

Original sponsor: Rules Committee

Offered: 5/15/81
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 153 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to the responsibilities of the Alaska
Public Offices Commission; establishing standards of
conduct for public officials; and providing for an
effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that it is
12 essential in the conduct of public business that public officials hold the
13 respect and confidence of the people. Public officials need to avoid conduct
14 which violates the trust that the people have placed in them or which creates
15 a justifiable impression among the public that the public trust is being
16 violated. To ensure and preserve public confidence, persons serving in
17 state and municipal government should have the benefit of specific standards
18 to guide their conduct. In order to strengthen the faith and confidence
19 that the governmental process reflects the will of the people and that each
20 public official considers and makes decisions affecting the public according
21 to the best interests of the public, AS 39.49 is enacted in sec. 2 of this
22 Act.

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* Sec. 2. AS 39 is amended by adding a new chapter to read:

24

CHAPTER 49. STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS.

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Sec. 39.49.010. GIFTS. A public official may not solicit,
directly or indirectly, a gift, whether in the form of money, service,
or benefit, under circumstances which the public official knows are
intended to influence the performance of official action or are intended
as a reward for official action.

1 Sec. 39.49.020. ABUSE OF OFFICE. (a) A public official may not
2 use or attempt to use his office to

3 (1) seek employment or to contract for services for himself
4 or a member of his household;

5 (2) solicit or accept compensation for the performance of
6 official duties or responsibilities for himself or others except as
7 provided by law;

8 (3) use public time, equipment, or facilities for any
9 private or business purposes for himself or others;

10 (4) use public time, equipment, or facilities for political
11 or campaign purposes;

12 (5) solicit or engage in a financial transaction with a
13 subordinate or a person or business which the public official inspects
14 or supervises;

15 (6) use information which is confidential by law for personal
16 gain or in a manner not connected with the performance of official
17 action.

18 (b) The provisions of (a)(3) and (4) of this section do not apply
19 to an elected public official. However, an elected public official may
20 not use state or municipal equipment for any private, business, or
21 campaign purpose.

22 Sec. 39.49.030. CONFLICT OF INTEREST. (a) Except as provided in
23 AS 39.49.040 and 39.49.050, a public official may not take official
24 action which he knows or has reason to know would affect

25 (1) a business or property in which the public official has
26 a financial interest; or

27 (2) a business or property for which the public official
28 acts as legal counsel, advisor, consultant, or representative.

29 (b) A public official has not acquired a financial interest in a

1 business which may be involved in official action under this section if
2 no benefit or detriment accrues to him beyond that which accrues uni-
3 formly to the members of the profession, occupation, or group affected
4 by the official action.

5 (c) A public official of the state may not assist a person before
6 a state agency for compensation that is conditioned on the success of
7 the transaction in a transaction involving the state. A public official
8 who is a member of the legislature or employed in the legislative
9 branch of the state government may not assist a person or business
10 before a state agency for compensation. A public official who is a
11 member of the governing body of a municipality or an employee of a
12 municipality may not assist a person or business before the municipal
13 governing body or an agency of the municipality for compensation.

14 (d) A public official may not for compensation attempt to secure
15 passage or defeat of a bill or appropriation or to obtain a contract,
16 claim, transaction, or proposal in which he has participated or will
17 participate as a public official. A public official may not assist a
18 person or business for compensation on the bill, contract, claim,
19 transaction, or proposal before the legislature, a state agency, or a
20 municipality.

21 (e) A public official may not assist a person before a state
22 agency or a municipality for compensation as to a bill, contract,
23 claim, transaction, or proposal involving official action by the state
24 agency or municipality over which the public official has authority.

25 (f) A former public official may not

26 (1) use information which is confidential by law for personal
27 gain;

28 (2) within 12 months after separation from employment assist
29 a person or business for compensation on a case or transaction upon

1 which he took official action when he was a public official; for pur-
2 poses of this paragraph "official action" does not include voting by an
3 elected public official.

4 Sec. 39.49.040. ACTION ON CONFLICT BY PUBLIC OFFICIAL OF THE
5 STATE. (a) A public official of the state who is unable to disqualify
6 himself in an action prohibited by AS 39.49.030 or whose participation
7 is necessary in order to constitute a quorum for official action does
8 not violate AS 39.49.030 if he has complied with AS 39.50.020 and if he
9 announces the nature of his conflict at the time he takes the official
10 action.

11 (b) A public official in the executive branch of the state govern-
12 ment who has a conflict in his discharge of official duties shall

13 (1) prepare a statement describing the duties requiring
14 official action and the nature of the conflict of interest with respect
15 to the official action; and

16 (2) deliver copies of the statement to the commission and to
17 his immediate superior or to the governor.

18 (c) A public official who is a member of a board or commission
19 who has a conflict of interest shall state the conflict to the board or
20 commission at the time of taking the official action.

21 (d) On receipt of a statement prepared under (b) of this section,
22 a public official's superior or the governor shall assign the official
23 action to a public official who does not have a conflict of interest.

24 (e) The governor and a public official without a superior in the
25 executive branch of the state government comply with this section if
26 the statement described in (b)(1) of this section is delivered to the
27 commission.

28 (f) The executive director of the commission shall review all
29 statements filed under (b) of this section.

1 Sec. 39.49.050. ACTION ON CONFLICT BY A PUBLIC OFFICIAL OF A
2 MUNICIPALITY. (a) A public official of a municipality who has a
3 conflict in his discharge of official duties shall

4 (1) prepare a statement describing the duties requiring
5 official action and the nature of the conflict of interest with respect
6 to the official action; and

7 (2) deliver copies of the statement to the commission and to
8 his immediate superior or to the presiding officer of the governing
9 body of the municipality.

10 (b) On receipt of a statement prepared under (a) of this section,
11 a public official's superior shall assign the official action to a
12 public official who does not have a conflict of interest.

13 (c) A public official who is a member of the governing body of a
14 municipality complies with this section if the statement described in
15 (a)(1) of this section is delivered to the commission.

16 (d) A public official who is a member of the governing body of a
17 municipality who has a conflict of interest shall state the conflict to
18 the governing body before taking the official action.

19 (e) The executive director of the commission shall review all
20 statements filed under (a) of this section.

21 Sec. 39.49.900. DEFINITIONS. In this chapter,

22 (1) "commission" means the Alaska Public Offices Commission
23 established under AS 15.13.020;

24 (2) "compensation" means money, a thing of value, or economic
25 benefit conferred on or received by a person in return for services
26 rendered or to be rendered by himself for another;

27 (3) "employment" means services performed for compensation;

28 (4) "financial interest" means an interest held by an indi-
29 vidual or a member of his household which is

1 (A) an ownership interest in a business;
2 (B) a creditor interest in an insolvent business;
3 (C) employment;
4 (D) prospective employment for which negotiations have
5 begun;

6 (E) an ownership interest in real or personal property;
7 (F) a loan or other debtor interest;
8 (G) a directorship or officership in a business;

9 (5) "member of his household" means

10 (A) a person who is the spouse, child, ward, brother,
11 sister, or parent of a public official or of the spouse of a
12 public official, and who shares a common residence with the public
13 official; or

14 (B) a person who is the child, ward, brother, sister,
15 or parent of a public official or of the spouse of a public offi-
16 cial, and over whose financial interests the public official has
17 legal, actual, or joint control, whether or not they share a
18 common residence;

19 (C) a person who shares a common residence with the
20 public official as though a spouse;

21 (6) "municipality" includes

22 (A) a city or borough of any class;

23 (B) a municipality unified under AS 29.68.240 - 29.68.-
24 440;

25 (C) a school district or a regional educational atten-
26 dance area;

27 (7) "official action" means a decision, recommendation,
28 approval, disapproval, or other action, including inaction, which
29 involves discretion;

1 (8) "public official" means a member or employee of the
2 legislature, the governor and lieutenant governor, appointed officers
3 and employees of a state agency, elected and appointed officers and
4 employees of a municipality of the state;

5 (9) "public time" means the regular work hours established
6 by or under law, regulation, ordinance, or collective bargaining agree-
7 ment for public officials;

8 (10) "state agency" means a department, board, board of
9 regents, commission, council, committee, institution, office, cor-
10 poration, authority or organization in the executive or legislative
11 branch of the state government, and includes the University of Alaska
12 and public corporations having a separate and independent legal exis-
13 tence.

14 * Sec. 3. AS 15.13.030 is repealed and reenacted to read:

15 Sec. 15.13.030. DUTIES OF THE COMMISSION. (a) The commission
16 shall

17 (1) develop and provide all forms for the reports and state-
18 ments required to be made under this chapter, AS 24.45, AS 39.49 and
19 AS 39.50;

20 (2) prepare and publish a manual setting out uniform methods
21 of bookkeeping and reporting for use by persons required to make reports
22 and statements under this chapter, AS 24.45, AS 39.49, and AS 39.50 and
23 otherwise assist candidates, groups, and individuals in complying with
24 the requirements of this chapter, AS 24.45, AS 39.49, and AS 39.50;

25 (3) receive and hold open for public inspection reports and
26 statements required to be made under this chapter, AS 24.45, AS 39.49,
27 and AS 39.50 and, upon request, furnish copies at cost to interested
28 persons;

29 (4) compile and maintain a current list of all reports and

1 statements filed with the commission;

2 (5) prepare a summary of reports filed with the commission
3 and make copies of the summary available to interested persons at cost;

4 (6) notify, by registered or certified mail, all persons who
5 are delinquent in filing reports and statements required to be made
6 under this chapter, AS 24.45, AS 39.49, or AS 39.50;

7 (7) examine, investigate and compare reports, statements and
8 actions required by this chapter, AS 24.45, AS 39.49, and AS 39.50 and
9 report to the attorney general the names of persons or groups which the
10 commission has substantial reason to believe have violated this chapter,
11 AS 24.45, AS 39.49, or AS 39.50;

12 (8) prepare and publish an annual report to the legislature
13 concerning the activities of the commission, the effectiveness of this
14 chapter, AS 24.45, AS 39.49, and AS 39.50, the enforcement by the
15 attorney general of this chapter, AS 24.45, AS 39.49 and AS 39.50, and
16 recommendations and proposals for change;

17 (9) subject to the provisions of the Administrative Procedure
18 Act (AS 44.62), adopt regulations necessary to implement and clarify
19 this chapter, AS 24.45, AS 39.49, and AS 39.50;

20 (10) appoint an executive director.

21 (b) The commission may delegate to the executive director powers
22 and duties given it by AS 15.13.031; it may not delegate to the execu-
23 tive director the power to issue a determination under AS 15.13.034.

24 (c) The commission, a commissioner, the executive director, or an
25 employee authorized by the commission may administer oaths, certify to
26 all official acts, and issue subpoenas, subpoenas duces tecum, and
27 other process to compel the attendance of witnesses and the production
28 of testimony, records, papers, accounts and documents in an inquiry,
29 investigation, hearing or proceeding before the commission. The com-

1 mission, a commissioner, or the executive director may petition a court
2 of this state to enforce its subpoenas, subpoenas duces tecum and other
3 process.

4 * Sec. 4. AS 15.13 is amended by adding new sections to read:

5 Sec. 15.13.031. POWERS OF COMMISSION. (a) The commission shall
6 administer this chapter, AS 24.45, AS 39.49, and AS 39.50 and may

7 (1) issue an advisory opinion under AS 15.13.032(a) on the
8 request of a public official or former public official;

9 (2) in its discretion issue an advisory opinion under
10 AS 15.13.032(c) upon the request of any person;

11 (3) issue a determination under AS 15.13.034;

12 (4) accept or initiate complaints concerning a violation of
13 a law administered by the commission, initiate investigations, and hold
14 hearings;

15 (5) subpoena witnesses, administer oaths, and take testimony
16 relating to matters before the commission and require the production
17 for examination of books or papers relating to a matter under investi-
18 gation by the commission.

19 (b) A complaint may be accepted by the commission and a complaint
20 may be initiated by the commission on a violation of AS 39.49 no later
21 than one year after separation from employment by a public official.
22 This subsection does not prevent a proceeding against a person who by
23 fraud prevents discovery of a violation of AS 39.49.

24 Sec. 15.13.032. ADVISORY OPINIONS. (a) A public official or a
25 former public official may request an advisory opinion as to whether
26 stated facts and circumstances describe a violation of AS 39.49.
27 Unless material facts were omitted or misstated in the request

28 (1) if an advisory opinion is not issued within 30 days
29 after the request is filed with the commission, the facts and circum-

1 stances stated in the request do not describe a violation of AS 39.49;
2 and

3 (2) the advisory opinion issued or the facts and circum-
4 stances stated in the request is binding in a charge subsequent to the
5 request concerning the public official or former public official.

6 (b) If an advisory opinion is issued under (a) of this section,
7 the executive director shall provide the public official or former
8 public official with the opinion.

9 (c) The commission may in its discretion, upon the request of any
10 person, issue an advisory opinion if the commission determines that the
11 request states a matter of general applicability or first impression
12 under AS 39.49. The advisory opinion shall be based on facts and
13 circumstances stated in the request and may not be used as a substitute
14 for a complaint charging a violation of AS 39.49 under AS 15.13.031(4).

15 (d) The commission may publish summaries of advisory opinions
16 issued under AS 15.13.033(b) and determinations issued under AS 15.-
17 13.034 with deletions in the summary to prevent disclosure of the
18 identity of a person involved in an advisory opinion or determination.

19 (e) The commission may authorize its executive director to issue
20 advisory opinions requested under (a) or (c) of this section.

21 Sec. 15.13.033. COMPLAINT PROCEDURES. (a) A complaint concerning
22 a violation of a law administered by the commission must be in writing
23 and signed by the complainant under oath. A complaint initiated by the
24 commission must be signed by three members of the commission. The
25 executive director shall notify each person against whom a complaint is
26 filed and afford the person an opportunity to explain the conduct
27 stated to be a violation. The executive director shall investigate
28 complaints involving a violation of AS 39.49 on a confidential basis.

29 (b) The executive director shall provide the public official who

1 is the subject of a complaint under (a) of this section with a decision
2 indicating whether a probable violation has been found. If the decision
3 indicates a probable violation, the person who is the subject of the
4 complaint may request a determination from the commission or comply
5 with the decision.

6 (c) If the person who is the subject of the complaint fails to
7 comply with the decision, a copy of a complaint shall be served on the
8 person. The person has 20 days after service to reply to the complaint.
9 Information on the face of the complaint is public information.

10 (d) Upon service of a complaint under (c) of this section, the
11 commission shall set a time and place for a hearing with notice to the
12 complainant and the person charged with a violation.

13 (e) Each party may have an opportunity to (1) be heard, (2)
14 subpoena witnesses and require the production of books or papers relat-
15 ing to the proceedings, (3) be represented by counsel, and (4) have the
16 right of cross-examination. The hearings shall be held under AS 44.62.
17 A witness shall testify under oath.

18 Sec. 15.13.034. DETERMINATIONS. (a) When the commission, after
19 hearings under AS 15.13.033(d), determines that there is sufficient
20 cause to believe that a public official removable only by impeachment
21 has committed a wilful violation of a provision of AS 39.49, it shall
22 issue a determination and refer the determination to the senate for
23 proceedings under art. II, sec. 20 of the state constitution. The
24 determination shall contain a statement of the facts describing the
25 violation.

26 (b) When the commission determines after hearings under AS 15.-
27 13.033(d) that there is sufficient cause to believe that a public
28 official other than a public official removable only by impeachment has
29 committed a wilful violation of a provision of AS 39.49, it shall refer

1 (1) to the governor a determination concerning a public
2 official in the executive branch;

3 (2) to the proper presiding officer of the legislature or to
4 both presiding officers of the legislature a determination concerning a
5 public official in the legislative branch;

6 (3) to the chairman of the Board of Regents a determination
7 concerning a public official in the University of Alaska; or

8 (4) to the presiding officer of the governing body of the
9 municipality a determination concerning a public official of the muni-
10 cipality.

11 (c) Any action of the governor, legislature, chairman of the
12 Board of Regents, or the governing body of a municipality in response
13 to a determination of the commission is public information.

14 (d) A determination of the commission must be based on competent
15 and substantial evidence. Testimony and evidence taken at the hearing
16 shall be recorded. A determination of the commission regarding a
17 violation shall be approved by three members of the commission. A
18 determination is public information.

19 Sec. 15.13.035. CONTRACTS VOIDABLE. (a) In addition to any
20 other penalty provided by law, a contract entered into by the state or
21 a municipality of the state in violation of AS 39.49, is voidable by
22 the state or a municipality of the state.

23 (b) In an action to void a contract entered into by the state or
24 a municipality of the state in violation of AS 39.49, the interests of
25 innocent parties who may be damaged by the action shall be protected
26 and the action to void the transaction must be brought within 60 days
27 of a determination of a violation of AS 39.49.

28 Sec. 15.13.036. VIOLATION. (a) The state or a municipality may
29 recover the compensation received by a person as a result of a violation

1 of AS 39.49 by a public official or former public official. An action
2 under this section shall be brought within two years of the violation.

3 (b) The appointing authority may discipline, reprimand, put on
4 probation, demote, suspend, or discharge an appointed public official
5 found to have violated a provision of AS 39.49.

6 Sec. 15.13.037. CIVIL PENALTIES. (a) The commission may assess
7 a civil penalty in an amount not to exceed twice the benefit determined
8 by the commission to have been obtained by a violation of this chapter,
9 AS 24.45, AS 39.49, or AS 39.50, or \$2,000, whichever is less, against
10 a public official.

11 (b) If the commission determines that a public official received
12 no economic benefit from a violation of this chapter, AS 24.45, AS 39.-
13 49, or AS 39.50, it may assess a civil penalty not to exceed \$2,000.

14 * Sec. 5. AS 15.13.122 is repealed and reenacted to read:

15 Sec. 15.13.122. LEGAL COUNSEL. (a) The attorney general is
16 legal counsel for the commission and shall advise the commission in
17 legal matters arising in the discharge of its duties and represent the
18 commission in actions to which it is a party.

19 (b) If, in the opinion of the commission, the public interest
20 warrants, the commission may request the chief justice of the supreme
21 court to appoint special counsel to represent the commission in a
22 proceeding involving a law administered by the commission and to pursue
23 appropriate remedies including criminal prosecution.

24 (c) The commission may employ temporary legal counsel in matters
25 in which the commission is involved.

26 * Sec. 6. AS 15.13.130 is amended by adding new paragraphs to read:

27 (8) "commission" means the Alaska Public Offices Commission;

28 (9) "public official" means a member or employee of the
29 legislature, the governor and lieutenant governor, appointed officers

1 and employees of a state agency, elected and appointed officers and
2 employees of a municipality of the state, and a person under a personal
3 services contract to a state agency or to a municipality of the state;

4 (10) "state agency" means a department, board, board of
5 regents, commission, council, committee, institution, office, corpora-
6 tion, authority or organization in the executive or legislative branch
7 of the state government, and includes the University of Alaska and
8 public corporations having a separate and independent legal existence.

9 * Sec. 7. AS 15.13.130 is amended by adding a new subsection to read:

10 (b) In AS 15.13.010 and 15.13.040 - 15.13.125, "municipality"
11 means a home rule or general law borough or city including but not
12 limited to a unified municipality organized under AS 29.68.240 - 29.68.-
13 440. In the implementation of AS 39.49 by the commission under AS 15.-
14 13.030 - 15.13.037, "municipality" includes

- 15 (1) a city or borough of any class;
16 (2) a municipality unified under AS 29.68.240 - 29.68.440;
17 (3) a school district or a regional educational attendance
18 area.

19 * Sec. 8. AS 15.13.045, 15.13.130(6), and AS 39.50.090(a) - (e) are
20 repealed.

21 * Sec. 9. (a) AS 39.49 enacted in sec. 2 of this Act applies to the
22 conduct of a public official of the state after the effective date of this
23 Act. AS 39.49 applies to public officials of a municipality of the state on
24 and after July 1, 1982, unless the municipality adopts standards of conduct
25 for its public officials, submits the standards to the Alaska Public Offices
26 Commission, and the Alaska Public Offices Commission determines before
27 July 1, 1982, that the municipal standards of conduct are substantially
28 similar to the standards of conduct adopted in AS 39.49.

29 (b) The legislature does not intend that each municipality adopt a

1 code establishing standards of conduct as comprehensive as the standards of
2 conduct established in AS 39.49 enacted in sec. 2 of this Act. In deter-
3 mining whether a municipal code establishing a standard of conduct is sub-
4 stantially similar to the standards of conduct established in AS 39.49, the
5 Alaska Public Offices Commission shall consider the standards of conduct
6 established in the municipal code with reference to the size of the munici-
7 pal government and recent budgets of the municipality, procedures adopted by
8 the municipality for the regulation of fiscal procedures, and other matters
9 submitted to the commission by the municipality.

10 * Sec. 10. This Act takes effect July 1, 1981.

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