

SENATE JOURNAL

ALASKA STATE LEGISLATURE

FOURTEENTH LEGISLATURE - SECOND SESSION

JUNEAU, ALASKA

WEDNESDAY

April 2, 1986

Eightieth Day

Pursuant to adjournment, the Senate was called to order by President Bennett at 11:15 a.m.

The roll showed nineteen members present. Senator Sackett was absent on official State business.

The prayer was offered by the Chaplain, Pastor Dan Pollard of the Bethany Baptist Church.

The Pledge of Allegiance was recited.

Senator Halford moved and asked unanimous consent that the journal for the seventy-ninth legislative day be approved as certified by the Secretary, with a correction on page 2189: Change MONDAY to TUESDAY. Without objection, it was so ordered.

MESSAGES FROM THE GOVERNOR

April 1, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Bennett:

Mr. Robert Taylor, appointee to the Occupational Safety and Health Review Board, has submitted his resignation effective immediately. Please remove Mr. Taylor's name from the confirmation list submitted to you on February 12, 1986.

Sincerely,

/s/ Bill Sheffield
Bill Sheffield
Governor

Message of April 1 was read, stating pursuant to applicable law, the Governor submits the following names for legislative confirmation of appointment to the position noted.

BOARDS AND COMMISSIONS

Guide Licensing and Control Board

Gamble, Sr., Edward J., Angoon
Term began 4/1/86, expires 6/15/88

The above appointment was referred to the Resources Committee.

Occupational Safety and Health Review Board

Hoff, Jr., Donald F., Ketchikan
Term began 4/1/86, expires 8/1/88

The above appointment was referred to the Labor and Commerce Committee.

MESSAGES FROM THE HOUSE

HB 148

Message of April 1 was read, stating the House made a technical amendment to the title of:

CS FOR HOUSE BILL NO. 148 (JUD) (title am)
(mobile home warranties and sales)

and transmitted to the Senate for concurrence in the title amendment.

Senator Halford moved that the Senate concur in the title amendment.

The question being: "Shall the Senate concur in the title amendment to CS FOR HOUSE BILL NO. 148 (JUD) (title am)? The roll was taken with the following result:

CSHB 148 JUD TITLE AM

Yeas:	16	Abood, Bennett, Coghill, DeVries, Eliason, Fahrenkamp, Fischer Paul, Fischer Vic, Halford, Josephson, Kelly, Ray, Rodey, Sturgulewski, Zharoff, Ziegler
Nays:	0	
Absent:	4	Faiks, Ferguson, Kerttula, Sackett

and so, the Senate concurred in the title amendment.

HB 148 cont'd

CS FOR HOUSE BILL NO. 148 (JUD) (title am) was returned to the House.

SCR 24

Message of April 1 was read, stating the House passed and returned:

SENATE CONCURRENT RESOLUTION NO. 24
(appointment of representatives to the
Pacific Fisheries Legislative Task Force)

SENATE CONCURRENT RESOLUTION NO. 24 was referred to the Secretary for enrolling.

STANDING COMMITTEE REPORTS

SB 377

A zero fiscal note was received from the Senate Labor and Commerce Committee for CS FOR SENATE BILL NO. 377 (L&C) (civil actions; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; efd).

SB 251

The Rules Committee considered SENATE BILL NO. 251 (practice of psychology; efd) and a majority of the committee recommended calendar April 2. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Josephson and Coghill.

SENATE BILL NO. 251 is on the calendar.

SB 365

The Rules Committee considered SENATE BILL NO. 365 (providing that a broker is the agent of an insurer for payment of premium; efd) and a majority of the committee recommended calendar April 2. The report was signed by Senator Kelly, Chairman and concurred in by Senators Bennett, Faiks and Coghill.

SENATE BILL NO. 365 is on the calendar.

SB 370

The Rules Committee considered SENATE BILL NO. 370 (aid to families with dependent children and to child support and enforcement; efd) and a majority of the committee recommended calendar April 2. The report was signed by Senator Kelly, Chairman and concurred in by Senators Bennett, Faiks and Coghill.

SENATE BILL NO. 370 is on the calendar.

INTRODUCTION AND REFERENCE OF SENATE BILLS

SB 391

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391 by the Rules Committee by request of the Governor, entitled:

"An Act relating to the ethical conduct of governmental activities; and providing for an effective date."

was read the first time and referred to the State Affairs Committee and the Finance Committee.

Fiscal note is in Senate Supplement No. 61.

Governor's transmittal letter dated April 2:

Dear Senator Bennett:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a sponsor substitute for Senate Bill 391, a bill relating to the ethical conduct of executive-branch officers. This sponsor substitute was necessitated by the substantial costs associated with the original version of SB 391, costs that primarily resulted from the creation of a separate commission to administer the new ethics Act.

While we adjudge the original version of SB 391 to be "perfect world" legislation, the version before you is one of those rarities: a compromise that substantially reduces the level of funding necessary while maintaining the bill's primary goal: the establishment -- in statute -- of a code of ethics for all public officers in the executive branch, and replacement of the relatively unknown and unworkable aspects of the common law on conflicts of interests with concrete standards of conduct.

SB 391 cont'd

The sponsor substitute continues to establish in AS 39 a new chapter entitled the "Alaska Executive Branch Ethics Act," but this sponsor substitute removes from the bill the creation of a separate commission to administer the new law. Instead, the bill relies upon two existing entities to shoulder responsibility for enforcement of the code of ethics: the Department of Law and the state's personnel board.

New staff positions in the Department of Law will 1) provide the executive branch with opinions and advice concerning the substance and intent of the code of ethics, 2) accept and investigate legitimate complaints, and 3) take to formal hearing probable cause violations of the code. The state's personnel board, which has already had some limited experience in evaluating allegations of employee misconduct, will appoint hearing officers or independent counsel and act as the final determiner in matters that have gone to hearing, and will, through the provision of new enforcement powers to the board, order appropriate penalties and remedies.

As a result of conversations with representatives of various departments, language has been added to AS 39.52.130(a), providing for acceptance of travel or hospitality by department personnel if acceptance does not compromise an officer in the proper performance of his or her duties.

In this sponsor substitute, under certain conditions, a non-salaried member of a board or commission is not precluded from participating in personal or financial matters that are regulated by the board or commission on which the member serves. AS 39.52.160(c).

Sections 2 and 3 of the sponsor substitute amend existing statutes relating to the personnel board, to reflect the board's duties and responsibilities under this bill.

In addition, this substitute legislation does not transfer any of the financial disclosure reporting requirements from the current conflict of interests law (AS 39.50) to the new executive ethics chapter. Executive branch officials who currently file conflict of interest statements will continue to file their statements with the Alaska Public Offices Commission.

Because no transfer of financial disclosure reporting requirements is contained in this sponsor substitute, the bill's previous extensive amendments to AS 39.50 have been eliminated. While many of the proposed changes to AS 39.50 deserve the attention of the legislature, many of the changes exist in other bills currently before the legislature, and we have, for that reason, and for the sake of simplicity, dropped them from this substitute bill.

SB 391 cont'd

Finally, inasmuch as passage of the "whistleblower" legislation currently pending before the legislature appears likely, I have also removed similar whistleblower provisions from SB 391.

Hence, SSSB 391 is considerably shortened and much leaner than the original. A sectional analysis of the revised legislation follows, for the legislature's use in reviewing the proposed bill and for the use of future researchers.

I believe that this sponsor substitute deserves prompt attention by the legislature. Passage of a code of ethics for the executive branch is a priority of my administration and, I hope, a priority of the legislature as well.

SECTIONAL ANALYSIS
OF SSSB 391

Section 1: This section of the bill amends AS 39 ("Public Officers and Employees") by adding a new chapter called the "Alaska Executive Branch Ethics Act." The proposed new Act contains six articles:

- Article 1: Declarations
- Article 2: Code of Ethics
- Article 3: Disclosure and Action to Prevent
Violation of Code
- Article 4: Complaints; Hearing Procedures
- Article 5: Enforcement; Remedies
- Article 6: General Provisions

Because sec. 1 of SB 391 comprises almost the entire bill, we have decided to organize our analysis of sec. 1 by the articles listed above.

ARTICLE 1. DECLARATIONS.

Article 1 of the new chapter sets out legislative declarations. I believe that the important public purpose behind the need for and adoption of an executive-branch ethics statute requires a strong legislative statement in the statute itself.

Sec. 39.52.010. DECLARATION OF POLICY. AS 39.52.010 specifically states the legislature's belief in the value of a code of ethics for executive-branch officers as a safeguard of the public trust. ("Officers" is defined as all employees of executive-branch agencies and all members of boards or commissions.)

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

Sec. 39.52.110. SCOPE OF CODE. To clarify the intent behind the code of ethics, this section describes its scope.

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One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. I wanted to make it clear in this section of the bill that the legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers cannot and should not be without a personal or financial stake in Alaska, so long as those private interests do not interfere with the full and faithful discharge of the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

While the code's subsequent provisions set out stern prohibitions on conduct, public officers are encouraged to have and maintain private interests so long as those interests do not improperly benefit the officers through abuse of the responsibilities given to them by their public office.

The code of ethics establishes eight types of ethical violations: (1) misuse of official position; (2) improper acceptance or solicitation of gifts or benefits; (3) improper use or disclosure of information; (4) improper influence in state grants, contracts, leases, or loans; (5) improper representation; (6) acceptance of certain prohibited employment outside of government positions; (7) prohibited representation in matters after leaving state service; and (8) aiding in a violation of the code. AS 39.52.120 -- 39.52.190.

Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. One of the clearest areas of public concern revolves around the conduct addressed in AS 39.52.120. This section prohibits a public officer from using, or attempting to use, an official position for personal gain or to intentionally secure unwarranted benefits for any person. AS 39.52.120(a).

Several types of actions are specifically mentioned as examples of misuse of official position: e.g., the use of one's position to extract other employment or contracts; the use of state time, property, or equipment to benefit the officer's personal or financial interests; the taking or withholding of official action by an officer in order to benefit the officer's personal or financial interests. This section also addresses the supervisor/subordinate relationship and prohibits activities that have in the past caused problems, including a prohibition against close economic associations between supervisors and subordinates, and activities that could suggest possible coercion of a subordinate by a supervisor. AS 39.52.120(b).

Sec. 39.52.130. IMPROPER GIFTS OR BENEFITS. This section addresses another potential abuse: the receipt of a gift or benefit under circumstances in which it could be inferred

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that the gift or benefit was intended to improperly influence the officer in the performance of his or her official duties. This section creates an objective -- rather than a subjective -- test by which the propriety of soliciting or receiving a gift or benefit can be judged from the viewpoint of a "reasonable person." Travel or hospitality given to aid a public officer in the performance of official duties may be accepted if the officer's designated supervisor (defined in AS 39.52.960) determines that acceptance does not interfere with the full and faithful discharge of the officer's public duties and responsibilities. AS 39.52.130(a).

The bill also sets up a reporting requirement for the receipt of a gift or benefit worth over \$25 if the public officer can take or withhold official action that benefits the giver. AS 39.52.130(b).

A designated supervisor may seek advice from the attorney general regarding the acceptance of gifts or benefits. AS 39.52.130(c).

The restrictions relating to gifts or benefits do not apply to campaign contributions to candidates for elected office so long as the contributions comply with the laws and regulations governing elections and campaign disclosure. AS 39.52.130(d).

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. One commonly expressed complaint is that public officers are able to improperly benefit themselves or family members through the improper use of information gained in the course of their employment. The so-called "insider information" problem is the issue addressed in AS 39.52.140. This section specifically prohibits the use or disclosure of information that either has not been "communicated" to the public (AS 39.52.140(a)) or is confidential by law (AS 39.52.-140(b)).

This section sets a fairly high standard. It requires, before officers (or members of their immediate families) can benefit personally or financially from the use or disclosure of information available, that the information first have "been communicated to the public." This means that the information was not simply "available" to the public, but that in some affirmative way the information was first communicated to others outside the agency, whether by newsletter, legislative testimony, a published report, a press release, a legal notice, a speech, etc. It is believed that more than just simple "availability" is necessary to avoid claims that public sector officers are acting improperly because of their access to potentially very beneficial information.

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Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. Much public scrutiny has recently been focused on the conduct addressed by this provision of the code of ethics. This section prohibits an officer from improperly influencing state grant, contract, lease, or loan procedures. Specifically, a public officer or member of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. AS 39.52.150(a). There are exceptions listed to this broad prohibition, which focus on the specific conditions under which the grant, contract, lease, or loan is solicited or awarded. AS 39.52.150(b) -- 39.52.150(c).

In addition, a public officer must report to the commission any personal or financial interests held by the officer or an immediate family member in any state grant, contract, lease, or loan that is awarded by the agency the officer serves. AS 39.52.150(d).

Sec. 39.52.160. IMPROPER REPRESENTATION. Another public concern addressed by the code is the issue of public officers using the advantage of their position in representation before public agencies to benefit their personal or financial interests. This section generally prohibits an officer from representing, advising, or assisting any person concerning a matter pending before the administrative unit that the officer serves. AS 39.52.160(a).

This prohibition does not apply, however, to activities related to collective bargaining, such as the processing of a grievance by an employee representative. AS 39.52.160(b).

In addition, this section clarifies, in the case of a non-salaried member of a board or commission, that the prohibition on representation does not preclude a member of a board or commission from taking responsibility for a matter affecting the member's personal business which is regulated by the very board or commission on which the member serves, so long as the member does not participate, deliberate, or vote on the particular matter when the issue comes before the board or commission for its review or determination. AS 39.52.160(c).

Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. Although AS 39.52.110 makes it clear that holding employment outside of state service is acceptable, the public interest requires that certain restrictions be placed on this privilege. This section prohibits public employees from rendering services or accepting employment outside of their agencies if the

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outside service or employment is incompatible or in conflict with the proper discharge of their official duties. AS 39.52.170(a). As is currently required by personnel rules, public employees must quarterly report outside employment to their designated supervisor. AS 39.52.170(b).

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. The most difficult area to address in this legislation is the post-employment situation. The public interest requires that some restrictions be placed on the range of activities that former public officers may perform in the private sector. Of course, regardless of whether employment is in the public or private sector, the expertise and knowledge one gains in a job are transferable skills that employees rightfully take with them and that enable the employees to seek more responsible positions. We must also consider that while Alaska has a relatively small workforce, government is the state's largest employer.

The development of a post-employment provision that places legitimate restrictions on the use of one's employment experience is, for these reasons, a difficult task. I believe that the post-employment section of this bill reflects a compromise between competing interests. That compromise protects the state's significant interests but does not unfairly restrict an officer's ability to work in the private sector after leaving state service.

Specifically, AS 39.52.180 prohibits certain types of representation by former public officers for two years after leaving their public positions. The two-year ban is narrowly drawn: an officer is only prohibited from representing, advising, or assisting a person for compensation regarding a matter (1) that was under consideration by the administrative unit directly served and (2) in which the officer participated personally and substantially through the exercise of official action. A "matter" is precisely defined to include a case, proceeding, application, contract, or determination, and does not include activities related to legislation or regulations. AS 39.52.180(a).

This section does not prevent an agency from contracting with a former public officer to act on the state's behalf. AS 39.52.180(b). Additionally, the head of an agency may waive, in writing, application of this section after determining that representation by a former public officer is not adverse to the public interest. A waiver is subject to the approval of the attorney general. AS 39.52.180(c).

Sec. 39.52.190. AIDING A VIOLATION. Finally, the bill simply states that it is an ethical violation for a public officer to knowingly aid another officer in a violation of AS 39.52.

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ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT VIOLATION OF CODE.

Article 3 sets out the various procedures that public officers have available to them for the prevention of a violation of the code of ethics. A major aspect of this legislation is its "preventative" posture. Public officers must be able to seek and receive prompt advice in order to avoid actions that might violate the code. It is these preventative procedures that give the bill its true strength, because it provides a positive approach to solving potential abuses and appropriately assists officers before the fact, rather than waiting for violations to occur which the attorney general must then prosecute.

Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC EMPLOYEES. This section establishes a procedure for handling a potential violation of the code of ethics. A public employee who believes that he or she may be involved in a matter that could result in a violation of the code of ethics is required to immediately disclose the potential conflict to the designated supervisor and to refrain from taking any official action until a determination is made as to a possible conflict or ethical problem. AS 39.52.210(a).

The employee's designated supervisor shall then make a written determination of whether the employee's involvement could or does violate the code of ethics. AS 39.52.210(b). The supervisor shall reassign duties to cure the employee's violation, or direct the divestiture or removal by the employee of the conflicting personal or financial interests. Id. The supervisor may seek an advisory opinion from the attorney general. AS 39.52.210(c).

Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS. This section establishes procedures for handling a potential violation of the code of ethics by a member of a board or commission. A member of a board or commission who believes he or she may be involved in a matter that could result in a violation of a code of ethics must disclose the potential conflict on the record. AS 39.52.220(a). The board chair, as the designated supervisor, rules on whether or not the member's involvement could violate the code of ethics. Id. If a determination is made that a violation would exist if the member continued to participate, then the member must not only refrain from voting on the matter, but must also refrain from deliberating or participating in discussions regarding that particular matter. Id.

The designated supervisor or the board or commission may request advice from the attorney general. AS 39.52.220(b).

Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. This section states that any person may report a potential violation of the code of ethics to a designated supervisor for review and appropriate action.

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Sec. 39.52.240. ADVISORY OPINIONS. This section covers requests by designated supervisors, or boards or commissions, for advice from the attorney general regarding appropriate conduct under AS 39.52. It is important to note that requests for advisory opinions are confidential. AS 39.52.240(g).

Advisory opinions must be issued within 60 days after the attorney general receives a completed request. AS 39.52.-240(a). Because, however, there may be instances where delay in the receipt of an opinion would cause substantial inconvenience or detriment to the requesting party, this section allows the attorney general to give oral advice. AS 39.52.240(b). The designated supervisor or board or commission then makes a determination regarding an ethical problem. AS 39.52.240(c). If the attorney general has suggested more than one alternative, the supervisor or board or commission will select the most appropriate way to avoid or correct the problem. Id.

A public officer is not liable under AS 39.52 for any action carried out in accordance with a supervisor's determination. AS 39.52.240(d). The attorney general can revise or revoke an advisory opinion at any time (AS 39.52.240(e)), but anyone may rely on advisory opinions currently in effect (AS 39.52.240(f)). Attorney general opinions will be published in the Alaska Administrative Journal with sufficient deletions to prevent disclosure of the identities of persons involved. AS 39.52.240(h).

Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS. Former public officers who need advice regarding their standing in relationship to the code of ethics may request an advisory opinion from the attorney general. AS 39.52.250(a). A former public officer who follows the advice of the attorney general is not liable under this new chapter for any action carried out in accordance with that advice, so long as the circumstances were fully disclosed. AS 39.52.250(b).

Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY GENERAL REVIEW. This section requires all designated supervisors to report to the attorney general any potential violations reported to them and the disposition of each matter. AS 39.52.260(a). The attorney general is required to review each of the reports filed, and may request additional information. AS 39.52.260(b). The report prepared by the supervisor is confidential and not available for public inspection unless formal proceedings are initiated as a result of a report filed. However, copies of the report will be made available with sufficient deletions to prevent disclosure of a person's identity. AS 39.52.-260(c).

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ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

Article 4 of the new chapter establishes a complete process for handling complaints regarding violations of the provisions of AS 39.52.

Sec. 39.52.310. COMPLAINTS. This section sets out the procedures for handling a complaint, whether filed with the attorney general or initiated by the attorney general, and establishes the conditions under which a complaint will be accepted and investigated. The attorney general can initiate a complaint or elect to treat as a complaint a matter referred by a supervisor. AS 39.52.310(a). In addition, any person can file a complaint with the attorney general in writing. AS 39.52.310(b).

If a complaint alleges a violation by the governor, lieutenant governor, or the attorney general, the personnel board shall appoint independent counsel who shall act in place of the attorney general in reviewing the validity of the complaint filed and, if sufficient, taking the matter to hearing. AS 39.52.310(c). The attorney general shall review each complaint filed to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of AS 39.52. A complaint may be dismissed (AS 39.52.310(d)) or referred to the appropriate supervisor or board chair for resolution (AS 39.52.310(e)).

If the attorney general accepts a complaint for investigation, the attorney general must provide a copy of the complaint to the subject of the complaint for a response. The subject of the complaint must respond within 20 days with full and fair disclosure in writing of all the facts and circumstances pertaining to the alleged violation. AS 39.52.310(f). The attorney general shall investigate to determine whether a violation of the chapter has occurred. AS 39.52.310(g). A violation of AS 39.52 can be investigated only within two years after discovery of the alleged violation. AS 39.52.310(h).

Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS. If it appears that there is no probable cause to believe that a violation of the chapter has occurred, the attorney general will dismiss the complaint and prepare and file with the personnel board a confidential summary of the matter. The attorney general is required to communicate disposition of this matter promptly to both the complainant and the subject of the complaint.

Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. This section provides the attorney general with the latitude to recommend action to correct or prevent a violation of the law, if the conduct complained about does not warrant the initiation of formal proceedings. The subject of the complaint is required to comply with the attorney general's recommendation.

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Sec. 39.52.340. CONFIDENTIALITY. Information obtained by the attorney general during an investigation is confidential, unless and until formal proceedings are initiated. AS 39.52.340(a). The attorney general and persons contacted during the course of an investigation are required to maintain confidentiality regarding the existence of the investigation. Id. A person who violates the confidentiality provisions of this section is guilty of a class A misdemeanor. Id.

It is not a violation of this section, however, for a person to contact an attorney or participate in a criminal investigation. AS 39.52.340(b). This section also provides that the subject of the complaint may, if he or she so chooses, waive the confidentiality protections of this section. AS 39.52.340(c).

Sec. 39.52.350. PROBABLE CAUSE. If the attorney general finds that there is probable cause to believe that an officer has violated the code of ethics, the attorney general initiates formal proceedings by serving an accusation upon the subject of the complaint. The accusation must specifically set out the alleged violation and, after service, is a public document. Except for deliberations of the personnel board, all subsequent proceedings are open to the public. AS 39.52.350(a).

The subject of the accusation must file an answer to the accusation. AS 39.52.350(b). If the subject denies that a violation has occurred, the attorney general shall refer the matter to the personnel board for appointment of a hearing officer to conduct a hearing. AS 39.52.350(c). If, however, the subject admits an ethical violation, the attorney general shall refer the matter to the personnel board to impose appropriate penalties. AS 39.52.350(d).

Sec. 39.52.360. HEARINGS. AS 39.52.360 establishes the formal hearing process to be followed if a matter is referred to the personnel board for hearing. The hearing officer appointed by the personnel board may conduct pre-hearing conferences, administer oaths, hold hearings, take testimony, and issue subpoenas upon application by a party. AS 39.52.360(a) and (b).

The attorney general presents the charges and has the burden of demonstrating by a preponderance of evidence that the subject of the accusation has violated the new chapter. AS 39.52.360(c). The subject of an accusation may be represented by counsel; each party has the opportunity to be heard and cross-examine witnesses. AS 39.52.360(d).

Hearings held under this section are not subject to the Administrative Procedure Act. AS 39.52.360(e). During the hearing itself, technical rules of evidence do not apply but

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the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. AS 39.52.360(f). At the conclusion of the hearing, the hearing officer may direct the submission of proposed orders (AS 39.52.360(g)), and within 30 days after the conclusion of the formal hearing, the hearing officer must file a written report with the personnel board containing the officer's findings of fact, conclusions of law, and recommendation (AS 39.52.360(h)).

Sec. 39.52.370. PERSONNEL BOARD ACTION. Either party to the hearing may protest the hearing officer's decision before the personnel board. Oral argument before the personnel board will be provided if requested. AS 39.52.370(a). The board may, for good cause shown, convene a hearing de novo or further augment the record with additional evidence. AS 39.52.370(b).

The personnel board shall review each report submitted by the hearing officer and any briefs filed and must either adopt or amend the findings of fact, conclusions of law, and recommendation of the hearing officer. AS 39.52.370(c). The deliberations of the personnel board are not open to the public. Id. If the personnel board determines that a violation has occurred, it may impose certain civil penalties. AS 39.52.370(d). If the board determines that a violation has not occurred, it shall issue a written order of dismissal. Id. The personnel board secretary must promptly inform both parties of the board's action. AS 39.52.370(e). The subject of the accusation may appeal the board's decision by filing an appeal in the superior court. AS 39.52.370(f).

Sec. 39.52.380. SUBPOENAS. This section gives the attorney general, independent counsel retained by the personnel board, the personnel board, and appointed hearing officers certain subpoena powers.

Sec. 39.52.390. SERVICE. This section dictates how service of an accusation and other documents must be accomplished.

ARTICLE 5. ENFORCEMENT; REMEDIES.

Article 5 describes the enforcement powers available to both the personnel board and the state when a violation of the ethics Act has occurred. Because we wish the attorney general and the personnel board to be able to take relatively swift action, we have provided for a wide range of civil remedies and penalties, as opposed to providing for criminal penalties for violation of the Act.

Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. Under this section, if a public employee is found to have violated AS 39.52, the personnel board has the authority to

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order the employee to stop engaging in the illegal action; may order divestiture, establishment of a blind trust, restitution, or forfeiture; and recommend that the employee's agency take disciplinary action against that employee. AS 39.52.410(a).

If the personnel board determines that a non-salaried member of a board or commission has violated AS 39.52, it may order the member to refrain from voting, deliberating, or participating in the matter; order restitution; or, in appropriate cases, recommend that the governor remove the offending member from the board or commission. AS 39.52.410(b).

If the board determines that a former public officer has violated AS 39.52, it shall issue a public statement of its findings and seek the attorney general's assistance in pursuing all legal remedies against that individual. AS 39.52.410(c).

Finally, if the board finds the governor or lieutenant governor in violation of AS 39.52, the board shall report the matter to the Alaska State Senate with its findings. AS 39.52.410(d).

Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. This section states that a violation of the code of ethics contained in AS 39.52 is a valid reason for an executive-branch agency to discipline an employee. AS 39.52.420(a). An agency may initiate appropriate disciplinary action without waiting for the attorney general to file an accusation or the board to complete formal proceedings. AS 39.52.420(b).

Sec. 39.52.430. ACTIONS VOIDABLE. This section describes the actions that may be taken by the state if state grants, contracts, leases, or loans have been entered into or received in violation of AS 39.52.

Sec. 39.52.440. CIVIL PENALTIES. This section provides that the personnel board may impose civil penalties not to exceed \$5,000 on a current or former public officer for a violation of the ethics Act.

Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. This section gives the personnel board the authority to seek from a current or former public officer payment of up to twice the financial benefit realized by a person in violation of AS 39.52.

Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. This section clarifies that the civil penalties provided for in art. 5 of the ethics Act are in addition to any criminal actions that may be pursued.

SB 391 cont'd

ARTICLE 6. GENERAL PROVISIONS.

Sec. 39.52.910. APPLICABILITY. This section gives notice that the bill applies generally to all public officers in executive-branch agencies, and that AS 39.52 supersedes the common law on conflicts of interests, including replacement of the common law standard of "the appearance of impropriety" with the specific standards set out in the code of ethics in art. 2 of AS 39.52. AS 39.52.910(a) and (b). This chapter is not subject to collective bargaining. AS 39.52.910(c).

Sec. 39.52.920. AGENCY POLICIES. This section establishes that agencies have the authority to adopt written policies for their employees which are more restrictive than the code of ethics. These agency policies are subject to the attorney general's review and approval.

Sec. 39.52.930. COOPERATION. This section requires agencies in all branches of state government to cooperate fully with the attorney general and the personnel board in the performance of their duties.

Sec. 39.52.940. CONSTRUCTION. This section calls for a liberal construction of the bill's provisions in order to promote high ethical standards in state government.

Sec. 39.52.950. REGULATIONS. Under this section, the attorney general is empowered to adopt necessary regulations to implement AS 39.52.

Sec. 39.52.960. DEFINITIONS. This section of the new chapter sets out definitions for the new code of ethics.

Section 2: This section of the bill amends AS 39.25.060(c) to make the members of the personnel board removable only for cause. The additional responsibilities granted the board under the new ethics law require that the members of the personnel board be free from possible interference in the performance of their duties. Therefore, unless cause can be shown, the governor should be prohibited from freely removing personnel board members from office.

Section 3: This section amends AS 39.25.070, relating to the powers of the personnel board, to add authority to perform the functions granted to the board by the new ethics Act, including authority to appoint hearing officers, review the recommendations of hearing officers, determine whether a violation of the code of ethics had occurred, and impose penalties for a violation of the code.

Section 4: This section of the bill provides for consistency between AS 42.40, regarding employees of the Alaska Railroad, and the new AS 39.52, which covers employees of the railroad as well as directors of the Alaska Railroad Corporation.

SB 391 cont'd

Section 5: This section of the bill merely adds attorney general ethics advisory opinions to the list of items to be published in the Alaska Administrative Journal, consistent with the proposed requirement in AS 39.52.240(h) (sec. 1 of the bill).

Section 6: Because the enforcement and remedy provisions in the new ethics law do not take effect until January 1987, this section of the bill clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before January 1, 1987, unless the violation continues after that date.

Section 7: Under this section of the bill, an agency with an existing policy related to conflicts of interests or the ethical performance of official duties is required to submit that policy to the attorney general for necessary review and approval by January 1, 1987.

Section 8: The sections of the ethics law regarding policy, the issuance of advisory opinions, declarations of potential violations, and the definition section, take effect July 1, 1986.

Section 9: The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions (AS 39.52.110 -- 39.52.190 and AS 39.52.310 -- 39.52.460) will take effect January 1, 1987.

I have provided different effective dates so that public officers, immediately upon passage of the bill, may seek guidance from the attorney general concerning their standing under the new code of ethics, in order that any reassignments, transfers, or divestitures that need to occur can be accomplished before the code of ethics, as well as the complaint process, is in force.

CONCLUSION

Several attempts have been made in past years to enact legislation providing ethical standards for the executive branch. Most recently at my request, SB 501 was introduced in 1984, but it did not pass during the Thirteenth Alaska Legislature. I strongly endorse this bill and urge its serious consideration and passage this session, especially in its now-revised form.

Sincerely,

/s/ Bill Sheffield

Bill Sheffield
Governor

SB 471

SENATE BILL NO. 471 by the Transportation Committee, entitled:

"An Act relating to drivers' licenses."

was read the first time and referred to the Transportation Committee.

CONSIDERATION OF THE CALENDAR

SECOND READING OF SENATE BILLS

SB 251

SENATE BILL NO. 251 (regulation of the practice of psychology; efd) was read the second time.

Senator Fahrenkamp moved and asked unanimous consent for the adoption of the Health, Education and Social Services Committee Substitute offered on page 2113. Without objection, CS FOR SENATE BILL NO. 251 (HESS) was adopted.

CS FOR SENATE BILL NO. 251 (HESS) was read the second time.

Senator Halford moved and asked unanimous consent that CS FOR SENATE BILL NO. 251 (HESS) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 251 (HESS) was read the third time.

Senator Fahrenkamp moved and asked unanimous consent that the Health, Education and Social Services Committee Letter of Intent offered on page 2113 be adopted as a Senate Letter of Intent. Without objection, the Senate Letter of Intent was adopted.

The question being: "Shall CS FOR SENATE BILL NO. 251 (HESS) (regulation of the practice of psychology; efd) pass the Senate?" The roll was taken with the following result:

SB 251 cont'd

CSSB 251 HESS 3RD

Yeas: 18 Abood, Bennett, Coghill, DeVries,
Eliason, Fahrenkamp, Faiks,
Fischer Paul, Fischer Vic,
Halford, Josephson, Kelly,
Kerttula, Ray, Rodey,
Sturgulewski, Zharoff, Ziegler

Nays: 0

Absent: 2 Ferguson, Sackett

and so, CS FOR SENATE BILL NO. 251 (HESS) passed the Senate with a Senate Letter of Intent.

Senator Halford moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 251 (HESS) was referred to the Secretary for engrossment.

SB 365

SENATE BILL NO. 365 (providing that a broker is the agent of an insurer for payment of premium; efd) was read the second time.

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 365 be returned to the Labor and Commerce Committee. Without objection, SENATE BILL NO. 365 was returned to the Labor and Commerce Committee.

SB 370

SENATE BILL NO. 370 (aid to families with dependent children and to child support and enforcement; efd) was read the second time.

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 370 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SB 370 cont'd

SENATE BILL. NO. 370 was read the third time.

The question being: "Shall SENATE BILL NO. 370 (aid to families with dependent children and to child support and enforcement; efd) pass the Senate?" The roll was taken with the following result:

SB 370 3RD

Yeas: 19 Abood, Bennett, Coghill, DeVries,
Eliason, Fahrenkamp, Faiks,
Fischer Paul, Fischer Vic,
Halford, Josephson, Kelly,
Kerttula, Ray, Rodey, Sackett,
Sturgulewski, Zharoff, Ziegler

Nays: 0

Absent: 1 Ferguson

and so, SENATE BILL NO. 370 passed the Senate.

Senator Halford moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

SENATE BILL NO. 370 was referred to the Secretary for engrossment.

CITATIONS

Honoring - Paul Brown
by Senators Rodey, Sackett, Vic Fischer,
Josephson, Kerttula, Faiks, Sturgulewski
and Abood

Honoring - Angoon Oldtimers Basketball Team
1986 Gold Medal C Champions
by Representatives Goll and Pourchot
Senators Eliason and Ray

Senator Halford moved and asked unanimous consent that the citation calendar be adopted. Without objection, the citations were adopted and referred to the Secretary for transmittal.

UNFINISHED BUSINESS

HJR 67

Senator Abood, Chairman, moved and asked unanimous consent that the State Affairs Committee referral be waived on CS FOR HOUSE JOINT RESOLUTION NO. 67 (SA) (Requesting the United States Congress to establish advanced all-weather satellite coverage of North Pacific waters). Without objection, it was so ordered.

CS FOR HOUSE JOINT RESOLUTION NO. 67 (SA) was referred to the Resources Committee.

Senator Sturgulewski, Chairman, moved and asked unanimous consent that the five-day notice and publication requirements be waived for the Resources Committee meeting on April 2 to consider CS FOR HOUSE JOINT RESOLUTION NO. 67 (SA). Without objection, it was so ordered.

SB 429

Senator Faiks, Co-Chairman, moved and asked unanimous consent that SENATE BILL NO. 429 (regulations that affect small businesses, small organizations, and small governmental jurisdictions; efd) have an additional referral to the Finance Committee. Without objection, it was so ordered.

SENATE BILL NO. 429 was referred to the Labor and Commerce Committee, the Judiciary Committee and the Finance Committee.

SB 205

Senator Fahrenkamp, Chairman, moved and asked unanimous consent that the Health, Education and Social Services Committee referral be waived on SENATE BILL NO. 205 (providing for the issuance of general obligation bonds in the amount of \$31,880,000 for the purpose of paying the cost of community college land acquisition, design, and construction; efd). Without objection, it was so ordered.

SENATE BILL NO. 205 was referred to the Finance Committee.

SPECIAL ORDERS

Senator Abood moved and asked unanimous consent that he be excused from the Senate, not subject to a call, on April 4. Without objection, Senator Abood was excused.

Senator Sturgulewski moved and asked unanimous consent that she be excused from the Senate, not subject to a call, on April 7 and 8. Without objection, Senator Sturgulewski was excused.

Senator Paul Fischer moved and asked unanimous consent that he be excused from the Senate, not subject to a call, on April 7, 8 and 9. Without objection, Senator Paul Fischer was excused.

Senator Kerttula moved and asked unanimous consent that he be excused from a call of the Senate on April 7 and 8. Without objection, Senator Kerttula was excused.

Senator Bennett moved and asked unanimous consent that he be excused from a call of the Senate on April 4. Without objection, Senator Bennett was excused.

ANNOUNCEMENTS

Announcements appear at the end of the journal.

ENGROSSMENT

SB 251

CS FOR SENATE BILL NO. 251 (HESS) was engrossed, signed by the President and Secretary and transmitted to the House for consideration with a Senate Letter of Intent.

SB 370

SENATE BILL NO. 370 was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

HB 104

An engrossment correction was made in Amendment No. 1 (page 2144) to CS FOR HOUSE BILL NO. 104 (JUD) am S (computation, forfeiture and restoration of statutory good time; efd) to cover an error of omission:

HB 104 cont'd

In deleting Sec. 5, it was the intent of the amendment to change the January 1, 1986 date for Sections 2 and 3 to an immediate effective date.

ENROLLMENT

SCR 24

SENATE CONCURRENT RESOLUTION NO. 24 (appointment of representatives to the Pacific Fisheries Legislative Task Force) was enrolled, signed by the President and Secretary, Speaker and Chief Clerk and the engrossed and enrolled copies transmitted to the Office of the Governor at 1:50 p.m., April 2, 1986.

ADJOURNMENT

Senator Halford moved and asked unanimous consent that the Senate adjourn until 11:00 a.m., April 3, 1986. Without objection, the Senate adjourned at 11:40 a.m.

Peggy Mulligan
Secretary of the Senate

April 1986

ANNOUNCEMENTS

Committee meetings in the Capitol

Change in time or place

COMMUNITY & REGIONAL AFFAIRS - BELTZ ROOM 211 - 3:30 PM

Apr 3 THURSDAY

HB 236 QUADRENNIAL OLYMPIC RESERVE ACCOUNT

SB 467 CAMPGROUNDS FBX NORTH STAR BOROUGH

SB 448 HOME RULE MUNICIPALITIES

Apr 8 TUESDAY

HB 694 METLAKATLA HOUSING AUTHORITY

FINANCE - FINANCE ROOM 518 - 8:30 AM

Apr 3 THURSDAY

SB 100 LIMIT CERTAIN PUBLIC EMPLOYEES' SALARIES

SB 138 ALCOHOLIC DRINK DISCOUNTS AND CONTESTS

SB 319 SPECIAL EDUCATION COOPERATIVE SERVICE UNIT

SB 453 MEMORIAL SCHOLARSHIP

SJR 12 OFFICE OF THE STATE TREASURER ESTABLISHED

SJR 41 AMEND CONSTITUTIONAL APPROPRIATION LIMIT

HB 58 SHORE BASED FISHERIES BUSINESS

HB 380 PUBLIC UTILITY WATER ASSESSMENT *TELE*

HEALTH, EDUCATION & SOCIAL SERVICES - BELTZ RM 211 - 1:30 PM

Apr 3 THURSDAY

SB 436 AGRICULTURAL SCIENCES MEMORIAL CHAIR

DISCUSSION ON MENTAL HEALTH TRUST LANDS

JUDICIARY - BUTROVICH ROOM 205 - 1:30 PM

Apr 3 THURSDAY

HB 534 VIOLENT CRIMES COMPENSATION

SB 86 RUNAWAY AND MISSING MINORS

SB 377 TORT REFORM

SB 458 AIR CARRIERS

SB 364 STATE PAYMENT OF UNTIMELY CLAIMS

LABOR AND COMMERCE - BELTZ ROOM 211 - 3:30 PM

Apr 4 FRIDAY

SJR 45 FISHERMEN'S INJURIES COMPENSATION

SB 469 EXEMPT FISHERMEN FROM WORKERS COMP

SB 429 REGULATIONS AFFECTING SMALL BUSINESS

RESOURCES - BUTROVICH ROOM 205 - 1:30 PM

Apr 3 THURSDAY

*4:00 PM SENATE FINANCE RM

OVERSIGHT HEARING ON VALDEZ OIL TERMINAL FACILITY

*JOINT WITH HOUSE OIL AND GAS COMMITTEE

Apr 4 FRIDAY

SB 393 APPROVING KUPARUK ROYALTY OIL SALE

SB 414 GENERAL GRANT LAND ENTITLEMENTS

SB 271 ALASKA HIRE, OIL & GAS PROJECTS

RULES - BELTZ ROOM 211 - 12:30 PM

Apr 2 WEDNESDAY

*1:00 PM

SCR 41 SUSPENSION OF THE UNIFORM RULES - SB 386

CALENDAR BILLS

STATE AFFAIRS - BUTROVICH ROOM 205 - 9:00 AM

Apr 3 THURSDAY
HB 454 PAY OF PUBLIC OFFICIALS
SB 391 EXECUTIVE BRANCH ETHICS

CONFERENCE COMMITTEE -

Apr 3 THURSDAY *3:30 PM BUTROVICH RM 205
SB 140 TERMINALLY ILL

CONFERENCE COMMITTEE

Apr 4 FRIDAY *8:30 AM ROOM 112
SB 187 ADOPTION

INTERNATIONAL TRADE -

Apr 3 THURSDAY *4:00 PM SENATE FINANCE RM
ALASKA RESOURCES WITH PACIFIC RIM

MAJORITY CAUCUS -

Apr 2 WEDNESDAY UPON ADJOURNMENT BUTROVICH ROOM