

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4380 SSTA HB 186 - HB 237

1259



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

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186

COMMITTEE REPORT
SENATE

FURTHER: RESOURCES
~~CDRA~~ CDRA
Finance

4/11/85

Date April 25, 1985

Mr. President

The Committee on STATE AFFAIRS considered CSHB 186(Res)
creating the Anchorage Coastal Wildlife Refuge.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Ed. Hoover

V. Fischer

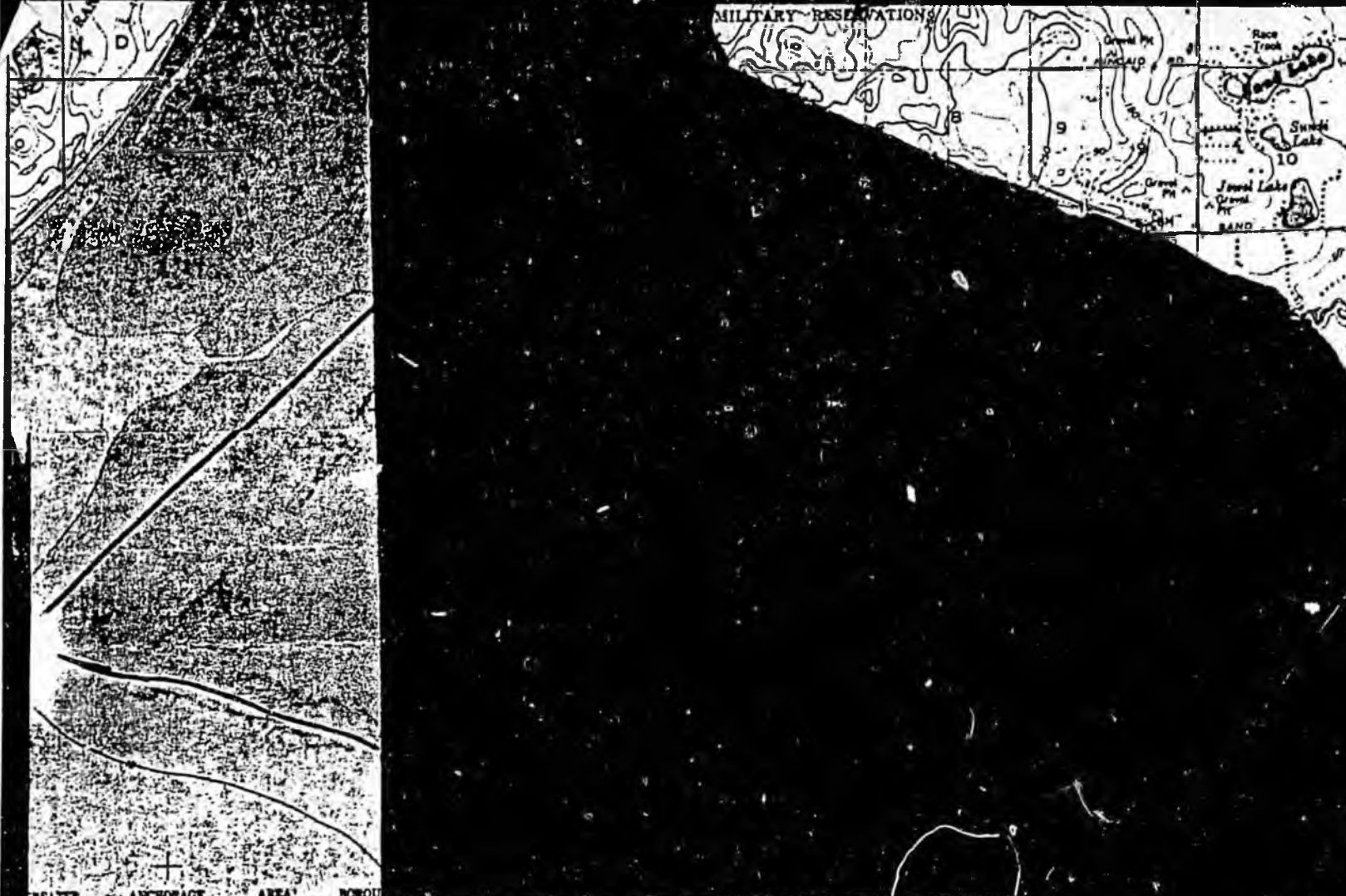
Tim Kelly

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation





THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE



GREATER ANCHORAGE AREA BOROUGH
KENAI PENINSULA BOROUGH

PROPOSED ANCHORAGE

COASTAL STATE WILDLIFE REFUGE

- State Land 
- Municipal Land 
- Private Lands 
- Alaska Railroad 



This map approximates land ownership patterns in the Proposed Anchorage Coastal State Wildlife Refuge

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
April 23, 1985

Senator Mitch Abood, Chairman
Senate State Affairs Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: CS HB 186 (Res): Anchorage Coastal Wildlife Refuge

Dear Senator Abood:

The League of Women Voters of Alaska supports establishment of the Anchorage Coastal Wildlife Refuge. We have supported this legislation in the House, and continue to do so in the Senate.

This bill would set aside and protect a unique area that is de facto critical habitat for a large population of water fowl and other wildlife, and which should be preserved in its natural state for the protection of the wildlife and the enjoyment of people who wish to view the wildlife. The availability of such an experience is especially important in a location close to a large population center such as Anchorage, where the experience can be enjoyed by many people, including children and the elderly, and not just those who are able to hike and backpack long distances to remote areas.

Thank you for your considering our views.

Sincerely,


Elizabeth Cuadra, State Board Member
(Natural Resources Portfolio)

DEC:lyn/27

cc: Committee Members (DeVries,
Vic Fischer, Ray, and Kelly)

Commissioner Collinsworth (DF&G)
Commissioner Wunnicke (DNR)

Paula Ziegler, LWVAK President



Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Finance Committee
Oil and Gas Committee

11920 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4975 4979

April 15, 1985

TO: Sen. Mitch Abood, Chairman
Senate State Affairs Committee

FROM: *Mike Szymanski*
Rep. Mike Szymanski

RE: CSHB 186 (Resources) - Anchorage Coastal Wildlife Refuge

CSHB 186 (Resources) establishing the Anchorage Coastal Wildlife Refuge is currently before the Senate State Affairs Committee. I would like to request the scheduling of this bill for hearing as soon as possible. Enclosed please find a map and background information on the bill. Should you have any questions, please feel free to give me a call.

Thank you very much. I appreciate your consideration of my request.

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APR 17 1985



Alaska State Legislature

House of Representatives

Representative Mike Szymanski

11920 Johns Road
Anchorage, Alaska 99515
Phone (907) 349-3373

While in Session:
Pouch V

State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

Finance Committee

Oil and Gas Committee

April 15, 1985

To: Sen. Mitch Abood, Chairman
Senate State Affairs Committee

From: Rep. Mike Szymanski

Re: Background/Intent of HB 186 - Anchorage Coastal Wildlife Refuge

In 1971 the Alaska State Legislature created Potter Point State Game Refuge (AS 16.20.030 (b)) which extends southeasterly along the coastline of Anchorage from Pt. Campbell to Potter Creek. This easily accessible, urban refuge provides excellent wildlife viewing opportunities for city residents, and it enhances the Anchorage economy through its value as a tourist attraction.

In June 1983, the Municipality of Anchorage (MOA) established the Potter Marsh Task Force to address management problems that were developing both within and around the refuge, and to subsequently make recommendations for action. This legislation is one of the task force's recommendations for improving management of the refuge, and it is supported by the MOA, Alaska Department of Fish and Game (ADF&G), Alaska Department of Natural Resources (DNR), and interested public members.

HB 186 would:

1) Rename the existing Potter Point State Game Refuge the "Anchorage Coastal Wildlife Refuge".

Section 1, AS 16.20.031 (a) would establish the Anchorage Coastal Wildlife Refuge to be managed for the protection of waterfowl, shore birds, salmon, and other fish and wildlife species, and their habitat and for the use and enjoyment of the people of the state. Section 3 repeals AS 16.20.030 (b) which is the existing statute establishing the Potter Point State Game Refuge. This new name more accurately reflects the refuge's location and relation to the city of Anchorage.

2) Provide a precise legal description, in surveyable section lines, of the boundaries of the state-owned land and water included in the refuge.

The 1971 legislation reads, "The following described state-owned land and adjacent state water, excluding existing and applied-for highway, pipelines and railway rights-of-way as of May 20, 1971, are established as the Potter Point State Game Refuge: All land and water south and west of and adjacent to the toe of the bluff which extends from Campbell Point southeasterly to Potter Creek." This language does not define any real or measurable limit as to how

far the refuge boundary extends seaward, and the inland boundary is open to wide interpretation. Many times this lack of clarity has resulted in confusion for state agencies, private development interests, and the general public. Therefore HB 186 in Section 1, subsections (1) through (7) describes in detail the legal refuge boundaries.

3) Add additional tidelands and near shore upland to the existing refuge.

The MOA has asked that refuge boundaries be expanded northward from Pt. Campbell to Pt. Woronzof to include municipally owned wetlands within the refuge for management by ADF&G. In 1979, under the Anchorage Coastal Zone Management Plan, these lands were identified as Areas Meriting Special Attention and classified as Preservation Wetlands. Inclusion of these lands within the refuge does not afford them any more protection than they already have under the preservation status, but would facilitate the uniform management of Anchorage's coastal lands. The new boundaries (described in Section 1, subsections (1) through (7)) were cooperatively drawn by the MOA, ADF&G, and DNR.

4) Restrict the state and municipality from acquiring property by eminent domain for inclusion within the refuge.

This would protect private property owners by requiring that property to be included within the Anchorage Coastal Wildlife Refuge be acquired through purchase, exchange, or otherwise (Section 1, (e)), and prohibiting acquisition by eminent domain.

5) Provide for management of the refuge by ADF&G and DNR.

Section 1 (b) provides that, as in the past, both ADF&G and DNR would exercise their respective authorities over the refuge, except as provided in Section 1 (d). Management of the Anchorage Coastal Wildlife Refuge will be consistent with a management plan prepared by the ADF&G under AS 16.20.040 - 16.20.060. The plan will be completed within one year of the effective date of this Act (Section 2).

The management plan prepared by ADF&G shall recommend a corridor for transportation and utilities between Fire Island and the Anchorage mainland (Section 1 (c)). This is to ensure access to the island's landowners for future development and would also be of economic benefit to the MOA.

Hunting, as in the past and in accordance with state regulations, will continue to be allowed on state-owned lands within the refuge west and north of the Alaska Railroad.

While the land and water areas of the Anchorage Coastal Wildlife Refuge are closed to mineral entry under AS 38.05.185 - 38.05.275, the boundary extension north of Pt. Campbell was drawn so that all previously issued offshore mining permits were excluded from within the refuge. Oil and gas leasing will not be affected (Section 1 (f)) by this legislation.



RECORDS CERTIFICATION

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James A. Smith
Signature of Camera Operator

11/24/89
Date

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Offered: 4/22/85
Referred: Finance

Original sponsors: Pourchot, Hurley,
M.M. Miller, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 218 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to standards of conduct of legisla-
7 tors and legislative employees and to the Select
8 Committee on Legislative Ethics; and providing for an
9 effective date."

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

11 * Section 1. AS 11.56.805(b) is amended to read:

12 (b) False accusation is a class A misdemeanor [CLASS C FELONY].

13 * Sec. 2. AS 24.60.020(a) is amended to read:

14 (a) This chapter applies to a member of the legislature, to a
15 person employed by a member of the legislature, and to a permanent or
16 temporary employee of an agency of the legislature.] This chapter does
17 not apply to and employee of the legislative branch

18 (1) a former member of the legislature or to a person
19 formerly employed by a member of the legislature or an agency of the
20 legislature unless the provision specifically states that it so ap-
21 plies;

22 (2) a person elected to the legislature who at the time of
23 election is not a member of the legislature;

24 (3) a person employed by a member of the legislature or an
25 employee of an agency of the legislature whose compensation is below
26 Step A, Range 18 of the state salary schedule established in AS 39.-
27 27.011(a).

28 * Sec. 3. AS 24.60.050(d) is amended to read:

29 (d) Each February 1, each state loan agency must deliver a

4) a person who is now employed by a legislator
and does not perform leg duties.

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*

1 listing of all outstanding loans to persons to whom this chapter
2 applies, except for loans described in (a) of this section, to the
3 presiding officer of each house. The list must include the name of
4 the person, the date of issuance and current status of the loan. The
5 list shall be published in the supplemental journal before February 5
6 of each year.

7 * Sec. 4. AS 24.60.070 is amended to read:

8 Sec. 24.60.070. INTERESTS BETWEEN PUBLIC OFFICIALS. A person to
9 whom this chapter applies shall disclose in the journal of the appro-
10 priate body or if the legislature is not in session to the committee,
11 which shall maintain a public record of the disclosure and forward the
12 disclosure to the respective house for inclusion in the journal by
13 [FOR] the fifth [FIRST] day of the session, the formation or main-
14 tenance of a close economic association involving a substantial finan-
15 cial matter with

16 (1) a supervisor who is not a member of the legislature who
17 has responsibility or authority, either directly or indirectly, over
18 the person's employment, including preparing or reviewing performance
19 evaluations, or granting or approving pay raises or promotions;

20 (2) legislators;

21 (3) a public official in another branch, if the public
22 official is required to file a financial disclosure statement under
23 AS 39.50;

24 (4) a registered lobbyist;

25 (5) a person to whom this chapter applies who is employed
26 by a member of the legislature or an agency of the legislature if the
27 close economic association is with a legislator [WHO IS NOT A MEMBER
28 OF THE IMMEDIATE FAMILY OF THE PERSON].

29 * Sec. 5. AS 24.60.100 is amended to read:

1 Sec. 24.60.100. REPRESENTATION. A person to whom this chapter
2 applies who represents another person for compensation before an
3 agency, board, or commission of the state shall disclose the name of
4 the person represented, the subject matter of the representation, and
5 the body before which the representation is to take place in the
6 journal of the appropriate body or if the legislature is not in ses-
7 sion to the committee. The committee shall maintain a public record
8 of the disclosure and forward the disclosure to the respective house
9 for inclusion in the journal by [FOR] the fifth [FIRST] day of the
10 session.

11 * Sec. 6. AS 24.60.110 is amended to read:

12 Sec. 24.60.110. ACTION ON A CONFLICT OF INTEREST. A legislator
13 who knowingly has a conflict of interest or has been notified of a
14 conflict of interest shall immediately

15 (1) resign the conflicting position;

16 (2) divest the interest that has resulted in the conflict
17 or potential conflict; or

18 (3) disclose the conflict of interest in the journal of the
19 appropriate body or if the legislature is not in session to the com-
20 mittee; the committee shall maintain a public record of the disclosure
21 and forward the disclosure to the respective house for inclusion in
22 the journal by [FOR] the fifth [FIRST] day of the session but dis-
23 closure does not remove the conflict of interest.

24 * Sec. 7. AS 24.60.130(b) is amended to read:

25 (b) The committee consists of nine [SEVEN] members, in two
26 subcommittees, as follows:

27 (1) the senate subcommittee consists of three members of
28 the senate, appointed by the president of the senate with the concur-
29 rence by roll call vote of two-thirds of the full membership of the

1 senate; and

2 (2) the house subcommittee consists of three members of the
3 house, appointed by the speaker of the house with the concurrence by
4 roll call vote of two-thirds of the full membership of the house; and

5 (3) three public members [ONE PUBLIC MEMBER,] who are [IS]
6 selected by the Chief Justice of the Alaska Supreme Court [TWO-THIRDS
7 OF EACH SUBCOMMITTEE] and who are [IS] ratified by two-thirds of the
8 full membership of the senate and two-thirds of the full membership of
9 the house, shall serve on both the full committee and each subcom-
10 mittee.

11 * Sec. 8. AS 24.60.130(c) is amended to read:

12 (c) No more than two legislative members of each subcommittee
13 may be members of the same political party or the same organizational
14 caucus. [At least one public member must be a former member of the
15 legislature.]

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

17 (a) The committee shall

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

20 (2) publish semi-annual summaries of decisions and [,] ad-
21 visory opinions [AND INFORMAL ADVISORY OPINIONS,] with sufficient
22 deletions in the summaries to prevent disclosing the identity of the
23 persons involved in the decisions or opinions that have remained
24 confidential.

25 * Sec. 10. AS 24.60.160 is amended to read:

26 Sec. 24.60.160. ADVISORY OPINIONS. The committee shall issue an
27 advisory opinion within 30 days on the request of a person to whom the
28 chapter applies or a person elected to the legislature who at the time
29 of election is not a member of the legislature as to whether the facts

1 and circumstances of a particular case constitute a violation of
2 ethical standards. The 30-day period for issuing an opinion may be
3 extended by the committee for not more than an additional 10 days if
4 the person requesting the opinion consents. The opinion issued is
5 binding on the committee in any subsequent proceedings concerning the
6 facts and circumstances of the particular case unless material facts
7 were omitted or misstated in the request for the advisory opinion.
8 Except as provided in this chapter an advisory opinion is confidential
9 but may be made public if a written request by the person who re-
10 quested the opinion is filed with the committee.

11 * Sec. 11. AS 24.60.190 is amended to read:

12 Sec. 24.60.190. DEFINITIONS. [DEFINITION OF "COMMITTEE."] In
13 this chapter [,]

14 (1) "committee" means the Select Committee on Legislative
15 Ethics or where appropriate, the applicable subcommittee;

16 [(2) "person employed by a member of the legislature" means
17 a person who is employed by an individual legislator or by a legisla-
18 tive body other than an agency of the legislature established under
19 AS 24.20, whose duties include assistance to a legislator or a legisla-
20 tive body in the performance of legislative functions.]

21 * Sec. 12. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).

Person.

Employer of the leg branch means a

Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE
COMMITTEE ON OIL AND GAS



ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(907) 338-2425


JUNEAU
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

House of Representatives

MEMORANDUM

DATE: March 12, 1986

TO: Senate State Affairs Committee
Senator Mitch Abood, Chairman
Senator Edna DeVries, Vice-Chairman
Senator Tim Kelly
Senator Bill Ray
Senator Vic Fischer

FROM: Representative Pat Pourchot 

SUBJECT: Senate Committee Substitute HB 218 (State Affairs),
Legislative Ethics

The draft Senate CSHB 218 (State Affairs) contains the amendments the State Affairs Committee adopted Thursday, February 27, 1986. A current sectional analysis is attached for your information.

Final Committee action on one issue was deferred pending additional information. The section of the current ethics law describing when close economic associations with "public officials" must be declared is unclear. "Public official" is defined in the ethics law as those "in another branch, if the public official is required to file a financial disclosure statement under AS 39.50." Many municipal officials are required to file financial disclosure statements but they are not considered "in another branch" of government.

The Ethics Committee has issued an opinion that legislators must disclose close economic associations with any municipal official who is required to file a financial disclosure statement. I have attached a listing of people who are required to file financial disclosure statements, including all municipal officials.

If the intent of the Committee is to exclude municipal officials, then the Committee should adopt the attached amendment #1. This amendment would simply exclude municipal officials, even though they file financial disclosure statements.

If the Committee wishes persons covered by this act to make disclosures of close economic association with all public officials who are required to file financial disclosures, then the Committee should adopt the suggested language on attached amendment #2.

At the February 27 meeting several amendments were adopted to clarify who was covered by the legislative ethics law. Because of these changes it appears the Ombudsman, who is currently covered, has been left out. All legislative agencies are established under AS 24.20 which is cited in the new CS. However, it was pointed out by Legal Services that the Ombudsman is organized under AS 24.55.

In order to include that agency's employees in the definition of "employees of the legislative branch", I would suggest an amendment to add the reference "or AS 24.55" to include the Ombudsman. This is suggested amendment #3.

Thank you for your time and consideration to the above suggestions.

FINANCIAL DISCLOSURES

The following people are required to file a financial disclosure statement under AS 39.50:

- Judicial officers (all judges)
- Commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), (see attached list)
- Head or deputy head of, or director of a division within, a department in the executive branch
- Assistant to the governor (includes any executive, legislative, special, administrative or press assistant to the governor, and any person similarly employed)
- Candidates for state elective office
- Candidates for elective municipal office
- Governor
- Lieutenant governor
- Members of the legislature
- Candidates for governor, lt. governor, and legislature
- Public officials include all of the above listed, excepting candidates, as well as the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of Legislative Affairs Agency, the directors of the divisions within the LAA.
- Municipal officers (includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city of borough, including but not limited to a unified municipality under AS 29.68))

AS 24.55.310 states that the Ombudsman, deputy ombudsman and their professional staff are subject to AS 39.50 and as such are required to file financial disclosure statements.

A M E N D M E N T #1

TO: SCS CSHB 218 (State Affairs), Legislative Ethics

Page 3, line 13, delete "in another branch" and

Page 3, line 15, after "AS 39.50", insert"

", but not including municipal officers;"

A M E N D M E N T #2

Page 3, lines 13 - 15, delete all material and insert:

"(3) a public official who [IN ANOTHER BRANCH, IF
THE PUBLIC OFFICIAL] is required to file a financial
disclosure statement under AS 39.50;"

A M E N D M E N T #3

Page 7, line 4:

After "AS 24.20" insert "or AS 24.55"

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(4) act as an appeals board, hold hearings at the request of an employer, employee, surviving spouse, or a beneficiary on decisions made by the administrator that relate to the deferred compensation program for state employees, and submit its findings to the administrator;

(5) prescribe the policies for the proper operation of the deferred compensation program for state employees and take other action that it considers necessary to carry out the intent and purpose of the program.

(b) In this section "administrator" means the administrator of the deferred compensation program for state employees. (§ 38 ch 146 SLA 1980)

d

Sec. 39.45.030. Investment authority. The administrator of the state or political subdivision deferred compensation program is authorized, subject to contracts with individual employees, to invest the funds held under a deferred compensation program in fixed and variable life insurance and annuity contracts. (§ 1 ch 40 SLA 1973)

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Sec. 39.45.040. Additional benefits. The deferred compensation program established under this chapter exists and serves in addition to any existing retirement, pension, or benefit system established by the state or its political subdivisions and may not effect a reduction in benefits receivable under an existing system. (§ 1 ch 40 SLA 1973)

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Revisor's notes. — In ch. 40, SLA 1973, this section contained the phrase "may not affect a reduction." That appears to involve a typographical error, and "affect" has been changed to "effect" here.

shall be

Sec. 39.45.050. Tax deferred investments. The administrator of a deferred compensation program under this chapter shall invest only in contracts that allow for deferment of the state and federal income tax until benefits are receivable under the program and shall make appropriate withholding adjustments in each participating employee's payroll. (§ 1 ch 40 SLA 1973)

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Sec. 39.45.060. Definition. In this chapter "employee" means a person, whether appointed, elected or under contract, who provides services for the state or a political subdivision of the state for which compensation is given. (§ 1 ch 40 SLA 1973)

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Chapter 50. Conflict of Interest.

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Section	Section
10. Findings and purpose	35. Exemptions
20. Report of financial and business interests	40. Blind trusts
25. Notification to candidates for legislature	50. Administration and inspection
30. Contents of statements	60. Penalty for wilful violation of disclosure requirements
	70. Failure to report by department, divi-

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Section
 sion, or deputy department heads
 80. Failure to report by a commission or board chairman or member
 90. Prohibited acts
 100. Enforcement by private citizens
 110. Report of financial interests of judicial officers
 120. Report of financial interests of legislators

Section
 130. Report of financial interests of governor and lieutenant governor
 135. Civil penalty: Late filing of required reports
 145. Participation by municipalities
 150. Initial filing date for public officials
 200. Definitions

Editor's notes. — Section 2, 1974 Initiative Proposal No. 2, provides: "Severability. If any provision of this chapter or portion of a provision is declared by a court of competent jurisdiction to be invalid, for any cause, such invalid provision or portion of it shall be considered to be nonexistent and the remainder of this chapter shall continue in full force and effect."

Section 3, 1974 Initiative Proposal No. 2, provides: "Repeal of Inconsistent Law. In case of conflict between provisions of this chapter and other provisions contained in the Alaska Statutes, the provisions of this chapter shall take precedence."

Sec. 39.50.010. Findings and purpose. (a) It is declared by the people of the State of Alaska that the purposes of this chapter are:

- (1) to discourage public officials from acting upon a private or business interest in the performance of a public duty;
- (2) to assure that public officials in their official acts are free of the influence of undisclosed private or business interests;
- (3) to develop public confidence in persons seeking or holding public office, enhance the dignity of the offices and make them attractive to citizens who are motivated to public service; and
- (4) to develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who seek and hold public office.

(b) The people of the State of Alaska declare that:

- (1) public office is a public trust that should be free from the danger of conflict of interest;
- (2) the public has a right to know of the financial and business interests of persons who seek or hold public office;
- (3) a compelling state interest requires that candidates for office and office holders disclose their personal and business financial interests;
- (4) reasonable disclosure requirements do not violate an individual's right to privacy when the individual seeks or holds public office and a compelling state interest in the disclosure exists; and
- (5) reasonable disclosure requirements do not have the effect of chilling the exercise of the right of a qualified person to seek or hold public office. (1974 Initiative Proposal No. 2, § 1)

Sec. 39.50.140. Accepting bribe. [Repealed, § 26 ch 25 SLA 1975.]

Sec. 39.50.145. Participation by municipalities. A municipality may exempt its municipal officers from the requirements of this chapter if a majority of the voters voting on the question at any regular election, as defined by AS 29.78.010(14), or a special municipality-wide election, vote to exempt its municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative ordinance. (§ 16 ch 25 SLA 1975; am § 1 ch 211 SLA 1975)

Sec. 39.50.150. Initial filing date for public officials. (a) Every person who is a public official or a public official-elect on December 11, 1974 shall file the statements required by this chapter before April 15, 1975. However, a public official who resigned from office or whose term of office expired on or after December 11, 1974 but before April 15, 1975, need not file a financial statement.

(b) Municipal officers shall file the statements required by this chapter before November 15, 1975. However, a municipal officer who resigns from office or whose term of office expires before November 15, 1975 need not file a financial statement. (Initiative Proposal No. 2 § 1; § 1 ch 2 SLA 1975; § 17 ch 25 SLA 1975)

NOTES TO DECISIONS

Applied in *Warren v. Thomas*, Sup. Ct. Op. No. 1484 (File No. 2919), 568 P.2d 400 (1977).

Sec. 39.50.200. Definitions. (a) In this chapter:

(1) "assistant to the governor" includes any executive, legislative, special, administrative or press assistant to the governor, and any person similarly employed.

(2) "child" includes a biological child, an adoptive child, and a stepchild;

(3) "commission" means the Alaska Public Offices Commission created under AS 15.13.020(a);

(4) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska and the Alaska State Housing Authority;

(5) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court;

(6) "mother or father" includes a biological parent, an adoptive parent, and a step-parent;

SLA 1975.]

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(7) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, including but not limited to a unified municipality under AS 29.68;

(8) "public official" means a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division within, a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, and each appointed or elected municipal officer;

(9) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

(b) In this chapter "state commission or board" means the

(1) Agricultural Revolving Loan Fund Board (created administratively to assist in administration of AS 03.10);

(2) Alaska State Council on the Arts (AS 44.27.040);

(3) Alcoholic Beverage Control Board (AS 04.06.010);

(4) State Assessment Review Board (AS 43.56.040);

(5) *[Repealed, § 1 ch 54 SLA 1981.]*

(6) Board of Education (AS 14.07.075);

(7) Alaska Public Broadcasting Commission (AS 44.21.256);

(8) Alaska Public Offices Commission (AS 15.13.020);

(9) Employment Security Advisory Council (AS 23.20.025);

(10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020);

(11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010);

(12) Alaska State Housing Authority (AS 18.55.020);

(13) State Commission for Human Rights (AS 18.80.010);

(14) *[Repealed, § 86 ch 59 SLA 1982.]*

(15) Alaska Judicial Council (art. IV, § 8, Alaska Constitution);

- (16) Commission on Judicial Conduct (art. IV, § 10, Alaska Constitution);
- (17) Governor's Commission on the Administration of Justice (AS 44.19.110);
- (18) Local Boundary Commission (AS 44.47.565);
- (19) Occupational Safety and Health Review Board (AS 18.60.057);
- (20) State Board of Parole (AS 33.15.010);
- (21) State Personnel Board (AS 39.25.060);
- (22) *[Repealed, § 20 ch 110 SLA 1981.]*
- (23) Public Employees Retirement Board (AS 39.35.030);
- (24) Alaska Public Utilities Commission (AS 42.05.010);
- (25) University of Alaska Board of Regents (AS 14.40.120);
- (26) Alaska Royalty Oil and Gas Development Advisory Board (AS 38.06.020);
- (27) *[Repealed, § 86 ch 59 SLA 1982.]*
- (28) *[Repealed, § 86 ch 59 SLA 1982.]*
- (29) Alaska Teachers' Retirement Board (AS 14.25.035);
- (30) Alaska Transportation Commission (AS 42.07.011);
- (31) Workers' Compensation Board (AS 23.30.005);
- (32) Alaska Commission on Postsecondary Education (AS 14.42.015);
- (33) Alaska Municipal Bond Bank Authority (AS 44.85.020);
- (34) *[Repealed, § 1 ch 54 SLA 1981.]*
- (35) Alaska Medical Facility Authority (AS 18.26.010 — 18.26.900);
- (36) Alaska Oil and Gas Conservation Commission (AS 31.05.005 — 31.05.170);
- (37) Alaska Housing Finance Corporation (AS 18.56.010 — 18.56.210);
- (38) Alaska Coastal Policy Council members and their alternates (AS 44.19.155);
- (39) *[Repealed, § 1 ch 75 SLA 1979.]*
- (40) Board of Fisheries (AS 16.05.221(a));
- (41) Board of Game (AS 16.05.221(b));
- (42) Board of Trustees and executive director of the Alaska Permanent Fund Corporation (AS 37.13.040);
- (43) Alaska Energy Center (AS 46.12);
- (44) Alaska Seafood Marketing Institute (AS 16.51.010);
- (45) Council on Domestic Violence and Sexual Assault (18.66.010);
- (46) Alaska Power Authority public directors (AS 44.83.030); and
- (47) Alaska Resources Corporation (AS 37.12.010). (Initiative Proposal No. 2, § 1; am §§ 18, 19 ch 25 SLA 1975; am § 3 ch 79 SLA 1975; am § 2 ch 170 SLA 1975; am § 18 ch 263 SLA 1976; am § 2 ch 67 SLA 1977; am § 2 ch 141 SLA 1978; am § 2 ch 158 SLA 1978; am § 9 ch 167 SLA 1973; am § 2 ch 66 SLA 1979; am § 3 ch 75 SLA 1979; am § 37 ch 3 SLA 1980; am § 28 ch 12 SLA 1980; am § 8 ch 18 SLA

§ 39.50.200

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r alternates

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§ 18.66.010);

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(Initiative

§ ch 79 SLA

§ am § 2 ch

§ A 1978; am

§ 7 SLA 1979;

§ ch 18 SLA

§ 39.51.010

PUBLIC OFFICERS AND EMPLOYEES

§ 39.51.020

1980; am §§ 39 — 43 ch 94 SLA 1980; am § 5 ch 148 SLA 1980; am E.O. No. 44 § 2 (1980); am § 1 ch 54 SLA 1981; am § 2 ch 101 SLA 1981; am § 5 ch 106 SLA 1981; am § 20 ch 110 SLA 1981; am § 86 ch 59 SLA 1982; am § 107 ch 6 SLA 1984; am § 1 ch 52 SLA 1984)

Revisor's notes. — This section was reorganized in 1984 to place the defined terms in alphabetical order.

Effect of amendments. — The first 1980 amendment repealed a former subparagraph to present paragraph (b), which read: "Alaska Salary Commission (AS 39.23)."

The second 1980 amendment inserted "court of appeals" following "a judge to the" near the middle of subparagraph (2) of paragraph (a).

The third 1980 amendment added subparagraph (42) in present paragraph (b).

The fourth 1980 amendment, in present paragraph (b), repealed former paragraphs, which read: "Board of Fish and Game (AS 16.05.220)," "State Section of Joint Federal-State Land Use Planning Commission (AS 41.40.020)," "Board of Directors, State-Operated Schools (AS 14.08.030)," and "Alaska Salary Commission (AS 39.23)," respectively, substituted "Workers'" for "Workmen's" in subparagraph (31), and added subparagraphs (40) and (41).

The fifth 1980 amendment added subparagraph (43) in present paragraph (b).

Section 2, Executive Order No. 44 (1980) substituted "(AS 44.27.040)" for "(AS 44.19.900)" at the end of subparagraph (2) of present paragraph (b).

The first 1981 amendment added paragraph (45) in subsection (b).

The second 1981 amendment added paragraph (44) of subsection (b).

The third 1981 amendment repealed paragraph (22) of subsection (b) which read "Alaska Pipeline Commission (AS 42.06.020)."

The 1982 amendment repealed paragraphs (14), (27), and (28) of subsection (b).

The first 1984 amendment added paragraphs (46) and (47) to subsection (b).

The second 1984 amendment inserted "the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency" in paragraph (8).

NOTES TO DECISIONS

Purpose of the Conflict of Interest law is to bring to light all conflicts — actual and potential. *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

Patient of a physician is a client for medical services and falls within the scope of this chapter. *Falcon v. Alaska*

Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

And source of income. — The Conflict of Interest law encompasses a physician's individual patients as sources of income. *Falcon v. Alaska Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).*

Chapter 51. Miscellaneous Provisions.

Section

20. Obstruction of access to public information

30. Nepotism prohibited

Sec. 39.51.010. Misuse of confidential information. [Repealed, § 21 ch 166 SLA 1978. For current law see AS 11.56.860.]

Sec. 39.51.020. Obstruction of access to public information. (a) A public employee may not be dismissed, demoted, suspended, laid off or otherwise made subject to any disciplinary action for communicating

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1986

SUBJECT: Legislative standards of conduct
[SCS CSHB 218(State Affairs)]

TO: Representative Pat Pourchot

FROM: Richard A. Bradley
Legislative Counsel *B*

I have prepared the senate committee substitute as suggested by Joyce Thoresen; this was done with Senator Abood's approval.

In the draft that we provided to Senator Abood, the addition to AS 24.60.020(a) as (4) was added though in my judgment it adds nothing to the bill. In my view the bill applies only to legislators in their roles as legislators; what a member of the legislator does in a private role is not reached by this bill. The section creates no problems, however.

I should also note the change to AS 24.60.190(2); all the former material after "AS 24.60" is deleted. If it was the intent of the legislature to reach everyone in the usual legislative agencies, committees, and personal staff, the material consisted of ambiguous language that confused the situation. Since that was my understanding, the change is logical and consistent with legislative intent.

Note, of course, that this bill does not apply to the ombudsman; that agency is organized under AS 24.55, not AS 24.20.

I am preparing two amendments to SCS CSHB 218(SA) for your use.

If I may be of further assistance, please advise.

RAB:mkr
m3/102

Legislative Ethics Act Establishes Enforcement Procedures

By Joe La Rocca
Part One

In the wake of criminal proceedings against two state senators several years ago, the Alaska Legislature in 1984 enacted a law setting out guidelines for the ethical conduct of legislators and certain legislative employees, and at the same time established a so-called Select Committee on Legislative Ethics to implement it.

The legislature's action was also taken in reaction to a state attorney general's opinion in 1982 saying that unless law governing unethical conduct by public officials were adopted, state attorneys would begin for the first time to enforce harsh common law sanctions in cases of alleged misconduct by public officials.

The Legislative Ethics Law enacted in 1984 establishes a two-pronged process for enforcing the ethical guidelines it prescribes.

One provision enables persons covered by the act, either legislators or certain legislative employees, to ask the Legislative Ethics Committee for an advisory opinion on whether any action they have taken or contemplate taking conforms to the ethics law.

The second provision authorizes anyone to lodge a complaint with the legislative ethics committee against any legislator or legislative employee covered by the act alleging that they have engaged in prohibited conduct.

In adopting the act, the legislature said that it's essential in the conduct of public business that legislators hold the respect and confidence of the public.

And it says that legislators must avoid conduct that even appears to violate the trust the people have placed in them.

The Ethics Committee is composed of three state senators, three members of the State House of Representatives, and one public, or non-legislative member.

Under the act, all of the committee's meeting, deliberations and proceedings pertaining to requests for advisory opinions or complaints against legislators or legislative employees are held in executive, or closed, session.

The act generally governs eight categories of conduct. The first is "conflicts of interest," and prohibits legislators or legislative employees from using public office for private advancement or gain, with certain narrowly defined exceptions.

The second category is "state contracts or leases," and it prohibits persons covered by the act from having an interest in a state contract or lease unless it's under \$1,000; is a standardized contract available to the general public; or is subject to a competitive bidding process.

The third category is "state loans," and prohibits anyone covered by the ethics act from participating in a state program, or receiving a state loan, unless such loans or programs are gen-

erally available to members of the public, are subject to fixed eligibility standards, and the state agency administering them exercises minimal discretion in determining qualification.

The fourth category governed by the legislative ethics law is "interests between public officials," and while it does not prohibit close economic associations involving financial matters between legislators and other public employees, it does require them to disclose those ties.

The fifth category is "gifts," and it prohibits legislators and certain legislative employees from soliciting or receiving a gift if it was intended as a reward or inducement for an official action.

The sixth category is "nepotism," and it prohibits spouses or relatives of legislators from working for pay in the same chamber in which the legislator serves; or in either chamber during the eight month interim between legislative sessions.

The seventh category of conduct governed by the legislative ethics law is "representation" and it requires legislators and certain legislative employees who represent others before a state board or commission for pay to disclose such relationships.

The eighth and final category is "state property and funds," and it prohibits persons covered by the legislative ethics act from using state property, or funds, for private gain.

MEMBERSHIP

Members of the legislative ethics committee are appointed by the presiding officers of the house and senate, subject to a two-thirds vote of each chamber.

Appointment of the one public member is subject to two-thirds approval by the full legislature.

The chairmanship alternates between the house and senate every year.

Under the act, no more than two of the three members from each chamber can be members of the same political party or of the same caucus.

Currently serving on the Legislative Ethics Committee are Senators Don Bennett, a Republican of Fairbanks, who is chairman; Bob Ziegler, a Democrat of Ketchikan, and Dick Ellason, a Republican of Sitka.

The sole public member is retired State Superior Court Judge Tom Stewart of Juneau, a former state legislator and secretary of Alaska's First Constitutional Convention.

Serving on the ethics committee from the House are Representatives Mike Miller, a Democrat of Juneau; Pat Pourchot, a Democrat of Anchorage, and Walt Furnace, a Republican of Anchorage.

COMMITTEE POWERS

The Select Committee on Legislative Ethics created under the 1984 ethics act to implement its provisions gives the seven-member committee the power to subpoena witnesses, compel testimony under oath, and conduct its inquiries under a strict cloak of confidentiality.

Only persons covered by the ethics act — that is, legislators and certain legislative employees — can ask the committee for advisory opinions, pertaining

only to their own conduct.

In other words, one legislator, or a member of the public, cannot ask the committee to issue an advisory opinion about the conduct of another legislator or legislative employee.

However, anyone can file a complaint with the committee alleging illegal and unethical conduct by persons covered by the act — that is, legislators and certain legislative employees.

When a person covered by the act asks the committee for an advisory opinion on whether he or she has done, or contemplates doing, something that may be illegal or unethical, the committee must issue an opinion within 30 days, subject to a 10-day extension, if necessary.

Complaints alleging violations of the ethics law can be investigated by the committee only if the alleged violations occurred within the two prior years.

Complaints must be in writing and signed under oath.

The committee must then notify the person or persons against whom complaints are lodged, and give them an opportunity to answer the allegations.

If the committee decides that a complaint is unjustified, it can dismiss it.

Under the act, it is a felony for anyone to lodge a false accusation against anyone else. That means that anyone filing a complaint with the committee which is dismissed, or investigated and found not to be valid, is subject to criminal prosecution.

GOVERNOR'S STANCE

When the legislature passed the ethics law in 1984, Governor Bill Sheffield refused to sign it, but allowed it to become law without his signature.

One of his objections to it was the provision making it a felony to lodge a false accusation with the committee.

In his letter to legislative leaders explaining why he declined to sign the law, Sheffield said the felony penalty provision is probably unconstitutional, because it may impermissibly abridge freedom of speech.

The governor pointed out that U.S. Supreme Court rulings strictly limit the basis for litigation by public officials over criticism of their official conduct.

If the ethics committee issues an advisory opinion which concludes that the action taken or contemplated by the person who asked for it violates state ethics law, that legislator or legislative employee is expected, but not required, to abide by the opinion.

But if he or she does not comply, the committee or some other person is free to initiate a complaint which can result in a recommendation to the full legislature that that person be disciplined.

In his letter, the governor also expressed objection to that feature of the ethics law, which allows legislators with a clear conflict of interest to resign their positions; divest themselves of the conflicting interest; or publicly disclose it.

In other words, so long as they disclose the conflict of interest, they can under the law continue to induce it. Said the Governor in his non-veto message: "This provision,

allows legislators to choose simple disclosure of the law, but it probably will do nothing to cure the conflict."

He added: "I can understand why part-time citizen legislators may need this escape clause in the law, but I doubt it will help enhance respect and confidence in the legislature by members of the public."

One important feature of the ethics law is that it authorizes only the legislature to impose disciplinary measures or penalties upon other legislators. That's in keeping with a provision in the state constitution which gives the legislature the exclusive power to judge the conduct of its members and, if it's deemed necessary, to discipline them.

NO COMPLAINTS

It's noteworthy that since the Ethics Act was adopted, and the committee began operations in mid-1984, about a dozen requests for advisory opinions have been filed with the committee, but not a single complaint has been lodged.

One of the ethics committee members, Representative Pat Pourchot, D-Anchorage, introduced legislation earlier this year which proposed, among other things, to reduce the penalty for lodging a false accusation with the committee from a felony to a misdemeanor.

Pourchot contends that the stiff penalty for lodging false accusations with the committee works as a disincentive to lodging complaints, effectively rendering the complaint process inoperable.

While his bill passed the House unanimously, it was buried in a Senate committee by senator who are opposed to another of its main provisions proposing to expand the number of public — or non-legislator — members of the ethics committee from one to three.

That issue was one of the most controversial during the debate over the ethics law in 1984, and that battle continues.

Debate over the 1984 law actually began in 1983, but the failure of the House and Senate to reach a compromise on the issue forestalled the legislation that year.

PUBLIC MEMBERS

The lines of battle were fairly clear-cut.

The House leadership wanted three public members on the committee, while the Senate leadership wanted none.

However, with the attorney general's 1982 opinion threatening to impose common law sanctions upon abuses of public office hanging over their heads, the House and Senate reached a compromise in 1984 providing for one public member on the committee.

Although the six legislative members — three from the House and three from the Senate — were appointed to the committee by mid-1984, the House and Senate could not reach an agreement on the appointment of a public member until 1985.

By that time, the committee had held four meetings and issued five of the nine advisory opinions it has formulated so far.

When the legislature convened last January, it unani-

mously approved the appointment of retired State Superior Court Judge Tom Stewart as the first public member of the ethics committee.

Since, then, the committee has met four times, and issued four advisory opinions.

Representative Pourchot promptly revived the issue of public membership in 1985 by introducing a measure, House Bill 218, which would, among other things, increase the number of public members on the committee from one to three.

While his bill passed the House unanimously, it never reached the floor of the Senate for a vote, and remains buried in a Senate committee.

The House argues that unless there is a substantial public presence on the committee, it would be perceived as a lapdog, rather than a watchdog, of legislative ethics.

The Senate, on the other hand, contends that giving non-legislators potential control over the decisions of the committee would encroach upon the legislature's exclusive constitutional power to judge the conduct of its members.

JUDGE STEWART

The only person directly involved in the operation of the ethics committee and the implementation of the ethics law who has not commented publicly on the public membership issue so far, is the sole public member of the committee, Judge Stewart.

Besides being a Retired Superior Court Jurist, Judge Stewart is a former state legislator, and was secretary of the first convention which drafted Alaska's state constitution.

Judge Stewart disagrees with those who say additional public membership would encroach upon the constitutional prerogatives of the legislature.

In a recent interview, he pointed out that even if there were three public members, they would still be outnumbered by the six legislative members, so they would not be in a position to control its decisions.

But even if they were, Judge Stewart said, it's clear that the ethics committee can only recommend to the legislature that it take disciplinary action against a legislator.

Any decision, Judge Stewart points out, is up to the legislature as a whole.


With an election year coming up, and in the wake of last

Continued on page 12

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Legislative Ethics Act . . .

—Continued from page 3

summer's failed impeachment hearings involving the governor, the ethics issue is almost certain to be addressed in the upcoming session of the legislature, along with Representative Pourchot's proposed amendments to the Legislative Ethics Act.

So it's likely that the question of adding public members to the ethics committee will be debated, if not resolved, in the legislature next year.

SECRET PROCESS

During the year and a half since the enactment of the Legislative Ethics Law, which created the Select Committee on Legislative Ethics to implement it, both have gotten little attention from the news media or the general public.

Part of that is due to the apathy of Alaska's news media which have failed to take an initiative in dealing with them.

But it also stems from the systemic secrecy of the process, which was expressly designed by the legislature to discourage public access to the ethic committee's activities, or information concerning them, by wrapping them in a statutory cloak of confidentiality.

In his letter to legislative leaders in 1984 advising them that he had allowed the ethics bill to become law without his signature, Governor Bill Sheffield said he objected to, among other things, the detailed restrictions on the disclosure of information gathered by the Legislative Ethics Committee.

Said the governor: "While these restrictions underscore the seriousness with which the Special Select Committee on Legislative Ethics must conduct its business, limited disclosure of information — or misinformation — may fuel public mistrust and suspicion of public officials."

If the governor's prophecy has failed so far to become manifest, it may be simply that the general public is largely unaware of the existence and covert operations of the legislative ethics committee because of the news media's failure to expose them.

The only real exception to the news blackout of the committee's activities arose last January when it issued an advisory opinion requested by one of its members, Representative Walt Furnace, a Republican of

Anchorage, pertaining to a perceived conflict of interest on his part.

But the publicity surrounding that incident arose independently of the committee's operations because Representative Furnace's perceived conflict of interest had already attracted the attention of the Anchorage news media.

STATE CONTRACT

Under the ethics law, all identities, or material which could point to the identity of persons involved in the committee's advisory opinions, must be deleted, so it's typically not possible to determine who the subjects are.

However, in Rep. Furnace's case, there had already been media reports concerning his perceived conflict of interest, so that when the advisory opinion pertaining to him was issued by the committee last January, his involvement was already widely known.

It centered around an \$85,000 state contract for professional services awarded in 1984 to a non-profit corporation in which Rep. Furnace has, or had, a financial interest.

Under the Legislative Ethics Act, persons covered by it are prohibited from holding state leases or contracts except under three conditions: the exceptions are contracts for amounts under \$1,000; contracts which are subject to competitive bidding procedures; and standardized contracts which were developed under publicly established guidelines, and are generally available to the public.

In its advisory opinion, the ethics committee concluded that while the first two exceptions did not apply in Rep. Furnace's case, the third did, and advised him that it would be acceptable for the corporation which he serves, or served, as a member of the board of directors, and as a part-time financial consultant, to be awarded the \$85 thousand dollar state contract.

In reaching its decision, the committee equated standardized contracts for professional services, with construction contracts awarded under the state's competitive bidding law when, in fact, they are not the same, and it required a tortured interpretation of the two mutually exclusive contracting processes to purport they are analogous.

Technical inconsistencies aside, the committee also failed to consider in Representative Furnace's case the far more compelling ethical question of whether any state agency would be unduly influenced — when deciding between applicants for a large state grant — by the fact that one of them is a member of the legislature; a ranking member of the majority; and a majority member of the house finance committee, which has a leading role in formulating the budgets of state agencies.

Apart from the substance of the committee's decision in Representative Furnace's case, the method it used to reach its decision clearly violated the very ethics law the committee is charged with implementing.

DISQUALIFIED

Under the Legislative Ethics Act, anyone covered by it — that is, legislators and certain legislative employees — can ask the Select Committee on Legislative Ethics for an advisory opinion on whether any action they have taken, or contemplate taking may be unethical or illegal. If a legislator seeking an advisory opinion happens to be a member of the Ethics Committee, then under the act, he or she is disqualified from participating in the committee's proceedings pertaining to his or her request.

And when any committee member is disqualified under that provision, the ethics law further requires the presiding officer of that member's chamber to appoint another legislator to sit on the committee for the purposes of that proceedings.

But that requirement was not followed in the case of Representative Furnace, a member of the ethics committee, who had

asked the committee for an advisory opinion on a perceived conflict of interest involving himself.

Instead, Rep. Furnace was excused from the meeting at which the committee rendered a decision on his request for an advisory opinion, in the absence of the substitute member required by the Ethics Law.

The committee approved the advisory opinion clearing Furnace of any conflict of interest in the award of an \$85,000 contract to a company in which he had a financial stake, with only four of seven members present, since Senator Bob Mulcahey, a Republican of Kodiak, was absent; Furnace was excused; and a public member had not yet been appointed to the committee.

LAST MEETING

That meeting took place on January 13th of this year, the day before the 1985 legislature convened.

It was the last meeting of the Ethics Committee as it was constituted under the 1983-84 legislature, so it was the final meeting for two members who were not re-elected to their seats in the legislature — Senator Mulcahey and Representative Ramona Barnes, an Anchorage Republican, who at that time was the chairperson of the Ethics Committee.

When I asked the committee's chief staff aide why the committee did not follow the law in Representative Furnace's case, he said that appointing a substitute member to sit on that case would have required waiting for the 1985 legislature to convene the following day, so that the house speaker could name, and the house could vote on a replacement for Rep. Furnace.

At the same time, he said,

another House member would have to be appointed to replace outgoing Representative Barnes; another would have to be appointed from the Senate to replace outgoing Senator Mulcahey; a newly-appointed public member would have to be confirmed by the House and Senate; and the newly-constituted committee, with four new members, would have to fully briefed on Representative Furnace's case.

So the committee decided, instead, the aide said, to proceed in violation of the legal requirement.

The aide noted that the situation disclosed a mechanical flaw in the ethics statute, which does not provide for the appointment of substitute members during the interim when the legislature is not in session in the event of a conflict involving a committee member.

While the committee and its members are expressly charged by the ethics statute with recommending legislation they consider desirable or necessary, neither introduced an amendment in the 1985 legislature which would remedy that acknowledged flaw in the statute.

In finding that Representative Furnace qualified for the state contract under one of the three exceptions allowed by the law, the committee said in its advisory opinion that it believed that — quote — "The language of this exception does not accurately reflect the intent of the legislature in enacting it."

The legislature "is" often accused of not knowing what it's doing. But this may be the first time its apologists have admitted it.

(To Be Continued)

Court . . .

—Continued from page 6

arrival from California, and opened pursuant to a warrant obtained shortly thereafter.

The seizure occurred based on the "positive alert" of a narcotics detection dog that indicated the presence of drugs in Pooley's suitcases. The luggage was subjected to the dog sniff search in Anchorage based on a tip from agents of the federal bureau of narcotic enforcement in California, who suspected Pooley of conveying drugs to Alaska.

The Alaska Court of Appeals, in an opinion by Chief Judge Alexander O. Bryner, held that the exposure of luggage to a drug detection dog is a search under the Alaska Constitution. The search, however, is "minimally intrusive," and is therefore justified if the police have a reasonable suspicion that drugs may be present in the container and that the drugs are being illegally imported to Alaska or are being illegally possessed for distribution.

The Court of Appeals affirmed Pooley's conviction.

Restaurant Lease

Dispute Reversed

The Alaska Supreme Court has ruled that the buyers of a restaurant business will have another chance to show they did not get the lease they bargained for.

Alfred and Georgine Winn purchased the Country Kitchen Restaurant from Harold and Helen Mannhalter in 1978, through Area, Inc. Realtors. One of the business assets was a lease purported to expire in 1986.

The Hayes-Teekel Partnership bought the building after a nonjudicial deed of trust foreclosure sale in 1980. It eventually informed the Winns it believed the lease expired in 1981. The Winns sued the Mannhalters and the real estate broker and agents alleging breach of contract and negligence.

Superior Court Judge James A. Hanson dismissed the Winns' claims. He entered judgment for the Mannhalters against the Winns for the purchase price and against Area, Inc. Realtors for its commission. Everyone appealed.

The high court affirmed in part, reversed in part and remanded. In an opinion by Justice Allen T. Compton, the court concluded that the Winns shall have the chance to prove that, although the lease survived the 1980 deed of trust foreclosure, it was not extended to 1986.

The court further ruled that the Mannhalters were under no duty to convey marketable title, provide title insurance, or protect the Winns' right to possess-

ion. The Winns' negligence case against the realtor was also reversed.

The high court affirmed the Mannhalters' judgment against the realtor but vacated the damage award, concluding that forfeiture of the realtor's commission was not the correct measure of damages.

DWI Conviction Upheld

The Alaska Court of Appeals has upheld the DWI conviction of William Van Wormer. Van Wormer pled nolo contendere to driving with a blood alcohol level of .10 or higher.

Van Wormer argued before Valdez Superior Court Judge John Bosshard III that the state denied him his right to counsel by telling him that he had no right to have "somebody present" prior to taking the breathalyzer test.

Judge Bosshard ruled that the request was not specifically for an attorney and refused to suppress the evidence against Van Wormer. The Court of Appeals affirmed.

In an opinion by Judge James K. Singleton, the court ruled that Judge Bosshard's findings were not clearly erroneous, and that when an ambiguous statement is made it is up to the trial judge to decide whether the statement constituted a request for counsel.

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ALL-ALASKA WEEKLY

Another Statewide Race Gets Crowded . . .

Nine Candidates Throw Hats In Race for Lt. Governor

State GOP Chairman Ken Stout Latest Filer for No. 2 Spot



H. Pappy Moss, of Delta Junctions, Republican candidate for Lieutenant Governor.



Edna DeVries, of Palmer, Republican candidate for Lieutenant Governor.



Nels Anderson, of Dillingham, Democratic candidate for Lieutenant Governor.

Ross, Eaton Also Possible Contenders

By Tom Snapp
Editor

Not only has the race for governor at this early date become crowded with ten candidates already filed, but the race for lieutenant governor became crowded this week with nine candidates either filed for the number 2 spot or having announced their intentions to file for it.

reported to be waiting in the wings. Some of those in the wing are expected to make their decisions soon on whether or not to throw their hats in the races — to take advantage of gathering campaign funds in two years, while other potential candidates apparently are going to wait until next spring, to see how the races shape up, before announcing their intentions.

No less than six candidates made it official the past week that they were running for the No. 2 spot. Lt. Gov. Stephen McAlpine, who had filed for re-election in 1984, indicated he was going to stick with lieutenant governor and was not going to try for the governorship. Former Anchorage Assembly chairwoman Jane Angvik filed for the lieutenant governor nomination, as did former state legislator Nels Anderson, of Dillingham. Anderson served four terms in the State House and was appointed in 1982 to fill the vacated seat of George Hohman, who was removed from the office after a conviction of bribery. State Senate President Don Bennett, who had told the Farthest North Press Club he would file either for governor or lieutenant governor by Dec. 12, told a press conference Thursday in Anchorage he had opted to run for the No. 2 position. Also filing for lieutenant governor on the Republican ticket was State Senator Edna De Vries of Palmer.

The latest candidate to file for lieutenant governor is State Republican Chairman Ken Stout. He filed Monday, indicating he was stepping down as head of the State GOP, to be replaced by the former mayor of Nome, Leo Rasmussen, the current vice-chairman.

Former State Senator Pappy Moss, of Delta Junction, filed early as a candidate for lieutenant governor on the Republican ticket. A former Democrat, he switched to the Republican party and was defeated in the primary by Jack Coghill, of Nenana, who went on to win the senate seat in the general election.

Michael Beirne, an Anchorage physician and former legislator, also filed earlier this month for the GOP nomination. And Ed Hoch, of Fairbanks, filed earlier this month for the Libertarian nomination.

Two other potential candidates for the Republican nomination for lieutenant governor are Perry Eaton,

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analysis

Little in Ethics Act, Implementation To Suggest Purpose Being Fulfilled

By Joe La Rocca
Part II

During the debate over the legislative ethics law in 1983 and 84, the threshold issue was whether ethical conduct can, or should, be legislated.

The prevailing conventional wisdom against that proposition held that either public officials are honest, or they are not, and nothing would change that.

In an interview recently, retired state Superior Court Judge Tom Stewart of Juneau, the first and only public member to be appointed to the legislative ethics committee, defended the ethics law.

Judge Stewart, a former Alaska legislator and secretary to the convention which drafted the state constitution nearly 30 years ago, said that — in his words — "the very existence of the law is helpful in making both the legislature and the public sensitive to the deep concern that exists with the legislature and the public . . . that ethical problems can be diminished."

He added: I think the existence of the act is healthy in terms of keeping that sensitivity

alive, and making . . . legislators think twice about what they're doing, to be sure that they are operating within an ethical realm.

Said Judge Stewart: "This isn't to say that (the law) is going to stop people from doing unethical things, but I think it gives them a healthy pause, helps them to do so, and I'm in favor of it."

COMPROMISE

The Legislative Ethics Act of 1984, like most controversial enactments, was a compromise which balanced the interests of those who wanted a tough, open ethics law, and those who wanted none.

The result, in the opinion of some, was a watered down version which is largely cosmetic.

The major effect at its passage was to remove the attorney general's threat to enforce the much harsher ethical standards embodied in common law governing abuses of public office.

One of the statutory barriers inhibiting public access to the ethics committee's actions is a curious provision in the Ethics Law which authorizes the publication and release of advisory

opinions only twice each year — once when the legislature convenes in January, and again at the end of June — even though the committee is required to issue advisory opinions to those who request them within 30 to 40 days.

So far, the committee has issued two semi-annual reports containing nine advisory opinions. There have been no decisions on formal complaints, because, according to a committee aide, no complaints have been filed.

And while the committee is required to issue advisory opinions upon request, there is no requirement for it to investigate any complaints lodged, which can be summarily dismissed by the committee in closed session without any public knowledge of the filing, or the nature, of the complaints, or why they were dismissed.

Although early discussion, debate and drafts of the proposed ethics law also encompassed standards of conduct for state public officials in the executive branch, wide differ-

—Continued on page 7

Legislative Ethics Committee . . .

—Continued from Page 1

ences of opinion prompted the legislature to narrow the scope of the law to apply only to legislators and certain legislative employees.

It was assumed that the Sheffield administration would independently pursue a code of ethics governing executive employees, because they are also subject to the attorney general's 1982 opinion, applying common law sanctions to abuses of public office.

However, that effort soon petered out, although there are now indications that it has been revived in the wake of last summer's failed impeachment proceedings involving the governor.

CONFLICTS OF INTEREST

Among the activities prohibited by the legislative ethics act of 1984 are conflicts between a legislator's public and private interests.

Conflicts of interest are generally defined in the act as official actions such as introducing, opposing, or voting on legislation that could substantially benefit or harm a financial matter in which the legislator has a direct or indirect private interest.

In addition to those kinds of conflicts of interest, the act also prohibits legislators from accepting campaign contributions raised at events held in Juneau during the legislative session, except for Juneau lawmakers.

That provision stemmed from a controversial practice initiated in 1980 when, for the first time, local democrats and the democratic leadership in the state house of representatives formed a legislative fund raising committee to support democratic candidates in upcoming legislative races around the state.

That fund raising effort was launched towards the end of the 1980 session, when most of the legislation being considered for action that year was pending in the house finance committee.

The practice came to light when a member of the press came across a letter from the legislative fundraising committee to the lobbyist for the liquor industry asking him to contribute alcoholic beverages for a fundraising event it was sponsoring.

At the time, the legislature was considering legislation, bitterly opposed by the liquor industry, which would increase the state excise tax on alcoholic beverages.

Among the members of the fundraising committee were the speaker of the house, and several members of the house finance committee, which would be instrumental in the passage or defeat of the proposed liquor tax increase.

Lobbyists in Juneau complained about the events sponsored by the legislative fundraising committee, particularly towards the end of the session, when many bills in which the lobbyists were interested tended to accumulate in the finance committees.

The lobbyists said that the timing of the fund raisers was calculated to compel them to buy tickets to the fundraisers, or risk adverse action on the bills in which they had an interest.

The same fundraising tactics

were also being quietly employed on an individual basis by certain influential Republican state senators serving on the Finance Committee, who were holding events in Juneau and other communities during, and especially towards the end of the legislative session.

DEBATE

While the controversy which erupted over the disclosure of that practice curbed it or, in some cases, forced it underground, where it was less effective, it did not halt it completely, and that practice became one of the issues which was extensively addressed during the debate over the legislative ethics act in 1983 and 84.

The result was a provision in the 1984 act which makes it a prohibited conflict of interest for a member of the legislature — except those from Juneau — to accept money from an event held in the capital city during the session, if a substantial purpose of the event is to raise money on behalf of a legislator for campaign purposes, or for other legislative political purposes.

Shortly after the legislative ethics act became law last year, a legislator anonymously asked the select committee on legislative ethics for an advisory opinion interpreting the fundraising provisions of the act.

Among other things, the legislator wanted to know whether that provision would prevent lawmakers or a political organization from selling tickets to fundraisers not held in Juneau, or for raffles held in Juneau, or elsewhere.

In a lengthy and detailed advisory opinion, the legislative ethics committee concluded that the ethics act does not prohibit legislators from selling tickets in Juneau during the session for raffles, or for fundraising events held outside of Juneau.

The ethics committee ruled — among other things — that a "raffle" is not an "event" under the ethics act, so legislators would be permitted to sell tickets to raffles held in Juneau during the legislative session to raise campaign funds for themselves or other candidates.

In short, the ethics act, in tandem with its interpretation of those provisions by the ethics committee, effectively authorized the continuation of the same fundraising abuses from which they sprang.

"EVENTS" VS. "RAFFLES"
Lobbyists argue that it's immaterial whether the fundraisers for which they asked to buy tickets are "events" such as receptions, dinners or cocktail parties; or merely "raffles." The effect, they say, is the same, since most of those who do purchase tickets to events have no intention of attending those events.

They buy the tickets in order to protect legislation pending before the legislature, in which they have an interest, from action which is inimical to their interests.

And they point out that continuing to allow fundraisers outside Juneau during the session has the same effect. They are still asked by legislators during the session in Juneau, and are compelled to buy tickets to events outside of Juneau which they have no intention of attending.

Critics say that the principal evil of that fundraising practice, which has now been condoned by the ethics committee, is that it gives certain key legislators the ability to attract campaign funds for themselves or other candidates they support, by manipulating legislation, over which they exercise a great deal of influence or control, irrespective of the legislation's merits, or lack thereof.

They say that disinterested persons could readily infer from the ethics committee's interpretation of the fundraising provisions of the ethics act that it has abrogated, rather than upheld, its charge under the act to "avoid conduct that even appears to violate the trust that people have placed in them."

COMPLAINTS

Under the Legislative Ethics Act, the Select Committee on Legislative Ethics, consisting of six legislators and one public member, is authorized to investigate questions arising about the conduct of legislators and certain legislative employees covered by the act.

The committee can look into, and issue advisory opinions on, requests filed by legislators to determine whether actions they have taken, or contemplate taking, conform to ethical standards under the law.

The committee is also empowered to investigate complaints filed by anyone else about the actions of legislators or certain legislative employees.

So far about a dozen requests for advisory opinions have been filed with and disposed of, by the committee, but no complaints have been filed.

One provision of the ethics law prohibits the filing or consideration of complaints against legislators within a 60 day period preceding a state election, unless two-thirds of the committee consents.

The express purpose of that provision is to prevent critics or adversaries of incumbent legislators from using or exploiting the ethics committee process as a campaign weapon against them.

But as it is drafted, the ethics law protects only those legislators who belong to the party or caucus which happens to be in power in either the House or Senate.

Since the law allows for the House and Senate leadership to appoint five of the seven members to the committee from the ranks of the party in power, the majority party controls decisions about whether a complaint concerning a minority member could be filed or processed during the 60-day period prior to the elections.

In short, the ethics law protects members of the party or caucus in power from abuse or exploitation of the committee's

power to investigate complaints, prior to elections, but not minority members.

CHIEF JUSTICE

One member of the ethics committee, Rep. Pat Pourchet, a Democrat of Anchorage, introduced legislation during the 1985 session which would, among other things, remove the power of the legislature to appoint members to the ethics committee, and bestow it instead upon the chief justice of the state supreme court.

Pourchet's bill passed the house unanimously earlier this year, but has not moved from committee in the Senate, mainly because of opposition in the Senate to another provision which would increase the number of public, or non-legislator members, on the ethics committee from one to three.

The first and only public member appointed to the committee, retired state superior court judge Tom Stewart, said in an interview recently that he supports Pourchet's proposal to increase public membership on the committee.

But Judge Stewart said he disagrees with the idea of shifting the power to appoint the members of the ethics committee from the legislature to the chief justice, because of potential constitutional clashes before the two branched of government.

Judge Stewart said he thinks it would be more appropriate to delegate that authority instead to the governor, who is already in the business of appointing a wide array of members of boards and commissions,

and who has the staff and resources to select and screen prospective appointees.

Judge Stewart's suggestion is not likely to find much favor in the legislature, particularly in the Senate which has jealously guarded against any dilution of the legislature's power to regulate the ethical conduct of its members.

PRIVATE GAIN

One of the main purposes of the Legislative Ethics Act is to deter legislators from using their public offices to enrich themselves at public expense.

The act says that it is a conflict of interest occurs when a legislator takes or withholds official action, or exerts official influence that could substantially benefit or harm a financial matter in which he or she has a direct or indirect interest.

On its face, that provision would appear to prohibit a legislator from voting on the budget of a state agency for which his or her spouse works.

Clearly, voting against, or to reduce, a state agency budget for which his or her spouse works officially influences action which could affect the spouse's job, particularly if it were decided by one vote.

But when that question was brought before the Select Committee on Legislative Ethics for a ruling on whether a legislator who was both a member of the finance committee and the subcommittee which considered the budget of the agency for which the legislator's spouse worked, the ethics committee

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Legislative Ethics Committee . . .

—Continued from page 7

ruling that there was no conflict, even though their earnings were combined.

More specifically, the ethics committee ruled that it would be appropriate for the legislator to refrain as a member of the finance committee or subcommittee from voting on the particular line item which funded the spouse's position; but there was no reason to refrain from voting on other matters affecting that agency, or from voting on its budget, of which that line item was only a small part.

The advisory opinion issued by the ethics committee does not identify either the legislator, the spouse or the agency involved, as that information is confidential under the ethics act.

In its opinion, the ethics committee pointed out that legislators should avoid situations which might prevent them from participating in the consideration of the state budgetary matters.

But by the same token, it said, "the committee should not impose artificial restrictions on voting in this area merely to protect the sensibilities of those persons who invariably perceive the appearance of impropriety, even when no real appearance of impropriety or conflict actually exists; or when the potential for conflict is clearly outweighed by other considerations."

The committee added that while the potential financial benefit to the legislator would exist, one has to assume that a legislator's judgment in voting on a \$2 billion operating budget would not be affected by a potential personal benefit of several thousand dollars contained in it.

To assume otherwise, the committee said, would bring the legislative process to a halt, in that a large number of legislators, like many other state residents, are benefitted to some degree by the passage of the operating budget.

The advisory opinion in this case, like several others similar to it on which the committee has ruled previously, dwells singlemindedly upon the question of whether a legislator's judgment would be influenced by the indirect personal financial benefit which would or would not accrue to him or her as a result of voting one way or

the other.

But it appears to ignore the equally compelling ethical question of whether the agency's decision to hire or retain the legislator's spouse would be influenced by the fact that the legislator is in a position to act favorably or unfavorably upon that agency's budget.

NON-BINDING

Soon after the select committee on legislative ethics created by the ethics act became operative in mid-1984, it was asked to address two questions dealing with the status of the advisory opinions. It is authorized to issue concerning the ethical conduct of legislators.

One question was whether an advisory opinion pertaining to one legislator is binding on another legislator in similar circumstances.

The second was whether advisory opinions issued by one ethics committee are binding on future ethics committees.

In its response, the ethics committee pointed out that the act does not require even the person seeking an advisory opinion to comply with it, once one is issued.

If an advisory opinion concludes that a violation of ethical standards has occurred, the committee said, the person who sought the opinion presumably will — but is not required to — take steps to rectify the violation.

But if he or she does not, then the ethics committee, or anyone else, is free to initiate a formal complaint triggering an investigation by the committee into the alleged violation.

If the allegations are substantiated, then the committee can order the legislator involved to correct the violation, or face disciplinary action by the full legislature. The committee said its "authority to order a person to rectify violations of ethical standards only arises after the filing of a formal complaint, not after the filing of a request for an advisory opinion."

In short, it ruled, an advisory opinion is not binding on either the legislator who requests it, or another legislator in the same or similar circumstances.

GUIDANCE

In response to the second question of whether the ethics

committee's advisory opinions are binding on a future ethics committee, the current ethics panel ruled that they are not.

It pointed out that a subsequent committee may interpret the ethics law differently than an earlier one. Said the committee: "In issuing advisory opinions over the years, the committee will gradually build up a body of decisions which can provide guidance to covered persons in a variety of circumstances. But much as a supreme court can overturn a precedent set by itself in the past, a future ethics committee may issue advisory opinions which overturn the principles set forth in earlier opinions."

At this point, the ethics committee appears to contradict itself. It says, on one hand, that advisory opinions are not binding on the legislators who request them. But on the other hand, it says in response to the second question — that an advisory opinion issued by one ethics committee is binding on future ethics committees as it relates to the specific person for whom it was issued.

For example, the committee said, if an ethics committee appointed by one legislature were to issue an advisory opinion telling the legislator who asked for it that certain conduct was acceptable, the ethics committee appointed by a succeeding legislature could not exercise sanctions against him or her for having relied on the opinion, merely because one committee believed the other committee wrongly interpreted the ethics law.

TEN OPINIONS

During the year and a half since the Select Committee on Legislative Ethics created by the Legislative Ethics Act of 1984 has been in operation, it has issued a total of 10 advisory opinions addressing questions anonymously raised by legislators concerning the ethical implications of certain legislative activities or conduct.

However, there are technically only eight advisory opinions of substance, because two were opinions advising the legislators who asked for them that the committee could not issue opinions to them concerning other legislators.

Under the Ethics Act, legislators or certain legislative employees covered by the act can request advisory opinions pertaining only to themselves.

Of the eight substantive advisory opinions issued by the ethics committee so far, three of them have dealt with questions involving political fundraising; two pertain to state contract awards in which the legislators who sought them had a financial stake; one involved the sale of game-of-chance tickets by the legislator for charitable purposes; one addressed a case in which a member of the Finance Committee voted on the budget of a state agency for which the legislator's spouse worked; and the eighth involved a case in which a legislator-attorney asked whether he could ethically introduce legislation possibly affecting the financial affairs of a client.

In all but one of the eight cases, the Ethics Committee

ruled that actions taken or contemplated by the legislators who sought advisory opinions did not constitute a conflict of interest or ethical violation under the Ethics Act.

The sole exception involved the case of the legislator who asked whether he could ethically introduce legislation affecting a client.

In that case the legislator had contemplated the introduction of two bills proposing to change the regulatory authority of the State Dept. of Labor as a result of past litigation between the department and the legislator's client, and asked the committee whether that would be improper.

The committee ruled that the introduction of one of the bills would be inappropriate, but not the other.

NO PUBLIC MEMBER

While the Ethics Act establishing the Select Committee on Legislative Ethics calls for the appointment to the committee of six legislators — three each from the House and Senate — and one public member, it should be noted that the committee operated for about six months, publishing one report embodying four of the eight advisory opinions issued so far, without the required public member.

The first and only public member is retired state superior court judge Tom Stewart of Juneau, who was not appointed to the committee until January of this year, after the 1985 legislature convened.

At that time, the make-up of the committee changed somewhat, as two members were not re-elected to their seats in the legislature.

In general, a comparison of the four advisory opinions issued by the original committee appointed by the previous legislature; and the four issued by the committee appointed by the current legislature does not reveal any compelling distinctions between the two committees' interpretation and implementation of the Ethics Act. It may be noteworthy, however, that the only advisory opinion which identifies a potential conflict of interest on the part of a legislator, and advises against the contemplated action, was issued by the second, or current ethics committee.

Beyond that, both the tone and convoluted rhetorical style of the advisory opinions makes them virtual clones, which appear to have been drafted by the same committee staff person, or persons, probably a lawyer.

CONCLUSIONS AND COMMENTS

Some critics have characterized the legislative ethics law as one which puts the fox to guard the chicken coop, particularly in the absence of a strong public presence on the Ethics Committee.

The advisory opinion issued by the committee in Representative Walt Furnace's case discussed earlier in this analysis betrays the extraordinary lengths to which the committee will go to rationalize a legislator's perceived conflict of interest. And it is more or less typical of most of the other advisory opinions issued to date. They exemplify the circular reasoning that pervades the committee's decisions, carefully framing questions of ethical conduct so that they conform to preconceived answers which condone the conduct that has been questioned.

Because of the time-consuming analysis required to expose the deficiencies of the Legislative Ethics Act and the emerging interpretations and practices which are further undermining it, the Ethics Committee's activities have been largely ignored by Alaska's news media.

In the meantime, with eight substantive advisory opinions issued so far, a growing body of spurious "case law" is being disseminated into the legislature's ethical portfolio which is fiercely at odds with the stated purposes of the Ethics Act.

It says that "It is essential . . . the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust people have placed in them."

There appears to be little in the Ethics Act or its implementation so far to suggest that its high purpose is being fulfilled.

STELLA L. BOLEY

Army Private Stella L. Boley, daughter of Lyle S. Boley Jr. of Soldotna, Alaska, has completed basic training at Fort McClellan.

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SECTIONAL ANALYSIS - CSHB 218 (JUDICIARY)
LEGISLATIVE ETHICS LEGISLATION

This legislation makes several changes to statutes dealing with legislative ethics and the Select Committee on Legislative Ethics.

EXPANSION OF PUBLIC MEMBERSHIP ON THE SELECT COMMITTEE ON
LEGISLATIVE ETHICS
Sections 7 and 8 (pages 3-4)

Public membership on the committee is expanded from one to three people, one of whom would be a former legislator. The three would be selected by the Chief Justice of the Alaska Supreme Court and would be confirmed by a two-thirds vote of each house of the Legislature. Presently, there is one public member on the committee, chosen by two-thirds vote of the House subcommittee and two thirds vote of the Senate subcommittee and ratified by two thirds of the full membership of both houses.

These provisions respond to public sentiment to expand public membership on the Ethics Committee and remove the possibility of charges of "legislative bias" by providing that public members are initially selected by the head of the judicial branch of government.

"FALSE REPORTING" PENALTIES
Section 1 (page 1)

This provision reduces the penalty for "false reporting" of a possible ethics violation from a felony to a misdemeanor. The current penalty has been criticized as extreme and acting as a deterrent to the filing of legitimate complaints of possible violations.

EXPANSION OF THE ETHICS LAW TO ALL LEGISLATIVE EMPLOYEES
Sections 2 and 11 (pages 1 and 5)

This change clarifies that staff employees of individual legislators and committees, range 18 and above, must comply with the provisions of the Ethics Act. Presently, it has been interpreted that the only legislative employees covered by the Ethics Act are those employed by a legislative agency--for example, House Research or the Division of Legal Services. There is no clear rationale for this discrepancy in the current law.

DELETION OF FAMILY EXEMPTION FOR LOBBYIST DISCLOSURE
Section 4 (page 2)

The current Act requires the filing of a notice in the Journal if a person covered by the Act has a "close economic association" with a registered lobbyist unless the lobbyist is a member of the person's immediate family. This section removes this exemption for family members. Similar notice requirements of "close economic association" with supervisors, legislators, and public officials currently do not contain this family member exemption. There is no clear rationale for this discrepancy in the current Act.

REPORTING DEADLINE CHANGES
Sections 3, 4, 5 and 6 (pages 1-3)

The deadlines for reporting "close economic associations," "representations before state agencies" and "conflicts of interest" are changed from the first to the fifth day of the legislative session. These technical changes will hopefully avoid the confusion that faced those covered by the Act, particularly new legislators and staff, at the beginning of this session as they hurried to comply with the provisions of the Ethics Act. Several notices were published in the Journal beyond the first day of this year's session.

Section 3 stipulates that the list of specified loans to persons covered by the Act be reported in the legislative journals by February 5. Although agencies are to provide the lists by February 1, there is currently no deadline for printing loan information in the journals.

CLEAN-UP PROVISIONS
Sections 4, 9 and 10 (pages 2 and 4)

Currently aides covered by the Ethics Statute have to report "close economic associations" with legislators, but the reverse is not required. Section 4 corrects this oversight by requiring legislators to report such associations with covered legislative staff.

Section 9 drops the requirement for the Committee's semi-annual reports to print "informal advisory opinions." The Ethics Committee as a matter of policy does not issue informal advisory opinions. Thus, the current printing requirement is unnecessary.

Section 10 would allow a person elected to the Legislature, but not yet sworn in, to request an advisory opinion from the Ethics Committee. This change will help newly elected legislators understand and comply with ethics requirements reporting deadlines.

SECTIONAL ANALYSIS
LEGISLATIVE ETHICS LEGISLATION, CSHB 218

EXPANSION OF PUBLIC MEMBERSHIP ON THE SELECT COMMITTEE ON LEGISLATIVE ETHICS

Sections 7 and 8

Public membership on the committee is expanded from one to three people. The three would be selected by the Chief Justice of the Alaska Supreme Court and would be confirmed by a two-thirds vote of each house of the Legislature. Presently, there is one public member on the committee, chosen by two-thirds vote of the House subcommittee and two-thirds vote of the Senate subcommittee and ratified by two-thirds of the full membership of both houses.

The provisions in this legislation accommodate public sentiment to expand public membership on the Ethics Committee and remove the possibility of charges of "legislative bias" by providing that public members are initially selected by the head of the judicial branch of government.

FALSE REPORTING

Section 1

This provision reduces the penalty for false reporting of a possible ethics violation from a felony to a misdemeanor. The current penalty has been criticized as extreme and acting as a deterrent to the filing of legitimate complaints of possible violations. It is also ironic that while there exists a felony penalty for "false" accusation, there is no statutory penalty for legislators violating the ethics law.

EXPANSION OF THE ETHICS LAW TO ALL LEGISLATIVE EMPLOYEES

Sections 2 and 11

This change clarifies that staff employees of individual legislators and committees, range 18 and above, must comply with the provisions of the Ethics Act. Presently, it has been interpreted that the only legislative employees covered by the Ethics Act are those employed by a legislative agency--for example, House Research or the Division of Legal Services. There is no clear rationale for this discrepancy in the current law.

DELETION OF FAMILY EXEMPTION FOR LOBBYIST DISCLOSURE
Section 4

The current Act requires the filing of a notice in the Journal if a person covered by the Act has a "close economic association" with a registered lobbyist unless the lobbyist is a member of the person's immediate family. Similar notice requirements of "close economic association" with supervisors, legislators, and public officials currently do not contain this family member exemption.

There is no clear rationale for this discrepancy in the current Act, and section 4 of the bill removes this exemption for family members who are lobbyists.

REPORTING DEADLINES
Sections 3, 4, 5 and 6

The deadlines for reporting "close economic associations," "representations before state agencies" and "conflicts of interest" are changed from the first to the fifth day of the legislative session. These technical changes will hopefully avoid the confusion that faced those covered by the Act, particularly new legislators and staff, at the beginning of both this session and last session as they hurried to comply with the provisions of the Ethics Act. Several notices were published in the Journal beyond the first day of the last two sessions.

Section 3 stipulates that the list of specified loans to persons covered by the Act be reported in the legislative journals by February 5. Although agencies are to provide the lists by February 1, there is currently no deadline for printing loan information in the journals.

CLEAN-UP PROVISIONS
Sections 9 and 10

Section 9 drops the requirement for the Committee's semi-annual reports to print "informal advisory opinions." The Ethics Committee as a matter of policy does not issue informal advisory opinions. Thus, the current printing requirement is unnecessary.

Section 10 would allow a person elected to the Legislature, but not yet sworn in, to request an advisory opinion from the Ethics Committee. Newly elected legislators are most often the individuals in need of conflict advice. This change will help newly elected legislators understand and comply with reporting deadlines.

PROPOSED AMENDMENTS TO CSHB 218 BY REP. POURCHOT

AMENDMENT #1, EXCEPTIONS TO STATE CONTRACT PROHIBITION

The Ethics law currently bars legislators and other covered persons from having an interest in a state contract or lease except in three specific cases: 1) competitive contracts under AS 37.05.230; 2) contracts of less than \$1000; and 3) a "standardized contract" generally available to the public at large.

The Ethics Committee has issued an advisory opinion (#84-6) regarding a legislator having an interest in a company which gets state contracts for professional services. In this opinion the Committee found that the language of the first exception to state contracts was ambiguous. The Committee felt that the Legislature intended to except all competitively bid contracts, yet the citation only refers to the competitively sealed bid process used for "hard dollar" contracts. AS 36.98 covers the competitive "Request for Proposals" (RFPs) process used for professional services.

However, the Committee through a rather tortured analysis concluded that legislators could accept contracts for professional services with the state through the third exception involving a "standardized contract."

The issue was again raised later before a court. The case involved the award of a professional services contract to a company owned by another legislator. In this case the court, citing the Ethics Committee opinion, ruled against an unsuccessful bidder and said that a violation of the state's ethics law had not occurred.

Despite the opinions of the Ethics Committee and the court, the issue remains unclear and may again come up. If RFP-type competitive contracts are not to be allowed, then the words of this amendment should be enacted. The rationale is that while competitive, the process is subjective and favoritism could be charged.

If both "hard-dollar" and RFP contracts, such as for professional services, are to be permitted, then the language of the Act should still be clarified to read "by competitive sealed bid or by competitive sealed proposal" with the AS 37.05.230 citation removed. The rationale permitting these contracts is that we desire a citizen Legislature, that the State is deeply involved with many aspects of the Alaskan economy and that legislators may deal with state contracts in their regular business or work.

AMENDMENT #2, DISCLOSURE OF CLOSE ECONOMIC ASSOCIATION WITH PUBLIC OFFICIALS

Under the Ethics Act legislators and other covered persons must declare a close economic association with legislators, lobbyists, certain staff and certain public officials. "Public officials" are defined as those

in "another branch" if the official has to file a financial disclosure statement.

The Ethics Committee in an advisory opinion (#85-5) concluded that associations with municipal elected officials must be declared. However, it found that the statute was unclear because while municipal elected officials must file financial disclosures under state law, they are not normally considered officials in "another branch." This term is most often used in reference to the executive, judicial, and legislative "branches" of government. The Committee concluded that it was not the intent of the Legislature to exclude municipal elected officials because they were not in another "branch," but rather to include them on the basis of their financial disclosure requirement.

The amendment would simply remove the reference to "another branch" and make disclosures required for close economic associations with all public officials who are required to file financial disclosures under AS 39.50.

AMENDMENT #3, MEMBERSHIP ON THE ETHICS COMMITTEE

The House Judiciary Committee added an amendment to the original bill requiring that one of the three public members must be a former member of the Legislature. It was felt that this would provide valuable experience to the decision-making process.

However, a concern has since been raised that it might be possible for a recently defeated legislator to be appointed who might not be removed enough from the Legislature to escape criticisms of bias, particularly in potential cases or opinions involving his or her opponent.

The amendment would simply require at least a one-year lapse of time for a former legislator to be appointed to the Ethics Committee from the time he or she served in the Legislature.

AMENDMENT #4, TEMPORARY REPLACEMENT OF MEMBERS OF THE ETHICS COMMITTEE

On January 13, 1985, prior to the beginning of the 14th Legislature, the Ethics Committee met to issue an advisory opinion requested by a current member of the Committee. The requesting member excused himself from the discussion and voted on the advisory opinion (#84-6) pursuant to AS 24.60.130(h). That part of the Ethics law also states that in the case of such a disqualification the presiding officer of the member's house shall appoint a temporary replacement for the particular proceedings with the concurrence of two-thirds of the full membership of that house.

The Ethics Committee meets year-round and could have a member disqualified from proceedings, as did occur, during the interim when confirmation of a replacement member is not possible. The amendment would allow the Speaker of the House or the President of the Senate to appoint another member of the Committee in the case of a disqualification when the Legislature is not in session. The temporary appointment would require the concurrence of a majority vote of the other Committee members from the respective house.

A M E N D M E N T

Offered in the House

By Pourchot

TO: CSHB 218 (Judiciary)

Page 1, following line 27, insert:

"* Sec. 3. AS 24.60.040(a) is amended to read:

(a) A person to whom this chapter applies may not be a party to or have an interest in a state contract or lease unless the contract or lease is let by competitive sealed bid [UNDER AS 37.05.230] or the total annual amount of the state contract or lease is \$1,000 or less, or is a standardized contract or lease which was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation or group. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits."

Renumber succeeding bill sections accordingly.

Page 2, lines 21 - 23, delete all material and insert:

"(3) a public official who [IN ANOTHER BRANCH, IF THE PUBLIC OFFICIAL] is required to file a financial disclosure statement under AS 39.50;"

Page 4, line 15, delete all material and insert:

"legislature who has not held office as a member of the legislature for the 12 months before the appointment."

Page 4, following line 15, insert:

"* Sec. 10. AS 24.60.130(h) is amended to read:

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an advisory opinion requested by the member. If the legislature is in session when [WHEN] a legislative member is disqualified under this subsection, the presiding officer of that member's house shall, with the concurrence by roll call vote of two-thirds of the full membership of that house, appoint another member from that house to act as a member of the committee in the proceeding. If the legislature is not in session when a legislative member is disqualified, the presiding officer of the house of which the disqualified legislator is a member shall appoint another member from that house, with the concurrence of a majority vote of the subcommittee of that house, to act as a member of the committee in the proceeding."

Renumber succeeding bill sections accordingly.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

POUCH C (MS-0210)
JUNEAU, ALASKA 99811

(907) 465-2250

February 20, 1986

The Honorable Pat Pourchot
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Pourchot:

Re: HB 218

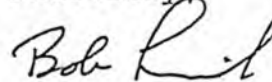
I am responding to your staff's request for additional information regarding Commissioner Eleanor Andrews' memorandum of January 28, 1986.

There are two main competitive procurement methods: (1) competitive sealed bids and (2) competitive sealed proposals. Competitive sealed bids are utilized to acquire commodities, leases or nonprofessional services. Awards are based primarily on an objective low bid process. Competitive sealed proposals are utilized primarily to secure professional services such as architects, economists or other consultants. The award is primarily based on a subjective evaluation of submitted proposals.

If the purpose of HB 218 is to allow legislators to compete for both types of contracts, then the most appropriate change would be [BY COMPETITIVE BID] by competitive sealed bid or competitive sealed proposal.

I hope this is of some assistance.

Sincerely,



Robert J. Link
Director

RJL/mms
15/11D1/0220-01

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF ADMINISTRATION

POUCH C (MS 0200)
JUNEAU, ALASKA 99811
PHONE: (907) 465-2200

OFFICE OF THE COMMISSIONER

January 28, 1986

The Honorable Pat Pourchot
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

JAN 31 1986

Dear Representative Pourchot:

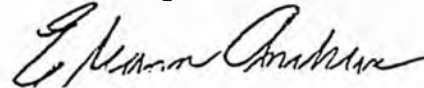
Re: HB 218

We have reviewed your proposed amendment. It appears the intent is to allow applicable persons to have an interest in State contracts or leases if the contract or lease was let through a bid process which is predominantly based on an objective low bid process. If that is true I would suggest you change (BY COMPETITIVE BID) to by competitive sealed bid.

This would not include competitive processes with a large portion of subjective evaluation such as competitive sealed proposals submitted for professional services. This terminology would also conform with the language of the proposed procurement bill--SB 341.

I hope this is of some assistance.

Sincerely,



Eleanor Andrews
Commissioner

EA/RJL/jbh
8/11D2/0128-02
cc: Division of General Services
& Supply
Department of Administration

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Ethics bill shows good faith to public

Rep. Pat Pouchot's bill to revise the legislature's Select Committee on Ethics may not be the last word on legislative ethics but it's an improvement over current law.

Today the ethics committee, which lawmakers created last year to settle conflict-of-interest and other questions of legislative conduct, has seven members: six legislators and only one member of the public. That's an intolerable tilt toward the interests of the legislature.

Rep. Pouchot's bill would change the makeup of the committee to nine members: six legislators and three public citizens. With three public members, Alaskans would be better ensured diverse representation on the committee and a louder voice in its deliberations. Judge Thomas Stewart of Juneau, the lone public member in the committee today, has excellent credentials for the job but he should not be alone.

Rep. Pouchot's bill does not address provisions in the ethics legislation that allow the committee to meet in secret; nor does it dispense with a noxious provision of the law that labels anyone found guilty of making "false accusation" against a legislator a felon.

But there's an extra bonus: All legislative employees above a range 18 on the pay scale — about the wage paid a secretary — would be required to report any close economic ties with legislators or lobbyists. This is especially important because of the influence legislative staff can have on legislation and legislative deliberations.

Legislators are talking of biting the bullet as they approach the final days in Juneau. They couldn't find a better way to demonstrate their seriousness to the public purpose than by approving Rep. Pouchot's bill.



Nazi issue is one of

BOSTON — When the Nazi death camps are discussed, there is a scene that comes to my mind. An SS guard holds the hand of a small child, a 4-year-old, and leads him up the steps to the gas chamber.

We who were not there can never fully know what it was like to experience such horror — to be in a world of absolute evil. But we know one thing from those who were there and survived: They were sustained by the faith that one day the human spirit would prevail, that mankind would see the evil for what it was and condemn it forever.

That is the framework in which to place President Reagan's statement that the German soldiers of World War II "were victims just as surely as the victims in the concentration camps." For what his words tell us is that he sees nothing unique in the evil of the Holocaust; he sees no dif-



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least 2 percent. But he pledged to "protect the poor, elderly and disabled" in his budget.

tery visit

r cable went to Kohl from the National Security Council. But another White House official expressed certainty that Kohl was asked by the National Security Council essentially to ease his insistence that Reagan visit Bitburg.

The weekend effort came after Reagan told Kohl, in a private phone call on Friday, that he would visit the military cemetery at Bitburg, where 47 Waffen SS soldiers are buried among the 2,000 dead.

corrections

Tuesday's Daily News editorial on Rep. Pat Pouchot's bill to revise the legislature's Select Committee on Ethics erroneously stated that under the measure false accusations against a legislator would continue to be a felony. The bill actually specifies that false accusations would become a class A misdemeanor.

In a Daily News story April 16, a chart on local childbirth procedures provided by the Childbirth Education Association did not make clear that the information listed related to Caesarean births only. In addition, the chart did not include the Caesarean rate at the Alaska Native Health Service Hospital, which in 1984 was 12.2 percent, or 97 out of 798 births. In a related story the same day, the word "clinics" was incorrectly used. Native women are encouraged to have their babies at "field hospitals" or the Alaska Native Health Service Hospital.

4/24/85

SPAY OR NEUTER YOUR PET

*This brand new world
is fascinating
but...Isn't there more
to it than this little
space of concrete and
bars?*

*Signed,
Wondering*



Our shelter is full of puppies and kittens born into a world where there simply are not enough homes for them. Even if you find homes for your pet's litter, it means that more of *these* animals go homeless. Don't let your pet contribute to the overpopulation of pet animals...spay or neuter today!

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Kieu

Sunday, May 5, 1985, The Anchorage Times: B-3

Ethics bill eases charge on reporting

by Dean Fosdick
Associated Press

Juneau — A measure that would add two public members to the Select Committee on Legislative Ethics and water down the law's false reporting penalties was approved Saturday by the House, but lawmakers doubt there's enough time to deal with the issue this year.

Senate President Don Bennett, R-Fairbanks and a member of the ethics panel, indicated he supports the measure. But Bennett said that with only nine days left in what is supposed to be a 120-day session, the issue probably will be awaiting lawmakers next session.

The House passed the bill 37-1 after more than an hour of debate. The only vote against the measure came from Rep. Walt Furnace, R-Anchorage. Reconsideration was asked on the measure, which means it could be brought up again before being shipped to the Senate.

Rep. Pat Pourchot, D-Anchorage and a prime sponsor, commended veteran legislators for getting an ethics law on the books after three years of wrangling, but he said it had two major flaws.

"One, there's limited public participation. The public thinks the foxes are in charge of the chicken coop," Pourchot said. "And two, somebody tagged on a clause (last year) that made false accusations a felony. That discourages anyone from filing (a complaint)."

Under this year's bill, the crime of false accusation would be changed from a felony to a misdemeanor.

Also, the makeup of the ethics committee would grow from seven to nine, with three public members to be selected by the chief justice of the Alaska Supreme Court and be ratified by two-thirds of the full membership of the House and Senate.

The panel currently includes one public member along with three people from the House and three from the Senate.

The law also would be amended to apply to any legislative employees over range 18. That classification would include administrative assistants and researchers.

Notes on Ethics Legislation

- * Sets ethical standards in the law for state agencies, boards and commissions, university and railroad employees.
 - Reduces confusion
 - Makes sure everyone knows the rules and sticks to them
 - Enhances public confidence
- * Sets up independent ethics commission.
 - Takes over some of the duties of APOC
 - Seven members
 - Appointed by Gov.; approved by Leg.
 - Only one can be a public official
- * Board will be set up in July of 1986.
 - Advisory opinions open up January 1987
 - Actual rules go into effect July 1987
 - That gives people with conflicts time to work them out
- * Sets up a process for making, processing and hearing complaints about alleged violations of the code.
 - Information gathering and investigations are confidential
 - Formal proceedings are public.
- * If employees are unsure if they have a conflict, they can ask the ethics board for an opinion.
 - Eliminates doubt in the employee's mind
 - Recognizes there are honest or unintended conflicts
 - Sets up an education program on the ethics code for executive branch employees
- * The code is flexible.
 - Ethics board will have flexibility to distinguish between unavoidable or insignificant conflicts and substantial ones that deserve action
- * The code prohibits:
 - Misuse of position for personal gain
 - Accepting gifts that "a reasonable person" would conclude were given to influence a decision
 - Using "insider information" to get a jump on the public
 - Accepting a loan, grant, lease etc., if you can influence the decision to award it
 - Giving advice or assistance to someone who has a matter pending before your agency
 - Having work outside of government that conflicts with your state job
 - After leaving state service, representing (for pay) anyone on a matter in which you had "personal and substantial" involvement while on the state payroll
 - Knowingly helping someone violate the ethics law
- * The code also protects state employees who "blow the whistle" on wrongdoers within government.

Effect of amendments. — The 1985 repealed paragraph (3), which defined amendment, effective January 1, 1986, "municipality."

Sec. 24.55.340. Short title. This chapter may be cited as The Ombudsman Act. (§ 1 ch 32 SLA 1975)

Chapter 60. Standards of Conduct.

Section	Section
10. Legislative findings and purpose	110. Action on a conflict of interest
20. Applicability	120. State property and funds
30. Conflicts of interest	130. Select committee on legislative ethics
40. Contracts or leases	140. Authority of the committee
45. Hazardous waste contracts	150. Duties of the committee
50. State loans	160. Advisory opinions
60. Confidential information	170. Proceedings before the committee
70. Interests between public officials	180. Cooperation by state agencies
80. Gifts	190. Definition of "committee"
90. Nepotism	
100. Representation	

Cross references. — For limitation of applicability of this chapter to acts committed after July 18, 1984, see § 4, ch. 36, SLA 1984 in the Temporary and Special Acts.

Sec. 24.60.010. Legislative findings and purpose. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this act to establish standards of conduct for state legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter. (§ 1 ch 36 SLA 1984)

Sec. 24.60.020. Applicability. (a) This chapter applies to a member of the legislature and to a permanent or temporary employee of an agency of the legislature. This chapter does not apply to

(1) a former member of the legislature or to a person formerly employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature;

(3) a person employed by the legislature or an employee of an agency of the legislature whose compensation is below Step A, Range 18 of the state salary schedule established in AS 39.27.011(a).

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature. They do not supersede or repeal provisions of the criminal laws of the state. (§ 1 ch 36 SLA 1984)

Sec. 24.60.030. Conflicts of interest. (a) A person to whom this chapter applies may not use public office for private advancement or gain.

(b) A conflict of interest exists when a person to whom this chapter applies takes or withholds official action or exerts official influence that could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(c) Conflicts of interest are prohibited but there is not a conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant;

(2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action.

(d) A conflict exists if benefits accrue to a person to whom this chapter applies beyond that which may accrue uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

(e) It is not a conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence within the state, including meals, lodging or transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event;

(4) food and foodstuffs indigenous to the state that are generally shared as a cultural or social norm;

(5) gifts from the person's family; or

(6) gifts of nominal value given by a nonprofit organization in recognition of public service by the recipient.

(f) It is a conflict of interest for a member of the legislature to accept money from an event held within the capital city during the session if a substantial purpose of the event is to raise money on

behalf of the member for state legislative campaign purposes or for other state legislative political purposes.

(g) Members of the legislature elected to represent the capital city are exempt from the requirements of (f) of this section. (§ 1 ch 36 SLA 1984)

Sec. 24.60.040. Contracts or leases. (a) A person to whom this chapter applies may not be a party to or have an interest in a state contract or lease unless the contract or lease is let under AS 37.05.230 or the total annual amount of the state contract or lease is \$1,000 or less, or is a standardized contract or lease which was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation or group. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits.

(b) In this section, "direct or indirect financial benefits" means income, profits or other financial benefits under a state contract, without regard to whether the income, profits or other financial benefits ensue to the person as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor. (§ 1 ch 36 SLA 1984)

Sec. 24.60.045. Hazardous waste contracts. A legislative staff member may not solicit or receive a contract concerning hazardous waste from a state agency or department other than the legislature during the interim following a session in which the person worked. This section applies to legislative staff members Range 18 or higher. In this section "hazardous waste" has the meaning given in AS 46.03.900. (§ 10 ch 77 SLA 1984)

Sec. 24.60.050. State loans. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification. The committee shall issue a list of those state programs and loans from the state that it considers to meet the standards of this paragraph within 30 days after July 19, 1984. It shall annually issue a revised list.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a person to whom this chapter applies may be in a position to influence the loan agency, the committee must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the person shall send a notice of the application to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement or if the applicant is not required to file a disclosure statement will place the notice in a legislative employee loan file that is open to the public. All records relating to a state loan to a person to whom this chapter applies may be disclosed to the committee.

(d) Each February 1, each state loan agency must deliver a listing of all outstanding loans to persons to whom this chapter applies, except for loans described in (a) of this section, to the presiding officer of each house. The list must include the name of the person, the date of issuance and current status of the loan. The list shall be published in the supplemental journal.

(e) The division of legislative audit shall annually review state loans granted to or held by persons to whom this chapter applies to determine whether appropriate procedures were observed in granting or reviewing the loans and whether loan conditions imposed by the lending agency are being enforced. The division shall report its findings to the committee by April 1.

(f) In this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private person. (§ 1 ch 36 SLA 1984)

Sec. 24.60.060. Confidential information. It is a conflict of interest if a person to whom this chapter applies willfully discloses, or knowingly uses, for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties. (§ 1 ch 36 SLA 1984)

Sec. 24.60.070. Interests between public officials. A person to whom this chapter applies shall disclose in the journal of the appropriate body or if the legislature is not in session to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session, the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

- (2) legislators;
- (3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50;
- (4) a registered lobbyist who is not a member of the immediate family of the person. (§ 1 ch 36 SLA 1984)

Sec. 24.60.080. Gifts. Unless otherwise provided for under AS 24.60.030, a person to whom this chapter applies may not solicit a gift in any amount, or accept or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, if the gift was intended as a reward or inducement for an official action by the person. A gift of travel and hospitality within the state received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section, nor are political contributions received and reported under AS 15.13.040. (§ 1 ch 36 SLA 1984)

Sec. 24.60.090. Nepotism. (a) A spouse or an individual other than a spouse who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in either house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother, father, sister, or brother.

(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided.

(c) For purposes of this section, a legislator is not an employee of the legislature. (§ 1 ch 36 SLA 1984)

Sec. 24.60.100. Representation. A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session. (§ 1 ch 36 SLA 1984)

Sec. 24.60.110. Action on a conflict of interest. A legislator who knowingly has a conflict of interest or has been notified of a conflict of interest shall immediately

- (1) resign the conflicting position;
- (2) divest the interest that has resulted in the conflict or potential conflict; or
- (3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session but disclosure does not remove the conflict of interest. (§ 1 ch 36 SLA 1984)

Sec. 24.60.120. State property and funds. A person to whom this chapter applies may not use state property, except property under lease from the state, or state funds for private gain. (§ 1 ch 36 SLA 1984)

Sec. 24.60.130. Select committee on legislative ethics. (a) There is established within the legislative branch of state government the Select Committee on Legislative Ethics.

(b) The committee consists of seven members, in two subcommittees, as follows:

(1) the senate subcommittee consists of three members of the senate, appointed by the president of the senate with the concurrence by roll call vote of two-thirds of the full membership of the senate; and

(2) the house subcommittee consists of three members of the house, appointed by the speaker of the house with the concurrence by roll call vote of two-thirds of the full membership of the house; and

(3) one public member, who is selected by two-thirds of each subcommittee and who is ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house, shall serve on both the full committee and each subcommittee.

(c) No more than two legislative members of each subcommittee may be members of the same political party or the same organizational caucus.

(d) The members of each subcommittee shall elect a chair. The chair selected by the senate subcommittee shall chair the full committee in odd numbered years and the chair selected by the house subcommittee shall chair the full committee in even-numbered years.

(e) A vacancy on the committee shall be filled under (b) of this section.

(f) The committee or a subcommittee may contract for professional services and may employ staff as it considers necessary.

(g) Each member serves for the duration of the legislature during which the member is appointed.

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an advisory opinion requested by the member. When a legislative member is disqualified under this subsection, the presiding officer of that member's house shall, with the concurrence by roll call vote of two-thirds of the full membership of that house, appoint another member from that house to act as a member of the committee in the proceeding. (§ 1 ch 36 SLA 1984)

Sec. 24.60.140. Authority of the committee. (a) The senate subcommittee has authority over proceedings concerning conduct by a member or former member of the senate or a person employed by a member or a committee of the senate.

(b) The house subcommittee has authority over proceedings concerning the conduct by a member or former member of the house or a person employed by a member or a committee of the house.

(c) The full committee has authority

(1) over proceedings concerning the conduct by an employee of an agency of the legislature;

(2) to review any matter arising under this chapter that would result in action being required by both houses of the legislature; and

(3) to issue advisory opinions under AS 24.60.160. (§ 1 ch 36 SLA 1984)

Sec. 24.60.150. Duties of the committee. (a) The committee shall

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

(2) publish semi-annual summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions that have remained confidential.

(b) The committee may

(1) recommend legislation to the legislature the committee considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(2) subpoena witnesses, administer oaths, and take testimony relating to matters before the committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee. (§ 1 ch 36 SLA 1984)

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Sec. 24.60.160. Advisory opinions. The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended by the committee for not more than an additional 10 days if the person requesting the opinion consents. The opinion issued is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential but may be made public if a written request by the person who requested the opinion is filed with the committee. (§ 1 ch 36 SLA 1984)

Sec. 24.60.170. Proceedings before the committee. (a) The committee may initiate, receive and consider complaints alleging a violation of this chapter.

(b) The committee may investigate a violation of this chapter in a proceeding begun within two years after the alleged violation occurs and within one year after termination of state service. Nothing in this subsection bars proceedings against a person who intentionally prevents discovery of a violation of this chapter.

(c) Before the committee may exercise power authorized in this section, the committee shall by resolution supported by a majority vote of the full membership of the committee, define the nature and scope of the inquiry. The committee shall investigate all complaints on a confidential basis.

(d) A proceeding is commenced by the filing of a complaint with the committee. A complaint may be initiated by any person. A complaint shall be in writing and signed under oath by the person making the complaint. No complaint, other than a complaint initiated by at least two-thirds of the members of the committee, may be filed within a period of 60 days preceding a state primary or general election. All proceedings pending before the committee on the 60th day preceding a state primary or general election are stayed until certification of the election unless the proceedings are based on a complaint initiated by at least two-thirds of the members of the committee. The committee shall notify in writing a person against whom a complaint has been filed of a stay of the proceeding. If the person objects in writing to the stay the proceedings shall continue.

(e) The committee shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter. If the committee determines that a complaint does not contain allegations of facts sufficient, if the alleged facts are treated as true, to constitute a



RECORDS CERTIFICATION

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Signature of Camera Operator

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Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 237 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to pension reform; and providing for
7 an effective date."

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

9 * Section 1. AS 14.25.110(a) is amended to read:

10 (a) Subject to AS 14.25.167, a [A] member is eligible for a
11 normal retirement benefit if the member

12 (1) was first hired before July 1, 1975, has attained the
13 age of 55 years, and has at least 15 years of credited service, the
14 last five of which have been membership service;

15 (2) has attained the age of 55 years and has at least eight
16 years of membership service;

17 (3) has attained the age of 55 years, has at least five
18 years of membership service, and has at least three years of Alaska
19 BIA service;

20 (4) has at least 25 years of credited service, the last
21 five of which have been membership service;

22 (5) has at least 20 years of membership service; or

23 (6) has at least 20 years of combined membership service
24 and Alaska BIA service, the last five of which have been membership
25 service.

26 * Sec. 2. AS 14.25.110(b) is amended to read:

27 (b) Subject to AS 14.25.167, a [A] member is eligible for an
28 early retirement benefit upon completing any one of the service re-
29 quirements in (a)(1), (2), or (3) of this section and attaining the

1 age of 50 years.

2 * Sec. 3. AS 14.25.125(a) is amended to read:

3 (a) Subject to AS 14.25.167, a [A] member is eligible for a
4 normal retirement salary at age 55 with at least two years membership
5 service if the member also is eligible for a normal retirement benefit
6 under the public employees' retirement system (AS 39.35).

7 * Sec. 4. AS 14.25.125(b) is amended to read:

8 (b) Subject to AS 14.25.167, a [A] member is eligible for an
9 early retirement salary at age 50 with at least two years of member-
10 ship service if the member also is eligible for an early retirement
11 benefit under the public employees' retirement system (AS 39.35).

12 * Sec. 5. AS 14.25.150 is amended to read:

13 Sec. 14.25.150. REFUND UPON TERMINATION. (a) Except as pro-
14 vided in (b) of this section, a [A] terminated member is entitled to a
15 refund of the balance of the member contribution account. A member is
16 not entitled to a refund of supplemental contributions except as pro-
17 vided in AS 14.25.160(a).

18 * Sec. 6. AS 14.25.150 is amended by adding a new subsection to read:

19 (b) A member who is terminated and is a vested member, deferred
20 vested member, or who is entitled to benefits under AS 14.25.125, and
21 who is married at the time of application for a refund or whose rights
22 to a refund are subject to a qualified domestic relations order is
23 entitled to receive a refund of the balance of the member contribution
24 account only if the member's present spouse and each person entitled
25 under the order consents to the refund in writing on a form provided
26 by the administrator. The administrator may waive written consent
27 from the person entitled under the order if the administrator deter-
28 mines that the person cannot be located or for other reasons estab-
29 lished by regulation. The administrator may waive written consent

1 from the spouse if the administrator determines that

2 (1) the member was not married to the spouse during any
3 period of the member's employment with an employer;

4 (2) the spouse has no rights to benefits under this chapter
5 because of the terms of a qualified domestic relations order;

6 (3) the spouse cannot be located; or

7 (4) for other reasons established by regulation.

8 * Sec. 7. AS 14.25 is amended by adding a new section to read:

9 Sec. 14.25.153. RIGHTS UNDER QUALIFIED DOMESTIC RELATIONS ORDER.

10 In this chapter the rights of a person under a qualified domestic
11 relations order take precedence over the rights of a spouse, surviving
12 spouse, or dependent child to the extent required by the order. A
13 person granted rights under a qualified domestic relations order shall
14 be treated as a spouse or surviving spouse under this chapter to the
15 extent required by the order. Rights under the order do not take
16 effect until the order is filed with the administrator.

17 * Sec. 8. AS 14.25.155(c) is amended to read:

18 (c) If the death of a vested member or deferred vested member
19 occurs and the proximate cause of death is not a bodily injury sus-
20 tained or hazard undergone while in the performance and within the
21 scope of the member's duties of employment, the surviving spouse may
22 elect to receive either the benefits described in (b) of this section
23 or a 50 percent joint and survivor option as provided under AS 14.25.-
24 167(a)(2) based on credited service to the date of the member's ter-
25 mination. If no spouse survives a vested or deferred vested member,
26 or if a person other than the spouse is designated as beneficiary in
27 accordance with AS 14.25.166, the administrator shall pay [,] the
28 designated beneficiary [SHALL BE PAID] the benefits described in
29 AS 14.25.160(b) and (c). Benefits accrue from the first day of the

1 month following the member's death and are payable the last day of the
2 month.

3 * Sec. 9. AS 14.25.157(a) is amended to read:

4 (a) If (1) the death of a member occurs before the member first
5 attains eligibility for normal retirement, and (2) the proximate cause
6 of death is a bodily injury sustained or hazard undergone while in the
7 performance and within the scope of the member's duties of employment,
8 and (3) the injury or hazard is not the proximate result of wilful
9 negligence on the part of the member, the administrator shall pay a
10 monthly survivor's pension equal to 40 percent of the member's base
11 salary at the time of termination of employment, divided by 12, [SHALL
12 BE PAID] to the member's surviving spouse. If there is no surviving
13 spouse, the administrator shall pay the monthly survivor's pension
14 [SHALL BE PAID] in equal parts to the dependent children of the mem-
15 ber. On the date the normal retirement of the member would have
16 occurred if the member had lived, monthly payments must [SHALL] equal
17 the monthly amount of the normal retirement benefit to which the mem-
18 ber, had the member lived and continued employment until the member's
19 normal retirement date, would have been entitled with an average base
20 salary as existed at the member's death and the credited service to
21 which the member would have been entitled. If the member does not
22 have a [NO SURVIVING] spouse or dependent children [EXIST] at the time
23 of death or if the member designates as beneficiary under AS 14.25.166
24 someone other than the surviving spouse or dependent children, the
25 administrator shall pay the member's designated beneficiary [SHALL BE
26 PAID] those benefits available to a beneficiary under AS 14.25.160(b)
27 and (c) and may not pay a [NO] benefit [WILL BE PAID] to the surviving
28 spouse or dependent children.

29 * Sec. 10. AS 14.25.166(a) is amended to read:

1 (a) Each member shall designate the beneficiary or beneficiaries
2 to whom the administrator shall distribute benefits payable under this
3 chapter as a consequence of the member's death. Notwithstanding a
4 previous designation of beneficiary, a person who is the spouse of a
5 member at the time of the member's death automatically becomes the
6 designated beneficiary if the spouse was married to the member during
7 part of the member's employment for an employer

8 (1) except to the extent a qualified domestic relations
9 order filed with the administrator provides for payment to a former
10 spouse or other dependent of the member; or

11 (2) unless the member files a revocation of beneficiary
12 accompanied by a written consent to the revocation from the spouse and
13 each person entitled under the order [SHALL BE DISTRIBUTED].

14 * Sec. 11. AS 14.25.166(b) is amended to read:

15 (b) Except as provided in (a) of this section, the member may
16 change or revoke the [THE] designation [MAY BE CHANGED OR REVOKED BY
17 THE MEMBER] without notice to the beneficiary or beneficiaries at any
18 time. If a member designates more than one beneficiary, each shares
19 [SHALL SHARE] equally unless the member specifies a different allo-
20 cation or preference. The designation of a beneficiary, [AND] a
21 change or revocation of a beneficiary, and a consent to revocation of
22 a beneficiary shall be made on a form provided by the administrator
23 and is not effective until filed with the administrator.

24 * Sec. 12. AS 14.25.166 is amended by adding a new subsection to read:

25 (d) A person claiming entitlement to benefits payable under this
26 chapter as a consequence of a member's death shall provide the admin-
27 istrator with a marriage certificate, divorce or dissolution judgment,
28 or other evidence of entitlement. Documents establishing entitlement
29 may be filed with the administrator immediately after a change in the

1 member's marital status. If the administrator does not receive noti-
2 fication of a claim before the date 10 days after the member's death,
3 the person claiming entitlement is not entitled to receive from the
4 division of retirement and benefits any benefit already paid by the
5 administrator.

6 * Sec. 13. AS 14.25.167(a) is repealed and reenacted to read:

7 (a) Benefits payable under this section are in place of benefits
8 payable under AS 14.25.110, 14.25.125, 14.25.155, 14.25.157, 14.25.-
9 160, 14.25.162, or 14.25.164. Upon filing an application for retire-
10 ment with the administrator, or when a disabled member becomes eligi-
11 ble for normal retirement under AS 14.25.130(e), the member shall
12 designate the person who is the member's spouse at the time of ap-
13 pointment to retirement as the contingent beneficiary. However, if
14 the designation of the spouse is revoked under (c) of this section,
15 the member may designate a dependent approved by the administrator as
16 the contingent beneficiary or may take normal or early retirement
17 under AS 14.25.110 or 14.25.125. The administrator shall pay benefits
18 under the option elected by the member. The member may elect an
19 option that provides that

20 (1) the member is entitled to receive a reduced benefit
21 payable for life, and, after the member's death, the contingent ben-
22 eficiary is entitled to receive payments in the amount of 75 percent
23 of the reduced benefit for life;

24 (2) the member is entitled to receive a reduced benefit
25 payable for life, and, after the member's death, the contingent ben-
26 eficiary is entitled to receive payments in the amount of 50 percent
27 of the reduced benefit for life; or

28 (3) the member is entitled to receive a reduced benefit
29 payable during the joint lifetime of the member and the contingent

1 beneficiary, and, after the death of either the member or the contin-
2 gent beneficiary, the survivor is entitled to receive payments in the
3 amount of 66-2/3 percent of the reduced benefit for life.

4 * Sec. 14. AS 14.25.167(c) is amended to read:

5 (c) A member may elect or [,] change [, OR REVOKE] an option
6 without the approval of the administrator if the member's election or
7 [,] change [, OR REVOCATION] is filed in writing with the administra-
8 tor before the effective date of the member's retirement. A member
9 may revoke a joint and survivor option if the member files with the
10 administrator before the effective date of the member's retirement a
11 revocation and a consent to the revocation signed by the member's
12 present spouse and each person entitled to benefits under a qualified
13 domestic relations order on forms provided by the administrator. The
14 administrator may waive the requirement for written consent from

15 (1) a person entitled under the order if the person cannot
16 be located or for other reasons established by regulation; or

17 (2) the spouse if the member is not married, the member was
18 not married to the spouse during any period of the member's employment
19 with an employer, the spouse has no rights to the option because of
20 the terms of a qualified domestic relations order, the spouse cannot
21 be located, or for other reasons established by regulation.

22 * Sec. 15. AS 14.25.167 is amended by adding new subsections to read:

23 (f) The member and any person claiming to be a contingent bene-
24 ficiary shall file with the administrator a marriage certificate,
25 divorce or dissolution judgment, or other evidence necessary to deter-
26 mine the applicability of this section and the identity of any contin-
27 gent beneficiary.

28 (g) If the administrator determines, based on the affidavit of
29 the member and other evidence, that a member is eligible to elect a

1 form of payment other than a joint and survivor option under this
2 section, and no contrary evidence is presented to the administrator
3 within 60 days after the effective date of the member's retirement, no
4 claim under this section, made by a spouse or former spouse of the
5 member, may be paid if payment would result in an increase in actuari-
6 al liability to the system.

7 (h) If a member fails to elect an option under (a) of this
8 section and no effective revocation is filed with the administrator,
9 the member is considered to have elected the option provided in (a)(2)
10 of this section.

11 * Sec. 16. AS 14.25.200(a) is amended to read:

12 (a) Benefits and other amounts held in the retirement fund on
13 behalf of the members are exempt from Alaska state and municipal taxes
14 and are not subject to anticipation, alienation, sale, transfer,
15 assignment, pledge, encumbrance, or charge of any kind, either volun-
16 tary or involuntary, before they are received by the person entitled
17 to the amount under the terms of the system, and any attempt to antic-
18 ipate, alienate, sell, transfer, assign, pledge, encumber, charge, or
19 otherwise dispose of any right to amounts accrued in the retirement
20 fund is void. However, a member's right to receive benefits may be
21 assigned under a qualified domestic relations order.

22 * Sec. 17. AS 14.25.220 is amended by adding a new paragraph to read:

23 (43) "qualified domestic relations order" means a divorce or
24 dissolution judgment under AS 25.24, including an order approving a
25 property settlement, that

26 (A) creates or recognizes the existence of an alter-
27 nate payee's right to, or assigns to an alternate payee the right
28 to, receive all or a portion of the benefits payable with respect
29 to a member;

1 (B) sets out the name and last known mailing address,
2 if any, of the member and of each alternate payee covered by the
3 order;

4 (C) sets out the amount or percentage of the member's
5 benefit, or of any survivor's benefit, to be paid to the alter-
6 nate payee, or sets out the manner in which that amount or per-
7 centage is to be determined;

8 (D) sets out the number of payments or period to which
9 the order applies;

10 (E) does not require any type or form of benefit or
11 any option not otherwise provided by this chapter;

12 (F) does not require an increase of benefits in excess
13 of the amount provided by this chapter, determined on the basis
14 of actuarial value; and

15 (G) does not require the payment, to an alternate
16 payee, of benefits that are required to be paid to another alter-
17 nate payee under another order previously determined to be a
18 qualified domestic relations order.

19 * Sec. 18. AS 22.25.030(b) is amended to read:

20 (b) To be eligible for the survivors' benefits, the surviving
21 spouse must have been married to the justice or judge for at least one
22 year [TWO YEARS] immediately preceding the death of the justice or
23 judge. The benefits continue until the remarriage or death of the
24 surviving spouse.

25 * Sec. 19. AS 22.25.030 is amended by adding a new subsection to read:

26 (f) The rights of a surviving spouse or dependent child under
27 this section are subject to the rights of a previous spouse or a
28 dependent under a qualified domestic relations order.

29 * Sec. 20. AS 22.25 is amended by adding a new section to read:

1 Sec. 22.25.035. RIGHTS UNDER A QUALIFIED DOMESTIC RELATIONS
2 ORDER. A person who was married to a justice or judge for at least
3 one year, who has not remarried, and who has been granted rights to
4 benefits under this chapter by the terms of a qualified domestic
5 relations order, shall be treated as a spouse or surviving spouse
6 under this chapter to the extent required by the order. Rights under
7 the order do not take effect until the order is filed with the admin-
8 istrator. The benefits continue until the remarriage or death of the
9 person.

10 * Sec. 21. AS 22.25 is amended by adding a new section to read:

11 Sec. 22.25.900. DEFINITION. In this chapter, "qualified domes-
12 tic relations order" means a divorce or dissolution judgment under
13 AS 25.24, including an order approving a property settlement, that

14 (1) creates or recognizes the existence of an alternate
15 payee's right to, or assigns to an alternate payee the right to,
16 receive all or a portion of the benefits payable with respect to a
17 justice or judge;

18 (2) sets out the name and last known mailing address, if
19 any, of the justice or judge and of each alternate payee covered by
20 the order;

21 (3) sets out the amount or percentage of the justice's or
22 judge's benefit, or of any survivor's benefit, to be paid to the
23 alternate payee, or sets out the manner in which that amount or per-
24 centage is to be determined;

25 (4) sets out the number of payments or period to which the
26 order applies;

27 (5) does not require any type or form of benefit or any
28 option not otherwise provided by this chapter;

29 (6) does not require an increase of benefits in excess of.

1 the amount provided by this chapter, determined on the basis of actu-
2 arial value;

3 (7) does not require the payment, to an alternate payee, of
4 benefits that are required to be paid to another alternate payee under
5 another order previously determined to be a qualified domestic rela-
6 tions order.

7 * Sec. 22. AS 25.24.160 is amended by adding a new subsection to read:

8 (b) If a judgment under this section distributes benefits to an
9 alternate payee under AS 14.24, AS 22.25, AS 26.05.222 - 26.05.226, or
10 AS 39.35, the judgment must meet the requirements of a qualified
11 domestic relations order under the definition of that phrase that is
12 applicable to those provisions.

13 * Sec. 23. AS 25.24.230 is amended by adding a new subsection to read:

14 (g) If a judgment under this section distributes benefits to an
15 alternate payee under AS 14.24, AS 22.25, AS 26.05.222 - 26.05.226, or
16 AS 39.35, the judgment must meet the requirements of a qualified
17 domestic relations order under the definition of that phrase that is
18 applicable to those provisions.

19 * Sec. 24. AS 26.05.224(d) is amended to read:

20 (d) Upon the death of an active member who has at least five
21 years service in the Alaska National Guard or Alaska Naval Militia or
22 a combination of these components, the member's designated beneficiary
23 is entitled to a lump sum benefit calculated in accordance with (b) of
24 this section. Upon the death of a former member who has at least 20
25 years service, the former member's designated beneficiary is entitled
26 to a lump sum benefit calculated in accordance with (b) of this sec-
27 tion less any retirement benefits previously paid. Except as provided
28 in (e) of this section, a [A] member may change or revoke the desig-
29 nation of a beneficiary without notice to the beneficiary at any time.

1 If a member designates more than one beneficiary, each shares [SHALL
2 SHARE] equally unless the member specifies a different allocation.
3 The member shall make a designation of a beneficiary or [AND] a change
4 or revocation of a beneficiary [SHALL BE MADE] on a form provided by
5 the Department of Military and Veterans' Affairs. It [AND] is not
6 effective until filed with the Department of Military and Veterans'
7 Affairs. If a member fails to designate a beneficiary or if no des-
8 ignated beneficiary survives the member, the department, except to the
9 extent provided otherwise in a qualified domestic relations order,
10 shall pay the death benefit under this subsection to the member's
11 surviving spouse or, if there is no spouse surviving, [SHALL BE PAID]
12 to the member's estate.

13 * Sec. 25. AS 26.05.224 is amended by adding new subsections to read:

14 (e) Notwithstanding any previous designation of beneficiary, the
15 spouse of a member at the time of the member's death automatically
16 becomes the designated beneficiary if the spouse was married to the
17 member during part of the member's service under this chapter

18 (1) except to the extent a qualified domestic relations
19 order provides for payment to a former spouse or other dependent of
20 the member; or

21 (2) unless the member files with the Department of Military
22 and Veterans' Affairs a revocation of beneficiary and a written con-
23 sent to the revocation signed by the present spouse and each person
24 entitled to benefits under the order on forms provided by the
25 department.

26 (f) A person claiming entitlement to any benefits payable under
27 this section shall provide the department with a marriage certificate,
28 divorce or dissolution decree, or other evidence of entitlement.
29 Documents showing entitlement may be filed with the department.

1 immediately after a change in the member's marital status. If the
2 department does not receive notification of a claim before the date 10
3 days after the member's death, the person claiming entitlement to the
4 benefits is not entitled to receive from the Department of Adminis-
5 tration or Department of Military and Veterans' Affairs any benefit
6 already paid under this section.

7 * Sec. 26. AS 26.05.227 is amended by adding a new paragraph to read:

8 (4) "qualified domestic relations order" means a divorce or
9 dissolution judgment under AS 25.24, including an order approving a
10 property settlement, that

11 (A) creates or recognizes the existence of an alter-
12 nate payee's right to, or assigns to an alternate payee the right
13 to, receive all or a portion of the benefits payable with respect
14 to a member;

15 (B) sets out the name and last known mailing address,
16 if any, of the member and of each alternate payee covered by the
17 order;

18 (C) sets out the amount or percentage of the member's
19 benefit, or of any survivor's benefit, to be paid to the alter-
20 nate payee, or sets out the manner in which that amount or per-
21 centage is to be determined;

22 (D) sets out the number of payments or period to which
23 the order applies;

24 (E) does not require any type or form of benefit or
25 any option not otherwise provided by AS 26.05.222 - 26.05.228;

26 (F) does not require an increase of benefits in excess
27 of the amount provided by AS 26.05.222 - 26.05.228, determined on
28 the basis of actuarial value; and

29 (G) does not require the payment, to an alternate,

1 payee, of benefits that are required to be paid to another alter-
2 nate payee under another order previously determined to be a
3 qualified domestic relations order.

4 * Sec. 27. AS 39.35.200(a) is amended to read:

5 (a) Except as provided in (c) of this section, an [AN] inactive
6 employee, not on leave-without-pay status or layoff status, is enti-
7 tled to receive a refund of the balance of the employee contribution
8 account.

9 * Sec. 28. AS 39.35.200 is amended by adding a new subsection to read:

10 (c) An employee who is terminated and is a vested employee,
11 deferred vested employee, or who is entitled to benefits under AS 39.-
12 35.385, and who is married at the time of application for a refund or
13 whose rights to a refund are subject to a qualified domestic relations
14 order is entitled to receive a refund of the balance of the employee
15 contribution account only if the employee's present spouse and each
16 person entitled under the order consent to the refund in writing on a
17 form provided by the administrator. The administrator may waive
18 written consent from the person entitled to benefits under the order
19 if the administrator determines that the person cannot be located or
20 for other reasons established by regulation. The administrator may
21 waive written consent from the spouse if the administrator determines
22 that

23 (1) the employee was not married to the spouse during any
24 period of the employee's employment with an employer;

25 (2) the spouse has no rights under this chapter because of
26 the terms of a qualified domestic relations order;

27 (3) the spouse cannot be located; or

28 (4) for other reasons established by regulation.

29 * Sec. 29. AS 39.35.370(a) is amended to read:

1 (a) Subject to AS 39.35.450, a [A] terminated employee is elig-
2 ible for a normal retirement benefit

3 (1) at age 55 with at least five years credited service, or

4 (2) with at least 20 years of credited service as a peace
5 officer or fireman, or

6 (3) with at least 30 years of credited service for all
7 other employees.

8 * Sec. 30. AS 39.35.370(b) is amended to read:

9 (b) Subject to AS 39.35.450, a [A] terminated employee is elig-
10 ible for an early retirement benefit at age 50 with at least five
11 years credited service.

12 * Sec. 31. AS 39.35.385(a) is amended to read:

13 (a) Subject to AS 39.35.450, an [AN] employee is eligible for a
14 normal retirement benefit at age 55 with at least two years of cred-
15 ited service if the employee also is eligible for a normal retirement
16 salary under the teachers' retirement system (AS 14.25).

17 * Sec. 32. AS 39.35.385(b) is amended to read:

18 (b) Subject to AS 39.35.450, an [AN] employee is eligible for an
19 early retirement benefit at age 50 with at least two years of credited
20 service if the employee also is eligible for an early retirement sal-
21 ary under the teachers' retirement system (AS 14.25).

22 * Sec. 33. AS 39.35.420(c) is amended to read:

23 (c) If, under AS 39.35.490, a vested or deferred vested member
24 designates as beneficiary to receive nonoccupational benefits someone
25 other than the surviving spouse to whom the member has been married
26 for at least one year, the administrator shall pay [TO RECEIVE
27 NONOCCUPATIONAL DEATH BENEFITS,] the designated beneficiary [SHALL BE
28 PAID]: (1) the balance of the deceased member's employee contribution
29 account; and (2) a lump-sum death benefit. The amount of the lump-sum.

1 death benefit is \$100 times the years of credited service of the
2 deceased member plus \$1,000.

3 * Sec. 34. AS 39.35.430(f) is amended to read:

4 (f) If the death of an employee occurs from occupational causes
5 but no surviving spouse or dependent children exist at the time of the
6 death or if the employee designates as beneficiary under AS 39.35.490
7 someone other than the surviving spouse or dependent children, the
8 employee's designated beneficiary is entitled to receive those bene-
9 fits available to a beneficiary under AS 39.35.420(c) and no occupa-
10 tional death benefit will be paid to the surviving spouse or dependent
11 children. [IF THE DESIGNATED BENEFICIARY IS THE SURVIVING SPOUSE OR
12 DEPENDENT CHILDREN, THE BENEFICIARY SHALL RECEIVE THE BENEFIT DE-
13 SCRIBED IN (b) OF THIS SECTION.]

14 * Sec. 35. AS 39.35.440(b) is amended to read:

15 (b) Upon the death of a disabled employee who is receiving or is
16 entitled to receive an occupational disability benefit, the adminis-
17 trator shall pay the surviving spouse a surviving spouse's pension,
18 equal to 40 percent of the employee's monthly compensation at the
19 termination of employment because of occupational disability [SHALL BE
20 PAID TO THE SURVIVING SPOUSE]. If there is no surviving spouse, the
21 administrator shall pay the survivor's pension [SHALL BE PAID] in
22 equal parts to the dependent children of the employee. On the date
23 the normal retirement of the employee would have occurred if the
24 employee had lived, the administrator shall adjust the monthly pay-
25 ments to [SHALL] equal the monthly amount of the normal retirement
26 benefit to which the employee, had the employee lived and continued
27 employment until the employee's normal retirement date, would have
28 been entitled with an average monthly compensation as existed at death
29 and the credited service to which the employee would have been.

1 entitled. If the death of an employee occurs from occupational causes
2 but no surviving spouse or dependent children exist at the time of the
3 death, or if the employee designates as beneficiary under AS 39.35.490
4 someone other than the surviving spouse or dependent children, the
5 administrator shall pay the employee's designated beneficiary [SHALL
6 BE PAID] those benefits available to a beneficiary under AS 39.35.-
7 420(c) and may not pay an [NO] occupational death benefit [WILL BE
8 PAID] to the surviving spouse or dependent children.

9 * Sec. 36. AS 39.35.450(a) is repealed and reenacted to read:

10 (a) Benefits payable under this section are in place of benefits
11 payable under AS 39.35.370, 39.35.385, and 39.35.460. Upon filing an
12 application with the administrator or when a disabled employee first
13 attains eligibility for normal retirement under AS 39.35.400(f) or
14 39.35.410(h), the employee shall designate the person who is the
15 employee's spouse at the time of appointment to retirement as the
16 contingent beneficiary. However, if the designation of the spouse is
17 revoked under (c) of this section, the employee may designate a depen-
18 dent approved by the administrator as the contingent beneficiary or
19 may take normal or early retirement under AS 39.35.370 or 39.35.385 or
20 a level income option under AS 39.35.460. The administrator shall pay
21 benefits under the option elected by the employee. The employee may
22 elect an option that provides that

23 (1) the employee is entitled to receive a reduced benefit
24 payable for life, and, after the employee's death, the contingent ben-
25 eficiary is entitled to payments in the amount of 75 percent of the
26 reduced benefit payable for life;

27 (2) the employee is entitled to receive a reduced benefit
28 payable for life, and, after the employee's death, the contingent
29 beneficiary is entitled to receive payments in the amount of 50.

1 percent of the reduced benefit payable for life;

2 (3) the employee is entitled to receive a reduced benefit
3 payable during the joint lifetime of the employee and the contingent
4 beneficiary, and, after the death of either the employee or the con-
5 tingent beneficiary, the survivor is entitled to receive payments in
6 the amount of 66-2/3 percent of the reduced benefit payable for life.

7 * Sec. 37. AS 39.35.450(c) is amended to read:

8 (c) An employee may elect or [,] change [, OR REVOKE] an option
9 without the approval of the administrator if the election or [,]
10 change [, OR REVOCATION] is filed in writing with the administrator
11 before the effective date of the employee's retirement. An employee
12 may revoke a joint and survivor option if the employee files with the
13 administrator before the effective date of the employee's retirement a
14 revocation and consent to the revocation signed by the employee's
15 present spouse and each person entitled to benefits under a qualified
16 domestic relations order on forms provided by the administrator. The
17 administrator may waive the requirement for written consent from

18 (1) a person entitled under the order if the person cannot
19 be located or for other reason established by regulation; or

20 (2) the spouse if the employee is not married, the employee
21 was not married to the spouse during any period of the employee's
22 employment with an employer, the spouse has no rights to the option
23 because of the terms of a qualified domestic relations order, the
24 spouse cannot be located, or for other reason established by regula-
25 tion.

26 * Sec. 38. AS 39.35.450 is amended by adding new subsections to read:

27 (f) The employee and any person claiming to be a contingent
28 beneficiary shall file with the administrator a marriage certificate,
29 divorce or dissolution judgment, or other evidence necessary to

1 determine the applicability of this section and the identity of any
2 contingent beneficiary.

3 (g) If the administrator determines, based on the affidavit of
4 the employee and other evidence that an employee is eligible to elect
5 a form of payment other than a joint and survivor option under this
6 section, and no contrary evidence is presented to the administrator
7 within 60 days after the effective date of the employee's retirement,
8 no claim under this section, made by a spouse or former spouse of the
9 member, may be paid if payment would result in an increase in actuari-
10 al liability to the system.

11 (h) If an employee fails to elect an option under this section,
12 and if no effective revocation is filed with the administrator, the
13 employee is considered to have elected the option provided in (a)(2)
14 of this section.

15 * Sec. 39. AS 39.35 is amended by adding a new section to read:

16 Sec. 39.35.455. RIGHTS UNDER QUALIFIED DOMESTIC RELATIONS ORDER.
17 In this chapter the rights of a person under a qualified domestic
18 relations order take precedence over the rights of a spouse, surviving
19 spouse, or dependent child to the extent required by the order. A
20 person granted rights under a qualified domestic relations order shall
21 be treated as a spouse or surviving spouse to the extent required by
22 the order. Rights under the order are effective when the order is
23 filed with the administrator.

24 * Sec. 40. AS 39.35.490 is amended to read:

25 Sec. 39.35.490. DESIGNATION OF BENEFICIARY. (a) Each employee
26 shall designate the beneficiary or beneficiaries to whom the adminis-
27 trator shall distribute benefits payable under this chapter as a
28 consequence of the employee's death. Notwithstanding a previous
29 designation of beneficiary, a person who is the spouse of an employee

1 at the time of the employee's death automatically becomes the desig-
2 nated beneficiary if the spouse was married to the employee during
3 part of the employee's employment for an employer

4 (1) Except to the extent a qualified domestic relations
5 order filed with the administrator provides for payment to a former
6 spouse or other dependent of the employee; or

7 (2) unless the employee files a revocation of beneficiary
8 accompanied by a written consent to the revocation signed by the
9 present spouse and each person entitled under the order [SHALL BE
10 DISTRIBUTED].

11 (b) Except as provided in (a) of this section, the [THE] desig-
12 nation may be changed or revoked by the employee without notice to the
13 beneficiary or beneficiaries at any time. If an employee designates
14 more than one beneficiary, each shares [SHALL SHARE] equally unless
15 the employee specifies a different allocation or preference. The
16 designation of [A] beneficiary, [AND] a change or revocation of a
17 beneficiary, or a consent to a revocation of a beneficiary shall be
18 made on a form provided by the administrator and is not effective
19 until filed with the administrator.

20 (c) If an employee fails to designate a beneficiary, or if no
21 designated beneficiary survives the employee, the administrator shall
22 pay the death benefit [SHALL BE PAID]

23 (1) to the surviving spouse or, if there is none surviving,

24 (2) to the surviving children in equal parts or, if there
25 is none surviving,

26 (3) to the surviving parents in equal parts or, if there is
27 none surviving,

28 (4) to the employee's estate.

29 * Sec. 41. AS 39.35.490 is amended by adding a new subsection to read:

1 (d) A person claiming entitlement to benefits payable under this
2 chapter as a consequence of an employee's death shall provide the
3 administrator with a marriage certificate, divorce or dissolution
4 decree, or other evidence of entitlement. Documents establishing
5 entitlement may be filed with the administrator immediately after a
6 change in the employee's marital status. If the administrator does
7 not receive notification of a claim before the date 10 days after the
8 employee's death, the person claiming entitlement to the benefits is
9 not entitled to receive from the division of retirement and benefits
10 any benefit already paid by the administrator.

11 * Sec. 42. AS 39.35.500 is amended to read:

12 Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM.
13 Employee contributions and other amounts held in the pension fund are
14 exempt from Alaska state and local taxes. Amounts held on behalf of,
15 or payable to, any employee or other person who is or may become
16 eligible for benefits under the system are not subject to anticipa-
17 tion, alienation, sale, transfer, assignment, pledge, encumbrance, or
18 charge of any kind, either voluntary or involuntary, before being
19 received by the person entitled to the amount under the terms of the
20 system. An attempt to anticipate, alienate, sell, transfer, assign,
21 pledge, encumber, charge, or otherwise dispose of a right to amounts
22 held under the system is void. However, an employee's right to re-
23 ceive benefits may be assigned under a qualified domestic relations
24 order.

25 * Sec. 43. AS 39.35.680 is amended by adding a new paragraph to read:

26 (40) "qualified domestic relations order" means a divorce
27 or dissolution judgment under AS 25.24, including an order approving a
28 property settlement, that

29 (A) creates or recognizes the existence of an

1 alternate payee's right to, or assigns to an alternate payee the
2 right to, receive all or a portion of the benefits payable with
3 respect to an employee;

4 (B) sets out the name and last known mailing address,
5 if any, of the employee and of each alternate payee covered by
6 the order;

7 (C) sets out the amount or percentage of the employ-
8 ee's benefit, or of any survivor's benefit, to be paid to the
9 alternate payee, or sets out the manner in which that amount or
10 percentage is to be determined;

11 (D) sets out the number of payments or period to which
12 the order applies;

13 (E) does not require any type or form of benefit or
14 any option not otherwise provided by this chapter;

15 (F) does not require an increase of benefits in excess
16 of the amount provided by this chapter, determined on the basis
17 of actuarial value; and

18 (G) does not require the payment to an alternate payee
19 of benefits that are required to be paid to another alternate
20 payee under another order previously determined to be a qualified
21 domestic relations order.

22 * Sec. 44. Notwithstanding former AS 39.37.060(b), the surviving spouse
23 of an elected public officer who has retirement rights under the Elected
24 Public Officers Retirement System is eligible for survivors' benefits under
25 former AS 39.37.060 if the surviving spouse was married to the elected
26 public officer for at least one year immediately preceding the death of the
27 elected public officer. The benefits continue until the remarriage or
28 death of the surviving spouse.

29 * Sec. 45. Within 90 days after the effective date of this section, the

1 Department of Administration shall publish notice of the provisions of this
2 Act in the regularly published newsletters of the division of retirement
3 and benefits and in newspapers of general distribution in each judicial
4 district of the state, and shall make available the forms necessary to
5 implement this Act.

6 * Sec. 46. Section 45 of this Act takes effect immediately in accor-
7 dance with AS 01.10.070(c).

8 * Sec. 47. Sections 1 - 44 of this Act take effect January 1, 1987.
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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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April 16, 1986

Honorable Mitch Abood, Chairman
Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSHB 237(Rls), retirement bill

Dear Senator Abood:

At the committee's March 18, 1986 hearing on CSHB 237 (Rls), the committee instructed me to draft changes to be included in the committee substitute as follows:

1. simplification of language concerning rights under a qualified domestic relations order (QDRO); and
2. addition of language to the bill to allow a spouse "veto power" over only 50 percent of the benefits.

After consultation with the two agencies interested in this bill, the Alaska Women's Commission and the division of retirement and benefits, we recommend that in sections 7 and 39, the following language be substituted for the current language:

A former spouse shall be treated as a spouse or surviving spouse to the extent required by a qualified domestic relations order. Rights under the order do not take effect until the order is filed with the administrator.

In section 20, we recommend that the following language be substituted for the current language:

A former spouse who was married to the justice or judge for at least one year and who has not remarried shall be treated as a spouse or surviving spouse to the extent required by a qualified domestic relations order. Rights under the order do not take effect until the order is filed with the administrator.