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STATE OF ALASKA
OFFICE OF THE GOVERNOR

RECEIVED MAR 3 1989

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commissioner's Ofc.	BILL NUMBER SB 61	SPONSOR Senator Zharoff
SHORT TITLE OF BILL An Act relating to ADF&G employees' interest in fisheries			
DEPARTMENT POSITION Oppose			
PREPARED BY Warren W. Wiley <i>Warren W. Wiley</i>	DATE 3/1/89	COMMISSIONER'S SIGNATURE <i>W. Callensworth</i>	DATE 3.1.89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Employees of ADF&G
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
Unknown

ANALYSIS OF BILL/PROGRAM EFFECTS

Enactment of this legislation would prohibit an employee of the Department of Fish and Game from acquiring a financial interest in a commercial fishery managed by the department. If an employee presently holds an interest in a commercial fishery, the proposed legislation would require that employee to disclose such interest and, eventually, to relinquish that interest. Certain provisions of AS 39.52 (the Ethics Act) may already apply to this situation. At present, the department is attempting to enact an ethics policy which would address situations similar to those discussed in Senate Bill 61.

AMENDMENTS PROPOSED

It might be possible that amendments could be made to AS 39.52 which would address the issue of public employees of resource agencies participating in the commercial harvest of resources managed by the employing agency.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: An Act prohibiting certain BRU: _____
employees of ADP&G from...financial interests
 Sponsor: Zharoff Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Warren W. Wiley, Asst. Commissioner Phone: 465-4100
 Division: Commissioner's Office Date: 3/1/89

Approved by Commissioner: *Omni Collinsworth* Date: 3.1.89
 Agency: Fish and Game

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



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 406, KODIAK, ALASKA 99815 (907) 486-6259

DURING SESSION:


P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465 3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLAIRE/LAKE ILIAMNA • PIRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Bettye Fahrenkamp
Chair
Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: April 19, 1989

RE: CS For Senate Bill 61 - "An Act prohibiting certain employees of the Department of Fish and Game from having certain financial interests."

The resource management decisions made by employees of the Alaska Department of Fish and Game have a major economic impact on Alaska's commercial fishermen and hunters.

In the fisheries -- my main area of concern -- these decisions include whether to have an opening or not, what areas or specific bays to open, how much to allow for escapement, etc. Each of these decisions could make or break a commercial fisherman's season. With the many management decisions that must be made during Alaska's fast-moving fishing seasons, opportunities exist for individual Fish and Game employees to favor certain fishermen or groups of fishermen over others.

It is absolutely important that Fish and Game personnel make their management decisions in the most fair and most impartial manner possible. This can not be accomplished if Fish and Game personnel have financial interests in the fisheries or the game resources they are managing.

SB 61 ensures this will never be a problem. The bill prohibits permanent full-time employees of the Department of Fish and Game from having financial interests in the fisheries or game resources they manage. This prohibition also extends to immediate family members.

In addition, the bill contains the following provisions:

-- It gives the department the power to extend the prohibition, by regulation, to other employees.

-- It allows employees to avoid discipline if they divest themselves of their financial interests.

-- It provides for discharge from the department and class B misdemeanor penalties for employees who violate the law.

SB 61 will help reassure Alaskan residents and visitors that management decisions are being made objectively and with fairness. It will allow the public to have a high level of confidence in the Department of Fish and Game.

Attached, as background information, is the Department of Fish and Game's bill analysis and fiscal note.



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TRAVEL						
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GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Warren W. Wiley, Asst. Commissioner Phone: 465-4100
 Division: Commissioner's Office Date: 3/1/89

Approved by Commissioner: *Don Collinsworth* Date: 3.1.89
 Agency: Fish and Game

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

Chapter 52. Alaska Executive Branch Ethics Act.

Article

- 1. Declarations (§ 39.52.010)
- 2. Code of Ethics (§§ 39.52.110 — 39.52.190)
- 3. Disclosure and Action to Prevent Violations (§§ 39.52.210 — 39.52.260)
- 4. Complaints; Hearing Procedures (§§ 39.52.310 — 39.52.390)
- 5. Enforcement; Remedies (§§ 39.52.410 — 39.52.460)
- 6. General Provisions (§§ 39.52.910 — 39.52.960)

Article 1. Declarations.

Section

- 10. Declaration of policy

Sec. 39.52.010. Declaration of policy. (a) It is declared (1) that high moral and ethical standards among public officers in the executive branch are essential to the conduct of free government; and (2) that the legislature believes that a code of ethics for the guidance of public officers will discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this state in their public officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute. (§ 1 ch 87 SLA 1986)

Article 2. Code of Ethics.

Section

- 110. Scope of code
- 120. Misuse of official position
- 130. Improper gifts
- 140. Improper use or disclosure of information
- 150. Improper influence in state grants, contracts, leases, or loans

Section

- 160. Improper representation
- 170. Outside employment restricted
- 180. Restrictions on employment after leaving state service
- 190. Aiding a violation prohibited

Sec. 39.52.110. Scope of code. (a) The legislature reaffirms that 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. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not pre-

Act.

vent an officer from following other independent pursuits. The legislature further recognizes that

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

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

(3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

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

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions. (§ 1 ch 87 SLA 1986)

Sec. 39.52.120. Misuse of official position. (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

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

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

(5) attempt to benefit a personal or financial interest through coercion of a subordinate. (§ 1 ch 87 SLA 1986)

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

(b) Notice of the receipt by a public officer of a gift with a value in excess of \$50, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt if the public officer may take or withhold official action that affects the giver.

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift is prohibited.

(d) The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure. (§ 1 ch 87 SLA 1986)

Sec. 39.52.140. Improper use or disclosure of information.

(a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

(b) A current or former public officer may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law. (§ 1 ch 87 SLA 1986)

Sec. 39.52.150. Improper influence in state grants, contracts, leases, or loans. (a) A public officer, or an immediate family member, 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 the award, execution, or administration of the state grant, contract, lease, or loan.

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

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

(2) takes official action with respect to the award, execution, or administration of the grant, contract, or lease.

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

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

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

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

(d) A public officer shall report in writing to the designated supervisor a personal or financial interest held by the officer, or an immediate

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family member, in a state grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves. (§ 1 ch 87 SLA 1986)

Sec. 39.52.160. Improper representation. (a) A public officer may not represent, advise, or assist a person in any matter pending before the administrative unit that the officer serves, if the representation, advice, or assistance is

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

(2) without compensation, but rendered to benefit a personal or financial interest of the public officer.

(b) This section does not prohibit activities related to collective bargaining.

(c) This section does not preclude a nonsalaried member of a board or commission from representing, advising, or assisting in any matter in which the member has a personal or financial interest regulated by the board or commission on which the member serves, except that the member must act in accordance with AS 39.52.220. (§ 1 ch 87 SLA 1986)

Sec. 39.52.170. Outside employment restricted. (a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

(b) A public employee rendering services for compensation, or engaging in employment outside the employee's agency, shall report by July 1 of each year the outside services or employment to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs. (§ 1 ch 87 SLA 1986)

Sec. 39.52.180. Restrictions on employment after leaving state service. (a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) This section does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval. (§ 1 ch 87 SLA 1986)

Sec. 39.52.190. Aiding a violation prohibited. It is a violation of this chapter for a public officer to knowingly aid another public officer in a violation of this chapter. (§ 1 ch 87 SLA 1986)

Article 3. Disclosure and Action to Prevent Violations.

Section	Section
210. Declaration of potential violations by public employees	230. Reporting of potential violations
220. Declaration of potential violations by members of boards or commissions	240. Advisory opinions
	250. Advice to former public officers
	260. Designated supervisor's report and attorney general review

Sec. 39.52.210. Declaration of potential violations by public employees. (a) A public employee who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall

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

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

(b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates AS 39.52.110 — 39.52.190. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

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

(c) A designated supervisor may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public employee is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

Sec. 39.52.220. Declaration of potential violations by members of boards or commissions. (a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor. The supervisor shall determine whether the member's involvement violates AS

39.52.110 — 39.52.190. If a member of the board or commission objects to the ruling of the supervisor, or if the supervisor discloses an involvement requiring a determination, the members present at a meeting, excluding the involved member, shall vote on the matter. If the supervisor or a 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.

(b) The designated supervisor or the board or commission may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a member of a board or commission is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

Sec. 39.52.230. Reporting of potential violations. A person may report to a public officer's designated supervisor, under oath and in writing, a potential violation of AS 39.52.110 — 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report, and shall review the report to determine whether a violation may exist. The supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor determines that the matter may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

Sec. 39.52.240. Advisory opinions. (a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall issue opinions interpreting this chapter. The requester must supply any additional information requested by the attorney general in order to issue the opinion. Within 60 days after receiving a complete request, the attorney general shall issue an advisory opinion on the question.

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

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

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

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

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

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

(h) The attorney general shall publish in the Alaska Administrative Journal, with sufficient deletions to prevent disclosure of the persons whose identities are confidential under (g) of this section, the advisory opinions issued under this section that the attorney general determines to be of major import because of their general applicability to executive branch officers. (§ 1 ch 87 SLA 1986)

Sec. 39.52.250. Advice to former public officers. (a) A former public officer may request, in writing, an opinion from the attorney general interpreting this chapter. The attorney general shall give advice in accordance with AS 39.52.240(a) or (b) and publish opinions in accordance with AS 39.52.240(h).

(b) A former public officer is not liable under this chapter for any action carried out in accordance with the advice of the attorney general issued under this section, if the public officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice. (§ 1 ch 87 SLA 1986)

Sec. 39.52.260. Designated supervisor's report and attorney general review. (a) A designated supervisor shall quarterly submit a report to the attorney general which states the facts, circumstances, and disposition of any disclosure made under AS 39.52.210 — 39.52.240.

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

(c) The report prepared under this section is confidential and not available for public inspection unless formal proceedings under AS 39.52.350 are initiated based on the report. If formal proceedings are initiated, the relevant portions of the report are public documents open to inspection. The attorney general shall, however, make available to the public a summary of the reports received under this section, with sufficient deletions to prevent disclosure of a person's identity. (§ 1 ch 87 SLA 1986)

Article 4. Complaints; Hearing Procedures.

Section

- 310. Complaints
- 320. Dismissal before formal proceedings
- 330. Corrective or preventive action
- 340. Confidentiality
- 350. Probable cause for hearing

Section

- 360. Hearings
- 370. Personnel board action
- 380. Subpoenas
- 390. Service

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

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

(c) If a complaint alleges a violation of AS 39.52.110 — 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) — (i) of this section, AS 39.52.320 — 39.52.350, and 39.52.360(c) and (d).

(d) 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 this chapter. The attorney general may require the complainant to provide additional information before accepting the complaint. If the attorney general determines that the allegations in the complaint do not warrant an investigation, the attorney general shall dismiss the complaint with notice to the complainant and the subject of the complaint.

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

(f) If the attorney general accepts a complaint for investigation, the attorney general shall serve a copy of the complaint upon the subject of the complaint, for a response. The attorney general may require the subject to provide, within 20 days after service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the attorney general is a violation of this chapter. Failure to answer within the prescribed time, or within any additional time period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.

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

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

(i) The unwillingness of a complainant to assist in an investigation, the withdrawal of a complaint, or restitution by the subject of the complaint may, but need not in and of itself, justify termination of an investigation or proceeding. (§ 1 ch 87 SLA 1986)

Sec. 39.52.320. Dismissal before formal proceedings. If, after investigation, it appears that there is no probable cause to believe that a violation of this chapter has occurred, the attorney general shall dismiss the complaint and prepare and file a confidential summary with the personnel board. The attorney general shall communicate disposition of the matter promptly to the complainant and to the subject of the complaint. (§ 1 ch 87 SLA 1986)

Sec. 39.52.330. Corrective or preventive action. After determining that the conduct of the subject of a complaint does not warrant a hearing under AS 39.52.360, the attorney general shall recommend action to correct or prevent a violation of this chapter. The attorney general shall communicate the recommended action to the complainant and the subject of the complaint. The subject of the complaint shall comply with the attorney general's recommendation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.340. Confidentiality. (a) Before the initiation of formal proceedings under AS 39.52.350, information regarding an investigation conducted under this chapter, or obtained by the attorney general during the investigation, is confidential. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation. A person who violates this section is guilty of a class A misdemeanor.

(b) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

(c) The subject of the complaint may, in writing, waive the confidentiality protection of this section. (§ 1 ch 87 SLA 1986)

Sec. 39.52.350. Probable cause for hearing. (a) If the attorney general determines that there is probable cause to believe that a knowing violation of this chapter or a violation that cannot be corrected under AS 39.52.330 has occurred, or that the subject of a complaint failed to comply with a recommendation for corrective or preventive action, the attorney general shall initiate formal proceedings by serving a copy of an accusation upon the subject of the accusation. The accusation shall specifically set out the alleged violation. After service, the accusation is a public document open to inspection. Except

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as provided in AS 39.52.370(c), all subsequent proceedings are open to the public.

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

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(c) If the subject of the accusation denies that a violation of this chapter has occurred, the attorney general shall refer the matter to the personnel board, which shall appoint a hearing officer to conduct a hearing.

(d) If the subject of the accusation admits a violation of this chapter, the attorney general shall refer the matter to the personnel board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.450, as appropriate. (§ 1 ch 87 SLA 1986)

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Sec. 39.52.360. Hearings. (a) The hearing officer may convene a prehearing conference to set a time and place for the hearing, and for stipulation as to matters of fact and to simplify issues, identify and schedule prehearing matters, and resolve other similar matters before the hearing.

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

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

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

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

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(f) 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. Copies of transcripts of the hearing record are available to the subject of the accusation at the subject's expense; however, upon request, a copy of the recording of the hearing must be furnished without charge to the subject of the accusation.

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

(h) Within 30 days after the conclusion of a formal hearing, the hearing officer shall serve a written report on the personnel board and

the parties, unless the personnel board grants an extension of time. The report must contain the officer's findings of fact, conclusions of law, and recommendation. The hearing officer shall submit the record to the personnel board. (§ 1 ch 87 SLA 1986)

Sec. 39.52.370. Personnel board action. (a) Within 10 days after receipt of the hearing officer's report, either party may protest the officer's findings of fact, conclusions of law, and recommendation, and, if a protest is filed, shall serve a copy on the other party. Oral argument before the personnel board must be provided only if requested by either party. The board chair shall set the deadline for submission of requests for oral argument, and set the dates for submission of briefs and oral argument before the board, if requested.

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

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

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

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

(f) The subject of the accusation may appeal the personnel board's decision by filing an appeal in the superior court as provided in the Alaska Rules of Appellate Procedure. (§ 1 ch 87 SLA 1986)

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

(b) Subpoenas must be served in the manner prescribed by AS 44.62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court. (§ 1 ch 87 SLA 1986)

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Sec. 39.52.390. Service. Service of an accusation must be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure. Service of any other pleading, motion, or other document must be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure. (§ 1 ch 87 SLA 1986)

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Article 5. Enforcement; Remedies.

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Section	Section
410. Violations; penalties for misconduct	450. Payment of twice the financial benefit
420. Disciplinary action for violation	
430. Actions voidable	460. Criminal sanctions additional
440. Civil penalties	

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Sec. 39.52.410. Violations; penalties for misconduct. (a) If the personnel board determines that a public employee has violated this chapter, it

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- (1) shall order the employee to stop engaging in any official action related to the violation;
- (2) may order divestiture, establishment of a blind trust, restitution, or forfeiture; and
- (3) may recommend that the employee's agency take disciplinary action, including dismissal.

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

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

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- (1) issue a public statement of its findings, conclusions, and recommendation; and
 - (2) request the attorney general to exercise all legal and equitable remedies available to the state to seek whatever relief is appropriate.
- (d) 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, with its finding. The report must contain a statement of the facts alleged to constitute the violation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.420. Disciplinary action for violation. (a) In addition to any other cause an agency may have to discipline a public employee, an agency may reprimand, demote, suspend, discharge, or otherwise subject an employee to agency disciplinary action commensurate with the violations of this chapter. This section does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.

(b) An agency may initiate appropriate disciplinary action in the absence of an accusation under this chapter or during the pendency of a hearing or personnel board action. (§ 1 ch 87 SLA 1986)

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

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

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

(d) The attorney general may recover any fee, compensation, gift, or benefit received by a person as a result of a violation of this chapter by a current or former public officer. Action to recover under this subsection must be brought within two years after discovery of the violation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.440. Civil penalties. The personnel board may impose on a current or former public officer civil penalties not to exceed \$5,000 for a violation of this chapter. A penalty imposed under this section is in addition to and not instead of any other penalty that may be imposed according to law. (§ 1 ch 87 SLA 1986)

Sec. 39.52.450. Payment of twice the financial benefit. The personnel board may, in addition to the civil penalties described in this chapter, require a current or former public officer who has financially benefited a person in violation of this chapter to pay to the state up to twice the amount that the person realized from the violation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.460. Criminal sanctions additional. To the extent that violations under this chapter are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this chapter. (§ 1 ch 87 SLA 1986)

Article 6. General Provisions.

Section

- 910. Applicability
- 920. Agency policies
- 930. Cooperation

Section

- 940. Construction
- 950. Regulations
- 960. Definitions

Sec. 39.52.910. Applicability. (a) Except as specifically provided, this chapter applies to all public officers within executive-branch agencies, including members of boards or commissions. This chapter does not apply to a former public officer of an executive-branch agency unless a provision specifically states that it so applies. This chapter does not apply to legislators covered by AS 24.60.

(b) The provisions of this chapter supersede the common law on conflicts of interests that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, excluding nepotism, adopted under AS 39.25. However, nothing in this chapter precludes a prosecution under an applicable criminal statute nor prevents enforcement of any other state law that imposes a stricter standard of ethical conduct on public officers.

(c) The provisions of this chapter are not subject to negotiation by collective bargaining under AS 23.40. (§ 1 ch 87 SLA 1986)

Cross references. — For provisions related to nepotism, see AS 39.90.020.

Sec. 39.52.920. Agency policies. Subject to the review and approval of the attorney general, an agency may adopt a written policy that, in addition to the requirements of this chapter, limits the extent to which a public officer in the agency or an administrative unit of the agency may

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

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

(3) accept a gift. (§ 1 ch 87 SLA 1986)

Sec. 39.52.930. Cooperation. 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. (§ 1 ch 87 SLA 1986)

Sec. 39.52.940. Construction. This chapter shall be construed to promote high standards of ethical conduct in state government. (§ 1 ch 87 SLA 1986)

Sec. 39.52.950. Regulations. The attorney general may adopt regulations under the Administrative Procedure Act necessary to interpret and implement this chapter. (§ 1 ch 87 SLA 1986)

Sec. 39.52.960. Definitions. In this chapter, unless the context requires otherwise,

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

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

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

(4) "board or commission" means a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, but excluding the Alaska Railroad;

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

(6) "child" includes a biological child, an adoptive child, and a step-child;

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

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

(A) the commissioner of each department in the executive branch, for public employees within the department;

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

(C) the attorney general, for the governor and lieutenant governor;

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

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(E) the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and

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(F) the governor, for commissioners and for other public officers not included in (A) — (E) of this paragraph; or

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

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(9) "financial interest" means

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

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

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

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

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

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(13) "nonsalaried member of a board or commission" means a member of a board or commission who is not a public employee by virtue of membership on a board or commission; receipt of per diem, nominal compensation for attendance at meetings, and travel expense reimbursement does not make a member of a board or commission a public employee for purposes of this chapter;

ernor;

(14) "official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

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

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

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

(18) "personal interest" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, non-profit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

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

(20) "public employee" or "employee" means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service;

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

(A) a public employee; and

(B) a member of a board or commission;

(22) "source of income" means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or child, or a combination of them, holds a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source. (§ 1 ch 87 SLA 1986)

Chapter 90. Miscellaneous Provisions.

Section

10. Obstruction of access to public information

Section

20. Nepotism prohibited

Sec. 39.90.010. Obstruction of access to public information.

(a) A public employee may not be dismissed, demoted, suspended, laid off or otherwise made subject to any disciplinary action for communicating matters of public record or information under AS 09.25.110 and 09.25.120.

(b) In this section, "public employee" means any employee receiving compensation for services provided to the state, including the University of Alaska, or any political subdivision of the state.

(c) A violation of this section is a misdemeanor. (§ 1 ch 151 SLA 1977)

Revisor's notes. — Formerly AS 39.51.020. Renumbered in 1987.

STANDARDS OF PROFESSIONAL CONDUCT
DEPARTMENT POLICIES
SUPERCEDES ALL PREVIOUS EDITIONS

PURPOSE

This policy, or Standards of Professional Conduct, will establish uniform standards of conduct for employees of the Department of Fish and Game and incorporate the requirements of AS 39.52 (Executive Ethics Act) and applicable state Personnel Rules. These Standards are adopted pursuant to AS 39.52.920.

OBJECTIVE

The objective of establishing Standards of Professional Conduct is to recognize and ensure the legal rights, privileges, and personal beliefs and activities of departmental employees while providing guidance regarding activities which, while not directly in violation of state or departmental policies, might substantially and materially call into question an employee's personal motivations and professional integrity. It is the intent of this policy to protect the rights and reputations of departmental employees by providing standards of conduct which will apply to all similarly situated employees of the department. Employees who engage in activities which appear to be outside the bounds of these standards may request a review of

such activities by the Designated Supervisor as defined in AS 39.52.960 (8)(A) and (G). Decisions regarding the activities of department employees will be made based only on AS 39.52, applicable Personnel Rules and the following Standards of Professional Conduct. Acceptance of employment with the Alaska Department of Fish and Game is an affirmation of acceptance on the part of the employee that the rights and obligations established in the Standards of Professional Conduct are necessary for both the employee and the department.

DISTRIBUTION

All SOP manual holders.

RATIONALE

The Alaska Department of Fish and Game is mandated to "manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state . . ." AS 16.05.020 (a). The people of Alaska have thus placed in the hands of the employees of the Department of Fish and Game their faith and trust in the department's ability to meet its obligations of professional resource stewardship. Public acceptance of the department's programs depends, to a great degree, on how the public perceives the activities of employees, both in the workplace and to an extent in their personal lives. This high degree of public trust carries an obligation to maintain high

standards of professional conduct. If the public recognizes employees of the department as impartial and unbiased, regardless of their position within the department, the management programs developed by professional employees have a far better chance to be approved and publically accepted. As professional resource managers, employees of the department must accept that the public expects higher standards of them in conducting certain activities than is expected of other public employees. While some might see this as burdensome, it can be better seen as an indication of the public's high expectations and high degree of interest in the work of the department.

Employees generally recognize that it is difficult for many citizens of the state to see a department representative on one hand as a professional manager of a resource while on another occasion that same employee is seen engaged in a commercial activity involving the same resource. However, the extent and degree of this public perception varies widely. The department recognizes that substantial and material conflicts that call into question the integrity of the employee or the department must be prevented. Minor and inconsequential conflicts are unavoidable in a free society. Instances of perceived conflict will be individually evaluated pursuant to AS 39.52, pertinent Alaska Personnel Rules and the Standards of Professional Conduct, including the following considerations:

- A. The extent of management jurisdiction an employee may have over a department managed resource and the extent to which an employee may have access to information not generally distributed to the public.
- B. The potential an individual employee may have by virtue of his or her position in the department to effect or influence management decisions.
- C. The extent to which a conflict is real or immediate or whether it is insignificant, conjectural, or contrived.
- D. The extent to which a perceived conflict will adversely effect the credibility of the employee and the department. If the conflict is found to be genuine in nature and perception, but not a serious violation of the standards, the department and the employee will be called upon to determine a remedy that will remove or acceptably minimize questions regarding the credibility of either.

DEFINITIONS

Commercial Activities: Activities for which an employee receives compensation, as defined in AS 39.52.960(7).

Commercial Guiding: Accompanying or being present with a hunter or fisherman in the field, personally or through an assistant,

for direct financial compensation: "commercial guiding" does not include:

1. accompanying or being present with a hunter or fisherman guided by another person if the employee has also engaged the services of a guide; or
2. providing transportation to or from the field, if the persons providing transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to harvest fish and wildlife resources; or
3. engaging in personal, lawful recreational or subsistence hunting or fishing, either alone or with friends or relatives, when such activities are not conducted for the purpose of, or with the intent of, receiving compensation (inconsequential compensation such as sharing expenses are not guiding, also see AS 39.52.130).

Commercial Harvest: An activity which an employee of the department engages in, which involves the taking or harvest of a resource managed by the department for compensation from a commercial processor, fur buyer, guide client, or retailer (also see Ethics Policy, department findings on exclusions to this definition).

Benefit: As defined in AS 39.52.960 (3).

Department Employee: A person with official status, holding a position control number and receiving compensation for work performed, but does not include the employee's spouse, children, siblings, or other family member for the purposes of this Ethics Policy. (Note: certain additional prohibitions extend to an employee's spouse, blood relation to the second degree of kindred, and members of the employee's household under the Executive Branch Ethics Act--See AS 39.52).

Designated Supervisor: The Commissioner or the Commissioner's designee.

PROFESSIONAL CODE OF CONDUCT

In an effort to maintain high professional standards of the department and to retain the public trust necessary for the department and its employees to meet statutory obligations, each department employee shall:

1. use sound biological information in an unbiased manner in recommending and making management decisions;
2. present information to the public and to peers factually, and impartially, and not let personal preference or bias interfere with this obligation;

3. recognize that some activities and actions may be perceived by the public as inappropriate for an employee of the department;
4. recognize that our activities associated with natural resource use, particularly commercial uses, are often viewed unfavorably by the public and peers;
5. refrain from commercial harvest activities unless specifically approved by this policy, or by the division director and the Designated Supervisor;
6. use the discretion expected of professional employees when conducting activities which might tend to call into question personal or departmental credibility, and consult with supervisors if there is any such doubt in an employee's mind;
7. obey fish and game laws and regulations;
8. not use their positions for personal financial gain or to give unwarranted benefit or treatment to any person or group, or to coerce subordinates for his or her personal or financial benefit; and
9. recognize that the off-duty activities of many department employees substantially benefit their job performance,

public acceptance and confidence expressed in the department. Fishing, hunting, trapping, photography, camping, and other similar activities provide employees the opportunity to obtain personal awareness and understanding of the public's involvement in the resources managed by the department. Membership in professional societies and community clubs and organizations, to the extent suggested by the standards, provides benefits to both the individual and the department.

INTERPRETATION

This policy will be interpreted in conformity with the Executive Ethics Act (AS 39.52). All employees are urged to read "Ethics-- A Handbook for Public Employees," available through personnel officers or from the Designated Supervisor. Provisions of the Standards of Professional Conduct will apply to all employees of the Department of Fish and Game.

Any departmental employee convicted of violating a state or federal fish and game law or regulation is subject to disciplinary action by the department. The violation will be reviewed by the appropriate Division Director, the Designated Supervisor, and the Commissioner.

Disciplinary action taken as a result of a violation of these standards may range from a verbal warning, to a written reprimand, to termination depending upon the severity of the violation and any extenuating circumstances.

Decisions regarding outside employment, possible conflicts with these standards and remedial actions taken to relieve conflict with the standards will be rendered only by division directors and the Designated Supervisor (also see Appeal Process).

All employees of the department, subject to provisions of the Ethics Policy, may not participate in commercial fishing, commercial game or fish guiding, trapping, mariculture, or aquaculture activities unless specifically approved by the division director and the Designated Supervisor. Provisions in the Ethics Policy do not apply to seasonal or temporary employees when they are on leave without pay status.

Employees may participate in secondary outside employment related to fish and game, providing the annual disclosure form has been completed, approved, and signed by the Designated Supervisor.

ETHICS POLICY

A. Commercial Activities

Exclusions

The department finds that no substantial and material conflict exists, and ~~no~~^{but} prior approval by the Designated Supervisor is required if:

1. employees participate in the commercial take of fish and game if those resources are not regulated by the department or the Boards of Fisheries and Game; or
2. employees act as a commercial guide if no harvest of fish or game is involved in such guiding activities; or
3. employees trap and their total annual compensation for sale of furs obtained from trapping does not exceed \$1,500.

Except for the above exclusionary findings, the prohibitions for commercial activities which relate to fish and game shall be based on divisional jurisdiction and region of employment.

Divisional Prohibitions (all employees)

Divisions of FRED, Commercial Fish, Sport Fish, External and International Affairs, and Commissioner's Office--no commercial harvest of fishery resources.

Division of Wildlife Conservation and Commissioner's Office--no commercial harvest of game resources, including the sale of furs of more than \$1,500 annually.

All other divisions-- commercial harvest approved subject to disclosure and prior approval.

Geographical Prohibitions (all employees)

In addition to jurisdictional (divisional) prohibitions, the following geographical prohibitions also apply.

Regional restrictions--no commercial harvest of fish or game resources within the region of employment, as defined by divisional geographic boundaries.

Headquarters' staff and staff located outside of Juneau with statewide responsibilities shall assume a regional prohibition of where they are stationed and/or where they primarily work.

B. Use of Information and Materials

1. Employees are encouraged to prepare job related general interest and technical papers on official and personal time. Employees may not, however, accept any compensation for an article, paper, or photograph produced on state time or with state equipment.

To maintain a high professional standard in published reports and papers, each division shall provide an in-house review of all such materials. The formal referee-review process required of scientific journals and symposia may substitute for a divisional review.

Policy oriented publications and non-technical articles not subject to formal referee-review procedures must be approved prior to publication or release at the regional supervisor level.

2. Department employees appearing as speakers at meetings where they are representing only themselves and not the department shall not use department materials without the approval of their immediate supervisor. In instances where the presentation might directly benefit the employee's personal or financial interests, the employee should carefully review the provisions of the Executive Ethics Act for guidance [AS 39.52.960(9)(18), and 39.120(b)].

C. Use of State Equipment and Facilities

1. Department employees shall not use state equipment or facilities in the pursuit of personal activities. Exceptions may be granted for employees stationed in field situations. Such exceptions may be approved by

the respective division director when in the judgment of the division director:

- a. no additional costs will be incurred by the state; and
- b. the activities will not occur when the employee is on state time; and
- c. the activities do no result in the employee's receiving compensation, as defined in AS 39.52.960.

D. Use of Photographs

1. Employment with the department may provide employees with unique photographic opportunities. Consequently, a significant potential exists for both real and perceived conflicts of interest. The department's policy is to allow employees to pursue an interest in photography while clearly distinguishing between ethical and unethical personal gain that may come from photographs taken while working for the department.
2. When photography occurs during normal or assigned working hours, and with the use of state equipment or film, the products of all such photography shall be considered property of the state. If personal

equipment or film is use, the photos may be kept for personal use, but shall not be commercially used.

3. Photography at times other than during normal or assigned working hours shall be considered a personal activity. If personal film and equipment are used, the photos shall be considered personal property and may be commercially sold or given to the state. However, if state equipment or film are used, the photos are state property and may not be used for personal or commercial gain.

E. Advisory Committees and Private Organizations

1. Department employees shall assist advisory committees and regional councils of the Alaska Boards of Fisheries and Game but shall not participate in nominating or voting on candidates for office nor vote on items before the committee or council when they attend such meetings representing the department. Department employees shall not serve as members or officers of an advisory committee or regional council except in the capacity of a non-voting recording secretary.
2. Department employees are encouraged to participate in private organizations with purposes related to fish and game resource use or conservation, and to make public

statements as long as the employee does not purport, or appear to purport, that he or she is speaking or acting in an official department capacity. All employees must recognize that in circumstances when their outside activities conflict with department positions or policies, the employee's credibility and/or job effectiveness may be jeopardized. Accordingly, employees should consult their regional supervisor for guidance to reduce potential conflicts.

Example 1: Ernie is a Fisheries Biologist working on the Kenai Peninsula. He has been asked by a local sport fishing club (of which he is a member) to testify at a public hearing about the need to allocate more fish for sport use. After consulting with his regional supervisor, Ernie determines that it would be professionally unethical for him to testify as a private person since the public's trust in his credibility as an unbiased department management biologist would likely be significantly reduced. He is encouraged, however, to testify as a department employee and provide biological data.

Example 2: Ann is a Habitat Biologist in interior Alaska. She has been asked by a professional society (The Ecological Society of America) to

testify before a House Agricultural Subcommittee in Washington, D.C. about the effects of a newly developed wastewater treatment system for placer mining on aquatic organisms (her area of expertise). Although the State of Alaska has endorsed this technology, after discussion of the request with her regional supervisor Ann decides to testify but limit her testimony to the biological tradeoffs associated with this treatment technology. Ann's testimony is presented as a professional scientist, not as a representative of the state, and further carefully avoids addressing the political or economic aspects of the issue.

Example 3: Bill is a Division of Wildlife Conservation Area Management Biologist who attends an advisory committee meeting where officers will be elected and regulations will be discussed. Because area biologists speak on proposals and are commonly viewed by the public to represent the department, Bill does not vote in the committee elections.

3. The department specifically encourages employees participation in professional societies and recognizes such organizations (e.g., The Wildlife Society, American Fisheries Society, Ecological Society of America, American Statistical Association, Professional

Secretaries International, etc.) as distinctly different from other special interest groups. In some situations it may be beneficial to the department for individuals to participate in activities of such societies on state time and requests to do so shall be made through their division director and the Designated Supervisor.

4. Department employees may not accept payment or reimbursement for travel or other expenses from a business, institution, organization, or association other than provided by AS 39.52.130. On a case by case basis, exceptions to this policy may be authorized by the Designated Supervisor when acceptance of travel or incidental expenses is in the overall public interest or required by law.

F. Patent/Copyright

The department will reserve and preserve all rights to any invention, discovery, material, equipment, or intellectual property designed, developed, and produced by department employees under the following circumstances:

1. during working hours; or

2. with a contribution by the department or the state of facilities, equipment, material funds, or of times and services of other state or department employees on official duty; or
3. which bears a direct relation to or is made in consequences of official duties of the inventor.

The department may, if allowed by law, award a percentage or other monetary award to the inventor or discoveror of such items.

DISCLOSURE

One of the best ways to avoid even the semblance of impropriety is for all department employees to provide full and detailed prior disclosure, in writing, of the precise nature of any association, relationship, business arrangement, or circumstances which suggest that decisions may be made contrary to the best interests of the general public, resources, or the department; for the employee's personal financial gain; or for reasons contrary to the department's statutory responsibilities. All such prior disclosures shall be done through division directors to the Designated Supervisor in accordance with 45 39.52.170(b).

Example 1: Carol is a clerk typist who wants extra money for the holidays and takes an after hours waitress job October thru December. ~~No~~ disclosure is necessary.

Example 2: Sid is permanent full-time technician working at the Fin Perfect Hatchery who builds and sells crab pots in his spare time. A disclosure is necessary.

REQUEST FOR AUTHORIZATION OR EXEMPTION

A. Department employees shall submit written requests for authorization to participate in commercial activities, or to conduct other activities identified in this policy, thru their director to their Designated Supervisor at least thirty working days before participating in the activity. Expedited requests will be considered by the designated supervisor in instances where the employee could not reasonably provide the 30 working day advance notice. Such requests must be accompanied by a written explanation of the factors which prohibited advance notice. The written request shall include:

1. type of activity;
2. duration or dates of activity;
3. approximate location of activity;

4. justification for authorization or exemption; and
5. name, address, and phone number of the employee.

Detailed and complete answers on the "Ethics Disclosure Form" shall satisfy this requirement.

- B. The Designated Supervisor shall indicate if an ethical problem exists with a request for authorization because of an employee's specific employment responsibilities, and recommend appropriate action in a memorandum to the employee, with a copy to the division director within ten working days upon receipt of a request.

APPEAL PROCESS

Department employees may utilize the grievance procedures in the Personnel Rules (2 AAC 07.435) if they disagree with the Designated Supervisor's decision.

CORRECTIVE ACTION

If a department employee is found to have violated the Executive Branch Ethics Act (AS 39.52), the State Personnel Rules (2 AAC 07), or these standards, the Commissioner may, by written memorandum: order the employee to stop engaging in the prohibited activity; temporarily or permanently reassign job

responsibilities to eliminate the potential conflict; order divestiture, establishment of a blind trust, restitution, or forfeiture; or take administrative disciplinary action against that employee. Disciplinary action, depending on severity, will range from: a verbal reprimand; a written reprimand placed in the employee's personnel file; suspension without pay; or termination of employment with the department [See AS 39.52.410(a)].

PUBLIC COMPLAINT PROCESS

Although the Commissioner has authority to take immediate action on ethics complaints, it is the intent of this policy that, unless special circumstances require, complaints will be handled initially by the division director who may reassign such responsibility to lower level supervisors, depending on the seriousness of the complaint.

A complaint concerning the ethical conduct of a department employee will be documented. Complaints will be handled according to provisions of AS 39.52.210 and AS 39.52.230.

Original sponsor: Zharoff

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 61 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting certain employees of the Depart-
7 ment of Fish and Game from having certain financial
8 interests."

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

10 * Section 1.. AS 44.39 is amended by adding a new section to read:

11 Sec. 44.39.060. FINANCIAL INTERESTS PROHIBITED. (a) A perma-
12 nent full-time employee of the department who makes or influences
13 policy decisions concerning management of a fishery or a game re-
14 source, or an immediate family member, may not have or acquire a
15 financial interest in the fishery or game resource. An employee who
16 has or acquires a financial interest in violation of this subsection
17 shall immediately disclose the interest to the commissioner and begin
18 procedures to become divested of the forbidden financial interest. An
19 employee who knows that an immediate family member has a financial
20 interest in violation of this subsection shall immediately disclose
21 the interest to the commissioner.

22 (b) The department may, by regulation, extend the prohibition
23 established in this section to other employees whose duties are relat-
24 ed to a fishery or a game resource.

25 (c) An employee who has, or who knows that a member of the
26 employee's immediate family has, a financial interest in violation of
27 this section is subject to discipline including discharge from state
28 employment. However, an employee who has promptly disclosed a forbid-
29 den financial interest and who did not acquire the financial interest

1 intending to violate this section may not be disciplined if divestment
2 occurs within a reasonable period of time following the disclosure.

3 (d) An employee who knowingly has, or who knows that a member of
4 the employee's immediate family has, an undisclosed interest in vio-
5 lation of (a) of this section is guilty of a class B misdemeanor. An
6 employee who has disclosed that the employee has an interest in viola-
7 tion of (a) of this section and who has failed to divest the interest
8 in a reasonable period of time is guilty of a class B misdemeanor.

9 (e) A disciplinary action or penalty under this section is in
10 addition to any other penalty that may be imposed by law.

11 (f) In this section

12 (1) "commissioner" means the commissioner of fish and game;

13 (2) "department" means the Department of Fish and Game;

14 (3) "financial interest" has the meaning given in AS 39.-
15 52.960;

16 (4) "fishery" means the commercial taking of a specific
17 fishery resource in a specific administrative area with any type of
18 gear or the sale or commercial processing of a specific fishery re-
19 source taken from a specific administrative area with any type of
20 gear; in this paragraph, "fishery resource" has the meaning given in
21 AS 43.75.140, and "gear" and "type of gear" have the meanings given in
22 AS 16.43.990;

23 (5) "game resource" means the conservation and development
24 of game within a game management unit; in this paragraph, "game" has
25 the meaning given in AS 16.05.940;

26 (6) "immediate family" includes a person's spouse and
27 children residing with the person.
28
29