

SB

13

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 28, 2007

SUBJECT: Draft CSSB 13(JUD): Does the amendment to section 1 prohibit privately-funded communication?
(Work Order No. 25-LS0106M)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Dan Wayne 
Legislative Counsel

The committee has asked: does the language of section 1 prohibits a legislator from communicating with constituents, by a newsletter or other means, if the communication is paid for by private funds or from a POET account? The answer is no. AS 24.60.030(a)(2), as set forth in the bill beginning on page 1, prohibits use only of *public* funds, facilities equipment, or services or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person. Therefore, communications, including newsletters, are not prohibited by this section if they are paid for with non-public funds, such as a private donation or money from a POET account.¹

If I may be of further assistance, please advise.

DCW:med
06-133.med

¹ There are separate legal restrictions on the management and use of POET funds that may affect the publication of newsletters, but not under section 1 of this bill.

Sen. Hollis French

From: Drue_Pearce@ios.doi.gov
Sent: Wednesday, February 21, 2007 10:52 AM
To: Sen. Lesil McGuire; Sen. Hollis French
Cc: Sharon Szymanski
Subject: SB19

I read the Alaska Budget Report section on the bill and I'm wondering how legislators are treated when they leave public service to take a federal position, either appointed like my old DOI position, confirmed like my new one, or a career position? I certainly have advised, for compensation, the federal government vis-a-vis Alaska issues, including many in which I participated as a State Senator. I would think you would want the door open for others to follow in my footsteps in the future; I maintain it's been good for Alaska to have me here. How would I have been treated if your new law had been in effect?

Drue Pearce
Federal Coordinator
Office of the Federal Coordinator
Alaska Natural Gas Transportation Projects
1849 C Street, NW
MS-6020
Washington, DC 20240

(202) 208-4177
(202) 219-0229 (fax)
Cell (907) 230-8558

Senator Hollis French

Capitol Room 504
465-3892
465-6595 fax



MEMORANDUM

Date: March 12, 2007

To: Leg Legal

From: Cindy Smith

RE: CSSB13: as-passed version

Please make the following change to CSSB13 \K version:

On page 6, line 13, delete the words "and for one year thereafter"

25-LS0106K
Wayne
2/28/07

CS FOR SENATE BILL NO. 13(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR STEVENS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to ethics in state government and to activities of former legislators; and**
2 **providing for an effective date."**

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

4 *** Section 1. AS 24.60.030(a) is amended to read:**

- 5 (a) A legislator or legislative employee may not
- 6 (1) solicit, agree to accept, or accept a benefit other than official
- 7 compensation for the performance of public duties; this paragraph may not be
- 8 construed to prohibit lawful solicitation for and acceptance of campaign contributions,
- 9 solicitation or acceptance of contributions for a charity event, as defined in
- 10 AS 24.60.080(c)(10), or the acceptance of a lawful gratuity under AS 24.60.080;
- 11 (2) use public funds, facilities, equipment, services, or another
- 12 government asset or resource for a nonlegislative purpose, for involvement in or
- 13 support of or opposition to partisan political activity, or for the private benefit of either
- 14 the legislator, legislative employee, or another person; this paragraph does not prohibit

1 (A) limited use of state property and resources for personal
2 purposes if the use does not interfere with the performance of public duties and
3 either the cost or value related to the use is nominal or the legislator or
4 legislative employee reimburses the state for the cost of the use;

5 (B) the use of mailing lists, computer data, or other information
6 lawfully obtained from a government agency and available to the general
7 public for nonlegislative purposes;

8 (C) telephone or facsimile use that does not carry a special
9 charge;

10 (D) the legislative council, notwithstanding AS 24.05.190,
11 from designating a public facility for use by legislators and legislative
12 employees for health or fitness purposes; when the council designates a facility
13 to be used by legislators and legislative employees for health or fitness
14 purposes, it shall adopt guidelines governing access to and use of the facility;
15 the guidelines may establish times in which use of the facility is limited to
16 specific groups;

17 (E) a legislator from using the legislator's private office in the
18 capital city during a legislative session, and for the 10 days immediately before
19 and the 10 days immediately after a legislative session, for nonlegislative
20 purposes if the use does not interfere with the performance of public duties and
21 if there is no cost to the state for the use of the space and equipment, other than
22 utility costs and minimal wear and tear, or the legislator promptly reimburses
23 the state for the cost; an office is considered a legislator's private office under
24 this subparagraph if it is the primary space in the capital city reserved for use
25 by the legislator, whether or not it is shared with others;

26 (F) a legislator from use of legislative employees to prepare
27 and send out seasonal greeting cards;

28 (G) a legislator from using state resources to transport
29 computers or other office equipment owned by the legislator but primarily used
30 for a state function;

31 (H) use by a legislator of photographs of that legislator;

1 (I) reasonable use of the Internet by a legislator or a legislative
2 employee except if the use is for election campaign purposes;

3 (J) a legislator or legislative employee from soliciting,
4 accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable
5 organization in a state facility;

6 (K) a legislator from sending any communication in the form of
7 a newsletter to the legislator's constituents, unless

8 (i) the communication is sent during the 30-day
9 period immediately preceding a state election: or

10 (ii) it is [EXCEPT] a communication expressly
11 advocating the election or defeat of a candidate or a newsletter or
12 material in a newsletter that is clearly only for the private benefit of a
13 legislator or a legislative employee; or

14 (L) full participation in a charity event approved in advance by
15 the Alaska Legislative Council;

16 (3) knowingly seek, accept, use, allocate, grant, or award public funds
17 for a purpose other than that approved by law, or make a false statement in connection
18 with a claim, request, or application for compensation, reimbursement, or travel
19 allowances from public funds;

20 (4) require a legislative employee to perform services for the private
21 benefit of the legislator or employee at any time, or allow a legislative employee to
22 perform services for the private benefit of a legislator or employee on government
23 time; it is not a violation of this paragraph if the services were performed in an
24 unusual or infrequent situation and the person's services were reasonably necessary to
25 permit the legislator or legislative employee to perform official duties;

26 (5) use or authorize the use of state funds, facilities, equipment,
27 services, or another government asset or resource for the purpose of political fund
28 raising or campaigning; this paragraph does not prohibit

29 (A) limited use of state property and resources for personal
30 purposes if the use does not interfere with the performance of public duties and
31 either the cost or value related to the use is nominal or the legislator or

1 legislative employee reimburses the state for the cost of the use;

2 (B) the use of mailing lists, computer data, or other information
3 lawfully obtained from a government agency and available to the general
4 public for nonlegislative purposes;

5 (C) telephone or facsimile use that does not carry a special
6 charge;

7 (D) storing or maintaining, consistent with (b) of this section,
8 election campaign records in a legislator's office;

9 (E) a legislator from using the legislator's private office in the
10 capital city during a legislative session, and for the 10 days immediately before
11 and the 10 days immediately after a legislative session, for nonlegislative
12 purposes if the use does not interfere with the performance of public duties and
13 if there is no cost to the state for the use of the space and equipment, other than
14 utility costs and minimal wear and tear, or the legislator promptly reimburses
15 the state for the cost; an office is considered a legislator's private office under
16 this subparagraph if it is the primary space in the capital city reserved for use
17 by the legislator, whether or not it is shared with others; or

18 (F) use by a legislator of photographs of that legislator.

19 * **Sec. 2.** AS 24.60.040 is amended by adding a new subsection to read:

20 (d) Disclosure by a legislator or legislative employee under this section shall
21 be made in writing to the committee, which shall maintain a public record of the
22 disclosure and forward the disclosure to the respective house for inclusion in the
23 journal.

24 * **Sec. 3.** AS 24.60.050(c) is amended to read:

25 (c) A legislator or legislative employee who participates in a program or
26 receives a loan that is not exempt from disclosure under (a) of this section shall make
27 written disclosure to [FILE A WRITTEN REPORT WITH] the committee by the
28 date required under AS 24.60.105 stating the amounts of the loans outstanding or
29 benefits received during the preceding calendar year from nonqualifying programs. If
30 the committee requests additional information necessary to determine the propriety of
31 participating in the program or receiving the loan, it shall be promptly provided. The

1 committee shall promptly compile a list of the statements indicating the loans and
2 programs and amounts and send it to the presiding officer of each house who shall
3 have it published in the supplemental journals with the next regular publication, by
4 the senate secretary and the house chief clerk, of disclosures under this chapter
5 [WITHIN THREE WEEKS AFTER THE FILING DATE]. A legislator or legislative
6 employee who believes that disclosure of participation in a program would be an
7 invasion of the participant's right to privacy under the state constitution may request
8 the committee to keep the disclosure confidential. If the committee finds that
9 publication would constitute an invasion of privacy, the committee shall publish only
10 the fact that a person has participated in the program and the amount of benefit that the
11 unnamed person received. The committee shall maintain the disclosure of the name of
12 the person as confidential and may only use the disclosure in a proceeding under
13 AS 24.60.170. If the disclosure becomes part of the record of a proceeding under
14 AS 24.60.170, the disclosure may be made public as provided in that section.

15 * Sec. 4. AS 24.60.080(c) is amended to read:

16 (c) Notwithstanding (a) of this section, it is not a violation of this section for a
17 legislator or legislative employee to accept

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

20 (A) with incidental transportation at the residence of a person;
21 however, a vacation home located outside the state is not considered a
22 residence for the purposes of this subparagraph; or

23 (B) at a social event or meal;

24 (2) discounts that are available

25 (A) generally to the public or to a large class of persons to
26 which the person belongs; or

27 (B) when on official state business, but only if receipt of the
28 discount benefits the state;

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

31 (4) travel and hospitality primarily for the purpose of obtaining

1 information on matters of legislative concern;

2 (5) gifts from the immediate family of the person;

3 (6) gifts that are not connected with the recipient's legislative status;

4 (7) a discount for all or part of a legislative session, including time
5 immediately preceding or following the session, or other gift to welcome a legislator
6 or legislative employee who is employed on the personal staff of a legislator or by a
7 standing or special committee to the capital city or in recognition of the beginning of a
8 legislative session if the gift or discount is available generally to all legislators and the
9 personal staff of legislators and staff of standing and special committees; this
10 paragraph does not apply to legislative employees who are employed by the
11 Legislative Affairs Agency, the office of the chief clerk, the office of the senate
12 secretary, the legislative budget and audit committee, the office of victims' rights, or
13 the office of the ombudsman;

14 (8) a gift of legal services in a matter of legislative concern and a gift
15 of other services related to the provision of legal services in a matter of legislative
16 concern;

17 (9) a gift of transportation from a legislator to a legislator if the
18 transportation takes place in the state on or in an aircraft, boat, motor vehicle, or other
19 means of transport owned or under the control of the donor; this paragraph does not
20 apply to travel described in (4) of this subsection or travel for political campaign
21 purposes;

22 (10) tickets from a lobbyist for a charity event at any time, including
23 during a legislative session, except that tickets to or gifts received at a charity event
24 under this paragraph are subject to the calendar year limit on the value of gifts
25 received by a legislator or legislative employee in (a) of this section; in this paragraph,
26 "charity event" means an event the proceeds of which go to a charitable organization
27 with tax-free status under 26 U.S.C. 501(c)(3) and that the Alaska Legislative Council
28 has approved in advance; the tickets may entitle the bearer to admission to the event,
29 to entertainment, to food or beverages, or to other gifts or services involved in the
30 charity event; or

31 (11) a contribution to a charity event from any person at any time; in

1 this paragraph, "charity event" has the meaning given in (10) of this subsection.

2 * Sec. 5. AS 24.60.080(i) is amended to read:

3 (i) A legislator or legislative employee who knows or reasonably should know
4 that a family member has received a gift because of the family member's connection
5 with the legislator or legislative employee shall make written disclosure to the
6 committee regarding the gift [REPORT THE RECEIPT OF THE GIFT BY THE
7 FAMILY MEMBER TO THE COMMITTEE] if the gift would have to be reported
8 under this section if it had been received by the legislator or legislative employee or if
9 receipt of the gift by a legislator or legislative employee would be prohibited under
10 this section. The committee shall maintain a public record of the disclosure and
11 forward the disclosure to the respective house for inclusion in the journal.

12 * Sec. 6. AS 24.60.085 is amended by adding a new subsection to read:

13 (c) During the term for which elected or appointed ~~and for one year thereafter,~~
14 a legislator may not, directly or by authorizing another to act on the legislator's behalf,
15 accept or agree to accept compensation, except from the State of Alaska, for work
16 associated with legislative action, administrative action, or political action.
17 Notwithstanding AS 24.60.990, in this subsection "administrative action" and
18 "legislative action" have the meanings given in AS 24.45.171.

19 * Sec. 7. AS 24.60.105(a) is amended to read:

20 (a) When a legislator or legislative employee is required to file a disclosure
21 under this chapter and a date by which the disclosure must be filed is not otherwise set
22 by statute, the deadline for filing disclosure shall be 30 days [DEADLINES SET
23 OUT IN THIS SECTION SHALL APPLY. FOR DISCLOSURE OF A MATTER OR
24 AN INTEREST THAT BEGAN OR WAS ACQUIRED DURING THE INTERIM
25 BETWEEN REGULAR LEGISLATIVE SESSIONS, WHETHER OR NOT THE
26 REGULAR SESSION IS EXTENDED OR THERE IS A SPECIAL SESSION, OR
27 DURING THE LAST 30 DAYS OF A REGULAR SESSION, THE LEGISLATOR
28 OR LEGISLATIVE EMPLOYEE SHALL DISCLOSE THE MATTER BY MARCH
29 15. FOR DISCLOSURE OF A MATTER OR AN INTEREST THAT BEGAN OR
30 WAS ACQUIRED DURING A REGULAR LEGISLATIVE SESSION, BUT NOT
31 DURING THE LAST 30 DAYS OF THE REGULAR SESSION, THE

1 DISCLOSURE MUST BE MADE WITHIN 30 DAYS] after the commencement of
2 the interest or representation.

3 * Sec. 8. AS 24.60.130(n) is amended to read:

4 (n) When appointing members of the legislature to serve on the committee, the
5 speaker of the house or the president of the senate, as appropriate, shall appoint an
6 alternate member for each regular member. An alternate must have the same
7 qualifications as the regular member for whom the alternate stands as alternate and is
8 subject to confirmation as required for the regular member. If a regular legislative
9 member of the committee or a subcommittee is unable to attend a meeting, the
10 chair of the committee or a subcommittee shall designate the regular member's
11 alternate to serve in place of the regular member at the meeting and the
12 designated alternate shall serve unless unable to serve for any reason. If a regular
13 legislative member of the committee or a subcommittee is disqualified under (h) of
14 this section from serving on the committee or the subcommittee concerning a
15 proceeding under AS 24.60.170 or if the regular member is unable to attend, the
16 chair of the committee or a subcommittee shall designate the regular member's
17 alternate to serve in place of the regular member in the proceeding unless the alternate
18 is also disqualified from serving. The designation shall be treated as confidential to the
19 same extent that the identity of the subject of a complaint is required to be kept
20 confidential.

21 * Sec. 9. AS 24.60.150(a) is amended to read:

22 (a) The committee shall

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

25 (2) publish advisory opinions annually;

26 (3) publish annual [SEMI-ANNUAL] summaries of decisions [AND
27 ADVISORY OPINIONS] with sufficient deletions in the summaries to prevent
28 disclosing the identity of the persons involved in the decisions [OR OPINIONS] that
29 have remained confidential.

30 * Sec. 10. AS 24.60.160(b) is amended to read:

31 (b) An opinion issued under this section is binding on the committee in any

1 subsequent proceedings concerning the facts and circumstances of the particular case
2 unless material facts were omitted or misstated in the request for the advisory opinion.
3 All advisory opinions shall be issued with sufficient deletions to prevent
4 disclosing the identity of the persons involved. Advisory opinion discussions and
5 deliberations are confidential, unless the requester and anyone else named in the
6 request who is covered by the ethics code waives confidentiality. The committee
7 vote shall be a public record [EXCEPT AS PROVIDED IN THIS CHAPTER, AN
8 ADVISORY OPINION IS CONFIDENTIAL BUT SHALL BE MADE PUBLIC IF A
9 WRITTEN REQUEST BY THE PERSON WHO REQUESTED THE OPINION IS
10 FILED WITH THE COMMITTEE].

11 * Sec. 11. AS 24.60.176(b) is amended to read:

12 (b) In this section, "appointing authority" means

13 (1) the legislative council for employees of the Legislative Affairs
14 Agency and of the legislative council and for legislative employees not otherwise
15 covered under this subsection;

16 (2) the Legislative Budget and Audit Committee for the legislative
17 fiscal analyst and employees of the division of legislative finance, the legislative
18 auditor and employees of the division of legislative audit, and employees of the
19 Legislative Budget and Audit Committee;

20 (3) the appropriate finance committee for employees of the senate or
21 house finance committees;

22 (4) the appropriate rules committee for employees of

23 (A) standing committees of the legislature, other than the
24 finance committees;

25 (B) the senate secretary's office and the office of the chief clerk
26 of the house of representatives; and

27 (C) house records and senate records;

28 (5) the legislator who made the hiring decision for employees of
29 individual legislators; however, the legislator may request the appropriate rules
30 committee to act in the legislator's stead;

31 (6) the ombudsman for employees of the office of the ombudsman,

1 other than the ombudsman;

2 (7) the legislature for the ombudsman;

3 (8) the victims' advocate for the employees, other than the victims'
4 advocate, of the office of victims' rights;

5 (9) the legislative council for the victims' advocate.

6 * Sec. 12. AS 24.60.210(a) is amended to read:

7 (a) A person required to file a disclosure statement under AS 24.60.200 shall
8 file an annual report with the Alaska Public Offices Commission, covering the
9 previous calendar year, containing the disclosures required by AS 24.60.200, on or
10 before March 15 of each year, except that a legislator appointed under
11 AS 15.40.320 - 15.40.350, a public member of the committee, and a legislative
12 director must file within 30 days after the person's initial appointment.

13 * Sec. 13. AS 24.60.250(c) is amended to read:

14 (c) In addition to the sanctions described in AS 24.60.260, if the Alaska Public
15 Offices Commission finds that a legislative director has failed or refused to file a
16 report under AS 24.60.200 by a deadline established in AS 24.60.210, it shall notify
17 the Alaska Legislative Council or the Legislative Budget and Audit Committee, as
18 appropriate. For the ombudsman and for the victims' advocate, the Alaska
19 Legislative Council shall be notified.

20 * Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

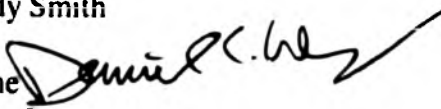
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 28, 2007

SUBJECT: Definition of "legislative action" (CSSB 13(JUD),
Work Order No. 25-LS0106K)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Dan Wayne 
Legislative Counsel

You have asked, as to the phrase "work associated with legislative action," used in sec. 6 of CSSB 13(JUD), version "K," whether "legislative action," as defined in AS 24.45.171(9), would prohibit a legislator paid by a private client from researching bill history and other legislative information for use in the legislator's work outside of the legislature. The short answer is no, although adding "contemporaneous or future" after "associated with" might make it clearer.¹

According to AS 24.45.171(9):

(9) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity;

it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor;

I have divided the cited language in half, because for the purpose of this discussion it is helpful to read the first half separately from the rest of the section. The first half says

¹ This opinion is not necessarily the opinion of the Select Committee on Legislative Ethics, which may disagree.

Senator Hollis French
February 28, 2007
Page 2

legislative action is, essentially, *legislating* -- by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature.²

CSSB 13(JUD), version "K", sec. 6, says:

(c) During the term for which elected or appointed and for one year thereafter a legislator may not, directly or by authorizing another to act on the legislator's behalf, accept or agree to accept compensation, except from the State of Alaska, for work *associated with* legislative action, administrative action, or political action. Notwithstanding AS 24.60.990, in this subsection "administrative action" and "legislative action" have the meanings given in AS 24.45.171. (Emphasis added).

I have emphasized "associated with" for the purpose of this discussion because the phrase could be interpreted to make prohibitions in sec. 6 seem applicable to anything connected with legislative action, no matter how far removed the connection. I think that would be a misinterpretation.

If "legislative action" is, as I have suggested, an act of *legislating* or law-making, then sec. 6 only prohibits outside work associated with "legislating" and not work associated with an end product of legislating like reviewing legislative records or the history of enacted statutes. Under this interpretation of sec. 6, a legislator or former legislator who is a lawyer in the paid employment of a client other than the state would not be prevented from performing any of the actions (research, prepare memos for court, etc.) listed in the definition of "legislative action," as long as the person is otherwise in compliance with the law, is not acting in the person's official capacity as a member or employee of the legislature, and is not doing work that is associated with legislating (i.e. lobbying the legislature, giving paid advice about how to pass or repeal a state statute, drafting proposed legislation, etc.).

If I may be of further assistance, please advise.

DCW:ljw
07-106.ljw

Enclosure

² I read the phrase "in an official capacity" as relating only to employees of the legislature.

Senator Hollis French

Capitol Room 504
465-3892
465-6595 fax



MEMORANDUM

Date: February 26, 2007

To: Leg. Legal/Dan Wayne

From: Cindy Smith

RE: **CSSB13**

Please incorporate the definitions, attached, for the terms "administrative action", "legislative action", "political action" used in Section 6. Note that the definitions for administrative and legislative action are from AS 24.45.171 and the definition for political action is from AS 24.60.990.

Please provide an opinion as to whether "legislative action", as defined in 25.45.171(9), would prohibit a legislator paid by a private client from researching bill history and other legislative information for use in his or her profession (e.g., could an attorney, under this definition, do research on the legislative history of a particular bill or legislative item?)

The committee has also asked for an opinion regarding section 1. Does the language prohibit the issuance of a newsletter within 30 days regardless of fund source? If so, is it constitutionally possible to restrict what a legislator uses his/her private funds for? Is there a distinction between using public funds and POET account funds? And finally, is there a distinction between newsletters and other communications? Would a legislator be permitted under this language to mail a letter on a single, time-sensitive matter within 30 days prior to an election?

Dan - please call me about this

Cindy

Sec. 24.45.171. Definitions.

In this chapter

(1) **"administrative action"** means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by any state agency of any rule or regulation, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act); "administrative action" does not include



(A) a proceeding or an action to determine the rights or duties of a person under existing statutes, regulations, or policies;

(B) the issuance, amendment, or revocation of a permit, license, or entitlement for use under existing statutes, regulations, or policies by the agency authorized to issue, amend, or revoke the permit, license, or entitlement for use;

(C) the enforcement of compliance with existing law or the imposition of sanctions for a violation of existing law;

(D) procurement activity, including the purchase or sale of property, goods, or services by the agency or the award of a grant contract;

(E) the issuance of, or ensuring compliance with, an opinion or activity related to a collective bargaining agreement including negotiating or enforcing the agreement;

(2) **"agency"** means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) **"commission"** means the Alaska Public Offices Commission;

(4) **"communicate directly"** means to speak with a legislator, legislative employee, or public official;

(A) by telephone;

(B) by two-way electronic communication; or

(C) in person;

(5) **"gift"**

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars, or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation;

(6) "immediate family" means the spouse and dependent children of an individual;

(7) "individual" means a natural person;

(8) "influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action;

(9) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor;

(10) "lobbyist" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

(11) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift, or other rendering or tendering of money, property, goods, or services or anything else of value;

(12) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or the lobbyist's activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(11) "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 public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;

(12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, 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;

(13) "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 endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office; ✓

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

(15) "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;

(16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially 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) has or seeks contracts in excess of \$10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Leail McGuire
Senator Gene Therriault

Senate Judiciary Committee

Date: February 16, 2001

TO: Legislative Legal

FROM: Senator Hollis French

RE: Senate Bill 13

Please prepare a Judiciary Committee CS to Senate Bill 13 as follows:

1. Delete provisions of the bill as written.
2. Add the following provisions:
 - The language in Section 2 of House Bill 10 (attached).
 - The provisions provided in work draft 1268\G (attached).
 - The provisions which are circled in the list provided by Joyce Anderson dated 1/26/07 (attached).
 - Title amendment as necessary, and an immediate effective date.

January 25, 2007 -- Suggested substantive changes to AS 24.60 Ethics Code

(These suggestions do not include changes already proposed in 2007 ethics bills.)

These suggestions are the result of either an advisory opinion issued by the committee, committee discussion or observations by ethics staff or individual committee members.

1. **AS 24.60.160 Advisory Opinions** - Add language allowing the Ethics Committee and/or staff to request an advisory opinion. Currently, the request must relate to a set of circumstances of a particular situation that effect the person requesting the opinion. Many times the person does not want to request an opinion. Advisory opinions are referenced when a similar request is received.
2. **AS 24.60.160 Advisory Opinions** – Add language allowing the Ethics Committee to request an advisory opinion from APOC and for APOC to request one from the Ethics Committee. APOC statutes and ethics statutes are much intertwined and many times clarification is needed from one oversight agency for the other agency to issue an advisory opinion.
3. **AS 24.60.160(b) Advisory Opinions** – Clarify the language in this section. Make it clear advisory opinions will be issued with sufficient deletions to prevent disclosure of the identity of the person requesting the opinion and any other persons named in the request. (suggested language approved by the ethics committee will be transmitted in a separate document)
4. **AS 24.60.150(a) Duties of the committee** – Delete in (a)(2) the requirement that summaries of public decisions and advisory opinions be published on a semi-annual basis. Public decisions have been published annually since 1999 and advisory opinions since 1995. (suggested language approved by the ethics committee will be transmitted in separate document)
5. **AS 24.60.130(n) Select committee on legislative ethics** – Add language to allow the chair of the committee or subcommittee to designate the alternate legislative member to attend a meeting if the regular member is unable to attend. Currently the alternate member may only serve if the regular member has a conflict. This change would allow the committee to meet in a more timely fashion. (suggested language approved by the ethics committee will be transmitted in a separate document)
6. **AS 24.60.030(f) Boards and Commissions** - Legislators currently have double disclosure requirements for membership on boards and commissions. Reporting is inclusive for APOC and subjective for Ethics. Membership on boards and commissions is only required if the board and commission will have an interest in legislation. This is very confusing and often times not reported properly. Should be inclusive for both oversight agencies. Reporting of membership on boards and

commissions is on the ethics web site for the public to view. APOC need this information to administer the financial disclosure reporting requirement.

7. **AS 24.60.050 State programs and loans** - Add a section that allows the committee to refrain from publishing disclosures that would be considered an invasion of the discloser's privacy. Currently a person who is a participant of the Violent Crimes Compensation program would have to disclose. The committee has determined they do not have the authority to withhold publication. They have, however, determined the dollar amount ~~need not be disclosed~~.

- X 620
3
8. **AS 24.60.105 Deadlines for filing disclosures** - Filing dates for ethics disclosures are very confusing. Some disclosures are required within 30 days of association at certain times of the year, some annually, and no disclosures are required during the timeframe of 30 days prior to the end of session. Suggest all disclosures be filed within 30 days of the association or interest.

- X
Section 1
9. **AS 24.60.031(1) Restrictions on fund raising** - The ethics committee defined 'acceptance' of a campaign contribution in Advisory Opinion 94-05. APOC differentiates between 'receiving' and 'accepting' a contribution. See 2 AAC 50.333. Clarification of these terms is needed so both ethics and APOC are disseminating the same information to candidates who are also sitting legislators.
- made
in 15/13.040
(Campaign
statutes)

10. Include in the ethics code an education program and/or training class.

- X
(a)(b)(c)
Section 2
11. **AS 24.60.030(c) Prohibitions related to conflicts of interest and unethical conduct** - Prohibit the distribution of legislative newsletters within the 30 days preceding an election. Many calls are received from the public asking why a legislator is allowed to send a legislative newsletter so close to an election. The newsletter is perceived as a campaign piece.

12. **Article 4 of AS 24.60** - Change the title from "Required Annual Financial Disclosure" to "Disclosure Statements" since the section covers both financial disclosure requirements and some ethics disclosures.
13. **AS 24.60.080(c)(10) Gifts** - Legislative Council presently approves 501(c)(3) charity events during session. Lobbyists are then allowed to give free tickets to attend the event. Change the approving authority from Legislative Council to the Ethics Committee. This will allow oversight from one area and provide consistency of information provided by Ethics and APOC.
14. **AS 24.60.170 Proceedings before the committee** - The complaint section of the code does not provide for an alternate legislative member to be appointed if both the legislative member and designated alternate have a conflict and cannot serve on the ethics subcommittee hearing a complaint. The Open Meetings section, AS 24.60.037, has a provision for this type of occurrence. Add similar language to
- 1.

the complaint section.

15. **AS 24.60.170(i) Proceedings before the committee** – This section states a person providing legal advice to the committee is prohibited from ever being involved in a complaint proceeding. The ethics committee discussed clarifying the language to stipulate 'currently providing legal advice to the committee'.

16. **AS 24.60.170(j) Proceedings before the committee** – This section grants authority to the subject of the complaint to change the date of the public hearing to a time outside of the 90 day requirement. However, the committee does not appear to have the authority to approve the change of the date of the hearing. An example given by the committee is what if the subject of the complaint wants to change the hearing to a date 6 months in the future. The statute needs to include a provision for approval by the committee of the change in date and also allow the committee to change the date of the hearing due to, for example, a lack of a quorum.

Suggested Language (prepared in 2005)

AS 24.60.150

(a) The committee shall

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

✓ (2) **publish advisory opinions annually; and**

(3) publish [SEMI-]annual summaries of decisions [AND ADVISORY OPINIONS] with sufficient deletions in the summaries to prevent disclosing the identity of the person involved in the decisions [OR OPINIONS] that have remained confidential.

AS 24.60.160

(b) An opinion issued under this section 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 SHALL BE MADE PUBLIC IF A WRITTEN REQUEST BY THE PERSON WHO REQUESTED THE OPINION IS FILED WITH THE COMMITTEE.] **All advisory opinions shall be issued with sufficient deletions to prevent disclosing the identity of the persons involved. Unless the requester and anyone else named in the request who is covered by the ethics code waives confidentiality, advisory opinion discussions and deliberations are confidential. The committee vote will be a public record.**

Suggested Language (Prepared in 2005)

AS 24.60.130(n)

When appointing members of the legislature to serve on the committee, the speaker of the house or the president of the senate, as appropriate, shall appoint an alternate member for each regular member. An alternate must have the same qualifications as the regular member for whom the alternate stands as alternate and is subject to confirmation as required for the regular member. **If a regular legislative member of the committee or a subcommittee is unable to attend a meeting, the chair of the committee or a subcommittee shall designate the regular member's alternate to serve in place of the regular member at the meeting and the designated alternate shall serve unless unable to serve for any reason.** If a regular legislative member of the committee or a subcommittee is disqualified under (h) of this section from serving on the committee or the subcommittee concerning a proceeding under AS 24.60.170 **or if the regular member is unable to attend**, the chair of the committee or a subcommittee shall designate the regular member's alternate to serve in place of the regular member in the proceeding unless the alternate is also disqualified from serving. The designation shall be treated as confidential to the same extent that the identity of the subject of a complaint is required to be kept confidential.

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925

Senator Gary Stevens

Alaska State Legislature

INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264



Memo

To: Senator Hollis French, Chair, Senate Judiciary Committee
From: Senator Gary Stevens
Date: January 17, 2007
Re: Senate Bill 13

I respectfully request a Senate Judiciary Committee hearing at your earliest convenience on Senate Bill 13 "An Act prohibiting a legislator from providing consulting services to a person in the private sector or agreeing to accept consulting fees from a person in the private sector."

Thank you for your consideration of this request.

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925

Senator Gary Stevens

Alaska State Legislature

INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264



Sponsor Statement for Senate Bill 13

“An Act prohibiting a legislator from providing consulting services to a person in the private sector or agreeing to accept consulting fees from a person in the private sector.”

Senate Bill 13 is straightforward and long overdue legislation that will prohibit a legislator from providing consulting services to anyone in the private sector and accepting consulting fees from anyone in the private sector.

In recent months, there has been much attention focused on legislative ethics and the consulting work of some legislators. During this time, it has become clear that the public expects our elected officials to work above the board and for Alaskans. SB 13 is a way to ensure that happens. I urge your support of this important measure.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 16, 2007

SUBJECT: Sectional Summary of SB 13, a bill relating to private consulting work by legislators (Work Order No. 25-LS0106\C)

TO: Senator Garv Stevens
Attn: Doug Sch

FROM: Dan Wayne 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional 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. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1, the bill's only section, would amend AS 24.60.085 by adding a subsection (c) that prohibits legislators from directly or indirectly providing consulting services to, or agreeing to accept consulting fees from, the private sector.¹

If I may be of further assistance, please advise.

DCW:med
07-016.med

¹ AS 24.60.085 reads:

- (a) A legislator or legislative employee may not
- (1) seek or accept compensation for personal services that is significantly greater than the value of the services rendered taking into account the higher rates generally charged by specialists in a profession; or
 - (2) accept a payment of anything of value, except for actual and necessarily incurred travel expenses, for an appearance or speech by the legislator or legislative employee; this paragraph does not apply to the salary paid to a legislator or legislative employee for making an appearance or speech as part of the legislator's or legislative employee's normal course of employment.
- (b) Notwithstanding (a) of this section, a legislator or legislative employee may accept a payment for an appearance or speech if the appearance or speech is not connected with the person's legislative status.