

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF LAW

The Department of Law proposes to adopt regulation changes in Title 9 of the Alaska Administrative Code, dealing with the Alaska Executive Branch Ethics Act, (AS 39.52), including the following:

- (1) 9 AAC 52.035 is a proposed new section to be added to establish the standards for the term "personal gain" as used in AS 39.52.120(a) to conform to statutes and to add clarifying language. The existing definition of "personal gain" at 9 AAC 52.990(b)(6) would be repealed.
- (2) 9 AAC 52.040 is proposed to be changed by adding new provisions establishing standards for the conditions when the acceptance or approval of state money to pay on behalf of, or reimburse a public officer for, expenses incurred for professional legal services to defend against a complaint brought under the Alaska Executive Branch Ethics Act (AS 39.52) may occur, including when the public officer is exonerated of any violation of the Act.
- (3) 9 AAC 52.045 is a proposed new section to be added to establish standards for determining when the use or authorization of state money or other state resources for transportation of family members of the governor or lieutenant governor does not result in personal gain or unwarranted benefits under the Act.
- (4) 9 AAC 52.050 is proposed to be changed to recognize that misuse of state resources may result in personal gain to a public officer or another person as well as benefit to an officer's personal interests or financial interests as those terms are defined in the Act. The regulation is also proposed to be changed to include standards for determining when a public officer's incidental use of state equipment, such as cell phones, personal digital assistants, and portable computers, is presumed insignificant.
- (5) 9 AAC 52.060 is proposed to be changed to clarify the application of AS 39.52.130, addressing gifts to a public officer. 9 AAC 52.060(b) currently permits agency heads to determine that a gift of travel received by an employee traveling on state business is a gift to the state, not a personal gift to the employee. The proposed amendment would clarify that the individual employee does not have to submit a disclosure for pre-approved state travel relating to offers by others made in advance to pay travel expenses of a state employee to facilitate state business.
- (6) 9 AAC 52.070 is proposed to be changed to update the description of information considered to be publicly disseminated for purposes of AS 39.52.140. That provision prohibits public officers from using information acquired during their jobs for personal benefit, unless it has been publicly disseminated. The proposed regulation change would, among other matters, establish that information posted for public consumption on a state website has been publicly disseminated.
- (7) 9 AAC 52.130(a) is proposed to be changed to change the deadline for ethics supervisors to submit quarterly reports to the attorney general from 45 to 30 days following the end of the quarter. The change would permit more timely review of the matters addressed by designated ethics supervisors during the quarter and earlier preparation of the public summary and report to the Personnel Board.

- (8) 9 AAC 52.135 is a proposed new section to provide guidance to designated ethics supervisors when review of an ethics disclosure reveals a violation of the Act.
- (9) 9 AAC 52.140 is proposed to be changed to clarify that the attorney general may separately address multiple alleged violations stated in one complaint.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Assistant Attorney General Judy Bockmon at the Department of Law, 1031 W. 4th Avenue, Ste. 200, Anchorage, Alaska 99501 or by email to judy.bockmon@alaska.gov. The comments must be received no later than 4:30 p.m. on January 22, 2010.

Oral or written comments also may be submitted at a hearing to be held on January 6, 2010, in the Fifth Floor Conference Room, Department of Law, 1031 W. 4th Avenue, Anchorage, Alaska. The hearing will be held from 10:00 a.m. to 12:00 p.m. and might be extended to accommodate those present before 10:00 a.m. who did not have an opportunity to comment.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kamie Willis at (907) 269-5100 at least seven days before the special accommodation is needed to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Kamie Willis at the Department of Law, 1031 W. 4th Avenue, Ste. 200, Anchorage, Alaska or (907) 269-5100 or go to www.law.state.ak.us/doclibrary/ethics.html.

After the public comment period ends, the Department of Law will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 39.52.950

Statutes Being Implemented, Interpreted, or Made Specific: AS 39.52.110 - 39.52.140; AS 39.52.210; AS 39.52.220; AS 39.52.260; AS 39.52.310; AS 39.52.410; AS 39.52.420; AS 39.52.950; AS 39.52.960

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: December 5, 2009

_____/s/_____
Daniel S. Sullivan
Attorney General
Department of Law

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Law
2. General subject of regulation: Changes to Alaska Executive Branch Ethics Act Regulations
3. Citation of regulation: 9 AAC 52.035 - 9 AAC 52.070; 9 AAC 52.130; 9 AAC 52.135; 9 AAC 52.140; 9 AAC 52.990
4. Reason for the proposed action:
 - ☐ compliance with federal law
 - ☐ compliance with new or changed state statute
 - ☐ compliance with court order
 - ☒ development of program standards
 - ☐ other: (please list) _____
5. RDU/component affected: Civil Division/Opinions, Appeals, and Ethics

6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2010	Subsequent Years
Operating Cost	\$ 0	\$ 0
Capital Cost	\$ 0	\$ 0
Federal receipts	\$ 0	\$ 0
General fund match	\$ 0	\$ 0
General fund	\$ 0	\$ 0
General fund/ program receipts	\$ 0	\$ 0
General fund/ mental health	\$ 0	\$ 0
Other funds (specify)	\$ 0	\$ 0

7. The name of the contact person for the regulations:

Name Judy Bockmon
Title Assistant Attorney General
Address 1031 W. 4th Ave. Suite 200
Anchorage, AK 99501
Telephone 907-269-5100
E-mail address judy.bockmon@alaska.gov

8. The origin of the proposed action:

☒ staff of state agency
☐ federal government
☒ general public
☐ petition for regulation change
☒ other (please list): Request from Department of Administration

9. Date: December 7, 2009

Prepared by: _____/s/_____
[signature]

Name (typed) Judy Bockmon
Title (typed) Assistant Attorney General
Telephone: 907-269-5100

9 AAC 52 is amended by adding a new section to read:

9 AAC 52.035. Personal gain. For purposes of AS 39.52.120(a), gain is personal gain if it is

- (1) a benefit to the public officer's personal interest or financial interest; or
- (2) actual or anticipated gain, benefit, profit, or compensation to the public officer or the officer's immediate family member. (Eff. __/__/__, Register __)

Authority: AS 39.52.120 AS 39.52.950

9 AAC 52.040(c) is amended by adding a new paragraph to read:

- (3) accepting money to reimburse the public officer for expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, approving money to reimburse another public officer for those expenses, entering into an agreement to pay those expenses on behalf of another public officer, or authorizing payment to secure those professional legal services on behalf of another public officer, if

- (A) the public officer to be reimbursed, or on whose behalf payment is to be made, is exonerated of a violation of the Ethics Act or other law for which reimbursement or payment is to be made, or agrees to repay the money or payment if the public officer is not exonerated of the violation;

- (B) the complaint concerns conduct that occurred during the public officer's employment or service as a public officer;

- (C) the expenses reimbursed or paid are reasonable; and

- (D) the reimbursement or payment is made by a state agency that has money appropriated that may be lawfully used for the purpose of paying the expenses.

9 AAC 52.040 is amended by adding a new subsection to read:

(d) For purposes of (c)(3) of this section,

(1) exoneration of a violation of the Ethics Act

(A) occurs when an allegation in a complaint brought against a public officer under AS 39.52.310 - 39.52.390 is

(i) dismissed under AS 39.52.310(d), 39.52.320, or 39.52.370(d);

(ii) resolved with only preventive action recommended under AS 39.52.330 to avoid a potential violation; or

(iii) dismissed after appeal under AS 39.52.370(f); and

(B) does not include the dismissal or resolution of an allegation in a complaint when corrective action is required under AS 39.52.330;

(2) expenses are reasonable if they were necessarily incurred to defend against an allegation in a complaint brought under AS 39.52.310 - 39.52.390; those expenses may

(A) include attorney's fees and fees incurred for professional legal services customarily performed by an attorney but delegated to and performed by an investigator, paralegal, or law clerk; and

(B) be apportioned by alleged violation if a complaint alleges more than one violation, but only if the public officer provides clear documentation that the expenses paid or to be reimbursed were limited to the alleged violation for which the public officer is exonerated; and

(3) payment or reimbursement under this section may be made to or on behalf of a current or former public officer. (Eff. 4/24/94, Register 130; am __/__/__, Register ____)

Authority: AS 39.52.120 AS 39.52.950

9 AAC 52 is amended by adding a new section to read:

9 AAC 52.045. Transportation of family members of governor and lieutenant governor. (a) The use or authorization of use of state money or other state resources for transportation of a family member of the governor or lieutenant governor does not violate AS 39.52.120(a) or (b)(3) if transportation is provided to an event at which the family member's presence benefits the state. The presence of a family member of the governor or lieutenant governor benefits the state if the family member's presence

(1) is required for state business; or

(2) has a public purpose related to the governor's or lieutenant governor's official duties, including

(A) attending a state-sponsored event that the family of the governor or lieutenant governor customarily attends;

(B) attending an event at which the family member serves as an official representative of the state; and

(C) accompanying, as an invited guest, the governor or lieutenant governor to an event related to issues important to the state when the family member's attendance is appropriate for the event, such as youth or family related events.

(b) For purposes of AS 39.52.120(a) and (b)(3) and (a) of this section, transportation of a family member to attend a political or campaign event held for partisan political purposes does not benefit the state.

(c) For purposes of AS 39.52.120(a) and (b)(3), the use or authorization of use of state money or other state resources for transportation of a family member that does not benefit the state is presumed insignificant if the governor or lieutenant governor pays the state the cost of the family member's transportation. Except for transportation by state aircraft for partisan political purposes under AS 39.52.120(f), the agency that authorized or paid for the travel shall determine the cost of the transportation based on either

- (1) the actual fare paid; or
- (2) the fare for an equivalent commercial flight, if the travel was by state aircraft.

(d) In this section,

- (1) "child" has the meaning given in AS 39.52.960;
- (2) "family member" means a spouse or minor child of the governor or lieutenant

governor;

- (3) "for partisan political purposes" has the meaning given in

AS 39.52.120(b)(6). (Eff. __/__/__, Register __)

Authority: AS 39.52.120 AS 39.52.950

9 AAC 52.050 is repealed and readopted to read:

9 AAC 52.050. Use of state time, property, equipment, or other facilities. (a) Unless the attorney general has issued a general opinion against the use or advised the public officer against the use, a public officer who uses state time, property, equipment, or other facilities to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person does not violate AS 39.52.120(a) or (b)(3) if the officer's designated supervisor determines that the use is insignificant.

(b) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a state cellular telephone to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if

(1) the cellular telephone service plan provides, for a set monthly fee, an allowance of usable minutes or an unlimited number of usable minutes;

(2) the use does not exceed

(A) the greater of 30 minutes or five percent of the allowed minutes under the applicable service plan per month, for a plan that provides an allowance of usable minutes;

(B) the greater of 30 minutes or five percent of the total minutes used in a month under the applicable service plan, for a plan that provides an unlimited number of usable minutes; and

(3) the public officer reimburses the state in full for use that results in a separate charge; charges for minutes exceeding an allowance of usable minutes are presumed to have been incurred to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person.

(c) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a portable state computer to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if the use

(1) is for electronic mail communications, Internet access, or entertainment;

(2) does not occur during duty hours; and

(3) occurs at no cost to the state.

(d) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a state personal digital assistant to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if, when the device is used as a

(1) cellular telephone, the use complies with (b) of this section;

(2) computer, the use complies with (c) of this section.

(e) Nothing in this section exempts a public officer from compliance with other state requirements applicable to state computing and information technology resources. (Eff. 4/24/94, Register 130; __/__/__, Register ____)

Authority: AS 39.52.110 AS 39.52.120 AS 39.52.950

9 AAC 52.060 is amended by adding a new subsection to read:

(c) An offer to a state agency by a person or governmental agency other than the state to pay or reimburse travel expenses for one or more public officers to carry out official responsibilities does not result in a gift to the individual traveling public officer within the meaning of AS 39.52.130 if an authorized supervising public officer approves acceptance of the offer in advance. An approving public officer may not participate in that travel without advance approval of acceptance of the offer by the head of the agency. In this subsection, "travel expenses" means the costs of transportation, lodging, or meals comparable to what the state would pay for travel expenses for the traveling public officer to carry out the associated official responsibilities. (Eff. 4/24/94, Register 130; am __/__/__, Register ____)

Authority: AS 39.52.130 AS 39.52.950

9 AAC 52.070 is amended to read:

9 AAC 52.070. Information disseminated to the public. (a) For purposes of AS 39.52.140, information has been disseminated to the public if it has been **distributed to the public** [PUBLISHED] through

(1) a newspaper or other printed publication;

(2) broadcast media;

(3) a press release;

(4) a newsletter;

(5) a legal notice;

(6) a nonconfidential court filing;

(7) a published report;

(8) an agency's website;

(9) posting on the Alaska Online Public Notice System established under AS 44.62.175;

(10) a public speech; or

(11) public testimony before the legislature [, A BOARD,] or **an agency** [A COMMISSION].

(b) Information that is available to the public but that has not been **distributed** [PUBLISHED] as described in (a) of this section has not been disseminated to the public. (Eff.

4/24/94, Register 130; am __/__/__, Register __)

Authority: AS 39.52.140 AS 39.52.950

9 AAC 52.130(a) is amended to read:

(a) A designated supervisor shall submit the quarterly report described in AS 39.52.260 during the **30** [45] days following the end of each calendar quarter.

(Eff. 4/24/94, Register 130; am __/__/____, Register ____)

Authority: AS 39.52.260 AS 39.52.950

9 AAC 52 is amended by adding a new section to read:

9 AAC 52.135. Designated supervisor's determination of violation. If, upon review of an ethics disclosure, a designated supervisor determines that a violation of AS 39.52.110 - 39.52.190 may have or has occurred, the designated supervisor shall

(1) in the case of a public employee, refer the matter for investigation and appropriate disciplinary action in accordance with AS 39.52.420 and, following any disciplinary action, to the attorney general for review under AS 39.52.310, unless the significance of the identified violation warrants immediate review by the attorney general; and

(2) in the case of a board or commission member, refer the matter to the attorney general for review under AS 39.52.310. (Eff. __/__/____, Register ____)

Authority: AS 39.52.210 AS 39.52.310 AS 39.52.950

AS 39.52.220 AS 39.52.420

9 AAC 52.140 is amended by adding a new subsection to read:

(e) If a complaint against a public officer alleges more than one violation of the Ethics Act, the attorney general may take action under AS 39.52.310, 39.52.320, 39.52.330, and

39.52.350 regarding each alleged violation separately. (Eff. 4/24/94, Register 130;

am __/__/__, Register __)

Authority: AS 39.52.310 **AS 39.52.330** AS 39.52.950

AS 39.52.320 **AS 39.52.350**

9 AAC 52.990(b)(6) is repealed:

(6) repealed __/__/__;

(Eff. 4/24/94, Register 130; am __/__/__, Register __)

Authority: **AS 39.52.120** AS 39.52.410 AS 39.52.960

[AS 39.52.120(a)] AS 39.52.950