

**HOUSE CS FOR CS FOR SENATE BILL NO. 186(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/24/06

Referred: Rules

Sponsor(s): SENATOR SEEKINS

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the Alaska Executive Branch Ethics Act."**

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

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

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

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

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

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

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

15 **(i) equal more than one percent of the stock in the**

1                    **business; or**

2                                    **(ii) have a total value of more than \$10,000;**

3                                    **(C) owns or has an option to buy**

4                                    **(i) less than one percent of the equity interest in the**

5                    **business; and**

6                                    **(ii) an equity interest in the business worth less than**

7                    **\$10,000;**

8                                    **(D) is not a member of the board of directors or another**  
 9                    **governing body of the business;**

10                                   **(E) is not an elected officer of the business;**

11                                   **(F) does not provide or have an option to provide personal**  
 12                    **or professional services to the business;**

13                                   **(G) does not have a contract or have an option for a**  
 14                    **contract with the business; and**

15                                   **(H) is not an employee of the business.**

16       \* **Sec. 2.** AS 39.52.130(f) is amended to read:

17                    (f) A public officer who knows or reasonably ought to know that **an**  
 18                    **immediate** [A] family member **or a business associate** has received a gift because of  
 19                    the family member's **or business associate's** connection with the public office held by  
 20                    the public officer shall report the receipt of the gift by the family member **or business**  
 21                    **associate** to the public officer's designated supervisor if the gift would have to be  
 22                    reported under this section if it had been received by the public officer or if receipt of  
 23                    the gift by a public officer would be prohibited under this section.

24       \* **Sec. 3.** AS 39.52.140 is amended to read:

25                    **Sec. 39.52.140. Improper use or disclosure of information.** (a) A current or  
 26                    former public officer may not disclose or use information gained in the course of, or  
 27                    by reason of, the officer's official duties **or position** that could in any way result in the  
 28                    receipt of any benefit for the officer, [OR] an immediate family member, **or a**  
 29                    **business associate** if the information has not also been disseminated to the public.

30                    (b) A current or former public officer may not disclose or use, without  
 31                    appropriate authorization, information acquired in the course of official duties **or by**

1 **reason of the officer's position** that is confidential by law.

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

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

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

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

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

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

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

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

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

20 \* **Sec. 7.** AS 39.52 is amended by adding a new section to read:

21 **Sec. 39.52.165. Professional misconduct.** A public officer may not, in taking  
 22 official action, violate or be required to violate a provision of a code or canon of  
 23 professional ethics if the public officer's professional conduct is bound by the code or  
 24 canon of professional ethics as a condition of obtaining or retaining a license to  
 25 engage in or to practice the profession.

26 \* **Sec. 8.** AS 39.52.230 is amended to read:

27 **Sec. 39.52.230. Reporting of potential violations.** A person may report to a  
 28 public officer's designated supervisor, under oath and in writing, a potential violation  
 29 of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a copy  
 30 of the report to the officer who is the subject of the report and to the attorney general,  
 31 and shall review the report to determine whether a violation may exist. **Except where**

1 **the report concerns the governor, lieutenant governor, or the attorney general,**  
 2 **the** [THE] supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the  
 3 supervisor determines that the matter may result in a violation of AS 39.52.110 -  
 4 39.52.190. **If the report concerns the governor, lieutenant governor, or the**  
 5 **attorney general, the supervisor shall refer the report as provided in (b) of this**  
 6 **section.**

7 \* **Sec. 9.** AS 39.52.230 is amended by adding a new subsection to read:

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

14 (1) in the case of a report or allegation against the governor or the  
 15 lieutenant governor, the attorney general shall refer the matter to the personnel board,  
 16 which shall appoint an independent counsel to investigate; the independent counsel  
 17 shall have power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390;  
 18 the independent counsel shall prepare a written report of the investigation; the written  
 19 report must include findings of fact and a conclusion as to whether, in the opinion of  
 20 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -  
 21 39.52.190; the report of the independent counsel shall be submitted to the attorney  
 22 general; the attorney general shall review the report and make an independent  
 23 determination as to whether the independent counsel's findings of fact, if true, would  
 24 constitute conduct in violation of AS 39.52.110 - 39.52.190; if the attorney general  
 25 concludes that the facts as found by the independent counsel would constitute a  
 26 violation of AS 39.52.110 - 39.52.190, then the attorney general shall treat the  
 27 independent counsel's report as a complaint and shall refer the report to the personnel  
 28 board under AS 39.52.310(c); if the attorney general concludes that the facts as found  
 29 by the independent counsel would not constitute a violation of AS 39.52.110 -  
 30 39.52.190, the investigation shall be closed and no further enforcement action shall be  
 31 taken; nothing in this paragraph precludes a person from filing a complaint concerning

1 the same matter under AS 39.52.310(b);

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

23 \* **Sec. 10.** AS 39.52.240(a) is amended to read:

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

30 \* **Sec. 11.** AS 39.52.310(a) is amended to read:

31 (a) The attorney general may initiate a complaint, or elect to treat as a

1 complaint, any matter disclosed under AS 39.52.210, 39.52.220, **39.52.230(a)**,  
 2 39.52.250, or 39.52.260. The attorney general may not, during a campaign period,  
 3 initiate a complaint concerning the conduct of the governor or lieutenant governor  
 4 who is a candidate for election to state office.

5 \* **Sec. 12.** AS 39.52.335(c) is amended to read:

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

10 [(1)] dismissal or resolution agreed to under AS 39.52.320 or  
 11 39.52.330 is public [; OR

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

14 \* **Sec. 13.** AS 39.52.335(f) is amended to read:

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

22 \* **Sec. 14.** AS 39.52.340(a) is amended to read:

23 (a) Except as provided in AS 39.52.335, before the initiation of formal  
 24 proceedings under AS 39.52.350, the complaint and all other documents and  
 25 information regarding an investigation conducted under this chapter or obtained by the  
 26 attorney general **or independent counsel** during the investigation are confidential and  
 27 not subject to inspection by the public. In the case of a complaint concerning the  
 28 governor, lieutenant governor, or attorney general, all meetings of the personnel board  
 29 concerning the complaint and investigation before the determination of probable cause  
 30 are closed to the public. If, in the course of an investigation or probable cause  
 31 determination, the attorney general finds evidence of probable criminal activity, the

1 attorney general shall transmit a statement and factual findings limited to that activity  
 2 to the appropriate law enforcement agency. If the attorney general finds evidence of a  
 3 probable violation of AS 15.13, the attorney general shall transmit a statement to that  
 4 effect and factual findings limited to the probable violation to the Alaska Public  
 5 Offices Commission. The attorney general, **complainant, subject of the complaint,**  
 6 and all persons contacted during the course of an investigation shall maintain  
 7 confidentiality regarding the existence of the investigation **or proceeding. In a**  
 8 **proceeding conducted or an action taken under this chapter,**

9 **(1) a person may not disclose the filing of a complaint, its contents,**  
 10 **or related matters until the personnel board makes a finding of probable cause or**  
 11 **unless the disclosure is made while the person is**

12 **(A) communicating with personnel board members or staff;**

13 **(B) seeking advice from an attorney; or**

14 **(C) lawfully representing the person or the person's client**  
 15 **in defense of a complaint that has been filed and the disclosure is**  
 16 **necessary;**

17 **(2) personnel board proceedings related to a complaint that has**  
 18 **been filed are closed to all persons except board members and staff until the**  
 19 **board makes a finding of probable cause unless**

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

22 **(B) the subject of the complaint waives confidentiality;**

23 **(3) the complaint document and each related record are**  
 24 **confidential and are not available for public inspection unless**

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

26 **or**

27 **(B) the subject of the complaint waives confidentiality;**

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

31 **(5) the personnel board shall make appropriate efforts to provide**

1 **notice of the confidentiality requirements of this section;**

2 **(6) this section governs confidentiality only for complaints filed**  
 3 **under this chapter and does not alter confidentiality or the rights of any person**  
 4 **for matters not connected with this chapter;**

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

9 \* **Sec. 15.** AS 39.52 is amended by adding a new section to read:

10 **Sec. 39.52.352. Wrongful use of complaint.** (a) The board may find there has  
 11 been wrongful use of an executive branch ethics complaint if it determines, after  
 12 compliance with due process requirements, including a public hearing, if requested,  
 13 and a majority vote, that the complainant made a factual allegation in the complaint  
 14 knowing the allegation to be false or with reckless disregard of the truth or falsity of  
 15 the allegation.

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

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

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

23 \* **Sec. 16.** AS 39.52.380(a) is amended to read:

24 (a) As provided in **AS 39.52.230(b), 39.52.310(g)** [AS 39.52.310(g)],  
 25 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained  
 26 under **AS 39.52.230(b) or 39.52.310(c)** [AS 39.52.310(c)], a hearing officer, the  
 27 subject of an accusation, and the personnel board may summon witnesses and require  
 28 the production of records, books, and papers by the issuance of subpoenas.

29 \* **Sec. 17.** AS 39.52.410(a) is amended to read:

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

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

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

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

7 \* **Sec. 18.** AS 39.52.960(9) is amended to read:

8 (9) "financial interest" means

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

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

16 **(C) an interest held by a public officer with a business**  
17 **associate;**

18 \* **Sec. 19.** AS 39.52.960(11) is amended to read:

19 (11) "immediate family member" means

20 (A) the spouse of the person;

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

24 (C) a child, including a stepchild and an adoptive child, of the  
25 person;

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

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

29 **(F) a child, parent, or sibling of another person living in the**  
30 **same household with the person in a sexual relationship that is not a legal**  
31 **marriage;**

1     \* **Sec. 20.** AS 39.52.960 is amended by adding new paragraphs to read:

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

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

9     \* **Sec. 21.** AS 39.52.335(h) is repealed.