

HB

353

Session:
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Alaska House of Representatives
David Guttenberg



District 8

Interim:
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Fairbanks, Alaska 99701-3171
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Date: February 23, 2010
To: Representative Bob Lynn
From: Representative David Guttenberg
Re: Hearing request for HB 353, An Act amending the Alaska Executive Branch Ethics Act to permit limited state-sponsored travel by the spouse or children of the governor or lieutenant governor; and providing for an effective date.

I respectfully request that HB 353 be scheduled for a hearing in the House State Affairs Committee consideration at your earliest convenience.

Included you will find:

- The current version of HB 353
- Sponsor statement
- Sectional Analysis (requested from legal, will be delivered upon completion)
- Settlement agreement for past executive travel controversy
- Legal opinion of Birch, Horton, Bittner and Cherot regarding a past executive travel controversy

I look forward to discussing the merits of this bill in the House State Affairs Committee. My staff, Amy Hundertmark, is assigned to this legislation if there are any questions, 465-4457. Any additional materials we wish to place before the committee will be submitted no later than 24 hours prior to the scheduled hearing.

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ALASKA STATE LEGISLATURE

Sponsor



Statement

SESSION:

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Representative David Guttenberg

"An Act amending the Alaska Executive Branch Ethics Act to permit limited state-sponsored travel by the spouse or children of the Governor or the Lieutenant Governor."

The current rules regarding travel for the families of the Governor or Lt. Governor are unclear. Over the past few years it has become clear that the state is in serious need of clear statutory language in defining acceptable, legitimate state expenses.

HB 353 determines that the state of Alaska does not pay for the travel of the Governor's or Lt. Governor's spouse or children. Should the Governor or Lt. Governor wish to have a family member travel with them on state business, they will be responsible for reimbursing the state for the cost of that travel.

It is reasonable for the Governor and Lt. Governor to want to travel with their families, but the state shouldn't be footing the bill. Now is the time to address this issue so there will be no future controversies about executive branch travel.

I urge you to support HB 353.

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Juneau, Alaska 99801-1182
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MEMORANDUM

March 23, 2010

SUBJECT: Sectional Summary of HB 353 (Work Order No. 26-LS1474\R)

TO: Representative David Guttenberg
Attn: Amy Hundertmark

FROM: Dan Wayne
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1, the bill's sole section, amends AS 39.52.120 of the Executive Branch Ethics Act, to allow the use of state resources to transport the spouses and children of the governor and the lieutenant governor to and from events that do not have a partisan political purpose, as long as the state is reimbursed for either the actual cost or the fair market value of the transportation.

Currently, AS 39.52.120 reads:

Sec. 39.52.120. Misuse of official position.

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

(b) A public officer may not

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

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

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

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

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

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of 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.

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

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

(e) Except for supplying information requested by the hearing officer or the entity with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a public officer may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer or individual, board, or commission with authority to make the final decision in the case assigned to the hearing officer unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the public officer to all parties to the hearing and the contact is made a part of the record.

(f) Use of state aircraft for partisan political 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

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

DCW:med
10-054.med

BEFORE THE ALASKA PERSONNEL BOARD

In Re October 24, 2008 Ethics Complaint

SETTLEMENT AGREEMENT

This settlement agreement is entered into between Governor Sarah Palin ("Governor") and the Alaska Personnel Board through its Independent Counsel ("Independent Counsel"). This settlement resolves the above described Complaint. The Complaint alleges that certain travel for Governor Palin's children was taken at State expense and in violation of the Alaska Executive Branch Ethics Act, AS 39.52.120(a) and (b)(3). The trips that are the subject of this Settlement Agreement are those described in Exhibit A. Exhibit A is specifically incorporated into the terms of this settlement agreement.

WHEREAS the parties agree that there is presently little statutory or regulatory guidance under the Alaska Executive Branch Ethics Act to determine the ethical standards for travel by the Governor's immediate family (referred to as Protocol Travel)¹ and, more specifically, to determine the circumstances under which (i) State reimbursement for travel by the Governor's children is ethically prohibited and (ii) when the Governor must reimburse the state for travel by her children on state transportation equipment;

WHEREAS the parties understand that AS 39.52.120(a)'s prohibition on unwarranted benefits or treatment is the most pertinent provision addressing

¹ As used herein, "Protocol Travel" is travel involving the First Family to events, ceremonies and other public appearances attended by the Governor.

travel by the Governor's immediate family as described in Exhibit A, that such provision is further defined by regulation, but that such regulation does not provide sufficiently clear standards for determining when travel as described in Exhibit A constitutes an unwarranted State reimbursed travel and therefore an ethical violation;

WHEREAS Independent Counsel has interpreted the Alaska Executive Branch Ethics Act, in the absence of specific regulation on the topic of first family travel, to require that state reimbursed travel for the first family should not occur at State expense unless the presence of the First Family serves an important state interest and that some of the travel raised by the Complaint does not meet this standard;

WHEREAS the Governor maintains that she adhered to Protocol Travel standards historically allowed to prior administrations, abided by the recommendations of state personnel, and has done nothing to violate the Act, but further agrees that written Protocol Travel guidelines would benefit her administration and all future administrations;

WHEREAS, as to the existing Complaint, the Governor wants to exceed minimum legal standards, and therefore wishes to respect and adhere to the determination made by Independent Counsel and does not wish to contest the standard being applied or the application of this standard to the Complaint in the interest of the State and the public;

WHEREAS the parties have agreed to mutually address and resolve the issues raised by the Complaint voluntarily, cooperatively and in the best interests of the State;

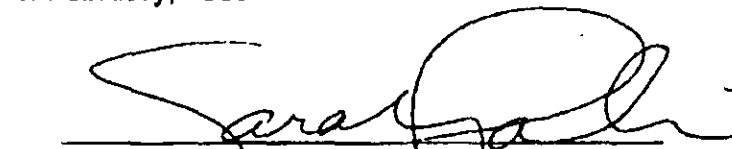
IT IS AGREED THAT:

1. The Governor shall reimburse the State within 120 days for payments for travel made as described in Exhibit A.
2. No other trips that could be the subject of the Complaint, through to the date of this agreement require reimbursement.
3. Independent Counsel shall refer this matter to the Department of Law for the purpose of promulgating additional regulations to clarify Protocol Travel by addressing more clearly what constitutes Protocol Travel that is warranted under the Alaska Executive Branch Ethics Act and therefore subject to State reimbursement. The Governor agrees to reimburse the State for any trip billed to the State for her children that are submitted in the future that does not comply with the regulation or regulations that are later promulgated.
4. It is expressly agreed that the terms of this agreement shall be made public, that the Governor waives her right to confidentiality regarding this agreement, and that Independent Counsel and the Governor shall be authorized to communicate the terms of this agreement to the public and to the Attorney General for purposes of seeking clarifying regulations. Independent Counsel, the Governor and her staff, and members of the Department of Administration

charged with arranging Protocol Travel shall be free to participate in the regulatory process as they choose or as they may be called upon.


5. Nothing in this agreement constitutes an admission of wrongdoing, and none has been found, nor may any inference of wrongdoing be inferred by virtue of the execution of this agreement in any other proceeding.

DATED this 23rd day of February, 2009


Governor Sarah Palin


Timothy J. Petumenos, Independent Counsel
Alaska Personnel Board

Approved as to form and content:

2-23-09 
Thomas Van Flein, Attorney for Governor Palin

T.A. DATES	EVENT DESCRIPTION	COST DESCRIPTION
01-1624 1/25 - 1/30/07	First Family attended Alaska Native Heritage Center First Family event in Anchorage (n/a); Bristol later attended opening night of Beauty and the Beast at Valley Performing Arts Center.	Additional cost to State for attending Beauty and the Beast to be reimbursed.
01-1901 4/18 - 4/22/07	First Family attended Elders and Community dinner in Glennallen (n/a); attended Alaska Prudential Student Recognition ceremony (n/a); attended Alaska Moose Federation banquet with Governor.	Trip to be prorated between three events, with Moose Federation to be reimbursed for marginal cost.
01-1857 01-1858 01-1859 5/6 - 5/8/07	First Family attended family dinner at the Outpost and attended the Skagway Community Reception for Palin family.	Family traveled via Ferry and DPS King Air.
01-1876 01-1877 5/9 - 5/10/07	Governor, Willow and Piper attend Cordova Shorebird Festival and documentary. Governor spoke to Cordova Chamber of Commerce.	Family traveled via DPS King Air. Two round trip tickets for Willow and Piper.
01-2134 10/7 - 10/11/07	Governor and Bristol attend Newsweek's Third Annual Women and Leadership Conference.	Airfare and one meal.
01-2335 01-2336 1/12/2008	Willow and Piper returned to Juneau to State of the State Address.	Willow and Piper traveled with Governor on DPS King Air.
01-2361 2/8 - 2/10/08	Start of the Iron Dog and Alaska Outdoor Council Banquet.	Piper traveled with Governor on DPS King Air.
01-2519 4/10/08	Curves Ribbon Cutting Ceremony, and bill signing for recycled eyeglasses during the Lions Club of Alaska and Yukon Territory Annual Convention.	Juneau to Anchorage
01-3151 01-3152 7/9 - 7/15/08	National Governor's Association Annual Summer Meeting.	Airfare and hotel

LAW OFFICES

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FEB 25 2009

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February 24, 2009

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FEB 25 2009

Executive AGO Juneau

Via Email and First Class Mail

Richard Svobodny, Acting Attorney General
P.O. Box 110300
Juneau, AK 99811
richard.svobodny@alaska.gov

Re: In re Ethics Complaint of October 24, 2008
Our File No. 506,751.3

Dear Mr. Svobodny:

I have been appointed Independent Counsel by the Alaska Personnel Board in connection with a complaint filed against Governor Palin under the Alaska Executive Ethics Act regarding travel by the Governor's children at State expense. After conducting legal research and an investigation into the facts of the matter, the Governor and the Personnel Board, through Independent Counsel, have entered into a Settlement Agreement which I have enclosed and which is to be released to the public. I write to you because the Department of Law has jurisdiction over the promulgation of regulations under the Alaska Executive Ethics Act.

I have come to the conclusion, and the Governor concurs, that the Ethics Act, and its clarifying regulations, gives insufficient guidance to an independent counsel, or a governor's office, as to what state reimbursed travel is appropriate for members of the first family. As a result, we have agreed in the settlement agreement to refer this matter to the Department of Law, in the public interest, so that more specific guidance and clarification be provided to this and future governors whose families may be called upon to travel on behalf of the State.

I have also come to the conclusion that the process of promulgating regulations is a far better way to address this issue than litigation following the filing of an adversarial accusation under these circumstances. The regulatory process provides for public comment and input as to what is an appropriate use of state funds for first family travel whereas litigation of the matter directly under the Act does not. The Governor's Office, in turn, is looking for more of a bright line set of rules to follow in scheduling travel that is simpler to apply than the current regulations.

BIRCH HORTON, BITTNER AND CHEROT
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Richard Svobodny, Acting Attorney General
February 24, 2009
Page 3

the standard used in the Settlement Agreement will guide the travel decisions by the Governor's Office.

It has been my endeavor to not only resolve this complaint, but attempt to recommend that a process be put into place that would make it unnecessary for gubernatorial related travel to become the subject of future request for scrutiny under the Ethics Act by making the standards clearer and easier for the Governor's Office to apply. Thank you for your consideration of this matter.

Very truly yours,

BIRCH HORTON BITTNER AND CHEROT



Timothy J. Petumenos
Independent Counsel

Cc: Thomas Van Flein, Counsel to Governor Palin (via email)
Alaska Personnel Board (via email)