

**HB**

**289**



AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 289( ), Draft Version "C"

- 1 Page 3, line 16:
- 2 Delete "official"
- 3 Insert "officially designated"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 289( ), Draft Version "C"

- 1 Page 3, line 14:
- 2 Delete "is"
- 3 Insert "has been"
- 4
- 5 Page 3, line 15, following "customary":
- 6 Insert "at similar events"
- 7
- 8 Page 3, line 19:
- 9 Delete "are customary"
- 10 Insert "have been customary at similar events"

# 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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**Session:**  
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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"** RepBobLynnBlog.com

## FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794 *nm*  
Alaska State Capitol, room 104  
Juneau, AK 99801-1182

# of Pages (including cover): 3

Phone: 907-465-4931

Fax: 907-465-4316

Re DRAFT FINAL CS HB 289 VERSION S

February 25, 2010

HB 289 moved from House State Affairs Committee this morning amended. Please draft a final CS with the following amendments:

Amendment #1  
26-LS1304\C.1

Amendment #2  
26-LS1304\C.2

Amendment 1 to Amendment #2

Page 3, line 19 after the word "customary" *delete* "at" *insert* **for**  
(so that line will read: "have been customary for similar events")

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- 9 Delete "are customary"
- 10 Insert "have been customary<sup>(at)</sup>similar events"

26-LS1304C  
Wayne  
2/22/10

**CS FOR HOUSE BILL NO. 289( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE GRUENBERG**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act authorizing state agencies to pay private legal fees and costs incurred by**  
2 **persons exonerated of alleged Alaska Executive Branch Ethics Act violations; allowing**  
3 **certain public officers and former public officers to accept state payments to offset**  
4 **private legal fees and costs related to defending against an Alaska Executive Branch**  
5 **Ethics Act complaint; and creating certain exceptions to Alaska Executive Branch**  
6 **Ethics Act limitations on the use of state resources to provide or pay for transportation**  
7 **of spouses and children of the governor and the lieutenant governor."**

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

9 **\* Section 1. AS 39.52.120(b) is amended to read:**

10 (b) A public officer may not

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

13 (2) accept, receive, or solicit compensation for the performance of

official duties or responsibilities from a person other than the state;

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

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

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

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for a partisan political purpose [PURPOSES]; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of state aircraft or the communications equipment in the governor's residence so long as there is no charge to the state for the use [; IN THIS PARAGRAPH, "FOR PARTISAN POLITICAL PURPOSES"

(A) MEANS HAVING THE INTENT TO DIFFERENTIALLY BENEFIT OR HARM A

(i) CANDIDATE OR POTENTIAL CANDIDATE FOR ELECTIVE OFFICE; OR

(ii) POLITICAL PARTY OR GROUP;

(B) BUT DOES NOT INCLUDE HAVING THE INTENT TO BENEFIT THE PUBLIC INTEREST AT LARGE THROUGH THE NORMAL PERFORMANCE OF OFFICIAL DUTIES].

\* Sec. 2. AS 39.52.120(f) is amended to read:

(f) Use of state aircraft for a partisan political purpose [PURPOSES] is permitted under (b) of this section only when the use is collateral or incidental to the normal performance of official duties and does not exceed 10 percent of the total of the use of the aircraft for official purposes and partisan political purposes, combined, on a single trip. A public officer who authorizes or makes any partisan political use of a state aircraft under (b) of this section shall disclose the authorization and use under AS 39.52.210 or 39.52.220 for each trip, and the person who uses the aircraft shall

1 reimburse the state for the proportionate share of the actual cost of the use.

2 \* **Sec. 3.** AS 39.52.120 is amended by adding new subsections to read:

3 (g) Notwithstanding (a) and (b)(1) - (5) of this section, the use of state  
4 resources to transport or pay the cost of transporting a person who is the spouse or  
5 child of the governor or lieutenant governor to an event other than an event that has a  
6 partisan political purpose is permitted if

7 (1) the person is transported with the governor or lieutenant governor  
8 and the state is reimbursed for the actual cost or, if the actual cost is not reasonably  
9 calculable, the fair market value of the person's transportation; or

10 (2) the person's attendance is a benefit to the state; under this  
11 paragraph, a benefit to the state is presumed when

12 (A) the person's attendance at the event is required for official  
13 action of the state;

14 (B) the event is state-sponsored and the person's attendance is  
15 customary;

16 (C) the person is attending as an official representative of the  
17 state; or

18 (D) the person is invited by the event's sponsor before the  
19 transportation occurs, the invitation and the person's attendance are customary,  
20 the event is related to issues important to the state, and the governor or  
21 lieutenant governor attend.

22 (h) In this section, "partisan political purpose"

23 (1) means a purpose intended to differentially benefit or harm a

24 (A) candidate or potential candidate for elective office; or

25 (B) political party or group;

26 (2) does not include a purpose intended to benefit the public interest at  
27 large through the normal performance of official duties.

28 \* **Sec. 4.** AS 39.52 is amended by adding a new section to article 5 to read:

29 **Sec. 39.52.470. Legal fees and costs.** (a) Notwithstanding AS 39.52.120, a  
30 state agency may pay the fees and costs of private legal representation that are  
31 incurred by a person who is a public officer or a former public officer while defending

1 against a complaint initiated or filed under AS 39.52.310 concerning conduct by the  
2 person during a period when the person was serving or employed as a public officer, if  
3 the person has been exonerated. When a complaint has alleged more than one  
4 violation against a public officer or a former public officer, payments shall be  
5 apportioned by alleged violation.

6 (b) Notwithstanding AS 39.52.120, a public officer or former public officer  
7 who is the subject of a complaint may accept a payment under (a) of this section.

8 (c) A public officer may not act for the state in the matter of a payment under  
9 this section if the payment is to the public officer or an immediate family member of  
10 the public officer.

11 (d) In this section,

12 (1) "exoneration" or "exonerated" means that an allegation of a  
13 violation of AS 39.52 (Alaska Executive Branch Ethics Act) is

14 (A) dismissed under AS 39.52.310(d), 39.52.320, or  
15 39.52.370(d);

16 (B) dismissed after an appeal under AS 39.52.370(f); or

17 (C) resolved solely with a recommendation for preventive  
18 action under AS 39.52.330;

19 (2) "fees and costs of private legal representation" means reasonable  
20 fees and related costs of legal representation that are necessarily incurred in defense  
21 against the allegations in the complaint and may include fees for services customarily  
22 performed by an attorney but delegated to and performed by a person working under  
23 the supervision of an attorney licensed to practice in the state.

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

26 **APPLICABILITY.** AS 39.52.470, enacted by sec. 4 of this Act, applies only to  
27 complaints under AS 39.52.310 - 39.52.390 that are initiated or filed on or after the effective  
28 date of this Act.

Member

*Standing Committees:*

Judiciary  
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*Finance Subcommittees:*

Transportation  
Courts  
Law

# Alaska State Legislature

## House of Representatives



**Representative Max F. Gruenberg, Jr.**  
**House District 20**

**Anchorage (Mountain View, Russian Jack, East Anchorage)**  
**House Minority Assistant Floor Leader**

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Rep.Max.Gruenberg@legis.state.ak.us

### EXPLANATION OF CHANGES

Changes between HB 289 and proposed CSHB 289 ( ) (26-LS1304\C):

- On page 4, line 2 after "officer," the phrase "if the person is exonerated" is added to make clear that only public officers who are exonerated may receive reimbursement from the state for reasonable legal fees incurred in defending against an alleged ethics violation.
- Under section 4 (a) of the proposed CS to HB 289 (page 3, line 29 to page 4, line 5), a public officer may only receive reimbursement for legal expenses *after* receiving a favorable judgment, rather than at any time after the complaint has been filed, as was provided in the original version of HB 289 (page 3, line 29 to page 4, line 9).
- Page 4, lines 12-16 of HB 289 were deleted to conform to the changes made above.
- A stylistic change was made on page 4, line 29 of HB 289 (page 4, line 20 of the CS), replacing the phrase "necessary to expend" with "necessarily incurred."

# FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 289  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB289-GOV-EO-02-19-10  
Title: An Act relating to Executive Branch Ethics: legal fees; and limitations on state paid family travel  
Sponsor: Representative Gruenberg  
Requester: (H) State Affairs  
Dept. Affected: OOG  
RDU: Executive Operations  
Component: Executive Office  
Component Number: 6

**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
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

SB 289 has an indeterminate fiscal impact on the Office of the Governor.

Prepared by: Linda Perez, Director Phone 465-3876  
Division: Administrative Services Date/Time 2/19/10 2:00 PM  
Approved by: Linda Perez, Administrative Director Date 2/19/2010  
Office of the Governor

Member

*Standing Committees:*

Judiciary  
State Affairs  
Transportation

*Finance Subcommittees:*

Transportation  
Courts  
Law

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### SPONSOR STATEMENT

#### HB 289 - EXECUTIVE ETHICS: LEGAL FEES/FAMILY TRAVEL

HB 289 sets forth in statute the substance of the Attorney General's proposed regulations establishing standards for (1) reimbursement of legal fees and costs for any executive branch employees accused of ethical violations, and (2) payment of travel expenses for the families of only the governor and lieutenant governor. It also cures several potential problems in the proposed regulations to (1) require that the employee be *exonerated* of the charges to attain reimbursement, (2) limit reimbursement to charges filed *after* the effective date of the Act (to clarify that reimbursement cannot be claimed by officials charged before this Act passed), and (3) require that the attorneys fees be reasonable in amount and reasonably incurred. The rules are carefully drafted to limit the circumstances under which family members of the governor and lieutenant governor can recover their travel costs.

Any questions? Please contact my legislative aide, Gretchen Staff, at 465-4940.

Thank you for your consideration of HB 289.

Member

*Standing Committees:*

Judiciary  
State Affairs  
Transportation

*Finance Subcommittees:*

Transportation  
Courts  
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### SECTIONAL ANALYSIS

#### HB 289 - EXECUTIVE ETHICS: LEGAL FEES/FAMILY TRAVEL

**Sec. 1.** Deletes definition of "for partisan political purposes." This definition section is moved to section 3 on page 3, lines 22-27.

**Sec. 2.** Conforming amendment.

**Sec. 3.** Adds new subsections. Proposed subsection (g) sets forth the rules covering the payment of travel costs for spouses and children of the governor and lieutenant governor. First, it may not be for a partisan political purpose. Second, the state must be repaid the actual costs of transportation or the reasonable cost if the actual cost cannot be determined. The state need not be reimbursed if:

- (a) the family member's presence is required for official state action, or
- (b) the event is state-sponsored and the person's attendance is customary, or
- (c) the family member is attending as an official representative of the state, or
- (d) the family member is invited by the event sponsor before they receive transportation, the invitation and the person's attendance are customary, the event is related to important state issues, and the governor or lieutenant governor attend.

Proposed subsection (h), discussed above, defines the term "partisan political purpose."

**Sec. 4.** Creates an exception to AS 39.52.120 by *allowing* (but not requiring) a state agency to pay the reasonable costs of private legal representation relating to the defense of an ethics complaint by a person accused of an ethics violation while employed with the state. Payment by the state is contingent upon exoneration, which is defined as either dismissed of the complaint or resolved solely by preventative action to avoid future violations. Reasonable fees are defined to require that they be reasonably incurred to defend against the charges.

**Sec. 5.** Makes Sec. 4 of the bill applicable only to ethics complaints filed on or after the effective date of the bill.

# LEGAL SERVICES

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

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Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
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## MEMORANDUM

February 12, 2010

**SUBJECT:** Are ethics regulations proposed December 8, 2009, within the scope of the Department of Law's regulation-making authority? (Work Order No. 26-LS1493)

**TO:** Representative David Guttenberg

**FROM:** Dan Wayne   
Legislative Counsel

You have asked if the Executive Branch Ethics Act regulations proposed by the Department of Law on December 8, 2009, are within the department's regulation-making authority or if the changes proposed would first require a change in statute by the legislature.

The Administrative Procedure Act says, at AS 44.62.020:

Except for the authority conferred upon the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.62.010 - 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

In this instance, the department's regulation-making authority comes from AS 39.52.950, which says:

The attorney general may adopt regulations under the Administrative Procedure Act necessary to interpret and implement this chapter.

I see two places where this limited authority may be exceeded by the proposed regulations. Proposed 9 AAC 52.045 would allow the state to pay the transportation expenses of family members of the governor and lieutenant governor, even though the Act, at AS 39.52.120, prohibits that type of payment. The attorney general has previously covered this in a September 30, 2004, opinion, that said:

For purposes of the Ethics Act, it is irrelevant that it does not cost the state more to fly the King Air with more of its seats occupied. The focus of the Ethics Act is on the benefit being conferred on the administration official

who would not have to pay the cost of a commercial air ticket to fly his or her spouse to a location, not the cost to the state.

Therefore, under current law, the Ethics Act precludes the spouses of administration officials from flying on the King Air unless the official reimburses the state the cost of a coach fare ticket for the spouse.

...

An amendment to the Ethics Act would be required to enable the Governor to allow spouses of administration officials to accompany the official on King Air flights free of charge.

Op. Attn'y Gen. (September 30, 2004); *redated for publication March 9, 2007*; 2007 Alas. AG LEXIS 5. Under the facts of this opinion there was no additional cost to the state in transporting the accompanying spouse. The 2004 opinion did not address the proposition, which the proposed 9 AAC 52.045 seems to rest upon, that the offices of governor and lieutenant governor should be considered apart from other administrative offices, as a matter of public policy, for the purpose of determining whether the state receives a benefit from the governor and lieutenant governor being accompanied by their spouses or children when traveling on state business.

The 2004 opinion said that AS 39.52.120 prohibits a public officer from securing or granting an unwarranted benefit for a spouse. "Unwarranted benefits" have been defined in existing regulations, at 9 AAC 52.040, as benefits that deviate from normal procedure and are improperly motivated. "Improper motivation" means, as defined by 9 AAC 52.990(b)(4), giving primary consideration to a person's relationship with a public officer. The 2004 A.G. Opinion reasoned that if a spouse of an administration official accompanies the official on a state trip without having to pay, there is a benefit to the spouse, and "[t]he primary consideration in granting the benefit would be the spouse's relationship with the administration official and the official's relationship with the Governor -- precisely the type of motivations that are prohibited by the Ethics Act."

In proposed 9 AAC 52.045, the accompanying spouse or child would have to demonstrate that the spouse's or child's transportation is of benefit to the state. However, as can be seen from existing regulations already adopted by the department, the department's past interpretation of AS 39.52.120 regarding state payment of family transportation costs does not, on balance, support a "benefits the state" exception to the prohibition. In fact, 9 AAC 52.040(b), which is not being amended by the proposed regulations, says that a public officer may not grant an unwarranted benefit "regardless of whether the result is in the best interest of the state." Although the proposed 9 AAC 52.045 appears to be in conflict with existing 9 AAC 52.040(b), that does not mean that a court would invalidate the proposed regulation. A court may or may not determine that a "benefits the state" exception allowing spouses and children of the governor and lieutenant governor to be transported with the governor without

Representative David Guttenberg

February 12, 2010

Page 3

reimbursement of transportation costs, exceeds the scope of AS 39.52.120; I am not able to predict which way the court would go on that question.

The proposed regulations would allow an exception to the prohibition for a spouse or child if the presence of the spouse or child is required for state business or if the purpose of transportation of the spouse or child is performance of a customary or ceremonial duty as an "official representative of the state." There is no legal authority to suggest that a person who is not a public employee or public official can be an "official representative" of the state. Being the spouse or child of a public officer does not legally confer official representative status on a person, and it follows from this that if the governor's or lieutenant governor's family member does serve the state it is in an unofficial role. I would note, nonetheless, that the governor's and lieutenant governor's families do serve a ceremonial role that is much more significant than the role served by the families of other administrative officials. The proposed regulations could be upheld on this basis if challenged.

The proposed regulations would also provide for reimbursement of private legal expenses incurred by public officers who are exonerated of allegations in an ethics complaint. The Executive Branch Ethics Act is silent with respect to legal representation of a public officer by private counsel during a complaint proceeding. The attorney general acknowledged the Act's silence on this point but argued, in a recent opinion, that public officers exonerated in ethics complaint proceedings should be reimbursed for private legal expenses incurred because it is consistent with the public's best interest and consistent with the state's general policy of paying legal expenses for public officers who defend against civil or criminal allegations arising from their service to the state.<sup>1</sup> A court might agree with this policy argument and still find that the legal expense reimbursement provisions of the proposed regulations go beyond the scope of the authority, granted to the Department of Law by AS 39.52.950 to adopt regulations "necessary to interpret and implement this chapter."

The legislature might appropriately choose to consider the public policy issues presented by these regulations and attempt to resolve them with legislation. Please let me know if you would like a bill drafted.

DCW:ljlw  
10-086.ljlw

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<sup>1</sup> Op. Attn'y Gen. file no. AN2009102807 (August 5, 2009); 2009 Alas. AG LEXIS 8.

NOTICE OF PROPOSED CHANGES IN THE  
REGULATIONS OF THE DEPARTMENT OF LAW

The Department of Law proposes to adopt regulation changes in Title 9 of the Alaska Administrative Code, dealing with the Alaska Executive Branch Ethics Act, (AS 39.52), including the following:

- (1) 9 AAC 52.035 is a proposed new section to be added to establish the standards for the term "personal gain" as used in AS 39.52.120(a) to conform to statutes and to add clarifying language. The existing definition of "personal gain" at 9 AAC 52.990(b)(6) would be repealed.
- (2) 9 AAC 52.040 is proposed to be changed by adding new provisions establishing standards for the conditions when the acceptance or approval of state money to pay on behalf of, or reimburse a public officer for, expenses incurred for professional legal services to defend against a complaint brought under the Alaska Executive Branch Ethics Act (AS 39.52) may occur, including when the public officer is exonerated of any violation of the Act.
- (3) 9 AAC 52.045 is a proposed new section to be added to establish standards for determining when the use or authorization of state money or other state resources for transportation of family members of the governor or lieutenant governor does not result in personal gain or unwarranted benefits under the Act.
- (4) 9 AAC 52.050 is proposed to be changed to recognize that misuse of state resources may result in personal gain to a public officer or another person as well as benefit to an officer's personal interests or financial interests as those terms are defined in the Act. The regulation is also proposed to be changed to include standards for determining when a public officer's incidental use of state equipment, such as cell phones, personal digital assistants, and portable computers, is presumed insignificant.
- (5) 9 AAC 52.060 is proposed to be changed to clarify the application of AS 39.52.130, addressing gifts to a public officer. 9 AAC 52.060(b) currently permits agency heads to determine that a gift of travel received by an employee traveling on state business is a gift to the state, not a personal gift to the employee. The proposed amendment would clarify that the individual employee does not have to submit a disclosure for pre-approved state travel relating to offers by others made in advance to pay travel expenses of a state employee to facilitate state business.
- (6) 9 AAC 52.070 is proposed to be changed to update the description of information considered to be publicly disseminated for purposes of AS 39.52.140. That provision prohibits public officers from using information acquired during their jobs for personal benefit, unless it has been publicly disseminated. The proposed regulation change would, among other matters, establish that information posted for public consumption on a state website has been publicly disseminated.
- (7) 9 AAC 52.130(a) is proposed to be changed to change the deadline for ethics supervisors to submit quarterly reports to the attorney general from 45 to 30 days following the end of the quarter. The change would permit more timely review of the matters addressed by designated ethics supervisors during the quarter and earlier preparation of the public summary and report to the Personnel Board.

- (8) 9 AAC 52.135 is a proposed new section to provide guidance to designated ethics supervisors when review of an ethics disclosure reveals a violation of the Act.
- (9) 9 AAC 52.140 is proposed to be changed to clarify that the attorney general may separately address multiple alleged violations stated in one complaint.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Assistant Attorney General Judy Bockmon at the Department of Law, 1031 W. 4th Avenue, Ste. 200, Anchorage, Alaska 99501 or by email to [judy.bockmon@alaska.gov](mailto:judy.bockmon@alaska.gov). The comments must be received no later than 4:30 p.m. on January 22, 2010.

Oral or written comments also may be submitted at a hearing to be held on January 6, 2010, in the Fifth Floor Conference Room, Department of Law, 1031 W. 4th Avenue, Anchorage, Alaska. The hearing will be held from 10:00 a.m. to 12:00 p.m. and might be extended to accommodate those present before 10:00 a.m. who did not have an opportunity to comment.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kamie Willis at (907) 269-5100 at least seven days before the special accommodation is needed to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Kamie Willis at the Department of Law, 1031 W. 4th Avenue, Ste. 200, Anchorage, Alaska or (907) 269-5100 or go to [www.law.state.ak.us/doclibrary/ethics.html](http://www.law.state.ak.us/doclibrary/ethics.html).

After the public comment period ends, the Department of Law will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

**Statutory Authority:** AS 39.52.950

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 39.52.110 - 39.52.140; AS 39.52.210; AS 39.52.220; AS 39.52.260; AS 39.52.310; AS 39.52.410; AS 39.52.420; AS 39.52.950; AS 39.52.960

**Fiscal Information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: December 5, 2009

\_\_\_\_\_  
/s/  
Daniel S. Sullivan  
Attorney General  
Department of Law

ADDITIONAL REGULATIONS NOTICE INFORMATION  
(AS 44.62.190(d))

1. Adopting agency: Department of Law
2. General subject of regulation: Changes to Alaska Executive Branch Ethics Act Regulations
3. Citation of regulation: 9 AAC 52.035 - 9 AAC 52.070; 9 AAC 52.130; 9 AAC 52.135; 9 AAC 52.140; 9 AAC 52.990
4. Reason for the proposed action:
  - compliance with federal law
  - compliance with new or changed state statute
  - compliance with court order
  - development of program standards
  - other: (please list) \_\_\_\_\_
5. RDU/component affected: Civil Division/Opinions, Appeals, and Ethics

6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2010	Subsequent Years
Operating Cost	\$ 0	\$ 0
Capital Cost	\$ 0	\$ 0
Federal receipts	\$ 0	\$ 0
General fund match	\$ 0	\$ 0
General fund	\$ 0	\$ 0
General fund/ program receipts	\$ 0	\$ 0
General fund/ mental health	\$ 0	\$ 0
Other funds (specify)	\$ 0	\$ 0

7. The name of the contact person for the regulations:

Name Judy Bockmon  
Title Assistant Attorney General  
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8. The origin of the proposed action:

- staff of state agency
- federal government
- general public
- petition for regulation change
- other (please list): Request from Department of Administration

9. Date: December 7, 2009

Prepared by: \_\_\_\_\_ /s/ \_\_\_\_\_  
[signature]

Name (typed) Judy Bockmon  
Title (typed) Assistant Attorney General  
Telephone: 907-269-5100

9 AAC 52 is amended by adding a new section to read:

**9 AAC 52.035. Personal gain.** For purposes of AS 39.52.120(a), gain is personal gain if it is

- (1) a benefit to the public officer's personal interest or financial interest; or
- (2) actual or anticipated gain, benefit, profit, or compensation to the public officer or the officer's immediate family member. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

**Authority:** AS 39.52.120 AS 39.52.950

9 AAC 52.040(c) is amended by adding a new paragraph to read:

(3) accepting money to reimburse the public officer for expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, approving money to reimburse another public officer for those expenses, entering into an agreement to pay those expenses on behalf of another public officer, or authorizing payment to secure those professional legal services on behalf of another public officer, if

(A) the public officer to be reimbursed, or on whose behalf payment is to be made, is exonerated of a violation of the Ethics Act or other law for which reimbursement or payment is to be made, or agrees to repay the money or payment if the public officer is not exonerated of the violation;

(B) the complaint concerns conduct that occurred during the public officer's employment or service as a public officer;

(C) the expenses reimbursed or paid are reasonable; and

(D) the reimbursement or payment is made by a state agency that has money appropriated that may be lawfully used for the purpose of paying the expenses.

9 AAC 52.040 is amended by adding a new subsection to read:

(d) For purposes of (c)(3) of this section,

(1) exoneration of a violation of the Ethics Act

(A) occurs when an allegation in a complaint brought against a public officer under AS 39.52.310 - 39.52.390 is

(i) dismissed under AS 39.52.310(d), 39.52.320, or 39.52.370(d);

(ii) resolved with only preventive action recommended under AS 39.52.330 to avoid a potential violation; or

(iii) dismissed after appeal under AS 39.52.370(f); and

(B) does not include the dismissal or resolution of an allegation in a complaint when corrective action is required under AS 39.52.330;

(2) expenses are reasonable if they were necessarily incurred to defend against an allegation in a complaint brought under AS 39.52.310 - 39.52.390; those expenses may

(A) include attorney's fees and fees incurred for professional legal services customarily performed by an attorney but delegated to and performed by an investigator, paralegal, or law clerk; and

(B) be apportioned by alleged violation if a complaint alleges more than one violation, but only if the public officer provides clear documentation that the expenses paid or to be reimbursed were limited to the alleged violation for which the public officer is exonerated; and

(3) payment or reimbursement under this section may be made to or on behalf of a current or former public officer. (Eff. 4/24/94, Register 130; am \_\_/\_\_/\_\_, Register \_\_)

**Authority:**    AS 39.52.120                      AS 39.52.950

9 AAC 52 is amended by adding a new section to read:

**9 AAC 52.045. Transportation of family members of governor and lieutenant governor.** (a) The use or authorization of use of state money or other state resources for transportation of a family member of the governor or lieutenant governor does not violate AS 39.52.120(a) or (b)(3) if transportation is provided to an event at which the family member's presence benefits the state. The presence of a family member of the governor or lieutenant governor benefits the state if the family member's presence

(1) is required for state business; or

(2) has a public purpose related to the governor's or lieutenant governor's official duties, including

(A) attending a state-sponsored event that the family of the governor or lieutenant governor customarily attends;

(B) attending an event at which the family member serves as an official representative of the state; and

(C) accompanying, as an invited guest, the governor or lieutenant governor to an event related to issues important to the state when the family member's attendance is appropriate for the event, such as youth or family related events.

(b) For purposes of AS 39.52.120(a) and (b)(3) and (a) of this section, transportation of a family member to attend a political or campaign event held for partisan political purposes does not benefit the state.

(c) For purposes of AS 39.52.120(a) and (b)(3), the use or authorization of use of state money or other state resources for transportation of a family member that does not benefit the state is presumed insignificant if the governor or lieutenant governor pays the state the cost of the family member's transportation. Except for transportation by state aircraft for partisan political purposes under AS 39.52.120(f), the agency that authorized or paid for the travel shall determine the cost of the transportation based on either

- (1) the actual fare paid; or
- (2) the fare for an equivalent commercial flight, if the travel was by state aircraft.

(d) In this section,

- (1) "child" has the meaning given in AS 39.52.960;
- (2) "family member" means a spouse or minor child of the governor or lieutenant

governor;

- (3) "for partisan political purposes" has the meaning given in

AS 39.52.120(b)(6). (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 39.52.120 AS 39.52.950

9 AAC 52.050 is repealed and readopted to read:

**9 AAC 52.050. Use of state time, property, equipment, or other facilities.** (a) Unless the attorney general has issued a general opinion against the use or advised the public officer against the use, a public officer who uses state time, property, equipment, or other facilities to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person does not violate AS 39.52.120(a) or (b)(3) if the officer's designated supervisor determines that the use is insignificant.

(b) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a state cellular telephone to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if

(1) the cellular telephone service plan provides, for a set monthly fee, an allowance of usable minutes or an unlimited number of usable minutes;

(2) the use does not exceed

(A) the greater of 30 minutes or five percent of the allowed minutes under the applicable service plan per month, for a plan that provides an allowance of usable minutes;

(B) the greater of 30 minutes or five percent of the total minutes used in a month under the applicable service plan, for a plan that provides an unlimited number of usable minutes; and

(3) the public officer reimburses the state in full for use that results in a separate charge; charges for minutes exceeding an allowance of usable minutes are presumed to have been incurred to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person.

(c) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a portable state computer to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if the use

(1) is for electronic mail communications, Internet access, or entertainment;

(2) does not occur during duty hours; and

(3) occurs at no cost to the state.

(d) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a state personal digital assistant to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if, when the device is used as a

(1) cellular telephone, the use complies with (b) of this section;

(2) computer, the use complies with (c) of this section.

(e) Nothing in this section exempts a public officer from compliance with other state requirements applicable to state computing and information technology resources. (Eff. 4/24/94, Register 130; \_\_/\_\_/\_\_, Register \_\_\_\_)

**Authority:** AS 39.52.110 AS 39.52.120 AS 39.52.950

9 AAC 52.060 is amended by adding a new subsection to read:

(c) An offer to a state agency by a person or governmental agency other than the state to pay or reimburse travel expenses for one or more public officers to carry out official responsibilities does not result in a gift to the individual traveling public officer within the meaning of AS 39.52.130 if an authorized supervising public officer approves acceptance of the offer in advance. An approving public officer may not participate in that travel without advance approval of acceptance of the offer by the head of the agency. In this subsection, "travel expenses" means the costs of transportation, lodging, or meals comparable to what the state would pay for travel expenses for the traveling public officer to carry out the associated official responsibilities. (Eff. 4/24/94, Register 130; am \_\_/\_\_/\_\_, Register \_\_\_\_)

**Authority:** AS 39.52.130 AS 39.52.950

9 AAC 52.070 is amended to read:

**9 AAC 52.070. Information disseminated to the public.** (a) For purposes of AS 39.52.140, information has been disseminated to the public if it has been **distributed to the public** [PUBLISHED] through

- (1)** a newspaper **or other printed** publication;
- (2)** broadcast media;
- (3)** a press release;
- (4)** a newsletter;
- (5)** a legal notice;
- (6)** a nonconfidential court filing;
- (7)** a published report;
- (8)** **an agency's website;**
- (9)** **posting on the Alaska Online Public Notice System established under**

**AS 44.62.175;**

- (10)** a public speech; or
- (11)** public testimony before the legislature [, A BOARD,] or **an agency** [A

COMMISSION].

(b) Information that is available to the public but that has not been **distributed** [PUBLISHED] as described in (a) of this section has not been disseminated to the public. (Eff.

4/24/94, Register 130; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 39.52.140 AS 39.52.950

9 AAC 52.130(a) is amended to read:

(a) A designated supervisor shall submit the quarterly report described in AS 39.52.260 during the 30 [45] days following the end of each calendar quarter.

(Eff. 4/24/94, Register 130; am \_\_/\_\_/\_\_, Register \_\_\_\_)

**Authority:** AS 39.52.260 AS 39.52.950

9 AAC 52 is amended by adding a new section to read:

**9 AAC 52.135. Designated supervisor's determination of violation.** If, upon review of an ethics disclosure, a designated supervisor determines that a violation of AS 39.52.110 - 39.52.190 may have or has occurred, the designated supervisor shall

(1) in the case of a public employee, refer the matter for investigation and appropriate disciplinary action in accordance with AS 39.52.420 and, following any disciplinary action, to the attorney general for review under AS 39.52.310, unless the significance of the identified violation warrants immediate review by the attorney general; and

(2) in the case of a board or commission member, refer the matter to the attorney general for review under AS 39.52.310. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

**Authority:** AS 39.52.210 AS 39.52.310 AS 39.52.950  
AS 39.52.220 AS 39.52.420

9 AAC 52.140 is amended by adding a new subsection to read:

(e) If a complaint against a public officer alleges more than one violation of the Ethics Act, the attorney general may take action under AS 39.52.310, 39.52.320, 39.52.330, and

