

Offered: 5/10/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391 (Judiciary)
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 encourage public officers to avoid
18 conduct that even appears to violate the trust that the people have
19 placed in them, will discourage those officers from acting upon
20 personal or financial interests in the performance of their public
21 responsibilities, will improve standards of public service, and will
22 promote and strengthen the faith and confidence of the people of this
23 state in their public officers. It is further declared that holding
24 public office or employment is a public trust and that as one safe-
25 guard of that trust, the people require public officers to adhere to a
26 code of ethics.

27 (b) The legislature declares that it is the policy of the state,
28 when a public employee is appointed to serve on a state board or
29 commission, that the holding of such offices does not constitute the

1 holding of incompatible offices unless expressly prohibited by the
2 Alaska Constitution, this chapter and any opinions or decisions ren-
3 dered under it, or another statute.

4 ARTICLE 2. CODE OF ETHICS.

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

13 (1) in a representative democracy, the representatives are
14 drawn from society and, therefore, may not always be without personal
15 and financial interests in the decisions and policies of 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 inconse-
20 quential 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 shall 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 with intent to benefit a personal or financial interest;

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; or

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

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

28 (b) A public officer shall notify the officer's designated
29 supervisor of the receipt of a gift with a value in excess of \$50,

1 including the name of the giver, a description of the gift, and its
2 approximate value, within 30 days after the date of its receipt if the
3 public officer may take or withhold official action that affects the
4 giver.

5 (c) A designated supervisor may request guidance from the
6 attorney general under AS 39.52.240 concerning whether acceptance of a
7 particular gift is prohibited.

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

12 Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a)
13 A public officer may not disclose or use information gained in the
14 course of, or by reason of, the officer's official duties with intent
15 to benefit a personal or financial interest of the officer or an
16 immediate family member, if the information has not also been
17 disseminated to the public.

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

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

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

1 officer

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

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

7 (c) The prohibition in (a) of this section does not apply to a
8 state loan held by the officer or an immediate family member if

9 (1) the public officer does not take or withhold official
10 action that affects the award, execution, or administration of the
11 loan;

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

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

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

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

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

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

29 (b) This section does not prohibit activities related to

1 collective bargaining.

2 (c) A nonsalaried member of a board or commission may represent,
3 advise, or assist in any matter in which the member has a personal or
4 financial interest regulated by the board or commission on which the
5 member serves if the member complies 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. The employee shall also report a change
15 in the employee's outside service or employment activity to the
16 designated supervisor when 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 the public officer and in
22 which the officer participated personally and substantially through
23 the exercise of official action. In this subsection, "matter" in-
24 cludes a case, proceeding, application, contract, or determination,
25 but does not include the proposal or consideration of legislative
26 bills, resolutions and constitutional amendments, or other legislative
27 measures; or the proposal, consideration, or adoption of administra-
28 tive 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) If the attorney general approves, the head of an agency may
4 waive application of (a) of this section after determining that
5 representation by a former public officer is not adverse to the public
6 interest. The waiver must be in writing and a copy of the waiver must
7 be provided to the attorney general.

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.-
7 110 - 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 comply with AS 39.52.210 or 39.52.220 if the supervisor
29 determines that the matter may result in a violation of AS 39.52.110 -

1 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 an opinion interpreting this chapter. The re-
5 quester shall supply any additional information requested by the
6 attorney 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 However, the attorney general shall provide a brief written statement
12 that summarizes the content of the oral advice to the designated
13 supervisor within two working days after the oral advice was given.

14 (c) The designated supervisor or a board or commission shall
15 make a written determination based on the advice of the attorney
16 general. If the attorney general suggests more than one way for a
17 public officer to avoid or correct a problem found under AS 39.52.-
18 110 - 39.52.190, the designated supervisor or the board or commission
19 shall, after consultation with the officer, determine the alternative
20 that is most appropriate and advise the officer of action required of
21 the officer to avoid or correct the problem.

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

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

29 (f) A person may rely on an advisory opinion that is currently

1 in effect.

2 (g) A request for advice made under (a) of this section is
3 confidential unless the subject of the opinion waives the
4 confidentiality protection and authorizes in writing the release of
5 the request or the full text of the advisory opinion.

6 (h) The attorney general shall make the advisory opinion issued
7 under this section available for public inspection with sufficient
8 deletions to prevent disclosure of the persons whose identities are
9 confidential under (g) of this section.

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

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

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

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

28 (c) The report prepared under this section is confidential and
29 not available for public inspection unless formal proceedings under

1 AS 39.52.350 are initiated based on the report. If formal proceedings
2 are initiated, the relevant portions of the report are public docu-
3 ments open to inspection. However, the attorney general shall make
4 available to the public a summary of the reports received under this
5 section, with sufficient deletions to prevent disclosure of each
6 person's identity.

7 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

15 (c) If a complaint alleges a violation of AS 39.52.110 - 39.-
16 52.190 by the governor, lieutenant governor, or attorney general, the
17 matter shall be referred to the personnel board. The personnel board
18 shall retain independent counsel who shall act in the place of the
19 attorney general under (d) - (i) of this section, AS 39.52.320 -
20 39.52.360.

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

29 (e) The attorney general may refer a complaint to the subject's

1 designated supervisor for resolution under AS 39.52.210 or 39.52.220.

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

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

16 (h) A hearing may not be initiated more than two years after
17 discovery of the alleged violation.

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

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

29 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After

1 determining that the conduct of the subject of a complaint does not
2 warrant a hearing under AS 39.52.360, the attorney general shall
3 recommend action to correct or prevent a violation of this chapter.
4 The attorney general shall communicate the recommended action to the
5 complainant and the subject of the complaint. The subject of the
6 complaint shall comply with the attorney general's recommendation.

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

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 (d) A person who violates this section is guilty of a class A
19 misdemeanor.

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

1 open to the public.

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

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

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

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

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

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

27 (d) The parties to a hearing are the attorney general and the
28 subject of the accusation. The subject of an accusation may be repre-
29 sented by counsel. Each party has an opportunity to be heard and

1 cross-examine witnesses, who shall testify under oath.

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

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

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

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

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

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

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

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

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

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

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

25 (b) Subpoenas shall be served in the manner prescribed by
26 AS 44.62.430 and Rule 45 of the Alaska Rules of Civil Procedure.
27 Failure or refusal to obey a subpoena issued under this chapter is
28 punishable as contempt in the manner provided by law and court rule.
29 The superior court may compel obedience to the subpoena in the same

1 manner as prescribed for obedience to a subpoena issued by the court.

2 Sec. 39.52.390. SERVICE. Service of an accusation shall be made
3 under Rule 4 of the Alaska Rules of Civil Procedure. Service of any
4 other pleading, motion, or other document shall be made under Rule 5
5 of the Alaska Rules of Civil Procedure.

6 ARTICLE 5. ENFORCEMENT; REMEDIES.

7 Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. (a) If
8 the personnel board determines that a public employee has violated
9 this chapter, it

10 (1) shall order the employee to stop engaging in any
11 official action related to the violation;

12 (2) may order divestiture, establishment of a blind trust,
13 restitution, or forfeiture; and

14 (3) may recommend that the employee's agency take
15 disciplinary action, including dismissal.

16 (b) A violation of this chapter is grounds for removal of a
17 board or commission member for cause. If the personnel board
18 determines that a nonsalaried member of a board or commission has vi-
19 olated this chapter, it

20 (1) shall order the member to refrain from voting,
21 deliberating, or participating in the matter;

22 (2) may order restitution; and

23 (3) may recommend to the appropriate appointing authority
24 that the member be removed from the board or commission; if
25 recommended, the appointing authority shall immediately act to remove
26 the member from office.

27 (c) If the personnel board determines that a former public
28 officer has violated this chapter, it shall

29 (1) issue a public statement of its findings, conclusions,

1 and recommendation; and

2 (2) request the attorney general to exercise all legal and
3 equitable remedies available to the state to seek whatever relief is
4 appropriate.

5 (d) If the personnel board finds a violation of this chapter by
6 a public officer removable from office only by impeachment, it shall
7 file a report with the president of the senate, with its finding. The
8 report must contain a statement of the facts alleged to constitute the
9 violation.

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

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

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

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

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

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

13 Sec. 39.52.440. CIVIL PENALTIES. The personnel board may impose
14 on a current or former public officer civil penalties not to exceed
15 \$5,000 for a violation of this chapter. A penalty imposed under this
16 section is in addition to and not instead of any other penalty that
17 may be imposed according to law.

18 Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. The
19 personnel board may, in addition to the civil penalties set out in
20 this chapter, require a current or former public officer who has
21 financially benefited a person in violation of this chapter to pay to
22 the state up to twice the amount that the person realized from the
23 violation.

24 Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. To the extent
25 that violations under this chapter are punishable in a criminal
26 action, the criminal penalty is in addition to the civil remedies set
27 out in this chapter.

28 ARTICLE 6. GENERAL PROVISIONS.

29 Sec. 39.52.910. APPLICABILITY. (a) Except as specifically

1 provided, this chapter applies to all public officers within execu-
2 tive-branch agencies, including members of boards or commissions.
3 This chapter does not apply to a former public officer of an execu-
4 tive-branch agency unless a provision specifically states that it so
5 applies. This chapter does not apply to legislators covered by
6 AS 24.60.

7 (b) The provisions of this chapter supersede the common law on
8 conflicts of interests that may apply to a public officer of an execu-
9 tive-branch agency and any personnel rules relating to conflicts of
10 interests, excluding nepotism, adopted under AS 39.25. However,
11 nothing in this chapter precludes a prosecution under an applicable
12 criminal statute or prevents enforcement of another state law that
13 imposes a stricter standard of ethical conduct on public officers.

14 (c) The provisions of this chapter are not subject to negotia-
15 tion by collective bargaining under AS 23.40.

16 Sec. 39.52.920. AGENCY POLICIES. Subject to the review and
17 approval of the attorney general, an agency may adopt a written policy
18 that meets the requirements of this chapter and further limits the
19 extent to which a public officer in the agency or an administrative
20 unit of the agency may

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

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

26 (3) accept a gift.

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

1 Sec. 39.52.940. CONSTRUCTION. This chapter shall be construed
2 to promote high standards of ethical conduct in state government.

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

6 Sec. 39.52.960. DEFINITIONS. In this chapter, unless the con-
7 text requires otherwise,

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

11 (2) "agency" means a department, office of the governor, or
12 entity in the executive branch, including but not limited to the
13 University of Alaska, public or quasi-public corporations, and boards
14 or commissions, but excluding the Alaska Railroad Corporation;

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

22 (4) "board or commission" means a board, commission, au-
23 thority, or board of directors of a public or quasi-public corpo-
24 ration, established by statute in the executive branch, but excluding
25 the Alaska Railroad;

26 (5) "business" includes a corporation, company, firm,
27 partnership, sole proprietorship, trust or foundation, or any other
28 individual or entity carrying on a business, whether operated for
29 profit or non-profit;

1 (6) "child" includes a biological child, an adoptive child,
2 and a stepchild;

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

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

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

9 (B) the president of the University of Alaska, for
10 university employees;

11 (C) the attorney general, for the governor and lieu-
12 tenant governor;

13 (D) the executive director of a board or commission
14 for the staff of the board or commission;

15 (E) the chair or acting chair of the board or commis-
16 sion, for the members and the executive director of a board or
17 commission; and

18 (F) the governor, for commissioners and for other
19 public officers not included in (A) - (E) of this subsection; or

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

24 (9) "financial interest" means

25 (A) an interest held by a public officer or an immedi-
26 ate family member, which includes an involvement or ownership of
27 an interest in a business, including a property ownership, or a
28 professional or private relationship, that is a source of income,
29 or from which, or as a result of which, the person has received

1 or expects to receive a financial benefit;

2 (B) holding a position in a business, such as an
3 officer, director, trustee, partner, employee, or the like, or
4 holding a position of management;

5 (10) "gain" includes actual or anticipated gain, benefit,
6 profit, or compensation;

7 (11) "immediate family member" means a public officer's
8 spouse, parent, child, brother, sister, grandparent, grandchild, aunt,
9 uncle, niece, nephew, in a full, half, or step relationship, and a
10 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 the University of Alaska, and any public or
14 quasi-public corporations, boards, or commissions; the term includes
15 municipalities but excludes the Alaska Railroad;

16 (13) "nonsalaried 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 nonprofit;

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 an interest held or involve-
4 ment by a public officer, or the officer's immediate family member or
5 parent, including membership, in any organization, whether fraternal,
6 non-profit, for profit, charitable, or political, from which, or as a
7 result of which, the person or organization receives a benefit;

8 (19) "personnel board" or "board" means the personnel board
9 established in AS 39.25.060;

10 (20) "public employee" or "employee" means a permanent,
11 probationary, seasonal, temporary, provisional, or nonpermanent em-
12 ployee of an agency, whether in the classified, partially exempt, or
13 exempt service;

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

15 (A) a public employee;

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

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

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

29 (c) A board member may be removed by the governor only for cause

1 [HOLDS OFFICE AT THE PLEASURE OF THE GOVERNOR NOTWITHSTANDING THE
2 MEMBER'S TERM].

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

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

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

9 (2) consider and act upon recommendations for the extension
10 of the partially exempt service and the classified service as provided
11 in AS 39.25.130;

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

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

18 (5) elect a chairman from its membership;

19 (6) have the power to administer oaths, subpoena witnesses,
20 and compel the production of books and papers pertinent to a hearing
21 authorized by this chapter;

22 (7) employ staff members, who shall be in the classified
23 service;

24 (8) retain independent counsel as required under AS 39.-
25 52.310(c);

26 (9) appoint, and review the findings, conclusions, and
27 recommendations of, hearing officers under AS 39.52.350(c), 39.52.360,
28 and 39.52.370;

29 (10) issue findings, conclusions, and decisions regarding

1 violations of the code of ethics in AS 39.52.110 - 39.52.190; and
2 (11) impose penalties under AS 39.52.410, 39.52.440, and
3 39.52.450.

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

5 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
6 Railroad are employees of the corporation and not of the state. The
7 provisions of AS 39 do not apply to employees of the corporation.
8 However, no later than January 1, 1987, the corporation shall adopt a
9 code of ethics for its directors and employees that is substantially
10 equivalent to that adopted in AS 39. If the governor determines that
11 the corporation has not adopted a substantially equivalent code by
12 January 1, 1987, the governor shall issue a finding of failure to
13 comply with this section and shall request the attorney general to
14 establish a code for the corporation that satisfies the requirements
15 of this section. The code established by the attorney general is
16 binding on the corporation and is not subject to negotiation under AS
17 42.40.720 - 42.40.880.

18 * Sec. 5. The attorney general and the personnel board have no juris-
19 diction over an alleged violation of AS 39.52.110 - 39.52.190 that occurred
20 before January 1, 1987, unless the violation continues after that date.

21 * Sec. 6. An agency or administrative unit with a policy in effect on
22 July 1, 1986, related to the subject of AS 39.52.110 - 39.52.190 shall, by
23 January 1, 1987, submit the policy to the attorney general for review as to
24 conformity with the provisions enacted in this Act, the attorney general's
25 suggestions for amendment, and the attorney general's necessary approval
26 under AS 39.52.920.

27 * Sec. 7. AS 39.52.010, 39.52.210 - 39.52.260, and 39.52.910 - 39.52.-
28 960, enacted in sec. 1 of this Act, and secs. 2 - 6 of this Act take effect
29 July 1, 1986.

1 * Sec. 8. AS 39.52.110 - 39.52.190, and 39.52.310 - 39.52.460, enacted
2 in sec. 1 of this Act, take effect January 1, 1987.