

HOUSE CS FOR CS FOR SENATE BILL NO. 186(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 2/21/06

Referred: Judiciary

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Executive Branch Ethics Act; and providing for an
2 effective date."

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

4 * **Section 1.** AS 39.52.110(b) is amended to read:

5 (b) Unethical conduct is prohibited, but there is no [SUBSTANTIAL]
6 impropriety if, as to a specific matter, a public officer's

7 (1) personal or financial interest in the matter is [INSIGNIFICANT,
8 OR] of a type that is possessed generally by the public or a large class of persons to
9 which the public officer belongs; [OR]

10 (2) action or influence would have insignificant or conjectural effect
11 on the matter; or personal or financial interest in a matter is in regard to a
12 business and the public officer

13 (A) does not own a controlling interest in the business;

14 (B) does not own stock or options to buy stock that, when

1 (b) A current or former public officer may not disclose or use, without
 2 appropriate authorization, information acquired in the course of official duties **or by**
 3 **reason of the officer's position** that is confidential by law.

4 * **Sec. 4.** AS 39.52.150(a) is amended to read:

5 (a) A public officer, [OR] an immediate family member, **or a business**
 6 **associate** may not attempt to acquire, receive, apply for, be a party to, or have a
 7 personal or financial interest in a state grant, contract, lease, or loan if the public
 8 officer may take or withhold official action that affects the award, execution, or
 9 administration of the state grant, contract, lease, or loan.

10 * **Sec. 5.** AS 39.52.150(c) is amended to read:

11 (c) The prohibition in (a) of this section does not apply to a state loan if

12 (1) the public officer does not take or withhold official action that
 13 affects the award, execution, or administration of the loan held by the officer, [OR] an
 14 immediate family member, **or a business associate**;

15 (2) the loan is generally available to members of the public; and

16 (3) the loan is subject to fixed eligibility standards.

17 * **Sec. 6.** AS 39.52.150(d) is amended to read:

18 (d) A public officer shall report in writing to the designated supervisor a
 19 personal or financial interest held by the officer, [OR] an immediate family member,
 20 **or a business associate** [,] in a state grant, contract, lease, or loan that is awarded,
 21 executed, or administered by the agency the officer serves.

22 * **Sec. 7.** AS 39.52.230 is amended to read:

23 **Sec. 39.52.230. Reporting of potential violations.** A person may report to a
 24 public officer's designated supervisor, under oath and in writing, a potential violation
 25 of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a copy
 26 of the report to the officer who is the subject of the report and to the attorney general,
 27 and shall review the report to determine whether a violation may exist. **Except where**
 28 **the report concerns the governor, lieutenant governor, or the attorney general,**
 29 **the** [THE] supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the
 30 supervisor determines that the matter may result in a violation of AS 39.52.110 -
 31 39.52.190. **If the report concerns the governor, lieutenant governor, or the**

1 **attorney general, the supervisor shall refer the report as provided in (b) of this**
 2 **section.**

3 * **Sec. 8.** AS 39.52.230 is amended by adding a new subsection to read:

4 (b) If a report or allegation of a violation of AS 39.52.110 - 39.52.190 by the
 5 governor, lieutenant governor, or attorney general comes to the attention of the
 6 designated supervisor for the governor, lieutenant governor, or attorney general, other
 7 than by the declaration of a potential violation by the governor, lieutenant governor, or
 8 attorney general under AS 39.52.210(a)(2) or by the filing of an ethics complaint
 9 under AS 39.52.310(b), then,

10 (1) in the case of a report or allegation against the governor or the
 11 lieutenant governor, the attorney general shall refer the matter to the personnel board,
 12 which shall appoint an independent counsel to investigate; the independent counsel
 13 shall have power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390;
 14 the independent counsel shall prepare a written report of the investigation; the written
 15 report must include findings of fact and a conclusion as to whether, in the opinion of
 16 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -
 17 39.52.190; the report of the independent counsel shall be submitted to the attorney
 18 general; the attorney general shall review the report and make an independent
 19 determination as to whether the independent counsel's findings of fact, if true, would
 20 constitute conduct in violation of AS 39.52.110 - 39.52.190; if the attorney general
 21 concludes that the facts as found by the independent counsel would constitute a
 22 violation of AS 39.52.110 - 39.52.190, then the attorney general shall treat the
 23 independent counsel's report as a complaint and shall refer the report to the personnel
 24 board under AS 39.52.310(c); if the attorney general concludes that the facts as found
 25 by the independent counsel would not constitute a violation of AS 39.52.110 -
 26 39.52.190, the investigation shall be closed and no further enforcement action shall be
 27 taken; nothing in this paragraph precludes a person from filing a complaint concerning
 28 the same matter under AS 39.52.310(b);

29 (2) in the case of a report or allegation against the attorney general, the
 30 governor shall refer the matter to the personnel board, which shall appoint an
 31 independent counsel to investigate; the independent counsel shall have power to issue

1 and enforce subpoenas under AS 39.52.380 and 39.52.390; the independent counsel
 2 shall prepare a written report of the investigation; the written report must include
 3 findings of fact and a conclusion as to whether, in the opinion of the independent
 4 counsel, the facts constitute conduct in violation of AS 39.52.110 - 39.52.190; the
 5 report of the independent counsel shall be submitted to the governor; the governor
 6 shall review the report and make an independent determination as to whether the
 7 independent counsel's findings of fact, if true, would constitute conduct in violation of
 8 AS 39.52.110 - 39.52.190; if the governor desires legal advice in making this
 9 determination, the personnel board, at the governor's request, shall appoint an
 10 additional independent counsel to advise the governor on legal issues; if the governor
 11 concludes that the facts as found by the independent counsel would constitute a
 12 violation of AS 39.52.110 - 39.52.190, then the governor shall refer the report to the
 13 personnel board for appropriate action in accordance with the procedures set out in
 14 AS 39.52.310(c); if the governor concludes that the facts as found by the independent
 15 counsel would not constitute a violation of AS 39.52.110 - 39.52.190, the
 16 investigation shall be closed and no further enforcement action shall be taken; nothing
 17 in this paragraph precludes a person from filing a complaint concerning the same
 18 matter under AS 39.52.310(b).

19 * **Sec. 9.** AS 39.52.240(a) is amended to read:

20 (a) Upon the written request of a designated supervisor or a board or
 21 commission, the attorney general shall issue opinions interpreting this chapter. The
 22 requester must supply any additional information requested by the attorney general in
 23 order to issue the opinion. Within 60 days after receiving a complete request, the
 24 attorney general shall issue an advisory opinion on the question. **This section does not**
 25 **apply to a report or an allegation investigated under AS 39.52.230(b).**

26 * **Sec. 10.** AS 39.52.310(a) is amended to read:

27 (a) The attorney general may initiate a complaint, or elect to treat as a
 28 complaint, any matter disclosed under AS 39.52.210, 39.52.220, **39.52.230(a),**
 29 39.52.250, or 39.52.260. The attorney general may not, during a campaign period,
 30 initiate a complaint concerning the conduct of the governor or lieutenant governor
 31 who is a candidate for election to state office.

1 * **Sec. 11.** AS 39.52.335(c) is amended to read:

2 (c) If a complaint is dismissed under AS 39.52.320 or resolved under
3 AS 39.52.330, the attorney general shall promptly prepare a summary of the matter
4 and provide a copy of the summary to the personnel board, the subject of the
5 complaint, and the complainant. The summary is confidential unless the

6 [(1)] dismissal or resolution agreed to under AS 39.52.320 or
7 39.52.330 is public [; OR

8 (2) SUPERIOR COURT MAKES THE MATTER PUBLIC UNDER
9 (h) OF THIS SECTION].

10 * **Sec. 12.** AS 39.52.335(f) is amended to read:

11 (f) After review of the summary, the personnel board may issue a report on the
12 disposition of the complaint to the attorney general, the subject of the complaint,
13 and the complainant. The report is confidential [. IF THE MATTER IS
14 CONFIDENTIAL AND THE BOARD DETERMINES THAT PUBLICATION OF
15 THE NAME OF THE SUBJECT IS IN THE PUBLIC INTEREST, THE REPORT
16 MAY INCLUDE A RECOMMENDATION THAT THE MATTER BE MADE
17 PUBLIC].

18 * **Sec. 13.** AS 39.52.340(a) is amended to read:

19 (a) Except as provided in AS 39.52.335, before the initiation of formal
20 proceedings under AS 39.52.350, the complaint and all other documents and
21 information regarding an investigation conducted under this chapter or obtained by the
22 attorney general or independent counsel during the investigation are confidential and
23 not subject to inspection by the public. In the case of a complaint concerning the
24 governor, lieutenant governor, or attorney general, all meetings of the personnel board
25 concerning the complaint and investigation before the determination of probable cause
26 are closed to the public. If, in the course of an investigation or probable cause
27 determination, the attorney general finds evidence of probable criminal activity, the
28 attorney general shall transmit a statement and factual findings limited to that activity
29 to the appropriate law enforcement agency. If the attorney general finds evidence of a
30 probable violation of AS 15.13, the attorney general shall transmit a statement to that
31 effect and factual findings limited to the probable violation to the Alaska Public

1 Offices Commission. The attorney general, complainant, subject of the complaint,
 2 and all persons contacted during the course of an investigation shall maintain
 3 confidentiality regarding the existence of the investigation or proceeding. In a
 4 proceeding conducted or an action taken under this chapter,

5 (1) a person may not disclose the filing of a complaint, its contents,
 6 or related matters until after the personnel board makes a finding of probable
 7 cause or unless the disclosure is made while the person is

8 (A) communicating with personnel board members or staff;

9 (B) seeking advice from an attorney; or

10 (C) lawfully representing the person or the person's client
 11 in defense of a complaint that has been filed and the disclosure is
 12 necessary;

13 (2) personnel board proceedings related to a complaint that has
 14 been filed are closed to all persons except board members and staff until after the
 15 board makes a finding of probable cause unless

16 (A) the board permits otherwise after finding that fairness
 17 to the subject of the complaint may be advanced by the permission; or

18 (B) the subject of the complaint waives confidentiality;

19 (3) the complaint document and each related record are
 20 confidential and are not available for public inspection unless

21 (A) the personnel board makes a finding of probable cause;

22 or

23 (B) the subject of the complaint waives confidentiality;

24 (4) under this section, if the subject of a complaint waives
 25 confidentiality of a proceeding or a document, the entire proceeding is open to
 26 the public, and the entire document is available for public inspection;

27 (5) the personnel board shall make appropriate efforts to provide
 28 notice of the confidentiality requirements of this section;

29 (6) this section governs confidentiality only for complaints filed
 30 under this chapter and does not alter confidentiality or the rights of any person
 31 for matters not connected with this chapter;

1 **(7) this subsection does not prevent a person from obtaining**
 2 **directly from a state agency a public record of that agency that has also been**
 3 **made available in connection with an investigation or a formal proceeding under**
 4 **AS 39.52.310 - 39.52.390.**

5 * **Sec. 14.** AS 39.52 is amended by adding a new section to read:

6 **Sec. 39.52.352. Wrongful use of complaint.** (a) The board may find there has
 7 been wrongful use of an executive branch ethics complaint if it determines, after
 8 compliance with due process requirements, including a public hearing, if requested,
 9 and a majority vote, that the complainant

10 (1) made a factual allegation in the complaint knowing the allegation
 11 to be false or with reckless disregard of the truth or falsity of the allegation; or

12 (2) did not reasonably believe that the facts alleged in the complaint, if
 13 proven, would constitute a violation of this chapter.

14 (b) The board may not find wrongful use of an executive branch ethics
 15 complaint under (a)(2) of this section if the complainant filed the complaint in reliance
 16 on advice from the complainant's attorney, a member or staff of the board, or an
 17 employee of the state acting in an official capacity.

18 (c) If, under (a) of this section, the board makes a finding of wrongful use of
 19 an executive branch ethics complaint, the board shall notify both the complainant and
 20 the subject of the complaint of its final determination under (a) of this section. The
 21 board

22 (1) shall provide to the subject of the complaint the name and last
 23 known mailing address of the complainant; and

24 (2) may recommend sanctions under AS 39.52.410 - 39.52.440.

25 * **Sec. 15.** AS 39.52.380(a) is amended to read:

26 (a) As provided in **AS 39.52.230(b), 39.52.310(g)** [AS 39.52.310(g)],
 27 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained
 28 under **AS 39.52.230(b) or 39.52.310(c)** [AS 39.52.310(c)], a hearing officer, the
 29 subject of an accusation, and the personnel board may summon witnesses and require
 30 the production of records, books, and papers by the issuance of subpoenas.

31 * **Sec. 16.** AS 39.52.410(a) is amended to read:

1 (a) If the personnel board determines that a public employee has violated this
2 chapter, it

3 (1) shall order the employee to stop engaging in any official action
4 related to the violation;

5 (2) may order divestiture, [ESTABLISHMENT OF A BLIND
6 TRUST,] restitution, or forfeiture; and

7 (3) may recommend that the employee's agency take disciplinary
8 action, including dismissal.

9 * **Sec. 17.** AS 39.52.960(9) is amended to read:

10 (9) "financial interest" means

11 (A) an interest held by a public officer, or an immediate family
12 member, which includes an involvement or ownership of an interest in a
13 business, including a property ownership, or a professional or private
14 relationship, that is a source of income, or from which, or as a result of which,
15 a person has received or expects to receive a financial benefit;

16 (B) holding a position in a business, such as an officer, director,
17 trustee, partner, employee, or the like, or holding a position of management; **or**

18 **(C) an interest held by a public officer with a business**
19 **associate;**

20 * **Sec. 18.** AS 39.52.960(11) is amended to read:

21 (11) "immediate family member" means

22 (A) the spouse of the person;

23 (B) another person **living in the same household**
24 [COHABITING] with the person in a **sexual** [CONJUGAL] relationship that is
25 not a legal marriage;

26 (C) a child, including a stepchild and an adoptive child, of the
27 person;

28 (D) a parent **or** [,] sibling [, GRANDPARENT, AUNT, OR
29 UNCLE] of the person; [AND]

30 (E) a **child**, parent, or sibling of the person's spouse; **and**

31 **(F) a child, parent, or sibling of another person living in the**

1 **same household with the person in a sexual relationship that is not a legal**
2 **marriage;**

3 * **Sec. 19.** AS 39.52.960 is amended by adding new paragraphs to read:

4 (23) "business associate" means any person with whom a public officer
5 jointly shares the management, control, or majority ownership of a business for the
6 conduct of trade, commerce, the practice of a profession, or any other occupation
7 engaged in for the purpose of providing income or potential income to the public
8 officer, regardless of how the business is organized;

9 (24) "household" means a social unit of those persons living together
10 in the same dwelling.

11 * **Sec. 20.** AS 39.52.335(h) is repealed.

12 * **Sec. 21.** This Act takes effect January 1, 2006.