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and Finance

1 IN THE SENATE

BY STIMSON

2 SENATE BILL NO. 336

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a standard of conduct for public
7 officials and employees; establishing 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. FINDINGS AND PURPOSE. The purpose of AS 39.49 as enacted
11 in sec. 2 of this Act is to

12 (1) prescribe standards of conduct for public officials of the
13 state;

14 (2) educate the public with respect to ethics in government;

15 (3) establish an ethics commission which will render advisory
16 opinions and enforce the provisions of AS 34.49 so that public confidence in
17 public officials will be preserved.

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

19 CHAPTER 49. STANDARDS OF CONDUCT.

20 Sec. 39.49.010. CONSTRUCTION. This chapter shall be liberally
21 construed to promote high standards of ethical conduct in state govern-
22 ment.

23 Sec. 39.49.020. GIFTS. A public official may not solicit or
24 receive, directly or indirectly, a gift, whether in the form of money,
25 service, or benefit, under circumstances where it may reasonably be
26 inferred that the gift is intended to influence him in the performance
27 of official action or as a reward for official action.

28 Sec. 39.49.030. CONFIDENTIAL INFORMATION. A public official may
29 not use information for his personal gain or disclose information which

1 by law or regulation is not available to members of the public and
2 which he acquires in his official position.

3 Sec. 39.49.040. FAIR TREATMENT. A public official may not use or
4 attempt to use his position to

5 (1) seek employment or contract for services for himself;

6 (2) solicit or accept consideration for the performance of
7 his official duties or responsibilities except as provided by law;

8 (3) use state time, equipment, or facilities for private or
9 business purposes;

10 (4) solicit, sell, or engage in a financial transaction with
11 a subordinate or a person or business which he inspects or supervises.

12 Sec. 39.49.050. CONFLICT OF INTEREST. (a) A public official may
13 not take official action affecting

14 (1) a business in which he has a financial interest; or

15 (2) a business for which he acts as legal counsel, advisor,
16 consultant, or representative.

17 (b) A public official who is a department head who is unable to
18 disqualify himself in an action described in (a) of this section does
19 not violate (a) of this section if he has complied with AS 39.50.020.

20 (c) A public official who is a member of a board, commission, or
21 committee and whose participation is necessary in order to constitute a
22 quorum for official action on a matter described in (a) of this section
23 does not violate (a) of this section if he has complied with AS 39.50.-
24 020.

25 (d) A public official may not acquire a financial interest in a
26 business which he has reason to believe may be directly involved in
27 official action he may take.

28 (e) A public official may not assist a person or business before
29 a state agency for contingent compensation in a transaction involving

1 the state.

2 (f) A public official may not assist a person or business for
3 compensation to secure passage of a bill or to obtain a contract,
4 claim, transaction, or proposal in which he has participated or will
5 participate as a public official nor may he assist a person or business
6 for compensation on the bill, contract, claim, transaction, or proposal
7 before the legislature or state agency.

8 (g) A public official may not assist a person or business before
9 a state agency for compensation on a bill, contract, claim, transaction,
10 or proposal involving official action by the state agency if he has
11 authority over the state agency.

12 Sec. 39.49.060. ACTION ON CONFLICT. (a) A public official in
13 the executive branch of the state government who in the discharge of
14 his official duties or responsibilities is required to take official
15 action prohibited by this chapter which would result in a conflict of
16 interest

17 (1) shall prepare a statement describing the matter requir-
18 ing official action and the nature of the conflict of interest with
19 respect to the official action; and

20 (2) shall deliver copies of the statement to the commission
21 and to his immediate superior or to the governor.

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

25 (c) The commission shall review the statement filed under (a) of
26 this section and may provide the public official with an advisory
27 opinion prepared under AS 39.49.110(2).

28 (d) A public official may request the commission to obtain an
29 advisory opinion from the attorney general on the application of this

1 chapter to a given set of circumstances or the commission may request
2 an opinion.

3 Sec. 39.49.070. CONTRACTS. (a) A state agency may not contract
4 with a public official or with a business in which a public official
5 has a controlling interest that involves services or property of a
6 value in excess of \$1,000 unless the contract is made after public
7 notice and by competitive bidding.

8 (b) A state agency may not enter into a contract with a person or
9 business which is represented or assisted by a person

10 (1) who has been a public official of the state agency
11 within the preceding two years; and

12 (2) who participated while he was a public official in the
13 subject with which the contract is concerned.

14 (c) The provisions of (b) of this section do not apply to a
15 public official whose services were provided to the state under a
16 personal services contract with the state.

17 Sec. 39.49.080. CONTRACTS VOIDABLE. (a) In addition to any
18 other penalty provided by law, a contract entered into by the state in
19 violation of this chapter is voidable by the state.

20 (b) In an action to void a contract entered into by the state in
21 violation of this chapter, the interests of third parties who may be
22 damaged by the action shall be considered and the action to void the
23 transaction must be brought within 60 days of a determination of a
24 violation of this chapter.

25 Sec. 39.49.090. RESTRICTIONS ON FORMER PUBLIC OFFICIALS. (a) A
26 former public official may not use information for his personal gain or
27 disclose information which by law or regulation is not available to
28 members of the public and which he acquired in the course of his offi-
29 cial duties.

1 (b) A former public official may not within 12 months after
2 termination of his employment assist a person or business for a fee or
3 consideration on matters in which he participated as a public official.

4 (c) A former employee may not within 12 months after termination
5 of his employment assist a person or business for a fee or considera-
6 tion on matters involving official action by the state agency with
7 which he was employed.

8 (d) This section does not prohibit a state agency from contracting
9 with a former public official to act on a matter on behalf of the state
10 within the periods stated in this section and does not prevent the
11 public official from appearing before a state agency under the contract.

12 Sec. 39.49.100. VIOLATION. (a) A service or benefit received as
13 a result of state action that violates this chapter is voidable in an
14 action brought by the attorney general.

15 (b) The attorney general may recover the compensation, gift, or
16 profit received by a person as a result of a violation of this chapter
17 by a public official or former public official.

18 (c) An action under (b) of this section shall be brought within
19 two years of the violation.

20 Sec. 39.49.110. DUTIES OF COMMISSION. (a) The State Ethics
21 Commission established under AS 15.13.020 shall administer this chapter
22 and may

23 (1) issue regulations to implement and interpret the provi-
24 sions of this chapter under the Administrative Procedure Act (AS 44.62);

25 (2) issue advisory opinions on the request of a public
26 official or former public official as to whether stated facts and
27 circumstances may constitute a violation of this chapter; if an advisory
28 opinion is not issued within 30 days after the request is filed with
29 the commission, the public official or the former public official may

1 consider that the facts and circumstances stated in the request do not
2 constitute a violation of this chapter; the opinion issued or considered
3 issued is binding on the commission in a subsequent charge concerning
4 the public official or former public official who sought the opinion.
5 and acted in reliance on it unless material facts were omitted or
6 misstated in the request;

7 (3) accept or initiate charges concerning a violation of
8 this chapter, initiate investigations, and hold hearings;

9 (4) subpoena witnesses, administer oaths, and take testimony
10 relating to matters before the commission and require the production
11 for examination of books or papers relating to a matter under investi-
12 gation before the commission; before the commission exercises a power
13 authorized in this section in an investigation, it shall by a vote of
14 three or more members of the commission define the nature and scope of
15 the inquiry;

16 (5) publish summaries of decisions and opinions with dele-
17 tions in the summaries or opinions to prevent disclosure of the identity
18 of a person involved in a decision or opinion;

19 (6) distribute its publications without cost to the public
20 and initiate programs to educate the public and public officials on
21 ethics in government employment.

22 (b) The commission may authorize its director to issue an advisory
23 opinion under (a)(2) of this section if delay would substantially
24 inconvenience the public official requesting the advisory opinion.

25 (c) A charge may be accepted by the commission and a charge may
26 be initiated by the commission on a violation of this chapter no
27 later than one year after termination of state employment by a public
28 official. This subsection does not prevent a proceeding against a
29 person who by fraud prevents discovery of a violation of the chapter.

1 Sec. 39.49.120. COMPLAINT PROCEDURES. (a) A charge concerning a
2 public official or former public official must be in writing and signed
3 by the complainant under oath. A charge initiated by the commission
4 must be signed by three members of the commission. The commission
5 shall notify each public official against whom a charge is filed and
6 afford him an opportunity to explain the conduct stated to be in viola-
7 tion of this chapter. The commission may investigate the charge and
8 render an advisory opinion to the public official. The commission
9 shall investigate charges on a confidential basis. If the advisory
10 opinion indicates a probable violation, the public official or former
11 public official may request a formal opinion or comply with the advisory
12 opinion. If the public official or former public official fails to
13 comply with the advisory opinion or if a majority of the members of the
14 commission determine that a violation of this chapter has occurred, a
15 copy of a complaint shall be served on the public official or former
16 public official. The public official or the former public official has
17 20 days after service to reply to the complaint.

18 (b) A commission member or individual, including the complainant,
19 who discloses information regarding the complaint before the issuance
20 of the complaint by the commission or, if the commission determines
21 that the complaint should not be issued, at any time discloses informa-
22 tion concerning the complaint or its contents except as permitted by
23 this chapter is guilty of a class A misdemeanor.

24 (c) If a majority of the members of the commission determine that
25 there is reason to believe that a violation of this chapter has oc-
26 curred, the commission shall set a time and place for a hearing with
27 notice to the complainant and the public official or former public
28 official. Each party may have an opportunity to (1) be heard, (2)
29 subpoena witnesses and require the production of books or papers relat-

1 ing to the proceedings, (3) be represented by counsel, and (4) have the
2 right of cross-examination. The hearings shall be held under AS 44.62.
3 A witness shall testify under oath and the hearing shall be closed to
4 the public unless the public official requests an open hearing. The
5 commission is not bound by the strict rules of evidence but the commis-
6 sion's determination must be based on competent and substantial evi-
7 dence. Testimony and evidence taken at the hearing shall be recorded.

8 (d) A determination of the commission regarding the conduct of a
9 public official shall be approved by three members of the commission.

10 Sec. 39.49.130. PROCEDURES. (a) When the commission, after
11 hearings under AS 39.49.120(c) determines that there is sufficient
12 cause to believe that a public official removable only by impeachment
13 has violated a provision of this chapter, it shall issue a determination
14 and refer the determination to the senate. The determination shall
15 contain a statement of the facts constituting the violation. If within
16 30 days after the determination the senate has not acted on the deter-
17 mination, the commission shall make the determination public. Days
18 during which the legislature is not in session are not included in the
19 30-day period.

20 (b) When the commission determines after hearings under AS 39.49.-
21 120(c) that there is sufficient cause to believe that a public official
22 other than a public official removable only by impeachment has violated
23 a provision of this chapter, it shall refer

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

26 (2) to the proper presiding officer of the legislature or to
27 both presiding officers of the legislature a determination concerning a
28 public official in the legislative branch; or

29 (3) to the chief justice of the supreme court a determination

1 concerning a public official of the judicial branch.

2 (c) The governor, legislature, or chief justice of the supreme
3 court shall notify the commission of any action taken within 60 days of
4 receipt of the determination. Days during which the legislature is not
5 in session are not included in the 60-day period.

6 (d) The commission may by a vote of four members issue a public
7 statement of its determination on a complaint against a former public
8 official and the attorney general may pursue remedies available to the
9 state.

10 Sec. 39.49.140. DISCIPLINARY ACTION FOR VIOLATION. The appoint-
11 ing authority may discipline, reprimand, put on probation, demote,
12 suspend, or discharge a public official found to have violated this
13 chapter.

14 Sec. 39.49.200. DEFINITIONS. In this chapter,

15 (1) "business" means a corporation, partnership, or sole
16 proprietorship carrying on a business whether or not operated for
17 profit;

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

19 (3) "compensation" means money, a thing of value, or economic
20 benefit conferred on or received by a person in return for services
21 rendered or to be rendered by himself for another;

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

25 (5) "employment" means services performed for compensation;

26 (6) "financial interest" means an interest held by an indivi-
27 dual, his spouse, or minor children which is

28 (A) an ownership interest in a business;

29 (B) a creditor interest in an insolvent business;

1 (C) employment;
2 (D) prospective employment for which negotiations have
3 begun;

4 (E) an ownership interest in real or personal property;

5 (F) a loan or other debtor interest;

6 (G) a directorship or officership in a business;

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

10 (8) "public official" means a member of the legislature, the
11 governor and lieutenant governor, a justice of the supreme court, a
12 judge of the superior court or of the district court, appointed officers
13 and employees of a state agency, and a person under a personal services
14 contract to a state agency;

15 (9) "state agency" means a department, board, board of
16 regents, commission, council, committee, institution, office, corpora-
17 tion, authority or organization in the executive, legislative, or
18 judicial branch of the state government, and includes the University of
19 Alaska and public corporations having a separate and independent legal
20 existence.

21 * Sec. 3. AS 15.13.020(a) is amended to read:

22 Sec. 15.13.020. STATE ETHICS [ALASKA PUBLIC OFFICES] COMMISSION.

23 (a) There is created in the Department of Administration the State
24 Ethics [ALASKA PUBLIC OFFICES] Commission consisting of the five
25 members.

26 * Sec. 4. AS 15.13.030(10) is amended to read:

27 (10) adopt regulations necessary to implement and clarify the
28 provisions of AS 24.45, AS 39.49, AS 39.50 and this chapter, subject to
29 the provisions of the Administrative Procedure Act (AS 44.62).

1 * Sec. 5. AS 15.13.030 is amended by adding a new paragraph to read:

2 (11) administer the provisions of AS 39.49.

3 * Sec. 6. AS 24.45.021(a) is amended to read:

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

6 * Sec. 7. AS 39.25.120(12) is amended to read:

7 (12) the executive director and staff of the State Ethics
8 [ALASKA PUBLIC OFFICES] Commission;

9 * Sec. 8. AS 39.50.020(b) is amended to read:

10 (b) The governor, lieutenant governor, members of the legis-
11 lature, and candidates for these offices, judicial officers, each
12 commissioner, head or deputy head of, or director of a division within,
13 a department in the executive branch, assistant to the governor or
14 chairman or member of a commission or board required to report under
15 this chapter, shall file the statement with the State Ethics [ALASKA
16 PUBLIC OFFICES] Commission. Municipal officers, and candidates for
17 elective municipal office, shall file with the municipal clerk or other
18 municipal official designated to receive their filing for office. All
19 statements required to be filed under this chapter are public records.

20 * Sec. 9. AS 39.50.050(a) is amended to read:

21 (a) The State Ethics [ALASKA PUBLIC OFFICES] Commission created
22 under AS 15.13.020(a) shall administer the provisions of this chapter.
23 The commission shall prepare and keep available for distribution,
24 standardized forms on which the reports required by this chapter shall
25 be filed.

26 * Sec. 10. AS 39.50.200(a)(4) is amended to read:

27 (4) "commission" means the State Ethics [ALASKA PUBLIC
28 OFFICES] Commission created under AS 15.13.020(a);

29 * Sec. 11. AS 44.62.330(39) is amended to read:

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

* Sec. 12. AS 39.50.090 (a) - (e) are repealed.

* Sec. 13. This Act takes effect July 1, 1981.