

**SB**

**89**

<TARGET><BILL>SB 89</BILL><SUBJECT>SB  
89</SUBJECT><COMM>HSTA27</COMM></TARGET>



**HOUSE CS FOR CS FOR SENATE BILL NO. 89(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATOR COGHILL**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act clarifying that a legislator or legislative employee is allowed to accept certain**  
2 **compassionate gifts; allowing legislators and legislative employees who are representing**  
3 **persons in an administrative hearing to contact hearing officers and attempt to influence**  
4 **the outcome of the hearing if they are professionals licensed in the state, and allowing**  
5 **legislators and legislative employees who are not professionals licensed in the state to**  
6 **contact hearing officers for the purpose of influencing the outcome of the hearing in**  
7 **certain instances; requiring the Select Committee on Legislative Ethics to maintain a**  
8 **public record of certain ethics disclosures made by legislators and legislative employees;**  
9 **prohibiting a public member of the Select Committee on Legislative Ethics from**  
10 **disclosing confidential information without authorization; clarifying the ethics**  
11 **disclosure requirements for tickets to or gifts in connection with charity events;**  
12 **amending disclosure deadlines under the Legislative Ethics Act; relating to requests to**

1 **refrain from disclosure under the Legislative Ethics Act; relating to the applicability of**  
 2 **certain provisions of the Legislative Ethics Act to certain legislative employees,**  
 3 **volunteers, and interns; establishing a seat for an alternate public member on the Select**  
 4 **Committee on Legislative Ethics; clarifying the requirements related to participation by**  
 5 **alternate public members and alternate legislative members in the proceedings of the**  
 6 **committee; amending the definition of 'legislative employee' in the Legislative Ethics**  
 7 **Act; and repealing a procedure for appointment of alternate legislative members."**

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

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

10 (a) A legislator or legislative employee may not

11 (1) solicit, agree to accept, or accept a benefit other than official  
 12 compensation for the performance of public duties; this paragraph may not be  
 13 construed to prohibit lawful solicitation for and acceptance of campaign contributions,  
 14 solicitation or acceptance of contributions for a charity event, as defined in  
 15 AS 24.60.080(a)(2)(B), or the acceptance of a gift [LAWFUL GRATUITY] under  
 16 AS 24.60.075 or 24.60.080 [AS 24.60.080];

17 (2) use public funds, facilities, equipment, services, or another  
 18 government asset or resource for a nonlegislative purpose, for involvement in or  
 19 support of or opposition to partisan political activity, or for the private benefit of  
 20 [EITHER] the legislator, legislative employee, or another person; this paragraph does  
 21 not prohibit

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

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

1 (C) the legislative council, notwithstanding AS 24.05.190, from  
2 designating a public facility for use by legislators and legislative employees for  
3 health or fitness purposes; when the council designates a facility to be used by  
4 legislators and legislative employees for health or fitness purposes, it shall  
5 adopt guidelines governing access to and use of the facility; the guidelines may  
6 establish times in which use of the facility is limited to specific groups;

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

16 (E) a legislator from use of legislative employees to prepare  
17 and send out seasonal greeting cards;

18 (F) a legislator from using state resources to transport  
19 computers or other office equipment owned by the legislator but primarily used  
20 for a state function;

21 (G) use by a legislator of photographs of that legislator;

22 (H) reasonable use of the Internet by a legislator or a legislative  
23 employee except if the use is for election campaign purposes;

24 (I) a legislator or legislative employee from soliciting,  
25 accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable  
26 organization in a state facility;

27 (J) a legislator from sending any communication in the form of  
28 a newsletter to the legislator's constituents, except a communication expressly  
29 advocating the election or defeat of a candidate or a newsletter or material in a  
30 newsletter that is clearly only for the private benefit of a legislator or a  
31 legislative employee; or

1 (K) full participation in a charity event approved in advance by  
2 the Alaska Legislative Council;

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

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

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

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

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

23 (C) storing or maintaining, consistent with (b) of this section,  
24 election campaign records in a legislator's office;

25 (D) a legislator from using the legislator's private office in the  
26 capital city during a legislative session, and for the 10 days immediately before  
27 and the 10 days immediately after a legislative session, for nonlegislative  
28 purposes if the use does not interfere with the performance of public duties and  
29 if there is no cost to the state for the use of the space and equipment, other than  
30 utility costs and minimal wear and tear, or the legislator promptly reimburses  
31 the state for the cost; an office is considered a legislator's private office under

1 this subparagraph if it is the primary space in the capital city reserved for use  
2 by the legislator, whether or not it is shared with others; or

3 (E) use by a legislator of photographs of that legislator.

4 \* **Sec. 2.** AS 24.60.030(i) is amended to read:

5 (i) A [EXCEPT FOR SUPPLYING INFORMATION REQUESTED BY THE  
6 HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH  
7 AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN  
8 RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR  
9 THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE  
10 THE FINAL DECISION IN THE CASE, A] legislator or legislative employee may  
11 not attempt to influence the outcome of an administrative hearing by directly or  
12 indirectly contacting or attempting to contact the hearing officer assigned to the  
13 hearing or the individual, board, or commission with authority to make the final  
14 decision in the matter [CASE] unless [THE]

15 (1) the legislator or legislative employee is representing another  
16 person for compensation subject to AS 24.60.100 and as a professional who is  
17 licensed in the state;

18 (2) the contact is made in the presence of all parties to the hearing or  
19 the parties' representatives while the legislator or legislative employee is acting as a  
20 party or a witness in the matter or responding to a question asked of the  
21 legislator or legislative employee by the hearing officer, individual, board, or  
22 commission and the contact is made a part of the record; or

23 (3) the contact is inadvertent and ex parte and the [(2)] fact and  
24 substance of the contact are [IS] promptly disclosed by the legislator or legislative  
25 employee to all parties to the hearing and [THE CONTACT IS] made a part of the  
26 record.

27 \* **Sec. 3.** AS 24.60.030 is amended by adding a new subsection to read:

28 (j) In this section, "administrative hearing" means a quasi-judicial hearing  
29 before an agency; "administrative hearing" does not include an informal conference or  
30 review held by an agency before a final decision is issued or a rate-making proceeding  
31 or other nonadjudicative public hearing.

1 \* **Sec. 4.** AS 24.60.050(c) is amended to read:

2 (c) A legislator or legislative employee who participates in a program or  
 3 receives a loan that is not exempt from disclosure under (a) of this section shall file  
 4 with the committee by the date required under AS 24.60.105 a disclosure stating the  
 5 amounts of the loans outstanding or benefits received during the preceding calendar  
 6 year from nonqualifying programs. If the committee requests additional information  
 7 necessary to determine the propriety of participating in the program or receiving the  
 8 loan, it shall be promptly provided. The committee shall **maintain the disclosure as a**  
 9 **public record and promptly forward the information contained in the disclosure**  
 10 [PROMPTLY COMPILE A LIST OF THE STATEMENTS INDICATING THE  
 11 LOANS AND PROGRAMS AND AMOUNTS AND SEND IT] to the presiding  
 12 officer of each house who shall have it published in the supplemental journals on or  
 13 before the next regularly scheduled publication of ethics disclosures. If a legislator or  
 14 legislative employee asks the committee to keep any part of the disclosure confidential  
 15 and a quorum of the committee determines by vote of a majority of committee  
 16 members that making the entire disclosure public would cause an unjustifiable  
 17 invasion of personal privacy, the committee may elect to publish only the fact that a  
 18 person has participated in the program and the amount of benefit that the unnamed  
 19 person received. The committee shall maintain the disclosure of the name of the  
 20 person as confidential and may only use the disclosure in a proceeding under  
 21 AS 24.60.170. If the disclosure becomes part of the record of a proceeding under  
 22 AS 24.60.170, the disclosure may be made public as provided in that section.

23 \* **Sec. 5.** AS 24.60.060(a) is amended to read:

24 (a) A legislator, [OR] legislative employee, **or public member of the**  
 25 **committee** may not knowingly make an unauthorized disclosure of information that is  
 26 made confidential by law and that the person acquired in the course of official duties.  
 27 A person who violates this section is subject to a proceeding under AS 24.60.170 and  
 28 may be subject to prosecution under AS 11.56.860 or another law.

29 \* **Sec. 6.** AS 24.60.080(a) is amended to read:

30 (a) Except as otherwise provided in this section, a legislator or legislative  
 31 employee may not

1 (1) solicit, accept, or receive, directly or indirectly, a gift worth \$250  
 2 or more, whether in the form of money, services, a loan, travel, entertainment,  
 3 hospitality, promise, or other form, or gifts from the same person worth less than \$250  
 4 that in a calendar year aggregate to \$250 or more in value;

5 (2) solicit, accept, or receive a gift with any monetary value from a  
 6 lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a  
 7 lobbyist, except

8 (A) food or beverage for immediate consumption;

9 (B) a contribution to a charity event, [FROM ANY PERSON  
 10 AT ANY TIME, AND] tickets to [FOR] a charity event, and [AT ANY TIME,  
 11 EXCEPT THAT TICKETS TO OR] gifts to which the tickets may entitle the  
 12 bearer; however, under this subparagraph a legislator or legislative  
 13 employee may not solicit, accept, or receive from the same lobbyist, an  
 14 immediate family member of the lobbyist, or a person acting on behalf of  
 15 the lobbyist, tickets to a charity event, gifts to which the tickets may entitle  
 16 the bearer, or both, that in a calendar year aggregate to \$250 or more in  
 17 value [RECEIVED AT A CHARITY EVENT UNDER THIS  
 18 SUBPARAGRAPH ARE SUBJECT TO THE CALENDAR YEAR LIMIT  
 19 ON THE VALUE OF GIFTS RECEIVED BY A LEGISLATOR OR  
 20 LEGISLATIVE EMPLOYEE IN (1) OF THIS SUBSECTION]; in this  
 21 subparagraph, "charity event" means an event the proceeds of which go to a  
 22 charitable organization with tax-free status under 26 U.S.C. 501(c)(3) and that  
 23 the Alaska Legislative Council has approved in advance; the tickets may entitle  
 24 the bearer to admission to the event, to entertainment, to food or beverages, or  
 25 to other gifts or services in connection with [INVOLVED IN] the charity  
 26 event;

27 (C) a gift that is unconnected with the recipient's legislative  
 28 status and is from a member of the legislator's or legislative employee's  
 29 immediate family;

30 (D) a gift delivered on the premises of a state facility and  
 31 accepted on behalf of a recognized nonpolitical charitable organization; or

1 (E) a compassionate gift under AS 24.60.075.

2 \* **Sec. 7.** AS 24.60.080(c) is amended to read:

3 (c) Notwithstanding (a)(1) of this section, it is not a violation of this section  
4 for a person who is a legislator or legislative employee to accept

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

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

10 (B) at a social event or meal;

11 (2) discounts that are available

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

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

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

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

20 (5) gifts from the immediate family of the person; in this paragraph,  
21 "immediate family" means

22 (A) the spouse of the person;

23 (B) the person's domestic partner;

24 (C) a child, including a stepchild and an adoptive child, of the  
25 person or of the person's domestic partner;

26 (D) a parent, sibling, grandparent, aunt, or uncle of the person;

27 (E) a parent, sibling, grandparent, aunt, or uncle of the person's  
28 spouse or the person's domestic partner; and

29 (F) a stepparent, stepsister, stepbrother, step-grandparent, step-  
30 aunt, or step-uncle of the person, the person's spouse, or the person's domestic  
31 partner;

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

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

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

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

20 (10) a contribution to a charity event, a ticket to a charity event, or a  
21 gift in connection with a charity event [FROM ANY PERSON AT ANY TIME]; in  
22 this paragraph, "charity event" has the meaning given in (a)(2)(B) of this section.

23 \* Sec. 8. AS 24.60.080(d) is amended to read:

24 (d) A legislator or legislative employee who accepts a gift under (c)(4) of this  
25 section that has a value of \$250 or more or a ticket to a charity event or gift in  
26 connection with a charity event under (c)(10) of this section that has a value of \$250  
27 or more shall disclose to the committee, within 60 [30] days after receipt of the gift,  
28 the name and occupation of the donor and the approximate value of the gift. A  
29 legislator or legislative employee who accepts a gift under (c)(8) of this section that  
30 the recipient expects will have a value of \$250 or more in the calendar year shall  
31 disclose to the committee, within 30 days after receipt of the gift, the name and

1 occupation of the donor, a general description of the matter of legislative concern with  
 2 respect to which the gift is made, and the approximate value of the gift. The committee  
 3 shall maintain a public record of the disclosures it receives relating to gifts under  
 4 (c)(4), (c)(8), (c)(10), and (i) of this section and shall forward the disclosures to the  
 5 appropriate house for inclusion in the journal. The committee shall forward to the  
 6 Alaska Public Offices Commission copies of the disclosures concerning gifts under  
 7 (c)(4), (c)(8), (c)(10), and (i) of this section that it receives from legislators and  
 8 legislative directors. A legislator or legislative employee who accepts a gift under  
 9 (c)(6) of this section that has a value of \$250 or more shall, within 30 days after  
 10 receiving the gift, disclose to the committee the name and occupation of the donor and  
 11 a description of the gift. The committee shall maintain disclosures relating to gifts  
 12 under (c)(6) of this section as confidential records and may only use, or permit a  
 13 committee employee or contractor to use, a disclosure under (c)(6) of this section in  
 14 the investigation of a possible violation of this section or in a proceeding under  
 15 AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the record  
 16 of a proceeding under AS 24.60.170, the confidentiality provisions of that section  
 17 apply to the disclosure.

18 \* **Sec. 9.** AS 24.60.080(h) is amended to read:

19 (h) A legislator, a legislative committee other than the Select Committee on  
 20 Legislative Ethics, or a legislative agency may accept a gift of (1) volunteer services  
 21 for legislative purposes so long as the person making the gift of services is not  
 22 receiving compensation from another source for the services, or (2) the services of a  
 23 legislative intern [TRAINEE] who is participating in an educational program  
 24 approved by the committee if the services are used for legislative purposes. The  
 25 committee shall approve training under a program of the University of Alaska and  
 26 training under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998).

27 \* **Sec. 10.** AS 24.60.105 is amended by adding a new subsection to read:

28 (d) A person may submit a written request to refrain from making a disclosure  
 29 that is required by this chapter if making the disclosure would violate state or federal  
 30 law, including the United States Constitution and the Constitution of the State of  
 31 Alaska, or a rule, adopted formally by a trade or profession, that state or federal law

1 requires the person to follow. The committee shall approve or deny the request, or  
 2 require further justification from the person making the request. At the request of the  
 3 committee or a person authorized to act on behalf of the committee, a person who  
 4 seeks to refrain from making a disclosure under this subsection shall provide the  
 5 committee with justification in writing, and the committee may review the written  
 6 justification to determine whether it is sufficient.

7 \* **Sec. 11.** AS 24.60.112 is repealed and reenacted to read:

8 **Sec. 24.60.112. Applicability to legislative interns.** A legislative intern shall  
 9 be considered to be a legislative employee for purposes of compliance with  
 10 AS 24.60.030 - 24.60.039, 24.60.060, 24.60.080, 24.60.085, 24.60.155, 24.60.158 -  
 11 24.60.170, 24.60.176, and 24.60.178. If a person believes that a legislative intern has  
 12 violated the provisions of one of those sections, the person may file a complaint under  
 13 AS 24.60.170. The provisions of AS 24.60.170 apply to the proceeding.

14 \* **Sec. 12.** AS 24.60.130(h) is amended to read:

15 (h) A member is disqualified from participating as a member in any  
 16 proceeding before the committee involving a complaint against the member or an  
 17 employee whose work is supervised by the member or an advisory opinion requested  
 18 by the member. If a regular legislative member of the committee is disqualified under  
 19 this subsection from participating in a proceeding involving a complaint, the member's  
 20 alternate shall be designated under AS 24.60.131 [(n) OF THIS SECTION].

21 \* **Sec. 13.** AS 24.60.130(o) is amended to read:

22 (o) Notwithstanding (h) [AND (n)] of this section and AS 24.60.131, if a  
 23 complaint before the committee alleges a violation of this chapter by a group of  
 24 legislators that includes a legislative member of the committee and that member's  
 25 alternate, the member and alternate member are disqualified from serving on the  
 26 committee with regard to the complaint. If the two disqualified members of the  
 27 committee are members of the majority organizational caucus, the presiding officer of  
 28 the house in which the two disqualified members serve shall appoint from that house  
 29 an alternate to serve with regard to the complaint. If one of the two disqualified  
 30 legislative members of the committee is not a member of the majority organizational  
 31 caucus, the leader of the minority organizational caucus with the greatest number of

1 members shall appoint from that house an alternate to serve with regard to the  
 2 complaint. If a complaint alleges a violation of this chapter that includes all legislative  
 3 members of the majority organizational caucus of one house, the presiding officer of  
 4 that house shall appoint from the other house an alternate to serve with regard to the  
 5 complaint. If the complaint alleges a violation of this chapter that includes all  
 6 legislative members of a minority organizational caucus of one house, the leader of  
 7 that minority organizational caucus shall appoint from the other house an alternate to  
 8 serve with regard to the complaint.

9 \* **Sec. 14.** AS 24.60 is amended by adding a new section to read:

10 **Sec. 24.60.131. Alternate members.** (a) When appointing members of the  
 11 legislature to serve on the committee under AS 24.60.130(b), the speaker of the house  
 12 of representatives or the president of the senate, as appropriate, shall appoint an  
 13 alternate member for each regular member. The alternate member shall have the same  
 14 qualifications for appointment to the committee as the regular member for whom the  
 15 alternate stands as alternate. The alternate member's appointment is subject to  
 16 confirmation as required for appointment of the regular member.

17 (b) When selecting public members to serve on the committee under  
 18 AS 24.60.130(b), the Chief Justice of the Alaska Supreme Court shall select one  
 19 alternate public member. The alternate public member's selection is subject to  
 20 ratification as required for selection of the regular public members.

21 (c) Subject to (d) of this section, if a regular member of the committee or a  
 22 subcommittee is unable to participate in a proceeding other than a proceeding under  
 23 AS 24.60.170, the chair of the committee or subcommittee that holds the proceeding  
 24 shall designate the regular member's alternate to participate in place of the regular  
 25 member at the proceeding, and the alternate shall participate for the duration of that  
 26 proceeding unless the alternate is unable to participate.

27 (d) If a regular member of the committee or a subcommittee or an alternate  
 28 member appointed under (a) or (b) of this section participates at the commencement of  
 29 a proceeding under AS 24.60.170, the member shall participate for the duration of the  
 30 proceeding unless the member is disqualified under AS 24.60.130(h) or is unable to  
 31 continue participating. If the participating member is disqualified under

1 AS 24.60.130(h) or becomes unable to participate, the chair of the committee or  
 2 subcommittee that holds the proceeding shall designate the member's alternate to  
 3 participate in place of the member for the duration of the proceeding unless the  
 4 alternate is disqualified or is unable to participate.

5 (e) If both a regular legislative member and that member's alternate appointed  
 6 under (a) of this section are not available to participate at the commencement of a  
 7 proceeding under AS 24.60.170 because they are disqualified under AS 24.60.130(h),  
 8 the presiding officer of the house in which the two members serve shall appoint from  
 9 that house an alternate and designate that alternate to participate in the proceeding;  
 10 however, if the two members who are not available to participate are not members of  
 11 the majority organizational caucus, the leader of the minority organizational caucus  
 12 with the greatest number of members shall appoint from that house an alternate and  
 13 designate that alternate to participate in the proceeding.

14 (f) A designation under (c) - (e) of this section shall be treated as confidential  
 15 to the same extent that the identity of the subject of a complaint is required to be kept  
 16 confidential.

17 \* **Sec. 15.** AS 24.60.990(a)(11) is amended to read:

18 (11) "legislative employee" means a person, other than a legislator,  
 19 who is compensated by the legislative branch in return for regular or substantial  
 20 personal services, regardless of the person's pay level or technical status as a full-time  
 21 or part-time employee, independent contractor, or consultant; it includes public  
 22 members and staff of the committee; it does not include individuals who are hourly  
 23 employees who perform functions that are incidental to legislative functions,  
 24 [INCLUDING SECURITY, MESSENGER, MAINTENANCE, AND PRINT SHOP  
 25 EMPLOYEES,] and other employees designated by the committee;

26 \* **Sec. 16.** AS 24.60.130(n) is repealed.

# Alaska State Legislature



**Chairman**  
State Affairs Committee

**Member**  
Judiciary Committee  
Energy Committee  
Joint Armed Services Committee  
Military & Veterans Affairs Committee

**Finance Subcommittees**  
Administration  
Corrections  
Military and Veterans Affairs

**Session:**  
Alaska State Capitol, #108  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us

## FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794  
Alaska State Capitol, Room 108  
Juneau, AK 99801-1182

# of Pages (including cover): 4

Phone: 907-465-4931  
Fax: 907-465-4316

Re CS for SB89 - Draft Final 27-LS0452\R

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3/6/2012

SB89 Version R moved from Committee this morning with three amendments. Please draft a final CS for SB89 Version R as amended. Thanks.

**Amendment #1** (Seaton)  
27-LS0452\R.2

**Amendment #2** (Seaton)  
27-LS0452\R.3

**Conceptual Amendment #3** (Seaton)  
Add a new section to the bill: 24.60.080 (h) (2) *delete* "trainee" insert **legislative intern**. So (h) (2) will read like this: the services of a legislative intern who is participating in an educational program approved by the committee if the services are used for legislative purposes.

...

**AMENDMENT** #1

OFFERED IN THE HOUSE  
TO: CSSB 89(JUD)

BY REPRESENTATIVE SEATON

1 Page 5, following line 26:

2 Insert a new bill section read:

3 **\*\* Sec. 3. AS 24.60.030 is amended by adding a new subsection to read:**

4 (j) In this section, "administrative hearing" means a quasi-judicial hearing  
5 before an agency; "administrative hearing" does not include an informal conference or  
6 review held by an agency before a final decision is issued or a rate-making proceeding  
7 or other nonadjudicative public hearing."

8

9 Renumber the following bill sections accordingly.

**AMENDMENT** # 2

OFFERED IN THE HOUSE  
TO: CSSB 89(JUD)

BY REPRESENTATIVE SEATON

1 Page 10, line 24, through page 11, line 1:

2 Delete all material and insert:

3 **\*\* Sec. 9:** AS 24.60.112 is repealed and reenacted to read:

4 **Sec. 24.60.112. Applicability to legislative interns.** A legislative intern shall  
5 be considered to be a legislative employee for purposes of compliance with  
6 AS 24.60.030 - 24.60.039, 24.60.060, 24.60.080, 24.60.085, 24.60.155, 24.60.158 -  
7 24.60.170, 24.60.176, and 24.60.178. If a person believes that a legislative intern has  
8 violated the provisions of one of those sections, the person may file a complaint under  
9 AS 24.60.170. The provisions of AS 24.60.170 apply to the proceeding."  
10

11 Page 13, lines 5 - 15:

12 Delete all material.

13

14 Renumber the following bill sections accordingly.

Conceptual Amend #3  
New Section to the bill

Seaton  
legislative  
Intern

§ 24.60.085 24.60.085 LEGISLATURE AND LOBBYING  
N(2) delete trainee

(h) A legislator, a legislative committee other than the Select Committee on Legislative Ethics, or a legislative agency may accept a gift of (1) volunteer services for legislative purposes so long as the person making the gift of services is not receiving compensation from another source for the services, or (2) the services of a trainee who is participating in an educational program approved by the committee if the services are used for legislative purposes. The committee shall approve training under a program of the University of Alaska and training under 29 U.S.C. 2801 — 2945 (Workforce Investment Act of 1998).

(i) A legislator or legislative employee who knows or reasonably should know that an immediate family member has received a gift because of the family member's connection with the legislator or legislative employee shall disclose for publication under (d) of this section the receipt of the gift by the family member to the committee if the gift would have to be disclosed under this section if it had been received by the legislator or legislative employee. If receipt of the gift by a person who is a legislator or legislative employee would be prohibited under this section, a member of the person's immediate family may not receive the gift.

(j) In this section, the value of a gift shall be determined by the fair market value of the gift to the extent that the fair market value can be determined.

(k) [Repealed, § 74 ch 47 SLA 2007.] (§ 1 ch 36 SLA 1984; am § 3 ch 167 SLA 1988; am §§ 10 — 13, 42 ch 127 SLA 1992; am §§ 27 — 33 ch 74 SLA 1998; am § 9 ch 3 SLA 2002; am § 42 ch 86 SLA 2002; am § 28 ch 108 SLA 2003; am § 6 ch 115 SLA 2003; am § 3 ch 10 SLA 2006; am §§ 27 — 30, 74 ch 47 SLA 2007; am §§ 2, 3 ch 94 SLA 2008)

**Revisor's notes.** — Subsections (g) — (j) were enacted as (h) — (k). Relettered in 1998, at which time former subsection (g) was relettered as (k).

**Effect of amendments.** — The 2006 amendment, effective March 31, 2006, added paragraph (11) of subsection (c), making corresponding stylistic changes.

The 2007 amendment, effective July 10, 2007, inserted the paragraph (1) and (2) designations in subsection (a), rewrote paragraph (a)(2), substituted "(a)(1)" for "(a)" in the introductory language of subsection (c), inserted "person who is a" in the introductory language of subsection (c), added the definition of "immediate family" in paragraph (c)(5), inserted "the office of victims' rights" in paragraph (c)(7), inserted "or a legislative employee" twice in paragraph (c)(9), deleted former paragraph (c)(10), relating to tickets for charity events, redesignated former paragraph (c)(11) as (c)(10), substituted "(a)(2)(B)" for "(10)" in paragraph (c)(10), substituted "(c)(8), and (i)" for "and

(8)" in the third and fourth sentences of subsection (d), substituted "within 30 days after receiving the gift, disclose to the committee" for "disclose to the committee annually on or before March 15" in the fifth sentence of subsection (d), split subsection (i) into two sentences, substituted "an immediate family member" for "a family member," "disclose for publication under (d) of this section" for "report," and "disclosed" for "reported" in the first sentence of subsection (i), inserted "person who is a" and "a member of the person's immediate family may not receive the gift" in the second sentence of subsection (i), and repealed subsection (k).

The 2008 amendment, effective September 14, 2008, inserted "a contribution to a charity event from any person at any time, and" at the beginning of subparagraph (a)(2)(B), added subparagraphs (a)(2)(C) — (E), and deleted the last two sentences of subsection (h), relating to legislative volunteers or educational trainees.

**Sec. 24.60.085. Restrictions on earned income and honoraria.** (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.

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# ALASKA STATE SENATE



Session

(907)-465-3719

FAX# (907)-465-3258

State Capitol  
Room 504

**Contact:**

Interim Address:

301 Santa Claus Lane, St. #b

North Pole, AK 99705

(907)-488-5725

Fax# (907)-488-4271

SENATOR JOHN COGHILL

## Senate Bill 89 Legislative Ethics Amendments Version R

This bill is a **product of discussions by the Select Committee of Legislative Ethics over the past couple of years.** There are some clarifications of existing statutes and amendments to current law to accommodate issues arisen dealing with confidentiality and meeting quorums.

**The bill draws a bright line for legislators and legislative staff to follow for assisting constituents with problems they encounter with state agencies.** Once an issue has been appealed to an administrative hearing officer, the legislator or legislative staffer may no longer make contacts with the agency, unless that person is a licensed professional to represent a person in such a proceeding and is being compensated for that representation. There are also provisions for inadvertent ex parte contact.

SB 89 clarifies that a **gift of a ticket from a lobbyist to a charity event sanctioned by Legislative Council cannot exceed \$250.00.** It also further **describes a contribution to a charity event** as a ticket to a charity event or a gift in connection with the charity event.

It also **extends the reporting deadline for reporting gifts of travel and from charitable events from 30 to 60 days and expands legislative ethics training to legislative volunteers or educational trainees who are on the job for more than 30 days.**

The bill adds **public members of the ethics committee** to the statute prohibiting members from knowingly making **unauthorized disclosure of confidential information.** This bill clarifies that disclosures prohibited by state and federal confidentiality laws are not required by the Select Committee on Legislative Ethics

Lastly, the bill adds a statute **creating an alternate public member** and would allow **any alternate member** of the ethics committee who participates in the beginning of a proceeding to **participate in the entire proceeding.** The Chief Justice of the Alaska Supreme Court would appoint the alternate for the public members.



# ALASKA STATE LEGISLATURE

## SENATOR JOHN COGHILL

State Capitol, Room 504, Juneau, AK 99801-1182 (907) 465-3719  
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

### MEMORANDUM

#### SB 89 Legislative Ethics Bill Summary of Version R

- Sec. 1.** Replaces "lawful gratuity" with "**gift**" to make section of law consistent with the usage of "gift".
- Sec. 2.** **Bright line** for legislators or staff being actively involved in constituent problems with the State. Once the issue is assigned to an administrative hearing the involvement of the legislative office ceases. Exceptions are included for lawyers and provision for inadvertent exparte contact.
- Sec. 3.** **Eliminates requirement** of committee to **compile lists of financial disclosure** statements. They must only maintain public records and forward them to chief clerk and senate secretary.
- Sec. 4.** **Adds public members** to statute **prohibiting disclosure of confidential information.**
- Sec. 5.** Clarifies that a **ticket to a charity event from a lobbyist**, or gifts received because of the ticket from a lobbyist **cannot exceed \$250.**
- Sec. 6.** **Further describes "a contribution to a charity event"** by clarifying it could be a ticket to a charity event or a gift in connection with a charity event.
- Sec. 7.** **Extend the reporting period** for gifts of travel for the purpose of obtaining information on legislative matters and disclosure of gifts from charitable events **from 30 days to 60 days.**
- Sec. 8.** **Allows for exceptions from disclosure** under the legislative ethics law if it would be in violation of the state or federal constitution or state or federal law. **The State Affairs Committee added language that includes exceptions for disclosures for a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow.** A written request with justification must be submitted to the committee.

- Sec. 9.** Requires anyone who is a **volunteer or educational trainee for more than 30 days to take the ethics training. The 30 day guideline was added in State Affairs.**
- Sec. 10.** Adds cite for new section on Alternate Members to statute describing the committee, its structure and its duties.
- Sec. 11.** Adds cite for new section on Alternate Members to statute describing the committee, its structure and its duties.
- Sec. 12.** This is a **new section describing the process for appointing alternates.** The section adds a **new provision that provides for the Chief Justice to appoint an alternate public member.**
- Sec. 13.** Adds **legislative volunteers and educational trainees** who are in that capacity for **more than 30 days** to the statute requiring the Legislative ethics course. **The 30 day guideline was added in State Affairs.**
- Sec. 14. **Redefines** legislative employee.
- Sec. 15. **Repeals** old statute describing the process for appointing alternates.

# FISCAL NOTE

**STATE OF ALASKA**  
**2012 LEGISLATIVE SESSION**

Bill Version CSSB 89(JUD)  
 Fiscal Note Number 2  
 (S) Publish Date 1/30/12

Identifier (file name) CSSB89-LEG-COU-1-17-2012 Dept. Affected Legislature  
 Title "Legislative Ethics Act" Appropriation Legislative Council  
 Allocation Select Committee on Ethics  
 Sponsor Senator Coghill  
 Requester Senate Judiciary Committee OMB Component Number 2321

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>FUND SOURCE</b>		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>POSITIONS</b>							
Full-time							
Part-time							
Temporary							

<b>CHANGE IN REVENUES</b>							
---------------------------	--	--	--	--	--	--	--

Estimated **SUPPLEMENTAL (FY12) operating costs** \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

**Initial version**

Prepared by Jessica Geary, Finance Manager  
 Division Legislative Affairs Agency  
 Approved by Pamela Varni, Executive Director  
Legislative Affairs Agency

Phone 465-6626  
 Date/Time 1/17/12 10:46 AM  
 Date 1/17/2012

FISCAL NOTE #2

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSSB 89(JUD)

**Analysis**

This legislation has zero fiscal impact on the Legislative Affairs Agency.

## Sec. 44.64.200. Definitions.

In this chapter,

(1) "administrative hearing" means a quasi-judicial hearing before an agency; it does not include an informal conference or review held by an agency before a final decision is issued or a rate-making proceeding or other nonadjudicative public hearing;

(2) "administrative law judge" means a hearing officer who is retained or employed by the office;

(3) "agency" means an agency of the executive branch of state government, including an officer, a division, or another subunit of an agency, a board or commission, a public corporation, and the University of Alaska;

(4) "hearing officer" means an individual who presides over the conduct of an administrative hearing and who is retained or employed by an agency for that purpose;

(5) "office" means the office of administrative hearings established in AS 44.64.010.

*non-adjudicative - a process of resolving a dispute which is done outside of a court of law, but within the jurisdiction of administrative law; exercising a judicial function.*

*" Evidentiary hearing, full hearing, agency adjudication,"*

C.J.S. *Executors and Administrators* §§ 935-936, 946.]

**administration de bonis non cum testamento annexo** (de boh-nis non kəm tes-tə-men-toh ə-nek-soh). An administration granted to settle the remainder of a testate estate not settled by a previous administrator or executor. • This type of administration arises when there is a valid will, as opposed to an *administration de bonis non*, which is granted when there is no will. — Abbr. d.b.n.c.t.a.

**administration durante absentia** (d[y]uu-ran-tee ab-sen-shee-ə). An administration granted during the absence of either the executor or the person who has precedence as administrator.

**administration durante minore aetate** (d[y]uu-ran-tee mi-nor-ee ee-tay-tee). An administration granted during the minority of either a child executor or the person who has precedence as administrator.

**administration pendente lite** (pen-den-tee li-tee). An administration granted during the pendency of a suit concerning a will's validity. — Also termed *pendente lite administration*; *special administration*. See PENDENTE LITE. [Cases: Executors and Administrators ☞22. C.J.S. *Executors and Administrators* §§ 951-952, 954-956.]

**administration with the will annexed.** See *administration cum testamento annexo*.

**ancillary administration** (an-sə-ler-ee). An administration that is auxiliary to the administration at the place of the decedent's domicile, such as one in another state. • The purpose of this process is to collect assets, to transfer and record changed title to real property located there, and to pay any debts in that locality. — Also termed *foreign administration*. [Cases: Executors and Administrators ☞518-526. C.J.S. *Executors and Administrators* §§ 916-935.]

"The object of ancillary administration is to collect assets of nonresident decedents found within the state and remit the proceeds to the domiciliary executor or administrator. . . . One of the principal purposes of ancillary administration is to protect local creditors of nonresident decedents by collecting and preserving local assets for their benefit." 31 Am. Jur. 2d *Executors and Administrators* §§ 1057-1058, at 686 (2002).

**caeterorum administration** (set-ə-ror-əm). [Latin "of the rest"] An administration granted when limited powers previously granted to an administrator are inadequate to settle the estate's residue.

**domiciliary administration** (dom-ə-sil-ee-er-ee). The handling of an estate in the state where the decedent was domiciled at death.

**foreign administration.** See *ancillary administration*.

**general administration.** An administration with authority to deal with an entire estate. Cf. *special administration*.

**limited administration.** An administration for a temporary period or for a special purpose. [Cases: Executors and Administrators ☞22. C.J.S. *Executors and Administrators* §§ 951-952, 954-956.]

**original administration.** An administration that is not ancillary to a domiciliary administration.

## Administrative Conference of the United States

**pendente lite administration.** See *administration pendente lite*.

**public administration.** In some jurisdictions, an administration by an officer appointed to administer for an intestate who has left no person entitled to apply for letters (or whose possible representatives refuse to serve). [Cases: Executors and Administrators ☞24.]

**special administration.** 1. An administration with authority to deal with only some of a decedent's property, as opposed to administering the whole estate. 2. See *administration pendente lite*. Cf. *general administration*. [Cases: Executors and Administrators ☞22. C.J.S. *Executors and Administrators* §§ 951-952, 954-956.]

**temporary administration.** An administration in which the court appoints a fiduciary to administer the affairs of a decedent's estate for a short time before an administrator or executor can be appointed and qualified. [Cases: Executors and Administrators ☞22. C.J.S. *Executors and Administrators* §§ 951-952, 954-956.]

**administration bill.** See BILL (3).

**administration expense.** *Tax.* A necessary expenditure made by an administrator in managing and distributing an estate. • These expenses are tax-deductible even if not actually incurred by the time the return is filed. [Cases: Executors and Administrators ☞108. C.J.S. *Executors and Administrators* § 237.]

**Administration for Children and Families.** A unit in the U.S. Department of Health and Human Services responsible for health issues involving children and families, refugees, legalized aliens, and people with developmental disabilities. — Abbr. ACF.

**administration letters.** See LETTERS OF ADMINISTRATION.

**administration of justice.** The maintenance of right within a political community by means of the physical force of the state; the state's application of the sanction of force to the rule of right.

**Administration on Aging.** A unit in the U.S. Department of Health and Human Services responsible for promoting the welfare of the elderly and for assisting the states and Native American governments in doing so.

**administration pendente lite.** See ADMINISTRATION.

**administration with the will annexed.** See *administration cum testamento annexo* UNDER ADMINISTRATION.

**administrative act.** See ACT.

**administrative adjudication.** The process used by an administrative agency to issue regulations through an adversary proceeding. Cf. RULEMAKING. [Cases: Administrative Law and Procedure ☞441-513. C.J.S. *Public Administrative Law and Procedure* §§ 87, 115-171.]

**administrative agency.** See AGENCY (3).

**administrative collateral estoppel.** See COLLATERAL ESTOPPEL.

**Administrative Conference of the United States.** A former independent federal agency that provided a forum where agency heads, private attorneys, uni-

**ad largum** (ad lahr-gəm), *adj.* [Law Latin] At large; at liberty; unconfined.

**adlegiare** (ad-lee-jee-air-ee), *vb.* [Law Latin] To purge (oneself) of a crime by oath. See PURGATION.

**ad levandam conscientiam** (ad læ-van-dəm kon-shee-en-shee-əm). [Law Latin] *Scots law.* For the purpose of easing the conscience. • The phrase typically described certain confessions that a criminal suspect voluntarily made when apprehended and that could be used as evidence in the criminal trial. But an arrested suspect's responses to questions posed by the arresting officer were usu. not admissible because only a magistrate could ask such questions.

**ad libellum rescribere** (ad læ-bel-əm ri-skri-bə-ree), *vb.* [Latin] *Roman law.* To write an answer to a petition, esp. one to the emperor. See RESCRIPT (3).

**ad libitum** (ad lib-i-təm), *adv.* [Law Latin] At pleasure. • The modern term *ad-lib* (*adj.* & *vb.*), borrowed from drama and music, is essentially the same; it means "at the performer's pleasure," and allows the performer discretion in innovating a part impromptu.

"[B]ut in actions where the damages are precarious, being to be assessed *ad libitum* by a jury, as in actions for words, ejectment, or trespass, it is very seldom possible for a plaintiff to swear to the amount of his cause of action; and therefore no special ball is taken thereon . . ." 3 William Blackstone, *Commentaries on the Laws of England* 292 (1768).

**ad litem** (ad li-tem or -təm). [Latin "for the suit"] For the purposes of the suit; pending the suit. See *guardian ad litem* under GUARDIAN.

**ad longum** (ad long-gəm). [Law Latin] *Hist.* At length.

**ad lucrandum vel perdendum** (ad loo-kran-dəm vel pər-den-dəm), *adv.* [Law Latin] For gain or loss. • These were emphatic words in a warrant of attorney. It is sometimes expressed "to lose and gain." See WARRANT OF ATTORNEY.

**ad majorem cautelam** (ad mə-jor-əm kaw-tee-ləm), *adv.* [Law Latin] For greater security.

**admanuensis** (ad-man-yoo-en-sis), *n.* [Law Latin fr. Latin *ad-* + *manus* "a hand"] *Hist.* An oath-taker who places a hand on the Bible.

**ad manum** (ad may-nəm), *adj.* [Latin] At hand; ready for use.

**admeasurement** (ad-mezh-ər-mənt), *n.* 1. Ascertainment, assignment, or apportionment by a fixed quantity or value, or by certain limits <the ship's admeasurement is based on its crew, engine, and capacity>. 2. A writ obtained for purposes of ascertaining, assigning, or apportioning a fixed quantity or value or to establish limits; esp., a writ available against persons who usurp more than their rightful share of property. — **admeasure** (ad-mezh-ər), *vb.*

**admeasurement of dower.** *Hist.* A writ to recover property from a widow who held more than she was entitled to. — Also termed *admensuratione dotis*.

**admeasurement of pasture.** *Hist.* A writ against a person whose cattle have overgrazed a common pasture.

**ad medium filum aquae.** See AD FILUM AQUAE.

**ad medium filum viae.** See AD FILUM VIAE.

**ad melius inquirendum** (ad mee-lee-əs in-kwə-ren-dəm), *n.* [Law Latin "for making better inquiry"] *Hist.* A writ commanding a coroner to hold a second inquest.

**admensuratio** (ad-men-shə-ray-shee-oh), *n.* [Law Latin] *Hist.* Admeasurement.

**admensuratione dotis.** See *admeasurement of dower* under ADMEASUREMENT.

**adminicle** (ad-min-i-kəl), *n.* 1. Corroborative or explanatory proof. 2. *Scots law.* A writing that tends to establish the existence or terms of an otherwise unavailable document, such as a lost will or deed. — Also termed *adminiculum*.

**adminicular** (ad-mə-nik-yə-lər), *adj.* Corroborative or auxiliary <adminicular evidence>.

**adminicular evidence.** See EVIDENCE.

**adminiculate** (ad-mə-nik-yə-layt), *vb.* *Scots law.* To give corroborating evidence.

**adminiculum** (ad-mə-nik-yə-ləm), *n.* [Latin "support"] *Roman law.* Legal or evidentiary means of supporting one's case; ADMINICLE.

**administration**, *n.* 1. The management or performance of the executive duties of a government, institution, or business. 2. In public law, the practical management and direction of the executive department and its agencies. [Cases: *Administrative Law and Procedure* §§ 301–513. C.J.S. *Public Administrative Law and Procedure* §§ 49–171.] 3. A judicial action in which a court undertakes the management and distribution of property. • Examples include the administration of a trust, the liquidation of a company, and the realization and distribution of a bankrupt estate. See JOINT ADMINISTRATION. 4. The management and settlement of the estate of an intestate decedent, or of a testator who has no executor, by a person legally appointed and supervised by the court. • Administration of an estate involves realizing the movable assets and paying out of them any debts and other claims against the estate. It also involves the division and distribution of what remains. [Cases: *Executors and Administrators* §§ 2–98, 100–181, 183–877, 879–899, 935–966; *Parent and Child* § 259; *Wills* § 157.] — **administer**, *vb.* — **administrative**, *adj.*

**administration cum testamento annexo** (kəm tes-tə-men-toh ə-nek-soh). [Latin "with the will annexed"] An administration granted when (1) a testator's will does not name any executor or when the executor named is incompetent to act, is deceased, or refuses to act, and (2) no successor executor has been named or is qualified to serve. — Abbr. c.t.a. — Also termed *administration with the will annexed*. [Cases: *Executors and Administrators* §§ 21. C.J.S. *Executors and Administrators* §§ 947–948.]

**administration de bonis non** (dee boh-nis non). [Latin "of the goods not administered"] An administration granted for the purpose of settling the remainder of an intestate estate that was not administered by the former administrator. — Abbr. d.b.n. [Cases: *Executors and Administrators* §§ 37.

versity professors, and others studied ways to improve the procedures that agencies use in administering federal programs. • ACUS was abolished in 1995. — Abbr. ACUS.

**administrative-control rule.** *Tax.* The rule making the grantor of a trust liable for tax if the grantor retains control that may be exercised primarily for the grantor's own benefit. IRC (26 USCA) § 675. [Cases: Internal Revenue ¶4028.]

**administrative-convenience exception.** *Bankruptcy.* A provision permitting a bankruptcy plan to have a separate classification for small, unsecured claims, to the extent that the separate classification will assist in a more efficient disposition of the estate, as by paying or eliminating the small claims earlier than other claims. 11 USCA § 1122(b). [Cases: Bankruptcy ¶3550. C.J.S. *Bankruptcy* § 386.]

**administrative crime.** See CRIME.

**administrative deviation.** A trustee's unauthorized departure from the terms of the trust.

**administrative discharge.** See DISCHARGE (8).

**administrative discretion.** See DISCRETION (4).

**Administrative Domain-Name Challenge Panel.** *Trademarks.* A board of experts convened under the auspices of the World Intellectual Property Organization to decide Internet domain-name disputes. — Abbr. ACP.

**administrative expense.** 1. OVERHEAD. 2. *Bankruptcy.* A cost incurred by the debtor, after filing a bankruptcy petition, that is necessary for the debtor to continue operating its business. • Administrative expenses are entitled to payment on a priority basis when the estate is distributed. 11 USCA § 503(b). See *general administrative expense* under EXPENSE. [Cases: Bankruptcy ¶2871-2879. C.J.S. *Bankruptcy* §§ 232, 250-254, 281, 354.]

**administrative freeze.** *Bankruptcy.* The refusal by a debtor's bank to permit withdrawals from the debtor's bank account after the bank learns that the debtor has filed bankruptcy, usu. because the debtor owes money to the bank in addition to maintaining funds on deposit. [Cases: Bankruptcy ¶2678. C.J.S. *Bankruptcy* § 164.]

**administrative hearing.** An administrative-agency proceeding in which evidence is offered for argument or trial. [Cases: Administrative Law and Procedure ¶469. C.J.S. *Public Administrative Law and Procedure* §§ 134, 136, 138-139.]

**administrative interpretation.** See INTERPRETATION.

**administrative law.** The law governing the organization and operation of administrative agencies (including executive and independent agencies) and the relations of administrative agencies with the legislature, the executive, the judiciary, and the public. • Administrative law is divided into three parts: (1) the statutes endowing agencies with powers and establishing rules of substantive law relating to those powers; (2) the body of agency-made law, consisting of administrative rules, regulations, reports, opinions containing findings of fact, and orders; and (3) the legal principles governing the acts of public agents when those acts conflict with private rights. [Cases:

*Administrative Law and Procedure* ¶1. C.J.S. *Public Administrative Law and Procedure* § 2.]

"Administrative law deals with the field of legal control exercised by law-administering agencies other than courts, and the field of control exercised by courts over such agencies." Felix Frankfurter, *The Task of Administrative Law*, 75 U. Pa. L. Rev. 614, 615 (1927).

"[A]dministrative law is to labor law, securities regulation, and tax what civil procedure is to contracts, torts, and commercial law. Administrative law studies the way government institutions do things. It is therefore the procedural component to any practice that affects or is affected by government decisionmakers other than just the courts. Its study goes beyond traditional questions; it explores a variety of procedures and it develops ideas about decisionmaking and decisionmakers." 1 Charles H. Koch, *Administrative Law and Practice* § 1.2, at 2 (2d ed. 1997).

**international administrative law.** 1. The internal law and rules of international organizations. 2. The substantive rules of international law that directly refer to the administrative matters of individual states. 3. Domestic administrative law specifically concerned with international problems or situations. — Also termed *administrative international law*.

**administrative-law judge.** An official who presides at an administrative hearing and who has the power to administer oaths, take testimony, rule on questions of evidence, and make factual and legal determinations. 5 USCA § 556(c). — Abbr. ALJ. — Also termed *hearing examiner*; *hearing officer*; *trial examiner*. [Cases: Administrative Law and Procedure ¶443. C.J.S. *Public Administrative Law and Procedure* § 138.]

**Administrative Office of the United States Courts.** An office in the judicial branch of the federal government responsible for administering the nonjudicial business of the federal courts (except the Supreme Court), disbursing funds, collecting statistics, fixing certain salaries, and purchasing supplies and equipment. • Created in 1939, the Office is supervised by the Judicial Conference of the United States. 28 USCA §§ 601 et seq. — Abbr. AOUSC; AO. See JUDICIAL CONFERENCE OF THE UNITED STATES. [Cases: Courts ¶55. C.J.S. *Courts* §§ 107-109.]

**administrative officer.** See OFFICER (1).

**administrative order.** See ORDER (2).

**administrative patent judge.** See JUDGE.

**Administrative Procedure Act.** 1. A federal statute establishing practices and procedures to be followed in rulemaking and adjudication. • The Act was designed to give citizens basic due-process protections such as the right to present evidence and to be heard by an independent hearing officer. 2. A similar state statute. — Abbr. APA. [Cases: Administrative Law and Procedure ¶4. C.J.S. *Public Administrative Law and Procedure* § 3.]

**administrative proceeding.** A hearing, inquiry, investigation, or trial before an administrative agency, usu. adjudicatory in nature but sometimes quasi-legislative. — Also termed *evidentiary hearing*; *full hearing*; *trial-type hearing*; *agency adjudication*. [Cases: Administrative Law and Procedure ¶309, 341-513. C.J.S. *Public Administrative Law and Procedure* §§ 71, 76-171.]

**administrative process.** 1. The procedure used before administrative agencies. [Cases: Administrative Law

and Procedure  $\S$  309. C.J.S. *Public Administrative Law and Procedure*  $\S$  71.] 2. The means of summoning witnesses to an agency hearing. [Cases: Administrative Law and Procedure  $\S$  464. C.J.S. *Public Administrative Law and Procedure*  $\S$  124, 132.]

**administrative remedy.** See REMEDY.

**administrative review.** See REVIEW.

**administrative rule.** An officially promulgated agency regulation that has the force of law. • Administrative rules typically elaborate the requirements of a law or policy. [Cases: Administrative Law and Procedure  $\S$  381. C.J.S. *Public Administrative Law and Procedure*  $\S$  87, 91.]

**administrative rulemaking.** See RULEMAKING.

**administrative search.** See SEARCH.

**administrative search warrant.** See *administrative warrant* under WARRANT (1).

**administrative tribunal.** An administrative agency before which a matter may be heard or tried, as distinguished from a purely executive agency; an administrative agency exercising a judicial function. [Cases: Administrative Law and Procedure  $\S$  309. C.J.S. *Public Administrative Law and Procedure*  $\S$  71.]

**administrative warrant.** See WARRANT (1).

**administrator** (ad-min-ə-stray-tər). 1. A person who manages or heads a business, public office, or agency. [Cases: Executors and Administrators  $\S$  17. C.J.S. *Executors and Administrators*  $\S$  34.]

**court administrator.** An official who supervises the nonjudicial functions of a court, esp. the court's calendar, judicial assignments, budget, and nonjudicial personnel. [Cases: Courts  $\S$  55. C.J.S. *Courts*  $\S$  107–109.]

**local administrator.** *Conflict of laws.* An administrator appointed in the state where property is located or where an act is done.

2. A person appointed by the court to manage the assets and liabilities of an intestate decedent. • This term once referred to males only (as opposed to *administratrix*), but legal writers now generally use *administrator* to refer to someone of either sex. In the Restatement of Property, the term *administrator* includes the term *executor* unless specifically stated otherwise. Cf. EXECUTOR (2).

**administrator ad colligendum** (ad kol-i-jen-dəm). An administrator appointed solely to collect and preserve the decedent's estate.

**administrator ad litem** (ad li-tem or -təm). A special administrator appointed by the court to represent the estate's interest in an action usu. either because there is no administrator of the estate or because the current administrator has an interest in the action adverse to that of the estate. [Cases: Executors and Administrators  $\S$  22. C.J.S. *Executors and Administrators*  $\S$  951–952, 954–956.]

**administrator ad prosequendum** (ad prahs-ə-kwen-dəm). An administrator appointed to prosecute or defend a certain action or actions involving the estate. [Cases: Executors and Administrators  $\S$  22.

C.J.S. *Executors and Administrators*  $\S$  951–952, 954–956.]

**administrator c.t.a.** See *administrator cum testamento annexo*.

**administrator cum testamento annexo** (kəm tes-tə-men-toh ə-nek-soh). An administrator appointed by the court to carry out the provisions of a will when the testator has named no executor, or the executors named refuse, are incompetent to act, or have died before performing their duties. — Also termed *administrator c.t.a.*; *administrator with the will annexed*. [Cases: Executors and Administrators  $\S$  21. C.J.S. *Executors and Administrators*  $\S$  947–948.]

**administrator d.b.n.** See *administrator de bonis non*.

**administrator de bonis non** (dee boh-nis non). An administrator appointed by the court to administer the decedent's goods that were not administered by an earlier administrator or executor. • If there is no will, the administrator bears the name *administrator de bonis non* (abbr. *administrator d.b.n.*), but if there is a will, the full name is *administrator de bonis non cum testamento annexo* (abbr. *administrator d.b.n.c.t.a.*). [Cases: Executors and Administrators  $\S$  37. C.J.S. *Executors and Administrators*  $\S$  935–936, 946.]

**administrator durante absentia** (d[y]uu-ran-tee absen-shee-ə). An administrator appointed to act while an estate's executor or an administrator with precedence is temporarily absent.

**administrator durante minore aetate** (d[y]uu-ran-tee mi-nor-ee ee-tay-tee). An administrator who acts during the minority of a person who either is named by the testator as the estate's executor or would be appointed as the estate's administrator but for the person's youth.

**administrator pendente lite.** See *special administrator*.

**administrator with the will annexed.** See *administrator cum testamento annexo*.

**ancillary administrator** (an-sə-ler-ee). A court-appointed administrator who oversees the distribution of the part of a decedent's estate located in a jurisdiction other than where the decedent was domiciled (the place of the main administration). [Cases: Executors and Administrators  $\S$  518. C.J.S. *Executors and Administrators*  $\S$  916.]

**domiciliary administrator.** A person appointed to administer an estate in the state where the decedent was domiciled at death.

**foreign administrator.** An administrator appointed in another jurisdiction. [Cases: Executors and Administrators  $\S$  517. C.J.S. *Executors and Administrators*  $\S$  915.]

**general administrator.** A person appointed to administer an intestate decedent's entire estate.

**public administrator.** A state-appointed officer who administers intestate estates that are not administered by the decedent's relatives. • This officer's right to administer is usu. subordinate to the rights of creditors, but in a few jurisdictions the

"Quasi-judicial is a term that is . . . not easily definable. In the United States, the phrase often covers judicial decisions taken by an administrative agency — the test is the nature of the tribunal rather than what it is doing. In England quasi-judicial belongs to the administrative category and is used to cover situations where the administrator is bound by the law to observe certain forms and possibly hold a public hearing but where he is a free agent in reaching the final decision. If the rules are broken, the determination may be set aside, but it is not sufficient to show that the administration is biased in favour of a certain policy, or that the evidence points to a different conclusion." George Whitecross Paton, *A Textbook of Jurisprudence* 336 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

**quasi-judicial act.** 1. A judicial act performed by an official who is not a judge. [Cases: Officers and Public Employees ⇨110. C.J.S. *Officers and Public Employees* §§ 234–245.] 2. An act performed by a judge who is not acting entirely in a judicial capacity. See *Judicial act* under **ACT**.

**quasi-judicial duty.** See **DUTY** (1).

**quasi-judicial power.** See **POWER** (3).

**quasi-legislative, adj.** (Of an act, function, etc.) not purely legislative in nature <the administrative agency's rulemaking, being partly adjudicative, is not entirely legislative — that is, it is quasi-legislative>. [Cases: Administrative Law and Procedure ⇨106, 381. C.J.S. *Public Administrative Law and Procedure* §§ 10, 87, 91.]

**quasi-legislative power.** See **POWER** (3).

**quasi-main motion.** See *incidental main motion* under **MOTION** (2).

**quasi-municipal corporation.** See *quasi-corporation* under **CORPORATION**.

**quasi-national domicile.** See **DOMICILE**.

**quasi-offense.** See **OFFENSE** (2).

**quasi-partner.** See **PARTNER**.

**quasi-personalty.** See **PERSONALTY**.

**quasi-possession.** See *incorporeal possession* under **POSSESSION**.

**quasi-posthumous child.** See **CHILD**.

**quasi-public corporation.** See **CORPORATION**.

**quasi-pupillary substitution.** See **SUBSTITUTION** (5).

**quasi-realty.** See **REALTY**.

**quasi-rent.** (often pl.) *Law and economics.* Value over and above one's opportunity cost or next best alternative; the excess of an asset's value over its salvage value. • In the economic theory of marriage, a quasi-rent is a spouse's excess value of the marriage over the value of the next best option of not being in that specific marriage. The next best option may be separation, divorce, or divorce and remarriage, depending on the spouse's preferences and opportunities.

**quasi-seisin.** See **SEISIN**.

**quasi-suspect classification.** See **SUSPECT CLASSIFICATION**.

**quasi-tenant.** See **TENANT**.

**quasi-tort.** See **TORT**.

**quasi traditio** (kway-sī [or -zī] trə-dish-ee-oh). [Latin "as if transfer"] *Roman law.* A party's acquisition of a servitude by using it with the informal permission or acquiescence of the owner.

"According to the civil law again a servitude — that is, a limited right of user in respect of a thing not one's own, e.g. a usufruct or a right of way — could only be created by means of certain definite legal forms. The praetorian law, on the other hand, allowed a servitude to be created by a so-called quasi traditio servitutis; that is, it was satisfied if one party gave the other, without any form, permission to exercise the right of user in question." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 82 (James Crawford Ledlie trans., 3d ed. 1907).

**quasi-trustee.** See **TRUSTEE** (1).

**quasi-usufruct.** See **USUFRUCT**.

**quator tempora jejunii.** See **EMBER DAYS**.

**quattuor pedibus currit** (kwah-too-or ped-ə-bəs kər-it). [Law Latin] It runs upon four feet; it runs upon all fours. • The term commonly described a precedent that was extremely close to a point being decided. See **ON ALL FOURS**.

**quayage** (kee-əj). A toll or fee charged for lading or unloading goods on a quay or wharf. — Also written *keyage*.

**Quayle action.** *Patents.* An office action telling the patent applicant that the claims are allowable on the merits but that the form of the application still needs to be amended. *Ex parte Quayle*, 25 USPQ 74, 1935 C.D. 11, 453 O.G. 213 (Comm'r Pat. 1935). • The applicant generally has two months to respond. A *Quayle* action ends the prosecution on the merits, and amendments that affect the merits will be treated in a manner similar to amendments after final rejection. — Also termed *Ex parte Quayle action*. [Cases: Patents ⇨109. C.J.S. *Patents* §§ 152–155.]

**qu. cl. fr. abbr.** QUARE CLAUSUM FREGIT.

**queen.** 1. A woman who possesses, in her own right, the sovereignty and royal power in a monarchy. • Among the more famous English queens are Queen Mary I, Queen Elizabeth I, Queen Victoria, and Queen Elizabeth II. — Also termed *queen regnant*. 2. The wife of a reigning king. • She has some royal prerogatives (such as having her own officers), but is in many ways legally no different from the rest of the king's subjects. — Also termed *queen consort*. 3. A woman who rules in place of the actual sovereign (e.g., if the sovereign is a child). — Also termed *queen regent*. 4. **DOWAGER-QUEEN**.

**Queen Anne's Bounty.** See **FIRST FRUITS** (2).

**queen dowager.** See **DOWAGER-QUEEN**.

**queen mother.** A queen who has children, esp. a dowager-queen whose child is the reigning monarch. See **DOWAGER-QUEEN**.

**Queen's Bench.** Historically, the highest common-law court in England, presided over by the reigning monarch. • The jurisdiction of this court now lies with the Queen's Bench Division of the High Court of Justice; when a king begins to reign, the name automatically changes to *King's Bench*. — Abbr. **Q.B.** — Also termed *Court of Queen's Bench*. Cf. **KING'S BENCH**.

## Nancy Manly

---

**From:** Rynnieva Moss  
**Sent:** Monday, February 20, 2012 4:04 PM  
**To:** Rep. Bob Lynn; Nancy Manly; Rep. Kyle Johansen; Rep. Max Gruenberg; Rep. Pete Petersen; Rep. Peggy Wilson; Rep. Paul Seaton; Rep. Wes Keller  
**Subject:** Legal about definition for administrative hearing  
**Attachments:** Legal Op on Administrative Hearing Amendment.pdf

Attached is a legal opinion that was attached to an amendment we requested to insert reference to AS 44.64 definitions for "administrative hearing". I am attaching the legal memo, the amendment, and the Select Committee on Legislative Ethics Advisory Opinion 2005-01 which discusses administrative hearings for your review.

I understand Joyce Anderson met with several of you last week and hopefully answered many of your questions. If you have any more concerns, please feel free to contact me prior to the meeting on Thursday so we can be prepared to answer your questions. My direct line is 465-6944.

Thanks.

# 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 17, 2012

**SUBJECT:** Amendment defining "administrative proceeding"  
(Work Order No. 27-LS0452\R.1)

**TO:** Senator John Coghill  
Attn: Jordan Shilling

**FROM:** Dan Wayne   
Legislative Counsel

Enclosed is the amendment you requested. Please note that the definition cross-referenced in the amendment is tailored for narrow applicability to AS 44.64, the chapter creating an independent office of administrative hearings in the Department of Administration. It reads:

(1) "administrative hearing" means a quasi-judicial hearing before an agency; it does not include an informal conference or review held by an agency before a final decision is issued or a rate-making proceeding or other nonadjudicative public hearing;

The independent office of administrative hearings has jurisdiction only over adjudicative administrative hearings that occur under statutes listed in AS 44.64.030(a); the list is a long one, but it omits many state agencies. Because the definition in AS 44.64.200 could change in the future in ways that you might not want to apply to AS 24.60.030, another option would be to add a definition of "administrative hearing" as a new subsection in AS 24.60.030, that would use the same language as current AS 44.64.200.

I also note that adding the proposed cross reference to the bill would narrow the existing prohibition under AS 24.60.030(i) to exclude every administrative proceeding except for final adjudications.

DCW:ljw  
12-138.ljw

Enclosure

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 89(JUD)

- 1 Page 5, line 11, following "hearing":
- 2 Insert "as defined in AS 44.64.200"

/docs/ethics/AO 05-01.doc (4 hits)

## Alaska State Legislature

### Select Committee on

#### Legislative Ethics

716 W. 4th, Suite 230 Mailing Address:  
Anchorage, AK P.O. Box 101468  
(907) 269-0150 Anchorage, AK  
FAX: 269-0152 99510-1468

November 9, 2005

### ADVISORY OPINION 2005-01

RE: AS 24.60.030(i) and legislative contacts with administrative decision makers

You are a legislator and therefore covered by the legislative ethics code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

#### Statement of Facts

You have asked several specific questions in regard to AS 24.60.030(i).<sup>1</sup> This subsection makes it a violation of the legislative ethics code for a legislator or legislative employee to "attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact" a decision maker in an administrative adjudication. Such communication is only permitted if the communication with the decision maker is made in the presence of all parties to the adjudication, and made a part of the record; or, if the fact and substance of the communication is promptly disclosed to all parties and made part of the record.

You ask how AS 24.60.030(i) will be applied in the following situations.

1. Can a legislator<sup>2</sup> contact a decision maker without trying to influence the outcome of the case by asking the decision maker:
  - a. if certain documents had been filed;
  - b. whether a file was complete; or
  - c. if there was other information that could be provided.
2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?
3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

#### Discussion

The provisions of AS 24.60.030(i) will only apply to an administrative matter that has progressed to a hearing. A legislator or legislative staff member may contact any administrative department with questions regarding a matter that is not the subject of a pending administrative adjudication.<sup>3</sup>

The ethical standards which prohibit ex parte contacts by legislators and legislative employees recognize that impartial fact finders and decision makers are an essential part of the due process of law.<sup>4</sup>

Administrative decision makers are required to be impartial and may not engage in ex parte communications.<sup>5</sup> An ex parte communication is a contact or communication (personal communications or some form of evidence) with the decision maker that takes place outside the presence of all parties to the proceeding.

1. Obtaining information on behalf of a constituent in regard to an administrative adjudication.

While a legislator or legislative staff member may contact an administrative department with questions regarding a matter, once that matter is assigned to a hearing officer or other decision maker there should be no direct contact with the decision maker.

Once a matter is in a hearing process, questions to the administrative unit should be limited to procedural matters and case information. The answers to those questions can most likely be answered by a person other than the decision maker. For example, if the office of administrative hearings has jurisdiction of the matter, that office will be able to provide information about the case file without impairing the impartial role of the hearing officer.<sup>6</sup> If the adjudication is not within the jurisdiction of the office of administrative hearings, the agency holding the hearings will have procedures to insulate the decision makers from improper contacts. Legislators subject to AS 24.60 will be expected to make every effort to obtain basic procedural or case file information about a matter under administrative adjudication by means other than contacting the hearing officer. Also, in response to your questions, it would not be the proper function of any administrator in the adjudicatory process to give advice in response to your questions, but only to provide information about the case file, parties, scheduling or other routine procedural matters.<sup>7</sup>

In the rare instance that a communication with a hearing officer occurs the legislator must comply with AS 24.60.030(i)(2): the "fact and substance of the contact [must be] promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact [must be] made a part of the record."

A failure by a legislator to properly make this disclosure may be held to be a violation of the legislative ethics code.

The committee is also concerned that ex parte contacts, by a legislator or legislative employee, with a decision maker creates an appearance of a violation of the ethics code. This is based on AS 24.60.010 which provides in pertinent part:

The legislature finds that

...  
 (2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;  
 ...

2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?

If contact with a decision maker does occur, a legislator or legislative employee must notify all parties and make the contact a part of the record. Complying with this requirement of disclosure to all parties is the responsibility of the legislator who initiated the ex parte contact, not the adjudicator hearing the

matter. Information about the other parties to the matter can be obtained as discussed in the answer to the first question.

There is no obligation to contact all parties in regarding communications with administrative departments or personnel initiated by a legislator when a matter has not yet been assigned to a hearing officer.

3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

As discussed above, a legislator may advocate and communicate on an administrative matter on behalf of a constituent. AS 24.60.030(i) only applies once an administrative matter is assigned to an administrative decision maker. In the event that a legislator makes an ex parte contact with a decision maker, the requirements of AS 24.60.030(i)(2) apply. The ethics statute clearly places the responsibility for compliance with (i)(2) on the legislator making the ex parte contact, not the adjudication agency or the administrative agency who is a party to the matter.

#### Conclusion

For the reasons stated above, the committee finds that a legislator or legislative employee seeking information on an administrative matter that is assigned to a hearing officer, individual, board or commission should not attempt to contact the decision maker assigned to that matter.<sup>8</sup> Information about the procedural aspects of the matter may be sought from the office administering the hearing, but not the decision maker directly. If a legislator or legislative employee makes an ex parte communication and fails to comply with the requirements of AS 24.60.030(i)(2), it could be considered a violation of the legislative ethics code.

AS 24.60.030 does not apply to contacts in regard to administrative matters that have not been assigned to an administrative decision maker.

Adopted by the Select Committee on Legislative Ethics on November 9, 2005.

Members present and concurring in this opinion were:

Herman G. Walker, Jr. Chair  
Representative Max Gruenberg  
Senator Hollis French  
Senator Ben Stevens  
Ann Rabinowitz, public member  
Marianne Stillner, public member  
H. Connor Thomas, public member

Members dissenting from this opinion were:

Members absent were:

Representative Bruce Weyhrauch  
Dennis "Skip" Cook, public member

BRC:med  
05-475.med

<sup>1</sup> This new subsection of AS 24.60.030, "Prohibitions related to conflicts of interest and unethical conduct," became effective July 1, 2005. The office of administrative hearings, created effective July 1, 2004, began hearing administrative proceedings that began on or after July 1, 2005. Sec. 92(a), ch. 163, SLA 2004. No previous advisory opinions have discussed AS 24.60.030(i).

This new subsection provides:

(i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

<sup>2</sup> All references in this opinion to a legislator also apply to legislative employees subject to AS 24.60.

<sup>3</sup> It may be difficult to determine from a constituent whether the matter of concern has reached the stage that this ethical prohibition applies so care should be taken to avoid contacting any person or entity that has the authority to make a final decision. It may be prudent for a legislator to make a call to the department administering a matter, to determine the appropriate person to contact for the information, in order to avoid inadvertently contacting a decision maker.

<sup>4</sup> Under the Alaska Constitution, a person may not "be deprived of life, liberty, or property, without due process of law." The Alaska Supreme Court has interpreted this provision as requiring an impartial fact finder. In re Robson, 575 P.2d 771 (Alaska 1978); K & L Distributors, Inc. v. Murkowski, 486 P.2d 351 (Alaska 1971). Questioning of a decision-maker while the case is pending impairs the impartiality of the judicial process. It may even invalidate the decision reached in the matter, causing the whole matter to be reheard. "To subject an administrator to a searching examination as to how and why he reached his decision in a case still pending before him, . . . sacrifices the appearance of impartiality - the *sine qua non* [essential condition] of American *judicial* justice . . ." Pillsbury v. F.T.C., 354 F.2d 952, 963 (5th Cir Ct. of Appeals, 1966). "Legislative intervention which occurs during a pending decisional process of an agency endangers and may undermine the integrity of the ensuing decision, and it has been held that administrative decisions which are based in whole or in part on pressures emanating from the legislature may be invalid." 73 C.J.S. Sec. 31, Public Administrative Law and Procedure.

<sup>5</sup> For example *see* AS 44.62.630 in the Administrative Procedure Act, also *see* AS 44.64.050(b) regarding the standard of conduct for hearing officers in the office of administrative hearings.

<sup>6</sup> *See* AS 44.64.030 for the jurisdiction of the office of administrative hearings. Child support services and permanent fund dividend adjudications are under the jurisdiction of the office of administrative hearings.

AS 44.64.050 provides fundamental standards of conduct required of hearing officers. The chief administrative law judge is required to adopt regulations for a code of conduct.

. . . The following fundamental canons of conduct shall be included in the code: in carrying out official duties, an administrative law judge or hearing officer shall

- (1) uphold the integrity and independence of the office;
- (2) avoid impropriety and the appearance of impropriety;
- (3) perform the duties of the office impartially and diligently;
- (4) conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office; and
- (5) refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment.

The proposed draft regulations at 2 AAC 64.030 provide:

(b) The following guidelines apply to any determination on whether a hearing officer of administrative law judge has adhered to the canons [of hearing officer conduct]:

(1) The requirement to uphold the integrity and independence of the office, and of the hearing function, dictates that a hearing officer or administrative law judge establish and personally observe high standards of conduct and avoid improper ex parte communications with private and agency parties on the subject of a hearing request; so that the integrity and independence of the office and hearing function will be preserved;

. . .  
(3) The requirement to perform the duties of the office or of the hearing function impartially and diligently dictates that a hearing officer or administrative law judge . . .

(B) not initiate, permit, or consider improper ex parte communications, . . .

"improper ex parte communications" are defined at 2 AAC 64.990(13) as a direct or indirect, oral or written communication between a decision maker and a party to a proceeding, or another person trying to influence the decision maker, which occurs outside the presence of the other parties, and without a notice and an opportunity to participate being given to the other parties.

<sup>7</sup> You have asked "can a legislator contact a decision maker to ask if there was other information that could be provided." This would require the decision maker or the administrator in charge of the case file to advise the legislator on how to conduct the case or influence the outcome. This would not be appropriate, as it impairs the impartiality of the hearing process.

<sup>8</sup> The only exceptions are described in AS 24.60.030(i):

[e]xcept for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case . . .

AO 05-01 -6-

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## AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: CSSB 89(JUD)

1 Page 10, line 24 – Page 11, line 1:

2 Delete all language

3

4 **\*\*Sec. 10.** AS 24.60.112 is repealed and reenacted to read:

5 **Sec. 24.60.112. Applicability to legislative volunteer or intern.** A legislative intern shall be

6 considered to be a legislative employee for purposes of compliance as AS 24.60.030 –

7 24.60.039, 24.60.060, 24.60.080, 24.60.085, 24.60.155, 24.60.158 – 24.60.170,

8 24.60.176, and 24.60.178. If a person believes that a legislative volunteer or intern has

9 violated the provisions of one of those sections, the person may file a complaint under

10 AS 24.60.170. The provisions of AS 24.60.170 apply to the proceeding.

11

12 Page 13, lines 6 - 7:

13 Delete **“who serves for more than 30 days as a legislative employee of educational**  
14 **trainee”**

15 Insert **“intern”**

16

17 Page 13, lines 10 - 11:

18 Delete **“a person who begins a period of service of more than 30 days as a**  
19 **volunteer or trainee”**

20 Insert **“an intern”**

**Sec. 44.64.200. Definitions.**

In this chapter,

(1) "administrative hearing" means a quasi-judicial hearing before an agency; it does not include an informal conference or review held by an agency before a final decision is issued or a rate-making proceeding or other nonadjudicative public hearing;

(2) "administrative law judge" means a hearing officer who is retained or employed by the office;

(3) "agency" means an agency of the executive branch of state government, including an officer, a division, or another subunit of an agency, a board or commission, a public corporation, and the University of Alaska;

(4) "hearing officer" means an individual who presides over the conduct of an administrative hearing and who is retained or employed by an agency for that purpose;

(5) "office" means the office of administrative hearings established in AS 44.64.010.

(h) A legislator, a legislative committee other than the Select Committee on Legislative Ethics, or a legislative agency may accept a gift of (1) volunteer services for legislative purposes so long as the person making the gift of services is not receiving compensation from another source for the services, or (2) the services of a trainee who is participating in an educational program approved by the committee if the services are used for legislative purposes. The committee shall approve training under a program of the University of Alaska and training under 29 U.S.C. 2801 — 2945 (Workforce Investment Act of 1998).

(i) A legislator or legislative employee who knows or reasonably should know that an immediate family member has received a gift because of the family member's connection with the legislator or legislative employee shall disclose for publication under (d) of this section the receipt of the gift by the family member to the committee if the gift would have to be disclosed under this section if it had been received by the legislator or legislative employee. If receipt of the gift by a person who is a legislator or legislative employee would be prohibited under this section, a member of the person's immediate family may not receive the gift.

(j) In this section, the value of a gift shall be determined by the fair market value of the gift to the extent that the fair market value can be determined.

(k) [*Repealed, § 74 ch 47 SLA 2007.*] (§ 1 ch 36 SLA 1984; am § 3 ch 167 SLA 1988; am §§ 10 — 13, 42 ch 127 SLA 1992; am §§ 27 — 33 ch 74 SLA 1998; am § 9 ch 3 SLA 2002; am § 42 ch 86 SLA 2002; am § 28 ch 108 SLA 2003; am § 6 ch 115 SLA 2003; am § 3 ch 10 SLA 2006; am §§ 27 — 30, 74 ch 47 SLA 2007; am §§ 2, 3 ch 94 SLA 2008)

**Revisor's notes.** — Subsections (g) — (j) were enacted as (h) — (k). Relettered in 1998, at which time former subsection (g) was relettered as (k).

**Effect of amendments.** — The 2006 amendment, effective March 31, 2006, added paragraph (11) of subsection (c), making corresponding stylistic changes.

The 2007 amendment, effective July 10, 2007, inserted the paragraph (1) and (2) designations in subsection (a), rewrote paragraph (a)(2), substituted "(a)(1)" for "(a)" in the introductory language of subsection (c), inserted "person who is a" in the introductory language of subsection (c), added the definition of "immediate family" in paragraph (c)(5), inserted "the office of victims' rights" in paragraph (c)(7), inserted "or a legislative employee" twice in paragraph (c)(9), deleted former paragraph (c)(10), relating to tickets for charity events, redesignated former paragraph (c)(11) as (c)(10), substituted "(a)(2)(B)" for "(10)" in paragraph (c)(10), substituted "(c)(8), and (i)" for "and

(8)" in the third and fourth sentences of subsection (d), substituted "within 30 days after receiving the gift, disclose to the committee" for "disclose to the committee annually on or before March 15" in the fifth sentence of subsection (d), split subsection (i) into two sentences, substituted "an immediate family member" for "a family member," "disclose for publication under (d) of this section" for "report," and "disclosed" for "reported" in the first sentence of subsection (i), inserted "person who is a" and "a member of the person's immediate family may not receive the gift" in the second sentence of subsection (i), and repealed subsection (k).

The 2008 amendment, effective September 14, 2008, inserted "a contribution to a charity event from any person at any time, and" at the beginning of subparagraph (a)(2)(B), added subparagraphs (a)(2)(C) — (E), and deleted the last two sentences of subsection (h), relating to legislative volunteers or educational trainees.

**Sec. 24.60.085. Restrictions on earned income and honoraria.** (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.