

**HB**

**194**

# Alaska State Legislature

## House of Representatives

Session address:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
1-888-465-2647 (toll free)  
1-907-465-3518 (fax)

Interim address:  
716 West 4th Avenue  
Anchorage, Alaska 99501-2133  
1-907-269-0106  
1-907-269-0109 (fax)

### Representative Les Gara

#### SPONSOR STATEMENT

#### HB 194 – Executive Branch Ethics Act Revisions

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HB194 is a responsible step toward making the Executive Branch Ethics Act clearer, easier to understand, and easier to follow. The bill would fix three problems with the current Ethics Act.

First, the bill sets a clear financial line for executive branch employees' personal financial holdings. The bill declares that a financial holding is "insignificant" only if it is less than \$5000 or 1% of a company's stock, whichever is less. This definition, which is missing under current law, lets executive branch employees know exactly where they can, and cannot, be involved in state decisions that would affect their personal investments.

HB 194 also broadens the definition of "official action" to include most of the day-to-day work activities performed by executive branch employees. This is a key definition: state employees should not be able to use their state offices to benefit their pocketbooks, and then claim that their acts were not "official." If an employee's act is within the scope of the employee's work performance, then it counts as "official" under HB 194.

Finally, the bill removes a potential loophole by removing an "or" from the current law. The current law declares that there is no violation of the law if a public officer's personal or financial interest is "insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officers belongs." The wording of the current law is unfortunate. An executive branch employee could have \$1,000,000 worth of stock in a company that directly benefited from the employee's official actions. But if the same employee also had an interest possessed generally by the public, then the "or" would work to absolve the employee of wrongdoing. Such a situation might arise for employees that deal with the Permanent Fund investments, for example.

The state's ethics laws should be clear to executive branch employees, and to the public those employees serve. Please join me in supporting HB 194.

*E-mail: Representative\_Les\_Gara@legis.state.ak.us*



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Representative Les Gara

### SECTIONAL ANALYSIS

#### HB 194 – Executive Branch Ethics Act Revisions

**Section 1** Clarifies the conditions under which an official action by a public official is not a violation of the Executive Branch Ethics Act and, thus, by exclusion, the conditions under which an action is a violation of the Act. Establishes that there is no substantial impropriety, i.e., that it is not a violation of the Executive Branch Ethics Act, for a public officer to take an official action or exercise influence on a matter in the following situations:

- ◆ The public officer has a personal or financial interest in the matter but the action taken or influence exercised would have insignificant or conjectural effect on the matter;
- ◆ The public officer has a personal interest in a matter that is insignificant or is possessed by the public or by a large class of persons to which the public officer belongs; OR
- ◆ The public officer or an immediate family member has a financial interest in the matter, including a property ownership or a professional or private relationship that is, or could be, a source of income, AND the value of that interest is less than \$5,000 or 1 percent of the total value of the business, whichever is less.

However, if a public officer or an immediate family member has a financial interest in a matter

- ◆ that equals or exceeds \$5,000 or 1 percent of the total value of the business or

*E-mail: Representative\_Les\_Gara@legis.state.ak.us*



- ◆ from which the individual has received or expects to receive a financial benefit equal to or greater than \$5,000,

taking official action regarding the matter would be a violation of the Executive Branch Ethics Act.

Section 2      Expands the definition of “official action” in the executive ethics act to include performance of any duties in the course and scope of a public officer’s employment. This includes, in addition to actions already stated in statute, “review, advice, participation, assistance, or another kind of involvement regarding a matter.”

*March 17, 2005*

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB194-LAW-OA&E-1-23  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act prohibiting a public officer from taking RDU CIVIL  
official action regarding a matter in which the public..." Component Opinions, Appeals & Ethics  
 Sponsor Representative Gara  
 Requester House State Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends AS 39.52.110(b) (Alaska Executive Branch Ethics Act - Ethics Code - Scope of code.) The bill establishes a "bright line" test for when a financial interest is insignificant under the ethics act. The bill also amends AS 39.52.960(14) (Alaska Executive Branch Ethics Act - General Provisions - Definitions.) to more clearly define what constitutes taking "official action". Together, these amendments make it simpler for public officials, designated ethics supervisors, and the attorney general to apply, interpret and enforce the Ethics Act.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughetee, Director  
 Division: Administrative Services Division  
 Approved by: Kathryn Daughetee for David Márquez, Attorney General  
 Agency: Department of Law

Phone 465-3673  
 Date/Time 1/23/06 10:05 AM  
 Date 1/23/2006

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 194  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: All  
 Title Executive Branch Ethics: Financial Interests RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Rep. Gara Component No. \_\_\_\_\_  
 Requester House State Affairs Committee

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would not have a significant fiscal impact on any state agency.

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676  
 Division Office of Management and Budget Date/Time 1/23/06 3:00 PM  
 Approved by: Cheryl Frasca, Director Date 1/23/06  
 Agency Office of Management and Budget

# Alaska ethics laws fall short, need revision, lawmakers say

■ **CONCLUSION:** Renkes broke law by not asking for ethical determination.

By **MATT VOLZ**  
The Associated Press

**JUNEAU** — An outside investigator shined a light on a murky area of Alaska ethics law when he found that the attorney general's potential to profit from a state business agreement did not rise to the standard for lawbreaking.

Alaska law does not say how much is too much when a state employee has a financial stake in a company.

That lack of a standard is what caused former U.S. attorney Robert Bundy to conclude that Attorney General Gregg Renkes' role in a trade agreement between Alaska and Taiwan could have benefited KFX Inc. — a company in which Renkes owned more than \$100,000 in stock — but wasn't an illegal conflict of interest.

Bundy's report to Gov. Frank Murkowski concluded, however, that Renkes broke the law by failing to ask for an ethical determination before playing a major role in the coal deal that involved technology by KFX Inc.

The lack of standards muddled Renkes' case and made it a close call, Bundy said.

"This controversy could have been avoided had a statute or regulation provided specific standards on when stock ownership constitutes a conflict of interest," Bundy's report said. "Accordingly, we recommend that the governor take steps to establish these standards."

Lawmakers agreed that changes need to be made.

"I think Bundy did a good job of outlining the black hole," said Rep. Beth Kerttula, D-Juneau. "It's incumbent for us to get this fixed and get this fixed quickly."

House Majority Leader John Coghill, R-North Pole, said the Legislature needs to address what he called a gray area of the law.

"The answer is yes. When, I don't know," he said. "The first thing we want to consider is that this thing runs its course before taking it up. We want to let the news die down, so we can be a little more deliberate."

Renkes owned 0.32 percent of KFX's outstanding shares, the value of which peaked at more than \$126,000.

Bundy used a 1989 attorney general's opinion to determine whether Renkes owned enough stock to be con-



DAVID J. SHEAKLEY / The Associated Press

Gregg Renkes talked about the allegations of ethics violations in Juneau on Tuesday. An investigator cleared him of some wrongdoing.

“  
I think Bundy did a good job of outlining the  
black hole.  
”

— Rep. Beth Kerttula, D-Juneau

sidered a conflict. That opinion measured excessive personal interest at owning 1 percent or more of a company's outstanding shares.

Bundy's findings hinged on that standard.

Several states — including Connecticut, Delaware, Florida, Massachusetts, New Jersey, Ohio and Pennsylvania — use a percentage of a company's outstanding shares to draw the line for conflict of interest, Bundy's investigation found. Others — Idaho, Oregon, Washington — draw the line at a certain dollar value of the stock.

And others use a combination, such as Kentucky's law of \$10,000 or 5 percent of the shares in a company.

At a news conference on Tuesday, Bundy said he would recommend \$10,000 or 1 percent as the standard for Alaska.

Murkowski has asked Bundy to draft legislation that would create a standard for Alaska. The legislation should be in-

troduced as soon as possible, regardless of the furor over Renkes, he said.

"Politics, in my opinion, shouldn't conflict with reasonable ethical review to make sure that other folks are not caught in this kind of dilemma," Murkowski said.

House Judiciary Committee member Les Gara, D-Anchorage, said the law should set limits on the dollar value of the investment, and not be based on percentage of outstanding shares.

The places that use the latter standard are protecting the interests of business, not the state, Gara said.

"Those are the states that want to let the fox guard the chicken house," Gara said.

He said under the standard used in Bundy's report, a lawmaker hypothetically could own \$15 million in Conoco Phillips stock and still be in compliance with ethics laws when deciding who builds a gas pipeline from the North Slope.



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Web posted January 27, 2005

## Empire editorial: Dump Renkes, ethics code

Far from being the last word on Attorney General Gregg Renkes' ethics and standing as Alaska's top lawyer, Tuesday's release of a report about his actions in a state coal deal is only the start of needed change.

The end must bring both new ethics rules and a new attorney general.

Contracted by Gov. Frank Murkowski to probe Renkes' negotiations on a deal to sell Cook Inlet coal to Taiwan, former U.S. Attorney Robert Bundy found that the attorney general should have requested an ethics determination but otherwise did not break the law. That's because Alaska's law is so vague, not specifying a dollar figure that pushes a public official's investment portfolio into the realm of a conflict. Renkes' \$100,000-plus investment in and close ties to KFx, the Denver company that stood to gain from the coal agreement, apparently doesn't rise to the state's legal definition of a conflict. It should and, once state lawmakers are done, it probably will.

In the meantime, Murkowski is wrong to insist that this, along with his reprimand, closes the matter and that a state personnel board inquiry should end. Where many ethics considerations hinge on an elusive perception of cozy relations, the attorney general's sizable stake in KFx cannot be viewed as anything but a conflict. Bundy finds the conflict insignificant because Renkes' shares represented no more than .02 percent of the company's total. But the issue isn't how Renkes' shares affected the company; it's how they stood to affect him. Bundy's recommendation that the state adopt a \$10,000 investment limit for any government official potentially influencing a company's standing with the state says it all: \$100,000 is a lot of money. That much is apparent to most Alaskans, whose median income in a family of four is some \$30,000 less.

Regardless of where Renkes' investment and active promotion of KFx and the coal deal stood with the law, it is unfathomable that he would not have understood that his involvement could affect him financially. Knowing this, it was reckless to get involved officially in the first place, and it was unpardonable not to at least ask for an official opinion about that involvement. If this behavior brings only a slap on the wrist, Alaskans will be right to doubt the integrity of their government. The governor should demand the attorney general's resignation since Renkes hasn't had the integrity to offer it himself.

Further, it is imperative that this Alaska Legislature remedy the lax ethics code. The state's reliance on and support of natural resource industries and the companies

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32° obscured  
New Weather

Wind:  
Hi Tide: 04:52am

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that fuel them makes it doubly important that the law spell out right and wrong and assure citizens that their officials are acting on Alaskans' behalf, and not for their own bank accounts.

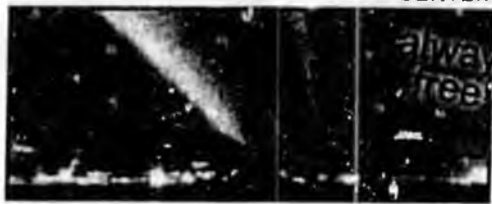
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## America's Newspapers

Opinion

Anchorage Daily News (AK)

February 8, 2005

Author: Staff

Estimated printed pages: 4

Renkes' right move

Resignation relieves governor of unreasonable burden

Gregg Renkes did the right thing Saturday by resigning his office as attorney general. Living under an ethical raincloud for his deep involvement in both a state coal deal and a company that would have benefited from it, his credibility and effectiveness had simply washed away. Gov. Frank Murkowski lost a loyal aide and confidant, but he will not have to carry any further the burden of Mr. Renkes' continued tenure in office.

Stability and principled leadership for the Department of Law now become the governor's first priority. This is a time when old-fashioned conservative restraint will serve best. Whoever the governor appoints as attorney general must be respected across the board (in order to dampen undue partisanship), principled beyond reproach (to rehabilitate public confidence in the administration), experienced in Alaska's key policy matters (to maintain momentum on natural gas and other issues) and prudent in his or her personal conduct (to make the attorney general once again a standard-setter in the rule of law).

The next priority must be to clear up the murky waters of Alaska's executive branch ethics law. Robert Bundy, the special investigator who found that Mr. Renkes violated the **Ethics Act** but not the Code of **Ethics**, also found too many "close calls" for comfort. The governor has asked Mr. Bundy to develop clear new language to guide public employees. That language should protect the public trust first of all and public officials' financial liberties secondarily.

(In the end, Mr. Bundy's report substantially damaged Mr. Renkes in two unforeseen ways: First, it crafted a too-clever legal analysis to reach the conclusion that \$126,000 in company stock was legally "insignificant" -- a view the average person on the street just wouldn't buy. And second, it revealed that the attorney general deleted thousands of e-mails from his work computer on the very day that damaging news reports first appeared while denying he even knew of the reports -- a story that went beyond all credibility.)

Mr. Renkes was undone by his own conduct and poor judgment. The Alaska attorney general, being in an appointed position beholden to the governor, has always been a hybrid creature: part governor's attorney, part Cabinet officer, part department manager, part policy analyst and adviser, part people's lawyer. Alaska attorneys general succeed when they leave partisan politics to others (even while remaining cognizant of the Capitol's hazardous political currents) and give sound legal advice to both the governor and the people of Alaska. The job requires diligence and sure footing. Ordinarily it goes without saying that the attorney general's personal example and judgment must uphold impeccable standards of trust. With his personal lack of restraint, Mr. Renkes crossed a line that is deliberately very restrictive.

Alaska's attorney general must, in the end, personify the ethic of public service. The position is a privilege, a burden and a duty -- and, for Gov. Murkowski at this moment, an exercise in governing wisely. Finding a new attorney general who radiates public trust and good judgment -- and who can do so without breaking a sweat -- is job one.

BOTTOM LINE: Gregg Renkes did the right thing by resigning Saturday; now the focus is on the governor to find  
[http://zephyr.ci.anchorage.ak.us:2069/iw-search/we/InfoWeb/?p\\_action=print&p\\_docid=10825A64A...](http://zephyr.ci.anchorage.ak.us:2069/iw-search/we/InfoWeb/?p_action=print&p_docid=10825A64A...) 3/21/2005



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Anchorage Daily News

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**Legislature considers changes to ethics laws****STOCK OWNERSHIP: Bills being debated in committee.**By MATT VOLZ  
The Associated Press*(Published: April 27, 2005)*

JUNEAU -- Proposed changes to Alaska's ethics laws were heard Tuesday in House and Senate committees, as lawmakers work to close holes in the statutes revealed by an investigation into former attorney general Gregg Renkes.

Companion bills by Sen. Hollis French, D-Anchorage, and Rep. Les Gara, D-Anchorage, would establish a "bright line" limit of \$5,000 or 1 percent stock ownership in a company that a public employee can own and still work on a state matter involving that company. Gara's bill was bumped up to a \$10,000 limit in committee.

Two other bills by Sen. Ralph Seekins, R-Fairbanks, draw the line at \$10,000 or 1 percent, but make several other changes to both the executive and legislative ethics laws. Among those changes, Seekins proposes charging anybody who talks about an ethics complaint that has been filed or will be filed with a misdemeanor.

Renkes owned between \$71,880 and \$124,680 in KFx Inc. stock when he was working on a coal deal between Taiwan and Alaska that included using a coal-drying process patented by KFx.

Former U.S. Attorney Robert Bundy, hired by Gov. Frank Murkowski's office to investigate the conflict of interest allegations against Renkes, found that Alaska law did not say how much was too much stock ownership to be considered a conflict. Bundy, using an old attorney general's opinion, concluded Renkes' holdings did not cross the line.

Renkes resigned in February amid continuing allegations of wrongdoing.

All the bills heard Tuesday are meant to define what Bundy found lacking in the law. Seekins' and French's bills were heard together in the Senate State Affairs Committee, Gara's in the House State Affairs Committee.

In the House committee, finding that line proved to be problematic. After the original proposal of a \$5,000 limit, subsequent proposals of \$50,000, \$40,000 and \$35,000 were rejected before the committee settled on raising it to \$10,000.

In the Senate, questions were directed toward Seekins' confidentiality restrictions. Seekins and State Affairs Chairman Gene Therriault, R-North Pole, compared the changes to a grand jury hearing.

If probable cause is found, the matter is released to the public. If not, it remains confidential, they said.

None of the bills moved from committee.

**INSIDE:** The Senate passed a bill removing a \$50,000 cap on grants distributed by the Alaska Children's Trust.

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*Therefore, I have concluded that there is probable cause to believe that the former Attorney General's ownership of stock in KFx, ranging in value from \$71,880 to \$124,680, was a significant financial interest in the Alaska/Taiwan coal negotiations between Alaska and the Republic of China within the meaning of Section 39.52.110(b)(1) of the Ethics Act.*

This has not been an easy decision because of the absence of clear guidance in the Alaska Ethics Act and the regulations interpreting it. The fact that another well-respected lawyer has reached a different conclusion demonstrates that reasonable minds can differ about the application of the Act to the facts here. Therefore, I join Mr. Bundy in recommending that the Legislature seriously consider amending the Ethics Act by setting specific dollar amounts of stock in publicly held companies that will be treated as significant for purposes of the conflict of interest provisions in the Act.

I also want to stress that this conclusion is not tantamount to a finding that Renkes violated the Ethics Act, because (1) the conclusion that Renkes' KFx, Inc. stock ownership was significant would not by itself enable a finding or conclusion that he violated the Ethics Act, and (2) Renkes has other defenses to the charges in the complaint which the Board has not determined on their merits. Before a finding of a violation could have been made, I would have had to (1) complete an independent investigation (AS 39.52.310(g)), (2) conclude that there was probable cause to believe that a violation had been committed and issue a formal complaint (AS 39.52.350), (3) present the evidence in a hearing before an independent hearing officer, during which Renkes would have the opportunity to defend himself (AS 39.52.360), (4) the hearing

*From report of independent counsel*

Thomas M. Daniel, Esq.  
Perkins Coie LLP  
1029 West Third Avenue, Suite 300  
Anchorage, Alaska 99501

AMENDMENT # 1  
To HB 194 Version G

8:33:06 AM

REPRESENTATIVE LYNN moved Conceptual Amendment 1, which read as follows [original punctuation provided]:

*public officer*  
Any ~~state employee~~ convicted of violating a conflict of interest law, may be liable for reimbursement to the state for the cost of the investigation of the complaint, in addition to any other fines imposed by an administrative or judicial process.

8:33:59 AM

REPRESENTATIVE GARDNER objected to point out that Conceptual Amendment 1 uses the phrase "state employee" while the language in the bill is "public officer".

8:34:09 AM

REPRESENTATIVE GARDNER moved an amendment to Conceptual Amendment 1, as follows:

Delete "state employee"  
Insert "public officer"

VICE CHAIR GATTO asked if there was any objection to the amendment to Conceptual Amendment 1. There being none, the amendment to Conceptual Amendment 1 was adopted.

8:34:31 AM

REPRESENTATIVE GRUENBERG stated his support of Conceptual Amendment 1 [as amended]. He asked Representative Gara if the word "convicted" is the appropriate word to use.

8:34:59 AM

REPRESENTATIVE GARA said he thinks it's a fair not to impose a penalty on the person unless it's clear he/she "did something wrong."

8:35:44 AM

REPRESENTATIVE GRUENBERG asked if the term "investigation" would also include prosecution.

8:35:55 AM

REPRESENTATIVE GARA responded, "If I were a judge I would say it did."

8:36:13 AM

REPRESENTATIVE GRUENBERG asked if "any other fines" would be broad enough. He mentioned civil penalties.

8:36:31 AM

REPRESENTATIVE GARA stated that a penalty is a fine.

8:36:39 AM

REPRESENTATIVE GARDNER withdrew her objection [to Conceptual Amendment 1, as amended].

8:36:49 AM

VICE CHAIR GATTO asked if there was any further objection [to Conceptual Amendment 1, as amended]. There being none, it was so ordered.

Second Adopted Amendment  
Amendment # 4

8:58:26 AM

REPRESENTATIVE GRUENBERG moved Amendment 4, as follows:

→ [ Page 2, line 9:  
Delete "\$5,000"  
Insert "\$10,000"

The committee took an at-ease from 8:59:37 AM to 9:00:59 AM.

9:01:42 AM

REPRESENTATIVE GRUENBERG restated Amendment 4.

9:02:03 AM

REPRESENTATIVE RAMRAS objected to Amendment 4.

REPRESENTATIVE RAMRAS moved an amendment to Amendment 4, to change "\$10,000" to "\$35,000".

VICE CHAIR GATTO objected to the amendment to Amendment 4.

A roll call vote was taken. Representatives Elkins and Ramras voted in favor of the amendment to Amendment 4. Representatives Lynn, Gardner, Gruenberg, and Gatto voted against it. Therefore, the amendment to Amendment 4 failed by a vote of 2-4.

9:03:37 AM

REPRESENTATIVE RAMRAS maintained his objection to Amendment 4. He said that if \$10,000 is too low now, ten years from now, with inflation, it really will be too low. He reiterated his previous comments regarding attracting high quality talent.

9:05:36 AM

REPRESENTATIVE LYNN reiterated that he agrees there is a need to attract and retain talented [public officers], but said, "Talent needs to include ... ethics."

9:05:52 AM

REPRESENTATIVE GARDNER concurred [with Representative Lynn]. She emphasized the importance of discouraging participation out of self-interest, and encouraging participation for the public

good.

9:06:12 AM

VICE CHAIR GATTO stressed the importance of counting public perception, which currently may be that "we might be ... straying a little bit beyond the bar."

9:06:31 AM

REPRESENTATIVE LYNN stated his support of [Amendment 4].

9:06:56 AM

A roll call vote was taken. Representatives Lynn, Gardner, Gruenberg, and Gatto voted in favor of Amendment 4. Representatives Ramras and Elkins voted against it. Therefore, Amendment 4 passed by a vote of 4-2.

3rd Adopted Amendment  
Amendment #5

9:09:24 AM

VICE CHAIR GATTO moved Amendment 5, as follows:

Page 2, line 9.

Between "\$5,000" and "."

Delete "or one percent of the total value of the  
business, whichever is less"

9:11:31 AM

REPRESENTATIVE RAMRAS withdrew his objection to Amendment 5.

VICE CHAIR GATTO asked if there was any further objection to Amendment 5. There being none, Amendment 5 was adopted.



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February 17, 2005

The Honorable Frank Murkowski  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Re: Proposed Revisions to the Code of Ethics

Dear Governor Murkowski:

Thank you for asking us to propose improvements to the Code of Ethics to better provide guidance on those issues raised by our investigation. Building upon our research and investigation in the Renkes matter, we have reviewed the statutory schemes from a variety of states. Although no language from any one state's statutory scheme addresses completely the issues we see, we started with language and ideas from several different statutes as the basis for our proposed revisions.

First, we would add language to AS 39.52.110 to clarify when a public officer's interest in a specific matter is insignificant. As was the case in the Renkes matter, a public officer's interest in a specific matter may derive from that officer's interest in a corporation or other organization. We believe the following language would provide additional guidance and direction for evaluating the significance of such interests.

(c) For purposes of section (b)(1), a public officer's personal or financial interest in a matter is not insignificant if a business entity may realize a reasonably foreseeable material benefit or detriment as a result of the action of the official, and the public officer--

- (1) has a controlling interest in the business entity;
- (2) owns more than one percent (1%) of the voting and/or equity interest in the business entity;
- (3) owns more than \$10,000 of the fair market value of the business entity;
- (4) is a member of the board of directors or other governing board of the business entity;

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The Honorable Frank Murkowski  
February 17, 2005  
Page 2

(5) serves as an elected officer of the business entity; or

(6) is an employee of the business entity.

Thus, if an officer has an interest in, or relationship with, a business entity, he or she must determine whether that business entity has a material interest in the matter. We do not recommend attempting to define "material." Materiality is a well-recognized legal concept that allows for the myriad of situations encountered in the real world.

This language would best fit in subsection (c) to AS 39.52.110. The current subsection (c) would then become subsection (d). We have attached a red-lined version of this statute showing our suggested changes.

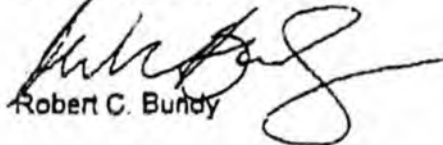
Second, we recommend further clarifying the exception for "large class of persons to which the public officer belongs" in subsection (b)(1). Mirroring the language used in the Legislative Ethics Act, AS 24.60.990(b)(1), we would add "as a member of a profession, occupation, industry, or region" to the end of this subsection such that it would read:

(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 as a member of a profession, occupation, industry, or region;

Thank you for the opportunity to provide our proposed revisions to you. Please do not hesitate to call if you have any questions or concerns. Of course, at your direction, we will make our research on these issues available to any state agency working on this matter.

Very truly yours,

  
Robert C. Bundy

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 24, 2006

**SUBJECT:** Adding costs as a penalty, raising the allowable interest in a business to \$10,000, in HSTA CS for HB194 (Work Order No. 24-LS0702\G)

**TO:** Representative Paul Seaton  
Attn: Louie Flora

**FROM:** Dan Wayne   
Legislative Counsel

I am preparing a new CS as you requested by fax today. Because "Amendment #1" is a conceptual amendment, I took some license with the wording. Placement of the amendment was left open and I put it where it made the most sense to me, in the penalty section of the Executive Branch Ethics Act. Since the bill involves only the Executive Branch Ethics Act I kept it that way by tightening up the language to clarify the terms "law" and "ethics law" in particular.

Please advise.

DCW:ljw  
06-024.ljw

Enclosure



## Alaska Aerospace

Jaska Natural Gas  
2, § 1; am §§ 18, 19  
um § 18 ch 263 SLA  
18 SLA 1978; am § 9  
; am § 37 ch 3 SLA  
- 43 ch 94 SLA 1980;  
SLA 1981; am § 2 ch  
am § 86 ch 59 SLA  
4; am § 1 ch 52 SLA  
1 SLA 1986; am § 69  
189; am §§ 12, 17 ch  
§ 3 ch 77 SLA 1991;  
LA 1992; am § 41 ch  
SLA 1992; am §§ 27,  
LA 1995; am § 16 ch  
); am § 10 ch 29 SLA  
; 56 ch 68 SLA 2000;  
, 44 ch 86 SLA 2002;  
39 — 41 ch 108 SLA

1, 2000, made a section  
tragraph (b)(55).  
it, effective April 28, 2000,

ment, effective August 20,  
(9)(E) [formerly (a)(8)(E)]  
sing "other than physician  
- subparagraph.

ent, effective July 1, 2000,  
paragraph (1) and added

ffective May 10, 2001, re-

ent, effective July 1, 2002,  
orce Investment Board" for  
nvestment Council" in sub-  
ly (a)(8)(D) and paragraph

ment, effective February 25,  
(57).

nt, effective May 22, 2003,  
).

lment, effective September  
1) added paragraph (4), in  
ed "domestic partner" for  
ted "dependent," and made  
aled former paragraph (10).  
ent, effective April 15, 2003,  
se in paragraph (b)(38).

**Purpose of the Conflict of Interest law** is to bring to light all conflicts — actual and potential. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

**Patient of a physician is a client for medical services** and falls within the scope of this chapter. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

**And source of income.** — The Conflict of Interest

law encompasses a physician's individual patients as sources of income. *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469 (Alaska 1977).

**Elected official.** — AS 39.50 does not define "elected official" in its definitions section, AS 39.50.200, but a successful legislative candidate is an elected official as that term is used in AS 39.50.060(b). *Grimm v. Wagoner*, 77 P.3d 423 (Alaska 2003).

## NOTES TO DECISIONS

## Chapter 51. Incentive Award Program and Miscellaneous Provisions.

*Sec. 39.51.010. Misuse of confidential information. [Repealed, § 21 ch 166 SLA 1978. For current law see AS 12.56.860.]*

*Secs. 39.51.020, 39.51.030. [Renumbered as AS 39.90.010 and 39.90.020.]*

*Secs. 39.51.110 — 39.51.200. Incentive awards program. [Repealed, § 3 ch 60 SLA 1989.]*

## 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 — 39.52.270)
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)

**Cross references.** — For additional laws on conflict of interest, see AS 39.50.

**Administrative Code.** — For executive branch code of ethics, see 9 AAC 52.

## NOTES TO DECISIONS

**Scope.** — This chapter concerns ethical violations by employees of the state executive branch, including state agencies, boards and commissions. *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

**No cause of action.** — Property owner, who alleged that city officials misused city and state funds in

connection with the removal of an encroachment from her property, had no cause of action, where there was no allegation that the officials were acting in any state executive capacity. *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

## Article 1. Declarations.

### Section

10. Declaration of policy

**Sec. 39.52.010. Declaration of policy.** (a) It is declared that

- (1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;
- (2) a code of ethics for the guidance of public officers will
  - (A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;
  - (B) improve standards of public service; and

(C) promote and strengthen the faith and confidence of the people of this state in their public officers;

(3) 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;

(4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

(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; am § 80 ch 74 SLA 1998)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a) rewrote paragraphs (1)-(3) and added paragraphs (4)-(7).

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

Administrative Code. — For executive branch code of ethics, see 9 AAC 52.

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 prevent 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 in a specific matter, a public officer

(1) personal or financial interest possessed generally by the public officer belongs; or

(2) action or influence

(c) The attorney general's board must be guided by ch 87 SLA 1986)

Significance of persons — Substantial evidence supports the Department's findings that the Department had neither a personal nor financial interest in the awarding of a contract

Sec. 39.52.120. Misuse of office. — An attempt to use, an officer or employee may not grant unwarranted benefits

(b) A public officer or employee may not

(1) seek other employment while in that position;

(2) accept, receive, or exercise any responsibilities from a source that is

(3) use state time, financial interests;

(4) take or withhold action that has a personal or financial interest;

(5) attempt to benefit or require another public officer at any time; or

(6) use or authorize government asset or resources to prohibit use of the government if there is no special character purposes"

(A) means having the following: (i) candidate or potential candidate; (ii) political party or organization; (B) but does not include interests through the normal process of the Board of Fisheries or the Board of Game and Wildlife

(c) In addition to other provisions, a public officer has not a financial interest in a matter if the officer is performing a task on behalf of the public or supervisor, if any. A public officer during the work day is not performing an inconsequential, and unconnected period of campaigning.

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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)

#### NOTES TO DECISIONS

**Significance of personal or financial interest.**  
— Substantial evidence supported the hearing officer's findings that Department of Corrections' official had neither a personal nor a financial interest in the awarding of a contract concerning the housing of minimum security prisoners to a bidder for whom she had served as vice-president of operations. *KILA, Inc. v. State, Dep't of Admin.*, 876 P.2d 1102 (Alaska 1994). Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

**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;

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time; or

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of the communications equipment in the governor's residence so long as there is no special charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning.