

**HB**

**14**

<TARGET><BILL>HB 14</BILL><SUBJECT>HB  
14</SUBJECT><COMM>HSTA27</COMM></TARGET>



Additional  
Materials for  
HB 14

# 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**

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*Member*

*Standing Committees:*

Rules  
Judiciary  
State Affairs  
Transportation

*Finance Subcommittees:*

Corrections  
Courts  
Law

### 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.<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> See page 3, lines 5-10 of the bill.

<sup>2</sup> See page 4, lines 6-11 of the bill.

# LEGAL SERVICES

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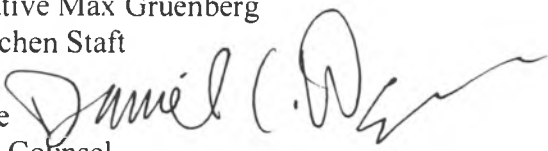
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## 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 Staft

**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

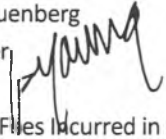


# LEGISLATIVE RESEARCH SERVICES

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

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(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*

HB 14

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***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.***

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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.<sup>1</sup>

- 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.<sup>2</sup>

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.<sup>3</sup>

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

**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.

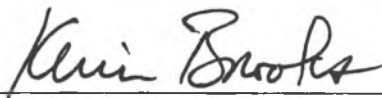
(e) "Disciplinary proceedings" means proceedings before the Alaska Commission on Judicial Conduct, the Alaska Bar Association, the Alaska Public Offices Commission, or any similar entity, but does not include proceedings brought under the Alaska Court System's Personnel Rules, or under any personnel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

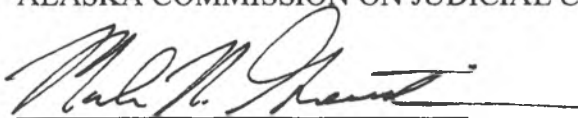
  
for Christine Johnson  
Administrative Director  
DATED: 5-19-10

  
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

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.

Member

*Standing Committees:*

Judiciary  
State Affairs  
Transportation

*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

### SPONSOR STATEMENT

#### HB 14 - EXECUTIVE ETHICS: LEGAL FEES/FAMILY TRAVEL

HB 14 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 14.

# 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  
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.<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:ljw  
10-086.ljw

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

## Relevant Statutes

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

**Alaska State Legislature**  
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**Anchorage (Mountain View, Russian Jack, East Anchorage)**  
**House Minority Floor Leader**

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**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.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number \_\_\_\_\_  
 Bill Version HB014  
 ( ) Publish Date \_\_\_\_\_

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 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<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 (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

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. HB014

**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.

# Alaska State Legislature

## House of Representatives



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**MEMORANDUM**

**TO:** Representative Bob Lynn, Chair  
House State Affairs Committee

**FROM:** Representative Max Gruenberg

**DATE:** January 20, 2011

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

\*\*\*\*\*

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

- HB 14 (27-LS0124\A)
- Sponsor Statement
- Legal Opinion 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.