

HB

10

<TARGET><BILL>HB 10</BILL><SUBJECT>HB
10</SUBJECT><COMM>HSTA28</COMM></TARGET>

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 16, 2013

FURTHER REFERRALS: Judiciary

Date of Committee Action: 5-19-2013

The STATE AFFAIRS Committee considered:

HB 10

HOUSE BILL NO. 10

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

HB 10-EXEC ETHICS: LEGAL FEES/FAMILY TRAVEL

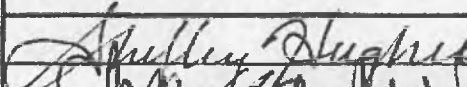
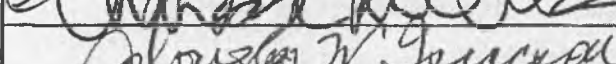
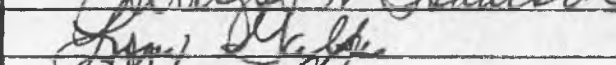



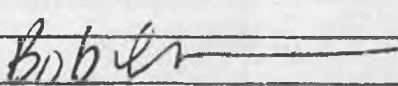
Recommends it be replaced with HCS or CS for HB 10 (STA)
 For Senate Bills with new title: Technical Title New Title: HCR _____ | Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

- List of Abbrev for Depts.:
- ADM
 - CED
 - COR
 - CRT
 - EED
 - DEC
 - DFG
 - GOV
 - DHS
 - LWF
 - LAW
 - LEG
 - MVA
 - DNR
 - DPS
 - REV
 - DOT
 - UA

<u>NEW FISCAL NOTES</u>				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	DOL			X

<u>PREVIOUS FISCAL NOTES</u>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Hughes	✓			
	Willett			✓	
	JACKSON			✓	
	Gattis			✓	
	Kreiss-Tomkins	✓			
	Keller			✓	
Chair: 	LYNN	✓			
Chair: _____					

CS FOR HOUSE BILL NO. 10(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GRUENBERG

A BILL

FOR AN ACT ENTITLED

1 **"An Act creating certain exceptions to limitations under the Alaska Executive Branch**
2 **Ethics Act on the use of state resources to provide or pay for transportation of spouses**
3 **and children of the governor and the lieutenant governor."**

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

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

6 **(b) A public officer may not**

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

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

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

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

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

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

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

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

15 (ii) POLITICAL PARTY OR GROUP;

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

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

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

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

29 (g) Notwithstanding (a) and (b)(1) - (5) of this section, state resources may be
 30 used to transport or pay the cost of transporting a person who is the spouse or child of
 31 the governor or lieutenant governor to an event. This subsection authorizes

1 transportation or payment of the cost of transportation of a person who is a child of the
 2 governor or lieutenant governor if the person is a biological child, an adopted child, or
 3 a stepchild of the governor or lieutenant governor and is under 19 years of age or,
 4 without regard to age, is dependent on the governor or lieutenant governor for care
 5 because of a physical, intellectual, or developmental disability. Under this subsection,
 6 use of state resources is permitted if the event does not have a partisan political
 7 purpose and

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

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

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

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

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

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

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

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

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

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

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

29 (B) political party or group;

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

Alaska State Legislature



Chairman
State Affairs Committee

Vice-Chair
Judiciary Committee

Vice-Chair
Veterans' Caucus

Member
Transportation Committee
Joint Armed Services Special Committee

Finance Subcommittees
Administration
Corrections
Military and Veterans' Affairs

A Communication From
REPRESENTATIVE BOB LYNN
District 23 Anchorage

Session:
Alaska State Capitol, #108
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794 *NManly*
Alaska State Capitol, Room 108
Juneau, AK 99801-1182

of Pages (including cover): 1

Phone: 907-465-4931
Fax: 907-465-4316

Re Draft FINAL CS to HB 10 Version N 28-LS0040\N

2/19/2013

HB 10 Version N moved from the House State Affairs Committee this morning with no changes to the CS Version N. Please draft a FINAL CS.

Thanks!

Alaska State Legislature

House of Representatives



Member:
Judiciary
Rules
Legislative Council
Military & Veterans Affairs

Representative Max F. Gruenberg, Jr.
House District 14
Anchorage (Russian Jack, College Gate, Nunaka Valley)
House Democratic 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

EXPLANATION OF CHANGES: HOUSE BILL 10: EXECUTIVE ETHICS "A" VERSION TO "N" VERSION

There were two changes from the A version to the N version that is before the House State Affairs Committee.

1. Page 3, line 12 of the A version (page 3, line 5 of the N version) "mental" was changed to "intellectual, or developmental" in accord with an amendment adopted by the committee during the previous hearing on the bill.
2. Page 4, line 7 through page 5, line 9 of the A version; Sections 4 and 5 were removed. There is also a corresponding title change to reflect these deletions.

28-LS0040\N
Wayne
2/15/13

CS FOR HOUSE BILL NO. 10()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GRUENBERG

A BILL
FOR AN ACT ENTITLED

1 **"An Act creating certain exceptions to limitations under the Alaska Executive Branch**
2 **Ethics Act on the use of state resources to provide or pay for transportation of spouses**
3 **and children of the governor and the lieutenant governor."**

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

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

- 6 (b) A public officer may not
- 7 (1) seek other employment or contracts through the use or attempted
- 8 use of official position;
- 9 (2) accept, receive, or solicit compensation for the performance of
- 10 official duties or responsibilities from a person other than the state;
- 11 (3) use state time, property, equipment, or other facilities to benefit
- 12 personal or financial interests;
- 13 (4) take or withhold official action in order to affect a matter in which
- 14 the public officer has a personal or financial interest;

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

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

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

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

15 (ii) POLITICAL PARTY OR GROUP;

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

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

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

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

29 (g) Notwithstanding (a) and (b)(1) - (5) of this section, state resources may be
 30 used to transport or pay the cost of transporting a person who is the spouse or child of
 31 the governor or lieutenant governor to an event. This subsection authorizes

1 transportation or payment of the cost of transportation of a person who is a child of the
 2 governor or lieutenant governor if the person is a biological child, an adopted child, or
 3 a stepchild of the governor or lieutenant governor and is under 19 years of age or,
 4 without regard to age, is dependent on the governor or lieutenant governor for care
 5 because of a physical, intellectual, or developmental disability. Under this subsection,
 6 use of state resources is permitted if the event does not have a partisan political
 7 purpose and

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

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

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

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

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

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

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

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

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

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

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

29 (B) political party or group;

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

Usaacson Amendment

Passed

28-LS0040\A.2
Wayne
1/30/13

AMENDMENT

1

OFFERED IN THE HOUSE

TO: HB 10

- 1 Page 3, line 12:
- 2 Delete "or mental"
- 3 Insert ", intellectual, or developmental"

Alaska State Legislature

**Chairman**

State Affairs Committee

Vice-Chair

Judiciary Committee

MemberTransportation Committee
Joint Armed Services Special Committee**Finance Subcommittees**Administration
Corrections
Military and Veterans Affairs**Session:**Alaska State Capitol, #108
Juneau, AK 99801-1182

Phone: (907) 465-4931

Fax: (907) 465-4316

Toll Free: (800) 870-4391

Interim:716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205

Fax: (907) 269-0207

A Communication From
REPRESENTATIVE BOB LYNN
District 23 Anchorage

FAX

To: Legal Services

Fax #: 465-2029From: Nancy Manly 465-2794
Alaska State Capitol, Room 108
Juneau, AK 99801-1182# of Pages (including cover): 1

Phone: 907-465-4931

Fax: 907-465-4316

Re HB 10 – 28-LS0040\A DRAFT a House STA CS

1/31/2013

HB 10 Version A was heard, amended and held in House State Affairs Committee. Please draft a House STA CS with the following changes: Thanks!

Amendment #1 (Isaacson)

28-LS0040\A.2

Alaska State Legislature

House of Representatives

Member:

Judiciary
Rules
Legislative Council
Military & Veterans Affairs



Representative Max F. Gruenberg, Jr.
House District 14
Anchorage (Russian Jack, College Gate, Nunaka Valley)
House Democratic 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

SPONSOR STATEMENT

HB 10 - EXECUTIVE ETHICS: LEGAL FEES/FAMILY TRAVEL

HB 10 sets forth in statute the substance of the 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 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.

Please contact my legislative aide, Ted Madsen, at 465-2840, with any comments or concerns.

Thank you for your consideration of HB 10.

Alaska State Legislature

House of Representatives

Member:

Judiciary
Rules
Legislative Council
Military & Veterans Affairs



Representative Max F. Gruenberg, Jr.
House District 14
Anchorage (Russian Jack, College Gate, Nunaka Valley)
House Democratic 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

SECTIONAL ANALYSIS

HB 10 - 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 4, lines 1-6.
- Sec. 2.** Conforming amendment.
- Sec. 3.** Adds new subsections.

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

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

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

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

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

LEGAL SERVICES

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

(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:ljw
10-086.ljw

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

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 10 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB010-LAW-CIV-01-25-13
Title: EXEC ETHICS: LEGAL FEES/FAMILY TRAVEL
Sponsor: GRUENBERG
Requester: (H) State Affairs

Department: Department of Law
Appropriation: Civil Division
Allocation: Opinions, Appeals and Ethics
OMB Component Number: 2716

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
---------------------------	--	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/14

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	01/25/2013 12:45 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	01/25/13
	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 10

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. The passage of this bill will require repeal of similar ethics regulations in 9 AAC 52.

Department of Law does not anticipate a fiscal impact from this bill.

9 AAC 52.045. Transportation of family members of governor and lieutenant governor

Statute text

(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).

History: Eff. 12/22/2010, Register 196

Authority: AS 39.52.120

AS 39.52.950

9 AAC 52.040. Unwarranted benefits or treatment **[emphasis added]**

(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.

History

History: Eff. 4/24/94, Register 130; am 12/22/2010, Register 196

Authority: AS 39.52.120

AS 39.52.950

Alaska State Legislature

House of Representatives

Member:

Judiciary
Rules
Legislative Council
Military & Veterans Affairs



Representative Max F. Gruenberg, Jr.
House District 14
Anchorage (Russian Jack, College Gate, Nunaka Valley)
House Democratic 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

MEMORANDUM

TO: Rep. Bob Lynn, Chair
House State Affairs Committee

FROM: Rep. Max Gruenberg *Max*

DATE: January 24, 2013

RE: HB 10—Executive Ethics: Legal Fees/Family Travel

.....

Please consider this memo as a request for HB 10 to be heard in the House State Affairs Committee. Accompanying this memo are the following documents:

- HB 10 (28-LS0040\A)
- Sponsor Statement
- Sectional Analysis
- Legal Opinion from Dan Wayne, Legislative Counsel
- Regulation 9 AAC 52.045
- Regulation 9AAC 52.040

Thank you for considering my request for a hearing on HB 10. Please contact my legislative aide, Ted Madsen, at 465-2840 with any questions.

28-LS0040U
Wayne
2/1/13

CS FOR HOUSE BILL NO. 10(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS 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 violations of the Alaska Executive Branch Ethics Act;
3 allowing certain public officers and former public officers to accept state payments to
4 offset private legal fees and costs related to defending against complaints under the
5 Alaska Executive Branch Ethics Act; and creating certain exceptions to limitations
6 under the Alaska Executive Branch Ethics Act on the use of state resources to provide
7 or pay for transportation of spouses and children of the governor and the lieutenant
8 governor."

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

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

11 (b) A public officer may not

12 (1) seek other employment or contracts through the use or attempted

1 use of official position;

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

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

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

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

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

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

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

22 (ii) POLITICAL PARTY OR GROUP;

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

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

27 (f) Use of state aircraft for a partisan political purpose [PURPOSES] is
28 permitted under (b) of this section only when the use is collateral or incidental to the
29 normal performance of official duties and does not exceed 10 percent of the total of
30 the use of the aircraft for official purposes and partisan political purposes, combined,
31 on a single trip. A public officer who authorizes or makes any partisan political use of

1 a state aircraft under (b) of this section shall disclose the authorization and use under
2 AS 39.52.210 or 39.52.220 for each trip, and the person who uses the aircraft shall
3 reimburse the state for the proportionate share of the actual cost of the use.

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

5 (g) Notwithstanding (a) and (b)(1) - (5) of this section, state resources may be
6 used to transport or pay the cost of transporting a person who is the spouse or child of
7 the governor or lieutenant governor to an event. This subsection authorizes
8 transportation or payment of the cost of transportation of a person who is a child of the
9 governor or lieutenant governor if the person is a biological child, an adopted child, or
10 a stepchild of the governor or lieutenant governor and is under 19 years of age or,
11 without regard to age, is dependent on the governor or lieutenant governor for care
12 because of a physical, intellectual, or developmental disability. Under this subsection,
13 use of state resources is permitted if the event does not have a partisan political
14 purpose and

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

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

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

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

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

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

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

31 (ii) the invitation and the person's attendance have been

1 customary for similar events.

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

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

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

5 (B) political party or group;

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

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

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

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

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

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

24 (e) In this section,

25 (1) "exonerated" means that an allegation of a violation of this chapter
26 has, without corrective action under AS 39.52.330, been

27 (A) dismissed under AS 39.52.310(d), 39.52.320, or
28 39.52.370(d);

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

30 (C) resolved solely with a recommendation for preventive
31 action under AS 39.52.330;

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

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

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

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 10

1 Page 1, lines 1 - 5:

2 Delete "authorizing state agencies to pay private legal fees and costs incurred by
3 persons exonerated of alleged violations of the Alaska Executive Branch Ethics Act;
4 allowing certain public officers and former public officers to accept state payments to
5 offset private legal fees and costs related to defending against complaints under the
6 Alaska Executive Branch Ethics Act; and"

7

8 Page 4, line 7, through page 5, line 9:

9 Delete all material.

Last yr
it moved out #STA
& JUD last yr
NO REC

Copy of CS Version U

reg - ~~Macalister~~^{McGalester}

Transportation reg

Already doing this

reimb before they are exonerated
they sign a pledge to pay back.

Rec'd
for
4 or
5 years
(after
Palm Admin)

Executive Branch,

Gruenberg

They had agreed amend would be
up for a vote.

The exec Branch is the only Branch
that gets the Money before they
are exonerated.

lets deal with vexatious litigants
- The reg were changed to provide reimb
before they were exonerated.