

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5756 HOUSE JUDICIARY

section and secs. 9 and 10 are given a July 1, 1989 effective date by sec. 59 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 9. As enacted, AS 10.06.833 provided for the filing of a certificate of withdrawal by certain foreign corporations. However, the corporation would not have a certificate of withdrawal to file; the corporation files an application for a certificate and the Department of Commerce and Economic Development issues a certificate to the corporation. The amendment corrects this error. It was requested by the corporations supervisor in the department.

Sec. 10. Last year, by Executive Order and a companion bill, the responsibility for administering business licenses was transferred from the Department of Revenue to the Department of Commerce and Economic Development. The proposed amendment to AS 10.06.870 reflects that transfer.

Secs. 11, 12, and 14 - 24. AS 10.05.773 is repealed, effective July 1, 1989, by ch. 166, SLA 1988. These sections delete references to the repealed provision. Sections 11 and 12 appeared in HB 148 as secs. 8 and 9. When originally drafted they would have substituted the substance of the repealed provision for the obsolete reference. Upon further review, it was determined that the approach taken in secs. 11 and 12, and new secs. 14 - 24, was more appropriate, because the former approach actually changed existing law. The sections are given a July 1, 1989 effective date by sec. 59 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 13. This section proposes amendments to AS 10.15.325 to delete material that has become obsolete through the passage of time and to rewrite the last sentence for clarity.

Sec. 25. AS 11.41.432, enacted last session, partially repeals AS 11.41.443 by implication. This section of the draft enacts the substance of AS 11.41.443 as a new subsection (b) of AS 11.41.432, with additional language to clarify the interaction of the two provisions. In sec. 58, AS 11.41.443 is proposed for repeal.

Sec. 26. This section proposes an amendment to the definition of "mentally incapable" (enacted by sec. 5, ch. 96, SLA 1988) for grammatical consistency.

Sec. 27. Last session, the legislature enacted AS 12.36.-050, relating to the remission of a forfeited weapon. At one time, the bill that enacted the provision had provided for a court order compensating a claimant for the monetary value of the claimant's interest in the weapon, or an order returning the weapon to a claimant. That provision (in AS 12.36.050(b)) was amended in committee to delete the authority to order compensation. The amendment to subsection (a) proposed by this section of the draft should have been made at that time, but it was overlooked until after the bill passed both houses and was being enrolled.

Sec. 28. The amendment proposed by this section harmonizes a provision enacted by ch. 63, SLA 1988, with related provisions enacted by ch. 64, SLA 1988.

Sec. 29. The amendment to the definition of "member contribution account" for the Teachers' Retirement System law is proposed to conform the language to actual practice. Members do not make "contributions" toward their indebtedness, they make "payments." The amendment was requested by the Department of Law. The internal reference to AS 14.25.170 is changed to a reference to AS 14.25.173 to correct what appears to be an error.

Sec. 30. This section proposes an amendment to AS 15.13.-040(d) to conform the dollar amount to other law and actual practice. In 1975, AS 15.13.080, which requires the filing with APOC of statements of contributions by persons and groups other than political action committees, was amended to require the statements when more than \$250 (rather than \$100) had been contributed. Even though AS 15.13.040(d)(1) was not amended at that time, such an amendment would have been consistent with the intent of the 1975 change. Therefore, since 1975 APOC has requested the filing of statements under AS 15.13.040(d)(1) only at the point when more than \$250 has been given in a year to a candidate or political group. The amendment proposed by this section was requested by APOC.

Sec. 31. This amendment is proposed to conform the language to the style of the statutes.

Sec. 32. The amendment proposed by this section deletes a reference to a subsection that was repealed in 1984.

Sec. 33. The purpose of this amendment is to replace a reference to a repealed provision with an appropriate reference to current law. In addition, the introductory language of the section is cleaned up to conform to current style.

Secs. 34 and 35. These amendments are proposed to substitute alternate language for gender-indicating personal pronouns.

Sec. 36. This section proposes amendments to AS 24.08.-330(a), relating to the distribution of the Alaska Statutes, to reflect actual practice.

Sec. 37. Under AS 25.23.125(a), enacted in 1986, the court is required to consider the desires of a person under the age of 10 who is adopted (if the person is "of sufficient age and intelligence to state desires"). Under AS 25.23.-040(a), enacted in 1974, a minor over the age of 10 must consent to an adoption, unless the court determines that it would be in the best interest of the minor to dispense with that requirement. The upshot of this is that a minor who is exactly 10 is not required to consent, nor is the court required to consider the minor's desires. The amendment proposed by this section amends AS 25.23.040(a) to require consent from a minor 10 years or older, using the age cutoff most recently enacted by the legislature.

Sec. 38. The suggested amendment to AS 33.32.015(b)(5), relating to the powers of the commissioner of corrections with respect to the correctional industries program, substitutes a reference to the new state procurement code for a reference to AS 37.05 (the Fiscal Procedures Act). This should have been done in 1986 in connection with the enactment of the procurement code. In sec. 23 of HB 148, the deletion of the reference to AS 37.05 had not been proposed.

Sec. 39. This amendment substitutes relevant current references for references rendered obsolete by the 1988 repeal of AS 39.35.110. The amendment was requested by the commissioner of revenue.

Sec. 40. This amendment rewrites AS 37.15.300, relating to borrowing by the state bond committee in anticipation of the sale of bonds, to update the style and clarify the language. There are no substantive changes.

Sec. 41. Section 2, ch. 123, SLA 1988 added a definition of "long-term lease" to AS 38.04. Unfortunately, the definition overlapped the existing definition of "short-term lease" (found in AS 38.04.910(8)) in that both definitions included a 10 year lease. The amendment to AS 38.04.910(4) proposed by this section would resolve this overlap by defining long-term leases as leases for more than 10 years, which is consistent with other relevant provisions of the public land laws. See, for example, AS 38.05.070(b).

Sec. 42. This section proposes an amendment to harmonize the definitions of "submerged land" and "tideland" for AS 38.05. Because the two types of land share a common boundary, the language used to define each should be the same. In sec. 27 of HB 148, the definition of "submerged land" was the one proposed for amendment. The Departments of Law and Natural Resources advised that an amendment to the definition of "tideland" would be more consistent with common usage.

Sec. 43. This amendment substitutes a reference to the only relevant statute for a spanned reference to clarify the law establishing a criminal provision in the tax laws. The amendment was suggested by the Department of Law.

Sec. 44. The amendment made by this section deletes a reference to a provision that was repealed in 1981.

Secs. 45 and 46. The amendments proposed in these sections are proposed to conform to the 1977 repeal of the gross production tax. The current tax is simply the "production tax."

Sec. 47. This section rewrites, for clarity, the law describing the membership of the science and engineering advisory commission.

Sec. 48. The amendment proposed by this section is intended to resolve a conflict between AS 44.21.240(2), enacted by sec. 3, ch. 108, SLA 1988, and AS 44.21.230(c). The latter provision (enacted in 1981) prohibits the Older Alaskans Commission from investigating, reviewing, or undertaking any responsibility for the Alaska Pioneers' Home. The 1988 legislation establishes the long term care ombudsman program within the commission, and defined "long term care facility" in such a way that it includes the Alaska Pioneers' Home (the pioneers' home is included within the definition of

"nursing home" in AS 08.70.180). The amendment resolves the conflict by excluding activities of the long term care ombudsman from the prohibition contained in AS 44.21.230(c). The problem was brought to our attention by the Department of Law when the 1988 Act was reviewed for the governor. This approach to resolving the conflict is different from that contained in sec. 30 of HB 148.

Secs. 49 - 51. The amendments proposed by these sections reflect a change in the name of the National Bureau of Standards (by last year's Omnibus Trade and Competitiveness Act). Also, in sec. 50, an obsolete provision is proposed for deletion.

Sec. 52. This amendment deletes obsolete time-dated material.

Sec. 53. The amendment proposed by this section conforms the provisions of AS 47.10.090(a), as amended by sec. 4, ch. 130, SLA 1988, to the other substantive provisions of ch. 130, SLA 1988. As enacted, AS 28.15.185 did not include any references to traffic offenses, although earlier versions of the bill did encompass certain traffic offenses. When the references to traffic offenses were removed from AS 28.15.185, the reference within AS 47.10.090(a) should also have been changed. This amendment was suggested by the Department of Law in connection with its review of the 1988 Act for the governor.

Sec. 54. Last year the legislature enacted ch. 148, SLA 1988, relating to the liability of corporate directors. In that Act, two provisions in AS 10.05 were amended. AS 10.05 is repealed, effective July 1, 1989, by ch. 166, SLA 1988, enacting the new corporations code. To give effect to legislative intent in enacting ch. 148, the provisions of sec. 1 of that Act were editorially incorporated into AS 10.06.-210(1)(N). The provisions of sec. 2 of that Act were not editorially incorporated, because the revisor mistakenly believed that they were no longer needed because of other changes made in the new code as it relates to ANSCA corporations. The revisor had overlooked sec. 10 of ch. 166, which grandfathers the two-thirds voting requirements of AS 10.05.276 for corporations incorporated under AS 10.05 before July 1, 1989. Because sec. 2 of ch. 148, SLA 1988 enacted an exception to the two-thirds requirement for ANSCA corporations that desired to amend their articles to eliminate or limit director liability as allowed under ch. 148,

that exception needs to be continued in connection with the grandfather clause.

This could probably be accomplished editorially, but that change would not be disseminated to the public until the 1989 statutory materials are distributed this fall. Further, while it is easy to communicate editorial changes in the codified Alaska Statutes, there is no equivalent way to communicate editorial changes made in Temporary Law provisions if those changes are made after publication of the session laws. (It has been done, on rare occasion, by including a letter from the revisor in the Journals of the next legislative session.) Section 54 of CSHB 148(Jud) amends sec. 10, SLA 1988 to continue the exception that had been enacted as AS 10.05.276(b). The problem was called to the revisor's attention on February 27 by an attorney for a Native Corporation.

Sec. 55. This amendment corrects a drafting error in one of the transitional provisions of ch. 166, SLA 1988, enacting the new corporations code. This section and sec. 54 are given a July 1, 1989 effective date by sec. 59 of this draft to correspond with the effective date of ch. 166. The error was brought to our attention by the Hon. Ralph Stemp.

Secs. 56 and 57. These sections propose that the revisor substitute "police officer" and "fire fighter" for "policeman" and "fireman," respectively, in those provisions in which the latter terms still appear. The change was requested by Representative Boyer, by amendments presented to the subcommittee.

Sec. 58. This section proposes the repeal of several obsolete provisions.

AS 09.10.055 was held unconstitutional by the Alaska supreme court in Turner Const. Co. v. Scales, 752 P.2d 467 (1988).

AS 10.40.130(c) was a 1977 deadline for compliance with a provision in AS 10.40.

AS 11.41.443 would be obsolete if sec. 25 of this draft is enacted, and the need for repeal of the provision is discussed in connection with sec. 25 of this draft.

AS 14.07.030(9) was rendered obsolete by 1975 legislation and should have been repealed then.

Representative Peter Goll
Representative Max Gruenberg
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AS 16.05.632(d) should have been repealed when the provisions relating to shellfish pot licenses were repealed in 1977.

AS 19.45.001(7) defines a term that is not used in AS 19 except in a section catchline, which is not law (see AS 01.05.006).

AS 38.05.184(c)-(g) were all related to the procedures to be followed to implement the ban on further oil and gas leasing in Katchemak Bay (contained in AS 38.05.-184(b)). The Department of Natural Resources advises that all of the provisions have been fully executed and are now obsolete. This information was received by the revisor immediately following the subcommittee meeting.

AS 44.47.560(1) and (2) contain definitions that are redundant to those found in AS 44.47.998(1) and (3).

AS 44.83.425(1) and (4) define terms that were deleted from AS 44.83 in 1984, making the definitions obsolete.

AS 46.03.299(e) relates to a duty that was imposed only from July 1, 1986 through June 30, 1987.

The text of all provisions proposed for repeal is attached as an appendix to this memo. Section 39 of HB 148 had proposed the repeal of only five provisions.

Sec. 59. Gives a July 1, 1989 effective date to those sections relating to the new corporations code.

Sec. 60. Gives an immediate effective date to the remainder of this draft.

DRD:kb
wkk2/054

Enclosure

cc: Art Peterson, Department of Law

COPY

STATE OF ALASKA
THE LEGISLATURE

FOUCHY STATE CAPITOL
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 14, 1989

SUBJECT: Sectional Analysis of draft
CSHB 148(Jud)(Revisor's Bill)

TO: Representative Peter Goll
Chair, House Judiciary Subcommittee
on HB 148

FROM: David R. Dierdorff
Revisor of Statutes

I have prepared the enclosed draft CSHB 148(Jud) for the consideration of your subcommittee. The draft incorporates the amendment I prepared for the committee.

In addition, the provisions of sec. 31 in the bill as introduced have been deleted. A proposed amendment to AS 44.88.545 was substituted for the deleted material (see sec. 50 of the draft CS).

Finally, sec. 32 of HB 148, dealing with trademark classifications, was deleted at the request of the Department of Commerce and Economic Development.

SUMMARY OF EFFECT

To assist in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions:
Sections 4, 5, 7, 10-24, 33, 45-47, 54, and 58 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 3, 6, 26, 29, 32, 34-37, 40, 41, 44, 48, 51-53, and 56 substitute new provisions for provisions that are obsolete, archaic, or

otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 2, 25, 28, 30, 31, 38, 42, 43, and 49 resolve conflicts between laws or otherwise harmonize laws dealing with the same subjects.

Sections that correct errors or oversights: Sections 1, 8, 9, 27, 39, 50, 55, and 57 correct errors or oversights in drafting.

SECTIONAL ANALYSIS

Section 1. The addition of "or delivery" to AS 04.16.-051(b)(1) by the amendment proposed in sec. 1 conforms the language of the paragraph to the introductory language of the subsection as amended by sec. 8, ch. 156, SLA 1988. The need for this change was noted by the Department of Law when the bill was reviewed for the governor.

Sec. 2. The amendment to AS 05.05.030(c) proposed in this section would remove a conflict with the provisions of AS 05.10.110. Existing AS 05.05.030(c) requires that a member of the athletic commission attend every boxing and wrestling event. However, AS 05.10.110 provides for the appointment of official inspectors to attend in the absence of a member of the commission. The amendment would simply recognize that commissioners need not attend if official inspectors have been provided for the event. The amendment also substitutes "member of the commission" for "commissioner" to be consistent with other usage in AS 05.05 and to eliminate confusion between the duties of the members of the commission and the duties of the athletic commissioner.

Sec. 3. The amendment substitutes "A member" for "The commissioners" to clarify that the provision is dealing with members of the commission and not the athletic commissioner, and conform the usage to that found elsewhere in AS 05.05.

Sec. 4. The proposed amendment to AS 08.84.030(a) deletes a reference to the Professional Examination Service Association because, effective last August, the association is no longer administering the exam for physical therapists. The amendment was requested by the division of occupational licensing.

Sec. 5. This amendment is required if AS 09.10.055 is repealed, as proposed in sec. 58 of this draft. It deletes two references to the section that would be repealed.

Sec. 6. This section proposes the substitution of a reference to specific, relevant provisions of AS 09.20 for an archaic reference to "the following provisions."

Sec. 7. Since the 1972 enactment of AS 09.30.100 - 09.30.180 (Uniform Foreign Money-Judgments Recognition Act), the United States' relationship with former trust territories has substantially changed. For example, the Ryukyu Islands (Okinawa and its neighbors) are now governed by Japan rather than by an American military government. Rather than name specific jurisdictions in this definitional provision, it appears to be wiser to rely on a generic listing of jurisdictions that would logically be considered "domestic" rather than "foreign."

Sec. 8. This section corrects a drafting error in the new corporations code (AS 10.06) enacted last session. This section and secs. 9 and 10 are given a July 1, 1989 effective date by sec. 59 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 9. As enacted, AS 10.06.833 provided for the filing of a certificate of withdrawal by certain foreign corporations. However, the corporation would not have a certificate of withdrawal to file; the corporation files an application for a certificate and the Department of Commerce and Economic Development issues a certificate to the corporation. The amendment corrects this error. It was requested by the corporations supervisor in the department.

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Sec. 28. The amendment proposed by this section harmonizes a provision enacted by ch. 63, SLA 1988, with related provisions enacted by ch. 64, SLA 1988.

Sec. 29. The amendment to the definition of "member contribution account" for the Teachers' Retirement System law is proposed to conform the language to actual practice. Members do not make "contributions" toward their indebtedness, they make "payments." The amendment was requested by the Department of Law. The internal reference to AS 14.25.-170 is changed to a reference to AS 14.25.173 to correct what appears to be an error.

Sec. 30. Section 11, ch. 60, SLA 1988, amended AS 14.30.-070(a) to allow chiropractors to conduct certain required school examinations. However, subsection (c) of that section was not amended, and without the amendment proposed

by this section of the draft, conflicts with amended (a). The amendment was suggested by the Department of Law.

Sec. 31. This section proposes an amendment to AS 15.13.-040(d) to conform the dollar amount to other law and actual practice. In 1975, AS 15.13.080, which requires the filing with APOC of statements of contributions by persons and groups other than political action committees, was amended to require the statements when more than \$250 (rather than \$100) had been contributed. Even though AS 15.13.040(d)(1) was not amended at that time, such an amendment would have been consistent with the intent of the 1975 change. Therefore, since 1975 APOC has requested the filing of statements under AS 15.13.040(d)(1) only at the point when more than \$250 has been given in a year to a candidate or political group. The amendment proposed by this section was requested by APOC.

Sec. 32. This amendment is proposed to conform the language to the style of the statutes.

Sec. 33. The amendment proposed by this section deletes a reference to a subsection that was repealed in 1984.

Secs. 34. The purpose of this amendment is to replace a reference to a repealed provision with an appropriate reference to current law. In addition, the introductory language of the section is cleaned up to conform with current style.

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exactly 10 is not required to consent, nor is the court required to consider the minor's desires. Obviously, the gap could be closed by amending either of the conflicting provisions. The amendment proposed by this section amends AS 25.23.040(a) to require consent from a minor 10 years or older, using the age cutoff most recently enacted by the legislature.

Sec. 39. The suggested amendment to AS 33.32.015(b)(5), relating to the powers of the commissioner of corrections with respect to the correctional industries program, adds a reference to the new state procurement code. The legislature may wish to delete the reference to AS 37.05 (the Fiscal Procedures Act), as was done in 1986 in AS 33.32.015(b)(1) in connection with the enactment of the procurement code.

Sec. 40. This amendment substitutes relevant current references for references rendered obsolete by the 1988 repeal of AS 39.35.110. The amendment was requested by the commissioner of revenue.

Sec. 41. This amendment rewrites AS 37.15.300, relating to borrowing by the state bond committee in anticipation of the sale of bonds, to update the style and clarify the language. There are no substantive changes.

Sec. 42. Section 2, ch. 123, SLA 1988 added a definition of "long-term lease" to AS 38.04. Unfortunately, the definition overlapped the existing definition of "short-term lease" (found in AS 38.04.910(8)), in that both definitions included a 10 year lease. The amendment to AS 38.04.910(4) proposed by this section would resolve this overlap by defining long-term leases as leases for more than 10 years, which is consistent with other relevant provisions of the public land laws. See, for example, AS 38.05.070(b).

Sec. 43. This section proposes an amendment to harmonize the definitions of "submerged land" and "tideland" for AS 38.05. Because the two types of land share a common boundary, the language used to define each should be the same.

Sec. 44. This amendment substitutes a reference to the only relevant statute for a spanned reference to clarify the law establishing a criminal provision in the tax laws. The amendment was suggested by the Department of Law.

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Sec. 45. The amendment made by this section deletes a reference to a provision that was repealed in 1981.

Secs. 46 and 47. The amendments proposed in these sections are proposed to conform to the 1977 repeal of the gross production tax. The current tax is simply the "production tax."

Sec. 48. This section rewrites, for clarity, the law describing the membership of the science and engineering advisory commission.

Sec. 49. The amendment proposed by this section is intended to resolve a conflict between AS 44.21.240(2), enacted by sec. 3, ch. 108, SLA 1988, and AS 44.21.230(c). The latter provision (enacted in 1981) prohibits the Older Alaskans Commission from investigating, reviewing, or undertaking any responsibility for the Alaska Pioneers' Home. The 1988 legislation established the long-term care ombudsman program within the commission, and defined "long-term care facility" in such a way that it includes the Alaska Pioneers' Home (the pioneers' home is included within the definition of "nursing home" in AS 08.70.180). The amendment resolves the conflict by excluding the Alaska Pioneers' Home from the definition. Alternatively, the legislature could decide to resolve the conflict by excluding investigations by the long-term care ombudsman from the prohibition contained in AS 44.21.230(c). The problem was brought to our attention by the Department of Law when the bill was reviewed for the governor.

Sec. 50. Last year the legislature enacted ch. 162, SLA 1988, which derived from SB 471. When introduced, that bill provided that the authority (AIDEA) could not make a guarantee in excess of \$1,000,000 per loan. In a later version of the bill, prepared for Senate Finance, that language was changed from "more than \$1,000,000 per loan" to "a loan of more than \$1,000,000." This change was not requested by the Senate Finance Committee, but as made by our office to make the language of AS 44.88.545(1) consistent with that of paragraph (2) of that section. (Paragraph (2) provides that the authority may not guarantee "loans to an individual borrower that cumulatively exceed \$1,000,000 of indebtedness.") The proposed amendment would restore the language of the provision as introduced. I should point out that the existing language of (2) prevents the change having any substantive effect, because as long as

a borrower's total indebtedness is limited to \$1,000,000 by AS 44.88.545(2), the amount of a guarantee would never exceed \$700,000.

Secs. 51 - 53. The amendments proposed by these sections reflect a change in the name of the National Bureau of Standards (by last year's Omnibus Trade and Competitiveness Act). Also, in sec. 52, an obsolete provision is proposed for deletion.

Sec. 54. This amendment deletes obsolete time-dated material.

Sec. 55. The amendment proposed by this section conforms the provisions of AS 47.10.090(a), as amended by sec. 4, ch. 130, SLA 1988, to the other substantive provisions of ch. 130, SLA 1988. As enacted, AS 28.15.185 did not include any references to traffic offenses, although earlier versions of the bill did encompass certain traffic offenses. When the references to traffic offenses were removed from AS 28.15.185, the reference within AS 47.10.090(a) should also have been changed. This amendment was suggested by the Department of Law in connection with its review of the bill for the governor.

Sec. 56. This amendment of the provision establishing the effective date for the repeal of the Winter Olympic funding program is proposed to reflect (1) the fact that there will not be a 1996 Winter Olympics, but rather a 1998 Olympics, and (2) the fact that the site for the 1992 games has been announced.

Sec. 57. This amendment corrects a drafting error in one of the transitional provisions of ch. 166, SLA 1988, enacting the new corporations code. This section is given a July 1, 1989 effective date by sec. 59 of this draft to correspond with the effective date of ch. 166. The error was brought to our attention by the Hon. Ralph Stemp.

Sec. 58. This section proposes the repeal of several obsolete provisions. AS 09.10.055 was held unconstitutional by the Alaska supreme court in Turner Const. Co. v. Scales, 752 P.2d 467 (1988). AS 10.40.130(c) was a 1977 deadline for compliance with a provision in AS 10.40. AS 11.41.443 would be obsolete if sec. 25 of this draft is enacted, and the need for repeal of the provision is discussed in connection with sec. 25 of this draft. AS 14.07.030(9) was

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rendered obsolete by 1975 legislation and should have been repealed then. AS 16.05.632(d) should have been repealed when the provisions relating to shellfish pot licenses were repealed in 1977. AS 19.45.001(7) defines a term that is not used in AS 19 (except in a section catchline, which is not law; see AS 01.05.006). AS 44.47.560(1) and (2) contain definitions that are redundant to those found in AS 44.47.-998(1) and (3). AS 44.83.425(1) and (4) define terms that were deleted from AS 44.83 in 1984, making the definitions obsolete. AS 46.03.299(e) relates to a duty that was imposed only from July 1, 1986 through June 30, 1987. The text of all provisions proposed for repeal is attached as an appendix to this memo.

Sec. 59. Gives a July 1, 1989 effective date to those sections relating to the new corporations code.

Sec. 60. Gives an immediate effective date to the remainder of this draft.

DRD:gc
WKG7/028

Enclosure

cc: Representative Mike Davis
Representative Max Gruenberg
Representative Terry Martin
Art Peterson, Department of Law

Sec. 09.10.055. Certain actions relating to construction in six years. (a) No action, whether in contract (oral or written, sealed or unsealed), in tort or otherwise, to recover damages (1) for a deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property; (2) for injury to property, real or personal, arising out of a deficiency; or (3) for injury to the person or for wrongful death arising out of such deficiency, may be brought against a person performing or furnishing the design, planning, supervision or observation of construction, or construction of an improvement more than six years after substantial completion of an improvement.

(b) Notwithstanding the provisions of (a) of this section, in the case of an injury to property or the person or an injury causing wrongful death, which injury occurred during the sixth year after substantial completion, an action in tort to recover damages for the injury may be brought within two years after the date on which the injury occurred. In no event may action be brought more than eight years after the substantial completion of construction of an improvement.

(c) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(d) The limitation prescribed by this section shall not be asserted by way of defense by a person in actual possession or control, as owner, tenant, or otherwise of an improvement at the time a deficiency in an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

(e) In this section, "person" means an individual, corporation, partnership, business trust, unincorporated organization, association, or joint-stock company. (§ 2 ch 61 SLA 1967)

Sec. 10.40.130. Service of process.

(c) Corporations organized under this chapter have until January 31, 1977, to comply with this section. (§ 58 ch 170 SLA 1976)

Sec. 11.41.443. Spousal relationship no defense. In a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant. (§ 1 ch 43 SLA 1985)

Sec. 14.07.030. Powers of the department. The department may (9) exercise disapproval power under AS 14.08.101;

Sec. 16.05.632. Identification of shellfish pots or buoys, or both, used in the taking of king crab and requirements for buoys.

(d) Upon conviction of a person of a violation of (a) or (b) of this section or a regulation adopted under (a) or (b) of this section, the court shall, in addition to any other penalty imposed by law, revoke the violator's shellfish pot license for a period of not less than 12 consecutive months nor more than five years and, in addition, restrict the boat used in a violation of (a) of this section from being used in the taking of king crab for the same period as the shellfish pot license is revoked. After the restriction is imposed, if the boat is used in the taking of king crab within the period of restriction, it shall be seized and forfeited to the state as provided in AS 16.05.195.

Sec. 19.45.001. Definitions. In AS 19.05 — AS 19.40

(7) "excess land" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in a shape or condition that is of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;

Sec. 44.47.560. Definitions. In AS 44.47.370 — 44.47.560,

(1) "commissioner" means the commissioner of the Department of Community and Regional Affairs;

(2) "department" means the Department of Community and Regional Affairs;

Sec. 44.83.425. Definitions. In AS 44.83.380 — 44.83.425,

(1) "bus bar" means the substation that serves as the delivery point from the generation and transmission system of the authority to the transmission and distribution system of the utility;

(4) "industrial consumer" means a customer of a utility which customer has a peak power demand in excess of 500 kilowatts and uses the power principally for

(A) manufacturing;

(B) pipeline transportation;

(C) the recovery or processing of minerals;

(D) the processing of timber, agricultural, or seafood products or their by-products; or

(E) the operation of facilities owned by the federal government;

Sec. 46.03.299. Regulation of hazardous waste.

(e) During the period July 1, 1986, through June 30, 1987, the department shall conduct a program to inform persons of their responsibilities under regulations adopted under (a) of this section. (§ 10 ch 93 SLA 1981; am § 1 ch 77 SLA 1984)

STATE OF ALASKA
THE LEGISLATURE

FOUCH V. STATE CAPITOL
JUNEAU ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 6, 1989

SUBJECT: Amendment for HB 148 (1989 Revisor's Bill)

TO: Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes 

I have prepared the enclosed amendment to HB 148 (the 1989 revisor's bill) for the consideration of your committee. If you prefer, I will prepare a draft CS incorporating this amendment and consolidate the following sectional analysis with the analysis of the bill as introduced.

SUMMARY OF EFFECT

To assist in understanding the draft amendment, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions:

Sections 5, 10, 13, 24, 45, 47, 55, and 59 delete or repeal provisions that have become obsolete either through the passage of time, other legislative action, or judicial decision.

Sections that update obsolete or archaic provisions, or improve the style of the statutes:

Section 34 substitutes a new provision for one that is obsolete.

Sections that eliminate conflicts with other laws:

Section 43 harmonizes two provisions that deal with the same subject.

Sections that correct errors or oversights:

Section 9 corrects a drafting error.

SECTIONAL ANALYSIS

Sec. 5. This amendment is required of AS 09.10.055 is repealed, as proposed in sec. 59 of this draft.

Sec. 9. As enacted, AS 10.06.833 provided for the filing of a certificate of withdrawal by certain foreign corporations. However, the corporation would not have a certificate of withdrawal to file; the corporation files an application for a certificate and the Department of Commerce and Economic Development issues a certificate to the corporation. The amendment corrects this error. It was requested by the corporations supervisor in the department.

Sec. 10. Last year, by Executive Order and a companion bill, the responsibility for administering business licenses was transferred from the Department of Revenue to the Department of Commerce and Economic Development. The proposed amendment to AS 10.06.870 reflects that transfer.

Sec. 13. This section proposes amendments to AS 10.15.325 to delete material that has become obsolete through the passage of time and to rewrite the last sentence for clarity.

Secs. 14 - 24. These sections, and existing secs. 8 and 9 of HB 148, as amended by the instructions within this amendment, delete a reference to a provision of the old corporations code that was repealed (effective July 1, 1989) by ch. 166, SLA 1988.

Sec. 34. The purpose of this amendment is to replace a reference to a repealed provision with an appropriate reference to current law. In addition, the introductory language of the section is cleaned up to conform with current style.

Sec. 43. This section, which replaces sec. 27 in HB 148, amends the definition of "tideland" to conform to the definition of "submerged land" found in AS 38.05.965(20). (Section 27 had proposed that the definition of "submerged land" be amended; the change in approach was requested by the Department of Law.)

Sec. 45. The amendment made by this section deletes a reference to a provision that was repealed in 1981.

Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
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Secs. 46 and 47. The amendments proposed in these sections are proposed to conform to the 1977 repeal of the gross production tax. The current tax is simply the "production tax."

Sec. 55. This amendment deletes obsolete time-dated material.

Sec. 59. The amendments to this section (sec. 39 in HB 148) add five provisions to the list of obsolete provisions proposed for repeal. AS 09.10.055 was held unconstitutional by the Alaska supreme court in Turner Const. Co. v. Scales, 752 P.2d 467 (1988); AS 10.40.130(c) was a 1977 deadline for compliance with a new provision in AS 10.40; AS 16.05.632(d) should have been repealed when the provisions relating to shellfish pot licenses were repealed in 1977; AS 44.47.560(1) and (2) contain definitions that are redundant to those found in AS 44.47.998(1) and (3); and AS 46.03.299(e) relates to a duty that was imposed only from July 1, 1986 through June 30, 1987.

DRD:gc
G6/054

Enclosure

A M E N D M E N T

OFFERED IN THE HOUSE JUDICIARY COMMITTEE

TO: HB 148

Page 2, after line 23:

Insert a new bill section to read:

"* Sec. 5. AS 09.10.050 is amended to read:

Sec. 09.10.050. ACTIONS TO BE BROUGHT IN SIX YEARS. A [NO] person may not bring an action (1) upon a contract or liability, express or implied, excepting those mentioned in AS 09.10.040 [OR 09.10.055]; (2) for waste or trespass upon real property; or (3) for taking, detaining, or injuring personal property, including an action for its specific recovery [, EXCEPT THOSE MENTIONED IN AS 09.10.055]; unless commenced within six years."

Renumber succeeding sections accordingly.

Page 3, after line 27:

Insert new bill sections to read:

"* Sec. 9. AS 10.06.833 is amended to read:

Sec. 10.06.833. FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF FOREIGN CORPORATION. A registered foreign corporation may withdraw from this state upon payment of all biennial corporation taxes and penalties due at the time of desired withdrawal and by filing with the department an application for a certificate of withdrawal signed by its proper officers and under its corporate seal. The fee for filing

the application [CERTIFICATE] with the commissioner shall be established by the department by regulation.

* Sec. 10. AS 10.06.870 is amended to read:

Sec. 10.06.870. IDENTIFICATION CODE. The commissioner [OF COMMERCE AND ECONOMIC DEVELOPMENT AND THE COMMISSIONER OF REVENUE] shall [JOINTLY] establish and adopt a coded list of business activities and shall make the list available to the public."

Renumber succeeding bill sections accordingly.

Page 4, lines 7 - 13:

Delete all underlined material.

Page 4, lines 22 - 27:

Delete all underlined material.

Page 4, after line 27:

Insert new bill sections to read:

** Sec. 13. AS 10.15.325 is amended to read:

Sec. 10.15.325. FORM OF BIENNIAL REPORT; DELINQUENT REPORTS. The biennial report shall be made on forms furnished by the department. The information contained in the biennial report shall be given as of June 30 of the reporting year. [THE FIRST BIENNIAL REPORT FOR CORPORATIONS REQUIRED TO FILE IN ODD-NUMBERED YEARS MUST BE FILED BEFORE JULY 2, 1981. THE FIRST BIENNIAL REPORT FOR CORPORATIONS REQUIRED TO FILE IN EVEN-NUMBERED YEARS MUST BE FILED BEFORE July 2,

1982.] The biennial report is delinquent if not filed before August 1 of each odd or even year as provided in this section. A corporation that is delinquent is [DELINQUENT RETURNS ARE] subject to involuntary dissolution under [THE PENALTY PRESCRIBED IN] AS 10.15.505.

* Sec. 14. AS 10.15.535 is amended to read:

Sec. 10.15.535. DETERMINATION OF LICENSE FEE FOR COOPERATIVE AUTHORIZED TO ISSUE CAPITAL STOCK. The license fee of each cooperative authorized by its articles to issue capital stock shall be established by the department by regulation [SUBJECT TO AS 10.05.773]. The license fee shall be based on the amount of authorized capital stock.

* Sec. 15. AS 10.15.545 is amended to read:

Sec. 10.15.545. LICENSE FEE FOR COOPERATIVE WITHOUT CAPITAL STOCK. The license fee of each cooperative having no authorized shares of capital stock shall be established by the department by regulation [SUBJECT TO AS 10.05.773].

* Sec. 16. AS 10.15.555 is amended to read:

Sec. 10.15.555. MISCELLANEOUS FEES AND CHARGES. (a) The department shall establish by regulation [SUBJECT TO AS 10.05.773] and charge and collect from a cooperative fees for filing

(1) articles of incorporation or articles of consolidation for a new cooperative;

(2) articles of amendment, restated articles, or articles of merger, and, if the articles provide for an increase of the amount of authorized capital stock of the cooperative, the filing cooperative shall also pay the proportionate part of the annual license fee for the succeeding fraction of the fiscal year, payable by a cooperative

whose authorized shares equal the newly increased authorized shares of the filing cooperative, less the annual license fee already paid for the succeeding fraction of the fiscal year by the filing cooperative; but filing articles decreasing the authorized shares does not reduce the annual license fee of the filing cooperative until the beginning of the fiscal year following that in which the articles were filed;

(3) statement of intent to dissolve;

(4) statement of revocation of voluntary dissolution proceedings;

(5) articles of dissolution;

(6) all other statements.

(b) The department may by regulation charge each cooperative corporation subject to this chapter a fixed fee in place of charging cooperative corporations the various fees specified in this chapter, with the exception of AS 10.15.535, (a)(1) of this section, and for routine administrative services rendered to the cooperative corporation by the department. [AN INCREASE IN THE AMOUNT OF A FIXED FEE CHARGED UNDER THIS SUBSECTION IS SUBJECT TO AS 10.05.773.]

* Sec. 17. AS 10.20.530 is amended to read:

Sec. 10.20.530. SERVICE ON COMMISSIONER. When a foreign corporation authorized to transact business in the state, or not authorized to transact business in the state but doing so, fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found at the registered office, or when the certificate of authority of a foreign corporation is suspended or revoked, the commissioner is an agent upon whom process,

notice, or demand may be served. Service on the commissioner shall be made by delivering to and leaving with the commissioner, or a designee in the corporation division of the department, duplicate copies of the process, notice or demand, accompanied by a fee established by the department by regulation [SUBJECT TO AS 10.05.773]. The commissioner shall immediately have one copy forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under whose laws it is incorporated. Service on the commissioner is returnable in not less than 30 days.

* Sec. 18. AS 10.20.635 is amended to read:

Sec. 10.20.635. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES. (a) The commissioner shall establish by regulation and [SUBJECT TO AS 10.05.773,] charge and collect fees for filing

(1) [FILING] articles of incorporation and issuing a certificate of incorporation;

(2) [FILING] articles of amendment and issuing a certificate of amendment;

(3) [FILING] restated articles of incorporation and issuing a restated certificate of incorporation;

(4) [FILING] articles of merger or consolidation and issuing a certificate of merger or consolidation;

(5) [FILING] a statement of change of address of registered office or change of registered agent, or both;

(6) [FILING] articles of dissolution;

(7) [FILING] an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing

a certificate of authority;

(8) [FILING] an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority;

(9) [FILING] a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state;

(10) [FILING] a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state;

(11) [FILING] an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal;

(12) [FILING] any other statement or report, including a biennial report, of a domestic or foreign corporation.

(b) The department may by regulation charge each corporation subject to this chapter a fixed fee in place of the various fees specified in this chapter, with the exception of (a)(1) of this section, and for routine administrative services rendered to the corporation by the department. [AN INCREASE IN THE FIXED FEE CHARGED UNDER THIS SUBSECTION IS SUBJECT TO AS 10.05.773.]

* Sec. 19. AS 10.20.640 is amended to read:

Sec. 10.20.640. FEE FOR CERTIFIED COPIES OF INSTRUMENTS. The fee for furnishing a certified copy of any instrument shall be established by the department by regulation [SUBJECT TO AS 10.05.773]

* Sec. 20. AS 10.25.530(a) is amended to read:

(a) The commissioner shall establish by regulation and [SUBJECT

TO AS 10.05.773,) charge and collect [FILING] fees for

- (1) filing articles of incorporation;
- (2) filing articles of amendment;
- (3) filing articles of consolidation or merger;
- (4) filing articles of conversion;
- (5) filing certificate of election to dissolve;
- (6) filing articles of dissolution;
- (7) filing certificate of change of principal office and designation or change of registered office and registered agent; and
- (8) acting as agent for service of process.

* Sec. 21. AS 10.25.530(b) is amended to read:

(b) The department may by regulation charge each cooperative subject to this chapter a fixed fee in place of the various fees specified in this chapter, with the exception of (a)(1) of this section, and for the routine administrative services rendered to the corporation by the department. [AN INCREASE IN THE FIXED FEE CHARGED UNDER THIS SUBSECTION IS SUBJECT TO AS 10.05.773.]

* Sec. 22. AS 10.35.060 is amended to read:

Sec. 10.35.060. FEE FOR AND DURATION OF REGISTERED NAME. The fee for the initial registration of a business name shall be established by the department by regulation [SUBJECT TO AS 10.05.773]. The year in which the registration becomes effective is considered a full year of registration and the registration is effective until the close of the fifth calendar year beginning with the year of initial registration.

* Sec. 23. AS 10.35.070 is amended to read:

Sec. 10.35.070. RENEWAL OF REGISTERED NAME. A registered business name may be renewed every five years if an application for renewal is filed. An application for renewal must set out the facts required in an original application for registration and be accompanied by a renewal fee to be established by the department by regulation [SUBJECT TO AS 10.05.773]. An application for renewal may be filed between October 1 and December 31 of any year. The renewal of the registration extends the registration for the following five calendar years.

* Sec. 24. AS 10.40.140(a) is amended to read:

(a) Any document required to be filed with the commissioner under this chapter shall be accompanied by a fee to be established by the department by regulation [SUBJECT TO AS 10.05.773]."

Renumber succeeding bill sections accordingly.

Page 7, after line 7:

Insert a new bill section to read:

** Sec. 34. AS 21.84.590 is amended to read:

Sec. 21.84.590. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained in this chapter, the following [OTHER CHAPTERS AND] provisions of this title [SHALL] apply to fraternal benefit societies [,] to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of this chapter [THEREOF, AS FOLLOWS]:

(1) AS 21.03

- (2) AS 21.06
- (3) AS 21.09.050 and 21.09.100
- (4) AS 21.33 [AS 21.33.010]
- (5) AS 21.36
- (6) AS 21.42.290 and 21.42.355
- (7) AS 21.69.370 and 21.69.640
- (8) AS 21.78
- (9) AS 21.89.060."

Renumber succeeding bill sections accordingly.

Page 11, lines 13 - 17:

Delete all material and insert:

"* Sec. 43. AS 38.05.965(21) is amended to read:

(21) "tideland" means land that [WHICH] is periodically covered by tidal water between the elevation of mean high water and mean low water [TIDES];"

Page 12, after line 2:

Insert new bill sections to read:

"* Sec. 45. AS 43.55.012(b) is amended to read:

(b) The cents-per-barrel amount set out in AS 43.55.011(c) [AS ADJUSTED BY (a) OF THIS SECTION] applies to oil of 27 degrees API gravity. For each degree of API gravity less than 27 degrees the cents-per-barrel amount shall be reduced by \$.005 and for each degree of API gravity greater than 27 degrees the cents-per-barrel amount

shall be increased by \$.005 except that oil above 40 degrees API gravity shall be taxed as 40 degree oil. In applying the gravity adjustment under this subsection, fractional degrees of API gravity shall be disregarded.

* Sec. 46. AS 43.55.020(a) is amended to read:

(a) The [GROSS] production tax on oil or gas shall be paid monthly. The tax is due on the 20th day of each calendar month on oil or gas produced from each lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

* Sec. 47. AS 43.55.020(b) is amended to read:

(b) The [GROSS] production tax on oil or gas shall be paid by or on behalf of the producer."

Renumber succeeding bill sections accordingly.

Page 16, after line 28:

Insert a new bill section to read:

** Sec. 55. AS 46.03.299(a) is amended to read:

(a) The department shall adopt [DEVELOP] regulations under the Administrative Procedure Act (AS 44.62) for the identification and management of hazardous waste as defined by the Environmental Protection Agency and hazardous waste that exhibits the characteristic of toxicity, persistence, or carcinogenicity. [THE DEPARTMENT SHALL ADOPT THESE REGULATIONS NOT LATER THAN JULY 1, 1986, IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62). THESE REGULATIONS

SHALL TAKE EFFECT JULY 1, 1987.]"

Renumber remaining bill sections accordingly.

Page 18, line 19:

Delete "* Sec. 39." and insert "* Sec. 59. AS 09.10.055, AS 10.40.-
130(c),"

After "AS 14.07.030(9)," insert "AS 16.05.632(d),"

Delete "and" and insert "AS 44.47.560(1), 44.47.560(2),"

Page 18, line 20:

Delete "and" and insert ","

After "44.83.425(4)" insert ", and AS 46.03.299(e)"

Page 18, line 21:

Delete "7 - 9 and 38"

Insert "8 - 12, 14 - 24, and 58"

Page 18, line 22:

Delete "7 - 9 and 38"

Insert "8 - 12, 14 - 24, and 58"

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STATE OF ALASKA
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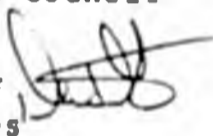
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

January 11, 1989

SUBJECT: Sectional Analysis of 1989 Revisor's Bill
(W.O. 6-0391)

TO: Representative Mike Davis
Chair, Legislative Council

FROM: David R. Dierdorff 
Revisor of Statutes

This memorandum discusses the 1989 revisor's bill, which has been transmitted to you in draft form for the consideration of the Legislative Council for possible introduction through the House Rules Committee.

The draft was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes shall

. . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state.

SUMMARY OF EFFECT

To assist in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions:
Sections 4, 6, 18, 35, 38, and 39 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 3, 5, 8, 9, 11, 14, 17, 19, 20, 21, 23, 24, 25, 28, 29, 32, 33, 34, 35, and

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37 substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 2, 10, 13, 15, 16, 22, 26, 27, and 30 resolve conflicts between laws or otherwise harmonize laws dealing with the same subjects.

Sections that correct errors or oversights: Sections 1, 7, 12, 31, and 36 correct errors or oversights in drafting.

SECTIONAL ANALYSIS

Section 1. The addition of "or delivery" to AS 04.16.051(b)(1) by the amendment proposed in sec. 1 conforms the language of the paragraph to the introductory language of the subsection as amended by sec. 8, ch. 156, SLA 1988. The need for this change was noted by the Department of Law when the bill was reviewed for the governor.

Sec. 2. The amendment to AS 05.05.030(c) proposed in this section would remove a conflict with the provisions of AS 05.10.110. Existing law requires, in AS 05.05.030(c), that a member of the athletic commission attend every boxing and wrestling event. However, AS 05.10.110 provides for the appointment of official inspectors to attend in the absence of a member of the commission. The amendment would simply recognize that commissioners need not attend if official inspectors have been provided for the event. The amendment also substitutes "member of the commission" for "commissioner" to be consistent with other usage in AS 05.05 and to eliminate confusion between the duties of the members of the commission and the duties of the athletic commissioner.

Sec. 3. The amendment substitutes "A member" for "The commissioners" to clarify that the provision is dealing with members of the commission and not the athletic commissioner, and conform the usage to that found elsewhere in AS 05.05.

Sec. 4. The proposed amendment to AS 08.84.030(a) deletes a reference to the Professional Examination Service Association because, effective last August, the association

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is no longer administering the exam for physical therapists. The amendment was requested by the division of occupational licensing.

Sec. 5. This section proposes to substitute a reference to specific, relevant provisions of AS 09.20 for an archaic reference to "the following provisions."

Sec. 6. Since the 1972 enactment of AS 09.30.100 - 09.30.180 (Uniform Foreign Money-Judgments Recognition Act), the United States' relationship with former trust territories has substantially changed. For example, the Ryukyu Islands (Okinawa and its neighbors) are now governed by Japan rather than by an American military government. Rather than name specific jurisdictions in this definitional provision, it appears to be wiser to rely on a generic listing of jurisdictions that would logically be considered "domestic" rather than "foreign."

Sec. 7. This section corrects a drafting error in the new corporations code (AS 10.06) enacted last session. This section is given a July 1, 1989 effective date by sec. 40 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Secs. 8 and 9. These sections substitute the substance of AS 10.05.773 for a reference to that section, which is repealed July 1, 1989 by ch. 166, SLA 1988. The sections are also given a July 1, 1989 effective date by sec. 40 of the draft to correspond with the effective date of ch. 166, SLA 1988.

Sec. 10. AS 11.41.432, enacted last session, partially repeals AS 11.41.443 by implication. This section of the draft enacts the substance of AS 11.41.443 as a new subsection (b) of AS 11.41.432, with additional language to clarify the interaction of the two provisions. In sec. 39, AS 11.41.443 is proposed for repeal.

Sec. 11. This section proposes an amendment to the definition of "mentally incapable" (enacted by sec. 5, ch. 96, SLA 1988) for grammatical consistency.

Sec. 12. Last session, the legislature enacted AS 12.36.050, relating to the remission of a forfeited weapon. At one time, the bill that enacted the provision had provided for a court order compensating a claimant for

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the monetary value of the claimant's interest in the weapon, or an order returning the weapon to a claimant. That provision (in AS 12.36.050(b)) was amended in committee to delete the authority to order compensation. The amendment to subsection (a) proposed by this section of the draft should have been made at that time, but it was overlooked until after the bill passed both houses and was being enrolled.

Sec. 13. The amendment proposed by this section harmonizes a provision enacted by ch. 63, SLA 1988, with related provisions enacted by ch. 64, SLA 1988.

Sec. 14. The amendment to the definition of "member contribution account" for the Teachers' Retirement System law is proposed to conform the language to actual practice. Members do not make "contributions" toward their indebtedness, they make "payments." The amendment was requested by the Department of Law. The internal reference to AS 14.25.170 is changed to a reference to AS 14.25.173 to correct what appears to be an error.

Sec. 15. Section 11, ch. 60, SLA 1988, amended AS 14.30.070(a) to allow chiropractors to conduct certain required school examinations. However, subsection (c) of that section was not amended, and without the amendment proposed by this section of the draft, conflicts with amended (a). The amendment was suggested by the Department of Law.

Sec. 16. This section proposes an amendment to AS 15.13.040(d) to conform the dollar amount to other law and actual practice. In 1975, AS 15.13.080, which requires the filing with APOC of statements of contributions by persons and groups other than political action committees, was amended to require the statements when more than \$250 (rather than \$100) had been contributed. Even though AS 15.13.040(d)(1) was not amended at that time, such an amendment would have been consistent with the intent of the 1975 change. Therefore, since 1975 APOC has requested the filing of statements under AS 15.13.040(d)(1) only at the point when more than \$250 has been given in a year to a candidate or political group. The amendment proposed by this section was requested by APOC staff.

Sec. 17. This amendment is proposed to conform the language to the style of the statutes.

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Sec. 18. The amendment proposed by this section deletes a reference to a subsection that was repealed in 1984.

Secs. 19 and 20. These amendments are proposed to substitute alternate language for gender-indicating personal pronouns.

Sec. 21. This section proposes amendments to AS 24.08.330(a), relating to the distribution of the Alaska Statutes, to reflect actual practice.

Sec. 22. Under AS 25.23.125(a), enacted in 1986, the court is required to consider the desires of a person under the age of 10 (if the person is "of sufficient age and intelligence to state desires") who is to be adopted. Under AS 25.23.040(a), enacted in 1974, a minor over the age of 10 must consent to an adoption, unless the court determines that it would be in the best interest of the minor to dispense with that requirement. The upshot of this is that a minor who is exactly 10 is not required to consent, nor is the court required to consider the minor's desires. Obviously, the gap could be closed by amending either of the conflicting provisions. The amendment proposed by this section amends AS 25.23.040(a) to require consent from a minor 10 years or older, using the age cutoff most recently enacted by the legislature.

Sec. 23. The suggested amendment to AS 33.32.015(b)(5), relating to the powers of the commissioner of corrections with respect to the correctional industries program, adds a reference to the new state procurement code. The legislature may wish to delete the reference to AS 37.05 (the Fiscal Procedures Act), as was done in 1986 in AS 33.32.015(b)(1) in connection with the enactment of the procurement code.

Sec. 24. This amendment substitutes relevant current references for references rendered obsolete by the 1988 repeal of AS 39.35.110. The amendment was requested by the commissioner of revenue.

Sec. 25. This amendment rewrites AS 37.15.300, relating to borrowing by the state bond committee in anticipation of the sale of bonds, to update the style and clarify the language. There are no substantive changes.

Sec. 26. Section 2, ch. 123, SLA 1988 added a definition of "long-term lease" to AS 38.04. Unfortunately, the

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definition overlapped the existing definition of "short-term lease" (found in AS 38.04.910(8)), in that both definitions included a 10 year lease. The amendment to AS 38.04.910(4) proposed by this section would resolve this overlap by defining long-term leases as leases for more than 10 years, which is consistent with other relevant provisions of the public land laws. See, for example, AS 38.05.070(b).

Sec. 27. This section proposes an amendment to harmonize the definitions of "submerged land" and "tideland" for AS 38.05. Because the two types of land share a common boundary, the language used to define each should be the same.

Sec. 28. This amendment substitutes a reference to the only relevant statute for a spanned reference to clarify the law establishing a criminal provision in the tax laws. The amendment was suggested by the Department of Law.

Sec. 29. This section rewrites, for clarity, the law describing the membership of the science and engineering advisory commission.

Sec. 30. The amendment proposed by this section is intended to resolve a conflict between AS 44.21.240(2), enacted by sec. 3, ch. 108, SLA 1988, and AS 44.21.230(c). The latter provision (enacted in 1981) prohibits the Older Alaskans Commission from investigating, reviewing, or undertaking any responsibility for the Alaska Pioneers' Home. The 1988 legislation established the long-term care ombudsman program within the commission, and defined "long-term care facility" in such a way that it includes the Alaska Pioneers' Home (the pioneers' home is included within the definition of "nursing home" in AS 08.70.180). The amendment resolves the conflict by excluding the Alaska Pioneers' Home from the definition. Alternatively, the legislature could decide to resolve the conflict by excluding investigations by the long-term care ombudsman from the prohibition contained in AS 44.21.230(c). The problem was brought to our attention by the Department of Law when the bill was reviewed for the governor.

Sec. 31. This amendment is proposed to resolve a problem in the 1988 law establishing the business assistance program within AIDEA. As enacted, the law placing limits on the total amount of loan guarantees that may be entered into was drafted in terms of the total indebtedness guaranteed rather

Representative Mike Davis
Page 7
January 11, 1989

than the total of guarantees. It is our understanding that the proposed amendment would more accurately express the intent of the legislature. The problem was brought to our attention by the prime sponsor of the 1988 legislation.

Sec. 32. This amendment would replace an obsolete listing of the classification of goods and services for trademark purposes with a reference to the current classification in use by the U.S. Patent and Trademark Office, which is also used by most states. Enactment of this amendment would obviate the necessity of legislative maintenance of the list and allow the administering agency to keep the state's classification system in step with that of other states and the federal government.

Secs. 33 - 35. The amendments proposed by these sections reflect a change in the name of the National Bureau of Standards (by last year's Omnibus Trade and Competitiveness Act). Also, in sec. 34, an obsolete provision is proposed for deletion.

Sec. 36. The amendment proposed by this section conforms the provisions of AS 47.10.090(a), as amended by sec. 4, ch. 130, SLA 1988, to the other substantive provisions of ch. 130, SLA 1988. As enacted, AS 28.15.185 did not include any references to traffic offenses, although earlier versions of the bill did encompass certain traffic offenses. When the references to traffic offenses were removed from AS 28.15.185, the reference within AS 47.10.090(a) should also have been changed. This amendment was suggested by the Department of Law in connection with its review of the bill for the governor.

Sec. 37. This amendment of the provision establishing the effective date for the repeal of the Winter Olympic funding program is proposed to reflect (1) the fact that there will not be a 1996 Winter Olympics, but rather a 1998 Olympics, and (2) the fact that the site for the 1992 games has been announced.

Sec. 38. This amendment corrects a drafting error in one of the transitional provisions of ch. 166, SLA 1988, enacting the new corporations code. This section is given a July 1, 1989 effective date by sec. 40 of this draft to correspond with the effective date of ch. 166. The error was brought to our attention by the Hon. Ralph Stemp.

Representative Mike Davis
Page 8
January 11, 1989

Sec. 39. This section proposes the repeal of several obsolete provisions. AS 11.41.443 would be obsolete if sec. 10 of this draft is enacted, and the need for repeal of the provision is discussed in connection with sec. 10 of this draft. AS 14.07.030(9) was rendered obsolete by 1975 legislation and should have been repealed then. AS 19.45.001(7) defines a term that is not used in AS 19 (except in a section catchline, which is not law; see AS 01.05.006). AS 44.83.425(1) and (4) define terms that were deleted from AS 44.83 in 1984, making the definitions obsolete. The text of all provisions proposed for repeal is attached as an appendix to this memo.

Sec. 40. Gives a July 1, 1989 effective date to those sections relating to the new corporations code.

Sec. 41. Gives an immediate effective date to the remainder of this draft.

DRD:kb
wkk1/009



Official Business

Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: Rep. Ben Grussendorf, Chairman
House Rules Committee
FROM: Rep. Mike Davis, Chairman
Legislative Council
DATE: February 2, 1989
SUBJECT: 1989 Revisor's Bill

I am writing to request the introduction of the attached bill by the House Rules Committee.

In addition to correcting drafting errors and updating obsolete provisions, the 1989 revisor's bill contains several more significant policy decisions. The Legislative Council would like to bring sections 6, 16, 22, 23, 26, 27, 30, 31, and 38 to the particular attention of future committees of referral, as these are interpretations of legislative intent. Please attach this letter to the bill when it is introduced.

H B

150

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 150

H State Affairs

3/2/89

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 150 [REPRESENTATION OF OTHERS BY PUB OFFICIAL]
"An Act relating to representation of others by legislators and certain legislative employees before state agencies."

be replaced with CSHB 150(SA) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note LAA
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

[Signature] (NO REC)
[Signature] (No Rec)
[Signature] (NO REC)

[Signature]
Chairman's signature



Official Business

Alaska State Legislature

Select Committee on Legislative Ethics

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

DATE: March 10, 1989

TO: All Persons Covered by Legislative Ethics Code

FROM: Senator Pat Pourchot, Chair *Pat*
Select Committee on Legislative Ethics

SUBJECT: Advisory Opinions

On March 8, 1989 the Select Committee on Legislative Ethics adopted two advisory opinions that will likely have wide application for legislators and other persons covered by the legislative ethics code.

Opinion 89-1 clarifies that persons covered by the code must disclose, under AS 24.60.080(d), gifts of travel and hospitality of \$100 or more for the purpose of obtaining information on matters of legislative concern, that are accepted from corporations, associations, local governments, etc., in addition to individuals.

Opinion 89-2 deals with the requirement in AS 24.60.100 that a person covered by the code who represents another person for compensation before an agency, board or commission of the state must disclose that representation. The opinion concludes that the requirement does not require disclosure of representations of partners or attorneys who work in the same law firm as a person covered by the code.

Copies of these two opinions are attached.

PP:jbg:jl

Attachments

MARCH 8, 1989

Advisory Opinion 89 - 2

RE: Reporting representation by other attorneys
in law firm

You have requested an advisory opinion, under AS 24.60.160, as to the scope of AS 24.60.100, requiring disclosure of representation for compensation by persons covered by the ethics code. Specifically you have asked whether you, as a member of a law firm with you and one other attorney as partners and one salaried associate, must disclose representations by your partner and by the associate. It is our opinion that you do not need to disclose these representations, provided that you are in no way involved in handling the cases.

We would first note that disclosure is not required if the representation is before a court. AS 24.60.100 requires disclosure only of representations "before an agency, board or commission of the state." Based on this plain language, we cannot construe the statute as applying to judicial bodies. Moreover, our construction is supported by the legislative history of ch. 36, SLA 1984, the chapter enacting the ethics code.

We also conclude, based on the plain language of AS 24.60.100, that disclosure of representation before agencies, boards and commissions by your partner and associate is not mandated. The statute speaks to "[a] person to whom this chapter applies," i.e., a legislator or legislative employee. We cannot read this language to expand it to other individuals associated with you in the practice of law but not associated with you in your legislative duties.

Moreover, practical considerations dictate this result. Some law firms have forty or fifty attorneys in the state, sometimes in several different cities, and any one attorney may have no idea what agencies, boards or commissions all of his or her colleagues are appearing before. It would not be reasonable to expect the attorney covered by the code to try to keep track of all of these other attorneys' activities.

We stress, however, in keeping to our commitment to maximize reasonable disclosure under AS 24.60, that if you have any role whatsoever in the representation (other than sharing in the profits derived therefrom), it must be disclosed.

Adopted by the Select Committee on Legislative Ethics on March 8, 1989. Members present and concurring in the opinion were: Sen. Pat Pourchot, Chairman; Sen. Jack Coghill; Sen. Dick Eliason; Rep. Mike Davis; Rep. C.E. Swackhammer; Margie MacNeille; Irene Peyton; and Judge Thomas Stewart.



Alaska State Legislature

Select Committee on Legislative Ethics

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

March 9, 1989

SUBJECT: Advisory Opinion in response to
your request

TO: Representative Max Gruenberg, Jr. *Pat*

FROM: Senator Pat Pourchot, Chair
Select Committee on Legislative Ethics

Enclosed please find Advisory Opinion 89-2, adopted unanimously by the Select Committee on Legislative Ethics on March 8, 1989 in response to your request of February 8. Because the committee believes that the opinion may affect many individuals covered by the ethics code, it has authorized the distribution of this opinion immediately to legislators and other covered persons.

JBG:PG:gc
WKG7/130

Enclosure

MARCH 8, 1989

Advisory Opinion 89 - 2

RE: Reporting representation by other attorneys
in law firm

You have requested an advisory opinion, under AS 24.60.160, as to the scope of AS 24.60.100, requiring disclosure of representation for compensation by persons covered by the ethics code. Specifically you have asked whether you, as a member of a law firm with you and one other attorney as partners and one salaried associate, must disclose representations by your partner and by the associate. It is our opinion that you do not need to disclose these representations, provided that you are in no way involved in handling the cases.

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We also conclude, based on the plain language of AS 24.60.100, that disclosure of representation before agencies, boards and commissions by your partner and associate is not mandated. The statute speaks to "[a] person to whom this chapter applies," i.e., a legislator or legislative employee. We cannot read this language to expand it to other individuals associated with you in the practice of law but not associated with you in your legislative duties.

Moreover, practical considerations dictate this result. Some law firms have forty or fifty attorneys in the state, sometimes in several different cities, and any one attorney may have no idea what agencies, boards or commissions all of his or her colleagues are appearing before. It would not be reasonable to expect the attorney covered by the code to try to keep track of all of these other attorneys' activities.

We stress, however, in keeping to our commitment to maximize reasonable disclosure under AS 24.60, that if you have any role whatsoever in the representation (other than sharing in the profits derived therefrom), it must be disclosed.

Adopted by the Select Committee on Legislative Ethics on March 8, 1989. Members present and concurring in the opinion were: Sen. Pat Pourchot, Chairman; Sen. Jack Coghill; Sen. Dick Eliason; Rep. Mike Davis; Rep. C.E. Swackhammer; Margie MacNeille; Irene Peyton; and Judge Thomas Stewart.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 7, 1989

SUBJECT: Representation by legislators and certain employees (HB 150)

TO: Representative Peter Goll

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked whether a system could be established to permit legislators and employees covered by AS 24.60 to represent clients before an agency in adjudications or quasi-judicial hearings that avoids having the matter considered by the commissioner. It is my understanding that the proposal would involve having the matter heard by a court, a person appointed by the court, or by another independent (non-agency) person.

Under AS 44.62.450 and AS 44.62.500 of the Administrative Procedure Act, an issue that is the subject of an adjudicatory hearing is decided by the agency. I have been informed that, in some cases, the role of the agency in making an initial determination is filled by the commissioner. Apparently, there is some concern about having an attorney from the legislative branch represent a client before a commissioner.

The problem with having this role filled by the court or a person appointed by the court is that the agency role (and expertise) in making initial determinations is circumvented as to some, but not all, matters depending upon who is representing the person involved in the adjudication. In addition, AS 44.62.560 provides for judicial review of an agency decision on the record. If the court determines the matter in the first place, that independent judicial review process is disrupted. If someone else outside the agency makes the initial determination, the agency does not bring its expertise to the matter and it seems hard to justify the requirement of judicial review on the record rather than de

Representative Peter Goll

Page 2

March 7, 1989

novo. In addition, I believe that providing for two different administrative procedures, one for people represented by attorneys who are members of the legislative branch and another for everyone else, raises due process questions.

If it is the desire of the legislature to permit attorneys who are members of the legislative branch covered by AS 24.60 to represent clients before administrative agencies in adjudicatory matters, but not to permit them to represent clients before commissioners, I believe the Administrative Procedure Act should be amended to prevent commissioners from deciding any adjudications. Instead these matters could be decided by other agency members. In any case, people should be subject to the same procedures in administrative hearings regardless of who represents them.

TBC:kb
wkk2/110

HB 150

FILE CONTENTS

HB 150.

Fiscal Note.

Memorandum from Representative Goll to Committee Chairman Boucher.

Letter from Alaska Public Offices Commission.

Copies of the following Alaska Statutes:

- (1) AS 39.50.090 (c)
- (2) AS 24.45.171 (8)
- (3) AS 24.45.041
- (4) AS 24.45.051
- (5) AS 24.45.061.

Memorandum from Richard Bradley, Legislative Counsel, to Representative Pat Pourchot regarding representation before a board.

Copy of the relevant sections of the November, 1988, draft Model Ethics Law from the Council on Governmental Ethics Laws.

Copies of the relevant sections of the ethics laws of:

- (1) Connecticut
- (2) Massachusetts
- (3) New Jersey
- (4) New York.

1 IN THE HOUSE

BY GOLL AND KOPONEN

2

HOUSE BILL NO. 150

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to representation of others by
7 legislators and certain legislative employees before
8 state agencies."

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

10 * Section 1. AS 24.60.100 is amended to read:

11 Sec. 24.60.100. REPRESENTATION. A person to whom this chapter
12 applies may not represent [WHO REPRESENTS] another person for compen-
13 sation before an agency, board, or commission of the state. However,
14 a person to whom this chapter applies who is an attorney may represent
15 a client before a court [SHALL DISCLOSE THE NAME OF THE PERSON REPRE-
16 SENTED, THE SUBJECT MATTER OF THE REPRESENTATION, AND THE BODY BEFORE
17 WHICH THE REPRESENTATION IS TO TAKE PLACE IN THE JOURNAL OF THE APPRO-
18 PRIATE BODY OR IF THE LEGISLATURE IS NOT IN SESSION TO THE COMMITTEE.
19 THE COMMITTEE SHALL MAINTAIN A PUBLIC RECORD OF THE DISCLOSURE AND
20 FORWARD THE DISCLOSURE TO THE RESPECTIVE HOUSE FOR INCLUSION IN THE
21 JOURNAL BY THE FIFTH DAY OF THE SESSION].

FISCAL NOTE

REQUEST:

Revision Date: _____ Affect Agency Legislative Affairs Agency
 Title: An Act relating to representation BRU: Legislative Council
of others by legislators and certain legislative...
 Sponsor: Representative Goll Components Council and Subcommittees
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

No Fiscal Impact

Prepared By: Pamela Stoops, Director Phone: 465-3850
 Division: Administrative Services Date: 2/27/89

Approved By: Warren Endicott, Executive Director
 Agency: Legislative Affairs Agency Date: 2/27/89

DISTRIBUTION (BY PREPARER)
 LEGISLATIVE FINANCE
 LEGISLATIVE SPONSOR

REQUESTOR
 OFFICE OF MANAGEMENT & BUDGET
 AGENCY (IES)

REPRESENTATIVE
PETER GOLL



P O BOX V
JUNEAU ALASKA 99811
(907) 465 4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Representative H. A. "Red" Boucher, Chair
House State Affairs Committee

FROM: Representative Peter Goll

RE: HB 150, "An Act relating to representation of
others by legislators and certain legislative
employees before state agencies."

DATE: February 28, 1989

HB 150 prohibits legislators and legislative employees covered under AS 24.60 (Legislative Ethics Act) from engaging in lobbying on behalf of a client for a fee before an agency, board or commission of the state.

This bill is an attempt to provide a reasonable solution to a conflict between two statutes, AS 24.60.100 and AS 39.50.090 (c).

The relevant portion of AS 39.50.090 (c) provides:

(c) A public official may not represent a client before a state agency for a fee. . . .

The term public official is defined in AS 39.50.200(a) (8) and provides in part:

(8) "public official" means . . . a member of the legislature . . .

AS 24.60.100, however, provides:

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 by the fifth day of the session.

Legislative Affairs Legal Services has provided one resolution to the conflict by stating that AS 24.60.100 takes precedence over AS 39.50.090(c) because AS 24.60 was passed subsequent to AS 39.50 and is thus a repeal by implication to the extent of a conflict between the two laws. (See attached memorandum from Richard Bradley to Pat Pourchot, dated December 22, 1988.)

I feel that that result, while it may be legally correct, is not in the public interest.

In fact, AS 39.50 is the public officer and employee conflict of interest law, and was initiated by the people in Initiative Proposal No. 2 in 1974. One of the stated purposes of the initiative, as codified in AS 39.50.010, was "to discourage public officials from acting upon a private or business interest in the performance of a public duty". In the same section the "people of the state declare that...public office is a public trust that should be free from the danger of conflict of interest..."

The position of a legislator is one of influence over state agencies, and it is inappropriate for that influence to be used, or even appear to be used, in the service of a private client for a fee.

The November, 1988, Model Ethics Law from the Council on Governmental Ethics Laws suggests a prohibition on public official lobbying or representation similar to HB 150. In the commentary on that section, the council states that the section prohibits:

"a public official or employee from appearing before other government entities as an advocate or attorney for another person. This limitation is imposed to remove the appearance of impropriety that may arise when an official or employee seeks to influence the actions of other government officials who may be more prone to side with the official or employee than with an adversary unknown to them."

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176

Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

February 24, 1989

Representative Peter Goll
P.O. Box V
Capitol Room 122
Juneau, Alaska 99811

Dear Representative Goll:

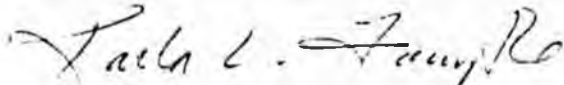
You asked the commission to indicate its position regarding HB 150, an act relating to representation of others by legislators and certain legislative employees before state agencies.

The commission discussed this measure at its February 22, 1989 commission meeting. The commission strongly endorses this bill. As you are aware, the current version of AS 24.60.100 is inconsistent with the conflict of interest law. Under AS 39.50.090(c), a public official may not represent a client before a state agency for a fee. The commission believes the two laws should be made consistent, and strongly favors the broad prohibition contained in the conflict of interest law.

I hope this information is helpful. If you have additional questions, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC Members
Dean Gottehrer, Special Assistant, Commissioner of
Administration

Sec. 39.50.090. Prohibited acts. (a) A public official may not use the official position or office for the primary purpose of obtaining personal financial gain or financial gain for a spouse, child, mother, father, or business with which the official is associated or in which the official owns stock.

(b) A person may not offer or pay to a public official, and a public official may not solicit or receive money for legislative advice or assistance, or for advice or assistance given in the course of the official's public employment or relating to the public employment. However, this prohibition does not apply to a chairman or member of a state commission or board or municipal officer if the subject matter of the legislative advice or assistance is not related directly to the function of the commission, board, or municipal body served by the municipal officer; this exception from the general prohibition does not apply to one whose service on a state commission or board constitutes the person as a full-time state employee under AS 39.

(c) A public official may not represent a client before a state agency for a fee. However, this prohibition does not apply to a municipal officer, or chairman or member of a state commission or board except with regard to representation before that commission or board; this exception from the general prohibition does not apply to one whose service on the commission or board constitutes the person as a full-time state employee under this title.

(d) A municipal officer may not represent a client for a fee before the municipal body the officer serves.

(e) Violation of this section is a misdemeanor, punishable upon conviction by a fine of not less than \$500 nor more than \$2,000, by imprisonment up to one year, or by both.

(f) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a), chairmen and members of all commissions and boards created by statute or administrative action as agencies of the state. (1974 Initiative Proposal No. 2, § 1; am § 12 ch 25 SLA 1975; am § 1 ch 40 SLA 1975; am §§ 2, 3 ch 211 SLA 1975)

Opinions of attorney general. — Subsection (f) of this section does not cover a municipal officer or employee who, as part of his official duties, represents his department before boards, committees, or the assembly of the same government. The rule which forbids the simultaneous holding of incompatible offices would, however, prohibit a person from being both an employee-advocate of a municipal department and a member of the municipal assembly evaluating the advocate's position. November 26, 1984 Op. Att'y Gen.

An official may be in violation of the

common law of conflict of interests even though he is not in violation of this section. November 26, 1984 Op. Att'y Gen.

The commission's power to investigate violations of this section derives from AS 39.50.050, which authorizes the commission to administer AS 39.50 and promulgate regulations to implement the chapter. In carrying out this responsibility, the commission staff should immediately notify the chief prosecutor whenever commission records, files, and inquiries reveal a possible criminal violation of this section. November 26, 1984 Op. Att'y Gen.

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(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;

(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, or a unified municipality;

(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, and 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 (AS 03.10.050);
- (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 Building Authority (AS 18.55.020);
- (13) State Commission for Human Rights (AS 18.80.010);

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seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form or format;

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

(8) "lobbyist" means

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action; or

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

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

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

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

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

(C) a payment which directly benefits a public official or a member of the immediate family of that official;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with a public official;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official;

Article 3. Disclosure: Registration and Reports.

Section	Section
41. Registration	91. Publication of reports
51. Reports	101. Public records
61. Reports by employers of lobbyists	111. Preservation of records
71. Certification of reports	116. Disclosure of contributions
81. Reporting periods	

Sec. 24.45.040. (Repealed, § 1 ch 167 SLA 1976.)

Sec. 24.45.041. Registration. (a) Before engaging in lobbying, a lobbyist shall file a registration statement on a form prescribed by the commission.

(b) The registration form prescribed by the commission shall include

(1) the lobbyist's full name and complete permanent residence and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person by whom the lobbyist is retained or employed;

(3) whether the person from whom the lobbyist receives compensation employs the person solely as a lobbyist or whether the person is a regular employee performing other services for the employer which include but are not limited to the influencing of legislative or administrative action;

(4) the nature or form of the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or in connection with, the influencing of legislative or administrative action;

(5) a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

(6) the full name and complete address of the person, if other than the registrant, who has custody of the accounts, books, papers, bills, receipts and other documents required to be maintained under this chapter.

(c) At the option of the registrant, the registration form may be accompanied by four two and one-half inch by two and one-half inch black and white photographs of the lobbyist. The photographs may not be more than five years old. These photographs shall be included in the directory published under (e) of this section.

(d) If a change occurs in any of the information contained in a registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed with the commission within 10 days after the change.

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(e) Within 45 days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the information prescribed in (b) of this section for each lobbyist and the photograph, if any, furnished by a lobbyist under (c) of this section. From time to time thereafter the commission shall publish those supplements to the directory that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public at the following locations: a public place adjacent to the legislative chambers in the state capitol building, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency and the commission's central office.

(f) Each lobbyist shall renew the registration annually by filing a new registration statement together with a new authorization to act as a lobbyist before engaging in lobbying. The lobbyist also shall file any reports or statements the lobbyist has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied with. (§ 2 ch 167 SLA 1976)

Sec. 24.45.050. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.051. Reports. Each lobbyist registered under AS 24.45.041 shall file with the commission a report concerning the lobbyist's activities during each reporting period prescribed in AS 24.45.081, so long as the lobbyist continues to engage in lobbying activities. The report shall be made on a form prescribed by the commission and filed in accordance with AS 24.45.071 and 24.45.081. The report also shall include any changes in the information required to be supplied under AS 24.45.041(b) and the following information for the reporting period, as applicable:

(1) the source of income, as defined in AS 39.50.200(a) and the monetary value of all payments, including but not limited to salary, fees, and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with influencing legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

(2) the aggregate amount of disbursements or expenditures made or incurred during the period in support of or in connection with influencing legislative or administrative action by the lobbyist, or on behalf of the lobbyist by the lobbyist's employer in the following categories:

- (A) food and beverages;
- (B) living accommodations;
- (C) travel;

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(3) the date and nature of any gift exceeding \$100 in value made to a public official and the full name and official position of that person;

(4) the name and official position of each public official, and the name of each member of the immediate family of any of these officials, with whom the lobbyist has engaged in an exchange of money, goods, services or anything of more than \$100 in value and the nature and date of each of these exchanges and the monetary values exchanged;

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official is a proprietor, partner, director, officer or manager, or has a controlling interest, and whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is \$100 or more in a calendar year; and

(6) a notice of termination if the lobbyist has ceased the lobbying activity which required registration under this chapter and if this report constitutes the final report of the lobbyist's activities. (§ 2 ch 167 SLA 1976)

Sec. 24.45.060. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.061. Reports by employers of lobbyists. (a) Within 15 days after employing, retaining or contracting for the employment or retention of a lobbyist, the person who employs, retains or who contracts for the services of a lobbyist shall file a statement with the commission authorizing or verifying that employment, retention or contract for lobbying services.

(b) A person who employs, retains or who contracts for the services of one or more lobbyists, whether independently or jointly with other persons, and who directly or indirectly makes payments to influence legislative or administrative action shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments have been made during the period by the maker of the report, together with the date and amount;

(4) the date and nature of any gift exceeding \$100 in value made to any public official and the full name and official position of the recipient of each gift;

(5) a general description of the legislative or administrative action which the person making the report has attempted to influence;

(6) the name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, which was paid for specific purposes, including salary, fees, and reimbursement for expenses; and

(7) a notice of termination if the person filing a report has ceased employing or retaining a lobbyist registered under this chapter and if this report constitutes the final report of the lobbyist's activities on behalf of the maker of the report. (§ 2 ch 167 SLA 1976)

Legislative history reports. — For report on CSHB 522, 1976 House Journal, p. 470, explanation of legislative intent, see re-

Sec. 24.45.070. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.071. Certification of reports. Every statement or report required to be filed under this chapter shall identify the full name of the person preparing it, the person's complete address and telephone number, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed. (§ 2 ch 167 SLA 1976)

Sec. 24.45.080. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.081. Reporting periods. Reports required under this chapter shall be filed during the calendar month following each calendar month during any part of which the legislature was in session and during the month following each calendar quarter when the legislature was not in session. However, if a lobbyist registered under this chapter has declared that the lobbyist seeks only to influence administrative action and not legislative action the lobbyist need only file a report required under this chapter for each calendar quarter. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date. (§ 2 ch 167 SLA 1976)

STATE OF ALASKA
THE LEGISLATURE

REGULATORY DIVISION
LEGISLATIVE AGENCY
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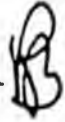
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 22, 1988

SUBJECT: Representation before a board;
AS 39.50.090(c) vs. AS 24.60.100
(Work Order No. 6-0414)

TO: Representative Pat Pourchot

FROM: Richard A. Bradley 
Legislative Counsel

Theda Pittman has asked that we comment on the conflict between AS 39.50.090(c) and AS 24.60.100; a person covered by AS 24.60 receives instructions under AS 24.60.100 that directly conflict with AS 39.50.090(c).

The relevant portion of AS 39.50.090(c) provides:

(c) A public official may not represent a client before a state agency for a fee. * * *

The term "public official" is defined at AS 39.50.200(a)(8). It provides, in part:

(8) "public official" means * * * a member of the legislature * * *

Theda Pittman believes that AS 24.60.100 is inconsistent with AS 39.50.090(c); the former provision provides:

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 disclo-

sure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session.

In our view, AS 24.60.100 takes precedence over AS 39.50.090(c) to the extent of the conflict; while AS 39.50.090(c) applies to public officials, AS 24.60.100 only applies to legislators and legislative employees. This occurs because we believe that AS 24.60.100 was carefully considered by the legislature and constitutes a subsequent inconsistent amendment of substantive law and thus a repeal by implication of the earlier law to the extent of the conflict. While repeals by implication are not favored, the legislative history is clear.

The early versions of SB 257 were consistent with AS 39.50.090(c); as introduced, SB 257 provided:

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

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

(1) an action before a court of the state; or

(2) a matter which was pending at the time a person to whom this chapter applies assumed office or in employed.

(c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would ordinarily be expected.

CSSB 257(SA) varied the provisions:

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

or commission of the state unless acting in an official capacity.

(b) A qualified member of the legislature may represent a client in a criminal action before a court of the state or in a civil action where the state is not a party.

(c) A legislator cannot avoid a conflict of interest under this section by waiving compensation for representing another person under circumstances where compensation would normally be expected.

(d) Disqualification under this section of an attorney who is a member of the legislature does not disqualify a law firm in which the legislator is a member.

(e) A person to whom this chapter applies may represent another person for compensation if the ethics commission determines that the representative will not involve improper influences.

The next version (CSSB 257(Jud)) was simpler:

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 to the committee 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

The next version in our files (CSSB 257(Jud)am) approximates the section that was eventually adopted:

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 a 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 in-

clusion in the journal for the first day of the session.

In commenting on February 24, 1984 to the conference committee on the conference committee version of SB 257 as well as the Senate and House versions, Billy Berrier noted the conflict:

Sec. 24.60.100 (of the conference committee version) requires that a person who represents another person before an agency of the state for compensation shall disclose the representation in the journal if the legislature is in session and, if not, to the committee. The committee must maintain a record of the disclosures and send them to the house involved for inclusion in the journal for the first day of the session.

The Senate version is identical. The House version prohibits representation before an agency of the state for compensation except in court actions and actions which were pending at the time the person was elected or employed.

It was, of course, the Senate version that was adopted.

What seems uncontrovertably clear in the evolution of AS 24.60.100 is that, at least within the context of SB 257, the legislature considered the question carefully and the provision finally adopted is clear that it permits a legislator to represent a client for compensation before an agency of the state.

I am aware from earlier work on this conflict that Theda Pittman, when she was executive director of the Public Offices Commission, has stated that she or staff of the commission discussed the conflict between AS 24.60.100 and AS 39.50.090(c) with the drafters of SB 257. I am certain that her statement is accurate but I cannot explain the failure of SB 257, as enacted, to resolve the conflict.

But it is clear that AS 24.60.100 is in pari materia to AS 39.50.090(c). Each law deals with the concern of the legislature with "conflict of interest" as that concern affects legislators in a particular area: the representation by attorney-legislators of clients who have cases on matters involving executive agencies of the state.

Representative Pat Pourchot
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In my view, the subsequent enactment of AS 34.61.00 constitutes a pro tanto repeal by implication of the provisions of AS 39.50.090(c) as the latter section applies to legislators.

The matter could, of course, be addressed by legislation.

If I may be of further assistance, please advise.

RAB:gc
LRG5/033

230 Restraints on Public Official and Employee Representation of Clients
Before Government Entities

230.01 Appearance as an Advocate

(1) A public official or employee shall not appear as the advocate of another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf of:

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

230.02 Appearance as an Attorney

(1) A public official or employee shall not appear as an attorney for another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf of:

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing as an attorney before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

COMMENT:

The preceding two sections prohibit a public official or employee from appearing before other government entities as an advocate or attorney for another person. This limitation is imposed to remove the appearance of impropriety that may arise when an official or employee seeks to influence the actions of other government officials who may be more prone to side with the official or employee than with an adversary unknown to them.

Excerpt, Model Ethics Law, November 1966, Council on Governmental Ethics Laws

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345, 348; P.A. 83-249, S.6, 14; 83-270, S.3; 83-586, S.3, 14;
P.A. 84-21, S.1,5; 84-335, S.2, 4; 84-546, S.141, 173; P.A.
87-524, S.5, 7, amending subsection (b) effective July 7, 1987.)

Sec. 1-84. (Formerly Sec. 1-66). Prohibited activities.

(a) No public official or state employee shall, while serving as such, have any financial interest in, or engage in, any business, employment, transaction or professional activity, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, as defined in section 1-85.

(b) No public official or state employee shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(c) No public official or state employee shall wilfully and knowingly disclose, for financial gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment and no public official or state employee shall use his public office or position or any confidential information received through his holding such public office or position to obtain financial gain for himself, his spouse, child, child's spouse, parent, brother or sister or a business with which he is associated.

(d) No public official or his employee or state employee or his employee shall agree to accept, or be a member or employee of a partnership, association, or a professional corporation which partnership, association or professional corporation agrees to accept, any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before the banking department, the claims commissioner, the commission on hospitals and health care, the insurance department, the department of liquor control, the department of motor vehicles, the state insurance purchasing board, the department of environmental protection, the department of public utility control, the connecticut siting council, the division of special revenue within the department of revenue services, the gaming policy board within the department of revenue services or the Connecticut real estate commission; provided this shall not prohibit any such person from making

inquiry for information on behalf of another before any of said commissions or commissioners if no fee or reward is given or promised in consequence thereof. For the purpose of this section, partnerships, associations or professional corporations refer only to such partnerships, associations or professional corporations which have been formed to carry on the business or profession directly relating to the employment, appearing, agreeing to appear or taking of action provided for in this subsection. Nothing in this subsection shall prohibit any employment, appearing, agreeing to appear or taking action before any municipal board, commission or council. Nothing in this subsection shall be construed as applying (1) to the actions of any TEACHING OR RESEARCH professional employee of a public institution of higher education if such actions are not in violation of any other provision of this chapter, (2) TO THE ACTIONS OF ANY OTHER PROFESSIONAL EMPLOYEE OF A PUBLIC INSTITUTION OF HIGHER EDUCATION IF SUCH ACTIONS ARE NOT COMPENSATED AND ARE NOT IN VIOLATION OF ANY OTHER PROVISION OF THIS CHAPTER OR (3) to any member of a board or commission who receives no compensation other than per diem payments or reimbursement for actual or necessary expenses, or both, incurred in the performance of his duties.

(e) No legislative commissioner or his partners, employees or associates shall represent any person subject to the provisions of part II concerning the promotion of or opposition to legislation before the general assembly, or accept any employment which includes an agreement or understanding to influence, or which is inconsistent with, the performance of his official duties.

(f) No person shall offer or give to a public official or state employee or candidate for public office or his spouse, his parent, brother, sister or child or spouse of such child or a business with which he is associated, anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official, state employee or candidate for public office would be or had been influenced thereby.

(g) No public official or state employee or candidate for public office shall solicit or accept anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official or state employee or candidate for public office would be or had been influenced thereby.

(h) Nothing in subsection (f) or (g) of this section shall be construed (1) TO APPLY TO ANY PROMISE MADE IN VIOLATION OF

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involved is one:

1. in which he or she participated at any time as a state employee or special state employee;
2. which is or has been (within the preceding year) the subject of the employee's official responsibility; or
3. which is pending in the state agency in which the employee is serving -- if the employee serves more than 60 days in any 365 day period. To serve more than 60 days means to perform work on more than 60 days; work on any part of a day will be considered work for one full day. The employee is responsible for keeping accurate records in this regard.

Example: A lawyer consults with the Department of Public Health (DPH) for 45 days spread out over a year; she is a special employee. Her work relates exclusively to the DPH lead-paint program. The lawyer could also represent a community health center in a funding application before DPH because she does not have official responsibility for or participate in DPH funding decisions and she worked less than 60 days for DPH during the previous year.

c. Application to Legislators

Like "special" state employees, Legislators have more leeway under the restrictions of Section 4. Since members of the state Legislature are expected to speak and act on behalf of their constituents, a member of the General Court may act as the unpaid representative of a constituent before any state agency.

In addition, a Legislator may receive compensation from, or act as the paid agent or attorney for, someone other than the commonwealth or a state agency if the particular matter involved is:

1. ministerial in nature (ministerial functions include, but are not limited to, the filing or amendment of: tax returns, applications for permits or licenses, incorporation papers, or other documents); or
2. an appearance before a court of the commonwealth; or
3. an appearance in a quasi-judicial proceeding. A proceeding is considered quasi-judicial if the action of the state agency is adjudicatory in nature, is appealable to the courts and both sides are entitled to legal representation (Note: The Legislator's opposing counsel may neither be the attorney general

NEW JERSEY

P.L. 1987, c. 432,
s. 3, eff.
Feb. 14, 1988

52:13D-16. Representation, appearance or negotiation on proceeding pending before particular office, bureau, etc., or state agency

5. a. No special State officer or employee, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

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b. No State officer or employee or member of the Legislature, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency; provided, however, this subsection shall not be deemed to prohibit a member of the Legislature from making an inquiry for information on behalf of a constituent, if no fee, reward, or other thing of value is promised to, given to or accepted by the member of the Legislature, whether directly or indirectly nor shall anything contained herein be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf.

c. Nothing contained in this section shall be deemed to prohibit any legislator, or any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

(1) Pending before any court of record of this State,

(2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),

(3) In connection with the determination or review of transfer inheritance or estate taxes,

(4) In connection with the filing of corporate or other documents in the office of the Secretary of State,

(5) Before the Division on Civil Rights or any successor thereof,

(6) Before the New Jersey State Board of Mediation or any successor thereof,

(7) Before the New Jersey Public Employment Relations Commission or any successor thereof,

(8) Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to P. L. 1952, c. 174, § 5 (C. 39:6-65), or

(9) Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

52:13D-17. Representation on matter in which directly involved during state service

P.L. 1987, c. 432,
s. 4, eff.
Feb. 14, 1988

6. No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for →, negotiate on behalf of, or provide information → not generally available to members of the public or services to, or agree to represent, appear for, → negotiate on behalf of, or provide information → not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered, any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed six months, or both.

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ment. The measure prohibits legislators and their law partners and party chairs from representing clients before state agencies. It prohibits the New York City party chairs from representing clients before city agencies. The new law's postemployment provision restricts for 2 years an official's appearances before an agency with which the official was formerly associated. It prohibits a legislative employee from lobbying the Legislature during the same session for which the person had worked for the Legislature. The new law requires the City of New York to adopt disclosure reports and financial reporting for its officials. The law also establishes a temporary state committee on local government ethics to review standards of conduct for local governments.

For additional information consult Evan Davis, Counsel to the Governor of New York (212/587-2100 or 518/474-8343).

2. Legislation proposed: Early in 1987, New York's Legislature had passed a law that included these provisions:

a. Creation of ethics code: New York's Legislature passed a law that would have these results:

(1) Prohibited state officials and legislators from appearing before most state officials. Those who are attorneys could appear before some "quasi-judicial" proceedings, but would be required to disclose their appearances. Law partners of legislators, state officials, and legislative employees were required to disclose appearances before state agencies.

(2) Require state officials and legislators who earn more than \$30,000 to file lengthy financial disclosure statements detailing their own investments, as well as those held by their spouses and dependent children. Candidates for state office would be required to also file the statements.

(3) Establish two ethics commissions, one to oversee state employees and a second to oversee the legislature.

(4) Make all disclosure information and lists of appearances before state agencies available for public scrutiny.

(5) Bar legislators and state officials who are attorneys from sharing the profits earned by legal partners who represent cases before state agencies.

(6) Prohibit legislative employees who leave government service from lobbying the legislature until the next election.

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**Model State
Conflict of Interest
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47 East 68th Street
New York, New York 10021

are parallel in some respects to the prohibitions of conflicts of interest contained in the American Bar Association Code of Professional Responsibility. They also parallel the restrictions which business corporations put on the actions of their officers and employees.

Section 12. Conflicts of Interest; Legislature.

(a) A member of the state legislature and a person appointed by the legislature or by any legislator shall not represent or assist any person or business before any state agency or before any agency of any political subdivision of the state for compensation or other benefit or promise thereof.

Commentary

Section 12 (a). This section deals with a variety of conflict of interest situations which may involve legislators or legislative staff. Subsection (a) bars state legislators and persons appointed by them from representing others before any agency of the state or its subdivisions, for compensation or other benefit or promise. It should be noted that the section prohibits representation "for compensation." It does not, however, interfere with a legislator's responsibility to represent his constituent's interests before a state agency. It should also be noted that the section is not intended to apply to representation of clients by state legislators or legislative employees before the courts of the state. The state courts are not generally considered to be agencies of the state, and, consequently, this section does not bar such representation. In the states which do not follow the usual rule and do consider courts state agencies, an express exception for courts should be added.

(b) A member of the state legislature shall comply with the Code of Legislative Ethics adopted by the legislature, and shall comply with the reporting requirements of Section 17 of this Act.

Commentary

Section 12 (b). This subsection reflects the universal constitutional provision that the legislature is the only body which may regulate a member's behavior on the floor, and the questions of his seating and seniority. Thus the section refers the legislators to their legislature's own code of legislative ethics in lieu of compliance with the requirements of this Act. Note, however, that legislators are not exempt from the reporting requirements of Section 17 of this Act. The section exhorts the houses of the legislature to set rules of conduct for their members and to enforce them. The provisions of this law clearly cannot reach instances of actions on the part of legislators in the legislative chambers that reflect conflicts of interest or that reflect commitment to special interests.

(c) Any violation of this Act by a member of the state legislature shall be subject to the sanctions of this Act to the fullest extent permissible under the provisions of the state constitution. Any violation not subject to the sanctions of this Act by reason of the state constitution shall be subject to such sanctions as the legislature itself may impose under its Code of Legislative Ethics.

Commentary

Section 12 (c). This section states the general principle that violations of the Act by members of the state legislature are to be subject to the sanctions of the Act insofar as such sanctions may be applied consistent with the provisions of the state constitution. In a number of states the constitutional protection granted legislators for actions on the floor of the respective houses of the legislature extends beyond matters of voting and free speech and may be inconsistent with the enforcement of certain conflict of interest provisions under this law. To the extent that some of the conflict of interest provisions under this law may not be applicable to state legislators under the constitution, the Act relegates those violations to sanctions imposed by the legislature itself. Thus, for example, if the Commission may not penalize a legislator for failing to disclose a conflict of interest prior to voting as required by Section 17, the legislature is obligated to proceed against its members when the commission cannot by reason of constitutional limitations.

Section 13. Government Contracts; Prohibitions.

(a) A state official or state employee or a member of his household shall not be a party to or have an interest in the profits or benefits of a state contract or the investment of state funds unless the contract or the investment meets the following exceptions:

- (i) The contract is let by competitive bidding or involves not more than \$150 (One Hundred and Fifty Dollars);
 - (ii) The contract is for necessary supplies or services for the governmental agency involved, which are unobtainable elsewhere for the same or lower cost, or which are furnished to the government agency as part of a continuing course of dealing, established before the state official or state employee became associated with the governmental agency, and the entire transaction is conducted at arm's length, with the agency's full knowledge of the interest of the state official or state employee or a member of his household, and the state official or state employee takes no part in the determinations of specifications, deliberations or decision of the governmental agency with respect to the public contract.
- (b) In the absence of bribery or a purpose to defraud, a state official or

NEPOTISM. AS 24.60.090.

The section on nepotism refers to "an individual who is related to" (i.e., a relative) meaning a child, stepchild, husband, wife, mother, father, sister or brother.

During the session, a relative of a legislator may not be employed in the house in which the legislator is a member or by an agency of the legislature established by AS 24.20.

During the interim, a relative of a legislator may not be employed in either house or by an agency of the legislature.

A relative of a legislative employee may not be employed in a position supervised by the employee.

A relative may work, without compensation from the state, for a legislator or an employee.

REPRESENTATION BEFORE A STATE AGENCY. AS 24.60.100.

Legislators and employees must disclose their paid representation of another person before a state agency, board or commission. The disclosure must include the name of the client, the subject matter of the representation, and the name of the agency, board or commission before which the representation is to take place.

During the session, such a disclosure is made in the appropriate journal. In the interim, it is made to the committee.

A legislator who practices law is required to disclose the names of clients, the state agency before which the representation took place, and the subject matter of the representation unless disclosure would violate the state or federal constitution or unless federal law prohibits full disclosure. If full disclosure is contrary to federal law or constitutional requirements, partial disclosure must be made.
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Representation for a fee before a state agency by a legislator or a legislative employee required to file a Conflict of Interest Statement

is prohibited by AS 39.50.090(c), one of the few portions of that statute which addresses conduct. In a memorandum dated December 22, 1988, legislative counsel concludes that the legislature carefully considered the differences between AS 39.50.090(c) and the language of AS 24.60.100 in the legislative process with the result that the ban against representation, before a state agency by a legislator, found in the Conflict of Interest statute is repealed by implication.

The names of all clients from whom more than \$100 is received are required to be disclosed on a Conflict of Interest Statement. Clients of most types of businesses are required to be disclosed. Under administrative regulation 2 AAC 50.100, the Alaska Public Offices Commission will consider requests for exemption from the requirement. Questions about the requirement should be directed to the Commission staff.

STATE CONTRACTS OR LEASES. AS 24.60.040.

Except for the kinds of leases or contracts listed below, a legislator or a legislative employee may not be a party to or have an interest in a state contract or lease. A person has an interest in a contract or lease if the person receives direct or indirect financial benefits from it, including the receipt of income, profits, a salary or fee, or any other financial benefit.

The allowable exceptions are:

- 1) the contract or lease is let through competitive sealed bid under the state procurement code; or
- 2) the total annual amount of the contract or lease is \$1,000 or less; or
- 3) the contract or lease is a standardized one developed under publicly established guidelines and is generally available to the public or to a group to which the legislator or employee belongs.

Income, profits or other financial benefits of a contract are covered by this provision regardless of whether they are the result of activity as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor.

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

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

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

(5) gifts from the family of the person.

(d) A person to whom this chapter applies who accepts a gift of travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern shall disclose the gift if it has a value of \$100 or more. The disclosure must include the name and occupation of the person making the gift; and the approximate value of the gift. Each gift required to be disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift 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 it receives and shall forward the disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular session.

(e) A political contribution that is reported under AS 15.13.040 is not a gift under this section.

(Sec. 1 ch 36 SLA 1984; am sec. 3 ch 167 SLA 1988)

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.

(Sec. 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 by the fifth day of the session.

A MODEL ETHICS LAW FOR STATE GOVERNMENT



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reports available to the public, the press and other watchdogs of the public interest serves three vital interests. First, the officials making disclosure pay more attention to complying fully and accurately with the law. Second, enforcement agencies are made more diligent in advising officials of potential conflicts of interest and in dealing with violations of ethical standards. Third, the officials guilty of intentional or unintentional violations may be brought by publicity to take corrective action. Public disclosure is an action-forcing mechanism for ethics officials and others to apply the law actively. In short, public disclosure forces the law to be taken seriously.

Finally, financial disclosure reports should be readily available to those requesting to see them. To facilitate these demands, it is vital that the ethics commission or other oversight authority be provided with adequate computer, copying and microfiche equipment.

PROSCRIBED ACTIVITIES

Conflict-of-interest statutes must be more than merely recommended codes of conduct. They should contain clear directives for public officials and employees in the form of enforceable statutes. The law must prohibit any use of official powers for personal financial gain and provide mechanisms to disqualify government officials and employees from specific actions which may enable them to do so.

The law must clearly prohibit giving and solicitation of gifts or other things of value in relation to an official's

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actions. The prohibition should include, for example, exchanges of gifts or other items of value as a reward or display of gratitude in relation to any official's actions, regardless of any intent to influence those actions. This is an important way to address the potential for apparent, as well as real, conflicts of interest.

To help prevent violations of the conflict-of-interest statutes, public officials and employees should be actively encouraged to seek legally binding advisory and interpretive decisions from the ethics commission on potential conflict-of-interest situations before they occur. Ideally, a sound conflict-of-interest statute backed up by an effective ethics commission or other enforcement mechanisms should provide any public official facing a potential conflict-of-interest situation with a set of procedures to avoid it. The procedures should guarantee that the official will not be charged with violating the law after acting in good faith in accordance with those procedures.

Public officials and employees should also be prevented from officially acting on any specific matter that would directly affect their personal financial standing. A series of guidelines should be established which provide a set of options and courses of action for the official or employee facing a conflict of interest. These should include methods for full disclosure of the financial interest and, when necessary, recusal or abstention from the action.

Outside employment

In addition to prohibitions on the use of public office for personal financial gain, public officials and employees must be

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prevented from engaging in compensated work outside of their official employment which might conflict with the public interest. Whenever an elected official or employee works for private interests in matters in which the state also has an interest, there is a potential for divided loyalties, influence peddling, and the use of insider information and favoritism.

Whether for compensation or for free, public officials and employees should also be prevented from representing interests other than the state's before the state or any state agency in relation to a matter in which the state is a party or has an interest. In other words, public officials and employees must be prevented from "serving two masters" in their official capacity, whether or not they personally gain from such activity.

For example, a state employee who, during off-duty hours, acts as voluntary director of a non-profit corporation which runs a program providing shelter for the homeless should not be able to represent the corporation before a state agency awarding grants for the development of such shelters. The employee's status and possible inside information gives that person an unfair advantage over other individuals and organizations which may come before the same agency.

Legislators :

State legislators can range from full-time/professional to part-time/citizen officials. In most states, legislators routinely maintain jobs outside the legislature. Legislators in some states receive full salaries; others do not. Some legislatures meet for short periods of time every other year; some meet for longer, annual sessions.