

STATE OF ALASKA

DEPARTMENT OF LAW

SARAH PALIN, GOVERNOR

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May 17, 2007

The Honorable Sarah Palin
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: SCS CSHB 109(FIN) am S -- 2007 Ethics
and Disclosure Reform Legislation
Our file: 883-07-0036

Dear Governor Palin:

We reviewed SCS CSHB 109(FIN) am S, which would make substantial changes to Alaska's ethics and disclosure laws. The bill would increase disclosure requirements for state and municipal offices and impose more stringent ethics restrictions on members of the executive and legislative branches of state government.

The bill originated as your proposal, but the legislature added many provisions. The provisions you proposed -- some in slightly modified form -- appear in secs. 7, 8, 34, 43 - 45, 54, 55, 59, 60, 62, 63, 66-68, and 77 - 79 of the bill. Despite the many additions to the bill, we believe it satisfies the one-subject and descriptive-title requirements of art. II, sec. 13 of the Alaska Constitution.

Section 1 of the bill would make it a misdemeanor for a public servant to fail to report to a peace officer or law enforcement agency when the public servant knows or reasonably should know of another person's bribery of a public servant or another public servant's receipt of a bribe. Under sec. 75 of the bill, sec. 1 would apply only to offenses occurring on or after sec. 1's effective date.

Section 2 of the bill would modify the definition of "benefit" that applies in state bribery statutes. The effect would be to prohibit agreements to exchange a campaign contribution for an elected official's or candidate's change of a vote or position on a matter that the official has, or the candidate would have, authority to take official action on. Under sec. 75 of the bill, sec. 2 would apply only to offenses occurring on or after sec. 2's effective date.

Sections 3 - 5, 10, 49-53, 73, and 76 would provide for forfeiture of certain pension contributions. The forfeiture would apply to pension contributions that the state makes on behalf of a public officer, legislator, or legislative director after that person commits a listed felony (such as bribery, perjury, or fraud) in connection with the person's official duties. The forfeiture

would occur upon conviction, but would apply only to offenses committed on or after these sections become law. The forfeiture would not apply to insurance, wage reductions, supplemental or health benefits, or pension contributions that the convicted person made. The Alaska Retirement Management Board could, in considering all of the circumstances, award some or all of the forfeited amounts to a spouse, dependent, or former spouse of the convicted person.

The pension forfeiture provisions might, as applied to particular circumstances, raise constitutional issues. For example, if the forfeiture provisions were applied to a person who became a member of a state retirement system before the effective date of the provisions, the person (or the person's beneficiaries) might claim that the forfeiture violates art. XII, sec. 7 of the Alaska Constitution. Article XII, sec. 7 provides that membership in employee retirement systems of the state or its political subdivisions constitutes a contractual relationship, and that accrued benefits of these systems may not be diminished or impaired.

Constitutional issues might also arise if forfeiture deprived a convicted person's dependents of pension benefits. Article I, sec. 15 of the Alaska Constitution provides, in part, that "[n]o conviction shall work corruption of blood or forfeiture of estate." That provision prohibits laws that, based on a conviction, disinherit the convict's heirs or prospective heirs or forfeit the convict's entire estate.¹

The outcome of a constitutional challenge to the pension forfeiture provisions on either of these grounds is uncertain. Although a challenge might succeed, we believe we could defend those provisions in good faith.

Section 6 of the bill would reduce the availability of an exemption from the laws requiring reporting of each campaign contribution and expenditure. That exemption currently applies to any candidate in a state election (or municipal election in a municipality with population exceeding 1,000) who (1) pledges to raise and spend no more than \$5,000 in the campaign, and (2) complies with the pledge. Section 6 would make that exemption available only to those who make and keep the pledge as candidates for constitutional convention delegate, judges seeking judicial retention, or candidates for municipal office.

Sections 7 and 8 of the bill would require electronic submission of campaign disclosures filed with the Alaska Public Offices Commission (APOC). The requirement would not apply to a candidate who makes and keeps a pledge to raise and spend no more than \$5,000 in seeking election or to a candidate for municipal office in a municipality of fewer than 15,000 residents. Until January 1, 2009, the requirement would not apply to a candidate for the legislature or a candidate for municipal office in a municipality of 15,000 or more residents. The APOC could grant exceptions to the electronic filing requirement when it determined exceptions were

¹ See *Estate of Blodgett*, 147 P.3d 702, 710-11 (Alaska 2006), and *Wallach v. Van Riswick*, 92 U.S. 202, 210 (1875) (discussing somewhat similar language in art. III, sec. 3 of United States Constitution).

warranted. However, those who do not file electronically would be required to submit legible disclosures on paper, in a format acceptable to the APOC.

Section 9 of the bill would require the APOC to scan the paper disclosures it receives and publish them on the Internet within two working days of receipt, in a format accessible to the general public.

Discussion of sec. 10 of the bill appears above, in the paragraph addressing sec. 3.

Section 11 of the bill would require the APOC to provide an annually updated ethics training course for lobbyists and their employers.

Section 12 of the bill would require each lobbyist (other than a representational lobbyist) to submit, with the lobbyist's annual registration, a sworn affirmation that the lobbyist attended the APOC's ethics training within the preceding 12 months. A representational lobbyist is one who receives no compensation for lobbying other than reimbursement of personal travel and living expenses.² Each registering lobbyist (including a representational lobbyist) would be required to submit a sworn affirmation that he or she was not previously convicted of a felony involving moral turpitude, as defined in AS 15.60.010.

Section 13 of the bill would bar a person previously convicted of a felony involving moral turpitude from registering as a lobbyist. A person affected by this provision might claim that the prohibition violates constitutional provisions such as art. I, secs. 1 and 15 of the Alaska Constitution and similar provisions of the United States Constitution. Article I, sec. 1 provides, in part, that all persons have natural rights to the enjoyment of the rewards of their own industry and are entitled to equal rights, opportunities, and protection under the law. Article I, sec. 15 prohibits, among other things, ex post facto laws and laws impairing the obligation of contracts. However, art. II, sec. 12 of the Alaska Constitution also expressly directs the legislature to regulate lobbying.

The outcome of a constitutional challenge to the lobbying disqualification provision on these grounds is uncertain. Although a challenge might succeed, we believe we could defend that provision in good faith.

Section 14 of the bill would require registered lobbyists to report to the APOC information about food and beverages the lobbyists provide to legislators, legislative employees, and spouses and domestic partners of legislators and legislative employees. The reporting requirement would apply to food and beverages for immediate consumption that the lobbyists provide or pay for, unless the cost of the food and beverages does not exceed \$15, or the food and beverages are provided as part of an event open to all legislators or all legislative employees. The reports would be required to include the dates the food and beverages were provided, the recipients' names, and the recipients' relationships to legislators or legislative employees.

² 2 AAC 50.511(a).

Section 15 of the bill would prohibit a lobbyist from making or offering a gift to a member of the executive branch that the Executive Branch Ethics Act prohibits the member from accepting. Section 15 of the bill would also make changes to conform to sec. 27's amendments to the Legislative Ethics Act's restrictions on gifts to legislators and legislative employees.

Section 16 of the bill would prohibit a former member of the executive branch from registering or serving as a lobbyist when the Executive Branch Ethics Act prohibits the former member from lobbying. The prohibition would not apply to service as a representational or volunteer lobbyist, each of which is a lobbyist that receives no compensation for lobbying other than reimbursement of reasonable personal travel and living expenses.³

Section 16 would also prohibit a spouse or domestic partner of a legislator from serving as a lobbyist, other than as a representational or volunteer lobbyist. A person affected by this provision might claim that the prohibition violates constitutional provisions such as art. I, secs. 1 and 15 of the Alaska Constitution and similar provisions of the United States Constitution. As we noted previously, art. I, sec. 1 provides, in part, that all persons have natural rights to the enjoyment of the rewards of their own industry and are entitled to equal rights, opportunities, and protection under the law. Article I, sec. 15 prohibits, among other things, laws impairing the obligation of contracts. Again, however, art. II, sec. 12 of the Alaska Constitution expressly directs the legislature to regulate lobbying.

The outcome of a constitutional challenge to the lobbying provision on these grounds is uncertain. Although a challenge might succeed, we believe we could defend that provision in good faith.

Section 17 of the bill would define "domestic partner" for purposes of sec. 16's prohibition on lobbying.

Section 18 of the bill would clarify language in the Legislative Ethics Act concerning provisions that apply to former legislators and former legislative employees.

Section 19 of the bill would make changes to conform to sec. 27's amendments to the Legislative Ethics Act's restrictions on gifts to legislators and legislative employees. Section 19 would also clarify that legislators' and legislative employees' personal use of telephones and facsimile machines is permissible if it does not interfere with performance of public duties and they reimburse the state whenever the cost or value of the use is more than nominal.

Section 20 of the bill would reduce from 90 to 60 days the length of the pre-election blackout period during which a legislator or legislative employee who is a candidate in the election may not, without approval of the Select Committee on Legislative Ethics, use state funds to print or distribute a political mass mailing to individuals eligible to vote for the candidate. A "political mass mailing" is a mass mailing from or about a candidate. During hearings on the

³ 2 AAC 50.511(a); AS 24.45.161(a)(1).

bill, testimony indicated that this provision was designed to permit legislators to report promptly to their constituents on special legislative sessions held after the regular session and before the next state primary or general election.

Section 21 of the bill would require legislators and legislative employees to disclose to the Select Committee every board of an organization on which they serve. Current law requires disclosure only of service on boards of organizations that regularly have substantial interest in the legislator's or legislative employee's legislative activities. A person affected by this disclosure requirement might claim that it violates the right of privacy under art. I, sec. 22 of the Alaska Constitution and similar protections under the United States Constitution. Article I, sec. 22 provides, in part, that "[t]he right of the people to privacy is recognized and shall not be infringed."

The outcome of a constitutional challenge to the disclosure provision on these grounds is uncertain. Although a challenge might succeed, we believe we could defend that provision in good faith.

Section 22 of the bill would require publication of legislators' and legislative employees' disclosures of their own and immediate family members' interests in state contracts and leases. The disclosures would be published in the appropriate journal or supplemental journal not later than the next regularly scheduled publication of ethics disclosures.

Section 23 of the bill would require that disclosures of legislators' and legislative employees' participation in state programs or loans also be published in the appropriate supplemental journal not later than the next regularly scheduled publication of ethics disclosures. The Select Committee could keep any part of a disclosure confidential if the committee determined that making the entire disclosure public would unjustifiably invade personal privacy.

Section 24 of the bill would eliminate an exception to the Legislative Ethics Act's requirements for reporting close economic associations. Legislators and legislative employees currently must disclose their close economic associations with public officials unless the officials are appointed municipal officers. Section 24 of the bill would eliminate that exception.

Section 25 of the bill would make changes to conform to sec. 16's lobbying prohibition on spouses and domestic partners of legislators and legislative employees.

Section 26 of the bill would create an exemption from gift restrictions in the Legislative Ethics Act for "compassionate gifts." The exemption would allow gifts to a legislator or legislative employee to aid or comfort the recipient or a member of the recipient's immediate family because of a catastrophe, tragedy, or health-related emergency. The exemption would apply only if the chair of the Legislative Council and the chair or vice-chair of the Select Committee approved in writing a written request for approval of the gift. The gifts would also be subject to a value limit: the cumulative, fair market value of an individual's compassionate gifts to a particular legislator or legislative employee during a calendar year would be required to be less than \$250.

Section 27 of the bill would extend the Legislative Ethics Act's restrictions on gifts from lobbyists and persons acting on their behalf to apply also to gifts from lobbyists' immediate family members. Section 27 of the bill would also reorganize some of the gift provisions.

Section 28 of the bill would define "immediate family" for purposes of a provision that permits gifts from a legislator's or legislative employee's immediate family to the legislator or legislative employee. Section 28 of the bill would also exclude the Office of Victims' Rights from accepting welcome gifts or session discounts in connection with legislative sessions; permit legislators and legislative employees to give each other rides in their own aircraft, boats, and motor vehicles; and make changes to conform to sec. 27's amendments to the Legislative Ethics Act's gift provisions.

Section 29 of the bill would require legislators and legislative employees to disclose to the Select Committee, within 30 days of receipt, gifts valued at \$250 or more that are not connected with the recipients' legislative status. Section 29 of the bill would also make changes to conform to sec. 27's amendments to the Legislative Ethics Act's gift provisions.

Section 30 of the bill would bar immediate family members of legislators and legislative employees from receiving gifts that the Legislative Ethics Act would bar them from receiving if they were legislators or legislative employees. Section 30 of the bill would also require legislators and legislative employees to submit disclosures to the Select Committee for publication whenever their immediate family members receive gifts that the legislators or legislative employees know or reasonably should know were made because of the family members' connections with the legislators or legislative employees.

Section 31 of the bill would prohibit legislators from accepting compensation from anyone other than the state for work associated with legislative, administrative, or political action. "Legislative action," as defined in AS 24.45.171(9), would include various activities related to bills, resolutions, amendments, motions, reports, nominations, appointments, or other legislative matters. "Administrative action," as defined in AS 24.45.171(1), would include various activities related to state agency rules or regulations, quasi-legislative actions or proceedings, or quasi-judicial actions or proceedings, but would not include certain proceedings to determine a person's rights or duties; certain proceedings concerning permits, licenses, or entitlements for use; certain enforcement proceedings; procurement activity; or certain activities related to collective bargaining agreements. "Political action," as defined in AS 24.60.990(a)(13), would include conduct in which public officials use their official positions or political contacts to exercise influence on state and local government employees or entities, such as endorsing a candidate for office.

Section 32 of the bill would require legislators and legislative employees to file a disclosure within 30 days after commencement of any matter or interest that must be disclosed, or within 30 days after the legislator or legislative employee first becomes subject to the Legislative Ethics Act, whichever comes later.

In addition, sec. 33 of the bill would require each legislator and legislative employee to file an annual disclosure within 30 days of the first day of the regular legislative session.

Section 34 of the bill would require each former legislator, former legislative employee, and former public member of the Select Committee to file final disclosures no later than 90 days after the person's final day of service in that office.

Section 35 of the bill would permit designation of an alternate to serve when a regular legislative member of the Select Committee or one of its subcommittees is unable to attend a meeting.

Section 36 of the bill would define "majority organizational caucus" for purposes of sec. 37's provision for disqualification of legislative members of the Select Committee from hearing certain complaints.

Section 37 of the bill would establish procedures for appointment of substitute legislators to serve on the Select Committee when it hears complaints alleging that groups of legislators that include regular legislative members of the Select Committee and their alternates violated the Legislative Ethics Act.

Section 38 of the bill would require the Select Committee to publish legislative ethics materials, including an annually updated handbook and a bimonthly newsletter. Section 38 of the bill would also require the Select Committee to provide introductory and refresher ethics training courses for legislators, legislative employees, and public members of the Select Committee. The courses would be held within 10 days of the first day of each regular session of the legislature and at other times determined by the committee. Under sec. 75, the Select Committee would be required to offer in 2008 only one type of ethics training course, which all legislators, legislative employees, and public members of the Select Committee would be required to attend.

Section 39 of the bill would require each legislator, legislative employee, and public member of the Select Committee to take an ethics training course within 10 days of the first day of the first regular session of each legislature unless the Select Committee granted the person additional time to complete the course. A person who first takes office or begins employment after the 10th day of the first regular session of a legislature would be required to complete a course within 30 days after the first day of service unless the Select Committee granted the person additional time to complete the course.

Section 40 of the bill would permit the Select Committee to issue advisory opinions on its own request or on request of the APOC. Section 40 of the bill would require the Select Committee to delete sufficient information from its advisory opinions to prevent disclosing the identities of the persons involved. The Select Committee's discussions and deliberations on advisory opinions would be confidential unless those requesting the opinions and those named in the requests waived confidentiality, but the committee's final votes on opinions would be public records.

Section 41 of the bill would permit the Select Committee to appoint someone to present a case against a person charged with violating the Legislative Ethics Act. The appointee could not be anyone who provides advice to the committee other than in presenting such cases. Section 41 of the bill would also permit the committee to schedule hearings beyond the current deadline of 90 days after service of the charge on the person charged. The committee could dismiss a complaint with prejudice or enter some other appropriate order if a complainant prevented a hearing from starting before the 90-day deadline and the committee determined that there was no compelling reason for the delay or that the delay would deprive the person charged of a fair hearing.

For purposes of administering remedies for violations of the Legislative Ethics Act, sec. 42 of the bill would designate the legislature as the appointing authority for the victims' advocate and designate the victims' advocate as the appointing authority for other employees of the Office of Victims' Rights.

Section 43 of the bill would require more details in the financial disclosures that legislators, legislative directors, and public members of the Select Committee must file with the APOC each year concerning their own and certain family members' income. The disclosures would be required to include information about deferred income, information about income from limited liability companies (including dividends received for personal services), the names and addresses of the income sources and recipients, the amounts received, the methods of calculating the income earned, the dates and approximate number of hours worked to earn the income, and, unless required by law to be confidential, clear descriptions of the nature of the services performed to earn the income.

Section 44 of the bill would require legislators appointed to fill vacant seats, public members of the Select Committee, and legislative directors to file financial disclosures with the APOC within 90 days of their appointment. Section 44 would also require any person leaving service as a legislator, legislative director, or public member of the Select Committee to file a final financial disclosure with the APOC within 90 days of the person's last day of service.

Section 45 of the bill would require electronic filing of financial disclosures from legislators, legislative directors, and public members of the Select Committee. The APOC could grant exceptions to the electronic filing requirement when it determined exceptions were warranted. However, those who do not file electronically would be required to submit legible disclosures on paper, in a format acceptable to the APOC. Under sec. 77 of the bill, the electronic filing requirement would take effect January 1, 2009.

Section 46 of the bill would require the APOC to notify the Alaska Legislative Council if the victims' advocate failed to file a timely financial disclosure.

Section 47 of the bill would make changes to conform to sec. 27's amendments to the Legislative Ethics Act's restrictions on gifts to legislators and legislative employees.

Section 48 of the bill would change the definition of "income" in the Legislative Ethics Act to include deferred or expected assets.

Discussion of secs. 49 through 53 appears above, in the paragraph addressing sec. 3.

Section 54 of the bill would require former public officials to file financial disclosures within 90 days of leaving office. "Public officials" include high-level members of the executive branch, judicial officers, and certain municipal officers. Public officials in the executive and judicial branches would file their disclosures with the APOC, while the municipal officers would file their disclosures with a municipal clerk or other designated official.

Section 55 of the bill would require more details in the financial disclosures that public officials and candidates for governor or lieutenant governor must file concerning their own and certain family members' income. Section 55 of the bill would require disclosure of more financial interests by reducing the reporting thresholds for income and other financial interests from \$5,000 to \$1,000. The reporting threshold for gifts would remain \$250. The disclosures would be required to identify, for all income and gifts, the source, the recipient, the amount or value, the method of calculating the income earned, the approximate number of hours worked to earn the income, and, unless required by law to be confidential, a clear description of the nature of the services performed to earn the income. Section 55 of the bill would also clarify that the disclosure requirements apply to interests involving limited liability companies.

Section 56 of the bill would similarly clarify that the disclosure requirements for close economic associations include involvements with limited liability companies.

Sections 57 and 58 of the bill would substantially change the provisions governing blind trusts that public officials may elect to use to reduce their potential for conflicts of interests. To qualify as a public official's blind trust under the revised provisions, a trust agreement would need the APOC's approval. The trust could not contain assets that must be recorded in a public office (other than the APOC) or are impractical to transfer. Only an institution could serve as the trustee and the trustee's management of the trust would be subject to the prudent investment rule. Communications about the trust between the public official and the trustee would be strictly limited. The trust would terminate only upon the order of the APOC, the public official's death or incompetence, or the termination of the public official's status as a public official, unless the APOC approved termination of the trust in advance.

Under these sections, the trust agreement would direct the trustee to avoid investing in ventures over which the public official would likely take official action. The attorney general and the personnel board would have access to information about the trust to investigate accusations under the Executive Branch Ethics Act. In addition, the trustee would be required to provide the APOC, upon request, a detailed description of the trust's transactions and holdings. The trustee would also be required to file with the APOC each year a notarized statement certifying compliance with the statutory requirements for the blind trust. The trustee would not be liable for actions involving the trust unless the trustee failed to exercise good faith, due diligence, and the ordinary skill, care, and judgment a prudent fiduciary would exercise.

Sections 59 and 60 of the bill would require electronic submission of the financial disclosures that public officials and candidates for governor or lieutenant governor must file. Under sec. 78 of the bill, the electronic filing requirement would take effect July 1, 2007, but the requirement would not apply to municipal officers in a municipality with fewer than 15,000 residents and would not apply to municipal officers in larger municipalities until January 1, 2009. The APOC could grant exceptions to the electronic filing requirement when it determined exceptions were warranted. However, those who do not file electronically would be required to submit legible disclosures on paper, in a format acceptable to the APOC.

Section 61 of the bill would clarify that the public officials' financial disclosure requirements apply to income received from limited liability companies.

Section 62 of the bill would expand the list of boards and commissions whose members must file financial disclosures with the APOC. The Alaska Industrial Development and Export Authority, the board of directors of the Knik Arm Bridge and Toll Authority, the Alaska Labor Relations Agency, the board of trustees of the Alaska Mental Health Trust Authority, and the board of directors of the Alaska Railroad Corporation would be added to that list.

Section 63 of the bill would establish a presumption under the Executive Branch Ethics Act that a public officer's ownership interest (or option to buy an interest) in a business is insignificant if the value of the interest is less than \$5,000.

Sections 64 and 65 of the bill would permit use of state aircraft for partisan political purposes only when the use is collateral or incidental to the normal performance of official duties and does not exceed 10 percent of the total use of the aircraft for political and official purposes on a single trip. Public officers who use or authorize use of state aircraft for partisan political purposes would be required to disclose the use or authorization in writing to their designated ethics supervisors and the attorney general. Public officers who use state aircraft for partisan political purposes would also be required to reimburse the state for the proportionate share of the actual cost of the use.

Section 66 of the bill would establish a presumption that a lobbyist's gift to a public officer or a member of the officer's immediate family is prohibited under the Executive Branch Ethics Act unless the lobbyist is an immediate family member of the person receiving the gift.

Section 67 of the bill would eliminate an existing exception to the Executive Branch Ethics Act's restrictions on employment after leaving state service. Under the Ethics Act, a former public officer may not, for two years after leaving state service, work for compensation on a matter in which the officer personally and substantially participated through the exercise of official action during the officer's state service. Currently, work on legislative bills, resolutions, constitutional amendments, other legislative measures, and administrative regulations is excepted from the two-year restrictions. Section 67 of the bill would eliminate that exception. Under sec. 75, the additional restrictions would apply only to those who leave state service on or after the effective date of sec. 67.

Section 68 of the bill would apply the one-year lobbying restrictions under the Executive Branch Ethics Act to additional positions. The Executive Branch Ethics Act currently prohibits former governors, lieutenant governors, and heads of principal departments from lobbying for one year after leaving those positions. Section 68 of the bill would extend the one-year lobbying prohibition to cover former deputy heads of principal departments; division directors; departmental legislative liaisons; legislative liaisons, administrative assistants, and other employees in the Office of the Governor or the Office of the Lieutenant Governor in policy-making positions; members of state boards and commissions that have authority to adopt regulations, other than boards and commissions covered by the centralized licensing provisions of AS 08.01; and members of the governing boards and executive officers of state public corporations. Under sec. 75 of the bill, the extended lobbying restrictions would apply only to those who leave service in covered positions on or after the effective date of sec. 68.

Section 69 of the bill would prohibit former heads of principal departments, for one year after leaving those positions, from serving on governing boards of entities that their departments regulated or with which they worked as part of their official duties. Section 69 of the bill would similarly prohibit former employees of the Office of the Governor in policy-making positions, for one year after leaving employment in that office, from serving on governing boards of entities with which they worked as part of their official duties. Section 69 would define "employee of the Office of the Governor in a policy-making position" as an employee required, because of that position, to file financial disclosures with the APOC under AS 39.50.020. Under sec. 75 of the bill, these restrictions would apply only to those who leave service in covered positions on or after the effective date of sec. 69.

Section 70 of the bill would require the governor, before granting executive clemency, to disclose in writing to the attorney general whether granting the clemency would benefit a personal or financial interest of the governor. The attorney general would then be required to publish a written determination whether granting executive clemency would violate the Executive Branch Ethics Act. In publishing the determination, information identifying a victim or witness in a criminal matter would not be made public.

One might argue that sec. 70's requirements unconstitutionally interfere with the governor's clemency authority under art. III, sec. 21 of the Alaska Constitution. However, art. III, sec. 21 expressly provides that the governor's clemency authority is "[s]ubject to procedure prescribed by law," and the bill's requirements are arguably procedural. Accordingly, we do not believe that the existence of this potential constitutional issue would warrant vetoing the bill.

Section 71 of the bill would clarify that the Executive Branch Ethics Act does not supersede the nepotism restrictions in AS 39.90.020 or prohibit immediate family members from serving as co-workers in the same agency or administrative unit, so long as a public employee would not have authority to take or withhold official action affecting the terms or conditions of an immediate family member's employment in a manner that would violate state law.

Section 72 of the bill would modify the definition of "official action" under the Executive Branch Ethics Act to clarify that it includes advice, participation, and assistance.

Discussion of sec. 73 of the bill appears above, in the paragraph addressing sec. 3.

Section 74 of the bill would repeal current statutory provisions establishing procedures for the disqualification of legislative members of the Select Committee on Legislative Ethics and the appointment of alternates (which sec. 37 would replace) and defining "immediate family" or "family member" in the gift provisions of the Legislative Ethics Act (which sec. 28 would replace).

Section 75 of the bill would make secs. 1 and 2 applicable to offenses occurring on after the effective date of those sections, and make secs. 67, 68, and 69 applicable only to persons leaving state service in covered positions on or after the effective date of those sections. Section 75 of the bill would also permit the Select Committee to offer in 2008 only one type of ethics training course, which all legislators, legislative employees, and public members of the Select Committee would be required to attend.

Discussion of sec. 76 of the bill appears above, in the paragraph addressing sec. 3.

Section 77 of the bill would make the electronic filing provisions for legislative and municipal offices (secs. 8, 45, and 60) effective January 1, 2009.

Section 78 of the bill would make the electronic filing requirement for executive and judicial officials' financial disclosures (sec. 59) effective July 1, 2007.

Section 79 of the bill would make the remaining provisions effective immediately.

The bill does not present any constitutional or other legal concerns, except as noted previously. To the extent that any of the noted concerns might lead a court to conclude that particular provisions are invalid, their invalidity would not likely affect the validity of the remaining provisions.⁴

Sincerely,

Talis J. Colberg
Attorney General

TJC:DTJ:pvp

⁴ See AS 01.10.030 (enacted laws construed to include severability clause).