

HB

348

LEGAL SERVICES

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

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

MEMORANDUM

March 30, 2010

SUBJECT: Membership of the State Personnel Board
CSHB 348(JUD) (Work Order No. 26-LS1360\S)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Alpheus Bullard *AB*
Legislative Counsel

This memorandum accompanies the committee substitute described above. I have one comment.

The bill provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. Note that this requirement, that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarini, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of

Representative Jay Ramras

March 30, 2010

Page 2

names provided by particular groups. The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17.

Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
10-066.med

Enclosure

CS FOR HOUSE BILL NO. 348(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE LYNN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the membership of the state personnel board."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1. AS 39.25.060(a) is amended to read:**

4 (a) The personnel board is composed of five [THREE] members appointed by
5 the governor and confirmed by the legislature meeting in joint session. The governor
6 may make an appointment only from a list of at least three nominees selected by
7 the chief justice of the Alaska Supreme Court, subject to the right of the governor
8 to request additional nominations. In appointing members under this subsection,
9 the governor shall ensure that the board has at least one member of the political
10 party that had the largest number of registered voters and one member of the
11 political party that had the second largest number of registered voters at the time
12 of the most recent general election at which a governor was elected. The term of
13 office of a member is six years; however, notwithstanding AS 39.05.080(4), the
14 member remains in office after expiration of the term until a successor is
15 confirmed. A vacancy in an unexpired term shall be filled by appointment by the

1 governor for the remainder of the term. The appointment is made from a list of
 2 nominees and subject to confirmation in the same manner as a full-term appointment.

3 * **Sec. 2.** AS 39.25.060(b) is amended to read:

4 (b) Members of the board may not be employees of the state. Not more than
 5 three [TWO] members of the board may be members of the same political party.

6 * **Sec. 3.** AS 39.25 is amended to by adding a new section to read:

7 **Sec. 39.25.064. Prohibited conduct by board members.** (a) A member of the
 8 personnel board may not, during the person's term of office,

- 9 (1) hold or campaign for elective office;
 10 (2) be an officer of a political party or political group;
 11 (3) lobby;
 12 (4) employ a lobbyist; or
 13 (5) assist in lobbying.

14 (b) In this section,

- 15 (1) "political group" has the meaning given to "group" in
 16 AS 15.13.400;
 17 (2) "political party" has the meaning given in AS 15.13.400.

18 * **Sec. 4.** AS 39.25.070 is amended to read:

19 **Sec. 39.25.070. Powers and duties of personnel board.** In addition to the
 20 other duties imposed by this chapter, the personnel board shall

- 21 (1) approve or disapprove amendments to the personnel rules in
 22 accordance with AS 39.25.140;
 23 (2) consider and act upon recommendations for the extension of the
 24 partially exempt service and the classified service as provided in AS 39.25.130;
 25 (3) hear and determine appeals by employees in the classified service
 26 as provided in AS 39.25.170;
 27 (4) establish its own rules of procedure; three [TWO] members
 28 constitute a quorum for the transaction of business and three [TWO] affirmative votes
 29 are required for final action on matters acted upon by the board;
 30 (5) elect a chair from its membership;
 31 (6) have the power to administer oaths, subpoena witnesses, and

1 compel the production of books and papers pertinent to a hearing authorized by this
2 chapter;

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

4 (8) carry out its powers and duties under AS 39.52.

5 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **MEMBERS OF PERSONNEL BOARD; TRANSITION; STAGGERED TERMS.**

8 Notwithstanding AS 39.25.060(a), as amended by sec. 1 of this Act, a member of the
9 personnel board serving on the effective date of this Act remains in office for the duration of
10 the term to which appointed and confirmed. Within 60 days after the effective date of this
11 Act, the chief justice of the Alaska Supreme Court shall submit to the governor a list of at
12 least six nominees for the two additional seats on the personnel board. The governor shall
13 appoint one member to a five-year term and one member to a six-year term. The governor
14 shall specify the term of each member appointed subject to this section.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic
Development, Trade &
Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
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Alaska State Legislature



House of Representatives

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1292 Sadler Way, Suite 324
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House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 4

From: Jane W. Pierson

Date: March 29, 2010

Re: Final HJUD CS for HB348

Today, the HJUD Committee heard and passed HB348 from committee with the following three attached amendments:

Please draft a final CS

Any questions, give me a call.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

AMENDMENT #1

OFFERED IN THE HOUSE
TO: CSHB 348(STA)

Offered by: Rep. Lynn

1 Page 2, line 9, following "contractors.":

2 Insert "(a)"

3

4 Page 2, line 14:

5 Delete ", political committee,"

6

7 Page 2, following line 18:

8 Insert a new subsection to read:

9 "(b) In this section,

10 (1) "political group" has the meaning given to "group" in
11 AS 15.13.400;

12 (2) "political party" has the meaning given in AS 15.13.400."

Conceptual
AMENDMENT #2

By Bruner

OFFERED IN THE HOUSE

TO: CSHB 348(STA) (26-LS1360\E)

1 Page 1, line 10:

2 Delete "of the candidate for governor who received the highest number of votes"

3 Insert "that has had the highest number of registered voters"

4

5 Page 1, lines 11-12:

6 Delete "of the candidate for governor who received the second highest number of

7 votes"

8 Insert "that has had the second highest number of registered voters"

#3

Conceptual Amendment to CSHB 348 (STA)

by Eversley

lines
page 2 lines 8-13

delete all material

and insert

" Sec. 39.25.064. Prohibited conduct by board members.

A member of the personnel board may not, during the
member's term of office,

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

Session:
Alaska State Capitol, #104
Juneau, AK 99801-1182

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Sponsor Statement for HB 348 (Version R) **"An Act relating to membership of the state personnel board."**

By Representative Bob Lynn

HB 348 brings a broader representation to the Personnel Board so it can operate, or at least appear to operate, with greater independence when addressing complaints, and carrying out its other powers and duties under AS 39.52 Alaska Executive Branch Ethics Act.

The bill increases board membership from three to five members, allowing the governor to make an appointment from a list of at least three nominees selected by the Chief Justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations. It also ensures that the board has at least one member of the two parties that received the most votes in a recent election.

The Personnel Board, as currently constructed, lends itself to criticism that it's a creature of the governor rather than an independent body when it comes to investigating Executive Branch ethics complaints. As we know, perception can be the same as reality in the public eye.

HB 348 also prohibits certain conduct by board members and board employees and contractors that can lead to conflicts of interest or at least an appearance of conflict, such as campaigning for elective office; being an officer of a political party, political committee, or group; or lobbying, employing, or assisting a lobbyist.

Like other ethics-related measures, the purpose of this bill is to build a better foundation of trust between the people of Alaska and those they elect to public office.

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

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Sectional Analysis for HB 348 (Version R) "An Act relating to membership of the state personnel board."

Section 1. Amends AS 39.25.060(a) to increase the membership on the Personnel Board from three to five members. The governor may make an appointment from a list of at least three nominees selected by the chief justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations. It ensures that the board has at least one member of the two parties that received the most votes in a recent election. It also requires that a member remains in office after expiration of term until a successor is confirmed.

Section 2. Amends AS 39.25.060(b) to increase the number of board members who can be of the same political party from two to three of the five-member board.

Section 3. Adds new section AS 39.25.064 that prohibits board members and board employees and contractors from certain activities that relate to possible conflicts of interest or at least an appearance of conflict.

Section 4. Amends AS 39.25.070 to add conforming language stating that three members constitute a quorum and three affirmative votes are required for final action on matter.

Section 5. Amends the uncodified law by adding a new section stating that a member of the personnel board serving on the effective date of this Act remains in office for the duration of the term which appointed and confirmed. Within 60 days of the effective date, the chief justice of the Alaska Supreme Court shall submit to the governor a list of at least six nominees for the two additional seats on the personnel board. The governor shall appoint one member to a five-year term and one member to a six-year term.

Alaska State Legislature

Chairman

State Affairs Committee

Member

Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees

Labor and Workforce Development
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A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

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Explanation of Changes in CSHB348 (STA) From original Version R to current Version E

Section 3: Amended the proposed section on prohibited conduct to include the word, "political," after the word, "or," on Page 2, line 14 in the latest Version E.

Section 3: Amended the proposed section on prohibited conduct to change and re-format Version R subsection (3) from (3) **lobby, employ, or assist a lobbyist** to now read in Version E on Page 2, lines 16-18:

- (3) **lobby;**
- (4) **employ a lobbyist; or**
- (5) **assist in lobbying.**

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 348
 () Publish Date: _____

Identifier (file name): HB348-DOA-DOPLR-03-08-10 Dept. Affected: Administration
 Title: _____ RDU: Central Administrative Services
"An Act relating to the membership of the state personnel board." Component: Personnel
 Sponsor: Representative Lynn
 Requester: (H)STA Component Number: 56

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Division of Personnel and Labor Relations.

Prepared by: Nicki Neal, Director
 Division: Division of Personnel and Labor Relations
 Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone 465-4429
 Date/Time 3/8/10 12:00 PM
 Date 3/8/2010

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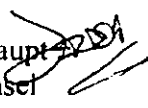
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 16, 2010

SUBJECT: Reference to Political Party, Political Committee, and Political Group (CSHB 348(STA); Work Order No. 26-LS1360\E)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed is the final CS(STA) you requested. I have one comment. In sec. 3, reference is made to "political party, political committee, or political group." These terms are not defined in AS 39.25, although it appears that it might have been intended to reference similar terms that are defined in AS 15.13. In this regard, you may want to contact Alpheus Bullard to clarify this ambiguity.

GPL:ljw
10-187.ljw

Enclosure

Chapter 13: State Election Campaigns

Sec. 15.13.400. Definitions.

In this chapter,

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

Chapter 60: General Provisions

Sec. 15.60.010. Definitions.

In this title, unless the context otherwise requires,

(23) "party district committee" means the political party committee that performs the executive function for a region representing an area larger than a precinct and smaller than the state;

(24) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party;

(25) "political party" means an organized group of voters that represents a political program and

(A) that nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or

(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election;

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MEMORANDUM

February 8, 2010

SUBJECT: Membership of the State Personnel Board
(Work Order No. 26-LS1360\A)

TO: Representative Bob Lynn
Attn: Mike Sica

FROM: Alpheus Bullard *AB*
Legislative Counsel

This memorandum accompanies the work order described above.

You asked for a bill that would make the appointment of Personnel Board (board) members under AS 39.25.060(a) similar to the manner in which public members are appointed to the Select Committee on Legislative Ethics under AS 24.60.130(b). You asked that the bill also include provisions addressing (1) the removal of board members, (2) the filling of vacancies and unexpired terms, (3) conflicts of interest, and (4) alternate members. I have a few comments.

Board members; increased membership and a constitutional concern relating to member appointment

The draft increases the number of board members (from three) to five,¹ making the membership of the board more difficult to "capture," and provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. Note that this requirement that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

¹ Mike Sica of your staff clarified that the intent of the legislation related to making sure that the board did not operate, or appear to operate, as a rubber stamp in investigating and addressing complaints concerning the governor. More members makes it less likely that (1) a majority of the board would be appointed by a sitting governor and (2) that the membership of the board would be of a single mind in any board proceeding. Because I increased the number of board members, I did not include a provision for alternate members.

Representative Bob Lynn
February 8, 2010
Page 2

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarj, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of names provided by particular groups. The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17.

Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

Quick notes

I included a provision, sec. 3 of the draft bill (prohibited conduct by board members and board employees and contractors), that relates to possible conflicts of interest and appearances of a conflict of interest. Is this what you had in mind? Please advise.

I did not prohibit a member appointed by the governor from participating in a proceeding that involved that same governor. Such a provision seemed unnecessary given that members are appointed from lists submitted by the chief justice.

Representative Bob Lynn
February 8, 2010
Page 3

I hope that this draft bill is consistent with your intent. If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
10-062.ljw

Enclosure

Personnel board appointments get another look

By SEAN COCKERHAM
scockerham@adn.com
(03/16/10 18:11:01)

Alaska legislators are talking about changing the law so governors can no longer appoint whoever they want to the state personnel board, the panel that dismissed ethics complaints against then-Gov. Sarah Palin on "Troopergate" and many other matters.

Anchorage Republican Rep. Bob Lynn, who has been supportive of Palin, sponsored a bill that would make the governor pick from a list submitted by the chief justice of the state supreme court. Lynn said it would reassure the public.

"It helps protect and insulate the governor from what could be, and usually is, unfair criticism from the public that you have the fox watching the hen house," Lynn said Tuesday, as the bill passed its first committee.

Anchorage Democratic Rep. Les Gara, no fan of Palin's, favors Lynn's House Bill 348. Gara said he thinks some of the people filing ethics complaints against Palin went overboard. But he said the current system casts a lot of doubt about the rulings made by members of the Personnel Board, who he said could be political allies of the governor.

"I did not follow every complaint in any great detail. But you always do wonder whether a personnel board appointed by Republican governors is going to be objective when it looks at conduct by a Republican governor," Gara said.

The three members of the Personnel Board are charged in Alaska law with looking into ethics complaints made against the governor and other members of the executive branch. The current members were all appointed by Republican governors, although two of them aren't registered with a political party.

The board members have six-year terms and only one, Alaska Christian College President Keith Hamilton, was appointed by Sean Parnell, the current governor. Board member Debra English was reappointed by Palin in 2008 and Al Tamagni was appointed in 2006 by Frank Murkowski.

Lynn said he does not think there's been a problem with the Personnel Board. "But there's always the perception out there and, in politics, perception often becomes reality in the public mind," he said.

Current law says only that the board members can't be state employees and no more than two of the three of can be registered with the same political party. They are appointed by the governor and then confirmed by the Legislature.

Lynn's bill would expand the board to five members. He said that would provide more of a broad range of opinion. The panel would also need to include at least one member from each of the top two political parties in the state.

The governor would be required to pick from a list of at least three nominees from the chief justice of the Alaska Supreme Court, although the governor could reject the entire list and ask the chief justice for another.

Gara said called that a loophole and said the governor shouldn't get to keep asking for new nominees over and over if he or she doesn't like the slate presented. But Lynn described it as a way to deal with potential separation of powers issues involved in the Legislature reducing a governor's ability to make appointments .

The attorney general's office raised the separation of powers issue Tuesday. But the Parnell administration didn't object to the bill as it passed from the House State Affairs Committee. The bill next goes to the judiciary committee, chaired by Fairbanks Republican Rep. Jay Ramras. Ramras last year deemed a "whitewash" the report commissioned by the personnel board that found Palin not responsible for any wrongdoing in the so-called Troopergate affair.

Zane Henning, who had two ethics complaints against Palin dismissed, last month testified to a legislative committee that elected officials rather than a governor's appointees should oversee the complaints. His concern seemed to resonate with some legislators. "I'm just wondering is there maybe too close of a relationship there," Sen. Kevin Meyer, R-Anchorage, asked during that hearing.

Assistant Attorney General Judy Bockmon said an independent counsel investigates ethics complaints against the governor, lieutenant governor or attorney general in an effort to separate the Personnel Board from those high-level officials.

The outcome of at least one Personnel Board case from the Palin era remains a mystery. Independent Counsel Tom Daniel on July 14 found "probable cause" that Palin's legal defense fund violated state ethics law. But the board has taken no public action and the fund's Web site still solicits donations.

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Palin critics question ethics rules proposals

PALIN ERA: New regulations would address traveling on the state's dime, paying legal bills.

By LISA DEMER
ldemer@adn.com

(02/08/10 22:44:25)

JUNEAU -- A legislative committee on Monday took up ethics issues that erupted during the Palin administration, but it's not clear whether the panel intends to take any action.

Attorney General Dan Sullivan has proposed state rules establishing when it's appropriate for the state to pay for the travel of family members of the governor or lieutenant governor. Another proposal sets out when the state should pay legal bills for state officials defending against ethics complaints.

Former Gov. Sarah Palin was hit with numerous ethics complaints during her 2 1/2 years in office. She said she quit in part because of what she called frivolous ethics complaints and personal legal bills amounting to an estimated \$600,000.

Most of the ethics complaints against Palin were dismissed. But she settled one by reimbursing the state more than \$8,000 for her children's air travel.

Some parts of the package Sullivan is proposing go beyond the Palin-era controversies. For instance, another proposed rule change would do away with a requirement for state officials to disclose as gifts any travel for state business paid by others. But they still would have to file travel reports, which would be public.

Sullivan is trying to make the changes through new state regulations, which don't need legislative approval.

Oversight comes from the joint House-Senate Administrative Regulation Review Committee, which examines regulations to make sure they are allowed under state law.

The panel agreed to hold a public hearing on the ethics measures after being pushed by Palin critic Andree McLeod. House leaders also requested it, said state Rep. Wes Keller, R-Wasilla, who is the committee chairman.

LEGAL FEES, FAMILY TRAVEL

Under the proposed rules, the state could cover the costs of defending a public official against ethics complaints if the official were exonerated, Assistant Attorney General Judy Bockmon told the committee.

Travel would be covered if the presence of a family member is required for state business or has a public purpose. The proposal says that would include a state-sponsored event that the family of the governor or lieutenant governor usually attends, or an event in which the family member is representing the state.

State Rep. David Guttenberg, D-Fairbanks, asked Bockmon whether state law gives any guidance on paying for family travel.

It doesn't, she said.

In that case, why try to decide when it's appropriate -- maybe it shouldn't be permitted at all, Guttenberg responded.

That's up to the Legislature, Bockmon said. There might be value to the state for the family to attend. It depends on the nature of the event.

State Rep. Carl Gatto, R-Palmer, said it might just save worry and time for a governor with young children to bring them along.

CRITICS TESTIFY

McLeod, who filed a number of ethics complaints against Palin and her staff, urged the committee to reject the changes.

"Are these changes valid? Do they improve the standards of public service? Do they promote the faith and confidence of the people in this state in their public officers? I submit that they do not," McLeod told the legislative committee.

McLeod said private citizens with questions about whether a public official has crossed a legal or ethical line can't get ethics opinions the way state employees can. So the public has no recourse except filing complaints to get answers, she said.

The Executive Branch Ethics Act is Important, and the attorney general shouldn't be trying to change the law, another Palin critic, Zane Henning, told the committee. The Legislature should make any needed changes, he said.

"I object to the entire process that is being pushed through here," Henning said.

The ethics law needs reform, but not in the way the attorney general wants, Henning said. Elected officials, not the governor-appointed Personnel Board, should oversee ethics complaints against state officials, he said.

Both of his complaints against Palin were dismissed. One involved an interview about the vice presidential campaign that she gave to Fox News in her state office; the other concerned the fact she collected state expense payments while living in her own home in Wasilla.

ARM'S-LENGTH INVESTIGATORS

Henning's concerns about the Personnel Board seemed to resonate with legislators.

"I'm just wondering is there maybe too close of a relationship there," state Sen. Kevin Meyer, R-Anchorage, asked during the hearing.

Bockmon told the committee an independent counsel investigates ethics complaints against the governor, lieutenant governor or attorney general in an effort to separate the Personnel Board from those high-level officials.

The committee can't halt the regulations from taking effect during the annual legislative session,

but can express disapproval and propose new laws to override any objectionable regulations.

The Department of Law has solicited public comment and held a hearing on the ethics changes, Bockmon said. The period for comment has ended and the department must now decide what to do. It could adopt the provisions as is or with minor changes, or let the matter drop with no action.

The committee hasn't yet decided how to proceed, Keller said.

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**Costs of dismissed Palin ethics complaints pile up
Personnel board member says tab is "close to about a third of a million dollars."**

By SEAN COCKERHAM
scockerham@adn.com

(05/27/09 21:57:12)

The Alaska Personnel Board, clearly frustrated with the pile of ethics complaints filed against Gov. Sarah Palin, wants to publicize the cost of dealing with them.

The personnel board members decided at a Wednesday meeting to work with the attorney general's office on how to make public the cost of addressing each ethics complaint, without violating the board's confidentiality rules.

"We've spent pretty close to about a third of a million dollars, and it's getting to be really expensive," said Al Tamagni, a member of the board.

Also Wednesday, the three-member board dismissed another complaint, this one involving Palin and her political action committee, and heard testimony from a woman who asserted fear of retaliation has prevented her from filing a complaint against the governor.

The governor's office said it is the 13th ethics complaint against Palin or her staff that has been resolved without finding of an executive ethics act violation. But Palin has agreed to reimburse the state in order to settle an ethics complaint over 10 state-paid trips taken by her children. A "few more" complaints are pending a decision by the personnel board, the governor's office said.

Andree McLeod, an Anchorage activist who has filed multiple ethics complaints against Palin and her staff, said after the meeting that the board is trying to squash accountability by saying it costs too much.

"The whole way to mitigate all this is for Palin to behave ethically," said McLeod, who filed the complaint that was dismissed by the board on Wednesday.

Valerie Henning told the board that fear of a backlash has prevented her from filing a complaint against the governor's practice of collecting per diem for time spent at her home in Wasilla. Henning's husband, Zane, earlier had an ethics complaint dismissed by the board. His complaint alleged Palin violated ethics law by holding national television interviews concerning her run for vice president from the governor's office.

Valerie Henning brought up to the board the statement that Palin's chief of staff, Mike Nizich, made on April 22 after the filing of an ethics complaint against Palin that was released to the press.

"I hope that the publicity-seekers will face a backlash from Alaskans who have a sense of fair play and proportion. I served six previous governors, and I've never seen anything like the attacks against governor Palin," Nizich said in a press release distributed by the governor's office.

Valerie Henning tried to get board members to suggest some alternative to making the ethics complaint, saying "I'm afraid of retaliation, basically."

Palin spokesman Bill McAllister said Nizich was simply asking that Alaskans who have a "sense of fair play and proportion" speak up about what's going on.

"I don't know what she means by retaliation, but certainly some people have been raising their voices in protest of this abuse of the ethics act," McAllister said. "People make these allegations against the governor and they keep getting dismissed and dismissed and dismissed, and some people are saying 'What's going on here?'"

Pro-Palin bloggers have assailed "ankle biter" ethics complainants in writing and KBYR talk radio host Eddie Burke has gone after McLeod on his show, saying he was going to hunt down evidence she was motivated by not getting a state job.

One of the personnel board members, Tamagni, last fall asked a state attorney if the board could charge attorney fees for Alaskans who file "a frivolous or meritless" ethics complaint. It's not clear how the state would judge a complaint frivolous, but charging for them would require changing the law.

Personnel board members spoke Wednesday about possibly pursuing changes in the law regarding their ethics complaint procedures -- such as changing the "thresholds for investigations."

Ethics complainants in the audience asked board chair Debra English for detail after the meeting, but she curtly brushed them off, saying the meeting was over and she wasn't going to say more.

English also refused to answer when a Daily News reporter asked what the board had in mind. She said the reporter should have come before the board and given public testimony in order to get any questions answered from its members.

Members of the personnel board are volunteers appointed by the governor, although all three of the current members were in place when Palin took office in 2006. Palin last year reappointed English to a six-year term but hasn't had a role yet in either of the two other positions, which have terms expiring in 2010 and 2012.

The governor also has the power to remove members of the personnel board, but only for cause.

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March 8, 2010

Memorandum

TO: Representative Bob Lynn
FROM: Chuck Burnham, Legislative Analyst
RE: Background: Selection of Public Members for the Select Committee on Legislative Ethics
LRS Report 10.197

You asked about the history of the selection process for public members of the Select Committee on Legislative Ethics. Specifically, you asked why the Chief Justice of the Alaska Supreme Court, rather than the Legislature, appoints the five public members of the Committee.

As you know, pursuant to § 9 ch 113 SLA 1986, the Select Committee on Legislative Ethics (SCLE) was expanded from seven to nine members in order to increase the number of "public members" (non-legislators) from one to three.¹ Public membership was subsequently expanded pursuant to § 18 ch 127 1992 to comprise five of the nine members of the SCLE. Under the provisions of AS § 24.60.130(b)(3), public members are to be appointed by the Chief Justice of the Alaska Supreme Court, subject to confirmation by two-thirds of both chambers of the Legislature.

Changes to the ethics regime of the Legislature, and specifically to the SCLE, in the mid-1980s appear to have been prompted by concerns over a number of investigations of certain Legislators' relationships with lobbyists and businesses seeking to win contracts from the state.² We include, as Attachment A, copies of five articles that appeared in the *Anchorage Daily News (ADN)* between January and July, 1986, that variously detail individual Legislators' financial involvement with lobbyists and to a number of Legislators receiving trips, flights, and other items of significant value by at least two companies seeking state contracts of substantial value.

Our review of committee minutes and newspaper reports from the period in which the expansion of the SCLE was being considered by the Legislature indicates that the increase of public membership was prompted by constituent concerns that the composition of the Committee at that time (six Legislators and one public member) did not sufficiently ensure that ethics violations would be vigorously investigated and punished. Attachment B is an article from the May 8, 1986, edition of the *ADN* that discusses the passage of the ethics legislation in question (HB 218) by the Senate Finance Committee. In that article, the bill's sponsor, Representative Pat Pourchot, indicates that the appointment of public SCLE members by the Supreme Court was intended to "remove the possibility of charges of 'legislative bias' by providing that public members are initially selected by the head of the judicial branch of government . . ."³

¹ Pursuant to AS § 24.60.130(c), "no more than one public member may be a former legislator and no more than two public members of the committee may be members of the same political party."

² These changes also occurred on the heels of an unsuccessful attempt to impeach Governor Bill Sheffield, and the Legislature's subsequent overhaul of the ethics laws of the executive branch. It appears reasonable to conclude that those recent activities played some role in both the public's desire for additional representation on the SCLE and the Legislature's willingness to have those members appointed by the Judiciary.

³ John Lindback, "Senate Panel OKs Ethics Bill," *Anchorage Daily News*, p. C1, May 8, 1986.

Committee minutes for HB 218 show no significant discussion of or concern over the judicial appointment of public members of the SCLE. Concern over the constitutionality of the bill was briefly discussed in a March 3, 1985, meeting of the House State Affairs Committee. Specifically, members questioned whether the bill violated Article II, Section 12, of the Alaska Constitution, which in part provides that each house of the Legislature "is the judge of the election and qualifications of its members . . ." Representative Pourchot responded that he had obtained a legal opinion on that question and was assured that the bill conformed because, regardless of the composition of the SCLE, pursuant to AS § 24.60.174, sanctions recommended by the Committee require approval of the chamber in which the accused Legislator serves.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or require additional information.

Attachment A

John Lindback, "Senator Discloses Ties to Lobbyist," *Anchorage Daily News*, January 14, 1986

John Lindback, "Trip Stirs Questions on Ethics Computer Company Hosting Lawmakers," *Anchorage Daily News*, March 22, 1986

John Lindback, "Private Jet, Free Rides: Legislators Use Enserch Plane," *Anchorage Daily News*, April 6, 1986

John Lindback, "Investigations of Pignalberi Take 2 Tracks," *Anchorage Daily News*, July 9, 1986

John Lindback, "Dischner Files Suit Over Loan Lobbyist Claims He Acted Under Duress," *Anchorage Daily News*, July 22, 1986

NewsBank America's Newspapers

SENATOR DISCLOSES TIES TO LOBBYIST

Anchorage Daily News (AK) - Tuesday, January 14, 1986

Author: JOHN LINDBACK Daily News reporter ; Staff

At the direction of the legislature's ethics committee, an Anchorage senator disclosed on the opening day of the legislative session his personal business ties to a lobbyist and a former municipal official.

Sen. Tim Kelly, a Republican from East Anchorage, disclosed that he holds a 2.5 percent business interest in the Old Anchorage Salmon Bake, a downtown tourist attraction serving seafood to summer visitors.

Ed Dankworth, a former state senator who now lobbies the legislature for Veco International, and Don Smith, a former Anchorage Assembly member, also own shares of the business, Kelly said. Smith owns 50 percent while Dankworth also owns a 2.5 percent share, he said.

Kelly disclosed the information after he sought a formal opinion from the ethics committee on whether he needed to make the business ties public. Information included in the opinion said Kelly purchased his share of the business last year for \$5,000.

The Select Committee on Legislative Ethics is composed of three members of the Senate, three members of the House and one member of the public.

In a strongly worded opinion completed last September and released for the first time Monday, the committee said Kelly's business ties to Dankworth and Smith were sufficient to constitute a "substantial financial matter" under the state ethics code.

"I disagree with the opinion," Kelly said. He and Dankworth do not have any say in the business' management and they've never even met to talk about the business, he said.

"But I asked for the opinion, entered it and so I complied," Kelly said.

The committee said that it is reasonable for its members to take a strict view of the ethics code requirements.

"It would be better to err on the side of requiring too much disclosure, rather than too little," according to the opinion.

The committee said his relationship with Smith, a veteran Anchorage Assembly member who lost a re-election bid last October, should be disclosed because municipal governments in Alaska can be construed as subsidiaries of the state. The ethics code requires disclosure by legislators of economic ties to officials from other branches of government.

"While municipalities may technically not be 'another branch' of government, they are in fact creatures of the state. Municipalities have no independent existence under the U.S. Constitution, as do the federal and state governments; they derive their existence and their powers solely from state government," the committee said.

The committee also argued that municipalities are dependent on the state for financial aide. "... There is frequent lobbying of legislators by municipal officials on behalf of their cities," the panel stated.

Two House members were the only other legislators to file disclosure statements on Monday -- a mostly uneventful opening day of the 1986 session.

Rep. Pat Pourchot, D-Anchorage, disclosed that he owns a partnership interest in a Juneau residence with oil company lobbyist Jim Palmer. Pourchot also said he and his wife, Alaska State Board of Education member Janie Leask, share ownership of bank accounts and property.

House Majority Leader Don Clocksin, D-Anchorage, reported that he is buying a house in Juneau from an employee of the Legislative Affairs Agency. He also mentioned that he and his wife, Alaska Women's Commission Chairman Betty Ramage, have numerous "close economic associations."

The filing of ethics code disclosure statements and showing up for opening day floor sessions in the House and Senate were

the only real deadlines faced by legislators on Monday.

Floor sessions included the ceremonial actions of notifying the governor that the two houses had officially convened. Also, House Speaker Ben Grussendorf and Senate President Don Bennett referred new bills to committees for their consideration.

The 120-day session convened in an atmosphere of calm, with some legislators predicting that election-year politics may encourage a polite session. Most incumbents are expected to run for re-election to the legislature later this year. Two senators -- Bennett and Edna DeVries of Palmer -- have announced plans to run for lieutenant governor.

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TRIP STIRS QUESTIONS ON ETHICS COMPUTER COMPANY HOSTING LAWMAKERS

Anchorage Daily News (AK) - Saturday, March 22, 1986

Author: JOHN LINDBACK Daily News reporter ; Staff

Transalaska Data Systems, the company that is hosting two of Alaska's most powerful legislators in San Francisco this weekend, is trying to sell computer equipment to the state that could cost \$1 million to \$3.5 million.

Deputy Commissioner of Administration Jim Shea said Friday that he has been studying the purchase of a so-called "intelligence network" for the state's extensive computer system and that Transalaska is one of three companies offering such equipment.

An intelligence network allows different brands of computers to communicate quickly and easily. Purchase of the equipment could speed up communications between state workers whose departments have purchased different brands of computers, Shea said.

No competitive bidding process has started yet because it needs further study and the state's revenue picture has been uncertain, he said.

How much the system costs depends on how fancy a system the state wants or can afford, according to Shea. But he estimated that it could cost from \$1 million to \$3.5 million.

"We're in the process of learning about it and getting a good cost-benefit analysis on it before we move," he said.

House Finance Committee Chairman Al Adams and Senate Finance Committee Co-Chair John Sackett flew to San Francisco on Friday for a demonstration of the computer equipment. Also on the plane was Ray Gillespie, Gov. Bill Sheffield's chief of staff.

Because of the jobs they hold, all three men are considered to be highly influential in the state's budget process, including the insertion of funds in the budget for major equipment purchases of any type.

Transalaska is marketing the equipment in conjunction with Tandem Computers of California.

Adams was quoted before he took the trip as saying that Transalaska lobbyist Kim Hutchinson of Juneau handled the arrangements and would be paying his expenses.

Hutchinson has declined to say whether he or his employers are paying the bills for the legislators. But he did confirm that he invited all three men to attend the computer demonstration.

Gillespie, meanwhile, said he was treating the trip as a weekend off. He took leave from his job and paid his own way, according to John Greely, Sheffield's press secretary.

No state records were available Friday that showed state funds paid for Sackett and Adams. Aides to both legislators said they didn't know who paid the bills.

The state's ethics law for legislators says a lawmaker may not accept or receive a gift of travel if it is "intended as a reward or inducement" for an official action.

It also states that "a gift of travel and hospitality within the state received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited ..." The law provides no specific exemption for a gift of travel out of state.

Neither the House nor Senate chairmen of the legislature's ethics committee would comment on the matter Friday.

Senate President Don Bennett and Rep. Mike Miller, D-Juneau, said they shouldn't comment in case a complaint about the trip is filed with the Select Committee on Legislative Ethics.

"If I gave my opinion now I'd have to disqualify myself if it came before the committee," said Bennett, R-Fairbanks. Miller agreed.

Transalaska officials could not be reached Friday for comment on the Adams and Sackett trip. President Robbie Mattson and Chairman Clint Pickett were reported to be out of Anchorage until Monday.

The trip to California is only part of Transalaska's lobbying effort this session.

Rep. H.A. "Red" Boucher, chairman of the House Committee on Telecommunications, said he attended a Feb. 6 dinner for legislators in Juneau hosted by Transalaska and Tandem Computers at the Baranof Hotel. No mention was made of the computer equipment but the two companies announced to legislators that they had formed an association with one another, Boucher said.

"I wasn't that excited about it" Boucher said, arguing that the state needs to carefully study its computer needs and past purchases before making a major new equipment buy. The dinner made so little an impression on him, Boucher said, that he couldn't remember for sure which other legislators attended.

His impression at the dinner was that he was being hosted by "just another outfit from Silicon Valley hustling Alaska," Boucher said.

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 **NewsBank** America's Newspapers**PRIVATE JET, FREE RIDES : LEGISLATORS USE ENSERCH PLANE**

Anchorage Daily News (AK) - Sunday, April 6, 1986

Author: JOHN LINDBACK Daily News reporter ; Staff

Members of the Alaska Legislature quietly ride for free on a private jet owned by Enserch Corp., a Texas-based company that is a major player in state politics.

The chief pilot of the seven-passenger jet is Enserch's registered lobbyist, Dana Pruhs.

Enserch and its subsidiaries do millions of dollars worth of business with the state and local governments. The company, its subsidiaries and officers were the fourth biggest contributor to legislative candidates in 1984, giving almost \$53,000 to 38 candidates.

Both company officials and legislators who have accepted free rides on the jet defended the practice. It is unclear whether any of the trips are legally or ethically questionable.

But concern about the legal or ethical aspects of the trips is one of the reasons legislators said they do not like to talk about the trips -- even with their colleagues. They also said the free travel could suggest a conflict of interest when they vote on legislation affecting the company.

Some recent examples of lawmakers taking advantage of the Enserch jet include:

Senate President Don Bennett and Senate Finance Committee Vice-chairman John Ringstad, both Fairbanks Republicans, flew from Juneau to Whitehorse, Y.T., and back on March 15 and 16.

Sen. Bettye Fahrenkamp, D-Fairbanks, a member of the Senate Resources Committee, said she has accepted three free rides from Enserch in the past eight years.

Sen. Joe Josephson, D-Anchorage, said he has accepted free rides two or three times between Juneau and Anchorage.

Seven members of a legislative basketball team were given free trips aboard the Enserch jet this session to play charity games in Homer and Kenai.

Lobbyist Pruhs flies the Anchorage-based Dessault-Breguet Falcon 10 to Juneau numerous times each legislative session. Legislators said vacant seats are commonly available to them for trips in either direction.

"I don't see it as an attempt to buy favoritism with any legislators. That isn't company policy," said G. Wilson Hughes, president of Enserch Alaska Services Inc. The company is a subsidiary of Dallas-based Enserch Corp.

Pruhs said in a recent interview the free rides for lawmakers are clearly legal under the legislative ethics code.

Pruhs said the plane is a business tool. "We use it to go all over the state. We use it like a car."

Chris Christensen, a lawyer who worked for the Select Committee on Legislative Ethics last year, said he couldn't comment on the legality of the trips under the ethics code. He can provide such opinions only to legislators or legislative staffers covered by the law, he said.

The legislature passed the current ethics law in 1984. According to the code, legislators may not solicit or accept a gift of travel, entertainment or hospitality if the "gift was intended as a reward or inducement for an official action" by a legislator. But it also says a gift of travel within Alaska is allowed for legislators "obtaining information on matters of legislative concern."

Legislators said they frequently accept free rides on corporate aircraft to go to oil fields and remote mining areas. They do it, they said, when necessary to gather information in the absence of commercial transportation.

Bennett said he flew with Enserch on state business. He and an aide, Sandy Nussbaum, flew to Whitehorse for a conference

between Alaska legislators and Yukon government leaders. The state paid the \$160 round-trip commercial airfare of the other legislators who participated in the conference that weekend. Bennett said he saved the state money.

"I don't know of anybody in this arena whose vote would be influenced by accepting a ride," Bennett said.

Ringstad, who was aboard the same flight, said he and his girlfriend flew to Whitehorse for a weekend pleasure trip. Ringstad said they were invited by Pruhs. He and Pruhs are old friends who grew up together in Fairbanks, Ringstad said.

A free trip from Enserch wouldn't influence his vote on any matter of concern to the company, Ringstad said.

"You can try and legislate a lot of stuff but you're never going to legislate morality and honesty," he said.

Jane Barcott of the Alaska Public Offices Commission said legislators who receive free travel probably should claim it as income on their annual conflict of interest statements.

The conflict of interest forms of two legislators known to have taken rides last year -- Fahrenkamp and Josephson -- do not list the trips as income. Both said they were unaware of any requirement to report the trips.

Josephson said he rode the jet once this session and "once or twice" last year. He said the trips were "a matter of catching a ride when they're going in my direction."

Other legislators rode the plane with him, Josephson said, but he refused to identify them.

Josephson said free travel aboard the jet would not compromise his votes on matters of concern to Enserch. The company has never asked him for anything, he said.

"I once asked Dana what they were interested in," Josephson said. "He said, 'Susitna.' As you well know, I've been critical of Susitna."

A joint venture including Ebasco Services, an Enserch subsidiary, has a \$65.5 million state contract to work on the proposed Susitna hydroelectric project. The contract is likely to be drastically cut because the huge project appears dead, according to Alaska Power Authority spokeswoman Marnie Isaacs.

Ebasco has been paid about \$14 million in other Alaska Power Authority contracts since 1981, according to APA records.

Fahrenkamp said she flew with Enserch on a fishing trip to Cold Bay last summer and has "bummed a ride" home to Fairbanks at other times. She said the Enserch jet recently helped her make a speedy exit from Juneau when she needed to see her dentist.

"It's so damned inconvenient to get in and out of this place," she said. In another case she took the ride because it was more convenient than the available commercial flight, she said.

"The plane was going and I took a ride on it. And I don't feel the least bit guilty," Fahrenkamp said.

Fahrenkamp, Josephson and the other legislators argued that their free trips saved the state money. A round-trip ticket between Juneau and Anchorage costs \$352.

But other legislators are uneasy about accepting such trips.

Both Sens. Jan Faiks, R-Anchorage, and Vic Fischer, D-Anchorage, said they wouldn't accept the free rides. Constituents, they said, might think the trips could influence legislative actions.

"It just wouldn't look right," Faiks said.

Another legislator who was concerned about the trips was Rep. Steve Frank, R-Fairbanks. Frank was one of three legislators who flew with Enserch in early March to a basketball game in Homer. Traveling with Frank were Reps. Roger Jenkins, R-Anchorage, and Al Adams, D-Kotzebue.

Rep. Mike Navarre, D-Kenai, who organized the trip, said the game was to raise money for a community college building in Homer. He said donations from Alaska Airlines and MarkAir, as well as the use of the Enserch jet, were necessary.

Frank said he felt uncomfortable about accepting the free ride so he asked a lawyer for the legislature's ethics committee if it would be a conflict of interest.

"He said he didn't see any problem with it as long as it was for a charitable cause," Frank said.

But, he said, he wouldn't accept a ride on the jet just because a seat was available and it was going his way.

"I like to stay away from anything that would appear to be inappropriate," he said.

On March 13, the Enserch jet took Navarre, Jenkins, Rep. David Thompson, R-Kodiak, Rep. John Sund, D-Ketchikan, and Rep. Dick Shultz, R-Delta Junction, to Kenai for a benefit game against a team of Seattle Seahawks, Navarre said. The next day the plane brought them back to Juneau. The game was a benefit for a government education program for high school students, Navarre said.

He said he "considered the perception of this before I went around arranging it." Because Enserch was being asked to donate the use of its plane to a charitable cause, he decided it would be appropriate, Navarre said.

Frank didn't go to the Kenai game. Part of the reason, he said, was that he still didn't feel comfortable about riding on the Enserch jet.

Enserch Alaska President Hughes said his company and its subsidiaries have a business interest in any legislation or state spending that affects the construction and oil industries in Alaska. The company's interests include architectural, engineering and oil field service subsidiaries.

One subsidiary, Frank Moolin and Associates, designed and managed construction of the \$363 million utilidor -- a sewer and water system -- in Barrow.

Enserch's generosity in providing plane rides to politicians made headlines in 1983 when newly elected Gov. Bill Sheffield accepted a free trip from Enserch to attend oil company fund-raisers in the Lower 48. After a public outcry over the trips, Sheffield reimbursed the company for the plane flight.

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INVESTIGATIONS OF PIGNALBERI TAKE 2 TRACKS

Anchorage Daily News (AK) - Wednesday, July 9, 1986

Author: JOHN LINDBACK Daily News reporter ; Staff

A legislative ethics committee investigation of Rep. Marco Pignalberi's secret loan from lobbyist Lew Dischner may well be delayed until after this year's elections.

But the Alaska Public Offices Commission is scheduled Thursday to discuss whether Pignalberi made complete and timely public disclosures of other business dealings.

Pignalberi, an Anchorage Republican seeking re-election to a House seat representing East Anchorage, is one of six candidates for public office this year whose conflict-of-interest statements are still considered to be incomplete, according to commission staff member Jane Barcott.

In the most serious cases, the public offices commission could ask Lt. Gov. Stephen McAlpine to remove a candidate's name from the Aug. 26 primary election ballot, Barcott said.

At issue for the Select Committee on Legislative Ethics -- scheduled to meet in Juneau today to begin deliberations on a complaint about the Pignalberi loan -- is a provision in the legislative ethics code that holds in abeyance investigations of complaints during the 60 days preceding state primary or general elections.

The 60-day period prior to the primary election began June 27, according to Hayden Kaden, a staff aide to the Select Committee. The complaint against Pignalberi, received by the committee just a few days before June 27, was filed by Anchorage resident Joseph Brewer.

According to legislators, the 60-day provision was included in the legislative ethics code to discourage the filing of politically motivated complaints during election seasons.

Kaden and members of the committee are prohibited by state law from speaking in public about cases pending before them.

But Kaden, commenting on his interpretation of the law and not on specifics of the Pignalberi case, said an investigation could be carried out within the 60-day period if the committee initiates a complaint of its own.

But because the legislature's ethics code calls for investigations and discussions of them to be conducted in closed meetings, no public announcement would be made if the committee takes such action, he said.

The fact that the committee is scheduled to discuss Pignalberi today should, by law, be confidential. But Brewer's complaint is the first formal complaint ever filed against a legislator under the 2-year-old ethics code and the public agenda for today's meeting states the committee will consider a formal complaint.

Pignalberi on Tuesday said he has considered asking the committee to delay its investigation but he needed to talk more about it with his lawyer. He also said that he had not thought yet about asking that proceedings before the ethics committee be conducted in public, which by law he can request.

"I really haven't thought about that," he said. "I've been busy trying to gear up for a campaign."

Rep. Pat Pourchot, one of three House members on the ethics committee, said the 60-day period would be in effect again right after the primary because the general election is scheduled for Nov. 4.

"I have a question whether it is ever physically possible to act on a complaint during elections," Pourchot said.

The Daily News on June 21 reported that Pignalberi, a week before the 1984 election, paid off two federal tax liens totalling \$18,000 after receiving a secret loan from Dischner, a prominent lobbyist in Juneau.

Pignalberi, completing his first two-year term, twice failed to report the Dischner loan to the ethics committee as required by

the ethics code. The code requires legislators each year to disclose for publication in House and Senate journals their financial ties to each other and to lobbyists.

In addition, Pignalberi didn't disclose the loan on conflict-of-interest statements he was required to file in 1985 and 1986 with the public offices commission. On June 20, he filed an amended financial statement with the commission after being asked about the Dischner loan by the Daily News. He listed Dischner as his creditor for those two years.

Pignalberi has declined to say under what terms he received the loan, though he said he paid it off "earlier this year."

At the same time as he filed his amendment about the Dischner loan he informed the public offices commission about his involvements in two businesses, Pacific Transportation Services and Pacific Consulting Services.

According to Barcott, the commission asked him to furnish a list of clients who did more than \$100 worth of business with both his businesses. They have not received a reply and that is the reason he is on the agenda for Thursday's meeting, she said.

Tim Petumenos, Pignalberi's lawyer, said his client believes the information does not need to be filed with the commission until July 10. It will be filed by that date, Petumenos said.

Pignalberi on Tuesday said he is the primary stockholder of Pacific Consulting Services and that Pacific Transportation Services exists only on a business license.

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DISCHNER FILES SUIT OVER LOAN LOBBYIST CLAIMS HE ACTED UNDER DURESS

Anchorage Daily News (AK) - Tuesday, July 22, 1986

Author: JOHN LINDBACK Daily News reporter ; Staff

Lobbyist Lewis Dischner sued the Teamsters Federal Credit Union on Monday to stop it from making him pay \$240,000 to retire a 1984 loan he cosigned for Anchorage Sen. Joe Josephson.

In a Superior Court lawsuit, Dischner alleges that when credit union officials asked him to guarantee the loan, they misrepresented the repayment terms and the collateral required of Josephson.

Dischner, who served as the Teamsters' lobbyist until 1985, claims he was pressured into cosigning the promissory note. He also suggests that money for the Democratic senator's loan came from Teamster pension funds in a financial arrangement that may violate federal law.

The suit says Dischner agreed to cosign the loan because he believed he would suffer "economic duress" if he did not.

Neither the credit union's lawyer, Michael Price of Anchorage, nor Josephson returned phone calls from the Daily News on Monday to answer questions about Dischner's claims.

The credit union, which earlier this year was taken over by federal regulators because of growing concern about problem loans, on July 2 demanded that Dischner pay \$240,000 to recover the full amount of the note due, plus interest.

Although informal inquiries were made to Josephson about making a payment on the 2-year-old note, no such formal demand has ever been made of him, Josephson has said.

The senator first disclosed the matter on July 9, when he told the Select Committee on Legislative Ethics that Dischner guaranteed the Oct. 30, 1984, loan without his knowledge. He sent the letter to explain why he had not disclosed his financial tie to the veteran lobbyist, as required by law, on state conflict-of-interest forms or in the Senate Journal.

In an interview on July 9, Josephson said he needed the loan to pay for more than \$150,000 in debt he assumed when his law firm dissolved. The credit union responded with a loan that requires him to make no payments until a formal demand is issued, but required him to pledge his house as collateral.

So far, Dischner has not disputed Josephson's claim that he didn't know anyone had cosigned the loan. According to Dischner's lawyer, Douglas Pope, the lobbyist says he signed the promissory note sometime in November or December, as long as two months after Josephson signed it.

At that time, Dischner "relied upon the intentional, reckless, negligent and/or innocent misrepresentations and omissions of representatives and agents" of the credit union, according to the suit.

As a result, Dischner should not be obligated to make any repayment and is instead entitled to damages exceeding \$500,000, the suit states.

Dischner claimed that agents of the credit union approached him in late 1984 to cosign the loan on a temporary basis.

The agents told Dischner that the loan to Josephson "was not in compliance with certain lending requirements of the credit union and the law, insofar as the loan was undercollateralized, and that plaintiff's signature was needed for a limited period of time while the credit union made final arrangements for a long-term loan to Joe Josephson that met the lending requirements on collateral," according to the suit.

Credit union officials told Dischner that a long-term loan for Josephson had already been approved and that the note he should sign would be "rescinded when the long-term loan documents were executed," the suit states.

Dischner further claims he was told that the loan was made to refinance Josephson's house, that it was secured by a deed of trust to the senator's home, and that additional collateral would be pledged by Josephson at a later time.

"Defendant credit union specifically informed plaintiff at this time that no steps would ever be taken to enforce the note against plaintiff," the suit states.

Dischner claims that he was not notified that the credit union never converted the loan into a long-term arrangement.

"In addition, no steps were ever taken by defendant to remove plaintiff as a signatory to the note executed by Joe Josephson, nor to accept the pledge or assignment of additional collateral to secure the note," the suit states.

Pope was not willing Monday to provide specific details about two of the lawsuit's most significant claims -- that Dischner was pressured into cosigning the loan and that the funds could be traced back to Teamster pension money.

"Those are two things that will have to come out during the course of litigation," Pope said.

The lawsuit states that Dischner had "sufficient information to believe, and did reasonably believe, that if he did not agree to the proposal that he affix his signature to the note that ... he would suffer significant economic loss. Accordingly, plaintiff affixed his signature to the note under compulsion and economic duress."

At the time the note was signed, Dischner had been aligned with the Teamsters for years as their chief operative in Juneau. In addition to serving as Teamsters Local 959's lobbyist, he was a member of the union, a participant in its pension plan and a member of the credit union.

Josephson was not a member of the Teamsters.

Dischner has "sufficient information to believe, and does believe, that the funds utilized by the credit union to advance the amounts reflected in the note accepted from Joe Josephson, were funds earmarked from the Alaska Teamsters-Employer Pension Trust ...," according to the suit. "Had plaintiff been aware of this at the time of the transaction, he would have refused to affix his signature to the note."

The suit suggests that a loan cosigned by Dischner that also could be tied to Teamster pension money could be viewed as violating federal laws governing the investing of union pension funds. The laws are designed to protect workers' retirement funds -- the Teamster pension trust now holds more than \$400 million -- from high-risk investments and opportunistic loans to "parties in interest," such as union officials and their investment advisers.

Jerry Allen, a comptroller for the Alaska Teamster Employer Service Corporation, said Monday that the pension trust occasionally purchased certificates of indebtedness from the credit union. The certificates, which were sold at terms ranging from 30 days to a year, provided a favorable interest return for the pension fund, Allen said.

Certificates of indebtedness are similar to conventional certificates of deposit in a bank, Allen said.

"We had no discretion as to how those monies were used," Allen said.

Allen suggested that Dischner's claim is probably not valid because the loan didn't directly come from the pension fund.

According to Allen, if Dischner's claim that he is a "party in interest" because of his relationship to the union is valid, it would apply to other Teamsters who received credit union loans at about the same time the pension fund bought certificates of indebtedness from the credit union.

Dischner's lawsuit is the latest development in a long list of recent controversies for the veteran lobbyist.

He has been identified as a principle target in an ongoing federal grand jury investigation of contract fraud and bid-rigging in the North Slope Borough. And a direct loan he made to another legislator, Rep. Marco Pignalberi of Anchorage, resulted in an order to strike Pignalberi's name from the August primary ballot.

Pignalberi didn't publicly disclose the loan for two years and the Alaska Public Offices Commission recommended that his name be removed from the ballot. A judge stayed Lt. Gov. Stephen McAlpine's order removing Pignalberi's name and that issue is still pending in court.

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Attachment B

John Lindback, "Senate Panel OKs Ethics Bill," *Anchorage Daily News*, May 8, 1986



SENATE PANEL OKS ETHICS BILL

Anchorage Daily News (AK) - Thursday, May 8, 1986

Author: JOHN LINDBACK *Daily News reporter ; Staff*

The Senate Finance Committee endorsed a House bill Wednesday that that would increase public representation on the legislative ethics committee.

The legislation, passed by the House last year, boosts the size of the committee from seven to nine members.

Currently the public is outnumbered by legislators 6-1 on the Select Committee on Legislative Ethics. Under the bill, three of the nine committee members would be public citizens and six would be legislators.

The ethics committee is charged with conducting investigations of ethics violations by legislators and their employees and providing advisory opinions on ethical matters. When the ethics code was passed in 1983 advocates argued that more public membership was necessary to boost public confidence in the committee, especially since almost all of the committee's business is carried out in closed meetings.

Rep. Pat Pourchot, D-Anchorage and prime sponsor of the bill, argued that it will "accommodate public sentiment to expand public membership." In addition, he said, it calls for the chief justice of the Alaska Supreme Court to appoint the public members.

The current law allows the ethics committee itself to appoint the lone public member.

The bill will "remove the possibility of charges of 'legislative bias' by providing that public members are initially selected by the head of the judicial branch of government," Pourchot said.

Supreme Court Chief Justice Jay Rabinowitz wrote legislators last year and said that, although he did not seek the task, he did not object to appointing the public members.

"The role of chief justice in the selection process would not impair the ability to participate in any appeals deliberations which might be generated by the work of the committee," Rabinowitz said.

In addition to the public membership change, the bill would also reduce the penalty assessed against someone who knowingly files a false ethics charge against a legislator from a felony to a misdemeanor.

"The current penalty has been criticized as extreme and acting as a deterrent to the filing of legitimate complaints of possible violations," Pourchot said. "It is also ironic that while there exists a felony penalty for 'false' accusation, there is no statutory penalty for legislators violating the ethics law."

All six members of the Senate Finance Committee present at Wednesday's meeting recommended that the bill pass the full Senate on a floor vote. They are Co-Chairman Jan Faiks, R-Anchorage; Frank Ferguson, D-Kotzebue; Dick Eliason, R-Sitka; Paul Fischer, R-Soldotna; Rick Halford, R-Chugiak and Jay Kerttula, D-Palmer. Co-Chairman John Sackett, R-Ruby, missed the vote.

The Finance Committee's "do pass" recommendations are a signal that the bill is likely to pass the Senate if it reaches the floor before Monday, the last day of the legally limited 120-day session. A quick House concurrence on minor Senate changes to the bill would send it to the governor for his signature.

In past years Senate leaders have disagreed with the House, pushing for fewer public members than the House wanted. But Senate Rules Committee Chairman Tim Kelly, R-Anchorage, said Pourchot's bill will be sent to the floor before adjournment and it is likely to pass.

"The group of Senate leaders this year thinks there ought to be more public membership on the committee. It's that simple," Kelly said.

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Sec. 39.25.060. Personnel board.

(a) The personnel board is composed of three members appointed by the governor and confirmed by the legislature meeting in joint session. The term of office of a member is six years. A vacancy in an unexpired term shall be filled by appointment by the governor for the remainder of the term. The appointment is subject to confirmation in the same manner as a full-term appointment.

(b) Members of the board may not be employees of the state. Not more than two members of the board may be members of the same political party.

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

(d) A member of the board may receive a per diem allowance and transportation expenses incurred in carrying out the member's duties.

Sec. 39.25.070. Powers and duties of personnel board.

In addition to the other duties imposed by this chapter, the personnel board shall

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

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

(3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170;

(4) establish its own rules of procedure; two members constitute a quorum for the transaction of business and two affirmative votes are required for final action on matters acted upon by the board;

(5) elect a chair from its membership;

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

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

(8) carry out its powers and duties under AS 39.52.

Sec. 39.25.080. Personnel records confidential; exceptions.

(a) State personnel records, including employment applications and examination and other assessment materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

(1) the names and position titles of all state employees;

(2) the position held by a state employee;

(3) prior positions held by a state employee;

(4) whether a state employee is in the classified, partially exempt, or exempt service;

(5) the dates of appointment and separation of a state employee;

(6) the compensation authorized for a state employee; and

(7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160 (l) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(e) In addition to any access to state personnel records authorized under (b) of this section, state personnel records shall promptly be made available to the child support services agency created in AS 25.27.010 or the child support enforcement agency of another state. If the record is prepared or maintained in an electronic data base, it may be supplied by providing the requesting agency with access to the data base or a copy of the information in the data base and a statement certifying its contents. The agency receiving information under this subsection may use the information only for child support purposes authorized under law.

Article 04. COMPLAINTS; HEARING PROCEDURES

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. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

(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 return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office as provided in (j) of this section if the complaint is initiated during a campaign period. 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). Notwithstanding AS 36.30.015 (d), the personnel board may contract for or hire independent counsel under this subsection without notifying or securing the approval of the Department of Law.

(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.

(j) The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for state office received during a campaign period to the complainant unless the governor or lieutenant governor, as appropriate, permits the personnel board to assume jurisdiction under this subsection. If the personnel board receives a complaint concerning the conduct of the governor or lieutenant governor who is a candidate during the campaign period, the personnel board shall immediately notify the subject of the complaint of the receipt of the complaint, of the suspension of the personnel board's jurisdiction during the campaign period, and of the candidate's right to waive the suspension of jurisdiction under this subsection. The candidate may, within 11 days after the personnel board mails or otherwise sends notice of the complaint to the candidate, notify the personnel board that the candidate chooses to have the personnel board proceed with the complaint under this section. If the candidate does not act within that time or if the candidate notifies the personnel board that the candidate is not waiving the suspension of jurisdiction, the personnel board shall return the complaint to the complainant with notice of the suspension of jurisdiction under this subsection and of the right of the complainant to file the complaint after the end of the campaign period.

(k) A campaign period under this section begins on the later of 45 days before a primary election in which the governor or lieutenant governor is a candidate for state office or the day on which the individual files as a candidate for state office and ends at the close of election day for the general or special election in which the individual is a candidate or on the day that the candidate withdraws from the election, if earlier. For a candidate who loses in the primary election, the campaign period ends on the day that results of the primary election showing that another individual won the election are certified.

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. The attorney general shall communicate disposition of the matter promptly to the complainant under AS 39.52.335 (c) and to the subject of the complaint.

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.

Sec. 39.52.335. Summary of disposition of complaints and review by personnel board.

(a) When the attorney general initiates or receives a complaint under AS 39.52.310, the attorney general shall immediately forward a copy of the complaint to the personnel board.

(b) Each month, the attorney general shall file a report with the personnel board concerning the status of each pending complaint and the resolution of complaints that have been closed since the previous report.

(c) If a complaint is dismissed under AS 39.52.320 or resolved under AS 39.52.330, the attorney general shall promptly prepare a summary of the matter and provide a copy of the summary to the personnel board and the complainant. The summary is confidential unless the

(1) dismissal or resolution agreed to under AS 39.52.320 or 39.52.330 is public; or

(2) superior court makes the matter public under (h) of this section.

(d) Within 15 days after receipt of a summary under this section, a complainant may file comments with the personnel board regarding the disposition of the complaint.

(e) At its next regular meeting that begins more than 15 days after receipt of a summary under this section, the personnel board shall review the summary and comments, if any, filed by the complainant. The personnel board may compel the attendance of the subject of the complaint or the complainant at the meeting and may compel the production of documents. Attendance may be by teleconference. The attorney general or the attorney general's designee

shall be available to respond to questions from the personnel board concerning the disposition of the complaint.

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint. If the matter is confidential and the board determines that publication of the name of the subject is in the public interest, the report may include a recommendation that the matter be made public.

(g) If the summary is confidential under (c) of this section,

(1) comments filed by the complainant, if any, are confidential;

(2) the personnel board shall conduct the review of the summary in executive session; and

(3) the personnel board report, if any, is confidential; the personnel board shall make available to the public an expurgated copy of a confidential report with sufficient deletions and editing to prevent disclosure of the identity of the persons involved in the matter.

(h) If the disposition of a complaint is not made public and the personnel board report under (f) of this section includes a recommendation that the matter be made public, an interested party may file an action against the state in superior court requesting that the court make public the complaint, the attorney general's disposition of the complaint, and the personnel board report. The court may order the matter or portions of the matter made public if the court determines that

(1) the dismissal or resolution of the complaint was clearly contrary to the requirements of this chapter;

(2) one or more of the allegations in the information to be released is supported by substantial evidence;

(3) the matter concerns the public interest; and

(4) release of the information will not infringe on any protected rights or liberties of the subject.

Sec. 39.52.340. Confidentiality.

(a) Except as provided in AS 39.52.335, before the initiation of formal proceedings under AS 39.52.350, the complaint and all other documents and information regarding an investigation conducted under this chapter or obtained by the attorney general during the investigation are confidential and not subject to inspection by the public. In the case of a complaint concerning

the governor, lieutenant governor, or attorney general, all meetings of the personnel board concerning the complaint and investigation before the determination of probable cause are closed to the public. If, in the course of an investigation or probable cause determination, the attorney general finds evidence of probable criminal activity, the attorney general shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency. If the attorney general finds evidence of a probable violation of AS 15.13, the attorney general shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation.

(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.

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

(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.

(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 notify the chief administrative law judge (AS 44.64.010), who shall appoint an administrative law judge to serve as 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.

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.

(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.

(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.

(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.

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.

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.

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.

Article 05. ENFORCEMENT; REMEDIES

Sec. 39.52.410. Violations; penalties for misconduct.

(a) If the personnel board determines that a public employee has violated this chapter, it

(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.

(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.

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

(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.

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.

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.

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.

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.

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.

