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1 IN THE HOUSE

2

HOUSE BILL NO. 20

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the responsibilities of the  
7 Alaska Public Offices Commission; establishing stan-  
8 dards of conduct for public officials; and providing  
9 for an effective date."

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  
14 conduct that violates the trust that the people have placed in them or that  
15 creates a justifiable impression among the public that the public trust is  
16 being violated. To ensure and preserve public confidence, persons serving  
17 in state and municipal government should have the benefit of specific  
18 standards to guide their conduct. In order to strengthen the faith and  
19 confidence that the governmental process reflects the will of the people  
20 and that each public official considers and makes decisions affecting the  
21 public according to the best interests of the public, AS 39.49 is enacted  
22 in sec. 2 of this Act.

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

24 CHAPTER 49. STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS.

25 Sec. 39.49.010. GIFTS. A public official may not solicit,  
26 directly or indirectly, a gift, whether in the form of money, service,  
27 or benefit, under circumstances that the public official knows are  
28 intended to influence the performance of official action or are in-  
29 tended 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 public office to

3           (1) seek employment or to contract for services that bene-  
4 fit the public official or a member of the household of the public  
5 official;

6           (2) solicit or accept compensation for the performance of  
7 official duties or responsibilities of benefit to the public official  
8 or others except as provided by law;

9           (3) use public time, equipment, or facilities for any  
10 private or business purposes of benefit to the public official or  
11 others;

12           (4) use public time, equipment, or facilities for political  
13 or campaign purposes;

14           (5) solicit or engage in a financial transaction with a  
15 subordinate or a person or business that the public official inspects  
16 or supervises;

17           (6) use information that is confidential by law for person-  
18 al gain or in a manner not connected with the performance of official  
19 action.

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

24           Sec. 39.49.030. CONFLICT OF INTEREST. (a) Except as provided  
25 in AS 39.49.040 and AS 39.49.050, a public official may not take  
26 official action that the public official knows or has reason to know  
27 would affect

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

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

3                   (b) A public official has not acquired a financial interest in a  
4 business that may be involved in official action under this section if  
5 no benefit or detriment accrues to the public official beyond that  
6 which accrues uniformly to the members of the profession, occupation,  
7 or group affected by the official action.

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

18                   (d) A public official may not for compensation attempt to secure  
19 passage or defeat of a bill or appropriation or to obtain a contract,  
20 claim, transaction, or proposal in which the public official has  
21 participated or will participate as a public official. A public  
22 official may not assist a person or business for compensation on the  
23 bill, contract, claim, transaction, or proposal before the legisla-  
24 ture, a state agency, or a municipality.

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

29                   (f) A former public official may not

1 (1) use information that is confidential by law for person-  
2 al gain;

3 (2) within 12 months after separation from employment  
4 assist a person or business for compensation on a case or transaction  
5 upon which the public official took official action while a public  
6 official; for purposes of this paragraph "official action" does not  
7 include voting by an elected public official.

8 Sec. 39.49.040. ACTION ON CONFLICT BY PUBLIC OFFICIAL OF THE  
9 STATE. (a) A public official of the state who is unable to reassign  
10 responsibilities concerning an action otherwise prohibited by  
11 AS 39.49.030 or whose participation is necessary in order to  
12 constitute a quorum for official action does not violate AS 39.49.030  
13 if the public official has complied with AS 39.50.020 and announces  
14 the nature of the conflict at the time the official action is taken.

15 (b) A public official in the executive branch of the state  
16 government who has a conflict in the discharge of official duties  
17 shall

18 (1) prepare a statement describing the duties requiring  
19 official action and the nature of the conflict of interest with re-  
20 spect to the official action; and

21 (2) deliver copies of the statement to the commission and  
22 to the immediate superior of the public official or to the governor.

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

26 (d) On receipt of a statement prepared under (b) of this sec-  
27 tion, the superior of the public official or the governor shall assign  
28 the official action to a public official who does not have a conflict  
29 of interest.

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

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

7 Sec. 39.49.050. ACTION ON CONFLICT BY A PUBLIC OFFICIAL OF A  
8 MUNICIPALITY. (a) A public official of a municipality who has a  
9 conflict in the discharge of official duties shall

10 (1) prepare a statement describing the duties requiring  
11 official action and the nature of the conflict of interest with re-  
12 spect to the official action; and

13 (2) deliver copies of the statement to the commission and  
14 to the immediate superior of the public official of a municipality or  
15 to the presiding officer of the governing body of the municipality.

16 (b) On receipt of a statement prepared under (a) of this sec-  
17 tion, the superior of the public official shall assign the official  
18 action to a public official who does not have a conflict of interest.

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

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

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

27 Sec. 39.49.900. DEFINITIONS. In this chapter,

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

1                   (2) "compensation" means money, a thing of value, or eco-  
2     nomic benefit conferred on or received by a person in return for  
3     services rendered or to be rendered by the person for another;

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

5                   (4) "financial interest" means an interest held by an indi-  
6     vidual or a household member that is

7                   (A) an ownership interest in a business;

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

9                   (C) employment;

10                  (D) prospective employment for which negotiations have  
11     begun;

12                  (E) an ownership interest in real or personal proper-  
13     ty;

14                  (F) a loan or other debtor interest;

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

16                  (5) "member of the household" or "household member" means

17                  (A) a person who is the spouse, child, ward, brother,  
18     sister, or parent of a public official or of the spouse of a  
19     public official, and who shares a common residence with the  
20     public official; or

21                  (B) a person who is the child, ward, brother, sister,  
22     or parent of a public official or of the spouse of a public offi-  
23     cial, and over whose financial interests the public official has  
24     legal, actual, or joint control, whether or not they share a  
25     common residence;

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

28                  (6) "municipality" includes

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

1 (B) a municipality unified under AS 29.68.240 - 29.-  
2 68.440;

3 (C) a school district or a regional educational atten-  
4 dance area;

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

8 (8) "public official" means a member or employee of the  
9 legislature, the governor and lieutenant governor, appointed officers  
10 and employees of a state agency, elected and appointed officers and  
11 employees of a municipality of the state;

12 (9) "public time" means the regular work hours established  
13 by or under law, regulation, ordinance, or collective bargaining  
14 agreement for public officials;

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

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

22 Sec. 15.13.030. DUTIES OF THE COMMISSION. (a) The commission  
23 shall

24 (1) develop and provide all forms for the reports and  
25 statements required to be made under this chapter, AS 24.45, AS 39.49,  
26 and AS 39.50;

27 (2) prepare and publish a manual setting out uniform meth-  
28 ods of bookkeeping and reporting for use by persons required to make  
29 reports and statements under this chapter, AS 24.45, AS 39.49, and

1 AS 39.50 and otherwise assist candidates, groups, and individuals in  
2 complying with the requirements of this chapter, AS 24.45, AS 39.49,  
3 and AS 39.50;

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

8 (4) compile and maintain a current list of all reports and  
9 statements filed with the commission;

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

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

16 (7) examine, investigate and compare reports, statements  
17 and actions required by this chapter, AS 24.45, AS 39.49, and AS 39.50  
18 and report to the attorney general the names of persons or groups that  
19 the commission has substantial reason to believe have violated this  
20 chapter, AS 24.45, AS 39.49, or AS 39.50;

21 (8) prepare and publish an annual report to the legislature  
22 concerning the activities of the commission, the effectiveness of this  
23 chapter, AS 24.45, AS 39.49, and AS 39.50, the enforcement by the  
24 attorney general of this chapter, AS 24.45, AS 39.49 and AS 39.50, and  
25 recommendations and proposals for change;

26 (9) subject to the provisions of the Administrative Proce-  
27 dure Act (AS 44.62), adopt regulations necessary to implement and  
28 clarify this chapter, AS 24.45, AS 39.49, and AS 39.50;

29 (10) appoint an executive director.

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

4 (c) The commission, a commissioner, the executive director, or  
5 an employee authorized by the commission may administer oaths, certify  
6 to all official acts, and issue subpoenas, subpoenas duces tecum, and  
7 other process to compel the attendance of witnesses and the production  
8 of testimony, records, papers, accounts and documents in an inquiry,  
9 investigation, hearing or proceeding before the commission. The com-  
10 mission, a commissioner, or the executive director may petition a  
11 court of this state to enforce its subpoenas, subpoenas duces tecum  
12 and other process.

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

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

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

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

20 (3) issue a determination under AS 15.13.034;

21 (4) accept or initiate complaints concerning a violation of  
22 a law administered by the commission, initiate investigations, and  
23 hold hearings;

24 (5) subpoena witnesses, administer oaths, and take testi-  
25 mony relating to matters before the commission and require the produc-  
26 tion for examination of books or papers relating to a matter under  
27 investigation by the commission.

28 (b) A complaint may be accepted by the commission and a com-  
29 plaint may be initiated by the commission on a violation of AS 39.49

1 no later than one year after separation from employment by a public  
2 official. This subsection does not prevent a proceeding against a  
3 person who by fraud prevents discovery of a violation of AS 39.49.

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

8 (1) if an advisory opinion is not issued within 30 days  
9 after the request is filed with the commission, the facts and circum-  
10 stances stated in the request do not describe a violation of AS 39.49;  
11 and

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

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

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

25 (d) The commission may publish summaries of advisory opinions  
26 issued under AS 15.13.033(b) and determinations issued under AS 15.-  
27 13.034 with deletions in the summary to prevent disclosure of the  
28 identity of a person involved in an advisory opinion or determination.

29 (e) The commission may authorize its executive director to issue

1 advisory opinions requested under (a) or (c) of this section.

2           Sec. 15.13.033. COMPLAINT PROCEDURES. (a) A complaint concern-  
3 ing a violation of a law administered by the commission must be in  
4 writing and signed by the complainant under oath. A complaint initi-  
5 ated by the commission must be signed by three members of the commis-  
6 sion. The executive director shall notify each person against whom a  
7 complaint is filed and afford the person an opportunity to explain the  
8 conduct stated to be a violation. The executive director shall inves-  
9 tigate complaints involving a violation of AS 39.49 on a confidential  
10 basis.

11           (b) The executive director shall provide the public official who  
12 is the subject of a complaint under (a) of this section with a deci-  
13 sion indicating whether a probable violation has been found. If the  
14 decision indicates a probable violation, the person who is the subject  
15 of the complaint may request a determination from the commission or  
16 comply with the decision.

17           (c) If the person who is the subject of the complaint fails to  
18 comply with the decision, a copy of a complaint shall be served on the  
19 person. The person has 20 days after service to reply to the com-  
20 plaint. Information on the face of the complaint is public informa-  
21 tion.

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

25           (e) Each party may have an opportunity to (1) be heard, (2)  
26 subpoena witnesses and require the production of books or papers  
27 relating to the proceedings, (3) be represented by counsel, and (4)  
28 have the right of cross-examination. The hearings shall be held under  
29 AS 44.62. A witness shall testify under oath.

1           Sec. 15.13.034. DETERMINATIONS. (a) When the commission, after  
2 hearings under AS 15.13.033(d), determines that there is sufficient  
3 cause to believe that a public official removable only by impeachment  
4 has committed a wilful violation of a provision of AS 39.49, it shall  
5 issue a determination and refer the determination to the senate for  
6 proceedings under art. II, sec. 20 of the state constitution. The  
7 determination shall contain a statement of the facts describing the  
8 violation.

9           (b) When the commission determines after hearings under AS 15.-  
10 13.033(d) that there is sufficient cause to believe that a public  
11 official other than a public official removable only by impeachment  
12 has committed a wilful violation of a provision of AS 39.49, it shall  
13 refer

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

16                 (2) to the proper presiding officer of the legislature or  
17 to both presiding officers of the legislature a determination concern-  
18 ing a public official in the legislative branch;

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

21                 (4) to the presiding officer of the governing body of the  
22 municipality a determination concerning a public official of the muni-  
23 cipality.

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

27           (d) A determination of the commission must be based on competent  
28 and substantial evidence. Testimony and evidence taken at the hearing  
29 shall be recorded. A determination of the commission regarding a

1 violation shall be approved by three members of the commission. A  
2 determination is public information.

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

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

12 Sec. 15.13.036. VIOLATION. (a) The state or a municipality may  
13 recover the compensation received by a person as a result of a viola-  
14 tion of AS 39.49 by a public official or former public official. An  
15 action under this section shall be brought within two years of the  
16 violation.

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

20 Sec. 15.13.037. CIVIL PENALTIES. (a) The commission may assess  
21 a civil penalty in an amount not to exceed twice the benefit deter-  
22 mined by the commission to have been obtained by a violation of this  
23 chapter, AS 24.45, AS 39.49, or AS 39.50, or \$2,000, whichever is  
24 less, against a public official.

25 (b) If the commission determines that a public official received  
26 no economic benefit from a violation of this chapter, AS 24.45,  
27 AS 39.49, or AS 39.50, it may assess a civil penalty not to exceed  
28 \$2,000.

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

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

5           (b) If, in the opinion of the commission, the public interest  
6 warrants, the commission may request the chief justice of the supreme  
7 court to appoint special counsel to represent the commission in a  
8 proceeding involving a law administered by the commission and to  
9 pursue appropriate remedies including criminal prosecution.

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

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

13           (8) "commission" means the Alaska Public Offices Commis-  
14 sion;

15           (9) "public official" means a member or employee of the  
16 legislature, the governor and lieutenant governor, appointed officers  
17 and employees of a state agency, elected and appointed officers and  
18 employees of a municipality of the state, and a person under a person-  
19 al services contract to a state agency or to a municipality of the  
20 state;

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

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

27           (b) In AS 15.13.010 and AS 15.13.040 - 15.13.125, "municipality"  
28 means a home rule or general law borough or city including but not  
29 limited to a unified municipality organized under AS 29.68.240 -

1       29.68.440. In the implementation of AS 39.49 by the commission under  
2 AS 15.13.030 - 15.13.037, "municipality" includes

- 3               (1) a city or borough of any class;  
4               (2) a municipality unified under AS 29.68.240 - 29.68.440;  
5               (3) a school district or a regional educational attendance  
6 area.

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

9       \* Sec. 9. (a) AS 39.49 enacted in sec. 2 of this Act applies to the  
10 conduct of a public official of the state after the effective date of this  
11 Act. AS 39.49 applies to public officials of a municipality of the state  
12 on and after July 1, 1984, unless the municipality adopts standards of  
13 conduct for its public officials, submits the standards to the Alaska  
14 Public Offices Commission, and the Alaska Public Offices Commission deter-  
15 mines before July 1, 1984, that the municipal standards of conduct are  
16 substantially similar to the standards of conduct adopted in AS 39.49.

17       (b) The legislature does not intend that each municipality adopt a  
18 code establishing standards of conduct as comprehensive as the standards of  
19 conduct established in AS 39.49 enacted in sec. 2 of this Act. In deter-  
20 mining whether a municipal code establishing a standard of conduct is sub-  
21 stantially similar to the standards of conduct established in AS 39.49, the  
22 Alaska Public Offices Commission shall consider the standards of conduct  
23 established in the municipal code with reference to the size of the municipi-  
24 pal government and recent budgets of the municipality, procedures adopted  
25 by the municipality for the regulation of fiscal procedures, and other  
26 matters submitted to the commission by the municipality.

27       \* Sec. 10. This Act takes effect July 1, 1983.