

Offered: 4/11/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE STATE AFFAIRS
COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391 (State Affairs)

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 declares that it is the policy of the state,
26 when a public employee is appointed to serve on a state board or
27 commission, that the holding of such offices does not constitute the
28 holding of incompatible offices unless expressly prohibited by the
29 Alaska Constitution, this chapter and any opinions or decisions

1 rendered under it, or another statute.

2 ARTICLE 2. CODE OF ETHICS.

3 Sec. 39.52.110. SCOPE OF CODE. (a) The legislature reaffirms
4 that each public officer holds office as a public trust, and any
5 effort to benefit a personal or financial interest through official
6 action is a violation of that trust. In addition, the legislature
7 finds that, so long as it does not interfere with the full and faith-
8 ful discharge of an officer's public duties and responsibilities, this
9 chapter does not prevent an officer from following other independent
10 pursuits. The legislature further recognizes that

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

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

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

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

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

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

28 (c) The attorney general, designated supervisors, hearing offi-
29 cers, and the personnel board must be guided by this section when

1 issuing opinions and reaching decisions.

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

6 (b) A public officer may not

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

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

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

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

17 (5) attempt to benefit a personal or financial interest
18 through coercion of a subordinate.

19 Sec. 39.52.130. IMPROPER GIFTS. (a) A public officer may not
20 solicit, accept, or receive, directly or indirectly, a gift, whether
21 in the form of money, service, loan, travel, entertainment,
22 hospitality, employment, promise, or in any other form, that is a
23 benefit to the officer's personal or financial interests, under
24 circumstances in which it could reasonably be inferred that the gift
25 is intended to influence the performance of official duties, actions,
26 or judgment.

27 (b) Notice of the receipt by a public officer of a gift with a
28 value in excess of \$50, including the name of the giver and a descrip-
29 tion of the gift and its approximate value, must be provided to the

1 designated supervisor within 30 days after the date of its receipt if
2 the public officer may take or withhold official action that affects
3 the giver.

4 (c) In accordance with AS 39.52.240, a designated supervisor may
5 request guidance from the attorney general concerning whether accep-
6 tance of a particular gift is prohibited.

7 (d) The restrictions relating to gifts imposed by this section
8 do not apply to a campaign contribution to a candidate for elective
9 office if the contribution complies with laws and regulations govern-
10 ing elections and campaign disclosure.

11 Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a)
12 A current or former public officer may not disclose or use information
13 gained in the course of, or by reason of, the officer's official
14 duties that could in any way result in the receipt of any benefit for
15 the officer or an immediate family member, if the information has not
16 also been disseminated to the public.

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

20 Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS,
21 LEASES, OR LOANS. (a) A public officer, or an immediate family
22 member, may not attempt to acquire, receive, apply for, be a party to,
23 or have a personal or financial interest in a state grant, contract,
24 lease, or loan if the public officer may take or withhold official
25 action that affects the award, execution, or administration of the
26 state grant, contract, lease, or loan.

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

1 (1) is employed by the administrative unit awarding the
2 grant, contract, or lease or is employed by the administrative unit
3 for which the grant, contract, or lease is let; or

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

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

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

11 (2) the loan is generally available to members of the
12 public; and

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

14 (d) A public officer shall report in writing to the designated
15 supervisor a personal or financial interest held by the officer, or an
16 immediate family member, in a state grant, contract, lease, or loan
17 that is awarded, executed, or administered by the agency the officer
18 serves.

19 Sec. 39.52.160. IMPROPER REPRESENTATION. (a) A public officer
20 may not represent, advise, or assist a person in any matter pending
21 before the administrative unit that the officer serves, if the rep-
22 resentation, advice, or assistance is

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

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

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

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

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

11 (b) A public employee rendering services for compensation, or
12 engaging in employment outside the employee's agency, shall report by
13 July 1 of each year the outside services or employment to the employ-
14 ee's designated supervisor. During the year, any change in an employ-
15 ee's outside service or employment activity must be reported to the
16 designated supervisor as it occurs.

17 Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE
18 SERVICE. (a) A public officer who leaves state service may not, for
19 two years after leaving state service, represent, advise, or assist a
20 person for compensation regarding a matter that was under considera-
21 tion by the administrative unit served by that public officer, and in
22 which the officer participated personally and substantially through
23 the exercise of official action. For the purposes of this subsection,
24 "matter" includes a case, proceeding, application, contract, or deter-
25 mination, but does not include the proposal or consideration of legis-
26 lative bills, resolutions and constitutional amendments, or other
27 legislative measures; or the proposal, consideration, or adoption of
28 administrative regulations.

29 (b) Nothing in this section prohibits an agency from contracting

1 with a former public officer to act on a matter on behalf of the
2 state.

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

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

11 ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT
12 VIOLATION OF CODE.

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

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

18 (2) immediately disclose the matter in writing to the
19 designated supervisor.

20 (b) A public employee's designated supervisor shall make a
21 written determination whether an employee's involvement violates
22 AS 39.52.110 -- 39.52.190. If the supervisor determines that a vio-
23 lation could exist or will occur, the supervisor shall,

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

26 (2) direct the divestiture or removal by the employee of
27 the personal or financial interests that give rise to the potential
28 violation.

29 (c) A designated supervisor may request guidance from the

1 attorney general, in accordance with AS 39.52.240, when determining
2 whether a public employee is involved in a matter that may result in a
3 violation of AS 39.52.110 -- 39.52.190.

4 Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS
5 OF BOARDS OR COMMISSIONS. (a) A member of a board or commission who
6 is involved in a matter that may result in a violation of AS 39.52.110
7 -- 39.52.190 shall disclose the matter on the public record and in
8 writing to the designated supervisor. The supervisor shall determine
9 whether the member's involvement violates AS 39.52.110 -- 39.52.190.
10 If a member of the board or commission objects to the ruling of the
11 supervisor, or if the supervisor discloses an involvement requiring a
12 determination, the members present at a meeting, excluding the in-
13 volved member, shall vote on the matter. If the supervisor or a
14 majority of the members voting determine that a violation will exist
15 if the member continues to participate, the member shall refrain from
16 voting, deliberating, or participating in the matter.

17 (b) The designated supervisor or the board or commission may
18 request guidance from the attorney general, in accordance with AS 39.-
19 52.240, when determining whether a member of a board or commission is
20 involved in a matter that may result in a violation of AS 39.52.110 --
21 39.52.190.

22 Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. A person may
23 report to a public officer's designated supervisor, under oath and in
24 writing, a potential violation of AS 39.52.110 -- 39.52.190 by the
25 public officer. The supervisor shall provide a copy of the report to
26 the officer who is the subject of the report, and shall review the
27 report to determine whether a violation may exist. The supervisor
28 shall act in accordance with AS 39.52.210 or 39.52.220 if the supervi-
29 sor determines that the matter may result in a violation of

1 AS 39.52.110 -- 39.52.190.

2 Sec. 39.52.240. ADVISORY OPINIONS. (a) Upon the written re-
3 quest of a designated supervisor or a board or commission, the attor-
4 ney general shall issue opinions interpreting this chapter. The re-
5 quester must supply any additional information requested by the attor-
6 ney general in order to issue the opinion. Within 60 days after
7 receiving a complete request, the attorney general shall issue an
8 advisory opinion on the question.

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

11 (c) The designated supervisor or a board or commission shall
12 make a written determination based on the advice of the attorney
13 general. If the advice of the attorney general provides more than one
14 way for a public officer to avoid or correct a problem found under
15 AS 39.52.110 -- 39.52.190, the designated supervisor or the board or
16 commission shall, after consultation with the officer, determine the
17 alternative that is most appropriate and advise the officer of any
18 action required of the officer to avoid or correct the problem.

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

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

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

28 (g) A request for advice made under (a) of this section is
29 confidential.

1 (h) The attorney general shall publish in the Alaska Administra-
2 tive Journal, with sufficient deletions to prevent disclosure of the
3 persons whose identities are confidential under (g) of this section,
4 the advisory opinions issued under this section that the attorney
5 general determines to be of major import because of their general
6 applicability to executive branch officers.

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

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

17 Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY
18 GENERAL REVIEW. (a) A designated supervisor shall quarterly submit a
19 report to the attorney general which states the facts, circumstances,
20 and disposition of any disclosure made under AS 39.52.210 -- 39.52.-
21 240.

22 (b) The attorney general shall review determinations reported
23 under this section. The attorney general may request additional
24 information from a supervisor concerning a specific disclosure and its
25 disposition.

26 (c) The report prepared under this section is confidential and
27 not available for public inspection unless formal proceedings under
28 AS 39.52.350 are initiated based on the report. If formal proceedings
29 are initiated, the relevant portions of the report are public

1 documents open to inspection. The attorney general shall, however,
2 make available to the public a summary of the reports received under
3 this section, with sufficient deletions to prevent disclosure of a
4 person's identity.

5 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

13 (c) If a complaint alleges a violation of AS 39.52.110 --
14 39.52.190 by the governor, lieutenant governor, or the attorney gener-
15 al, the matter shall be referred to the personnel board. The person-
16 nel board shall retain independent counsel who shall act in the place
17 of the attorney general under (d) -- (i) of this section, AS 39.52.320
18 -- 39.52.350, and AS 39.52.360(c) and (d).

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

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

29 (f) If the attorney general accepts a complaint for inves-

1 tigation, the attorney general shall serve a copy of the complaint
2 upon the subject of the complaint, for a response. The attorney
3 general may require the subject to provide, within 20 days after ser-
4 vice, full and fair disclosure in writing of all facts and circum-
5 stances pertaining to the alleged violation. Misrepresentation of a
6 material fact in a response to the attorney general is a violation of
7 this chapter. Failure to answer within the prescribed time, or within
8 any additional time period that may be granted in writing by the
9 attorney general, may be considered an admission of the allegations in
10 the complaint.

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

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

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

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

28 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After deter-
29 mining that the conduct of the subject of a complaint does not warrant

1 a hearing under AS 39.52.360, the attorney general shall recommend
2 action to correct or prevent a violation of this chapter. The attor-
3 ney general shall communicate the recommended action to the complain-
4 ant and the subject of the complaint. The subject of the complaint
5 shall comply with the attorney general's recommendation.

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

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

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

18 Sec. 39.52.350. PROBABLE CAUSE FOR HEARING. (a) If the attor-
19 ney general determines that there is probable cause to believe that a
20 knowing violation of this chapter or a violation that cannot be cor-
21 rected under AS 39.52.330 has occurred, or that the subject of a com-
22 plaint failed to comply with a recommendation for corrective or pre-
23 ventive action, the attorney general shall initiate formal proceedings
24 by serving a copy of an accusation upon the subject of the accusation.
25 The accusation shall specifically set out the alleged violation.
26 After service, the accusation is a public document open to inspection.
27 Except as provided in AS 39.52.370(c), all subsequent proceedings are
28 open to the public.

29 (b) The subject of the accusation shall file an answer with the

1 attorney general within 20 days after service of the accusation, or at
2 a later time specified by the attorney general. If the subject of the
3 accusation fails to timely answer, the allegations are considered
4 admitted.

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

9 (d) If the subject of the accusation admits a violation of this
10 chapter, the attorney general shall refer the matter to the personnel
11 board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.-
12 450, as appropriate.

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

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

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

25 (d) The parties to a hearing are the attorney general and the
26 subject of the accusation. The subject of an accusation may be repre-
27 sented by counsel. Each party has an opportunity to be heard and
28 cross-examine witnesses, who shall testify under oath.

29 (e) The Administrative Procedure Act does not apply to hearings

1 under this section, except as provided in AS 39.52.380.

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

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

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

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

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

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

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

10 (e) The personnel board secretary shall promptly notify the
11 parties and the public officer's designated supervisor of the board's
12 action.

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

16 Sec. 39.52.380. SUBPOENAS. (a) As provided in AS 39.52.310(g),
17 39.52.360(b), and 39.52.370(b), the attorney general, independent
18 counsel retained under AS 39.52.310(c), a hearing officer, the subject
19 of an accusation, and the personnel board may summon witnesses and
20 require the production of records, books, and papers by the issuance
21 of subpoenas.

22 (b) Subpoenas must be served in the manner prescribed by AS 44.-
23 62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or
24 refusal to obey a subpoena issued under this chapter is punishable as
25 contempt in the manner provided by law and court rule. The superior
26 court may compel obedience to the subpoena in the same manner as
27 prescribed for obedience to a subpoena issued by the court.

28 Sec. 39.52.390. SERVICE. Service of an accusation must be
29 accomplished in accordance with Rule 4 of the Alaska Rules of Civil

1 Procedure. Service of any other pleading, motion, or other document
2 must be accomplished in accordance with Rule 5 of the Alaska Rules of
3 Civil Procedure.

4 ARTICLE 5. ENFORCEMENT; REMEDIES.

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

12 (b) If the personnel board determines that a non-salaried member
13 of a board or commission has violated this chapter, it (1) shall order
14 the member to refrain from voting, deliberating, or participating in
15 the matter; (2) may order restitution; and (3) may recommend to the
16 appropriate appointing authority that the member be removed from the
17 board or commission. A violation of this chapter is grounds for
18 removal of a board or commission member for cause. If the personnel
19 board recommends that a board or commission member be removed from
20 office, the appointing authority shall immediately act to remove the
21 member from office.

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

27 (d) If the personnel board finds a violation of this chapter by
28 a public officer removable from office only by impeachment, it shall
29 file a report with the president of the Senate, with its finding. The

1 report must contain a statement of the facts alleged to constitute the
2 violation.

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

11 (b) An agency may initiate appropriate disciplinary action in
12 the absence of an accusation under this chapter or during the pendency
13 of a hearing or personnel board action.

14 Sec. 39.52.430. ACTIONS VOIDABLE. (a) In addition to any other
15 penalty provided by law, a state grant, contract, or lease entered
16 into in violation of this chapter is voidable by the state. In a
17 determination under this section of whether to void a grant, contract,
18 or lease, the interests of third parties who could be damaged may be
19 taken into account. The attorney general shall give notice of intent
20 to void a state grant, contract, or lease under this section no later
21 than 30 days after the personnel board's determination of a violation
22 under this chapter.

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

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

1 (d) The attorney general may recover any fee, compensation,
2 gift, or benefit received by a person as a result of a violation of
3 this chapter by a current or former public officer. Action to recover
4 under this subsection must be brought within two years after discovery
5 of the violation.

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

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

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

21 ARTICLE 6. GENERAL PROVISIONS.

22 Sec. 39.52.910. APPLICABILITY. (a) Except as specifically
23 provided, this chapter applies to all public officers within execu-
24 tive-branch agencies, including members of boards or commissions.
25 This chapter does not apply to a former public officer of an execu-
26 tive-branch agency unless a provision specifically states that it so
27 applies. This chapter does not apply to legislators covered by
28 AS 24.60.

29 (b) The provisions of this chapter supersede the common law on

1 conflicts of interests that may apply to a public officer of an execu-
2 tive-branch agency and any personnel rules relating to conflicts of
3 interests, excluding nepotism, adopted under AS 39.25. However,
4 nothing in this chapter precludes a prosecution under an applicable
5 criminal statute nor prevents enforcement of any other state law that
6 imposes a stricter standard of ethical conduct on public officers.

7 (c) The provisions of this chapter are not subject to negotia-
8 tion by collective bargaining under AS 23.40 or AS 42.40.720 --
9 42.40.880.

10 Sec. 39.52.920. AGENCY POLICIES. Subject to the review and
11 approval of the attorney general, an agency may adopt a written policy
12 that, in addition to the requirements of this chapter, limits the
13 extent to which a public officer in the agency or an administrative
14 unit of the agency may

15 (1) acquire a personal interest in an organization or a
16 financial interest in a business or undertaking that may benefit from
17 official action taken or withheld by the agency or unit;

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

20 (3) accept a gift.

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

24 Sec. 39.52.940. CONSTRUCTION. This chapter must be construed to
25 promote high standards of ethical conduct in state government.

26 Sec. 39.52.950. REGULATIONS. The attorney general may adopt
27 regulations under the Administrative Procedure Act necessary to inter-
28 pret and implement this chapter.

29 Sec. 39.52.960. DEFINITIONS. In this chapter, unless the

1 context requires otherwise,

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

5 (2) "agency" means a department, office of the governor, or
6 entity in the executive branch, including but not limited to the
7 University of Alaska, the Alaska Railroad, public or quasi-public
8 corporations, and boards or commissions;

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

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

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

24 (6) "child" includes a biological child, an adoptive child,
25 and a stepchild;

26 (7) "compensation" means any money, thing of value, or
27 economic benefit conferred on or received by a person in return for
28 services rendered or to be rendered by the person for another;

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

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

3 (B) the president of the University of Alaska, for
4 university employees;

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

7 (D) the attorney general, for the governor and lieu-
8 tenant governor;

9 (E) the executive director of a board or commission
10 for the staff of the board or commission;

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

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

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

20 (9) "financial interest" means

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

27 (B) holding a position in a business, such as an
28 officer, director, trustee, partner, employee, or the like, or
29 holding a position of management;

1 (10) "gain" includes actual or anticipated gain, benefit,
2 profit, or compensation;

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

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

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

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

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

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

25 (17) "person" includes a natural person, a business, and an
26 organization;

27 (18) "personal interest" means an interest held or
28 involvement by a public officer, or the officer's immediate family
29 member or parent, including membership, in any organization, whether

1 fraternal, non-profit, for profit, charitable, or political, from
2 which, or as a result of which, a person or organization receives a
3 benefit;

4 (19) "personnel board" or "board" means the personnel board
5 established in AS 39.25.060;

6 (20) "public employee" or "employee" means a permanent,
7 probationary, seasonal, temporary, provisional, or nonpermanent em-
8 ployee of an agency, whether in the classified, partially exempt, or
9 exempt service;

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

11 (A) a public employee; and

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

13 (22) "source of income" means an entity for which service is
14 performed for compensation or which is otherwise the origin of pay-
15 ment; if the person whose income is being reported is employed by
16 another, the employer is the source of income; if the person is self-
17 employed by means of a sole proprietorship, partnership, professional
18 corporation, or a corporation in which the person, the person's spouse
19 or child, or a combination of them, holds a controlling interest, the
20 "source" is the client or customer of the proprietorship, partnership,
21 or corporation; if the entity which is the origin of payment is not
22 the same as the client or customer for whom the service is performed,
23 both are considered the source.

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

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

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

29 Sec. 39.25.070. POWERS AND DUTIES OF PERSONNEL BOARD. In

- 1 addition to the other duties imposed by this chapter, the personnel
2 board shall
- 3 (1) approve or disapprove amendments to the personnel rules
4 in accordance with AS 39.25.140;
- 5 (2) consider and act upon recommendations for the extension
6 of the partially exempt service and the classified service as provided
7 in AS 39.25.130;
- 8 (3) hear and determine appeals by employees in the clas-
9 sified service as provided in AS 39.25.170;
- 10 (4) establish its own rules of procedure (two members
11 constitute a quorum for the transaction of business and two affirma-
12 tive votes are required for final action on matters acted upon by the
13 board);
- 14 (5) elect a chairman from its membership;
- 15 (6) have the power to administer oaths, subpoena witnesses,
16 and compel the production of books and papers pertinent to a hearing
17 authorized by this chapter;[.]
- 18 (7) employ staff members, who shall be in the classified
19 service;
- 20 (8) retain independent counsel in accordance with AS 39.-
21 52.310(c);
- 22 (9) appoint, and review the findings, conclusions, and
23 recommendations of, hearing officers in accordance with AS 39.52.-
24 350(c), 39.52.360, and 39.52.370;
- 25 (10) issue findings, conclusions, and decisions regarding
26 violations of the code of ethics in AS 39.52.110 -- 39.52.190; and
27 (11) impose the penalties described in AS 39.52.410, 39.52.-
28 440, and 39.52.450.
- 29 * Sec. 4. AS 42.40.710 is amended to read:

1 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
2 Railroad are employees of the corporation and not of the state. The
3 provisions of AS 39, except AS 39.52, do not apply to employees of the
4 corporation.

5 * Sec. 5. AS 44.62.175(a) is amended by adding a new paragraph to read:
6 (10) in accordance with AS 39.52.240(h), advisory opinions
7 of the attorney general.

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

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

18 * Sec. 8. AS 39.52.010, 39.52.210 -- 39.52.260, and 39.52.910 --
19 39.52.960, enacted in sec. 1 of this Act, and secs. 2 -- 7 of this Act take
20 effect July 1, 1986.

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