24.61.430 requires compliance by legislators with the Open Meetings Act; if this section is violated, a legislator may not be fined or expelled

- AS 24.61.440 requires legislators and employees to police the legislative system and prohibits retaliation against or harassment of "whistleblowers"

- AS 24.61.450, which like AS 24.61.430 carries limited sanctions, prohibits acts of employment discrimination in violation of the state Human Rights Act

Article 2 also contains several sections relating to financial and personal relationships between legislators and legislative employees and persons with interests before the legislature. AS 24.61.250 states a general rule that legislators and legislative employees should avoid financial relationships and transactions that might compromise or appear to compromise them. AS 24.61.255 - 24.61.265 define three terms ("financial conflict of interest," "substantial interest in legislative, administrative, or political action," and "close economic association") that govern what financial relationships must be disclosed under AS 24.61.300(b). AS 24.61.270 states that financial conflicts shall be generally dealt with as a matter of disclosure and voluntary restraint. AS 24.61.280 states that personal relationship conflicts of interest can be damaging to the public trust, but generally are dealt with as a matter of voluntary restraint.

Article 3 establishes the Legislative Ethics Commission, consisting of nine public members appointed by all three branches of government, and subject to decertification by the legislature. It authorizes the hiring of an executive director and other staff. The article, like current law, provides for advisory opinions and a complaint process (more open than current law, and similar to what the ethics committee proposed in HB 451); it also authorizes the commission to grant exceptions to the prohibitions of AS 24.61.

AS 24.61.560 sets out a lengthy list of the sanctions that the commission can recommend to the legislature, if a legislator is found guilty of an ethics violation, or that the commission can impose itself, if a legislative employee is found guilty. Article 3 also authorizes the attorney general to bring civil or criminal actions to enforce AS 24.61.

Article 4 establishes an ethics education program for legislators, aides and lobbyists, including the publication of an ethics manual, the establishment of an education advisory committee, and the giving of ethics seminars at which attendance is mandatory.

Article 5 contains general provisions for AS 24.61. Among other things the article sets forth a principle of strict compliance (AS 24.61.920), and retains current laws concerning the cooperation of others with the ethics commission and the prohibition against "leaking" confidential ethics information. The article also defines terms used in AS 24.61.

Sections 3 - 7 of the bill make technical changes.

Section 8 raises the annual salary of legislators to $40,000 from the current $22,140 (Range 10, Step A of the state salary schedule).

Section 9 repeals the provision of current law allowing legislators to receive long-term per diem of $50 per day for work that they do in their districts during the interim. It retains the provisions relating to per diem during the session and to per diem for travel on legislative business at any time to a location other than the legislator's residence.

Section 10 eliminates the current office allowance, and instead allows legislators to charge actual office expenses to the state, up to a maximum that varies according to the number of constituents a legislator represents. It also allows each legislator to send two constituent newsletters a year, not subject to the office expense limit, provided that the newsletters comply with the ethics act.

Section 11 allows each legislator two state-paid round trip airplane tickets to a city in the legislator's district for "a personal, family, business, or constituent purpose."

Sections 12 - 13 eliminate current provisions of law that allow an attorney-legislator who represents a client to get an automatic stay of a court case during the session.

Sections 14 - 16 are additions to the regulation of lobbying chapter to ensure compliance with the ethics education for lobbyists provisions.

Section 17 prohibits lobbyists from using state property as part of their lobbying activities, and from participating in a candidate's campaign management or hosting a fund-raiser.

Section 18 places the executive director and staff of the legislative ethics commission in the exempt service.

Section 19 - 20 transfer the authority for handling financial disclosure statements of legislators and legislative candidates from APOC to the ethics commission.

Section 21 makes a technical change.

Section 22 repeals the current legislative ethics law, AS 24.-60, and three provisions that make AS 39.50 applicable to legislators.

Section 23 provides for terms of varying length of the initial commission appointees, in order to stagger terms.

Section 24 provides that the initial ethics courses and seminars provided for by the act will be held in January and February, 1991.

Section 25 provides that the Legislative Council make its proposals to the Legislative Ethics Commission for adoption as regulations required by the act by January 1, 1991.

Section 26 provides that, notwithstanding the repeal of AS 24.60, the Legislative Ethics Commission may consider complaints under AS 24.60 that arise before January 21, 1991 (the effective date of most of AS 24.61), but that are not filed until after that date.

Section 27 provides for a transitional period for those covered by AS 24.61 who are currently representing others in violation of the new law. It requires that any such representation be terminated by January 1, 1992, but that the Legislative Ethics Commission may grant an exemption from this date in exceptional cases.

Section 28 makes effective on July 1, 1990, the portions of the bill establishing the commission and requiring it to

adopt regulations and begin the ethics education process. It also makes sections 23 - 25 effective on July 1.

Section 29 makes AS 24.61.200 - 24.61.240 (primarily campaign financing sections) effective on November 6, 1990, the day after the election.

Section 30 makes the remainder of the bill, including the new standards of conduct and the repeal of AS 24.60, effective on January 21, 1991 (the date that the Seventeenth Legislature convenes).

JG:mi:pl
WKP4/104

5/3/90
Pourchot
A

SUMMARY ETHICS BILL
CS SB 415 (JEC)

Senator Pat Pourchot
Thursday, May 3, 1990

Findings and Ethical Principals
- Normative ethics; important in goals and education but not specifically enforceable

Standards of Conduct
- prohibits misuse of public office for personal gain p.9-10
- duty to report improper offers or requests p.10 & p.14
- misuse of state property and resources for personal gain p.10-12
- misuse of non-public and confidential information p.15
- misuse of title, prestige, official letterhead p.15
- post-service employment restrictions:
  - no lobbying legislature by legislators for a year or state agency where legislator had special authority
  - legislative assistant as a lobbyist for a year p.16-17
- improper coercion p.23-24 and p.42-44
- nepotism (same as current law) p.29

Campaign Activities
- no soliciting or accepting funds in state building p.13
- no use of campaign funds for personal use p.18-19
- no fundraising after election day p.19
- disbursement of campaign surpluses by: p.20-21
  - return to contributors
  - charity, government
  - future campaign account - $2,500 House, $5,000 Senate
  - $1,000 to office account
- no fundraising by legislators and other public officials who are legislative candidates during session p.24-25
- all legislative candidates' fundraising limited from June 1 of year before election to election

Legal Defense Funds - p.21-23

Conflicts of Interest/Close Association
- disclose economic relationship with lobbyists p.30
- board membership restrictions p.31
- legislative assistant can't serve as elected officials but can seek exemption p.31-32
- restrictions on legislative actions where substantial financial interest p.32
- Restriction on advocating before state agencies
- Restriction on interests in state contract p.32-33
- Participation in state loans and programs/leases p.33-35 and p.35-37

Gifts - p.37-40
- Prohibition of gifts - $100, including travel
- Exclusions for family gifts, awards, meals, foreign gifts, travel by government/non-profits, hospitality in a friend's home
- Reporting of some exclusions

Outside Employment/Income - p.40-50
- full day's work for full day's pay
- restrictions on work impeding legislators' official duties
- disclosure of income from those with substantial interest in legislative actions
- no honoraria except from government, non-profits
- income disclosures by amount for substantial legislative interest income and sources for other income

Compliance with Other Laws
- open meetings p.50
- whistle blower p.50-51
- discrimination p.51+

Legislative Ethics Commission - p.52-72
- 9 citizen members appointed by legislature, governor, Lt. governor, supreme court, APOC and Commission
- powers to issue advisory opinions, exemptions, investigate complaints, conduct hearings, make findings and recommendations
- civil sanctions LEC could recommend: fines, divestiture, disclosure, restitution, reprimand, censure, expulsion
- sanctions recommendations go to legislature for action - legislature does not retry case only votes to appropriate anction.

Ethics Education - p.73-76
- LEC develops education program for legislature, employees, lobbyists
- initial course required of all legislators, employees, lobbyists
- update every 2 years for legislators and employees
- retake course every 3 years for lobbyists

Pay/Compensation/Allowances - p.85-87
- legislators $40,000/yr. salary
- per diem during session
- short-term per diem for legislative travel
- no per diem for travel to legislative home
- no long-term per diem during interim
- vouchered legislative office allowance for office expenses only:
  - $6,000 single member house district
  - $7,000 single member senate district and 2 member house district
  - $9,000 two-member senate district

- 2 newsletters per year paid for by senate subject to content restrictions by legislative council p.12-13
- 2 trips home during session for personal reasons

Alaska State Legislature

Senate

Official Business

Finance Committee

Pouch V
State Capitol
Juneau, Alaska 99811

APPLICATION AND PENALTIES OF PROVISIONS CONTAINED IN JOSEPHSON PROPOSAL CSSB (415) (Leg. Ethics)

AS 24.61.100	ALL STAFF - & LEGISLATORS	Misuse of Office for Private Gain: General Principle
AS 24.61.110	ALL STAFF - & LEGISLATORS	Improper Benefit from Performance of Public Duties
		Penalty:
	sub. (a)	Is an existing crime 11.56.120 & civil sanctions Staff: Class A misdemeanor Legislators: May be protected by legislative immunity during session
	sub. (b)	May be an existing crime (felony). Civil sanctions apply to everyone.
AS 24.61.120	ALL STAFF & LEGISLATORS	Duty to Report Improper Offers Penalty: Civil sanctions apply to everyone.
AS 24.61.130	ALL STAFF & LEGISLATORS	Misuse of State Property and Resources for Private Gain or Personal Advantage
	sub. (a)	May be prosecuted as "theft" 11.46. Legislators may be protected by legislative immunity during session. Civil sanctions apply to everyone.
	sub. (b)	Civil sanctions apply to everyone. Criminal penalty under another law.
	sub. (c)	Staff: Class A misdemeanor Legislators: May be protected by legislative immunity during session. Civil sanctions apply to everyone.

AS 24.61.140	ALL STAFF - & LEGISLATORS	Misuse of State Property and Resources for Political Purposes
		Penalty:
	sub. (a)	Is an existing crime "theft". May be a misdemeanor or felony under existing law.
	sub. (c)	Staff: Class A misdemeanor Legislators: May be protected by legislative immunity during session
	sub. (d)	same as subsection (c)
	sub. (e)(1)	theft under 11.46, Class A mis.
	sub. (f)	May be "theft" under existing law. Civil sanctions apply to everyone.
	subsections	b,c,e (1-3) are civil sanctions.
AS 24.61.150	ALL STAFF ONLY NO LEGISLATORS	Obligation of Subordinates to Refuse to Perform Improper Tasks
		Penalty: Civil sanctions
AS 24.61.170	ALL STAFF & LEGISLATORS	Use of Nonpublic & Confidential Information for Private Gain
		Penalty: Civil sanctions
AS 24.61.180	ALL STAFF & LEGISLATORS	Misuse of Title or Prestige of Office for Private Gain or Personal Advantage
		Penalty: Civil sanctions apply to everyone in addition to criminal penalties undera another law.
AS 24.61.190	LEG. ASSISTANTS & LEGISLATORS	Post-service Restrictions to Prevent Misuse of Public Office by Former Legislators and Leg. Employees. (Note contradiction)

		Penalty for former assistants & legislators: Class A misdemeanor & civil sanctions for everyone
AS 24.61.205	LEGISLATORS & CANDIDATES	Prohibited Use of Campaign Funds Penalty: Class A misdemeanor & civil sanctions (Under APOC law but not referenced)
AS 24.61.210	LEGISLATORS & CANDIDATES	Disbursement of Surplus Campaign Funds Penalty: None
AS 24.61.220	ALL STAFF LEGISLATORS & CANDIDATES	Payment of Legal Expenses; Special Expense Funds Penalty: Class A misdemeanor & civil sanctions
AS 24.61.230	ALL STAFF & LEGISLATORS	Improper Coercion
	sub. (b)(c)	Is an existing crime <u>Staff</u>: Class A misdemeanor <u>Legislators</u>: May be protected by legislative immunity during session. Civil sanctions apply to everyone.
AS 24.61.245	LEGISLATORS ONLY	Fund Raising Limitations APOC shall enforce. 15.13.120(a) plus civil sanctions.
AS 24.61.250	ALL STAFF & LEGISLATORS	General Obligation to Avoid Conflicts of Interest & Preserve Ability to Make Independent Impartial Judgements Penalty: None

AS 24.61.260	ALL STAFF & LEGISLATORS	Substantial Interest in Legislative Administrative, or Political Action Defined Penalty: None
AS 24.61.265	ALL STAFF & LEGISLATORS	Close Economic Association Defined Penalty: None
AS 24.61.280	ALL STAFF & LEGISLATORS	Dealing With Personal Relationship Conflicts of Interest Penalty: None
AS 24.61.290	SOME STAFF & LEGISLATORS	Restricted Relationships: Nepotism Penalty: Civil sanctions
AS 24.61.300	ALL STAFF & LEGISLATORS	Restricted Relationships: Lobbyists, Legislators, & Legislative Employees Penalty: Civil sanctions and other penalties under 24.45
AS 24.61.310	ALL STAFF & LEGISLATORS	Restricted Relationships: Board Membership Penalty: Civil sanctions
AS 24.61.320	ALL STAFF & LEGISLATORS	Restricted Financial Interests Penalty: Civil sanctions
AS 24.61.330	LEG. ASSISTANTS & LEGISLATORS	Restricted Activities as an Attorney or Representative Penalty: Civil sanctions & appropriate criminal penalties under another law.
AS 24.61.340	LEG. ASSISTANTS & LEGISLATORS	Restricted Transactions: Interest in State Contracts or Leases

		Possibly also an existing crime Penalty: Civil sanctions
AS 24.61.345	ALL STAFF & LEGISLATORS	Participation in General Statewide Programs Permissible Penalty: Civil sanctions & criminal penalties under another law.
AS 24.61.350	ALL STAFF & LEGISLATORS	Restricted Transactions: Gratuities Penalty: Civil sanctions
AS 24.61.360	ALL STAFF & LEGISLATORS	Restrictions on Earned Income: Outside Employment & Honoraria Penalty: Civil sanctions
AS 24.61.370	ALL STAFF & LEGISLATORS	Obligation to Make all Decisions on the Merits: Favoritism & Patronage Possibly a crime. Penalty: Civil sanctions
AS 24.61.380	ALL STAFF & LEGISLATORS sub. (c)	Improper Influence with the Independent Judgement of Others on Behalf of Constituents Penalty: <u>Staff</u>: Class A misdemeanor <u>Legislators:</u> May be protected under legislative immunity during session. Civil sanctions apply to everyone
AS 24.61.390	LEG. ASSISTANTS & LEGISLATORS	Conflict of Interest Disclosure: Statement of Purpose
AS 24.61.400	LEG. ASSISTANTS & LEGISLATORS	Conflict of Interest Disclosure by Legislators & Legislative Assistants: Category A and Category B Income

AS 24.61.405	LEG. ASSISTANTS & LEGISLATORS	Reporting Category A Income
AS 24.61.410	LEG. ASSISTANTS & LEGISLATORS	Reporting Category B Income
AS 24. 61.415	LEG. ASSISTANTS & LEGISLATORS	Reporting Obligations of Employers and Others Paying Compensation to Legislators or Legislative Assistants
AS 24.61.420	LEG. ASSISTANTS & LEGISLATORS	Prohibited Conduct Relating to Disclosures Penalty: Staff: Class A misdemeanor Legislators: May be protected by legislative immunity during session. Civil sanctions apply to everyone
AS 24.61.430	ALL STAFF & LEGISLATORS	Accountability: Openness & Oversight Penalty: Administrative sanctions
AS 24.61.440	ALL STAFF & LEGISLATORS	Accountability: Self-Policing, Whistleblowing, & Protection of Whistleblowers Penalty: Civil sanctions
AS 24.61.450	ALL STAFF & LEGISLATORS	Duty Toward Colleagues & Subordinates Penalty: Liability under another criminal law or administrative sanctions & civil rights statutes
AS 24.61.460	ALL STAFF	Duty to Advance Principles of

	& LEGISLATORS	Representative Democracy Penalty: Administrative sanctions
AS 24.61.570	SUPERVISOR OR APPOINTING AUTHORITY	Recommendations & Order Where Violator is a Legislative Employee Failure to implement the commission's order is subject to civil sanctions
AS 24.61.960	ALL STAFF, LEGISLATORS, COMMISSION MEMBERS AND THEIR EMPLOYEES	Confidentiality Penalty: Subject to prosecution under 11.56.860 or another law, plus civil sanctions.

Senator Pourchot
May 2, 1990

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Alaska State Legislature

Legislative Research Agency

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May 3, 1990

MEMORANDUM

TO: Senator Rick Uehling

ATTN: Carol Horos

FROM: Leola Weimer LHW
Legislative Analyst

RE: Ethics Codes: A Comparison
Research Request 90.317 (Supplemental Information)

On pages 27 and 28 of 90.317 the following definitions found in CSSB 415 (Leg. Ethics) were omitted:

> 24.61.990 (16) "legislative assistant" means a legislative employee whose assigned duties involve the exercise of substantial discretion and judgment; it does not include employees who perform purely clerical or ministerial functions; the legislative council shall propose policies relating to the interpretation of this definition, and the commission shall consider the adoption of these guidelines as regulations under AS 24.61.160;
>
> 24.61.990 (17) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes members and staff of the commission; it does not include individuals who perform functions that are incidental to legislative functions, such as security messengers, maintenance, and print shop employees; for purposes of this paragraph, "regular or substantial" means work that is expected to involve, or does involve, at least 400 hours in a calendar year or 300 hours during a regular legislative session; the legislative council shall propose policies relating to the interpretation of this definition, and the commission shall consider the adoption of these guidelines as regulations under AS 24.61.160;
>
> 24.61.990 (20) "nonpublic information" means information that (A) is obtained in the course of a person's legislative duties and that is subject to public inspection under AS 09.25.110 - 09.25.120, but that, because of its nature, is not readily accessible to the public or the profession, occupation, or group to which the person belongs; and (B) if used or disclosed, a personal benefit or advantage is likely to result.

Alaska State Legislature

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May 2, 1990

MEMORANDUM

TO: Senator Rick Uehling

ATTN: Carol Horos

FROM: Leola Weimer LMW
Legislative Analyst

RE: **Ethics Codes: A Comparison**
Research Request 90.317

You asked for a comparison of governmental ethics codes in the United States. Specifically, you wanted to know the provisions in federal, state and various model ethics codes regarding 1) the composition and jurisdiction of ethics boards or commissions; 2) mandatory ethics education; 3) required disclosures of conflicts of interest; and 4) post-employment restrictions.

SUMMARY

The composition and jurisdiction of ethics boards and commissions vary from state to state. A five-member board that regulates either campaign finance or ethics codes is the most common. Alaska has three agencies that regulate ethics codes: the Alaska Public Offices Commission (APOC) for campaigns, financial disclosures and lobbyist registration; the Personnel Board for deciding matters regarding the Executive Branch Ethics Act; and the Select Committee on Legislative Ethics for matters concerning legislators and legislative staff. These agencies have five, three and nine members, respectively. CSSB 415 would create a Legislative Ethics Commission of nine members.

Education is a key element to an effective ethics code. Most states require ethics commissions to publish annual reports or handbooks on the state's ethics code. The requirement for mandatory ethics education is a relatively new development. Ethics codes for the City of Los Angeles and the State of California are the only two which require mandatory ethics education. Alaska Statutes require APOC to publish a manual on the state ethics codes. CSSB 415 would require mandatory ethics education for all legislators, employees and lobbyists. A five-member education advisor committee would administer the on-going education program.

The purpose of conflict-of-interest provisions is to prevent public officials and employees from abusing the power and status of their public office for personal gain. Financial disclosure is considered the "linchpin" of government

ethics laws. Financial disclosure requirements must be drafted carefully to provide a constitutional balance between the official's or employee's right to privacy and the public's right to know. Alaska Statutes require financial disclosures of legislative members, executive official employees, candidates and lobbyists. Some conflict-of-interest provisions in CSSB 415 are already covered in Alaska Statutes, many of the general proposals have precedence in other states or model codes, and some specific provisions have no precedence.

Twenty-nine states have statutes restricting the employment of government officials or employees after they leave their government posts. These "revolving-door" restrictions typically prohibit high-ranking public officials from lobbying their former agencies on matters in which they were personally and substantially involved. Other common provisions place permanent bans on disclosing confidential information and temporary bans on lobbying for a specific matter in which a high-ranking public official was personally or substantially involved. Such restrictions must be defined narrowly so as not to discourage highly qualified professionals from entering government service, infringe on the constitutional rights of present state officials, or prevent the flow of communication and understanding between the public and private sector. Alaska Statutes place a two-year, post-employment prohibition on executive branch public officers from lobbying, for compensation, their former agencies on matters which they participated in personally and substantially, and permanently bans all government employees from disclosing confidential information. CSSB 415 would prohibit legislators from lobbying, for compensation, the legislature or state agencies on specific matters over which the former legislator had special oversight or budget authority. "Legislative assistants" are subject to a one-year ban from lobbying before the legislature on any matter.

BACKGROUND

The first major ethics reform in the United States was spawned by the Watergate scandal of the early 1970s. At that time, relatively few states had comprehensive or effective ethics laws. Today, almost every state has enacted ethics laws that seek to prevent public officials from using their positions for private gain. Although public support for ethics reform has remained strong, only about a dozen states have something comprehensive enough to be called a state code of ethics.[1]

According to a recent *National Journal* article, "almost every state and major city in the U.S. has confronted a scandal among its public officials in the last

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[1]Jill M. Schultz, legislative analyst, "State Ethics Codes And Minnesota's Ethics Laws--A Comparison," Minnesota Senate Counsel and Research, February 1988, p. 1.

five years."[2] Publicity of these local scandals and national revelations about the Iran-Contra affair, the scandal at the U.S. Department of Housing & Urban Development, the collapse of the savings and loan industry, and lobbying activities of former White House officials, has spawned a renewed demand to revise and strengthen existing codes of ethics. Over 22 states are currently considering bills to reform their state ethics laws.[3]

Model ethics codes have been drafted by the Council on Governmental Ethics Laws (COGEL),[4] by the National Municipal League and by Common Cause. A review of federal ethics was completed by the President's Commission on Federal Ethics Law Reform in March 1989. Many of the commission's recommendations were enacted into law on November 30, 1989 through the passage of the *Ethics Reform Act of 1989* (PL 101-194). Wisconsin has long been considered the model to which other state ethics laws are compared. New York, California and the City of Los Angeles have recently passed ethics codes considered to the be most comprehensive.

COMPOSITION AND JURISDICTION OF ETHICS BOARDS AND COMMISSIONS

The composition and jurisdiction for ethics boards and commissions varies from state to state. Tables 1 - 3, attached, are summaries of the findings from a survey conducted by COGEL in 1989 of the fifty states, District of Columbia and federal government.[5] A more detailed description by state is found in Attachment A.

Fifty-seven percent of those surveyed have more than one agency which is responsible for regulating the conduct of public officials and employees. The ethics boards and commissions are most commonly (34 percent) composed of 5 members. Thirty-eight percent have separate campaign and ethics commissions, 29 percent have commissions which regulate campaigns only, 23 percent have boards which regulate both campaign finance and ethics codes, and the remaining 10 percent have a complex structure of boards some which regulate both campaigns and ethics and some which regulate only a specific aspect of campaigns or ethics.

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[2]"Grass-Roots Graft," *National Journal*, August 1, 1987, pp. 1962-1967.

[3]Schultz, *Op. cit.*

[4]COGEL is an affiliate of the Council of State Governments (CSG).

[5]Council on Governmental Ethics Laws, *Campaign Finance, Ethics & Lobby Law*, Special Edition, Blue Book 1988-89.

Model Ethics Codes

The Council On Governmental Ethics Laws (COGEL) *Model Laws* recommends the establishment of an independent authority consisting of five members appointed by the governor from a panel of ten individuals nominated by the chief justice (§ 206.01).[6] Meetings are held at the call of the chair or a majority of its members (§ 206.03). Members serve without compensation, but are afforded actual and necessary expenses incurred in the performance of duties (§ 206.06).

Common Cause (CC) *Model Ethics Law for State Government* recommends the establishment of an independent commission consisting of seven members; five of whom are appointed by the governor, one by the state secretary and one by the attorney general [Section II (1.1)].[7] A special caution was added in the commentary of the CC report to ensure that there "always be an odd number of commissioners, as well as some mechanism for ensuring timely action by the commission."[8] The commission is to meet at least once each month. The chair or any four members may call a meeting at any time provided that advance written notice is mailed to each member and public notice is made 72 hours prior to such meeting [Section II (1.7)]. Members are to be compensated for work preformed at a set rate and reimbursed for reasonable and necessary expenses [Section II (1.8)].

The National Municipal League (NML) *Model State Conflict of Interest and Financial Disclosure Law* recommends the establishment of a seven-member commission appointed by the governor with the concurrence of the Senate [Section 4 (a)].[9] There is no recommendation as to the frequency of commission meetings. Each member shall be compensated at a set rate for each day and reimbursed for reasonable and necessary expenses incurred in the performance of official duties [Section 4 (d)].

All three model codes extend the ethics commission's jurisdiction to elected or appointed officials and employees of state legislative, executive and judicial branches.

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[6]Council on Governmental Ethics Laws, *Model Laws*, second draft, Section 206.01 (hereafter cited as COGEL Model Laws).

[7]Common Cause, *A Model Ethics Law For State Government*, January 1989, Appendix, Text of Model State Ethics Law, p. 13 (hereafter cited as Common Cause, *Ethics Law*).

[8]*Ibid.*, p. 16.

[9]National Municipal League, *Model State Conflict of Interest & Financial Disclosure Law*, 1979, p. 5 (hereafter cited as NML, *Model Law*).

Alaska's Current Law

In Alaska, government ethics are regulated by the Alaska Public Offices Commission (APOC), the Alaska Executive Branch Ethics Act (AS 39.52) and the Select Committee on Legislative Ethics (AS 24.60.130).
APOC

The duties of the Alaska Public Offices Commission (APOC) are specified in AS 15.13. APOC is the agency in charge of regulating campaign finance, personal financial disclosure and lobbyist registration (AS 15.13.010 - .130). The commission has a total of five members, four of whom are appointed by the governor. The commission meets four times a year and received an annual budget of 572,500 for FY 88.

Executive Branch

Alaska Statute 39.52 establishes the Alaska Executive Branch Ethics Act. Article 4 describes the complaints and hearing procedures. Violations of the Executive Branch Ethics Act are reported to the attorney general. If a complaint is deemed warranted, the attorney general then conducts an investigation and presents the findings to a hearing officer. Within thirty days after the conclusion of the formal hearing, written conclusions are submitted to the Personnel Board who then determines if a violation has occurred and what action should be taken. The Personnel Board is composed of three members appointed by the governor and confirmed by the legislature (AS 39.25.060).

Legislative Branch

Alaska Statute 24.60.130 establishes a Select Committee on Legislative Ethics. The committee adopts procedures and publishes summaries of decisions and advisory opinions. They may also conduct investigations and make recommendations to the legislature. The committee consists of nine members: three senate members, three house members and three public members. The committee is divided into two subcommittees, one for the house and one for the senate; public members serving on both subcommittees.

Josephson's Proposal

Article 3 of CSSB 415 describes the composition and jurisdiction of the Legislative Ethics Commission.

Section 24.61.500 establishes an independent commission of nine members, of whom one member is appointed by the senate, one by the house, two by the supreme court, one by the governor, one by the lieutenant governor, one by APOC, and two by a majority vote of the seven appointed members. Section 24.61.504 requires

that the commission meet at least once every three months and/or at the call of the chair or a majority of the commissioners. The fiscal note for CSSB 415 (JUD) is $1,244,000 for FY 91.

Section 24.61.504 (d) requires the commission to "develop and implement policies consistent with those employed by other state commissions for the reimbursement of travel costs and the payment of per diem under AS 39.20.180." Attachment B is a summary by state of salary and per diem expenses for existing ethics commissions and their annual budgets.

Section 24.61.510 lists the general powers and duties of the commission. The provisions outlined under this section are similar to those of model and existing state ethics codes.

A comparison of the composition of ethics commissions discussed above is as follows:

Source	Number of Members
COGEL survey of states (mode or 34 percent)	5
COGEL model laws	5
Common Cause model	7
National Municipal League	7
APOC	5
Alaska Personnel Board (Executive Branch)	3
Alaska Select Committee on Legislative Ethics	9
Josephson's Proposal CSSB 415 (5/1/90 draft)	9

ETHICS EDUCATION

Education is a key element to an effective ethics code. Most states require the ethics commission to publish annual reports or handbooks on the state ethics code. For example, Title 8, Section 803(i) of the Federal Ethics Reform Act of 1989 (PL 101-194--November 30, 1989) establishes an Office on Advice and Education which is responsible for a) providing information and guidance; b) submitting written interpretations of applicable laws, rules, regulations, or

other standards upon request; c) recommending formal advisory opinions of general applicability; and d) carrying out periodic educational briefings for members, officers and employees on those laws, rules, regulations, or other standards of conduct applicable to them. In addition, executive branch agencies are responsible for training their employees concerning ethics requirements. To maintain uniformity among executive branch agencies, each must obtain approval of its annual plan for training and awareness activities from the Office of Government Ethics.[10]

Mandatory Ethics Education

The requirement for mandatory ethics education is a relatively new development. In 1989, Los Angeles was the first city to initiate a mandatory ethics education program. According to the final report and recommendations of the commission organized to draft an ethics code for the Los Angeles city government, "the central function of an ethics code is to prevent--rather than punish--unethical conduct. To achieve that goal, the Commission believes an educational and training program must accompany the new code."[11] Simply reading the rules or getting instruction on the filing of disclosure forms was deemed ineffective. Instead, mandatory ethics training courses and ongoing educational seminars are required for all current and newly elected and appointed officials, city employees, lobbyists, declared candidates and campaign treasurers.[12]

After over one and one half years of special committee hearings and deliberations, the California State Legislature passed a comprehensive political reform act on ethics in government (SB 1738) on April 26, 1990.[13] Upon enactment of this bill, a new section will be added to the Government Code. One section of this proposal will require mandatory ethics education. In addition to requiring legislators and designated employees to participate in ethics course at least once per biennial session, this bill also amends the Political Reform

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[10]President's Commission on Federal Ethics Law Reform, *To Serve With Honor*, Report and Recommendations to the President, March 9, 1989, p. 97.

[11]*Ethics and Excellence in Government*, Final Report and Recommendations of the Commission to Draft an Ethics Code for Los Angeles City Government, November 1989, p. 12 (hereafter cited as *Ethics and Excellence in Government*).

[12]*Ibid.*, p. 11 (Recommendation 7).

[13]Ethics reform in California is a three tier process. One of which includes the passage of SB 1738. There is also an initiative, proposition 112, to be voted on in the next election and a comprehensive reform of internal rules of both houses.

Act to require that lobbyists take the course at least once every two years.[14] Section 1.8956 states

> (a) The appropriate legislative ethics committees shall conduct at least semiannually an orientation course of the relevant statutes and regulations governing official conduct. The curriculum and presentation of the course shall be established by house rules.
>
> (b) The committees shall conduct at least annually an orientation course on the relevant ethical issues and laws relating to lobbying, in consultation with the Fair Political Practices Commission. This course may be combined with the course described in subdivision (a).
>
> (c) At least once in each biennial session, each Member of the Legislature and each designated employee of the Legislature shall attend one of these courses.
>
> (d) The committees shall impose fees on lobbyists for attending the course described in subdivision (b). The fees shall be set at an amount that will enable the lobbyists' participation in the course to be funded from those fees to the fullest extent possible.

Model Ethics Codes

Section 208.12 of the COGEL model ethics law recommends that the ethics commission "(1) conduct research concerning state governmental ethics; and (2) implement the educational programs it considers necessary to effectuate this Act."

Chapter 2, Section 2.3 of the Common Cause model ethics law suggests including "a provision requiring the commission to notify all new employees and officials of provisions of conflict of interest law as it applies to them. The commission should publish working interpretations of the law, with examples, for specific branches of government, other agencies, or candidates, thereby 'spreading the word' among employees and officials and facilitating compliance."[15]

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[14]California State Legislature, Conference Committee on SB 1738, hearing April 4, 1990, p. 5.

[15]Common Cause, *Ethics Law*, p. 26.

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Section 5 (c) of the National Municipal League model ethics code states

> The Commission shall, in addition to its other duties:
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> (i) Prescribe forms for reports, statements, notices, and other documents required by law;
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> (ii) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this law; and
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> (iii) Provide assistance to agencies, officials and employees in administering the provisions of this law.[16]

Alaska Statutes

Alaska Statutes 15.13.030(2) requires the Alaska Public Offices Commission to:

> prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter.

Josephson's Proposal

Article 4 of CSSB 415 (Leg. Ethics) establishes a Legislative Ethics Education Program. A five-member Education Advisor Committee is responsible for implementing mandatory ethics orientation training courses for new legislators and employees each January; current issues and applications seminars required for all existing legislators and legislative employees in January of each odd-numbered year; and lobbyist training courses. There is no specification as to when lobbyist training courses must be offered, but lobbyists are required to repeat the training course at least once every three years.

CONFLICT-OF-INTEREST DISCLOSURE REQUIREMENTS

The purpose of conflict-of-interest provisions is to prevent public officials and employees from abusing the power and status of their public office for personal gain. A variety of conflict-of-interest prohibitions have been adopted

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[16]NML, *Model Law.*, p. 9.

in the United States. Financial disclosure, however, is considered the "linchpin" of any government ethics law.[17] In drafting precise and complete financial disclosure requirements, the official or employee's right to privacy must be weighed against the public's right to know. In general, conflict of interest provisions seek to

1. prohibit the acceptance of gifts and additional compensation,

2. prohibit the solicitation of things of value,

3. prohibit the use of confidential information for personal gain,

4. restrict an employee's or an official's appearances before his or her own agency or other agencies on personal or private business,

5. restrict an employee's or an official's outside business interests and employment, and official acts which would affect his or her financial interests, and

6. restrict an employee's or official's business contracts with the state.[18]

Attachment C is a description of personal disclosure statements by state. Conflict-of-interest disclosures are primarily a listing of financial interests. The disclosure of personal relationships beyond one's immediate family members and dependents is not currently required by any state.

Sample States

California and New York are two states commonly referred to as having model ethics codes. California has recently adopted a revised comprehensive ethics code covering executive, judicial and legislative branches. It provides a comprehensive list of conflict-of-interest restrictions. New York's Ethics In Government Act of 1987 (EIGA) is one of the most comprehensive standards of conduct and financial disclosure laws for elected officials. Extensive personal financial disclosures are required for legislators and key legislative employees.

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[17] *Ethics and Excellence in Government*, p. 15.

[18] Schultz, *op cit.*, p. 2.

California

California Political Reform Act on Ethics in Government bans honoraria, limits gifts to no more than $250 per single source per calendar year and makes various changes on gift limitations and the use of campaign funds. It also strengthens existing conflict of interest laws by imposing a fine of up to $2,000 per violation for legislators who attempt to use their official positions to influence a governmental decision in which they have a financial interest, including

1. any state governmental decision, other than an action or decision before the legislature, made in the course of his or her duties as a member;

2. approval, modification or cancellation of any contract to which either house or any committee of the legislature is a party;

3. introduction as a lead author of any legislation that the member knows or has reason to know is not general legislation;

4. any vote in a legislative committee or subcommittee on what the member knows or has reason to know is not general legislation;

5. any roll-call vote on the Senate or Assembly floor on an item which the member knows is not general legislation;

6. any action or decision before the legislature in which the member knows or has reason to know the action or decision will have a direct and substantial financial impact, different from the impact on the public generally, on a lobbyist or employer from whom the member has received earned income within the preceding 12 months; and

7. any action or decision before the legislature on legislation that the member knows or has reason to know will have a direct and significant financial impact on any person from whom the member has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any

> other action on behalf of that person, before any local board or agency.[19]

These provisions do not apply to a vote on the budget bill as a whole, on a consent calendar, motion for reconsideration, waiver of any legislative rule, or purely procedural matters.

New York

One of the major aspects of the New York Ethics in Government Act of 1987 was to provide for stricter personal financial disclosure requirements. Previously, legislative officials were only required to disclose a limited amount of personal financial information. Currently, an extensive financial disclosure form is required for all legislators and legislative staff who earned in excess of $53,171 from the legislature during 1990 or who hold "policy-making" positions. Employees who earn less than $53,171 or have "non-policy-making" positions are only required to fill out a limited disclosure form. Copies of both the long and short form are Attachment D. General code of ethics standards as they apply to legislative employees, members of the legislature and officers and employees of state agencies are also in Attachment D.

Federal Conflict of Interest Restrictions

The Ethics Reform Act of 1989 (PL 100-194) provides specific descriptions of the way in which individuals must report assets, income, financial transactions, liabilities, gifts and reimbursements. A review of existing ethics laws by the President's Commission on Federal Ethics Law Reform, however, warned that

> the use of unduly narrow categories for specifying asset value and income seems to the Commission to result in a needless burden on filers without providing particularly useful information to the public and also increases the risk that filers will make inadvertent mistakes. In the case of assets other than publicly traded securities, the precision of the required reporting may also necessitate the employee's incurring the cost of a professional appraisal.[20]

The commission recommended that disclosures be limited to a minimum number of asset value and income categories as may be needed to provide useful information. The commission also recommended that financial disclosure

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[19]California State Legislature, Conference Committee on SB 1738, hearing April 4, 1990, p. 6.

[20]President's Commission, *op cit.*, p. 81.

requirements for political appointees and high-level policy makers be extended to include home mortgages and loans from relatives. The commission warned, however, that these requirements should not be extended to "career employees." The commission explained that they were "reluctant to increase reporting burdens on those who have become accustomed to the existing requirements, and there has been no indication that indebtedness among career employees is a significant source of conflict problems."[21]

Model Ethics Codes

COGEL

The COGEL model ethics laws suggest that statutes include both general conflict-of-interest clauses and specific requirements for personal financial disclosure.

Recommended conflict-of-interest sections center around preventing the use of a public position to obtain private benefits for oneself or an immediate family member. This includes appearing as an advocate or representing former clients before state or local entities (except in purely ministerial matters), in a personal capacity for immediate family, or for a government entity that is the public official's or employee's principal employer (Section 230). Acceptance of gifts, honoraria, contracts and outside employment are also regulated (Sections 232, 234, 236 and 238). In the case of accepting anything of value for the promise to perform certain duties and responsibilities, conflict-of-interest restrictions are extended to include business associates (Section 218). Likewise in the case of "using one's public position to obtain benefits for business or social acquaintances," restrictions are extended to persons "with whom the public official or employee has a personal, financial, or other non-business relationship has an economic interest in the particular matter, or may receive an unwarranted privilege as a result of the official or employee's participation" (Section 220). Copies of the relevant sections are found in Attachment E.

The accompanying commentary stresses the need to make clear distinctions "between the proper and improper use of title and prestige of office" and stresses that prohibitions be extended "regardless of whether the public official or employee receives any pecuniary benefit."[22]

Special attention should also be paid to serious constitutional questions as to how these restrictions may effect the right to free speech. COGEL recognizes that many of these sections will "be difficult to police and will have to be

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[21]Ibid., p. 82.

[22]COGEL, *Model Laws*, p. 23.

enforced on a subjective, rather than objective, basis."[23] Endorsement of political parties and candidates for public office is recognized as a constitutionally protected right. Restrictions on endorsements should "serve to temper these endorsements by playing down the public servant's government affiliation and emphasizing instead the individual."[24] For example, a campaign advertisement should not say "endorsed by the Governor of Alaska," or "endorsed by Governor Cowper," but rather that the candidate was "endorsed by Steve Cowper."

With regards to financial disclosures, COGEL suggests that public officials, public employees earning $35,000 or more and consultants disclose their own financial and economic interests and those of their immediate family members. Ten category amounts are specified ranging from less than $1,000 to over $100,000 (Section 246, Attachment E). Exceptions are specified and disclosure of the following financial information is not required:

(1) spouses living separate and apart from the public official or public employee;

(2) a former spouse;

(3) a seasonal or special occasion gift exchanged between family members or family friends;

(4) a campaign contribution (eliminates duplication of campaign finance law disclosure requirements);

(5) a gift of a nonpecuniary occasional nature that is not substantial in value;

(6) an award presented at a public ceremony in recognition of the civic, governmental, cultural, charitable, or religious activities of a public official, public employee, or immediate family member; and

(7) income received by a dependent child from a trust established for that child by a family member.

Common Cause

In September 1989, Common Cause published a special report entitled *Conflict of Interest Legislation in the States*. In the review of the ethics codes in each of the fifty states, they found that "a sound conflict-of-interest statute is

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[23] *Ibid.*, p. 24.

[24] *Ibid.*

vital to comprehensive reform."[25] Four key elements were identified as essential components of an effective statute:

(1) personal financial disclosure requirements;

(2) prohibitions on abuse of public office for personal financial gain;

(3) prohibitions on conflicts of interest and standards of conduct to prevent and avoid them; and

(4) the establishment of an independent, nonpartisan commission to administer the law with investigatory and civil enforcement powers.[26]

In considering the specific scope of personal disclosure statements, special attention must be paid to the constitutional question of balancing "the public's right to know versus the public official's right to privacy."[27] Virtually all state courts have upheld the constitutionality of financial disclosure. Most state courts have reached conclusions similar to those of the Supreme Court of Washington decision in the case of *Fritz v. Gorton*, 517 P.2d 911, 925 (1974). In this case, the court held

> The right of the electorate to know most certainly is no less fundamental than the right of privacy. When the right of the people to be informed does not intrude upon intimate personal matters which are unrelated to fitness for public office, the candidate or officeholder may not complain that his own privacy is paramount to the interests of the people.[28]

Section 5 of the Common Cause model ethics law outlines a proposal for financial disclosure guidelines that take into account this delicate balance between the public's right to know and a public official's right to privacy. The complete text of this model ethics code is found in Attachment F. The Common Cause proposal suggests that "all candidates for public office, high-level officials, and their spouses and dependent children must disclose their financial interests

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[25]Common Cause, *Conflict of Interest Legislation in the States*, September 1989, p. 6.

[26]*Ibid.*, pp. 6-7.

[27]*Ibid.*, p.10.

[28]*Ibid.*

according to a system of category amounts."[29] It explains that this type of disclosure has become "an accepted foundation of sound ethics laws across the country" and cites statutes in which "the legislators of forty states and the state-wide elected officials of thirty-six states currently must disclose their personal financial interests."[30] In evaluating the personal disclosure requirements of these various states, Common Cause warns that "simply requiring candidates, officials and employees to file financial disclosure reports is not enough. To be effective, financial disclosure must be public."[31]

National Municipal League

Sections 11 through 20 of the NML model code regulate conflicts of interest and Sections 9 and 10 deal with financial disclosures. A complete text of this proposal is found in Attachment G. The stated purpose for specified conflict-of-interest provisions is to "prevent public officials and employees from gaining financial profit from their official actions (other than government salaries), or from helping family or friends to profit unfairly because of inside information or preferential treatment."[32] The purpose of financial disclosure laws is "to make available sufficient relevant information to allow citizens to judge whether officials are acting in the public interest or tending too much to favor personal interests."[33]

Commentary of the NML report explains that "having a conflict of interest is not, in and of itself, evil, wrong or even unusual. Conflicts may be ethnic, cultural, emotional, nostalgic, regional, financial or philosophical." Likewise, "it is not the purpose of financial disclosure laws to give the public a chance to pry into every private detail of an official's life, right down to valuations on jewelry, silver, antiques and art."[34]

The definition section of the model code extends conflict-of-interest and financial disclosure requirements beyond one's immediate family [Section 3 (e)]. The term "member of household" is used and defined as

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[29]Common Cause, *Ethics Law*, p. 40.

[30]*Ibid.*, pp. 8 and 40.

[31]*Ibid.*, p. 9.

[32]NML, *op cit.*, p. x.

[33]*Ibid.*

[34]*Ibid.*

(i) a person who is another person's spouse, child, ward, parent or other relative, or the child, ward, parent or other relative of such person's spouse, and who shares such other person's legal residence; or

(ii) a person who is another person's spouse, child, ward, parent or other relative of such person's spouse, and over whose financial affairs and holdings such other person has legal or actual control, whether or not they share a legal residence.

This definition includes "individuals whose financial affairs are likely to be best know to the official and who, because of ties of blood or affection the official is most likely to want to benefit financially."[35]

Whereas conflict of interest provisions apply to all state officials and employees, financial disclosure requirements apply only to state officials. A state official is defined as

> an elected office holder in the legislative and executive branches of state government, or a member of any state board, commission, agency, bureau, department or any other part of state government who is appointed by any elected state official or by the legislature, except a member of the judiciary . . . [or] a member of any commission which is solely advisory in nature and which has no authority to make binding decisions, to enter into contracts or to make expenditures. . .[36]

State employee is defined to include

> all persons who, by reason of their work for the government, gain contacts and inside knowledge which, because of their position, may be abused or used in a manner to benefit themselves or others. The definition includes not only persons who stand in formal employment relationship, but also persons who may be regarded as independent contractors.[37]

The rationale for limiting financial disclosures to only state officials is based on the premise that "over-inclusiveness may become burdensome to the Commission in that the mass of filing may obscure violations rather than reveal

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[35]*Ibid.*, p. 3.

[36]*Ibid.*, Section 3 (g), p. 4.

[37]*Ibid.*, Section 3 (f), commentary.

them."[38] States, however, are "urged to consider including some state employees in disclosure requirements. . . [but] to limit inclusion to employees who are actually in a position to benefit from their own interests."[39]

Alaska Statutes

Legislative standards of conduct are detailed in AS 24.60. Conflicts of interest are specified in AS 24.60.030 (attachment H). A conflict of interest generally exists when a public office is used for private advancement or gain. If a conflict of interest arises, AS 24.60.110 requires a legislator to either

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

The Alaska Executive Branch Ethics Act (AS 39.52) regulates public officers and employees in the executive branch. As it relates to this section, a public official is defined in AS 39.50.200(8) as

> a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division, a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, the executive director of the Alaska Tourism Marketing Council, and each appointed or elected municipal officer.

Financial disclosure requirements are covered under AS 39.50. Within 30 days of taking office as a public official or declaration of candidacy, public officials and candidates for public office are required to file statements with

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[38] *Ibid.*, p. 15.

[39] *Ibid.*

the Alaska Public Offices Commission giving income sources and business interests. All financial disclosure statements filed under this chapter are public records.[40]

Josephson's Proposal

Conflict-of-interest and personal disclosure requirements are covered in Article 2 of the proposed CSSB 415 (Leg. Ethics). According to a review of this proposal by John Gaguine, counsel for the Legislative Affairs agency, conduct described in the following sections is already covered under Title 11 (criminal penalties) of the Alaska Statutes:

24.61.110. Improper benefit from performance of public duties.

24.61.130. Misuse of state property and resources for private gain or personal advantage.

24.61.140. Misuse of state property and resources for political purposes.

24.61.180. Misuse of title of prestige of office for private gain or personal advantage.

24.61.230. Improper coercion.

24.61.340. Restricted transactions: interest in state contracts or leases.

24.61.345. Participation in general statewide programs permissible.

24.61.350. Restricted transactions: gratuities.

24.61.380. Improper influence with the independent judgement of others on behalf of constituents.

24.61.450. Duty toward colleagues and subordinates.[41]

Many of Josephson's general proposals that are not already covered by Alaska Statutes, have a precedence in other states or model ethics codes. Some of the

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[40]AS 39,50.020, Alaska Statutes Supplement, pp. 41-42.

[41]John B. Gaguine, legislative counsel, Legislative Affairs Agency, State of Alaska, Memorandum to Senator Pat Pourchot, chair, Joint Committee on the Legislative Ethics Act, April 30, 1990, pp. 2-3.

specific provisions regarding definitions of scope and responsibility, however, are apparently unprecedented.

POST-EMPLOYMENT RESTRICTIONS

Twenty-nine states have statutes restricting post-employment of government officials or employees. Attachment I is a listing of these and other substantive restraints by state. Three provisions are commonly found in post-employment or "revolving door" statutes:

(1) a former employee or official is banned from making an appearance before his or her former agency, usually for one year;

(2) a former employee or official is prohibited from becoming involved in matters in which he or she participated personally and substantially as a state employee, sometimes permanently and sometimes for one year; and

(3) a former employee or official is permanently prohibited from disclosing or using confidential information for personal gain, which he or she obtained as an employee.[42]

Legislative Branch Restrictions

The same employees and public officials that are covered under conflict-of-interest provisions are not necessarily the same as those covered by post-employment restrictions. For example, the code of ethics for Connecticut and Wisconsin apply conflict-of-interest restrictions on legislative branch public officials and employees but exempts them from post-employment restrictions. Similarly, the State of California considered including legislative employees in the revised ethics codes dealing with post-employment but decided to exempt them because "they are 'at will' employees and therefore not afforded the same protection as executive branch employees."[43]

Ethics codes that do include legislative branch officials and employees typically apply post-employment restrictions only to "top full-time decision makers" or "senior employees." Ethics codes for the city of Los Angeles and the federal government are two such examples.

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[42]Schultz, *op cit.*, p. 4.

[43]Charlene Simmons, chief staffer, Senate Select Committee on Ethics, telephone conversation April 23, 1990, TEL: (916) 324-8234.

Los Angeles, California

The intent of the Los Angeles ethics codes regarding post-employment restrictions is "to impose limits on the unfair advantages which may come with switching sides. It is not to discourage talented people from entering government, or to penalize them when they leave."[44] The Los Angeles code of ethics places both permanent and temporary restrictions on the post-employment of city officials and employees.

A permanent ban on lobbying and advocacy is placed upon all former city employees with regard to particular matters in which they were personally and substantially involved. "Personal and substantial involvement" includes "involvement through decision, approval, disapproval, recommendation, the rendering of advice, or investigation."[45] The ban only applies for as long as the matter does. The commission extended the ban to include self-representation in order "to preclude the possibility that by acquiring a small equity interest, a former employee can evade the revolving door restrictions."[46]

Temporary post-employment restrictions place a one-year ban on lobbying any city department by all elected officials and top, full-time decision-makers upon leaving city government. "Top full-time decision-makers" are defined as "those men and women whose influence and power is pervasive, such as the Deputy Mayor and the Chief Administrator."[47] The commission recognized that only elected officials and top decision-makers have citywide influence. "Lower-level decision-makers" therefore were not included in the general ban but are subject to a one-year ban on lobbying their own department. All officials and employees are also forbidden to negotiate for employment with individuals or companies that have particular matters in front of them.

Federal Government

Title One of the *Ethics Reform Act of 1989* (PL 101-194) establishes post-employment restrictions on the executive and legislative branches. Table 4 is a summary of federal post-employment restrictions as they apply to legislative members and staff (18 USC § 207). The purpose of post-employment restrictions is to prevent former members and employees from abusing their influence and

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[44] *Ethics & Excellence in Government*, p. 39.

[45] *Ibid.*, p. 40.

[46] *Ibid.*

[47] *Ibid.*, p. iii.

knowledge of confidential information to protect the public confidence in the integrity and process of government.[48]

The President's Commission on Federal Ethics Law Reform warned that the definition and scope of post-employment restrictions need to be clear, identifiable and specific if they are to be constitutionally sound and not act as a deterrent to qualified persons from entering or remaining in government service. In explaining their proposals for post-government restrictions, the commission added that,

> We cannot over-emphasize the care that must be exercised in drafting such a prohibition. A vague or overbroad restriction might impermissibly chill the exercise of First Amendment rights. The intent of the prohibition is protection, not repression.[49]

Post-employment restrictions are limited to members and "Senior Employees" (employees paid at or above the GS 17 rate, $78,200 for 1990). The commission considered extending post-employment restrictions to persons paid at the GS 16 rate or above but rejected this idea because it would be "highly detrimental to the efforts of the government to attract able personnel. Indeed, it could cause an immediate exodus of current employees."[50] Commission records show that

> Employees at that level have neither the status nor the political clout to improperly trade on their government service. Their inclusion in the law can only chill employment options and discourage qualified people from seeking government service.[51]

Particular concern over the ability to attract individuals with scientific or technological skills was also noted. In particular, overly broad restrictions against aiding or advising were viewed with extreme caution because of the potential for prohibiting the healthy attributes of the so-called "revolving door."

> With regard to the release of sensitive information, we have noted that the exchange of information between the government and private sectors can be, and often is, advantageous to both sides. In particular, a former employee's understanding of how an agency works on a day-to-day basis can be a valuable tool for the private sector employer who desires to do business with the government.

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[48]President's Commission, *op cit.*, p. 63.

[49]*Ibid.*, p. 64.

[50]*Ibid.*, p. 59.

[51]*Ibid.*

> Concomitantly, this knowledge saves government resources that would otherwise be necessary to assist the individual or firm in working through the government bureaucracy. The adoption of a general prohibition against aiding or advising would virtually eliminate all communications, including those that would be helpful to both the government and private employer. As such, we concluded that the addition of a general bar on aiding and advising would not be appropriate.[52]

The commission also noted that

> the flow of individuals between private life and occasional government service is a source of invigoration to both sectors, and provides a valuable exchange of information about the workings of government which improves the understanding of each sector about the other. Our system of government in a sense mandates a substantial amount of "revolving door" activity every four or eight years.[53]

Model Ethics Codes

COGEL

Section 240 of the COGEL Model Laws details the post-employment restrictions of former officers and employees. A copy of these provisions are found in Attachment E. In general, they prevent an officer or employee of state government from negotiating for employment, assisting or representing a non-governmental entity with whom they "participated personally and substantially as a member, officer, or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while employed or serving."[54] These post-employment restrictions apply to former members of the state legislature and "senior staff." Senior legislative staff are those persons employed as a staff director for a member, committee or the leadership. Their level of responsibility and decision-making authority is thought to be at least equivalent to deputy directors or division chiefs of departments and agencies.[55]

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[52]*Ibid.*, p. 67.

[53]*Ibid.*, p. 53.

[54]COGEL, *Model Laws*, p. 44 (Section 240).

[55]*Ibid.*, p. 45 [Section 240.01 (f)].

Common Cause

Chapter 4, Section 8 of the CC Model Ethics Law outlines a three-tiered system of post-employment restrictions (Attachment F).

The first level permanently bans former officials and employees from representing nongovernmental interests before their former agencies of employment in specific matters in which the former official was personally and substantially involved. Legislators are exempted from this section since the matters they consider rarely involve specific parties.

The second level places a two- or three- year ban on former state officials from representing, aiding or advising nongovernment interests before their former agency on particular matters involving specific parties for which they were more generally responsible.

Legislators are exempted from first- and second-level restrictions because their "broad responsibilities do not lend themselves to restrictions on particular matters involving specific parties."[56]

The third level of post-government restrictions ban, for one year, "top-level" officials, including legislators, from lobbying any state agency on any matter after leaving public service. "Second-tier" officials are also subject to a one-year lobbying ban, but they are prohibited only from lobbying the agency of their former employment. Top-level officials in the legislative branch include elected officials and "the high-level aides supporting them." Second-tier officials are defined as

> (1) the head of each division, bureau, or other major administrative unit within such state agency and persons exercising similar authority;
>
> (2) any person whose salary equals or exceeds that of the state employee classified in state statute and who reports directly to said executive or administrative head; or
>
> (3) any other persons occupying positions involving a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or the execution of other public

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[56]Common Cause, *Ethics Law*, p. 15.

trusts, including appointees to boards and commissions, so determined by a majority of the ethics commission.[57]

Employees who do not fit under either category are not restricted in their post-employment activities.

The intent of these "revolving door" restrictions is "to prevent former state employees and officials from using their past friendships and associations within government to derive unfair advantage for themselves or others."[58] Restrictions apply only when a person leaves government service for private sector employment.

National Municipal League

Section 20 of the NML model state ethics law places a two-year post-employment restriction on state officials and employees from assisting or appearing on behalf of any other person or business in connection with any transaction that they had previously had any direct connection. This restriction is also extended to "any business or person associated with such business in which the former state official or state employee is a partner or member or in a professional corporation, a shareholder."[59] The two-year restriction begins after the end of a term of office or termination of one's state service.

The accompanying commentary warns that the range of prohibitions should be defined narrowly so as not to discourage highly qualified professionals from entering government service by limiting their future employment opportunities, or infringing on the constitutional rights of present state officials and employees. The NML example seeks to "resolve these competing considerations by drawing a balance which results in reasonable limits."[60] The text of this section is found in Attachment G.

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[57] *Ibid.*, Chapter I, Sections 12.5, 12.6 and 12.7, Appendix p. 5.

[58] *Ibid.*, pp. 37-38.

[59] NML, *Model Law*, p. 33-34.

[60] *Ibid.*

Alaska Post-Employment Restrictions

Executive Branch

Two specific provisions of the Alaska Executive Branch Ethics Act (AS 39.52) restrict the actions of executive branch employees after leaving government service. One provision places a two-year, post-employment prohibition on public officers from lobbying, for compensation, their former agencies on matters that they participated in personally and substantially. AS 39.52.180 (a) states that

> A public officer who leaves state service may not, for two years after leaving state service represent, advise or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action.

Another statute prohibits former public officers from disclosing confidential information. AS 39,52.140 states that

> (a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.
>
> (b) A current or former public officer may not disclose or use, with out appropriate authorization, information acquired in the course of official duties that is confidential by law. (§ 1 ch 87 SLA 1986)

In both of these statutes, the specific term "public officer" is used instead of the term "public employee." AS 39.52.960 (21) defines public officer as "(A) a public employee; and (B) a member of a board or commission." AS 39.52.960 (20) defines public employee as "a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service."

Legislative Branch

Post-employment restrictions on legislators and legislative employees are not specifically defined in Title 24 (Legislature) of the Alaska Statutes. Title 11 (Criminal Law) provisions prohibiting the misuse of confidential information do, however, apply to former legislators and legislative employees. AS 11.56.860 states

(a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Josephson's Proposed Post-Employment Restrictions

Post-Employment Lobbying

Section 24.61.190 of CSSB 415 (Leg. Ethics) proposes a one-year, post-employment prohibition on lobbying for both legislators and legislative assistants. Restrictions for legislators extend to lobbying before legislative and executive branches but is limited to matters which the former legislator had special oversight or budget authority. Legislative assistants, on the other hand, are prohibited only from lobbying before the legislature but the scope includes all matters regardless of whether or not a legislative assistant had any special oversight or authority while employed by the legislature.

The term "legislative assistant" is not defined in Alaska Statutes or the proposed CSSB 415 (Leg. Ethics). The Judiciary Letter of Intent for CSSB 415 (Jud), as published in Senate Journal Supplement No. 22 on April 17, 1990, p. 2 provides guidelines for constructing a definition for legislative assistant. Based on the premise that "many legislative employees expend state funds and have access to confidential information," the Letter of Intent seeks to distinguish a special category of legislative employees referred to as "legislative assistants" who "exercise, or are perceived to exercise, discretion

and judgement with respect to legislative, administrative or political actions."[61]

Post-Employment Disclosure of Nonpublic Information

Section 24.61.170 regulates the use of nonpublic information for private gain for both present and former legislators and legislative employees. A one-year prohibition is applied to former legislators and legislative employees. The end of the proscribed one-year prohibition, however, does not allow the disclosure of information made confidential by law.

The term "non-public information" is not defined by Alaska Statutes or the proposed CSSB 415 (Leg. Ethics). Current Alaska Statutes make a distinction between public and confidential information but do not provide a reference for defining nonpublic information. The Letter of Intent for CSSB 415 (Jud) suggests a definition of nonpublic information that includes

> valuable information not available to the general public which was acquired by the legislator or legislative employee by virtue of public position. For example, "inside information" about state plans or negotiating strategies, information revealed to legislative committees with the expectation that it be only used for official purposes, financial data, computer data and lists obtained during legislative service . . .[62]

I hope this information is useful to you. If you have any questions or would like additional information, please contact this agency.

Attachments

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[61]Judiciary Letter of Intent Alaska Legislative Ethics Act of 1990 Guidelines and Commentary to CSSB 415 (Judiciary), Senate Journal Supplement No. 22, April 17, 1990, p. 2.

[62]*Ibid.*, p. 15.

TABLE 1
NUMBER OF AGENCIES THAT ADMINISTER ETHICS LAWS
in the 50 States, Federal Government & District of Columbia
(Summary)*

Number of Agencies Within Each State	% of Total
1	40
2	30
3	25
5	2

Source: Council on Governmental Ethic Laws/
Council of State Governments

* See Attachment A for complete list.

Prepared by the Legislative Research Agency, May 1990 (90-317a)

TABLE 2
MEMBERSHIP OF AGENCIES THAT ADMINISTER ETHICS LAWS
in the 50 States, Federal Government & District of Columbia
(Summary)*

Number of Members	% of Total
3	10
4	5
5	34
6	15
7	15
8	8
9	5
11	1.6
12	1.6
15	1.6
18	1.6
28	1.6

Source: Council on Governmental Ethic Laws/
Council of State Governments

* See Attachment A for complete list.

Prepared by the Legislative Research Agency, May 1990 (90-317b)

TABLE 3
JURISDICTION OF AGENCIES THAT ADMINISTER ETHICS LAWS
in the 50 States, Federal Government & District of Columbia
(Summary)*

Jurisdiction	% of Total
Campaign only	29
Campaign & Ethics--Separate	38
Campaign & Ethics-Combined	23
Multiple Agencies with Partial Jurisdiction*	10

*Some states have agencies which regulate both campaigns and ethics as well as some which regulate only a specific aspect of either campaigns or ethics.

Source: Council on Governmental Ethics Laws/
Council of State Governments

* See Attachment A for complete list.

Prepared by the Legislative Research Agency, May 1990 (90-317c).

TABLE 4

Post Employment Restrictions in 18 USC 207(e)

Members	1 year ban on "lobbying" the legislative branch
Employees paid at or above the GS 17 rate for 60 days who serve on:	
Personal Staff	1 year ban on "lobbying" personal staff or the Member
Committee	1 year ban on lobbying Members and employees who are currently on the Committee and Members who were on Committee within one year prior to the employee's termination
Leadership Staff	1 year ban on lobbying any Member or employee of the majority or minority leadership
Other Legislative Offices	1 year ban on lobbying the legislative office which they left
<u>ALL Members, Officers, and Employees paid at or above the GS 17 rate</u>	1 year ban on representing a foreign entity before the U.S. government and aiding or advising a foreign entity with the intent to influence the U.S. Government
<u>All Members, Officers and Employees</u>, who personally and substantially participate in trade or treaty negotiations	1 year ban on using confidential information to aid or assist anyone regarding that continuing negotiation

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3500

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 3, 1990

SUBJECT: Susan Burke's constitutional questions re CSSB 415 (Leg. Ethics)

TO: Senator Pat Pourchot

FROM: John B. Gaguine JBG
Legislative Counsel

You have asked me for my opinions on the constitutional questions raised by Susan Burke in her testimony this morning on the ethics bill. Here is a brief response.

1. Separation of powers regarding appointment of members. Tam Cook of this office sent you a memorandum on this exact subject recently, in which she concluded that the provisions of the ethics bill on appointment of members to the ethics commission did not raise separation-of-powers problems. I am enclosing a copy of that memorandum, with which I am in agreement. I believe that the court decisions to which Ms. Burke referred are those relating to giving executive functions to legislative employees, such as the U.S. Supreme Court decision that invalidated the Gramm-Rudman provision giving the Comptroller General (a Congressional employee) the power to trigger the automatic budget cuts.

2. Sanctions against former legislators and employees. I agree with Ms. Burke that the Legislative Ethics Commission probably is without power to impose sanction on former legislative employees, and that the legislature also probably lacks the power to impose sanctions against former legislators. However, I believe that the legislature, as part of its broad investigatory powers, could at least look into a complaint, and could issue a report on the complaint, even if it could not impose sanctions. I must express two caveats, however. First, under numerous decisions of the U.S. Supreme Court, the investigation has to in some way give rise to the possibility of a legislative enactment or be properly related to the legislature's oversight functions;

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ALASKA LEGISLATIVE ETHICS ACT OF 1990
Guidelines and Commentary
(CSSB 415 (Leg. Ethics), 5/2/90)

Article 1. Legislative Findings and Ethical Principles

GENERAL

1. Structure. This Alaska Legislative Ethics Act (ALEA) has three major components:

(a) Ethical Principles and Standards of Conduct -- a comprehensive declaration of the ethical principles inherent in legislative activities along with specific standards of conduct and rules of disclosure expressed in the form of legislative rules, civil laws and criminal offenses which make these obligations binding and enforceable; provisions and interpretative directives in these guidelines and commentary are an intrinsic part of this law.

(b) Legislative Ethics Commission -- an independent public commission is established to implement the Legislative Ethics Act.

(c) Continuous Mandatory Educational Program -- creates a mandatory ongoing educational program for legislators, legislative staff and lobbyists to assure that the legal requirements and ethical expectations embodied in it, as well as the principles and values that underlie them, are known and understood.

2. Types of Provisions. The Statement of Ethical Principles, Standards of Conduct & Guidelines contain three types of provisions:

(a) Legislative Rules and Directives -- the overarching principles and some specific provisions establish internal rules and directives for behavior, the violation of which may subject the violator to administrative sanctions imposed by the legislature through the processes established. They do not provide the basis for a separate civil or criminal charge.

(b) Civil Laws -- some provisions establish legal obligations that give rise to civil liability and court-ordered sanctions. Such actions may be brought by the attorney general's office or by a private citizen.

(c) Criminal Offenses -- some provisions establish criminal offenses enforceable as other criminal laws in the Alaska courts.

3. Strict Compliance is Expected. As codified in AS 24.61.920, legislators and legislative employees in civil and administrative actions will be held strictly to the provisions and spirit of the principles and standards of this act as explained and amplified in the guidelines and commentary. Except in extraordinary circumstances, persons will not be permitted to assert a lack of knowledge or understanding as a defense to a charge of misconduct.

(a) Obligation to Know Duties. While some of the provisions of this code are detailed and complex, it is essential that each legislator, legislative employee and lobbyist accept and fulfill a personal obligation to know and understand its requirements. Extensive educational and training opportunities are provided through the legislative ethics commission to assist them. It is not only unseemly, it is publicly unacceptable when those who are intimately involved in the lawmaking process claim ignorance of the law or assert that violations were mere "technicalities" or mistakes.

(b) Extraordinary Circumstances. The presumption that those covered by this code know and understand its provisions is a strong one but it may be rebutted in exceptional circumstances where the person charged demonstrates that it would be unreasonable to hold him or her to strict knowledge. For example, changes in the law, errors in officially published educational materials or other special circumstances may justify a defense based on a mistake or asserted ignorance of law.

4. Application Depends on Duties Rather Than Salary Status. Most of the provisions of this chapter apply to all employees involved in some substantive way with the legislative process,

regardless of salary or duties (see definitions at AS 24.61.990 (13), (14)). The time of public employees is a state resource which should only be used for proper public purposes. Moreover, many legislative employees expend state funds and have access to confidential information. The most serious restrictions and disclosure requirements, however, only apply to legislative employees who exercise, or are perceived to exercise, discretion and judgment with respect to legislative, administrative or political actions. These individuals are referred to as legislative assistants. The purposes of the chapter should not be circumvented by legalistic arrangements which change the category of a person who otherwise would, and should, be subject to its provisions. Thus, the controlling factors are related to the function employees or agents perform and the amount of discretionary authority they possess, rather than their salary or technical status as full-time or part-time employee, independent contractor or consultant.

STATEMENT OF PRINCIPLES

AS 24.61.020. PREAMBLE. The eight principles stated in AS 24.61.025 -- AS 24.61.060 articulate the theoretical and moral foundation for the standards of conduct. They represent the spirit of the Legislative Ethics Act. They set forth a positive dimension of the ethical obligations of public service in order to make clear that the objective of these rules and regulations is to raise the issue of government ethics to a higher plane. The overarching principles are an integral part of each provision of the standards of conduct and they infuse individual rules with ethical purpose in a way that precludes narrow legalistic approaches leading to the conclusion that if an act is technically legal it is ethical, or that it is proper if it is not clearly prohibited. They direct legislators, legislative employees and lobbyists to follow the ethical high road, not simply to avoid punishment but to advance the grand, noble and important principles of democracy and public service.

AS 24.61.025. PRINCIPLE OF GOOD FAITH. The goals of the Legislative Ethics Act cannot be attained unless its provisions are construed and enforced in good faith. The standards of conduct, like other written regulations, are vulnerable to an endless array of evasion strategies. Unduly narrow or legalistic constructions of specific provisions, strained and insincere interpretation of facts and willful blindness to the real motives behind an act undermine the clear purpose of an ethics code and denigrate the spirit this Act. Under the principle of good faith, deliberate bad faith circumvention of these standards is itself a violation of the ethical obligations of public service and may be the basis for administrative sanction.

AS 24.61.030. PRINCIPLE OF NONPARTISANSHIP. If these standards are to rise above politics, they must be applied objectively, on the merits, without regard to party, regional or ideological partisanship.

(a) Highest Duty. The highest duty of legislators and legislative employees is to uphold the integrity of the legislature, regardless of narrow political considerations. Though partisan politics based on party, region and ideology are an integral and often constructive part of the American political structure, it is essential that the ethical responsibilities arising from these standards of conduct -- including consideration of a complaint, imposition of sanctions, appointment of members of the Legislative Ethics commission and appropriation of the commission's budget -- be unfailingly treated as nonpartisan, public interest issues of great importance.

(b) Playing Politics With Ethics. The ethical quality of democracy and the integrity and stature of the legislature are inherently nonpartisan issues. Playing politics with ethics issues creates two very significant harms. First, it undermines the effectiveness and moral authority of the ethical rules themselves. Second, the elevation of politics over ethics is invariably perceived by the public and the

press in a way that dramatically increases public cynicism and disrespect for the legislature -- the very things these standards are designed to prevent. Thus, it is a violation of this provision for a legislator or a legislative employee to bring an ethics complaint for political reasons or to seek to influence any action under this chapter based on an appeal to political partisanship.

(c) Need for Long Term Perspective. Unfortunately, it is often difficult to maintain a nonpolitical, nonpartisan perspective in the context of competitive politics. The disposition of ethics-based charges may have profound political implications, not only on the careers of the persons directly involved, but often for political parties and other individuals vying for power. Ethics issues are often raised for political motives and it takes great restraint and a powerful long term public perspective to separate the motives of a charge from the merits of it. While the political dimension of legislative actions regarding matters of ethics may never be entirely removed, with discipline and commitment to principle, it can be consciously subordinated to a broader view of the legislator's role and of the public interest.

AS 24.61.035. PRINCIPLES OF PUBLIC TRUST. There are two separate dimensions to the obligation to ensure public trust: 1) avoiding actual wrongdoing -- violating laws, legislative rules or doing any other act which involves dishonesty, a lack of integrity, or disregard for ethical standards; and 2) avoiding the appearance of wrongdoing -- engaging in conduct which is likely to generate cynical attitudes and suspicions about government and the people who administer it.

(a) Importance of Perceptions. The concept of trust is as much a creature of perceptions and beliefs as it is of reality. Thus, conduct which a person knows or reasonably should know is likely to create in the minds of reasonable objective observers the perception that government office has been or may be used improperly, violates the obligation

to safeguard public trust even if the conduct does not actually misuse public office.

(b) Reasonable Person Standard. The standard to determine whether something is improper is not set by the most suspicious and cynical members of society who are predisposed to assume bad faith or corrupt motive. The standard is whether reasonable, objective and fair-minded citizens find the conduct improper. In applying this test, however, it is important to remember that such citizens will make their judgments with no special knowledge of the facts or private intentions of the parties.

(c) Responsibility to Act. It is not always right to avoid an act simply because it will look wrong. The ethical obligation to avoid the appearance of impropriety should not be used as an excuse for inaction where, on balance, the action is proper. Excess timidity in the face of possible criticism is no more justifiable than callous disregard for improper appearances. In some cases, legislators should be willing to confront criticisms and endure unfair denunciations, choosing to explain and justify their behavior rather than alter their conduct to suit the cynical perceptions of a misinformed press or public.

(d) Avoiding Bad Decisions. A balance must be found between the need to preserve public confidence by avoiding appearances of impropriety and the responsibility to make sound decisions on the merits. The requirement that legislators avoid even the appearance of impropriety can sometimes undermine the public interest and cause bad decisions. For example, it may lead to discrimination against friends or political supporters simply because a transaction may look bad to the public. Sensitivity, thoughtful discrimination and restraint is important in this area. But if a friend or political supporter is clearly the best qualified person available to perform a needed public task, it is unfair and unwise to automatically and invariably disqualify

them.

(e) Accountability. Occasionally, a conscientious legislator or legislative employee will decide to override the appearance of impropriety test in order to do what he or she thinks is "right" under the circumstances. In such cases, there is a responsibility to reduce the harm to public trust by taking affirmative steps to assure that all facts relevant to the choice are made public and that the process of decision making is open to and can withstand close scrutiny.

AS 24.61.040. PRINCIPLES OF PUBLIC INTEREST.

(a) Purpose of Government. Subsection (a) establishes one of the most fundamental principles of public service ethics -- pursuit of public interest. The purpose of state government is to advance the public interest by assuring justice, providing educational opportunities, protecting health and the environment, securing public safety, creating economic stability and development, and safeguarding the liberties and rights of the people, among other things. Legislative office and authority should be used only to pursue these and similar public interests. The duty to only use public office in pursuit of the overall public interest is a positive one. Although it precludes using government position for private gain, it also precludes use of public resources, power or prestige for any nonpublic purpose, even if the actor does not personally benefit.

(b) Principle Over Expediency. Subsection (b) precludes unlawful conduct or improper use of office to achieve a "greater good" on the theory that the end justifies the means. In a democracy, the primacy of state and federal constitutions require that each public servant's vision of the public interest be pursued only through lawful processes which acknowledge and respect the separation of powers among government branches and the role of other public officials

in the formation and implementation of public policy.

(c) Determining the Public Interest. Subsection (c) is designed to provide guidance to legislators and legislative employees who must often unravel conflicting loyalties and duties. It uses the term "should" rather than "shall" because the principles stated in this provision are not amenable to uniform interpretation or enforcement. Still, the principles and rationales stated in this provision and the following commentary are deeply rooted in democratic political philosophy, and they are important. Legislators are accountable to a complex network of competing loyalty obligations -- to country, state, community, constituency groups, political supporters, colleagues, subordinates, family and self. In many political situations, these loyalties conflict. What is best for the country or state may not be good for a particular community; what is good for an individual constituent or interest group may not be in the best interest of other constituents or interest groups; and the highest public interest may conflict with personal career ambitions. Inevitably, legislators must resolve conflicting interests by ranking their loyalty obligations. Though decisions have to be made on a case-by-case basis, the principle of public service generally requires elected officials to pursue the greatest long term good for the greatest number by placing larger, broader interests over smaller, narrower ones: country over state, state over community, community over individuals, and principle over party.

(d) Representative and Administrative Duties of Legislators. A major duty of state legislators is to pursue laws and policies which improve the social and economic conditions of their districts. They are also expected to represent the views and advocate the interests of their constituents and, as an aspect of this responsibility, they often perform an ombudsman function by assisting constituents in their relationships with government to assure

that they are treated fairly and efficiently. In addition to these representative responsibilities, however, all elected officials have policy and law-making obligations which impose a duty to use independent objective judgment to pursue the overall public good. In exercising these responsibilities -- allocating public funds and formulating public policies relating to pressing social issues such as the environment, education, health and safety -- they should transcend their role as advocates of narrow constituent interests. They should perform a role closer to that of a neutral administrator or judge, evaluating information objectively and deciding what is best for the public as a whole.

(e) Conflicts in Constituent and Public Interests. Representation of specific constituent interests usually raises no substantial conflict with public interests. But when it does, the dilemma generally should be resolved in favor of the wider public interest in spite of political risks. For example, the public interest may require taxes that individuals do not want to pay, especially for programs with low constituency support but high public importance (for example, correctional facilities, waste disposal sites, providing aid to homeless or otherwise impoverished but politically powerless groups). Similarly, the public interest may require budget cuts and the elimination of government facilities, public works projects or jobs though the cost of such measures will be felt disproportionately in the districts most directly affected. When decisions about programs and expenditures are controlled by the desire to steer money and jobs to particular districts, the quality and efficiency of government programs inevitably are compromised. This type of decision making is especially dangerous when public health or safety are involved. It also contributes to the cynical impression that political decision makers are more concerned about their political careers than the public

good. It is said that a politician thinks of the next election, a statesman thinks of the next generation. Politicians who consider staying in office a moral imperative will be unwilling or unable to take such risks. Those who view their role more broadly, however, will see it as their obligation to do so.

(f) Loyalty Conflicts Within Organizations. A common loyalty conflict arises where the interests of an organization are inconsistent with those of individuals within the organization. The problem gets even more complicated when loyalty to a particular person within the organization conflicts with loyalty obligations to others. Under the principles of public interest, the responsibility of office generally demands the placing of institutional interests above individual loyalties though decisions which advance the institution at the cost of individuals should be made and executed with compassion, sensitivity and respect.

AS 24.61.045. PRINCIPLES OF ACCOUNTABILITY. There are several dimensions to accountability: 1) citizens must have the information they need about the actions of their representatives and the legislature as a whole so they can meet their personal responsibilities as citizens to participate as informed voters; 2) constituents are entitled to have specific information about the conduct of their own representatives so they can hold those representatives accountable for them both in discussions and at the polls; and 3) government officials who delegate authority have a responsibility to assure that those to whom power has been assigned use it properly and efficiently.

(a) Individual Citizens Are Personally Accountable. In a democracy every citizen is a public servant. Bottom line responsibility for government rests with the people. As a result, those who perform government functions do so as representatives on behalf of the citizenry. Legislators have the special duty to educate their constituents about the major issues of government so that they use their franchise

to vote intelligently.

(b) Representatives Are Accountable to Citizens. A separate aspect of accountability concerns the public official's responsibility to employ public authority openly, to state important policy positions and beliefs candidly and publicly, and to assure that their own official conduct and that of other government officials is subject to public scrutiny. Citizens have the obligation to hold their representatives accountable both in public dialogue and at the ballot box. Elected representatives have a corollary obligation to act in a way that allows the public to hold them accountable. See also AS 24.61.430.

(c) Representatives Must Hold Their Agents Accountable. Each public servant is government is responsible to strive to make government as open, efficient, equitable and honorable as possible. In pursuing this responsibility, they must exercise proper oversight with regard to delegated functions. See also AS 24.61.430.

(d) Affirmative Duty to Improve System. This affirmative duty arising from the principle of accountability is not intended to be enforced or to provide the basis of any charge or sanction. It does, however, state an important ethical obligation of those who serve the legislature, especially staff members who might otherwise believe that the fairness and efficiency of government is not necessarily their responsibility. Legislators and legislative employees should take whatever actions they can to correct problems, streamline procedures and improve services. Where desirable changes exceed authority, public servants should promptly and forcefully recommend reform to the appropriate person or body. There is a tendency in all organizations to define one's responsibilities narrowly, fostering an "it's-not-my-job" mentality with respect to defects in policy or implementation. It is every public servant's job to see that the government serves the people well by assuring that it is responsive, respectful, efficient, economical and fair.

(e) Self-Policing. Public servants are often in the best position to observe and take actions against unlawful and unethical uses of public position, authority and resources. In fact, many such uses could not occur without the active involvement or, at least, the acquiescence of colleagues and subordinates. The principles of public trust and accountability combine to place a special obligation on persons in public office to refuse to cooperate, to actively discourage, and if necessary to prevent improper conduct, to report violations of both law and ethical standards. It is important to establish an atmosphere in government where potential wrongdoers undertake very high risk in seeking to misuse government office. This occurs when it becomes known that the pride and ethical commitment of all public servants impels them to police their own profession. The person who violates the public trust, not the one who prevents or reports such violations ought to bear the brunt of disapproval from the public and government colleagues.

AS 24.61.050. PRINCIPLE OF REPRESENTATIVE DEMOCRACY.

(a) Legitimate and Illegitimate Tactics It is sometimes very difficult to distinguish legitimate political tactics to advance public policy positions from illegitimate ones. An illegitimate tactic is one that tends to disregard any of the overarching ethical principles of public service and places ends over means. The essence of representative democracy is "means." In other words, the procedures for setting policies and resolving disputes established by the federal and state constitutions and by other duly enacted laws is all that sets a republic apart from a dictatorship. The notion that this is a nation of laws, not of men, cautions us remember that even well-meaning persons who seek only their vision of the public good, must defer to democratic due process.

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(b) Principles of Representative Democracy. This provision is likely to seem naive to some who believe that "all is fair in love and politics" but this is, after all, a statement of ethical principles. The fact is, that notwithstanding various "might makes right" power theories, the ideals of democracy are clear -- one person, one vote; the majority rules but never in a way that tramples the rights of the minority; matters of import should be decided on their merits after full and open debate, not on the basis of power politics which smelches dissent and coerces compliance. Though it is unlikely that a provable violation of this provision will arise conduct which is inconsistent with this representative democracy standard is serious in spite of contrary customs traditions and political rationalizations.

(c) Abiding by the Spirit as Well as the letter of the Law. Legislators and legislative employees should not engage in artifices and schemes to exploit loopholes or ambiguities in the law in a way that undermines their spirit and purpose. When public servants seek to circumvent the spirit or purpose of laws they tend to undermine the public's confidence in government and diminish the public's commitment to civic responsibility by legitimizing self-interested evasions of public policy.

(d) Fairness in the Use of Procedural Rules. In using procedural rules, legislators and legislative employees should maintain the integrity, fairness and efficiency of the process by honoring the substance and spirit of the rules and by refraining from conduct which undermines the principles of representative democracy. The importance of technical procedures in the legislative and administrative process encourages legalistic manipulation to achieve political goals. While this in not inherently improper, there is a tendency to adopt an "ends-justifies-the-means" philosophy which can elevate process over substance and power over principle in a way that undermines fundamental assumptions of democratic government. The public interest is not served

when public servants engage in trickery or procedural extortion to achieve their ends. Generally, the public views parliamentary machinations with cynicism. Responsible public servants recognize that no specific political victory is worth damaging the delicate structure of democratic government. Legalistic maneuvering which creates unfair or antidemocratic results inevitably spawns ill will and draconian countermeasures. Too often political scheming becomes so prevalent that it demeans the inherent nobility of the democratic process and reduces politics to a cynical game. For example, a fundamental rule of fairness is notice. Thus, it is improper to suspend the rules or force a vote in a way that violates customary practices and expectations of fair notice and, therefore, prevents legitimate opposition from having its say.

(e) Use of Leadership Power. Legislative leaders and committee chairs should use their leadership powers only in a manner consistent with fairness, accountability and the principle of representative democracy . Within a legislative body, special powers are delegated to leaders including committee chairs. The purpose of such delegation invariably should be to improve the process so that the organization's general will can be carried out more effectively; never to provide individual legislators with almost dictatorial power to subvert or make public policy in a manner that derogates the prerogatives of the policy-making body as a whole or any other legislator. Legislative committees must sort through and prioritize an overabundance of bills, some which were probably introduced for reasons other than a full commitment to their merits. Since there are no limitations on the number or regulations concerning the quality of bills offered, the committee is empowered to screen proposed legislation to assure that the time of the members is only spent on matters which have a reasonable chance of success. Skilled committee chairs can properly use leadership power to bring factions together, to fashion compromises and to break unhealthy

gridlock situations. On the other hand, Lord Acton's admonition that "power corrupts and absolute power corrupts absolutely," applies to legislative leaders who use their position in inappropriate ways to block consideration of important issues, to bully, bribe or intimidate fellow legislators to support positions and programs favored by the leader. A legislator who controls the parliamentary process or is otherwise in a position to facilitate or prevent the consideration of an issue, has an ethical obligation to avoid any use that effectively undermines representative democracy.

(f) Improper Uses of the Power to Move or Bury a Bill. There are a number of proper reasons to move or bury a bill but there are some that are clearly improper because they violate fundamental principles of democracy, fairness, due process and the notion that government is to be run by laws not men. Thus, a legislative leader or committee chair should not prevent a measures from receiving appropriate consideration because they dislike the sponsor of the bill, to get even, or because "burying" the bill creates political advantages sought by the leader or chair. It is also improper and anti-democratic for an individual, or small group of individuals, to use their power to move or bury a bill as a means of extracting concessions or affecting the behavior of other legislators. Persons who abuse their poser in this way should be subjected to internal discipline.

(g) The Ideologically-Driven Veto. The hardest case concerns the use of leadership position to effectively veto a bill on ideological grounds. A legislator who believes that a particular bill, though sincerely offered and vigorously pursued by one or more colleagues is bad policy may have the power to prevent it from leaving a committee. Some believe this is a proper incident of democracy but it is not. Committee chairs are not chosen by any true democratic process which provides them with the legitimate power to act as an ideological filter over the entire body. Nor is the fact

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that a dozen or more committee chairs may assert similar prerogatives a justification. History is full of circumstances where one person has, through the use of committee power, effectively imposed a personal ideology on a whole legislative body in a way that stymies democracy and elevates single individuals above their colleagues. This disenfranchises individual legislators and their constituents. A democratically-committed representative must be willing to lose rather than give in to the end justifies the means rationale.

(h) Civil Disobedience. In rare cases, a legislators or legislative employees may exercise the prerogative of conscientious objection by disobeying the law. In such cases, the illegal behavior should be open and the official should be willing to bear the appropriate legal and political consequences. There is a long and revered history in this country of civil disobedience--the open and public refusal to abide by a law as a means of protest and as an impetus to change the law.

AS 24.61.055. PRINCIPLE OF RESPECTABILITY -- CONDUCT BEFITTING THE LEGISLATURE

(a) Legislators Must Not Discredit the Legislature. Legislators and legislative employees are visible leaders in society and they properly are held to high standards of personal probity. Acts which demean or discredit government or demonstrate defects in their character and judgment set a bad example and injure the reputation of the legislature. While public servants are not expected to be perfect, they should realize their special responsibilities. They should strive to conduct their professional and personal lives so as to reveal character traits, attitudes, and judgments that are worthy of honor and respect and demonstrate fitness for public office. Thus, conduct which violates this rule is independently sanctionable.

(b) Honesty and Integrity. Legislators should be scrupulously honest, avoiding any form of lying, deception, deviousness, hypocrisy and cheating in their professional and personal lives. Dishonesty by a legislator is wrong in itself but it also violates principles of public service ethics by seriously undermining the credibility of government. Technical or literal truthfulness is not all that is required; honesty precludes any deliberate deception including the raising of false inferences. Legislators and legislative employees should also reflect personal integrity in all matters, placing principle over expediency and demonstrating courage of convictions. Although it is necessary and proper for elected officials to represent the views of their constituencies it also is necessary that they have pronounced and strong personal convictions--things they stand for. Legislators should offer principled leadership.

(c) Illegal and Dishonest Conduct. Activities which are illegal but not directly related to legislative service (for example, drunk driving, drug use, tax evasion, assault, hiring prostitutes) discredit the individual and the legislature itself. Similarly, private conduct, even if legal, discredits the body if it reveals dishonesty, deviousness, or hypocrisy. All such acts by legislators or legislative employees tend to undermine public respect and confidence and, therefore, they violate the principle of respectability.

(d) Private Personal Conduct. The most difficult area of private conduct concerns legal behaviors that subject the actor and the legislature to criticism or ridicule because it violates the moral sensibilities of a significant portion of the public. The obligation of public servants to lead exemplary lives for the sake of the reputation of government in general must be balanced against a real and important right to a private life which may involve choices and behaviors that raise moral issues. Acts of adultery, homosexuality or promiscuity, for example, concern personal matters that should not be the basis of any charge or sanction under

these rules unless it is clear that the behavior bears on the fitness to serve or the ability to carry out duties. Whether or not lawful private acts which do not bear in any direct way on the responsibilities of public office are proper subjects of press disclosure and public scrutiny, they are not appropriate concerns under this Act. No separate sanction for private conduct in the "moral arena" is contemplated. Such matters should be left to the electorate.

24.61.060. PRINCIPLE OF INDEPENDENT JUDGMENT.

(a) Independent Judgment and Conflicts of Interest. The most heavily regulated area of government ethics relates to conflicts of interest, especially financial conflicts. This provision overarches the individual conflict of interest provisions in this code and states clearly the nature of the ethical obligation. Essentially, a conflict of interest exists whenever a person has personal interests which are inconsistent with professional obligations. In the case of public service, the primary obligation is to exercise independent objective judgment in the public interest and scrupulously avoid interests that are likely to impede the ability to make such judgments. In addition to the need to safeguard one's own ability to make independent objective judgments on the merits, public servants also are obligated to respect the duty of other government officials to the same. Thus, it is improper to engage in any act designed to cause another public official to violate the duty of independent judgment.

(b) Spending Taxpayer Funds. All expenditures of public funds, whether hiring employees or making purchasing or other decisions with economic impact, involve the use of public resources. Those who have the authority to spend taxpayer money are obligated to do so with scrupulous consideration of the public interest and avoid the temptations to favor family, friends or acquaintances or discriminate against personal enemies and political foes.

(c) Employment Decisions. Legislators and legislative employees should make all employment decisions on the merits, only choosing those who are well qualified. This provision expands specific anti-nepotism rules. In spite of the long tradition of patronage in American politics, public jobs should not be treated as the spoils of victory. Cronyism and patronage inevitably undermine the efficiency and integrity of government.

(d) Fair Distribution of Public Funds. A common derivative of the spoils system mentality is sometimes seen in the allocation of funds by legislative leadership so that majority party members receive substantially more staff support, office equipment, and travel budget than their minority colleagues. This form of favoritism is so traditional that its ethical implications often go unnoticed. For some, it is simply part of the "game." Ultimately, however, a disproportionate allocation of public funds may shortchange the constituents of minority members who have substantially less resources to serve their districts than their brethren on the other side of the aisle. There are many legitimate advantages that the majority may enjoy but leadership ought to make substantial efforts to assure that minority members receive a fair share of legislative resources.

Article 2. STANDARDS OF CONDUCT

AS 24.61.100. MISUSE OF OFFICE FOR PRIVATE GAIN. The obligation to use public office only in the public interest and not for private gain underlies many of the specific provisions of this code. It is impossible, however, to envision and specify all the possible ways that this principle may be violated as the range of private interests and improper motives is almost inexhaustible. This provision makes it clear that it is improper to make any use of office or position primarily to attain personal benefits, whether they are financial, social or political. This statement

of principle is somewhat broader but not inconsistent with AS 39.52.120, "Misuse of Official Position," which prohibits non-legislative public officers from using or attempting to use, an official position for personal gain or to secure or grant unwarranted benefits or treatment.

AS 24.61.110. IMPROPER BENEFIT FROM PERFORMANCE OF PUBLIC DUTIES.

(a) Benefit Need Not Affect Conduct. Legislators and legislative employees have an obligation to perform their duties diligently, promptly, efficiently and fairly. In representing constituents from their districts they have the additional responsibility to exercise oversight over administrative agencies and, in some cases, to assist constituents in a reasonable manner that does not unduly interfere with the independent judgment of administrators (see AS 24.61.380). The only lawful compensation for properly performing these services is official salary and allowances paid by the state. It is improper to seek or receive anything of value from a citizen as a reward, expression of gratitude or payment for the performance of public duties even if the benefit had no actual affect on public decisions or actions.

(b) Unsolicited Gratuities. Even unsolicited gratuities otherwise permitted under AS 24.61.350 create an appearance of impropriety when they are given to a legislator or legislative employee after or in anticipation of an official action or informal representation within the normal scope of duties. Though the recipient may not have anticipated the gift and, therefore, could not have been influenced by its prospect, a reasonable observer might believe it was a payment or reward for services rendered. Minor courtesy items such as ceramic coffee cups, a desk memento, flowers or a box of candy may be accepted, but generally, gifts ought to be returned with a polite but clear message that the gesture was unnecessary and could be construed as improper. If this is not feasible, they ought to be given to charity or otherwise handled in a way which makes it clear that the public

servant has not accepted and does not want any personal benefit for official actions.

(c) Avoiding the Appearance of Selling Access. The ability of a citizen to confer directly with a legislator is frequently referred to as access. Because of the great press of duties and demands on the legislator's time, it not always possible for a legislator to personally talk with everyone who seeks an audience or to give them all the time they would like. The legislator's time is a crucial asset which must be carefully allocated among competing demands. It is important, however, that access is not determined by the willingness or ability of the person to provide any benefit to the official whether it be in the form of a gratuity, an honorarium or even a campaign contribution (regulations dealing with improper means of acquiring political support are stated in AS 24.61.230).

(d) Duty to Reject Improper Offers. Subsection (b) concerns improper offers and the obligation to reject them. Under Alaska's criminal law, AS 11.56.100, "a person commits bribery if the person confers, offers to confer, or agrees to confer a benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise of official discretion." If the benefit conferred is accepted with the intent to use one's government position for private gain, the public servant is also guilty of bribery -- even if no act was actually performed. It is critical to recognize, therefore, that the acceptance by a legislator or legislative employee of benefits of any sort from persons who seek to influence official actions raises criminal as well as ethical issues. Although the high standard of proof and other procedural safeguards of a criminal trial make it difficult to establish the crime of bribery, the ethical obligation to avoid transactions which cast doubt on the integrity of government is not delimited by the standards of provable bribery. Legislators and legislative employees must avoid both the appearance and

the reality that public office was used for private gain. Therefore, it is improper to accept any benefit, whether in the form of compensation for services or a gratuity, from a person with a corrupt motive. It is not enough that the public servant has no intent to do anything improper or, in fact, that nothing improper is done.

AS 24.61.120. DUTY TO REPORT IMPROPER OFFERS. It is not always sufficient to turn down an improper offer of gifts or other benefits. Any attempt to unduly influence a public official warrants some action that at least educates the offeror of the impropriety and risk of such conduct. Occasionally, an improper offer is made by an unsophisticated individual who should have, but did not know any better. A polite but firm warning may be sufficient. On the other hand, improperly motivated gratuities are attempted bribes and when the source is a registered lobbyist or otherwise appears to be well aware of the significance and impropriety of the action, the matter should be handled with great seriousness. A failure to react with indignation or report improper offers to the authorities can be viewed as wrong in itself. (Imagine how would it look on the nightly news to learn that a public official was offered a bribe and he merely said, "No thank you.").

AS 24.61.130. MISUSE OF STATE PROPERTY AND RESOURCES FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.

(a) Authorized Use of Government Property to Aid Private Enterprises. Subsection (a) covers situations where a legislator or legislative employee improperly uses state property or resources for personal gain or for the gain of another. In certain cases, economic development activities authorized by law involve using state resources to assist private enterprises. This is permitted.

(b) Misuse of Government Property for Personal Gain. Subsection (a) also establishes the basic rule that state facilities, equipment and services (office space, typewriters,

word processors, telephones, postage, computer data, stationery, mailing facilities, photocopying, etc.) may not be appropriated for personal gain or advantage. Common sense and fairness requires that this provision be interpreted reasonably. Though government facilities should certainly not be used for personal purposes on a substantial, regular or ongoing basis, occasional and limited usage should be permitted so long as the conditions of subsection (a) are met. For example, interpretation of these limitations should take into account the reasonable needs and expectations of employees and permit them to make and receive occasional personal phone calls of short duration or makes an occasional personal copy on a state photocopy machine.

(c) Frequent Flyer Points. Unless otherwise provided by law or regulation, the frequent flyer points or other bonuses related to air travel paid for by the state, should be treated as the personal property of the employee. While a strong logical case can be made that the collateral benefits of state-paid travel should accrue to the state, the practical and morale problems entailed in administering such a position do not justify the small gain. The state, of course, has an interest in seeing that public resources are used economically and only spent in the public interest. Allowing public employees to personally benefit from bonuses attributed to government travel raises a potential conflict of interest as it creates an incentive for the employee to select a carrier based on private economic advantage rather than state interests. This conflict is not a major one, however, especially in Alaska where the number of carriers and flights tend to limit options. Moreover, the prohibition against using public authority or funds for personal gain would make selection of a carrier on inappropriate criteria improper. Any legislator or legislative employee who actually allows the desire to earn frequent flyer points or bonuses to influence official decisions violates this provision and is subject to sanction notwithstanding the

fact that any points earned are the property of the legislator or employee. This should provide a sufficient deterrent to protect the state's interests.

(d) Misuse of Legislative Employees for Personal Gain. Subsection (d) prohibits misuse of legislative employees whose time is and should be treated as public property which should not be misappropriated to personal use. Publicly paid employees simply must not be used as personal secretaries or private staff. Overly strict application of this provision, however, is inappropriate. For example, a legislator should be permitted to make use of staff to help organize and schedule the legislator's calendar, appointments and travel plans -- including some events of a political or private nature. Similarly, a legislator may occasionally ask a legislative employee to assist the legislator in performing personal services in unusual situations where the service permits the legislator to perform pressing official duties. For example, a legislator who is tied up in committee hearings or legislative sessions may need assistance in picking up dry cleaning or getting cash for an impending trip. And, it is not inappropriate for a legislator while working to ask an employee to order and pick up lunch or dinner. On the other hand, it is not proper for a legislative employee to regularly perform personal tasks such as making bank deposits, handling personal bills or arranging for auto repairs. Several issues are involved. In addition to the fact that such use of publicly paid staff results in an improper personal benefit, more than infrequent use of staff for personal tasks is not consistent with professional status of a legislative employee. Finally, there is the problem of the appearance of impropriety. Even if the employee is fully comfortable with the assigned tasks, the use of public employees for personal services creates an appearance of abuse of position. Both the legislator and the employee should be careful to avoid actual abuse as well as the creation of the appearance of unreasonable use of public personnel.

(e) Use of Employee's Own Time. Generally, employees do not voluntarily contribute their personal time to benefit their employers. Yet public officials sometimes claim that employees willingly perform personal services "on their own time" -- during lunch hour, after normal working hours. Such claims should be examined with skepticism as there is a high risk that the employees believed that they were required to perform personal work as part of their jobs. In such cases, there is at least an appearance of improper exploitation and such use of public personnel should be avoided. If a legislative employee is asked to perform any personal service, it is best if the employee is paid for his or her time out of the official's private funds.

AS 24.61.140. MISUSE OF STATE PROPERTY AND RESOURCES FOR POLITICAL PURPOSES.

(a) Misuse of Resources or Staff for Political Purposes. Subsections (b) - (c) regulate the use of government resources, including legislative employees, for political or campaign purposes. It is often difficult to distinguish legitimate political work within the scope of official duties from campaign activities but the basic rule is clear: public resources should not be used for political purposes as the taxpayer should not be forced to subsidize campaign or other partisan political activities. In general, the use of public employees is justified in activities where there is a substantial and bona fide public purpose to the activity and there is no personal profit (as with the writing of a book for royalties). Materials which express the legislator's opinions or views are generally proper whether in the form of a speech, article, newsletter, or position paper. They can be worked on by legislative staff even if these materials will and are intended to be used as part of a campaign for legislative office.

(b) Special Problems With Senior Aides. Many legislators are assisted by a senior aide who also serves as a major campaign adviser. It is unrealistic to expect that such persons will not be involved intimately in the full political life of their employer. So long as the senior aide "does a full day's work for a full day's pay" to justify the government salary, party and campaign activities above and beyond public duties should be tolerated. In some cases, portions of the aide's salary ought to be paid out of campaign funds. Once one begins to use other legislative staff, however, a serious problem arises and unless the use is expressly justified by regulations promulgated by the legislature or the commission it shall be regarded as improper.

(c) Advice of Commission. A legislator or legislative employee who is unsure about the propriety of a use should seek advice from the commission.

(d) Contents of Newsletters. The purpose of the requirements regarding revelation of bills introduced by a legislator, as well as the legislator's votes on significant bills acted on by the legislator's house is to provide constituents with detailed relevant information which will inform them of the actions and judgments of their representatives and empower constituents to hold the legislator accountable. In addition to drawing up regulations and guidelines which shall be approved by the commission, legislative council shall provide to legislators a list and description of the bills deemed significant which must be used by all legislators who use public funds for mass mailings. In addition, the council shall specify the amount constituting a significant contribution under subsection (d)(3). While the amount may change from time to time, the amount of $250 should be used unless the council decides another figure is more appropriate. The information required under (d) of this section must include all activity since the last mailing or, in special cases,

whatever information is deemed appropriate by the commission.

AS 24.61.150. OBLIGATION OF SUBORDINATES TO REFUSE TO PERFORM IMPROPER TASKS. While it is improper for a superior to ask a subordinate to perform personal or political services, it also is improper for a subordinate, as a public servant, to accede to such requests. While tact is imperative as a practical matter, employees still have the obligation to assure that their services are not converted to nongovernmental uses. It is a violation of this Act for a supervisor to harass, pressure, embarrass, intimidate or punish an employee who properly refuses to perform improper personal services. This provision will be difficult for some employees to comply with yet its existence and their duty to do so provides the best protection against abuse. It is very likely that improper requests will be sharply reduced by the knowledge of this obligation and the fact that the employee subjected to such requests has no discretion to accede to them.

AS 24.61.170. USE OF NONPUBLIC AND CONFIDENTIAL INFORMATION FOR PRIVATE GAIN.

(a) What Nonpublic Information Is. In the course of their official duties, legislators and legislative employees may acquire information confidential as a matter of law and other information not generally known or accessible even though it is technically available to the public. In some cases, simply learning of information before it is generally available can provide a substantial advantage for those who use or disclose it. A legislator or legislative employee may not actually or reasonably appear to gain special personal benefits by virtue of access to information resulting from public service.

(b) Improper Exploitation. This provision addresses the improper use of information gained in government service for private gain. It forbids the exploitation of not only information which is labeled "confidential" or is treated as confidential by law, it also prohibits the private use of other valuable information not available to the general public which was acquired by the legislator or legislative

employee by virtue of public position. For example, "inside information" about state plans or negotiating strategies, information revealed to legislative committees with the expectation that it be only used for official purposes, financial data, computer data and lists obtained during legislative service may not be used to obtain private or political advantages nor conveyed to others to give them such undue advantages. A similar, but narrower, provision is contained in AS 39.52.140 as part of the Code of Ethics for nonlegislative public officials.

AS 24.61.180. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.

(a) Objective. The objective of these provisions is to prohibit legislators and legislative employees from affording themselves and others unwarranted advantages by the inappropriate use of official title or the prestige of office. Because of the great power and authority of the legislature, the prestige and implied "clout" that usually accompanies legislative service is often a marketable asset. Some dimensions of this prestige are intimately associated with the person who attained the position and they constitute valid qualifications. It is important, however, that it not appear that a legislator or legislative employee has sought or obtained undue personal benefits from the office, especially in a way that discredits, cheapens or commercializes government service or connections. This provision includes, but is not limited to, a prohibition against the use of authority, title, or prestige to obtain employment, contracts for goods or services, clients, grants, or loans.

(b) Use of Title in Conducting Business. It is improper to use or permit the use of official title in any manner which would lead reasonable observers to believe that legislative office is being exploited to derive direct financial gain or enhance the stature, reputation or business opportunities of an individual, corporation, or organization. It is common to use the stature and prestige of legislative office by direct reference to title or position or by use of official

letterhead in communications. When carrying out the business of government, use or mention of official title or legislative affiliation is entirely proper. It is a different matter, however, when one is acting in a personal or private business capacity. Actual or apparent improprieties can arise from such conduct for several reasons: 1) a reference to public position may give the erroneous impression of governmental approval; 2) a person dealing with a high government official may think that the way the private matter is handled will affect treatment by the government; and 3) where legislators or legislative employees are affiliated with a private organization or business, potential clients or customers could easily conclude that the business has access to inside information or powerful connections that may be brought to bear on their behalf. For example, it is improper to use official letterhead or refer to one's legislative position as a means of inducing or intimidating persons to resolve disputes more favorably, provide preferential treatment or give free tickets, discounts, favors or other advantages.

(c) Board Membership and Consulting. Enterprises of all sorts, including nonprofit associations, charitable organizations corporations and firms involved in lobbying, public relations, law practice and consulting often seek out persons serving in government, especially legislators, to serve on boards, advisory committees or as consultants. All such associations raise ethical problems because of the possibility that public office is used by the legislator and the enterprise that employs the legislator for private benefit. Because of the conflict of interest, AS 24.61.310 generally prohibits board membership on any organization that regularly does business with the state. In other situations, however, this provision applies. While the most serious problems arise when the public servant is compensated in relation to the association, even uncompensated relationships may violate this provision if the legislator or legislative

employee knows or reasonably should know that the organization intends to trade on its affiliation with someone in the state legislature.

(d) Pay Should be Commensurate With Services. It is especially important when legislators and legislative employees receive outside income that the compensation is commensurate with the actual personal services rendered. If any premium is being paid due to the public servant's position, or no significant services are being rendered, the enterprise is, in effect, improperly buying, and the public servant is, in effect, improperly selling the prestige associated with the office. In addition, premium payments may be perceived not as compensation, but as illegal gratuities.

(e) Perception of Undue Advantage. Where the compensation paid for services is proportional to the services performed by normal market standards, or the service is uncompensated, the appearance of impropriety is less severe. But even such relationships may inappropriately use public office. For example, clients or customers may seek representation by a firm employing a legislator because they think that they will have some special advantage in dealing with government. Legislators and legislative employees who associate with private enterprises have a special duty to assure that these enterprises do not suggest or imply special influence with government and that clients and customers of the enterprise are not led to expect or encouraged to think that the association of the public official with an enterprise may afford them unwarranted benefits.

AS 24.61.190. POST-SERVICE RESTRICTIONS TO PREVENT MISUSE OF PUBLIC OFFICE BY FORMER LEGISLATORS AND LEGISLATIVE EMPLOYEES.

(a) Restrictions on Post-Service Lobbying. This provision addresses the problem of the so called "revolving door." The tendency of persons to leave positions of power and influence in government to represent private interests in their dealings with government, often for compensation many

times more than earned in public life, raises a number of serious concerns about the integrity of the political system. Among the concerns: 1) the former legislator or legislative assistant will unduly exploit connections and inside information to gain undue and unfair advantages for their clients or employers; 2) the legislator or legislative assistant may adjust official conduct even while in office in an attempt to attract the attention of or curry favor with prospective employers or clients; and 3) former associates may be too willing to defer to, do favors for or provide inside information to their former colleague. In any event, the perceptions of impropriety are great. Many people would ban former legislative officials from any representational activities concerning the legislature or state agencies. This provision is more narrowly drawn to prevent only formal lobbying and to allow lobbying state agencies provided that the former legislator did not have special oversight or budget authority. While this may seem to work an unfair hardship on presiding officers and certain committee chairs, their relationship with certain agencies is so close that to permit them to turn around and lobby these agencies within a year of their government service is simply not appropriate. At the same time, the potential conflicts of interests arising from other legislators lobbying state agencies seems manageable so long as there is disclosure.

(b) Improper Appearance of "Cashing In." It is unseemly and a violation of the spirit of public service ethics when present or former government officials appear to be blatantly "cashing in" on their government service by acting as consultants, lobbyists, or spokespersons for private interests in circumstances where it appears that they are peddling influence or selling the prestige and stature of their prior office. This is not to say that former government officials who have important experiences cannot serve on boards, make speeches for substantial fees or engage in consulting or lobbying. But, the circumstances including how,

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when, and at what price they sell their services are of critical importance. See also Guidelines and Commentary to AS 24.61.180(d) and (e).

AS 24.61.205. PROHIBITED USES OF CAMPAIGN FUNDS.

(a) Improper Conversion or Gratuity. A candidate who solicits donations for the purpose of conducting a campaign accepts such funds on the implicit condition that they are only given for the limited lawful purpose of financing campaign activities for an immediate election. When funds given for this limited purpose are converted to personal use, either before or after a campaign, the use is either an illegal conversion or an improper gratuity. The use of campaign funds for personal benefits violates the principles of these standards by permitting private gain from public office and creates blatant appearances of impropriety.

(b) Examples of Prohibited Uses. It is improper to use campaign funds to: purchase personal items such as clothes, gifts, art; defray normal living costs such as auto leasing or maintenance, gas, or dry cleaning; pay for the travel of spouses or other relatives not clearly relevant to a campaign; or to decorate political offices.

(c) Employment of Family. A special problem under Subsection (c) concerns the employment of any member of a candidate's immediate family by the campaign. While such employment is not specifically prohibited, it is most strongly discouraged. Ordinarily, family members would be expected to volunteer their time to support a candidacy and payment, even if the amount is clearly reasonable, appears as a method of siphoning campaign funds for personal use. Payment of a relative by a campaign should be permitted only when: 1) the person has taken leave from a paid position in order to serve on the campaign and 2) the amount is clearly commensurate with the services rendered, in light of the person's qualifications and training and what others non-relatives receive for similar services.

(d) Repeal of Prior Law Re: Post-Election Conversion of Funds. Prior law permitted candidates after an election to disburse surplus campaign funds to themselves provided they declared the funds as income. This provision is expressly repealed with respect to legislative candidates. The ability to convert surplus funds to personal income is totally inconsistent with the limited purpose under which the funds were, and lawfully could be, given and received. Loans of campaign funds to the candidate or others has the effect of converting the funds to personal use. Such loans create a serious appearance of impropriety, whether or not interest is paid and whether or not the loan is paid back in a timely manner.

AS 24.61.210. DISBURSEMENT OF SURPLUS CAMPAIGN FUNDS. Where candidates have raised more funds than they need for an immediate election, continued efforts to raise campaign funds is proper only if the donors are clearly informed about the likely use and lack of immediate need for their contributions. The increasing ability of incumbents to amass large "war chests" well before an election has raised serious ethical issues. This section prevents this by limiting the carryover of surplus funds to $5,000 for senate candidates and $2,500 for house candidates. The discrepancy is justified by the length of time between elections and the fact that other provisions limit fund raising to specific periods. Retained surplus campaign funds can be used for campaign travel and other political activities.

AS 24.61.230. IMPROPER COERCION.

(a) Solicitations of Campaign Contributions or Any Other Benefit. Difficult problems arise with respect to the solicitation and acceptance of any benefit including campaign or other contributions from those who have a substantial interest in legislative, administrative or political actions of a legislator or legislative employee. In such cases, great caution should be exercised to avoid the

appearance that solicitations of campaign contributions or other contributions are connected in any way, as a quid pro quo, with any legislative, administrative or political action which might benefit or harm the contributor. For example, solicitations of any benefit made shortly before or shortly after a legislator has done any act on behalf of a constituent should be scrupulously avoided in order to avoid the appearance that the legislator expected a contribution or other benefit in return for legislative, administrative or political services.

(b) Political Contributions or Support in Exchange for Access. A common complaint among lobbyists and others who have a substantial interest in legislative, administrative or political actions is that legislators directly, or through their staff, create the impression that those who make political contributions, hold fund raising events or provide other political support will have special access to the legislator when they want to make their case to influence action. In some cases, this access is expected to give the person an edge in persuading the legislator to take or refrain from taking certain actions. In others, the person solicited believes that the contributions are more defensive, necessary to lubricate the relationship, believing that the failure to be supportive would significantly reduce their ability to effectively plead their case. In all these situations, however, there is implicit impropriety.

(c) Soliciting Donations to Charitable and Other Causes. More and more, lobbyists and others who have a substantial interest in legislative, administrative or political actions have complained that legislators "strong arm" them to make donations to charities or other causes in which the legislator has a personal or political interest. Because of the importance of a positive relationship with the legislator, many persons so solicited feel obligated, not by conscience but by fear of offending, to comply with the request.

Although most situations do not create the appearance of influence peddling since the benefit is not personal and since it is rarely large enough to create the appearance of a quid pro quo, many insiders see this as a mild form of extortion or a "tax" levied by legislative whim. A legislator who solicits another, either directly or through an aide, to contribute to a charity or a cause, should do so in a manner that clearly and unequivocally removes any suggestion of coercion or implication that the decision to make or not make the requested contribution will in any way affect the professional relationship.

AS 24.61.240. FUND RAISING LIMITATIONS. Previous law limited certain forms of fund raising in the capital city during legislative session but this limitation did not effectively prevent fund raising activities. Instead, it inspired creative methods of non-event fund raising such as raffles, fund raising activities in Juneau for events outside the city and various forms of fund raising by legislators for other candidates. As a result, neither the goal of preventing the diversion of the legislator's time and energy to public matters or of reducing opportunities for potential conflicts was achieved. This ban on all fund raising activities during the legislative session will accomplish that purpose. It goes further by preventing "off-year" fundraising and limiting the total period of legislative fund raising to about ten months for incumbents and fourteen months for non public official challengers. Nonincumbent candidates are permitted to fund raise during the legislative session in the year of the election because the reasons to prevent fund raising during sessions do not apply to them and because there is a general consensus that nonincumbents need more time to raise funds.

AS 24.61.250. OBLIGATION TO AVOID CONFLICTS OF INTEREST AND PRESERVE ABILITY TO MAKE INDEPENDENT IMPARTIAL JUDGMENTS. Public officials must be vigilant for relationships and transactions that create conflicts of interest. Such conflicts are either

forbidden, in which case, the interest must be divested or the relationship terminated; or it shall be disclosed pursuant to law. In addition, the legislator or legislative employee who has a conflict may be required to refrain from participating in any legislative, administrative or political action which involves the questioned financial interest or personal relationship. Financial conflicts of interest can arise out of almost any close economic association but the most common and significant conflicts for legislators and legislative employees relate to:

(a) sources of nonlegislative income for personal services, especially when the income is derived from a source that has a substantial interest in legislative, administrative or political actions of the legislator or legislative employee;

(b) the conferment of any benefit, including investment opportunities, employment, entertainment, gratuities, honoraria, loans, favors and special treatment from a source that has a substantial interest in legislative, administrative or political actions of the legislator or legislative employee;

(c) close economic associations with other public officials or lobbyists, especially those that have a substantial interest in legislative, administrative or political actions of the legislator or legislative employee;

(d) personal financial interests in contracts or leases with the state or other government entities;

(e) personal financial interests in licenses, permits, franchises or other valuable entitlements or privileges granted by the state;

(f) personal participation in state loan or other programs conferring benefits;

(g) representation of oneself or others in actions before state agencies or other government entities;

(h) state regulation or funding which substantially affect a profession, occupation or organization in which the legislator or legislative employee has a substantial economic interest; and

(i) personal involvement at a managerial or governance level with a private enterprise or nonprofit organization that is regulated by or seeks benefits from the state.

AS 24.61.280. PERSONAL RELATIONSHIP CONFLICTS OF INTEREST. The area of personal conflicts of interest is a delicate matter and difficult definitional issues arise. Still, it is important to acknowledge that certain personal relationships raise conflict of interest problems every bit as potent as financial conflicts. The definition of personal conflicts of interest leaves much room for discretion and judgment but the principle of good faith can be of great assistance. There are two separate aspects to the personal relationship conflict of interest: 1) does the relationship create real conflicts with the ability of the public servant to exercise independent judgment in matters relating to the person involved in the relationship; and 2) does the relationship create in the mind of an objective, fair-minded observer the belief that the person will have undue access to confidential information or will otherwise receive favored treatment regarding public actions. It is not intended that this provision create unwarranted and embarrassing intrusions into personal lives yet certain romantic relationships reach a point where they do create serious conflicts of interest. This point is not measured by any specific litmus test such as exclusivity, sexual activity, or longevity. It is a common sense test. The "how would it look in the newspaper" test may be helpful. Put another way, given the respective duties and activities of both parties, would a responsible and fair person doubt the ability of the legislator or legislative assistant to exercise independent professional judgment?

(b) Personal Conflict of Interest Defined. A close personal relationship is a special relationship between a legislator or legislative employee and another person that creates strong bonds of loyalty, friendship, or love that could potentially conflict with public duties and the obligation to exercise objective independent judgment or create the appearance that the person may

have access to confidential information or otherwise receive favored treatment regarding public actions. A close personal relationship includes, but is not limited to, immediate family, long-term personal friends, or former business associates, and persons with whom the legislator or legislative employee has a significant and continuous romantic relationship.

AS 24.61.300. RESTRICTED RELATIONSHIPS: LOBBYISTS, LEGISLATORS AND LEGISLATIVE EMPLOYEES.

(a) Fund Raising by Lobbyists. When a lobbyist is actively involved as a fund raiser in a legislative campaign (or for a legal defense fund) both financial interest and personal relationship conflict of interests emerge in major proportions. The likelihood that the legislator will be beholden to the lobbyist in a way that could impede objective impartial independent judgment is so great that the relationship must be prohibited.

(b) Close Relationships. It is the purpose of this code to stay out of the private lives of those regulated to the greatest extent reasonably possible without compromising the public need to assure that impermissible conflicts are prevented and that questionable ones are revealed. The system established allows the commission to privately screen and evaluate the substantiality of the conflict. Only if it finds the conflict to be substantial or one that ought to be disclosed publicly, shall it take further action. In the case of legislators, however, there ought to be a strong presumption in favor of public disclosure since such information is necessary if the citizens of the legislator's district are to hold the legislator accountable. If the legislator or legislative employee requests, the matter shall be disclosed.

AS 24.61.310. RESTRICTED RELATIONSHIPS: BOARD MEMBERSHIPS AND OTHER PUBLIC OFFICES.

(a) Board Memberships. A person who serves on a governing

or advisory board of an organization, whether for profit or not, which regularly has a substantial interest in legislative, administrative or political actions, must be considered to be too integrally involved in the welfare of that organization to exercise independent objective judgment with regard to official actions that affect the organization in a significant way. Though exemptions may be sought, they should be granted rarely and only when the commission can impose limitations on actions involving the organization. Either the interest must be divested or strict limitations must be imposed by the commission prohibiting any actions which involve official or unofficial use of public office to influence the outcome of a decision affecting private business interests.

(b) Other Public Offices. A legislative assistant is prohibited from serving as an elected public official or in any other position that requires confirmation by the legislature for three reasons: (1) the demands and needs of the constituency that elected the legislative assistant can create serious actual and apparent conflicts of interest which impede the legislative assistant's ability to make objective judgments for the legislature in matters which may affect that constituency; (2) constituents should be able to have access to their elected representatives even during the legislative session yet such access will often require the legislative assistant to tend to matters relating to public office on state time and on state premises; and (3) any position which requires the legislative assistant to seek from the legislature confirmation or benefits for others creates conflicts of interest. Persons elected to office or confirmed by the legislature before this provision was enacted should be permitted to serve out their term but they should disclose the position they hold to the commission which shall consider imposing restrictions on the legislative assistant's legislative duties to reduce the opportunities and scope of conflicts.

AS 24.61.320. RESTRICTED FINANCIAL INTERESTS.
This provision presents legislators and legislative assistants with an alternative when it comes to actions relating to a substantial personal financial interest: either divest the interest or refrain from taking any official or unofficial actions. Under present legislative rules and practices, a person with a conflict of interest is not permitted to refrain from voting during legislative session. Other forms of participation, however, are forbidden by this rule. The spirit of this chapter strongly disfavors official actions which materially affect private financial interests.

AS 24.61.330. RESTRICTED ACTIVITIES AS AN ATTORNEY OR REPRESENTATIVE.

(a) Representation in Matters Involving State Government. Legislators and legislative assistants may not professionally represent, either informally or formally, persons or entities in their dealings with state entities except where the nature of the representation is such that no actual or apparent conflict of interest exists. Where a matter is to be determined in an adversary setting with opposite parties represented, a legislator or legislative assistant may act as a representative. It is not proper, however, for the legislator or legislative assistant to make telephone calls, render advise, or otherwise represent another who is dealing with state or local government. It is impossible to remove the appearance of undue advantage when a person with substantial state legislative authority seeks to help another who is dealing with state agencies. Moreover, the advantage is often real -- some government officials simply do things for legislators and, to a lesser extent, legislative assistants that they would not do for less connected persons.

(b) Dealing With Local Government Entities. Initial drafts of this provision extended the prohibitions of professional representation of persons dealing with entities of local government. This limitation was removed in favor of a more

liberal rule that relies on the exercise of discretion of legislators and legislative assistants to avoid representation in situations where there is an actual unfair advantage due to the legislator or legislative assistant's influence with the government entity or where a reasonable objective observer would conclude that clients of the legislator or legislative assistant would have an unfair advantage. It would violate the spirit of this section if a legislator or legislative assistant created or fostered a belief in a client that employment of the legislator or legislative assistant would provide a special advantage to the client as a result of the legislative status of the legislator or legislative assistant.

(c) Special Issues for Lawyers. In conjunction with the adoption of this chapter, AS 24.40.020 concerning continuance of a criminal proceeding and AS 24.40.031 concerning postponement of civil proceedings were amended to eliminate an automatic right of an attorney who is a legislator to delay legal proceedings during the legislative session. It was considered that this provision provided special advantages to clients of legislators that were not justified and that could be abused. A lawyer who could guarantee a postponement for up to four months could attract of counsel and full representational relationships that provide improper personal benefit to the legislator and undue advantage to the legislator's clients. In principle, a legislator or legislative assistant should not seek or accept special treatment, privileges, rights or concessions solely by reason of service in the legislator. The initial draft of this section also included the provision that the law firm of a legislator or legislative assistant who is disqualified from representation is also disqualified. This result may be required by the attorneys code of professional responsibility which requires disqualification of a law firm from actions in which any member of the firm is disqualified by a conflict of interest. But, whether or not the attorney's

code is so construed, legislators and legislative assistants should be aware of the potential improprieties if their firm creates or fosters a belief in clients that association with the legislator or legislative assistant might provide the client with special advantages.

AS 24.61.350. RESTRICTED TRANSACTIONS: GRATUITIES.

(a) Gift Rules are Not Personal. Some public officials take personal offense at the implication that they would allow their integrity to be compromised by a gift or favor. This reaction unduly personalizes the ethical theory and sound public policy which seeks to insulate public officials from the corrupting influences of gratuities. The motives of the gift givers offers insight to the problems. Rarely do they expect any quid pro quo; they do not think a public official will consciously change an action because of a gift. Gifts work more subtly to undermine objectivity. Receiving a gift often generates unconscious feelings of gratitude and appreciation which evoke a natural tendency to give something in return, whether out of natural gratitude or the desire to encourage further gifts. Gifts given freely out of affection by persons who want nothing in return create few problems, but most gratuities given to legislators or legislative employees are provided by persons or entities that do want something because they have a substantial interest in the legislative, administrative or political action of the recipient. In spite of the confidence of those who accept gratuities that their judgment remains unimpeded, the people who provide gratuities seem to believe that it is to their advantage to do so and the public perception is that the gift givers are right, at least some of the time. A legislator or legislative employee who is considering accepting even a lawful gratuity should carefully, realistically and objectively evaluate the likely motive of the person offering it: Why am I being offered this gift or

favor? Would I be offered the benefit if I did not wield public influence? Who is paying for it? Is it likely to be written off as a business expense? If I accept the benefit will reasonable outsiders think that the donor has some hold on me or that I owe something in return? Since there is no offsetting public good to justify the appearance of impropriety created by the acceptance of gratuities, all close cases should be resolved against any action which raises reasonable suspicions regarding the integrity of the legislator or legislative employee or government in general.

(b) The Source of the Gift is Important. These rules discourage the acceptance of all gratuitous benefits that could raise the slightest appearance of impropriety but they permit wide personal discretion in all but the clearest cases of improper appearances. While legislators and legislative employees need not be so sensitive to the adverse appearances that they are unable to have close and cordial relationships lubricated by hospitality, gratuities accepted should be moderate, infrequent and given under circumstances that do not create the impression that the giver seeks undue influence or that the receiver seeks undue personal benefit. Thus, the most stringent rules concern gratuities offered by those who have a substantial interest in the legislative, administrative or political actions of a legislator or legislative employee.

(c) Requirement to Aggregate Gifts From Single Sources. The rules follow the modern trend to require that gifts under the legal limit be aggregated annually to limit the overall giving power of any individual and to prevent avoidance of the limits by making frequent periodic gifts or by deliberately breaking down gifts into smaller parts.

(d) Permissible Gifts. This section exempts a substantial number of gratuities because they do not present sufficient conflicts of interest to warrant prohibition. There is no specific exemption for discounts that are provided to the general public or any large group since these are not things

of value under the definitions of this Act. However, if the basis of the discount relates to government status (for example, airline discounts for legislators and other public officials) it is a gift unless the commission approves the discount program as one that presents no conflict of interest.

(e) Forgiven Loans. The amount of a forgiven loan from persons other than family members are to be treated as a gratuity in the year it is forgiven.

AS 24.61.360. RESTRICTIONS ON EARNED INCOME: OUTSIDE EMPLOYMENT AND HONORARIA.

(a) Employment Conflicts. Assuring that a legislator or legislative employee's sources of outside earned income are consistent with the ethical obligations of imposed by public office is a major and continuous challenge for the conscientious citizen-public servants. The major employers in Alaska tend to be very active in the political process, employing lobbyists and engaging in other activities to assure that their interests are protected and advanced in the legislature. It would be unreasonable to ban all employment with these employers but any such employment must be subjected to the most rigorous scrutiny to assure that the legislator or legislative employee is acting in the public's interest rather than in the interest of the sources of outside income. The provisions of this Act do not and cannot exhaust all the possible ways in which outside employment with a firm that has a substantial interest in legislative, administrative or political actions can create conflicts. The principles of good faith, public interest, independent judgment and public trust are especially important, therefore, in helping individual legislators, legislative employees and the commission interpret and apply these provisions.

(b) Other State Employment. Employment by other state agencies is prohibited because of the appearance that a legislator or legislative employee has an undue advantage

and may have exercised undue influence in obtaining the position. Compensation from the state ought to be strictly limited to official legislative pay and allowances unless special circumstances justify an exemption.

(c) Honoraria. Generally, legislators and legislative employees should not accept payments for giving speeches or writing about matters concerning their public duties. Such payments, often called honoraria, may be proper in exceptional cases where the source has no significant interest in the public servant's governmental decisions and where the nature and amount of the payment is clearly reasonable and proportional to the effort required to earn it. A public official should not accept compensation for merely appearing at a function or attending a breakfast, lunch or dinner meeting and discussing a matter of interest to other participants.

AS 24.61.380. IMPROPER INTERFERENCE WITH THE INDEPENDENT JUDGMENT OF OTHERS ON BEHALF OF CONSTITUENTS.

(a) Intervening on Behalf of Constituents and Friends. Legislators and legislative employees should be extremely cautious about directly or indirectly intervening with normal decision making, investigatory or adjudicative processes of governmental bodies on behalf of constituents or friends since such intervention can threaten the ability of government administrators to exercise independent objective judgment on the merits. Generally, intervention on behalf of constituents or friends is proper only if it is strictly limited to assuring fairness of the procedures or to helping a constituent get a benefit or service he or she is clearly entitled to as a matter of right. The legislator must be especially cautious when the constituent is also a contributor, particularly a major contributor. A politician should not be required to do any less for a contributor/constituent than the legislator would do for any other constituent, but the legislator should also do no more. Since actions on

behalf of campaign contributors will usually receive much greater scrutiny and therefore the legislator's motives should be clear.

(b) Legitimate Casework vs. Improper Interference. Elected politicians are frequently asked by constituents and other supporters to intervene with other government agencies or departments. In fact, "case work" comprises a major part of the service provided by elected officials at all levels of government. Constituents bidding on government contracts often seek the help of "their" representatives; those who are subjected to investigations may expect their legislator to provide protection from what they view to be unfair procedures, and persons seeking government approvals or licenses sometimes ask politicians to facilitate the process. In the ombudsman function, seeking to remedy clear injustices or otherwise assure fair determination of rights is appropriate. Still, efforts to intervene on behalf of constituents are fraught with potential appearances of impropriety and the possibility that the intervention will prevent other public officials from exercising independent objective judgment on the merits. Legislators should consider a much heavier reliance on the ombudsman's office to avoid conflicts and assist constituents.

(c) Is Intervention in the Public Interest? An initial problem with intervention is that the interests of a particular constituent are not necessarily parallel with the interests of other constituents or the public as a whole. The primary obligation to advance the overall public good may require public servants to refuse requests for assistance in some cases. Another problem associated with intervention is that the public official may not know or understand all the facts that are relevant to a fair regulatory determination or a wise contracting decision.

(d) Perception of Pressure. Even where the intervening politician has no intent to influence improperly the normal process of decision making, it is not unlikely that the

public servants involved think otherwise. Unless the intervening politicians are explicit and credible in stating the limited purposes of their involvement, administrators whose budgets are controlled by legislators are likely to feel pressure to make decisions differently than they otherwise would. Sometimes, regardless of the intervener's intent, administrators see the intervention as an opportunity to do a favor for the politician. To avoid creating the appearance of improper pressure, a legislator or legislative assistant is required under AS 24.61.060 to explicitly convey to the administrators involved in any intervention that no undue influence is intended and that the administrator is expected to made an independent judgment and that no advantages or disadvantages to the administrator or the agency will result from a favorable or unfavorable disposition.

AS 24.61.390. CONFLICT OF INTEREST DISCLOSURE: STATEMENT OF PURPOSE. Financial disclosure is a less restrictive means of assuring that legislators and legislative assistants make decisions and take legislative action objectively. In lieu of a full ban, disclosure allows some sources of outside income but requires them to be disclosed, so that a vigilant public can make informed judgments. To serve its "watchdog" function, financial disclosure must be as comprehensive as possible to reveal effectively any potential conflicts of interest to the public. The disclosure requirements in this chapter relate only to relationship conflicts and sources of income and they are not intended to replace disclosure obligations under APOC or any other law. The commission should design forms that are compatible with other disclosure forms.

AS 24.61.400. CONFLICT OF INTEREST DISCLOSURE BY LEGISLATORS AND LEGISLATIVE ASSISTANTS.

(a) General Structure. Disclosure requirements must balance the privacy interests of the legislator or legislative assistant against the public disclosure necessary to guard against conflicts of interest. They

should not be so intrusive of individual's privacy that qualified and interested individuals decline public service because of them. The purpose of the category A - category B two-tier reporting requirement of this provision is to prevent unnecessary invasions of the personal domain and, where that is not possible, to restrict the availability of disclosed information when it is reasonable to do so. Income earned from persons or entities which have a substantial interest in legislative, administrative or political actions of the recipient involves such significant potential conflicts that all amounts of income from those sources must be reported. On the other hand, income from a category B sources amounting to less than $1,000 need not be reported. And, since category B income is inherently less problematical, even if it is over $1000, the reports will usually be kept confidential. Only if the commission determines affirmatively that the public interest in the disclosure outweighs the individual's right to privacy will the information be made public.

(b) Income of Spouses and Dependent Children. In an effort to balance the legitimate privacy rights of the spouses and dependent children of legislators and legislative assistants, spouses and dependent children are not required to disclose the amount earned even from persons with a substantial interest in legislative, administrative and political actions. The danger that benefits to a legislator or legislative assistant might be disguised as payments to a spouse or dependent child, however, is deemed sufficiently great to require the legislator or legislative assistant to examine the amounts, nature and sources of spousal and dependent child income so that a statement can be made to the commission indicating that the funds paid were commensurate with the value of actual services rendered and that the employment of the spouse or child was not related to an attempt to confer a benefit on or influence the legislator or legislative assistant.

AS 24.61.415. REPORTING OBLIGATIONS OF EMPLOYERS AND OTHERS PAYING COMPENSATION TO LEGISLATORS AND LEGISLATIVE ASSISTANTS.

(a) Purpose. A legislator or legislative assistant who receives nonlegislative compensation may not know whether the source properly qualifies as a category A or category B source or who controls the source if it is a corporation. The requirement that person's paying compensation report facts concerning the details of the financial relationship assures that the legislator or legislative employee and the commission have necessary knowledge and that the source of the compensation is aware of its responsibilities when employing a legislator or legislative employee. The legislator or legislative assistant must submit the appropriate forms to the person paying compensation which forms shall state clearly the definition of persons who have a substantial interest in legislative, administrative or political action (category A sources). The person paying the compensation determines whether they qualify. If, in good faith, they conclude they do not qualify they need not file the form with the commission. If the legislator or legislative assistant believes in good faith that the person paying the compensation does qualify, the legislator or legislative assistant should so inform the person and, if the person still does not file the required form, the legislator or legislative assistant shall inform the commission that the person paying the compensation was so informed.

(b) Contents of the Employer Form. The form should be made as simple and clear as possible and shall require sufficient information to determine the nature of the relationship, including the names of other persons or firms that have a substantial equity interest in the person paying the compensation, the terms of compensation and the amount paid.

24.61.430. ACCOUNTABILITY: OPENNESS AND OVERSIGHT.

(a) Open Meetings Law. This ethical principle has been essentially incorporated into Alaska's "Open meetings of Governmental Bodies" law (AS 44.62.310). Secret or closed meetings and back room deals which conceal from the public facts that bear on its ability to exercise responsible citizenship are improper, even when made by well intentioned public servants who simply seek to conduct government business efficiently without undue intrusiveness or embarrassment. Conscientious legislators and legislative employees should avoid the temptation to short cut open meeting requirements by devising legalistic theories which effectively remove the public business from the public eye. They should be especially scrupulous about maintaining maximum openness in dealing with issues of compensation, benefits and all other actions which affect their own rights and obligations. Although secrecy or confidentiality occasionally is in the public interest, exceptions to the general rule of openness should be rare and the principles and procedures for determining those exceptions should be subject to scrutiny, debate and oversight.

(b) Evasion of Openness Rules. Legislators and legislative employees should honor the spirit and intent of open government rules and not engage in subterfuges or legalistic schemes to avoid them. While public servants should abide by the letter and spirit of all rules, open meeting, freedom of information, and "sunshine" laws are especially important because they reinforce accountability by requiring public business to be conducted in a way that assures citizen access to political processes. Although these rules tend to be unpopular with many public servants who believe they unreasonably invade privacy and encumber government operations, it is improper to engage in tactics which improperly evade their spirit.

(c) Oversight Responsibilities. It is the duty of public servants with agency oversight responsibilities to develop effective auditing and reporting procedures which permit the

exercise of vigilant oversight. In addition, persons in supervisory authority should assure that their staff know and understand the legal and ethical obligations applicable to their duties.

24.61.440. ACCOUNTABILITY: SELF-POLICING, WHISTLE BLOWING AND PROTECTION OF WHISTLE BLOWERS.

(a) Protection of Whistle Blowers. Without the risk that conscientious public servants will, when necessary, disclose unlawful or improper governmental activities, the likelihood of illegal secret policies, corrupt practices, waste and mismanagement and unaccountable and arrogant decision making increases. Hence, persons who whistle blow in good faith act in the public interest. It is, therefore, improper to harass, punish or seek other reprisals against public servants who seek to hold government accountable. Whistle blowing is most often justified when it is the only practical way to reveal illegal conduct or major abuses of public authority. The decision to whistle blow, however, must be regarded with the utmost seriousness. Although whistle blowing can represent the highest form of loyalty to an institution and to democratic processes, it often requires breaching traditional notions of loyalty to colleagues and organization. In addition, it may involve the violation of professional obligations of confidentiality. Thus, the act of whistle blowing invariably incurs hostility and resentment and tends to undermine trust and create an atmosphere of suspicion. Yet, in spite of the personal and institutional costs, whistle blowing is sometimes essential to the public interest and morally justified as a means of preventing or correcting serious wrongs.

(b) Difference Between Leaking and Whistle Blowing. While both leaking and whistle blowing may be acts of conscience, whistle blowers act overtly and hence take greater risks and subject themselves to significant personal abuse including

reprisals. In contrast, leakers act covertly and are essentially unaccountable for the consequences of their actions. Since it is fairer that criticisms and charges be made on the record, whistle blowing is preferable to leaking. In fact, in most cases, leaking is an improper violation of confidentiality and fairness. Although leaking is presumptively improper, there are rare circumstances where it is justified as a means of holding the government accountable for improper covert actions. Many issues of great public importance (for example, Watergate, Pentagon Papers, CIA assassination policies) came to light only because of leakers who acted in the public interest but sought to protect themselves and their families from the ramifications of their revelations. Because of general principles of trust, honor and professional discretion, however, disclosure of confidential information or documents through secret leaking is justified only to advance a compelling public interest. In the absence of a clear and compelling interest in disclosure, public servants should honor their confidences and legal obligations to maintain the secrecy of specified information (for example, classified documents, grand jury testimony, medical or psychiatric records, reports about juvenile abuse, etc.). It is not proper, for example, to leak information simply to give one news organization a competitive advantage over another about matters that will be made public in due time (for example, revealing the contents of a report a few days before it is to be formally issued). Nor is it proper to leak information simply as a means of affording the leaker some personal or political advantage.

(c) Leaks Concerning the Rights of Others. An especially troublesome category of leaks concerns information that could unjustifiably damage reputations, improperly prejudice court proceedings, unfairly affect elections, or unreasonably endanger the safety of others. It is almost always improper, for example, to leak information about undercover

operations, criminal investigations, unsubstantiated charges or secret grand jury testimony. Supervisors in departments which possess potentially damaging information should take steps to protect the rights of those who would be injured by leaks and to hold leakers accountable for their actions.

AS 24.61.450. DUTY TO TOWARD COLLEAGUES AND SUBORDINATES. This section simply makes it clear that improper or illegal conduct with regard to subordinates or colleagues is a legitimate matter for the commission. Only egregious cases ought to be brought to the level of a complaint but the presiding officer of each house should seek to assure that civility and decency prevail. When necessary, the presiding officer should use this provision to counsel and, occasionally, reprimand members who violate it.

ARTICLE 3. Legislative Ethics Commission

AS 24.61.500. LEGISLATIVE ETHICS COMMISSION ESTABLISHED. The composition of the commission responds to the need for an independent, highly qualified and respectable agency to implement the provisions of the Alaska Legislative Ethics Act. It includes two representatives selected by each branch of government, a representative selected by the commission most involved with the enforcement of general campaign and disclosure laws (APOC), and two additional persons selected by the combined special appointees. In making their appointments, the Supreme Court and the Alaska Public Officials Commission shall develop their own procedures. It is expected that this Commission will take a broad public view of legislative ethics and enable major stakeholders in the legislative process to participate in administering the Act. In making appointments to the commission, the appointing authorities should seek a representative group, diverse in terms of ethnic background, sex, region, and political orientation (including registered independents).

AS 24.61.502. CERTIFICATION; LEGISLATIVE DECERTIFICATION OR

REMOVAL FROM OFFICE. The decertification process, in effect, gives the legislature veto power over individual nominations. It is a power that should not be exercised lightly or used for political purposes. Other provisions of the Act establish the ethical responsibility of legislators to rise above partisan politics especially when dealing with the commission. Still, the legislature should be comfortable with the integrity, character and capacity of each commissioner and, for good cause, they may decertify a newly appointed commissioner.

AS 24.61.508. APPLICABILITY OF CHAPTER TO COMMISSIONERS AND EMPLOYEES; OTHER RESTRICTIONS. Commissioners and commission staff must not be involved with any political activities with respect to the legislature or individuals over whom they have adjudicatory responsibility in any way that casts reasonable doubt on their impartiality, objectivity or lack of partisanship. Similarly, it is improper to engage in any form of inappropriate conduct which casts reasonable doubt on their ability to serve. For example, the public expression of prejudices or opinions about a legislator or a matter which might come before the commission is inconsistent with the neutral objective temperament demanded by the position.

AS 24.61.520. INFORMAL NONBINDING ADVICE. Ethical behavior is encouraged when legislators and staff are able to raise ethical issues freely and receive informed advice, both formally and informally. Individuals seeking to conform their actions to ethical principles deserve the guidance which informal letters and telephone conversations may give them. Often, unethical conduct can be avoided, and ethical principles maintained, by a simple recitation of the code as applied to any given circumstance. Advice given personally, over the telephone or by informal letter can provide valuable guidance relating to decisions which must be made rapidly or immediately and, thereby, advance behavior consistent with this Act. However, the duties of the Commission to interpret and implement the Act cannot be delegated to staff nor

can one seeking informal advice expect it to be preceded by the thorough discussion and research associated with a formal advisory opinion. Therefore, the person seeking advice must be explicitly informed that the opinions given are in no way binding on the commission. If the person is unwilling to take the risk, he or she may request a formal advisory opinion which is binding, seek the nonbinding opinion of the committee of the legislature charged with ethics matters, or hire outside personal counsel to get additional guidance.

AS 24.61.525. FORMAL BINDING ADVISORY OPINIONS.

(a) Requests for Opinions. Undertaking to research, discuss and prepare a formal written advisory opinion involves a substantial commitment of time and resources. Therefore, a formal written request is important. The commission has the discretion to refuse or grant the request for a written advisory opinion since not all issues justify the commitment of public resources, either because they relate to minor or moot points or because it is clear from the provisions of the Act or from previous opinions how the questions should be answered.

(b) Confidentiality. Confidentiality is important to enable individuals to seek advice without fear of reprisal or self-incrimination.

AS 24.61.527. USE OF INFORMATION SUBMITTED WITH REQUEST FOR ADVICE. It is the policy of this act to encourage those regulated by it to freely seek advice. Thus, a person who in good faith, and not gain some procedural advantage or pre-empt an impending complaint, voluntarily reveals information to the commission in an effort to obtain advice should be assured that the information revealed will not be used by the commission to initiate a complaint. If, however, after revealing the information and seeking advice, the person acts in a way inconsistent with that advice, a complaint may be initiated by the commission based on conduct occurring after the advice was given. In addition, if the commission is given information about a violation from a source other than

the person seeking advice, it may use that information as the basis of a complaint notwithstanding the fact that the same or similar information had been conveyed to the commission as part of a request for advice.

AS 24.61.530. EXEMPTIONS PROCESS. This subsection was created to address occasional cases where strict application of the provisions of the Act would be contrary to the purposes of the Act. Exemptions should be granted only in rare and exceptional circumstances. The burden of proof is on the applicant to prove the three criteria necessary for exemption.

AS 24.61.550. ADJUDICATORY HEARING. Ethics complaints against public officials should be resolved as quickly as possible consistent with fundamental rules of fairness and the needs of both the respondent and the investigators to prepare. Ethics complaints put a cloud of suspicion over those charged and inevitably hinder their ability to fully and effectively perform their public duties until they are resolved. Thus, the adjudicatory process has been designed to allow for maximum speed and efficiency. Commissioners who have active business and personal lives will not always be available on short notice to alter their schedules to meet the intense time demands that an adjudicatory ethics hearing may require. By having nine confirmed commissioners, any five whom may sit on the hearing board, the commission is more likely to be able to impanel a tribunal quickly. In selecting the hearing board the chair should assume all commissioners are qualified and shall select a board that can perform the adjudicatory function as efficiently as possible. The selection of a hearing board is to be made on a rotating basis that assures that no discretion is exercised in the selection of commissioners. If a commissioner in line for appointment is unable to serve at the times required, the next name will be selected. For subsequent hearing board selections, the names of commissioners who did not serve on the immediately previous hearing shall go to the top of the list.

AS 24.61.555. FINDINGS AND RECOMMENDATIONS.

(a) Exoneration. Since the commission had previously found probable cause to believe that a violation had occurred, it should be very rare that, after a full hearing, it finds that the respondent has been exonerated. If, however, the evidence produced at the hearing clearly establish the falsity or unfairness of the charges, the respondent should have the opportunity to recoup legal fees. Without such a determination, however, the mere acquittal of the respondent should not be construed as a vindication warranting the state to pay for the defense.

ARTICLE 4. Legislative Ethics Education Program

24.61.700. ETHICS EDUCATION PROGRAM. In order for ethics rules to be sufficiently specific to provide meaningful guidance and enforceable standards, they must be detailed. If they are to reach the subtleties of the choices that must be made, they sometimes must be complex. In many cases, they dictate results that are not intuitively obvious. It is unrealistic to expect that, without any special effort, that most legislators and legislative employees will read, let alone understand them. Ethics education will serve to explain the rules and regulations that legislators and their staffs must follow. But effective education goes far beyond reading the rules or getting instruction on the filing of disclosure forms. If public servants are to live lives consistent with these standards, they must internalize and remain sensitive to the norms of expected behavior. They need to understand the difference between what is legal and what is ethical, and they must know what procedures can and should be followed if they are to adhere to the highest aspirations of the Act. The ethics education program prescribed should help individuals develop the ability to apply rules, standards, values and ethics codes to specific situations. Public officials are constantly faced not only with hard decisions as to right and wrong, but even harder choices requiring them to choose among conflicting goods or the

lesser of evils. Ethics education courses help public servants sort through and deal with the enormously complex ethical issues they are bound to face and emphasize the vital importance of the notion that public office is a public trust.

24.61.710. ETHICS EDUCATION MANUAL. All that can be done should be done to educate public servants on their legal and ethical obligations. One of the overarching principles of this Act is that it must be strictly enforced and that ignorance of the rules or their meanings will not be an acceptable excuse. The commission should thoroughly distribute this Manual at each time of issuance and develop procedures, in cooperation with the Personnel Office of the Legislative Affairs Agency, to assure that the Manual reaches all new legislators, legislative employees, and lobbyists.

AS 24.61.730. LEGISLATIVE ORIENTATION TRAINING COURSE. An Orientation Training Course covering both the "letter" and "spirit" of all ethics laws should be a minimum of six hours. The material is both extensive and in depth, involving many laws and complex issues surrounding those laws. The commission should remember that the public's trust and confidence in government is based on the highest ethical standards which can, in fact, be taught. Legislators should attend Orientation Courses and Workshops separately from legislative employees in order to allow the Courses to focus on issues which only affect one or the other group of people. Legislative employees have many different ethical issues to deal with from those of legislators, and as well, will benefit from the more confidential atmosphere achieved by the absence of their superiors. Limiting attendance to fifty people will afford every attendee ample opportunity to ask questions and fully participate in discussions, case studies, and other educational activities. Effective ethics education deals with complex issues of both a professional and personal nature, and therefore depends on the active participation of all attendees

and should avoid the development of a passive learning environment.

AS 24.61.750. LOBBYIST TRAINING COURSE. Lobbyists play an integral role in the political process and substantially influence public policy formation. Therefore, it is essential that lobbyists know and understand the specific legal requirements which regulate the lobbying profession. Furthermore, and more importantly, lobbyists share the ethical obligation to not act in ways which will impede the legislature's ability to perform its duties according to the highest standards of public service ethics. The commission should cooperate, and coordinate, with the Alaska Public Offices Commission in order to most effectively implement and enforce lobbying regulations.

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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 employee 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)

M E M O R A N D U M

DATE: MAY 2, 1990

TO: SENATOR FRED F. ZHAROFF

FROM: PENNELOPE GOFORTH

RE: CSSB 415

COMMENTS ON SELECT SECTIONS OF
CS FOR SENATE BILL 415
LEGISLATIVE ETHICS ACT OF 1990

ARTICLE 1. LEGISLATIVE FINDINGS AND ETHICAL PRINCIPLES

This section is the rhetorical "front section" of the bill that provides the "comprehensive and unified statement of the ethical principles, considerations and obligations" that govern the rest of the bill. It contains nemerous provisions that legislators and staff "shall" do, but carries no penalties for failure to do so.

ARTICLE 2. STANDARDS OF CONDUCT

This section substantively addresses a variety of actions by legislators, legislative employees and assistants, and their spouses and dependents as well as lobbyists and spells out the punitive measures (civil sanctions and criminal penalties) for violations of these sections. Note that in most cases, the penalties are: criminal, class A misdemeanor, with up to year in jail. Civil penalties can include the greater of a fine up to $5000 or twice the damages, dismissal, scolding, suspension with or without pay, probationary status, and the recommendation that a committee chair or co-chair be barred from chairing any committee for the duration of their term of office. For a section by section analysis of the sanctions see Attachment 1.

Legislative Counsel John Gaguine, has issued a memorandum (Attachment 2) wherein he concludes that for civil sanctions, legislators "are not precluded by the legislative immunity provision of the Alaska Constitution, Article II, Section 6". Staff face both civil sanctions and criminal penalties.

Sec. 24.61.130 Misuse of State Property and Resources for Private Gain

In this section, it becomes incumbent upon staff and legislators to prohibit lobbyists, friends and relatives from using the copy machine, computers, telephone and staff time to pursue their own interests as well as staff and legislators. (ie. it will not be permitted to use the computer, for example, to balance your personal checkbook or a campaign account (under 24.61.140 also). Also prohibited will be the use of the Macs to print campaign literature and other personal hardcopy.)

Sec. 24.61.130 Misuse of State Property and Resources for Political Gain

This section lays out what you may or may not say in your two allowable state-funded newsletters. Leg Council will determine which of your bills are "significant" and must be written about in these newsletters. Note that including this information is mandatory or else the Commission won't authorize paying for the newsletter. You must also disclose "significant campaign contributions received. You may not mail out your own political campaign material or supporting another's campaign during the period of 60 days before the primary in which you are a candidate and ending the day after a general or special election. You also can't mail out any mass mailings that might be construed as directly or indirectly trying to influence the outcome of an election. You may not accept any campaign contributions in your legislative office or post, circulate or communicate campaign literature in your office.

Sec. 24.61.150 Obligation of Subordinates to Refuse to Perform Improper Tasks

This section mandates that your staff must report any violations of this Ethics Act they observe you doing to the Commission, upon pain of sanctions which can include fines up to $5000 and dismissal from the job. You may not request your staff to perform any tasks that may be a violation of this Act and should you persist your staff is required to file a complaint with the Commission. (ie. to regularly do personal errands, to do anything for your spouse or dependents or friends, to perform campaign functions, etc.)

Sec. 24.61.190 Post-Service Restrictions

You and your staff may not accept any position for one year after leaving legislative service that would require you to act as a lobbyist (excepting government positions and volunteer lobbyist positions).

Neither may you or your staff reveal non-public information to obtain a benefit. You may seek a waiver in this instance if you are unsure about a position you may want to consider. Note that "non-public" is not the same as confidential. It is defined in the bill as public information that is not readily accessible to the public.

Sec. 24.61 200-210 Use of Campaign Funds

These sections describe how campaign funds may and may not be used, ie."only to advance the interests of the campaign". Among the prohibitions are accepting post-election contributions, contributing to another candidate's campaign, transferring more than $1000 to your office account following the campaign. (These prohibitions were adotped in an effort to prevent incumbents from building up a "war chest" and intimidating challengers. The most that can carry over for next campaign is $5000.) These sections take effect, conveniently on November 6, 1990.

Sec. 24.61.265, .270, .280, .290, .310 Definitions of Close Associations

These sections define the types of associations you may and may not indulge in and which you may disclose to the Commission if you think it may be a conflict of interest. Not sanctioned except .290 which states that neither your spouse or dependent may work in the same body during session (same as current law) or in either body during interim. Waiver provision added. You must disclose associations with lobbyists under pain of sanction.

Sec. 24.61.320 Restricted Financial Interests

You may not serve as the chair of a budget committee which affects a business in which you are engaged. (ie., commercial fisherman may not oversee Fish & Game budget, educator at the U OF A may not oversee the University budget, etc.) This section has civil sanctions but you may request a waiver.

Sec. 24.61.345 Participation in General Statewide Programs Permissible

You may participate, without disclosure, in a statewide benefit or loan program if it is available to the general public, subject to eligibility standards and requires minimal discretion in determining qualifications. If the program or loan is not exempt, as determined by the Commission, you must disclose.

Sec. 24.61.350 Restricted Transactions: Gratuities

Of note in this section is the provision (c)4 that requires you to disclose overnights stays of more than $100 in value. (ie., if you are on trip in your district and stay with friends or constituents and then get weathered in, or a mechanical prevents you from flying out on schedule, for several days making the value of your stay more $100 you will have to report this.) Leg Council has been charged with determining provisions on spouse/dependent restrictions.

Sec. 24.61.380 Improper interference with the Independent Judgement of Others

When communicating with another state agency you "should explicitly convey to the administrators involved that the administrator is is expected to make an independent judgement and that no advantages

or disadvantages to the administrator or the agency will result from a favorable or unfavorable disposition". (The so-called Miranda Clause.) Sanctions have been removed from this provision.

Sec. 24.61.415 Reporting obligations of Employers of Legislators/Assistants

Private sector employers will be required under this section to report "Category A" income sources (that is income from those persons who have a substantial interest in legislative administrative or political actions) to the Commission. (This is highly doubtful that it is enforceable. ie., the Commission only has jurisdiction over the legislature.) Your spouse and dependents will be required to disclose their sources of income also. (The so-called "Jim Wright Case-where his wife received substantial funds from a questionable source and they were funneled to her husband. Those sneaky Texans!)

ARTICLE 3 LEGISLATIVE ETHICS COMMISSION

This sections contains the provisions that set up the 9 member Ethics Commission and sets out their duties and responsibilities. The fiscal note will address the costs of hiring an executive director, staff and provisions for an educational program to be presented in January of 1991. The effective date of this section is July 1, 1990. Significant oversight of this section is delegated to Legislative Council. See Attachment 4 for references to Leg Council mandates in the bill.

Sec. 24.61.570 Recommendations and Order Where Violator is an Employee

Under this section the Commission shall order you to impose sanctions in accordance with the Commission's order on your staff. Civil sanctions apply to you if you do not. No appeal process is instituted. (ie, if one of your staff members has done something to violate this Act, whether trivial or major, and the Commission determines that the sanction should be termination of employment, you have to do it. No mitigating circumstances will be considered.)

ARTICLE 5 GENERAL PROVISIONS

Sec. 24.10.100, .105, .110 Salary, Per Diem, Office Expense of Legislators

Your salary will be increased to $40,000 annually, per diem will be restricted to short-term while in session only (long term if Juneauite), and all office expenses will be on a voucher system. Office expense will be calibrated on a $7-8-9,000 scale depending on the district you represent. You may be reimbursed for up to two trips to your district for family, personal or constituent business.

SB 415

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM April 30, 1990

SUBJECT: Conflict-of-interest provisions of CSSB 415 ( ) (4/30 version)

TO: Senator Pat Pourchot, Chair
Joint Committee on the Legislative Ethics Act

FROM: John B. Gaguine JBG
Legislative Counsel

You have asked for an analysis of the penalties for violation of the standard-of-conduct provisions in the proposed Legislative Ethics Act of 1990 (CSSB 415 ( )). With a few exceptions, violation of all of those provisions carry possible "civil" penalties (for legislators, recommended by the ethics commission but imposable only by the legislature; for staff imposable by the commission) listed in AS 24.61.560(a), and ranging from minor sanctions such as disclosure orders or written reprimands to major ones such as heavy fines, expulsion, and the repeal of "tainted" legislation. In addition, many violations are also made punishable criminally as class A misdemeanors.

"Civil" sanctions, despite the misleading name, are imposed by the legislative or legislative body (the ethics commission). They are hence not precluded by the legislative immunity provision of the Alaska Constitution, Article II, section 6. Criminal sanctions can only be imposed by a court, after the person has been found guilty of a charge brought by the Department of Law. The legislative immunity provision would preclude prosecution of legislators (but not staff) for many (but not all) of the criminal violations in the bill.

The following is a list of the conflict-of-interest provisions that carry the possible "civil" sanctions listed in AS 24.61.560(a). When a provision is preceded by an asterisk, that provision also carries the criminal penalty under their bill. Other provisions, preceded by "#", concern conduct that is already criminal under Title 11, in these

cases, the bill generally refers either to a Title 11 statute or to the criminal law in general. When both an asterisk and # appears, some subsections make conduct criminal, and others refer to existing criminal laws.

24.61.110. Improper benefit from performance of public duties.

24.61.120. Duty to report improper offers.

24.61.130. Misuse of state property and resources for private gain or personal advantage.

* # 24.61.140. Misuse of state property and resources for political purposes.

24.61.150. Obligation of subordinates to refuse to perform improper tasks.

24.61.170. Use of nonpublic and confidential information for private gain.

24.61.180. Misuse of title or prestige of office for private gain or personal advantage.

* 24.61.190. Post-service restrictions to prevent misuse of public office by former legislators and legislative employees.

* 24.61.205. Prohibited use of campaign funds.

* 24.61.210. Disbursement of surplus campaign funds.

* 24.61.220. Payment of legal expenses; special expense funds.

* # 24.61.230. Improper coercion.

* 24.61.240. Fund raising limitations.

24.61.290. Nepotism.

24.61.300. Restricted relationships: lobbyists, legislators, and legislative employees. (Violators are also subject to penalties of AS 24.45.)

24.61.310. Restricted relationships: board memberships.

24.61.320. Restricted financial interests.

24.61.330. Restricted activities as an attorney or representative.

24.61.340. Restricted transactions: interest in state contracts or leases.

24.61.345. Participation in general statewide programs permissible.

24.61.350. Restricted transactions: gratuities.

24.61.360. Restrictions on earned income: outside employment and honoraria.

24.61.380. Improper influence with the independent judgment of others on behalf of constituents.

* 24.61.420. Prohibited conduct relating to disclosures.

24.61.440. Accountability: self-policing, whistle blowing, and protection of whistle blowers.

There are two provisions that carry only "administrative" sanctions under AS 24.61.560(b). Those sanctions are any sanction that could be imposed under section 560(a), except for fines and expulsion of a legislator or dismissal of an employee. These two provisions are:

24.61.430. Accountability: openness and oversight.

24.61.450. Duty toward colleagues and subordinates.

If I may be of further assistance, please advise.

JG:mi
wkmi6/085

5/3/90
E

COPY

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM April 26, 1990

SUBJECT: Appointment of the Legislative Ethics Commission (CSSB 415( ))

TO: Senator Pat Pourchot

FROM: Tamara Brandt Cook
Director
Division of Legal Services

Under Sec. 24.61.500 of the draft CSSB 415( ) dated 4/18/90 the Legislative Ethics Commission is established composed of members appointed by officials of the legislative, executive, and judicial branches, a member appointed by the Alaska Public Officer Commission, and two members selected by the other members. You have asked whether this violates Article III, sec. 26 of the State Constitution with respect to the power of the governor to make appointments. That section provides in part

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law.

There is no doubt that the Legislative Ethics Commission qualifies as a quasi-judicial agency. It has the power to hold disciplinary hearings and impose sanctions. Therefore, a question is presented regarding application of Art. III, sec. 26 to the commission.

While the outcome of a challenge to the appointment scheme contained in the bill cannot be determined with certainty, the scheme could be defended on the theory that Art. III, sec. 26 applies only to executive branch boards and commissions, not to commissions in the legislative branch. There is support for this point of view in the Alaska Constitutional Convention Proceedings. The discussion of this

the legislature cannot use its investigative powers simply to try a person before the legislature. Second, assuming that this first requirement is met, it is not clear to me that the Legislative Ethics Commission, with no legislators as members, could exercise these legislative investigatory powers. All the cases have involved traditional legislative committees consisting of legislators, such as the House Un-American Activities Committee.

3. Power of legislature to impose sanctions less than expulsion. Ms. Burke suggested that the fact that Article II, Section 12 of the Alaska constitution speaks only of expelling a member means that lesser sanctions, such as censure (and those listed in AS 24.61.560(a) of the ethics bill) might not be allowed. Case law from other states makes it clear that the constitutional power to expel a member includes the power to impose lesser sanctions.

4. The legislative immunities clause. Again, I agree with Ms. Burke that the legislative immunities clause of the constitution (Article II, Section 6) would in many instances preclude criminal or civil prosecution of legislators by the Department of Law. However, Section 6 in no way limits action that can be taken against a legislative employee, and it does not limit the legislature, through the Legislative Ethics Commission, from acting against a member (because of Section 6's language that legislators "may not be held to answer before any other tribunal").

If I may be of further assistance, please advise.

JBG:gc
G14/063

Enclosure

Uehling 5/4/98

5.4.90 News

Ready or not, ethics bill comes to vote today

By DAVID POSTMAN
Daily News reporter



JUNEAU — It took some strong-arm tactics by Senate President Tim Kelly, but the 1990 Legislative Ethics Act is set for a vote on the Senate floor today.

Kelly has said the Senate Finance Committee must finish its review of the bill by this morning, and the committee was meeting late Thursday to meet that deadline Thursday morning. Finance Committee members had apparently begun to lay the groundwork to stop the bill, some said they were concerned not enough time had been put into the proposal, that it was unconstitutional and would be too expensive to enforce.

The proposal drafted by a Senate ethics consultant makes sweeping changes in what legislators and their staff can do, places new restrictions on campaign fundraising, and gives legislators a salary increase that more than makes up for miscellaneous payments that would end under the bill.

Committee co-chairman Sen. Rick Uehling, R-Anchorage, and Sens. Fred Zharoff, D-Kodiak, and Paul Fischer, R-Soldotna, led the charge in asking witnesses pointed questions and making it clear they were not convinced the bill was ready for a floor vote.

The committee also heard from officials of legislative ethics commissions in New York and California. The senators primarily wanted to know how much work had gone into the other states' ethics acts — quite a bit more than the three months put into the Alaska proposal -- and how legislative staff are treated in the law.

The committee was about to recess for the Thursday morning Senate session when Kelly sent word that there would be no session until the committee passed the bill, committee member Sen. Steve Frank, R-Fairbanks, said later.

"We have an unethical situation here," Uehling said, as members huddled quickly before heading to Kelly's office. After a brief meeting between the Senate president and key committee members, it was decided the committee could hold a second hearing Thursday but would have to finish their work by this morning.

Sen Pat Pourchot, chairman of the special ethics committee that spent 40 hours reworking the bill, said the finance committee was on its way to either killing the bill or weakening it.

"They hate it. They set us up but they will pass it," he said.

Thursday night, the committee reviewed the 93-page bill, made corrections and grilled Pourchot about what the proposed ethics code means.

At 11 p.m., Uehling said the committee would adjourn until 8 a.m. today and Kelly said the Senate would not meet today until the committee was done. Uehling and other committee members said they resented Kelly's attempt to rush the bill.

LUST ... The Senate Finance Committee also approved a bill Thursday dealing with leaking underground storage tanks — a far different animal from the one that first surfaced last year.

When the House first looked at the so-called LUST bill, it called for a 2-cents-per-gallon tax on all fuel tanks to pay for repairs and replacement of leaky tanks. The industry tax didn't fly

Please see Back Page, CAPITOL

MAY 04 '90 07:36 YUKONOFFICESUPPLY P.2

Please see Back Page, CAPITOL

CAPITOL COUNTDOWN: Ethics bill vote is today

Continued from Page A-1

and the House changed it to a consumer tax. Aboveground tanks were also taken out of the law.

Now, though, the Senate Finance Committee plan calls for the state to pay the cost of fixing the faulty tanks out of the general fund.

And the regulations governing what would have to be done would be written not by the state, but by a board dominated by industry. The commissioners of transportation and environmental conservation would serve on the board along with an engineer and a general contractor familiar with underground tanks, two people who own or operate tanks and a member of the insurance industry.

OIL-SPILL BILL . . . The oil industry lost one Thursday when the Senate Judiciary Committee unanimously approved a bill that would allow judges to impose higher fines against corporations convicted of criminal negligence in oil spills and other crimes.



Sen. Tim Kelly

The committee increased most of the allowable fines above what was approved by the state House and made the bill tougher, according to an assistant attorney general.

BARGAINING CHIPS . . . Bills Held Hostage Day 116. In the final days of the legislature, bills are often held by committee chairmen and chairwoman as bargaining stock.

Some may never see the light of day. Others are just being held until the time is right, or the captor gets what he needs.

"We have to make sure everything is in the right place so neither body can all of a sudden pick up and move out," said Rep. Ben Grussendorf, D-Sitka, chairman of the House Rules Committee which schedules bills for floor votes.

According to several legislators, current hostage bills include:

- A proposed ban on fish farming — sponsored by Grussendorf and Sen. Dick Eliason, R-Sitka — that Sen. Bettye Fahrenkamp, D-Fairbanks, is holding in her Senate Resources Committee.
- A bill that would authorize construction of a coal-fired power plant near Healy, supported by Fahrenkamp, that is parked in Eliason's Senate Labor and Commerce Committee.
- A bill that would give hunting and fishing guides exclusive use of prime areas — in the House Finance Committee. Committee Co-chairman Lyman Hoffman, D-Bethel, has been telling lawmakers the bill may not move unless there is action on his proposed constitutional amendment for subsistence.
- A bill that would exempt the Alaska Railroad from certain state purchasing codes is being held by Grussendorf. He said he is watching the Senate to see if it does anything on a House bill that would require the railroad to take measures to reduce moose kills.

Grussendorf said he made a commitment to the sponsors of the House moose bill that he would "give them a lever" to get the bill passed.

MAY 04 '90 07:25 TUI OFFICESUFFLYD P.1

ATTACHMENT I

U.S. Federal Legislative Branch
Post-Employment Restrictions

TABLE 20
SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
(As of January 1, 1988)

Jurisdiction	Sources of Substantive Restraints on State/Provincial Government Officials/Employees Concerning:									
	Use of Public Position to Obtain Personal Benefits	Providing Benefits to Influence Official Actions	Use of Confidential Government Information	Post-governmental Employment	Receipt of Gifts by Officials or Employees	Representation of Private Clients by Public Officials or Employees before Public Entities	Receipt of Fees or Honoraria by Public Officials or Employees	Nepotism	Competitive Bidding	Outside Employment or Business Activities of Public Officials or Employees
Alabama	S	S	S	S	S	S	S	S	—	S
Alaska	S	S	—	—	A	S	—	—	—	—
Arizona	S	S	S	—	S	S	S	S	S	S
Arkansas	S	S	S	—	—	—	—	—	—	—
California	S	S	—	S	S	S	S	—	—	S
Colorado	—	—	—	—	—	—	—	—	—	—
Connecticut	S	S	S	S,A	S,A	S	S	S	S	S
Delaware	S	S	—	—	—	—	•	R	S	•
Florida	S	S	S	S	S	S	—	S	S	S
Georgia	—	—	—	—	—	—	—	—	—	—
Hawaii	S	S	S	S	S	S	S	—	S	S
Idaho	—	—	—	—	—	—	—	—	—	—
Illinois(e)	S	S	A,S	S	A,S	S	A	A,S	A,S	A,S
Indiana	S	S	A,S	S	A	A,S	A	S	S	A
Iowa	S	S	(b)	S	S	•	•	S	S	R
Kansas	S	S	S	S	S	S	S	A	S	S
Kentucky	S	S	S	—	S	S	S	R	R	R
Louisiana	S	S	S	S	S	S	S	S	S	S
Maine	S	S,L	S	S	S	S,A	—	S	•	—
Maryland	S	S	S	S	S	S	S	S	—	S
Massachusetts	S	S	S	S	S	S	S	S	—	S
Michigan	S	S	S	—	S	S	—	L	A,E,L,R,S	S
Minnesota(c)	—	—	—	—	—	—	—	—	—	—
Mississippi	S,R	S,L	S	S,R	—	S	—	S,L	S,L	S,L,R
Missouri	—	S	S	S	S	E	—	C	•	—
Montana	S	S	—	S	S	—	—	S	S	C(d)
Nebraska	S	S	S	—	S	S	—	S	S	—
Nevada	S	S	S	—	S	A	—	S	S	S
New Hampshire	S	S	S	—	S	S	S	—	A,S	S
New Jersey	S	S	S	S	S	S	A	—	R	R

TABLE 20 (continued)
SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
(As of January 1, 1988)

Jurisdiction	Sources of Substantive Restraints on State/Provincial Government Officials/Employees Concerning:									
	Use of Public Position to Obtain Personal Benefits	Providing Benefits to Influence Official Actions	Use of Confidential Government Information	Post-governmental Employment	Receipt of Gifts by Officials or Employees	Representation of Private Clients by Public Officials or Employees before Public Entities	Receipt of Fees or Honoraria by Public Officials or Employees	Nepotism	Competitive Bidding	Outside Employment or Business Activities of Public Officials or Employees
New Mexico	S	S	S	—	S	—	—	—	S	S
New York	—	—	—	—	—	—	—	—	—	—
North Carolina	E	S	—	—	R	—	R	R	S	R
North Dakota	—	—	—	—	—	—	—	—	—	—
Ohio	S	S	S	S	S,(c)	S	(c)	(c)	S	(c)
Oklahoma	S	S	—	—	S	S	S	S	S	S
Oregon	S	S	S	S	S	S	S	S	S	S
Pennsylvania	S	S	S	S	S	R	R	S,R	S	—
Philadelphia, PA	S	S	S	S	S	S	S	—	S	S
Rhode Island	S	S	S	—	S	S	—	—	S	S
South Carolina	S	S	S	S	S	—	S,A	R(f)	S(f)	S,A
South Dakota	—	—	—	—	—	—	—	—	S	S
Tennessee	S	S	S	S	S	S	S	S	S	S
Texas	S	S	S	—	S	S	S	S	S	S
Utah	—	—	—	—	—	—	—	—	—	—
Vermont	S(g)	S	—	—	S	—	R(g)	—	S	A
Virginia	S	S	S	—(h)	S	S	R,S	S	S	S
Washington	S	S	S	S	S	S	S,A	A	S	S
West Virginia	L,R,S	E,R,S	•	S	E,R,S	—	E	—	A,L,R,S	A,R,S
Wisconsin	S	S	S	S	S	S	S	S	S	S
Wyoming	—	—	—	—	—	—	—	—	—	—
District of Columbia	S	S	S	S	S	S	S	S	S	S
U.S.A. (Federal)	S,R	S,R	S,R	S,R	R	S,R	—	R	—	R
Virgin Islands	S	—	S	—	—	—	—	—	—	S
Alberta	—	—	—	—	—	—	—	—	—	—
British Columbia	—	—	—	—	—	—	—	—	—	—
Newfoundland	—	—	—	—	—	—	—	—	—	—
Ontario	—	—	—	—	—	—	—	—	—	—
Quebec	—	—	—	—	—	—	—	—	—	—
Saskatchewan	—	—	—	—	—	—	—	—	—	—
Canada (Federal)	—	—	—	—	—	—	—	—	—	—

TABLE 20 (continued)
SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
(As of January 1, 1988)

Key:
— No restraints/Not applicable
A Administrative regulation
C Constitutional
E Executive order
L Case law
R Agency ruling
S Statutory
• Restricted activity; source of restriction unavailable.
(a) The majority of the several hundred citations in the Illinois Revised Statutes which might be described as "conflict of interest" in character apply to specific agencies, officers or programs an are sometimes further implemented by agency rule or administrative regulation. A number carry civil penalties for violation, although a number encompass criminal sanctions. There are als a number of criminal statutes pertaining to bribery and official misconduct which are of generic application to officers and employees in state and local government. However, there is no separa statutory code of conduct applying evenly throughout Illinois state government.
(b) House and senate rules.
(c) No substantive restraints fall within the jurisdiction of the Ethical Practices Board.
(d) Judges only.
(e) Agency opinions.
(f) Not encompassed within the State Ethics Act.
(g) State employee contract also prohibits it.
(h) Statutory restraints for a few.

Ethics Code Proposed By Los Angeles Panel

In a move that supporters hope will be a n tional model for cleaning up corruption, a special commission proposed a new ethics code for Los Angeles's city government, calling it the toughest such measure in the country.

The proposal comes against the backdrop of growing public outrage over ethical lapses by public officials.

Article, page A11.

SMOKING KILLS...OVER A THOUSAND PEOPLE A day! Isn't it time you stopped? The Martin Himmel Health Foundation 450 Park Avenue N.Y. 10022 ADVT

Rigid Ethics Code Urged for Los Angeles Government

A Look at the Proposed Ethics Code

Here are key provisions of the code proposed by the ethics commission in Los Angeles:

As elected officials and top decision makers would be required to annually list all investments and sources of income. Tougher rules would also apply for some officials, candidates and consultants.

Outside earned income would be banned and gifts strictly limited for all elected officials and top decision makers.

Top decision makers and elected officials would not be permitted to lobby any part of the city government for one year after leaving office.

All campaign fund-raising would be prohibited until 60 days ma before an election and partial public funding would be provided to candidates agreeing to spending limits. Copies of all campaign materials distributed to 200 or more people would have to be submitted to the commission and opponents.

An independent city ethics commission would have power to write regulations, arrange training sessions, carry out investigations, issue opinions and impose fines.

An ethics training program would be established for all elected officials, decision-making employees, lobbyists, political candidates and campaign treasurers.

The city attorney's investigative powers would be increased, a special prosecutor would be provided for cases concerning elected officials and citizens would have the opportunity to sue as private attorneys general.

Decision makers would be required to act only in matters in which they do not have a conflict of interest.

Decision makers would be required to act only investment that is reasonably likely to present a conflict of interest.

Article continues on subsequent column and page.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION CSSB 415(JLE)
PUBLISH DATE

FISCAL NOTE

REQUEST:
Revision Date:
Title: "An Act establishing a legislative ethics commission & standards of conduct...
Sponsor: Jt. Comm. on Leg. Ethics
Requestor: Jt. Comm. on Leg. Ethics

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components: Salaries & Allowances
Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	865.6	1480.1	1480.1	1480.1	1480.1	1480.1
Travel	-28.2	-28.2	-28.2	-28.2	-28.2	-28.2
Contractual	704.0	1015.3	1015.3	1015.3	1015.3	1015.3
Supplies	3.0	3.0	3.0	3.0	3.0	3.0
Equipment	20.5	2.0	2.0	2.0	2.0	2.0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	1564.9	2472.2	2472.2	2472.2	2472.2	2472.2
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	1564.9	2472.2	2472.2	2472.2	2472.2	2472.2
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	1564.9	2472.2	2472.2	2472.2	2472.2	2472.2

POSITIONS:

Full-Time	3	3	3	3	3	3
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

CSHB 415(JLE) establishes a Legislative Ethics Commission and standards of conduct for legislators and legislative employees, former legislators and employees, and lobbyists. The bill also amends legislators' compensation and allowances. The following is requested to adequately support the Legislative Ethics Commission and the changes in legislators' compensation & allowances.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 5/2/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 5/2/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

This fiscal note reflects changes in requested funding for Legislators' Salaries & Allowances component and Ethics funding in the Council & Subcommittees component. FY 91 budget request of $3,150,500 for Legislators' Salaries & Allowances and $50,000 for House & Senate Ethics Committee is in addition to the requested figures in this fiscal note.

PERSONAL SERVICES

1. Staff is requested as follows to assist the Legislative Ethics Commission.

Executive Director - Range 24A		
$4,687 x 12 months =	$56,244	
$56,244 x 36% benefits =	$20,247	
	$76,491	76.5
Administrative Assistant - Range 19A		
$3,353 x 12 months =	$40,236	
$40,236 x 36% benefits =	$14,485	
	$54,721	54.7
Executive Secretary - Range 15A		
$2,531 x 12 months =	$30,372	
$30,372 x 36% benefits =	$10,933	
	$41,305	41.3
		172.5

2. Compensation of legislators.

Effective January 21, 1991, legislators' annual salaries will change from $22,140 to $40,000. The below figures show the FY 91 cost including benefits for 6 months at the new rate and the estimated FY 92 cost including benefits for 12 months.

CURRENT FY 91 BUDGET REQUEST LEGISLATORS' SALARIES	CSSB 415(JLE) FY 91 COST LEGISLATORS' SALARIES
$1,865,189	$2,558,304

FY 91 increased personal services cost under Salaries & Allowances would be $693,115. 693.1

FY 92 estimated increase in personal services cost under Salaries & Allowances is $1,307,577.

TRAVEL

3. It is anticipated there will be 6 meetings of the Legislative Ethics Commission.

6 meetings x 9 members at 3 days each		
airfare - 6 meetings x 9 members = 54 airfares		
54 airfares x $390 =	$21,060	
compensation - 6 meetings x 9 members = 54		
54 x 3 days compensation = 162		
162 x $175 =	$28,350	
per diem - 6 meetings x 9 members = 54		
54 x 3 days per diem = 162		
162 x $80 =	$12,960	
	$62,370	62.4

4. Additional stipend for the Chair of the Commission.
Stipend is an annual amount - $500. 0.5

5. Legislative Ethics Commission staff travel - travel for Executive Director and staff to Legislative Ethics Commission meetings and other related travel - $10,000. 10.0

6. Eliminates long-term per diem for legislators. Amount budgeted in FY 91 Legislative Affairs budget is $180,500. -180.5

7. A new subsection is added to reimburse a member of the Legislature for up to two round trip tickets from Juneau to a city in the district from which the legislator was elected during each regular session of the Legislature.

2 trips each session Coach travel for 57 legislators $26,000 x 2 trips = $52,000	52.0	
Per Diem - 3 days x 57 legislators x $80/day = $13,680/trip 2 trips x $13,680 = $27,360	27.4	
	79.4	79.4

CONTRACTUAL

8. Legislators allowances are being changed from $4,000 annually to 14 representatives @ $6,000 for 1 district, 26 representatives @ $7,000 for 2 districts, 8 senators @$7,000 for a single-senator district & 12 senators @$9,000 for a two-senator district.

14 reps x $6,000 =	$84,000		
26 reps x $7,000 =	$182,000		
8 senators x $7,000 =	$56,000	$430,000 proposed	
12 senators x $9,000 =	$108,000	$240,000 current	
	$430,000	$190,000 increase	190.0

9. Professional services for contracts to investigate compliance with the Legislative Ethics Act of 1990 with outside investigators, attorneys, additional staff, etc. Training services for orientation education courses, etc. - $75,000. 75.0

10. Lease office space funding
2,000 sq. ft x $2.00 sq. ft = $4,000 $4,000 x 12 months = $48,000 48.0

11. Preparation & publication of the Legislative Ethics Manual; development and dissemination of training materials - $50,000. 50.0

12. Phones and postage - $800 a month x 12 months = $9,600. 9.6

13. Estimated cost of newsletters for all 60 legislators. Assumption: Mailing of newsletter to all registered voters in the State (285,000+). Newsletters printed on newsprint through one vendor (8 pages). 14 House members would send 7,125 newsletters, 26 House members would send 14,250 newsletters, 8 senators would send 14,250 newsletters and 12 senators would send 28,500 newsletters. Typesetting, printing, labels, bulk permit & mailing for two newsletters estimated cost per year is $642,712. 642.7

SUPPLIES

13. Office Supplies - paper, stationery, etc. - $3,000.	3.0

EQUIPMENT

14. 3 desks, 2 filing cabinets, bookcases, 3 chairs, 3 computers, 1 laser printer, phone system, etc. Misc. equipment to furnish Legislative Ethics Commission staff office - $20,500.	20.5

A/13

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION CSSB 415(Jud)
PUBLISH DATE 4/17/90

FISCAL NOTE

REQUEST:
Revision Date:
Title: "An Act establishing a legislative ethics commission & standards of conduct...
Sponsor: S. Judiciary
Requestor: S. Judiciary

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components: Salaries & Allowances
Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	865.6	1480.1	1480.1	1480.1	1480.1	1480.1
Travel	-27.7	-27.7	-27.7	-27.7	-27.7	-27.7
Contractual	382.6	382.6	382.6	382.6	382.6	382.6
Supplies	3.0	3.0	3.0	3.0	3.0	3.0
Equipment	20.5	2.0	2.0	2.0	2.0	2.0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	1244.0	1840.0	1840.0	1840.0	1840.0	1840.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	1244.0	1840.0	1840.0	1840.0	1840.0	1840
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	1244.0	1840.0	1840.0	1840.0	1840.0	1840.0

POSITIONS:

Full-Time	3	3	3	3	3	3
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

CSHB 415(Jud) establishes a Legislative Ethics Commission and standards of conduct for legislators and legislative employees, former legislators and employees, and lobbyists. The bill also amends legislators' compensation and allowances. The following is requested to adequately support the Legislative Ethics Commission and the changes in legislators' compensation & allowances.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 4/10/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 4/10/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

PERSONAL SERVICES

1. Staff is requested as follows to assist the Legislative Ethics Commission.

Executive Director - Range 24A		
$4,687 x 12 months =	$56,244	
$56,244 x 36% benefits =	$20,247	
	$76,491	76.5
Administrative Assistant - Range 19A		
$3,353 X 12 months =	$40,236	
$40,236 X 36% benefits =	$14,485	
	$54,721	54.7
Executive Secretary - Range 15A		
$2,531 x 12 months =	$30,372	
$30,372 x 36% benefits =	$10,933	
	$41,305	41.3
		172.5

2. Compensation of legislators.

Effective January 21, 1991, legislators' annual salaries will change from $22,140 to $40,000. The below figures show the FY 91 cost including benefits for 6 months at the new rate and the estimated FY 92 cost including benefits for 12 months.

CURRENT FY 91 BUDGET REQUEST	CSSB 415(Jud) FY 91 COST
LEGISLATORS' SALARIES	LEGISLATORS' SALARIES
$1,865,189	$2,558,304

FY 91 increased personal services cost under Salaries & Allowances would be $693,115. 693.1

FY 92 estimated increase in personal services cost under Salaries & Allowances is $1,307,577.

TRAVEL

3. It is anticipated there will be 6 meetings of the Legislative Ethics Commission.

6 meetings x 9 members at 3 days each		
airfare - 6 meetings x 9 members = 54 airfares		
54 airfares x $390 =	$21,060	
compensation - 6 meetings x 9 members = 54		
54 x 3 days compensation = 162		
162 x $175 =	$28,350	
per diem - 6 meetings x 9 members = 54		
54 x 3 days per diem = 162		
162 x $80 =	$12,960	
	$62,370	62.4

4. Additional stipend for Chair and Vice-Chair of the Commission.
   Stipend is an annual amount.
   2 x $500 each = $1,000 — 1.0

5. Legislative Ethics Commission staff travel - travel for Executive Director and staff to Legislative Ethics Commission meetings and other related travel - $10,000. — 10.0

6. Eliminates long-term per diem for legislators. Amount budgeted in FY 91 Legislative Affairs budget is $180,500. — -180.5

7. A new subsection is added to reimburse a member of the Legislature for up to two round trip tickets from Juneau to a city in the district from which the legislator was elected during each regular session of the Legislature.

   2 trips each session
   Coach travel for 57 legislators
   $26,000 x 2 trips = $52,000 — 52.0

   Per Diem - 3 days x 57 legislators x $80/day = $13,680/trip
   2 trips x $13,680 = $27,360 — 27.4

   79.4 — 79.4

CONTRACTUAL

8. Legislators allowances are being changed from $4,000 annually to $6,000 for representatives and $10,000 for senators.

20 senators x $10,000 =	$200,000	$440,000 proposed	
40 reps x $6,000 =	$240,000	$240,000 current	
	$440,000	$200,000 increase	200.0

9. Professional services for contracts to investigate compliance with the Legislative Ethics Act of 1990 with outside investigators, attorneys, additional staff, etc. Training services for orientation education courses, etc. - $75.0. — 75.0

10. Lease office space funding
    2,000 sq. ft x $2.00 sq. ft = $4,000 $4,000 x 12 months = $48,000 — 48.0

11. Preparation & publication of the Legislative Ethics Manual; development and dissemination of training materials - $50,000. — 50.0

12. Phones and postage - $800 a month x 12 months = $9,600 — 9.6

SUPPLIES

13. Office Supplies - paper, stationery, etc. - $3,000 — 3.0

EQUIPMENT

14. 3 desks, 2 filing cabinets, bookcases, 3 chairs, 3 computers, 1 laser printer, phone system, etc. Misc. equipment to furnish Legislative Ethics Commission staff office - $20,500 — 20.5

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION CSSB 415(Jud)
PUBLISH DATE

FISCAL NOTE

REQUEST:
Revision Date:
Title: "An Act establishing a legislative ethics commission & standards of conduct...
Sponsor: S. Judiciary
Requestor: S. Judiciary

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components: Salaries & Allowances
Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services	824.3	1438.8	1438.8	1438.8	1438.8	1438.8
Travel	-27.7	-27.7	-27.7	-27.7	-27.7	-27.7
Contractual	382.6	382.6	382.6	382.6	382.6	382.6
Supplies	3.0	3.0	3.0	3.0	3.0	3.0
Equipment	20.5	20.5	20.5	20.5	20.5	20.5
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	1202.7	1817.2	1817.2	1817.2	1817.2	1817.2
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	1202.7	1817.2	1817.2	1817.2	1817.2	1817.2
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	1202.7	1817.2	1817.2	1817.2	1817.2	1817.2

POSITIONS:

Full-Time	3	3	3	3	3	3
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

CSHB 415(Jud) establishes a Legislative Ethics Commission and standards of conduct for legislators and legislative employees, former legislators and employees, and lobbyists. The bill also amends legislators' compensation and allowances. The following is requested to adequately support the Legislative Ethics Commission and the changes in legislators' compensation & allowances.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 4/10/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 4/10/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

PERSONAL SERVICES

1. Staff is requested as follows to assist the Legislative Ethics Commission.

Executive Director - Range 24A		
$4,687 x 12 months =	$56,244	
$56,244 x 36% benefits =	$20,247	
	$76,491	76.5
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$40,236 X 36% benefits =	$14,485	
	$54,721	54.7
Executive Secretary - Range 15A		
$2,531 x 12 months =	$30,372	
$30,372 x 36% benefits =	$10,933	
	$41,305	41.3
		131.2

2. Compensation of legislators.

Effective January 21, 1991, legislators' annual salaries will change from $22,140 to $40,000. The below figures show the FY 91 cost including benefits for 6 months at the new rate and the estimated FY 92 cost including benefits for 12 months.

CURRENT FY 91 BUDGET REQUEST	CSSB 415(Jud) FY 91 COST
LEGISLATORS' SALARIES	LEGISLATORS' SALARIES
$1,865,189	$2,558,304

FY 91 increased personal services cost under Salaries & Allowances would be $693,115. 693.1

FY 92 estimated increase in personal services cost under Salaries & Allowances is $1,307,577.

TRAVEL

3. It is anticipated there will be 6 meetings of the Legislative Ethics Commission.

6 meetings x 9 members at 3 days each		
airfare - 6 meetings x 9 members = 54 airfares		
54 airfares x $390 =	$21,060	
compensation - 6 meetings x 9 members = 54		
54 x 3 days compensation = 162		
162 x $175 =	$28,350	
per diem - 6 meetings x 9 members = 54		
54 x 3 days per diem = 162		
162 x $80 =	$12,960	
	$62,370	62.4

4. Additional stipend for Chair and Vice-Chair of the Commission.
Stipend is an annual amount.
2 x $500 each = $1,000

5. Legislative Ethics Commission staff travel - travel for Executive Director and staff to Legislative Ethics Commission meetings and other related travel - $10,000. 1(

6. Eliminates long-term per diem for legislators. Amount budgeted in FY 91 Legislative Affairs budget is $180,500. -180

7. A new subsection is added to reimburse a member of the Legislature for up to two round trip tickets from Juneau to a city in the district from which the legislator was elected during each regular session of the Legislature.

2 trips each session Coach travel for 57 legislators $26,000 x 2 trips = $52,000	52.0	
Per Diem - 3 days x 57 legislators x $80/day = $13,680/trip 2 trips x $13,680 = $27,360	27.4	
	79.4	79.4

CONTRACTUAL

8. Legislators allowances are being changed from $4,000 annually to $6,000 for representatives and $10,000 for senators.

20 senators x $10,000 =	$200,000	$440,000 proposed	
40 reps x $6,000 =	$240,000	$240,000 current	
	$440,000	$200,000 increase	200.0

9. Professional services for contracts to investigate compliance with the Legislative Ethics Act of 1990 with outside investigators, attorneys, additional staff, etc. Training services for orientation education courses, etc. - $75.0. 75.0

10. Lease office space funding
2,000 sq. ft x $2.00 sq. ft = $4,000 $4,000 x 12 months = $48,000 48.0

11. Preparation & publication of the Legislative Ethics Manual; development and dissemination of training materials - $50,000. 50.0

12. Phones and postage - $800 a month x 12 months = $9,600 9.6

SUPPLIES

13. Office Supplies - paper, stationery, etc. - $3,000 3.0

EQUIPMENT

14. 3 desks, 2 filing cabinets, bookcases, 3 chairs, 3 computers, 1 laser printer, phone system, etc. Misc. equipment to furnish Legislative Ethics Commission staff office - $20,500 20.5

A/B

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION SB 415
PUBLISH DATE 4/17/90

FISCAL NOTE

REQUEST:
Revision Date:
Title: "An Act relating to conduct of legislators, legislative employees...
Sponsor: Senator Pourchot
Requestor: Senate Judiciary

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

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 A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 4/17/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 4/17/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : CSSB 415
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : An Act establishing a legislative ethics committee
Sponsor : Sen. Fourchet
Requestor :

Agency Affected : Dept. of Administration
BRU : AK Public Offices Commission
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	86.0	88.7	91.3	93.6	96.7	99.7
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	3.8	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	89.8	88.7	91.3	93.6	96.7	99.7
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	89.8	88.7	91.3	93.6	96.7	99.7
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	89.8	88.7	91.3	93.6	96.7	99.7

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED NARRATIVE

Prepared by : Kayla L. Forsythe, Executive Director
Division : Alaska Public Offices Commission
Phone : 276-4176
Date : 5-1-90

Approved by Commissioner : Annie/Laurie Howard, Chair
Agency : Alaska Public Offices Commission
Date : 5-1-90

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CSSB 415 NARRATIVE

This bill will create new prohibitions in Alaska's campaign finance law which will apply only to candidates for legislative office.

These include prohibitions on misuse of campaign contributions and on improper disbursement of surplus campaign funds, and restrictions on the time period during which funds may be raised.

Although the prohibitions are worded in a fairly straightforward manner, the commission anticipates ongoing requests for advice about interpretation of the law, including whether a planned campaign expenditure is permissible, and whether a loan is "bona fide" and therefore can be retired from surplus campaign funds. The commission also anticipates several new complaints each year alleging that a legislative candidate has violated one or more of these new prohibitions. Finally, because the bill applies only to legislative candidates, commission staff will be required to develop one set of policies, instruction manuals, forms and training services for legislative candidates, and another set for candidates for governor, lieutenant governor, and local office. Questions will also increase due to confusion over which set of rules apply to which type of candidate.

The commission anticipates adding one professional staff member (Range 18) to absorb the new workload. Because the one secretary/receptionist in the Anchorage office cannot absorb additional telephone, front counter, filing and typing tasks which will result from the increased workload, the commission also will need an additional Range 10 secretary/receptionist.

Actual Costs FY 91

Personnel:	Range 18A	$37,548
	Range 10A	$22,140
Benefits Rate:	.286	
Insurance Rate:	$386.19	
Equipment:	Computer(1)	$3122
	Desk & Chair	$600

phone number is 258-4968.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSSB 415 (Leg Ethics)
Publish Date:

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act establishing a legislative ethics committee
BRU: Trial Courts
Sponsor: Legislative Ethics
Components:
Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services	-	-	-	-	-	-
Travel	-	-	-	-	-	-
Contractual	-	-	-	-	-	-
Supplies	-	-	-	-	-	-
Equipment	-	-	-	-	-	-
Land & Structures	-	-	-	-	-	-
Grants & Claims	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	-	-	-	-	-	-
Federal Funds						
Other						
TOTAL	-	-	-	-	-	-

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Unable to ascertain fiscal impact at this time.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 05/03/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 05/03/90
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

Fiscal Analysis

Many of the provisions of this bill carry penalties ranging from criminal to civil sanctions. This bill also provides that the Department of Law may independently bring criminal or civil enforcement actions. The court system does anticipate a fiscal impact given the bill's numerous penalty sections and the constitutional questions that have been raised in testimony. However, the court system cannot predict the additional resources that will be necessary to process these cases until the Department of Law's enforcement activity begins.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 415 (Leg. Ethics)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Legislative Ethics Law

Agency Affected: Public Safety
BRU: AST

Sponsor: Comm. on Legislative Ethics
Requestor: Senate Finance

Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
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)
Although this bill contains numerous provisions which carry criminal penalties, the Department of Public Safety assumes that the Legislative Ethics Commission will investigate the majority of complaints or cases which arise. While the DPS may conduct some additional criminal investigations if this bill passes, it is impossible to estimate the extent of any fiscal impact.

Prepared by: Gayle A. Horetski, Deputy Commissioner
Division: _____
Phone: 465-4322
Date: 5/2/90

Approved by Commissioner: D.A.H. for Arthur English
Agency: Department of Public Safety
Date: 5-2-90

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

COGEL

CAMPAIGN FINANCE, ETHICS & LOBBY LAW

SPECIAL EDITION

BLUE BOOK 1988-89



CAMPAIGN FINANCE, ETHICS & LOBBY LAW BLUE BOOK 1988-1989

Special Edition

Campaign Finance, Ethics, Lobby Law Legislation and Litigation Updates presented at the Ninth Annual Conference of the Council on Governmental Ethics Laws in September 1987

Dinker I. Patel
Policy Analyst

Joyce Bullock
Editor

Published by the Council on Governmental Ethics Laws
through The Council of State Governments
Lexington, Kentucky
1988

The Council of State Governments

COGEL

TABLE 1
AGENCIES' AREAS OF AUTHORITY

Jurisdiction/ Agency	Areas of Authority						Officials/Employees Within Agency's Areas of Authority							
								State/Provincial		County		Municipal		
	Campaign Finance	Ethics	Personal Financial Disclosure	Lobbying	Elections	Other	Federal	Elected	Appointed	Elected	Appointed	Elected	Appointed	
Alabama														
Alabama Ethics Commission		•	•	•				•	•	•	•	•	•	
Secretary of State's Office, Elections Division	•				•		•	•						
Alaska														
Alaska Public Offices Commission	•		•	•				•	•	•	•	•	•	
Arizona														
Secretary of State's Office	•		•	•	•			•				•	•	
Ethics and Rules Office		•	•											
Arkansas														
Secretary of State's Office, Elections Division	•	•	•		•			•	•					
California														
Fair Political Practices Commission	•	•	•	•				•	•	•	•	•	•	
Secretary of State's Office	•			•			*(a)	•						
Colorado														
Department of State	•	•	•	•	•			•		•				
Connecticut														
Connecticut State Elections Enforcement Commission	•				•			•		•		•		
Secretary of State's Office	•				•		•	•		•		•		
State Ethics Commission		•	•	•				•	•		(b)			
Delaware														
State Election Commissioner	•				•			•	•	•				
Legislative Council				•										
Florida														
Commission on Ethics		•	•					•	•	•	•	•	•	
Joint Office on Lobby Registration		•		•		*(c)		•	•	•	•	•	•	
House Committee on Ethics and Elections	•	•	•		•	•		•		•	•	•	•	

TABLE 1 (continued)
AGENCIES' AREAS OF AUTHORITY

Jurisdiction/ Agency	Areas of Authority						Officials/Employees Within Agency's Areas of Authority						
								State/Provincial		County		Municipal	
	Campaign Finance	Ethics	Personal Financial Disclosure	Lobbying	Elections	Other	Federal	Elected	Appointed	Elected	Appointed	Elected	Appointed
Georgia													
State Ethics Commission	•		*(d)					•		•		•	
Hawaii													
Campaign Spending Commission	•							•		•		•	
State Ethics Commission		•	•	•				•	•				
Idaho													
Secretary of State's Office	•			•	•			•					
Illinois													
Illinois Board of Ethics		•	•						•				
Illinois State Board of Elections	•				•		•	•		•		•	
Secretary of State's Office, Index Department		•	•	•				•	•				
DuPage County Board of Election Commissioners					•		•	•		•		•	
Board of Ethics, City of Chicago	•	•	•	•					•			•	•
Indiana													
Indiana State Election Board	•				•	*(e)		•					
Secretary of State's Office	•			•	•	*(f)							
State Ethics Commission		•						•	•				
Iowa													
Iowa Campaign Finance Disclosure Commission	•							•		•		•	
Secretary of the Senate			•	•				•					
Kansas													
Kansas Public Disclosure Commission	•	•	•	•				•					
Kentucky													
Attorney General's Office		•	•										
Financial Disclosure Review Commission		•	•					•	•				
Kentucky Registry of Election Finance	°		•					•		•		•	

TABLE 1 (continued)
AGENCIES' AREAS OF AUTHORITY

Jurisdiction/ Agency	Areas of Authority						Officials/Employees Within Agency's Areas of Authority						
								State/Provincial		County		Municipal	
	Campaign Finance	Ethics	Personal Financial Disclosure	Lobbying	Elections	Other	Federal	Elected	Appointed	Elected	Appointed	Elected	Appointed
Louisiana													
LA Ethics Administration Program	•	•	•					•	•	•	•	•	•
Louisiana Senate				•				•					
Maine													
Commission on Governmental Ethics and Election Practices	•	•	•					•		•			
Secretary of State, Div. of Public Administration			•	•		(g)		•	•				
Maryland													
State Administrative Board of Election Laws	•							•		•			
State Ethics Commission		•				(h)		•	•				
Massachusetts													
Office of Campaign and Political Finance	•							•		•			
Secretary of State's Office, Division of Public Records	•			•		(i)	•	•	•				
MA State Ethics Commission		•				(j)		•	•	•	•	•	•
Michigan													
Department of State, Bureau of State Elections	•			•	•	(k)		•		*(l)		*(m)	
MI Board of Ethics		•							•				
Minnesota													
MN Ethical Practices Board	•	•	•	•		(n)		•	•				
Mississippi													
Mississippi Ethics Commission		•	•			(o)		•	•	•		•	•
Secretary of State's Office	•		•	•	•			•		•			
Missouri													
Campaign Finance Review Board	•							•		•		•	
Secretary of State's Office, Campaign Reporting Division	•							•		•		•	

TABLE 1 (continued)
AGENCIES' AREAS OF AUTHORITY

Jurisdiction/ Agency	Areas of Authority						Official/Employees Within Agency's Areas of Authority						
								State/Provincial		County		Municipal	
	Campaign Finance	Ethics	Personal Financial Disclosure	Lobbying	Elections	Other	Federal	Elected	Appointed	Elected	Appointed	Elected	Appointed
Montana													
Commissioner of Political Practices	•		•	•			•	•		•		•	
Nebraska													
Nebraska Accountability and Disclosure Commission	•	•	•	•				•	•	•	•	•	•
Nevada													
Nevada Commission on Ethics		•	•					•	•(p)	•	•	•	•
Secretary of State's Office	•				•			•		•		•	
Legislative Counsel Bureau				•				•					
New Hampshire													
Secretary of State's Office	•			•	•			•					
New Jersey													
Executive Commission on Ethical Standards		•	•						•				
New Jersey Election Law Enforcement Commission	•		•	•		(k)		•		•		•	
Joint Legislative Committee on Ethical Standards		•	•					(q)	(q)				
New Mexico													
Secretary of State's Office	•	•	•(r)	•	•		•	•					
New York													
New York State Board of Elections	•				•			•					
New York State Commission on Lobbying				•				•					
North Carolina													
Secretary of State's Office				•									
North Carolina Board of Ethics		•	•						•				
State Board of Elections	•	•	•		•			•	•	•	•	•	•
North Dakota													
Secretary of State's Office	•		•	•	•			•					

TABLE 1 (continued)
AGENCIES' AREAS OF AUTHORITY

Jurisdiction/ Agency	Areas of Authority						Officials/Employees Within Agency's Area of Authority						
								State/Provincial		County		Municipal	
	Campaign Finance	Ethics	Personal Financial Disclosure	Lobbying	Elections	Other	Federal	Elected	Appointed	Elected	Appointed	Elected	Appointed
Ohio													
Ohio Elections Commission	•				•	(s)		•		•		•	
Ohio Ethics Commission		•	•					•	•	•	•	•	•
Supreme Court of Ohio						(t)		*(u)	*(u)	*(u)	*(u)		
Oklahoma													
Merit Protection Commission		•				(v)			•				
Oklahoma State Election Board	•		•		•			•	•				
Oregon													
Oregon Government Ethics Commission		•	•	•				•	•	•	•	•	•
Secretary of State's Office, Elections Division and Public Records Division	•				•	(w)		•					
Pennsylvania													
Department of State, Bureau of Commissions, Elections and Legislation	•				•		*(x)	•					
State Ethics Commission		•	•					•	•	•	•	•	•
Philadelphia Board of Ethics		•	•							•	•	•	•
Rhode Island													
Rhode Island Ethics Commission		•	•				•	•	•	•	•	•	•
Rhode Island State Board of Elections	•				•		*(x)	•				•	
Secretary of State's Office				•	•								
South Carolina													
Secretary of State's Office				•									
South Carolina State Election Commission									•				
State Ethics Commission	•	•	•					•	•	•	•	•	•
South Dakota													
Secretary of State's Office	•		•	•	•			•	•				
Tennessee													
Secretary of State's Office, Elections Division	•	•	•	•	•			•					

TABLE 1 (continued)
AGENCIES' AREAS OF AUTHORITY

Jurisdiction/ Agency	Areas of Authority						Officials/Employees Within Agency's Areas of Authority						
								State/Provincial		County		Municipal	
	Campaign Finance	Ethics	Personal Financial Disclosure	Lobbying	Elections	Other	Federal	Elected	Appointed	Elected	Appointed	Elected	Appointed
Texas													
Secretary of State's Office, Elections Division	•		•	•	•			•	•	*(y)		*(y)	
State Ethics Advisory Commission	•	•	•	•		(z)		•	•	•	•	•	•
Utah													
Lieutenant Governor's Office	•			•	•			•	•				
Vermont													
Secretary of State's Office	•			•	•			•					
Virginia													
Secretary of Commonwealth's Office		•	•	•				•	•				
State Board of Elections	•				•			•			•		
Washington													
Washington State Public Disclosure Commission	•		•	•		(w)		•	•	•		•	
West Virginia													
Secretary of State's Office	•	•			•			•	•				
Wisconsin													
Secretary of State's Office				•				•	•				
Wisconsin State Elections Board	°				•			•	•	•		•	
Wisconsin State Ethics Board		•	•					•	•			(aa)	
Wyoming													
Secretary of State's Office	•				•			•	•	•	•	•	•
District of Columbia													
Office of Campaign Finance (ab)	•	•	•	•		(ac)						•	•
U.S.A. (Federal)													
Federal Election Commission	•		°		•		•						
Office of Government Ethics		•	•				•						
Committee on Standards of Official Conduct		•	•				•						

TABLE 1 (continued)
AGENCIES' AREAS OF AUTHORITY

Jurisdiction/ Agency	Areas of Authority						Officials/Employees Within Agency's Areas of Authority						
								State/Provincial		County		Municipal	
	Campaign Finance	Ethics	Personal Financial Disclosure	Lobbying	Elections	Other	Federal	Elected	Appointed	Elected	Appointed	Elected	Appointed
Virgin Islands													
Department of Justice		•	•		•			•	•			•	•
Alberta													
Chief Electoral Officer's Office	•				•			•				•	•
British Columbia													
Chief Electoral Officer's Office					•			•					
Manitoba													
Chief Electoral Officer's Office	•				•			•					
Newfoundland													
Chief Electoral Officer's Office	•				•			•					
Nova Scotia													
Chief Electoral Officer's Office	•				•			•					
Ontario													
Commission on Election Finances	•		•					•					
Quebec													
Chief Electoral Officer's Office	•				•	(ad)		•				•	
Saskatchewan													
Chief Electoral Officer's Office	•				•				•				
Canada (Federal)													
Elections Canada	•				•		•						
Office of Assistant Deputy Registrar General of Canada		•	•				•						

TABLE 1 (continued)
AGENCIES' AREAS OF AUTHORITY

Key:
* Application exists.
(a) Receipt and distribution only.
(b) County sheriffs and deputy sheriffs.
(c) Lobbying expenditures.
(d) Statewide candidates.
(e) Maintains the state precinct maps.
(f) The secretary of state's office shares some functions with the State Election Board.
(g) Constitutional officers who are elected by the legislature.
(h) Content of local government ethics laws.
(i) State Freedom of Information Act.
(j) Financial disclosure.
(k) Gubernatorial public financing.
(l) Supervisory authority for 83 county clerks.
(m) Through county clerks.
(n) Public financing, candidates for state partisan offices.
(o) Investigate any violation of state ethics law.
(p) Any appointed official in the state, provided he/she is not on a board, commission or panel which is not purely advisory in nature.
(q) Legislative only.
(r) Congressional candidates only.
(s) Campaign Practices.
(t) Attorney and judicial misconduct.
(u) Judicial officals only.
(v) Bribery and fraud committed by state employees.
(w) Political advertising.
(x) Elections only.
(y) Officials file disclosure reports at the local level.
(z) Bribery and corrupt influence; abuse of office; candidate for speaker; campaign finance; legislative bribery.
(aa) Municipal Judges.
(ab) Administrative body for the Board of Elections and Ethics.
(ac) Citizen service programs.
(ad) Districting (since 1987).

TABLE 2
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Alabama						
AL Ethics Commission	1973	Ala. Code Tit. 36, sec. 16-25-1 to-30 (1975)				
Secretary of State's Office, Elections Division	1915	Ala. Code Tit. 17, sec. 17-22-5 to -10 (1975 as amended)				
Alaska						
AK Public Offices Commission	1974	AS sec 15.13, 39.50, 24.25	2ACC 50.010-920			
Arizona						
Secretary of State's Office	1974	•				
Ethics and Rules Office	1985	Navajo Tribal Code Tit.2. ch.6, Sec. 3751-3761	•			CAU 46-84
Arkansas						
Secretary of State's Office, Elections Division	1972	Ark. Code 7-6-201 to 214; 21-8-301 to 309				
California						
Fair Political Practices Commission	1975	Cal. Govt Code Sec. 81000-91014		Proposition 9:	Political Ref. Act of 1974	
Secretary of State's Office	1974	Cal. Govt Code Sec. 81000-91014	CA Admin. Code tit. 2, div. 6			
Colorado						
Department of State	1835	•				
Connecticut						
CT State Elections Enforcement Commission	1974	Conn. Gen. Stat. sec. 9-7a,b				
Secretary of State's Office	(a)	(a)				
CT State Ethics Commission	1978	Conn. Gen. Stat. ch.10,parts 1,11				

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Delaware						
DE State Election Comm'r.	1969	Del. Code Ann. tit. 15, chap.3				
Legislative Council		Del. Code ch.16,tit.29				
Florida						
FL Commission on Ethics	1974	Fla. Stat. Ann. part III,ch.112				FL Constitution, art. II, sec. 8f
Joint Office on Lobby Registration	1949(b)	Fla. Stat. 11.045-11.065				House and Senate Rule
House Committee on Ethics and Elections	N.A.					House Rule 6.1
Georgia						
GA State Ethics Commission	1974	Ga. Code Ann. sec. 21-5-1				
Hawaii						
Campaign Spending Commission	1974	Haw. Rev. Stat. sec. 11-191 et seq.				
HI State Ethics Commission	1968	Haw. Rev. Stat. sec. 84-31				HI Constitution, art 14
Idaho						
Secretary of State's Office	1974	Idaho Code tit. 67, ch. 66		Lobbying & Campaign Finance (Nov. 1974)		
Illinois						
IL Board of Ethics	1977(c)					Exec. Order 3-77
IL State Board of Elections	1974	Ill.Rev.Stat. Stat. ch. 46			as amended	IL Constitution, art. III, sec. 5
Secretary of State's Office, Index Dept.	(d)	(d)				
DuPage Co. Board of Election Comm'r.	1973					
Board of Ethics, City of Chicago	1986			City Ordinance Feb. 1987		

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Indiana						
IN State Election Board	1974	Ind. Code sec. 3-9	1AC15			
Secretary of State's Office	1851	Ind. Code sec. 2-7				Constitutional auth.
IN State Ethics Commission	1975	Ind. Code sec. 4-2-6				
Iowa						
IA Campaign Finance Disclosure Commission	1973	Iowa Code ch. 56				
Secretary of the Senate	N.A.					Senate Rules
Kansas						
KS Public Disclosure Commission	1975	Kan. Stat. Ann. sec. 25-4119				
Kentucky						
Attorney General's Office	N.A.	Ky. Rev. Stat. ch. 6				
Financial Disclosure Review Commission	1975	Ky. Rev. Stat. sec. 61.782				
KY Registry of Election Finance	1966	Ky. Rev. Stat. ch. 121				
Louisiana						
LA Ethics Admn. Program	1980(e)	La. Rev. Stat. Ann. sec.42.1101 et seq. sec.18.1481 et seq.				La. Const. art 10, sec.21
Louisiana Senate	1972	La. Rev. Stat. sec. 24.51 et seq.				
Maine						
Commission on Govtl. Ethics & Election Practices	1975	P.L.1975 ch. 621				
Secretary of State's Office, Division of Public Admin.	1919(f)	P.L. 1919 ch. 100 P.L. 1979 ch. 734, sec. 2				

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Maryland						
State Adm. Board of Election Laws	1970		•			
MD State Ethics Commission	1979		•			
Massachusetts						
Office of Campaign & Political Finance	1974	Mass. Gen. Laws Ann.ch. 55 & 55A				
Secretary of State's Office, Public Records Division	1890(g)	(g) Mass. Gen. Laws. ch.3, sec.39-50	950 C.M.R. 31.00			
State Ethics Commission	1978	Mass. Gen. Laws ch. 268B				
Michigan						
Dept. of State, Elections Division	1951(h)	MCLA 168.1 et seq., 169.201 et seq., 4.411 et. seq.				Elections: Little Hoover Commission (1951)
MI State Board of Ethics	1973	1973 Mich. Pub. Act 196 as amended				
Minnesota						
MN Ethical Practices Board	1974	Minn. Stat. Ann. ch. 10A				
Mississippi						
MS Ethics Commission.	1979	Miss. Code Ann. sec. 25-4-1 et seq.				
Secretary of State's Office	1848(i)	Miss Code Ann:23-15-801 et seq.; 23-15-1 et seq.; 7-3-45; 7-3-47; 5-[illegible]1 et seq.				
Missouri						
Campaign Finance Review Board	1978	Mo. Rev. Stat. ch. 130				
Secretary of State's Office, Campaign Reporting Division	1978	Mo. Rev. Stat. ch. 130				

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Montana						
Commr. of Political Practices	1975	Mont. Code Ann. sec. 13-35-37				*(Lobbying)
Nebraska						
NE Accountability & Disclosure Commission	1977	Neb. Rev. Stat 49-1401 to 49-1439				
Nevada						
NV Commission on Ethics	1985	Nev. Rev. Stat. sec. 281.411 to -.581				
Secretary of State's Office	1975	Nev. Rev. Stat. ch. 294A				
Legislative Counsel Bureau		Nev. Rev. Stat. 218.918				
New Hampshire						
Secretary of State's Office	N.A.					
New Jersey						
Exec. Commission on Ethical Standards	1971	N.J. Stat. Ann. 52:13:1-25			Executive Order 2	
NJ Election Law Enforcement Commission	1973	N.J. Stat Ann. 19:44A-1 et seq., 19:44B-1 et seq.; 52:13C-18 et seq.	N.J. A.C. 19:25-1.1 et seq.			
Joint Leg. Committee on Ethical Standards	1971	N.J. State Ann. 52:13D-12 et seq.				
New Mexico						
Secretary of State's Office	1912	N.M. Stat. Ann. sec. 1-19-25, et seq., 10-16-1 to -15, 2-11-1 et seq. (1978)				NM Constitution as amended in 1984

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
New York						
NY State Board of Elections	1974					
NY State Commission on Lobbying	1978	1981 N.Y. Laws ch. 1040 (as amended by ch. 946, 1983 & ch. 813, 1987)				
North Carolina						
Secretary of State's Office	1933	N.C. Gen. Stat. ch. 120, art. 9A				
NC Board of Ethics	1977					Exec Order 1
NC State Board of Elections	1965	NC Gen. Stat. ch. 163				
North Dakota						
Secretary of State's Office	1911	N.D. Century Code ch 16.1-08, 54-05.1	N.D Admin. Code Title 8, Chs. 1-7	ND Constitution		
Ohio						
OH Elections Commission	1974	Ohio Rev. Code Ann., sec. 3517.14				
OH Ethics Commission	1974	Ohio Rev. Code Ann. ch. 102, sec. 2921.42	Ohio Admin. Code ch. 102			
Supreme Court of Ohio	N.A.					Ohio Supreme Court Governing Rule V
Oklahoma						
Ethics & Merit Commission	1982	Okla. Stat. tit. 74, sec. 840.1 et seq.				
OK State Election Board	1970(j)	Okla. Stat. tit. 26				

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Oregon						
OR Govt. Ethics Commission	1975	Or. Rev. Stat. ch. 244; sec. 171.725 to -.785				
Secretary of State's Office, Elections & Public Records Division	1854	Or. Rev. Stat. chs. 246-260				
Pennsylvania						
Dept. of State, Bur. of Commissions, Elections and Legislation	1937		•		•	
PA State Ethics Commission	1979	65 PS 401 et seq. Act 170	51 PA Code 51.1 et seq.			
Philadelphia Board of Ethics	1963	Phila. Code sec. 20-606				
Rhode Island						
RI Ethics Commission(k)	1976(k)	R.I. Gen. Laws sec. 36-14-1 et seq.				
RI State Board of Elections	1939	R.I. Gen. Laws tit. 17, ch. 7 & 25				
Secretary of State's Office	N.A.	R.I. Gen. Laws ch. 22-10 (lobbying); R.I. Gen. Laws ch. 17-6 (elections)				
South Carolina						
Secretary of State's Office	1935	S.C. Code Ann. sec. 17, tit. 2				
SC State Election Commission	1968	S.C. Code Ann. 3; sec. 7-3-10 et seq.				
SC State Ethics Commission	1976	S.C. Code Ann. sec. 8-13-10 et seq.; 1975 S.C. Acts 19[1]				

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations In Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
South Dakota						
Secretary of State's Office	N.A.					
Tennessee						
Secretary of State's Office, Elections Division	1985	TN Code Ann. sec. 2-10-105				
Texas						
Secretary of State's Office	1951(l)	Tex. Elec. Code Ann. sec. 31.001-31.005; sec. 251.031 Tex. Gov't Code Ann. ch. 305; Tex. Rev. Civ. Stat. Ann. art. 6252-9b				
TX State Ethics Advisory Commission	1983	Tex. Rev. Civ. Stat. Ann. art. 6252-9d				
Utah						
Lt. Governor's Office	1896(m)	Utah Const. Ann. Art. 7, Sec. 1; Utah Code ch. 14				
Vermont						
Secretary of State's Office	1777(n)	17 V.S.A. sec. 2457; 17 V.S.A., ch. 59; 2 V.S.A., ch. 11.				
Virginia						
Secretary of Commonwealth's Office	1983					
State Board of Elections	1946(o)	Code of VA, tit. 24.1, ch. 2 and 9.				
Washington						
WA State Public Disclosure Commission	1973	Wash. Rev. Code ch. 42.17	Wash. Admin. Code ch. 390			No. 276 (1972)
West Virginia						
Secretary of State's Office	N.A.	W. Va. Code ch. 3				

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Wisconsin						
Secretary of State's Office	1899	Wis. Stat. Ann. ch. 13, subch. III	Ch. SS2, adopted 11/10/78			
WI State Elections Board	1973	Wis. Stat. Ann. ch. 334				
WI State Ethics Board	1973	Wis. Stat. Ann. sec. 15.62, 19.41-59				
Wyoming						
Secretary of State's Office	(m)	Wyo. Stat. sec. 22-25-101 to -115				
District of Columbia						
Office of Campaign Finance(p)	1974	88 Stat. 447, P.L. 93-376; D.C. Code Ann. sec. 1-1401 et seq. (q)	3 D.C. Mun. Regs. (elections, ethics)		D.C. Code 1-1401 et seq.	
U.S.A. (Federal)						
Federal Election Commission	1975	Federal Election Campaign Act of 1971, as amended; (2 USC sec. 431 et seq.)				
Office of Govt. Ethics	1979	5USC App. sec. 401 et seq., Title IV of Ethics in Govt Act of 1978, as amended				
Committee on Standards of Official Conduct	1967					House Resolutic

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization				
		Statute	Administrative Regulation	Executive Order	Initiative	Other
Virgin Islands						
Department of Justice	1979	3VIC ch. 37 Act 5255, sec. 3(a); Act 4749, sec. 5(a),5b; Act 5265				
Alberta						
Chief Electoral Officer's Office	1977	•				
British Columbia						
Chief Electoral Officer's Office	N.A.	Election Act; Constitution Act				
Manitoba						
Chief Electoral Officer's Office	1870(r)	Elections Act, ch. E30, CCSM; Elections Finances Act, ch. 32, CCSM				
Newfoundland						
Chief Electoral Officer's Office	1946	R.S.N., 1970, c. 106 as amended				
Nova Scotia						
Chief Electoral Officer's Office	1969 ch. 83.	Elections Act, RSNS 1967,				
Ontario						
Commission on Election Finances	1975	Election Act, 1986 c. 134 (o)	Commission Guidelines			
Quebec						
Chief Electoral Officer's Office	1945(s)	•				
Saskatchewan						
Chief Electoral Officer's Office	1905	•				

TABLE 2 (continued)
AGENCY AUTHORIZATION

Jurisdiction/Agency	Year Commenced Operations in Area	Citation of Authorization: Statute	Administrative Regulation	Executive Order	Initiative	Other
Canada (Federal)						
Asst. Deputy Registrar General of Canada	1974					
Elections Canada	1920(t)	Canada Elections Act				

Key:
• Area of authorization; citation unavailable.
N.A. Not available.
(a) 1638-89, secretary receives and reads the nominations (Fundamental Order of CT Sec. 2); 1670, Secretary receives nominations in October and transmits them to town clerks for April or May election (as cited in 1808 Statutes of Conn. Vol. 1 p. 245); 1895, Campaign finance filed with Secretary (1895 Statutes of Conn. Chap. 338, Sec. 4); 1953, Secretary becomes Commissioner of Elections.
(b) House Rule since 1949, Statute since 1978.
(c) Under current Executive Order; 1973 under Executive Order 4-73, rescinded.
(d) This office administers the IL Governmental Ethics Act, which was authorized in Ill. Rev. Stat. ch. 127, par. 601-101 et seq., and by which filing commenced in 1972. The Ill. Lobbyist Registration Act, which is also administered by this office, was authorized in Ill. Rev. Stat. ch. 63, par. 171 et seq., and was enacted in 1969.
(e) Operations related to: Ethics, 1980; Campaign Finance, 1981. These programs began in other agencies in 1964 and 1976, respectively.
(f) Operations related to: lobbyist registration, 1919; filing for executive employees, 1979.
(g) The original lobbying statute, ch. 456 of the Acts of 1890, was repealed and amended by ch. 981 of the Acts/1973 (see sec. 39-50 of Mass. General Laws).
(h) Operations related to: Elections, 1951; Campaign Finance, 1977; Lobbying, 1977.
(i) Operations related to: Elections, 1848, Lobbying, 1916, Personal Financial Disclosure, 1929, Campaign Finance, 1978.
(j) Operatings related to Elections 1907; Campaign contributions and expenditures, 1964; Financial disclosure, 1986.
(k) Replaced the former Conflict of Interest Commission in July 1987, which had been in existance for 11 years.
(l) Operations related to: Elections and Campaign Finance, 1951; personal financial disclosure, 1973.
(m) Year of statehood.
(n) Operations related to: Elections, 1777; Campaign Finance, 1915; Lobbying, 1939.
(o) Operations related to: Elections, 1946; Campaign Finance, 1971.
(p) Administrative body for the Board of Elections and Ethics.
(q) D.C. Campaign Finance Reform and Conflict of Interest Act of 1974.
(r) Operations relating to: Elections, 1870; Finances, 1980.
(s) Electoral law: 1945. Districting and financing of authorized political entities and election expenses control: 19[illegible].
(t) Elections: 1920. Campaign finance: 1974.

Table 4
BOARD/COMMISSION COMPOSITION
(As of January 1, 1986)

Jurisdiction/Agency	No. of Meetings Per Year	Number of members appointed by: Governor	Legislature	Judiciary	Political Party	Other	Total	Length of term (years)	May members be reappointed?	Are members required to be of different political parties?
Alabama										
AL Ethics Commission	10					5(a)	5	5	No	No
Alaska										
AK Public Offices Commission	4	4				1	5	5	No	Yes
Arizona										
Ethics & Rules Office	24					6(b)	6	4	Yes	No
California										
Fair Political Practices Commission	12	2				3	5	4	(c)	Yes
Connecticut										
CT Elections Enforcement Commission	24	1	4				5	5	Yes	Yes
State Ethics Commission	12	3	4				7	4	No(c)	Yes
Florida										
Commission on Ethics	N.A.	5	4				9	2	Yes(d)	Yes
House Committee on Ethics	N.A.		18				18	2	Yes	No
Georgia										
State Ethics Commission	12(e)	2				3	5	5	No	Yes
Hawaii										
Campaign Spending Commission	N.A.	5					5	4	Yes	Yes
State Ethics Commission	N.A.	5					5	4	Yes	No
Illinois										
IL Board of Ethics	10	3					3	(f)	(f)	No
IL State Board of Elections	12	8					8	4	Yes	Yes
DuPage Co. Board of Election Comm.	24			3			3	3	Yes	Yes
Board of Ethics, City of Chicago	12					7(g)	7	(h)	Yes	No
Indiana										
IN State Election Bd.	(i)	2				1	3	2	Yes	Yes
State Ethics Commission	12(i)	5					5	4	Yes	Yes
Iowa										
IA Campaign Finance Disclosure Commission	(i)	5					5	6	Yes	Yes
Kansas										
KS Public Disclosure Commission	4(e)	1	4				5	2	Yes	Yes
Kentucky										
Financial Disclosure Review Commission	(i)	5					5	4	Yes	No
KY Registry of Election Finance	(i)	5					5	4	Yes	Yes
Louisiana										
Bd. of Ethics for Elected Officials (i)	N.A.	1	4				5	6	Yes	No
Commission on Ethics for Public Employees (i)	N.A.	5					5	6	Yes	No

Table 4 (continued)
BOARD/COMMISSION COMPOSITION
(As of January 1, 1988)

Jurisdiction/Agency	No. of Meetings Per Year	Number of members appointed by: Governor	Legislature	Judiciary	Political Party	Other	Total	Length of term (years)	May members be reappointed?	Are members required to be of different political parties?
Maine										
Commission on Govtl. Ethics & Election Practices	(k)		6			1	7	2	Yes	Yes
Maryland										
State Adm. Board of Election Laws	N.A.	5					5	4	Yes	Yes
State Ethics Commission	N.A.	5(j)					5	5	Yes(l)	Yes(m)
Massachusetts										
Office of Campaign & Political Finance	(n)				2	1	4(o)	(o)	Yes	Yes
State Ethics Commission	N.A.	3				2(p)	5	5	No	Yes
Michigan										
MI State Board of Ethics	(i)	7					7	4	Yes	Yes
Minnesota										
MN Ethical Practices Board	(q)	6					6	4	Yes	Yes
Mississippi										
MS Ethics Commission	12	2	4	2			8	4	Yes	No
Missouri										
Campaign Finance Review Board	N.A.		2		2		6	3	Yes	Yes
Nebraska										
NE Accountability & Disclosure Commission	N.A.	4	2		2	1(r)	9	6	(s)	Yes
Nevada										
NV Commission on Ethics	4(e)	3	3				6	(h)	Yes	Yes
New Jersey										
Exec. Commission on Ethical Standards	12(e)	7					7	4	Yes	No
NJ Election Law Enforcement Commission	12	4(t)					4	3	Yes	Yes
Joint Legislative Committee on Ethical Standards	N.A.		8				8	1	Yes	Yes
New York										
NY State Board of Elections	N.A.	4(u)					4	2	Yes	Yes
NY State Commission on Lobbying	12(e)	6					6	2	Yes	Yes
North Carolina										
NC Board of Ethics	(i)	7					7	(f)	Yes(f)	No
NC State Board of Elections	N.A.	5(v)					5	4	Yes	Yes
Ohio										
OH Elections Commission	20(w)					5(x)	5	5	No	Yes
OH Ethics Commission	1(e)	6		28			6	6	Yes	Yes
Supreme Court of Ohio	6						28	3	Yes	No

Table 4 (continued)
BOARD/COMMISSION COMPOSITION
(As of January 1, 1988)

Jurisdiction/Agency	No. of Meetings Per Year	Number of members appointed by: Governor	Legislature	Judiciary	Political Party	Other	Total	Length of term (years)	May members be reappointed?	Are members required to be of different political parties?
Oklahoma										
Ethics & Merit Commission	12(e)	5(y)	4(z)				9	3	Yes	Yes(y)
OK State Election Board	(aa)	3(t)					3	4	Yes	Yes
Oregon										
OR Govt. Ethics Commission	12	3	4				7	4	(s)	Yes
Pennsylvania										
State Ethics Commission	9	3	4				7	5	No(ab)	No
Philadelphia Board of Ethics	4					6(ac)	6	(ad)	Yes(ae)	No
Rhode Island										
RI Conflict of Interest Commission	(i)	15					15	5	Yes	Yes
RI State Board of Elections	(af)	7					7	14	Yes	(ag)
South Carolina										
SC State Election Commission	12(e)	5					5	4	Yes	Yes
State Ethics Commission		6	6(ah)				6	4	Yes(ai)	No
Texas										
State Ethics Advisory Commission	4(e)	5	4			2(aj)	11(aj)	2	Yes	Yes
Utah										
Lt. Governor's Office	(ak)							1-6	Yes	Yes
Virginia										
State Board of Elections	(al)	3					3	4	Yes	Yes
Washington										
WA State Public Disclosure Commission	N.A.	5					5	5	(d)	Yes
Wisconsin										
WI State Elections Board	(am)	1	4	1	2		8	2	Yes	Yes
WI State Ethics Board	4(e)	6					6	6	Yes	(ae)
District of Columbia										
Office of Campaign Finance	12(e)					3(ac)	3	3	Yes	Yes
U.S.A. (Federal)										
Federal Election Commission	12(e)					8(an)	8(an)	6	Yes	Yes
Committee on Standards of Official Conduct	12(e)		12				12	6(ao)	(ap)	Yes
Ontario										
Commission on Election Finances	N.A.				6	(aq)	9	5	Yes	Yes

Key:
N.A. Actual number of meetings not available, and minimum frequency of meetings not mandated.
(a) Appointed by governor, lieutenant governor and speaker of the house.
(b) Appointed by chairman, Navajo Tribal Council and confirmed by the council.
(c) Members may be appointed to one full term if filling unexpired portion of another's term. Otherwise, may not be reappointed.
(d) May be reappointed once in succession.
(e) Number of meetings mandated; board or commission may actually meet more often.

(y) Serve at the pleasure of the governor for unspecified terms.
(z) Appointed by the mayor, with the consent of the city council.
(aa) After an initial term, a member may have a four year term.
(ab) At the call of the chair.
(ac) Administered by the Louisiana Ethics Administration Program.
(ad) Mandated to meet four times in the years which primary and general elections are held and two times during other years.
(ae) Maximum 2 full terms.
(af) One member must be opposite party from governor.
(ag) Board meets only to choose the director.
(ah) Secretary of state, chairman of the Democratic State Committee, chairman of the Republican State Committee, and dean of law school (dean serves 6 years).
(ai) One appointed by the attorney general, and one appointed by the secretary of state.
(aj) At call of the chair or on request of four members.
(ak) The secretary of state is a member of the commission.
(al) May be appointed to one full term after filling an unexpired term of less than three years. In Nebraska, after filling unexpired term of three years or less.
(am) With consent from the senate.
(an) Legislature recommends two to the governor, and political parties recommend two to the governor.
(ao) Three board appointees from the governor's party and two from the opposition.
(ap) The frequency of meetings is not mandated.
(aq) The secretary of state appoints four members. The four members appoint a fifth member as chair.
(ar) No more than four of the appointments made by the governor may be from the same political party.
(as) Two by the senate, two by the house.
(at) Following all statewide elections.
(au) Limited to one full 5-year term.
(av) Appointed by mayor.
(aw) Serves at the pleasure of the mayor for unspecified term.
(ax) Reappointed to only one 5-year term.
(ay) As required, mostly on a weekly basis.
(az) Required to be nonpartisan.
(ba) One appointed from each congressional district.
(bb) May be reappointed for one additional term.
(bc) 2 non-voting members (secretary of state and attorney general) plus 9 voting members.
(bd) Depends on statute or executive order.
(be) Meets following each primary/general election for federal or state office.
(bf) Usually bi-monthly; monthly during election periods.
(bg) Appointed by president. Includes 2 ex-officio members.
(bh) Republican-no limit; Democrat-6 years.
(bi) Members are elected for 2 year terms.
(bj) Appointed by cabinet.

TABLE 8
INVESTIGATIVE AUTHORITY OF SELECTED AGENCIES

State or Province/Agency	Agency Is Empowered to Conduct Investigations: Yes, on Own Volition	Yes, in Response to Formal Complaint	No	Approximate Number of Investigations Conducted on Annual Basis: Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure	Approximate Percentage of Those Investigations Resulting in Sanctions(a): Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure
Alabama											
AL Ethics Commission		•			5-10	11-50	5-10				
Secretary of State's Office, Elections Division			•								
Alaska											
AK Public Offices Commission	•	•		5-10	0-5			70	70		
Arizona											
Secretary of State's Office	•			0-5				0			
Ethics & Rules Office	•										
Arkansas											
Secretary of State's Office, Elections Division			•								
California											
Fair Political Practices Commission	•	•		11-50	11-50	11-50	5-10	14	9	2	5
Secretary of State's Office			•								
Colorado											
Department of State		•		0-5				50			
Connecticut											
CT State Elections Enforcement Commission	•	•		51-100				92			
Secretary of State's Office			•								
State Ethics Commission	•	•			0-5	11-50	11-50		90	90	90
Delaware											
State Election Comm.			•								
Legislative Council	N.A.	N.A.	N.A.								
Florida											
Commission on Ethics		•			11-50	51-100			80	35	
Joint Office on Lobby Registration			•	N.A.							
House Committee on Ethics & Elections	*(b)	*(b)				0-5				N.A.	

TABLE 8 (continued)
INVESTIGATIVE AUTHORITY OF SELECTED AGENCIES

State or Province/Agency	Agency Is Empowered to Conduct Investigations: Yes, on Own Volition	Yes, in Response to Formal Complaint	No	Approximate Number of Investigations Conducted on Annual Basis: Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure	Approximate Percentage of These Investigations Resulting in Sanctions(a): Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure
Georgia											
State Ethics Commission		•		5-10				2			
Hawaii											
Campaign Spending Commission	•			11-50				5			
State Ethics Commission	•	•			0-5	11-50	0-5		0	10	0
Idaho											
Secretary of State's Office	•	•		5-10			0-5	1			1
Illinois											
IL Board of Ethics	•				11-50				1		
IL State Board of Elections	•	•		11-50				80			
Secretary of State's Office, Index Dept.			•								
DuPage Co. Board of Election Comm.	•	•									
Board of Ethics, City of Chicago	•			0-5	11-50	51-100	0-5			5	
Indiana											
IN State Election Board	•			0-5				0			
Secretary of State's Office	•	•					0-5				
State Ethics Commission	•					11-50				50	
Iowa											
IA Campaign Finance Disclosure Commission		•		5-10				100			
Secretary of the Senate	N.A.	N.A.	N.A.								
Kansas											
KS Public Disclosure Commission	•	•		0-5	0-5	0-5	0-5	1	1	0	0
Kentucky											
Attorney General's Office	(c)										
Financial Disclosure Review Commission	•	•			0-5	0-5			0	0	
KY Registry of Election Finance	•	•		300+	0-5			90	0		
Louisiana											
LA Ethics Administration Prog.	•	•		101-300	0-5	101-300		75		15	

TABLE 8 (continued)
INVESTIGATIVE AUTHORITY OF SELECTED AGENCIES

State or Province/Agency	Agency is Empowered to Conduct Investigations: Yes, on Own Volition	Yes, in Response to Formal Complaint	No	Approximate Number of Investigations Conducted on Annual Basis: Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure	Approximate Percentage of These Investigations Resulting in Sanctions(s): Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure
Maine											
Commission on Govtl. Ethics & Election Practices	•	•		0-5	0-5		0-5	0	0		0
Maryland											
State Adm. Board of Election Laws	•	•		5-10				0			
State Ethics Commission	•	•			51-100	11-50	5-10		20	20	5
Massachusetts											
Office of Campaign & Political Finance	•	•		N.A.				N.A.			
Secretary of State's Office, Division of Public Records			•								
State Ethics Commission	•	•			0-5	301+			N.A.	N.A.	
Michigan											
Dept. of State, Bureau of Elections	•(d)	•(d)		101-300			0-5	75			0
MI State Board of Ethics	•	•						N.A.			
Minnesota											
MN Ethical Practices Board	•	•		11-50	0-5		0-5	0-1	0-1		0-1
Mississippi											
MS Ethics Commission	•	•			5-10	11-50			20	50	
Secretary of State's Office			•	N.A.							
Missouri											
Campaign Finance Review Board	•	•		301+							
Secretary of State's Office, Campaign Reporting Division			•					33			
Montana											
Comm. of Political Practices	N.A.	N.A.	N.A.								
Nebraska											
NE Accountability & Disclosure Commission	•	•		0-5	11-50		0-5	80	50	2	2

TABLE 8 (continued)
INVESTIGATIVE AUTHORITY OF SELECTED AGENCIES

State or Province/Agency	Agency Is Empowered to Conduct Investigations:			Approximate Number of Investigations Conducted on Annual Basis:				Approximate Percentage of Those Investigations Resulting in Sanctions(a):			
	Yes, on Own Volition	Yes, in Response to Formal Complaint	No	Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure	Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure
Nevada											
NV Commission on Ethics		•									
Secretary of State's Office			•								
Legislative Counsel Bureau	•						•	0	0	0	0
New Hampshire											
Secretary of State's Office			•								
New Jersey											
Exec. Commission on Ethical Standards	•	•			51-100	101-300				15	
NJ Election Law Enforcement Commission	•	•		101-300	0-5		0-5	50	0	N.A.	0
Joint Legislative Commission on Ethical Standards	•	•		N.A.	N.A.	5-10	N.A.				10
New Mexico											
Secretary of State's Office			•								
New York											
NY State Board of Elections	•	•		101-300				25			
NY State Commission on Lobbying	•						101-300				
North Carolina											
Secretary of State's Office			•								
NC Board of Ethics	•	•									
NC State Board of Elections	•	•		5-10	5-10	0-5		N.A.			
North Dakota											
Secretary of State's Office	N.A.	N.A.	N.A.								
Ohio											
OH Elections Commission		•		101-300				20			
OH Ethics Commission	•	•			101-300	51-100			5	15	
Supreme Court of Ohio			•	N.A.				N.A.			
Oklahoma											
Merit Protection Commission	•	•				11-50				1	
OK State Election Board			•								

TABLE D (continued)
INVESTIGATIVE AUTHORITY OF SELECTED AGENCIES

State or Province/Agency	Agency is Empowered to Conduct Investigations: Yes, on Own Volition	Yes, in Response to Formal Complaint	No	Approximate Number of Investigations Conducted on Annual Basis: Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure	Approximate Percentage of These Investigations Resulting in Sanction(s): Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure
Oregon											
OR Govt. Ethics Commission	•	•			0-5	51-100	0-5		0	25	0
Secretary of State's Office, Elections & Public Records Division	•	•		51-100				40			
Pennsylvania											
Dept. of State, Bureau of Commissions, Elections & Legislation		•		0-5				(e)			
State Ethics Commission	•	•			11-50	51-100			5	35	
Philadelphia Board of Ethics			•								
Rhode Island											
RI Ethics Commission	•	•			11-50	11-50			66	40	
RI State Board of Elections	•	•		11-50				N.A.			
Secretary of State's Office			•								
South Carolina											
Secretary of State's Office	N.A.	N.A.	N.A.								
SC State Election Commission			•								
State Ethics Commission		•		0-5	11-50	5-10		50	50	50	
South Dakota											
Secretary of State's Office	N.A.	N.A.	N.A.								
Tennessee											
Secretary of State's Office, Elections Division			•	N.A.				N.A.			
Texas											
Secretary of State's Office			•	N.A.				N.A.			
State Ethics Advisory Commission			•	N.A.				N.A.			
Utah											
Lt. Governor's Office			•								
Vermont											
Secretary of State's Office			•	0-5							

TABLE 8 (continued)
INVESTIGATIVE AUTHORITY OF SELECTED AGENCIES

State or Province/Agency	Agency is Empowered to Conduct Investigations: Yes, on Own Volition	Yes, in Response to Formal Complaint	No	Approximate Number of Investigations Conducted on Annual Basis: Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure	Approximate Percentage of These Investigations Resulting in Sanctions(a): Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure
Virginia											
Secretary of Commonwealth's Office	N.A.	N.A.	N.A.								
State Board of Elections			•								
Washington											
WA State Public Disclosure Commission	•	•		101-300	300+		51-100	50	60		30
West Virginia											
Secretary of State's Office	•	•		11-50	0-5			99	1		
Wisconsin											
Secretary of State's Office	•	•					0-5				1
WI State Elections Board	•			0-5				50			
WI State Ethics Board	•	•			11-50	0-5		20	N.A.		
Wyoming											
Secretary of State's Office			•	N.A.				N.A.			
District of Columbia											
Office of Campaign Finance(g)	•	•		11-50	5-10	0-5	0-5	5	10	10	1
U.S.A. (Federal)											
Federal Election Commission	•	•		101-300				90			
Office of Govt. Ethics			•	N.A.							
Committee on Standards of Official Conduct	•	•		N.A.				N.A.			
Virgin Islands											
Department of Justice	•	•			0-5	0-5					
Alberta											
Chief Electoral Officer's Office	•	•		0-5				N.A.			
British Columbia											
Chief Electoral Officer's Office			•								
Manitoba											
Chief Electoral Officer's Office	•			0-5				2			

TABLE 8 (continued)
INVESTIGATIVE AUTHORITY OF SELECTED AGENCIES

State or Province/Agency	Agency is Empowered to Conduct Investigations: Yes, on Own Volition	Yes, in Response to Formal Complaint	No	Approximate Number of Investigations Conducted on Annual Basis: Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Disclosure	Approximate Percentage of Those Investigations Resulting in Sanctions(a): Campaign Finance	Personal Financial Disclosure	Standards of Conduct	Lobbyist Dis Closur
Newfoundland											
Chief Electoral Officer's Office	•			0-5	0-5	0-5	0-5	0	0	0	
Nova Scotia											
Chief Electoral Officer's Office			•								
Ontario											
Commission on Election Finances		•		0-5				100			
Quebec											
Chief Electoral Officer's Office	•	•		5-10				50			
Saskatchewan											
Chief Electoral Officer's Office	N.A.	N.A.	N.A.								
Canada (Federal)											
Asst. Deputy Registrar General of Canada	N.A.	N.A.	N.A.								
Elections Canada	•	•		(h)				15.8			

Key:
• Present application
N.A. Not available.
(a) Responses in these columns are those given by the agencies. Any questions regarding them should be submitted directly to the agency.
(b) Only with regard to House Rules.
(c) In certain instances.
(d) Investigations are conducted through the Compliance & Rules Division.
(e) The Bureau either refers the information to the attorney general or requests an amended report.
(f) No, but the Attorney General has sometimes asked the agency to conduct investigations.
(g) Administrative body for the Board of Elections and Ethics.
(h) Investigations are conducted on a cyclical basis following each election. Following the 1984 general election, 567 alleged violations were investigated. One hundred fifteen prosecutions were instituted giving rise to 90 convictions.

TABLE 9
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Is Agency Bound by State/Provincial General Administrative Procedure Act?	Agency Has Authority to: Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
Alabama										
AL Ethics Commission	Yes	—	—	•	—	—	—	—	•	Attorney general or district attorney (a)
Secretary of State's Office, Elections Division	N.A.	—	—	—	—	—	—	—	—	Attorney general
Alaska										
AK Public Offices Commission	Yes	•	•	•	•	—	—	—	•	Dept. of Law; district attorney
Arizona										
Secretary of State's Office	Yes	—	—	—	—	—	—	—	•	Attorney general
Ethics & Rules Office	No	•	•	•	•(b)	•(b)	•	—	•	
Arkansas										
Secretary of State's Office, Elections Division	N.A.	—	—	—	—	—	—	—	—	Prosecuting attorneys
California										
Fair Political Practices Commission	Yes	•	•	•	•	•	•	—	•	Attorney general or district attorney
Secretary of State's Office	N.A.	—	—	—	•	—	•	—	—	
Colorado										
Department of State	Yes	•	•	•	•	—	•	•	—	Attorney general or district attorney
Connecticut										
CT State Elections Enforcement Commission	Yes	•	•	•	•	•	—	—	•	Chief state's attorney, or attorney general
Secretary of State's Office	Yes	—	—	•	•	•	—	•	—	Attorney general
State Ethics Commission	Yes	•	•	•	•	•	—	—	•	Chief state's attorney or attorney general
Delaware										
State Election Comm.	No	—	—	•	—	—	—	—	•	Attorney general
Legislative Council	N.A.	—	—	—	—	—	—	—	—	—

TABLE 9 (continued)
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Is Agency Bound by State/Provincial General Administrative Procedure Act?	Agency Has Authority to: Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
Florida										
Commission on Ethics	Yes	•	•	•	—	—	—	—	•	
Joint Committee on Lobby Registration	No	—	—	—	—	—	—	—	—	(c)
House Committee on Ethics & Elections	Yes	—	—	—	—	—	—	—	—	—
Georgia										
State Ethics Commission	Yes	•	•	•	•	•	•	•	—	
Hawaii										
Campaign Spending Commission	Yes	•	•	•	•	•	•	(d)	(d)	
State Ethics Commission	Yes	•	•	•	—	—	•	—	•	Attorney general for ethics violations Attorney general or city prosecutor for lobbying violations
Idaho										
Secretary of State's Office	Yes	—	—	•	•	—	—	—	•	Attorney general or prosecuting attorney
Illinois										
IL Board of Ethics	Yes	—	—	•	—	—	—	—	•	Attorney general or state's attorney
IL State Board of Elections	Yes	•	•	•	•	•	•	—	•	Attorney general or state's attorney
Secretary of State's Office, Index Dept.	N.A.	—	—	—	—	—	—	—	—	Attorney general or state's attorney
DuPage Co. Board of Election Comm.	Yes	•	•	•	—	—	•	•	•	Attorney general or state's attorney
Board of Ethics, City of Chicago	No	•	•	•	•	•	—	—	•	Dept. of Law, City of Chicago
Indiana										
IN State Election Board	Yes	•	•	•	—	—	—	—	•	County prosecutor
Secretary of State's Office	Yes	•	•	•	•	•	—	•	—	Attorney general or county prosecutor
State Ethics Commission	Yes	•	•	•	—	—	—	—	•	Prosecuting attorney
Iowa										
IA Campaign Finance Disclosure Commission	Yes	•	•	•	•	•	—	—	•	Attorney general or county attorney
Secretary of the Senate	N.A.	—	—	—	—	—	—	—	—	

TABLE 9 (continued)
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Is Agency Bound by State/Provincial General Administrative Procedure Act?	Agency Has Authority to: Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
Kansas										
KS Public Disclosure Commission	No	•	•	•	•	—	—	•	—	State attorney general and district attorney or county attorney
Kentucky										
Attorney General's Office	No	—	—	—	—	—	•	—	•	Police agencies; Registry of Election Finance
Financial Disclosure Review Commission	Yes	—	—	—	—	—	—	—	—	Governor
KY Registry of Election Finance	Yes	•	•	•	•	•	•	—	•	Attorney general or commonwealth attorney
Louisiana										
LA Ethics Admn. Program	Yes	•	•	•	•	•	•	—	•	
Maine										
Commission on Govtl. Ethics & Election Practices	Yes	•	•	•	•	—	—	—	•	Attorney general
Secretary of State's Office	Yes	—	—	—	•	—	—	—	—	Attorney general
Maryland										
State Adm. Board of Election Laws	Yes	—	—	•	—	•(e)	—	—	•	State's attorney, state prosecutor
State Ethics Commission	Yes	•	•	•	—	—	•	—	•	
Massachusetts										
Office of Campaign & Political Finance	Yes	•	•	•	—	—	—	—	•	Attorney general, district attorney
Secretary of State's Office, Division of Public Records	Yes	—	—	•	•	•	—	—	•	Attorney general
State Ethics Commission	Yes	•	•	•	•	•	•	—	•	Attorney general or district attorney
Michigan										
Dept. of State, Bureau of Elections	Yes	—	—	•	•(f)	—	—	—	•	Attorney general
MI State Board of Ethics	Yes	—	—	•	—	—	—	—	•	Executive branch
Minnesota										
MN Ethical Practices Board	Yes	•	•	—	•	•	•	—	•	Appropriate law enforcement authorities

TABLE 9 (continued)
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Is Agency Bound by State/Provincial General Administrative Procedure Act?	Agency Has Authority to: Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
Mississippi										
MS Ethics Commission	Yes	•	•	–	–	–	•	–	•	Attorney general and district attorney
Secretary of State's Office	Yes	–	–	•	–	–	–	–	•	Attorney general
Missouri										
Campaign Finance Review Board	N.A.	–	–	–	–	–	–	–	–	
Secretary of State's Office, Campaign Reporting Division	N.A.	–	–	–	–	–	–	–	–	
Montana										
Comm. of Political Practices	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
Nebraska										
NE Accountability & Disclosure Commission	Yes	•	•	•	•	•	•	–	•	Agency, county attorney or attorney general
Nevada										
NV Commission on Ethics	No	–	–	•	–	(h)	–	–	•	Attorney general
Secretary of State's Office	Yes	–	–	–	–	–	–	–	–	Attorney general
Legislative Counsel Bureau	N.A.	–	–	–	–	–	–	–	–	
New Hampshire										
Secretary of State's Office	Yes	–	–	–	–	–	–	(i)	(i)	Attorney general
New Jersey										
Exec. Commission on Ethical Standards	Yes	•	•	•	•	•	•	•	•	
NJ Election Law Enforcement Commission	Yes	•	•	•	•	•	•	–	•	
Joint Legislative Cmte. on Ethical Standards	No	•	•	•	•	•	•	–	•	
New Mexico										
Secretary of State's Office	No	–	–	–	–	–	–	–	–	Attorney general
New York										
NY State Board of Elections	Yes	•	•	•	–	–	•	–	•	District attorney
NY State Commission on Lobbying	No	•	•	•	•	–	–	–	–	

TABLE 9 (continued)
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Agency Has Authority to:									
	If Agency Issued by Commercial Quasi-Judicial Ad-ministrative Procedure Act	Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
North Carolina										
Secretary of State's Office	N.A.	—	—	—	—	—	—	—	—	District attorney
NC Board of Ethics	Yes	—	—	—	—	—	—	—	—	Attorney general
NC State Board of Elections	Yes	•	•	•	—	—	•	—	•	District attorneys
North Dakota										
Secretary of State's Office	No	—	—	—	—	—	—	—	—	Attorney general or county state's attorney
Ohio										
OH Elections Commission	No	•	•	•	•	•	—	—	•	
OH Ethics Commission	Yes	•	•	•	—	•	—	—	•	County prosecutor
Supreme Court of Ohio	No	•	•	•	—	—	—	—	•	Office of Certified Counsel & Certified Grievances Committee
Oklahoma										
Merit Protection Commission	Yes	•	•	•	—	•	•	•	•	
OK State Election Board	Yes	—	—	•	—	—	—	—	•	Attorney general
Oregon										
OR Govt. Ethics Commission	Yes	•	•	•	•	•	—	—	•	
Secretary of State's Office, Elections & Public Records Divisions	Yes	—	—	—	—	•	—	—	•	Attorney general
Pennsylvania										
Dept. of State, Bureau of Commissions, Elections & Legislation	(8)	—	—	—	•	—	—	—	•	Attorney general
State Ethics Commission	Yes	•	•	•	—	•	•	—	•	Attorney general or district attorney
Philadelphia Board of Ethics	No	—	—	—	—	—	—	—	—	City solicitor, district attorney, or attorney general
Rhode Island										
RI Ethics Commission	Yes	•	•	•	•	—	—	—	•	
RI State Board of Elections	No	•	•	•	—	—	—	—	•	
Secretary of State's Office	Yes	—	—	—	—	—	—	•	—	Attorney general

TABLE 9 (continued)
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Is Agency Bound by State/Provincial General Administrative Procedure Act?	Agency Has Authority to: Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
South Carolina										
Secretary of State's Office	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
SC State Election Commission	Yes	•	•	•	—	—	—	—	•	Attorney general
State Ethics Commission	Yes	•	•	•	•	—	—	—	•	Attorney general & solicitors
South Dakota										
Secretary of State's Office	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
Tennessee										
Secretary of State's Office, Elections Division	No	—	—	—	—	—	—	—	—	Attorney general
Texas										
Secretary of State's Office	Yes	—	—	—	*(f)	—	—	—	•	Attorney general, county attorney or district attorney
State Ethics Advisory Commission	Yes	—	—	—	—	—	—	—	—	Attorney general, county attorney of district attorney
Utah										
Lt. Governor's Office	Yes	—	—	•	—	—	—	—	—	
Vermont										
Secretary of State's Office	Yes	—	—	—	—	—	—	—	•	Attorney general
Virginia										
Secretary of Commonwealth's Office	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
State Board of Elections	No	—	—	—	—	—	—	—	•	Commonwealth's attorney in each county or city
Washington										
WA State Public Disclosure Commission	Yes	•	•	•	—	•	—	—	•	
West Virginia										
Secretary of State's Office	N.A.	•	•	•	—	—	•	—	•	County prosecuting attorney

TABLE 9 (continued)
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Is Agency Bound by State/Provincial General Administrative Procedure Act?	Agency Has Authority to: Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
Wisconsin										
Secretary of State's Office	Yes	•	•	•	—	—	•	—	•	
WI State Elections Board	Yes	•	•	•	•	•	•	—	•	
WI State Ethics Board	Yes	•	•	•	•	•	—	—	•	
Wyoming										
Secretary of State's Office	Yes	—	—	—	—	—	—	—	—	Attorney general, district attorney
District of Columbia										
Office of Campaign Finance	Yes	•	•	•	•	•	—	—	•	U.S. Attorney (k)
U.S.A. (Federal)										
Federal Election Commission	Yes	•	•	•	—	•	•	—	•	U.S. Attorney, Justice Department
Office of Govt. Ethics	—	—	—	—	—	—	—	—	•	Justice Department
Cmte. on Standards of Official Conduct	No	•	•	•	(l)	(l)	—	—	—	
Virgin Islands										
Department of Justice	N.A.	•	•	•	—	—	•	—	—	
Alberta										
Chief Electoral Officer's Office	No	•	•	•	•	•	•	•	•	Attorney general
British Columbia										
Chief Electoral Officer's Office	Yes	—	—	—	—	—	—	—	—	
Manitoba										
Chief Electoral Officer's Office	Yes	•	•	—	—	—	•	—	—	
Newfoundland										
Chief Electoral Officer's Office	No	•	•	•	—	•	—	•	•	Attorney general
Nova Scotia										
Chief Electoral Officer's Office	No	—	—	—	—	—	—	•	—	
Ontario										
Commission on Election Finances	Yes	•	•	•	—	—	—	—	•	Attorney general

TABLE 9 (continued)
PROSECUTORIAL AUTHORITY OF SELECTED AGENCIES

Jurisdiction/Agency	Is Agency Bound by State/Provincial General Administrative Procedure Act?	Agency Has Authority to: Subpoena Witnesses	Subpoena Records	Conduct Administrative Hearings	Impose Administrative Fines	Impose Administrative Penalties	File Independent Court Actions	Request Other Official to Prosecute on: Mandatory Basis	Request Other Official to Prosecute on: Discretionary Basis	If Agency Cannot Initiate Prosecution for Violations on Its Own Violation, Who Does Have Authority to Prosecute:
Quebec										
Chief Electoral Officer's Office	Yes	•	•	•	—	—	•	—	—	
Saskatchewan										
Chief Electoral Officer's Office	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	
Canada (Federal)										
Elections Canada	No	•(m)	•(m)	—	—	—	•	—	—	The Commissioner of Canada Elections(n)
Asst. Deputy Registrar General of Canada	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	

Key:
• Has authority in this area
— Has no authority in this area
N.A. Not Available
(a) Candidates for office who do not file disclosure statements are removed from the ballot.
(b) While the agency cannot impose fines and other penalties, it frequently recommends them when violations are found.
(c) House Ethics and Elections Committee, Senate Rules Committee, or Ethics Commission.
(d) May request other official to prosecute for criminal action.
(e) Fines for filing late campaign fund reports.
(f) Fine imposed for filing late.
(g) District attorney on criminal matters, attorney general on civil matters.
(h) May suggest a course of action.
(i) May request prosecution.
(j) While the Department of State in general is bound by the state Administrative Procedures Act, the Bureau of Elections is not bound by it in its elections and campaign finance activities.
(k) Administrative body for the Board of Elections and Ethics.
(l) Not a prosecutional agency.
(m) In limited cases.
(n) The only authority with power to consent to prosecutions.

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

ATTACHMENT B

Salary and Per Diem Rates
COGEL, *Campaign Finance, Ethics & Lobby Law*, Special Edition
Blue Book 1988-89

TABLE 3
AGENCY ADMINISTRATION
(As of January 1, 1988)

Jurisdiction/Agency	Agency Head/Title	Agency Head Annual Salary(a)	No. FTE Staff Prof.	No. FTE Staff Other	In-house Counsel?	Annual Budget 1985-86	Annual Budget 1986-87	Annual Budget 1987-88
Alabama								
AL Ethics Commission	Melvin G. Cooper, Executive Director	N.A.	9		No	$310,035	$307,690	$323,703(b)
Secretary of State's Office, Elections Division	Glen Browder, Secretary of State	N.A.	3		No	N.A.	N.A.	N.A.
Alaska								
AK Public Offices Commission	Karla L. Forsythe, Executive Director	$60,252	3	6	No	535,900	577,300	572,500
Arizona								
Secretary of State's Office	Jim Shumway, Secretary of State	50,000	33		No	N.A.	N.A.	1,900,000
Ethics and Rules Office	Asa Begaye, Director	28,1[illegible]	2	1	No	105,000	105,000	82,520
Arkansas								
Secretary of State's Office, Elections Division	Janet Reddin, Elections Supervisor		4		Yes	(c)	(c)	(c)
California								
Fair Political Practices Commission	Gregory Baugher, Executive Director	76,500(b)	40	20	Yes	3,200,000	3,400,000	3,600,000
Secretary of State's Office	March Fong Eu, Secretary of State	72,500	4	16	Yes	724,000	697,000	600,000
Colorado								
Department of State	Natalie Meyer, Secretary of State	48,500	25	47	Yes	N.A.	N.A.	4,100,000
Connecticut								
CT State Elections Enforcement Commission	Jeffrey B. Garfield, Executive Director and General Counsel	53,600	9		Yes	239,159	262,637	338,852
Secretary of State's Office	Julia H. Tashjian, Secretary of State	N.A.	7	5	Yes	N.A.	N.A.	N.A.
State Ethics Commission	Alan Plofsky, Executive Director and General Counsel	47,500	3	3	Yes	N.A.	N.A.	N.A.
Delaware								
State Election Comm.	John G. Davis Jr., State Election Commissioner	34,900	6		Yes	250,000	236,900	196,400
Legislative Council	Earl McGinnes, Director of Division of Research	N.A.	7	8	Yes	N.A.	N.A.	N.A.
Florida								
Commission on Ethics	Bonnie J. Williams, Executive Director	50,700	7	7	Yes	504,414	573,040	762,429
Joint Office on Lobby Reg.	Terrie Corbett, Lobbyist Registrar	19,512	1		Yes	N.A.	N.A.	N.A.
House Committee on Ethics	George Crady, Chairman	N.A.	4		Yes	N.A.	N.A.	N.A.

TABLE 3 (continued)
AGENCY ADMINISTRATION
(As of January 1, 1988)

Jurisdiction/Agency	Agency Head/Title	Agency Head Annual Salary(a)	No. FTE Staff		In-house Counsel?	Annual Budget		
			Prof.	Other		1985-86	1986-87	1987-88
Georgia								
State Ethics Commission	Robert P. Lane, Executive Secretary	42,000	3		Yes	138,697	150,014	160,000
Hawaii								
Campaign Spending Commission	Jack M.K. Gonzales	N.A.		5	No	139,000	141,000	143,000
State Ethics Commission	Daniel J. Mollway, Executive Director	42,384	4	3	Yes	179,012	277,549	270,782
Idaho								
Secretary of State's Office	Pete T. Cenarrusa, Secretary of State	45,000	1	2	Yes	759,700(d)	1,300,000(d)	635,600(h)
Illinois								
IL Board of Ethics	John L. Larsen, Executive Director	44,472	3		No	N.A.	N.A.	N.A.
IL State Board of Elections	Ronald D. Michaelson, Executive Director	59,976	47	20	Yes	4,335,496	5,208,002	4,325,609(e)
Secretary of State's Office, Index Dept.	John Hofferkamp, Director	N.A.	19		No	N.A.	N.A.	N.A.
DuPage Co. Board of Election Comm.	Daniel L. Nelson, Executive Director	56,680	20		Yes	2,970,016	2,788,319	2,680,817
Board of Ethics, City of Chicago	Harriet McCullough, Executive Director	42,444	3	6	Yes	150,000	255,724	342,668
Indiana								
IN State Election Board	Laurie P. Christie, Executive Director	32,000	6		No	250,000	250,000	250,000
Secretary of State's Office	Evan Bayh, Secretary of State	46,000	2(c)	1(e)	Yes	N.A.	2,172,170	2,405,305
State Ethics Commission	Mary A. Donovan, Executive Secretary	N.A.	1	1	Yes	N.A.	N.A.	N.A.
Iowa								
IA Campaign Finance Disclosure Commission	Kay Williams, Executive Director	37,627	4		No	138,000	140,000	182,251
Secretary of the Senate	John Dwyer	N.A.	N.A.			N.A.	N.A.	N.A.
Kansas								
KS Public Disclosure Commission	Carol E. Williams, Administrator	30,132	3	2	No	188,988	181,321	183,533
Kentucky								
Attorney General's Office	David L. Armstrong	N.A.	200		Yes	N.A.	N.A.	N.A.
Financial Disclosure Review Commission	Ralph Roaden, Executive Director	36,000	1		No	50,900	52,400	55,000
KY Registry of Election Finance	Raymond E. Wallace, Executive Director	38,208	6	0.5	Yes	278,200	289,000	309,800
Louisiana								
LA Ethics Admn. Program	R. Gray Sexton, Executive Secretary	41,000	3	8	Yes	490,000	450,000	429,000
LA Senate	Michael S. Baer, Secretary	N.A.	1	1	Yes	N.A.	N.A.	N.A.

TABLE 3 (continued)
AGENCY ADMINISTRATION
(As of January 1, 1988)

Jurisdiction/Agency	Agency Head/Title	Agency Head Annual Salary(a)	No. FTE Staff Prof.	No. FTE Staff Other	In-house Counsel?	Annual Budget 1985-86	Annual Budget 1986-87	Annual Budget 1987-88
Nevada								
NV Commission on Ethics	Carl F. Dodge, Chair	(f)		1	No	32,000	32,000	31,300
Secretary of State's Office	Frankie Sue Del Papa, Secretary of State	52,500	3	41	Yes	N.A.	N.A.	N.A.
Leg. Counsel Bureau	Donald Rhodes, Director	58,000	60	50	Yes	5,160,000	5,170,000	5,800,000
New Hampshire								
Secretary of State's Office	William M. Gardner, Secretary of State	N.A.	5	24	No	N.A.	N.A.	N.A.
New Jersey								
Exec. Commission on Ethical Standards	John G. Donnelly, Executive Director	N.A.	5	2	No	200,000	207,000	295,000
NJ Election Law Enforcement Commission	Frederick M. Herrmann, Executive Director	70,345	14	16	Yes	912,000	959,999	1,067,000
Joint Legislative Committee on Ethical Standards	Sen. Paul Contillo, Chairman Albert Portoni, Secretary and Counsel	N.A.	2	1	Yes	N.A.	N.A.	N.A.
New Mexico								
Secretary of State's Office	Rebecca Vigil-Giron, Secretary of State	40,425	28		No	N.A.	N.A.	1,312,000
New York								
NY State Board of Elections	Thomas Wallace, Executive Director	N.A.	40		Yes	N.A.	N.A.	N.A.
NY State Commission on Lobbying	Louis J. Cotrona, Executive Director	N.A.	8	2	Yes	N.A.	N.A.	450,000
North Carolina								
Secretary of State's Office	Thad Eure, Secretary of State	N.A.	1	1	No	N.A.	N.A.	N.A.
NC Board of Ethics	Mildred M. Donavant, Administrative Assistant	23,988	1		No	30,469	32,669	34,390
NC State Board of Elections	Alex K. Brock, Executive Secretary-Director	N.A.		5	No	N.A.	N.A.	N.A.
North Dakota								
Secretary of State's Office	Ben Meier, Secretary of State	46,000	23	2	No	N.A.	N.A.	N.A.
Ohio								
OH Elections Commission	Donald J. McTigue, Chief Counsel	N.A.	2	1	Yes	N.A.	N.A.	N.A.
OH Ethics Commission	Melissa Warheit, Executive Director	N.A.	11	1	Yes	397,486	394,105(j)	400,000
The Supreme Court of Ohio	James W. Mason, Secretary	61,832	1	2	Yes	N.A.	565,000	379,000
Oklahoma								
Merit Protection Commission	James L. Howard, Executive Director	43,000	5	2	No	448,000	500,000	500,000
OK State Election Board	Mr. Lee Slater, Secretary	52,500	9	6	No	N.A.	3,000,000	3,000,000

TABLE 3 (continued)
AGENCY ADMINISTRATION
(As of January 1, 1988)

Jurisdiction/Agency	Agency Head/Title	Agency Head Annual Salary(a)	No. FTE Staff Prof.	No. FTE Staff Other	In-house Counsel?	Annual Budget 1985-86	Annual Budget 1986-87	Annual Budget 1987-88
Virginia								
Secretary of Commonwealth's Office	Sandy Bowen, Secretary of the Commonwealth	46,500	2	10	No	N.A.	N.A.	N.A.
State Board of Elections	Susan H. Fitz-Hugh, Secretary	55,208	2	11	No	4,377,647	5,486,690	7,468,754(l)
Washington								
WA State Public Disclosure Commission	Graham E. Johnson, Executive Director	50,100	6	5	No	491,872	485,147	610,057
West Virginia								
Secretary of State's Office	Ken Hechler, Secretary of State	43,200	10	20	No	N.A.	N.A.	N.A.
Wisconsin								
Secretary of State's Office	Douglas La Follette, Secretary of State	42,089	11	33	Yes		2,178,600	1,700,000
WI State Elections Board	Kevin J. Kennedy, Executive Secretary	47,000	7	2	Yes	400,000	450,000	450,000
WI State Ethics Board	R. Roth Judd, Executive Director	N.A.	1.5	1.5	Yes	134,600	136,400	141,900
Wyoming								
Secretary of State's Office	Kathy Karpan, Secretary of State	52,500	2		No	N.A.	N.A.	N.A.
District of Columbia								
Office of Campaign Finance (m)	Marianne Coleman Niles, Director of Campaign Finance	69,556	12	17	Yes	992,000	1,372,000	948,000
U.S.A. (Federal)								
Federal Election Commission	John C. Surina, Staff Director	77,500	142	91	Yes	N.A.	12,883,000	14,174,000
Office of Govt. Ethics	Frank Q. Nebeker, Director	72,500	21	6	Yes	1,106,000	1,303,000	1,578,000
Committee on Standards of Official Conduct	Julian C. Dixon, Chair	89,500(n)	8	2	Yes	N.A.	N.A.	400,000
Virgin Islands								
Dept. of Justice	Godfrey R. de Castro, Attorney General	N.A.	2		Yes	68,345	65,708	N.A.
Alberta								
Chief Electoral Officer's Office	Patrick D. Ledgerwood, Chief Electoral Officer	N.A.	8	(o)	No	N.A.	N.A.	N.A.
British Columbia								
Chief Electoral Officer's Office	Harry M. Goldberg, Chief Electoral Officer and Registrar General of Voters	60,000	43(p)	(p)	No	N.A.	2,700,000	$2,700,000
Manitoba								
Chief Electoral Officer's Office	Richard Wills, Chief Electoral Officer	62,000	6		No	303,000	229,400	265,000

BOARD AND COMMISSION MEMBERS: COMPENSATION FOR DUTIES
(As of January 1, 1988)

Jurisdiction/Agency	Salary		Per Diem Expense Allowance:		
	Per Annum	Per Diem	Flat Rate	Travel	Meals and Lodging
Alabama					
AL Ethics Commission	–	$50(a)	$40	$.22/mile	–
Alaska					
AK Public Offices Commission	–	50	80	Actual expenses	–
Arizona					
AZ Ethics and Rules Office	–	–	50	$.22/mile	–
California					
Fair Political Practices Commission	(b)	100	82	Actual expenses	Actual Expenses
Connecticut					
CT Elections Enforcement Commission	–	50	50	$.22/mile	–
State Ethics Commission	–	50	50	Necessary expenses	Necessary expenses
Florida					
Commission on Ethics	–	–	50	Actual expenses	$21 or actual expenses
House Cmte. on Ethics	19,800(c)	–	50	–	–
Georgia					
State Ethics Commission	–	–	59	.20/mile	–
Hawaii					
Campaign Spending Commission	–	–	45	–	–
State Ethics Commission	–	–	–	Actual airfare	Out-of state: $100 Intra-state: $50
Illinois					
IL Board of Ethics	–	–	–	Actual expenses	Actual expenses
IL State Board of Elections	$18,000(d)	–	–	.205/mile	Meals:$22; Lodging:$50
DuPage Co. Board of Election Comm.	$19,425(e)	–	–	–	–
Board of Ethics, City of Chicago	–	–	–	(f)	–
Indiana					
IN State Election Board	$5,000	–	–	–	–
State Ethics Commission	–	50	–	.25/mile	Expenses
Iowa					
IA Campaign Finance Disclosure Commission	–	–	–	Actual expenses	Reasonable expenses
Kansas					
KS Public Disclosure Commission	–	–	35	.20/mile	Actual expenses
Kentucky					
Financial Disclosure Review Commission	–	–	100	Actual expenses	Actual expenses
KY Registry of Election Finance	–	65	65	.18/mile	Meals: $14; Lodging: $35
Louisiana					
Board of Ethics for Elected Officials	–	50	–	Actual expenses	Actual expenses
Commission on Ethics for Public Employees	–	50	–	Actual expenses	Actual expenses

TABLE 6 (continued)
BOARD AND COMMISSION MEMBERS: COMPENSATION FOR DUTIES
(As of January 1, 1988)

Jurisdiction/Agency	Salary		Per Diem Expense Allowance:		
	Per Annum	Per Diem	Flat Rate	Travel	Meals and Lodging
Oregon					
OR Govt. Ethics Commission	–	–	30	.20/mile	As needed
Pennsylvania					
State Ethics Commission	–	50	50	Actual expenses	Actual expenses
Rhode Island					
RI Ethics Commission	$6,000(h)	100(f)	–	–	–
RI State Board of Elections	$28,000	–	–	–	–
South Carolina					
SC State Election Commission	–	–	35	.205 mile	Actual expenses
State Ethics Commission	–	35	35	Actual expenses	Actual expenses
Texas					
State Ethics Advisory Commission	–	–	–	Actual expenses	Actual expenses
Utah					
Lt. Governor's Office	–	–	–	$.21/mile	Meals:$23; Lodging:$35 plus tax
Virginia					
State Board of Elections	(i)	–	50	$.21/mile	Actual expenses
Washington					
WA State Public Disclosure Commission	–	100	–	–	–
Wisconsin					
WI State Elections Board	–	25	–	.25/mile	–
WI State Ethics Board	–	25	25	Actual & reasonable expenses	Actual & reasonable expenses
District of Columbia					
Office of Campaign Finance	(j)	–	–	–	–
U.S.A. (Federal)					
Federal Election Commission	77,500	–	–	Actual expenses	Actual expenses
Ontario					
Commission on Election Finances	–	–	175	–	–

Key:
– No funds received in this category.
(a) Board members receive $50 per diem plus expenses.
(b) Chairman receives $81,600 per year.
(c) Salary of legislative member.
(d) Chair: $28,000. vice chair: $23,000.
(e) Chair: $19,425; vice chair: $15,750; secretary: $15,750.
(f) $200 budgeted for the year for extraordinary expenses for the whole board.
(g) Chairman receives $125 per day.
(h) Each member receives $6,000 per fiscal year.
(i) Secretary receives $43,309.
(j) Compensation while actually in the service of the board. Members are not to exceed the sum of $12,500 per annum. The chairperson is not to exceed the sum of $26,500 per annum.

ATTACHMENT C

Personal Disclosure Statements
COGEL, *Campaign Finance, Ethics & Lobby Law*, Special Edition
Blue Book 1988-89

CHART I:
FINANCIAL DISCLOSURE REPORTING OF ELECTED OFFICIALS*

	INCOME SOURCES	INVESTMENTS	REAL ESTATE	OFFICES HELD	DEBTS	CONTRACTS	REIMBURSED EXPENSES	LICENSES	PRIVATE EMPLOYMENT	TRUSTS	SPOUSAL FINANCES	AMOUNT/ CATEGORY
ALABAMA	X	X	X	X	X	X			X	X	X	X
ALASKA	X	X	X	X	X	X			X	X	X	X
ARIZONA	X	X	X	X	X			X	X		X	X
ARKANSAS	X	X		X					X			
CALIFORNIA	X	X	X	X	X		X		X	X	X	X
COLORADO	X	X	X	X	X	X		X	X	X	X	
CONNECTICUT	X	X	X		X	X				X	X	
FLORIDA	X	X	X	X	X				X	X		
HAWAII	X	X	X	X	X				X		X	X
IOWA	X	X		X								
KANSAS	X	X	X	X					X		X	
KENTUCKY	X	X	X	X	X	X	X	X	X	X		X
MAINE	X											
MARYLAND		X	X		X		X		X	X	X	$
MASSACHUSETTS	X	X	X	X	X				X	X	X	X
MINNESOTA	X	X	X						X	X		
MISSISSIPPI	X				X				X		X	
MONTANA		X	X							X	X	
NEBRASKA	X	X	X	X	X				X	X		
NEVADA	X	X		X							X	$
NEW YORK	X	X	X	X	X	X	X	X	X	X	X	X
OHIO	X	X	X	X	X				X	X		
OKLAHOMA	X	X	X									
OREGON	X	X	X	X	X		X		X		X	
PENNSYLVANIA	X	X	X	X	X	X						

CHART I:(continued)
FINANCIAL DISCLOSURE REPORTING OF ELECTED OFFICIALS*

	INCOME SOURCES	INVESTMENTS	REAL ESTATE	OFFICES HELD	DEBTS	CONTRACTS	REIMBURSED EXPENSES	LICENSES	PRIVATE EMPLOYMENT	TRUSTS	SPOUSAL FINANCES	AMOUNT/ CATEGORY
RHODE ISLAND	X		X	X					X	X	X	X
SOUTH CAROLINA			X	X		X						
SOUTH DAKOTA	X											
TENNESSEE	X		X	X	X				X		X	
TEXAS	X	X	X	X	X				X		X	X
VIRGINIA	X	X	X	X		X	X		X	X	X	
WASHINGTON	X	X	X	X	X		X		X	X	X	X
WEST VIRGINIA						X						
WISCONSIN	X	X	X	X	X	X	X		X		X	X
UNITED STATES	X	X		X	X		X					X

* Adapted from: information found in the Campaign Finance, Ethics & Lobby Law Blue Book, 1988-89. Council on Governmental Ethics Laws, publ. Lexington, KY: 1988

CHART II:
OVERSIGHT OF ELECTED OFFICIALS

STATE	ETHICS	FINANCIAL DISCLOSURE STATEMENT	STAFF #	IN-HOUSE COUNSEL	NUMBER ADVISORY OPINIONS	INVESTIGATIONS INDEP COMPLAINT		CIVIL PENALTIES
Alabama Ethics Commission	X	X	9	N	101+		X	
Alaska Public Officers Comm.	X	X	9	N	0-10	X	X	X
Arizona Ethics & Rules	X	X	3	N	11-25	X		
Arkansas Sec. of State	X	X	4	Y				
California Fair Political Practices Comm.	X	X	60	Y	0-10	X	X	X
Colorado Dept. of State	X	X	72	Y			X	X
Connecticut State Ethics Comm.	X	X	6	Y	11-25	X	X	X
Florida Comm. on Ethics	X	X	14	Y	76-100		X	
Hse. Comm. on Ethics and Elections	X	X	4	Y	0-10			
Hawaii State Ethics Comm.	X	X	7	Y	11-25	X	X	
Iowa Secretary of Senate		X						
Kansas Public Disclosure Comm.	X	X	5	N	26-50	X	X	X
Kentucky FD Review Comm.	X	X	1	N	0-10	X	X	
Maine Comm. on Gov. Ethics & Election Practices	X	X	1	Y	0-10	X	X	
Maryland State Ethics Comm.	X		6.5	Y	26-50	X	X	
Massachusetts State Ethics Comm.	X		33	Y	101+	X	X	X
Minnesota Ethical Practices Bd.	X	X	5	N	0-10	X	X	X
Mississippi Ethics Comm.	X	X	7.5	N	76-100	X	X	
Montana Comm. on Political Practices		X	2	N	0-10			

CHART II:(continued)
OVERSIGHT OF ELECTED OFFICIALS

STATE	ETHICS	FINANCIAL DISCLOSURE STATEMENT	STAFF #	IN-HOUSE COUNSEL	NUMBER ADVISORY OPINIONS	INVESTIGATIONS INDEP	INVESTIGATIONS COMPLAINT	CIVIL PENALTIES
Nebraska Accountability & Disclosure Comm.	X	X	7	Y	11-25	X	X	X
Nevada Comm. on Ethics	X	X	1	N	0-10		X	
New Mexico Sec. of State	X		28	N				
New York Legislative Ethics Comm.	X	X	9	Y	76-100	X	X	X
Ohio Ethics Comm.	X	X	12	Y	11-25	X	X	
Oklahoma Election Board		X	15	N				
Oregon Gov. Ethics Comm.	X	X	4	N	69	X	X	X
Pennsylvania State Ethics Comm.	X	X	13	Y	101+	X	X	
Rhode Island Ethics Comm.	X	X	4	Y	101+	X	X	X
So. Carolina State Ethics Comm.	X	X	4	N	26-50		X	X
So. Dakota Secretary of State		X	12	N				
Tennessee Sec. of State	X	X	5	Y				
Texas St. Ethics Advisory Comm.	X	X	.5	Y	0-10			
Virginia Sec. of Commonwealth's Office	X	X	12	Y				
Washington Public Disclosure Comm.		X	11	N	0-10	X	X	
West Virginia Sec. of State	X		30	N	26-50	X	X	
Wisconsin State Ethics Board	X	X	3	Y	11-25	X	X	X
USA Comm. on Standards of Official Conduct	X	X	10	Y		X	X	

* Adapted from: information found in the Campaign Finance, Ethics & Lobby Law Blue Book, 1988-89. Council on Governmental Ethics Laws, publ. Lexington, KY: 1988

STATE OF NEW YORK

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ANNUAL REPORT 1989

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TABLE 17

PERSONAL DISCLOSURE STATEMENTS: FILING REQUIREMENTS

(As of January 1, 1988)

Jurisdiction	Those required to file personal disclosure statement:													
	Statewide Provincial Elective Officials	Candidates for Statewide Provincial Elective Office	Legislators/Members of Provincial Parliament	Nominees for Appointment to State/Provincial Offices, Agencies or Departments	Officers of State/Provincial Offices, Agencies or Departments	State Employees Earning in Excess of $ Annually	County Elective Officials	Certain County Employees	Municipal Elective Officials	Certain Municipal Employees	Paid Members of State/Provincial Boards or Commissions	Volunteer Members of State/Provincial Boards or Commissions	Paid Members of Local Boards or Commissions	Volunteer Members of Local Boards or Commissions	Other
Alabama	•	•	•	•	•	25,000	•	•	•	•	—	—	—	—	—
Alaska	•	•	•	•	•	—	•	—	•	—	•	•	•	•	(z)
Arizona	•	•	•	—	•	—	—	—	•	—	—	—	—	—	—
Arkansas	•	•	•	—	•	—	•	•	•	•	*(b)	•	*(b)	—	—
California	•	•	•	—	•	(c)	•	•	•	—	•	•	•	•	(d)
Colorado	•	•	•	—	—	—	—	—	—	—	•	—	—	—	—
Connecticut	•	—	•	•	•	—	•	•	—	—	•	—	—	—	—
Delaware	•	•	•	•	•	—	—	—	—	—	•	—	—	—	—
Florida	•	•	•	—	•	—	•	•	•	•	•	•	•	•	—
Georgia	—	•	—	—	—	—	—	—	—	—	—	—	—	—	—
Hawaii	•	•	•	—	•	—	—	—	—	—	•	—	—	—	—
Idaho	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Illinois(e)	—	•	—	—	•	—	—	—	•	•	•	•	—	•	—
Indiana(e)	—	•	—	—	•	—	—	—	—	—	•	•	—	—	—
Iowa	—	—	•	—	—	—	—	—	—	—	—	—	—	—	—
Kansas	•	•	•	•	—	—	•	•	•	•	•	•	—	—	—
Kentucky(e)	•	•	•	—	•	—	—	—	—	—	•	•	—	—	—
Louisiana	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Maine	—	•	—	—	•	—	—	—	—	—	•	•	—	—	—
Maryland	•	•	•	—	•	—	—	—	—	—	•	•	—	—	—
Massachusetts	•	•	•	—	•	34,926	•	—	—	—	•	•	—	—	—
Michigan(k)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Minnesota	*(m)	*(m)	•	—	•	—	—	—	—	—	•	•	•	•	(g)
Mississippi	•	•	•	—	•	—	•	—	•	—	•	•	•	•	(g)
Missouri	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Montana	•	—	•	—	—	—	—	—	—	—	(o)	(o)	(o)	(o)	(g)
Nebraska	•	•	•	•	•	—	•	—	*(p)	—	•	•	—	—	*(z)

TABLE 17 (continued)
PERSONAL DISCLOSURE STATEMENTS: FILING REQUIREMENTS
(As of January 1, 1983)

Jurisdiction	Those required to file personal disclosure statement:														
	Statewide Provincial Elective Officials	Candidates for Statewide/Provincial Elective Office	Legislators/Members of Provincial Parliament	Nominees for Appointment to State/Provincial Offices, Agencies or Departments	Officers of State/Provincial Offices, Agencies or Departments	State Employees Earning in Excess of $ Annually	County Elective Officials	Certain County Employees	Municipal Elective Officials	Certain Municipal Employees	Paid Members of State/Provincial Boards or Commissions	Volunteer Members of State/Provincial Boards of Commissions	Paid Members of Local Boards or Commissions	Volunteer Members of Local Boards or Commissions	Other
Nevada	•	•	•	•	•	—	•	•	•	•	•(r)	•(r)	•(r)	(r)	—
New Hampshire	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
New Jersey(e)	—	—	—	—	•(t)	—	—	—	—	—	—	—	—	—	(s)
New Mexico	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
New York	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
North Carolina	—	—	—	—	—	30,000	—	—	—	—	—	—	—	—	(u)
North Dakota	—	—	—	—	(t)	—	—	—	—	—	—	—	—	—	—
Ohio	•	•	•	—	• (v)	18,000	•	—	•(w)	—	(x)	(x)	—	—	—
Oklahoma	•	•	•	—	•	—	—	—	—	—	•	—	—	—	—
Oregon	•	•	•	—	•	—	—	•	•	•	•	—	•	•	—
Pennsylvania	•	•	•	•	•	—	•	•	•	•	—	—	•	•	—
Philadelphia, PA	—	—	—	—	—	—	•	•	•	•	•	•	•	•	—
Rhode Island	•	•	•	•	•	—	•	—	•	•	•	•	—	—	—
South Carolina	•	•	•	•	•	—	•	•	•	•	•	•	—	—	(y)
South Dakota	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—
Tennessee	—	—	•	—	•	—	—	—	—	—	—	—	•	—	—
Texas	•	•	•	•	•	—	—	—	—	—	•	•	—	—	(z)
Utah	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Vermont	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Virginia	•	•	•	—	•	—	•	•	•	•	•	—	—	—	—
Washington	•	•	•	—	•	—	•	—	•(aa)	—	—	—	—	—	—
West Virginia	•	—	•	—	•	0	—	—	—	—	•	•	—	—	(a)
Wisconsin	•	•	•	•	•	—	—	—	—	—	—	—	(ab)	(ab)	(ac)
Wyoming	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
District of Columbia	—	—	—	—	—	—	—	—	•	•	—	—	•	•	—

TABLE 19
PERSONAL DISCLOSURE STATEMENTS: REQUIRED DISCLOSURES
(As of January 1, 1988)

Jurisdiction	Tax Returns	Sources of Personal Income	Sources of Income of Business If a Partner or Shareholder	Investments	Real Estate Interests	Offices and/or Directorships Held	Creditor Indebtedness	Leases or Other Contracts with Public Entities	Retainers	Compensated Representation Before Public Entities	Fees or Honoraria	Reimbursement of Travel Expenses from Private Sources	Professional or Occupational Licenses Held	Deposits in Financial Institutions	Cash Surrender Value of Insurance	Private Employer or Nature of Private Employment	Professional Services Rendered	Identification of Trusts by Trustee	Identification of Trust Interests by Trustee	Identification of Trusts by Beneficiary	Identification of Trust Interests by Beneficiary	Names of Immediate Family Members	Financial Interests of Spouse	Financial Interests of Dependents	Other	Total Value of Interests	Actual Amounts	Categories of Amounts	Other
Alabama	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(a)	—	—	—	—
Alaska	—	—	—	•	•	—	—	—	—	—	•	—	—	•	—	•	—	•	•	•	•	•	•	•	•	—	—	—	—	—
Arizona	—	•	•	•	•	•	•	•	—	•	•	•	—	•	—	•	—	•	•	•	•	•	•	•	•	—	—	—	—	—
Arkansas	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
California	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Colorado	3	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Connecticut	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Delaware	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Florida	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Georgia	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Hawaii	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Idaho	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Illinois(g)	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Indiana(h)	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Iowa	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Kansas	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Kentucky(i)	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Louisiana	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Maine	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Maryland	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Massachusetts	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Michigan(y)	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Minnesota	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mississippi	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Missouri	—	—	—	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Montana	—	•	•	•	•	•	•	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Nebraska	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

(a) (b) (c) (d) (e) (f) (g) (h) (i) (y)

TABLE 19 (continued)
PERSONAL DISCLOSURE STATEMENTS: REQUIRED DISCLOSURES
(As of January 1, 1988)

Jurisdiction	Tax Returns	Sources of Personal Income	Sources of Income of Business If a Partner or Shareholder	Investments	Real Estate Interests	Offices and/or Directorships Held	Creditor Indebtedness	Leases or Other Contracts with Public Entities	Retainers	Compensated Representation Before Public Entities	Fees or Honoraria	Reimbursement of Travel Expenses from Private Sources	Professional or Occupational Licenses Held	Deposits in Financial Institutions	Cash Surrender Value of Insurance	Private Employer or Nature of Private Employment	Professional Services Rendered	Identification of Trusts by Trustee	Identification of Trust Interests by Trustee	Identification of Trusts by Beneficiary	Identification of Trust Interests by Beneficiary	Names of Immediate Family Members	Financial Interests of Spouse	Financial Interests of Dependents	Other	Total Value of Interests	Actual Amounts	Categories of Amounts	Other
Virgin Islands	—	•	•	•	—	•	•	—	—	—	•	—	—	—	—	—	•	—	—	—	—	•	•	—	—	—	•	—	—
Alberta	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
British Columbia	—	—	—	•	•	—	•	—	—	—	—	—	—	—	—	—	—	•	•	—	—	—	—	—	—	—	—	•	—
Newfoundland	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Ontario	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Quebec	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Saskatchewan	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Canada (Federal)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Keys
• Required
— Not required

(a) Financial interests of non-independent children residing with official.
(b) Name identification and sources of income over $100.
(c) Gifts of over $50 from sources other than family members.
(d) Investments, real property and income.
(e) Actual amounts of gifts and honoraria.
(f) May be submitted in place of a personal financial disclosure statement.
(g) Dependent children residing in household.
(h) Source only; no dollar amounts.
(i) Disclosure of interests meeting thresholds. In Delaware and Montana, threshold is $1,000.
(j) Over $1,000 for constitutional disclosure, no amounts for statutory disclosure.
(k) The various offices in which these reports are filed require different information on the reports. Contact individual agencies to determine who must report to that office and which specific disclosures are required.
(l) Certain types of indebtedness – liabilities exceeding $500.
(m) Any economic interest, property, income or association which creates or could give rise to a conflict of interest.
(n) Gifts and honoraria.
(o) Combination of categories and exact values as per disclosure of gifts.
(p) The investment in stocks, bonds, bills, notes, mortgages or other securities offered for sale through recognized financial brokers if that investment is less than five percent of the total outstanding issue of any such stock, bonds, bills, notes, mortgages or other securities of the offering entity.
(q) Spouse only.
(r) Percent owned.
(s) Names and occupations of spouses.
(t) Under certain circumstances.
(u) If they work for the state.
(v) If attributable.
(w) Specific categories include real estate, interests in corporation, partnerships doing business with the state, employment by immediate family, if by state, certain debts, gifts and names of places of salaried employment of filer and spouse. (Criteria for what items must be disclosed varies for board and commission members paid below a specified amount.)
(x) Most board and commission members only report in dollar ranges.
(y) Michigan Ethics Act has no disclosure provisions.
(z) Full or partial interests in pari-mutuel horse racing in U.S.A. and Canada for self and immediate family.
(aa) Sources above certain thresholds.
(ab) Sources of income over $1,000; real property and other financial holdings valued at over $1,000; creditors of $1,000 owed and gifts over $100.

TABLE 18
REVIEW OF PERSONAL DISCLOSURE STATEMENTS
(As of January 1, 1988)

Jurisdiction	Reviews Are Conducted of: All Reports	Randomly Selected Reports	Reports About Which Complaints Are Filed	Number of State/Provincial Reports Filed Annually:	Reports Are Available to Public on: Unrestricted Basis	Restricted Basis	Not Available	Aggregate Data Compiled and Published?
Alabama	D	D	DF	10,001-25,000	•			No
Alaska			D	501-1,000				No
Arizona	D			251-500		•		No
Arkansas	D			1,001-5,000	•			No
California	D	D	DF	10,001-25,000	•			Yes
Colorado	D			0-250	•			No
Connecticut	D		F	251-500		•		No
Delaware		DF		N.A.	•			No
Florida			F	25,000	•			Yes
Georgia				N.A.	•			No
Hawaii	D		DF	1,001-5,000		•		No
Idaho				0				No
Illinois	D			5,001-10,000	•			No(a)
Indiana	D			0-250	•			No
Iowa				N.A.	•			No
Kansas	D		F	5,001-10,000	•			No
Kentucky	D			(b,c)	•(b)		•(c)	No
Louisiana	D			0-250	•			No
Maine	D			0-250	•			No
Maryland	D	D	F	5,001-10,000	•			No
Massachusetts	D			5,001-10,000	•			No
Michigan				N.A.				N.A.
Minnesota	D			1,001-5,000	•			No
Mississippi	D		DF	1,001-5,000	•			No
Missouri				0				No
Montana	D		DF	0-250	•			No
Nebraska	D	F	F	1,001-5,000	•			No
Nevada	D			1,001-5,000	•			No
New Hampshire				0				No
New Jersey	D	F	DF	1,001-5,001	•			No
New Mexico				0-250				N.A.
New York				0				No
North Carolina	D			1,001-5,000	•			No
North Dakota	D			0-250	•			No

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

ATTACHMENT D

New York Financial Disclosure Forms

EMPLOYEE DESIGNATION — FINANCIAL DISCLOSURE

1990

NAME: _____

WORK ADDRESS: _____

_____

_____

WORK PHONE NUMBER: _____

Employees of the Legislature who are anticipated to receive annual compensation in excess of $53,171 during 1990 from the Legislature OR who hold a policy-making position, as determined by the appointing authority, must file an Annual Statement of Financial Disclosure pursuant to Section 73-a of the Public Officers Law. This form will be mailed to each such employee directly by the Legislative Ethics Committee. Please indicate below whether the above-named employee will receive annual compensation in excess of $53,171. If the answer to this question is NO, please indicate whether the employee holds a policy-making position.

Pursuant to the provisions of Section 80 (8) d of the Legislative Law, the Legislative Ethics Committee has promulgated the following guidelines to assist appointing authorities in determining which persons who receive $53,171 or less in annual compensation hold policy-making positions:

GUIDELINES REGARDING POLICY-MAKING POSITIONS

Those employees who exercise substantial authority and discretion as a regular and significant part of their employment with regard to influencing legislative content and determining support or opposition to a matter of concern to the Legislature may be "policy-makers."

Appointing authorities may wish to consider whether such substantial authority and discretion involves the following functions which may be relevant:

- researching and developing budget proposals
- supervising staff responsible for developing legislation
- revising and making recommendations as to support or opposition to legislation
- researching, drafting and negotiating legislation
- developing agendas for committee consideration.

1) EARNING over $53,171 YES: _____ NO: _____

2) POLICY-MAKER EARNING $53,171 or less YES: _____

_____ _____

(Appointing Authority Signature) (Date)

_____

(Please Type or Print Name)

"If neither item 1 nor 2 is 'yes' the employee must complete the Statement of Financial and Other Interests pursuant to Section 73, subdivision 6 (a) of the Public Officers Law which is included in the sign up packet."

White (Ethics Committee)
Yellow (Personnel Copy)
Pink (Member/Department Head)
Gold (Employee)

(carbon copies attached to original)

New York State Legislature — 1990
Statement of Financial and Other Interests

Pursuant to Section 73, subdivision 6 (a), of the Public Officers Law

When and Where to File. This Statement of Financial and Other Interests must be filed with the Legislative Ethics Committee on or after December fifteenth and before the following January fifteenth in each year by each legislative employee who receives annual compensation of $53,171 or less and who is determined not to hold a policymaking position by his/her appointing authority.

I, _____, holding the position of _____
(please print name) *(title)*

in the office of _____ in the _____.
(name of office) *(Senate, Assembly or other legislative entity)*

_____, _____.
(office address) *(office telephone)*

make the following statement:

1) Each financial interest, direct or indirect, of myself, my spouse and my unemancipated children under the age of 18 years in any activity which is subject to the jurisdiction of a regulatory agency*, or the name of the entity in which such interest is had, and whether such interest is over or under five thousand dollars in value, is as follows (if none, so state):

FINANCIAL INTERESTS (Type of Activity or Name of Entity)	Held in Name of	Check One Over $5,000	Check One Under $5,000

(attach sheet if more space is needed)

2) Every office and directorship held by me in any corporation, firm or enterprise which is subject to the jurisdiction of a regulatory agency*, including the name of such corporation, firm or enterprise, is as follows (if none, so state):

Offices and Directorships Held	Name of Corporation, Firm or Enterprise

(attach sheet if more space is needed)

3) Any other interests or relationships which I determine in my discretion might reasonably be expected to be particularly affected by legislative action, or in the public interest should be disclosed, are as follows (if none, so state):

Other Interests or Relationships

_____
_____
_____
_____

(attach sheet if more space is needed)

(Date) _____ (Signature) _____

* "Regulatory agency" means the banking department, insurance department, state liquor authority, department of agriculture and markets, department of education, department of environmental conservation, department of health, division of housing and community renewal, department of state, other than the division of corporations and state records, department of public service, the industrial board of appeals in the department of labor and the department of law, other than when the attorney general or his agents or employees are performing duties specified in section sixty-three of the executive law.

False statements. Section 73 (6)(c) of the Public Officers Law provides that: "Any . . . legislative employee who knowingly and willfully with intent to deceive makes a false statement or gives information which he knows to be false in any written statement required to be filed pursuant to this subdivision, shall be assessed a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty shall be made by the legislative ethics committee in accordance with the provisions of subdivision twelve of section eighty of the legislative law. For a violation of this subdivision, the committee may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor."

12 1 89

Legislative Ethics Committee
Box 75, L.O.B.
Albany, New York 12247
(518)432-7837/7838

Annual Statement of Financial Disclosure

For Calendar Year 1989

1. Name _____

2. (a) Title of Position _____

   (b) Department, Agency or other Governmental Entity _____

   (c) Address of Present Office _____

   (d) Office Telephone Number _____

3. (a) Marital Status _____. If married, please give spouse's full name including maiden name where applicable.

   _____

   (b) List the names of all unemancipated children.

   _____

   _____

   _____

INSTRUCTIONS

Answer each of the following questions completely, with respect to calendar year 1989, unless another period or date is otherwise specified. If additional space is needed, attach additional pages.

Whenever a "value" or "amount" is required to be reported herein, such value or amount shall be reported as being within one of the following Categories: Category A - under $5,000; Category B - $5,000 to under $20,000; Category C -$20,000 to under $60,000; Category D - $60,000 to under 100,000; Category E - $100,000 to under $250,000; and Category F - $250,000 or over. A reporting individual shall indicate the Category by letter only.

Whenever "income" is required to be reported herein, the term "income" shall mean the aggregate net income before taxes from the source identified.

The term "calendar year" shall mean the year ending the December 31st preceding the date of filing the annual statement.

4. (a) List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership, or other organization other than the State of New York. Include compensated honorary positions; do NOT list membership or uncompensated honorary positions. If the listed entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

Position	Organization	State or Local Agency

(b) List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by the spouse or unemancipated child of the reporting individual, with any firm, corporation, association, partnership, or other organization other than the State of New York. Include compensated honorary positions; do NOT list membership or uncompensated honorary positions. If the listed entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

Position	Organization	State or Local Agency

5. (a) List the name, address and description of any occupation, employment, (other than the employment listed under Item 2 above), trade, business or profession engaged in by the reporting individual. If such activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had

matters other than ministerial matters before, any state or local agency, list the name of any such agency.

Position	Name & Address of Organization	Description	State or Local Agency

(b) If the spouse or unemancipated child of the reporting individual was engaged in any occupation, employment, trade, business or profession which activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name, address and description of such occupation, employment, trade, business or profession and the name of such agency.

Position	Name & Address of Organization	Description	State or Local Agency

6. List any interest, in EXCESS of $1,000, [redacted] held by the reporting individual, such individual's spouse or unemancipated child, or partnership of which any such person is a member, or corporation, 10% or more of the stock of which is owned or controlled by any such person, whether vested or contingent, in any contract made or executed by a state or local agency and include the name of the entity which holds such interest and the relationship of the reporting individual or such individual's spouse or such child to such entity and the interest in such contract. Do NOT include bonds and notes. Do NOT list any interest in any such contract on which final payment has been made and all obligations under the contract except for guarantees and warranties have been performed, provided, however, that such an interest must be listed if there has been an ongoing dispute during the calendar year for which this statement is filed with respect to any such guarantees or warranties. Do NOT list any interest in a contract made or executed by a local agency

after public notice and pursuant to a process for competitive bidding or a process for competitive requests for proposals.

Self, Spouse or Child	Entity Which Held Interest in Contract	Relationship to Entity and Interest in Contract	Contracting State or Local Agency	Category of Value of Contract

7. List any position the reporting individual held as an officer of any political party or political organization, as a member of any political party committee, or as a political party district leader. The term "party" shall have the same meaning as "party" in the election law. The term "political organization" means any party or independent body as defined in the election law or any organization that is affiliated with or a subsidiary of a party or independent body.

8. (a) If the reporting individual practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, give a general description of the principal subject areas of matters undertaken by such individual. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients.

(b) List the name, principal address and general description or the nature of the business activity of any entity in which the reporting individual or such individual's spouse had an investment in excess of $1,000 excluding investments in securities and interests in real property.

9. List each source of gifts, EXCLUDING campaign contributions, in EXCESS of $1,000, received during the reporting period for which this statement is filed by the reporting individual or such individual's spouse or unemancipated child from the same donor, EXCLUDING gifts from a relative. INCLUDE the name and address of the donor. The term "gifts" does not include reimbursements, which term is defined in item 10. Indicate the value and nature of each such gift.

Self, Spouse or Child	Name of Donor	Address	Nature of Gift	Category of Value of Gift

10. Identify and briefly describe the source of any reimbursements for expenditures, EXCLUDING campaign expenditures and expenditures in connection with official duties reimbursed by the state, in EXCESS of $1,000 from each such source. For purposes of this item, the term "reimbursements" shall mean any travel-related expenses provided by nongovernmental sources and for activities related to the reporting individual's official duties such as, speaking engagements, conferences, or factfinding events. The term "reimbursements" does NOT include gifts reported under item 9.

Source	Description

11. List the identity and value, if reasonably ascertainable, of each interest in a trust, estate or other beneficial interest, including retirement plans other than retirement plans of the state of New York or the city of New York, and deferred compensation plans (e.g., 401, 403(b), 457, etc.) established in accordance with the Internal revenue code, in which the REPORTING INDIVIDUAL held a beneficial interest in EXCESS of $1,000 at any time during the preceding year. Do NOT report interests in a trust, estate or other beneficial interest established by or for, or the estate of, a relative.

Identity	Category of Value[1]

[1]The value of such interest shall be reported only if reasonably ascertainable.

12. (a) Describe the terms of, and the parties to, any contract, promise, or other agreement between the reporting individual and any person, firm, or corporation with respect to the employment of such individual after leaving office or position (other than a leave of absence).

(b) Describe the parties to and the terms of any agreement providing for continuation of payments or benefits to the REPORTING INDIVIDUAL in EXCESS of $1,000 from a prior employer OTHER THAN the State. (This includes interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance; buy-out agreements; severance payments; etc.)

13. List below the nature and amount of any income in EXCESS of $1,000 from EACH SOURCE for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Nature of income includes, but is not limited to, all income (other than that received from the employment listed under Item 2 above) from compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

Self/ Spouse	Source	Nature	Category of Amount

14. List the sources of any deferred income (not retirement income) in EXCESS of $1,000 from each source to be paid to the reporting individual following the close of the calendar year for which this disclosure statement is filed, other than deferred compensation reported in item 11 hereinabove. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall identify as the source, the name of the firm, corporation, partnership or association through which the income was derived, but shall not identify individual clients.

Source	Category of Amount

15. List each assignment of income in EXCESS of $1,000, and each transfer other than to a relative during the reporting period for which this statement is filed for less than fair consideration of an interest in a trust, estate or other beneficial interest, securities or real property, by the reporting individual, in excess of $1,000, which would otherwise be required to be reported herein and is not or has not been so reported.

Item Assigned or Transferred	Assigned or Transferred to	Category of Value

16. List below the type and market value of securities held by the reporting individual or such individual's spouse from each issuing entity in EXCESS of $1,000 at the close of the taxable year last occurring prior to the date of filing, including the name of the issuing entity exclusive of securities held by the reporting individual issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed ONLY IF the reporting individual has knowledge thereof except where the reporting individual or the reporting individual's spouse has transferred assets to such trust for his or her benefit in which event such securities shall be listed unless they are not ascertainable by the

reporting individual because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to the reporting individual. Securities of which the reporting individual or the reporting individual's spouse is the owner of record but in which such individual or the reporting individual's spouse has no beneficial interest shall not be listed. Indicate percentage of ownership ONLY if the reporting person or the reporting person's spouse holds more than five percent (5%) of the stock of a corporation in which the stock is publicly traded or more than ten percent (10%) of the stock of a corporation in which the stock is NOT publicly traded. Also list securities owned for investment purposes by a corporation more than fifty percent (50%) of the stock of which is owned or controlled by the reporting individual or such individual's spouse. For the purpose of this item the term "securities" shall mean mutual funds, bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests in limited or general partnerships and certificates of deposits (CDs) and such other evidences of indebtedness and certificates of interest as are usually referred to as securities. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in item 8(a) or if the security is corporate stock, NOT publicly traded, in a trade or business of a reporting individual or a reporting individual's spouse.

Self/ Spouse	Issuing Entity	Type of Security	Percentage of corporate stock owned or controlled (if more than 5% publicly traded stock, or more than 10% of stock not publicly traded, is held)	Category of Market Value as of the close of the taxable year last occurring prior to the filing of this statement

17. List below the location, size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest in EXCESS of $1,000 is held by the reporting individual or the reporting individual's spouse. Also list real property owned for investment purposes by a corporation more than fifty percent (50%) of the stock of which is owned or controlled by the reporting individual or such individual's spouse. Do NOT list any real property which is the primary or secondary personal residence of the reporting individual or the reporting individual's spouse, except where there is a co-owner who is other than a relative.

Self/ Spouse Corporation	Location	Size	General Nature	Acquisition Date	Percentage of Ownership	Category of Market Value

18. List below all notes and accounts receivable, other than from goods or services sold, held by the reporting individual at the close of the taxable year last occurring prior to the date of filing and other debts owed to such individual at the close of the taxable year last occurring prior to the date of filing, in EXCESS of $1,000, including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities reported in item 16 hereinabove. Debts, notes and accounts receivable owed to the individual by a relative shall not be reported.

Name of Debtor	Type of Obligation, Date Due, and Nature of Collateral, if any	Category of Amount

19. List below all liabilities of the reporting individual and such individual's spouse, in EXCESS of $5,000 as of the date of filing of this statement, other than liabilities to a relative. Do NOT list liabilities incurred by, or guarantees made by, the reporting individual or such individual's spouse or by any proprietorship, partnership or corporation in which the reporting individual or such individual's spouse has an interest, when incurred or made in the ordinary course of the trade, business or professional practice of the reporting individual or such individual's spouse. Include the name of the creditor and any collateral pledged by such individual to secure payment of any such liability. A reporting individual shall not list any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded. If any such reportable liability has been guaranteed by any third person, list the liability and name the guarantor.

Name of Creditor or Guarantor	Type of Liability and Collateral, if any	Category of Amount

The requirements of law relating to the reporting of the financial interests are in the public interest and no adverse inference of unethical or illegal conduct or behavior will be drawn merely from compliance with these requirements.

(Signature of Reporting Individual) Date(month/day/year)

penalty shall be final unless modified, suspended or vacated within thirty days of imposition and upon becoming final shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the state ethics commission or legislative ethics committee, pursuant to article seventy-eight of the civil practice law and rules.

5. Nothing contained in this section shall be construed as precluding any public authority or public benefit corporation from exercising any authority or power now or hereafter existing to require any of its members, directors, officers or employees to file financial disclosure statements with such public authority or public benefit corporation that are the same as, different from or supplemental to any of the requirements contained herein and to provide only for internal employment discipline for any violation arising out of such internal filing.

Historical Note

Effective Date. Section effective Jan. 1, 1989, pursuant to L.1987, c. 813, § 26, set out as a note under section 73.

Former Section 73-a. Section, added L.1965, c. 1031, § 182, which related to prohibited business or professional activity by public officers and employees, was repealed by L.1967, c. 680, § 116.

1989 Amendment. Subd. 1, par. (c), subpars. (ii), (iii). L.1989, c. 242, § 3, eff. Jan. 1, 1990, substituted "the filing rate established by paragraph (i) of this subdivision" for "thirty thousand dollars" in two instances.

Subd. 1, par. (d). L.1989, c. 242, § 4, eff. Jan. 1, 1990, substituted "the filing rate established by paragraph (i) below" and "thirty thousand dollars".

Subd. 1, par. (i). L.1989, c. 242, § 5, eff. Jan. 1, 1990, added par. (i).

Subd. 2, par. (a), subpar. (v). L.1989, c. 242, § 6, eff. July 1, 1989, inserted "for statewide office and candidates".

Subd. 2, par. (a), subpar. (viii). L.1989, c. 242, § 6, eff. July 1, 1989, added subpar. (viii).

Subd. 2, par. (e). L.1989, c. 242, § 7, eff. July 1, 1989, amended par. without substantive change.

Subd. 2, par. (g). L.1989, c. 242, § 8, eff. Jan. 1, 1990, substituted "the filing rate" for "thirty thousand dollars" in two instances.

Subd. 2, par. (j). L.1989, c. 242, § 9, eff. July 1, 1989, added par. (j).

Subd. 3. L.1989, c. 242, § 10, eff. Jan. 1, 1990, added provisions defining the terms "income" and "calendar year".

Subd. 3, par. 4. L.1989, c. 242, § 11, eff. Jan. 1, 1990, inserted "Include compensated honorary positions; do NOT list membership or uncompensated honorary positions" in two instances.

Subd. 3, par. 5, subpar. (a). L.1989, c. 242, § 11, eff. Jan. 1, 1990, inserted "(other than the employment listed under Item 2 above)".

Subd. 3, par. 6. L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized certain terms and made other technical changes.

Subd. 3, pars. (9), (10). L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized certain terms.

Subd. 3, par. (11). L.1989, c. 242, § 11, eff. Jan. 1, 1990, inserted "(e.g., 401, 403(b), 457, etc.)" and capitalized certain terms.

Subd. 3, par. 12, subpar. (b). L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized certain terms.

Subd. 3, par. 13. L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized certain terms and substituted "all income (other than that received from the employment listed under Item 2 above) from" for "state salary, income from other".

Subd. 3, par. 14. L.1989, c. 242, § 11, eff. Jan. 1, 1990, inserted "(not retirement income)" and capitalized "EXCESS".

Subd. 3, par. 15. L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized "EXCESS".

Subd. 3, par. 16. L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized certain terms and made other technical changes, and in schedule inserted limitation of 5 percent of publicly traded stock or 10 percent or stock not publicly traded.

Subd. 3, par. 17. L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized certain terms and made other technical changes, and in first column of schedule substituted "Corporation" for "Other Party".

Subd. 3, par. 18. L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized "EXCESS".

Subd. 3, par. 19. L.1989, c. 242, § 11, eff. Jan. 1, 1990, capitalized certain terms and deleted "Revolving charge account information shall only be set forth if liability thereon is in excess of $5,000 at the time of filing."

Subd. 4. L.1989, c. 242, § 12, eff. July 1, 1989, in sentence beginning "A reporting individual" substituted "subject to" for "assessed".

Effective Date. Section eff. Jan. 1, 1989, pursuant to section 26 of L.1987, c. 813, as amended, set out as a note under section 73.

PUBLIC OFFICERS LAW

§ 74 Code of Ethics

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

j. If any officer or employee of a state agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

Historical Note

1983 Amendment. Subd. 1, opening par. L.1983, c. 764, § 2, eff. Sept. 1, 1983, inserted "or any public benefit corporation or public authority at least one of whose members is appointed by the governor".

Effective Date. Section effective Jan. 1, 1955, pursuant to L.1954, c. 696, § 3.

Legislative Declaration. Laws 1954, c. 696, § 1, eff. Jan. 1, 1955 provides: "Declaration of intent. A continuing problem of a free government is the maintenance among its public servants of moral and ethical standards which are worthy and warrant the confidence of the people. The people are entitled to expect from their public servants a set of standards above the morals of the market place. A public official of a free government is entrusted with the welfare, prosperity, security and safety of the people he serves. In return for this trust, the people are entitled to know that no substantial conflict between private interests and official duties exists in those who serve them.

"Government is and should be representative of all the people who elect it, and some conflict of interest is inherent in any representative form of government. Some conflicts of material interests which are improper for public officials may be prohibited by legislation. Others may arise in so many different forms and under such a variety of circumstances, that it would be unwise and unjust to proscribe them by statute with inflexible and penal sanctions which would limit public service to the very wealthy or the very poor. For matters of such complexity and close distinctions, the legislature finds that a code of ethics is desirable to set forth for the guidance of state officers and employees the general standards of conduct to be reasonably expected of them."

LEGISLATIVE LAW

§ 80. Legislative ethics committee; functions, powers and duties; review of financial disclosure statements; advisory opinions; investigation and enforcement.

1. There is established a legislative ethics committee which shall consist of eight members of the legislature and shall have and exercise the powers and duties set forth in this section only with respect to members of the legislature, legislative employees as defined in section seventy-three of the public officers law and candidates for member of the legislature.

2. Two members of the committee shall be appointed by the temporary president of the senate, two by the speaker of the assembly, two by the minority leader of the senate, and two by the minority leader of the assembly.

3. Members of the committee shall serve for terms of two years concurrent with their legislative terms of office.

4. The temporary president of the senate and the speaker of the assembly shall each designate one member of the committee from his respective house as a co-chairperson thereof. The co-chairpersons jointly or any five members of the committee may call a meeting.

5. Any vacancy occurring on the committee shall be filled within sixty days by the appointing authority.

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

Model State Conflict of Interest and Financial Disclosure Law

NATIONAL MUNICIPAL LEAGUE
47 East 68th Street
New York, New York 10021

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FOREWORD

That "public office is a public trust" has always been a basic principle underlying the National Municipal League's programs to make state and local government more responsive and responsible, efficient and effective. Its special interest in ethics was initiated by William W. Scranton in 1970 while he was League president. In its preliminary stages ethics was considered as an adjunct to the Election Systems Project (1971-1973) because financial disclosure requirements for candidates and regulations governing campaign finance are integral parts of comprehensive election legislation.

The public disillusionment with government generally caused by a number of scandals involving officials at all levels of government prompted the enactment in the early 1970s of an unprecedented number of new statutes, broadly described as ethics legislation. The administration of these statutes was uncharted territory to a substantial extent. Since 1976, the League has been able through its Ethics Project not only to assist in an exchange of information among those with official responsibilities in this field but also to serve as a forum for the evaluation of existing statutes, the case law developed as the statutes have been adjudicated, and proposals for further legislation. In a very real sense the League has been the instrumentality for "reforming reform," and thus guiding an effort to make refinements to assure that today's reform will not be tomorrow's problem, as is sometimes the case when measures are not reappraised after they are in operation. The *Model State Conflict of Interest and Financial Disclosure Law* is presented to provide such guidance.

The League is indebted to The George Gund Foundation of Cleveland for

a series of grants which provided the basic financial support for the project, which included preparation of this model statute.

The League is also indebted to Mark S. Matthews of Greenwich, Connecticut, a former member of the Council, for financing the preliminary stages of the project which led to the publication of the *Preliminary Bibliography on Conflict of Interest and Personal Ethics in Government* and *Ethics in Government: Selected Statutes and Reports*.

Barbara Rawson, who chaired the League's Ethics Project Committee, provided constant assistance to the project staff. She brought to the undertaking not only a longtime concern that state and local government be worthy of citizen trust because of its competence and integrity, but also the special experience gained as an early chairman of the Ohio Ethics Commission as that body launched a statewide program to administer newly enacted legislation.

The members of the League committee made invaluable contributions to the development of the model. The committee deliberations held in connection with the annual National Conference on Government, as well as comments received from members, shaped the basic policy thrust of the *Model*. Although some members expressed reservations with regard to detail, the committee as a whole gave approval.

Members of the special Advisory Committee composed of persons with official responsibilities for the administration of conflict of interest, financial disclosure and campaign finance laws gave the model the benefit of their experience in dealing with the delicate issues involved in enforcing rules and regulations designed to maintain high ethical standards. (The rosters of the committees appear at the end of this volume.)

Frank P. Grad, professor of law and director of the Legislative Drafting Research Fund, Columbia University, not only prepared the draft of the *Model* but also was of enormous assistance in the deliberations of the League committee and in the preparation of the commentary which accompanies the legal text.

In addition to her participation as a member of the Advisory Committee, Barbara Snethen, former executive director of the Iowa Campaign Finance Disclosure Commission, provided special assistance in analyzing financial disclosure requirements.

Page Elizabeth Bigelow, League staff associate, directed the research effort for the project, prepared the detailed specifications for the model for review by the committee, and revised them for the guidance of the draftsman. She also prepared the analytical commentary.

Acknowledgement is also made of the assistance provided by League staff members: William J. D. Boyd, former assistant director, Debra J. Collins,

research librarian, and Thomas J. Drury and Shelley M. Greenwald, legal research assistants.

As the *Model* was in preparation, many inquiries were received from citizens and officials concerned with conflict of interest issues. Their questions were important to the model-building process and helped to focus staff research. It is hoped that those using the *Model* will address inquiries to the League and thus help enhance its capability for making further refinements in the law governing ethical standards in government.

WILLIAM N. CASSELLA, JR.
Executive Director

INTRODUCTION

In December 1974, the executive directors of several newly established ethics and campaign finance commissions formed an ad hoc group which sponsored a conference in Washington, D.C., primarily for representatives of commissions and agencies involved in the administration of state legislation on conflicts of interest, financial disclosure, campaign finance, elections and lobbying. A major purpose of the meeting was to facilitate the exchange of information among governmental bodies charged with responsibility in these evolving areas. A number of participants urged the National Municipal League to expand its limited program in this field into a national center with a clearinghouse capability to serve public officials and citizens.

In October 1975, The George Gund Foundation of Cleveland, which had provided financial support for the 1974 conference, made a grant to the National Municipal League for the operation of a service center to assist states and major local governments as they administer and refine newly established programs for enforcing ethical practices in government. The service center project has operated an information clearinghouse, sponsored annual conferences on "The Public Official and The Public Trust," published periodic newsletters, indexes and directories, and prepared the *Model State Conflict of Interest and Financial Disclosure Law* and the *Model State Campaign Finance Law*.

An Advisory Committee of executive directors and commissioners from various states has assisted the League in planning program objectives and the annual conferences. This committee also was extremely helpful in commenting on technical aspects of the model laws, particularly those with administrative implications. The participation of the committee was advisory only, and does not imply endorsement of the contents by the committee members or their respective commissions.

The League's Ethics Project Committee was responsible for basic policy decisions with respect to the model laws which were subsequently approved by the League's Executive Committee.

Early in the process of designing the *Model State Conflict of Interest and Financial Disclosure Law* it was decided to incorporate the strictest provisions that the League committee found acceptable which would also be constitutionally permissible in most states. Recognizing that the strictest provisions would not be necessary everywhere, and that their use might be counterproductive where they were stronger than needed, it was decided that the commentary would provide guidance for varying them in such a way as to maintain basic effectiveness. Most of these variations are in the financial disclosure provisions (Section 9) and the definition of "State Official" (Section 3(g)).

The committee began its work with one basic premise, which was that the only conflicts of interest which could be regulated under this law were those which concerned finances. Having a conflict of interest is not, in and of itself, evil, wrong or even unusual. Conflicts may be ethnic, cultural, emotional, nostalgic, regional, financial or philosophical. Conflict of interest laws are concerned with financial conflicts which set apart an individual officeholder from most of the general public. For example, being a taxpayer and a legislator voting on new taxes is not a conflict one worries about; while being a contractor/legislator voting on a bill specifying one's own company as the contractor is a matter of concern.

Conflict of interest provisions are designed to prevent public officials and employees from gaining financial profit from their official actions (other than government salaries), or from helping family or friends to profit unfairly because of inside information or preferential treatment. At the same time, the provisions can take some outside pressure off by making certain practices illegal instead of merely unethical. This is particularly true when the provisions are combined with those for financial disclosure and when the existence of conflicts or potential conflicts becomes a matter of public record.

Financial disclosure provisions are an essential part of the enforcement capability of the conflict of interest provisions. There would be no point to financial disclosure laws if there were no conflict of interest provisions. The purpose of financial disclosure laws is to make available sufficient relevant information to allow citizens to judge whether officials are acting in the public interest or tending too much to favor personal interests. Another role of financial disclosure statements is to remind public officials to examine their actions in light of their holdings and to be aware of possible conflicts of interests or the appearance of conflicts of interests. It is not the purpose of financial disclosure laws to give the public a chance to pry into every private detail of an official's life, right down to valuations on jewelry, silver, antiques and art.

Local officials are not included in this law. There are statutes which include

local officials in the conflict of interest and financial disclosure provisions; some have operated fairly smoothly while others have encountered resistance. There is no reason why any local government could not adapt this model for its needs. The needs of local government may be very different depending on the population and budget, whether or not any of its officials are paid, and if so, how much. There is a big difference between what may be needed in Loving County, Texas (population 164), and what is appropriate for Cook County, Illinois (population 5,492,369). It appears wiser to adapt the model provisions for local use than to try to make provisions appropriate for such disparate situations.

The *Model State Conflict of Interest and Financial Disclosure Law* is designed to allow sufficient flexibility for adaptation to particular conditions and political traditions. The commentaries on the sections dealing with commission structure and financial disclosure explain what kind of variations could be made and still fulfill the stated purposes of the law. There should be no mistake, however, about the standards of conduct expected from public officials; there is virtually no provision in the commentary for changes in the conflict of interest and penalty provisions. The use of public position for private financial benefit or gain is clearly and unequivocally unacceptable, and no variations in the structure of the enforcement body or the financial disclosure requirements change that standard.

PAGE ELIZABETH BIGELOW
Research Director
National Municipal League Ethics Project

Model Conflict of Interest and Financial Disclosure Law

An Act to prohibit conflicts of interest among State officials and employees, creating a State Ethics Commission and prescribing its powers and duties, establishing a state code of ethics and procedures for its enforcement, and penalties for its breach.

Section 1. Short Title.

This Act shall be known and may be cited as Conflict of Interest and Financial Disclosure Act.

Section 2. Legislative Findings and Statement of Policy.

The legislature finds that public confidence in the impartiality and independence of state officials and employees is essential for the sound functioning of a democratic government. To maintain such confidence, the business and offices of the state must be conducted in a manner free from improper influence, and particularly from influences arising, or which may arise, from opportunities for personal gain or from divided loyalties resulting from involvement in business ventures that may benefit from particular government decisions or courses of action.

The purpose of the Conflict of Interest and Financial Disclosure Act, therefore, is to establish ethical standards for state officials and employees for the avoidance of such conflicts of interest as the use of offices or employment for private gain, the granting and exchange of favored treatment to persons, businesses or organizations, and the conduct of activities by such officials and employees that may engender opportunities for personal gain or advantage to influence government decisions. It is the purpose of the code of ethics to delineate clearly the ethical standards for state officials and employees in order to aid them in avoiding situations or conduct that may give rise to the appearance of impropriety even when no actual impropriety has occurred. It is the intention of the legislature that the Act be liberally construed so as to accomplish its purposes of protecting the public against government decisions that result or are affected by undue influences or conflicts of interest.

Commentary

Section 2 The *Model State Conflict of Interest and Financial Disclosure Law* emphasizes the avoidance of conflicts between the private financial interests of public officials and employees and their responsibilities to the public and to the government that employs them. The Act is intended to curb such conflicts, and to protect the public's right to honest government and to government decisions unaffected by competing private interests of officials. When the private interest of officials and employees conflicts with the interests and rights of the public, such private interests must yield.

Implicit in this statement is the intent to use such constitutionally permissible and effective methods for the enforcement of the conflict of interest provisions as have been provided for. For this reason, the financial disclosure provisions as set forth in Sections 9 and 10 are essential for the enforcement of the law.

Section 3. Definitions. As used in the Act.

(a) "Business" means any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or a service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as nonprofit organizations.

Commentary

Section 3(a). The definition of *business* is intentionally broad in order to include as many forms of economic activity as possible. Many economic involvements which may appear to be slight or of little consequence may nevertheless have sufficient economic importance to affect an official's or employee's judgment in situations that may give rise to conflicts with official obligations.

(b) "Business with which a person is associated" means any business in which the person is a director, officer, owner, member, partner, employee, or is a holder of securities which have a fair market value of $5,000 or more or whose market value is one-fifth of his net worth, regardless of its value. It does not include any insurance companies which have issued the person a policy of insurance if that is his sole association with such companies.

Commentary

Section 3(b) The definition of *business with which a person is associated* is intended to delineate business relationships that involve some measurable element of close and continuing association and economic interest which might lead to a conflict of interest. The definition seeks to exclude relationships of a mere formal nature, as

between insurance companies and their insureds, and relationships where the interest is of such a minor nature that it is unlikely to have any impact on the decisions of the business or on the decisions of government that may affect such business, as in the case of a government official who owns a few shares of the stock of a large, publicly held corporation.

(c) "Commission" means the State Ethics Commission.

(d) "Interest in Real Property" includes any leasehold, beneficial interest, ownership interest or an option to acquire any such interest in real property.

Commentary

Section 3(d). *Real property* is defined in a broad manner to include a broad spectrum of property interests not limited to ownership of legal title. The definition recognizes that other interests may lead to conflicts of interest to the same degree as outright ownership. For further discussion of conflicts of interest involving real property, see commentary on Section 10 (d), which requires that such interests in real property be listed in financial disclosure statements.

(e) "Member of Household" means

(i) a person who is another person's spouse, child, ward, parent or other relative, or the child, ward, parent or other relative of such person's spouse, and who shares such other person's legal residence; or

(ii) a person who is another person's spouse, child, ward, parent or other relative of such person's spouse, and over whose financial affairs and holdings such other person has legal or actual control, whether or not they share a legal residence.

Commentary

Section 3 (e) *Member of Household* is defined to include those family members or wards sharing the same legal residence with another person and those family members or wards over whose financial affairs such person has legal or actual control. The defined term is used in provisions relating to public officials' financial disclosure statements and potential conflicts of interest. Members of household, as defined, are individuals whose financial affairs are likely to be best known to the official and who, because of ties of blood or affection the official is most likely to want to benefit financially. In some cases, there may be a more direct self interest, *i.e.*, where the public official is a possible beneficiary of the estate of a member of the household. The inclusion of members of household in financial disclosure requirements will allow not only the public but also the public official to become aware of potential conflicts, apparent or real, before they occur so that such conflict of interest may be avoided.

It should be noted that in cases where such financial disclosure involving members of household would prove difficult or cause serious family problems, the Commission

is empowered to modify or waive the financial disclosure requirement to the extent necessary to relieve such hardship. Such waiver authorization does not extend to references to member of household in conflict of interest provisions relating to such matters as government contracts, as for instance in Section 13, which are designed to prevent the abuse of official position.

(f) "State Employee" means a person who obtains or is entitled to compensation for any services to any department or agency of state government other than a state official. The term includes full-time and part-time service and service on a long-term or short-term basis, whether or not included in civil service or a merit system, whether undertaken pursuant to a written agreement or otherwise, and whether the relationship is considered an employment relationship or an independent contractor relationship for any purposes other than this Act, unless the Commission exempts such independent contractor relationship by regulation.

Commentary

Section 3 (f). State employee is defined to include all persons who, by reason of their work for the government, gain contacts and inside knowledge which, because of their position, may be abused or used in a manner to benefit themselves or others. The definition includes not only persons who stand in a formal employment relationship, but also persons who may be regarded as independent contractors. For instance, a lawyer, accountant or consultant should not be able to do work for the state, whether as an employee or an independent contractor, and then represent or assist private clients against the state in the same, or in a related matter. In instances where there is no risk of an abuse of the independent contractor relationship, as in independent contractual relationships with plumbers, electricians, and other such service- and repair-related matters, the Commission may by regulation exempt such contractors, unless there is good reason that they continue to be covered by this definition.

(g) "State Official" means an elected office holder in the legislative and executive branches of state government, or a member of any state board, commission, agency, bureau, department or any other part of state government who is appointed by any elected state official or by the legislature, except a member of the judiciary. The term includes a member of a commission, except that a member of any commission which is solely advisory in nature and which has no authority to make binding decisions, to enter into contracts or to make expenditures other than expenditures necessarily incurred for research in connection with its advisory functions shall not be required to meet the requirements of financial disclosure of Sections 9 and 10.

Commentary

Section 3(g). The definition of State Official includes all elective office holders in the legislative and executive branches and all appointed office holders who owe their appointment to an elected official. Thus, it includes all officials who are charged with authority to make choices and decisions, and whose conflicts of interest and official corruption are likely to be most injurious to public confidence in government. The betrayal of the public trust by such an official, whether appointed or elected, who is expected to serve the public interest and who, generally, has taken an oath pledging to do so, undermines the public confidence in the official's agency and in the government as a whole, unless it is dealt with promptly and effectively. The definition thus covers officials whose fidelity is essential to well-ordered government.

There are some states which include the judiciary in conflict of interest and financial disclosure provisions. In many others this would pose substantial constitutional problems. It is for this reason that judicial offices are not included in this Model. The Model thus recognizes that the laws relating to ethical standards for judicial offices may need to be varied by each state. To include the judiciary within this law one need merely delete "except a member of the judiciary" from the first sentence of the definition.

Members of commissions which are purely advisory in nature and have no authority to make binding decisions, to enter into contracts or to make expenditures other than those necessarily incurred for research in connection with its advisory function are covered by the conflict of interest provisions of the law, but they are exempted from financial disclosure requirements. Members of such commissions are usually not compensated and frequently are very difficult to recruit. Their exemption from the financial disclosure requirements is intended to avoid further discouragement from such service. Moreover, because of the limitations regarding spending and decision-making authority, the opportunities to use these positions for personal financial gain or benefit are greatly diminished.

Section 4. State Ethics Commission; Establishment, Membership, Executive Director; Offices.

(a) There is hereby established the State Ethics Commission to administer and implement this Act. The Commission shall consist of seven members appointed by the governor with the concurrence of the Senate. Not more than four members shall be identified with the same political party. No member shall hold any elected or appointed office under the government of the United States, the state or any of its political subdivisions or be a candidate for any such office. A member may contribute to a political campaign, but no member shall hold any political party office, or participate in any political campaign or in a campaign relating to a referendum or other ballot issue, and no member shall be a lobbyist or an employee of the state or any of its political subdivisions. Members of the Commission may be removed by the

governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct in office or violation of this law, after written notice and opportunity for reply.

Commentary

Section 4 (a). The provision establishing the Ethics Commission requires appointment by the Governor with concurrence by the Senate, which parallels the federal constitutional requirement as laid down in *Buckley* v. *Valeo*, 424 U.S. 1, 46 L.Ed. 2d 659, 96 S. Ct. 612 (1976) which sets the *federal* separation of powers standard for commission appointments where the commission has regulatory and enforcement powers. The federal requirement is that all such appointments be made by the chief executive rather than by other executive or legislative officers. In most states, by express constitutional requirement or by judicial interpretation under the doctrine of separation of powers, the result reached in *Buckley* v. *Valeo* would be followed. In some states it is permissible, however, to have various executive and legislative officers appoint members of regulatory commissions. If this is done, it is advisable not to authorize the attorney general to appoint members as he may do in some states, because there might be a conflict in his official obligations due to his role in Commission litigation.

The Commission is designed to be bipartisan. Because of its sensitive position, its members must avoid even the appearance of a conflict of interest, and they are barred from participation in political campaigns, running for or holding any federal, state or local office or employment, or engaging in lobbying. They may, however, contribute to a political campaign.

While many states do not have any provisions for the removal of members of ethics commissions, it is advisable to allow removal for cause. The Model follows this course, but requires the concurrence of the Senate in order to prevent abuse of this power by the Governor. The Model thus seeks to balance Commission independence against prevention of abuse. This Commission ought to be as independent as possible so long as its members perform their duties faithfully and in compliance with the law.

It has been suggested that there ought to be two separate state ethics commissions—one for the executive branch and one for the legislature—administering the same law. Several states, among them Nevada, Ohio and South Carolina, have this arrangement because of constitutional separation of power provisions which do not allow legislators to be overseen or regulated by a gubernatorially appointed body; they can only be governed by their own members. States that encounter this problem may have to adapt the Model to meet their special constitutional requirements. For other states a single commission is considered preferable.

(b) A member of the Commission shall be appointed for a term of office of seven years and until his successor has been appointed and has qualified, except that the members first appointed shall be appointed for terms of office of one, two, three, four, five, six and seven years, respectively, and until their successors have been appointed and have qualified. No member shall serve for more than one full seven-year term. When a vacancy occurs in the membership of the Commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as original appointments.

Commentary

Section 4 (b). The provision for limited and rotating terms is intended to achieve continuity on the Commission while avoiding long-term domination of the Commission and its decisions by any single member.

(c) The Commission shall elect a chairman from among its membership. Four members of the Commission shall constitute a quorum and, if a quorum is present, a vacancy on the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission. A majority of the total membership shall be necessary to act at all times.

Commentary

Section 4 (c). A majority of the total membership of the Commission is necessary for Commission action. This discourages the practice of leaving one or more vacancies in order to gain more favorable decisions from a "rump" commission. The requirement for an absolute majority for binding action—rather than merely a majority of a quorum—is not unusual. An absolute majority is necessary for many government actions including, in most states, those of state legislatures.

(d) Each member of the Commission shall be compensated at the rate of $_____ for each day devoted to the performance of his official duties. Each member of the Commission shall be reimbursed for reasonable and necessary expenses incurred in the performance of official duties.

Commentary

Section 4 (d). The level of per diem compensation ought to be high enough so as not to discourage professionals and others of high standing in the community from service, where such service would otherwise constitute an undue economic sacrifice. On the other hand, the rate of compensation should not be so high as to make service on the commission a plum to be sought for its economic benefits.

(e) The Commission shall appoint and set the compensation of an executive director to assist the Commission in carrying out its functions, in accordance with Commission policies and regulations and with applicable law. The executive director shall appoint and discharge counsel and employees, consistent with applicable civil service laws, and shall fix the compensa-

tion of employees and prescribe their duties. The counsel to the Commission shall advise the Commission on all legal matters and on the instructions of the Commission may commence civil or criminal actions as may be appropriate.

Commentary

Section 4 (e). The executive director is directly responsible to the Commission which does the hiring and sets the salary. In turn, counsel and employees are responsible to the executive director, who is responsible to the Commission for their work. However, the counsel is directly responsible to the Commission in the sense that he or she may commence legal proceedings only on its instruction. In all other matters counsel is responsible to the executive director, thus avoiding the problem of competition for staff leadership position and power.

(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission, except that the Commission shall not delegate the power to hold hearings and determine violations.

Commentary

Section 4 (f). It is a common pattern that Commission staff may be delegated to act for the Commission on routine matters between commission meetings. Some states also allow commission staff or others to act as hearing officers and present their findings to the Commission for its decision. Such a delegation may be necessary when the Commission would otherwise be overburdened by the size of its docket. States wishing to adopt such a system should change the section to read:

> "(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission. The Commission may delegate the power to hold hearings but not to determine violations."

The delegation of the power to hold hearings to hearing officers generally meets the requirements of due process if the Commission itself makes the appropriate determination or decision on the basis of a fully adequate record so that it may review the hearing officers' recommendations.

(g) The principal office of the Commission shall be in [illegible] but it may establish offices, meet, and exercise its power at any other place in the state. Meetings of the Commission other than hearings shall be public or private as provided for in Section 6(b), except that the Commission may exclude the public from attendance at discussions of Commission personnel, planned or ongoing litigation and planned or ongoing investigations.

Commentary

Section 4 (g). The subsection provides for accessible commission offices and for open meetings, making exception in certain limited situations. As provided for in Section 6 (b), hearings may be open or private, depending on the wishes of the person charged (see commentary, subsection 6(b)). Meetings may also be closed when the Commission discusses its own personnel, and certain litigation and investigations. The provision is intended to balance the need for the protection of confidential discussions to enable the Commission to perform its functions effectively against the public's right to open movement.

Section 5. State Ethics Commission; Powers and Duties.

(a) The Commission may adopt, amend and rescind rules and regulations to carry out the provisions of this Act, and to govern the procedures of the Commission, in accordance with the administrative procedure act of the state. Such rules and regulations shall be consistent with this law and other applicable law.

(b) The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its duties and powers of investigation.

(c) The Commission shall, in addition to its other duties:

(i) Prescribe forms for reports, statements, notices, and other documents required by law;

(ii) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this law; and

(iii) Provide assistance to agencies, officials and employees in administering the provisions of this law.

(d) The Commission may:

(i) Prepare reports and studies to advance the purposes of the law;

(ii) Contract for any services which cannot satisfactorily be performed by its employees;

(iii) Request the Attorney General to provide legal advice and representation without charge to the Commission, and the Attorney General shall comply with the request. The Commission may also employ additional legal counsel, and

(iv) Request appropriate agencies of state government to provide such professional assistance as it may require in the discharge of its duties.

Commentary

Section 5. This section authorizes the Commission to carry out its routine housekeeping functions. It also grants the Commission full authority to make rules consistent with the law, and it provides the Commission with the necessary powers to carry on investigations and to hold hearings and determine cases. The intent is to give the commission sufficient authority to run effective, efficient and timely investigations with the full cooperation of other state agencies, and to carry out its other enforcement responsibilities. It may use its powers of subpoena both for investigational purposes and in mind of the production of evidence at hearings. It may undertake studies and enter into contracts. In addition, the Commission also has the duty to provide assistance and information to persons and agencies covered by the law, and it may also prepare instructional and other public information materials it may deem advisable to advance compliance with the law.

Section 6. State Ethics Commission; Complaints; Hearings; Dispositions; Judicial Review.

(a) Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate alleged violations of this law.

Not later than fifteen days after the Commission receives a sworn complaint, or after it decides to investigate on its own initiative, it shall acknowledge the receipt of the complaint to the complainant, where appropriate, and it shall give notice of the investigation to the person complained against. Not later than thirty days after receipt of a complaint under this section, or after the Commission decides to act on its own initiative, the Commission shall notify in writing the person who made the complaint and the person complained against of what action, if any, the Commission has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Commission does not decide within thirty days of receipt of the complaint what action to take, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give him the appropriate notification.

Commentary

Section 6 (a). Section 6 requires the Commission to investigate on the sworn complaint of any individual and sets up procedures under which the Commission is required to keep the complainant and the person complained against apprised of Commission actions and decisions with regard to the complaint until such time as final decisions are made. This provision is designed not only to ensure prompt action by the

Commission, but also to make sure that the cases will not be buried or delayed for political reasons, or in order to avoid hard political choices. The time limits and procedures are particularly important in light of the three-year statute of limitations on criminal prosecutions (Section 21c1) and civil actions (Section 24 (b)), and in light of provisions which allow for citizen action to sue for relief should the Commission fail to take action. The section also allows the Commission to initiate complaints on its own.

(b) When the Commission concludes that there is probable cause for believing that the law has been violated, it may hold a hearing to determine if such violation has occurred. The person complained against may choose whether the hearing shall be open or closed. At the hearing, the person complained against shall have all of the protections of due process consistent with the state administrative procedure act, including but not limited to the right to be represented by counsel, the right to call and examine witnesses, the right to the production of evidence by subpoena, the right to introduce exhibits and the right to cross-examine opposing witnesses. When the Commission determines that the preponderance of the evidence shows a violation has occurred, it shall issue an order to the violator to comply with any one or more of the following requirements:

(i) To cease and desist violation of this law;
(ii) To file any reports or other documents or information required by this law; or
(iii) To pay a penalty not to exceed $100 a day until the proper financial disclosure statements are filed.

Commentary

Section 6 (b). The Commission may not proceed to the hearing stage unless it concludes that there is "probable cause for believing that the law has been violated." Thus, it may not proceed on mere suspicion. Once it has found such probable cause it may hold a hearing to determine whether such a violation has indeed occurred.

The provisions for hearings allow the person complained against to choose whether the hearing shall be open to the public or not. Many states require that such hearings be open while others require that they be closed. The decision to allow a choice reflects a desire to keep a balance between the rights of persons who are drawn into situations without wrongdoing—such as individuals who may not be directly involved in the situation in question—and the rights of the public. Since the final determination made by the Commission will be a matter of public record, the public's right to know will ultimately be served in every case.

There are good and valid reasons why a person might choose to have a hearing closed to the public. There are cases in which the inquiry might involve delicate or confidential information about government plans, where disclosure might be detrimental to the best interests of the government. Other such cases might involve

lisclosure of the assets of a minor or disclosure of a serious mental or physical illness of omeone other than the involved official and which might interfere with that person's ight to lead as normal a life as possible. If a determination is made to go to court, such nformation would become public, but in many situations cases will not progress that ar and could be handled without damage to privacy or the public right to know by llowing the option of closed hearings.

For others, an open hearing may offer prompt public vindication and may be the nore desirable alternative. While in some situations the protection of privacy is a lesirable goal, it seems equally important to guarantee the personal right of an ndividual to a public hearing, particularly in situations in which a great deal of public peculation and inneundo already exists, when only full and prompt disclosure of facts nay lead to public vindication.

This section also provides for the usual guarantees of due process at hearings, ncluding the right to counsel, to call and examine witnesses, to subpoena evidence, nd the right of cross-examination.

The Commission has the authority to impose a number of sanctions and restrictions dministratively, without going to court, if it finds by a preponderance of the evidence hat violation has occurred. It may issue cease and desist orders against a further iolation of law, and it may order the violator to file reports or other documents as equired by law. It may also order the violator to pay a penalty of not more than $1(X) a day until proper financial disclosure statements are filed. The issuance of any dministrative order does not, however, preclude the Commission from referring a ase to the Attorney General for criminal prosecution (cf. Section 6(c)), or from suing or injunctive relief or for civil penalties (cf. Section 22 (a)).

(c) The Commission shall refer to the Attorney General violations of the aw which in its opinion merit prosecution. The Attorney General shall have esponsibility for all prosecutions under the law and may request from the Commission all evidence collected in its investigation.

Commentary

Section 6 (c). Where the Commission finds by a preponderance of the evidence hat a violation has occurred which, in its opinion, merits prosecution, the Commission nay refer the case to the Attorney General for criminal prosecution. Under section 21 t must be shown for conviction that the violation was knowing or willful. Thus, the Commission is likely to find that a case merits prosecution when there is evidence of nowing or willful violation. Referral for prosecution does not preclude the Commis- ion from issuing the order authorized in Section 6 (b) or from filing a civil suit pursuant o Section 22 (a).

In states where the Attorney General is not the chief prosecutor for the state, this provision should be adapted to mandate referral to the appropriate prosecutorial uthority.

(d) Any person directly involved or affected by a final action of the Commission within the meaning of the state administrative procedure act may seek judicial review of the action of the Commission other than of a determination to refer a violation to the Attorney General for prosecution.

Commentary

Section 6 (d) Subsection (d) gives any person "directly involved or affected by a final action of the Commission" the right to seek judicial relief of a final action of the Commission other than the determination to refer a violation to the Attorney General.

Thus, a right to seek judicial review is available only to final actions of the Commission, carrying out the usual requirement of administrative law that there must be an exhaustion of administrative remedies before a judicial review may be had.

It should be noted, too, that not only the person charged with a violation may seek judicial review, but other persons involved or affected by such final action may ask for review, too. For instance, if a person is ordered to file certain information and the filing of such information would have adverse consequences to a third person, such person adversely affected would also have a right to judicial review. This may become a matter of some significance in light of the broad financial disclosures required under the law.

(e) If judicial review is sought of any action of the Commission relating to a pending election, the matter shall be advanced on the docket of the court. The court may take any steps authorized by law to accelerate its procedures so as to permit a timely decision.

Commentary

Section 6 (e). Subsection (e) provides for docket preferences, and allows the court to speed the resolution of matters relating to a pending election. A prompt resolution of such matters is desirable so that the matter will not unfairly become an election issue or otherwise taint the election.

Section 7. State Ethics Commission; Advisory Opinions.

The Commission may on its own motion issue opinions and interpretations of the law. Any person may request the Commission to issue an opinion with respect to his duties under this law in a given factual situation. The Commission shall, within thirty days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith relying on an opinion issued to him by the Commission shall be subject to criminal or civil penalties for so acting, if the statement of facts and other data submitted as part of his request for an opinion and on

which the opinion is based are complete and true. The Commission's opinions with such limited modifications as may be necessary to protect the privacy of individuals, other than public officials or candidates for public office, shall be public records and shall from time to time be published.

Commentary

Section 7. The power of the Commission to issue advisory opinions is intended to provide protection to persons who seek advance determination as to whether particular activities will violate the law. If such a person submits a true and complete statement of facts to the Commission, and if the person follows the Commission's opinion in good faith, then such a person will be protected against civil and criminal penalties which would arise from a different resolution of the issues.

By giving opinions on certain issues prospectively, the Commission may also ease its caseload and the number of cases which must go through time-consuming hearings. With this power the Commission can, with authority, clarify the application of the law in a variety of circumstances. The certainty of the application of the law is also sought to be advanced by the requirement that advisory opinions be published from time to time. When made public or published, names of individuals other than public officials and candidates for public office may be deleted or withheld to protect the privacy of persons who are not involved as officials or candidates.

In *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E. 2d 409, *app. dismissed* 412 U.S. 925, 93 S. Ct. 2750, 37 L. Ed 2d 152 (1973), a provision of the Illinois Ethics Act was held unconstitutional because it authorized the Secretary of State to hire legal counsel and to render advisory legal opinions interpreting a legislative enactment, because that function properly belonged to the attorney general, the chief law officer of the state. Thus, states which follow the Illinois approach should delegate the advisory opinion function under this section to the attorney general. In *Dunphy v. Sheehan*, 549 P 2d 332 (Nev. 1976) the invalidation of the financial disclosure provision of the Nevada Ethics in Government Law was based in part on the ground that advisory opinions from the State Ethics Commission provided no insulation from criminal prosecution.

Section 8. State Ethics Commission; Modification of Reporting Requirements.

Upon application made in the form prescribed by the Commission, it may suspend or modify any of the requirements of Sections 9 and 10 of this law in a particular case, if it finds (a) that strict application of this Act works a manifestly unreasonable hardship, and (b) that such suspension or modification will not frustrate the purposes of the law. Any such suspension or modification shall limit the application of a requirement only to the extent necessary to relieve the hardship.

Commentary

Section 8. This provision gives the Commission flexible powers to suspend or modify financial disclosure requirements where warranted. This may obviate the criticism that financial disclosure requirements will discourage substantial and dedicated people from seeking public office or employment when required disclosures produce manifest hardship. Under the provision, it would be possible for the Commission to tailor difficult financial disclosure provisions to the particular requirements of the position held or sought, while providing sufficient information so as not to frustrate the purposes of the law relating to public disclosure.

Section 9. Financial Disclosure; Filing Requirements.

(a) On or before January 31 of each calendar year, each state official shall file with the Commission a financial disclosure statement. The statement shall cover the previous calendar year. The state official shall file the statement at the office of the Commission, or shall mail it by certified mail to the Commission prior to the time specified.

Commentary

Section 9 (a). Section 9 requires that all "state officials" as defined in Section 3 (g) file by January 31 of each year a financial disclosure statement covering the previous calendar year. It is the responsibility of each official to make sure that the Commission has received the statement by January 31 or that it has been mailed by certified mail by January 31. Certified mail is required to ensure timely mailing and to prevent violation of the time limit by using a back-dated postal meter. It is necessary that all state officials file financial disclosure forms because only in this manner can the legislative purposes of the law be carried out (see Section 2).

While the financial disclosure provisions as stated are limited to "state officials" and do not include "state employees," this does not indicate any disapproval of such inclusion. Financial disclosure provisions might well include employees in policy-making positions, particularly those who can authorize and make expenditures. Differences between states' employment provisions make it inadvisable to write state employees into a model provision. States are urged to consider including some state employees in disclosure requirements. It is advisable, however, to limit inclusion to employees who are actually in a position to benefit their own interests. Over-inclusiveness may become burdensome to the Commission in that the mass of filing may obscure violations rather than reveal them.

(b) A person who becomes a state official less than ten days before the filing date or who becomes a state official after the filing date shall file a financial disclosure statement for the previous twelve months no later than ten days after the date on which he assumes the duties of his office, unless he has filed a financial disclosure statement with the Commission during the preceding twelve months.

Commentary

Section 9 (b). Since many appointments do not take effect until after the appointing authority takes office, or until another official's term of office is completed in mid year, this section provides for a filing procedure for them. It also provides that officials who have filed during the previous 12 months need not file again, so as to avoid the burden of over-repetitive filings. It should be noted that this provides for filing the financial disclosure statement after taking office. This would not, however, prevent a confirming authority (usually the Senate) from requiring earlier filing as part of the confirmation proceedings and perhaps even as a pre-condition for confirmation consideration. The fact that many state-appointed offices may not require confirmation militates against the practicality of a general requirement of pre-appointment filing

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(c) A candidate for state office shall file a financial disclosure statement with the Commission for the previous twelve months no later than ten days after he becomes a candidate, unless he has filed a financial disclosure statement with the Commission during the previous twelve months. A candidate shall continue to file annual financial disclosure statements with the Commission until he ceases to be a candidate by reason of election, withdrawal or defeat. As used in this section, a candidate is a person who officially files as a candidate for office, or who publicly announces that he is running for office, or who authorizes the collection or disbursement of money for the promotion of his candidacy or election. The State Election Commission [or Secretary of State] shall promptly inform the State Ethics Commission when a person files as a candidate for office.

Commentary

Section 9 (c). This section requires candidates to file if they have not already done so in a given year and to continue filing so long as they are candidates. This section is intended to address the problem of public knowledge of the reportable finances and actual and potential conflicts of interest of the incumbent state official, and the lack of comparable knowledge of the reportable finances and potential conflicts of other candidates. The public has a right to know as much about the candidates as it knows about incumbents in order to make an informed choice

The definition of *candidate* in this section is designed to correlate this section with Section 3 (c) of the *Model State Campaign Finance Law* (National Municipal League, 1979) The definition of the term "candidate" in both laws is similar but not identical A person must have taken some positive action to become a candidate in order to be required to file financial disclosure statements. For purposes of the Campaign Finance Law, the fact that money is being collected with or without his permission or authorization for the promotion of his nomination or candidacy suffices to make him a candidate, though the positive assertion of his candidacy will also reach that result.

(d) The Commission shall retain financial disclosure statements in its files for not less than ten years from the date of filing.

Commentary

Section 9 (d). This subsection puts a limit on the required retention of records, while providing that they be kept for ten years—long enough to facilitate efficient investigation should that be necessary.

Section 10. Financial Disclosure Statement; Contents.

The financial disclosure statement shall disclose the economic interest of the state official or candidate, and of all members of his household. The value of interests shall be indicated by category only. The categories are Category I, less than $5,000; Category II, $5,000-$24,999; Category III, $25,000-$99,999; and Category IV, $100,000 or more.

Commentary

Section 10. A key provision of the law is the requirement that public officials and candidates regularly disclose their holdings and earnings The Model provides for disclosure by officials or candidates by categories rather than by actual specific amounts Disclosure by categories represents an acceptable compromise between specific disclosure by amount and disclosure by source or type of property only Disclosure by categories as in the Model produces significantly more information by which the public may judge the behavior of its public officials, as well as information for the Commission should investigation be called for. Among other things, it reflects any significant augmentation of reportable holdings and income The lesser alternative is to list by sources and nature of holdings This model would work without categorization by amount, but not as effectively.

However, if reporting by source is relied on, once a source reaches a reportable level, the income can become much greater or the value of a holding can be augmented substantially without triggering public or Commission awareness, except in the case of the acquisition of a controlling interest in a business, in which case its real estate holdings would have to be disclosed under Section 10 (d) Disclosure by categories, as in the Model, will facilitate the use of the information to call attention to major or potential conflicts of interest, or to indicate possible use of confidential information or use of public position for private financial gain, thus aiding the preventive purpose of the Act.

States which do not seek financial disclosure by category may use the Model without such categories by eliminating all references to them in Section 10, Section 10 (d), Section 10 (e), Section 10 (f), Section 10 (g) and Section 10 (h).

In addition, broader or narrower ranges may be used The Model may be adapted to such changes so long as the threshold amounts referred to in the body of the law are keyed to the arrangement of the categories The amounts shown in the Model were designed to be far enough apart to prevent accurate pinpointing of net worth of

officials and candidates, but to provide an opportunity for the observation of substantial changes in holdings which may give rise to inquiry.

The statement shall include:

(a) The name, address, and public position held or sought by the state official or candidate, the names of all members of his household, and all names under which any of them do business.

Commentary

Section 10 (a). There is a substantial issue as to whether financial disclosure requirements should be limited to public officials, or whether members of the official's household should also be included. The Model resolves this issue in favor of the broader disclosure requirement, in view of the ease of concealment of questionable income or holdings by such methods as giving it or having it paid to the spouse, particularly in community property states, putting it in a revocable trust, or using some other device through which actual control is retained.

This provision covers only persons included in the definition of "member of household" (Section 3(e)). Thus, persons who share the official's legal residence, or relatives over whose financial affairs the public official has legal or actual control whether or not they share the same legal residence are included. In most cases, adult children or wards will probably not fall within the requirement. In cases where such disclosure would cause unusual problems, the Commission can make necessary modifications in the disclosure requirements under Section 8 without allowing circumvention of the disclosure law. For example, in a situation in which a member of the official's household is one of several beneficiaries of a trust where the official has neither control nor even knowledge of its holdings, and in which disclosure would necessarily make known the holdings of persons not covered by the act, the Commission could waive disclosure.

For discussion of the implications of the "member of household" definition, see Commentary on Section 3 (e).

Financial disclosure provisions have been upheld against a variety of constitutional challenges, including the alleged invalid delegation of legislative power; vagueness and overbreadth, thus violative of due process; denial of the equal protection of the law; unconstitutional conditions on right to public employment; invasion of privacy; invasion of employees' right to freedom of association and other first amendment rights; infringement of employees' rights to petition government for redress of grievances, e.g., *Alabama State Employees' Assoc. v. Dr. Wright, et. al.*, Circuit Court of Montgomery Co. (Ala.), Civil Action No. 39026, 1974; *County of Nevada v. MacMillen*, 11 Cal. 3d 662, 114 Cal. Rptr. 345, 522 P.2d 1345 (1974); *Baty v. Bales*, Marin County Superior Court, No. 83978 (July 15, 1977); *Metropolitan Water District of Southern California v. FPPC*, 73 Cal. App. 3d 650 (1977); *Goldtrap v. Askew*, 334 So.2d 20 (Fla. 1976); *Plante v. Gonzalez, Thomas v. Gonzalez*, 575 Fed. 2d 1119 (5th Cir. 1978), *cert. den.* — U.S. — 1979; *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409, *app. dismissed*, 412 U.S. 925, 93 S. Ct. 2750, 37 L.Ed.2d 152 (1973); *Illinois State Employees' Association (I.S.E.A.) v. Walker*, 57 Ill. 2d 512, 315 N.W. 2d 9, *cert. denied* (with memorandum, Douglas, J.) sub. nom. *Troopers Lodge No. 41 v. Walker*, 419 U.S. 1058, 95 S. Ct. 642, 42 L.Ed. 2d 656 (1974); *Klaus v. Minnesota State Ethics Commission*, 309 Minn. 430, 244 N.W.2d 672 (1976); *Kenny v. Byrne*, 144 N.J. Super. 243, 365 A.2d 211 (App. Div. 1976); *Evans v. Carey*, 53 A.D. 2d 109, 385 N.Y.S.2d 965 (1976), *aff'd*, 40 N.Y.2d 393, 359 N.E. 2d 983 (1976); *Fritz v. Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974), *app. dismissed* 417 U.S. 902, 94 S. Ct. 2596, 41 L.Ed. 2d 208 (1974), *In Re Koding*, Wis. 2d 508, 235 N.W. 2d 409 (1975) (disclosure requirements under Judicial Code of Ethics). Decisions apparently to the contrary involved special and non-recurring situations, e.g., *Comer v. City of Mobile*, 337 So. 2d 742 (Ala. 1976) (law amending earlier state ethics legislation invalidated in part on such grounds as violation of prohibition of a special legislation in its effect on certain local governments; major provisions on disclosure upheld); *Alabama League of Municipalities v. Dr. Wright* (unconstitutional delegation of legislation in that state ethics commission was granted overly broad, and not legislatively defined, role asking power on ethical conduct and financial disclosure; also, violation of subject/title rule); *Dunphy v. Sheehan*, 549 P.2d 332 (Nev. 1976) (required disclosures limited to economic interests that would "materially affect" the official in the performance of his duties; held unconstitutionally vague, in that they failed to inform officials as to what conduct was proscribed); *Rapp v. Carey*, 44 N.Y. 2d 157 (1978) (Governor's executive order for financial disclosure inconsistent with earlier state law).

The inclusion of the economic interest of the spouse, children or other dependents was challenged and upheld in a number of cases, e.g., *County of Nevada v. MacMillen, supra; Baty v. Bales, supra; Illinois State Employees' Association (I.S.E.A.) v. Walker, supra; Havrilsky v. Byrne*, N.J. (1978), *In Re Koding, supra;*

(b) The occupations and principal places of business of the state official or candidate, and of all members of his household, indicating in each instance which person is associated with any particular business.

(c) The name of each business with which the state official or candidate or any member of his household was associated at any time during the filing year, indicating to which person it applies, and a brief description of the business or activity of each business entity, and the nature of the association of the state official or candidate or member of his household with each such business.

Commentary

Section 10 (b) and (c). These requirements primarily serve the purpose of identification, helping to connect individuals covered by the financial statement and their business interests.

(d) A listing of all interests of the state official or candidate and of all members of his household, in real property, excluding his principal

residence, held by him at any time during the previous year and which had a fair market value exceeding $5,000. If he acquired or divested any such interest during the year, he shall disclose the transaction and the date it occurred. This listing shall include the street address or legal description of the property, and its value by category. An interest in real property for purposes of this section shall include property owned by any business in which the official or any member of his household owns a controlling interest.

Commentary

Section 10 (d). Inclusion in financial disclosure statement of direct and indirect interests in real property is particularly important because such interests provide many opportunities for conflict of interest violations. For instance, an official can use confidential information to buy real estate while the price is low, expecting its value to rise sharply when public announcement of state building plans is made. This has given rise to problems in areas surrounding highway development, specifically in the acquisition of land at premium prices for planned entrance and exit ramps. Another example involves the participation in decisions on the location of government buildings or other projects on or adjacent to land owned by the decision maker. A further example is the corrupt development of design specifications for a project to fit only the real estate the official owns, such as in the development of water resources and other similar uses for undeveloped land.

(e) A listing of all securities the state official or candidate or members of his household held at any time during the previous year and which at any time during the year had a fair market value of $5,000 or more, and their value by category for each such security. If he or any member of his household acquired or divested any such securities during such year, the transaction and date shall be shown.

Commentary

Section 10 (e). Persons required to file financial disclosure statements must list all securities having a fair market value of $5,000 or more which they or members of their household held at any time during the previous calendar year. In addition, acquisitions and divestments of such securities must also be shown, together with an indication of when they were acquired or disposed of. The $5,000 value of securities was chosen as a threshold because it would be considered by most a fairly substantial holding and because, particularly in closely held corporations, a person holding a $5,000 security interest may well be in the position to affect company decisions. Holdings of a lesser value than $5,000 are not considered to give their owner an interest which is likely to affect the business decisions. It is difficult to determine a value which is likely to give the owner of shares a sufficient interest to affect business decisions in all situations. Clearly, in a major, publicly held company a $5,000 share interest is not likely to be of

sufficient dimension to affect company policy so as to involve the holder or the company in significant conflicts of interest.

The requirement that dates of acquisition and dates of divestiture be indicated serves the additional purpose of flagging what may be significant transactions having conflict of interest implications. The acquisition of shares in a company at a time when the official has regulatory responsibilities relating to the field of operations of the particular business would of course be a matter which would give rise to inquiry. An additional purpose of the requirements of detail in furnishing information relating to security holdings is a preventive one, in that a public official who knows that his acquisition and divestiture of securities is subject to scrutiny is less likely to acquire shares and other securities in companies and at times when these may point to conflict of interest situations.

(f) A listing of all bonds issued by the state or by any municipality, county or other political subdivision of the state regardless of value, held by the state official or candidate, or any member of his household at any time during the filing year, and their value by category. If he or any member of his household acquired or divested any such securities during such year, the transaction and date shall be shown.

Commentary

Section 10 (f). The section requires that all persons who must file financial disclosure statements must list holdings of all bonds issued by any state or local government regardless of value. As in the case of other securities, their value, time of acquisition and time of divestiture must also be shown. The requirement that state and municipal bonds be listed regardless of the value of the holding indicates the importance of the concern for potential conflicts of interest which officials may encounter who have an interest in state and municipal bonds. The value of state and municipal bonds is peculiarly affected by decisions made on the state level. This is the case especially in the instance of revenue bonds issued to support particular capital projects of the state or municipality.

(g) The name and address of each creditor to whom the state official or candidate or a member of his household owed a debt in excess of $1,000 at any time during the filing year, other than for a credit card or retail installment contract, and the rate of interest, listing each obligation to each creditor and the amount of each debt by category. If he or any member of his household incurred or discharged any such debt during such year, the transaction and date shall be shown.

Commentary

Section 10 (g). Persons required to file financial disclosure statements must list any debt in excess of $1,000 owed at any time during the filing year. This does not include

credit card or retail installments which may be regarded as fairly routine. Other debts, rate of interest and listing of each obligation to individual creditors and the amount of the debt must be listed, and the incurring or discharge of the debt during the year and the date of such transaction must also be shown. Note that all personal debts of the person who files, and of his household, must be included if they exceed the $1,(XX) threshold. The purpose of the provision is to forestall or at the very least to raise questions regarding debts which have been granted on a preferential basis, or where the interest rate shows that the borrower has been given an unusual preference or advantage, or that he has been given unusually favorable terms in situations which may well raise questions of conflicts of interest. The nature of the obligation may also provide useful information. In political life it is not at all unusual to make gifts by way of extending credit in instances where there is no intention that the loan be repaid, even though it will ostensibly have all of the characteristics and all of the formalities and legal instruments that normally show that a loan rather than gift was intended.

The $1,000 threshold is intended to cover loans of some significance. The figure may need adjustment from time to time to insure that the requirement includes only significant obligations.

(h) The name and address of any person or business that made payments or provided gross income exceeding $1,000, other than income received from securities reported in subsection 10(e), including the amount by category, to the state official or candidate or any member of his household, indicating the nature of the business or services for which such payment or income was received. A report shall be made under this subsection when the payment is to a business which pays, or which is under an obligation to pay, a prorated share to the state official or candidate exceeding $1,000. If such payments or income are for the rendition of medical or mental health services, the income shall be listed but the identity of individual patients need not be disclosed.

Commentary

Section 10 (h). The provision requires persons who file financial disclosure statements to include information on all payments made exceeding $1,(XX) during the reporting year to the person filing or to any member of his household, indicating the nature of the business or services for which the payment was made. The section expressly excludes payments of dividends earned on securities which are already covered in another provision. The disclosure requirement is of all payments regardless of whether these payments were made by an individual or by a business or corporate entity. The source of the payment must be disclosed unless such payment is for medical or mental health services. Included in the report are to be payments to a business which in turn is under an obligation to pay the state official a prorated share exceeding $1,000. The purpose of the provision is the disclosure of sources of income to the state official or candidate other than the public sources which pay his compensation as a state official. The requirement that the nature of the business or services for which payment was made must be disclosed is intended to prevent the gratuitous and potentially corrupt payment of moneys under the guise of payment for goods or services rendered. Under the provisions government officials who are involved in law practice for instance would have to indicate payments received from particular clients, but they would not have to disclose the exact nature of services rendered. It has been held that it is not a violation of the code of professional ethics to reveal the name of clients so long as the exact nature of the professional services is not disclosed. Legal requirements of a similar nature in other laws have not had any untoward effects on the practice of the professions and have not caused lawyers with outside interests to leave public employment.

A requirement that attorneys disclose the names of clients who paid a fee of $1,000 or more in the report year was upheld in *Hays v. Wood*, 79 Cal. App. 3d 354, modified 79 Cal. App. 3d 447, with the court indicating that the requirement of disclosing the client's name did not invade any recognized rights of privacy or legally recognized privilege. The California Political Reform Act of 1974 required attorneys and others, such as brokers, to disclose the names of clients who had paid $1,(XX) or more during the year. This the court found discriminatory, and held that lawyers and brokers would be bound only by the $10,(XX) disclosure rule applicable to other professionals under the law.

(i) The name and address of business or governmental clients or customers of any business in which the state official or candidate or a member of his household is an officer, director or partner or has an ownership interest of more than _____ percent, if the client or customer has paid an aggregate of $25,000 or more to the business during the filing year, but the full amounts of such fees need not be disclosed.

Commentary

Section 10 (i). The section covers the rather unusual situation of a state official, candidate or member of his household who is an officer or has a major ownership interest in a business to which a customer or client has paid an aggregate of $25,(XX) or more during the filing year. The disclosure required by this section affects only state officials with major business interests in situations where a major client or customer may affect the overall financial condition of the firm. The underlying assumption is that where a government official also has a major interest in a business he is likely to value important customers and clients, and that this may in turn influence his judgment in carrying out his official duties. There is a particular risk of this in instances where a number of important clients or customers may have similar interests in certain government decisions. So, for instance, a law firm which represents a number of banks or insurance companies or which represents a number of mining operations may well have a particular point of view with respect to the law which applies to these regulated interests. The disclosure of the relationship of the public official to certain regulated industries puts the matter on the public record and may thus be useful in preventing undue influence.

An effort has been made to make this provision no more burdensome than

ecessary. The only disclosure that is required is the name of the client or customer ho has paid an aggregate of $25,(XX) or more during the filing year. The exact mount paid need not be disclosed, and there is no requirement that the amount paid e disclosed by category. It should be noted that professional or trade directories equently list the important clients of law firms or the most important trade onnections of the firm. Except in the case of very large firms or businesses, it is nlikely that an officer, director, partner, or part owner will be unaware of the xistence of such important clients or customers. It may well be that the $25,(XX) reshold is too low to be of significance in the case of large companies. In that event, is may be an appropriate situation for a petition to the Commission for a odification of the requirement under Section 8 of the law.

(j) A list of all gifts received which exceed _____ dollars in value from persons other than relatives or a person to whom the state official or candidate is engaged or intends to marry. As used in this section, the term "gifts" does not include campaign contributions, but shall have the same meaning as in Section 18.

Commentary

Section 10 (j). The section requires financial disclosure of valuable gifts, exempt- g only defined categories of gifts among family members or among persons who spect to marry. The section makes the assumption that large gifts received by a public fficial or candidate from persons other than family members may at least be subject to me explanation. The section expressly exempts campaign contributions which have een properly defined in Section 3(e) of the *Model S te Campaign Finance Law*. The atter of the acceptance of gifts by state officials or employees is dealt with in nsiderable detail in Section 18 of this law. Thus, the present section may be viewed a regulatory mechanism to see that Section 18 is properly complied with.

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ection 11. Conflicts of Interest; Prohibitions.

(a) No state official or state employee shall use his public office for private dvancement or gain.

Commentary

Section 11 (a). Section 11 contains a number of specific prohibitions that deal with curring problems involving conflicts of interest. Section 11 (a) is a general prohibition n the use of public office for private advancement or gain. The subsection is tentionally broad because it is intended to cover the variety of situations which may ot be expressly covered by more specific prohibitions. One such example of the use f public office for private gain is the situation of a state official who uses his official osition to place state funds in a bank in order to obtain favorable action from the ank on a personal loan application.

(b) A state official or state employee shall not represent or otherwise assist any person or business before any state agency or before any agency of any political subdivision of the state for contingent compensation in any transaction involving the state or any political subdivision.

Commentary

Section 11 (b). The section prohibits state officials or employees from representing or assisting any person or business before any agency of the state or any of its political subdivisions for a contingent compensation. The agreement to pay compensation contingent on the success of the assistance of representation adds a special inducement to the use of undue influence to get a desired result. Note that this section does not address the question of state officials or employees who represent others before agencies for compensation other than contingent compensation, such as on a regular fee basis. Such representation is permitted except as restricted by other provisions of this Act, and especially subsections (c), (d) and (e) of this section.

(c) A state official or state employee shall not represent or otherwise assist any person or business for a fee or other compensation to secure passage of a bill or to obtain a contract, or payment of a claim, or in any other transaction or proposal if he has participated, will participate, or is likely to participate as an official or employee in the disposition of the matter.

(d) A state official or state employee shall not represent or otherwise assist any person or business before a state agency on any bill, contract, claim or other transaction or proposal involving official action by the agency if he has official authority over that state agency or is an official or employee of that agency.

(e) This section shall not apply to elected members of the state legislature who shall be governed by Section 12 of this Act.

Commentary

Section 11 (c) and (d). These subsections prohibit state officials or employees from representing others for a fee or other consideration in matters in which they have been involved in their work for the state. Subsection (c) deals with the situation of a state official or state employee who represents another in a situation where such official or state employee participates in or is likely to participate in the disposition of the matter. Such matters as passage of a bill, obtaining a contract, or the payment of a claim are covered transactions. Subsection (d) deals more generally with a state official or state employee who represents or assists another before a state agency on any bill, contract, claim or other transaction if such state official or employee has official authority over that state agency or is an official or employee of that agency. The situations covered involve some classic and recurring conflict of interest problems, and

are parallel in some respects to the prohibitions of conflicts of interest contained in the American Bar Association Code of Professional Responsibility. They also parallel the restrictions which business corporations put on the actions of their officers and employees.

Section 12. Conflicts of Interest; Legislature.

(a) A member of the state legislature and a person appointed by the legislature or by any legislator shall not represent or assist any person or business before any state agency or before any agency of any political subdivision of the state for compensation or other benefit or promise thereof.

Commentary

Section 12 (a). This section deals with a variety of conflict of interest situations which may involve legislators or legislative staff. Subsection (a) bars state legislators and persons appointed by them from representing others before any agency of the state or its subdivisions, for compensation or other benefit or promise of benefit. It should be noted that the section prohibits representation "for compensation." It does not, however, interfere with a legislator's responsibility to represent his constituent's interests before a state agency. It should also be noted that the section is not intended to apply to representation of clients by state legislators or legislative employees before the courts of the state. The state courts are not generally considered to be agencies of the state, and, consequently, this section does not bar such representation. In the states which do not follow the usual rule and do consider courts state agencies, an express exception for courts should be added.

(b) A member of the state legislature shall comply with the Code of Legislative Ethics adopted by the legislature, and shall comply with the reporting requirements of Section 17 of this Act.

Commentary

Section 12 (b). This subsection reflects the universal constitutional provision that the legislature is the only body which may regulate a member's behavior on the floor, and the questions of his seating and seniority. Thus the section refers the legislators to their legislature's own code of legislative ethics in lieu of compliance with the requirements of this Act. Note, however, that legislators are not exempt from the reporting requirements of Section 17 of this Act. The section exhorts the houses of the legislature to set rules of conduct for their members and to enforce them. The provisions of this law clearly cannot reach instances of actions on the part of legislators in the legislative chambers that reflect conflicts of interest or that reflect commitment to special interests.

(c) Any violation of this Act by a member of the state legislature shall be subject to the sanctions of this Act to the fullest extent permissible under the provisions of the state constitution. Any violation not subject to the sanctions of this Act by reason of the state constitution shall be subject to such sanctions as the legislature itself may impose under its Code of Legislative Ethics.

Commentary

Section 12 (c). This section states the general principle that violations of the Act by members of the state legislature are to be subject to the sanctions of the Act insofar as such sanctions may be applied consistent with the provisions of the state constitution. In a number of states the constitutional protection granted legislators for actions on the floor of the respective houses of the legislature extends beyond matters of voting and free speech and may be inconsistent with the enforcement of certain conflict of interest provisions under this law. To the extent that some of the conflict of interest provisions under this law may not be applicable to state legislators under the constitution, the Act relegates those violations to sanctions imposed by the legislature itself. Thus, for example, if the Commission may not penalize a legislator for failing to disclose a conflict of interest prior to voting as required by Section 17, the legislature is obligated to proceed against its members when the commission cannot by reason of constitutional limitations.

Section 13. Government Contracts; Prohibitions.

(a) A state official or state employee or a member of his household shall not be a party to or have an interest in the profits or benefits of a state contract or the investment of state funds unless the contract or the investment meets the following exceptions:

(i) The contract is let by competitive bidding or involves not more than $150 (One Hundred and Fifty Dollars);

(ii) The contract is for necessary supplies or services for the governmental agency involved, which are unobtainable elsewhere for the same or lower cost, or which are furnished to the government agency as part of a continuing course of dealing, established before the state official or state employee became associated with the governmental agency, and the entire transaction is conducted at arm's length, with the agency's full knowledge of the interest of the state official or state employee or a member of his household, and the state official or state employee takes no part in the determinations of specifications, deliberations or decision of the governmental agency with respect to the public contract.

(b) In the absence of bribery or a purpose to defraud, a state official or

state employee, or a member of his household, shall not be considered as having an interest in a public contract or the investment of public funds when such a person has a limited interest as a shareholder or creditor of the business which is the contractor on the public contract involved or which is the issuer of the security in which public funds are invested. A limited interest for purposes of this section is an interest not exceeding 5 percent of the outstanding shares of a corporation or an interest as a creditor not exceeding 5 percent of the total indebtedness of a corporation or other organization, unless it is a corporation whose shares are traded on a public exchange, in which case the Commission may set lower limits. A person claiming such a limited interest shall file with the State Ethics Commission and the governmental agency an affidavit describing his status in and connection with the corporation or other business, before such public contract is entered into.

Commentary

Section 13. Section 13 places management restrictions on business dealings between state officials or employees and the state. It prohibits outright self dealing but it relieves the state of the burden of limiting its business transactions to companies in which no state official or employee has even a minute or indirect interest. In instances where a state official or employee has such a minor interest in a business that deals with the state the section provides that the state official or employee may take no part in the deliberations and decisions relating to such dealings, and that the persons and businesses involved in such situations be aware of the relationship and take appropriate steps to disclose the same to the commission. The purpose of the section is not only to prohibit outright self-dealing but also to prevent even the appearance of conflict to the fullest extent possible.

The purpose of preventing self-dealing might best be served by an outright and complete ban, but such a ban is not likely to serve the public interest because it is unfeasible and unmanageable.

The prohibition against self-dealing allows for certain exceptions. The exception in subsection (a) is for contracts let by competitive bidding, or where the amount involved is $150 or less where the contract is let for necessary materials at the best available price, as part of a continuing course of dealing established prior to the time the state official or employee became associated with a governmental agency. Further conditions require the arrangement to be at arm's length and that the state official or employee disclose his interest to the agency. Both the small amount involved and the conditions imposed assure that no significant instances of self-dealing will be permitted under this subsection.

Subsection (b) allows public contract or the investment of public funds with businesses in which a state official or state employee has a demonstrably limited interest. Such a limited interest may be a shareholder's interest or a creditor's interest where the shareholder's interest does not exceed 5 percent of the outstanding shares of the business and where the interest of the creditor does not exceed 5 percent of the total indebtedness of the business. In the instance of publicly held companies whose shares are traded on a public exchange, a 5 percent share interest or a 5 percent

interest in the corporate indebtedness would be considered a substantial or major interest, and in that situation the State Ethics Commission may set lower limits. Again, the section relies on the principle of public disclosure in that a state official or employee is required to file with the State Ethics Commission and the governmental agency involved an affidavit which describes the nature of his interest.

Section 14. Conflicts of Interest; Employment.

(a) No state official and no state employee shall seek employment with, or allow himself to be employed by, any business which is or may be regulated by a department or agency which he serves. The term employment within the meaning of this section includes professional services and other services rendered by the state official or state employee whether rendered as an employee or as an independent contractor.

(b) No business shall employ a state official or state employee if the employment violates subsection (a) of this section.

Commentary

Section 14. This section prohibits a state official or employee from seeking or accepting employment from a business regulated by his agency. For purposes of this prohibition the term employment is broadly defined to include professional services and other services that may be rendered either as an employee or as an independent contractor. Subsection (b) poses a correlative prohibition on businesses. They are prohibited from employing state officials or state employees if such state officials or employees are prohibited from accepting such employment under this section, thus the business and the employee would become equally guilty of violating the law.

Section 15. Conflicts of Interest; Avoidance.

No state official or state employee shall acquire any financial interest, including, but not limited to, interest in a business, real property, or in a contractual relationship, when he believes or has reason to believe that it will be directly and immediately affected by his official action or the action of the government department or agency which he serves.

Commentary

Section 15. The section prohibits the acquisition by any state official or employee of any financial interest which he believes or has reason to believe will put him in a conflict of interest situation. It is clearly contemplated by the section that any employee who finds that he has acquired such a financial interest divest himself of the same as promptly as possible.

Section 16. Conflicts of Interest; Reporting.

(a) A state official or state employee, other than a legislator, who is required to take any action or make any decision in the discharge of his official duties that may cause financial benefit or detriment to him, to a member of his household or a business with which he is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the Commission and to his immediate superior, if any, who shall assign the matter to another, or, if he has no immediate superior, he shall take such steps as the Commission shall prescribe or advise to remove himself from influence over actions and decisions on the matter. This restriction shall not prevent such person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made, but in such event the person shall report the occurrence to the Commission.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the state official or state employee is aware of such conflict or as soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 16. When a state official or employee finds himself faced by a conflict of interest as defined in the section he must prepare a written statement describing the situation and he must deliver a copy of the statement to the State Ethics Commission and to his immediate superior in the agency. The state official or employee must then also disengage himself from participation in the matter so far as legally permissible. His superior is under an obligation to assign the matter to another person for determination or decision, and if the official or employee has no direct superior, he must follow the advice of the Ethics Commission in removing himself from a decision-making role. In some instances the law may require that certain decisions be made by designated officials. In such an event, where the determination cannot be delegated to another, the needs of government shall be met in that the particular official or employee shall make the legally required decision, but he must report the matter to the ethics commission. The section provides that a state official or employee cannot close his eyes to the existence of a conflict of interest situation. The obligation to report and to disqualify himself arises as soon as he is aware of the conflict, or as soon as he should reasonably be aware of such conflict.

The section protects not only public agency decisions from the effect of conflicts of interest but also the state official or employee involved. A state official who promptly reports the matter to the State Ethics Commission as required by law and who thereafter follows the direction of the Commission would be protected from any subsequently asserted liability.

Section 17. Conflicts of Interest; Member of State Legislature; Reporting.

(a) A member of the Legislature who is required to take an action in the discharge of his official duties that may cause financial benefit or detriment to him, a member of his household or a business with which he is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public shall:

(i) Prepare a written statement describing the matter requiring action and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the clerk of the house of the legislature for inclusion in the official legislative record and to the Speaker of the House or [Assembly] or the President Pro Tempore of the Senate as appropriate [and to the Commission.]. He may request permission to abstain from voting on the issue and such legislative officers may grant the request. Nothing in this section shall be construed to prohibit any legislator from voting on any matter that comes before his house of the legislature.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the member of the legislature is aware of such conflict or as soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 17. Section 17 imposes disclosure requirements on legislators who find themselves in a situation of conflict of interest. Section 16, which deals with conflicts of interest of state officials and state employees other than legislators, requires them to disqualify themselves from official action in conflict situations, except insofar as they may be required to act by reason of the legal responsibilities of their position. Unlike other state officials, legislators are not required to disqualify themselves, but they are required under section 17 to disclose their conflict and to put it on the legislative record. Disqualification of state legislators is not required because to require them to disqualify themselves would deprive their constituents of representation. To require a legislator to disqualify himself, and in effect to prohibit him from voting when he finds himself in a conflict of interest, or to penalize him for voting in such a situation, would probably be an unconstitutional interference with the legislative process. The right of the legislature to be the sole judge of the conduct of its members on the floor is virtually absolute. However, a legislator who finds himself in a conflict of interest is encouraged to request permission to abstain from voting on the particular issue and

the presiding officer of the particular house may grant the request. It is clear that the effectiveness of Section 17 in dealing with legislative conflicts of interest will depend largely on the seriousness of the legislature in its enforcement. In this area it is likely that efforts by the State Ethics Commission to seek enforcement of the law will meet with constitutional objections based on the principle of the separation of powers.

Section 18. State Officials or Employees; Making and Acceptance of Gifts.

(a) No state official or state employee shall solicit, accept or agree to accept any gift, including economic opportunity, loan (other than from a regular lending institution on terms generally available for such loans), gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars ($100) or more in any calendar year from any person, except from members of his family or from a person whom he plans to marry. This section shall not, however, operate to prevent the acceptance by a state official or state employee of reimbursement for expenses which are expressly provided for or permitted by law.

(b) No person or business shall offer or make any gift which a state official or employee is prohibited from accepting pursuant to subsection (a) of this section.

Commentary

Section 18. Section 18 prohibits any state official or employee from accepting any gift in excess of $100 from persons other than his family or a person whom such official or employee plans to marry. Earlier formulation of state ethics laws prohibited officials from accepting gifts from persons one might "reasonably" expect to have an interest in some matter over which such official's agency had authority. In this earlier formulation there was the recurring risk that the law would be declared unconstitutional, as void for vagueness. The firm dollar limit eliminates the problem of what is a reasonable gift, and it also eliminates the problem of determining when a gift is made because it is reasonably expected to have some impact on the official's actions. The section assumes that gifts other than from relatives or future spouses in excess of the limit are questionable in purpose and resolves the issue by prohibiting such gifts altogether. The dollar limit on gift giving may have to be adjusted from time to time to reflect inflationary changes. Subsection (b) of Section 18 makes the giver or offerer of an illegal gift equally liable with the official who accepts it.

Section 19. State Officials or Employees; Disclosure of Information.

No state official or state employee shall disclose or use confidential information or information not available to members of the general public for

his personal gain or benefit or for the personal gain or benefit of any other person or business if he has obtained such information through his official position. The restriction on the use of information shall continue for two years after he ends his term of office or leaves government service or employment, and shall supersede any other less restrictive requirements of confidentiality that may be applicable.

Commentary

Section 19. Section 19 prohibits the use of confidential information for financial gain. The use of confidential information has long been a common and serious abuse of public trust and one which, because of its nature, was particularly difficult to prove. Financial disclosure requirements make certain gross abuses easier to trace. However, when confidential information is not used by the official himself but is given to friends or business associates, tracing it may still be difficult. The abuse of confidential information gained through official position both during and after public service has been the frequent subject of public investigations, particularly as "government in the sunshine" laws diminish the amount of truly confidential information and makes it easier to trace its leakage. Note that Section 19 restricts the use of information gained in consequence of official position for two years after the term of office is concluded or government service or employment is ended. This two-year limitation supersedes other less restrictive requirements which are commonly scattered throughout the law with a variety of requirements applicable to different agencies.

Section 20. State Officials or Employees: Limitation on Representation.

(a) No former state official or former state employee shall for a period of two years following the end of his term of office or the termination of his state service or employment assist another person or business whether or not for compensation, in any transaction, or in any appearance in connection with any transaction involving the state or any of its agencies or subdivisions in which such former state official or former state employee participated during his term of office or employment.

(b) No business in which a former state official or former state employee is a partner or member, or, in the case of a professional corporation, a shareholder, and no employee of such business, shall, for a period of two years following the termination of his term of office or employment, assist another person in any appearance or transaction involving the state or any of its agencies or subdivisions in which the former state official or former state employee participated during his term of office or state employment. For purposes of this section, the termination of employment of the former state official or former state employee with the agency which he served when he so

participated shall be deemed to be the termination of his state employment.

(c) Nothing contained in this Act shall prohibit a former state official or former state employee from being retained or employed by the department or state public agency which he served.

Commentary

Section 20. Section 20 deals with the recurring problem of state officials and employees who leave public employment to work in the private sector, who are then able to use confidential information and the previous close contacts gained in public employment for the advantage of their private employer's customers or clients. The problem of the "revolving door" in public service is a recurring and serious one. While abuses in the use of special contacts and special information gained during public employment must be curbed, it is constitutionally unacceptable to place undue job restrictions on public officials and public employees after they leave public service. Moreover, it would be a disservice to the public interest to limit employment opportunities of former government officials and employees unduly because it would discourage highly qualified and expert persons from entering government service for fear of unduly limiting their future employment opportunities.

Section 20 seeks to resolve these competing considerations by drawing a balance which results in reasonable limits. Under subsection (a) a former state official or employee is barred for a period of two years following the end of his official service from assisting or appearing on behalf of any other person or business in connection with any transaction in which such official participated during his term of office or employment. Subsection (b) applies a similar limitation to any business or person associated with such business in which such a former state official or state employee is a partner or member, or in a professional corporation, a shareholder. It should be noted that only those matters with which the former state official or employee had any direct connection are out of bounds. It may be of particular significance to law firms and similar professional undertakings that all appearances, including those before the agency of the former official or employee, on matters that were not his responsibility are permitted. The narrow range of prohibitions is intended to limit the adverse impact which such limitations would have on highly qualified professionals who might otherwise avoid entering government service. At the same time the section also protects businesses from a form of undue pressure or blackmail by state officials or employees who may condition favorable government action on advantageous private job offers.

Section 21. Criminal Prosecution; Penalties.

(a) A person who knowingly or willfully violates any provision of this Act other than a requirement of financial disclosure pursuant to Sections 9 and 10 of this Act is guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine not to exceed $10,000.

Commentary

Section 21(a). Section 21 separately provides for convictions which involve violation of the conflict of interest provision of the law and violation of the financial disclosure requirements. Knowing and willful violation of the conflict of interest provisions is a misdemeanor and the penalty is a fine of not more than $10,000, imprisonment for not more than one year, or both. Many jurisdictions treat the violation of conflict of interest provisions as a felony. However, it has been a common experience that white collar crimes, which generally do not involve any violence or threat of violence, are treated lightly by juries and that juries are less likely to convict when the violation is treated as felony subject to many years of imprisonment. Thus, designating knowing and willful violation as misdemeanors is more likely to result in convictions. It should be noted, moreover, that in many instances it is likely that more than one offense of conflict of interest will be charged. Thus, in egregious cases, consecutive one-year terms for different counts or violations are not unlikely.

(b) A person who knowingly or willfully violates any financial disclosure requirements of Section 9 or 10 of this Act is guilty of a misdemeanor, punishable by a fine of not more than $10,000 or three times the amount or value of the interest or interests the person failed to report, whichever is greater.

Commentary

Section 21(b). The violation of financial disclosure requirements under the law is treated as a misdemeanor. Unlike violations of conflict of interest provisions this misdemeanor is not punishable by a jail term but only by a fine. In effect, the violation of a financial disclosure requirement is regarded as a primarily economic offense; consequently, the penalty provided is primarily economic in nature. For the conviction of failure to make required financial disclosures the penalty is three times the amount or value of items not reported. Thus, when there has been a gross failure to meet financial disclosure requirements, penalties may be greatly in excess of $10,000.

(c) The Attorney General shall commence prosecution for violation of this Act no later than three years after the date of violation.

Commentary

Section 21(c). A three-year statute of limitations for violations of the *Model State Conflict of Interest and Financial Disclosure Law* is intended to provide sufficient time for the discovery and careful investigation and case preparation of violations which in many instances may involve complex financial dealings. While some states allow for longer statutes of limitations in laws of this nature, the three year statute of limitations is intended to require diligent prosecution efforts when violations have been discovered. A three-year statute of limitations is also subject to less abuse for political purposes and for purposes of influencing the outcome of elections.

(d) A person convicted of a misdemeanor under this Act shall not be a candidate for any elective office or be eligible for any appointive office or act as a paid lobbyist for a period of four years following the date of the conviction, unless the court at the time of sentencing reduces the period or determines that this provision shall not be applicable. A plea of *nolo contendere* shall be deemed a conviction for purposes of this Act.

Commentary

Section 21 (d). As an additional sanction, Subsection (d) provides that a convicted official or employee may not become a candidate for public office, or become eligible for appointive office, or be a paid lobbyist for four years unless the court relieves him from the effects of this provision at the time of sentencing. Removal from office as a sanction for conviction of violation of law is a justifiable penalty, and it is recommended that Section 21 (d) also provide for removal from office in states where such a provision is constitutionally permissible. It is not constitutionally permissible in all states for all public officials, because the constitution may limit removal from office to certain offenses or may require certain constitutionally prescribed procedures.

Section 22. Civil Action; Injunctive Relief; Civil Penalties.

(a) The Commission may sue in the _____ Court for injunctive relief to enjoin a violation or to compel compliance with the provisions of the Act, and for the collection of civil penalties.

Commentary

Section 22. Section 22 authorizes the Commission to bring civil actions for two purposes. First, to secure injunctions against violation of the Act, or to compel compliance with its provisions and, second, to sue for the collection of civil penalties under the Act.

The injunctive process is a useful and necessary procedure to deal with situations that involve conflicts of interest before they have done irreversible damage. Such damage may involve not only public confidence in government, but also the expenditure of substantial public funds in reliance on administrative decisions or other government action based on a process that was tainted by the private interest of the decision maker. The injunctive process has the advantage of a prospective, preventive procedure that can deal with imminent risks in a timely fashion, unlike criminal prosecution for violation of the Act which generally deals with violation after the harm is done, and which takes a lengthy course of preparation, and evidence to convict beyond a reasonable doubt. The effectiveness of the injunctive procedure is enhanced by the availability of the power of the court to hold the violator in contempt if he fails to obey the court's injunctive order. Such contempt powers are exercised by the court subject to the applicable provisions of state law.

It is likely that the power to enjoin violations of the law will usually be exercised after the violator has failed to obey the State Ethics Commission's own administrative order to cease his violation.

The Commission's right to sue for civil penalties is discussed in connection with Subsection 22 (d).

(b) Upon a preliminary showing in an action brought by the Commission that a violation of the law has occurred that involves a conflict of interest or a disqualification for official action, the court may restrain the execution of any official action in relation to which such violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that in the absence of such conflict of interest the official action might not have been taken or approved, the court may set the official action aside as void. The term official action as used in this subsection includes, but is not limited to, executive and administrative action, such as orders, permits, resolutions and contracts, but does not include the enactment of state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury to members of the public who rely on the official action in good faith.

Commentary

Section 22 (b). In addition to the power of the State Ethics Commission to seek an injunction against a violation of the ethics law under Subsection 22(a), this subsection allows the court, in an injunctive proceeding brought by the Commission, to restrain the official action alleged to be tainted. The Commission may obtain a temporary restraining order against such government action after a preliminary showing that a violation of the law has occurred. Such a preliminary restraining order will hold all further government action in relation to which the violation has occurred until the issue of the existence of the alleged violation has been determined. When it is determined that there has been a violation, the court may void the tainted government decision or action. The court, however, is not required to grant such temporary or permanent relief, but must give due weight to the detrimental effect such an order may have on members of the public who rely on the official action, in good faith. A number of instances of such good faith reliance may be suggested—such as employees whose jobs may be lost when their company's contract is voided, or the residents of a particular area who may lose the benefit of some public works project, be it a housing project, a public transportation project, or a flood control project, as a result of the voidance of the particular government action.

(c) Any person who violates any of the reporting requirements of this Act is liable to the state for a civil penalty in an amount not exceeding the value of the interest not properly reported.

Commentary

Section 22(c). This subsection allows a civil action for the collection of a civil penalty for the violation of the reporting requirements of the Act, in an amount not exceeding the value of the interest not properly reported in the financial disclosure statement. Note that this civil penalty is limited to violations of reporting requirements, and that, unlike the criminal fine for the same violation, the penalty may be collected regardless of whether the violation was knowing and willful. The civil penalty, as in other civil suits, may be imposed on the basis of the fair preponderance of the evidence of violation. For additional discussion of the imposition of civil penalties see Commentary in Section 24.

(d) Any state official or state employee who realizes an economic benefit as a result of violation of the conflict of interest provisions of Sections 11 to 20, is liable to the state for a civil penalty in an amount not exceeding three times the amount or value of the benefit.

Commentary

Section 22 (d). This subsection allows a civil action for the collection of a penalty for the violation of the conflict of interest provisions of Sections 11 to 20 in an amount not exceeding three times the amount of the benefit derived from the violation (such as the use of official information for private benefit, or the benefit from government contracts improperly obtained). The provision does not require proof beyond a reasonable doubt or proof of knowing and willful violation. The section treats the violation as a civil, economic or administrative offense, for which an economic penalty is imposed that stands in direct relationship to the economic benefit gained from the violation.

(e) If two or more persons are responsible for any violation, each of them is liable to the state for the full amount of the civil penalty, and a separate civil penalty for the full amount may be imposed on, and collected from, each of them individually.

Commentary

Section 22 (e). This subsection provides for separate civil causes of action against each person civilly liable under the provision of the Act. Civil penalties, therefore, are not to be divided among the persons responsible in cases where more than one person bears responsibility, but each person is liable independently for the full amount of the penalty.

Section 23. Citizen Action.

Any resident of the state may file a written request with the Commission

that the Commission commence action for injunctive relief to enjoin a violation or to compel compliance with the provisions of the Act, or for the collection of civil penalties. The request shall state the grounds for belief that a cause of action exists. The Commission shall respond no later than forty days after the receipt of the request, indicating whether it intends to file a civil action. If the response is affirmative, and suit is commenced within fifty days thereafter, no other action may be brought unless the action brought by the Commission is dismissed without prejudice as provided for in subsection 24 (c). If the Commission fails to reply or to take any action, the resident may proceed with the action in the same manner and to the same extent as is provided for civil actions by the Commission pursuant to Section 22 of this Act.

Commentary

Section 23. This section follows the trend, which began in the sixties, to give standing to private citizens to engage in litigation to vindicate the public interest. In areas of the law where there is a great concern that powerful groups within and outside the government may prevent others from carrying out the law to the fullest, private citizens may bring lawsuits not to protect narrow personal interests but rather broad public ones. Citizens acting in this manner have sometimes been referred to as "private attorneys general," and the public interest litigation they have engaged in in such areas as civil rights, consumer protection, environmental protection, has added greatly to compliance with the law.

As in other areas of citizen action, the purpose is not to oust the government from jurisdiction, but rather to encourage government assumption of its duties. Moreover, it should be noted that citizen action is limited to civil action and plays no direct part in criminal prosecution. Great care is taken in Section 23 to assume that citizen action will not interfere with, but will rather enhance public enforcement activities. Thus, citizen action can only be brought if the Ethics Commission has failed to respond to a request to take action, or having responded to the request, has failed to proceed promptly. Once the Commission has begun its own civil suit, no citizen action may be brought, unless the Commission's action is dismissed without prejudice. The kind of action the citizen may bring is like the Commission's authorized actions—either for injunctive or for civil penalties. The purpose of the section is to give private citizens the opportunity of closely reviewing government action or inaction, without objectionable interference in the government's primary sphere. In the case of this model state ethics law, it is expected that in most instances the law would work to stimulate the Commission to take enforcement steps on its own.

Section 24. Civil Action; Generally.

(a) In any civil action brought under Section 22 or 23 of this Act:

(i) The court may award court costs and reasonable attorney's fees to the prevailing party;

(ii) The court in determining the amount of civil liability under subsections (c) and (d) of Section 22 may take into account the seriousness of the violation and the degree of culpability of the defendant;

(iii) The court, on motion of any party, may require the defendant or a private plaintiff at any stage of the proceedings to post a bond in a reasonable amount sufficient to assure payment of costs and attorney's fees.

(b) No action shall be filed under Sections 22 and 23 more than three years after the occurrence of the violation complained of.

Commentary

Section 24(a) and (b). The provisions of this section are applicable to all civil actions brought under this law, whether by the Commission under Section 22, or as a citizen action under Section 23. In all such civil actions, the court may award court costs and attorneys fees to the winning party, and it may also require the posting of bond by defendants and by citizen plaintiff, to secure the payment of costs and attorneys fees. This is a device to discourage frivolous lawsuits. In addition, the section sets forth the considerations the court may take into account in setting the amount of the civil penalty.

A three-year statute of limitations on civil actions, which parallels the statute for criminal prosecution is Section 21(c), is provided for.

(c) The court may dismiss an action under Section 22 or 23 without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion of the Commission or any other plaintiff who intends to bring an action based on the same violation.

Commentary

Section 24(c). The subsection authorizes the court to dismiss a civil action, whether brought by the Commission or by a private citizen, for failure to proceed diligently and in good faith. The subsection meets several needs. It prevents an action from being dragged out unnecessarily. Such protracted delay, which reflects a failure to pursue the matter diligently, gives evidence of lack of good faith. Delays in litigation have the result of damaging the defendant's reputation, and, where a particular business contract or activity has been suspended, it may damage other, tangible, interests as well. Delay intended to defeat the full pursuit of the matter may be dealt with by dismissing the action "without prejudice," which has the result of allowing some other party—most probably a private citizen plaintiff—to start a new lawsuit and carry the matter to a completion, so long as the three-year statute of limitations has not run out at the time the new action is commenced.

(d) Any civil penalties imposed under Section 22 or 23 shall be paid into the general fund of the state.

Commentary

Section 24 (d). Civil penalties, whether collected in a civil action brought by the Commission or by a private citizen, must be paid into the general fund of the state. This also demonstrates the public interest nature of citizen actions, because the plaintiff does not derive any personal benefit from the successful outcome of the suit.

(e) The commencement or conclusion of a criminal prosecution for violations shall not bar a civil action under Section 22 or 23, nor shall a civil action be a bar to criminal prosecution for violation of this Act.

Commentary

Section 24 (e). The subsection expressly provides that civil and criminal proceedings and sanctions are not mutually exclusive. The purpose of a criminal prosecution is to prove a criminal violation beyond a reasonable doubt, and to impose a criminal penalty that will, because of its punitive nature, exert a deterrent effect. The civil sanction is based on a civil proceeding that does not impose the stigma of criminality on the violator. A civil violation may, therefore, be proved by a fair preponderance of the evidence. While the civil sanction may be economically onerous, it is nonetheless not intended to be punitive, but rather compensatory and restitutional in scope, in that it is designed to have the violator pay back to the public the economic cost of his violation. In view of the different modes of proof, the different procedural requirements and the different measures for, and purposes of, the sanctions imposed, the two procedures may stand separately, and no question of double jeopardy arises. The existence of two possible procedures to deal with violation allows the Commission a wide range of choices of civil and criminal sanctions, depending on the nature of the violation and the nature of the available evidence. The constitutionality of civil and criminal sanctions for violation growing out of the same set of circumstances has been upheld by the U.S. Supreme Court.

The distinction between criminal prosecution and civil penalty action was drawn authoritatively in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed 2d 644 (1963). The distinction has been applied in numerous cases where both criminal and civil sanctions were available, e.g., *United States v. Ashland Oil & Transp Co.*, 364 F.Supp. 349 (W.D. Ky. 1973); *United States v. General Motors Corp.*, 403 F.Supp. 1151 (D.Conn. 1975).

Section 25. Violations; Employment Discipline.

Any state employee who violates a provision of the law is subject to discipline, including dismissal, by his agency, consistent with any applicable civil service or other personnel laws, regulations and procedures.

Commentary

Section 25. This section adds another sanction to the array that may be imposed for violation of the law. A violation of this Act is clearly a breach of employment discipline in the case of state employees and may be treated accordingly.

Section 26. Severability.

If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Effective Date.

This law shall become effective on _____.

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APPENDIX

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I

DEFINITIONS

(1) "Amount" means a category of value, rather than an exact dollar figure, as follows: greater than $1,000 but not more than $2,500; greater than $2,500 but not more than $5,000; greater than $5,000 but not more than $10,000; greater than $10,000 but not more than $25,000; greater than $25,000 but not more than $50,000; greater than $50,000 but not more than $100,000; greater than $100,000.

(2) "Anything of value" means anything which is not de minimis in value. "Anything of value" shall not include a lawful political contribution made in accordance with [cite appropriate state law].

(3) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, or trust, whether or not organized for profit.

(4) "Business with which one is associated" means any business, including self-employment, in which the reporting person or a member of his/her immediate family is a general partner, proprietor, officer or other employee, or serves as a director, trustee or in any similar managerial capacity.

(5) "Candidate for public office" means any individual who seeks nomination or election to public office, as defined by this chapter. For the purposes of this chapter, an individual shall be deemed to be seeking nomination or election to public office if he/she has:

(5.1) received a political contribution or made an expenditure, or has given his/her consent for any other person or committee to receive a political contribution or make an expenditure, for the purpose of influencing his/her nomination or election to such office, whether or not the specific public office for which he/she will seek nomination or election is known at the time the political contribution is received or the expenditure is made; or

(5.2) taken the action necessary under the laws of the state to qualify him/herself for nomination or election to such office.

(6) "Commission" means the State Ethics Commission as established in section (1) of chapter (II) of this act.

(7) "Compensation" means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered personally or by another.

(8) "Competitive bidding" means all bidding given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.

(9) "Equity" means any stock or similar ownership in a business.

(10) "Financial interest" means:

(10.1) any interest as a result of which the owner or member of his/her immediate family currently receives or is entitled to receive in the future more than $1,000 per year;

(10.2) any interest representing more than one percent ownership or any percentage of ownership which represents a fair market value of $10,000 or more of a corporation, partnership, sole proprietorship, firm, enterprise, franchise, organization, holding company, joint stock company, receivership, or trust;

(10.3) any interest denoted by a person's position as corporate officer or member of the board of directors or other governing board position in a business;

(10.4) any interest resulting from a position as debtor, creditor or guarantor of another person or business in the amount of $5,000 or more;

(10.5) any interest resulting from real property which is an equitable or legal ownership with a market value of $5,000 or more;

(10.6) provided, however, that financial interest shall not include:

(10.6.1) the authorized compensation paid to an official or employee for his lawful discharge of duties;

(10.6.2) any economic benefit provided equally to all residents of the state.

(11) "Gift" means any payment, entertainment, subscription, forbearance, services or anything of value, rendering or deposit of money, which is transferred to a donee directly or in trust for his/her benefit or by any other means. "Gift" shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from immediate family.

(12) "<u>High-level official</u>" means:

(12.1) the members of both chambers of the state legislature;

(12.2) the governor, lieutenant governor and the executive council (all secretaries of executive office, <u>e.g.</u> the cabinet);

(12.3) any other person holding a position for which one is nominated at a state primary or chosen at a state election;

(12.4) the executive or administrative head or heads of a state agency;

(12.5) the head of each division, bureau, or other major administrative unit within such state agency and persons exercising similar authority;

(12.6) any person whose salary equals or exceeds that of a state employee classified in state statute [cite appropriate state law] and who reports directly to said executive or administrative head; and

(12.7) any other persons occupying positions involving a substantial and material exercise of administrative

discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or the execution of other public trusts, including appointees to boards and commissions, so determined by a majority of the ethics commission.

(13) "Immediate Family" means: a spouse and any dependent children as well as a person who is related to an official or employee as any of the following, whether by blood or adoption:

*parent;
*child;
*brother, sister;
*grandparent;
*grandchild;
*father-in-law, mother-in-law;
*brother-in-law, sister-in-law;
*son-in-law, daughter-in-law;
*stepfather, stepmother;
*stepson, stepdaughter;
*stepbrother, stepsister;
*half brother, half sister.

(14) "Income" means income from whatever source derived, whether in the form of a fee, salary, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital

gain, or any other form of recompense or any combination thereof.

(15) "Legislative agent" means any person who for compensation or reward does any act to promote, oppose, or influence legislation, or to promote, oppose or influence the decision of any member of the executive and/or legislative branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, or rule of regulation pursuant thereto. The term shall include persons who, in the course of their employment, attempt to promote, oppose or influence legislation or the governor's approval or veto thereof, whether or not any compensation in addition to the salary for such employment is received for such services.

(16) "Official act" means any decision or action in a particular matter or in the drafting of, voting on, or enactment of legislation.

(17) "Official responsibility" means the administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal, or through subordinates, to approve, disapprove or otherwise direct agency action.

(18) "Participate" means participate in agency action or in a particular matter personally and substantially as a state employee or state official through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

(19) "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, decision, approval, disapproval, contract, claim, controversy, charge, accusation, arrest, recommendation, finding, rendering of advice, or investigation, including the drafting of and voting on special legislation, but excluding drafting of and voting on general legislation by the state legislature.

(19.1) For the purposes of this definition, special legislation shall be understood to mean any legislation which is directed at a specific situation, individual, or entity as distinct from general legislation which is directed at an entire group, class or segment of the state citizenry.

(20) "Person" means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons.

(21) "Political contribution" means a contribution of money or anything of value, including in-kind transfers, to an individual, candidate, political committee, or person acting on behalf of an individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters, and shall include any:

(21.1) gift, subscription, loan, advance, deposit of money, or thing of value, except a loan or money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business;

(21.2) transfer of money or anything of value between political committees;

(21.3) payment, by any person other than a candidate or political committee, or compensation for the personal services of another person rendered to such candidate or committee;

(21.4) purchase from an individual, candidate or political committee, or person acting on behalf of an

individual, candidate or political committee, whether through the device of tickets, advertisements, or otherwise, for fund raising activities, including testimonials, held on behalf of said individual, candidate or political committee, to the extent that the purchase price exceeds the actual cost of the goods sold or services rendered;

(21.5) discount or rebate not available to other candidates for the same office and to the general public; and

(21.6) forgiveness of indebtedness or payment of indebtedness by another person.

(22) "Reporting person" means any person required to file a statement of financial interest pursuant to the provisions of section (1) of chapter (V) of this act.

(23) "State agency" means any department of a state government, including the executive, legislative and all councils thereof and thereunder, and any department, division, board, bureau, commission, council, instrumentality or agency, or other independent state authority, district, commission, instrumentality or agency which is primarily funded by or through state authority.

(24) "State employee" means any person performing services for or holding office, position, employment, or membership in a state agency or other independent state authority, district, commission, instrumentality or agency which is primarily funded by or through state authority whether by contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis.

(25) "State official" means any person holding office for which one is nominated at a state primary or chosen at a state election and any person appointed to office in a state agency or other independent state authority, district, commission, instrumentality or agency which is primarily funded by or through state authority, including members of the state legislature and executive council (cabinet).

II

STATE ETHICS COMMISSION

(1) Establishment of the State Ethics Commission

(1.1) The state ethics commission shall consist of seven members. No more than four of the members shall be of the same political party. Of the seven members and with consent of the Senate, five shall be appointed by the Governor, one by the State Secretary and one by the Attorney General. No member or employee of the commission shall:

(1.1.1) hold or be a candidate for any other public office while a member or employee of the commission or for one year thereafter;

(1.1.2) hold office in any political party or political committee;

(1.1.3) participate in or contribute to the political campaign of any candidate for state public office;

(1.1.4) be an employee of or be directly responsible to his/her appointing authority.

(1.2) Commission members shall be appointed to five-year staggered terms. The terms of the initial three of the five members appointed by the Governor shall expire after two years. The terms of the initial two members remaining appointed by the Governor shall expire after three years. The term of the initial member appointed by the Attorney General shall expire after four years. The term of the initial member appointed by the Secretary of State shall expire after five years. No member shall serve on the commission more than ten consecutive years nor be appointed for more than two full terms.

(1.3) Each member shall hold office from the date of his/her appointment until the end of the term for which he/she was appointed or until his/her successor qualifies for office. Any vacancy occurring on the commission shall be filled within 90 days by the original appointing authority.

(1.4) Members of the commission may be removed by the Governor for good cause, including substantial neglect of duty, inability to discharge the powers and duties of office, violation of section (1.1) of this chapter (I), gross misconduct or conviction of a felony.

(1.5) At its first meeting, the commission shall elect a chair. The chair shall serve as such until the end of

his/her term as a commission member. The chair shall appoint, with approval of the majority of the full commission, a vice-chair, and an executive director. The vice-chair shall act as chairman in the absence of the chair or in the event of a vacancy of that position. The executive director shall be responsible for the administrative operation of the commission and shall perform such other tasks as the commission shall determine. The executive director shall appoint and discharge employees, including a general counsel, consistent with applicable civil service laws, and shall fix the compensation of employees and prescribe their duties. The general counsel shall be the chief legal officer of the commission and shall advise the commission on all legal matters and, on the instructions of the commission, may commence civil or criminal actions as may be appropriate.

(1.6) The commission may employ the services of such technical, professional and clerical services experts and consultants as are necessary to carry out its duties. The commission may also:

(1.6.1) contract for services which cannot be satisfactorily performed by its employees;

(1.6.2) request the Attorney General to provide legal advice and representation without charge to the commission, and the Attorney General shall comply with the request. The commission may also employ additional legal counsel; and

(1.6.3) request appropriate agencies of state government (e.g. the commissioner of public safety, the state auditor, the comptroller, and the director of the office of campaign and political finance) to provide such professional assistance as it may require in the discharge of its duties.

(1.7) The commission shall meet at least once each month. Five members of the commission shall constitute a quorum and the vote of a majority of the members present is required for any action or recommendation of the commission. The chair or any four members of the commission may call a meeting at any time provided that advance written notice is mailed to each member and public notice is made 72 hours prior to such meeting.

(1.8) Members of the commission shall be compensated for work performed for the commission at a rate of ____ and shall be reimbursed for their reasonable and necessary expenses.

(1.9) The commission shall annually report to the state legislature and the Governor concerning the actions it has taken, the names and salaries and duties of all individuals in its employ, and the money it has disbursed, and shall make such further reports on matters within its jurisdiction as necessary.

(2) Duties and Powers of the State Ethics Commission

The commission shall:

(2.1) prescribe and publish rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of proceedings hereunder;

(2.2) prepare and publish, after giving the public an opportunity to comment, forms for the statements and reports required to be filed by this chapter and make such forms available to any and all persons required to file statements and reports pursuant to section (1) of chapter (V);

(2.3) prepare and publish uniform methods of accounting and reporting to be used by persons required to file statements and financial disclosure reports as required by section (2) of chapter (V);

(2.4) make statements and reports filed with the commission available for public inspection and copying during regular office hours upon the request of any individual free of charge or at a charge not to exceed the actual material costs incurred in reproducing said statements and reports;

(2.5) compile and maintain a computerized index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(2.6) prepare and publish regular summaries of statements and reports filed with the commission;

(2.7) review all statements of financial interests filed with the commission in order to ascertain whether any reporting person has failed to file such a statement or has filed a deficient statement, based on the following procedure:

(2.7.1) random review of ten percent of all statements;

(2.7.2) within 60 days, review of the members of both chambers of the State Legislature; the Governor, Lieutenant Governor and the Executive Council (all secretaries of executive office, e.g. the cabinet); any other person holding a position for which one is

nominated at a state primary or chosen at a state election; the executive or administrative head or heads of a state agency; any person whose salary equals or exceeds that of a state employee classified in ____ of statute ____ and who reports directly to said executive or administrative head.

(2.8) If, upon auditing, it is found that a reporting person has failed to file a statement of financial interest, or if it is found that any such statement filed with the commission fails to conform with the requirements of sections (2) of chapter (V), then the commission shall, in writing, notify the delinquent of failure to comply and of:

(2.8.1) necessity to comply within fourteen days or face criminal and/or civil penalty;

(2.8.2) criminal penalties for any intentional or willing failure to comply, falsification of content, or fictitious response;

(2.9) preserve all statements and reports filed with the commission for a period of ____ years;

(2.10) in a timely fashion upon request from a person who is or may be subject to the provisions of this chapter and

chapters (III), (IV), (V) and (VI), render advisory opinions on the requirements of said chapters. An opinion rendered by the commission, until and unless amended or revoked, shall be a defense in a criminal action brought under this and any other chapters and shall be binding on the commission in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; provided, however, that the commission shall publish such opinions, but the name of the requesting person and any other identifying information shall not be included in such publication unless the requesting person consents to such inclusion;

(2.11) act as the primary civil enforcement agency for violations of all sections of chapters (III), (IV), (V) and (VI).

(3) Investigations by the Commission/Preliminary Investigation

(3.1) Not later than ten days after the commission receives a sworn complaint signed under pains and penalties of perjury, or not later than ten days after the receipt of evidence deemed sufficient by the commission, the commission shall initiate a preliminary inquiry into any

alleged violation of any section of chapters (III), (IV), (V) or (VI). At the beginning of a preliminary inquiry into any such alleged violation, the commission shall notify the Attorney General of such action. The commission shall notify any person who is the subject of a preliminary inquiry of the existence of such inquiry within 30 days of commencement of the inquiry.

(3.1.1) All commission proceedings and records relating to a preliminary inquiry shall be confidential, except:

(3.1.1.1) the commission may turn over to the Attorney General, the appropriate U.S. District Attorney or a district attorney of competent jurisdiction, evidence which may be used in criminal proceedings; and

(3.1.1.2) if the complainant or alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party.

(3.2) If a preliminary inquiry fails to indicate reasonable cause for belief that any section of chapters (III), (IV),

(V) or (VI) have been violated, the commission shall immediately terminate the inquiry and so notify, in writing, the complainant, if any, and the alleged violator, except:

(3.2.1) if the investigation fails to indicate reasonable cause, the commission may, in writing, confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.

(3.3) If a preliminary inquiry indicates reasonable cause for belief that any section of chapters (III), (IV), (V) or (VI) have been violated, the commission may, upon majority vote:

(3.3.2) due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations

of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such a resolution, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator; or

(3.3.3) initiate an adjudicatory proceeding to determine whether there has been such a violation.

(3.4) For the purposes of carrying out a preliminary investigation according to section (3.1) and/or an adjudicatory proceeding, the commission may require by subpoena the attendance and testimony of witnesses and the production of books, papers and other records relating to any matter being investigated by it pursuant to this chapter or chapters (III), (IV), (V) or (VI). Such subpoenas may be issued by the chair or the majority of the members of the commission and shall be served in the same manner as subpoenas for witnesses in civil cases, and all provisions of law relative to subpoenas issued in such cases, including compensation of witnesses, shall apply to subpoenas issued by the commission. Upon petition by the commission, any superior court within the jurisdiction of which any inquiry is being carried on may, in case of

refusal to obey a subpoena or order of the commission, issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as contempt thereof.

(3.5) All testimony in a commission adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel and any other due process rights, privileges and responsibilities of a witness appearing before the courts of this state. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings. All witnesses shall be entitled to be represented by counsel.

(3.6) Any person whose name is mentioned during adjudicatory proceedings of the commission and who may be adversely affected thereby may appear personally before the commission on said person's own behalf, with or without attorney, to give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of proceeding.

(3.7) All adjudicatory proceedings of the commission carried out pursuant to the provisions of this section

shall be public, unless the members vote to go into executive session in accordance with [cite appropriate state statute].

(3.8) Within 30 days after the end of an adjudicatory proceeding pursuant to the provisions of this section, the commission shall meet in executive session for the purpose of reviewing the evidence before it. Within 30 days after completion of deliberations, the commission shall publish a written report of its findings and conclusions.

(3.9) The commission, upon a finding pursuant to an adjudicatory proceeding that there has been a violation of this chapter or chapters (III), (IV), (V) or (VI) may:

(3.9.1) issue an order requiring the violator to cease and desist such violation of this chapter or chapters (III), (IV), (V) or (VI);

(3.9.2) issue an order requiring the violator to file any report, statement or other information as required by section (4) of chapter (IV) and sections (1) and (2) of chapter (V);

(3.9.3) in writing, publicly reprimand the violator for potential violations of the law and provide a copy of

the reprimand to the alleged violator's appointing authority, if any;

(3.9.4) in writing, recommend to the violator's appointing authority of removal or suspension from office of violator, as well as a recommendation for length of suspension, to be approved by the appointing authority, if any;

(3.9.5) issue an order requiring the violator to pay a civil penalty of not more than $2,000 for each violation of this chapter or chapters (III), (IV), (V) and (VI).

(3.10) In addition to any other remedies provided by law, any violation of any section of chapters III and IV, inclusive, which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interests of the state and innocent third persons require.

(3.11) The state ethics commission may bring a civil action against any person who has acted to his/her economic advantage in violation of any section of chapters (III) and (IV), inclusive, and may recover on behalf of the state damages in the amount of three times the economic advantage

or $500, whichever is greater. If there has been no final criminal judgement of conviction or acquittal of the same violation, upon receipt of the written approval of the Attorney General, the state ethics commission may, at the discretion of the court, so recover additional damages in an amount not exceeding twice the amount of economic advantage or $500, and a judgment for such damages shall bar any criminal prosecution for the same violation.

(3.12) The commission may file a civil action in superior court to enforce such an order.

(3.13) The commission shall refer to the Attorney General violations of the law which in its opinion merit prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation. The commission may represent itself through the general counsel in all subsequent proceedings.

(3.14) Any final action by the commission made pursuant to this section (3) of this chapter shall be subject to review in superior court upon petition of any party in interest filed within 30 days after the action for which review is sought. The court shall enter a judgement enforcing, modifying or setting aside the order of the commission or

it may remand the proceeding to the commission for such further action as the court may direct.

(4) Whistleblower Protection

(4.1) A state agency or appointing authority shall not discharge, threaten, or otherwise discriminate against a complainant, or state employee or state official acting on behalf of a complainant, regarding compensation, terms, conditions, location, or privileges of employment because:

(4.1.1) the complainant, or state employee or state official acting on behalf of the complainant, reports or is about to report, verbally or in writing, a violation or a suspected violation of this act or because;

(4.1.2) a complainant, or state employee or state official acting on a behalf of the complainant, is requested by the commission to participate in an investigation, hearing, or inquiry held by the commission or any related court action;

(4.1.3) provided, however, that this section shall not apply to a complainant, or state employee or state official acting on behalf of a complainant, who knowingly makes a false report.

(4.2) A complainant, or state employee or state official acting on behalf of a complainant, who alleges a violation of section (4.1) may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of section (4.1).

(4.2.1) A court, in rendering a judgement in an action brought pursuant to this act, shall order, as the court considers appropriate, reinstatement of the complainant, or state employee or state official acting on behalf of the complainant, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

(5) Multi-year Reauthorization

(5.1) The state ethics commission is hereby authorized to carry out the provisions of this chapter with appropriations:

(5.1.1) not to exceed $_____ for the fiscal year ending _____;

(5.1.2) not to exceed $_____ for each of the five fiscal years thereafter.

III

ANTI-BRIBERY AND ANTI-EXTORTION

(1) Bribery

(1.1) No person may, other than as provided by law for the proper discharge of official duty, directly or indirectly give, offer, or promise anything of value, including, but not limited to a gift, favor or promise of future employment, to any state employee or state official, including members of his/her immediate family, or to any person who has been selected to be such an employee or official, including members of his/her immediate family, or any other person or entity, with intent:

(1.1.1) to influence any official act or any act within the official responsibility of such employee or official or person who has been selected to be an employee or official; or

(1.1.2) to influence an employee or official, or person who has been selected to be such an employee or official, to commit or aid in committing, or collude in,

or allow any fraud, or create the opportunity for commission of any fraud on a state agency; or

(1.1.3) to induce an employee or official, or person who has been selected to be such an employee or official, to do or omit to do any act in violation of his/her lawful duty.

(2) Extortion

(2.1) No state employee or state official, or a person selected to be such an employee or official, other than as provided by law for the proper discharge of official duty, may directly or indirectly ask, demand, exact, solicit, seek, accept, receive or agree to receive anything of value including, but not limited to a gift, favor or promise of future employment, for him/herself or any other person or entity, in exchange for:

(2.1.1) influencing his/her performance of any official act or any act within his/her official responsibility; or

(2.1.2) influencing him/her to commit or aid in committing, or collude in, or allow any fraud, or create opportunity for the commission of any fraud, on a state agency; or

(2.1.3) inducing him/her to do or omit to do any acts in violation of his/her official duty.

(3) Giving and Soliciting in General

(3.1) No person may, other than as provided by law for the proper discharge of official duty, directly or indirectly give, offer, or promise anything of value, including, but not limited to a gift, favor or promise of future employment, to any state employee or official, including members of his/her immediate family, or to any person who has been selected to be such an employee or official, including members of his/her immediate family, or any other person or entity, for, or because of, any official act performed or to be performed by such an employee or official, or person selected to be such an employee or official.

(3.2) No state employee or official, or person selected to be such an employee or official, other than as provided by law for the proper discharge of official duty, may directly or indirectly ask, demand, exact, solicit, seek, accept, receive or agree to receive anything of value including, but not limited to, a gift, favor or promise of future employment, for him/herself or any other person or entity, for, or because of, any official act or act within his/her official responsibility performed or to be performed.

(4) Limitations to this Chapter (III)

(4.1) Except as prohibited in sections (1), (2) and (3), nothing in this chapter shall prohibit any person from giving or receiving:

(4.1.1) an award publicly presented in recognition of public service; or

(4.1.2) commercially reasonable loans made in the ordinary course of the lender's business; or

(4.1.3) political contributions, consistent with applicable state law.

IV

RESTRICTED ACTIVITIES

(1) General Provision/Abuse of Office

(1.1) No state employee or state official may use his/her public office to obtain financial gain, other than compensation provided by law, whether for:

(1.1.1) personal gain;

(1.1.2) gain of state employee's or state official's immediate family; or

(1.1.3) gain of any business with which the state employee or state official is associated or any person or organization with whom the state employee or state official is negotiating or has any arrangement concerning prospective employment or has a financial interest.

(2) General Provision/Abuse of Information

(2.1) No state employee or state official may use or disclose, other than in the performance of official duties and responsibilities, or as may be required by law, confidential information acquired in the course of or by reason of such state employee's or official's position of employment, to obtain financial gain, other than compensation provided by law, whether for:

(2.1.1) personal gain;

(2.1.2) gain of state employee's or state official's immediate family; or

(2.1.3) gain of any business with which the state employee or state official is associated or any person or organization with whom one is negotiating or has any arrangement concerning prospective employment or has a financial interest.

(3) General Conflict-of-interest Provision

(3.1) No state employee or state official may participate as such in a particular matter concerning the state or a state agency in which the following has a financial interest:

(3.1.1) the state employee or state official;

(3.1.2) state employee's or state official's immediate family;

(3.1.3) a business with which the state employee or state official is associated; or

(3.1.4) any person or organization with whom the state employee or state official is negotiating or has any arrangement concerning prospective employment.

(3.2) Any state employee or state official so identified by section (3.1) whose duties would otherwise require the state employee or state official to participate in a particular matter concerning the state or a state agency shall advise the official responsible for appointment to the state employee's or state official's position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest. The appointing official shall thereupon either:

(3.2.1) assign the particular matter to another employee or official; or

(3.2.2) assume responsibility for the particular matter; or

(3.2.3) recommend the employee or official immediately eliminate any such financial interest as identified in section (3.1) and, only thereafter, continue to participate in the particular matter; or

(3.2.4) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the state or state agency of said employee or official may expect from the employee or official, in which case it shall not be a violation for the employee or official to participate in the particular matter. Copies of such written determination shall be forwarded to the employee or official and filed with the state ethics commission by the person who made the determination. The state ethics commission shall make such written determinations available to the public.

(3.3) Any legislator so identified by section (3.1) shall abstain from participating in such particular matters, including the drafting of and voting on special legislation, and shall disclose fully to the ethics commission and to the legislature the nature and

circumstances of the particular matter requiring action and the nature of the financial interest in conflict with such action.

(4) Conflict-of-interest Provision for High-level Officials

(4.1) Any high-level official, as defined in section (12) of chapter (I), except for legislators, who in the discharge of his/her official duties would be required knowingly to take action which would substantially affect such official's financial interests as determined by section (3) of this chapter, unless the effect on the official is no greater than on the general public, shall abstain from such required action and shall disclose fully to the ethics commission the nature and circumstances of the matter requiring action and the nature of the financial interest in conflict with such action.

(4.2) If the financial interests of a legislator are affected by any general legislation as determined by section (3), the legislator, unless the effect on the legislator is no greater than on the general public, prior to a vote on such legislation, shall disclose to the ethics commission and the legislature the matter requiring action and the nature of the financial interest in conflict with such action.

(5) Restrictions on Compensation and Representation

(5.1) No state employee or state official may, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the state or agency, in relation to any particular matter in which the state or a state agency is a party or has a direct and substantial interest.

(5.2) No person may, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(5.3) No state employee or state official may, otherwise than in the proper discharge of official duties, act as agent or attorney for him/herself or anyone other than the state or a state agency for prosecuting any claim against the state or state agency, or as agent or attorney for him/herself or anyone else in connection with any particular matter in which the state or a state agency is a party or has a direct and substantial interest.

(5.4) A member of the state legislature shall not be subject to paragraphs (5.1) or (5.3). However, no member of the state legislature may personally appear for any

compensation other than his/her statutory compensation for legislative duties before the state or any state agency, unless:

(5.4.1) the appearance is before a court of the state; or

(5.4.2) the particular matter before the state agency is ministerial in nature; or

(5.4.2.1) For the purposes of section (5.4.2), ministerial functions include, but are not limited to, the filing or amendment of:

* tax returns;
* incorporation papers;

(5.4.3) the appearance is in a quasi-judicial proceeding.

(5.4.3.1) For the purposes of this section (5.4.3), a proceeding shall be considered quasi-judicial if:

* the action of the state agency is adjudicatory in nature; and
* the action of the state agency is appealable to the courts; and

* both sides are entitled to representation by counsel and such counsel is neither the attorney general nor the counsel for the state agency conducting the proceeding.

(6) Contracts

(6.1) A state employee or state official may not have, directly or indirectly, a financial interest in or be a party to a contract made by a state agency in which the state or a state agency is an interested party, if the state employee or state official is employed in the contracting agency and the contract is under his/her official responsibility. This section shall not apply if:

(6.1.1) the state employee or state official in good faith and within 30 days after he/she learns of an actual or prospective violation of this section makes full disclosure of said employee's or state official's financial interests to the contracting agency and the state ethics commission and terminates or disposes of the interest; or

(6.1.2) the contract is made after public notice or where applicable, through competitive bidding, and if the state employee or state official files with the

state ethics commission a statement making full disclosure of said employee's or official's interest and the interests of said employee's or official's immediate family in the contract.

(7) Provision Concerning Employment of Relatives

(7.1) No state employee or state official shall employ or advocate employment in any state agency:

(7.1.1) any person who is a member of his/her immediate family;

(7.1.2) in exchange for or in consideration of the employment of any member of his/her immediate family by any other employee or official.

(7.2) No state employee or state official shall use or permit the use of his/her position to assist any member of his/her immediate family in securing employment or contracts with any state agency exercising contract authority over said employment or contract.

(8) **Post-employment Restrictions**

(8.1) No high-level official, as defined in section (12) of chapter (I), except members of the legislature, may, after retirement or termination of such employment:

(8.1.1) knowingly act as agent or attorney for, or otherwise represent any other person, except the state or a state agency, concerning any formal or informal appearance before; or

(8.1.2) knowingly make, with the intent to influence, any communication on behalf of any other person (except the state) to;

(8.1.3) the state or a state agency in connection with any particular matter in which the state is a party or has a direct interest and in which the official participated personally and substantially and which involved a specific party or specific parties at the time of such participation.

(8.2) No high-level official, as defined in section (12) of chapter (I), except members of the legislature, may, within two years of retirement or termination of such employment:

(8.2.1) knowingly act as agent or attorney for, or otherwise represent, aid, or advise any other person, except the state or a state agency, concerning any formal or informal appearance before; or

(8.2.2) knowingly make, with the intent to influence, any communication on behalf of any other person (except the state) to;

(8.2.3) the state or a state agency in connection with any particular matter in which the state is a party or has a direct interest and which was pending under his/her official responsibility and which involved a specific party or specific parties at the time it was so pending.

(8.3) A high-level official, as defined in section (12) of chapter (I), shall not, within one year of retirement or termination of such employment:

(8.3.1) act as agent or attorney or otherwise represent any person, other than the state or a state agency, in any formal or informal appearance before; or

(8.3.2) make, with intent to influence, any communication on behalf of any other person, other than the state or a state agency to;

(8.3.2.1) any agency of the state, except a court of law, in connection with any matter in which the state or a state agency is a party or has a direct interest, if the official is identified as "high-level" by sections (12.1) through (12.4) of chapter I.

(8.3.2.1) the agency of his/her former employment, in connection with any matter in which the state or a state agency is a party or has a direct interest, if the official is identified as "high-level" by sections (12.5) through (12.7) of chapter I.

(9) Restrictions on Acceptance of Honoraria

(9.1) No person while an elected or appointed officer or employee of the government shall accept any honoraria. The term "honoraria" means a payment of money or anything of value to such person for any appearance, discussion, speech or article by such person, or for travel and subsistence expenses in excess of any actual and necessary expenses in connection with such appearance, discussion, or speech.

V

FINANCIAL DISCLOSURE

(1) General Guidelines for Statement of Financial Interests

(1.1) Every candidate for public office shall file a statement of financial interest for the preceding calendar year with the commission on or before the date on which a certificate of nomination or nomination papers for such candidate are submitted to the state secretary.

(1.1.1) Every candidate for public office who has not filed nomination papers with the state secretary, but on whose behalf a statement of organization of a political committee has been filed with the director of campaign and political finance under section _____ and who is seeking public office by the so-called "write-in" or "sticker" method, shall, within three days after such filing, file a statement of financial interests with the commission.

(1.2) Every high-level official shall file a statement of financial interests for the preceding calendar year with the commission on or before the last Tuesday in May of each

year that such official holds such office and on or before May 1 of the year after such official leaves such office; provided, however, that no official shall be required to file a statement of financial interests for any year in which he/she held public office for less than eight days.

(1.3) The commission shall, upon receipt of a statement of financial interests pursuant to the provisions of this section, issue to the person filing such statement a receipt verifying the fact that statement of financial interests has been filed and receipted copy of such statement.

(1.4) No candidate for public office or high-level official shall be allowed to take the oath of office, enter or continue in his duties, or receive compensation from public funds unless he/she has filed a statement of financial interests with the commission as required by this chapter.

(1.5) The statement of financial interests filed pursuant to the provisions of this section shall be on a form prescribed by the commission and shall be signed under penalty of perjury by the reporting person.

(2) Content of Statement of Financial Interests

(2.1) Reporting persons shall disclose, to the best of their knowledge, the following information for the preceding calendar year, or as of the last day of said year with respect to the information required by sections (2.1.1) through (2.1.10) below; such persons shall also disclose the same information with respect to their spouse and dependent children:

(2.1.1) The name and address of, the nature of association with, the share of equity in, if applicable, and the amount of income if greater than $1,000 derived from such business with which the reporting person is associated; and, if the business or entity has done business with or been regulated by the state or any political subdivision thereof, the date and the nature of such business or regulation;

(2.1.2) The identity of all securities and other investments with a fair-market value of greater than $1,000 which were beneficially owned, not otherwise reportable hereunder; and the amount of income if more than $1,000 from any such security which is issued by the state or any political subdivision thereof or any public agency or authority created by the state legislature;

(2.1.3) Except as provided in section (2.1.3.1), the amount of holdings in and/or income from a trust or other financial arrangement received. The reporting individual need not report the holdings of:

(2.1.3.1) Any trust that was not created directly by the reporting person, his/her spouse or dependent child; or the holdings or income of which the reporting person, his/her spouse or dependent children have no knowledge.

(2.1.4) The name and address of each creditor to whom more than $1,000 was owed and the original amount, the amount outstanding, terms of repayment, and the general nature of the security pledged for each such obligation;

(2.1.5) The name and address of the source, and the cash value of any reimbursement for expenses aggregating more than $50 in the calendar year if the source of such reimbursement is a legislative agent; or if the recipient is a high-level official and the source of such reimbursement is a person having a direct interest in a matter before the state agency by which the recipient is employed;

(2.1.6) The name and address of the source, the date of receipt, and the fair market value of any gift received,

the value of which is in excess of $50; and the name and address of the source, the date of receipt, and the fair market value of a series of gifts from the same source received in the calendar year, the aggregate value of which exceeds $50, if the recipient is a high-level official and if the source is other than a member of his/her immediate family;

(2.1.7) The description, as appearing on the most recent tax bill, and the amount of assessed value of all real property located within the state, in which a direct or indirect financial interest was held, which has an assessed value greater than $1,000 and, if the property was transferred during the year, the name and address of the person furnishing consideration to the reporting person or receiving it from him or her in respect to such transfer;

(2.1.8) The name and address of any creditor who has forgiven an indebtedness of more than $1,000, and the amount forgiven; provided, however, that no such information need be reported if the creditor is a spouse, dependent child or member of his/her immediate family;

(2.1.9) The name and address of any business from which the reporting person is taking a leave of absence; the

name and address of the source, and the amount, of any severance payments received from any business from which the reporting person is taking a leave of absence or retiring to become a candidate for public office, assume a public office or a position as a public employee; or if the recipient is a high-level official and the source of such payment is a person having a direct interest in legislation, legislative action, or a matter before a state agency; or if the recipient is a high-level official and the source of such payment is a person having a direct interest in a matter before the state agency by which the recipient is/was employed;

(2.1.10) The identity of any equity in a business with which the reporting person is associated that has been transferred to a member of the reporting person's immediate family; provided, however, that a member of the reporting person's family need not report any such transfer to the reporting person.

(2.2) Nothing in this section shall be construed to require the disclosure of information which is privileged by law.

(2.3) A reporting person must file a statement of financial interests within 30 days after receiving notice as provided in section (2.8) of chapter (II). A reporting person must

file a complete statement of financial interests after receipt of such notice. Upon failure of reporting to fulfill either of these obligations, the commission may initiate appropriate proceedings pursuant to the provisions of section (3) of this chapter (II).

VI

RESTRICTIONS ON LEGISLATIVE AGENTS

(1) Giving and Legislative Agents

(1.1) No legislative agent shall knowingly and willfully offer or give any gift or gifts, act as an agent or intermediary in the giving of any gift or gifts, or arrange for the giving of any gift or gifts by any other person to a high-level official or a member of such person's immediate family, and no high-level official or member of such person's immediate family shall knowingly and willfully solicit or accept from any legislative agent, any gift or gifts, with an aggregate value of $50 or more in a calendar year, except when the source of such gift is a member of his/her immediate family.

(2) Prohibiting Contributions During the Legislative Session

(2.1) No legislative agent shall contribute to, act as agent or intermediary for contributions to, or arrange for the making of contributions to the campaign funds of any elected official during the legislative session.

VII

PENALTIES

AND

SEVERABILITY

(1) Penalties

(1.1) Any violation of a provision of any section of this act shall be punishable by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

(2) Severability

(2.1) If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of this act and the application of such provisions to other persons and circumstances shall not be affected thereby.

THE FOLLOWING DOCUMENT HAS

NOT BEEN FILMED BUT IS

AVAILABLE IN THE ORIGINAL

FILE

C O G E L

Council on Governmental Ethics Laws

Model Laws
Second Draft

For more information regarding COGEL, contact: Joyce Bullock, The Council of State Governments, P.O. Box 11910, Iron Works Pike, Lexington, Kentucky 40578-1910, (606) 231-1920.

200 Ethics, Conflict of Interest, and Personal Financial Disclosure

This is the Ethics, Conflict of Interest, and Personal Financial Disclosure Act.

202 Intent and Purpose

The proper operation of democratic government requires that a public official or employee be independent and impartial; that government policy and decisions be made through the established processes of government; that a public official or employee not use public office to obtain private benefits; that a public official or employee avoid action which creates the appearance of using public office to obtain a benefit; and that the public have confidence in the integrity of its government and public officials and employees.

Public office is a public trust. That trust is eroded by actions that appear to place the private interest of a public official or employee above the public good. This Act seeks to avoid the erosion of public confidence that arises through such conflicts or appearances of conflict, and to declare as public policy of this state that a public official or employee shall work for the benefit of the people of the state.

204 Definitions

204.01 "Anything of value" means the following:

(1) A pecuniary item, including money, or a bank bill or note.

(2) A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.

(3) A stock, bond, note, or other investment interest in an entity.

(4) A receipt given for the payment of money or other property.

(5) A right in action.

(6) A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel.

(7) A loan.

(8) A work of art, antique, or collectible.

(9) An automobile or other means of personal transportation.

(10) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within reality, a leasehold interest, or other beneficial interest in realty.

(11) A promise or offer of employment.

(12) Any other thing of value that is pecuniary or compensatory in value to a person, including a discount or transaction at less than fair market value.

204.02 "Business associate" includes the following:

(1) An employer.

(2) A general or limited partnership, or a general or limited partner within the partnership.

(3) A corporation:

(A) that is family-owned; or

(B) in which all shares of stock are closely-held;

or the shareholders, owners, or officers of the corporation.

(4) A corporation in which the public official or employee, or other person subject to the Act:

(A) has an investment interest;

(B) owns; or

(C) has a beneficial interest in shares of stock which constitute more than:

(i) five percent (5%) of the value of the corporation, or

(ii) [a specific dollar figure, probably $500 to $1,000].

(5) A corporation, business association, or other business entity in which the public official or employee, or other person subject to the Act serves as an agent or a compensated representative.

(6) An association not otherwise covered by this definition between the public official or employee, or other person subject to the Act, and another person, which involves the conduct of a common enterprise.

204.03 "Candidate" means an individual who seeks nomination or election to [state] office. An individual is a candidate when the individual:

(1) files a statement of candidacy or petition for nomination for office with the appropriate filing officer;

(2) is nominated for office by:

(A) a party at a primary;

(B) nominating convention; or

(C) petition for nomination;

(3) solicits or receives and retains contributions, makes expenditures, or gives consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when:

(A) the solicitation is made;

(B) the contribution is received and retained; or

(C) the expenditure is made; or

(4) is an officeholder who is the subject of a recall election.

COMMENT:

This section is intended to cover all persons who seek office at an election, regardless of the type of election by which the office is obtained. For example, a person seeking appointment by a political party caucus to fill a vacant office would be a candidate under this section. This definition also covers unannounced candidates who are accepting contributions or making expenditures in obvious furtherance of a candidacy.

204.04 "Change order" means a change in a contract term:

(1) not specifically provided for in the contract

(2) that authorizes or necessitates an increase or decrease in the cost of the contract or the time to completion.

204.05 "Charitable organization" means an organization described in 26 U.S.C. 170(c) as it currently exists or as it may be amended.

204.06 "Consultant" means an individual other than an elected official or public employee who contracts to:

(1) evaluate bids for public contracts; or

(2) award public contracts;

for the state or political subdivision.

204.07 "Economic interest" means an interest distinct from that of the general public in a state purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official or employee may gain an economic benefit of fifty dollars ($50) or more.

204.08 "Employee" means a person appointed to a position, paid or unpaid, in state, county, or municipal government, including members of the judiciary.

204.09 "Family member" means an individual:

(1) related to another individual by birth, marriage, or adoption; and

(2) who is the spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

204.10 "Informal representation" means a contact, including a request for information, whether in person, by mail, or by telephone, made with a state or local agency official or employee on behalf of a client or constituent.

204.11 "Judge" means an official who presides over a state, county, or municipal court [or an administrative law tribunal].

204.12 "Kickback" means money, fee, commission, credit, gift, gratuity, thing of value, or compensation provided, directly or indirectly, to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee for improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

204.13 (a) "Local entity" means a local or regional government office, department, division, bureau, board, or commission.

(b) The term does not include a court.

204.14 "Negotiating" or "negotiate for employment" means a communication, directly or indirectly, with a prospective employer to discuss rendering services for compensation to that prospective employer.

204.15 "Negotiation for employment" means the period that begins with a communication to a prospective employer to discuss rendering services for compensation to the prospective employer.

204.16 "Occasional" means occurring no more than:

(A) six (6) times a year; and

(B) one (1) time per month.

204.17 "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.

204.18 "Participation" includes decision, approval, disapproval, recommendation, the rendering of advice, or vote.

204.19 "Particular matter" includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, rulemaking, or legislation.

204.20 "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

204.21 "Prime contractor" means a person who has entered into a public contract.

204.22 "Prime contractor employee" means an officer, employee, or agent of a prime contractor.

204.23 "Public contract" means a contract for goods, services, or construction let by a unit of state or local government.

204.24 "Public member" means a member appointed appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses and a per diem payment for services.

204.25 (a) "Public official" means an individual elected to a state, county, or municipal office, or an individual who is appointed to fill a vacancy in the office. The term includes a member of the [board of regents or trustees, chancellor and vice chancellor or equivalent of the state university system, and a president of a state university].

(b) The term does not include a public member of an advisory board, commission, or council.

204.26 "Remunerable activity" means a service for which a person receives payment in the form of a wage, salary, or other goods or services.

204.27 "Representation" means an appearance before a state or local entity whether gratuitous or for compensation.

204.28 "Sheltered market" has the meaning ascribed to it in Section 2 of the federal Minority and Female Business Enterprise Act as it currently exists and as it may be amended.

204.29 (a) "State entity" means a state agency, office, department, division, bureau, board, commission, or council, including the legislature.

(b) The term does not include a court or an agency in the judicial branch.

204.30 "Subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for obtaining goods or services under a prime contract.

204.31 "Subcontractor" means:

(1) a person, other than the prime contractor, who offers to furnish or furnishes goods or services under a prime contract or a subcontract entered into in connection with the prime contract; and

(2) a person who offers to furnish or furnishes goods or services to the prime contractor or a higher tier subcontractor.

204.32 "Subcontractor employee" means an officer, employee, or agent of a subcontractor.

204.33 "Substantial value" means a monetary value of fifty dollars ($50) or more, if a monetary value is ascertainable, or if a monetary value is not ascertainable, anything of more than nominal value.

204.34 "Unit of state or local government" means the state or a unit or agency of state government; a county or municipal government or committee or an agency of county or municipal government; or any other entity funded by or expending tax dollars or the proceeds of publicly guaranteed bonds.

204.35 "Unwarranted privilege" means a privilege, treatment, or advantage not available to others on an equal basis.

206 Agency Organization

206.01 Establishment and Composition of the Agency

(1) The agency is established as an independent authority.

(2) The agency consists of five (5) members. The members are appointed by the governor from a panel of ten (10) individuals nominated by the chief justice of the [state court of last resort]. A member of the agency must be a citizen of the United States and a resident of this state. A member of the agency shall not be:

(A) a public official;

(B) a public employee; or

(C) a candidate;

while a member of the agency.

(3) A member of the agency serves a term of four (4) years. However, the intial members of the agency serve the following terms:

(A) One (1) member serves a term of one (1) year.

(B) One (1) member serves a term of two (2) years.

(C) One (1) member serves a term of three (3) years.

(D) Two (2) members serve a term of four (4) years.

(4) An individual may not serve more than two (2) consecutive terms as a member of the agency. A member of the agency continues in office until a successor is appointed and has qualified.

206.02 Election and Duties of the Chair and Vice Chair

The chair and vice chair of the agency are elected by the members of the agency. The chair and vice chair serve a term of one (1) year, and may be re-elected. The chair presides at meetings of the agency. The vice chair presides in the absence or disability of the chair.

206.03 Agency Meetings

The agency meets at the call of the chair or a majority of its members. A quorum consists of three (3) or more members. An affirmative vote of three (3) or more members is necessary for an agency action.

206.04 Filling of a Vacancy

A vacancy is filled for the remainder of an unexpired term in the same manner as an original appointment, except that the chief justice of the [state court of last resort] shall nominate two (2) individuals for gubernatorial appointment to a vacancy.

206.05 Removal of a Member

The governor may remove or suspend a member of the agency upon filing with the agency a written finding of the member's misfeasance or malfeasance, and upon serving a copy of the written finding on the member removed or suspended.

206.06 Expenses for Agency Members

A member of the agency serves without compensation, but is afforded actual and necessary expenses incurred in the performance of duties.

206.07 Agency Staff

(1) The agency may employ and remove the persons necessary to perform its functions.

(2) An executive director shall administer the daily business of the agency, and perform the duties assigned by the agency.

(3) The agency shall fix the compensation of its employees. The staff of the agency is outside of the [classified state service]. A member of the staff of the agency shall not be:

(A) a public official; or

(C) a candidate;

while a member of the staff of the agency.

206.08 Filing of Statement of Financial Disclosure

A member and an employee of the agency shall file a statement of financial disclosure with the agency.

206.09 Prohibition on Political Activity by Agency Members and Staff

A member of the agency and its staff shall not participate in political management or in a political campaign during the member or employee's term of office or employment. A member of the agency and its staff shall not:

(1) make a financial contribution to a candidate;

(2) make a financial contribution to a political committee; or

(3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

206.10 Prohibition on Lobbying Activity by Agency Members and Staff

(1) A member of the agency and its staff may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist, unless the lobbying activities are:

(A) authorized by the agency;

(B) conducted on behalf of the agency; and

(C) permitted under state law.

208 Agency Authority

208.01 General Powers of the Agency

Except as expressly provoded otherwise, the agency is responsible for administering the provisions of this chapter. The agency shall have the power and duties set forth in this Act.

208.02 Issuance of Advisory Opinions

(1) The agency may render advisory opinions concerning this Act based upon real or hypothetical circumstances, when requested in writing by:

(A) a public official or employee; or

(B) a person who is personally and directly involved in the matter.

(2) An advisory opinion must be made available to the public, but the identity of the person requesting the opinion and of a person whose conduct is involved in the circumstances described in the request for opinion, is confidential.

208.03 Conduct of Investigations

(1) The agency may conduct investigations, inquiries, and hearings concerning any matter covered by this Act and certify its own acts and records. In investigating complaints of violations of this Act, the agency by a two-thirds (2/3) vote, may request the issuance of a subpoena in accordance with state law.

(2) The agency may determine whether to:

(A) investigate; and

(B) act upon a complaint.

When the agency determines that assistance is needed in conducting investigations, or when required by law, the agency shall request the assistance of other appropriate agencies.

208.04 Adoption of Rules

The agency shall adopt, amend, repeal, and enforce rules to implement this Act.

208.05 Prescription of Forms and Preservation of Documents

The agency shall prescribe and provide forms for reports, statements, notices, and other documents required by this Act. Documents filed with the agency as public records must be retained for at least four (4) years from the date of their receipt.

COMMENT:

States should check this provision against other provisions of state law which govern retention of records. Most states have a general statute which covers the retention and disposition of public records.

208.06 Review of Statements

The agency shall:

(1) review each statement filed in accordance with this Act for compliance with its provisions; and

(2) notify the individual on whose behalf the statement is filed of an omission or deficiency.

208.07 Access to Statements

(1) The agency shall make statements and reports filed with the agency available upon the written request of an individual for public inspection and copying during regular office hours. The agency shall make copying facilities available free of charge or at a cost not to exceed actual cost. A statement may be requested by mail, and the agency shall mail a copy of the requested statement to the individual making the request upon payment of appropriate postage costs.

(2) The agency shall forward a copy of the request to the person whose statement has been examined.

208.08 Maintenance of Statements

The agency shall compile and maintain an index of reports and statements filed with the agency to facilitate public access to the reports and statements.

208.09 Access to Information for Investigations

The agency may require the cooperation of a state agency, official, employee, and other person whose conduct is regulated by this Act. An individual shall make information reasonably related to an investigation available to the agency on written request.

208.10 Annual Report of the Agency

No later than [December 1] of each year, the agency shall report to the legislature and the governor on the agency's activities in the preceding [fiscal] year. The report must contain the names and duties of each individual employed by the agency, and a summary of agency determinations and advisory opinions. The agency shall prevent disclosure of the identity of a person involved in the [decisions or] opinions. The report may contain other information on matters within the agency's jurisdiction and recommendations for legislation as the agency deems desirable.

208.11 Publication of Information

The agency shall publish and make available to the persons subject to this Act and the public explanatory information concerning this Act, the duties imposed by it, and the means for enforcing it.

208.12 Research and Educational Outreach

The agency may:

(1) conduct research concerning state governmental ethics; and

(2) implement the educational programs it considers necessary to effectuate this Act.

208.13 Oaths and Subpoenas

The agency may:

(1) administer oaths and affirmations for the testimony of witnesses; and

(2) issue subpoenas, subject to judicial enforcement, for the procurement of witnesses and materials relevant to the agency's investigations, including books, papers, records, documents, or other tangible objects.

208.14 Local Rules

The agency shall rules governing state government conflicts of interest, financial disclosure, and lobbyist regulation. The rules may be adopted by a local jurisdiction or imposed upon a local jurisdiction under this Act.

208.15 Other Duties

The agency may perform the other acts, duties, and functions authorized by this Act that it deems appropriate in connection with this Act.

210 Complaints

210.01 Complaints Initiated by an Individual

(1) The agency shall accept from an individual, either personally or on behalf of an organization or governmental body, a verified complaint in writing that states the name of a person alleged to have committed a violation of this Act, and sets forth the particulars of the violation.

(2) The agency shall forward a copy of the complaint and a general statement of the applicable law with respect to the complaint to the respondent.

(3) If the agency determines that the complaint does not allege facts sufficient to constitute a violation of the Act, it shall dismiss the complaint and notify the complainant and the respondent. If the agency determines that the complaint alleges facts sufficient to constitute a violation of the Act, an investigation may be conducted with respect to an alleged violation.

210.02 Complaints Initiated by the Agency

(1) If the agency determines that information the agency has received:

(A) provides an adequate basis for the belief that a violation of the Act has been committed; or

(B) that an investigation of a possible violation is warranted;

an investigation may be conducted with respect to an alleged violation.

(2) If the agency, during the course of an investigation, or upon the receipt of information finds probable cause to believe that a violation of the Act has occurred, it may, upon its own motion, make a complaint in writing, stating the name of the person who is alleged to have committed a violation of the Act, and set forth the particulars thereof. A complaint initiated by the agency must be signed by two-thirds (2/3) or more of the members of agency.

(3) The agency shall forward a copy of the complaint, and a general statement of the applicable laws with respect to the complaint to the respondent.

210.03 Amendment of Complaints

(1) If a verified complaint has been filed, or if the agency has issued its own complaint, and subsequently the agency finds probable cause to believe that a violation of the Act has occurred, other than an alleged violation in the complaint, the agency may amend the complaint upon its own motion to include the violation.

(2) An amended complaint issued by the agency must be signed by two-thirds (2/3) or more of the members of agency. The agency shall forward a copy of the amended complaint, and a general statement of the applicable laws with respect to the amended complaint to the complainant and respondent.

210.04 Right to Appear

The agency shall afford a public official or employee who is the subject of a complaint an opportunity to explain the conduct alleged to be in violation of the Act. A public official or employee who is the subject of a complaint has the right to appear and be heard [under oath] and to offer information which may tend to exonerate the public official or employee of probable cause to believe that there has been a violation of the Act.

210.05 Right to Request an Investigation of One's Own Conduct

A public official or employee may request the agency to make an investigation of the public official or employee's own conduct, or of allegations made by another individual as to the public official or employee's conduct. This request must be in writing and set forth in detail the reasons for requesting an investigation.

210.06 Statute of Limitations

Action may not be taken on a complaint filed more than three (3) years after the violation of the Act is alleged to have occurred.

210.06 Use of Information in a Criminal Proceeding

Notwithstanding [the provisions of a state confidentiality law], the agency shall turn over to an appropriate government agency [upon request or as a matter of course], evidence that may be used in a criminal proceeding.

COMMENT:

This section requires the agency to make available to an appropriate government official or agency information that may be used in a criminal proceeding. The question that the state needs to resolve is whether this information should be turned over to such an entity automatically, or only after the material has been requested of the agency. Automatic release of materials may promote more prosecutions, for the appropriate prosecutorial authorities may be unaware of certain transgressions without such notice. Release upon request would serve to reduce the burden on prosecutorial authorities, for thy would then only be required to look into more information on the investigations that they had initiated.

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212 Investigations and Hearings

212.01 Authorization to Conduct an Investigation

Before the agency may subpoena a witnesses, administer oaths, take testimony, or require the production for examination of books or papers with respect to an investigation or hearing, it shall, by resolution adopted by a vote of at least two-thirds (2/3) of its members, define the nature and scope of its inquiry.

COMMENT:

This section requires the agency to define the scope of a proceeding at its outset. The question that the state needs to resolve is whether this definition of the nature and scope of the inquiry is to be limiting or advisory. If the former, the resolution should be drawn as broadly as possible, or made subject to later amendment. If the latter, there should be some specificity to guard against the proverbial government witchhunt.

212.02 Agency Investigatory Powers

In an investigation or hearing conducted under this section, the agency may do the following:

(1) Require an individual to submit in writing verified reports and answers to questions relevant to the proceedings conducted under this section.

(2) Administer oaths and require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to the investigation or hearing being conducted.

(3) Order testimony taken by deposition before an individual designated by the agency who has the power to administer oaths, and, to compel such testimony and the production of evidence by subpoena.

(4) Pay witnesses the same fees and mileage reimbursement paid in similar circumstances by the courts of the state.

(5) Request and obtain from the [state department of taxation or revenue] copies of state income tax returns and access to other appropriate information regarding a person who is the subject of an investigation.

(6) Request the respondent's attendance at a meeting [or hearing] of the agency conducted to obtain further information from the respondent.

212.03 Enforcement of Subpoenas

Enforcement of subpoenas issued by the agency may be effected by written application of the agency to a [local court] judge.

212.04 Probable Cause of Violation

(1) At the conclusion of its investigation, the agency shall, in preliminary written decision with findings of fact and conclusions of law, make a determination of whether probable cause exists to believe that a violation of the Act has occurred. If the agency determines that probable cause does not exist, it shall send written notice of the determination to the respondent and the complainant. The written notice of no probable cause must be in the form of a written decision with findings of fact and conclusions of law.

(2) If the agency determines that there is probable cause to believe that a violation of the Act has been committed, its preliminary decision with findings of fact and conclusions of law may contain an order setting forth a date for hearing before the agency to determine whether a violation of the Act has occurred. The order shall be served upon the respondent. The respondent is entitled to full discovery rights before a hearing is ordered, including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.

(3) If the agency finds probable cause to believe that a violation of the Act has occurred, the agency may waive further proceedings because of action the respondent takes to remedy or correct the alleged violation. The agency shall make the remedial or corrective action taken by the respondent, the agency's decision in light of the action to waive further proceedings, and the agency's justification for its decision, a part of the public record.

212.05 Hearing Procedures

(1) The agency may appoint a qualified individual as a hearing examiner. The hearing examiner must:

(A) be a member of the bar of the state;

(B) not be an elective official or a full-time employee of the executive or legislative branch; and

(C) not be a member or employee of the agency.

(2) The hearing examiner shall conduct a hearing or rehearing under this section in accordance with the [requirements of the state administrative procedure act], except as otherwise expressly provided.

(3) During an investigation or hearing to determine whether a violation of the Act has occurred, the respondent may be represented by counsel of the respondent's choice.

(4) The respondent has the following rights:

(A) To be afforded an opportunity to challenge the veracity and sufficiency of a complaint filed against the respondent.

(B) To present witnesses, who shall be subpoenaed by the agency to compel attendance upon the respondent's request.

(C) To establish pertinent facts and circumstances;

(D) To rebut or offer countervailing evidence;

(E) To question or refute testimony or evidence, including the opportunity to confront and cross-examine an adverse witness.

(F) To exercise fully any pretrial discovery procedure usually available in a civil action.

(5) During an agency hearing conducted to determine whether a violation of the Act has occurred, all evidence, including records the agency considers, shall be fully offered and made a part of the record in the proceedings.

(6) A person whose name is mentioned or who is otherwise identified during an agency hearing, and who, in the opinion of the agency, may be adversely affected as a result, may, upon the request of the person or the person's representative:

(A) appear personally before the agency and testify on the person's own behalf;

(B) have a representative appear to testify; or

(C) rebut or offer countervailing evidence.

The agency may permit any other person to appear and testify at a hearing.

(7) The agency shall not be bound by the strict rules of evidence when conducting a hearing to determine whwther a violation of this Act has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

(8) After the conclusion of its hearing, the agency shall, as soon as practicable:

(1) begin deliberations on the evidence presented at the hearing; and

(2) determine whether the respondent has violated the Act.

(9) If a hearing officer is appointed and a majority of the members of the agency are not present at the hearing, the agency shall not begin deliberations until after:

(A) the proposed decision is served upon the agency and the parties; and

(B) an opportunity is provided for oral arguments.

(10) A hearing to determine whether there has been a violation of the Act must be public, unless the agency votes to hear the evidence in executive session.

(11) A member of the agency may administer oaths. A member of the agency may hear testimony or receive other evidence in a proceeding before the agency.

212.06 Orders and Recommendations

(1) No later than [a reasonable time] after the conclusion of a hearing to determine whether a violation of the Act has occurred, the agency shall set forth its determination in a written decision with findings of fact and conclusions of law. The agency shall send its written decision with findings of fact and conclusions of law to the respondent and complainant.

(2) If the agency determines that a violation of the Act has occurred, its written decision with findings of fact and conclusions of law must contain one (1) or more of the following orders or recommendations:

(A) In the case of a state official liable to impeachment, a recommendation to the presiding officer of each chamber of the legislature that the official be removed from office.

(B) In the case of a public official or employee in the [classified or unclassified] service, a recommendation to the apppropriate appointing authority that the public official or employee be censured, suspended, or removed from office or employment.

(C) In the case of a member of the state legislature, a recommendation to the presiding officer of the appropriate chamber of the legislature that the legislator be censured, suspended, or removed from office.

(D) In the case of a judge, a recommendation to the [state court of last resort] and to the presiding officer of each chamber of the legislature that the judge be censured, suspended, or removed from office.

(E) An order requiring the public official or employee to conform the official or employee's conduct to the requirements of the Act.

(F) An order requiring the public official or employee to pay a civil penalty of not more than [$2,000] for each violation of the Act. The attorney general, when requested by the agency, shall institute proceedings to recover a fine or forfeiture incurred under this section not paid by, or on behalf of, the person against whom it is assessed.

(G) Other recommendations or orders, including forfeiture of receipts or profits obtained through a violation of the Act, as necessary and appropriate, consistent with the Act.

(3) A fine imposed by the agency, disciplinary action taken by an appropriate authority, or a determination not to take disciplinary action made by an appropriate authority is public record.

(4) This section does not limit the power of:

(A) either chamber of the legislature to discipline its own members or to impeach a public official; or

(B) of a department to discipline its officials or employees.

212.07 Rehearings

(1) After the service upon the alleged violator by the agency of a decision under section 212.06 containing an order or recommendation, the respondent may apply to the agency for a rehearing with respect to a matter determined in the decision.

(2) An application for a rehearing is governed by rules established by the agency. The agency may grant one (1) rehearing to a particular respondent.

(3) An agency order may not become effective:

(A) before twenty (20) days after it is issued;

(B) while an application for rehearing or a rehearing is pending; or

(C) before ten (10) days after the application for rehearing is either denied, or the agency has announced its final determination on rehearing.

212.08 Action by the Attorney General

(1) The attorney general may recover a fee, compensation, gift, or profit received by a person as a result of a violation of the Act.

(3) Action taken by the attorney general under this subsection must be brought no later than one (1) year after a determination of a violation of the Act.

212.09 Appeal

A final action by the agency under this Act is subject to review in accordance with the [state administrative procedure act].

212.10 Settlement Agreements

A public official or employee under investigation by the agency for a possible violation of the Act may enter into a settlement agreement with the agency to resolve the matter to preclude further proceedings or hearings. A settlement agreement is a matter of public record.

212.11 Authentication of Agency Actions

A decision or advisory opinion of the agency must be in writing and signed by at least two-thirds (2/3) of the members of the agency.

212.12 Public Inspection of Records

(1) Except as provided in subsection (2) below, all agency records are open for public inspection during normal business hours.

(2) The following agency records are not open for public inspection:

(A) Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity of the individual requesting the information, or the governmental entity or organization on whose behalf the opinions are requested. The agency may make records described by this subdivision public with the consent of the individual requesting the advisory opinion, or the governmental entity or organization on whose behalf the opinions are requested.

(B) Records obtained or prepared by the agency in connection with an investigation or complaint. However, the agency shall permit inspection of the following:

(i) Records made public in the course of a hearing.

(ii) Verified complaints filed with the agency.

(iii) Complaints issued by the agency.

(iv) Probable cause decisions with findings of fact and conclusions of law.

(v) Decisions with findings of fact and conclusions of law issued after a hearing.

(vi) A determination made by the agency regarding a rehearing.

(vii) A settlement agreement entered into by the agency and a respondent.

(3) A person who makes or purports to make public the substance or a portion of an advisory opinion requested by or on behalf of the person has waived the confidentiality of the request for an advisory opinion, and of a record obtained by the agency in connection with the request for an advisory opinion.

(4) The agency may publicly respond to a statement or interpretation made concerning the contents of an advisory opinion or decision it has issued or is purported to have issued.

212.13 Cooperation of Other State Entities

The agency may request and shall receive from every officer, department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, cooperation and assistance in the performance of its duties.

212.14 Publication of Decisions and Opinions

The agency shall publish its decisions and opinions annually. The agency shall make sufficient deletions in published advisory opinions to prevent the disclosure of the identity of the persons involved in the situations presented in the opinions.

212.15 **Freedom from Reprisal for Disclosure of Improper Acts**

(1) A public official or employee who reports or attempts to report to the agency or the official or employee's department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, information concerning an action that the public official or employee reasonably believes to involve:

(A) corruption;

(B) unethical practices;

(C) violation of federal, state, or local laws or regulations;

(D) mismanagment;

(E) gross waste of public funds;

(F) abuse of authority;

(G) danger to the public safety; or

(H) other alleged acts of impropriety;

within a state department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, may not be subject to discipline or reprisal for reporting the acts of alleged impropriety to the extent that the public official or employee is not directly responsible for the acts complained of.

(2) A public official or employee shall not subject a person who reports to a government entity or the agency information concerning an action the person reasonably believes is a violation of the Act, or of any order, or rule, issued by the agency to reprisal or retaliation.

(3) A public official or employee who is discharged, disciplined, or otherwise penalized by a government employer in violation of this section may, after exhausting all available administrative remedies, bring a civil action, no later than ninety (90) days after the date of the final administrative determination or not later than ninety (90) days after the violation, whichever is later, in [district-level] court for:

(A) reinstatement to the position held at the time of the dsiclosure;

(B) payment of back wages and benefits; and

(C) other relief as the public official or employee may deem appropriate or necessary.

(4) An employee found to have knowingly made a false report shall be subject to disciplinary action which may include dismissal.

COMMENT:

An individual, particularly a public employee, should be free to speak out on issues relating to fraud, waste, and abuse in government without fear of retaliation through demotion, transfer, cut in pay, or an unsatisfactory performance review. This provision permits a public employee or any person to disclose alleged improprieties without reprisal by the government. Safeguards for reinstating an employee and discouraging willful misconduct through making false accusations are also included.

212.16 Copy of the Act to be Furnished to Public Officials and Employees

(1) Each public official and employee shall receive a copy of this Act [notice of amendments,] and a brochure describing the general application of the Act before January 15 of each year, from the public official or employee's department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, upon assuming the duties of office or position within state government.

(2) The [jurisdiction] may choose to assume the responsibility for the distribution of the Act for appropriate public officials and employees under subsection (1) above if it annually includes a copy of the Act with each official or employee's paycheck or statement of electronic funds transfer.

214 Use of Title and Prestige of Public Office

A public official or employee shall not use the public official or employee's title or the prestige of the public official or employee's office to give the public official or employee or any other person unwarranted privilege, including the following:

(1) Seeking employment or contracts for goods or services.

(2) Conducting private business activities or activities for private financial gain.

(3) Endorsing or assisting a political party or a candidate for elective office.

(4) Soliciting campaign support or assistance, including money or votes, for a political party or a candidate for elective office.

(5) Seeking to provide an endorsement or advantage for an individual or entity that is not a part of the public official or employee's regular business on behalf of the [jurisdiction].

COMMENT:

The objective of this section is to prohibit government officials from affording themselves and others unwarranted advantages by the inappropriate use of official title or prestige of office. Because of the power and authority of government, prestige often accompanies public office. This prestige generally manifests itself when public officials refer to their official titles or to their positions in government. When carrying out the business of government, a public official's use or mention of his or her official title or affiliation with a government entity is, of course, proper and necessary. To recognize this, but to also prevent the misuse of titles and prestige, some distinction must be drawn between the proper and improper use of title and prestige of office.

A reference to a public official or employee's official title or position when dealing with non-governmental matters may give the erroneous impression of governmental approval or acquiescence to such matters, possibly resulting in unwarranted enhancement of those affairs.

The section particularly focuses upon the misuse of the prestige of office for commercial and political purposes. This section prohibits trading on the office for commercial purposes regardless of whether the public official or employee receives any pecuniary benefit. Thus, at least arguably, an individual elected President of the United States could not appear in an advertisement--with or without compensation--taped at the President's inauguration which quotes the President as saying the first thing he or she wants to do is to "Visit Disney World." However, appearance in a public service advertisement would not be prohibited.

The endorsement of political parties and candidates for public office by most public officials and employees is constitutionally protected, commonplace, and would not be proscribed by this section. Rather, this section would serve to temper these endorsements by playing down the public servant's government affiliation and emphasizing instead the individual. Thus, an advertisement for a Massachusetts candidate running during the 1988 campaign would not say that the candidate was "endorsed by the Governor of Massachusetts," or "endorsed by Governor Dukakis," but would instead read that the candidate was "endorsed by Michael Dukakis."

The language in this section is not intended to prohibit someone from writing a routine letter of reference or recommendation for employment in response to a request from an individual for a friend, acquaintance, or colleague, if it is done in good faith, but it is intended to keep a public official or employee from trading on his or her government service to, for example, write a letter to a judge urging a reduced criminal sentence for someone.

This section will, of necessity, be difficult to police and will have to be enforced on a subjective, rather than objective, basis. There also may be serious constitutional questions as to its effect on regulating free speech.

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216 Restraints on Use of Public Position to Obtain Private Benefit

(1) A public official or employee shall not use or attempt to use the public position to obtain private financial gain, contract, employment, license, or other personal or private advantage, direct or indirect, for the public official or employee, for a relative, or for an entity in which the public official or employee has a present or potential economic interest.

(2) A public official or employee, or a former public official or employee, shall not disclose or use for the public official or employee, or a former public official or employee's own economic benefit, or that of another person, confidential information acquired by the public position or employment that is not generally available to the public.

COMMENT:

This section is unique in that former officials and employees are included in the confidential information section.

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218 Restraints on Private Actions of Public Officials and Employees

(1) A public official or public employee, or a member of the immediate family or a business associate of a public official or public employee, shall not solicit or accept anything of value, or the promise or offer of anything of value, from:

(A) a person regulated by or providing goods or services to, the government entity that the public official or employee serves;

(B) a person who has offered, or expressed an intention to provide, goods or services to the government entity that the public official or employee serves; or

(C) a person who was regulated by, or provided goods and services to, the government entity that the public official or employee serves, when circumstances show that the thing of value was promised or offered to or received by the public official within a reasonable period of time after the termination of a relationship between the person and the government entity.

(2) A public official or employee shall not solicit or accept anything of value, other than allowed under this Act, to perform the official or employee's public duties and responsibilities. This provision does not prohibit a government entity from receiving donated funds, goods, or services, except if the donated funds, goods, or services are given to the government entity with the specified purpose of compensating identified public officials or employees, or their respective positions.

220 Restraints on Use of Public Position to Obtain Benefits for Business or Social Acquaintances

(1) A public official or employee shall not participate in a particular matter involving the public official or employee's agency:

(A) in a manner or under circumstances that the public official or employee knows or reasonably should know that the official or employee's participation in the particular matter may substantially influence the particular matter; and

(B) the public official or employee has actual knowledge that a business associate or a person with whom the public official or employee has a personal, financial, or other non-business relationship has an economic interest in the particular matter, or may receive an unwarranted privilege as a result of the official or employee's participation.

(2) In addition to any other penalty provided in this Act, a particular matter entered into in violation of subsection (1) may be cancelled or rescinded by the agency upon its finding that:

(A) a violation occurred;

(B) the violation substantially influenced the particular matter;

(C) the public interest would be served; and

(D) the cancellation or rescission may be accomplished in a manner that would not adversely affect the interests of an innocent third party.

COMMENT:

This section is designed to curb what is commonly referred to as "cronyism." Examples of cronyism include a public official manipulating bid specifications to ensure that his fraternity brother gets a contract; hiring the daughter of a next door neighbor, even though she is not qualified for the job; purchasing a building through a real estate agent who is a personal friend ands who will receive a hefty commission; and leasing office space for a state agency from a large campaign contributor.

Cronyism tends to erode public confidence and perpetuate the belief that "it's not what you know, but who you know" that leads to government contracts or jobs. Cronyism may also result in major financial losses to government by promoting unnecessarily expensive contracts or hirings.

Although cronyism may be instantly recognizable, it is not so easily defined. The problem involves highly subjective relationships that only broaddefinitions reach. Any statute seeking to legislate against cronyism may therefore be subject to criticism as being overly broad and unconstitutionally vague.

The issue is further complicated by the recognition that many public officials, especially elective officials, have a wide range of acquaintances, and, in fact, it is probably because of their broad-based popularity that they hold the positions that they do. Thus, it is almost impossible to legislate as to these social relationships.

In drafting this section, an attempt was made to detail specific types of relationships, but because the process was so flawed, the term "significant non-governmental personal relationship" was instead substituted, anticipating refinement on a case-by-case basis.

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222 Restraints on Private Actions of Candidates, Nominees, Designees, and Officials-Elect

224 Restraints on Nepotism

(1) A public official or employee shall not:

(A) employ;

(B) appoint;

(C) promote;

(D) transfer; or

(E) advance

to an office or position of the state, county, municipality, or political subdivision, or supervise or manage a member of the public official or employee's household or an immediate family member, except upon the approval of the agency.

(2) This section does not apply to an employee who has been employed in the same division of an office or department before the immediate family member became a public official or employee with the authority to make the appointment, employment, or promotion decision.

(3) An employee exempted under subdivision (2) may not be promoted, advanced, transferred, or appointed to another office within the same division of an office or department by the public official or employee who is an immediate family member.

COMMENT:

This section prohibits the hiring, advancement, transfer, or appointment of a family member related to a public official or employee who has supervisory or management control over that person.

An exception is made for a person already serving in the position prior to the election or hiring of the supervisor or manager. However, if the exception applies, the supervisor or manager could not participate in personnel actions affecting that family member.

The agency is afforded the authority to grant an exemption. Approval should not be routinely granted, and should be based upon the professional needs of the government entity. Some small units of goevrnment find it difficult to avoid granting exemptions due to the limited number of individuals willing to serve.

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226 Restraints on Use of Public Facilities, Supplies, Services, Time, and Personnel for Campaign Activities

(1) A public official or employee shall not use public funds, time, personnel, facilities, or equipment for the public official or employee's private gain or that of another unless the use is authorized by law.

(2) A public official or employee shall not use public funds, time, personnel, facilities, or equipment for political or campaign activity unless the use is:

(A) authorized by law; or

(B) properly incidental to another activity required or authorized by law.

(3) The agency may adopt rules specifying examples of political or campaign activity permissible or not permissible under this section.

COMMENT:

This section deals with two areas of misconduct. Section 226(1) covers situations where an employee or official is improperly using public resources for personal gain or that of another. Many states currently have some form of this proohibition by statute, personnel rule, or legal opinion. In recent years, states have become more involved in economic development activities that involve using state resources to assist private endeavors. The modifying language allowing the use of public resources where authorized by law recognizes this activity by providing for possible exceptions to the prohibition. One drafting alternative would be to limit vagueness by inserting the word "misuse" in the first line after the word "not." However, this might make enforcement more difficult.

Section 226(2) covers situations where an official or employee is using public resources for political activity. A review of several state laws and legal opinions suggests that a consensus approach does not exist regarding the regulation of use of public resources for political activity. The State of Washington applies this type of bar to ballot questions, while other states have various types of prohibitions applicable only to candidates. In adopting the language in section 226(2), a definition of political or campaign activity should also be considered for inclusion in the law. Some states, including Connecticut and Wisconsin, limit state-paid materials that can be sent out by an incumbent for a period immediately prior to an election even if those materrials could arguably be considered to serve a reasonable governmental purpose. Other states, including Alabama, have broad prohibitions against the use of public resources similar to section 226(2).

Difficult issues can arise under this type of provision, especially regarding the political activities of incumbent elected officials. For example, these officials are often assigned staff and vehicles that may be accompanying the official to events or activities that range from partly political to purely political. Similarly, legislative personnel staff, where these positions

exist, may be involved with people or events that could be considered political activity (for a broad review of issues regarding use of legislative staff see "Political Campaign Activity - The Use of Legislative Staff and Resources," published by the New York State Senate Research Service in January of 1988).

Another drafting consideration regarding section 226(2) is whether it should be included in the jurisdiction's ethics law or its election law. A drafting alternative is to include section 226(2) in the ethics law with a cross-reference in the election law.

An alternative to section 226 is to rely upon a general prohibition against using an official's or employee's position for personal gain or the gain of another as a means for reaching these types of misconduct. Some states regard a broad approach as a general tool that can be used to prohibit or allow conduct based on whether it appears to be improper. This broader approach was rejected for the model law as not being clear enough to let those covered by the law know the topics to be covered, and because these types of sections have more potential for legal challlenge on the grounds of vagueness.

Sections 226(1) and (2) have been drafted to allow some administrative or statutory flexibility to deal with gray areas, provide for exceptions, and to facilitate more specific guidelines. Wisconsin, for example, has issued guidelines covering specific prohibited uses of state resources for political activity. A drafting alternative would be to only include the prohibitions and not the language providing for exceptions. Generally, some flexibility is seen as desirable; however, given the range of conduct that could be at issue the need to have the option to be specific as frequent problem areas arise is paramount.

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228 Restraints on Votes, Deliberations, and Discussions

(1) A public official shall not participate in, vote on, influence, or attempt to influence an official decision if the public official or business with which the public official is associated has:

(A) a pecuniary interest in; or

(B) a potential benefit from;

the matter under consideration by the governmental entity of which the public official is a member. A potential benefit includes detriment to a business competitor to the public official or business with which the public official is associated.

(2) Except as permitted in subdivision (3), a public official described by this subdivision but not exempt shall abstain from participation in the discussion and vote on the decision. The public official's abstention and the reason for the abstention must be recorded in the governmental entity's minutes.

(3) A public official may participate in, vote on, or influence or attempt to influence an official decision if the only pecuniary interest or potential benefit that may accrue to the public official is incidental to the public servant's position, or which accrues to the public official as a member of a profession, occupation, or large class, to no greater extent than the pecuniary interest or potential benefit could reasonably be expected to accrue to all other members of the profession, occupation, or large class.

COMMENTS:

Subsections (1) and (2) would generally preclude a public servant from any involvement in an official matter in which the public servant had an interest in or potential benefit from the interest if the benefit did not accrue to the entire profession, occupation, or large class. The term large class should be defined. The prohibition would not apply when the public servant's interest or benefit is prohibited by another ethics measure. The abstention does not legalize a prohibited interest. This provision applies to an interest not otherwise prohibited. The section also prohibits a public official from using public office to harm a business competitor. An additional benefit of this provision is that it can be used to gauge whether a measure being voted upon is weak or strong; if there are a number of abstentions, the measure may be extremely comprehensive, while few abstentions may suggest that the measure does not cover as much.

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230 Restraints on Public Official and Employee Representation of Clients Before Government Entities

230.01 Appearance as an Advocate

(1) A public official or employee shall not appear as the advocate of another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf of:

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

230.02 Appearance as an Attorney

(1) A public official or employee shall not appear as an attorney for another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf of:

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing as an attorney before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

COMMENT:

The preceding two sections prohibit a public official or employee from appearing before other government entities as an advocate or attorney for another person. This limitation is imposed to remove the appearance of impropriety that may arise when an official or employee seeks to influence the actions of other government officials who may be more prone to side with the official or employee than with an adversary unknown to them.

An alternative approach is to limit the prohibition on representation to appearances before entities on the same level of government that the public official or employee serves. States may also wish to allow public officials or employees to represent clients before such bodies as workers' compensation commissions, whose proceedings are adversarial in nature.

A state with a part-time legislature may wish to permit legislators to represent clients or constituents with appropriate disclosure. Language that would permit this is:

A member of the legislature may represent a client or constituent before a state or local entity if the member files a disclosure statement with the agency and with the [ethics panel or presiding officer of the chamber in which the members serves] stating the services rendered.

230.03 Representation for a Former Client

A public official or employee shall not provide formal or informal representation for a client, constituent, or other person whom the public official or employee has represented for a fee or other consideration in a matter within the preceding twelve (12) months.

230.04 Partnership with a Person Who Provides Representation Before Government

A public official or employee shall not have a formal or informal business partnership with a person who provides representation before a state or local entity for a fee or other consideration.

230.05 Use of an Agent to Perform Prohibited Acts

A public official or employee shall not authorize or request another person to perform an act on the public official or employee's behalf that the public official or employee is prohibited from performing under this section.

230.06 Representation by a Public Member of a Board, Commission, or Council

(1) A public member of a board, commission, or council may represent a client or constituent before a state or local entity if the member files a disclosure statement with the agency and with the board, commission, or council on which the member serves stating the services rendered.

(2) A public member of a board, commission, or council is not required to file a disclosure statement for representation on a purely ministerial matter that does not require discretion by the state or local entity.

COMMENT:

A state may wish to permit public members of a board, commission, or council to represent clients or constituents with appropriate disclosure. Language that would permit this is:

"A public member of a board, commission, or council may represent a client or constituent before a state or local entity if the member files a disclosure statement with the agency and with the board, commission, or council on which the member serves stating the services rendered."

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232 Restraints on Solicitation or Acceptance of Gifts and Gratuities

(1) A person shall not, directly or indirectly, give, offer, or promise anything of value to a:

(A) public official or employee; or

(B) a person who has been selected to be a public official or employee;

with the intent to :

(i) influence an official act;

(ii) influence a public official or employee, or individual who has been selected to be a public official or employee, to commit, aid in committing, collude in, or allow fraud on a state, county, or municipal entity; or

(iii) induce a public official or employee, or individual who has been selected to be a public official or employee, to perform or fail to perform an act in violation of the public official or employee's lawful duty.

(2) A public official or employee, or individual who has been selected to be a public official or employee, shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for the public official or employee, or individual who has been selected to be a public official or employee, or for any other person or entity, in return for being:

(A) influenced in the performance of an official act;

(B) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a state, county, or municipal governmental entity; or

(C) induced to perform or fail to perform an act in violation of the public official or employee's official duty.

(3) A person shall not, directly or indirectly, give, offer, or promise to give anything of value to another person or entity, with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

(A) a court;

(B) a committee or either house or both houses of the legislature; or

(C) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(4) A person shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a a trial or other proceeding before:

(A) a court;

(B) a committee or either house or both houses of the legislature; or

(C) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(5) Subsections (3) and (4) do not prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence at a trial, hearing, or proceeding, or, in the case of an expert witness involving a technical or professional opinion, a reasonable fee for time spent in the preparation of the opinion, and in appearing or testifying.

234 Restrictions on Acceptance of Honoraria

(1) A public official or employee shall not accept an honorarium of more than one thousand dollars ($1,000), excluding amounts for actual travel and subsistence expenses for the public official or employee, for a speech or article, or honoraria aggregating more than ten thousand dollars ($10,000) in a calendar year.

(2) A public official or employee shall not accept an honorarium for a speech or article unless the subject matter of the speech or article is unrelated to the subject of the public official or employee's official responsibilities.

(3) If an honorarium payable to a public official or employee is paid instead at the public official or employee's request to a charitable organization selected by the payor from a list of five (5) or more charitable organizations provided by the public official or employee, the public official or employee has not, for purposes of this section, accepted the honorarium.

236 Restraints on Public Officials' Private Interests in Public Contracts

236.01 Prohibition on Public Officials' Interest in Public Contracts

(1) A public official or employee may not have a direct or indirect interest in a public contract unless:

(A) the value of the contract, when added to the value of all public contracts granted in the past twelve (12) months in which the public official or employee has an interest, is less than one thousand dollars ($1,000);

(B) the contract is available on the same terms to the general public or a broad class of persons; or

(C) the contract is provided by the sole supplier of the goods or services within the geographical boundaries of the state or local subdivision, and the circumstances under which the contract is granted are publicly disclosed.

(2) The interest of an immediate family member is an interest of the public official or employee for the purposes of subsection (1) unless the details of the contract are publicly disclosed.

(3) A public official or employee shall not use confidential information, gained in government service, to help obtain or perform the contract.

(4) A contract entered into in contravention of this section is voidable at the option of the agency unless a third party has in good faith relied upon the contract.

COMMENT:

A public official or employee has considerable insight into the procedures and future plans of the agency the official or employee serves. The official or employee may at least be acquainted with the agency's procurement personnel. While chances are lower that an official or employee would be so well-versed with the personnel and circumstances surrounding a procurement by another agency or level of government, there still exists the potential for impropriety, or, at a minimum, for the appearance of impropriety. To maintain confidence in the process when it contracts for goods or services with a government employee, those responsible for contract approval must be scrupulous in their scrutiny of the process attendant to award. If there is a suspicion that the use of inside information or the improper use of position has played a role in the decisionmaking process, approval of the contract should be suspended until the suspicion has been resolved.

236.02 Restraint from Deliberation where Contract Conflict is Present

A public official or employee shall not particpate in obtaining or granting a public contract in which the official or employee or a member of the officla or employee's immediate family has a direct or indirect interest unless the contract is available on the same terms to the general public or a broad class of persons.

236.03 Interest Arising from a Contract

An interest in a contract does not arise from an interest in a corporation unless the combined holdings in the corporation of the public official or employee and their immediate family members exceed two percent (2%) of the outstanding shares.

COMMENT:

This section attempts to prevent the appearance of impropriety that arises when people in power profit from public contracts, and the actual impropriety that results from a public official or employee acting in a matter in which the officeholder or employee has a conflict of interest. Because the latter involves misconduct, it applies to all public officials and employees. The former applies only to those in a position of some power.

While it may not apppear fair to prevent spouses and other close family members from having an interest in a public contract, it is clear that public confidence may be diminished if there are no restrictions on them. Thus, subsection (1) permits family members to receive contracts provided there is full public disclosure. Subsection (2) would prevent public officials or employees from helping family members to obtain such contracts.

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238 Restraints on Public Officials' Employment Apart from Public Position

238.01 Candidate Disclosure of Remunerable Activity

(1) A candidate for public office shall file, no later than fourteen (14) days after filing the declaration of candidacy or petition for nomination, a disclosure of remunerable activity with the agency. The disclosure must be on a form prescribed by the agency. The agency shall maintain the form as a part of the candidate's election records. The form is a public record.

(2) The form for the disclosure of remunerable activity must require the candidate to briefly describe:

(A) remunerable activity in which the candidate engages;

(B) whether or not the remunerable activity is a full-time occupation; and

(C) the number of hours per week the candidate engages in the remunerable activity. If the candidate believes it is inaccurate or misleading to describe the candidate's engagement in the remunerable activity in terms of hours per week, the candidate can attach a brief statement. The statement must contain an accurate statement of how much time the candidate engages in the remunerable activity in the course of a month or a year.

(3) A public official shall amend the official's disclosure of remunerable activity to reflect a change in the remunerable activity. The disclosure must be amended no later than seven (7) days after the change in the remunerable activity. Changes that must be reported include the following:

(A) Terminating a remunerable activity.

(B) Being dismissed from a remunerable activity.

(C) Engaging in a new remunerable activity.

(D) Spending more time or less time in a remunerable activity.

238.02 Remunerable Activity of a Judge

(1) A judge who holds a full-time position shall not engage in remunerable activity except occasional remunerable activity that has no connection to a case pending in the court over which the judge presides. A judge shall amend the judge's disclosure of remunerable activity no later than seven (7) days after engaging in a remunerable activity.

(2) The amendment must include the person or organization from whom the judge received the remuneration and the amount of the remuneration. If the remuneration was in the form of goods and services, the judge shall describe those goods or services accurately and estimate their dollar value. A judge who holds a full-time position and is appointed to that position shall comply with this disclosure requirement no later than fourteen (14) days after the judge's appointment.

(3) The state [court of last resort] or its agent shall designate which judgeships are full-time positions and which judgeships are part-time.

(4) A judge who holds a part-time position is subject to the disclosure requirement set forth in subsection (1). A judge who holds a part-time position and is appointed to that position shall comply with this disclosure requirement no later than fourteen (14) days after the judge's appointment. The judge is disqualified from a case if the judge's remunerable activity might cause a reasonable person to believe that the judge will financially benefit from the disposition of the case.

(5) The state [court of last resort] shall designate an agent to advise a judge if the judge has a question regrading the judge's remunerable activity. The agent's advice must be rendered in writing and is a public record. The advice is not binding on the judge who seeks it.

238.03 Others Required to Disclose Remunerable Activity

(1) A public employee who directs a state agency shall comply with the remunerable activity disclosure requirement described in subsection (1).

(2) The legislative body of the state, county, or municipality may designate other public employee positions as subject to the remunerable activity disclosure requirement described in 238.01.

(3) A public employee subject to the remunerable activity disclosure requirement described in 238.01 shall comply no later than fourteen (14) days after assuming the position that subjects the employee to the requirement.

238.04 Restrictions on Remunerable Private Activity

(1) A public official shall not engage in remunerable activity if that activity enables the official to realize financial or material gain in discharging the official's official duties or responsibilities.

(2) A public employee shall not engage in remunerable activity if that activity enables the employee to realize financial or material gain in discharging the employee's official duties or responsibilities.

240 Restraints on Former Officials and Negotiations for Other Employment

240.01 Disqualification of Former Officers and Employees

(1) A former member of the state legislature or former officer of the executive, legislative, or judicial branch of the government of the state, or an independent agency of the state, including a part-time member of a board, commission, or committee who was appointed by the governor, shall not knowingly act as agent or attorney for, or assist or represent, with or without compensation, another person, except the state:

(A) in connection with a proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter involving a party in which the state is a party or has a direct and substantial interest; and

(B) in which the person participated personally and substantially as a member, officer, or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while employed or serving.

(2) A person described in subsection (1) shall not, within two (2) years after the person's employment or government service has ceased, knowingly act as agent or attorney for, or otherwise represent, any person (except the state) before:

(A) the state legislature, or a department, agency, or court of the state, or a member, officer, or employee of such an entity,

(B) in connection with a proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter involving a party in which the state is a party or has a direct and substantial interest, and,

(C) which was pending under the person's official responsibility as a member, officer, or employee within one (1) year before the termination of the responsibility.

(3) A person as described in subsection (4), within one (1) year after the employment has ceased, shall not knowingly act as agent or attorney for, or otherwise represent, a person or entity other than the state in an appearance before, or with the intent to influence, make an oral or written communication on behalf of a person or entity other than the state, to:

(A) the department, agency, house of the state legislature, or court in which the person served as an officer, employee, or member, or an officer, employee, or member of that entity. and

(B) in connection with a proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter, and

(C) that is or can be the subject of official action by the department or agency or by the officer or employee to whom the representation or communication is made.

(4) Subsection (3) applies to a person who was:

(A) A member of the governor's cabinet;

(B) A member of the state legislature;

(C) A justice of the [state court of last resort and any intermediate appellate courts];

(D) An individual acting as the director of a state agency, who is not also a member of the governor's cabinet;

(E) A member of a board, commission, or committee appointed by the governor; and

(F) [Senior staff of the legislature and senior staff of departments and agencies other than those covered by subdivision (D). The description of these individuals will depend upon the state's personnel scheme. The thought is to cover at least the deputies and possibly the division chiefs of departments and agencies, and, for the legislative staff, each member's staff director and each committee staff director and counsel. Leadership staff positions should also be considered for coverage.]

242.02 Exceptions

The restrictions of subsections (1), (2), and (3) do not apply if:

(1) the former member, officer, or employee is testifying under oath to facts that are within the individual's knowledge, or as an expert witness who does not accept compensation other than regularly provided for by law, or rule for subpoenaed witnesses; or

(2) the former member, officer, or employee is an elected representative of the federal government, or a local government within the state, or whose principal occupation or employment is with the federal government or a local government, and the appearance, communication, assistance, or representation is on behalf of the government; or

(3) the former member, officer, or employees's assistance, appearance, or communication is solely for the purpose of furnishing scientific or technical information under procedures established by the [attorney general or the agency.]

240.03 Administrative Debarment

If the head of a department or agency of the executive branch in which a former officer or employee served finds, after notice and opportunity for a hearing, that the former officer or employee violated subsection (1), (2), or (3) of this section, the department or agency head may prohibit that person from making, on behalf of any other person (except the state), an appearance

before, or with the intent to influence, an oral or written communication to the department or agency on a matter for not more than five (5) years. The disciplinary action is subject to review in an appropriate state [district level] court. A department or agency shall, in consultation with [the attorney general or the agency], adopt rules to implement this subsection.

242.04 Negotiating for Non-government Employment

(1) An officer or employee of state government may not participate personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, or otherwise in a proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter the outcome of which will have an effect on the financial interests of an individual or an organization with whom the officer is negotiating for, or has an agreement or arrangement for employment.

(2) An officer or employee who may not act in a matter under subsection (1) shall notify the officer or employee's supervisor in writing of the disqualification, or if the officer or employee is a member of a board, commission, or committee appointed by the governor, shall notify the chairman in writing. The chairman shall note the member's recusal for the record in a public proceeding in which the recusal is required. If the officer or employee is the chairman, the chairman shall notify the governor and the member of the board, commission, or committee who will preside during the consideration of the particular matter in which the chairman is disqualified.

(3) The restriction of subsection (1) does not apply if:

(A) the matter concerns setting broad policy or rule that does not involve parties;

(B) the effect on the interest of the person or organization with whom the officer or employee is negotiating is not unique; and

(C) the person or organization would neither profit nor lose more than ten thousand dollars ($10,000) as a result of the outcome of the matter during the twelve (12) months following final action on the matter.

(4) A member of the state legislature shall not, during a legislative session, negotiate for employment with a person who seeks action from the legislator, either personally, or from a committee on which the member serves.

COMMENT:

"Particular matter" as used in the post-employment subsection (3) and the negotiating for employment subsection (1) is purposefully a much broader term than "particular matter involving a specific party or parties" in the post-employment subsections (1) and (2) where there is party-specific information and rights involved. The reason for such a differentiation is that post-employment subsection (3) prohibits use of former position, not information, and should include general rulemaking and policy decisions. Those same kinds

of broad governmental processes should also be protected from potential abuse without a case-by-case determination of the officer or employee's integrity, which is why "particular matter" is used in negotiating for employment subsection (1) as well. In post-employment subsections (1) and (2), legislators need not fear, because legislation is not normally a particular matter involving a specific party or parties. On those occasions where legislators do involve themselves in such matters, wither through constituency work or through private bills, then the restrictions of post-employment subsections (1) and (2) should apply.

242.05 Post-Government Employment Restrictions

(1) A former public official or employee shall not assist another (other than the [government]), or act in a representative capacity for another (other than the [government]), on a particular matter involving a specific party or parties in which the former official or employee had participated personally and substantially as an official or employee if the [government] is a party or retains a substantial interest in the matter.

(2) A former public official or employee shall not, within twelve (12) months after termination of government employment, act in a representative capacity for another (other than the [government]) to or before a department, agency, court, or legislative body or official or employee of the entity on a particular matter involving a specific party or parties that was under the official or employee's responsibility and in which the [government] is a party or retains a substantial interest.

(3) A former public official or employee may not communicate with an official or employee of the agency or regulatory body in which the official or employee served, on behalf of another, with the intent to influence an official action of that agency, regulatory body, official, or employee within twelve (12) months after terminating service as the director of an executive department or agency, or member of a regulatory body.

(4) An individual may not communicate with a member, officer, or employee of the house in which the individual served on behalf of another with the intent to influence an official act of that member, officer, or employee, unless the communication is made on behalf of the state [or local government] within twelve (12) months after terminating the individual's service as a member of the state legislature or as an officer or employee of the legislature.

242.06 Negotiating for Employment

(1) An official or employee of the executive branch shall not take official action in a matter that will have a direct effect upon the financial interest of a person or organization with whom the official or employee is negotiating or has an agreement or arrangement for future employment.

(2) A member of the state legislature shall not, during a legislative session, negotiate for employment with a person or organization that is seeking an official action directly from that member or from a committee on which the member sits.

(3) An officer or employee of the legislative branch shall not negotiate for employment with a person or organization which is seeking an official action from that officer or employee, the member of the legislature for whom that officer or employee works, or from a committee on which the member for whom the employee works sits.

(4) A judge, or officer or employee of the judicial branch, shall not take an official action in a particular matter involving a specific party or parties in which a person or organization with whom the judge, officer, or employee is negotiating for employment is a party, or represents a party in that matter.

244 Interference With Public Contracting

244.01 Legislative Findings and Intent

The legislature finds that the cost to the public is increased, and the quality of goods, services, and construction paid for by public funds is decreased when contracts for public services or construction are obtained by means other than through independent non-collusive submission of bids or offers by individual contractors or suppliers, and the evaluation of those bids or offers by the governmental unit under only criteria publicly announced in advance.

244.02 Bid Rigging

A person commits bid rigging when the person knowingly agrees with a person who is, or but for the agreement would be, a competitor of the person concerning a bid submitted or not submitted by the person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to the person or another, and the person either:

(1) provides the person or receives from another information concerning the price or material term or terms of the bid that would not otherwise be disclosed to a competitor in an independent noncollusive submission of bids; or

(2) submits a bid that is of such price or other material term or terms that the person does not intend the bid to be accepted.

244.03 Bid Rotating

A person commits bid rotating when, under a collusive scheme or agreement with another, the person engages in a pattern over time (which, for the purposes of this section includes at least three (3) contract bids within a period of ten (10) years, the most recent of which occurs after the effective date of this Act) of submitting sealed bids to units of state or local government with the intent that the award of the bids rotates, or is distributed among, persons or business entities that submit bids on a substantial number of the same contracts.

244.04 Acquisition or Disclosure of Bidding Information by a Public Official or Employee

(1) An official or employee of a unit of state or local government shall not knowingly open a sealed bid at a time or place other than as specified in the invitation to bid or as otherwise designated by the state or local unit of government, or outside the presence of witnesses required by the applicable statute or ordinance.

(2) An official or employee of a unit of state or local government may make a disclosure to an interested person if the disclosure is also made generally available to the public.

244.05 Interference with Contract Submission and Award by a Public Official or Employee

(1) An official or employee of a unit of state or local government shall not knowingly convey, directly or indirectly, outside of the publicly available official invitation to bid, pre-bid conference, or solicitation for contracts procedure used in a sheltered market procurement adopted under statute or ordinance by that unit of government, to a person who has submitted or intends to submit a bid or proposal for contract to that unit of government, information concerning the specifications for the contract or the identity of a particular potential subcontractor, if inclusion of the terms or contractors in the bid or offer would influence the likelihood of acceptance of the bid or offer.

(2) An official or employee of a unit of state or local government shall not, directly or indirectly, knowingly inform a bidder or offeror that the bid or offer will be accepted only if specified individuals are included as subcontractors.

(3) An official or employee of a unit of state or local government does not violate this Act if the official or employee follows procedures established by federal or state minority- or female-owned business enterprise programs.

(4) A bidder or offeror who is the recipient of communications from the unit of government that the bidder or offeror reasonably believes to be proscribed [by subsections (1) or (2)] shall inform either the attorney general or [county prosecutor] for a county in which the unit of government is located no later than two (2) days after receipt of the communications.

(5) An official or employee of a unit of state or local government shall not knowingly award a contract based on criteria that were not publicly disseminated by the invitation to bid, when the invitation to bid is required by statute or ordinance, the pre-bid conference, or a solicitation procedure used in a sheltered market procurement procedure adopted under statute or ordinance.

244.06 Kickbacks

(1) A person commits kickback acceptance when the person knowingly:

(A) provides, attempts to provide, or offers to provide a kickback;

(B) solicits, accepts, or attempts to accept a kickback; or

(C) includes, directly or indirectly, the amount of a kickback prohibited by [subdivisions (A) or (B)] in the contract price charged by a subcontractor to a prime contractor or a higher tier contractor, or in the contract price charged by a prime contractor to a unit of state or local government for a public contract.

(2) A person who has received an offer of a kickback, or has been solicited to make a kickback shall report it to a law enforcement official, the attorney general, or the county prosecutor for a county in which the contract is to be performed.

(3) A unit of state or local government may, in a civil action, recover a civil penalty from a person who knowingly engages in conduct that violates [subdivision (1)(C)] in twice the amount of each kickback involved in the violation. This subsection does not limit the ability of a unit of state or local government to recover monies or damages regarding public contracts under another statute or ordinance. A civil action is barred unless the action is commenced no later than six (6) years after the later of:

(A) the date the conduct establishing the cause of action occurred; or

(B) the date on which the unit of state or local government knew or should have known that the conduct establishing the cause of action occurred.

244.07 Bribery of an Inspector Employed by a Contractor

(1) A person shall not offer a person employed by a contractor or subcontractor on a public project contracted for by a unit of state or local government, property or other thing of value with the intent that the offer is for the purpose of obtaining wrongful certification or approval of the quality or completion of goods or services supplied or performed in the course of work on the project.

(2) A person employed by a contractor or subcontractor on a public project contracted for by a unit of state or local government shall not accept property or other thing of value either before or afterward issues wrongful certification knowing that the property or thing of value was intentionally offered to influence the certification or approval of the quality or completion of goods or services supplied or performed under subcontract to that contractor.

(3) A person employed by a contractor or subcontractor on a public project contracted for by a unit of state or local government shall report an offer of property or other thing of value intentionally offered to influence the certification or approval of the quality or completion of goods or services supplied or performed under subcontract to that contractor to a law enforcement official, including the attorney general or the county prosecutor for a county in which the contract is to be performed.

244.08 Change Orders

(1) This section applies to a change order that authorizes or necessitates an increase or decrease:

(A) in either the cost of the contract by ten thousand dollars ($10,000) or more; or

(B) in the time of completion by thirty (30) days or more.

(2) An official or employee of a unit of state or local government shall not knowingly authorize a change in a government contract without a determination in writing by the unit of state or local government or its designee on whose behalf the contract was signed, that the circumstances said to necessitate the change in performance:

(A) were not reasonably foreseeable at the time the contract was signed;

(B) were not within the contemplation of the unit of state or local government; or

(C) are authorized by law.

The written determination is a public record.

244.09 Rules of Evidence

(1) The certified bid is prima facie evidence of the bid.

(2) In the absence of practices proscribed by this Act, it is presumed that a person who submits a bid in response to an invitation to bid by a unit of state or local government submits a bid independent of all other bidders, without information obtained from the governmental entity outside the invitation to bid, and in a good faith effort to obtain the contract.

(3) A bid submitted to, and contract executed by a unit of state or local government must contain a certification by the contractor that the contractor is not barred from bidding on the contract as a result of a violation of either the bid rigging or bid rotating provisions of this Act. The state and units of local government shall provide the appropriate form for the certification.

COMMENT:

This section should cover the promise to give somebody something in the future, also.

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246 Personal Financial Disclosure

246.01 Exceptions to Reporting Requirements

This section does not require the disclosure of financial information concerning the following:

(A) A spouse living separate and apart from the public official or public employee.

(B) A former spouse.

(C) A seasonal or special occasion gift exchanged between family members or family friends.

(D) A campaign contribution.

(E) A gift of a nonpecuniary occasional nature that is not substantial in value.

(F) An award presented at a public ceremony in recognition of the civic, governmental, cultural, charitable, or religious activities of a public official, public employee, or immediatefamily member.

(G) Income received by a dependent child from a trust established for that child by a family member.

246.02 Public Officials and Employees Required to File and Threshold Amounts

(1) A:

(A) public official; or

(B) a public employee earning thirty-five thousand dollars ($35,000) or more annually in straight salary or in salary and overtime payments, including a public employee who receives an increase in pay during the year to an amount of thirty-five thousand dollars ($35,000) or more;

who held an elected or appointed position or were employed at the state, county, or municipal level on January 1 of a calendar year shall file a statement of financial interests no later than April 30 of that calendar year.

COMMENT

The requirement that a public official or employee file a statement of financial interest, identifying the official or employee's personal financial interests and that of family members, reminds the official or employee both of what financial interests are actually held, and of the need to avoid affecting them through a personal action or inaction. Violations are also deterred by the knowledge that a filer's financial interests have been made a matter of public record, making it easier to detect a violation.

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(2) A consultant shall file a statement of economic interests no later than ten (10) days after entering into a contractual relationship with the state or a political subdivision if the consultant, or a member of the household of the consultant has an economic interest in an entity:

(A) whose bid was evaluated by the consultant and who was subsequently awarded the contract by the state or the political subdivision that contracted with the consultant; or

(B) who was awarded a contract by the consultant.

(3) The financial and economic interests of a public official, public employee, or consultant, or a member of the immediate family of a public official or employee, or a member of the household of a public official or employee or consultant must be shown in the following category amounts:

(A) Category 1: less than $1,000.

(B) Category 2: $1,000 - $5,000.

(C) Category 3: $5,001 - $10,000.

(D) Category 4: $10,001 - $15,000.

(E) Category 5: $15,001 - $20,000.

(F) Category 6: $20,001 - $30,000.

(G) Category 7: $30,001 - $40,000.

(H) Category 8: $40,001 - $50,000.

(I) Category 9: $50,001 - $75,000.

(J) Category 10: $75,001 - $100,000.

(K) Category 11: over $100,000.

246.03 Agency Handling of Disclosure Statements

(1) The agency may grant a reasonable extension of time for filing a statement of financial interests. The extension may not:

(A) exceed thirty (30) days, except in cases of illness or incapacitation; or

(B) permit a statement of financial interests to be filed later than fifteen (15) days before an election.

(2) A statement of financial interests becomes a public record available for copying when received by the agency. A statement may be reviewed and copied at the office of the agency during ordinary business hours.

(3) The statements of financial interests must be retained for a five (5) year period in the office of the agency.

246.04 Information Required

(1) A statement of financial interests must contain full and complete information concerning the following:

(A) The name, residential address, business or governmental address, residential and work place telephone number of the public official or employee or consultant.

(B) The source, type, and amount or value of income received from the governmental position by the public official, public employee, consultant, spouse, or dependents.

(C) The source, type, and amount or value of income received from:

(i) a business;

(ii) corporation;

(iii) partnership;

(iv) sole proprietorship;

(v) firm; or

(vi) other legal, professional, or occupational entity or organization;

by the public official, public employee, consultant, spouse, and dependents.

(D) The source, date, and amount of honoraria, including speeches, appearances, articles or other publications:

(i) received during the calendar year; and

(ii) that exceed fifty dollars ($50) in amount or value;

by the public official, public employee, or consultant, and the official or employee or consultant's spouse and dependents.

(E) The source and value of gifts including food, lodging, or entertainment:

(i) received by a public official, public employee, consultant, and the official or employee or consultant's spouse and dependents; and

(ii) in excess of twenty-five dollars ($25);

including a notation of the word "lobbyist" to identify gifts received by the public official, public employee, consultant, and the official or employee or consultant's spouse and dependents from a person engaged in lobbying activities or any lobbyist organization.

(F) The description (commercial, residential, or rural), location, and amount of profit received from the sale, lease, or rental of real property during the calendar year by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members, and the name of the person the profit was received from.

If the sale, lease, or rental of real property involves a state, county, or municipal instrumentality of government, a copy of the contract, lease, or rental agreement must be attached to the statement of financial interests.

(G) The description, location, and amount of profit received from the sale, lease, or rental of personal property during the preceding calendar year by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

If the sale, lease, or rental of personal property involves a state, county, or municipal instrumentality of government, a copy of the contract, lease, or rental agreement must be attached to the statement of financial interests. **(Note: should we also ask for info on the purchaser/renter?)**

(H) The identity, date, and value received from the purchase, sale, or exchange of:

(i) stocks;

(ii) bonds;

(iii) debentures;

(iv) commodities futures; or

(v) other form of securities;

during the preceding calendar year by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(I) The source and description of consultant or professional fees, or other compensation received from a governmental instrumentality by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year.

(J) The source of fees received by the public official, public employee, or consultant, and the official or employee or consultant's spouse and dependents for service as a director or trustee of a corporation, firm, business, or other organization.

(K) The name, address, and amount of dividends or interest received from a:

(i) bank;

(ii) credit union;

(iii) cash management account;

(iv) savings and loan institution; or

(v) other financial organization that receives deposits of money and pays interests or dividends to the public official, public employee, or consultant, or the official or employee or consultant's immediate family members.

(L) The source and description of goods or services received by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members instead of a monetary amount.

(M) The source and identification of royalties received by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(N) The source, description, and amount of income received from a trust by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(O) The description and amount of income received from:

(i) a certificate of interest or participation in a profit-sharing agreement; or

(ii) in an oil, gas, or other mineral royalty or lease;

by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(P) The description and amount of income received from a business, partnership, proprietorship, or public corporation:

(i) in which the public official, public employee, or consultant, or the official or employee or consultant's immediate family members own five percent (5%) or more of the stock or fair market value; and

(ii) which does business with state, county, or municipal instrumentalities of government.

(Q) A list of businesses, partnerships, corporations, firms, or other organizations with the amount of retainers paid to the public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year;

(R) The circumstances, dates, and amounts of winnings from gambling or gaming activity, including state lotteries, casino, pari-mutuel, over-the-counter or other form of gambling, accruing to the public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year.

(S) The source and amount of bonuses received as an officer, employee, partner, owner, sole proprietorship, or consultant from a business, corporation, partnership, professional association, or proprietorship by the public official, public employee, or consultant, and the official or employeeor consultant's immediate family members during the preceding calendar year.

(T) A description and amount of reimbursements totaling more than one hundred dollars ($100) received from named payers and providers other than:

(i) the state or a state instrumentality;

(ii) a county or municipality or a county or municipal instrumentality; or

(iii) a nonprofit organization;

received by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year.

(U) A listing by name and address of:

(i) each creditor to whom the public official, public employee, or consultant, and the official or employee or consultant's immediate family members owed a debt in excess of five hundred dollars ($500) at any time during the calendar year, other than for a credit card or retail installment contract; and

(ii) the rate of interest charged the public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

If a discharge of the debt has been made, the date of the transaction must be shown.

(V) The amount and listing by name and address of all clients represented by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members before a state, county, or municipal regulatory agency for a fee, reward, gift, or other compensation during the preceding calendar year.

(2) The information shall be filed on a form prescribed by the agency.

248 Forfeiture of Pension and Retirement Benefits

(1) A public official or employee, or a survivor, heir, successor, or estate of a public official or employee who is convicted of a felony:

(A) relating to; or

(B) arising out of;

the public official or employee's public service shall not receive the portion of pension or retirement benefits paid by a public entity and interest accrued on that portion.

(2) A public official or employee entering public service subsequent to the passage of this Act is deemed to have consented to this section as a condition of coverage.

COMMENT:

Principles of fairness are at stake in the distribution of the government share of retirement or pension benefits to a public official or employee who has abused the public trust. Situations in Pennsylvania and Illinois have highlighted the problem in recent years. This section denies the government's payments (and accrued interest on the payments) to a public official or employee's pension or retirement plan if the official or employee's felony conviction is related to the individual's government service. The public official or employee is still entitled to redeem the employee's share of the contribution to the pension or retirement plan.

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250 Tax Treatment of Fines and Repayments

(1) A fine, penalty, reimbursement, or other payment ordered by the agency or court in connection with making the government whole for a transaction improperly entered into by a public official, employee, or consultant, or a member of the immediate household of a public official, employee, or consultant does not qualify for a state or local tax credit or deduction.

(2) The guilt or innocence of a party making a payment under subsection (1) has no effect upon the state or local tax consequences, nor does an admission or failure to admit guilt or complicity in a transaction.

COMMENT:

A corrupt public official or employee should not be able to profit from his or her action in any manner, direct or indirect. Much of the language of this statute has been oriented to proscribing the direct benefits. This section and section 248 are devoted to keeping the wrongdoer from deriving some good from the wrongdoing. The scenario is not hypothetical; former Vice President Spiro T. Agnew tried to do just this.

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

Ethics

EASIER SAID THAN DONE

1989 Volume 2 Number 2

Honesty

Integrity

Promise-keeping

Fidelity

Fairness

Caring For Others

Respect For Others

Responsible Citizenship

Pursuit of Excellence

Accountability

Ethics & Journalism

A Map Through the Journalism Jungle
By Michael Josephson

When is Lying and Deception Justified?
By Louis W. Hodges

Teaching Ethics in J-School
By Cynthia Z. Rawitch

The Gossip Mill
By William Boot

Media Ethics: A Contradiction in Terms?
By Christopher L. Tyner