

HB

14

<TARGET><BILL>HB 14</BILL><SUBJECT>HB
14</SUBJECT><COMM>HJUD27</COMM></TARGET>

**Alaska State Legislature
House of Representatives**



Representative Max F. Gruenberg, Jr.
House District 20
Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Floor Leader

Interim:
716 W 4th Avenue, Rm 350
Anchorage, Alaska 99501-2133
Phone: (907) 269-0123
Fax: (907) 269-0124

Session:
Alaska State Capitol, Rm 110
Juneau, Alaska 99801-1182
Phone: (907) 465-4940
Toll Free: (866) 465-4940
Fax: (907) 465-3766

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

Member

Standing Committees:

- Judiciary
- State Affairs
- Transportation
- Rules

Finance Subcommittees:

- Transportation
- Courts
- Law

MEMORANDUM

TO: Representative Carl Gatto, Chair
House Judiciary Committee

FROM: Representative Max Gruenberg *MG*

DATE: February 9, 2011

RE: HB 14 – Executive Ethics: Legal Fees/Family Travel



Please consider this memo as a request for House Bill 14 to be heard in the House Judiciary Committee. Accompanying this memo are the following documents:

- HB 14 (27-LS0124\A)
- Sponsor Statement
- Sectional Analysis
- Expected Witness List
- Relevant Regulations
- Fiscal Note (0.0)
- Legal Opinion (dated 2/31/10) from Dan Wayne, Legislative Counsel
- Legal Opinion (dated 1/31/11) from Dan Wayne, Legislative Counsel

Thank you for considering my request for a hearing on HB 14. Please contact my legislative aide, Gretchen Staft, at 465-4940 with any questions.

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UPDATED SPONSOR STATEMENT

HB 14 - EXECUTIVE ETHICS: LEGAL FEES/FAMILY TRAVEL

House Bill 14 sets forth in statute the substance of the Attorney General's recently-enacted 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.

HB 14 differs from the regulations in two important ways. First, although both the regulations and HB 14 authorize the use of state funds to pay the travel costs of children of the governor and lieutenant governor to certain events, HB 14 would authorize this payment not just for minor children, but also for mentally and physically disabled children who are dependent on the governor or lieutenant governor for care.¹ Second, the regulations authorize the state to pay, *in advance of exoneration*, the ongoing legal fees and costs of an employee accused of an ethics violation. If the employee is not exonerated of the ethics charges, the state must then attempt to recoup the funds it advanced to defend the guilty employee. HB 14, on the other hand, would require that an employee *be exonerated* before the state could reimburse the employee for his or her fees and costs.² HB 14 cures both problems.

If you have any questions, please contact my legislative aide, Gretchen Staff, at 465-4940.

Thank you for your consideration of HB 14.

¹ See page 3, lines 5-10 of the bill.

² See page 4, lines 6-11 of the bill.

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Toll Free: (866) 465-4940
Fax: (907) 465-3766

Email:

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

SECTIONAL ANALYSIS

HB 14 - 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, line 30 to page 4, line 4.
- Sec. 2.** Conforms AS 39.52.120(f) to the change proposed in section 1.
- Sec. 3.** Adds language to AS 39.52.120 that would allow, with exceptions, the use of state resources to cover costs of transporting members of the governor’s and lieutenant governor’s families to certain events.
- 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 Executive Branch Ethics Act violation, in certain circumstances.
- Sec. 5.** Makes section 4 of the bill applicable only to ethics complaints filed on or after the effective date of the bill.

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HB 14

EXECUTIVE ETHICS: LEGAL FEES/FAMILY TRAVEL

Expected Witnesses

Anchorage LIO:

Judy Bockmon (Department of Law)

Remote Call-In:

Dan Wayne (Legislative Legal Services)

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
 Bill Version HB 14
 (H) Publish Date 2/2/11

Identifier (file name): HB014-LAW-CIV-01-21-11 Dept. Affected Law
 Title An Act relating to Executive Branch Ethics; legal fees; and limitations on Appropriation Civil
state paid family travel. Allocation Opinions, Appeals and Ethics
 Sponsor Representative Gruenberg
 Requester (H) State Affairs OMB Component Number 2716

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
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

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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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							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 1/21/11 6:00 PM
 Date 1/21/2011

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 14

Analysis

This bill authorizes state agencies to pay private legal fees and costs incurred by persons exonerated of alleged Alaska Executive Branch Ethics Act violations. Allows certain public officers and former public officers to accept state payments to offset private legal fees and costs related to defending against an Alaska Executive Branch Ethics Act complaint. Creates certain exceptions to Alaska Executive Branch Ethics Act limitations on the use of state resources to provide or pay for transportation of spouses and children of the governor and lieutenant governor. Department of Law does not anticipate a fiscal impact from this bill.

9 AAC 52.040. UNWARRANTED BENEFITS OR TREATMENT. (a) As used in AS 39.52.120 (a), "unwarranted benefits or treatment" includes

(1) a deviation from normal procedures for the award of a benefit, regardless of whether the procedures were established formally or informally, if the deviation is based on the improper motivation; and

(2) an award of a benefit if the person receiving the benefit was substantially less qualified, in light of the formal or informal standards set out for the award, than another person who was or reasonably should have been considered for the award if the award is based on an improper motivation.

(b) A public officer may not grant or secure an unwarranted benefit or treatment, regardless of whether the result is in the best interest of the state.

(c) Subject to the requirements of AS 39.52.110, 39.52.120, 39.52.150, and AS 39.90.020, neither the Ethics Act nor this chapter prohibits a public officer from

(1) considering a person who has a relationship with an officer for a state contract or job if the person is considered on an equal basis with other applicants; or

(2) considering an individual's political affiliation or political support in determining whether to appoint the individual to a state board or commission or to hire the individual for an exempt or partially exempt state job.

(3) accepting money to reimburse the public officer for reasonable expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, if

(A) the public officer is exonerated of a violation of the Ethics Act for which payment is made;

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

(C) the public officer executes a written agreement to repay any money requested and paid in advance of exoneration if the public officer is not exonerated of the violation; and

(D) the public officer repays any money paid in advance if the public officer is not exonerated of the violation; or

(4) approving money to reimburse another public officer for reasonable expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, 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 complaint concerns conduct that occurred during the public officer's employment or service as a public officer;

(B) the payment is made by a state agency that has money appropriated that may be lawfully used for the purpose of paying the expenses; and

(C) the public officer whose expenses are paid

(i) has been exonerated of a violation of the Ethics Act for which payment is made; or

(ii) has executed a written agreement to repay any money paid in advance of exoneration, if the public officer is not exonerated of the violation.

(d) For purposes of (c)(3) and (4) 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, based on an evaluation of the complexity of the alleged claim, the attorney's fee or hourly rate, the hours expended, the relationship between the amount of work performed and the significance of the alleged claim, and other relevant factors, the expenses 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, fees incurred for professional legal services customarily performed by an attorney but delegated to and performed by an investigator, paralegal, or law clerk, and related costs; 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 were limited to the alleged violation for which the public officer is exonerated; and

(3) payment under this section may be made to or on behalf of a current public officer or a former public officer who was the subject of a pending complaint when the officer left state service or becomes the subject of a complaint after leaving state service.

(Eff. 4/24/94, Register 130; am 12/22/10, Register 196)

Authority: AS 39.52.120

AS 39.52.950

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 official action of the state; 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 officially designated representative of the state; or

(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 equivalent commercial transportation, if the travel was by state aircraft, vessel, or vehicle.

(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. 12/22/10, Register 196)

*Authority: AS 39.52.120
AS 39.52.950*

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

LEGAL SERVICES

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

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

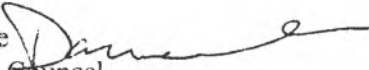
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

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.¹ 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

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

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STATE OF ALASKA

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

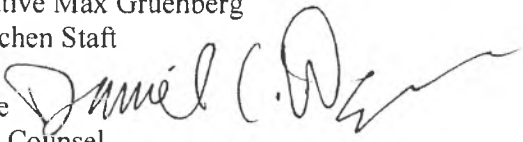
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 31, 2011

SUBJECT: State reimbursement of legal costs for defending against ethics complaints. (HB 14; Work Order No. 27-LS0124\A)

TO: Representative Max Gruenberg
Attn: Gretchen Staff

FROM: Dan Wayne 
Legislative Counsel

You have asked for a further explanation of the term "apportionment" as used on page 4, lines 12 - 13 of HB 14, and the term "necessarily incurred," as used on page 4, line 31.

1. "Apportionment" would allow for partial reimbursement of legal expenses where a single ethics complaint alleges more than one ethics violation, if an accused person is exonerated of fewer than all of the violations alleged. 9 AAC 52.040 allows apportionment as well. 9 AAC 52.040(d)(2)(B) says that legal expenses paid may "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 were limited to the alleged violation for which the public officer is exonerated."

2. The term "necessarily incurred" is relied on by Alaska courts when awarding attorney fees under Rule 82 of the Alaska Rules of Civil Procedure. Rule 82(b)(2) requires that, in cases in which the prevailing party does not win a money judgment, the court shall award the prevailing party a percentage of that party's "reasonable actual attorney's fees which were necessarily incurred." The court does not pay the awarded fees; it orders them paid by the party who opposed the prevailing party. The percentage is 30 percent if the case goes to trial and 20 percent if it's resolved without a trial, although under Rule 82(b)(3) that amount can be increased or decreased based on fairness to the parties, the complexity of the litigation, the length of trial, vexatious or bad faith conduct, the relationship between the amount of work performed and the significance of the matters at stake, the extent to which the fees incurred by the prevailing party suggest they were influenced by considerations apart from the case (such as a desire to discourage claims by others), and the reasonableness of the hourly rate, number of hours expended, and number of attorneys used.

If I may be of further assistance, please advise.

DCW:plm
11-045.plm



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@legis.state.ak.us

Memorandum

TO: Representative Max Gruenberg
FROM: Patricia Young, Manager
DATE: January 25, 2011
RE: State Payment of Legal Fees Incurred in Defense of an Ethics Complaint against a Public Official
LRS Report 11.122

You wished to know of any instances in Alaska or other jurisdictions where the government is authorized to reimburse a public official or state employee for legal fees and costs that the individual incurs in defending against an ethics complaint. You also wished to know of instances in Alaska or other jurisdictions where the government is authorized to pay such fees and costs in advance of exoneration.

Authorization for reimbursement of legal fees appears to be relatively common, although in a number of jurisdictions, the reimbursement is authorized to be gained from the person who brought the complaint. We identified at least three jurisdictions in which reimbursement comes through the government.¹

- A 2008 amendment to the ethics laws on investigations in Alberta, Canada, provides for reimbursement of legal expenses through the Legislative Assembly.
- Connecticut law provides for reimbursement of legal fees by the state when charges of ethics violations are held to be without foundation. The Connecticut law further authorizes that if the complainant brought the charge knowing that it was baseless, the public official or state employee will have a cause of action against the complainant for double the amount of damage caused. If the action is successful, the courts may also award the individual the costs and reasonable attorneys' fees for the action.
- An agreement between Alaska's Division of Risk Management and the Alaska Court System establishes that in exchange for interagency assessments, Risk Management provides coverage for third party tort liability and workers' compensation claims for the Court System and its employees, for the Alaska Judicial Council and its members and employees, and for the Alaska Commission on Judicial Conduct and its members and employees. Risk Management provides limited coverage for disciplinary proceedings before the Alaska Commission on Judicial Conduct, the Alaska Bar Association, the Alaska Public Offices Commission, or any similar entity if the alleged conduct is within the scope of the employee's or member's office or employment and does not allege a conflict of interest. The annual aggregate limit is \$45,000 per fiscal year, and each disciplinary proceeding is limited to \$15,000. The employee must retain independent counsel and pay the first \$3,000 for actual incurred attorney's fees and related costs. Thereafter, Risk Management pays up to \$15,000 for the representation. In proceedings alleging a conflict of interest, no reimbursement is made unless a final adjudication establishes that no conflict existed.²

While there may be other jurisdictions that provide for advance payment of legal fees in such cases, we identified only the following in the timeframe of this report: in December 2010, the Alaska executive branch promulgated regulations establishing standards for the use of state money to reimburse or to pay in advance of exoneration a public officer's ongoing legal fees and costs for defending against an ethics complaint. In either case, the public officer must repay any money if not exonerated. Language of the new provisions follows.³

¹ Given the timeframe for this response, we searched the 2010 and 2009 Ethics Updates for the *COGEL Blue Book*, published annually by the Council on Governmental Ethics Laws and the websites of selected state ethics commissions. We also contacted Peggy Kerns, director of the Center for Ethics in Government at the National Conference of State Legislatures. Although traveling at this time, Ms. Kerns noted that she may be able to provide additional information on this topic in the future. We will forward any additional information upon its arrival.

² A copy of the Memorandum of Agreement between the Division of Risk Management and the Alaska Court System is attached.

³ We also note that some states—including California, Michigan, and North Carolina—allow candidates for elective office or elective officials to create legal defense funds.

9 AAC 52.040. Unwarranted Benefits or Treatment.

...
(c) Subject to the requirements of AS 39.52.110, 39.52.120, 39.52.150, and AS 39.90.020, neither the Ethics Act nor this chapter prohibits a public officer from

- ...
(3) accepting money to reimburse the public officer for reasonable expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, if
(A) the public officer is exonerated of a violation of the Ethics Act for which payment is made;
(B) the complaint concerns conduct that occurred during the public officer's employment or service as a public officer;
(C) the public officer executes a written agreement to repay any money requested and paid in advance of exoneration if the public officer is not exonerated of the violation; and
(D) the public officer repays any money paid in advance if the public officer is not exonerated of the violation; or 3
(4) approving money to reimburse another public officer for reasonable expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, 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 complaint concerns conduct that occurred during the public officer's employment or service as a public officer;
(B) the payment is made by a state agency that has money appropriated that may be lawfully used for the purpose of paying the expenses; and
(C) the public officer whose expenses are paid
(i) has been exonerated of a violation of the Ethics Act for which payment is made; or
(ii) has executed a written agreement to repay any money paid in advance of exoneration, if the public officer is not exonerated of the violation.

(d) For purposes of (c)(3) and (4) 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, based on an evaluation of the complexity of the alleged claim, the attorney's fee or hourly rate, the hours expended, the relationship between the amount of work performed and the significance of the alleged claim, and other relevant factors, the expenses 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, fees incurred for professional legal services customarily performed by an attorney but delegated to and performed by an investigator, paralegal, or law clerk, and related costs; 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 were limited to the alleged violation for which the public officer is exonerated; and

(3) payment under this section may be made to or on behalf of a current public officer or a former public officer who was the subject of a pending complaint when the officer left state service or becomes the subject of a complaint after leaving state service.

(Eff. 4/24/94, Register 130; am 12/22/10, Register 196)

Authority: AS 39.52.120

AS 39.52.950

We hope this information is helpful. If you have questions or need additional information, please let us know.

**Memorandum of Agreement for
Representation and Liability Coverage
and Workers' Compensation Coverage**

between

**State of Alaska,
Department of Administration,
Division of Risk Management**

and

**State of Alaska,
Alaska Court System**

RECEIVED

JUN 01 2010

**DEPARTMENT OF ADMINISTRATION
COMMISSIONER'S OFFICE**

The Division of Risk Management and the Alaska Court System agree that Risk Management will provide representation and liability coverage and workers' compensation coverage under the terms of this Memorandum of Agreement ("Agreement") for the Alaska Court System and its employees, for the Alaska Judicial Council and its members and employees, and for the Alaska Commission on Judicial Conduct and its members and employees.

The Alaska Court System, the Alaska Judicial Council, and the Alaska Commission on Judicial Conduct ("Court System") pay interagency assessments to Risk Management in exchange for coverage of tort liability and workers' compensation claims. Because Risk Management provides a program of self-insurance, this Agreement is not an insurance agreement.

This agreement confirms that based upon the receipt of these interagency funds the Division of Risk Management will provide the following services to the employees and members of the Court System:

(1) Defense and indemnity of third party tort liability claims for damages made against the Court System or its employees or members when acting within the scope of the employee's or members office or employment. For purposes of this agreement "acting within the scope of the employee's office or employment" is defined as set forth in AS 09.50.253(h)(1) and this definition is incorporated by reference. Third party liability claims for damages does not include claims or litigation arising out of employment scenarios (such as wrongful discharge, constructive discharge, employment related torts);

(2) Defense and indemnity of third party claims for damages brought pursuant to 42 USC sec. 1983 which meet the criteria in (1) above;

(3) If the criteria in (1) above is met, legal representation of employees and members will be provided to defend claims for punitive damages; however this agreement does not provide indemnity for punitive damage awards or judgments;

(4) Defense counsel for the above services will be provided through the State of Alaska, Department of Law, through Risk Management's RSA, unless there is an ethical conflict barring representation; and

(5) Claim processing and payment of workers compensation claims made by Court System employees where the Court System is the employer.

The Division of Risk Management will provide the following additional services to the Court System as set forth below:

(1) Risk Management will not provide representation or indemnification to an employee for disciplinary proceedings. However, Risk Management will provide limited coverage for disciplinary proceedings, if the alleged conduct is within the scope of the employee's or member's office or employment as defined in AS 09.50.253(h)(1) and does not allege a conflict of interest.

(a) For each disciplinary proceeding, an employee who retains a private attorney will be reimbursed up to \$15,000 for the actual incurred costs (independent attorney fees and related legal expenses) incurred for that representation. Reimbursement will be made per disciplinary proceeding, notwithstanding the number of allegations contained within any complaint or charging document.

(b) Prior to reimbursement, the employee must first pay \$3,000 for actual incurred costs (independent attorney fees and related legal expenses) for private representation.

(c) There is an annual aggregate limitation to this reimbursement by the Division of Risk Management to \$45,000 per fiscal year (the period of July 1 through June 30).


(d) Risk Management will not provide reimbursement for proceedings that allege a conflict of interest between the employee's official capacity and the activities of the employee as a director, officer, partner, investor, or trustee of any private, public, or charitable organization, or to any other conflict of interest claim, unless a final adjudication has been made and no conflict was found to exist.


(e) "Disciplinary proceedings" means proceedings before the Alaska Commission on Judicial Conduct, the Alaska Bar Association, the Alaska Public Offices Commission, or any similar entity, but does not include proceedings brought under the Alaska Court System's Personnel Rules, or under any personnel rules adopted by the Alaska Judicial Council or the Alaska Commission on Judicial Conduct.

This agreement may be cancelled by either party upon 60 days' notice.


ALASKA COURT SYSTEM

DEPARTMENT OF ADMINISTRATION

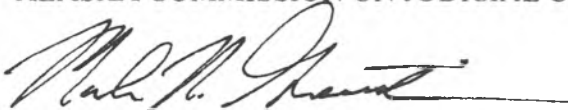

for Christine Johnson
Administrative Director
DATED: 5-19-10


for Annette Kreitzer
Commissioner
DATED: 6-1-10

ALASKA JUDICIAL COUNCIL


Larry Cohn
Executive Director
DATED: 5/20/10

ALASKA COMMISSION ON JUDICIAL CONDUCT


Marla Greenstein
Executive Director
DATED: 5-20-10

CS FOR HOUSE BILL NO. 14(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

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

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

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

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

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

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

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

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

20 (ii) POLITICAL PARTY OR GROUP;

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

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

25 (f) Use of state aircraft for a partisan political purpose [PURPOSES] is
26 permitted under (b) of this section only when the use is collateral or incidental to the
27 normal performance of official duties and does not exceed 10 percent of the total of
28 the use of the aircraft for official purposes and partisan political purposes, combined,
29 on a single trip. A public officer who authorizes or makes any partisan political use of
30 a state aircraft under (b) of this section shall disclose the authorization and use under
31 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, state resources may be
4 used to transport or pay the cost of transporting a person who is the spouse or child of
5 the governor or lieutenant governor to an event. This subsection authorizes
6 transportation or payment of the cost of transportation of a person who is a child of the
7 governor or lieutenant governor if the person is a biological child, an adoptive child,
8 or a stepchild of the governor or lieutenant governor and is under 19 years of age or,
9 without regard to age, is dependent on the governor or lieutenant governor for care
10 because of a physical or mental disability. Under this subsection, use of state resources
11 is permitted if the event does not have a partisan political purpose and

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

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

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

19 (B) the event is state-sponsored and the person's attendance has
20 been customary at similar events;

21 (C) the person is attending as an officially designated
22 representative of the state; or

23 (D) the person is invited by the sponsor of the event before the
24 transportation occurs, the event is related to issues important to the state, the
25 governor or lieutenant governor attends, and

26 (i) the event is a family or youth oriented event at which
27 the person's attendance is particularly appropriate; or

28 (ii) the invitation and the person's attendance have been
29 customary for similar events.

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

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

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

2 (B) political party or group;

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

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

6 **Sec. 39.52.470. Legal fees and costs.** (a) Notwithstanding AS 39.52.120, a
7 state agency may pay the fees and costs of private legal representation that are
8 incurred by a person who is a public officer or a former public officer while defending
9 against a complaint initiated or filed under AS 39.52.310 concerning conduct by the
10 person during a period when the person was serving or employed as a public officer, if
11 the person has been exonerated. When a complaint has alleged more than one
12 violation against a public officer or a former public officer, payments may be
13 apportioned by alleged violation.

14 (b) A payment made under this section must be from funds that have been
15 appropriated to a state agency and that may lawfully be used for the payment.

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

18 (d) A public officer may not act for the state in the matter of a payment under
19 this section if the payment is to the public officer or an immediate family member of
20 the public officer.

21 (e) In this section,

22 (1) "exonerated" means that an allegation of a violation of AS 39.52
23 (Alaska Executive Branch Ethics Act) has, without corrective action under
24 AS 39.52.330, been

25 (A) dismissed under AS 39.52.310(d), 39.52.320, or
26 39.52.370(d);

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

28 (C) resolved solely with a recommendation for preventive
29 action under AS 39.52.330;

30 (2) "fees and costs of private legal representation" means reasonable
31 fees and related costs of legal representation that are necessarily incurred in defense

1 against the allegations in the complaint and may include fees for services customarily
2 performed by an attorney but delegated to and performed by a person working under
3 the supervision of an attorney licensed to practice in the state.

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

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