

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2484 HJ SB 208 - SB 257

2484

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Alcoholic Beverage Control Board should reevaluate its interpretation and application of the enforcement requirements of Title 4.

Alaska Statute 04.06.075 states that the director of the ABC Board shall enforce Title 4 and regulations adopted by the Board. Title 4 also provides that a person who violates a provision of the Title or adopted regulations is guilty, upon conviction, of a class A misdemeanor. To enable the Director and enforcement personnel to accomplish this task, Title 4 also provides for the exercise of peace officer powers, upon concurrence of the Commissioner of Public Safety.

Although these statutes clearly show that the ABC Board is mandated to enforce Title 4, it is ABC's opinion the primary responsibility for enforcement rests with State and local law enforcement agencies. As a result, few criminal complaints have resulted from ABC enforcement activities. During Fiscal Year 1982, only eight criminal complaints were filed, five of which were originated by ABC personnel.

The ABC Board utilizes a Notice of Violation to communicate to licensees that a violation allegedly occurred. However, Notices of Violation of and by themselves carry no penalty. Again, the ABC Board relies primarily on State and local law enforcement agencies to provide information to generate a Notice. Over 60 percent of the Notices issued during Fiscal Year 1982 were the result of work performed by local law enforcement agencies.

State and local law enforcement agencies are required to investigate and report violations of Title 4 to the ABC Board. However, this responsibility is only a small part of their total criminal enforcement responsibilities in the State of Alaska. As a matter of priority, these agencies cannot devote sufficient time to the enforcement of Title 4. Therefore, this responsibility must and does rest with the ABC Board.

It is our opinion that the ABC Board should reevaluate its interpretation of the enforcement responsibilities of Title 4 and, within staffing limitations, reconsider the direction of current ABC enforcement efforts.

Recommendation No. 2

The Office of the Governor should keep appointments to the Alcoholic Beverage Control Board current and staggered as required by AS 04.06.030.

During our review of appointments to the ABC Board we noted the following exceptions:

1. Past appointments to the Board have not been made in accordance with the provisions of AS 04.06.030(b) which requires the Governor to fill vacancies to unexpired terms within 30 days of the vacancies. Our review of appointments showed one position remained vacant for 92 days and another position was vacant for 152 days.
2. AS 04.06.030(a) requires appointments to be overlapping terms of 3 years. We found that the terms of two members will expire on January 31, 1984, and the terms of two other members will expire January 31, 1985.

We recommend the Office of the Governor appoint new members or reappoint current members to vacant ABC Board seats in a timely manner and in compliance with AS 04.06.030. We also recommend that the appointment terms be staggered as required by law.

We further recommend the Office of the Governor establish a talent pool for Board appointments. The concept of a talent pool is to have a list of persons available and desiring to serve as a Board member. Many sources exist in the State to establish such a pool. Liquor industry associations could be requested to provide a list of members who would like to serve as an industry representative on the Board.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analysis indicates both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent to which the board, commission or program has operated in the public interest.

Public protection gained through licensing to control liquor manufacture and traffic has been adequately provided by the ABC Board. However, the Board is also charged with enforcement of the alcoholic beverage control laws, rules, and regulations. As previously documented in this report, it is our opinion the ABC Board has not met its statutory responsibilities in protecting public health, safety, and welfare (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matter.

The 1980 revisions to Title 4 have, for the most part, been beneficial to the operation of the ABC Board. However, those sections which deal with suspension and revocation of licenses and permits place severe restrictions upon the ability of ABC to suspend and revoke licenses for the illegal act of licensee employees.

The Board is also restricted in meeting its statutory responsibilities in protecting the public health, safety and welfare by the size of the enforcement staff which consists of one agent in Juneau, one in Fairbanks and three, including a supervisory agent in Anchorage. Including the supervisory agent, there are only five agents with inspection and enforcement responsibilities for 1,483 licensed premises. However, one other Anchorage Investigator position is vacant.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no exceptions. The Board has therefore, presented qualified applicants to serve the public.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No discrepancies were noted during our review of the ABC Board affirmative action program.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to I and II above and to the previous section, Findings and Recommendations.

(Intentionally left blank)

APPENDIXES

APPENDIX A

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
ALCOHOLIC BEVERAGE CONTROL BOARD  
REVENUE COMPARED WITH EXPENDITURES  
Fiscal Years 1980, 1981 and 1982  
(UNAUDITED)  
(Note 1)

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Revenue (See Schedule 1)	\$ 1,028,982	\$ 1,494,489	\$ 1,548,393
Expenditures	<u>(483,121)</u>	<u>(556,589)</u>	<u>(562,178)</u>
<u>Excess of Revenue Over Expenditures</u>	<u>\$ 545,861</u>	<u>\$ 937,900</u>	<u>\$ 986,215</u>

Schedule 1  
Revenue Collected

<u>Types of License</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Liquor License Application	\$ 76,050	\$ 83,250	\$ 86,350
Pub	494	100	400
Beverage Dispensary	501,850	771,050	773,200
Club	24,650	39,500	39,300
Common Carrier	14,150	25,800	29,050
Restaurant	46,250	60,750	69,600
Roadhouse	3,250	-0-	-0-
Retail Store	248,350	330,700	335,400
Wholesale General	79,500	138,500	156,000
Wholesale Malt Beverage	15,300	13,200	21,600
Miscellaneous (Note 2)	<u>21,138</u>	<u>31,639</u>	<u>37,493</u>
<u>Total</u>	<u>\$ 1,028,982</u>	<u>\$ 1,494,489</u>	<u>\$ 1,548,393</u>

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenue Compared with Expenditures, nor the Schedule of Revenue Collected.

Note 2

Includes recreational-site licenses, caterer's, special events and conditional contractor's permits.

APPENDIX B

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
ALCOHOLIC BEVERAGE CONTROL BOARD  
NUMBER OF LICENSES BY TYPE  
Fiscal Years 1980, 1981 and 1982

<u>Types of License</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Pub	1	1	1
Beverage Dispensary	607	620	634
Club	61	63	65
Common Carrier	64	72	88
Restaurant	146	182	215
Roadhouse	20	-0-	-0-
Retail Store	431	438	445
Wholesale General	16	15	16
Wholesale Malt Beverage	6	7	7
Miscellaneous (Note 1)	<u>10</u>	<u>9</u>	<u>12</u>
<u>Total</u>	<u>1362</u>	<u>1407</u>	<u>1483</u>

Note 1

Includes recreational-site licenses, caterer's, special events and conditional contractor's permits.

APPENDIX C

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
ALCOHOLIC BEVERAGE CONTROL BOARD  
DESCRIPTION OF LICENSE TYPES AND FEES

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Application Fee	For each license application.	\$ 50
Beverage Dispensary	To sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.	1,250
Restaurant or Eating Place	To sell beer and wine for consumption only on the licensed premises.	300
Club	To sell alcoholic beverages for consumption only on the licensed premises.	600
Bottling Works	To operate a bottling works where beer and wine may be bottled and sold.	250
Brewery	To operate a brewery where beer is manufactured and bottled or barreled for sale.	500
Winery	To operate a winery where wine is manufactured and bottled or barreled for sale.	250
Package Store	To sell alcoholic beverages to a person in response to a verbal solicitation for purchase received from the person present on the licensed premises or in response to a written solicitation made by a person known to the licensee for a purchase to be received by the person making the solicitation.	750

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Retail Stock	To sell the remaining stock of a package liquor store when the owner wishes to close or terminate business. Sale may only be to licensed persons.	\$ 100
General Wholesale	To sell alcoholic beverages in the original package, and wine in bulk, in quantities of not less than five gallons to holders of licenses.	1,000 First \$100,00 of sales plus \$500 - 10,000 on additional sales
Wholesale Malt Beverage and Wine	To sell malt beverages and wine in the original packages in quantities of not less than five wine gallons to holders of licenses.	200 First \$20,000 of sales plus \$300 - 10,000 based on additional sales
Distillery	To operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.	500
Community Liquor	Authorizes a municipality to operate a beverage dispensary or a package store or both subject to the same conditions and fees applicable to beverage dispensary or package liquor store licenses.	1,250 Beverage Dispensary 750 Package Store
Common Carrier Dispensary	To sell alcoholic beverages for consumption aboard a vehicle, boat, aircraft, or railroad buffet car licensed by the State or federal agency for passenger travel.	350 Per vehicle, boat, aircraft or railroad car
Recreational Site	To sell beer and wine at a recreational site during and one hour before and after a recreational event which is not a school event, for consumption on designated areas at the site.	400

<u>Source</u>	<u>Description</u>	<u>Annual Fee</u>
Pub	To sell beer and wine for consumption only at designated premises located on the campus of an accredited college or university.	\$ 400
Caterer	Authorizes the holder of a beverage dispensary license to sell or dispense alcoholic beverages at conventions, banquets, social gatherings, sporting events or similar affairs held off the holder's licensed premises.	50
Special Events	To sell or dispense beer or wine for consumption at designated premises for a specific occasion and limited period of time. Only a nonprofit organization may acquire the permit.	50 Per day
Conditional Contractor	To sell beer or wine for consumption only on designated premises for one year from the date of issuance of the permit at construction sites which are located outside a city and inside the boundaries of a military or naval reservation.	600

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

March 2, 1983

RECEIVED  
MAR 02 1983  
LEGISLATIVE  
AUDIT

Mr. Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, AK 99811

Dear Mr. Wilkerson:

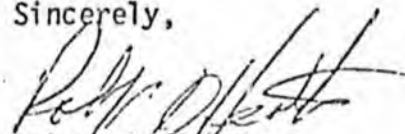
This letter is in response to your Recommendation No. 1 contained in your preliminary audit report of the Alcoholic Beverage Control Board dated December 15, 1982.

Without generating a lengthy dissertation about staff and budgetary limitations, utilization of present staff, and administrative/judicial due process, we generally believe your recommendation has merit. However, if we understand your perception of enforcement by the board to be criminally oriented, under present law heavy reliance on other state and local-law authority is required, and no single agency could fill a void which the report implies exists.

The board at each and every monthly meeting evaluates its enforcement function through granting or denying license applications, sitting in informal conference, and reviewing hearing officer decisions. The board has scheduled "workshop" sessions during its two-day April meeting in Juneau and will review law and regulations in light of your opinion.

Thank you for the opportunity to respond.

Sincerely,

  
Robert D. Heath  
Commissioner of Revenue

cc: Patrick L. Sharrock, Director  
ABC Board

ABC Board Members

S

B

2

3

1

POSITION PAPER  
SENATE BILL NO. 231

Article III, Section 18, of the Alaska Constitution requires the State establish a parole system. This administration supports the Parole Board as the least costly constitutional method of carrying out the parole process. Numerous legislative hearings held around the State over the last four years in conjunction with the sunset review of the Parole Board support this position.

Although the administration expects to submit a comprehensive bill next session to revise the outdated statutes, this bill will extend the life of the Board until the new bill is submitted next session.

The Parole Board is currently in its one year "wind down" now and is due to go out of existence on July 1, 1983. Legislation must be passed by then to comply with the constitutional mandate for a parole system. Expeditious passage of this legislation is strongly supported.

Recommend by: *Samuel H. Trivette* Date *April 13, 1983*  
Samuel H. Trivette  
Executive Director  
Parole Board

Approved by: *Robert London Smith* Date *4/14/83*  
Robert London Smith, Ph.D.  
Commissioner  
Department of Health and  
Social Services

I. REQUEST  
 Bill/Resolution No.: SB 231  
 Title: Extend life of Parole Board  
 Sponsor: Rules Committee  
 Requestor: Governor

II. FISCAL DETAIL  
 Agency Affected: Health & Social Services  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Parole Board *AAJ* Phone: 465-3384  
 Division: Parole Board Date: April 5, 1983

Approved by Commissioner: *[Signature]* Date: 4/5/83  
 Department: Health and Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU


April 6, 1983

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill extending the life of the State Board of Parole to June 30, 1985. Under the current law, that board "sunsetted" June 30, 1982 and is now in its one-year wrap-up period. Unless it is extended, it will go out of existence on June 30, 1983. However, art. III, sec. 21, of the Alaska Constitution says that "A parole system shall be provided by law." Therefore, it is necessary either to extend the life of the present board or establish a new parole system before the present board goes out of existence. It is my intent that members of my administration work with the legislature in dealing with additional issues confronting the parole system.

Sincerely,

  
Bill Sheffield  
Governor

SENATE JUDICIARY COMMITTEE

Meeting Minutes

4/22/83

The meeting was called to order at 1:37 p.m. by Chairman Ray. All members were present.

The first order of business was SENATE BILL 231--Extending the life of the parole board, as to which Senator Ray briefly explained the purpose of the legislation and a discussion was had wherein Senator Pettyjohn stated that he was on the parole board for about two years and thus has some familiarity with the subject matter of the bill and he fully supports it. Senator Ziegler then moved to pass the bill out with individual recommendations. All members voted Do Pass.

The second order of business was SENATE BILL 232--Relating to state liability under AS 03.05, as to which Mark Hutton, who works for the Commissioner of the DEC, testified, concluding that his department opposes the present version of the bill and recommends that action on it be held in abeyance pending the drafting of a better version. After a discussion in which Senators Ray, Eliason and Ziegler participated, it was agreed that the Committee would follow Mr. Hutton's recommendation.

The third order of business was SENATE BILL 243--Modifying or abolishing some common law real property rules, as to which Dick Regan, Research Director for the Alaska Code Revision Committee, testified in favor of the bill and answered various questions posed by each member of the Committee, all of whom participated in a discussion, whereupon Senator Ziegler moved that the bill be passed out with individual recommendations. Senators Josephson, Ziegler and Pettyjohn voted Do Pass. Senators Ray and Eliason voted No Recommendation.

The fourth order of business was the unanimous confirmation of the following new ABC Board appointees:

John Walters from Nome; and

Wesley "Wally" Wallace from Fairbanks

The fifth and final order of business was the following new subcommittee appointments:

SB 163--Use of seat belts in cars.

Senator Pettyjohn



Alaska State Legislature

SENATOR  
ROBERT H. ZIEGLER, SR.  
307 BAWDEN STREET  
KETCHIKAN, ALASKA 99901

While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN  
SENATE RESOURCES COMMITTEE  
MEMBER  
SENATE JUDICIARY COMMITTEE  
WESTERN STATES LEGISLATIVE  
FORESTRY TASK FORCE  
WESTERN CONFERENCE COUNCIL  
OF STATE GOVERNMENTS

April 14, 1983

Senator Bill Ray,  
Chairman - Senate Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska

RE: SB 231

Dear Senator Ray:

The captioned bill extends the life of the Parole Board until June 30, 1983. If it doesn't pass, the Board goes kaput as of June 30 of this year.

It should pass.

Very truly yours,

A handwritten signature in cursive script that reads "R. H. Ziegler, Sr.".

Robert H. Ziegler, Sr.

RHZ:lk

S

B

2 4 3

ALASKA CODE REVISION COMMISSION



MAY 18 1983

COMMISSIONERS  
JOHN W. ABBOTT - CHAIRMAN  
JAMES L. BALDWIN - VICE CHAIRMAN  
PATRICK M. RODEY  
CHARLIE BUSSELL  
L. S. KURTZ, JR.  
JUDGE (RET.) THOMAS B. STEWART  
FREDERIC E. BROWN

ALASKA STATE LEGISLATURE  
POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-4878

EXECUTIVE SECRETARY  
BILLY G. BERRIER

MEMORANDUM

TO: Representative John J. Liska  
Vice Chairman (Acting Chairman)  
House Judiciary Committee

FROM: Dick Regan, Research Director  
Alaska Code Revision Commission *DR*

DATE: May 18, 1983

RE: SB 243 on common law property rules

When Professor Jesse Dukeminier was here to testify but had to return to Los Angeles, you suggested we might submit written testimony on SB 243.

For an analysis of the bill we cannot provide a more accurate written statement than the commentary in Joint House and Senate Journal Supplement No. 8.

However, in an effort to express the reasons for the bill non-technically, I recently provided the attached statement to Chairman Bussell. It could serve as written testimony, and I'll be glad to answer questions about the bill at the hearing today.

DR:chw

Enclosure

FURTHER EXPLANATION OF THE REASONS FOR SB 243  
ON COMMON LAW PROPERTY RULES

SB 243 deals with common law rules with roots that go back to feudal land holdings.

The main purpose of the bill is to remove possible hidden traps in order to make it more sure that the terms of a person's will will be carried out.

The bill benefits the person who drafts his or her own will. It benefits lawyers, too, in the same sense that accident prevention benefits insurance companies. But everybody who may leave property by a will benefits by reducing the risk of accidents in will drafting so the person's true intentions can be carried out. Nothing is much sadder than the bitterness engendered among family members by a disputed will. These ancient common law rules can be a cause of that bitterness.

The bill is to clarify and simplify the law by abolishing two old rules and changing a third.

Section 1 is a statement of intent that would become a revisor's note with the sections when they are published in Alaska Statutes. It is a broad brush explanation using the common names for the rules.

Section 2 changes the rule against perpetuities. That rule is well entrenched and it is needed. It sets a limit on how long a person can control who will own the property the person deeds, gives, or includes in the person's will.

But the rule works injustices by invalidating from the start many transfers that would be completed well within the time limit. The old rule determines validity or invalidity of a transfer based on possibilities, no matter how outlandishly unlikely the possibilities may be. This bill would carefully change the rule by statute so actual events, not unlikely possibilities, determine validity of a transfer. And any transfer that still is not completed within the time limit is to be carried out as nearly as possible within the limits of the rule as changed.

More than half of the states, England, and several Commonwealth jurisdictions have changed the rule, and the form we are proposing has proven to be suitable in other jurisdictions.

Sections 3 and 4 of the bill would abolish the other two old rules--the "Rule in Shelley's Case" and the "doctrine of destructibility of contingent remainders." The reasons for the two rules no longer exist in modern land holding. But common law rules aren't statutes that can just be repealed by a repealer section. Abolishing or changing a common law rule requires careful use of language. Unfortunately, as the rules are old, some old-sounding terms are needed in a bill that abolishes or changes them.

As is pointed out in joint journal supplement number 8, whether the Rule in Shelley's Case presently applies in Alaska is unclear. It is easy to make it clear that the rule does not apply by enacting section 3 of SB 243, the kind of course that has been taken in the vast majority of states.

Similarly, about three-fourths of the states have managed in one way or another to get rid of the long outdated doctrine of destructibility of contingent remainders, as the bill does in section 4.

Enactment of the bill would include Alaska among the enlightened jurisdictions that have enacted statutes to assure that the old rules from the feudal system will no longer interfere with reasonable property dispositions.

ALASKA CODE REVISION COMMISSION



MAY 18 1983

COMMISSIONERS  
JOHN W. ABBOTT - CHAIRMAN  
JAMES L. BALDWIN - VICE CHAIRMAN  
PATRICK M. ROYCE  
CHARLIE BUSH  
L. S. KURTZ, JR.  
JUDGE (RET.) THOMAS B. STEWART  
FREDERIC E. BROWN

ALASKA STATE LEGISLATURE  
POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-4878

EXECUTIVE SECRETARY  
BILLY G. BARRIER

MEMORANDUM

TO: Representative John J. Liska  
Vice Chairman (Acting Chairman)  
House Judiciary Committee

FROM: Dick Regan, Research Director  
Alaska Code Revision Commission *DR*

DATE: May 18, 1983

RE: SB 243 on common law property rules

When Professor Jesse Dukeminier was here to testify but had to return to Los Angeles, you suggested we might submit written testimony on SB 243.

For an analysis of the bill we cannot provide a more accurate written statement than the commentary in Joint House and Senate Journal Supplement No. 8.

However, in an effort to express the reasons for the bill non-technically, I recently provided the attached statement to Chairman Bussell. It could serve as written testimony, and I'll be glad to answer questions about the bill at the hearing today.

DR:chw

Enclosure

FURTHER EXPLANATION OF THE REASONS FOR SB 243  
ON COMMON LAW PROPERTY RULES

SB 243 deals with common law rules with roots that go back to feudal land holdings.

The main purpose of the bill is to remove possible hidden traps in order to make it more sure that the terms of a person's will will be carried out.

The bill benefits the person who drafts his or her own will. It benefits lawyers, too, in the same sense that accident prevention benefits insurance companies. But everybody who may leave property by a will benefits by reducing the risk of accidents in will drafting so the person's true intentions can be carried out. Nothing is much sadder than the bitterness engendered among family members by a disputed will. These ancient common law rules can be a cause of that bitterness.

The bill is to clarify and simplify the law by abolishing two old rules and changing a third.

Section 1 is a statement of intent that would become a revisor's note with the sections when they are published in Alaska Statutes. It is a broad brush explanation using the common names for the rules.

Section 2 changes the rule against perpetuities. That rule is well entrenched and it is needed. It sets a limit on how long a person can control who will own the property the person deeds, gives, or includes in the person's will.

But the rule works injustices by invalidating from the start many transfers that would be completed well within the time limit. The old rule determines validity or invalidity of a transfer based on possibilities, no matter how outlandishly unlikely the possibilities may be. This bill would carefully change the rule by statute so actual events, not unlikely possibilities, determine validity of a transfer. And any transfer that still is not completed within the time limit is to be carried out as nearly as possible within the limits of the rule as changed.

More than half of the states, England, and several Commonwealth jurisdictions have changed the rule, and the form we are proposing has proven to be suitable in other jurisdictions.

Sections 3 and 4 of the bill would abolish the other two old rules--the "Rule in Shelley's Case" and the "doctrine of destructibility of contingent remainders." The reasons for the two rules no longer exist in modern land holding. But common law rules aren't statutes that can just be repealed by a repealer section. Abolishing or changing a common law rule requires careful use of language. Unfortunately, as the rules are old, some old-sounding terms are needed in a bill that abolishes or changes them.

As is pointed out in joint journal supplement number 8, whether the Rule in Shelley's Case presently applies in Alaska is unclear. It is easy to make it clear that the rule does not apply by enacting section 3 of SB 243, the kind of course that has been taken in the vast majority of states.

Similarly, about three-fourths of the states have managed in one way or another to get rid of the long outdated doctrine of destructibility of contingent remainders, as the bill does in section 4.

Enactment of the bill would include Alaska among the enlightened jurisdictions that have enacted statutes to assure that the old rules from the feudal system will no longer interfere with reasonable property dispositions.

FILE WITH SB

#  
02418 ANCHORAGE AK 39 04-22 0915 AST

PMS SEN BILL RAY 1905

JUNEAU

THE PROBATE LAW SECTION OF THE ALASKA BAR ASSOCIATION CONSIDERED THE DRAFT OF SB243 RELATING TO THE ABOLISHMENT OF THREE COMMON LAW PROPERTY RULES AT ITS REGULAR MEETING ON JANUARY 20 1983. THE SECTION FAVORS THE PASSAGE OF THE BILL. THE SECTION FEELS THAT THE THREE COMMON LAW RULES IN QUESTION ARE ANTIQUATED AND WERE DESIGNED TO DEAL WITH SOCIAL PROBLEMS THAT NO LONGER EXIST. THE SECTIONS AGREE THAT PROPOSED LEGISLATION IS SUFFICIENTLY SIMPLE AND DIRECT TO ACCOMPLISH THE DESIRED RESULTS. WE URGE YOUR FAVORABLE CONSIDERATION OF THE BILL.

KATHRYN A BLACK CHAIRPERSON



HB 340  
SB 243

COMMISSIONERS  
JOHN W. ABBOTT - CHAIRMAN  
JAMES L. BALDWIN - VICE CHAIRMAN  
PATRICK M. RODEY  
CHARLES G. ANDERSON  
L. S. KURTZ, JR.  
JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE  
POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465.4878

EXECUTIVE SECRETARY  
BILLY G. BERRIER

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman  
Alaska Code Revision Commission *JWA*

DATE: February 22, 1983

RE: Bill on common law property rules

Pursuant to authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on common law property rules and asks that it be introduced in the legislature.

The bill deals with three old common law property rules. If enacted it will modify the rule against perpetuities, and will abolish the rule on destructibility of contingent remainders and a rule known to lawyers as "the rule in Shelley's case."

The reasons for treating these rules by statute and the debt the commission owes to Professor Jesse Dukeminier in its preparation are matters covered in the attached commentary on the bill.

JWA:chw

Attachment

cc: Hon. Bill Sheffield  
Hon. Edmond W. Burke, Chief Justice  
Myrton R. Charney, Executive Director  
Legislative Affairs Agency

FEBRUARY 1983  
COMMENTARY TO ACCOMPANY DRAFT BILL  
ON COMMON LAW PROPERTY RULES  
BILL NO.

GENERAL BACKGROUND

The rules dealt with in the attached bill reach so far back that few remember they exist. That is one of the main reasons for the bill. The rules, when not recognized and dealt with by statute, can defeat the intention of a person who makes a will or otherwise transfers real property. Many Alaskans draft their own wills, and many Alaska attorneys are general practitioners who may not be aware that these archaic rules still may be in effect in Alaska.

The common law that has developed through custom and precedent is the basic law of Alaska, subject to AS 01.10.010. That section provides:

SEC. 01.10.010. APPLICABILITY OF COMMON LAW.  
So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state.

Statutes are needed to make clear whether certain of the old common law rules regarding land transfers continue to apply and to assure that the rules that apply are modified if no longer consistent with current conditions. A distinguished professor of real property law, Jesse Dukeminier of the UCLA Law School, has focused on the problem caused by these common law property rules and the need for legislation to abolish or modify them. His pointing out the need for legislation in Alaska caused the Alaska Code Revision Commission to consider the subject and to propose the attached bill on three rules--the rule against perpetuities, the rule in Shelley's Case, and the doctrine of

destructibility of contingent remainders. With minor exceptions, the following explanations of the rules and the need for legislation is Professor Dukeminier's, and is adopted by the commission.

#### Section 1

The Statement of Purpose is self-explanatory.

#### Section 2

Three common law property rules are dealt with here:

#### I. AS 34.27.010. MODIFICATION OF THE COMMON LAW RULE AGAINST PERPETUITIES.

Purpose of Proposed AS 34.27.010. Proposed AS 34.27.010 is to provide the State of Alaska with a Rule against perpetuities that preserves (a) the essential purpose of the Rule, and (b) the intentions of testators, grantors, and settlors of trusts to the maximum extent possible.

#### What is the Rule Against Perpetuities?

Expressed in the technical language of the law, the rule is as follows:

No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

The purpose of the rule is to prevent property from being tied up for too long a period. It was developed by the English courts to curb the efforts of land owners who wanted to establish family dynasties. These problems are almost nonexistent today.

#### Why Does the Rule Need Modification?

Many unsound incrustations upon a basically sound rule have accumulated over the many years of the rule's existence. The rule is ridden with superfluous technicalities and decisions that destroy careful and reasonable estate plans offering no threat to the public interest. The following examples illustrate

these technicalities, which are traps for people who write their own wills and for lawyers and their clients:

The fertile octogenarian. Testator devises property in trust to pay the income 'to my sister A for life, then to A's children for their lives, and then to distribute the principal to A's grandchildren.' A is eighty years old at testator's death. Because the law conclusively presumes A to be capable of bearing children, for purposes of the rule against perpetuities, the remainder to A's grandchildren might not vest until the death of A's children conceived after testator's death, which is too remote. The remainder to A's grandchildren is void.

The unborn widow. Testator devises property 'to my son A for life, then to A's widow for life, then to A's issue per stirpes.' The remainder to A's issue may not vest until the death of A's widow, who might be a woman not yet born at testator's death. Hence the remainder to A's issue is void.

The slothful executor. Testator devises property 'to my issue living upon distribution of my estate.' Because the law assumes the distribution of testator's estate may occur more than twenty-one years after lives in being at testator's death, the gift to testator's issue is void.

The two basic difficulties with standard perpetuities doctrine, which result in defeating reasonable dispositions by reasonable property owners, are these:

1. In determining whether an interest violates the rule the courts close their eyes to events which actually happen and decide the case upon events which might happen after testator's death. For example, the courts assume that a man or woman of any age--even eighty or beyond--can have a child. See the fertile octogenarian case above. It will be observed that the first sentence of proposed AS 34.27.-010 corrects this by declaring that 'the period of perpetuities shall be measured by actual rather than possible events.' If in fact A does not have a child born after testator's death the gift is good. This sentence enacts the wait-and-see doctrine.

2. If it is found that an interest violates the rule, the entire interest is struck down instead of cutting it down to permissible size. It will be observed that the second sentence of proposed AS 34.17.010, corrects this

by declaring that the interest 'shall be reformed, within the limits of that rule, to approximate most closely the intention of the creator of the interest.' (It should be noted that this provision of proposed AS 34.17.010 applies to private dispositions the cy pres doctrine, with which all lawyers are familiar, whereby when the purpose of a charitable trust fails the money is applied, under the supervision of the Attorney General, to such other charity as most closely approximates the general charitable intent of the settlor of the trust.)

All the known anomalies in the decisions on the rule will be automatically corrected by these two simple provisions. Modification of the rule by these provisions will avoid a trap for people who draft their own wills, and will also practically eliminate any potential liability of lawyers for falling into what John Chipman Gray (the great authority on the rule) called "the net which the rule spreads for the unwary."

Is There General Recognition that the Rule is Defective?

Yes. The wait-and-see doctrine determines validity by what actually happens, not by what might happen. The wait-and-see doctrine has been adopted in one form or another by fourteen states, England, and several Commonwealth jurisdictions. Fla. Stat. § 689.22(2) (1977); Ky. Rev. Stat. § 381.216 (1972); Ohio Rev. Code Ann. § 2131.08 (Page 1978); 20 Pa. Cons. Stat. Ann. § 6104(b) (Purdon 1975); Va. Code § 55-13.3 (approved April 7, 1982); Vt. Stat. Ann. tit. 27, § 501 (1975); Ill. Ann. Stat. ch. 30, § 195 (Smith-Hurd 1969 & Supp. 1979); Wash. Rev. Code §§ 11.98.010-.050 (1976); Conn. Gen. Stat § 45-95 (1979); Me. Rev. Stat. tit. 33, § 101 (1978); Md. Est. & Trusts Code Ann. § 11-103(a) (1978); Mass. Gen. Laws Ann. ch. 184A, § 1 (West 1977); Phelps v. Shropshire, 254 Miss. 277, 785, 183 So. 2d 148, 161-62 (1966); Merchants Nat'l Bank v. Curtis, 90 N.H. 225, 230-31, 97 A.2d 207, 211 (1953); English Perpetuities

and Accumulations Act, 1964, c. 55, § 3. In May 1979, the American Law Institute approved the wait-and-see approach to be incorporated into the Restatement (Second) of Property. Restatement (Second) of Property, Donative Transfers §§ 1.3-.4 (Tent. Draft No. 2, 1979).

Under the cy pres doctrine the invalid interest is reformed to give effect as nearly as possible to the general intent of the creator of the interest. The cy pres doctrine has been adopted in fifteen states and by the Restatement (Second) of Property. Cal. Civ. Code § 715.5 (West 1970); Mo. Ann. Stat. § 442.555 (Vernon Supp. 1979); Okla. Stat. tit. 60, § 75 (1971 & Supp. 1978); Tex. Rev. Civ. Stat. Ann. art. 1291b (Vernon Supp. 1978); Ky. Rev. Stat. § 381.216 (1972); Ohio Rev. Code Ann. § 2131.08(c) (Page 1976); Vt. Stat. Ann. tit. 27, § 501 (1975); Va. Code § 55-13.3 (approved April 7, 1982); Wash. Rev. Code § 11.98.030 (1976); In re Estate of Chun Quan Yee Hop, 52 Haw. 40, 46, 469 P.2d 183, 197 (1970); In re Foster's Estate, 190 Kan. 498, 503, 376 P.2d 784, 788 (1962) (semble); Carter v. Berry, 243 Miss. 321, 376, 140 So. 2d 843, 855 (1962); Edgerly v. Barker, 66 N.H. 434, 31A. 900 (1891); Berry v. Union Nat'l Bank, 262 S.E.2d 766 (W. Va. 1980) (a particularly persuasive opinion analyzing cy pres and citing most of the relevant literature); See also Atchison v. City of Englewood, 568 P.2d 13, 17-18 (Colo. 1977) (reforming commercial agreement so as to avoid violation of the Rule). Restatement (Second) of Property, Donative Transfers § 1.5 (Tent. Draft No. 2, 1979), applies the cy pres doctrine if the interest actually vests beyond the perpetuities period. Thus, the Restatement has adopted the modifications adopted in Kentucky, Mississippi, New Hampshire, Ohio, Vermont, and Virginia. These modifications are provided in proposed AS 34.27.010 of the statute proposed for Alaska.

To summarize, proposed AS 34.27.010 draws upon and combines the best features of existing legislation in other American states, and does so in simple form.

#### Who Will Benefit from This Bill?

This bill will cause innocent and reasonable family dispositions, which standard perpetuities doctrine now invalidates, to be upheld within the limits of the rule. Instead of determining validity of interests by what might happen, often unforeseen by competent lawyers, it will determine the validity of interests by what actually occurs. It will benefit the general practicing lawyer who has difficulty keeping abreast of the intricacies and technicalities of the rule. It will also benefit the property owner who consults the lawyer or who drafts his own will.

It should be noted that the statute does not affect or modify any disposition that would have been valid prior to enactment of the statute. It only affects dispositions that heretofore would be void.

#### How Will the Statute Apply?

The discussion that follows is somewhat more technical.

In the first place, it would seem desirable for a court to decline to pass on the validity of a future interest which may or may not vest within the rule until previous interests have expired; in the case of land no issue of possession can arise until this time comes, and in the case of a trust the trustee is not in a position where he or she has to distribute. It is standard practice in many jurisdictions to decline to pass on a perpetuities issue until previous interests expire. The proviso in the first sentence of proposed AS 34.27.010

("However, the period of perpetuities may not be measured by a life whose continuance does not have a causal relationship to vesting or failure of the interest") prevents waiting out lives which have no relationship to the gift.

If decision is postponed until previous interests expire, it will usually be found that "actual rather than possible events" have eliminated any hypothetical violation of the rule. If, however, actual events still produce a violation of the rule, then the court under the second sentence of proposed AS 34.27.010 will enter a decree reforming the will, deed, or trust in such a way as to carry out most closely the intent while still staying within the limits of the Rule.

Two common examples:

(1) A childless farmer has several brothers. His youngest brother, John, works the place with him. John has several children. The farmer's will leaves the place to John for life, and then to John's children who reach the age of 25. Under standard perpetuities doctrine, the gift to the children is void; and on John's death the property will pass to the farmer's heirs (who would include the other brothers). Under the proposed Act the validity of the remainder would not be determined until John's death; then, if all John's children were born in the testator's lifetime or if all were over 4 years old at John's death, no reformation of the interest would be required. The remainder would actually vest within the period. If there were at John's death a child under 4 who was born after the testator's death, the will would be reformed to give the farm to such of John's children as should reach 21. The justification is that the testator obviously would have preferred earlier vesting to total invalidity if the point were put to him.

(2) A father has a son, aged 45, who is married and has three children. He leaves his property in trust to pay the income to the son for life, then to pay the income to the son's widow for life, and then to pay the principal to the son's children who should be living at the death of the survivor of the son and his widow. Under standard perpetuities doctrine the gift to the children is void, because of the possibility that the son's present marriage might end by death or divorce, the son might marry a woman who was unborn at the testator's death, there might be children of this second marriage, and the second wife might survive her husband. Of course, the chance that these events would occur is absurdly slight; but the existence of the chance causes the standard rule to be violated. Under the proposed Act it would not be determined whether the gift to children is valid or void until the son's death, when it would doubtless appear that the "actual events" did not violate the rule. However, on the long chance that this extraordinary series of events actually did take place, the court would reform the gift to the children so that it would read: ". . . to such children of my son as shall be living at the death of the survivor of my son and any widow of his, provided that, if my son leaves a widow who was unborn at my death, the interest to my son's children shall vest not later than 21 years after my son's death." As thus reformed, the gift is valid, no matter what happens.

#### Conclusion

Proposed AS 34.27.010, if enacted, will provide Alaska with a law of perpetuities which at once safeguards the public interest against overlong dispositions, carries out to the greatest feasible extent the intentions of testators,

grantors, and settlors of trusts, and removes potential traps for the lay will drafter and the general practicing attorney.

II. AS 34.27.020. ABOLITION OF THE COMMON LAW RULE IN SHELLEY'S CASE.

What is the Rule in Shelley's Case?

Many lawyers know the rule in Shelley's Case only as a quaint rule learned in law school and immediately forgotten after the real property law exam. Under the rule if one instrument creates a life estate in land in a person and purports to create a remainder in the person's heirs, the remainder becomes a remainder in fee simple in the grantee, not in the grantee's heirs. Thus:

Testator devises land to A for life, remainder to A's heirs. The remainder to A's heirs is void. A takes the remainder in fee simple, which merges with A's life estate, giving A a fee simple in possession. See 1 American Law of Property §§ 4.40-4.52.

The rule in Shelley's Case is a rule of law defeating the testator's intent to give A only a life estate. It serves no good purpose. It is a feudal anachronism which has been abolished in thirty-nine states and the District of Columbia.

Does the Rule Exist in Alaska?

It is not clear whether the rule exists in Alaska, and the question should be answered by legislation. Deferring to the courts would only cause someone to incur major litigation expenses and would perpetuate the period of uncertainty until someone is willing to incur the expense in time and money to resolve the question.

The rule in Shelley's Case was abolished by statutes in Alaska that were part of the original code adopted from Oregon, Compiled Laws of Alaska 1913, Sections 586 and 587. These sections were carried over into Alaska Statutes in 1962 as AS 13.05.210 and AS 13.05.220. They were:

Sec. 13.05.210. DEVISE OF ESTATE FOR LIFE WITH REMAINDER TO HEIRS. If any person by last will devise any real estate to any person for the term of such person's life, and after his death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

Sec. 13.05.220. ESTATE BY DEED OR WILL. Where any estate, real, or personal is given by deed or will to any person for his life, and after his death to his heirs, or to the heirs of his body, the conveyance shall be construed to vest an estate for his life only in such person, and a remainder in fee simple in his heirs or the heirs of his body.

These sections were repealed by the blanket repeal of AS 13 when the Uniform Probate Code was adopted in Alaska by ch. 78, SLA 1972.

The rule of statutory construction involved is AS 01.-10.100(c):

(c) When any act repealing a former act, section, or provision is itself repealed, such repeal does not revive the former act, section, or provision, unless it is expressly so provided.

AS 13.05.210--13.05.220, now repealed, simply declared a rule of law that negated a common law rule. Whether the common law rule in Shelley's Case was revived by the 1972 repeal of AS 13.-05.210--13.05.220 is an open question. Proposed AS 34.27.020 in the bill would include Alaska clearly with the 39 states in which the rule is specifically abolished by statute.

#### Why Should the Rule be Abolished?

The rule developed out of feudal land holdings where feudal incidents (equivalent to death taxes) came due if land descended to the heir, not if the heir took by way of remainder. To prevent tax avoidance by giving A a life estate only, with remainder to A's heirs, the rule was invented. No reason for the rule exists in the present system of land holding, but it

is ingrained in the common law and crops up occasionally to defeat testamentary intent in the few states where the rule is not abolished by statute.

### III. AS 34.27.030. ABOLITION OF THE COMMON LAW DESTRUCTIBILITY OF CONTINGENT REMAINDERS.

#### What is the Rule on Destructibility of Contingent Remainders?

At English common law a legal contingent remainder in land was destroyed if it did not vest at or before the termination of the preceding freehold estate. Thus:

Testator devises land to A for life, then to A's children who reach 21. Thereafter A dies, leaving two children aged 15 and 12. Because the children are under 21, the remainder is destroyed and A's children never take. Testator's heirs take a fee simple absolute at A's death. See 1 American Law of Property §§ 4.60-4.63.

Using the same example and assuming proposed AS 34.-27.030 has been enacted, the state of the title is:

A has a life estate, A's children have a contingent remainder, and the testator's heirs have a reversion. If A dies leaving children under 21, possession of the land will go to the testator's heirs until a child reaches 21. The testator's heirs will have to surrender possession to A's first child to reach 21, who in turn will have to share possession with his siblings who reach 21. This is what is meant by the final sentence of AS 34.27.030: "the remainder [in A's children] takes effect [after the termination of the life estate] in the same way as a springing or shifting executory interest." The remainder is not destroyed at A's death, but takes effect [springs up] later if the condition is met.

There are two types of future interests in transferees: remainders and executory interests. A remainder follows a life estate in possession. An executory interest is an interest which springs up in the future at some time other than at the death of a life tenant; it does not follow a life estate. Remainders were recognized in early feudal days; executory

interests were made permissible by the Statute of Uses (1536). The main difference between remainders and executory interests was that remainders were destroyed if they did not vest upon termination of the life estate, whereas executory interests--which did not follow life estates--were indestructible. It is this difference that AS 34.27.030 wipes out.

Why Should the Doctrine be Abolished by Statute?

This doctrine ought to be abolished because it defeats the testator's intent. In the above example there is no reason why A's children should not take when they reach 21. This doctrine has been abolished in about three-fourths of the states, but not expressly abolished in Alaska. There appears to be no Alaska case accepting or rejecting it.

There are ways an astute lawyer can draft a will to avoid the consequences of this doctrine, but not all lawyers and very few non-lawyers are aware of the potential problem. Until the doctrine is abolished by statute the potential exists for malpractice by attorneys drafting wills and for frustration of the testamentary intent of persons who carefully plan for the disposition of their property after death.

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: SB 243  
 Title: "...modifying...property rules."  
 Sponsor: Senate Rules  
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: General Govt.  
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director

Division: Administrative Services Division

Approved by Commissioner: Richard I. Pegues / for / Norman C. Gorsuch, Attorney General

Department: Department of Law

Phone: 465-3672

Date: May 18, 1983

Date: May 18, 1983

Distribution:

Original to Legislative Finance

Copy to Office of Management and Budget (for Legislature introduced bills)

Copy to Department (for Governor introduced bills)

Copy to Sponsor

Copy to Requestor (if different from Sponsor)

SB 243  
Fiscal Note  
Analysis

This bill modifies and abolishes some common law property rules. It is part of an ongoing effort of the Code Revision Commission to clarify and update the state's property statutes in a model form. Because this action enhances the legal process there will be no fiscal impact on the Department of Law's operations.

S

B

2

5

7



FREE

## Federation's Role in our Enterprise Economy



25 May 1983

Representative Charlie Bussell  
Chairman of the Judiciary Committee  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811



Re: Legislative Ethics -- SB 257

Dear Representative Bussell:

On May 23, 1983, the FREE Committee wrote to you concerning SB 257 and HB 362. Since that letter was posted, the final version of SB 257 as it was passed by the Senate on Friday, May 20, became available in Anchorage. It is our understanding that SB 257 will be considered by your committee on Monday, May 30, at 1:30 p.m. and, therefore, a representative of the FREE Committee will be attending that meeting.

There were 14 significant amendments made on the floor to the Senate Judiciary Committee version of the bill before it was passed by the Senate. The FREE Committee has reviewed those amendments and submits the following comments and suggested amendments for your consideration. (Deletions are in brackets and additions are underlined.)

1. To avoid confusion and to ensure that the state can continue to contract non-competitively with sole sources, for fair traded items, for air taxi services, or for other services or goods enumerated in AS 37.05.230, page 3, line 29 and page 4, lines 1 through 7 should be amended to read as follows:

contract or lease unless the contract or lease is let [by competitive bidding under] pursuant to AS 37.05.230 or the total amount of the state contract or lease is \$1000 or less, [or is a standardized contract or lease generally available to the public at large, members of a profession, occupation or group which was developed under publicly established guidelines]. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits.

There are many occasions when the state has a legitimate reason to contract non-competitively and the FREE Committee believes that it is important to protect that right even where one possible beneficiary is a legislator or employee of the legislature. The second deletion is suggested, because it is not

P.O. Box 4-2955 • Anchorage, Alaska 99509

*A committee of the GFWC Anchorage Woman's Club*

clear why the deleted language was included and is, therefore, unnecessary.

2. FREE Committee believes that public officials have the right to expect that ethical standards be clearly defined so that they can avoid ethical problems and, therefore, suggests that the following sentence be added to Sec. 24.60.050 (a) at page 4, line 18:

determining qualification. Within 30 days, the committee shall issue a list of loans that are not considered to create a conflict of interest. Such list shall be reviewed annually.

3. While the public's right to know is important, FREE believes that legislators and legislative employees have a right to privacy. Loan applications and the supporting documents often contain information that should be kept confidential and, therefore, FREE recommends that only notice of a loan application be sent to the APOC. It is simply not the function of the Ethics Committee to second guess the decision of the lending agency to lend money. Where an agency exercises its authority to lend money, even courts are reluctant to impose a contrary determination. More importantly, since the Ethics Committee has subpoena powers and the power to require the production of evidence when it is investigating a complaint, it is unnecessary to require routine production of such confidential information where no complaint has been filed.

In addition, FREE believes that it should be incumbent upon the legislator seeking the loan to notify the APOC, rather than upon the lending agency. Finally, FREE believes that to be consistent, the bill needs to specify where loan applications of legislative employees should be filed. To minimize expense, FREE suggests that APOC could be designated, so long as AS 15.13.030 was amended to permit APOC to receive the information. Based on these reasons, the following changes to page 4, lines 27-29 and to page 5, lines 1-3 are suggested:

the [lending agency] legislator shall send a [copy] notice of the application to the Alaska Public Offices Commission, which will incorporate the [material] notice into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement or which will place the information in a legislative employee loan file which is open to the public, if the applicant is not required to file a disclosure statement. [All records relating to a state loan to a person to whom this chapter applies may be disclosed to the committee.]

4. FREE is also concerned that Sec. 24.60.050 (d) (page 5, lines 4-9) only requires state loan agencies to list outstanding loans. It does not clearly require quasi-state loan agencies

(such as the Alaska Commercial and Fishing and Agriculture Bank) to provide the same information. Since a large number of loans are processed through such agencies, this language should be re-written to address them. With that in mind, the following language is suggested for page 5, line 4:

(d) Each February 1, each [state loan agency] lending agency that receives more than 50% of its funding from state funds must deliver a . . .

5. Since reasonable regulations should apply to everybody, FREE believes that Sec. 24.60.050 (e) (page 5, lines 10-14) should be deleted entirely. In addition, if separate well written regulations setting up procedures for granting loans are enacted, it makes an Ethics Committee unnecessary, because there would be no reason to review an agency's decision to grant a loan.

6. For reasons discussed above in paragraph 3, subsection (f), page 5, lines 17-18 should be re-written as follows:

to determine whether [appropriate procedures were observed in granting or reviewing the loans] loan conditions imposed by the lending agency are being enforced. The division shall report its findings to the committee by April 1.

7. The FREE Committee believes that the entire Sec. 24.60.070, beginning page 5, line 29 and ending page 6, line 16, should be deleted. This section duplicates information already provided to the APOC by legislators and where it would affect legislative employees, that information would already have been filed with the APOC by the other business partner (legislator, public official required to file a financial disclosure, or registered lobbyist). The only economic association that would not already have been disclosed would be an association between supervisor and employee. It is difficult to understand why this is relevant to the purpose of this bill, legislative ethics. Therefore, FREE suggests that this section be deleted.

8. The original language found in SB 257 for Sec. 24.60.080 should be used rather than the new language, page 6, lines 17-25. The original language was clearer and carefully identified gifts which would not create conflicts of interests. The present version creates a legal problem by requiring intent to be established.

9. To be consistent with the rest of Sec. 24.60.090, line 26, page 6, should be changed to read as follows:

Sec. 24.60.090. NEPOTISM. (a) [A relative of] An individual who is related to a member of the . . .

10. Sec. 24.60.100 allows legislators and legislative

employees to represent clients before state agencies, boards and commissions for compensation. FREE believes that this is improper and recommends that the present section be deleted and re-written as follows (page 7, lines 9-17):

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

(b) A member of the legislature may represent a client in

(1) an action before a court of the state; or  
(2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed.

The FREE Committee believes that if a person receives no compensation, representation does not create a conflict of interest. Legislators should be allowed to represent constituents without fear that they will be subject to censure.

11. To avoid creating unnecessary, expensive permanent interim committees, the FREE Committee suggests that page 7, line 26, be amended to read as follows:

the Rules committee shall maintain a [public] record open to the public of the disclosure . . . .

12. In a time of declining revenues, FREE Committee believes that every effort must be made to reduce government and its costs. Therefore, FREE suggests that any committee created to address violations of the ethical code be limited to employing staff only when there is in fact a complaint to investigate. The following addition to page 8, lines 21 and 22, is therefore suggested:

(f) The committee or a subcommittee may contract for professional services and may employ staff as it considers necessary to investigate a complaint and to recommend action by the legislature. The authority of the committee or subcommittee to contract for professional services or to employ staff is expressly limited to those times that it is actively addressing a complaint.

13. The FREE Committee does not believe that any Ethics Committee created by this legislation should be bound by its inaction on a request for an advisory opinion and, therefore, recommends that the sentence binding the committee be eliminated. The section would then read as follows (page 9, lines 8-15):

Sec. 24.6C.150. ADVISORY OPINIONS. The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. [If an advisory opinion is not issued within 30 days after the request is filed with the committee, the facts and circumstances of the particular case do not constitute a violation of the ethical standards.] The opinion issued [or considered issued] is binding on the committee in any subsequent . . . .

14. FREE Committee does not believe that it is appropriate to leave a legislator or legislative employee open to investigation for a violation of this chapter for 4 years. This is unreasonable. Since a person who intentionally hides his or her unethical behavior is not subject to any time limit and since criminal prosecution is not affected by this section, the FREE Committee recommends that any complaint must be brought within one year of the alleged violation. It is too difficult to reconstruct the circumstances surrounding a complaint 4 years later. The amended language would read on page 9, line 26, as follows:

a proceeding begun within [four] one year[s] after the alleged violation . . . .

15. Subsection (d) should also be re-written. Since a complaint can be initiated by one private person, it only makes sense that a complaint should be allowed to be initiated by one sub-committee member where the complaint is against a legislator. (It should be remembered that each sub-committee only has three members and this bill would require all three to initiate the complaint.) In addition, the FREE Committee sees no reason to stay all pending actions before a committee within 60 days preceding a state primary or general election. There is some merit to not allowing complaints to be filed within the 60 day period, however. The following language is, therefore, recommended (page 10, lines 7-17):

the committee. A complaint may be initiated by any [private] person [or by three or more members of the committee]. A complaint shall be in writing and signed under oath by the person making the complaint. No complaint, other than a complaint initiated by [five or more members ] the majority of the members of the committee, may be received within a period fo 60 days preceding a state primary or general election. [All proceedings pending before the commission on the 60th day preceding a state primary or general election are stayed unless the proceedings are based on a complaint initiated by five or more members of the committee. No further action may be taken in the stayed proceeding

until the legislature next convenes in regular session.]

16. Line 15, page 11 should be amended to set a specific minimum notice period for setting a hearing. This is only fair. The time itself should only be a minimum and is somewhat arbitrary. The language could read as follows:

the committee with a minimum of 10 days notice to the complainant, if any, and to the . . . .

17. The Committee believes that subsections (j) and (k) found on page 12, lines 3-19, appear to conflict and are somewhat difficult to understand. It is suggested that they be carefully considered. In particular, the phrase, "The order is confined to this determination." needs to be clarified. While subsection (j) seems to make this order public immediately, subsection (k) appears to require a 30 day waiting period (lines 16-18). The Committee also suggests that the 30 day period should run whether the legislature is in session or not. To do otherwise allows the committees to engage in political manipulation. Therefore, the Committee recommends that the following deletion be made (page 12, lines 17-18):

the referral. [Days during which the legislature is not in session may not be counted in determining the 30 day period.] The legislature . . . .

18. Finally, the FREE Committee is concerned about frivolous accusations and complaints. Therefore, the Committee has enclosed a copy of a statute found in the Louisiana ethics legislation which provides a penalty for false accusations. While the penalty provisions might be harsh, it is suggested that this is one approach that the legislature might consider.

Ethics legislation is important to Alaska, its citizens and the persons directly affected by this legislation. The FREE Committee urges you to carefully consider its recommendations.

Sincerely,

*Cheri C. Jacobus*

Cheri C. Jacobus  
Chairman, Legislative Study

cc: all legislators  
Governor Bill Sheffield

**R.S. 42:1145 PUBLIC OFFICERS—EMPLOYEES**

D. Prescription.—No action to enforce any provisions of this Part shall be commenced after the expiration of two years following the discovery of the occurrence of the alleged violation or four years after the alleged violation, whichever period is shorter. No action may be taken against a violator who committed the violation prior to the effective date of this Chapter. Added Acts 1964, No. 110, § 1.

Library references: States Ⓞ51; C.J.S. States § 55.

**§ 1146. Criminal laws not affected**

Nothing in this Part is intended to nor is to be construed as repealing, amending or modifying in any way the provisions of any of the criminal or penal laws of this state. Added Acts 1964, No. 110, § 1.

Library references: Criminal Law Ⓞ15; C.J.S. Criminal Law § 27.

**§ 1147. Penalty for false accusations**

Any person who shall knowingly and intentionally file a false complaint with either the Louisiana Commission on Governmental Ethics or the Louisiana Board of Ethics for State Elected Officials or any member of either said board or commission who shall knowingly and intentionally initiate action against any state employee, board or commission member or elected official knowing such action to be false shall, upon conviction in a court of competent jurisdiction, be guilty of the crime of making false accusations.

Whoever commits the crime of making false accusations shall be fined not more than five thousand dollars or imprisoned, with or without hard labor for not more than five years, or both. Added Acts 1964, No. 110, § 1.

Library references: Malignous Prosecution Ⓞ78; C.J.S. Malignous Prosecution § 110.

**§ 1148. Procedure and rules of evidence for hearings**

Notwithstanding any other provisions of this Chapter, all hearings conducted by the Louisiana Commission on Governmental Ethics and by the Louisiana Board of Ethics for State Elected Officials shall be held in accordance with the rules of procedure set forth in Title 15 of the Louisiana Revised Statutes of 1950, including but not restricted to those rules governing the admissability of evidence and all other rules pertaining to the introduction of and the weight to be given to any evidence. Added Acts 1964, No. 110, § 1.

Library references: Administrative Law and Procedure Ⓞ111 et seq.; C.J.S. Public Administrative Bodies and Procedure § 111 et seq.

# Alaska State Legislature

IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
☎(907) 465-4949



BOX 142  
EAGLE RIVER, ALASKA  
99577

**Representative Randy Phillips**

HOUSE DISTRICT 15

## MEMORANDUM

TO: Representative Charlie Bussell  
Chairman, House Judiciary Committee

FROM: Representative Randy Phillips *R.E.P.*

DATE: May 25, 1983

RE: Conflict of Interest Legislation  
(House Bill 362, CSSB 257 (Jud) am)

Attached are the following items for your committee's review:

1. Memorandum dated May 24, 1983, entitled "Comparison of CSSB 257 (Jud) am and SB 257. As you know, SB 257 is the same as House Bill 362.

Attached to this memorandum is a copy of CSSB 257 (Jud) am in which the changes from SB 257 to the Senate-passed version have been highlighted.

2. Memorandum dated May 25, 1983, comparing the Legislative Ethics Commission as proposed in HB 362/SB 257 and the Select Committee on Legislative Ethics as proposed in CSSB 257 (Jud) am.

If you have any questions, please do not hesitate to contact me. I plan on being in attendance at this Friday's meeting when I understand this subject matter will be before your committee.

MEMORANDUM

TO: Representative Randy Phillips  
FROM: Janet Seitz *J. Seitz*  
DATE: May 25, 1983  
RE: Conflict of interest legislation

Attached is a seven-page comparison of the Legislative Ethics Commission, as contained in House Bill 352/Senate Bill 257, and the Select Committee on Legislative Ethics, as contained in CSSB 257 (Jud) am.

The provisions for the Legislative Ethics Committee start in Sec. 24.60.130, starting on page 8 of SB 257. The provisions for the Select Committee on Legislative Ethics start in Sec. 24.60.130, starting on page 8 of CSSB 257 (Jud) am.

The page and line number references are included for each category.

1  
LEGISLATIVE ETHICS COMMISSION  
(SB 257/HB 362)

In legislative branch (p.8, l. 3-5)

Seven Members (p. 8, ls. 6-25)

One Senator appointed by President  
with concurrence of 3/4 roll call  
vote of full membership

One Representative appointed by  
Speaker with concurrence of 3/4  
roll call vote of full membership

Two persons appointed by Senate  
President with concurrence of 2/3  
roll call vote of full membership

Two persons appointed by Speaker  
with concurrence of 2/3 roll  
call vote of full membership

One former legislator appointed  
by other commission members

No more than 4 members of same party  
or residents of same organized or  
unorganized borough (p. 8, ls. 26-28)

Commission members shall elect  
chair and vice-chair and other  
offices. Legislators may not serve  
as chair or vice-chair (p. 8, l. 29 to  
p. 9, l. 3)

Term of office (p. 9, ls. 4-8)  
Public member - 4 years from  
Feb. 1 of year of appointment  
and until successor is appointed  
and qualifies

Legislator may not serve beyond  
expiration of legislative term

Members may not serve more than  
one full term.

Members MAY NOT (p. 9, ls. 9-16)  
Hold or seek elective office  
(except for legislators who are  
members)

SELECT COMMITTEE ON LEGISLATIVE ETHICS  
(CSSB 257 (Jud) am) -

In legislative branch (p. 8, l. 3-5)

Six Members - two subcommittees (p. 8,  
ls. 6-14)

Senate subcommittee  
3 Senators appointed by President  
with concurrence of 3/4 roll call  
vote of full membership

House subcommittee  
3 Representatives appointed by  
Speaker with concurrence of  
3/4 roll call vote of full  
membership

No more than two members of each  
subcommittee may be of same party  
(p. 8, ls. 15-16)

Members of each subcommittee shall  
elect chairs, who shall co-chair  
meetings (p. 8, ls. 17-18)

LEGISLATIVE ETHICS COMMISSION  
(SB 257/HB 362)

SELECT COMMITTEE ON LEGISLATIVE ETHICS  
(CSB 257 (Jud) am)

Be officer of political party,  
political committee, or group

Lobby

Vacancy (p. 9, ls. 17-18)  
Filled under appointment pro-  
visions for balance of term

Vacancy (p. 8, ls. 19-20)  
Filled in same manner as original  
appointments

Services and Staff (p. 9, ls. 19-21)-  
Commission may contract for  
professional services and  
staff

Services and Staff (p. 8, ls. 21-22)  
Committee may contract for  
professional services and  
staff

Compensation (p. 9, ls. 22-28)  
No compensation received except  
for travel and per diem. Legisla-  
tors who are members of the committee  
are not entitled to travel or per  
diem if receiving from legislative  
duties.

COMMITTEE AUTHORITY (p. 8, l. 23 to  
p. 9, l. 7)

Senate subcommittee has authority  
over proceedings concerning Senate  
member or former member or employee  
of Senator or Senate committee.

House subcommittee has authority  
over proceedings concerning House  
member or former member or employee  
of House or House committee.

Full committee:

1. has authority over employee  
of legislative agency
2. may review matter arising  
under this chapter that would result  
in action being required by both  
houses
3. may issue advisory opinions

DUTIES OF COMMISSION (p. 9, l. 29  
to p. 10, l. 13)

Adopt regulations.

Recommend legislation.

LEGISLATIVE ETHICS COMMISSION  
(SB 257/HB 362)

SELECT COMMITTEE ON LEGISLATIVE ETHICS  
(CSSB 257 (Jud) am)

Subpoena witnesses, administer oaths, take testimony, require production for examination.

Publish semi-annual summaries of decisions, advisory opinions, and informal advisory opinions, with sufficient deletions to prevent disclosure

ADVISORY OPINIONS (p. 10, ls. 13-21)

Issued on request of person to whom chapter applies.

States whether facts and circumstances of a particular case constitute violation.

If not issued within 30 days of request, no violation.

Opinion issued is binding on commission unless material facts were omitted or misstated in request.

Opinion is confidential but may be made public upon written request of person who requested opinion.

PROCEEDINGS BEFORE COMMISSION (p. 10, l. 28, to p. 11, l. 9)

Commission may initiate, receive, and consider complaints.

Commission may investigate violation in proceeding begun within 4 years after alleged violation and 1 year after termination of service.

Nothing bars proceedings against person who by fraud prevents discovery of violation.

Before the commission may investigate resolution supported by three

ADVISORY OPINIONS (p. 9, ls. 8-21)

May issue on request of person to whom chapter applies as to whether facts and circumstances of particular case constitute violation.

If not issued within 30 days after request is filed, no violation.

Opinion issued is binding on committee on subsequent proceedings concerning facts and circumstances unless facts or circumstances were misrepresented or omitted.

Opinion is confidential unless written request from person involved is received.

PROCEEDINGS BEFORE COMMITTEE (p. 9, l. 22, to p. 10, l. 6)

Committee may initiate, receive, and consider complaints.

May investigate a violation of this chapter in a proceeding begun within 4 years after alleged violation occurs and within one year after termination of state service.

Nothing bars proceedings against person who intentionally prevents discovery of violation.

Before exercising powers authorized, committee must have resolution

4  
LEGISLATIVE ETHICS COMMISSION  
(SB 257/HB 362)

commission members must be passed  
defining nature and scope

Investigations are confidential

COMPLAINTS (p. 11, l. 9, to  
p. 12, l. 7)  
Proceedings commenced by filing  
complaint.

Complaint must be in writing  
and signed under oath. Three  
or more commission members may  
initiate.

No complaint, other than one  
initiated by five or more  
commission members, may be received  
within 60 days preceding state  
primary or general election.

Commission must notify in  
writing each person against  
whom complaint is received.  
Person accused must be given  
opportunity to explain conduct.

If commission determines that  
complaint is insufficient, may  
dismiss

Commission shall investigate charges  
filed and issue advisory opinion to  
person alleged to have violated  
provisions of chapter.

SELECT COMMITTEE ON LEGISLATIVE ETHICS  
(CSSB 257 (Jud) am)

supported by majority vote of full  
membership of the committee to define  
scope and nature.

Investigations are confidential.

COMPLAINTS (p. 10, l. 5, to  
p. 11, l. 13)  
Proceeding initiated by filing of  
complaint either by private person  
or three or more members of the  
committee.

Complaint must be signed under oath  
and in writing.

No complaint, other than one initiated  
by five or more committee members, may  
be received within a period of 60 days  
preceding a state primary or general  
election.

All proceedings pending before the  
committee on the 60th day preceding  
election are stayed unless proceedings  
are based on a complaint initiated by  
five or more members of the committee.  
No further action may be taken in stayed  
proceedings until the legislature next  
convenes in regular session.

Committee shall notify each person  
against whom complaint alleged, in  
writing, and afford person opportunity  
to explain conduct.

If committee determines complaint does  
not contain sufficient allegations for  
violation, may dismiss

Committee shall investigate charges filed  
and issue advisory opinion to person  
alleged to have violated provisions  
of chapter.

If committee determines that a probable  
violation exists that may be corrected  
by action of the person, and does not  
warrant other sanctions, the advisory  
opinion shall recommend such action.

LEGISLATIVE ETHICS COMMISSION  
(SB 257/HB 352)

If advisory opinion indicates probable violation, person against whom complaint was made may request formal opinion or comply with advisory opinion.

Upon failure to comply or belief by majority of commission that probable cause exists regarding violation, commission will file complaint.

Complaint shall be personally served on person charged, who has 20 days after service of the complaint to respond in writing to commission.

HEARING (p. 12, ls. 8-25)

Commission may set time and place for hearing. Notice shall be given to complainant and person charged.

Representative of commission and the charged with violation shall have opportunity to be heard, subpoena witnesses, require production of items, to be represented by counsel and to have right of cross-examination.

Witnesses shall testify under oath.

Hearings are closed to public unless person charged requests open hearing.

Commission not bound by rules of evidence but findings must be based upon evidence.

Testimony taken shall be recorded and evidence maintained

Testimony and evidence available only to commission staff and to person

SELECT COMMITTEE ON LEGISLATIVE ETHICS  
(CSSB 257 (Jud) am)

Person against whom complaint is filed may comply with advisory opinion or request hearing.

After hearing, committee may amend or affirm opinion.

If person fails to comply with opinion or if majority of committee determines probable cause for belief violation may not be corrected, committee shall formally charge person.

Charge and statement of alleged violation shall be personally served on person charged and that person has 20 days to respond in writing to the committee.

HEARING (p. 11, l. 14 to. p. 12, l. 2)

Committee may set time and place for hearing with notice to complainant and person charged.

Representative of committee and person charged with violation shall have opportunity to be heard, subpoena witnesses, and require production of items, to be represented by counsel and to have right of cross-examination.

Witnesses shall testify under oath.

Hearings are closed unless person charged otherwise requests.

Committee not bound by rules of evidence but findings must be based upon evidence.

Testimony recorded and record maintained.

Testimony and evidence available to committee and staff and person charged

LEGISLATIVE ETHICS COMMISSION  
(SB 257/HB 362)

charged with violation.

Copy of transcript may be furnished to person charged with violation upon that person's request and at no charge to that person.

DECISION (p. 12, l. 26 to p. 13, l. 24)

In writing and signed by four or more commission members

Accompanied by written order determining if violation did or did not exist.

Order is confined to determination.

Order is public record.

If decision is that violation has occurred or legislator has not cooperated with commission, decision is to be referred to presiding officers of legislature.

Decision shall contain statement of facts determined to constitute violation or failure to cooperate.

May contain recommendations for civil penalties (up to \$25,000), divestment of interest, termination of legislative privileges, or expulsion.

Decision shall be made public 30 days referral. Days during which legislature is not in session are not counted.

Legislature shall act as appropriate.

If four commission members agree to decision that a former member of legislature or employee or former employee of legislative agency has violated this chapter, commission shall issue a public statement of its decision 30 days after date of decision.

Legislature shall act as appropriate.

SELECT COMMITTEE ON LEGISLATIVE ETHICS  
(CS&B 257 (Jud) am)

with violation.

Copy of transcript may be furnished to person charged with violation upon that person's request and at no charge to that person.

DECISION (p. 12, ls. 3-29)

In writing and signed by majority of committee

Accompanied by written order determining if violation did or did not exist.

Order is confined to determination.

Order is public record.

If committee decides violation has occurred, shall refer decision to presiding officers of legislature.

Decision shall contain statement of facts determined to constitute violation or failure to cooperate

May contain recommendations for penalties.

Decision is public 30 days after referral. Days legislature is not in session are not counted.

Legislature shall act as appropriate.

If majority of committee agree to decision that former member or an employee or former employee has violated this chapter, the committee shall issue public statement of decision 30 days after date of decision.

Legislature shall act as appropriate.

LEGISLATIVE ETHICS COMMISSION  
(SB 257/HB 362)

In case of an employee, action may include suspension, demotion, or dismissal.

CONFIDENTIALITY (p. 13, ls. 25-28)

Commission member or individual who divulges information regarding a charge before the filing of a complaint by the commission is guilty of misuse of confidential information under AS 11.56.860 (Berrier says this is a Class A misdemeanor.)

SELECT COMMITTEE ON LEGISLATIVE ETHICS  
(CSSB 257 (Jud) am)

In case of employee, action may include suspension, demotion, or dismissal.

Employee is entitled to hearing before action taken.

CONFIDENTIALITY (p. 12, l. 29,  
to p. 13, l. 2)

A committee member or staff member divulges information concerning proceedings is guilty of a Class A misdemeanor.

MEMORANDUM

TO: REP. RANDY PHILLIPS  
 FROM: JANET SEITZ *J. Seitz*  
 DATE: MAY 24, 1983  
 RE: COMPARISON OF CSSB 257 (JUD) AM and SB 257

On the attached bill, changes are highlighted in yellow.

Changes are also as listed below:

1. Page 1, Line 8, title change -- from "Legislative Ethics Commission" to "Select Committee on Legislative Ethics".
2. Page 1, Line 23 - same as title change. Reference is to the committee's name.
3. Page 1, line 27, deletes "to a person employed by a member of the legislature." This was done by Senator Kelly on the Senate floor. Senator Moss had pointed out that this language would mean that a person employed outside of a member's legislative duties would also be effected by this legislation (Sen. Moss cited the person plowing his field as an example). Remaining language now reads: "This chapter applies to a member of the legislature and to a permanent or temporary employee of an agency of the legislature."
4. Page 2, line 6, deletes "a member of". This is, I think, part of Kelly's amendment, referenced above.
5. Page 2, Line 19, deletes "has discretion to" and then the verbs are changed in the rest of this subsection.
6. Page 2, line 20, changes "which" to "that"
7. Page 3, lines 2-5. Changes the wording to read positively. Rather than a conflict does not exist, this new language states: "A conflict exists . . ."
8. Page 3, Lines 6 to 26. Includes (g) concerning fund raising during legislative session.
9. Page 3, Lines 27-29. Adds "or lease" to this provision.
10. Page 4, Lines 2-7. Adds "or lease" as appropriate. Also ADDS "or is a standardized contract or lease generally available to the public at large, members of a profession, occupation or group which was developed under publicly established guidelines" after "less," on line 3. DELETES "A person has an interest in a state contract under this section if the contract is awarded to (1) a firm, corporation, or association that has assets in excess of \$5,000,000 and in which the person has an ownership

interest greater than 10 percent or that has assets of \$5,000,000 or less and in which the person has an ownership interest greater than 25 percent; or (2) a partnership in which the person is a partner."

11. Page 4, Line 10, deletes "the person is a party to the contract, and without regard to whether"

12. Page 4, Line 11. Changes "inure" to "ensue"

QUERY: No mention is made of "leases" in (b). Oversight?

13. Page 4, Line 22, changes references to "commission" to "committee"

14. Page 5, line 4. Changes "1st" to "1" when referring to date. Adds "state" before "loan agency". Somewhere along the line, I remember some reference to the fact that the language in the original bill would mean all loan agencies, be they state or private, would have to report if the original language was retained. Changes "publish" to "deliver" when referring to the list of loans.

15. Page 5, lines 6-7, adds "to the presiding officer of each house." That's who the list of loans is to be delivered to by the state agencies.

16. Page 5, Lines 8-9. Adds: "The list shall be published in the supplemental journal."

17. Page 5, Line 19. Changes reference from "commission" to "committee".

18. Page 5, Lines 25 and 26. Adds "wilfully" before "discloses" and "knowingly" before "uses".

19. Page 6, Lines 1-5. Drops reference to commission. Adds, after "shall disclose", the following: "in the journal of the appropriate body or if the legislature is not in session to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session,"

20. Page 6, lines 15-16. Adds "(4) a registered lobbyist who is not a member of the immediate family of the person." as another class of persons that close economic association with (formation or maintenance of) must be disclosed under this section.

21. DROPPED from this section was section (b) of the original bill: "(b) It is a prohibited conflict of interest for a person to whom this chapter applies to form or maintain a close economic association involving a substantial financial matter with a lobbyist who is not a member of the immediate family of the person."

22. Page 6, Line 18, drops reference to the \$100 figure.

23. Page 6, line 19. Same as 22 above.

24. Page 6, lines 20-25, DELETES: "under circumstances in which it may reasonably be inferred that the gift is intended to influence the person in the performance of the duties of the person or is intended as a reward for an official action by the person. (b) It is not a conflict of interest under this section if a person to whom this chapter applies accepts (1) hospitality at another person's residence, including meals, lodging or ground or water transportation; (2) discounts that are generally available to the public or a large class of persons to which the person belongs; (3) an invitation to attend a meal or social event that does not exceed \$100 in value received by the person for each meal or event and that does not in the aggregate exceed \$250 in value during the calendar year from one person; or (4) gifts from the person's immediate family. (c) The commission may establish policies that limit the extent to which persons to whom this chapter applies may accept the benefits set out in (b)(2) of this section, or that require public officials to turn over the benefits to the agency."

PLACED IN THE NEW VERSION IS: "if the gift was intended as a reward for an official action by the person. A gift of travel and hospitality received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section, nor are political contributions received and reported under AS 15.13.040.

25. Page 6, lines 26-29 REPLACES "(a) An individual who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in the other house during the interim between sessions." WITH "(a) A relative of a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in the other house during the interim between sessions."

26. Page 7, Line 4, adds "stepchild".

27. Page 7, Line 5, REPLACES "a permanent member of the legislators' household" WITH "a member of the same household."

28. Page 7, Lines 6-8, REPLACES "(b) An individual is not employed if no compensation is received from the state for the services provided" WITH "(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided."

29. Page 7, Line 9, DROPS "BY LEGISLATORS" and REPLACES "(a) Except as provided in this section, a member of the legislature or a person employed by an agency of the legislature established under AS 24.20 may not represent another person for compensation before an agency, board, or commission of the state. (b) A member of the legislature may represent a client in (1) an action before a court of the state; or (2) a matter which was pending at the time a person to whom this chapter applies assumes office or is employed. (c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would

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

30. Page 7, lines 18-20. Adds "knowingly" before "has a conflict of interest" and adds "or has been notified of a conflict of interest" before "shall immediately".

31. Page 7, line 21. Adds "conflicting" before "position".

32. Page 7, lines 25-6. Changes reference from "commission" to the committee.

33. Page 8, lines 1-2. REPLACES "for private gain or campaign purposes" WITH "except property under lease from the state or funds for private gain."

34. Page 8, lines 3, through Page 9, line 8. This is where the Commission is dropped and the Committee is inserted.

35. Page 9, lines 8-21. Changes reference from commission to committee.

36. Page 9, line 22, through Page 13, lines 3. Sets out the proceedings before the committee. While some of the procedures are similar, they are not the same.

37. Page 13, lines 3-8, ADDS new section "Cooperation by State Agencies."

38. Page 13, Lines 9, Definitions - defines "committee".

39. Page 13, lines 12-15. Adds Section 2 "Nothing in this Act applies to conduct which occurred before the effective date of the Act and the committee established by this Act has no jurisdiction over any alleged violation which occurred before the effective date of this Act."

# Lawmakers judge selves under ethics bill

JUNEAU (AP) — A measure to establish standards of conduct among Alaska legislators and their employees and to create a joint-legislative committee to ensure the standards were followed cleared the Senate Thursday.

The bill, held for a reconsideration vote, was approved 13-6 following the defeat of several amendments including one that to give the public four seats on the panel that would sit in judgment of lawmakers.

As the bill stands now, lawmakers would act as their own judges, a provision that one legislator said injures the measure's main aim -- to instill public confidence in the Legislature.

Chopped from the final version was a provision that would have banned lawmakers from holding campaign fundraisers in the capital during the session unless they lived here. The vote on the deletion, proposed by Sen. Bettye Fahrenkamp, D-Fairbanks, came despite arguments that it was a conflict of interest for lawmakers to solicit donations from lobbyists while considering legislation being sought by lobbyists.

The bill (CSSB257), forged by a special joint-committee on legislative reform and two Senate panels, follows a warning from Attorney General Norman Gorsuch that his office would begin enforcing common law controlling conflicts of interest and related

concerns if the Legislature failed to pass its own standards of conduct.

Common law is defined as law based not on statute but on a body of legal opinion derived from court cases involving conduct of public officials both within and outside Alaska.

Approval came after one opponent called the measure an "abomination" and backers said it represented the Senate's best effort to grapple with the murky area of "ethics."

The bill sets guidelines controlling conflicts of interest, business contracts with the state, applying for some state loans, hiring relatives, accepting gifts and raising campaign funds during the legislative session, among other things.

The measure would not supplant a state statute banning conflicts of interest, which are defined in the law as use of public office for personal gain.

Sen. Fritz Pettyjohn, R-Anchorage, and others, however, said common law was "judges law" and not the proper way to control legislative behavior. "Personally, I want a statute that tells me what I can and cannot do."

Sen. Joe Josephson, D-Anchorage, who played a major role in hammering out the legislation, said "This is not a perfect bill by any means. And if our constituents feel it needs strengthening, they can tell us so and we can take action."

Josephson said he was disappointed in his failed effort to amend the measure to permit public representation on the panel that would judge those who violated the standards of conduct. He said the failure could weaken public confidence in the law.

Sen. Bob Ziegler, D-Ketchikan, submitted an amendment, partly in jest, that would have replaced the measure with the following:

"To be an ethical and moral legislator you must (1) turn aside without ostentation to aid the weak; (2) treasure ideals more than raw ambition; (3) hold honesty of conscience above honesty of purse; (4) track no man to his undeserved hurt; and (5) pursue no woman to her tears."

Ziegler withdrew the amendment but said he viewed the measure with trepidation because "You've got problems when you endeavor to legislate ethics and morality."

Among other things, the bill would:

—Ban conflicts of interest, defined as taking or withholding official action that "could substantially benefit or harm a financial matter in which a person has a direct or indirect private interest.

—Ban virtually any interest in a state contract unless it was for \$1,000 or less or complied with statutory competitive bidding regulations.

—Permit legislators to receive state loans, such as for home mortgages, that are

generally available to the public. However, a legislator or employee who applied for a state loan not generally available to the public, such as a fishing or business business loan, must send a copy of the application to the Alaska Public Offices Commission to be incorporated in the legislator's financial disclosure statement.

—Ban solicitation or acceptance of gifts in any form or amount that is intended as a reward for official action. "However, gifts of travel and hospitality received by a legislator to obtain information about matters of legislative concern" would be expressly exempted.

—Ban relatives of lawmakers from employment in the house of which a legislator is a member or in a legislative agency. Relatives could be employed by the other house during the session, however.

Voting for the measure were: Sens. Dick Eliason, R-Sitka; Fahrenkamp; Jan Faiks, R-Anchorage; Paul Fischer, R-Soldotna; Vic Fischer, D-Anchorage; Josephson; Tim Kelly, R-Anchorage; Jay Kerttula, D-Palmer; Bob Mulcahy, R-Kodiak; Pettyjohn; Bill Ray, D-Juneau; Pat Rodey, D-Anchorage; and Arliss Sturgulewski, R-Anchorage.

Voting against were Sens. Don Bennett, R-Fairbanks; Don Gilman, R-Kenai; Halford; Moss; John Sackett, R-Ruby, and Ziegler.

# Senate OKs ethics bill to let lawmakers judge themselves

NEWS 5-20-83

By HAL SPENCER

The Associated Press

B1

JUNEAU — A measure to establish standards of conduct for Alaska legislators and their employees and to create a joint legislative committee to ensure the standards are followed cleared the Senate on Thursday.

The bill, held for a reconsideration vote, was approved 13-6 following the defeat of several amendments, including one to give the public four seats on the panel that would sit in judgment of lawmakers.

As the bill stands now, lawmakers would act as their own judges, a provision that one legislator said works against the main aim of the measure — to instill public confidence in the legislature.

Chopped from the final version was a provision that would have banned lawmakers from holding campaign fund-raisers in the capital during the session unless they lived here. The vote on the deletion, proposed by Sen. Bettye Fahrenkamp, D-Fairbanks, came despite arguments that it was a conflict of interest for lawmakers to solicit donations from lobbyists while considering legislation being sought by lobbyists.



Sen. Bob Ziegler

The bill, forged by a special joint committee on legislative reform and two Senate panels, follows a warning from Attorney General Norman Gorsuch that his office would begin enforcing common law controlling conflicts of interest and related concerns if the legislature failed to pass its own standards of conduct.

Common law is defined as law based not on statute but on a body of legal opinion derived from court cases in-

volving conduct of public officials both within and outside Alaska.

Approval came after one opponent called the measure an "abomination" and backers said it represented the best effort of the Senate in the murky area of ethics.

The bill sets guidelines controlling conflicts of interest, business contracts with the state, applying for some state loans, hiring relatives, accepting gifts and raising campaign funds during the legislative session, among other things.

The measure would not supplant a state statute banning conflicts of interest, which are defined in the law as use of public office for personal gain.

The key distinction between the proposal and the criminal statute is that the proposal deals with appearances of misconduct while the law, which carries a maximum misdemeanor penalty of a year in jail and a \$5,000 fine, deals with actual misconduct.

The measure would provide a committee composed of legislators the power to advise their colleagues they were violating the standards of con-

duct. If the advice were ignored, the House or Senate could take action against the member in question.

Both bodies could use their existing powers to punish the member by stripping the member of committee assignments, withdrawing privileges, or even expulsion.

"I oppose this bill for the simple reason that it does nothing in and of itself, but does repeal common law," which does maintain legislative standards of conduct, said Sen. Rick Halford, R-Chugiak.

Sen. Joe Josephson, D-Anchorage, who played a major role in drafting the legislation, said, "This is not a perfect bill by any means. And if our constituents feel it needs strengthening, they can tell us so and we can take action."

Josephson said he was disappointed in his failed effort to amend the measure to permit public representation on the panel that would judge those who violated the standards of conduct. He said the failure could weaken public confidence in the law.

Sen. Bob Ziegler, D-Ketchikan, submitted an amendment, partly in jest, that



Sen. Joe Josephson

would have replaced the measure with the following:

"To be an ethical and moral legislator you must (1) turn aside without ostentation to aid the weak; (2) treasure ideals more than raw ambition; (3) hold honesty of conscience above honesty of purse; (4) track no man to his undeserved hurt; and (5) pursue no woman to her tears."

Ziegler withdrew the amendment but said he viewed the measure with

trepidation because "you've got problems when you endeavor to legislate ethics and morality."

Among other things, the bill would:

- Ban conflicts of interest, defined as taking or withholding official action that "could substantially benefit or harm a financial matter in which a person has a direct or indirect private interest."

- Ban virtually any interest in a state contract unless it was for \$1,000 or less or complied with statutory competitive bidding regulations.

- Permit legislators to receive state loans, such as for home mortgages, that are generally available to the public. However, a legislator or employee who applied for a state loan not generally available to the public, such as a fishing or business loan, must send a copy of the application to the Alaska Public Offices Commission.

- Ban solicitation or acceptance of gifts in any form or amount that is intended as a reward for official action.

- Ban relatives of lawmakers from employment in the house of which a legislator is a member or in a legislative agency.

# Standards-of-conduct bill clears Senate

by Hal Spencer  
Associated Press

**Juneau** — A measure to establish standards of conduct among Alaska legislators and their employees and to create a joint-legislative committee to ensure the standards were followed cleared the Senate Thursday.

The bill, held for a reconsideration vote, was approved 13-6 following the defeat of several amendments including one that would have given the public four seats on the panel that would sit in judgment of lawmakers. If the bill passes the reconsideration vote, it will go to the House.

As the bill stands now, lawmakers would act as their own judges, a provision that one legislator said injures the measure's main aim — to instill public confidence in the legislature.

Chopped from the final version was a provision that would have banned lawmakers from holding campaign fund-raisers in the capital during the session unless they lived here. The vote on the deletion, proposed by Sen. Bettye Fahrenkamp, D-Fairbanks, came despite arguments that it was a conflict of interest for lawmakers to solicit dona-

tions from lobbyists while considering legislation being sought by lobbyists.

The bill, forged by a special joint-committee on legislative reform and two Senate panels, follows a warning from Attorney General Norman Gorsuch that his office would begin enforcing common law controlling conflicts of interest and related concerns if the legislature failed to pass its own standards of conduct.

Common law is defined as law based not on statute but on a body of legal opinion derived from court cases involving conduct of public officials both within and outside Alaska.

Approval came after one opponent called the measure an "abomination" and backers said it represented the Senate's best effort to grapple with the murky area of "ethics."

The bill sets guidelines controlling conflicts of interest, business contracts with the state, applying for some state loans, hiring relatives, accepting gifts and raising campaign funds during the legislative session, among other things.

The measure would not sup-

plant a state statute banning conflicts of interest, which are defined in the law as use of public office for personal gain.

The key distinction between the proposal and the criminal statute is the proposal deals with appearances of misconduct while the law, which carries a maximum misdemeanor penalty of a year in jail and a \$5,000 fine, deals with actual misconduct.

The measure would provide a committee composed of legislators the power to advise their colleagues they were violating the standards of conduct. If the advice were ignored, the House or Senate could take action against the member in question.

Both bodies could use their existing powers to punish the member by stripping the member of committee assignments, withdrawing privileges, or even expulsion.

"I oppose this bill for the simple reason that it does nothing in and of itself, but does repeal common law," which does maintain legislative standards of conduct, said Sen. Rick Halford, R-Chugiak.

"This bill is an abomination," said Sen. Pappy Moss, D-Delta

Junction. He favored relying on common law to keep lawmakers honest.

Sen. Fritz Pettyjohn and others, however, said common law was "judges law" and not the proper way to control legislative behavior. "Personally, I want a statute that tells me what I can and cannot do."

Sen. Joe Josephson, D-Anchorage, who played a major role in hammering out the legislation, said "This is not a perfect bill by any means. And if our constituents feel it needs strengthening, they can tell us so and we can take action."

Josephson said he was disappointed in his failed effort to amend the measure to permit public representation on the panel that would judge those who violated the standards of conduct. He said the failure could weaken public confidence in the law.

Sen. Bob Ziegler, D-Ketchikan, submitted an amendment, partly in jest, that would have replaced the measure with the following:

"To be an ethical and moral legislator you must (1) turn aside without ostentation to aid the weak; (2) treasure ideals more

regulations.

- Permit legislators to receive state loans, such as for home mortgages, that are generally available to the public. However, a legislator or employee who applied for a state loan not generally available to the public, such as a fishing or business business loan, must send a copy of the application to the Alaska Public Offices Commission to be incorporated in the legislator's financial disclosure statement.

- Ban solicitation or acceptance of gifts in any form or amount that is intended as a reward for official action. "However, gifts of travel and hospitality received by a legislator to obtain information about matters of legislative concern" would be expressly exempted.

- Ban relatives of lawmakers

from employment in the house of which a legislator is a member or in a legislative agency. Relatives could be employed by the other house during the session, however.

Voting for the measure were: Sens. Dick Eliason, R-Sitka; Fahrenkamp; Jan Faiks, R-Anchorage; Paul Fischer, R-Soldotna; Vic Fischer, D-Anchorage; Josephson; Tim Kelly, R-Anchorage; Jay Kerttula, D-Palmer; Bob Mulcahy, R-Kodiak; Pettyjohn; Bill Ray, D-Juneau; Pat Rodey, D-Anchorage; and Arliss Sturgulewski, R-Anchorage.

Voting against were Sens. Don Bennett, R-Fairbanks; Don Gilman, R-Kenai; Halford; Moss; John Sackett, R-Ruby, and Ziegler. Sen. Frank Ferguson, D-Kotzebue, was absent.

SENATE JUDICIARY COMMITTEE

SECTIONAL ANALYSIS

OF

CS SB 257 (JUD)

LEGISLATIVE ETHICS ACT

TABLE OF CONTENTS

Sec. 24.60.010	Legislative Findings and Purpose.....	1
Sec. 24.60.020	Applicability.....	1
Sec. 24.60.030	Conflicts of Interest.....	1
Sec. 24.60.040	Contracts.....	2
Sec. 24.60.050	State Loans.....	3
Sec. 24.60.060	Confidential Information.....	3
Sec. 24.60.070	Interests Between Public Officials.....	3
Sec. 24.60.080	Gifts.....	4
Sec. 24.60.090	Nepotism.....	4
Sec. 24.60.110	Representation.....	4
Sec. 24.60.120	Action on a Conflict of Interest.....	5
Sec. 24.60.130	Select Committee on Legislative Ethics.....	5
Sec. 24.60.140	Authority of the Committee.....	5
Sec. 24.60.150	Advisory Opinions.....	5
Sec. 24.60.160	Proceedings Before the Committee.....	6
Sec. 24.60.170	Cooperation by State Agencies.....	8
Sec. 24.60.180	Definitions.....	8

Sec. 24.60.010 LEGISLATIVE FINDINGS AND PURPOSE

This section states, in essence, that the basic purpose of this Act is to give legislators and staff the benefit of specific standards to guide their conduct while, at the same time, recognizing that under the Alaska Constitution each house of the legislature has primary responsibility for judging the qualifications of--and by implication judging the conduct of--its own members.

Another key purpose of the Act is to establish a Select Committee on Legislative Ethics (hereinafter the "Ethics Committee") which can initiate, accept, investigate and act upon complaints and render advisory opinions.

Sec. 24.60.020 APPLICABILITY

Pursuant to this section, the Act applies to the following persons:

All legislators once they have been sworn in;

Former legislators, but only in the limited circumstances set forth in the Act;

Legislative employees at or above Step 2, Range 18 (i.e., administrative assistants are covered, but not professional secretaries);

Former legislative employees, but only in the limited circumstances set forth in the Act.

The Act also expressly repeals--or supersedes--common law rules regarding legislative conflicts of interest, but it does not supersede applicable criminal laws.

Sec. 24.60.030 CONFLICTS OF INTEREST

Under this section two things are generally prohibited:

The use of public office for private advancement or gain; and

Conflicts of interest.

A conflict of interest is deemed to exist under the following two broad situations:

When a person takes or withholds official action or exerts influence that could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest; and

If benefits accrue to a person beyond that which may accrue uniformly to members of the profession, occupation

or group to which the person belongs, or to the public at large.

In addition, a conflict of interest is deemed to exist if a legislator who does not represent the City and Borough of Juneau accepts money from a fundraiser held therein during session. However, this does not apply if the legislator is running for anything other than a state legislative office. Thus, for example, a legislator running for statewide or congressional office can hold a fundraiser in Juneau during session without violating the Act.

Furthermore, the Act also provides that it is a conflict of interest to knowingly disclose, or willfully use for personal gain or the gain of another, confidential information acquired in the course of official duties (see Sec. 24.60.060, below).

Conflicts of interest are expressly deemed not to exist under the following specific circumstances:

If there is no substantial impropriety or appearance of impropriety because the person's interest in a matter is relatively insignificant or the person's authority in regard to the matter is relatively remote; or

If a person merely accepts:

Hospitality at another's residence within the state, including meals, lodging or transportation;

Public discounts;

Meals or social events worth \$100 or less each;

Cultural food and foodstuffs;

Gifts from the person's own family.

It is also provided that the Ethics Committee, or a subcommittee thereof, can establish policies limiting the extent to which persons can accept the benefits previously listed. However, legislative approval is necessary to establish these additional limitations.

#### Sec. 24.60.040 CONTRACTS

This section prohibits virtually any interest in a state contract unless:

The contract is for \$1000 or less; or

It complies with statutory competitive bidding criteria.

The basic philosophy and intent of this section is that a person to whom the Act applies should have the same right as anyone else to enter into

a state contract, as long as the contract complies with statutory competitive bidding criteria. State leases were intentionally omitted because the Judiciary Committee believes that they are inherently different from state contracts and, also, that they are already subject to statutory competitive bidding criteria.

#### Sec. 24.60.050 STATE LOANS

The basic philosophy, intent and provisions of this section provide that, as to state loans generally available to the public, persons covered by the Act will be treated exactly the same as anyone else.

However, when a person covered by the Act applies for a state loan that is not generally available to the public, full disclosure is required in that the loaning agency must send a copy of the application to APOC, where it will be kept, and where it will be incorporated into the financial disclosure statement of an applicant who is otherwise required to file one with APOC.

State loan agencies must publish annual lists of all outstanding loans that are not generally available to the public and are made to persons covered by the Act. The agencies must also adopt separate procedures for granting and reviewing such state loans, and annual reviews by the division of legislative audit are required, as well as annual reports to the Ethics Committee.

#### Sec. 24.60.060 CONFIDENTIAL INFORMATION

This section prohibits, by deeming it a conflict of interest, persons covered by the Act from knowingly disclosing or wilfully using, for personal gain or the gain of another, confidential information acquired in the course of official duties.

#### Sec. 24.60.070 INTERESTS BETWEEN PUBLIC OFFICIALS

Under this section, a person covered by the Act must disclose a close economic association involving a substantial financial matter with:

The person's own supervisor;

A legislator;

A public official in another branch who is required to file an APOC statement; or

A registered lobbyist not a member of the person's immediate family.

Disclosure is to be made as follows:

When the legislature is in session, in the journal of

the appropriate house;

When the legislature is not in session, to the Ethics Committee, which, in addition to maintaining a public record thereof, must forward the disclosure to the appropriate house for inclusion in its journal for the first day of session.

#### Sec. 24.60.080 GIFTS

This section generally prohibits a person covered by the Act from soliciting, accepting or receiving a gift in any form or amount which is intended as a reward for an official action.

However, gifts of travel and hospitality received by a legislator to obtain information about matters of legislative concern are expressly exempted. Also, under Sec. 24.60.030 (see above), certain other "gifts" --such as hospitality at another's residence within the state--are exempted.

#### Sec. 24.60.090 NEPOTISM

This section sets forth the following limitations:

Relatives of a legislator may not be employed in the house of which the legislator is a member or be a legislative agency;

Relatives of a legislator may be employed in the house of which the legislator is not a member, but only during session; and

Relatives of an employee of the legislature may not be employed in a position over which the employee has supervisory authority.

However, individuals who are not on the state payroll are exempt from these limitations.

Furthermore, the definition of a relative includes close family members --such as spouses, children, parents and siblings--as well as "a member of the same household".

#### Sec. 25.60.100 REPRESENTATION

This section provides that a person covered by the Act is not prohibited from paid representation of another before a state agency, board or commission. However, disclosure of such representation must be made in essentially the same manner as disclosure of interests between or with public officials (see Sec. 24.60.070, above).

Sec. 24.60.110 ACTION ON A CONFLICT OF INTEREST

Under this section if a legislator knows or has been notified that he or she has a conflict of interest, the legislator must immediately resign the conflicting position; or get rid of the interest that caused the conflict; or disclose the conflict. Disclosure is to be made in essentially the same manner as disclosure of interests between or with public officials (see Sec. 24.60.070, above).

Sec. 24.60.120 STATE PROPERTY AND FUNDS

Pursuant to this section, the use of state property or funds for private gain is prohibited. However, there is an exception for state leases.

Sec. 24.60.130 SELECT COMMITTEE ON LEGISLATIVE ETHICS

In essence, this section establishes the Ethics Committee, consisting of a three-member subcommittee from each house. Members are to be appointed by the presiding officer with the concurrence of three-fourths of the full membership of each house, and no more than two members of each subcommittee can belong to the same political party.

Sec. 24.60.140 AUTHORITY OF THE COMMITTEE

This section provides that the Ethics Committee as a whole has authority over:

Proceedings involving the conduct of employees of legislative agencies;

Matters requiring action by both houses of the legislature; and

The issuance of advisory opinions.

Each subcommittee has authority over proceedings involving the conduct of members or employees of its respective house.

Sec. 24.60.150 ADVISORY OPINIONS

Pursuant to this section, a person covered by the Act can request an advisory opinion from the Ethics Committee as to whether or not the facts and circumstances of a particular case constitute a violation of ethical standards.

The Ethics Committee has thirty days to issue the advisory opinion. If it fails to do so within that period, the facts and circumstances of that particular case are automatically deemed not to constitute an ethical violation, unless there were material omissions or misstatements in the request for the advisory opinion.

When the Ethics Committee does issue an advisory opinion, that opinion is binding in any subsequent proceeding involving the same facts and circumstances, unless there were material omissions or misstatements in the request for the advisory opinion.

Advisory opinions are confidential unless the persons requesting them ask, in writing, that they be made public.

#### Sec. 24.60.160 PROCEEDINGS BEFORE THE COMMITTEE

This section generally empowers the Ethics Committee to initiate, receive, investigate and consider complaints against persons covered by the Act, but a complaint must be filed within four years of an alleged violation, unless the accused person has intentionally prevented the discovery of the violation.

A complaint must be filed in writing and under oath, and this can be done by a private person or by three or more members of the Ethics Committee.

No complaint can be filed or acted on in any way within sixty days prior to a state primary or general election, unless the complaint has been initiated by five or more members of the Ethics Committee.

Before acting on a complaint, a majority of the members of the Ethics Committee must pass a resolution defining the nature and scope of the inquiry, and all investigations must be conducted on a confidential basis.

Once the Ethics Committee proceeds to act on a complaint, written notice must be served on the accused person, who must be given an opportunity to explain the alleged misconduct, whereupon the Ethics Committee can summarily dismiss the complaint if it determines that even if the alleged facts and circumstances are true, they are not sufficient to constitute a violation of the Act.

After investigating the charges alleged in a complaint, the Ethics Committee must issue an advisory opinion which can merely recommend that a probable violation of the Act be corrected. The accused person can then simply comply with the recommendation and thus end the matter. However, the accused person can also request a hearing before the Ethics Committee, following which the advisory opinion can either be affirmed or amended.

If an accused person does not comply with an advisory opinion, or if the Ethics Committee determines that a violation has occurred that cannot be corrected as previously described, formal written charges must be personally served on the accused person, who then has twenty days to submit a written response, whereupon a time and place must be set for a formal hearing before the Ethics Committee, with notice thereof to the accused person as well as to the complainant, if any.

Unless the accused person otherwise requests, hearings before the Ethics Committee are closed to the public and are to be conducted pursuant to the following procedural and substantive rights to:

Be represented by counsel;

Be heard (i.e., to testify and present evidence and witnesses);

Subpeona witnesses;

Require the production of books and papers;

Have witnesses testify under oath;

Cross-examine witnesses;

Have the Ethics Committee base its findings on competent and substantial evidence, even though it is not bound by formal rules of evidence;

Have testimony recorded and evidence preserved and not be released to anyone else; and

Receive a free transcript of the testimony.

After a formal hearing, the Ethics Committee must submit a written decision signed by a majority of its members, along with a written order, which becomes a public record, determining only whether or not there was a violation of the Act. If the decision establishes that a legislator has violated the Act or has failed to cooperate with the Ethics Committee, specific details as to what constitutes the violation or failure to cooperate must be provided, and the decision can also contain recommendations as to appropriate penalties to be imposed. The decision will then be referred to the presiding officers of the legislature--and thirty days later the decision is to be made public--for disposition as the legislature deems appropriate.

If the proceedings involved a former legislator or a past or present legislative employee, and if the decision contains a determination that a violation of the Act occurred, the Ethics Committee must issue a public statement of its decision thirty days after it is made, whereupon the legislature must act on it as it deems appropriate.

Furthermore, this section provides that if a member or employee of the Ethics Committee divulges unauthorized information about a proceeding, that person is guilty of a class A misdemeanor.

Sec. 24.60.170 COOPERATION BY STATE AGENCIES

This section provides that state executive agencies must fully cooperate with the Ethics Committee or a subcommittee thereof, including the disclosure of financial and other records, to the extent allowed by state and federal law.

Sec. 24.60.180 DEFINITIONS

This section defines the terms "committee" and "person employed by a member of the legislature."

## Fiscal Note for Senate Bill No. 257:

## III ANALYSIS:

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

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

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

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

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

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

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

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

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

None

FULL TIME						
PART TIME						
TEMPORARY						

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

SEE ATTACHMENT

IV. DATE April 20, 1983 PREPARED BY Wally Harrison, Director, Admin. Svcs.  
 AGENCY Legislative Affairs Agency  
 Original: Legislative Finance PHONE 465-3850  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/82)

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

RECEIVED JUL 19 1983

Bill Sheffield, Governor

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

July 13, 1983

Honorable Charlie Bussell  
Representative  
Alaska State Legislature  
P. O. Box 4-1325  
Anchorage, AK 99509

Re: Common Law Conflicts  
of Interest

Dear Representative Bussell:

As you know, none of the legislative ethics bills considered this session was passed. It was my hope that bills dealing with conflicts of interest for both legislators and public employees would be enacted so that definite and certain statutory standards would supersede the common law standards that now apply. As I pointed out in my letter of June 16, 1983 to Senator Vic Fischer, the imposition of common law conflicts of interest standards on citizen legislators in the state of Alaska is less than desirable. First, the common law standards are not well defined, producing uncertainty in determining what conduct is acceptable. In addition, the common law standards are strict, prohibiting not only actual conflicts of interest but also requiring avoidance of even the appearance of impropriety.

The common law conflicts of interest standards that are now in effect will be enforced by this office prospectively only; i.e., from the close of the legislative session. This is in accordance with my memorandum of December 28, 1982, in which I stated that enforcement action of the common law rules relating to conflicts of interest would be deferred until the end of the session, in order to give the legislature the opportunity to modify those rules. Since no action was taken, my decision to defer enforcement must be retracted. I recognize that some of you may have explored or entered into investment or business opportunities during the session in reliance on my decision to defer enforcement and on the presumption that a legislative ethics bill superseding the common law would be enacted. In those instances, even if the final arrangements were made after the end of the session, I will not take enforcement action based on the common law rules, unless, of course, the conduct is egregious (e.g., where the conflict also violates express civil or criminal statutes).

The purpose of this letter is not only to remind you that the common law standards are in effect and will be enforced during the interim, but also to provide you with some basic guidelines regarding conflicts of interest until statutory standards can be established, preferably during the next legislative session. In regard to state contracts and loans, the key to avoiding a conflict is the amount of discretion involved in administration of the loan or contract. As indicated in the December 3, 1982 opinion of this office, home loans and education loans are subject to fixed eligibility standards and little discretion is involved in their administration. Commercial loans, in contrast, involve a much higher degree of discretion, giving rise to a greater potential for influence or abuse. Thus, before entering into a state loan or contract, a legislator should examine carefully the amount of discretion involved, and avoid any situation in which there is potential for influence because of the degree of discretion. If the administrative procedures for granting a loan or contract are well-defined and minimal discretion is exercised in awarding the loan or contract under these procedures, the potential for undue influence should likewise be minimal, and the loan or contract can be accepted without fear of creating a conflict.

In regard to financial interests other than state loans and contracts, certain additional factors should be considered in attempting to avoid potential conflicts. These include:

1. whether your interest is of a type possessed generally by the public or by a large class of persons to which you belong;
2. whether your authority as a legislator is relatively far removed from any official action that could affect a matter in which you have a financial interest;
3. whether the effect that your action or influence could have on a matter in which you have a financial interest is insignificant or speculative; and
4. whether your financial interest is relatively insignificant.

These factors, taken together, should help you to judge whether there is potential for influence or abuse. If that potential exists, a financial interest should be avoided.

I hope this reminder will be of assistance to you in dealing with potential conflicts situations during the interim.

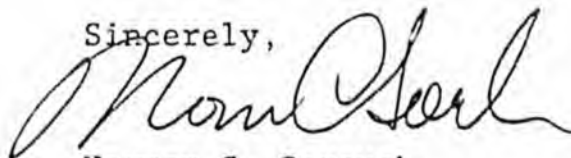
Common Law Conflicts  
of Interest

July 13, 1983  
Page 3

I trust that in the next legislative session the uncertainty of dealing with the common law standards will be cured with adoption of an ethics bill covering both legislators and public employees.

If you have any questions, please do not hesitate to contact this office. Assistant Attorney General Thomas M. Jahnke can assist you with conflicts problems. If he is unavailable, please contact Assistant Attorney General Diane T. Colvin.

Sincerely,

A handwritten signature in cursive script, appearing to read "Norm Gorsuch".

Norman C. Gorsuch  
Attorney General

NCG:DTC:eja

Draft Amendments to CSHB 362(St. Affs.)

by Rep. M.M. Miller

1. Pg. 1 - L. 16 - Delete "must" and insert "should".
2. - L. 18 - After "legislators" add "and legislative employees".
3. - L. 25 - After "chapter." add "This chapter shall be liberally construed to promote high standards of ethical conduct in the legislature."
4. - L. 29 - After "legislature." insert "Except for AS 24.60.090,".
5. Pg. 2 - L. 11 - Delete "specifically repeal" and insert "supersede".
6. Pg. 3 - L. 4 - After "less" insert "except as set forth in subsection (c)."
7. - L. 11 - Insert the following subsections:

(c) A state agency may enter into a contract without resort to the competitive bidding process under AS 37.05.230 when, in the judgment of the agency the property or services should not in the public interest, be acquired through competitive bidding. Written justification for the noncompetitive award of such contract shall be made a matter of public record and shall be filed with the ethics commission at least ten days before such contract is entered into.

(d) In addition to any other penalty provided by law, any contract entered into by the state in violation of this chapter is voidable on behalf of the state; provided that in any action to avoid a contract pursuant to this section, the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The Attorney General shall have the authority to enforce this provision.

8. Pg. 6 - L. 13 - After "lobbyist" insert "as defined by AS 24.45.171,".
9. - L. 19 - Delete "A gift of travel and hospitality received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section."
10. Pg. 7 - L. 15 - Delete the entire section and insert the following:

A person to whom this chapter applies who knowingly has a conflict of interest or has been notified of a conflict of interest shall

(1) Immediately divest the interest that has resulted in the conflict; or

(2) Prepare a written statement describing such matter and the nature of the conflict, and

Draft Amendments to CSHB 362(S.A.) cont.

(A) in the case of a legislator, deliver within 48 hours, copies of the statement to the commission and the presiding officer of respective body of the legislator, who shall cause such statement to be printed in the journal or if the legislature is not in session such statement shall be printed in the first journal of the following legislative session; or

(B) in the case of an employee of the legislature covered by this chapter, deliver within 48 hours, a copy of the statement to the commission and to their immediate superior, if any, who shall assign the matter to another employee, or if the employee has no immediate superior, the employee shall take such steps as the commission shall prescribe or advise to remove the employee from influence over action or decision on the matter.

11. Pg. 10, L. 21 - After "opinion" insert ", or until the opinion is amended or revoked by the commission."