

HOUSE BILL NO. 289

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE GRUENBERG

Introduced: 1/19/10

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing state agencies to pay private legal fees and costs incurred by**
2 **persons exonerated of alleged Alaska Executive Branch Ethics Act violations; allowing**
3 **certain public officers and former public officers to accept state payments to offset**
4 **private legal fees and costs related to defending against an Alaska Executive Branch**
5 **Ethics Act complaint; and creating certain exceptions to Alaska Executive Branch**
6 **Ethics Act limitations on the use of state resources to provide or pay for transportation**
7 **of spouses and children of the governor and the lieutenant governor."**

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

9 *** Section 1.** AS 39.52.120(b) is amended to read:

10 (b) A public officer may not

11 (1) seek other employment or contracts through the use or attempted
12 use of official position;

13 (2) accept, receive, or solicit compensation for the performance of

1 official duties or responsibilities from a person other than the state;

2 (3) use state time, property, equipment, or other facilities to benefit
3 personal or financial interests;

4 (4) take or withhold official action in order to affect a matter in which
5 the public officer has a personal or financial interest;

6 (5) attempt to benefit a personal or financial interest through coercion
7 of a subordinate or require another public officer to perform services for the private
8 benefit of the public officer at any time; or

9 (6) use or authorize the use of state funds, facilities, equipment,
10 services, or another government asset or resource for a partisan political purpose
11 [PURPOSES]; this paragraph does not prohibit use of the governor's residence for
12 meetings to discuss political strategy and does not prohibit use of state aircraft or the
13 communications equipment in the governor's residence so long as there is no charge to
14 the state for the use [; IN THIS PARAGRAPH, "FOR PARTISAN POLITICAL
15 PURPOSES"]

16 (A) MEANS HAVING THE INTENT TO
17 DIFFERENTIALLY BENEFIT OR HARM A

18 (i) CANDIDATE OR POTENTIAL CANDIDATE
19 FOR ELECTIVE OFFICE; OR

20 (ii) POLITICAL PARTY OR GROUP;

21 (B) BUT DOES NOT INCLUDE HAVING THE INTENT TO
22 BENEFIT THE PUBLIC INTEREST AT LARGE THROUGH THE
23 NORMAL PERFORMANCE OF OFFICIAL DUTIES].

24 * **Sec. 2.** AS 39.52.120(f) is amended to read:

25 (f) Use of state aircraft for a partisan political purpose [PURPOSES] is
26 permitted under (b) of this section only when the use is collateral or incidental to the
27 normal performance of official duties and does not exceed 10 percent of the total of
28 the use of the aircraft for official purposes and partisan political purposes, combined,
29 on a single trip. A public officer who authorizes or makes any partisan political use of
30 a state aircraft under (b) of this section shall disclose the authorization and use under
31 AS 39.52.210 or 39.52.220 for each trip, and the person who uses the aircraft shall

1 reimburse the state for the proportionate share of the actual cost of the use.

2 * **Sec. 3.** AS 39.52.120 is amended by adding new subsections to read:

3 (g) Notwithstanding (a) and (b)(1) - (5) of this section, the use of state
4 resources to transport or pay the cost of transporting a person who is the spouse or
5 child of the governor or lieutenant governor to an event other than an event that has a
6 partisan political purpose is permitted if

7 (1) the person is transported with the governor or lieutenant governor
8 and the state is reimbursed for the actual cost or, if the actual cost is not reasonably
9 calculable, the fair market value of the person's transportation; or

10 (2) the person's attendance is a benefit to the state; under this
11 paragraph, a benefit to the state is presumed when

12 (A) the person's attendance at the event is required for official
13 action of the state;

14 (B) the event is state-sponsored and the person's attendance is
15 customary;

16 (C) the person is attending as an official representative of the
17 state; or

18 (D) the person is invited by the event's sponsor before the
19 transportation occurs, the invitation and the person's attendance are customary,
20 the event is related to issues important to the state, and the governor or
21 lieutenant governor attend.

22 (h) In this section, "partisan political purpose"

23 (1) means a purpose intended to differentially benefit or harm a

24 (A) candidate or potential candidate for elective office; or

25 (B) political party or group;

26 (2) does not include a purpose intended to benefit the public interest at
27 large through the normal performance of official duties.

28 * **Sec. 4.** AS 39.52 is amended by adding a new section to article 5 to read:

29 **Sec. 39.52.470. Legal fees and costs.** (a) Notwithstanding AS 39.52.120, a
30 state agency may pay the fees and costs of private legal representation that are
31 incurred by a person who is a public officer or a former public officer while defending

1 against a complaint initiated or filed under AS 39.52.310 concerning conduct by the
2 person during a period when the person was serving or employed as a public officer.
3 Payment may be made at any time after the complaint is initiated or filed under
4 AS 39.52.310. The agency shall cancel a payment before it clears, and attempt to
5 recover a payment when canceling the payment is not possible, if a complaint
6 proceeding terminates and the public officer or former public officer accused in the
7 complaint is not exonerated. When a complaint alleges more than one violation against
8 a public officer or a former public officer, payments and cancellation or recovery of
9 payments may be apportioned by alleged violation.

10 (b) Notwithstanding AS 39.52.120, a public officer or former public officer
11 who is the subject of a complaint may accept a payment under (a) of this section
12 subject to a condition that the public officer or former public officer automatically
13 forfeits eligibility for, and agrees to repay to the state, any part of the payment
14 intended to offset the fees and costs of private legal representation incurred by the
15 public officer or former public officer while defending against a complaint that is
16 resolved without exoneration.

17 (c) A public officer may not act for the state in the matter of a payment under
18 this section if the payment is to the public officer or an immediate family member of
19 the public officer.

20 (d) In this section,

21 (1) "exoneration" or "exonerated" means that an allegation of a
22 violation of AS 39.52 (Alaska Executive Branch Ethics Act) is

23 (A) dismissed under AS 39.52.310(d), 39.52.320, or
24 39.52.370(d);

25 (B) dismissed after an appeal under AS 39.52.370(f); or

26 (C) resolved solely with a recommendation for preventive
27 action under AS 39.52.330;

28 (2) "fees and costs of private legal representation" means reasonable
29 fees and related costs of legal representation that are necessary to expend in defense
30 against the allegations in the complaint and may include fees for services customarily
31 performed by an attorney but delegated to and performed by a person working under

1 the supervision of an attorney licensed to practice in the state.

2 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** AS 39.52.470, enacted by sec. 4 of this Act, applies only to
5 complaints under AS 39.52.310 - 39.52.390 that are initiated or filed on or after the effective
6 date of this Act.