

Introduced: 4/4/86
Referred: State Affairs,
Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 706

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the ethical conduct of govern-
7 mental activities; and providing for an effective
8 date."

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

10 * Section 1. AS 39 is amended by adding a new chapter to read:

11 CHAPTER 52. ALASKA EXECUTIVE BRANCH ETHICS ACT.

12 ARTICLE 1. DECLARATIONS.

13 Sec. 39.52.010. DECLARATION OF POLICY. (a) It is declared (1)
14 that high moral and ethical standards among public officers in the
15 executive branch are essential to the conduct of free government; and
16 (2) that the legislature believes that a code of ethics for the guid-
17 ance of public officers will discourage those officers from acting
18 upon personal or financial interests in the performance of their
19 public responsibilities, will improve standards of public service, and
20 will promote and strengthen the faith and confidence of the people of
21 this state in their public officers. It is further declared that
22 holding public office or employment is a public trust and that as one
23 safeguard of that trust, the people require public officers to adhere
24 to a code of ethics.

25 (b) The legislature recognizes that it may be necessary for
26 public officers who may have potentially conflicting public respon-
27 sibilities to serve on state boards and commissions. The legislature
28 declares that it is the policy of the state that the holding of two or
29 more such offices does not constitute the holding of incompatible

1 offices, unless expressly prohibited by the Alaska Constitution, this
2 chapter, or another statute.

3 ARTICLE 2. CODE OF ETHICS.

4 Sec. 39.52.110. SCOPE OF CODE. (a) The legislature reaffirms
5 that each public officer holds office as a public trust, and any
6 effort to benefit a personal or financial interest through official
7 action is a violation of that trust. This chapter, however, does not
8 prevent an officer from accepting other employment or following a pur-
9 suit that does not interfere with the full and faithful discharge of
10 the officer's public duties and responsibilities. The legislature
11 further recognizes that

12 (1) in a representative democracy, the representatives are
13 drawn from society and, therefore, cannot and should not be without
14 personal and financial interests in the decisions and policies of
15 government;

16 (2) people who serve as public officers retain their rights
17 to interests of a personal or financial nature; and

18 (3) standards of ethical conduct for members of the execu-
19 tive branch need to distinguish between those minor and inconsequen-
20 tial conflicts that are unavoidable in a free society, and those
21 conflicts of interests that are substantial and material.

22 (b) Unethical conduct is prohibited, but there is no substantial
23 impropriety if, as to a specific matter, a public officer's

24 (1) personal or financial interest in the matter is insig-
25 nificant, or of a type that is possessed generally by the public or a
26 large class of persons to which the public officer belongs, or

27 (2) action or influence would have insignificant or conjec-
28 tural effect on the matter.

29 (c) The attorney general, designated supervisors, hearing

1 officers, and the personnel board must be guided by this section when
2 issuing opinions and reaching decisions.

3 Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. (a) A public
4 officer may not use, or attempt to use, an official position for
5 personal gain, and may not intentionally secure or grant unwarranted
6 benefits or treatment for any person.

7 (b) A public officer may not

8 (1) seek other employment or contracts through the use or
9 attempted use of official position;

10 (2) accept, receive, or solicit compensation for the per-
11 formance of official duties or responsibilities from a person other
12 than the state;

13 (3) use state time, property, equipment, or other facil-
14 ities to benefit personal or financial interests; or

15 (4) take or withhold official action in order to affect a
16 matter in which the public officer has a personal or financial inter-
17 est;

18 (5) engage in a close economic association with a subordi-
19 nate;

20 (6) directly solicit a subordinate for the purpose of
21 selling products or services; or

22 (7) attempt to benefit a personal or financial interest
23 through coercion of a subordinate.

24 Sec. 39.52.130. IMPROPER GIFTS OR BENEFITS. (a) A public
25 officer may not solicit, accept, or receive, directly or indirectly, a
26 gift or benefit, whether in the form of money, service, loan, travel,
27 entertainment, hospitality, employment, promise, or in any other form,
28 under circumstances in which it could reasonably be inferred that the
29 gift or benefit is intended to influence the performance of official

1 duties, actions, or judgment. Nothing in this subsection precludes
2 the acceptance of travel or hospitality given to a public officer to
3 aid or assist in the performance of official duties if the officer's
4 designated supervisor determines that acceptance does not interfere
5 with the full and faithful discharge of the officer's public duties
6 and responsibilities.

7 (b) Notice of the receipt by a public officer of a gift or
8 benefit with a value in excess of \$25, including the name of the giver
9 and a description of the gift or benefit and its approximate value,
10 must be provided to the designated supervisor within 30 days after the
11 date of its receipt if the public officer may take or withhold offi-
12 cial action that benefits the giver.

13 (c) In accordance with AS 39.52.240, a designated supervisor may
14 request guidance from the attorney general concerning whether accep-
15 tance of a particular gift or benefit is prohibited.

16 (d) The restrictions relating to gifts or benefits imposed by
17 this section do not apply to a campaign contribution to a candidate
18 for elective office if the contribution complies with laws and regu-
19 lations governing elections and campaign disclosure.

20 Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a)
21 A current or former public officer may not disclose or use information
22 gained in the course of, or by reason of, the officer's official
23 duties that could in any way result in the receipt of any benefit for
24 the officer or an immediate family member, if the information has not
25 also been communicated to the public.

26 (b) A current or former public officer may not disclose or use,
27 without appropriate authorization, information acquired in the course
28 of official duties that is confidential by law.

29 Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS,

1 LEASES, OR LOANS. (a) A public officer, or an immediate family
2 member, may not attempt to acquire, receive, apply for, be a party to,
3 or have a personal or financial interest in a state grant, contract,
4 lease, or loan if the public officer may take or withhold official
5 action that affects the award, execution, or administration of the
6 state grant, contract, lease, or loan.

7 (b) The prohibition in (a) of this section does not apply to a
8 state grant, contract, or lease competitively solicited unless the
9 officer

10 (1) is employed by the administrative unit awarding the
11 grant, contract, or lease or is employed by the administrative unit
12 for which the grant, contract, or lease is let; or

13 (2) takes official action with respect to the award, exe-
14 cution, or administration of the grant, contract, or lease.

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

17 (1) the public officer does not take or withhold official
18 action that affects the award, execution, or administration of the
19 loan held by the officer, or an immediate family member;

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

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

23 (d) A public officer shall report in writing to the designated
24 supervisor a personal or financial interest held by the officer, or an
25 immediate family member, in a state grant, contract, lease, or loan
26 that is awarded, executed, or administered by the agency the officer
27 serves.

28 Sec. 39.52.160. IMPROPER REPRESENTATION. (a) A public officer
29 may not represent, advise, or assist a person in any matter pending

1 before the administrative unit that the officer serves, if the rep-
2 resentation, advice, or assistance is

3 (1) for compensation, unless the representation, advice,
4 assistance, and compensation are required by statute, regulation, or
5 court rule, or is otherwise customary; or

6 (2) without compensation, but rendered to benefit a per-
7 sonal or financial interest of the public officer.

8 (b) This section does not prohibit activities related to collec-
9 tive bargaining.

10 (c) This section does not preclude a non-salaried member of a
11 board or commission from representing, advising, or assisting in any
12 matter in which the member has a personal or financial interest reg-
13 ulated by the board or commission on which the member serves, except
14 that the member must act in accordance with AS 39.52.220.

15 Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. (a) A public
16 employee may not render services to benefit a personal or financial
17 interest or engage in or accept employment outside the agency which
18 the employee serves, if the outside employment or service is incom-
19 patible or in conflict with the proper discharge of official duties.

20 (b) A public employee rendering services for compensation or
21 engaging in employment outside the employee's agency, shall quarterly
22 report the outside employment activities to the employee's designated
23 supervisor.

24 Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE
25 SERVICE. (a) A public officer who leaves state service may not, for
26 two years after leaving state service, represent, advise, or assist a
27 person for compensation regarding a matter that was under considera-
28 tion by the administrative unit served by that public officer, and in
29 which the officer participated personally and substantially through

1 the exercise of official action. For the purposes of this subsection,
2 "matter" includes a case, proceeding, application, contract, or deter-
3 mination, but does not include the proposal or consideration of legis-
4 lative bills, resolutions and constitutional amendments, or other
5 legislative measures; or the proposal, consideration, or adoption of
6 administrative regulations.

7 (b) Nothing in this section prohibits an agency from contracting
8 with a former public officer to act on a matter on behalf of the
9 state.

10 (c) The head of an agency may waive application of (a) of this
11 section after determining that representation by a former public
12 officer is not adverse to the public interest. The waiver must be in
13 writing and a copy of the waiver must be provided to the attorney
14 general for approval or disapproval.

15 Sec. 39.52.190. AIDING A VIOLATION PROHIBITED. It is a viola-
16 tion of this chapter for a public officer to knowingly aid another
17 public officer in a violation of this chapter.

18 ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT
19 VIOLATION OF CODE.

20 Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC
21 EMPLOYEES. (a) A public employee who is involved in a matter that
22 may result in a violation of AS 39.52.110 -- 39.52.190 shall

23 (1) refrain from taking any official action relating to the
24 matter until a determination is made under this section; and

25 (2) immediately disclose the matter in writing to the
26 designated supervisor.

27 (b) A public employee's designated supervisor shall make a
28 written determination whether an employee's involvement violates
29 AS 39.52.110 -- 39.52.190. If the supervisor determines that a

1 violation could exist or will occur, the supervisor shall,

2 (1) reassign duties to cure the employee's potential vio-
3 lation, if feasible; or

4 (2) direct the divestiture or removal by the employee of
5 the personal or financial interests that give rise to the potential
6 violation.

7 (c) In accordance with AS 39.52.240, a designated supervisor may
8 request guidance from the attorney general concerning whether a public
9 employee is involved in a matter that may result in a violation of
10 AS 39.52.110 -- 39.52.190.

11 Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS
12 OF BOARDS OR COMMISSIONS. (a) A member of a board or commission who
13 is involved in a matter that may result in a violation of AS 39.52.110
14 -- 39.52.190 shall disclose the matter on the public record and in
15 writing to the designated supervisor. The supervisor shall determine
16 whether the member's involvement violates AS 39.52.110 -- 39.52.190.
17 If a member of the board or commission objects to the ruling of the
18 supervisor, or if the supervisor discloses an involvement requiring a
19 determination, the members present at a meeting, excluding the in-
20 volved member, shall vote on the matter. If the supervisor or a
21 majority of the members voting determine that a violation will exist
22 if the member continues to participate, the member shall refrain from
23 voting, deliberating, or participating in the matter.

24 (b) In accordance with AS 39.52.240, the designated supervisor
25 or the board or commission may request guidance from the attorney
26 general concerning whether a member of a board or commission is in-
27 volved in a matter that may result in a violation of AS 39.52.110 --
28 39.52.190.

29 Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. A person may

1 report to a public officer's designated supervisor, under oath and in
2 writing, a potential violation of AS 39.52.110 -- 39.52.190 by the
3 public officer. The supervisor shall provide a copy of the report to
4 the officer who is the subject of the report, and shall review the
5 report to determine whether a violation may exist. The supervisor
6 shall act in accordance with AS 39.52.210 or 39.52.220 if the supervi-
7 sor determines that the matter may result in a violation of AS 39.52.-
8 110 -- 39.52.190.

9 Sec. 39.52.240. ADVISORY OPINIONS. (a) Upon the written re-
10 quest of a designated supervisor or a board or commission, the attor-
11 ney general may issue opinions interpreting this chapter. The re-
12 quester must supply any additional information requested by the attor-
13 ney general in order to issue the opinion. Within 60 days after
14 receiving a complete request, the attorney general shall issue an
15 advisory opinion on the question.

16 (b) The attorney general may offer oral advice if delay would
17 cause substantial inconvenience or detriment to the requesting party.

18 (c) The designated supervisor or a board or commission shall
19 make a written determination based on the advice of the attorney
20 general. If the advice of the attorney general provides more than one
21 way for a public officer to avoid or correct a problem found under
22 AS 39.52.110 -- 39.52.190, the designated supervisor or the board or
23 commission shall determine the alternative that is most appropriate
24 and advise the officer of any action required of the officer to avoid
25 or correct the problem.

26 (d) A public officer is not liable under this chapter for any
27 action carried out in accordance with a determination made under
28 AS 39.52.210 -- 39.52.240 if the officer fully disclosed all relevant
29 facts reasonably necessary to the determination.

1 (e) The attorney general may reconsider, revoke, or modify an
2 advisory opinion at any time, including upon a showing that material
3 facts were omitted or misstated in the request for the opinion.

4 (f) A person may rely on an advisory opinion that is currently
5 in effect.

6 (g) A request for advice made under this section is confiden-
7 tial.

8 (h) The attorney general shall publish the advisory opinions in
9 the Alaska Administrative Journal, with sufficient deletions to pre-
10 vent disclosure of the persons whose identities are confidential under
11 (g) of this section.

12 Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS. (a) A former
13 public officer may request, in writing, an opinion from the attorney
14 general interpreting this chapter. The attorney general shall give
15 advice in accordance with AS 39.52.240(a) or (b) and publish opinions
16 in accordance with AS 39.52.240(h).

17 (b) A former public officer is not liable under this chapter for
18 any action carried out in accordance with the advice of the attorney
19 general issued under this section, if the public officer fully dis-
20 closed all relevant facts reasonably necessary to the issuance of the
21 advice.

22 Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY
23 GENERAL REVIEW. (a) A designated supervisor shall quarterly submit a
24 report to the attorney general which states the facts, circumstances,
25 and disposition of any disclosure made under AS 39.52.210 --
26 39.52.240.

27 (b) The attorney general shall review determinations reported
28 under this section. The attorney general may request additional
29 information from a supervisor concerning a specific disclosure and its

1 disposition.

2 (c) The report prepared under this section is confidential and
3 not available for public inspection unless formal proceedings under
4 AS 39.52.350 are initiated based on the report. If formal proceedings
5 are initiated, the relevant portions of the report are public docu-
6 ments open to inspection. The attorney general shall, however, make
7 available to the public an extract of the reports received under this
8 section, with sufficient deletions to prevent disclosure of a person's
9 identity.

10 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

11 Sec. 39.52.310. COMPLAINTS. (a) The attorney general may
12 initiate a complaint, or elect to treat as a complaint any matter
13 disclosed under AS 39.52.210, 39.52.220, 39.52.250, or 39.52.260.

14 (b) A person may file a complaint with the attorney general
15 regarding the conduct of a current or former public officer. A com-
16 plaint must be in writing, be signed under oath, and contain a clear
17 statement of the details of the alleged violation.

18 (c) If a complaint alleges a violation of AS 39.52.110 --
19 39.52.190 by the governor, lieutenant governor, or the attorney gener-
20 al, the matter shall be referred to the personnel board. The person-
21 nel board shall retain independent counsel who shall act in the place
22 of the attorney general under (d) -- (i) of this section, AS 39.52.320
23 -- 39.52.350, and AS 39.52.360(c) and (d).

24 (d) The attorney general shall review each complaint filed, to
25 determine whether it is properly completed and contains allegations
26 which, if true, would constitute conduct in violation of this chapter.
27 The attorney general may require the complainant to provide additional
28 information before accepting the complaint. If the attorney general
29 determines that the allegations in the complaint do not warrant an

1 investigation, the attorney general shall dismiss the complaint with
2 notice to the complainant and the subject of the complaint.

3 (e) The attorney general may refer a complaint to the subject's
4 designated supervisor for resolution under AS 39.52.210 or 39.52.220.

5 (f) If the attorney general accepts a complaint for investiga-
6 tion, the attorney general shall serve a copy of the complaint upon
7 the subject of the complaint, for a response. The attorney general
8 may require the subject to provide, within 20 days after service, full
9 and fair disclosure in writing of all facts and circumstances pertain-
10 ing to the alleged violation. Misrepresentation of a material fact in
11 a response to the attorney general is a violation of this chapter.
12 Failure to answer within the prescribed time, or within any additional
13 time period that may be granted in writing by the attorney general, is
14 considered an admission of the allegations in the complaint.

15 (g) If a complaint is accepted under (f) of this section, the
16 attorney general shall investigate to determine whether a violation of
17 this chapter has occurred. At any stage of an investigation or re-
18 view, the attorney general may issue a subpoena under AS 39.52.380.

19 (h) A violation of this chapter may be investigated within two
20 years after discovery of the alleged violation.

21 (i) The unwillingness of a complainant to assist in an investi-
22 gation, the withdrawal of a complaint, or restitution by the subject
23 of the complaint may, but need not in and of itself, justify termina-
24 tion of an investigation or proceeding.

25 Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS. If, after
26 investigation, it appears that there is no probable cause to believe
27 that a violation of this chapter has occurred, the attorney general
28 shall dismiss the complaint and prepare and file a confidential summa-
29 ry with the personnel board. The attorney general shall communicate

1 disposition of the matter promptly to the complainant and to the
2 subject of the complaint.

3 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After deter-
4 mining that the conduct of the subject of a complaint does not warrant
5 a hearing under AS 39.52.360, the attorney general shall recommend
6 action to correct or prevent a violation of this chapter. The attor-
7 ney general shall communicate the recommended action to the complain-
8 ant and the subject of the complaint. The subject of the complaint
9 shall comply with the attorney general's recommendation.

10 Sec. 39.52.340. CONFIDENTIALITY. (a) Before the initiation of
11 formal proceedings under AS 39.52.350, information regarding an inves-
12 tigation conducted under this chapter, or obtained by the attorney
13 general during the investigation, is confidential. The attorney
14 general and all persons contacted during the course of an investiga-
15 tion shall maintain confidentiality regarding the existence of the
16 investigation. A person who violates this section is guilty of a
17 class A misdemeanor.

18 (b) It is not a violation of this section for a person to con-
19 tact an attorney or to participate in a criminal investigation.

20 (c) The subject of the complaint may, in writing, waive the
21 confidentiality protection of this section.

22 Sec. 39.52.350. PROBABLE CAUSE FOR HEARING. (a) If the attor-
23 ney general determines that there is probable cause to believe that a
24 knowing violation of this chapter or a violation that cannot be cor-
25 rected under AS 39.52.330 has occurred, or that the subject of a com-
26 plaint failed to comply with a recommendation for corrective or pre-
27 ventive action, the attorney general shall initiate formal proceedings
28 by serving a copy of an accusation upon the subject of the accusation.
29 The accusation shall specifically set out the alleged violation.

1 After service, the accusation is a public document open to inspection.
2 Except as provided in AS 39.52.370(c), all subsequent proceedings are
3 open to the public.

4 (b) The subject of the accusation shall file an answer with the
5 attorney general within 20 days after service of the accusation, or at
6 a later time specified by the attorney general. If the subject of the
7 accusation fails to timely answer, the allegations are considered
8 admitted.

9 (c) If the subject of the accusation denies that a violation of
10 this chapter has occurred, the attorney general shall refer the matter
11 to the personnel board, which shall appoint a hearing officer to con-
12 duct a hearing.

13 (d) If the subject of the accusation admits a violation of this
14 chapter, the attorney general shall refer the matter to the personnel
15 board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.-
16 450, as appropriate.

17 Sec. 39.52.360. HEARINGS. (a) The hearing officer may convene
18 a pre-hearing conference to set a time and place for the hearing, and
19 for stipulation as to matters of fact and to simplify issues, identify
20 and schedule pre-hearing matters, and resolve other similar matters
21 before the hearing.

22 (b) The hearing officer may administer oaths, hold hearings, and
23 take testimony. Upon application by a party to the hearing, the
24 hearing officer may issue subpoenas under AS 39.52.380.

25 (c) The attorney general shall present the charges before the
26 hearing officer. At a hearing, the attorney general has the burden of
27 demonstrating by a preponderance of the evidence that the subject of
28 the accusation has, by act or omission, violated this chapter.

29 (d) The parties to a hearing are the attorney general and the

1 subject of the accusation. The subject of an accusation may be repre-
2 sented by counsel. Each party has an opportunity to be heard and
3 cross-examine witnesses, who shall testify under oath.

4 (e) The Administrative Procedure Act does not apply to hearings
5 under this section, except as provided in AS 39.52.380.

6 (f) Technical rules of evidence do not apply, but the hearing
7 officer's findings must be based upon reliable and relevant evidence.
8 All testimony and other evidence taken at the hearing must be recorded
9 and the evidence maintained. Copies of transcripts of the hearing
10 record are available to the subject of the accusation at the subject's
11 expense; however, upon request, a copy of the recording of the hearing
12 must be furnished without charge to the subject of the accusation.

13 (g) At the conclusion of the formal hearing, the hearing officer
14 may direct either or both parties to submit proposed findings of fact,
15 conclusions of law, and recommendation to be filed within 10 days
16 after the conclusion of the hearing.

17 (h) Within 30 days after the conclusion of a formal hearing, the
18 hearing officer shall serve a written report on the personnel board
19 and the parties, unless the personnel board grants an extension of
20 time. The report must contain the officer's findings of fact, conclu-
21 sions of law, and recommendation. The hearing officer shall submit
22 the record to the personnel board.

23 Sec. 39.52.370. PERSONNEL BOARD ACTION. (a) Within 10 days
24 after receipt of the hearing officer's report, either party may pro-
25 test the officer's findings of fact, conclusions of law, and recommen-
26 dation, and, if a protest is filed, shall serve a copy on the other
27 party. Oral argument before the personnel board must be provided only
28 if requested by either party. The board chair shall set the deadline
29 for submission of requests for oral argument, and set the dates for

1 submission of briefs and oral argument before the board, if requested.

2 (b) The board may issue subpoenas under AS 39.52.380, and may,
3 for good cause shown, augment the hearing record, in whole or in part,
4 or hold a hearing de novo.

5 (c) The personnel board shall review each report submitted by a
6 hearing officer and shall either adopt or amend the findings of fact,
7 conclusions of law, and recommendation of the officer. Deliberations
8 of the personnel board must be conducted in sessions not open to the
9 public.

10 (d) If the personnel board determines that a violation occurred,
11 it may impose the penalties in AS 39.52.410, 39.52.440, and 39.52.450,
12 as appropriate. If the board determines that no violation occurred,
13 the board shall issue a written order of dismissal.

14 (e) The personnel board secretary shall promptly notify the
15 parties and the public officer's designated supervisor of the board's
16 action.

17 (f) The subject of the accusation may appeal the personnel
18 board's decision by filing an appeal in the superior court as provided
19 in the Alaska Rules of Appellate Procedure.

20 Sec. 39.52.380. SUBPOENAS. (a) As provided in AS 39.52.310(g),
21 39.52.360(b), and 39.52.370(b), the attorney general, independent
22 counsel retained under AS 39.52.310(c), a hearing officer, the subject
23 of an accusation, and the personnel board may summon witnesses and
24 require the production of records, books, and papers by the issuance
25 of subpoenas.

26 (b) Subpoenas must be served in the manner prescribed by AS 44.-
27 62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or
28 refusal to obey a subpoena issued under this chapter is punishable as
29 contempt in the manner provided by law and court rule. The superior

1 court may compel obedience to the subpoena in the same manner as
2 prescribed for obedience to a subpoena issued by the court.

3 Sec. 39.52.390. SERVICE. Service of an accusation must be
4 accomplished in accordance with Rule 4 of the Alaska Rules of Civil
5 Procedure. Service of any other pleading, motion, or other document
6 must be accomplished in accordance with Rule 5 of the Alaska Rules of
7 Civil Procedure.

8 ARTICLE 5. ENFORCEMENT; REMEDIES.

9 Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. (a) If
10 the personnel board determines that a public employee has violated
11 this chapter, it (1) shall order the employee to stop engaging in any
12 official action related to the violation; (2) may order divestiture,
13 establishment of a blind trust, restitution, or forfeiture; and (3)
14 may recommend that the employee's agency take disciplinary action.

15 (b) If the personnel board determines that a non-salaried member
16 of a board or commission has violated this chapter, it (1) shall order
17 the member to refrain from voting, deliberating, or participating in
18 the matter; (2) may order restitution; and (3) may recommend to the
19 appropriate appointing authority that the member be removed from the
20 board or commission.

21 (c) If the personnel board determines that a former public
22 officer has violated this chapter, it shall (1) issue a public state-
23 ment of its findings, conclusions, and recommendation; and (2) request
24 the attorney general to exercise all legal and equitable remedies
25 available to the state to seek whatever relief is appropriate.

26 (d) If the personnel board finds a violation of this chapter by
27 a public officer removable from office only by impeachment, it shall
28 report the matter to the Senate, with its finding. The report must
29 contain a statement of the facts alleged to constitute the violation.

1 Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. (a) In
2 addition to any other cause an agency may have to discipline a public
3 employee, an agency may reprimand, demote, suspend, discharge, or
4 otherwise subject an employee to agency disciplinary action commensu-
5 rate with the violations of this chapter. This section does not
6 prohibit the review of a disciplinary action in the manner prescribed
7 by an applicable collective bargaining agreement or personnel statute
8 or rule.

9 (b) An agency may initiate appropriate disciplinary action in
10 the absence of an accusation or during the pendency of a hearing or
11 personnel board action.

12 Sec. 39.52.430. ACTIONS VOIDABLE. (a) In addition to any other
13 penalty provided by law, a state grant, contract, or lease entered
14 into in violation of this chapter is voidable by the state. In a
15 determination under this section of whether to void a grant, contract,
16 or lease, the interests of third parties who may be damaged must be
17 taken into account. The attorney general shall give notice of intent
18 to void a state grant, contract, or lease under this section no later
19 than 60 days after the personnel board's determination of a violation
20 under this chapter.

21 (b) In addition to any other penalty provided for by law, the
22 state may require a state loan received in violation of this chapter
23 to become immediately payable.

24 (c) Any state action obtained in violation of this chapter is
25 voidable, except that the interests of third parties and the nature of
26 the violation must be taken into account. The attorney general may
27 pursue any other available legal and equitable remedies.

28 (d) The attorney general may recover any fee, compensation,
29 gift, or benefit received by a person as a result of a violation of

1 this chapter by a current or former public officer. Action to recover
2 under this subsection must be brought within three years after discov-
3 ery of the violation.

4 Sec. 39.52.440. CIVIL PENALTIES. The personnel board may impose
5 on a current or former public officer civil penalties not to exceed
6 \$5,000 for a violation of this chapter. A penalty imposed under this
7 section is in addition to and not instead of any other penalty that
8 may be imposed according to law.

9 Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. The
10 personnel board may, in addition to the civil penalties described in
11 this chapter, require a current or former public officer who has
12 financially benefited a person in violation of this chapter to pay to
13 the state up to twice the amount that the person realized from the
14 violation.

15 Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. To the extent
16 that violations under this chapter are punishable in a criminal
17 action, that sanction is in addition to the civil remedies set out in
18 this chapter.

19 ARTICLE 6. GENERAL PROVISIONS.

20 Sec. 39.52.910. APPLICABILITY. (a) Except as specifically
21 provided, this chapter applies to all public officers within execu-
22 tive-branch agencies, including members of boards or commissions.
23 This chapter does not apply to a former public officer of an execu-
24 tive-branch agency unless a provision specifically states that it so
25 applies.

26 (b) The provisions of this chapter supersede the common law on
27 conflicts of interests that may apply to a public officer of an execu-
28 tive-branch agency and any personnel rules relating to conflicts of
29 interests, excluding nepotism, adopted under AS 39.25. However,

1 nothing in this chapter precludes a prosecution under an applicable
2 criminal statute nor prevents enforcement of any other state law that
3 imposes a stricter standard of ethical conduct on public officers.

4 (c) The provisions of this chapter are not subject to negotia-
5 tion by collective bargaining under AS 23.40 or AS 42.40.720 --
6 42.40.880.

7 Sec. 39.52.920. AGENCY POLICIES. Subject to the review and
8 approval of the attorney general, an agency may adopt a written policy
9 that

10 (1) in addition to the requirements of this chapter, limits
11 the extent to which a public officer in the agency or an administra-
12 tive unit of the agency may

13 (A) acquire a personal interest in an organization or
14 a financial interest in a business or undertaking that may bene-
15 fit from official action taken or withheld by the agency or unit;

16 (B) have a personal or financial interest in a state
17 grant, contract, lease, or loan administered by the agency or
18 unit; or

19 (C) accept a gift or benefit; or

20 (2) requires a public officer of the agency or unit to turn
21 over a gift to the agency or unit.

22 Sec. 39.52.930. COOPERATION. All agencies and instrumentalities
23 of the state shall cooperate fully with the attorney general and the
24 personnel board in the performance of their duties under this chapter.

25 Sec. 39.52.940. CONSTRUCTION. This chapter must be liberally
26 construed to promote high standards of ethical conduct in state gov-
27 ernment.

28 Sec. 39.52.950. REGULATIONS. The attorney general may adopt
29 regulations under the Administrative Procedure Act necessary to

1 interpret and implement this chapter.

2 Sec. 39.52,960. DEFINITIONS. In this chapter, unless the con-
3 text requires otherwise,

4 (1) "administrative unit" means a branch, bureau, center,
5 committee, division, fund, office, program, section, or any other
6 subdivision of an agency;

7 (2) "agency" means a department, office of the governor, or
8 entity in the executive branch, including the University of Alaska,
9 the Alaska Railroad, public or quasi-public corporations, and boards
10 or commissions;

11 (3) "benefit" means anything that is to a person's advan-
12 tage or self-interest, or from which a person profits, regardless of
13 the financial gain, including any dividend, pension, salary, acqui-
14 sition, agreement to purchase, transfer of money, deposit, loan or
15 loan guarantee, promise to pay, grant, contract, lease, money, goods,
16 service, privilege, exemption, patronage, advantage, advancement, or
17 anything of value;

18 (4) "board or commission" means a board, commission, au-
19 thority, or board of directors of a public or quasi-public corpo-
20 ration, established by statute in the executive branch, including the
21 Alaska Railroad;

22 (5) "business" includes a corporation, company, firm,
23 partnership, sole proprietorship, trust or foundation, or any other
24 individual or entity carrying on a business, whether operated for
25 profit or non-profit;

26 (6) "child" includes a biological child, an adoptive child,
27 and a stepchild;

28 (7) "compensation" means any money, thing of value, or
29 economic benefit conferred on or received by a person in return for

1 services rendered or to be rendered by the person for another;

2 (8) "designated supervisor" or "supervisor" means

3 (A) the commissioner of each department in the execu-
4 tive branch, for public employees within the department;

5 (B) the president of the University of Alaska, for
6 university employees;

7 (C) the chief executive officer of the Alaska Rail-
8 road, for railroad employees;

9 (D) the attorney general, for the governor and lieu-
10 tenant governor;

11 (E) the executive director of a board or commission
12 for the staff of the board or commission;

13 (F) the chair or acting chair of the board or commis-
14 sion, for the members and the executive director of a board or
15 commission; and

16 (G) the governor, for commissioners and for other
17 public officers not included in (A) -- (F) of this subsection; or

18 (H) a public officer designated by a commissioner, the
19 university president, or the governor to act as the supervisor if
20 the name and position of the officer designated has been reported
21 to the attorney general;

22 (9) "financial interest" means

23 (A) an interest held by a public officer, an immediate
24 family member, or parent, which includes an involvement or owner-
25 ship of an interest in a business, including a property owner-
26 ship, or a professional or private relationship, that is a source
27 of income, or from which, or as a result of which, a person has
28 received or expects to receive a financial benefit;

29 (B) holding a position in a business, such as an

1 officer, director, trustee, partner, employee, or the like, or
2 holding a position of management;

3 (C) involvement, or ownership of an interest, in a
4 property or a business as specified by regulation of the attorney
5 general;

6 (10) "gain" includes actual or anticipated gain, benefit,
7 profit, or compensation, whether for oneself or for another person;

8 (11) "immediate family member" means a public officer's
9 spouse, a relation by blood within and including the second degree of
10 kindred, and a regular member of the officer's household;

11 (12) "instrumentality of the state" means a state agency or
12 administrative unit, whether in the legislative, judicial, or execu-
13 tive branch, including such entities as the University of Alaska, the
14 Alaska Railroad, and any public or quasi-public corporations, boards,
15 or commissions; the term includes municipalities;

16 (13) "non-salaried member of a board or commission" means a
17 member of a board or commission who is not a public employee by virtue
18 of membership on a board or commission; receipt of per diem, nominal
19 compensation for attendance at meetings, and travel expense reimburse-
20 ment does not make a member of a board or commission a public employee
21 for purposes of this chapter;

22 (14) "official action" means a recommendation, decision,
23 approval, disapproval, vote, or other similar action, including inac-
24 tion, by a public officer;

25 (15) "organization" includes a group, association, society,
26 political party, or other entity made up of two or more persons,
27 whether operated for profit or non-profit;

28 (16) "parent" includes a biological parent, an adoptive
29 parent, and a step-parent of the public officer;

1 (17) "person" includes a natural person, a business, and an
2 organization;

3 (18) "personal interest" means

4 (A) an interest held or involvement by a public offi-
5 cer, or the officer's immediate family member or parent, includ-
6 ing membership, in any organization, whether fraternal, non-
7 profit, for profit, charitable, or political, from which, or as a
8 result of which, a person or organization receives a benefit;

9 (B) an involvement, as may be specified by the regu-
10 lations of the attorney general, in any organization;

11 (19) "personnel board" or "board" means the personnel board
12 established in AS 39.25.060;

13 (20) "public employee" or "employee" means a permanent,
14 probationary, temporary, provisional, or nonpermanent employee of an
15 agency, whether in the classified, partially exempt, or exempt ser-
16 vice;

17 (21) "public officer" or "officer" means

18 (A) a public employee; and

19 (B) a member of a board or commission;

20 (22) "source of income" means an entity for which service is
21 performed for compensation or which is otherwise the origin of pay-
22 ment; if the person whose income is being reported is employed by
23 another, the employer is the source of income; if the person is self-
24 employed by means of a sole proprietorship, partnership, professional
25 corporation, or a corporation in which the person, the person's spouse
26 or child, or a combination of them, holds a controlling interest, the
27 "source" is the client or customer of the proprietorship, partnership,
28 or corporation; if the entity which is the origin of payment is not
29 the same as the client or customer for whom the service is performed,

1 both are considered the source.

2 * Sec. 2. AS 39.25.060(c) is amended to read:

3 (c) A board member may be removed by the governor only for cause
4 [HOLDS OFFICE AT THE PLEASURE OF THE GOVERNOR NOTWITHSTANDING THE
5 MEMBER'S TERM].

6 * Sec. 3. AS 39.25.070 is amended to read:

7 Sec. 39.25.070. POWERS AND DUTIES OF PERSONNEL BOARD. In addi-
8 tion to the other duties imposed by this chapter, the personnel board
9 shall

10 (1) approve or disapprove amendments to the personnel rules
11 in accordance with AS 39.25.140;

12 (2) consider and act upon recommendations for the extension
13 of the partially exempt service and the classified service as provided
14 in AS 39.25.130;

15 (3) hear and determine appeals by employees in the clas-
16 sified service as provided in AS 39.25.170;

17 (4) establish its own rules of procedure (two members
18 constitute a quorum for the transaction of business and two affirma-
19 tive votes are required for final action on matters acted upon by the
20 board);

21 (5) elect a chairman from its membership;

22 (6) have the power to administer oaths, subpoena witnesses,
23 and compel the production of books and papers pertinent to a hearing
24 authorized by this chapter;[.]

25 (7) employ staff members, who shall be in the classified
26 service;

27 (8) retain independent counsel in accordance with
28 AS 39.52.310(c);

29 (9) appoint, and review the findings, conclusions, and

1 recommendations of, hearing officers in accordance with AS 39.52.-
2 350(c), 39.52.360, and 39.52.370;

3 (10) issue findings, conclusions, and decisions regarding
4 violations of the code of ethics in AS 39.52.110 -- 39.52.190; and

5 (11) impose the penalties described in AS 39.52.410, 39.52.-
6 440, and 39.52.450.

7 * Sec. 4. AS 42.40.710 is amended to read:

8 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
9 Railroad are employees of the corporation and not of the state. The
10 provisions of AS 39, except AS 39.52, do not apply to employees of the
11 corporation.

12 * Sec. 5. AS 44.62.175(a) is amended by adding a new paragraph to read:

13 (10) in accordance with AS 39.52.240(h), advisory opinions
14 of the attorney general.

15 * Sec. 6. The attorney general and the personnel board have no juris-
16 diction over an alleged violation of AS 39.52.110 -- 39.52.190 that oc-
17 curred before January 1, 1987, unless the violation continues after that
18 date.

19 * Sec. 7. An agency or administrative unit with a policy in effect on
20 July 1, 1986 related to the subject of AS 39.52.110 -- 39.52.190 shall, by
21 January 1, 1987, submit the policy to the attorney general for review as to
22 conformity with the provisions enacted in this Act, the attorney general's
23 suggestions for amendment, and the attorney general's necessary approval
24 under AS 39.52.920.

25 * Sec. 8. AS 39.52.010, 39.52.210 -- 39.52.260, and 39.52.910 --
26 39.52.960, enacted in sec. 1 of this Act, and secs. 2 -- 7 of this Act take
27 effect July 1, 1986.

28 * Sec. 9. AS 39.52.110 -- 39.52.190, and 39.52.310 -- 39.52.460, enact-
29 ed in sec. 1 of this Act, take effect January 1, 1987.