

COMMITTEE REPORT

SENATE

FURTHER:

4/11/86

Date 4/22/86

Mr. President

The Committee on FINANCE considered SSSB 391
relating to the ethical conduct of governmental activities; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SS SB 391 (SA)
- new title
- same title and recommends "DO PASS"
- and attached a "LETTER OF INTENT" 2 NEW FISCAL NOTES
- reports it back without recommendation 62.5 SFC
2 SFC
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
Paul Gruber
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

Rich Halford NO REC
[Signature] no rec

Co- [Signature]
Chairman
[Signature]
Chairman recommendation

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSSB 391 (S.A)
 Title: Act relating to the ethical
 conduct of government

Sponsor: Rules by Request of the
 Requestor: Governor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Department of Law
 BRU: Legal Services

Components: Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		51.8	56.8	58.5	60.3	62.1
TRAVEL		1.7	1.7	1.8	1.9	1.9
CONTRACTUAL		2.4	2.6	2.7	2.8	2.8
SUPPLIES		3.4	2.7	2.1	2.2	2.2
EQUIPMENT		3.2	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		62.5	63.2	65.1	67.2	69.1

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		62.5	63.2	65.1	67.2	69.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Senator Jan Faiks, Co-chairman
 Division: Senate Finance Committee

Phone: 465-4523
 Date: 4/21/86

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. : CSSSSB 391 (S.A.)
 Title : Act relating to the ethical
conduct of government

Sponsor : Rules by Request of the
 Requestor : Governor
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept. of Administration
 BRU : Division of Personnel

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This fiscal note zeroes previous fiscal note funding
for the Dept. of Administration.

Prepared by : _____ Phone : 465-4523
 Division : Senator Jan Paiks, Co-chairman Date : _____
Senate Finance Committee
 Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

797

Offered: 4/11/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE
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.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : _____
 Title : _____

 Sponsor : _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : _____
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		51.8	56.8	58.5	60.3	62.1
TRAVEL		1.7	1.7	1.8	1.9	1.9
CONTRACTUAL		2.4	2.6	2.7	2.8	2.8
SUPPLIES		3.4	2.1	2.1	2.2	2.3
EQUIPMENT		3.2	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		62.5	63.2	65.1	67.2	69.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		62.5	63.2	65.1	67.2	69.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

4/21/86 Directed by Dept to reduce fiscal note to 1/3 of the funding originally requested by Dept. of Law. See attached fiscal note from Dept. which accompanied bill into committee. JW

Prepared by : _____ Phone : _____
 Division : _____ Date : _____

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

A/B

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 3/26/86

REQUEST

Bill/Resolution No.: SSSB 391
Title: "An Act relating to the ethical conduct of government; and providing for an effective date."
Sponsor: By Request of the Governor
Requestor: Governor's Office/OMB
Date of Request: March 24, 1986

FISCAL DETAIL

Agency Affected: Department of Law
BRU: Legal Services
Components: Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		155.2	170.6	175.7	181.0	86.4
TRAVEL		5.0	5.2	5.4	5.6	5.8
CONTRACTUAL SUPPLIES		7.3	7.9	8.1	8.3	8.5
EQUIPMENT		10.1	6.2	6.4	6.6	6.8
LAND & STRUCTURES		9.5	0	0	0	0
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		187.1	189.9	195.6	201.5	207.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		187.1	189.9	195.6	201.5	207.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Please see attached analysis.

Prepared by: Richard I. Pegus, Director Phone: 465-3672
Division: Administrative Services Division Date: 3/26/86
Approved by Commissioner Richard I. Pegus/FR/ Date: 3/26/86
Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SS SB 391

This bill provides a code of ethics for the guidance of public officers and employees in the executive branch. It establishes procedure to determine if violations exist and requires that the attorney general provide advisory opinions to interpret the Act and recommend corrective action, as may be needed. The bill also requires that the attorney general investigate complaints on suspected violations and bring allegations before the state personnel board, where appropriate. Based on the experience of other states who have implemented similar legislation, we can expect between 200 and 300 requests for advisory opinions during the first year (FY 87) after the bill goes into effect. We have no accurate guide to determine how many complaints may have to be investigated, but obviously there will be more than a few. Consequently, there will be a heavy caseload almost from the day the bill takes effect on July 1, 1986. We therefore anticipate that the services of two attorneys will be needed for at least the first two years. This is the time it will take to deal with a wide variety of conflict issues that will arise when the bill is implemented.

COST SUMMARY - EXECUTIVE BRANCH ETHICS BILL

	<u>Attorney IV</u>	<u>Attorney III</u>	<u>Leg. Secretary I</u>	<u>Total</u>
71000	71.5	52.8	30.9	155.2
72000	3.0	2.0	-0-	5.0
73000	2.4	2.0	2.9	7.3
74000	3.9	3.5	2.7	10.1
75000	<u>1.5</u>	<u>1.5</u>	<u>6.5</u>	<u>9.5</u>
Total	82.3	61.8	43.0	187.1

FY 87 costs are based on 12 months each for the Attorney IV and the Legal Secretary, and 10 months for the Attorney III. Costs beyond FY 87, extend the Attorney III to 12 months, delete one-time costs, and include a 3% annual inflation factor.

Position Title Attorney IV			No. of Positions 1	Range/Step 24A	Barg. Unit PX	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location AWA - Juneau		Election District 4	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This is a request for the first of two attorneys that will be needed to implement the executive branch ethics bill. The bill provides that the attorney general will provide advisory opinions to agencies, boards and commissions regarding potential conflicts of interest. The bill also provides that the attorney general will investigate all complaints and, where appropriate, bring allegations before the state personnel board for action. The attorney general would also be empowered to seek civil penalties. Based on the experience of other states, we anticipate between 200 and 300 requests for advisory opinions during the first year that the bill goes into effect. For this reason, we are reporting that this position be established at the beginning of FY 87. The duties of the position will require full working level attorney experience and allocation to Attorney IV is therefore recommended.</p>					
1	2	3						
Salary	56,244							
Benefits	15,248							
Premium Pay								
Other								
Total Personal Services		71,492						
Travel		3,000						
Contractual		2,400						
Commodities		3,900						
Equipment		1,500						
Other								
Total Cost		82,292						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		82,292					
	I-A Receipts 1005							
	Program Receipts 1028							
	CI? Receipts 1061							
	Other							
For B&M Use Only								
Key Number _____								

**Request For
New Position**

Agency Department of Law
 BRU Legal Services
 Component Operations

Page 1 of 1
 Revised Date _____

FY 87

Position Title Attorney III			No. of Positions 1	Range/Step 22A	Bar Unit PX	Gov.	Appov.	Disapp.
Time Status PFT	Staff Months 10	RP Number	Location AWA-Juneau		Election District 4	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This is a request for the second of two attorneys that will be needed to implement the executive branch ethics bill. This position will assist the first attorney in rendering advisory opinions and will have primary responsibility for investigating complaints. We anticipate a flood of opinion requests beginning on July 1, 1986. Complaint handling will begin on January 1, 1987. Advisory opinion requests must be satisfied within 60 days. Because we expect between 200 and 300 such requests within the first year, and because we must also be in a position to begin investigating complaints by January 1, 1987, this second position should be established by September 1, 1986. Allocation to the Attorney III level is recommended in view of the availability of the Attorney IV, who can handle the more complex issues.</p>					
1	2	3						
Salary	40,950							
Benefits	11,592							
Premium Pay								
Other								
Total Personal Services		52,842						
Travel		2,000						
Contractual		2,000						
Commodities		3,500						
Equipment		1,500						
Other								
Total Cost		61,842						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		61,842					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Kcy Number								

Request For
New Position

Agency Department of Law
 BRU Legal Services
 Component Operations

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 Revised Date

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4-3-86

REQUEST
Bill/Resolution No.: SSSB 391
Title: Act relating to the ethical
conduct of government.

FISCAL DETAIL
Agency Affected: Department of Administration
BRU: Division of Personnel

Sponsor: Rules by request of Governor
Requestor: Governor's Office
Date of Request: 4-1-86

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	7.9	13.2	10.6	7.9	5.3
CONTRACTUAL	0	32.0	50.1	39.5	28.8	18.2
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	39.9	63.3	50.1	36.7	23.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	39.9	63.3	50.1	36.7	23.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	39.9	63.3	50.1	36.7	23.5

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary See attached.

Prepared By: Frank Raye, Director *Frank Raye* Phone: 465-4430
 Division: Personnel Date: 4/3/86
 Approved by Commissioner: Eleanor Andrews *Eleanor Andrews* Date: 4/4/86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

58 391

CONTINUATION of FISCAL NOTE ANALYSIS

For SSSB 391

This bill provides a code of ethics for the guidance of public officers and employees in the executive branch. It establishes procedures to determine if violations exist and requires the attorney general to investigate suspected violations and bring allegations before the State Personnel Board where appropriate. The Personnel Board's duties are to appoint a hearing officer in instances where the alleged violation is contested, adopt or amend hearing officers' recommendations, and impose penalties for confirmed violations.

The members of the State Personnel Board serve without compensation but are entitled to receive travel expenses and per diem when convened. The Board would have to retain independent counsel when they required legal advice to ensure the integrity of the proposed legislation.

It is anticipated that questions and determinations of activities which pose a possible violation of the code of ethics will be more numerous during the first twelve to eighteen months after the bill becomes effective. This assumption is reflected in the number of hearings and Personnel Board meetings budgeted for successive fiscal years.

	FY 87 Effective (1-1-87)	FY 88	FY 89	FY 90	FY 91
<u>Hearings</u>	3	4	3	2	1
<u>Board Meetings</u>	3	5	4	3	2

No inflation factor is used.

Hearings: \$3,150

Hearing Officer - \$75 per hour x 30 hours = \$2,250
 Transcription and report preparation - \$30 per hour x 30 hours = \$900
 Contractual = \$3,150

Personnel Board Meetings (two days each): \$10,140

Travel - 3 members (and legal council) x \$540 = \$2,160
 Per diem - 3 members x \$80 x 2 days = \$480
 Travel = \$2,640

Legal Services - \$150 per hour x 50 hours = \$7,500
 Contractual = \$7,500

	<u>CONTRACTUAL</u>	<u>TRAVEL</u>
<u>FY 87</u>		
Hearings:	\$ 9,450	
Meetings:	22,500	\$ 7,920
	<u>\$31,950</u>	

	<u>CONTRACTUAL</u>	<u>TRAVEL</u>
<u>FY 88</u>		
Hearings:	\$12,600	
Meetings:	<u>37,500</u>	\$13,200
	\$50,100	
<u>FY 89</u>		
Hearings:	\$ 9,450	
Meetings:	<u>30,000</u>	\$10,560
	39,450	
<u>FY 90</u>		
Hearings:	\$ 6,300	
Meetings:	<u>22,500</u>	\$ 7,920
	28,800	
<u>FY 91</u>		
Hearings:	\$ 3,150	
Meetings:	<u>15,000</u>	\$ 5,280
	18,150	

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4-3-86

REQUEST

Bill/Resolution No.: SSSB 391
Title: Act relating to the ethical conduct of government.

FISCAL DETAIL

Agency Affected: Department of Administration
BRU: Division of Personnel

Sponsor: Rules by request of Governor
Requestor: Governor's Office
Date of Request: 4-1-86

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	7.9	13.2	10.6	7.9	5.3
CONTRACTUAL	0	32.0	50.1	39.5	28.8	18.2
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	39.9	63.3	50.1	36.7	23.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	39.9	63.3	50.1	36.7	23.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	39.9	63.3	50.1	36.7	23.5

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary See attached.

Prepared By: Frank Rye, Director Phone: 465-4430
Division: Personnel Date: 4/3/86

Approved by Commissioner: Eleanor Andrews Date: 4/4/86
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

58391

CONTINUATION of FISCAL NOTE ANALYSIS

For SSSB 391

This bill provides a code of ethics for the guidance of public officers and employees in the executive branch. It establishes procedures to determine if violations exist and requires the attorney general to investigate suspected violations and bring allegations before the State Personnel Board where appropriate. The Personnel Board's duties are to appoint a hearing officer in instances where the alleged violation is contested, adopt or amend hearing officers' recommendations, and impose penalties for confirmed violations.

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It is anticipated that questions and determinations of activities which pose a possible violation of the code of ethics will be more numerous during the first twelve to eighteen months after the bill becomes effective. This assumption is reflected in the number of hearings and Personnel Board meetings budgeted for successive fiscal years.

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Meetings:	<u>22,500</u>	\$ 7,920
	28,800	
<u>FY 91</u>		
Hearings:	\$ 3,150	
Meetings:	<u>15,000</u>	\$ 5,280
	18,150	

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391
ALASKA EXECUTIVE BRANCH ETHICS ACT
Sectional Analysis

Section 1.

This section of the bill amends AS 39 by adding a new chapter called the Alaska Executive Branch Ethics Act.

Article 1, Declarations.

Sec. 39.52.010. A declaration of policy states the legislature's belief in the value of a code of ethics for executive branch officers as a safeguard of the public trust.

Article 2, Code of Ethics.

Sec. 39.52.110. The scope of the code is outlined. Each public officer holds office as a public trust and any effort to benefit a personal or financial interest through official action is a violation of that trust. This section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in a free society and those conflicts which are substantial and material and must be prohibited.

Sec. 39.52.120. This section prohibits a public officer from using, or attempting to use, an official position for personal gain or to intentionally secure unwarranted benefits for any person.

Sec. 39.52.130. A public officer is prohibited from receiving soliciting or accepting a gift that is a benefit to the officer's personal or financial interest under circumstances in which it could reasonable be inferred that the gift is intended to influence the performance of official duties, actions or judgment. Receipt by a public officer of a gift with a value in excess of \$50 must be reported to the designated supervisor.

Sec. 39.52.140. This section specifically prohibits the use or disclosure of information that either has not been disseminated to the public or is confidential by law.

Sec. 39.52.150. A public officer or members of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. Several exceptions to this prohibition are detailed including competitively awarded procurements, and loans that are available to members of the public.

Sec. 39.52.160. This section generally prohibits an officer from receiving a benefit for representing, advising, or assisting any

person concerning a matter pending before a administrative unit that the officer serves.

Sec. 39.52.170. This section prohibits public employees from rendering services or accepting employment outside of their agencies if the outside service or employment is incompatible or in conflict with the proper discharge of their official duties. Public employees must report outside employment to their designated supervisor.

Sec. 39.52.180. This section prohibits certain types of employment by former public officers for two years after leaving their public positions.

Sec. 39.52.190. It is a violation for a public officer to knowingly aid another public officer in violation of this chapter.

Article 3, Disclosure and Action to Prevent Violation of Code.

Sec. 39.52.210. This section establishes a procedure for handling a potential violation of the code of ethics. A public employee who believes that he or she may be involved in a matter that could result in a violation of the code is required to disclose the potential conflict to the designated supervisor and to refrain from taking any official action until a determination is made as to possible conflict or ethical problem.

Sec. 39.52.220. This section establishes procedures for handling a potential violation of the code by a member of a board or commission. Potential conflicts must be disclosed on the record. The board chair rules on whether or not the member's involvement could violate the code. If the chair, or majority of the members voting, determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating or participating in the matter.

Sec. 39.52.230. This section states that any person may report a potential violation of the code of ethics to a designated supervisor for review and appropriate action.

Sec. 39.52.240. Under this section designated supervisors, boards or commissions may request advise from the attorney general regarding appropriate conduct under the code. Advisory opinions determined to be of major import will be published in the Alaska Administrative Journal.

Sec. 39.52.250. Former public officers may request an advisory opinion from the attorney general regarding ethical conduct.

Sec. 39.52.260. This section requires all designated supervisors to report to the attorney general any potential violations reported to them and the disposition of each matter.

Article 4, Complaints; Hearing Procedures.

Sec. 39.52.310. This section sets out the procedures for handling a complaint, and establishes the conditions under which a complaint will be accepted and investigated. If the complaint alleges a violation by the governor, lieutenant governor, or the attorney general, the personnel board shall appoint independent counsel who shall act in place of the attorney general in reviewing the validity of the complaint.

Sec. 39.52.320. Complaints that are not supported by probable cause shall be dismissed.

Sec. 39.52.330. The attorney general may recommend action to correct or prevent a violation of the code if the conduct complained about does not warrant the initiation of formal proceedings.

Sec. 39.52.340. Information obtained by the attorney general during an investigation is confidential, unless and until formal proceedings are initiated.

Sec. 39.52.350. If the attorney general determines that there is probable cause to believe that a knowing violation of this chapter has occurred which cannot be corrected under AS 39.52.330, or the subject of a complaint failed to comply with a recommendation for corrective or preventive action, formal proceedings shall be initiated according to the procedure established under this section.

Sec. 39.52.360. This section establishes the formal hearing process to be followed if a matter is referred to the personnel board for hearing.

Sec. 39.52.370. Either party to the hearing may protest the hearing officer's decision before the personnel board. The board may convene a hearing de novo or augment the record with additional evidence. The personnel board shall review each report submitted by the hearing officer and any briefs filed, and must either adopt or amend the findings of fact, conclusions, of law, and recommendation of the hearing officer. The deliberations of the personnel board are not open to the public. The personnel board may impose penalties for violations of this chapter.

Sec. 39.52.380. This section gives the attorney general, independent counsel retained by the personnel board, the personnel board, and appointed hearing officers certain subpoena powers.

Sec. 39.52.390. This section dictates how service of an accusation and other document must be accomplished.

Article 5, Enforcement; Remedies.

Sec. 39.52.410. If the personnel board determines that a public employee or member of a board or commission has violated this chapter, it shall order an appropriate penalty for the misconduct. If the personnel board finds a violation of this chapter by a public

officer removable from office only by impeachment, it shall file a report with the President of the Senate.

Sec. 39.52.420. This section states that a violation of the code is a valid reason for an executive branch agency to discipline an employee. An agency may initiate appropriate disciplinary action without waiting for the attorney general to file an accusation or the board to complete formal proceedings.

Sec. 39.52.430. This section describes the actions that may be taken by the state if state grants, contracts, leases, or loans have been entered into or received in violation of AS 39.52.

Sec. 39.52.440. This section provides that the personnel board may impose civil penalties not to exceed \$5,000 on a current or former public officer for a violation of the ethics act.

Sec. 39.52.450. This section gives the personnel board the authority to seek from a current or former public officer payment of up to twice the financial benefit realized by a person in violation of AS 39.52.

Sec. 39.52.460. Civil penalties provided in the act are in addition to any criminal actions that may be pursued.

Article 6, General Provisions.

Sec. 39.52.910. This act applies to all public officers in executive branch agencies. It does not apply to legislators. The act is not subject to collective bargaining.

Sec. 39.52.920. This section establishes that agencies have the authority to adopt written policies for their employees which are more restrictive than the code of ethics.

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

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

Sec. 39.52.950. The attorney general may adopt regulations necessary to interpret and implement this chapter.

Sec. 39.52.960. Definitions.

Section 2. AS 39.25.060(c) is amended to provide that board member may be removed by the governor only for cause.

Section 3. AS 39.25.070, Powers and Duties of Personnel Board, is amended to reflect the additional responsibilities imposed by this act.

Section 4. AS 42.40.710 is amended to make this chapter applicable to employees of the Alaska Railroad.

Section 5. AS 44.62.175(a) is amended to require publication of the attorney general ethics advisory opinions in the Alaska Administrative Journal.

Section 6. Because the enforcement and remedy provisions in the new ethics law do not take effect until January 1987, this section clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before that time, unless the violation continues after January 1, 1987.

Section 7. An agency with existing policy related to conflicts of interests or the ethical performance of official duties is required to submit that policy to the attorney general for review and approval by January 1, 1987.

Section 8. The sections of the ethics law regarding policy, the issuance of advisory opinions, declarations of potential violations, and the definition section, take effect July 1, 1986.

Section 9. The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions take effect January 1, 1987.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

~~SB 391~~
SSSB391

April 2, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a sponsor substitute for Senate Bill 391, a bill relating to the ethical conduct of executive-branch officers. This sponsor substitute was necessitated by the substantial costs associated with the original version of SB 391, costs that primarily resulted from the creation of a separate commission to administer the new ethics Act.

While we adjudge the original version of SB 391 to be "perfect world" legislation, the version before you is one of those rarities: a compromise that substantially reduces the level of funding necessary while maintaining the bill's primary goal: the establishment -- in statute -- of a code of ethics for all public officers in the executive branch, and replacement of the relatively unknown and unworkable aspects of the common law on conflicts of interests with concrete standards of conduct.

The sponsor substitute continues to establish in AS 39 a new chapter entitled the "Alaska Executive Branch Ethics Act," but this sponsor substitute removes from the bill the creation of a separate commission to administer the new law. Instead, the bill relies upon two existing entities to shoulder responsibility for enforcement of the code of ethics: the Department of Law and the state's personnel board.

New staff positions in the Department of Law will 1) provide the executive branch with opinions and advice concerning the

substance and intent of the code of ethics, 2) accept and investigate legitimate complaints, and 3) take to formal hearing probable cause violations of the code. The state's personnel board, which has already had some limited experience in evaluating allegations of employee misconduct, will appoint hearing officers or independent counsel and act as the final determiner in matters that have gone to hearing, and will, through the provision of new enforcement powers to the board, order appropriate penalties and remedies.

As a result of conversations with representatives of various departments, language has been added to AS 39.52.130(a), providing for acceptance of travel or hospitality by department personnel if acceptance does not compromise an officer in the proper performance of his or her duties.

In this sponsor substitute, under certain conditions, a non-salaried member of a board or commission is not precluded from participating in personal or financial matters that are regulated by the board or commission on which the member serves. AS 39.52.160(c).

Sections 2 and 3 of the sponsor substitute amend existing statutes relating to the personnel board, to reflect the board's duties and responsibilities under this bill.

In addition, this substitute legislation does not transfer any of the financial disclosure reporting requirements from the current conflict of interests law (AS 39.50) to the new executive ethics chapter. Executive branch officials who currently file conflict of interest statements will continue to file their statements with the Alaska Public Offices Commission.

Because no transfer of financial disclosure reporting requirements is contained in this sponsor substitute, the bill's previous extensive amendments to AS 39.50 have been eliminated. While many of the proposed changes to AS 39.50 deserve the attention of the legislature, many of the changes exist in other bills currently before the legislature, and we have, for that reason, and for the sake of simplicity, dropped them from this substitute bill.

Finally, inasmuch as passage of the "whistleblower" legislation currently pending before the legislature appears likely, I have also removed similar whistleblower provisions from SB 391.

Hence, SSSB 391 is considerably shortened and much leaner than the original. A sectional analysis of the revised legislation follows, for the legislature's use in reviewing the proposed bill and for the use of future researchers.

I believe that this sponsor substitute deserves prompt attention by the legislature. Passage of a code of ethics for the executive branch is a priority of my administration and, I hope, a priority of the legislature as well.

SECTIONAL ANALYSIS
OF SSSB 391

Section 1: This section of the bill amends AS 39 ("Public Officers and Employees") by adding a new chapter called the "Alaska Executive Branch Ethics Act." The proposed new Act contains six articles:

- Article 1: Declarations
- Article 2: Code of Ethics
- Article 3: Disclosure and Action to Prevent Violation of Code
- Article 4: Complaints; Hearing Procedures
- Article 5: Enforcement; Remedies
- Article 6: General Provisions

Because sec. 1 of SB 391 comprises almost the entire bill, we have decided to organize our analysis of sec. 1 by the articles listed above.

ARTICLE 1. DECLARATIONS.

Article 1 of the new chapter sets out legislative declarations. I believe that the important public purpose behind the need for and adoption of an executive-branch ethics statute requires a strong legislative statement in the statute itself.

Sec. 39.52.010. DECLARATION OF POLICY. AS 39.52.010 specifically states the legislature's belief in the value of a code of ethics for executive-branch officers as a safeguard of the public trust. ("Officers" is defined as all employees of executive-branch agencies and all members of boards or commissions.)

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

Sec. 39.52.110. SCOPE OF CODE. To clarify the intent behind the code of ethics, this section describes its scope. One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. I wanted to make it clear in this section of the bill that the legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers cannot and should not be without a personal or financial stake in Alaska, so long as those private interests do not interfere with the full and

faithful discharge of the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

While the code's subsequent provisions set out stern prohibitions on conduct, public officers are encouraged to have and maintain private interests so long as those interests do not improperly benefit the officers through abuse of the responsibilities given to them by their public office.

The code of ethics establishes eight types of ethical violations: (1) misuse of official position; (2) improper acceptance or solicitation of gifts or benefits; (3) improper use or disclosure of information; (4) improper influence in state grants, contracts, leases, or loans; (5) improper representation; (6) acceptance of certain prohibited employment outside of government positions; (7) prohibited representation in matters after leaving state service; and (8) aiding in a violation of the code. AS 39.52.120 -- 39.52.190.

Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. One of the clearest areas of public concern revolves around the conduct addressed in AS 39.52.120. This section prohibits a public officer from using, or attempting to use, an official position for personal gain or to intentionally secure unwarranted benefits for any person. AS 39.52.120(a).

Several types of actions are specifically mentioned as examples of misuse of official position: e.g., the use of one's position to extract other employment or contracts; the use of state time, property, or equipment to benefit the officer's personal or financial interests; the taking or withholding of official action by an officer in order to benefit the officer's personal or financial interests. This section also addresses the supervisor/subordinate relationship and prohibits activities that have in the past caused problems, including a prohibition against close economic associations between supervisors and subordinates, and activities that could suggest possible coercion of a subordinate by a supervisor. AS 39.52.120(b).

Sec. 39.52.130. IMPROPER GIFTS OR BENEFITS. This section addresses another potential abuse: the receipt of a gift or benefit under circumstances in which it could be inferred that the gift or benefit was intended to improperly influence the officer in the performance of his or her official duties. This section creates an objective -- rather than a subjective -- test by which the propriety of soliciting or receiving a gift or benefit can be judged from the viewpoint of a "reasonable person." Travel or hospitality given to aid a public officer in the performance of official duties may be accepted if the officer's designated

supervisor (defined in AS 39.52.960) determines that acceptance does not interfere with the full and faithful discharge of the officer's public duties and responsibilities. AS 39.52.130(a).

The bill also sets up a reporting requirement for the receipt of a gift or benefit worth over \$25 if the public officer can take or withhold official action that benefits the giver. AS 39.52.130(b).

A designated supervisor may seek advice from the attorney general regarding the acceptance of gifts or benefits. AS 39.52.130(c).

The restrictions relating to gifts or benefits do not apply to campaign contributions to candidates for elected office so long as the contributions comply with the laws and regulations governing elections and campaign disclosure. AS 39.52.130(d).

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. One commonly expressed complaint is that public officers are able to improperly benefit themselves or family members through the improper use of information gained in the course of their employment. The so-called "insider information" problem is the issue addressed in AS 39.52.140. This section specifically prohibits the use or disclosure of information that either has not been "communicated" to the public (AS 39.52.140(a)) or is confidential by law (AS 39.52.-140(b)).

This section sets a fairly high standard. It requires, before officers (or members of their immediate families) can benefit personally or financially from the use or disclosure of information available, that the information first have "been communicated to the public." This means that the information was not simply "available" to the public, but that in some affirmative way the information was first communicated to others outside the agency, whether by newsletter, legislative testimony, a published report, a press release, a legal notice, a speech, etc. It is believed that more than just simple "availability" is necessary to avoid claims that public sector officers are acting improperly because of their access to potentially very beneficial information.

Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. Much public scrutiny has recently been focused on the conduct addressed by this provision of the code of ethics. This section prohibits an officer from improperly influencing state grant, contract, lease, or loan procedures. Specifically, a public officer or member of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract,

lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. AS 39.52.150(a). There are exceptions listed to this broad prohibition, which focus on the specific conditions under which the grant, contract, lease, or loan is solicited or awarded. AS 39.52.150(b) -- 39.52.-150(c).

In addition, a public officer must report to the commission any personal or financial interests held by the officer or an immediate family member in any state grant, contract, lease, or loan that is awarded by the agency the officer serves. AS 39.52.150(d).

Sec. 39.52.160. IMPROPER REPRESENTATION. Another public concern addressed by the code is the issue of public officers using the advantage of their position in representation before public agencies to benefit their personal or financial interests. This section generally prohibits an officer from representing, advising, or assisting any person concerning a matter pending before the administrative unit that the officer serves. AS 39.52.160(a).

This prohibition does not apply, however, to activities related to collective bargaining, such as the processing of a grievance by an employee representative. AS 39.52.160(b).

In addition, this section clarifies, in the case of a non-salaried member of a board or commission, that the prohibition on representation does not preclude a member of a board or commission from taking responsibility for a matter affecting the member's personal business which is regulated by the very board or commission on which the member serves, so long as the member does not participate, deliberate, or vote on the particular matter when the issue comes before the board or commission for its review or determination. AS 39.52.160(c).

Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. Although AS 39.52.110 makes it clear that holding employment outside of state service is acceptable, the public interest requires that certain restrictions be placed on this privilege. This section prohibits public employees from rendering services or accepting employment outside of their agencies if the outside service or employment is incompatible or in conflict with the proper discharge of their official duties. AS 39.52.170(a). As is currently required by personnel rules, public employees must quarterly report outside employment to their designated supervisor. AS 39.52.170(b).

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. The most difficult area to address in this legislation is the post-employment situation. The public interest requires that some restrictions be placed on the

range of activities that former public officers may perform in the private sector. Of course, regardless of whether employment is in the public or private sector, the expertise and knowledge one gains in a job are transferable skills that employees rightfully take with them and that enable the employees to seek more responsible positions. We must also consider that while Alaska has a relatively small workforce, government is the state's largest employer.

The development of a post-employment provision that places legitimate restrictions on the use of one's employment experience is, for these reasons, a difficult task. I believe that the post-employment section of this bill reflects a compromise between competing interests. That compromise protects the state's significant interests but does not unfairly restrict an officer's ability to work in the private sector after leaving state service.

Specifically, AS 39.52.180 prohibits certain types of representation by former public officers for two years after leaving their public positions. The two-year ban is narrowly drawn: an officer is only prohibited from representing, advising, or assisting a person for compensation regarding a matter (1) that was under consideration by the administrative unit directly served and (2) in which the officer participated personally and substantially through the exercise of official action. A "matter" is precisely defined to include a case, proceeding, application, contract, or determination, and does not include activities related to legislation or regulations. AS 39.52.180(a).

This section does not prevent an agency from contracting with a former public officer to act on the state's behalf. AS 39.52.180(b). Additionally, the head of an agency may waive, in writing, application of this section after determining that representation by a former public officer is not adverse to the public interest. A waiver is subject to the approval of the attorney general. AS 39.52.180(c).

Sec. 39.52.190. AIDING A VIOLATION. Finally, the bill simply states that it is an ethical violation for a public officer to knowingly aid another officer in a violation of AS 39.52.

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

Article 3 sets out the various procedures that public officers have available to them for the prevention of a violation of the code of ethics. A major aspect of this legislation is its "preventative" posture. Public officers must be able to seek and receive prompt advice in order to avoid actions that might violate the code. It is these preventative procedures that give the bill its true

strength, because it provides a positive approach to solving potential abuses and appropriately assists officers before the fact, rather than waiting for violations to occur which the attorney general must then prosecute.

Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC EMPLOYEES. This section establishes a procedure for handling a potential violation of the code of ethics. A public employee who believes that he or she may be involved in a matter that could result in a violation of the code of ethics is required to immediately disclose the potential conflict to the designated supervisor and to refrain from taking any official action until a determination is made as to a possible conflict or ethical problem. AS 39.52.210(a).

The employee's designated supervisor shall then make a written determination of whether the employee's involvement could or does violate the code of ethics. AS 39.52.210(b). The supervisor shall reassign duties to cure the employee's violation, or direct the divestiture or removal by the employee of the conflicting personal or financial interests. Id. The supervisor may seek an advisory opinion from the attorney general. AS 39.52.210(c).

Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS. This section establishes procedures for handling a potential violation of the code of ethics by a member of a board or commission. A member of a board or commission who believes he or she may be involved in a matter that could result in a violation of a code of ethics must disclose the potential conflict on the record. AS 39.52.220(a). The board chair, as the designated supervisor, rules on whether or not the member's involvement could violate the code of ethics. Id. If a determination is made that a violation would exist if the member continued to participate, then the member must not only refrain from voting on the matter, but must also refrain from deliberating or participating in discussions regarding that particular matter. Id.

The designated supervisor or the board or commission may request advice from the attorney general. AS 39.52.220(b).

Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. This section states that any person may report a potential violation of the code of ethics to a designated supervisor for review and appropriate action.

Sec. 39.52.240. ADVISORY OPINIONS. This section covers requests by designated supervisors, or boards or commissions, for advice from the attorney general regarding appropriate conduct under AS 39.52. It is important to note that requests for advisory opinions are confidential. AS 39.52.240(g).

Advisory opinions must be issued within 60 days after the attorney general receives a completed request. AS 39.52.240(a). Because, however, there may be instances where delay in the receipt of an opinion would cause substantial inconvenience or detriment to the requesting party, this section allows the attorney general to give oral advice. AS 39.52.240(b). The designated supervisor or board or commission then makes a determination regarding an ethical problem. AS 39.52.240(c). If the attorney general has suggested more than one alternative, the supervisor or board or commission will select the most appropriate way to avoid or correct the problem. Id.

A public officer is not liable under AS 39.52 for any action carried out in accordance with a supervisor's determination. AS 39.52.240(d). The attorney general can revise or revoke an advisory opinion at any time (AS 39.52.240(e)), but anyone may rely on advisory opinions currently in effect (AS 39.52.240(f)). Attorney general opinions will be published in the Alaska Administrative Journal with sufficient deletions to prevent disclosure of the identities of persons involved. AS 39.52.240(h).

Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS. Former public officers who need advice regarding their standing in relationship to the code of ethics may request an advisory opinion from the attorney general. AS 39.52.250(a). A former public officer who follows the advice of the attorney general is not liable under this new chapter for any action carried out in accordance with that advice, so long as the circumstances were fully disclosed. AS 39.52.250(b).

Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY GENERAL REVIEW. This section requires all designated supervisors to report to the attorney general any potential violations reported to them and the disposition of each matter. AS 39.52.260(a). The attorney general is required to review each of the reports filed, and may request additional information. AS 39.52.260(b). The report prepared by the supervisor is confidential and not available for public inspection unless formal proceedings are initiated as a result of a report filed. However, copies of the report will be made available with sufficient deletions to prevent disclosure of a person's identity. AS 39.52.260(c).

ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

Article 4 of the new chapter establishes a complete process for handling complaints regarding violations of the provisions of AS 39.52.

Sec. 39.52.310. COMPLAINTS. This section sets out the procedures for handling a complaint, whether filed with the

attorney general or initiated by the attorney general, and establishes the conditions under which a complaint will be accepted and investigated. The attorney general can initiate a complaint or elect to treat as a complaint a matter referred by a supervisor. AS 39.52.310(a). In addition, any person can file a complaint with the attorney general in writing. AS 39.52.310(b).

If a complaint alleges a violation by the governor, lieutenant governor, or the attorney general, the personnel board shall appoint independent counsel who shall act in place of the attorney general in reviewing the validity of the complaint filed and, if sufficient, taking the matter to hearing. AS 39.52.310(c). The attorney general shall review each complaint filed to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of AS 39.52. A complaint may be dismissed (AS 39.52.310(d)) or referred to the appropriate supervisor or board chair for resolution (AS 39.52.310(e)).

If the attorney general accepts a complaint for investigation, the attorney general must provide a copy of the complaint to the subject of the complaint for a response. The subject of the complaint must respond within 20 days with full and fair disclosure in writing of all the facts and circumstances pertaining to the alleged violation. AS 39.52.310(f). The attorney general shall investigate to determine whether a violation of the chapter has occurred. AS 39.52.310(g). A violation of AS 39.52 can be investigated only within two years after discovery of the alleged violation. AS 39.52.310(h).

Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS. If it appears that there is no probable cause to believe that a violation of the chapter has occurred, the attorney general will dismiss the complaint and prepare and file with the personnel board a confidential summary of the matter. The attorney general is required to communicate disposition of this matter promptly to both the complainant and the subject of the complaint.

Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. This section provides the attorney general with the latitude to recommend action to correct or prevent a violation of the law, if the conduct complained about does not warrant the initiation of formal proceedings. The subject of the complaint is required to comply with the attorney general's recommendation.

Sec. 39.52.340. CONFIDENTIALITY. Information obtained by the attorney general during an investigation is confidential, unless and until formal proceedings are initiated. AS 39.52.340(a). The attorney general and persons contacted

during the course of an investigation are required to maintain confidentiality regarding the existence of the investigation. Id. A person who violates the confidentiality provisions of this section is guilty of a class A misdemeanor. Id.

It is not a violation of this section, however, for a person to contact an attorney or participate in a criminal investigation. AS 39.52.340(b). This section also provides that the subject of the complaint may, if he or she so chooses, waive the confidentiality protections of this section. AS 39.52.340(c).

Sec. 39.52.350. PROBABLE CAUSE. If the attorney general finds that there is probable cause to believe that an officer has violated the code of ethics, the attorney general initiates formal proceedings by serving an accusation upon the subject of the complaint. The accusation must specifically set out the alleged violation and, after service, is a public document. Except for deliberations of the personnel board, all subsequent proceedings are open to the public. AS 39.52.350(a).

The subject of the accusation must file an answer to the accusation. AS 39.52.350(b). If the subject denies that a violation has occurred, the attorney general shall refer the matter to the personnel board for appointment of a hearing officer to conduct a hearing. AS 39.52.350(c). If, however, the subject admits an ethical violation, the attorney general shall refer the matter to the personnel board to impose appropriate penalties. AS 39.52.350(d).

Sec. 39.52.360. HEARINGS. AS 39.52.360 establishes the formal hearing process to be followed if a matter is referred to the personnel board for hearing. The hearing officer appointed by the personnel board may conduct pre-hearing conferences, administer oaths, hold hearings, take testimony, and issue subpoenas upon application by a party. AS 39.52.360(a) and (b).

The attorney general presents the charges and has the burden of demonstrating by a preponderance of evidence that the subject of the accusation has violated the new chapter. AS 39.52.360(c). The subject of an accusation may be represented by counsel; each party has the opportunity to be heard and cross-examine witnesses. AS 39.52.360(d).

Hearings held under this section are not subject to the Administrative Procedure Act. AS 39.52.360(e). During the hearing itself, technical rules of evidence do not apply but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. AS 39.52.360(f). At the conclusion of the hearing,

the hearing officer may direct the submission of proposed orders (AS 39.52.360(g)), and within 30 days after the conclusion of the formal hearing, the hearing officer must file a written report with the personnel board containing the officer's findings of fact, conclusions of law, and recommendation (AS 39.52.360(h)).

Sec. 39.52.370. PERSONNEL BOARD ACTION. Either party to the hearing may protest the hearing officer's decision before the personnel board. Oral argument before the personnel board will be provided if requested. AS 39.52.370(a). The board may, for good cause shown, convene a hearing de novo or further augment the record with additional evidence. AS 39.52.370(b).

The personnel board shall review each report submitted by the hearing officer and any briefs filed and must either adopt or amend the findings of fact, conclusions of law, and recommendation of the hearing officer. AS 39.52.370(c). The deliberations of the personnel board are not open to the public. Id. If the personnel board determines that a violation has occurred, it may impose certain civil penalties. AS 39.52.370(d). If the board determines that a violation has not occurred, it shall issue a written order of dismissal. Id. The personnel board secretary must promptly inform both parties of the board's action. AS 39.52.370(e). The subject of the accusation may appeal the board's decision by filing an appeal in the superior court. AS 39.52.370(f).

Sec. 39.52.380. SUBPOENAS. This section gives the attorney general, independent counsel retained by the personnel board, the personnel board, and appointed hearing officers certain subpoena powers.

Sec. 39.52.390. SERVICE. This section dictates how service of an accusation and other documents must be accomplished.

ARTICLE 5. ENFORCEMENT; REMEDIES.

Article 5 describes the enforcement powers available to both the personnel board and the state when a violation of the ethics Act has occurred. Because we wish the attorney general and the personnel board to be able to take relatively swift action, we have provided for a wide range of civil remedies and penalties, as opposed to providing for criminal penalties for violation of the Act.

Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. Under this section, if a public employee is found to have violated AS 39.52, the personnel board has the authority to order the employee to stop engaging in the illegal action; may order divestiture, establishment of a blind trust, restitution, or forfeiture; and recommend that the employee's

agency take disciplinary action against that employee. AS 39.52.410(a).

If the personnel board determines that a non-salaried member of a board or commission has violated AS 39.52, it may order the member to refrain from voting, deliberating, or participating in the matter; order restitution; or, in appropriate cases, recommend that the governor remove the offending member from the board or commission. AS 39.52.410(b).

If the board determines that a former public officer has violated AS 39.52, it shall issue a public statement of its findings and seek the attorney general's assistance in pursuing all legal remedies against that individual. AS 39.52.410(c).

Finally, if the board finds the governor or lieutenant governor in violation of AS 39.52, the board shall report the matter to the Alaska State Senate with its findings. AS 39.52.410(d).

Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. This section states that a violation of the code of ethics contained in AS 39.52 is a valid reason for an executive-branch agency to discipline an employee. AS 39.52.420(a). An agency may initiate appropriate disciplinary action without waiting for the attorney general to file an accusation or the board to complete formal proceedings. AS 39.52.420(b).

Sec. 39.52.430. ACTIONS VOIDABLE. This section describes the actions that may be taken by the state if state grants, contracts, leases, or loans have been entered into or received in violation of AS 39.52.

Sec. 39.52.440. CIVIL PENALTIES. This section provides that the personnel board may impose civil penalties not to exceed \$5,000 on a current or former public officer for a violation of the ethics Act.

Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. This section gives the personnel board the authority to seek from a current or former public officer payment of up to twice the financial benefit realized by a person in violation of AS 39.52.

Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. This section clarifies that the civil penalties provided for in art. 5 of the ethics Act are in addition to any criminal actions that may be pursued.

ARTICLE 6. GENERAL PROVISIONS.

Sec. 39.52.910. APPLICABILITY. This section gives notice that the bill applies generally to all public officers in executive-branch agencies, and that AS 39.52 supersedes the common law on conflicts of interests, including replacement of the common law standard of "the appearance of impropriety" with the specific standards set out in the code of ethics in art. 2 of AS 39.52. AS 39.52.910(a) and (b). This chapter is not subject to collective bargaining. AS 39.52.910(c).

Sec. 39.52.920. AGENCY POLICIES. This section establishes that agencies have the authority to adopt written policies for their employees which are more restrictive than the code of ethics. These agency policies are subject to the attorney general's review and approval.

Sec. 39.52.930. COOPERATION. This section requires agencies in all branches of state government to cooperate fully with the attorney general and the personnel board in the performance of their duties.

Sec. 39.52.940. CONSTRUCTION. This section calls for a liberal construction of the bill's provisions in order to promote high ethical standards in state government.

Sec. 39.52.950. REGULATIONS. Under this section, the attorney general is empowered to adopt necessary regulations to implement AS 39.52.

Sec. 39.52.960. DEFINITIONS. This section of the new chapter sets out definitions for the new code of ethics.

Section 2: This section of the bill amends AS 39.25.060(c) to make the members of the personnel board removable only for cause. The additional responsibilities granted the board under the new ethics law require that the members of the personnel board be free from possible interference in the performance of their duties. Therefore, unless cause can be shown, the governor should be prohibited from freely removing personnel board members from office.

Section 3: This section amends AS 39.25.070, relating to the powers of the personnel board, to add authority to perform the functions granted to the board by the new ethics Act, including authority to appoint hearing officers, review the recommendations of hearing officers, determine whether a violation of the code of ethics had occurred, and impose penalties for a violation of the code.

Section 4: This section of the bill provides for consistency between AS 42.40, regarding employees of the Alaska Railroad, and the new AS 39.52, which covers employees of the railroad as well as directors of the Alaska Railroad Corporation.

Section 5: This section of the bill merely adds attorney general ethics advisory opinions to the list of items to be published in the Alaska Administrative Journal, consistent with the proposed requirement in AS 39.52.240(h) (sec. 1 of the bill).

Section 6: Because the enforcement and remedy provisions in the new ethics law do not take effect until January 1987, this section of the bill clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before January 1, 1987, unless the violation continues after that date.

Section 7: Under this section of the bill, an agency with an existing policy related to conflicts of interests or the ethical performance of official duties is required to submit that policy to the attorney general for necessary review and approval by January 1, 1987.

Section 8: The sections of the ethics law regarding policy, the issuance of advisory opinions, declarations of potential violations, and the definition section, take effect July 1, 1986.

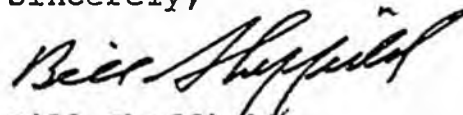
Section 9: The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions (AS 39.52.110 -- 39.52.190 and AS 39.52.310 -- 39.52.460) will take effect January 1, 1987.

I have provided different effective dates so that public officers, immediately upon passage of the bill, may seek guidance from the attorney general concerning their standing under the new code of ethics, in order that any reassignments, transfers, or divestitures that need to occur can be accomplished before the code of ethics, as well as the complaint process, is in force.

CONCLUSION

Several attempts have been made in past years to enact legislation providing ethical standards for the executive branch. Most recently at my request, SB 501 was introduced in 1984, but it did not pass during the Thirteenth Alaska Legislature. I strongly endorse this bill and urge its serious consideration and passage this session, especially in its now-revised form.

Sincerely,



Bill Sheffield
Governor

Introduced: 4/2/86
Referred: State Affairs
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391

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) appoint, and review the findings, conclusions, and
28 recommendations of, hearing officers in accordance with AS 39.52.-
29 350(c), 39.52.360, and 39.52.370;

1 (9) issue findings, conclusions, and decisions regarding
2 violations of the code of ethics in AS 39.52.110 -- 39.52.190; and
3 (10) impose the penalties described in AS 39.52.410, 39.52.-
4 440, and 39.52.450.

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

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

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

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

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

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

23 * Sec. 8. AS 39.52.010, 39.52.210 -- 39.52.260, and 39.52.910 --
24 39.52.960, enacted in sec. 1 of this Act, and secs. 2 -- 7 of this Act take
25 effect July 1, 1986.

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