ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4023 SJUD LEGISLATIVE REFORM

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James O. Smith
Signature of Camera Operator

11/7/89
Date

02-519 (REV 8/78)

LEGISLATIVE REFORM

Editorial - Anch. Times

How to save a million

LEGISLATORS and the governor are perspiring heavily over some tough budget problems. It's beginning to appear the state spending program may be pared down considerably, just as many lawmakers had been forecasting at the beginning of the session.

Because oil income has dropped off significantly, there is talk about state employee layoffs, reductions in loan programs, retrenchment in departmental operating budgets and denial of pay increases already negotiated for state employees.

There also are discussions of a next-to-nothing capital budget for next year, in sharp contrast to the massive ones in recent years.

EACH OF THESE options is serious business.

Layoffs are a very painful way to save money. So are cuts in loan programs. Eliminating promised pay increases weakens employees' trust in the state.

Severe reductions in the capital budget deny communities and regions of needed facilities. They are a sharp blow to the construction industry and, therefore, to the economy of the state.

ONE OPTION not being seriously discussed by the legislators would be popular with many Alaskans. It also would save the state more than $1 million next year alone.

By simply by rolling back the exorbitant pay increase they gave themselves two years ago, the legislators not only would save a million bucks but also would set a nice tone for the remaining five weeks of the session. It would show Alaskans that their elected representatives are putting service above self as they come to grips with the most serious financial problem the legislature has had to face since it started going wild a few years ago when the oil money began to flow.

FELLOW OF THE AMERICAN ACADEMY OF FAMILY PHYSICIANS

JOAN C. BURGESS, M.D.
4050 LAKE OTIS PARKWAY
ANCHORAGE, ALASKA 99504

TELEPHONE ~~279-0042~~
~~333-3685~~ 561-7014

April 16, 1985

To: Alaska Legislature

We urge you to repeal the excessive pay increase in legislators' pay and retirement plans. (Doubled these last year!)

If you don't, the people of Alaska will repeal it by initiative on the ballot.

We expect you to act responsibly with our money This was not intended to be a full time legislature. We hope you will respond to the overwhelming feelings of the Alaskan people rapidly.

Sincerely,

Joan C. Burgess, M.D.

Joan C. Burgess, M.D.

Health, Education and
Social Services Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811
465-4907
465-4908

Alaska State Legislature

Senate

May 21, 1983

Senator Victor Fischer, Chairman, State Affairs Committee
Senator Pat Rodey
Senator Arliss Sturgelewski
Senator Tim Kelly
Senator Bill Ray

Dear Colleagues:

Attached are pages 22-27 are from the May 15, 1983, report of the National Conference of State Legislatures regarding Alaska legislative procedures.

Your attention is called to page 25 where, coincidentally, the NCSL refers to the New Jersey capital planning model, which I suggested in Senate Bill 220 that is before the Committee on State Affairs.

Thanks for your consideration.

Sincerely,

Joe Josephson

ALASKA LEGISLATIVE PROCEDURES STUDY

FINAL REPORT

Submitted to:

The Joint Special Committee on Legislative Reform

Prepared by the

NATIONAL CONFERENCE OF STATE LEGISLATURES

1125 Seventeenth Street, Suite 1500

Denver, Colorado 80202

May 15, 1983

To the extent that Alaska is unique, solutions for dealing with the troublesome aspects of Alaska's capital budgeting process must be carefully tailored to meet Alaska's unique situation.

1. The capital budget for local projects should be separated from the state capital budget and included either in a separate bill or in a separate secton of the state appropriations bill. A specific deadline should be established for submission of the local capital budget.

Discussion: Over the past several years, a pattern has been established for the development of the Alaska capital budget. The governor develops a list of projects mainly, but not exclusively, of a statewide nature and uses up to a third of the monies available for capital finance to fund these. At the same time, each house of the legislature takes another third of the capital budget, divides up the funds among its members and allows the members to propose local capital projects. These projects are added onto the governor's list, and the result is the "state" capital budget. In fact, the capital budget is a hybrid that is neither a "state" nor a "local" capital budget.

A number of those interviewed for this study said they felt the most serious flaw in the current capital budgeting process is that neither local nor state capital projects receive a thorough review. Caught up with the development of what is in fact the local capital budget, individual legislators spend little time reviewing the governor's proposed list of state capital projects. Likewise, the executive branch has little opportunity to review the local capital budget since it is usually relatively late in the session before the legislature produces its list of local projects. In fact, individual legislators themselves have almost no opportunity to review the list of proposed local capital projects.

The legislature and the governor should thoroughly review all proposed capital projects and the public should have ample opportunity to examine and comment on these proposals. By separating the local and state capital budgets and requiring that these budgets be submitted early in the session, all interested parties will be able to carefully review the budgets, and state elected officals will be able to make explicit decisions as to how much should be spent on state versus local projects.

One state which has adopted an approach to capital budgeting not altogether unlike the one recommended here is Colorado. Included in Colorado's single state appropriations bill is a section which lists, by department, all capital construction appropriations for the year. Under the capital construction appropriation to the Department of the Treasury, there appears a multimillion dollar appropriation of Oil Shale Trust Fund monies. These monies are earmarked for expenditure in the western, energy-impacted counties of the state to relieve the effects of oil shale production. In a footnote to the oil shale appropriation are listed all the specific, local capital projects for which these monies are to be spent.

2. The Alaska Legislature should develop a standard form for capital projects which describes the purpose of and need for each project. A completed form should accompany each proposed capital project and be available for public inspection.

Discussion: In order to make well-informed decisions about capital projects, legislators need detailed information on the purpose of and need for each proposed project. Several legislators expressed frustration over the often inadequate documentation for proposed capital projects--especially local projects.

The standard form should include, at minimum, the following elements:

- Project title
- Project purpose
- Project justification (e.g., needed to protect health or welfare of citizens, to respond to court order, to encourage economic development, etc.)
- Alternative ways of dealing with the problem at hand
- Alternative funding sources if project is not funded
- Estimated capital expenditure requirements over the next five years, by year
- Estimated operating expenses which will be generated by this project, over the next five years, by year

A compendium of the completed capital project forms should accompany the proposed state and local capital budgets when they are taken up for consideration by the finance committees.

3. Legislative Finance Division staff or consultants should be responsible for reviewing all capital project proposals to see if the fiscal notes included are reasonable.

Discussion: In recent years, millions of dollars have been reappropriated by the Alaska legislature from excess capital funds appropriated in earlier years. This suggests that initial capital appropriations were unnecessarily generous. With revenue projections no where near as rosy as

they were just three years ago, the Alaska legislature can ill afford to appropriate more for any particular purpose than is actually needed.

In most states, the initial fiscal note on a proposed capital project is developed by an agency or entity that has a vested interest in seeing the project generously-funded. Typically, the corrections department develops the request for a new prison, the department of higher education develops the request for funds to remodel a dormitory, and the department of natural resources prepares the request for improving a lake habitat. While a state's central budget office and/or state buildings division may review these requests, it is important that the legislature conduct its own independent review, with an eye toward shaving any unnecessary costs. The Alaska legislature should have the capability, whether in-house or on a consulting basis, to independently and objectively examine proposed project costs before appropriating funds for capital projects.

4. A minimum of four joint hearings of the House and Senate finance committees should be held on the state and local capital budgets, preferably in different parts of the state.

Discussion: This recommendation addresses two weaknesses of the current Alaska capital budgeting process frequently cited by those interviewed in the course of this study. The first is that the finance committees do not schedule enough time for discussion of the final version of the capital budget. Senate and House capital projects are added onto the governor's proposed list relatively late in the session leaving little time for public review and comment on the whole capital budget. The second weakness is that the procedure used by the legislature for developing its list of local capital projects tends to encourage the inclusion of projects benefiting a specific, identifiable legislative district to the exclusion of projects benefiting a larger local area. The Anchorage Daily News wrote in a March 1983 editorial, "The breakdown in [legislative] negotiations [over the supplemental capital budget] limits the chances that areawide needs will be addressed. . . in the budget. . . House members from Anchorage apparently couldn't agree to work together to pool funds for major projects. . ."

By holding several hearings on the capital budget, in different parts of the state, people at the local level will have ample opportunity to testify on items in the proposed capital budget. Finance committee members will also be able to question local residents about the need for projects proposed for their areas. An added advantage of holding committee meetings in different parts of the state is that members of the finance committee can visit the sites of proposed new projects or examine the buildings which require expansion or remodeling.

5. The Alaska Legislature and governor should work together to develop goals and criteria for ranking capital projects. Using these goals and criteria, the state should write and annually update a five-year, long-term capital investment plan.

Discussion: As the cost of and demand for new infrastructure grows, more and more states are seeing the need to develop long-range capital investment plans. The necessity for such planning has become all the more acute in recent years as states have adopted measures to control total state expenditures. Alaska faces these same pressures.

Almost every legislator interviewed by NCSL for this study cited the need for better long-range capital planning by the state. Such planning requires a major analysis of future capital needs and a public decision about what the state should view as its funding priorities.

There are several models Alaska should consider for developing long-range capital investment plans and prioritizing projects.[3] New Jersey has a Commission on Capital Budgeting which advises the governor and the legislature. The Commission, which has four public members, four legislative members and four members from the executive branch, has the following responsibilities:

> (1) to develop and maintain, on an ongoing basis, short and long-range capital spending plans for the State; (2) to analyze and report on the impact of capital spending programs on future operating budgets; and (3) to present the plans for short and long-range capital investments, recommending to the Governor and the Legislature items for inclusion in the annual budget. The Commission is required to recommend the means by which capital projects should be funded, to comment on capital projects recently completed or presently under construction, as well as to make annual recommendations on the maintenance of State facilities.[4]

In developing its recommendations for FY 1982, the Commission used the following criteria: 1) needs must be critical and well-defined; 2) careful planning must precede each capital project; 3) maximum utilization must be made of available federal matching monies, and 4) expenditures must be cost-effective with a minimal adverse impact on future operating budgets.

In Maryland, capital planning is the responsibility of the Department of State Planning, which prepares an annual and a proposed five-year, prioritized capital improvement plan. The Maryland State Planning Commission, consisting of nine members, seven of whom are legislators, serves as a capital advisory group to the Department of State Planning. Each year, the Department and the legislature's budget committees jointly hold hearings on the short and long-range capital plans.

6. The Alaska Legislature and the governor should agree on the definition of a "capital item." Only those items which meet this definition should be included in the capital budget.

Discussion: Interviews with legislators and members of the public indicated that Alaska employs no consistent definition of a capital project. As

a consequence, a "capital project" may or may not appear in the capital budget. By the same token, operating budget items not infrequently are found in the capital budget. To aid in the planning process and assist people in reading the state budget, Alaska should adopt a working definition of a capital item and include all such items and only these items in the capital budget.

There are a number of ways in which a capital item may be defined. The Municipal Finance Officers Association's definition of capital expenditures includes programs that result in the acquisition of assets of a long-term character. Ohio's capital improvements bill describes the general purposes for which its appropriations can be used as follows:

> Land acquisition; construction, architectural, and engineering expenses, complete heating and lighting systems, utilities, and ventilating, plumbing and sewer systems; machinery which is part of the structure at the time of construction or acquisition; and equipment essential to bring the facility up to its intended use, provided that its unit cost is at least $10 and the item has a useful life of five years or more. Disallowed purchases are replacement equipment, vehicles, adding machines, calculators, dictating equipment and normal supply and maintenance items.[5]

Colorado's "Guide to the State Budget" defines capital construction as "the purchase, construction, remodeling or renovation of major capital facilities." Not included under the definition of capital construction are: equipment (automobiles, typewriters); alterations and replacement of buildings costs less than $15,000; new structures costing less than $15,000; and non-new structural improvements to land costing less than $5,000.

7. Those entities responsible for spending capital appropriations should be required to submit annually to the legislature a status report on each project which has been funded by the legislature.

Discussion: The Alaska Legislature is inadequately informed as to how projects which have been funded by the state are progressing. The legislature does not routinely receive information on the status of state-funded local capital projects. Tracking of capital project expenditures is poor. According to the state auditor, excess capital project appropriations are not always being returned to the General Fund as they should be. Inadequate oversight of capital project expenditures has resulted in several deficits. Finally, poor tracking of exactly what capital project funds have been reappropriated, when, and for what purposes has resulted in differing estimates by executive agencies, the Office of Management and Budget, and legislative staff as to how much money is actually available at any time for previously-approved projects and for reappropriation.

The governor should be required to submit annually to the legislature a status report on every capital project for which funds have been appropriated. At minimum, this status report should include the following information:

-- Project name and purpose

-- Total appropriated by the state for this project

-- Additional funds committed to this project (e.g., federal or local funds)

-- Expenditures to date by object of expenditure and type of funds used

-- Estimated total expenditures over the life of the project by object of expenditure and type of fund used

-- Accrued but unpaid liabilities to date by object of expenditure and fund type

-- Monies returned to the General Fund

-- Description of the current status of the project.

8. The Alaska House and Senate should form a joint subcommittee on debt policy of the finance committees.

Discussion: There has been a significant increase in recent years in legislative concern over debt levels and debt policy. As legislatures have reviewed these issues, their recommendations are very similar. The Maryland Legislature created the Capital Debt Affordability Committee, composed of the State Treasurer, State Comptroller, and Secretaries of the Departments of State Planning and Budget and Fiscal Planning. This committee is required to submit to the Joint Budget and Audit Committee a review of the size of state debt and an estimate of the amount of new debt that may be prudently authorized. In a review of debt in Oregon, the Bonded Debt Advisory Commission recommended creation of a similar body, and also recommended creation of a subcommittee of the Joint Ways and Means Committee to review all debt authorizations. A recent report of the California Legislative Analyst recommended both creation of a long-term capital outlay plan and subcommittees of each fiscal committee "for overseeing on an ongoing basis all bond-related legislation."

By using a debt policy subcommittee, the Alaska Legislature would be better able to establish a clear link between its capital outlays and the need for bond financing; it would also be able to review debt issuance on a comprehensive basis, rather than issue by issue. A joint subcommittee, or one which at least held joint hearings, could make more efficient use of limited legislative time, particularly when considering new issues or holding oversight hearings.

C. Finance Committee Structure and Procedures

Background: Alaska's finance committees play a critical role in shaping the state's budget. It is their job to hold hearings on the budget, to analyze, review and modify the governor's proposed budget, and to oversee all aspects of executive branch budget management. Finance Committee members are responsible for knowing every aspect of the budget. They must review agency budget requests, decide on what capital projects should be funded, and determine the cost of new legislation.

The organization of and procedures used by a finance committee influence its ability to carefully review and analyze the budget. These factors also have an effect on public access to the process.

Alaska's appropriations committee structure is like that in many other states. Alaska has a House and a Senate Finance Committee. These committees handle both revenue and appropriations issues. In 39 other states, there are separate House and Senate committees; in 14 of these states the committees are combined appropriations-revenue committees. Like most other states, Alaska relies on its finance subcommittees to hold hearings on agency budgets and make recommendations on individual agency budgets. There are 23 states that write a single omnibus state budget bill; Alaska is one of these. In Alaska, all bills with fiscal impact are referred to the finance committees, as is true in about half the states.

Not everything about Alaska's finance committee structure and procedures is typical. A much larger portion of the legislature sits on the finance committees in Alaska than do in most states. In large part because the legislature is so small, almost one-third (7 members) of the Alaska Senate, and over one-fourth (11 members) of the House sit on Finance.. Having noted the large proportion of legislators serving on the finance committees, it is nonetheless true that in absolute numbers, the Alaska finance committees are small. Only five states have smaller finance committees than Alaska--Colorado, Delaware, Oregon, Wyoming, and Wisconsin--and Wisconsin is the only other state where the finance committee is responsible both for revenues and appropriations. What this means is that the legislators on finance in Alaska bear an especially heavy load.

The load on Senate Finance Committee members in Alaska is still heavier, for all Senate Finance Committee members also serve on other committees and indeed several even chair other committees. Again, because the Alaska Legislature is so small, the overlap in committee assignments is necessary.

Anch Daily News 7/9

ALASKA

Session limit fails to win two-thirds Senate vote

By JEAN KIZER
Associated Press Writer

JUNEAU—Reversing a vote cast just hours earlier, the Alaska Senate on Tuesday defeated a proposed constitutional amendment to limit the length of legislative sessions.

Senators voted 11-9 in favor of the session limit, which already passed the House, but the ballot fell three votes short of the two-thirds majority needed to rewrite Alaska's constitution.

The proposed amendment would limit sessions to 120 days, with one 15-day extension allowed if agreed on by a majority of each chamber. When the House passed the measure, which is a priority of the GOP-led majority coalition, it set a strict 120-day limit with no extensions permitted.

Tuesday was the 128th day of the session. Last year, lawmakers stayed in Juneau for a record 165 days.

The Senate's defeat of the measure came on a final reconsideration ballot.

However, Senate President Jalmar Kerttula, D-Palmer, said he would hold the bill on his desk for at least a day rather than return it immediately to the House. That means the bill will be available if senators want to try to rescind their action.

The nine senators who voted against the session limit included Don Bennett, R-Fairbanks, Bettye Fahrenkamp, D-Fairbanks, Frank Ferguson, D-Kotzebue, Bob Mulcahy, R-Kodiak, Charlie Parr, D-Fairbanks, Bill Ray, D-Juneau, John Sackett, R-Ruby, and Robert Ziegler, D-Ketchikan, and Kerttula.

Meanwhile, supporters of the measure vowed to try to turn around enough votes to pass the measure, which may be caught up in end-of-the-session bargaining between the two chambers.

That appeared to be the case Tuesday morning, when the Senate passed the session limit on an initial 14-4 ballot. The action came after senators, in a surprise move, amended the priority House measure to combine it with another constitutional amendment proposed by Senate Finance co-Chairman Ed Dankworth, R-Anchorage.

His amendment calls for a portion of the state's oil and gas and mineral revenue to be dedicated to a new Alaska Resource Fund. The multi-billion dollar fund would be used for building dams and other revenue-producing projects.

Dankworth's proposal passed the Senate earlier, but was shot down in the House last week on a resounding vote.

Senators voted unanimously Tuesday morning to add Dankworth's amendment to the session limit measure, although some senators voiced criticism about "piggybacking" unrelated constitutional amendments.

When the Senate reconvened in the afternoon, Dankworth urged the Senate to withdraw approval of his amendment, and the Senate agreed.

Dankworth said he made the request because there could be legal problems in combining two constitutional amendments.

However, it also was clear that the Senate's action had been planned in advance to send the House a message encouraging lawmakers to reconsider their earlier rejection of Dankworth's proposal and to try to work out a compromise.

When he offered the amendment Tuesday morning, Dankworth assured senators that his action to attach the proposal to a priority House bill was "not to be clever or a smart aleck." He said he believes creation of a fund to finance dams is "the most important subject we could discuss this year."

After a meeting with House leaders Tuesday afternoon, Dankworth said they had agreed to try to work on a compromise proposal to create a fund for financing dams.

Original sponsors: Hayes, Abood, Anderson, et al

Offered: 3/31/82
Referred: Judiciary

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 12 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska providing a method for limiting the length of regular sessions of the legislature.

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

* Section 1. Article II, sec. 8, Constitution of the State of Alaska, is amended to read:

SECTION 8. REGULAR SESSIONS. The legislature shall convene each year on the fourth Monday in January, but the month and day may be changed by law. [The legislature shall adjourn from a session convened under this section no later than one hundred twenty consecutive calendar days from the date it convenes unless the session is extended for a period not to exceed fifteen consecutive calendar days by a majority vote of the full membership of each house of the legislature. A session may be extended only once.]

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

24.05.150

HJR 12 TITLE & SPONSOR SUMMARY 10:43 6/21/82 PAGE 1 OF

AMENDED TITLE: SCS CSHJR 12(TRSP)AM S(FLD S)
PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA PROVIDING A METHOD FOR LIMITING THE LENGTH OF REGULAR SESSIONS OF THE LEGISLATURE

PRIME SPONSOR: HAYES.
CO-SPONSORS: ABOOD, ANDERSON, BARNES, BEIRNE, BETTISWORTH, BYLSMA, CUDDY, HALFORD, HAUGEN, MARTIN, METCALFE, MONTGOMERY, O'CONNELL, PHILLIPS, SUTCLIFFE
CURRENT STATUS: 5/18/82 FAILD (S) ON RECONS

HJR 12 HOUSE ACTION 10:43 6/21/82 PAGE 2 OF

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/10/81	01	0217	FIRST READING -- COMMITTEE REPORTS
03/12/81	02	0537	NOT MOVED FROM S.A. COMM BY DIV 17-22-01
05/11/81	03	1337	NOT MOVED FROM S.A. COMM BY DIV 15-21-04
01/22/82	04	0114	S.A. -- DNP02, DP(AM)03
01/25/82	05	0133	JUD -- CS06, NR01
03/03/82	06	0669	SECOND READING
03/03/82	07	0673	MOTIONS RULED OUT OF ORDER
03/03/82	08	0675	AM 01 TO CS ADOPTED BY DIV 25-12-03
03/03/82	09	0675	JUD CS ADOPTED BY DIV 25-09-06
03/03/82	10	0676	AM02 NOT ADOPTED BY DIV 12-25-03
03/03/82	11	0677	AM03 NOT ADOPTED BY DIV 13-24-03
03/03/82	12	0677	AM04 NOT ADOPTED BY DIV 12-25-03
03/03/82	13	0678	ADVANCED TO 3RD READING BY UNAN CONSENT
03/03/82	14	0678	THIRD READING
03/03/82	15	0678	FAILED BY DIV 24-13-03
03/03/82	16	0678	NOTICE OF RECONSIDERATION GIVEN
03/05/82	17	0699	POSTPONED UNTIL 03/10/82 BY DIV 22-11-07
03/10/82	18	0760	FAILD TO RETN 2ND READNG BY DIV 11-26-03
03/10/82	19	0760	PASSED ON RECONSIDERATN BY DIV 27-10-03
****	**	**	*** *** ***

HJR 12 SENATE ACTION 10:43 6/21/82 PAGE 3 OF

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/12/82	20	0551	FIRST READING -- COMMITTEE REPORTS
03/31/82	21	0745	TRAN -- DNP01, CS01, NR02
05/17/82	22	1404	MOVED FROM JUD TO RLS BY UNAN CONSENT
05/18/82	23	1426	RLS -- OTHER03
			TAKEN UP IMMEDIATELY
05/18/82	24	1428	SECOND READING
05/18/82	25	1428	TRAN CS ADOPTED BY UNAN CONSENT
05/18/82	26	1428	AM01 ADOPTED BY UNAN CONSENT
05/18/82	27	1429	AM02 ADOPTED BY UNAN CONSENT
05/18/82	28	1430	AM03 NOT ADOPTED BY DIV 08-10-02
05/18/82	29	1430	AM04 NOT ADOPTED BY DIV 07-11-02
05/18/82	30	1430	ADVANCED TO 3RD READING BY UNAN CONSENT
05/18/82	36	1430	AM02 NOT ADOPTED BY DIV 00-20-00
05/18/82	37	1430	ADVANCED TO 3RD READING BY UNAN CONSENT
05/18/82	31	1431	THIRD READING
05/18/82	32	1431	PASSED BY DIV 14-04-02
05/18/82	33	1435	NOTICE OF RECONSIDERATION GIVEN
05/18/82	34	1435	RETURNED TO 2ND READING BY UNAN CONSENT
05/18/82	35	1435	ACTION NO. 027 RESCINDED BY DIV 20-00-00
05/18/82	38	1436	FAILED ON RECONSIDERATN BY DIV 11-09-00

FREE denounces bill piggybacks

Despite earlier Legislator promises, the legislature has continued to gut, strip and "piggyback" bills. During the last legislative session in a report dated January, 1981, the FREE Committee, a committee of the Anchorage Womans' Club, revealed that bill "piggybacking" and gutting was frequently practiced in the Alaska Legislature, even though the Alaska Uniform Rules prohibit it.

In "piggybacking", amendments which are totally unrelated to an existing bill are added to it, often in order to prevent public involvement or to facilitate the passage of weak or controversial legislation.

This means that a particular bill, favored by only a few, can be "piggybacked" onto another, more popular bill, favored by the public and therefore be assured of passing.

Bill gutting and stripping occurs when a bill as introduced addresses a particular subject, but subsequent committee substitutions completely change the content and meaning of the bill.

Frequently, legislators use bill gutting to switch pieces of

worked hard to end these abuses and flagrant violations of the legislators own rules. Last year, in apparent lip service to these groups, the legislature adopted new, stricter rules which were to become effective June 30 after this session ended.

The legislature which will convene in Jan., 1983, may adopt new rules by which to govern itself and is bound in no way by changes enacted by the preceding legislature. It is imperative that the rules governing "piggybacking" and bill gutting are incorporated into the next legislatures adopted rules.

According to a study done by the FREE Committee during this legislative session, the practice has been commonplace in both Houses. Following are some significant bills which have been gutted, stripped or 'piggybacked':

• SB 150 began as a $1.8 million appropriation for improvements to the Steese Highway (an appropriation made last session)...The House Rules Committee gutted this carry over bill and the House

Finance Committee "piggybacked a $20 million appropriation to the Federal Budget Impact Fund.

• SB 752 would give stockholders of a savings association access to the association's books and allowed the association to secure loans by real estate or by mobile homes, The House Labor and Commerce Committee "piggybacked" language which, with SB 756, would allow out-of-state banks to acquire a controlling interest in Alaska banks.

• SB 768 was a bill simply designed to change the definition of "rural" for the purpose of rural home loans. The House Resources Committee gutted this bill. The new, complicated bill would create fishery product loan guarantee fund in the Department of Revenue.

• SB 849 only related to minimum crew sizes of railroads in Alaska. The original bill only changed one sentence of an existing statute. The new, 46 page complex bill, "piggybacked" by the House Rules Committee establishes the Alaska Railroad Authority and essentially incorporates SB 212. This is a highly complex and important piece of legislation.

• SB 875 originally would have transferred ownership of University of Alaska trust lands from Natural Resources to the University to facilitate a negotiated settlement between Anchorage and the University. The House Resource Committee "piggybacked" complicated and detailed language establishing a new homestead pro-

Continued on Page 11

Committee returns ethics bill for probable 'burial' this year

by Bill White
Times Juneau Bureau

Juneau — Bills setting up ethics standards for lawmakers and protection for workers who "blow the whistle" on their employers were returned to the State Affairs Committee Tuesday, where presumably they will die.

Sen. Pat Rodey, D-Anchorage, made the request on the Senate floor after reading an article in The Anchorage Times Sunday that he said implied his Judiciary Committee killed the measures.

He said his panel was put in an awkward position by the measure's prime author, Sen. Vic Fischer, another Anchorage Democrat. If the committee refined the measure to make the bill workable, it would be accused of watering it down, he said. And if the panel let the bill die because it was poorly written, its members would be charged with being soft on ethics, he added.

But Fischer defended the bill.

"It is a good bill. It's an adequate bill. It would do a very good job in establishing a standard of conduct," he said. The attorney general's office, the state's ombudsman, the League of Women Voters and others worked on the proposal, he said.

At this point his State Affairs Committee has too little time to rewrite the measure and get it passed by both houses, he said, so he would take the bill back.

But Rodey cited what Fischer said when his committee first approved the bill in February: "I'd rather let it die in some other committee."

In interviews, two other Judiciary members — Sens. Bill Ray, D-Juneau, and Nels Anderson, D-Dillingham — agreed with Rodey that the ethics and whistleblowers bills were in bad shape when they received them.

"A grade schooler wouldn't have accepted them," Anderson said.

On the floor, Ray objected to a statement in The Times' story that referred to "blistering fights" over the bill between Ray and Fischer.

"I can't remember anything like that happening," he said. "The inference was that somehow that I was opposed to the bill."

"It wasn't the subject matter of the bills. It was the composition" that he found objectionable, Ray said. The Times never checked with him about the story, he added.

for KEVIN BRUCE/Sen. Rodey's Office

Legislative Reform

Notwithstanding abundant criticism to the contrary, the 1981-82 Legislature did more to reform the legislative process than any since statehood. Leading the way in the Senate was Majority Leader Pat Rodey.

It is likely that you remember it was Sen. Rodey who was the first - and for a long time the only - member of the Legislature to urge the expulsion of convicted felon George Hohman. But it was also Rodey, who as co-chairman the previous session of the Senate Special Committee on Legislative Reform, was successful in persuading his collegues to adopt six substantive changes to the way the Legislature does its business.

The two most significant of these will go into effect next session. They will: (1) limit the power of budget free conference committees by prohibiting members from adding new items to the bill or increasing the amount of any appropriation above the higher amount contained ineither version passed by a house; and (2) prohibit a change in the title of a bill once it reaches the other body, thus preventing a common practice called 'bill stripping' and sharply curtailing another called 'piggybacking'

Rules reforms which were in effect this session, and which did make a difference were those which:

* limited the powers of conference committees;
* mandated public notice requirements;
* provided for increased recordkeeping; and
* limited the establishment of interim committees.

Two other improvements to the legislative process were adopted by the 12th Legislature: a constitutional amendment limiting State spending which will appear on the November ballot, and a bill establishing specific procedures to be followed in the awarding of public contracts.

Still remaining as issues for the next Legislature to consider are a constitutionally-imposed session limitation, and adoption of a code of ethics for public officials.

Of course, the best legislative reform is that done in the voting booth.

Legislative Reform

The 1981-82 Legislature did more to reform the legislative process than any legislature since statehood. As you might recall, legislative reform was one of the chief issues of the First Session, and leading the way in the Senate was Sen. Pat Rodey.

Co-chairman of the Senate Special Committee on Legislative Reform, Rodey was successful in persuading his collegues to adopt six substantive changes to the way the legislature does its business. The two most significant of these go into effect next session. They will: (1) limit the power of budget free conference committees by prohibiting members from adding new items to the bill or increasing the amount of any appropriation above the higher amount contained in either version passed by a house; and (2) prohibit a change in the title of a bill once it reaches the other body, thus preventing a common practice called 'bill stripping' and sharply curtailing another called 'piggybacking'.

Additionally, rules reforms were adopted to:

* require a conference committee to request limited powers of free conference on specific points which can't be resolved by adopting exact provisions of either bill; only then if the committee still can't reach a compromise may a free conference committee be appointed, and then it must be all new members;

* require each committee to set weekly schedules, and give public notice of five days for the first hearing on a bill; 24-hour notice is required before adoption of a conference committee report;

* require committees to tape record meetings, and keep minutes in a standardized form; and

*require interim committees to be established by a resolution of the house, not simply by order of a presiding officer.

Two other improvements to the legislative process were adopted by the 12th Legislature: a constitutional amendment limiting state spending which will appear on the November ballot, and a bill establishing specific procedures to be followed in the awarding of public contracts.

Still remaining as issues for the next legislature are consideration of a constitutionally-imposed session limitation and adoption of a code of ethics for public officials

Introduced: 1/17/83
Referred: State Affairs,
Judiciary and Finance

IN THE HOUSE

BY M.M.MILLER,DUNCAN,ZHAROFF
DAVIS,MCBRIDE AND SZYMANSKI

HOUSE BILL NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the responsibilities of the Alaska Public Offices Commission; establishing standards of conduct for public officials; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that it is essential in the conduct of public business that public officials hold the respect and confidence of the people. Public officials need to avoid conduct that violates the trust that the people have placed in them or that creates a justifiable impression among the public that the public trust is being violated. To ensure and preserve public confidence, persons serving in state and municipal government should have the benefit of specific standards to guide their conduct. In order to strengthen the faith and confidence that the governmental process reflects the will of the people and that each public official considers and makes decisions affecting the public according to the best interests of the public, AS 39.49 is enacted in sec. 2 of this Act.

* Sec. 2. AS 39 is amended by adding a new chapter to read:

CHAPTER 49. STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS.

Sec. 39.49.010. GIFTS. A public official may not solicit, directly or indirectly, a gift, whether in the form of money, service, or benefit, under circumstances that the public official knows are intended to influence the performance of official action or are intended as a reward for official action.

Sec. 39.49.020. ABUSE OF OFFICE. (a) A public official may not use or attempt to use public office to

(1) seek employment or to contract for services that benefit the public official or a member of the household of the public official;

(2) solicit or accept compensation for the performance of official duties or responsibilities of benefit to the public official or others except as provided by law;

(3) use public time, equipment, or facilities for any private or business purposes of benefit to the public official or others;

(4) use public time, equipment, or facilities for political or campaign purposes;

(5) solicit or engage in a financial transaction with a subordinate or a person or business that the public official inspects or supervises;

(6) use information that is confidential by law for personal gain or in a manner not connected with the performance of official action.

(b) The provisions of (a)(3) and (4) of this section do not apply to an elected public official. An elected public official may not use state or municipal equipment for a private, business, or campaign purpose.

Sec. 39.49.030. CONFLICT OF INTEREST. (a) Except as provided in AS 39.49.040 and AS 39.49.050, a public official may not take official action that the public official knows or has reason to know would affect

(1) a business or property in which the public official has a financial interest; or

(2) a business or property for which the public official acts as legal counsel, advisor, consultant, or representative.

(b) A public official has not acquired a financial interest in a business that may be involved in official action under this section if no benefit or detriment accrues to the public official beyond that which accrues uniformly to the members of the profession, occupation, or group affected by the official action.

(c) A public official of the state may not assist a person before a state agency for compensation that is conditioned on the success of the transaction in a transaction involving the state. A public official who is a member of the legislature or employed in the legislative branch of the state government may not assist a person or business before a state agency for compensation. A public official who is a member of the governing body of a municipality or an employee of a municipality may not assist a person or business before the municipal governing body or an agency of the municipality for compensation.

(d) A public official may not for compensation attempt to secure passage or defeat of a bill or appropriation or to obtain a contract, claim, transaction, or proposal in which the public official has participated or will participate as a public official. A public official may not assist a person or business for compensation on the bill, contract, claim, transaction, or proposal before the legislature, a state agency, or a municipality.

(e) A public official may not assist a person before a state agency or a municipality for compensation as to a bill, contract, claim, transaction, or proposal involving official action by the state agency or municipality over which the public official has authority.

(f) A former public official may not

(1) use information that is confidential by law for personal gain;

(2) within 12 months after separation from employment assist a person or business for compensation on a case or transaction upon which the public official took official action while a public official; for purposes of this paragraph "official action" does not include voting by an elected public official.

Sec. 39.49.040. ACTION ON CONFLICT BY PUBLIC OFFICIAL OF THE STATE. (a) A public official of the state who is unable to reassign responsibilities concerning an action otherwise prohibited by AS 39.49.030 or whose participation is necessary in order to constitute a quorum for official action does not violate AS 39.49.030 if the public official has complied with AS 39.50.020 and announces the nature of the conflict at the time the official action is taken.

(b) A public official in the executive branch of the state government who has a conflict in the discharge of official duties shall

(1) prepare a statement describing the duties requiring official action and the nature of the conflict of interest with respect to the official action; and

(2) deliver copies of the statement to the commission and to the immediate superior of the public official or to the governor.

(c) A public official who is a member of a board or commission who has a conflict of interest shall state the conflict to the board or commission at the time of taking the official action.

(d) On receipt of a statement prepared under (b) of this section, the superior of the public official or the governor shall assign the official action to a public official who does not have a conflict of interest.

(e) The governor and a public official without a superior in the executive branch of the state government comply with this section if the statement described in (b)(1) of this section is delivered to the commission.

(f) The executive director of the commission shall review all statements filed under (b) of this section.

Sec. 39.49.050. ACTION ON CONFLICT BY A PUBLIC OFFICIAL OF A MUNICIPALITY. (a) A public official of a municipality who has a conflict in the discharge of official duties shall

(1) prepare a statement describing the duties requiring official action and the nature of the conflict of interest with respect to the official action; and

(2) deliver copies of the statement to the commission and to the immediate superior of the public official of a municipality or to the presiding officer of the governing body of the municipality.

(b) On receipt of a statement prepared under (a) of this section, the superior of the public official shall assign the official action to a public official who does not have a conflict of interest.

(c) A public official who is a member of the governing body of a municipality complies with this section if the statement described in (a)(1) of this section is delivered to the commission.

(d) A public official who is a member of the governing body of a municipality who has a conflict of interest shall state the conflict to the governing body before taking the official action.

(e) The executive director of the commission shall review all statements filed under (a) of this section.

Sec. 39.49.900. DEFINITIONS. In this chapter,

(1) "commission" means the Alaska Public Offices Commission established under AS 15.13.020;

(2) "compensation" means money, a thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another;

(3) "employment" means services performed for compensation;

(4) "financial interest" means an interest held by an individual or a household member that is

(A) an ownership interest in a business;

(B) a creditor interest in an insolvent business;

(C) employment;

(D) prospective employment for which negotiations have begun;

(E) an ownership interest in real or personal property;

(F) a loan or other debtor interest;

(G) a directorship or officership in a business;

(5) "member of the household" or "household member" means

(A) a person who is the spouse, child, ward, brother, sister, or parent of a public official or of the spouse of a public official, and who shares a common residence with the public official; or

(B) a person who is the child, ward, brother, sister, or parent of a public official or of the spouse of a public official, and over whose financial interests the public official has legal, actual, or joint control, whether or not they share a common residence;

(C) a person who shares a common residence with the public official as though a spouse;

(6) "municipality" includes

(A) a city or borough of any class;

(B) a municipality unified under AS 29.68.240 - 29.-68.440;

(C) a school district or a regional educational attendance area;

(7) "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves discretion;

(8) "public official" means a member or employee of the legislature, the governor and lieutenant governor, appointed officers and employees of a state agency, elected and appointed officers and employees of a municipality of the state;

(9) "public time" means the regular work hours established by or under law, regulation, ordinance, or collective bargaining agreement for public officials;

(10) "state agency" means a department, board, board of regents, commission, council, committee, institution, office, corporation, authority or organization in the executive or legislative branch of the state government, and includes the University of Alaska and public corporations having a separate and independent legal existence.

* Sec. 3. AS 15.13.030 is repealed and reenacted to read:

Sec. 15.13.030. DUTIES OF THE COMMISSION. (a) The commission shall

(1) develop and provide all forms for the reports and statements required to be made under this chapter, AS 24.45, AS 39.49, and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter, AS 24.45, AS 39.49, and

AS 39.50 and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter, AS 24.45, AS 39.49, and AS 39.50;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter, AS 24.45, AS 39.49, and AS 39.50 and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all reports and statements filed with the commission;

(5) prepare a summary of reports filed with the commission and make copies of the summary available to interested persons at cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter, AS 24.45, AS 39.49, or AS 39.50;

(7) examine, investigate and compare reports, statements and actions required by this chapter, AS 24.45, AS 39.49, and AS 39.50 and report to the attorney general the names of persons or groups that the commission has substantial reason to believe have violated this chapter, AS 24.45, AS 39.49, or AS 39.50;

(8) prepare and publish an annual report to the legislature concerning the activities of the commission, the effectiveness of this chapter, AS 24.45, AS 39.49, and AS 39.50, the enforcement by the attorney general of this chapter, AS 24.45, AS 39.49 and AS 39.50, and recommendations and proposals for change;

(9) subject to the provisions of the Administrative Procedure Act (AS 44.62), adopt regulations necessary to implement and clarify this chapter, AS 24.45, AS 39.49, and AS 39.50;

(10) appoint an executive director.

(b) The commission may delegate to the executive director powers and duties given it by AS 15.13.031; it may not delegate to the executive director the power to issue a determination under AS 15.13.034.

(c) The commission, a commissioner, the executive director, or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas, subpoenas duces tecum, and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in an inquiry, investigation, hearing or proceeding before the commission. The commission, a commissioner, or the executive director may petition a court of this state to enforce its subpoenas, subpoenas duces tecum and other process.

* Sec. 4. AS 15.13 is amended by adding new sections to read:

Sec. 15.13.031. POWERS OF COMMISSION. (a) The commission shall administer this chapter, AS 24.45, AS 39.49, and AS 39.50 and may

(1) issue an advisory opinion under AS 15.13.032(a) on the request of a public official or former public official;

(2) in its discretion issue an advisory opinion under AS 15.13.032(c) upon the request of any person;

(3) issue a determination under AS 15.13.034;

(4) accept or initiate complaints concerning a violation of a law administered by the commission, initiate investigations, and hold hearings;

(5) subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of books or papers relating to a matter under investigation by the commission.

(b) A complaint may be accepted by the commission and a complaint may be initiated by the commission on a violation of AS 39.49

no later than one year after separation from employment by a public official. This subsection does not prevent a proceeding against a person who by fraud prevents discovery of a violation of AS 39.49.

Sec. 15.13.032. ADVISORY OPINIONS. (a) A public official or a former public official may request an advisory opinion as to whether stated facts and circumstances describe a violation of AS 39.49. Unless material facts were omitted or misstated in the request

(1) if an advisory opinion is not issued within 30 days after the request is filed with the commission, the facts and circumstances stated in the request do not describe a violation of AS 39.49; and

(2) the advisory opinion issued or the facts and circumstances stated in the request is binding in a charge subsequent to the request concerning the public official or former public official.

(b) If an advisory opinion is issued under (a) of this section, the executive director shall provide the public official or former public official with the opinion.

(c) The commission may in its discretion, upon the request of any person, issue an advisory opinion if the commission determines that the request states a matter of general applicability or first impression under AS 39.49. The advisory opinion shall be based on facts and circumstances stated in the request and may not be used as a substitute for a complaint charging a violation of AS 39.49 under AS 15.13.031(4).

(d) The commission may publish summaries of advisory opinions issued under AS 15.13.033(b) and determinations issued under AS 15.13.034 with deletions in the summary to prevent disclosure of the identity of a person involved in an advisory opinion or determination.

(e) The commission may authorize its executive director to issue

advisory opinions requested under (a) or (c) of this section.

Sec. 15.13.033. COMPLAINT PROCEDURES. (a) A complaint concerning a violation of a law administered by the commission must be in writing and signed by the complainant under oath. A complaint initiated by the commission must be signed by three members of the commission. The executive director shall notify each person against whom a complaint is filed and afford the person an opportunity to explain the conduct stated to be a violation. The executive director shall investigate complaints involving a violation of AS 39.49 on a confidential basis.

(b) The executive director shall provide the public official who is the subject of a complaint under (a) of this section with a decision indicating whether a probable violation has been found. If the decision indicates a probable violation, the person who is the subject of the complaint may request a determination from the commission or comply with the decision.

(c) If the person who is the subject of the complaint fails to comply with the decision, a copy of a complaint shall be served on the person. The person has 20 days after service to reply to the complaint. Information on the face of the complaint is public information.

(d) Upon service of a complaint under (c) of this section, the commission shall set a time and place for a hearing with notice to the complainant and the person charged with a violation.

(e) Each party may have an opportunity to (1) be heard, (2) subpoena witnesses and require the production of books or papers relating to the proceedings, (3) be represented by counsel, and (4) have the right of cross-examination. The hearings shall be held under AS 44.62. A witness shall testify under oath.

Sec. 15.13.034. DETERMINATIONS. (a) When the commission, after hearings under AS 15.13.033(d), determines that there is sufficient cause to believe that a public official removable only by impeachment has committed a wilful violation of a provision of AS 39.49, it shall issue a determination and refer the determination to the senate for proceedings under art. II, sec. 20 of the state constitution. The determination shall contain a statement of the facts describing the vio ation.

(b) When the commission determines after hearings under AS 15.-13.033(d) that there is sufficient cause to believe that a public official other than a public official removable only by impeachment has committed a wilful violation of a provision of AS 39.49, it shall refer

(1) to the governor a determination concerning a public official in the executive branch;

(2) to the proper presiding officer of the legislature or to both presiding officers of the legislature a determination concerning a public official in the legislative branch;

(3) to the chairman of the Board of Regents a determination concerning a public official in the University of Alaska; or

(4) to the presiding officer of the governing body of the municipality a determination concerning a public official of the municipality.

(c) Any action of the governor, legislature, chairman of the Board of Regents, or the governing body of a municipality in response to a determination of the commission is public information.

(d) A determination of the commission must be based on competent and substantial evidence. Testimony and evidence taken at the hearing shall be recorded. A determination of the commission regarding a

violation shall be approved by three members of the commission. A determination is public information.

Sec. 15.13.035. CONTRACTS VOIDABLE. (a) In addition to any other penalty provided by law, a contract entered into by the state or a municipality of the state in violation of AS 39.49 is voidable by the state or a municipality of the state.

(b) In an action to void a contract entered into by the state or a municipality of the state in violation of AS 39.49, the interests of innocent parties who may be damaged by the action shall be protected and the action to void the transaction must be brought within 60 days of a determination of a violation of AS 39.49.

Sec. 15.13.036. VIOLATION. (a) The state or a municipality may recover the compensation received by a person as a result of a violation of AS 39.49 by a public official or former public official. An action under this section shall be brought within two years of the violation.

(b) The appointing authority may discipline, reprimand, put on probation, demote, suspend, or discharge an appointed public official found to have violated a provision of AS 39.49.

Sec. 15.13.037. CIVIL PENALTIES. (a) The commission may assess a civil penalty in an amount not to exceed twice the benefit determined by the commission to have been obtained by a violation of this chapter, AS 24.45, AS 39.49, or AS 39.50, or $2,000, whichever is less, against a public official.

(b) If the commission determines that a public official received no economic benefit from a violation of this chapter, AS 24.45, AS 39.49, or AS 39.50, it may assess a civil penalty not to exceed $2,000.

* Sec. 5. AS 15.13.122 is repealed and reenacted to read:

Sec. 15.13.122. LEGAL COUNSEL. (a) The attorney general is legal counsel for the commission and shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party.

(b) If, in the opinion of the commission, the public interest warrants, the commission may request the chief justice of the supreme court to appoint special counsel to represent the commission in a proceeding involving a law administered by the commission and to pursue appropriate remedies including criminal prosecution.

(c) The commission may employ temporary legal counsel in matters in which the commission is involved.

* Sec. 6. AS 15.13.130 is amended by adding new paragraphs to read:

(8) "commission" means the Alaska Public Offices Commission;

(9) "public official" means a member or employee of the legislature, the governor and lieutenant governor, appointed officers and employees of a state agency, elected and appointed officers and employees of a municipality of the state, and a person under a personal services contract to a state agency or to a municipality of the state;

(10) "state agency" means a department, board, board of regents, commission, council, committee, institution, office, corporation, authority or organization in the executive or legislative branch of the state government, and includes the University of Alaska and public corporations having a separate and independent legal existence.

* Sec. 7. AS 15.13.130 is amended by adding a new subsection to read:

(b) In AS 15.13.010 and AS 15.13.040 - 15.13.125, "municipality" means a home rule or general law borough or city including but not limited to a unified municipality organized under AS 29.68.240 -

29.68.440. In the implementation of AS 39.49 by the commission under AS 15.13.030 - 15.13.037, "municipality" includes

(1) a city or borough of any class;

(2) a municipality unified under AS 29.68.240 - 29.68.440;

(3) a school district or a regional educational attendance area.

* Sec. 8. AS 15.13.045, 15.13.130(6), and AS 39.50.090(a) - (e) are repealed.

* Sec. 9. (a) AS 39.49 enacted in sec. 2 of this Act applies to the conduct of a public official of the state after the effective date of this Act. AS 39.49 applies to public officials of a municipality of the state on and after July 1, 1984, unless the municipality adopts standards of conduct for its public officials, submits the standards to the Alaska Public Offices Commission, and the Alaska Public Offices Commission determines before July 1, 1984, that the municipal standards of conduct are substantially similar to the standards of conduct adopted in AS 39.49.

(b) The legislature does not intend that each municipality adopt a code establishing standards of conduct as comprehensive as the standards of conduct established in AS 39.49 enacted in sec. 2 of this Act. In determining whether a municipal code establishing a standard of conduct is substantially similar to the standards of conduct established in AS 39.49, the Alaska Public Offices Commission shall consider the standards of conduct established in the municipal code with reference to the size of the municipal government and recent budgets of the municipality, procedures adopted by the municipality for the regulation of fiscal procedures, and other matters submitted to the commission by the municipality.

* Sec. 10. This Act takes effect July 1, 1983.

Alaska State Legislature
Senate

OFFICIAL BUSINESS

RULES COMMITTEE

JAN FAIKS
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3770

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

Dear Mr. President:

The Joint Special Committee on Legislative Reform finds that there is no specific law governing legislative conflict of interest and ethics nor is there a specific mechanism for resolution of questions which may arise in this area. It further finds that prescribing standards of legislative conduct and specific mechanism for addressing problems would assist in resolving questions in this area, provide guidance in a difficult area for legislators and would increase public confidence in the legislative process.

The Committee recommends:

1. Establishment of a legislative ethics commission within the legislative branch of government composed partly of legislators and partly of public members. The commission shall issue advisory opinions to assist legislators and staff in conforming their conduct to established requirements. It shall also consider complaints alleging a violation by a legislator or staff person of laws concerning conflict of interest in a manner which affords due process to any accused and protects the right of the public. The commission shall report the results of that consideration to the presiding officer of a house with its recommendations concerning action in cases where it determines a violation has occurred.

2. Adoption of standards of conduct for legislators and legislative staff. The purpose of these standards are to prevent action by legislators or staff which create a conflict of interest between the person acting and the public interest. It is neither desirable or feasible to prevent legislators and staff from participating in programs available to the public generally but it is necessary that improper use of office for private gain is prevented and appearance of improper use is avoided. It must be recognized in

the standards of conduct that the legislature is a citizen legislature which would be seriously harmed if structured so severly that serving in the legislature would be substantially curtailed but that public confidence in the legislature be maintained.

3. That a balanced, carefully considered approach to implement the above recommendations be followed.

To assist in implementing these recommendations, the Committee is preparing legislation for submission to implement the recommendations.

Sincerely,

Jan Faiks, Senator

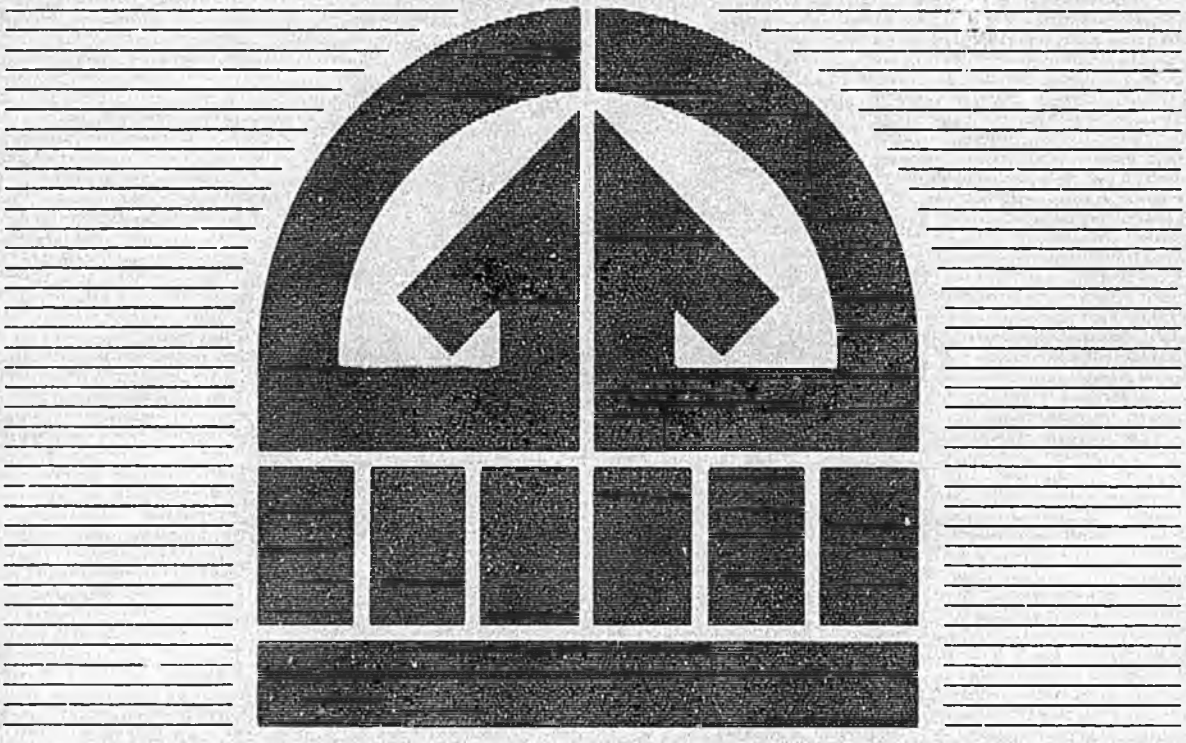
Tim Kelly, with reservations

Tim Kelly, Senator

Joe P. Josephson, Senator

(Ethics) Legislative Reform

STATE LEGISLATIVE REPORT



Legislative Management Series

FAIR CAMPAIGN PRACTICES

Vol. 8, No. 3 April, 1983

by

Candace Romig

An Information Service of the National Conference of State Legislatures
1125 17th Street, Suite 1500, Denver, Colorado 80202. Earl S. Mackey, Executive Director

STATE LEGISLATIVE REPORT

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"Plant Closing Legislation in the States" (Vol. 7, No. 3)	March, 1982
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FAIR CAMPAIGN PRACTICES

by
Candace Romig
Legislative Management

INTRODUCTION

Political election campaigns have been increasingly characterized by deceptive campaign statements, misleading advertising, and unscrupulous tactics. These unethical practices can unfairly damage the reputations of many candidates and public officials and may dissuade more qualified and competitive candidates from entering the political arena. Voters, confused by misleading information, are distracted from the more substantive political issues and vote not for their choice of candidates or issues but for the lesser of a set of perceived evils. As a consequence, election results may be skewed and less qualified and deserving candidates may be propelled into office.[1]

The deterioration of election campaigns for state and federal office has been the concern of the press, state ethics commissions, citizen advocacy groups, and political scientists. State legislatures, however, are ultimately responsible for designing effective and constitutional guidelines to police the election process and the conduct of political campaigns. This report will summarize a survey of federal and state statutes and case law controlling fair campaign practices. In addition, it explores voluntary alternatives to improve campaign practices in the states.

FEDERAL LAW

In 1971, the United States Congress legislated election reform through the Federal Election Campaign Act (FEC Act) which was the first major election campaign legislation since 1925. The FEC Act extended regulatory control of the congressional and federal elections process to state primaries, caucuses, and conventions in addition to general and special elections. In 1974, the act was amended to include public financing for presidential elections, campaign finance provisions, and the creation of a board with civil enforcement powers to oversee the law. The FEC Act again was revised to comply with a 1976 U.S. Supreme Court decision that found statutory limitations on campaign expenditures to be in violation of First Amendment guarantees of freedom of expression.[2] The court, however, upheld expenditure limitations in public financing and reasonable limits on amounts which individuals contribute to campaigns.

The sole portion of the FEC Act which pertains to the regulation of campaign practices is Title 2, United States Code, Section 441d, entitled "Publication or distribution of political statements." The two key provisions are that:

- anyone paying for a political statement in any newspaper or publication, through the direct mail, or on broadcast must state whether or not the candidate has authorized the communication and must state the name of the person, committee or organization who is paying for the communication; and

- political advertising in newspapers and magazines may not be sold at a rate in excess of that charged for other comparable purposes.

CASE LAW

The First Amendment of the U.S. Constitution guarantees the right to free political expression, and the Fourteenth Amendment extends this right to the states. Because of these constitutional guarantees, any regulation of state political campaign practices must balance the states' interest in protecting the electoral process with the public's desire for unfettered debate among political candidates. Over the past 20 years, a sizeable body of case law has developed in order to preserve First Amendment guarantees in state political campaigns. Among the many cases, two are most important: New York Times Co. v. Sullivan, 84 S.Ct. 710 (1964), and Vanasco v. Schwartz, 401 F. Supp 87 (1975), aff'd 423 U.S. 1041 (1976).

The New York Times case established the "malice standard" upon which the constitutionality of state laws regulating political campaign practices is judged today. A suit for libel was brought against the New York Times for publishing an advertisement describing the mistreatment of protesting students. The Supreme Court's decision states:

> The constitutional guarantee of freedom of speech and press prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice," that is, with knowledge that it was false or with reckless disregard of whether it was false or not; such a qualified privilege of honest mistake of fact is required by the First and Fourteenth Amendments.[3]

The court subsequently clarified the New York Times decision with specific regard to campaign speech, stating that the First Amendment "has its fullest and most urgent application in speech by candidates for public office."[4] Consequently, state regulation of campaign speech is subject to strict scrutiny, and the standard of "actual malice" must be applied to a wide range of potential campaign situations in order to protect against abridgement of First Amendment guarantees.

The New York Times "malice standard" was tied directly to a state campaign statute in the case of Vanasco v. Schwartz. The Vanasco case challenged the constitutionality of the New York Fair Campaign Code which prohibited any attack on a candidate based on race, sex, religious affiliation, or ethnic background and outlawed the misrepresentation of a candidate's qualifications, position, or party affiliation. Portions of the code were declared in violation of the First and Fourteenth Amendments. The Supreme

Court sustained a lower court ruling that no statute could impose a fine or monetary sanction on deceptive campaign speech without adherring to the New York Times malice standard. The lower court stated:

> Speech is often provocative and indeed offensive, but unless it falls into one of those "well defined and narrowly limited classes" of unprotected speech (e.g. "fighting words") it enjoys constitutional protection. New York's attempt to eliminate an entire segment of protected speech from the arena of public debate is clearly unconstitutional.[5]

The court further noted that political reality makes it very difficult to ascertain what statements made about a candidate would be relevant to his or her qualification for public office.

In one area--limitations on political contributions and related disclosure requirements--federal statutes have been sustained against First Amendment challenges.[6] The courts have concluded that governmental interests to ensure an informed public and to safeguard the political process against corrupt campaign finance justify regulation when weighed against the incidental effect on First Amendment freedoms.

In deference to free speech goals, the courts have struck down some statutory penalties for being too severe. For example, Pennsylvania tried unsuccessfully to impose criminal sanctions on candidates who publish defamatory political advertisements just before an election without giving opponents notice and the opportunity to respond.[7] In 1982, the U.S. Supreme Court overturned a Kentucky case which nullified an election victory, because the successful candidate had made a campaign promise in violation of a state law prohibiting the offering of material benefits to voters for their votes.[8] The court held that it is not "the government's function to select the issues" to be discussed in political debate.[9] Although erroneous statements are inevitable in open political discourse, the court has firmly stated that free debate must be protected "if the freedoms of expression are to have the breathing space that they need to survive."[10]

STATE LAW

State legislatures have attempted to secure the political process against abusive campaign practices by passing more specific legislation in careful consideration of the New York Times and Vanasco cases. The 50 states have fashioned four general strategies that cover: deceptive speech, literature disclosure, campaign tactics, and enforcement.

Deceptive Speech Statutes. Twenty states have statutes addressing the use of deceptive speech in campaigns, and more than half of these generally proscribe false statements which are knowingly made in a campaign to impugn the character of a candidate. Seven states are more specific in identifying prohibited elements of campaign speech. For example, in Florida, no one can charge another candidate with the willful violation of the election code. Massachusetts prohibits the misuse of the word "veteran" and erroneous use of a political party designation. Mississippi requires newspapers to print candidate retorts to editorials or news stories which reflect on the

character of the candidate. The Ohio statute specifies numerous false statements which a candidate cannot make in the course of a campaign, including remarks made about a candidate's incumbency, formal education, occupation, criminal or mental confinement record, voting record or the source of campaign statements. Erroneous statements of party support are prohibited under Minnesota law; fictitious names cannot be used in Virginia; and in Texas a candidate cannot make statements which lead the electorate to believe incorrectly that he or she holds an office.

Literature disclosure. Paralleling federal law, 23 states have statutes which require all political advertisements to include the name of the responsible person or group. Alabama, Arkansas, Kansas, Maryland, Massachusetts, Minnesota, Montana, Rhode Island, and North Carolina require that all paid political advertisements be identified as such together with the party responsible for the advertisement. California, Florida, Maine, Michigan, Pennsylvania, Texas, and West Virginia require that an advertisement indicate whether it has been officially endorsed by any candidate or group. In New Hampshire and Virginia, all political advertisements must indicate the source, whether the advertisement has an official endorsement, and if the statement is a "paid" advertisement. Only Arizona and South Carolina have no statutory requirement to disclose responsibility for campaign literature. Kentucky requires politicians or organizations making political advertisements to be in compliance with the Federal Communication Commission regulations concerning radio and television advertisements. In Nevada and New York, newspapers, broadcasting stations, and all distributors of campaign material must make available for inspection before each primary or general election information identifying the cost of all advertisements for each candidate. In addition, New York requires a report of all advertisements, campaign materials, and a schedule of all television and radio time purchased in an election.

Campaign tactics. State statutes regulating campaign methods have focused on political espionage, undue influence of voters, and campaign "dirty" tricks. Most states outlaw bribing voters and giving or offering a thing of value to influence an election. North Carolina also prohibits promises of appointment for political support. Nine states--Ohio, Minnesota, Montana, North Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin--prohibit the payment of any consideration to a newspaper, publication, or broadcasting service for an editorial, endorsing or opposing a candidate or ballot measure. In Florida, no candidate can pay for the privilege of speaking at a political meeting. In Washington, at least one picture of a candidate used in political advertisements must have been taken within the past five years. Some states have statutory regulations barring political espionage and unfair campaign practices. Alaska, Indiana, Louisiana, and Minnesota specifically ban the circulation of false information in a campaign. Washington also has comprehensive legislation pending in the 1983 session (Senate Bill 4012) which would outlaw theft of campaign materials or assets, misrepresentation of polls, bribery of campaign workers, eavesdropping, wiretapping and other tactics.

Montana, New York, and Pennsylvania have the most specific and extensive statutes pertaining to campaign dirty tricks. In an effort to avoid unfair tactics, Montana bans all political advertisements on election day. Candidates in Montana also have the opportunity to sign a voluntary code of fair campaign practices which specifies by statute methods and tactics condoned in political campaigns.

Montana is the only state that currently has a voluntary code detailed in statute; however, California and Connecticut legislators are considering bills this year to establish campaign ethics codes. California Assembly Bill 406 would require all candidates to sign a fair campaign practices agreement to be eligible for public campaign funds. Connecticut Proposed Bill 6788 would establish a voluntary code covering political espionage, malicious campaign speech, and subversive tactics.

In New York, it is illegal to misrepresent the contents of polls or to steal campaign materials. New York law also prohibits the placing of agents in campaign organizations, bribing an opponent's staff, and eavesdropping or wiretapping an opponent's activities. Ohio also bans the placement of an agent in a campaign organization for the purpose of impeding the success of a candidate or a ballot proposal.

Pennsylvania has an interesting statute pertaining to campaign practices. No advertisement, which refers to an opponent, may be broadcast or distributed in the 120 hours preceding the election, unless the opponent is given sufficient notice and time to reply. California's pending AB 406 similarly would have candidates preview copies of all campaign advertisements with their opponents. A constitutional amendment on last-minute campaign mailings also will be placed before the voters in the 1984 California general election.

Enforcement. Largely due to the First Amendment protections afforded campaign practices, enforcement of statutes regulating electoral campaigns has been difficult. There are few standards to determine whether campaign advertisements are false or misleading; and most adjudicatory procedures are too slow to offer a just remedy in the fast-paced and compressed time frame of a campaign.

Generally, violations of campaign practices codes are considered misdemeanors punishable by a fine or imprisonment, or both at the discretion of the court. Most states punish bribery with a felony conviction, but only a few treat other campaign violations as felonies. The size of the fine and the length of confinement vary between states. State legislatures would be well advised to scrutinize various enforcement laws.

Eight states--Alabama, Kansas, Kentucky, Maryland, Minnesota, Montana, North Carolina, and Wisconsin--provide that a person convicted of a campaign violation is ineligible for public office for a specified period of time. If the convicted individual has attained public office by the election in question, the office must be vacated. Some of the states also proscribe the privilege of voting for anyone convicted of ection violation. In Mississippi, if a person charged with a violatio ne campaign practices statutes is acquitted, the complainant filing th iginal affidavit must pay all of the court costs of the proceedings. Ohio, anyone filing a frivolous complaint may be ordered to pay court costs. Pending legislation

in Massachusetts (House Bill 3894) and Rhode Island would establish policing commissions on campaign practices. In addition, the Rhode Island legislation would set fines of up to $25,000 and other civil and criminal penalties.

Finally, a review of state law on campaign practices reveals that 16 states prohibit the sale of political advertising at a rate in excess of that charged for comparable advertising by other commercial customers. California, Illinois and Tennessee also prohibit the distribution of campaign materials at public expense.

VOLUNTARY ALTERNATIVES

In the absence of government regulation of fair campaign practices, some officials are attempting to invoke standards and procedures through the voluntary support and cooperation of candidates. Between 1965 and 1979, the Fair Campaign Practices Commission, which was composed of many prestigious, nonpartisan and knowledgeable persons, attempted to establish ethical standards, arbitrate disputes, and offer public judgments on unethical campaign behavior. Urging voluntary cooperation, the commission devised a fair campaign practices code which candidates were encouraged to sign. Although the commission was available to arbitrate disputes, few candidates availed themselves of the opportunity, largely because of the difficulty of obtaining the required consent from both candidates. Headquartered in Washington, D.C., the commission also was inaccessible to many candidates around the country.[11]

Connecticut had a voluntary campaign code which was in effect for the 1978 elections. The code had no enforcement mechanism and was reported to have received some negative response from candidates who chose not to subscribe to the voluntary agreement but who faced the issue in their campaign debates. Some Connecticut legislators are interested in establishing a statutory code with some enforcement mechanisms.

The California Fair Political Practices Commission (FPPC) has developed a model fair campaign practices agreement as a result of extensive public hearings on the problem of false and misleading campaign practices. This agreement contains general provisions encouraging candidates to: 1. assume personal control and accountability for the conduct of their campaign; 2. provide accurate and relevant information on their past records, issues, character, and competency; 3. participate in debates on issues relevant to the office; 4. appear at public forums and other events where skills for office can be judged and constituents have the opportunity to ask questions and make comments; and 5. disavow and repudiate support derived from unethical, false, or misleading campaign material.[12]

In addition, the agreement establishes procedures for ensuring that candidates have ample opportunities to respond to advertisements distributed by their opponents. The agreement also provides for candidate-appointed panels to arbitrate disputes.

The Fair Campaign Practices Agreement was in operation for the first time during the 1982 elections. According to California FPPC officials, opposing candidates signed the agreement in six out of 100 state legislative

contests, in four out of 43 congressional races, and in many local and judicial elections. In many races throughout California, at least one candidate in a contest signed the agreement. Major campaign advertisements were previewed by the candidates and the 48-hour predisclosure requirements were respected, according to reports by the California FPPC. No advertisement was publicly repudiated by the panel for being deceptive or false, and candidates took personal responsibility for advertisements instead of shifting the onus onto their managers. All candidates who signed the agreement committed themselves to participate in public debates.

Because of the notoriety the agreement received, the press was attentive to the presence of misleading campaign advertising in California during the November elections. When only one candidate chose to sign the agreement, the opponent's refusal often became a major campaign issue. The FPPC reports, however, that the news coverage of the agreement may have diverted attention from more substantive campaign issues. Although the agreement will not be able to resolve all of the problems with fair campaign practices, the FPPC contends it can have an important impact on reducing unfair political advertisements and on focusing public attention on unethical practices.[13]

CONCLUSION

The detrimental effects which abusive campaign practices have on the political process have not gone unnoticed in state legislatures. The number of bills currently pending and the increasing interest in voluntary codes are evidence of this continuing concern. Because the courts have underscored the importance of the First Amendment in political debate, legislative solutions have not been easily fashioned. Whether through statutory innovations or simply as political candidates, state legislators will play a central role in promoting higher ethical standards in political campaigns.

NOTE: In addition to the chart on state fair campaign statutes provided with this report, NCSL compiled a more detailed listing of state statutory provisions pertaining to deceptive speech, literature disclosure, campaign tactics, enforcement, and other pertinent items. For further information on fair campaign practices, contact Candace Romig of the NCSL Denver office, (303)292-6600.

FOOTNOTES

1. Houston, Thomas Kingsley, "Ethics in Political Campaigns," Draft paper presented to The Hastings Center at a meeting on legislative ethics, December, 1982, p. 5.

2. Buckley v. Valeo, 424 U.S. 1 (1976).

3. New York Times Co. v. Sullivan, 84 S.Ct. at 710 (1964).

4. Briefing Book on Misleading, Negative and Last Minute Campaign Advertising, California Fair Political Practices Commission, Sacramento, California, March, 1982.

5. Vanasco v. Schwartz, 401 F.Supp. at 94 (1975).

6. "The Use of Adverse Publicity to Regulate Campaign Speech," Pacific Law Journal, Volume 12, pp 812 and 813.

7. Commonwealth of Pennsylvania v. Wadzinksi, 422 A2d 124 (1980).

8. Brown v. Hartlage, 102 S.Ct. 1523 (1982).

9. Ibid, at 1532.

10. Ibid.

11. Houston, p. 29 and 30.

12. Houston, p. 32.

13. Houston, p. 42.

STATE FAIR CAMPAIGN STATUTES

State	DECEPTIVE SPEECH			LITERATURE DISCLOSURE				CAMPAIGN TACTICS				ENFORCEMENT							OTHER
	Irresponsible or Deliberate False Statements Prohibited	Notices Required	Other	Identification of Responsible Party	Paid Advertisements to be so Marked	Payments for Editorial Support Prohibited	Other	Bribery or Undue Influence on Election	Circulation of Certain False Statements Prohibited	Political Espionage Prohibited	Other	Misdemeanor	Felony	Fine	Imprisonment	Ineligible or Forfeiture of Public Office	Voting Restricted	Other	Advertising at Cost and Commercial Rate
Alabama				X	X			X				X		X	X				
Alaska	X			X	X			X	X		X	X							
Arizona								X			X	X							
Arkansas				X				X				X	X	X	X	X			
California		X			X		X	X	X		X	X			X				
Colorado	X			X								X		X	X				X
Connecticut				X				X						X	X				
Delaware				X	X			X						X	X				
Florida			X	X	X		X	X			X	X	X	X	X				X
Georgia				X				X	X			X	X	X	X				
Hawaii				X			X	X	X			X		X	X	X			
Idaho				X				X				X		X					
Illinois				X				X				X							
Indiana				X	X			X	X			X							
Iowa								X				X							
Kansas				X				X				X				X			X
Kentucky				X			X	X						X	X	X	X		X
Louisiana	X			X				X	X					X	X				X
Maine				X			X	X						X					
Maryland				X	X			X				X		X	X	X			X
Massachusetts	X		X	X		X		X			X			X	X				
Michigan				X			X					X		X	X				
Minnesota	X			X	X			X	X		X	X				X			X
Mississippi	X		X	X				X				X		X	X			X	X
Missouri				X	X			X			X	X		X	X				

STATE FAIR CAMPAIGN STATUTES (cont'd.)

State	DECEPTIVE SPEECH			LITERATURE DISCLOSURE				CAMPAIGN TACTICS				ENFORCEMENT							OTHER
	Irresponsible or Deliberate False Statements Prohibited	Notices Required	Other	Identification of Responsible Party	Paid Advertisements to be so Marked	Payments for Editorial Support Prohibited	Other	Bribery or Undue Influence on Election	Circulation of Certain False Statements Prohibited	Political Espionage Prohibited	Other	Misdemeanor	Felony	Fine	Imprisonment	Ineligible or Forfeiture of Public Office	Voting Restricted	Other	Advertising at Cost and Commercial Rate
Montana	X			X	X	X		X			X	X		X	X	X			
Nebraska	X			X				X			X	X							
Nevada							X	X				X		X	X				
New Hampshire				X			X	X			X	X	X						X
New Jersey				X				X		X	X	X		X	X				
New Mexico				X				X			X		X	X	X				
New York	X						X	X	X	X			X	X					
North Carolina	X			X	X			X			X	X		X	X	X	X		X
North Dakota	X			X		X		X				X							
Ohio	X			X	X			X		X	X	X	X	X	X	X		X	X
Oklahoma				X				X				X	X	X	X				
Oregon	X			X		X		X			X	X		X					
Pennsylvania			X				X				X	X		X	X				
Rhode Island				X			X	X			X	X	X	X			X		X
South Carolina								X				X		X	X				
South Dakota				X				X				X				X		X	
Tennessee				X				X	X			X							
Texas	X			X		X		X			X	X	X	X	X				X
Utah	X			X		X		X			X	X		X	X				X
Vermont				X				X						X					
Virginia			X	X	X	X		X				X						X	
Washington	X			X			X	X			X	X	X	X	X				
West Virginia	X			X	X	X		X				X		X	X				
Wisconsin				X	X	X		X			X			X	X	X			X
Wyoming				X				X				X	X	X	X				X

- *WOULD REQUIRING ALL STANDING COMMITTEES TO OPERATE UNDER THE SAME SET OF FORMAL RULES ENHANCE THE PUBLIC'S ABILITY TO UNDERSTAND AND WORK WITH THE COMMITTEE SYSTEM?*

  The League believes that formal committee rules should be adopted and that all committees should be required to follow the same procedures.

- *WOULD THE PROHIBITION OF "PIGGYBACKING" (amending one bill onto another when their subject matters are the same or similar) PRESERVE THE COMMITTEE HEARING PROCESS?*

  The League believes that the practice of piggybacking should be prohibited unless approval is obtained from a majority of the members of the committee which has or has had jurisdiction over the "carrier" bill. Some tracking mechanism should be devised whereby bills that have become amendments to other bills are indicated as such.

- *WOULD RESTRICTIONS ON THE POWER OF FREE CONFERENCE COMMITTEES REMOVE THE POTENTIAL FOR ABUSE WHICH MAY RESULT FROM THEIR CURRENT UNLIMITED ABILITY TO REWRITE LEGISLATION?*

  The League believes that these committees should be restricted in the kinds of changes they may make in the bill under consideration; any such changes must be clearly germane. In addition, a waiting period should be required between the time a free conference committee makes its report and the time the floor vote on the report is taken.

- *WOULD A WRITTEN EXPLANATION MANDATORILY ACCOMPANYING EACH BILL AT ITS INTRODUCTION HELP INCREASE PUBLIC (AND LEGISLATIVE) ABILITY TO JUDGE THE PROPOSAL'S WORTH?*

  The League believes that a statement of purpose or other concise, written explanation should be required for all bills and joint resolutions before they may be introduced.

For the full text of the League position or more information please write:

League of Women Voters of Alaska
307 Bawden Street
Ketchikan, Alaska 99901

ALL LEGISLATORS IN ALASKA SHOULD KNOW ABOUT

the League of Women Voters of Alaska Legislative Process study and the League's position concerning an accessible, efficient and accountable legislature for Alaska.

SHOULDN'T YOU ?

LR

The ability of the legislature to serve the citizens of Alaska depends, to a large extent, on the structure, process and procedure the legislature uses. In other words, what the legislature does is closely related to how it does it.

In 1978-79, the League of Women Voters of Alaska studied the legislative process in Alaska and reached some specific conclusions about its operation. After polling legislators, lobbyists, administrators, the press and the public, researching methods used in other states and observing the Tenth and Eleventh State Legislatures, the League prepared a 70-page study document which members used to reach a position concerning how the Alaska state legislature should function.

What follows are highlights of the League viewpoint.

FUNDAMENTALLY . . .

- *WHAT IS THE PRESENT STRUCTURE OF THE ALASKA LEGISLATURE?*

  There is a 20-member Senate (4-year terms; 10 members elected every two years) and a 40-member House (2-year terms), both districted according to population. It meets in annual sessions of unspecified length; special sessions may be called by the Governor or by the legislature itself.

- *HOW IS THE COMMITTEE SYSTEM ORGANIZED?*

  There are the same nine standing committees in each house. Special committees are appointed from time to time. Interim committees are used when the legislature is not in session.

- *HOW IS LEGISLATION ENACTED?*

  A bill must be passed in both houses to become law. Free conference committees, comprised of three legislators from each house, are used to resolve differences when there are both a Senate-passed version and a House-passed version of the same bill.

- *HOW ARE CHANGES MADE IN THE LEGISLATIVE PROCESS IN ALASKA?*

  The legislature uses written rules which set forth the procedures by which bills are introduced, sent to committee and passed. These are called the Uniform Rules. Each legislature has the power to refine and change the Rules as it deems necessary, within constraints imposed by the state constitution. Other aspects of legislative structure and operation can be addressed by legislation or constitutional amendment.

EFFICIENTLY . . .

- *WOULD A CHANGE TO BIENNIAL BUDGETING (PASSING A BUDGET FOR A TWO-YEAR PERIOD INSTEAD OF ONE YEAR) PROVIDE A BETTER USE OF LEGISLATIVE TIME AND ALLOW BOTH LEGISLATORS AND ADMINISTRATORS TO EVALUATE PROGRAMS IN TERMS OTHER THAN WHAT THEY COST?*

  The League believes that the legislature should study the matter of biennial budgeting and its specific applicability to Alaska. A bill to institute biennial budgeting was before the Eleventh Legislature but did not pass.

- *WOULD A GREATER USE OF JOINT STANDING COMMITTEE MEETINGS (HOUSE AND SENATE COMMITTEES HOLDING HEARINGS TOGETHER) SAVE TIME AND AVOID DUPLICATION?*

  The League believes that House and Senate standing committees should be encouraged to meet jointly by adding such a provision to the Rules.

- *WOULD IT BE DESIREABLE TO LIMIT THE NUMBER OF BILLS INTRODUCED?*

  The League believes that any bills introduced by a committee should require the written approval of a majority of the committee concerned before they may be introduced. This would place a control on a method now used to circumvent the cut-off date for the introduction of personal legislation presently in the Rules.

ACCESSIBLY . . .

- *WOULD LIMITING LEGISLATIVE SESSIONS PROMOTE EFFICIENCY WITHOUT AN UNDUE LOSS OF FLEXIBILITY?*

  The League believes that if session length is limited by law, a provision should be made for extending a session for a certain number of days by a vote of both houses. Legislation to limit session length has been introduced numerous times; none has ever passed.

- *WOULD REQUIRING ADVANCE NOTICE OF COMMITTEE HEARINGS IN SUCH A WAY AS TO GUARANTEE ACTUAL NOTICE AFFORD THOSE WHO WISH TO TESTIFY A GREATER OPPORTUNITY TO DO SO?*

  The League believes that advance notice of committee hearings (including free conference committee meetings) should be formally required and a standardized manner prescribed in the Rules for posting such notice.

- *WOULD A STATEWIDE SYSTEM OF PUBLICIZING HEARING SCHEDULES BE HELPFUL TO THE PUBLIC?*

  The League believes that a coordinated and well-publicized statewide distribution of hearing schedules should be instituted, emphasizing that all meetings are open to the public. Great improvement in this area was made during the Eleventh Legislature's second session.

- *WOULD COORDINATING COMMITTEE RECORD-KEEPING IN A MANNER TO INSURE ACCURACY, CONSISTENCY AND EASY AVAILABILITY ENABLE THE PUBLIC TO BE BETTER INFORMED OF COMMITTEE ACTION AND THE REASONS THEREFOR?*

  The League believes that record-keeping methods should be standardized and records should be readily available to the public. Legislation to this effect was introduced during the 1980 session but did not pass.

ACCOUNTABLY . . .

- *WOULD A CONSISTENT METHOD OF OPERATING INTERIM COMMITTEES ENHANCE THEIR EFFECTIVENESS?*

  The League believes that more controls should be placed on the creation and funding of interim committees and that their work should be carefully evaluated.

- *WOULD REQUIRING COMMITTEES TO REPORT, FAVORABLY OR OTHERWISE, ON ALL BILLS REFERRED TO THEM MAKE IT CLEARER WHAT HAS HAPPENED TO A BILL AND WHY?*

  The League believes that committees should be required in the Rules to report, by a time certain, one way or another on all bills referred to them.

Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

MEMORANDUM

February 23, 1983

TO: THE SENATE SPECIAL COMMITTEE ON LEGISLATIVE REFORM, FELLOW SENATORS, AND OTHERS

FROM: SENATOR VIC FISCHER

RE: LEGISLATIVE ETHICS PROPOSAL

Transmitted with this memo is an outline for a legislative ethics bill. I believe it is an important step toward enacting a code of ethical conduct which will assure the public and the legislature that elected officials live up to the highest standards of conduct.

This proposal is the product of several years' work. Two years ago, I introduced a comprehensive ethics bill that was designed to cover all elected and appointed public officials. By the end of last session, it became clear that a more focused approach would be required, with standards and procedures more clearly set out.

A basic change deemed necessary was to establish the legislature as the judge of its members' conduct, just as the state constitution provides with respect to their qualifications. Accordingly, this bill is designed to deal only with the legislative branch, covering both elected official and their staffs.

Separate legislation is being completed to establish an ethics code for the other state employees and officials. I hope to have a draft ready in March.

Action to establish standards of conduct for all public officials is critical, and it's timely. Over recent years, the legislature has had the painful task of dealing with distrust, accusations, and the criminal process. The public is distrustful, and the attorney general has indicated that he intends to meet his obligation to enforce ethical conduct under the common law unless the legislature acts this session to establish alternate guidelines.

Establishment of the joint committee specifically charged with developing a code of ethics for legislators demonstrates a commitment to action this session. I sincerely hope that this draft outline will assist in establishing a clear set of standards and procedures to deal with the complex ethical questions that we confront.

This outline is not a bill. Rather it a working draft that sets out the policies, processes, criteria, definitions, and other elements needed to draft a bill. I hope this format will facilitate initial review. In developing this proposal, we have been in touch with the Congress and a number of state legislatures, and this draft reflects what we have learned from their legislation and their actual experiences. Instead of making decisions about what should and should not be included in an ethics bill for Alaska's legislature, we have included a number of alternative possibilities.

The major provisions of the proposed legislative ethics bill are:

* The policy section states that legislators are trustees of the public interest, which is best served by a citizen legislature whose members are involved with all elements and aspects of Alaska life.

* The legislative ethics system will apply to all present and former legislators, and to those employees of the legislative branch who work as staff for legislators or committees.

* Three general ethics rules prohibit: (1) the receipt of benefits for improper influence exerted from an official position; (2) outside business or professional opportunities which conflict with the conscientious performance of official duties; and (3) misuse of state property.

* Legislative conflicts of interest are defined to exist when "a personal interest tends to impair the legislator's or staff person's independence of judgement." This situation is presumed to occur in a set of circumstances where the legislator or staff person has a direct interest, distinct from that of the general public, in an enterprise or interest that would be affected by a vote on proposed legislation.

* If a legislator or staff person is in a position that is presumed to be or appears to be a conflict of interest, he or she may participate in action affecting that legislation by signing a statement that describes the circumstances of the apparent conflict and asserts that he or she is able to vote and otherwise participate in the legislative action concerning that interest.

* A standing ethics committee will be established in each house, with five members and staff; formal rules of procedure will be adopted.

* If a legislator or staff person is in doubt about the propriety of any action, either taken or proposed, they may request an advisory opinion from the ethics committee.

* No person covered by this statute may:

--Be a party to a contract with the state or a municipal government that is not let by competitive bid;

--Represent, for compensation, any person or business before any element of the state or a local government;

--Lawyer-Legislators, however, may represent clients before state or federal courts, where the state is not a party to the action;

--Use information that by law, regulation, ordinance, or practice is not available to the general public for personal gain;

--Use state material, equipment, or telephones for personal or campaign purposes;

--Supervise a close relative who is on the state payroll;

--Apply for or accept any discretionary state benefits such as loans or land disposals, for which the decision making process is discretionary. (For example, student and home loans and lottery land disposals are allowed; commercial loans (e.g., tourism loans) that require discretionary decisions are not allowed.)

* The following are specifically allowed:

--Outside employment and business opportunities for legislators are not discouraged, but any relationship with the state or local governments that may be colored by the legislator's position should be disclosed to the committee for an advisory opinion;

--Former members of the legislature may lobby or work for or with state agencies immediately after leaving the legislature, but they may not use confidential information except for the benefit of the state. This does not alter the constitutional ban on legislators accepting positions on which they voted to raise the salary for one year.

* Transferrable promotional benefits and discounts (e.g., Amigo Fares) are the property of the state.

* Punitive or retaliatory action against a person who has assisted or initiated an ethics action is prohibited.

* People covered under this statute must make certain additional disclosures:

--Staff people covered will make the same APOC disclosure as legislators;

--All gifts and fees and honorariums over $100 must be reported within three days during the session and 30 days in the interim;

--All financial transactions between people covered by this statute with a value over $1,000 must be reported.

* Sworn complaints may come from the public, any legislator, or the committee.

* The committee will issue advisory opinions concerning the ethical propriety of any matter in which a legislator or staff person is involved. These opinions may be requested be any person covered by the bill or the public at the discretion of the committee.

* A person who follows the advice of an advisory opinion after disclosing all of the facts is presumed not to be in violation of this statute. The committee will publish ethical guidelines and policies that may be relied on unless changed.

* The committee will investigate complaints. It will have subpoena power and the power to take sworn testimony. People being investigated will be given notice and have the right to counsel. If there is a hearing, persons under investigation

will also have the right to cross examine witnesses and present evidence on their own behalf.

* If the committee finds evidence of an ethical violation, it will make their findings public. The committee may issue a private reprimand or it may recommend to the whole body that a legislator be censured or expelled. Conviction of a felony is grounds for expulsion. Termination of employment may be recommended for staff.

* The ethics committee will make weekly public reports during the session , plus interim and annual reports.

* Confidentiality will be protected throughout this process, with private information made public only if an ethical violation is found. All allowed disclosures and ethics policy decisions will be made public through the Journal.

* This bill will supersede the common law standards referred to in the Attorney General's memo of December 3, 1982.

I would appreciate your comments on the policies and specific elements of this draft, what sections might be omitted, and, perhaps more difficult, your suggestions concerning what has been left out. Please contact me or Lewis Schnaper of my staff at 465-4954.

....WORK DRAFT...WORK DRAFT...WORK DRAFT...WORK DRAFT....

VF/LS 2/24/82 [leth] DRAFT nine

DRAFT OUTLINE FOR LEGISLATIVE ETHICS BILL

T A B L E O F C O N T E N T S:

P O L I C Y:

The Alaska Constitution, in Article II, Section 12, grants each house of the legislature the power to judge the qualifications of its members. Perhaps the most important qualification for membership in the legislature is the maintenance of the highest standards of ethical conduct.

It is essential to the proper conduct and operation of the legislature that legislators be independent and impartial, and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law defines standards of ethical conduct, protects against conflict of interest, and establishes procedures for the conduct of elected officials and legislative employees in situations where conflicts may exist.

It is also essential that the legislature attract those citizens best qualified to serve. Thus, the law against conflict of interest must be designed not to unreasonably impede recruiting and retaining in government accomplished citizens of diverse backgrounds. Legislators and legislative staff should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests--except where conflicts with the public responsibility of those officials cannot be avoided.

It is declared to be the policy of the legislature that no member or employee shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity, or incur any obligation of any nature which is in substantial conflict with the proper discharge of their duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of Alaska in their legislature, there is enacted a code of ethics setting forth standards of conduct required of legislators and staff in the performance of their official duties. It is the intent of the legislature that this code shall serve not only as a guide for the official conduct of public servants, but also as a basis for the discipline of those who violate the provisions of this chapter.

APPLICABILITY:

To apply to all members of both houses of the Alaska legislature. Also applies to members-elect, former members, and the permanent and temporary staff of the legislative branch who work directly for legislators or committees. [ALTERNATIVE: limit applicability to legislators only, or legislators and all legislative branch employees.]

APPLICABILITY OF OTHER LAW:

This chapter will specifically supersedes the common law of conflicts of interest in the areas that it covers. Nothing in this chapter is intended to preclude investigation or action under other statutes.

ETHICS RULES:

To provide guidance to those affected by this section, the following rules articulate the standards of conduct expected by the public of legislators and legislative staff:

GENERAL STANDARDS:

(a) Legislators or members of the legislative staff shall not receive any benefit directly or indirectly, from any source, by virtue of influence improperly exerted from their public position.

(b) Legislators or members of the legislative staff shall not engage in any outside business or professional activity or employment which is inconsistent or in

conflict with the conscientious performance of official duties.

(c) Legislators or members of the legislative staff shall not misuse state property or funds entrusted to them.

SPECIFIC RULES:

NOTE: The absence of a rule prohibiting a specific activity will not bar the committee from making a determination of its ethical acceptability under either the standards above or below, or additional standards as they evolve. No penalties may be imposed unless the affected party had, or should have had, sufficient notice of the ethical standard involved.

CONFLICTS OF INTEREST--POLICY: Broadly, a conflict of interest is a situation where the exercise of one's official position or powers may affect one's personal financial interests.

In discussing conflicts of interests, personal financial interests must be defined to include all direct or indirect financial interests of the legislator or staff person which may influence his or her judgement.

Alaska's part-time legislature derives much of its strength from the involvement of its members and staff in all aspects of life in the state, and it is neither possible or desirable to restrict members or staff from dealing with those issues that they know best.

In this context, it is not desirable to bar legislators and staff from any contact with activities which may appear to be conflicts. Instead, the public interest will be protected by requiring legislators and staff to disclose all of their financial interests, and to make

special disclosures during the legislative session of certain types of financial dealings of particular sensitivity because of their potential for abuse.

In situations where actual conflicts of interest occur, to the point where the legislator or staff person's personal interest may tend to impair their independence of judgement, then the public interest requires that the legislator or staff person either state that he or she is able to fairly and objectively deal with the issue or disqualify themselves from exercising their official prerogative to affect that situation.

CONFLICT OF INTEREST--PROCEDURE: For the purposes of this chapter there is neither a conflict of interest, nor a duty to disclose a conflict if the only benefit received by a legislator or staff, or member of their household is the same as that received generally by all Alaskans or all members of a large group or class of citizens.

If the class of persons who will be affected by the legislative action is small, and the legislator or staff person will directly or indirectly receive a benefit from the official action, then a conflict may exist. The test for an actual conflict of interest is if the personal interest tends to impair [ALTERNATIVE: replace "impair with "influence"] the person's independence of judgement.

When a legislator or staff person acts on a legislative matter as to which they have an economic interest, they will consider whether their judgement will be substantially impaired by the interest. If it is concluded that an actual conflict of interest does exist a legislator will declare that interest on the floor and request to be disqualified and to abstain from voting. [Uniform Rule 34(b), but consideration should be given to changing this rule to require more than a single no vote

to block a member abstaining from a vote on ethics grounds.] If a conflict is concluded to exist a written statement of the conflict must be delivered to the committee within 24-hours and neither a legislator nor a staff person will take further legislative action on the legislation involved.

It is presumed that personal interest tends to impair a legislator or staff person's independence of judgement in any of the following circumstances:

(1) Having or acquiring a direct interest, distinct from that of the general public, in an enterprise which would be affected by a vote on proposed legislation;

(2) Benefiting financially from a close economic association with a person whom the legislator knows, or from the facts is presumed to know, has a direct interest in an enterprise or interest which would be affected by a vote on proposed legislation, differently from other like enterprises or interests;

(3) Benefitting financially from a close economic association with a person who is lobbying or who has employed a lobbyist to propose legislation or to influence legislator's votes.

"Close economic association" includes and refers to the legislator or staff person's employer (other than the state), employees, and partners in business and professional enterprises; corporations in which the legislator owns capital stock beyond the value of $1,000; and corporations in which the legislator is an officer, director, or agent; or

(4) Soliciting, accepting, or agreeing to accept any gift, loan, or payment of in an aggregate amount of $100 or more from a person who would be affected by or has an interest in an enterprise

which would be affected by a vote on proposed legislation..

The disqualification arising under this section is suspended if a legislator with an apparent conflict of interest or an apparent impairment of judgement files with the committee a sworn statement which describes the circumstances of the apparent conflict and the specific legislation to which it relates and asserts that he or she is able to vote and otherwise participate in legislative action relating thereto fairly, objectively, and in the public interest. Whenever a legislator files a statement for the suspension of the disqualification, the committee on its own motion may issue a statement concerning the propriety of the legislator's participation in the particular legislative action, with reference to the applicable ethical standards of this matter

If the legislator or staff person is in doubt as to the propriety of any action taken or proposed to be taken by them, or is in a situation which is presumed to impair independence of judgement and does not accept the presumption, they should request an advisory opinion from the ethics committee.

Fulfilling requirements to make a disclosure to the Alaska Public Offices Commission does not excuse the requirement to disclose the same information concerning potential conflicts to the committee.

For reference, the current criminal statute on conflicts of interests, AS 39.50.090, provides:

> No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father or business with which he is associated or owns stock.

PROHIBITED ACTS:

CONTRACTS: Legislators and staff may not be a party to or have any interest in a contract with, or in the investment of money with or for, the state or any municipal government which is not awarded through the public competitive bid process. Permission to engage in non-bid contracts may be granted at the discretion of the committee following a finding that no influence was improperly exerted to secure the contract and that the performance of the contract does not conflict with the conscientious performance of official duties. All contracts with the state or local governments must be disclosed to the ethics committee. Permanent employees may not be a party to a contract with the state or a local government under any circumstances. [ALTERNATE: bar all contracts with the state or local government, or limit legislators and temporary staff to contracts where a judgement of the quality of performance is not likely to occur.]

REPRESENTATION: With the exception for lawyer-legislators noted below, no legislator or staff may, for compensation, represent any person or entity to or before any state entity or any entity of local government.

LAWYER-LEGISLATORS: Legislators or staff who are members of the Alaska Bar may represent their clients in actions before state or federal courts. [ALTERNATIVE add: and quasi-judicial commissions, e.g., Workers Compensation or Limited Entry Commissions.] but they may not represent any person on business, for compensation, before any state entity or any portion of any local government.

CONFIDENTIAL INFORMATION: Information that by law, regulation, ordinance, or practice is not available to the general public may not be used for personal gain if it was obtained in the course of official duties. [See AS 11.56.860]

STATE PROPERTY AND FUNDS: Legislators or legislative staff may not use state material, equipment, long--distance telephones, or postage for personal or campaign purposes. The state will be promptly reimbursed for any material used and non-business long-distance calls.

STATE LOANS AND LAND DISPOSALS: Legislators and staff may not apply for or accept any discretionary state benefits not available generally to the public, including loans and land disposals, unless the decision making process leading to the approval of these benefits is on the record as being sufficiently clear and "automatic" as to preclude the appearance that improper influence may have been used to secure these benefits. Examples of acceptable activities include land disposals by lottery, student loans or state housing loans where the requirements are on record and minimal discretionary action by the granting agency is required.

NEPOTISM: Employment by the legislature of persons related within the second degree to other employees is not allowed if the relative is under the direct supervision of the legislator or staff member to whom they are related. An exception is made if the relative is not working for state-paid compensation. [c.f., HB 49]

PROMOTIONAL BENEFITS: Transferrable promotional benefits that result from activities undertaken on official business and paid for by the state, e.g.,

airline discount tickets and reduced fare programs, hotel discounts, etc, become the property of the state. These discounts should to be used to reduce state costs, but if state use of these discounts is not possible, they may be sold or otherwise used by the state.

PROBLEMS WITH DIVESTING: In situations where it becomes necessary for a legislator or staff person to divest of a property or contract to meet the requirements of this or any other statute, and circumstances prevent the divestiture, this problem must be disclosed and an advisory opinion requested and followed in good faith.

PROTECTIONS FOR REPORTING A VIOLATION: It will be a violation of legislative ethics for any person subject to this chapter to take any punitive or retaliatory action against a person who has initiated or assisted in the investigation of an alleged ethics violation. Violation of this section is punishable by any of the remedies specified above.

ACTS ALLOWED:

OUTSIDE EMPLOYMENT AND BUSINESS OPPORTUNITIES: Are not discouraged, but any relationship with the state or local governments in the course of these business transactions which may be colored by the legislator's position should either be precluded or placed under the purview of the ethics committee by requesting and following an advisory opinion.

FORMER MEMBERS OF THE LEGISLATURE: It is acceptable for former legislators or staff members to lobby or work for or with state agencies immediately after leaving employment with the legislature, subject to the

constitutional ban against an ex-legislator taking a job where the legislature has raised the salary. Former legislators and staff should not use confidential information obtained in the course of their official legislative activity for the benefit of any party except the State of Alaska.

ADDITIONAL REPORTING REQUIREMENTS:

STAFF REPORTING AND PUBLICATION: Legislative staff subject to this chapter will make the same disclosures required of legislators in AS 39.50.030. The latest APOC disclosure forms of both legislators and staff will be published as a special edition of the Journal during the first week of each session.

GIFTS: no gifts or special privileges (anything of value not available to the general public), with an aggregate value of more than $100, may be accepted by legislators or staff without disclosure to the committee within three days after receipt during the session and 30 days after receipt in the interim. An exception is made for meals, drinks and entertainment not associated with overnight accommodation. If legislators or staff accept transportation on non-public aircraft or vessels, and the travel is done in the course of official business, it must be reported to the ethics committee for publication in the Journal within three days of the start of travel during the session and 30 days in the interim.

FEES AND HONORARIUMS: Legislators w ll report to the Ethics Committee, within 3 days of receipt during the session and 30 days after receipt in the interim, any compensation or reimbursement for travel or expenses in excess of $100 received for attending a meeting,

presenting a paper, or giving a talk or demonstration. The report must include the amount of the compensation or reimbursement, together with a brief statement describing the circumstances under which the payment was received.

FINANCIAL TRANSACTION WITH LEGISLATORS OR STAFF: Financial transactions over the actual value of $1,000 between parties subject to this chapter are banned, unless the transaction is disclosed. Campaign contributions disclosed to the Public Offices Commission are exempted from this provision.

P R O C E D U R E S:

COMMITTEE:

The purpose of establishing the ethics committee[s] is to institutionalize a body which will provide consistent guidance on ethical matters through advisory opinions and statements of policy and investigate complaints of violations of this chapter. If a violation is found to have occurred, the committee may issue a private reprimand or recommend any of the other remedies provided below for action by the body as a whole. If disciplinary action is recommended, the matter may be referred to the committee for hearing.

Uniform Rule 20 will be amended to establish a standing ethics committee in each house with five members appointed per Uniform Rule 1(e). [ALTERNATIVE: establish a joint standing ethics committee with seven members: three members of each house and one former member of either house selected by agreement of 2/3 of the

committee members from each house.] Provide for staff and legal support, either by staff counsel, contract, or through the Division or Legal Services, and the appointment of a special investigator if required. The committee will establish formal rules of procedure [an good example of which is the U.S. Senate's rules for its Select Committee on Ethics] that will be put before both bodies for their approval.

A quorum of the committee will be a simple majority. The committee will meet weekly during the session and at least monthly during the interim unless there is no business before it. Special meetings may called by the chairman or at the request of three members.

Meetings of the ethics committee are covered by the provisions of the open meeting law but any meeting at which "subjects that tend to prejudice the reputation and character of any person..." [AS 44.62.310(c)(2)] may be closed.

COMPLAINTS:

Must be sworn, and may come from the public, from a member of either house, staff member, or the committee may initiate an investigation on its own volition.

ADVISORY OPINIONS:

Upon a written request from any member, the Committee will issue written advice concerning the propriety of any matter to which the legislator or staff person is or may become a party. An advisory opinion concerning the application of this chapter may be issued upon the written request of any other person as deemed appropriate by the Committee. Advisory opinions will be issued within 15 days of receipt of a request while the legislature is

in session; 45 days if not in session. If the requested opinion is not issued within this time period, or a written extension of time not filed by the Committee (by delivery to the person requesting the opinion and publication in the Journal), the person requesting the opinion will consider the facts and circumstances stated as being in violation of this chapter.

Following the adjournment of each Legislature, all of the advisory opinions issued during that Legislature will be made public after deleting, to the fullest extent possible, all references to particular individuals and identifying situations. Advisory opinions may be made public at any time by agreement of the committee and the person requesting the opinion. The privacy of anyone mentioned in the opinion who has not agreed to its publication will be protected. This will facilitate the establishment of guidelines for conduct. [ALTERNATIVE: All advisory opinions are confidential without the permission of all parties to make the opinion public.]

Any member or employee of the Ethics Committee making public the identity of the person requesting an advisory opinion or of persons mentioned in the opinion, or any other information held in confidence by the committee, beyond such public disclosure as is provided by the committee, is guilty of a misdemeanor, is subject to the penalties provided in this chapter, and a civil action for damages may be brought by any person who is damaged by this disclosure.

RELIANCE ON ADVISORY OPINIONS:

It is prima facie evidence of an intent to comply with this Chapter when a person refers a particular matter to the Ethics Committee, discloses all of the

material facts, and abides in objective good faith by the Committee's advisory opinion.

An advisory opinion may be relied upon, unless cancelled or superseded with notice by the committee, by any person involved in the specific transaction or activity considered by the advisory opinion if the request for the advisory opinion included a complete and accurate statement of the specific factual situation.

PRECEDENT AND POLICY:

Except as provided in Reliance on Advisory Opinions, above, no decision of the committee will be held to be binding on or as precedent for the committee in future decisions.

In the interest of providing notice and guidance to persons bound by this chapter, the committee will publish and identify those opinions or statements of policy which it intends to follow, and these may be relied upon by any person unless revoked with notice.

INVESTIGATIONS:

Upon receipt of a complaint, the committee may initiate an investigation after finding that there is sufficient evidence for the committee to conclude that a violation within its jurisdiction has occurred. [ALTERNATIVE: omit or change threshold standard.] The decision whether or not to undertake an investigation will be made by a recorded vote of a majority of the committee. The investigation will be completed in the shortest possible time commensurate with protecting the interests of the public and the rights of all parties to the investigation, [ALTERNATIVE: add a set time limit for investigations] and the scope of the investigation will be

sufficiently broad to protect the public interest. The committee will have power to subpoena witnesses and documents per AS 24.25.010 [ALTERNATIVE: modify this statute to remove the necessity that the committee get the concurrence of the speaker or president before each subpoena is issued], and to take testimony under oath with penalties provided for perjury [per AS 24.25.060.] The Committee must preserve evidence and testimony under the same rules as the state courts. [See: Administrative Rules 35-37.5]

The committee will give written notice to any person who becomes the subject of an investigation of the fact of the investigation and the charges. The notice will be sent no later than three working days after the committee has voted to conduct an investigation, or has identified a person as an additional subject of investigation. All persons who are subjects of a committee investigation have the right to be represented by counsel. The test for the sufficiency of evidence for recommending any sanction under this chapter will be the preponderance of the evidence.

FOLLOWING AN INVESTIGATION:

In as short a time as reasonably possible, the committee will produce comprehensive findings of facts and conclusions of law. In cases where the alleged violation is found to have occurred, this document and all evidence will be made public. If it is concluded that the allegation does not constitute a violation of this chapter or any other Alaska statute a report of this conclusion will be made as provided below, but the identity of parties and the facts of the situation will be held in confidence, and the evidence may be sealed at he discretion of the committee unless the accused party

requests that the committee's conclusions and/or the evidence be made public.

REMEDIES FOR VIOLATIONS:

If a finding is made by the committee that an ethical violation has occurred, the remedies available will be:

Private Reprimand: The committee may issue a private written reprimand to a legislator or staff member by a majority vote.

Or, the committee may recommend any of the following actions to the body:

Censure: by 2/3 [Alternative: majority] vote of house involved; penalty action may include but is not limited to stripping of committee assignments.

Expulsion: a member may be expelled by a 2/3 vote of the house involved. [Uniform Rule 49(a)(2)] A legislator may not be suspended. Conviction in any state or federal court of a crime that would be a felony under the laws of Alaska is grounds for expulsion. For the purposes of this chapter, conviction occurs upon sentencing by a court equivalent to the Alaska Superior Court.

Termination of Employment: Upon a finding by the committee that an employee of the legislature has committed an ethical violation, or upon conviction of a felony, as defined above, the employment of that employee may be terminated. Any employee recommended for termination under this chapter will be entitled to a hearing before the Rules Committee with the rights specified below.

[ALTERNATIVE: provide a remedy for the expelled member or terminated employee if the conviction is later overturned on appeal. One possibility is back pay for an expelled legislator or back pay and reinstatement for a terminated employee.]

Recovery: Upon a determination of the Ethics Committee that an ethical violation has occurred, the Attorney General may bring civil action to recover the compensation, gift, or profit received by a member or staff person as a result of a violation of this chapter.

Contracts Voidable: In addition to any other remedy, any contract entered into by the state in violation of this Chapter is voidable. In deciding whether to bring an action to void a contract under this section, the Attorney General will consider the interests of innocent parties who may be damaged by the action. Any action to void a contract under this section must be brought within 60 days of the finding of a violation by the committee.

Recommendation for Prosecution: following a finding that an ethical violation has occurred, or if the committee finds evidence of other statutory violations, the committee may recommend that the Attorney General consider prosecution under any applicable criminal statute.

H E A R I N G:

The Committee may hold public hearings following referral of a recommended sanction to the committee or, on other topics with the concurrence of a majority of the body.

If a hearing results from the action of the committee, any person accused of a violation of this chapter will have the right to adequate notice, the right to

counsel, and the right to confront and cross-examine witnesses, and the right to present evidence.

All testimony and evidence will be recorded and preserved, the rules of evidence will be those used in APA hearings (AS 44.62.460) and the burden of proof will be met by a preponderance of the evidence.

REPORTS TO THE LEGISLATURE:

During session, the Ethics Committee will make a weekly report for inclusion in the Journal containing, at minimum, summaries of all information then available to the public, and summaries of all other committee activity, with privacy protected. Examples of the information presented are: disclosures of conflicts, gifts, contracts, etc; reports (with names deleted) of complaints filed and the progress or conclusions of investigations. Monthly reports will be made in the interim and each Committee will make an annual report to the legislature and the public by February 1 of each year.

DEFINITIONS:

All definitions used in this chapter must be carefully drafted to be as specific and clear as possible. Examples will be given where useful. Please add definitions, examples and categories which you feel need to be included.

Some of the definitions which will need close attention are:

HOUSEHOLD: This term should be very tightly defined to include the family of a legislator, their immediate relatives, live-in lovers, etc.

BUSINESS ASSOCIATES: This also needs a careful definition to cover businesses in which the legislator or his "household" has any direct, indirect or contingent interest;

COMPENSATION: Again, a careful definition needed. Should include offers of jobs or benefits in the future, grants of confidential information, opportunities or permits; also, of course, any present payments or benefits, in whatever form.

PLEASE NOTE THAT THIS IS A WORK DRAFT FOR DISCUSSION ONLY.

PLEASE CONTACT VIC FISCHER OR LEWIS SCHNAPER AT 4954 WITH YOUR COMMENTS OR SUGGESTIONS.

Original sponsor: Rules Committee

Offered: 3/31/81
Referred: Rules

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE CONCURRENT RESOLUTION NO. 3 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the uniform rules relating to conference committees and free conference committees.

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

* Section 1. Rule 41 of the Uniform Rules of the Alaska State Legislature is amended to read:

RULE 41. CONFERENCE COMMITTEE. (a) If one house refuses to concur in the amendments of the other it so notifies the amending house and requests that it recede from its amendments. If the house refuses to recede, the presiding officer of each house appoints three members to sit as a Committee on Conference. The committee meets when mutually agreeable to its members and when agreement on previously adopted amendments to a bill adopted by either house is reached, the committee submits an identical report to each house. If the report is adopted by both houses the bill is enrolled, signed, and transmitted to the governor. If the members of the Committee on Conference cannot agree on amendments or if one or both houses refuses to adopt the report, the Committee on Conference shall submit a written report to each house listing the specific points of disagreement for which the committee requests powers of free conference. The presiding officer of each house may give limited powers of free conference only on the specific points listed. [IT IS IN ORDER AT ANY TIME TO GRANT POWERS OF FREE CONFERENCE TO THE COMMITTEE ON CONFERENCE.] If the members of the Committee on Conference with limited powers of free conference cannot agree on amendments or one or both houses refuses to adopt its report,

it is then in order to appoint a Committee on Free Conference. A member who served on a Committee on Conference or on a Committee on Conference with limited powers of free conference may not be appointed to a subsequent Committee on Conference or Committee on Free Conference concerning the same measure. The vote on adoption of a conference committee report is taken by the calling of the roll and the recording of the yeas [AYES] and nays in the journal. Adoption requires a majority of the membership of the house.

(b) The Committee on Free Conference is appointed in the same manner as a Committee on Conference and may suggest in its report any new amendments clearly germane to the question. When a majority of the membership on the committee from each house agree on amendments [TO BE PROPOSED], the amendments are attached to the bill and reported back to each house in an identical report. The report is not subject to amendment in either house. The report is referred to the last committee in each house to which the bill was referred for consideration for its information; the committee shall report the bill with its recommendations for or against passage of the report. If the report is adopted in both houses the bill is then ordered enrolled by its house of origin. If the Committee on Free Conference fails to agree or its report is not adopted, a second Committee on Free Conference may be appointed but no member of the first committee may be reappointed. A free conference committee report may not be voted on by the house until at least 24 hours after the report is printed and distributed to each member at his desk. The vote on adoption of a free conference committee report is taken by calling of the roll and the recording of the yeas [AYES] and nays in the journal. Adoption requires a majority of the membership of the house.

Introduced: 2/13/81
Referred: State Affairs

IN THE HOUSE BY THE RULES COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 3

IN THE LEGISLATURE OF THE STATE OF ALASKA

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