

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 3/15/06

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;

11 **(3) financial interest in a matter is held in a blind trust or the**
12 **public officer does not have management control over the financial interest; or**

13 **(4) personal or financial interest in a matter is in regard to a**
14 **business and the public officer**

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

1 (B) does not own stock or options to buy stock that, when
 2 combined,

3 (i) equal more than one percent of the stock in the
 4 business; or

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

6 (C) owns or has an option to buy

7 (i) less than one percent of the equity interest in the
 8 business; and

9 (ii) an equity interest in the business worth less than
 10 \$10,000;

11 (D) is not a member of the board of directors or another
 12 governing body of the business;

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

14 (F) does not provide or have an option to provide personal
 15 or professional services to the business;

16 (G) does not have a contract or have an option for a
 17 contract with the business; and

18 (H) is not an employee of the business.

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

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

27 * **Sec. 3.** AS 39.52.140 is amended to read:

28 **Sec. 39.52.140. Improper use or disclosure of information.** (a) A current or
 29 former public officer may not disclose or use information gained in the course of, or
 30 by reason of, the officer's official duties or position that could in any way result in the
 31 receipt of any benefit for the officer, [OR] an immediate family member, or a

1 **business associate** if the information has not also been disseminated to the public.

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

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

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

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

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

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

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

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

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

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

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

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

29 * **Sec. 8.** AS 39.52.230 is amended to read:

30 **Sec. 39.52.230. Reporting of potential violations.** A person may report to a
31 public officer's designated supervisor, under oath and in writing, a potential violation

1 of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a copy
 2 of the report to the officer who is the subject of the report and to the attorney general,
 3 and shall review the report to determine whether a violation may exist. **Except where**
 4 **the report concerns the governor, lieutenant governor, or the attorney general,**
 5 **the** [THE] supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the
 6 supervisor determines that the matter may result in a violation of AS 39.52.110 -
 7 39.52.190. **If the report concerns the governor, lieutenant governor, or the**
 8 **attorney general, the supervisor shall refer the report as provided in (b) of this**
 9 **section.**

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

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

17 (1) in the case of a report or allegation against the governor or the
 18 lieutenant governor, the attorney general shall refer the matter to the personnel board,
 19 which shall appoint an independent counsel to investigate; the independent counsel
 20 shall have power to issue and enforce subpoenas under AS 39.52.380 and 39.52.390;
 21 the independent counsel shall prepare a written report of the investigation; the written
 22 report must include findings of fact and a conclusion as to whether, in the opinion of
 23 the independent counsel, the facts constitute conduct in violation of AS 39.52.110 -
 24 39.52.190; the report of the independent counsel shall be submitted to the attorney
 25 general; the attorney general shall review the report and make an independent
 26 determination as to whether the independent counsel's findings of fact, if true, would
 27 constitute conduct in violation of AS 39.52.110 - 39.52.190; if the attorney general
 28 concludes that the facts as found by the independent counsel would constitute a
 29 violation of AS 39.52.110 - 39.52.190, then the attorney general shall treat the
 30 independent counsel's report as a complaint and shall refer the report to the personnel
 31 board under AS 39.52.310(c); if the attorney general concludes that the facts as found

1 by the independent counsel would not constitute a violation of AS 39.52.110 -
2 39.52.190, the investigation shall be closed and no further enforcement action shall be
3 taken; nothing in this paragraph precludes a person from filing a complaint concerning
4 the same matter under AS 39.52.310(b);

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

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

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

1 **apply to a report or an allegation investigated under AS 39.52.230(b).**

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

3 (a) The attorney general may initiate a complaint, or elect to treat as a
4 complaint, any matter disclosed under AS 39.52.210, 39.52.220, **39.52.230(a),**
5 39.52.250, or 39.52.260. The attorney general may not, during a campaign period,
6 initiate a complaint concerning the conduct of the governor or lieutenant governor
7 who is a candidate for election to state office.

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

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

13 [(1)] dismissal or resolution agreed to under AS 39.52.320 or
14 39.52.330 is public [; OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **or**

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

31 **(4) under this section, if the subject of a complaint waives**

1 **confidentiality of a proceeding or a document, the entire proceeding is open to**
 2 **the public, and the entire document is available for public inspection;**

3 **(5) the personnel board shall make appropriate efforts to provide**
 4 **notice of the confidentiality requirements of this section;**

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) may order divestiture, establishment of a blind trust **for a period of**
7 **time or under conditions determined appropriate, placement of the financial**
8 **interest into an investment where the employee does not have management**
9 **control over the financial interest**, restitution, or forfeiture; and

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

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

13 (9) "financial interest" means

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

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

21 **(C) an interest held by a public officer with a business**
22 **associate;**

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

24 (11) "immediate family member" means

25 (A) the spouse of the person;

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

29 (C) a child, including a stepchild and an adoptive child, of the
30 person;

31 (D) a parent **or** [,] sibling [, GRANDPARENT, AUNT, OR

1 UNCLE] of the person; [AND]

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

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

4 same household with the person in a sexual relationship that is not a legal

5 marriage;

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

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

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

14 * **Sec. 21.** AS 39.52.335(h) is repealed.