

Introduced: 1/11/78
Referred: State Affairs and
Judiciary

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL
(By Request of the Ombudsman)

1 IN THE HOUSE

2 HOUSE BILL NO. 603

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a standard of conduct for public
7 officials and employees; providing for a State Ethics
8 Commission; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 15.13.020(a) is amended to read:

11 Sec. 15.13.020. STATE ETHICS [ALASKA PUBLIC OFFICES] Commission.

12 (a) There is created in the office of the lieutenant governor the
13 State Ethics [ALASKA PUBLIC OFFICES] Commission consisting of five
14 members.

15 * Sec. 2. AS 15.13.030(10) is amended to read:

16 (10) adopt regulations necessary to implement and clarify the
17 provisions of AS 24.45, AS 39.50, AS 39.55 and this chapter, subject to
18 the provisions of the Administrative Procedure Act (AS 44.62);

19 * Sec. 3. AS 15.13.030 is amended by adding a new paragraph to read:

20 (11) administer the provisions of AS 39.55.

21 * Sec. 4. AS 24.45.021(a) is amended to read:

22 (a) This chapter shall be administered by the State Ethics [ALASKA
23 PUBLIC OFFICES] Commission created under AS 15.13.020(a).

24 * Sec. 5. AS 39.50.020(b) is amended to read:

25 (b) The governor, lieutenant governor, members of the legislature,
26 and candidates for these offices, judicial officers, each commissioner,
27 head or deputy head of, or director of a division within, a department
28 in the executive branch, assistant to the governor or chairman or member
29 of a commission or board required to report under this chapter, shall

1 file the statement with the State Ethics [ALASKA PUBLIC OFFICES] Commis-
2 sion. Municipal officers, and candidates for elective municipal
3 office, shall file with the municipal clerk or other municipal official
4 designated to receive their filing for office. All statements required
5 to be filed under this chapter are public records.

6 * Sec. 6. AS 39.50.050(a) is amended to read:

7 (a) The State Ethics [ALASKA PUBLIC OFFICES] Commission created
8 under AS 15.13.020(a) shall administer the provisions of this chapter.
9 The commission shall prepare and keep available for distribution, stan-
10 dardized forms on which the reports required by this chapter shall be
11 filed.

12 * Sec. 7. AS 39 is amended by adding a new chapter to read:

13 CHAPTER 55. STANDARDS OF CONDUCT.

14 Sec. 39.55.010. FINDINGS AND PURPOSE. The purpose of this chapter
15 is to

16 (1) prescribe standards of conduct for public officials and
17 employees of the state;

18 (2) educate the public with respect to ethics in government;
19 and

20 (3) establish an ethics commission which will render advisory
21 opinions and enforce the provisions of this law so that public confi-
22 dence in public servants will be preserved.

23 Sec. 39.55.020. CONSTRUCTION. This chapter shall be liberally
24 construed to promote high standards of ethical conduct in state govern-
25 ment.

26 Sec. 39.55.030. APPLICABILITY. This chapter applies to each nomi-
27 nated, appointed or elected public official, and to each employee of the
28 state, including members of departments, boards, commissions, councils,
29 committees, institutions, offices, corporations, authorities, organiza-

1 tions, and persons under personal service contract to the state.

2 Sec. 39.55.040. GIFTS. No public official or employee may soli-
3 cit, accept, or receive, directly or indirectly, any gift, whether in
4 the form of money, service, loan, travel, entertainment, hospitality,
5 thing or promise, or in any other form, under circumstances in which it
6 can reasonably be inferred that the gift is intended to influence him in
7 the performance of his official duties or is intended as a reward for
8 any official action on his part.

9 Sec. 39.55.050. CONFIDENTIAL INFORMATION. No public official or
10 employee may disclose information which by law or practice is not avail-
11 able to the public and which he acquires in the course of his official
12 duties, or use the information for his personal gain or for the benefit
13 of anyone.

14 Sec. 39.55.060. FAIR TREATMENT. (a) No public official or em-
15 ployee may use or attempt to use his official position to secure or
16 grant unwarranted privileges, exemptions, advantages, contracts, or
17 treatment, for himself or others. This prohibition includes

18 (1) seeking other employment or contract for services for
19 himself by the use or attempted use of his office or position;

20 (2) accepting, receiving, or soliciting compensation or
21 other consideration for the performance of his official duties or re-
22 sponsibilities except as provided by law;

23 (3) using state time, equipment or other facilities for
24 private business purposes;

25 (4) soliciting, selling, or otherwise engaging in a sub-
26 stantial financial transaction with a subordinate or a person or busi-
27 ness whom he inspects or supervises in his official capacity;

28 (5) all other uses or attempted uses of official position to
29 secure or grant unwarranted privileges, exceptions, advantages, con-

1 tracts or treatment.

2 (b) Nothing in this section may be construed to prohibit a legis-
3 lator from introducing bills and resolutions, serving on committees, or
4 from making statements or taking action in the exercise of his legisla-
5 tive functions.

6 Sec. 39.55.070. CONFLICT OF INTEREST. (a) No employee may take
7 any official action directly affecting

8 (1) a business or other undertaking in which he has a sub-
9 stantial financial interest; or

10 (2) a private undertaking in which he is engaged as legal
11 counsel, advisor, consultant, representative, or other agency capacity.

12 (b) A department head who is unable to disqualify himself on any
13 matter described in (a) of this section is not in violation of this
14 section if he has complied with the disclosure requirements of AS 39.-
15 50.020.

16 (c) A member of a board, commission, or committee, whose parti-
17 cipation is necessary in order to constitute a quorum to conduct offi-
18 cial business on any matter described in (a) of this section, is not in
19 violation of this section if he has complied with the disclosure re-
20 quirements of AS 39.50.020.

21 (d) No employee may acquire financial interests in any business or
22 other undertaking which he has reason to believe may be directly in-
23 volved in official action to be taken by him.

24 (e) No public official or employee may assist any person or busi-
25 ness or act in a representative capacity before a state agency for a
26 contingent compensation in any transaction involving the state.

27 (f) No public official or employee may assist any person or busi-
28 ness or act in a representative capacity for a fee or other compensation
29 to secure passage of a bill or to obtain a contract, claim, or other

1 transaction or proposal in which he has participated or will participate
2 as a legislator or employee; nor may he assist any person or business or
3 act in a representative capacity for a fee or other compensation on that
4 bill, contract, claim, or other transaction or proposal before the
5 legislature or agency of which he is an employee or legislator.

6 (g) No employee may assist any person or business or act in a
7 representative capacity before a state agency for a fee or other con-
8 sideration on any bill, contract, claim, or other transaction or pro-
9 posal involving official action by the agency if he has official author-
10 ity over that state agency.

11 Sec. 39.55.080. ACTION UPON CONFLICT. (a) An employee or public
12 official who, in the discharge of his official duties, is required to
13 take an action that is prohibited by this chapter and which would result
14 in a conflict of interest

15 (1) may not take the action;

16 (2) shall prepare a written statement describing the matter
17 requiring action or decision, and the nature of the possible conflict of
18 interest with respect to the action or decision; and

19 (3) shall deliver copies of the statement to the commission
20 and to his immediate superior, if any.

21 (b) Upon receipt of a statement under (a) of this section, an
22 employee's superior, if any, shall assign the matter to another employee
23 who does not have a possible conflict of interest. If the employee has
24 no immediate superior, he may seek advice from the commission to remove
25 himself from influence over actions and decisions on the matter on which
26 the possible conflict exists.

27 (c) The commission shall review the statement describing the
28 matter requiring action or decision and the nature of the possible
29 conflict of interest, and may advise the employee under sec. 160(2) of

1 this chapter. The commission may authorize its director to act in its
2 place in instances where delay is of substantial inconvenience or detri-
3 ment to the requesting party. Written advice issued under this sub-
4 section is confidential except that it may be included in materials
5 referred to the appropriate body under secs. 170 and 180 of this chapter
6 or may be subpoenaed by any court of record or legislative committee or
7 appropriate agency. No person except the person who initially requested
8 preparation of the statement may make the contents of any written advice
9 or other records of the board public. It shall be prima facie evidence
10 of intent to comply with this chapter when a person refers a matter to
11 the commission and abides by the written advice.

12 (d) A state public official or employee may request the commission
13 to obtain an advisory opinion from the attorney general on the applica-
14 tion of this chapter to a given set of circumstances, real or hypotheti-
15 cal, or the commission may request such an opinion on its own motion.

16 Sec. 39.55.090. CONTRACTS. (a) A state agency may not enter into
17 any contract with a public official or an employee or with a business in
18 which a public official or an employee has a controlling interest,
19 involving services or property of a value in excess of \$1,000, unless
20 the contract is made after public notice and competitive bidding.

21 (b) A state agency may not enter into a contract with any person
22 or business which is represented or assisted personally in the matter by
23 a person who has been an employee of the agency within the preceding two
24 years and who participated while in state office or employment in the
25 matter with which the contract is directly concerned.

26 (c) This section does not apply to a personal contract of employ-
27 ment with the state.

28 Sec. 39.55.100. CONTRACTS VOIDABLE. In addition to any other
29 penalty provided by law, any contract entered into by the state in

1 violation of this chapter is voidable on behalf of the state; however,
2 in any action to avoid a contract under this section, the interests of
3 third parties who may be damaged by the action shall be taken into
4 account, and the action to void the transaction must be initiated within
5 60 days after the determination of a violation under this chapter. The
6 attorney general has the authority to enforce this provision.

7 Sec. 39.55.110. RESTRICTIONS ON EMPLOYMENT. (a) No former public
8 official or employee may disclose any information which by law or prac-
9 tice is not available to the public and which he acquired in the course
10 of his official duties or use the information for his personal gain or
11 the benefit of anyone.

12 (b) No former public official or employee may, within 12 months
13 after termination of his employment, assist any person or business or
14 act in a representative capacity for a fee or other consideration, on
15 matters in which he participated as an employee.

16 (c) No former public official or employee may, within 12 months
17 after termination of his employment, assist any person or business or
18 act in a representative capacity for a fee or other consideration, on
19 matters involving official action by the particular state agency or
20 subdivision of it with which he had actually served.

21 (d) This section does not prohibit any agency from contracting
22 with a former public official or employee to act on a matter on behalf
23 of the state within the period of limitations stated in this section,
24 and does not prevent the public official or employee from appearing
25 before any agency in relation to that contract.

26 Sec. 39.55.120. OBSTRUCTION OF ACCESS TO PUBLIC RECORDS. A public
27 official or employee who has custody or control of a public record may
28 not obstruct or attempt to obstruct, or aid or abet another person in
29 obstructing or attempting to obstruct, the inspection of a public record

1 subject to inspection under AS 09.25.110 or 09.25.120.

2 Sec. 39.55.130. VIOLATION OF PERSONNEL ACT. A public official or
3 employee may not wilfully violate a provision of the State Personnel Act
4 (AS 39.25) or of the personnel rules adopted under the State Personnel
5 Act.

6 Sec. 39.55.140. RIGHTS OF STATE EMPLOYEES. (a) No department,
7 agency, official, officer, employee, or person employed by the state may
8 directly or indirectly

9 (1) require or coerce any employee of the state to partici-
10 pate in any way in any activity or undertaking unless the activity or
11 undertaking is related to the performance of official duties;

12 (2) require or coerce any employee of the state to make a
13 report concerning any of his activities or undertakings unless the
14 activity or undertaking is related to the performance of his official
15 duties;

16 (3) except as directly related to the performance of his
17 official duties, require or coerce any employee of the state to submit
18 to an interrogation or examination or psychological test which is de-
19 signed to extract from him information concerning

20 (A) his personal relationship with any person connected
21 with him by blood or marriage,

22 (B) his religious beliefs or practices,

23 (C) sexual matters,

24 (D) his political affiliation or philosophy;

25 (4) coerce any employee of the state to invest or contribute
26 his earnings in any manner or for any purpose;

27 (5) restrict or attempt to restrict after-working-hour state-
28 ments, pronouncements or other activities, not otherwise prohibited by
29 law or personnel rule, of any employee of the state, if the employee

1 does not purport to speak or act in an official capacity.

2 (b) The heads of administrative departments of the state may adopt
3 internal management regulations for their respective departments, speci-
4 fying exceptions to (a)(5) of this section. These regulations shall be
5 submitted for approval to the personnel board provided for in AS 39.25.-
6 060.

7 (c) The provisions of (a) of this section do not diminish the
8 authority of an authorized law enforcement agency to conduct criminal
9 investigations of state employees suspected of being involved in crimi-
10 nal activity.

11 Sec. 39.55.150. VIOLATION. (a) Any favorable state action ob-
12 tained in violation of the standards for public officials and employees
13 and former public officials and employees is voidable by the state in
14 the same manner as contracts are voidable under sec. 100 of this chap-
15 ter, and the attorney general may pursue all available legal and equi-
16 table remedies.

17 (b) The attorney general may recover any fee, compensation, gift
18 or profit received by any person as a result of a violation of these
19 standards by a public official or employee or former public official or
20 employee. Action to recover under this subsection shall be brought
21 within two years of the violation under this chapter.

22 Sec. 39.55.160. DUTIES OF COMMISSION. The State Ethics Commission
23 created under AS 15.13.020 shall administer this chapter and has the
24 following powers and duties:

25 (1) to issue regulations to implement and interpret the
26 provisions of this chapter subject to judicial review in accordance with
27 the provisions of the Administrative Procedure Act (AS 44.62);

28 (2) to render advisory opinions upon the request of any
29 public official or employee or former public official or employee as to

1 whether the facts and circumstances of a particular case constitute or
2 will constitute a violation of the standards; if no advisory opinion is
3 rendered within 30 days after the request is filed with the commission,
4 it is considered that an advisory opinion was rendered and that the
5 facts and circumstances of that particular case do not constitute a
6 violation of the standards; the opinion rendered or considered rendered,
7 until amended or revoked, shall be binding on the commission in any
8 subsequent charges concerning the public official or employee or former
9 public official or employee who sought the opinion and acted in reliance
10 on it in good faith, unless material facts were omitted or misstated by
11 the public official or employee or former public official or employee in
12 the request for an advisory opinion;

13 (3) to initiate, receive and consider charges concerning
14 alleged violation of this chapter, initiate or make investigations and
15 hold hearings;

16 (4) to subpoena witnesses, administer oaths, and take testi-
17 mony relating to matters before the commission and require the produc-
18 tion for examination of any books or papers relating to any matter under
19 investigation or in question before the commission; before the commis-
20 sion exercises any of the powers authorized in this section with respect
21 to an investigation or hearing, it shall by formal resolution, supported
22 by a vote of three or more members of the commission, define the nature
23 and scope of its inquiry;

24 (5) to assume jurisdiction for purposes of investigation and
25 of taking appropriate action on alleged violations of this chapter in
26 all proceedings commenced within one year after termination of state
27 employment by a public official or employee; nothing in this paragraph
28 bars proceedings against a person who by fraud or other device prevents
29 discovery of a violation of this chapter; a proceeding shall be con-

1 sidered commenced by the signing of a charge by three or more members of
2 the commission;

3 (6) to publish yearly summaries of decisions, advisory opin-
4 ions, and informal advisory opinions; the commission shall make suffi-
5 cient deletions in the summaries to prevent disclosing the identity of
6 persons involved in the decisions or opinions;

7 (7) to distribute its publications without cost to the public
8 and initiate and maintain programs with the purpose of educating the
9 public and all legislators and employees on matters of ethics in govern-
10 ment employment.

11 Sec. 39.55.165. COMPLAINT PROCEDURES. (a) Charges concerning a
12 public official or employee or former public official or employee must
13 be in writing, signed by the person making the charge under oath, except
14 that any charge initiated by the commission must be signed by three or
15 more members of the commission. The commission shall notify in writing
16 every public official or employee against whom a charge is received and
17 afford him an opportunity to explain the conduct alleged to be in viola-
18 tion of this chapter. The commission may investigate, after compliance
19 with this section, such charges and render an informal advisory opinion
20 to the alleged violator. The commission shall investigate all charges
21 on a confidential basis, having available all the powers provided in
22 sec. 160 of this chapter, and proceedings at this stage may not be
23 public. If the informal advisory opinion indicates a probable viola-
24 tion, the public official or employee or former public official or
25 employee shall request a formal opinion or within a reasonable time
26 comply with the informal advisory opinion. If the public official or
27 employee or former public official or employee fails to comply with the
28 informal advisory opinion or if a majority of the members of the commis-
29 sion determine that there is probable cause for belief that a violation

1 of this chapter has occurred, a copy of the charge and a further state-
2 ment of the alleged violation shall be personally served upon the
3 alleged violator. He shall have 20 days after service to respond in
4 writing to the charge and statement.

5 (b) Any commission member or individual, including the individual
6 making the charge, who divulges information concerning the charge before
7 the issuance of the complaint by the commission or, if the investigation
8 discloses that the complaint should not be issued by the commission, at
9 any time divulges any information concerning the original charge or
10 divulges the contents or disclosures except as permitted by this chap-
11 ter, is guilty of a felony and upon conviction is punishable by a fine
12 of not more than \$5,000, or by imprisonment for not more than five
13 years, or by both.

14 (c) If, after 20 days following personal service, a majority of
15 the members of the commission conclude that there is reason to believe
16 that a violation of this chapter has been committed, the commission
17 shall set a time and place for a hearing, giving notice to the com-
18 plainant and the alleged violator. All parties shall have an oppor-
19 tunity to (1) be heard, (2) subpoena witnesses and require the produc-
20 tion of any books or papers relative to the proceedings, (3) be repre-
21 sented by counsel, and (4) have the right of cross-examination. All
22 hearings shall be in accordance with AS 44.62. All witnesses shall
23 testify under oath, and the hearings shall be closed to the public
24 unless the party complained against requests an open hearing. The
25 commission is not bound by the strict rules of evidence, but the com-
26 mission's findings must be based upon competent and substantial evi-
27 dence. All testimony and other evidence taken at the hearing shall be
28 recorded. Copies of transcripts of the record shall be available only
29 to the complainant and the alleged violator at their own expense.

1 (d) A decision of the commission pertaining to the conduct of any
2 public official or employee shall be in writing and signed by three or
3 more of the members of the commission.

4 Sec. 39.55.170. PROCEDURE. (a) Public Officials and Employees
5 Removable Only by Impeachment. When the commission, after hearings
6 under sec. 160(d) of this chapter, determines that there is sufficient
7 cause to file a complaint against a public official or an employee
8 removable only by impeachment, it shall issue a complaint and refer the
9 matter to the appropriate body of the legislature. The complaint shall
10 contain a statement of the facts alleged to constitute the violation.
11 If within 30 days after the referral the legislature has not disposed of
12 the complaint, the commission shall make the charges public. Days
13 during which the legislature is not in session are not included in
14 determining the 30-day period.

15 (b) Public Officials and Employees other than Public Officials and
16 Employees Removable Only by Impeachment. When the commission determines
17 under sec. 160(d) of this chapter that there is sufficient cause to file
18 a complaint against a public official or employee, other than a public
19 official or employee removable only by impeachment, it shall refer the
20 decision to the governor, for a public official or employee in the
21 executive branch; to the legislature, for a public official or employee
22 in the legislative branch; or to the chief justice of the supreme court,
23 for a public official or employee of the judicial branch. The governor,
24 legislature, or chief justice of the supreme court shall take appropri-
25 ate action within 60 days and shall notify the commission of the action
26 taken. If it is found that a violation has occurred, the governor,
27 legislature, chief justice of the supreme court, or the commission by a
28 vote of four members, may make the findings and the record of the pro-
29 ceeding public, taking into account the seriousness of the violation.

1 This subsection does not prevent the commission from reporting decisions
2 in the yearly summaries required by sec. 160(6) of this chapter.

3 (c) Former Employees. The commission may with the consent of four
4 commissioners issue a public statement of its findings and conclusions,
5 and the attorney general may exercise the legal or equitable remedies
6 available to the state.

7 Sec. 39.55.180. DISCIPLINARY ACTION FOR VIOLATION. In addition to
8 any other powers the personnel board or other appointing authority may
9 have to discipline employees, the personnel board or appointing author-
10 ity may reprimand, put on probation, demote, suspend, or discharge an
11 employee found to have violated the standards of this chapter.

12 Sec. 39.55.190. COOPERATION. All state agencies shall cooperate
13 with the commission in the performance of its duties.

14 Sec. 39.55.200. DEFINITIONS. In this chapter,

15 (1) "business" includes a corporation, partnership, sole
16 proprietorship, trust or foundation, or any other individual or organi-
17 zation carrying on a business, whether or not operated for profit;

18 (2) "commission" means the State Ethics Commission;

19 (3) "compensation" means any money, thing of value, or eco-
20 nomic benefit conferred on or received by a person in return for ser-
21 vices rendered or to be rendered by himself for another;

22 (4) "controlling interest" means an interest in a business or
23 other undertaking which is sufficient in fact to control, whether the
24 interest is greater or less than 50 per cent;

25 (5) "employee" means a nominated or appointed employee of the
26 state, including members of departments, boards, commissions, councils,
27 committees, institutions, offices, corporations, authorities, organi-
28 zations, and persons under contract to the state; "employee" does not
29 include elected officials and judicial officers;

1 (6) "employment" means any rendering of services for compen-
2 sation;

3 (7) "financial interest" means an interest held by an indivi-
4 dual, his spouse, or minor children which is

5 (A) an ownership interest in a business,

6 (B) a creditor interest in an insolvent business,

7 (C) an employment, or prospective employment for which
8 negotiations have begun,

9 (D) an ownership interest in real or personal property,

10 (E) a loan or other debtor interest,

11 (F) a directorship or officership in a business;

12 (8) "official act" or "official action" means a decision,
13 recommendation, approval, disapproval, or other action, including in-
14 action, which involves the use of discretionary authority;

15 (9) "official authority" includes administrative or legis-
16 lative powers of decision, recommendation, approval, disapproval, or
17 other discretionary action;

18 (10) "public official" means a judicial officer, a member of
19 the legislature, the governor and the lieutenant governor, and each
20 appointed or elected municipal officer, as defined in AS 39.50.200(6);

21 (11) "state agency" includes a department, board, commission,
22 council, committee, institution, office, corporation, authority or
23 organization in the executive, legislative or judicial branch of state
24 government, and a department, board, commission, council, committee,
25 institution, office, corporation, authority or organization of the state
26 government independent of the executive, legislative and judicial
27 branches of state government.

28 * Sec. 8. AS 44.62.330(39) is amended to read:

29 (39) State Ethics [ALASKA PUBLIC OFFICES] Commission

1 * Sec. 9. AS 11.30.245; AS 39.25.210; AS 39.26.010; AS 39.51.010; and AS
2 39.50.090 are repealed.

3 * Sec. 10. This Act takes effect July 1, 1978.
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