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1 under this section, except as provided in AS 39.52.380.

2 (f) Technical rules of evidence do not apply, but the hearing
3 officer's findings must be based upon reliable and relevant evidence.
4 All testimony and other evidence taken at the hearing must be recorded
5 and the evidence maintained. Copies of transcripts of the hearing
6 record are available to the subject of the accusation at the subject's
7 expense; however, upon request, a copy of the recording of the hearing
8 must be furnished without charge to the subject of the accusation.

9 (g) At the conclusion of the formal hearing, the hearing officer
10 may direct either or both parties to submit proposed findings of fact,
11 conclusions of law, and recommendation to be filed within 10 days
12 after the conclusion of the hearing.

13 (h) Within 30 days after the conclusion of a formal hearing, the
14 hearing officer shall serve a written report on the personnel board
15 and the parties, unless the personnel board grants an extension of
16 time. The report must contain the officer's findings of fact, conclu-
17 sions of law, and recommendation. The hearing officer shall submit
18 the record to the personnel board.

19 Sec. 39.52.370. PERSONNEL BOARD ACTION. (a) Within 10 days
20 after receipt of the hearing officer's report, either party may pro-
21 test the officer's findings of fact, conclusions of law, and recommen-
22 dation, and, if a protest is filed, shall serve a copy on the other
23 party. Oral argument before the personnel board must be provided only
24 if requested by either party. The board chair shall set the deadline
25 for submission of requests for oral argument, and set the dates for
26 submission of briefs and oral argument before the board, if requested.

27 (b) The board may issue subpoenas under AS 39.52.380, and may,
28 for good cause shown, augment the hearing record, in whole or in part,
29 or hold a hearing de novo.

1 (c) The personnel board shall review each report submitted by a
2 hearing officer and shall either adopt or amend the findings of fact,
3 conclusions of law, and recommendation of the officer. Deliberations
4 of the personnel board must be conducted in sessions not open to the
5 public.

6 (d) If the personnel board determines that a violation occurred,
7 it may impose the penalties in AS 39.52.410, 39.52.440, and 39.52.450,
8 as appropriate. If the board determines that no violation occurred,
9 the board shall issue a written order of dismissal.

10 (e) The personnel board secretary shall promptly notify the
11 parties and the public officer's designated supervisor of the board's
12 action.

13 (f) The subject of the accusation may appeal the personnel
14 board's decision by filing an appeal in the superior court as provided
15 in the Alaska Rules of Appellate Procedure.

16 Sec. 39.52.380. SUBPOENAS. (a) As provided in AS 39.52.310(g),
17 39.52.360(b), and 39.52.370(b), the attorney general, independent
18 counsel retained under AS 39.52.310(c), a hearing officer, the subject
19 of an accusation, and the personnel board may summon witnesses and
20 require the production of records, books, and papers by the issuance
21 of subpoenas.

22 (b) Subpoenas must be served in the manner prescribed by AS 44.-
23 62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or
24 refusal to obey a subpoena issued under this chapter is punishable as
25 contempt in the manner provided by law and court rule. The superior
26 court may compel obedience to the subpoena in the same manner as
27 prescribed for obedience to a subpoena issued by the court.

28 Sec. 39.52.390. SERVICE. Service of an accusation must be
29 accomplished in accordance with Rule 4 of the Alaska Rules of Civil

1 Procedure. Service of any other pleading, motion, or other document
2 must be accomplished in accordance with Rule 5 of the Alaska Rules of
3 Civil Procedure.

4 ARTICLE 5. ENFORCEMENT; REMEDIES.

5 Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. (a) If
6 the personnel board determines that a public employee has violated
7 this chapter, it (1) shall order the employee to stop engaging in any
8 official action related to the violation; (2) may order divestiture,
9 establishment of a blind trust, restitution, or forfeiture; and (3)
10 may recommend that the employee's agency take disciplinary action,
11 including dismissal.

12 (b) If the personnel board determines that a non-salaried member
13 of a board or commission has violated this chapter, it (1) shall order
14 the member to refrain from voting, deliberating, or participating in
15 the matter; (2) may order restitution; and (3) may recommend to the
16 appropriate appointing authority that the member be removed from the
17 board or commission. A violation of this chapter is grounds for
18 removal of a board or commission member for cause. If the personnel
19 board recommends that a board or commission member be removed from
20 office, the appointing authority shall immediately act to remove the
21 member from office.

22 (c) If the personnel board determines that a former public
23 officer has violated this chapter, it shall (1) issue a public state-
24 ment of its findings, conclusions, and recommendation; and (2) request
25 the attorney general to exercise all legal and equitable remedies
26 available to the state to seek whatever relief is appropriate.

27 (d) If the personnel board finds a violation of this chapter by
28 a public officer removable from office only by impeachment, it shall
29 file a report with the president of the Senate, with its finding. The

1 report must contain a statement of the facts alleged to constitute the
2 violation.

3 Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. (a) In
4 addition to any other cause an agency may have to discipline a public
5 employee, an agency may reprimand, demote, suspend, discharge, or
6 otherwise subject an employee to agency disciplinary action commensu-
7 rate with the violations of this chapter. This section does not
8 prohibit the review of a disciplinary action in the manner prescribed
9 by an applicable collective bargaining agreement or personnel statute
10 or rule.

11 (b) An agency may initiate appropriate disciplinary action in
12 the absence of an accusation under this chapter or during the pendency
13 of a hearing or personnel board action.

14 Sec. 39.52.430. ACTIONS VOIDABLE. (a) In addition to any other
15 penalty provided by law, a state grant, contract, or lease entered
16 into in violation of this chapter is voidable by the state. In a
17 determination under this section of whether to void a grant, contract,
18 or lease, the interests of third parties who could be damaged may be
19 taken into account. The attorney general shall give notice of intent
20 to void a state grant, contract, or lease under this section no later
21 than 30 days after the personnel board's determination of a violation
22 under this chapter.

23 (b) In addition to any other penalty provided for by law, the
24 state may require a state loan received in violation of this chapter
25 to become immediately payable.

26 (c) Any state action taken in violation of this chapter is
27 voidable, except that the interests of third parties and the nature of
28 the violation may be taken into account. The attorney general may
29 pursue any other available legal and equitable remedies.

1 (d) The attorney general may recover any fee, compensation,
2 gift, or benefit received by a person as a result of a violation of
3 this chapter by a current or former public officer. Action to recover
4 under this subsection must be brought within two years after discovery
5 of the violation.

6 Sec. 39.52.440. CIVIL PENALTIES. The personnel board may impose
7 on a current or former public officer civil penalties not to exceed
8 \$5,000 for a violation of this chapter. A penalty imposed under this
9 section is in addition to and not instead of any other penalty that
10 may be imposed according to law.

11 Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. The
12 personnel board may, in addition to the civil penalties described in
13 this chapter, require a current or former public officer who has
14 financially benefited a person in violation of this chapter to pay to
15 the state up to twice the amount that the person realized from the
16 violation.

17 Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. To the extent
18 that violations under this chapter are punishable in a criminal
19 action, that sanction is in addition to the civil remedies set out in
20 this chapter.

21 ARTICLE 6. GENERAL PROVISIONS.

22 Sec. 39.52.910. APPLICABILITY. (a) Except as specifically
23 provided, this chapter applies to all public officers within execu-
24 tive-branch agencies, including members of boards or commissions.
25 This chapter does not apply to a former public officer of an execu-
26 tive-branch agency unless a provision specifically states that it so
27 applies. This chapter does not apply to legislators covered by
28 AS 24.60.

29 (b) The provisions of this chapter supersede the common law on

1 conflicts of interests that may apply to a public officer of an execu-
2 tive-branch agency and any personnel rules relating to conflicts of
3 interests, excluding nepotism, adopted under AS 39.25. However,
4 nothing in this chapter precludes a prosecution under an applicable
5 criminal statute nor prevents enforcement of any other state law that
6 imposes a stricter standard of ethical conduct on public officers.

7 (c) The provisions of this chapter are not subject to negotia-
8 tion by collective bargaining under AS 23.40 or AS 42.40.720 -- 42.-
9 40.880.

10 Sec. 39.52.920. AGENCY POLICIES. Subject to the review and
11 approval of the attorney general, an agency may adopt a written policy
12 that, in addition to the requirements of this chapter, limits the
13 extent to which a public officer in the agency or an administrative
14 unit of the agency may

15 (1) acquire a personal interest in an organization or a
16 financial interest in a business or undertaking that may benefit from
17 official action taken or withheld by the agency or unit;

18 (2) have a personal or financial interest in a state grant,
19 contract, lease, or loan administered by the agency or unit; or

20 (3) accept a gift.

21 Sec. 39.52.930. COOPERATION. All agencies and instrumentalities
22 of the state shall cooperate fully with the attorney general and the
23 personnel board in the performance of their duties under this chapter.

24 Sec. 39.52.940. CONSTRUCTION. This chapter must be construed to
25 promote high standards of ethical conduct in state government.

26 Sec. 39.52.950. REGULATIONS. The attorney general may adopt
27 regulations under the Administrative Procedure Act necessary to inter-
28 pret and implement this chapter.

29 Sec. 39.52.960. DEFINITIONS. In this chapter, unless the

1 context requires otherwise,

2 (1) "administrative unit" means a branch, bureau, center,
3 committee, division, fund, office, program, section, or any other
4 subdivision of an agency;

5 (2) "agency" means a department, office of the governor, or
6 entity in the executive branch, including but not limited to the
7 University of Alaska, public or quasi-public corporations, and boards
8 or commissions, but excluding the Alaska Railroad Corporation;

9 (3) "benefit" means anything that is to a person's advan-
10 tage or self-interest, or from which a person profits, regardless of
11 the financial gain, including any dividend, pension, salary, acqui-
12 sition, agreement to purchase, transfer of money, deposit, loan or
13 loan guarantee, promise to pay, grant, contract, lease, money, goods,
14 service, privilege, exemption, patronage, advantage, advancement, or
15 anything of value;

16 (4) "board or commission" means a board, commission, au-
17 thority, or board of directors of a public or quasi-public corpo-
18 ration, established by statute in the executive branch, including the
19 Alaska Railroad;

20 (5) "business" includes a corporation, company, firm,
21 partnership, sole proprietorship, trust or foundation, or any other
22 individual or entity carrying on a business, whether operated for
23 profit or non-profit;

24 (6) "child" includes a biological child, an adoptive child,
25 and a stepchild;

26 (7) "compensation" means any money, thing of value, or
27 economic benefit conferred on or received by a person in return for
28 services rendered or to be rendered by the person for another;

29 (8) "designated supervisor" or "supervisor" means

1 (A) the commissioner of each department in the execu-
2 tive branch, for public employees within the department;

3 (B) the president of the University of Alaska, for
4 university employees;

5 (C) the chief executive officer of the Alaska Rail-
6 road, for railroad employees;

7 (D) the attorney general, for the governor and lieu-
8 tenant governor;

9 (E) the executive director of a board or commission
10 for the staff of the board or commission;

11 (F) the chair or acting chair of the board or commis-
12 sion, for the members and the executive director of a board or
13 commission; and

14 (G) the governor, for commissioners and for other
15 public officers not included in (A) -- (F) of this subsection; or

16 (H) a public officer designated by a commissioner, the
17 university president, or the governor to act as the supervisor if
18 the name and position of the officer designated has been reported
19 to the attorney general;

20 (9) "financial interest" means

21 (A) an interest held by a public officer or an immedi-
22 ate family member, which includes an involvement or ownership of
23 an interest in a business, including a property ownership, or a
24 professional or private relationship, that is a source of income,
25 or from which, or as a result of which, a person has received or
26 expects to receive a financial benefit;

27 (B) holding a position in a business, such as an
28 officer, director, trustee, partner, employee, or the like, or
29 holding a position of management;

1 (10) "gain" includes actual or anticipated gain, benefit,
2 profit, or compensation;

3 (11) "immediate family member" means a public officer's
4 spouse, a relation by blood within and including the second degree of
5 kindred, and a regular member of the officer's household;

6 (12) "instrumentality of the state" means a state agency or
7 administrative unit, whether in the legislative, judicial, or execu-
8 tive branch, including such entities as the University of Alaska, the
9 Alaska Railroad, and any public or quasi-public corporations, boards,
10 or commissions; the term includes municipalities;

11 (13) "non-salaried member of a board or commission" means a
12 member of a board or commission who is not a public employee by virtue
13 of membership on a board or commission; receipt of per diem, nominal
14 compensation for attendance at meetings, and travel expense reimburse-
15 ment does not make a member of a board or commission a public employee
16 for purposes of this chapter;

17 (14) "official action" means a recommendation, decision,
18 approval, disapproval, vote, or other similar action, including inac-
19 tion, by a public officer;

20 (15) "organization" includes a group, association, society,
21 political party, or other entity made up of two or more persons,
22 whether operated for profit or non-profit;

23 (16) "parent" includes a biological parent, an adoptive
24 parent, and a step-parent of the public officer;

25 (17) "person" includes a natural person, a business, and an
26 organization;

27 (18) "personal interest" means an interest held or involve-
28 ment by a public officer, or the officer's immediate family member or
29 parent, including membership, in any organization, whether fraternal,

1 non-profit, for profit, charitable, or political, from which, or as a
2 result of which, a person or organization receives a benefit;

3 (19) "personnel board" or "board" means the personnel board
4 established in AS 39.25.060;

5 (20) "public employee" or "employee" means a permanent,
6 probationary, seasonal, temporary, provisional, or nonpermanent em-
7 ployee of an agency, whether in the classified, partially exempt, or
8 exempt service;

9 (21) "public officer" or "officer" means

10 (A) a public employee; and

11 (B) a member of a board or commission;

12 (22) "source of income" means an entity for which service is
13 performed for compensation or which is otherwise the origin of pay-
14 ment; if the person whose income is being reported is employed by
15 another, the employer is the source of income; if the person is self-
16 employed by means of a sole proprietorship, partnership, professional
17 corporation, or a corporation in which the person, the person's spouse
18 or child, or a combination of them, holds a controlling interest, the
19 "source" is the client or customer of the proprietorship, partnership,
20 or corporation; if the entity which is the origin of payment is not
21 the same as the client or customer for whom the service is performed,
22 both are considered the source.

23 * Sec. 2. AS 39.25.060(c) is amended to read:

24 (c) A board member may be removed by the governor only for cause
25 [HOLDS OFFICE AT THE PLEASURE OF THE GOVERNOR NOTWITHSTANDING THE
26 MEMBER'S TERM].

27 * Sec. 3. AS 39.25.070 is amended to read:

28 Sec. 39.25.070. POWERS AND DUTIES OF PERSONNEL BOARD. In addi-
29 tion to the other duties imposed by this chapter, the personnel board

1 shall

2 (1) approve or disapprove amendments to the personnel rules
3 in accordance with AS 39.25.140;

4 (2) consider and act upon recommendations for the extension
5 of the partially exempt service and the classified service as provided
6 in AS 39.25.130;

7 (3) hear and determine appeals by employees in the clas-
8 sified service as provided in AS 39.25.170;

9 (4) establish its own rules of procedure (two members
10 constitute a quorum for the transaction of business and two affirma-
11 tive votes are required for final action on matters acted upon by the
12 board);

13 (5) elect a chairman from its membership;

14 (6) have the power to administer oaths, subpoena witnesses,
15 and compel the production of books and papers pertinent to a hearing
16 authorized by this chapter;[.]

17 (7) employ staff members, who shall be in the classified
18 service;

19 (8) retain independent counsel in accordance with AS 39.-
20 52.310(c);

21 (9) appoint, and review the findings, conclusions, and
22 recommendations of, hearing officers in accordance with AS 39.52.-
23 350(c), 39.52.360, and 39.52.370;

24 (10) issue findings, conclusions, and decisions regarding
25 violations of the code of ethics in AS 39.52.110 -- 39.52.190; and

26 (11) impose the penalties describe in AS 39.52.410, 39.52.-
27 440, and 39.52.450.

28 * Sec. 4. AS 42.40.710 is amended to read:

29 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska

1 Railroad are employees of the corporation and not of the state. The
2 provisions of AS 39 do not apply to employees of the corporation.
3 However, no later than January 1, 1987, the corporation shall adopt a
4 code of ethics for its directors and employees that is substantially
5 equivalent to that adopted in AS 39.

6 * Sec. 5. AS 44.62.175(a) is amended by adding a new paragraph to read:
7 (10) in accordance with AS 39.52.240(h), advisory opinions
8 of the attorney general.

9 * Sec. 6. The attorney general and the personnel board have no juris-
10 diction over an alleged violation of AS 39.52.110 -- 39.52.190 that oc-
11 curred before January 1, 1987, unless the violation continues after that
12 date.

13 * Sec. 7. An agency or administrative unit with a policy in effect on
14 July 1, 1986 related to the subject of AS 39.52.110 -- 39.52.190 shall, by
15 January 1, 1987, submit the policy to the attorney general for review as to
16 conformity with the provisions enacted in this Act, the attorney general's
17 suggestions for amendment, and the attorney general's necessary approval
18 under AS 39.52.920.

19 * Sec. 8. AS 39.52.010, 39.52.210 -- 39.52.260, and 39.52.910 --
20 39.52.960, enacted in sec. 1 of this Act, and secs. 2 -- 7 of this Act take
21 effect July 1, 1986.

22 * Sec. 9. AS 39.52.110 -- 39.52.190, and 39.52.310 -- 39.52.460, enact-
23 ed in sec. 1 of this Act, take effect January 1, 1987.

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SECTIONAL ANALYSIS

Section 1: This section of the bill amends AS 39 ("Public Officers and Employees") by adding a new chapter called the "Alaska Executive Branch Ethics Act." The proposed new Act contains six articles:

- Article 1: Declarations
- Article 2: Code of Ethics
- Article 3: Disclosure and Action to Prevent Violation of Code
- Article 4: Complaints; Hearing Procedures
- Article 5: Enforcement; Remedies
- Article 6: General Provisions

Because sec. 1 comprises almost the entire bill, we have organized our analysis of sec. 1 by the articles listed above.

ARTICLE 1. DECLARATIONS.

Article 1 of the new chapter sets out legislative declarations. The important public purpose behind the need for and adoption of an executive-branch ethics statute requires a strong legislative statement in the statute itself.

Sec. 39.52.010. DECLARATION OF POLICY. AS 39.52.010 specifically states the legislature's belief in the value of a code of ethics for executive-branch officers as a safeguard of the public trust. ("Officers" is defined as all employees of executive-branch agencies and all members of boards or commissions.)

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

Sec. 39.52.110. SCOPE OF CODE. To clarify the intent behind the code of ethics, this section describes its scope. One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. This section of the bill makes it clear that the legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers cannot and should not be without a personal or financial stake in Alaska, so long as those private interests do not interfere with the full and faithful discharge of the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

While the code's subsequent provisions set out stern prohibitions on conduct, public officers are encouraged to have and maintain private interests so long as those interests do not improperly

benefit the officers through abuse of the responsibilities given to them by their public office.

The code of ethics establishes eight types of ethical violations: (1) misuse of official position; (2) improper acceptance or solicitation of gifts or benefits; (3) improper use or disclosure of information; (4) improper influence in state grants, contracts, leases, or loans; (5) improper representation; (6) acceptance of certain prohibited employment outside of government positions; (7) prohibited representation in matters after leaving state service; and (8) aiding in a violation of the code. AS 39.52.120 -- 39.52.190.

Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. One of the clearest areas of public concern revolves around the conduct addressed in AS 39.52.120. This section prohibits a public officer from using, or attempting to use, an official position for personal gain or to intentionally secure unwarranted benefits for any person. AS 39.52.120(a).

Several types of actions are specifically mentioned as examples of misuse of official position: e.g., the use of one's position to extract other employment or contracts; the use of state time, property, or equipment to benefit the officer's personal or financial interests; the taking or withholding of official action by an officer in order to benefit the officer's personal or financial interests. This section also addresses the supervisor/subordinate relationship and prohibits activities that could suggest coercion of a subordinate by a supervisor. AS 39.52.120(b).

Sec. 39.52.130. IMPROPER GIFTS. This section addresses another potential abuse: the receipt of a gift under circumstances in which it could be inferred that the gift was intended to improperly influence the officer in the performance of his or her official duties by benefitting the officer's personal or financial interests. This section creates an objective -- rather than a subjective -- test by which the propriety of soliciting or receiving a gift can be judged from the viewpoint of a "reasonable person."

The bill also sets up a reporting requirement for the receipt of a gift worth over \$50 if the public officer can take or withhold official action that benefits the giver. AS 39.52.130(b).

A designated supervisor may seek advice from the attorney general regarding the acceptance of gifts. AS 39.52.130(c).

The restrictions relating to gifts do not apply to campaign contributions to candidates for elected office so long as the contributions comply with the laws and regulations governing elections and campaign disclosure. AS 39.52.130(d).

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. One commonly expressed complaint is that public officers are able to improperly benefit themselves or family members through the improper use of information gained in the course of their employment. The so-called "insider information" problem is the issue addressed in AS 39.52.140. This section specifically prohibits the use or disclosure of information that either has not been "disseminated" to the public (AS 39.52.140(a)) or is confidential by law (AS 39.52.140(b)).

This section sets a fairly high standard. It requires, before officers (or members of their immediate families) can benefit personally or financially from the use or disclosure of information available, that the information first have "been disseminated to the public." This means that the information was not simply "available" to the public, but that in some affirmative way the information was first disseminated to others outside the agency, whether by newsletter, legislative testimony, a published report, a press release, a legal notice, a speech, etc. It is believed that more than just simple "availability" is necessary to avoid claims that public sector officers are acting improperly because of their access to potentially very beneficial information.

Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. Much public scrutiny has recently been focused on the conduct addressed by this provision of the code of ethics. This section prohibits an officer from improperly influencing state grant, contract, lease, or loan procedures. Specifically, a public officer or member of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. AS 39.52.150(a). There are exceptions listed to this broad prohibition, which focus on the specific conditions under which the grant, contract, lease, or loan is solicited or awarded. AS 39.52.150(b) -- 39.52.150(c).

In addition, a public officer must report to the commission any personal or financial interests held by the officer or an immediate family member in any state grant, contract, lease, or loan that is awarded by the agency the officer serves. AS 39.52.150(d).

Sec. 39.52.160. IMPROPER REPRESENTATION. Another public concern addressed by the code is the issue of public officers using the advantage of their position in representation before public agencies to benefit their personal or financial interests. This section generally prohibits an officer from representing, advising, or assisting any person concerning a matter pending before the administrative unit that the officer serves. AS 39.52.160(a).

This prohibition does not apply, however, to activities related to collective bargaining, such as the processing of a grievance by an employee representative. AS 39.52.160(b).

In addition, this section clarifies, in the case of a non-salaried member of a board or commission, that the prohibition on representation does not preclude a member of a board or commission from taking responsibility for a matter affecting the member's personal business which is regulated by the very board or commission on which the member serves, so long as the member does not participate, deliberate, or vote on the particular matter when the issue comes before the board or commission for its review or determination. AS 39.52.160(c).

Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. Although AS 39.52.110 makes it clear that holding employment outside of state service is acceptable, the public interest requires that certain restrictions be placed on this privilege. This section prohibits public employees from rendering services or accepting employment outside of their agencies if the outside service or employment is incompatible or in conflict with the proper discharge of their official duties. AS 39.52.170(a). As is currently required by personnel rules, public employees must annually report outside employment to their designated supervisor, as well as when changes occur during the year. AS 39.52.170(b).

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. The most difficult area to address in this legislation is the post-employment situation. The public interest requires that some restrictions be placed on the range of activities that former public officers may perform in the private sector. Of course, regardless of whether employment is in the public or private sector, the expertise and knowledge one gains in a job are transferable skills that employees rightfully take with them and that enable the employees to seek more responsible positions. We must also consider that while Alaska has a relatively small workforce, government is the state's largest employer.

The development of a post-employment provision that places legitimate restrictions on the use of one's employment experience is, for these reasons, a difficult task. We believe that the post-employment section of this bill reflects a compromise between competing interests. That compromise protects the state's significant interests but does not unfairly restrict an officer's ability to work in the private sector after leaving state service.

Specifically, AS 39.52.180 prohibits certain types of representation by former public officers for two years after leaving their public positions. The two-year ban is narrowly drawn: an officer is only prohibited from representing, advising, or assisting a person for compensation regarding a matter (1) that was under consideration by the administrative unit directly served and (2)

in which the officer participated personally and substantially through the exercise of official action. A "matter" is precisely defined to include a case, proceeding, application, contract, or determination, and does not include activities related to legislation or regulations. AS 39.52.180(a).

This section does not prevent an agency from contracting with a former public officer to act on the state's behalf. AS 39.52.180(b). Additionally, the head of an agency may waive, in writing, application of this section after determining that representation by a former public officer is not adverse to the public interest. A waiver is subject to the approval of the attorney general. AS 39.52.180(c).

Sec. 39.52.190. AIDING A VIOLATION. Finally, the bill simply states that it is an ethical violation for a public officer to knowingly aid another officer in a violation of AS 39.52.

ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT VIOLATION OF CODE.

Article 3 sets out the various procedures that public officers have available to them for the prevention of a violation of the code of ethics. A major aspect of this legislation is its "preventative" posture. Public officers must be able to seek and receive prompt advice in order to avoid actions that might violate the code. It is these preventative procedures that give the bill its true strength, because it provides a positive approach to solving potential abuses and appropriately assists officers before the fact, rather than waiting for violations to occur which the attorney general must then prosecute.

Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC EMPLOYEES. This section establishes a procedure for handling a potential violation of the code of ethics. A public employee who believes that he or she may be involved in a matter that could result in a violation of the code of ethics is required to immediately disclose the potential conflict to the designated supervisor and to refrain from taking any official action until a determination is made as to a possible conflict or ethical problem. AS 39.52.210(a).

The employee's designated supervisor shall then make a written determination of whether the employee's involvement could or does violate the code of ethics. AS 39.52.210(b). The supervisor shall reassign duties to cure the employee's violation, or direct the divestiture or removal by the employee of the conflicting personal or financial interests. Id. The supervisor may seek an advisory opinion from the attorney general. AS 39.52.210(c).

Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS. This section establishes procedures for handling a potential violation of the code of ethics by a member of a board or commission. A member of a board or commission who believes he or she may be involved in a matter that could result in a violation of a code of ethics must disclose the potential conflict on the record. AS 39.52.220(a). The board chair, as the designated supervisor, rules on whether or not the member's involvement could violate the code of ethics. Id. If a determination is made that a violation would exist if the member continued to participate, then the member must not only refrain from voting on the matter, but must also refrain from deliberating or participating in discussions regarding that particular matter. Id.

The designated supervisor or the board or commission may request advice from the attorney general. AS 39.52.220(b).

Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. This section states that any person may report a potential violation of the code of ethics to a designated supervisor for review and appropriate action.

Sec. 39.52.240. ADVISORY OPINIONS. This section covers requests by designated supervisors, or boards or commissions, for advice from the attorney general regarding appropriate conduct under AS 39.52. It is important to note that requests for advisory opinions are confidential. AS 39.52.240(g).

Advisory opinions must be issued within 60 days after the attorney general receives a completed request. AS 39.52.240(a). Because, however, there may be instances where delay in the receipt of an opinion would cause substantial inconvenience or detriment to the requesting party, this section allows the attorney general to give oral advice. AS 39.52.240(b). The designated supervisor or board or commission, after consultation with the officer, then makes a determination regarding an ethical problem. AS 39.52.240(c). If the attorney general has suggested more than one alternative, the supervisor or board or commission will select the most appropriate way to avoid or correct the problem. Id.

A public officer is not liable under AS 39.52 for any action carried out in accordance with a supervisor's determination. AS 39.52.240(d). The attorney general can revise or revoke an advisory opinion at any time (AS 39.52.240(e)), but anyone may rely on advisory opinions currently in effect (AS 39.52.240(f)). Attorney general opinions of major import will be published in the Alaska Administrative Journal with sufficient deletions to prevent disclosure of the identities of persons involved. AS 39.52.240(h).

Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS. Former public officers who need advice regarding their standing in relationship to the code of ethics may request an advisory opinion from the attorney general. AS 39.52.250(a). A former public officer who follows the advice of the attorney general is not liable under this new chapter for any action carried out in accordance with that advice, so long as the circumstances were fully disclosed. AS 39.52.250(b).

Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY GENERAL REVIEW. This section requires all designated supervisors to report to the attorney general any potential violations reported to them and the disposition of each matter. AS 39.52.260(a). The attorney general is required to review each of the reports filed, and may request additional information. AS 39.52.260(b). The report prepared by the supervisor is confidential and not available for public inspection unless formal proceedings are initiated as a result of a report filed. However, summaries of the report will be made available with sufficient deletions to prevent disclosure of any person's identity. AS 39.52.260(c).

ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

Article 4 of the new chapter establishes a complete process for handling complaints regarding violations of the provisions of AS 39.52.

Sec. 39.52.310. COMPLAINTS. This section sets out the procedures for handling a complaint, whether filed with the attorney general or initiated by the attorney general, and establishes the conditions under which a complaint will be accepted and investigated. The attorney general can initiate a complaint or elect to treat as a complaint a matter referred by a supervisor. AS 39.52.310(a). In addition, any person can file a complaint with the attorney general in writing. AS 39.52.310(b).

If a complaint alleges a violation by the governor, lieutenant governor, or the attorney general, the personnel board shall appoint independent counsel who shall act in place of the attorney general in reviewing the validity of the complaint filed and, if sufficient, taking the matter to hearing. AS 39.52.310(c).

The attorney general shall review each complaint filed to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of AS 39.52. A complaint may be dismissed (AS 39.52.310(d)) or referred to the appropriate supervisor or board chair for resolution (AS 39.52.310(e)).

If the attorney general accepts a complaint for investigation, the attorney general must provide a copy of the complaint to the subject of the complaint for a response. The subject of the com-

plaint must respond within 20 days with full and fair disclosure in writing of all the facts and circumstances pertaining to the alleged violation. AS 39.52.310(f). The attorney general shall investigate to determine whether a violation of the chapter has occurred. AS 39.52.310(g). A violation of AS 39.52 can be investigated only within two years after discovery of the alleged violation. AS 39.52.310(h).

Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS. If it appears that there is no probable cause to believe that a violation of the chapter has occurred, the attorney general will dismiss the complaint and prepare and file with the personnel board a confidential summary of the matter. The attorney general is required to communicate disposition of this matter promptly to both the complainant and the subject of the complaint.

Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. This section provides the attorney general with the latitude to recommend action to correct or prevent a violation of the law, if the conduct complained about does not warrant the initiation of formal proceedings. The subject of the complaint is required to comply with the attorney general's recommendation.

Sec. 39.52.340. CONFIDENTIALITY. Information obtained by the attorney general during an investigation is confidential, unless and until formal proceedings are initiated. AS 39.52.340(a). The attorney general and persons contacted during the course of an investigation are required to maintain confidentiality regarding the existence of the investigation. Id. A person who violates the confidentiality provisions of this section is guilty of a class A misdemeanor. Id.

It is not a violation of this section, however, for a person to contact an attorney or participate in a criminal investigation. AS 39.52.340(b). This section also provides that the subject of the complaint may, if he or she so chooses, waive the confidentiality protections of this section. AS 39.52.340(c).

Sec. 39.52.350. PROBABLE CAUSE. If the attorney general finds that there is probable cause to believe that an officer has violated the code of ethics, the attorney general initiates formal proceedings by serving an accusation upon the subject of the complaint. The accusation must specifically set out the alleged violation and, after service, is a public document. Except for deliberations of the personnel board, all subsequent proceedings are open to the public. AS 39.52.350(a).

The subject of the accusation must file an answer to the accusation. AS 39.52.350(b). If the subject denies that a violation has occurred, the attorney general shall refer the matter to the personnel board for appointment of a hearing officer to conduct a hearing. AS 39.52.350(c). If, however, the subject admits an ethical violation, the attorney general shall refer the matter to

the personnel board to impose appropriate penalties. AS 39.52.350(d).

Sec. 39.52.360. HEARINGS. AS 39.52.360 establishes the formal hearing process to be followed if a matter is referred to the personnel board for hearing. The hearing officer appointed by the personnel board may conduct pre-hearing conferences, administer oaths, hold hearings, take testimony, and issue subpoenas upon application by a party. AS 39.52.360(a) and (b).

The attorney general presents the charges and has the burden of demonstrating by a preponderance of evidence that the subject of the accusation has violated the new chapter. AS 39.52.360(c). The subject of an accusation may be represented by counsel; each party has the opportunity to be heard and cross-examine witnesses. AS 39.52.360(d).

Hearings held under this section are not subject to the Administrative Procedure Act. AS 39.52.360(e). During the hearing itself, technical rules of evidence do not apply but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. AS 39.52.360(f). At the conclusion of the hearing, the hearing officer may direct the submission of proposed orders (AS 39.52.360(g)), and within 30 days after the conclusion of the formal hearing, the hearing officer must file a written report with the personnel board containing the officer's findings of fact, conclusions of law, and recommendation (AS 39.52.360(h)).

Sec. 39.52.370. PERSONNEL BOARD ACTION. Either party to the hearing may protest the hearing officer's decision before the personnel board. Oral argument before the personnel board will be provided if requested. AS 39.52.370(a). The board may, for good cause shown, convene a hearing de novo or further augment the record with additional evidence. AS 39.52.370(b).

The personnel board shall review each report submitted by the hearing officer and any briefs filed and must either adopt or amend the findings of fact, conclusions of law, and recommendation of the hearing officer. AS 39.52.370(c). The deliberations of the personnel board are not open to the public. Id. If the personnel board determines that a violation has occurred, it may impose certain civil penalties. AS 39.52.370(d). If the board determines that a violation has not occurred, it shall issue a written order of dismissal. Id. The personnel board secretary must promptly inform both parties of the board's action. AS 39.52.370(e). The subject of the accusation may appeal the board's decision by filing an appeal in the superior court. AS 39.52.370(f).

Sec. 39.52.380. SUBPOENAS. This section gives the attorney general, independent counsel retained by the personnel board, the personnel board, and appointed hearing officers certain subpoena powers.

Sec. 39.52.390. SERVICE. This section dictates how service of an accusation and other documents must be accomplished.

ARTICLE 5. ENFORCEMENT; REMEDIES.

Article 5 describes the enforcement powers available to both the personnel board and the state when a violation of the ethics Act has occurred. Because we wish the attorney general and the personnel board to be able to take relatively swift action, we have provided for a wide range of civil remedies and penalties, as opposed to providing for criminal penalties for violation of the Act.

Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. Under this section, if a public employee is found to have violated AS 39.52, the personnel board has the authority to order the employee to stop engaging in the illegal action; may order divestiture, establishment of a blind trust, restitution, or forfeiture; and recommend that the employee's agency take disciplinary action against that employee, including dismissal. AS 39.52.410(a).

If the personnel board determines that a non-salaried member of a board or commission has violated AS 39.52, it may order the member to refrain from voting, deliberating, or participating in the matter; order restitution; or, in appropriate cases, recommend that the governor remove the offending member from the board or commission (in which case, the governor must act to immediately remove that member from office). AS 39.52.410(b).

If the board determines that a former public officer has violated AS 39.52, it shall issue a public statement of its findings and seek the attorney general's assistance in pursuing all legal remedies against that individual. AS 39.52.410(c).

Finally, if the board finds the governor or lieutenant governor in violation of AS 39.52, the board shall file a report of the matter with the President of the Alaska State Senate, together with its findings. AS 39.52.410(d).

Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. This section states that a violation of the code of ethics contained in AS 39.52 is a valid reason for an executive-branch agency to discipline an employee. AS 39.52.420(a). An agency may initiate appropriate disciplinary action without waiting for the attorney general to file an accusation or the board to complete formal proceedings. AS 39.52.420(b).

Sec. 39.52.430. ACTIONS VOIDABLE. This section describes the actions that may be taken by the state if state grants, contracts, leases, or loans have been entered into or received in violation of AS 39.52.

Sec. 39.52.440. CIVIL PENALTIES. This section provides that the personnel board may impose civil penalties not to exceed \$5,000 on a current or former public officer for a violation of the ethics Act.

Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. This section gives the personnel board the authority to seek from a current or former public officer payment of up to twice the financial benefit realized by a person in violation of AS 39.52.

Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. This section clarifies that the civil penalties provided for in art. 5 of the ethics Act are in addition to any criminal actions that may be pursued.

ARTICLE 6. GENERAL PROVISIONS.

Sec. 39.52.910. APPLICABILITY. This section gives notice that the bill applies generally to all public officers in executive-branch agencies, and that AS 39.52 supersedes the common law on conflicts of interests, including replacement of the common law standard of "the appearance of impropriety" with the specific standards set out in the code of ethics in art. 2 of AS 39.52. AS 39.52.910(a) and (b). This chapter is not subject to collective bargaining. AS 39.52.910(c).

Sec. 39.52.920. AGENCY POLICIES. This section establishes that agencies have the authority to adopt written policies for their employees which are more restrictive than the code of ethics. These agency policies are subject to the attorney general's review and approval.

Sec. 39.52.930. COOPERATION. This section requires agencies in all branches of state government to cooperate fully with the attorney general and the personnel board in the performance of their duties.

Sec. 39.52.940. CONSTRUCTION. This section calls for the bill's provisions to be construed to promote high ethical standards in state government.

Sec. 39.52.950. REGULATIONS. Under this section, the attorney general is empowered to adopt necessary regulations to implement AS 39.52.

Sec. 39.52.960. DEFINITIONS. This section of the new chapter sets out definitions for the new code of ethics.

Section 2: This section of the bill amends AS 39.25.060(c) to make the members of the personnel board removable only for cause. The additional responsibilities granted the board under the new ethics law require that the members of the personnel board be free from possible interference in the performance of their duties. Therefore, unless cause can be shown, the governor should be prohibited from freely removing personnel board members from office.

Section 3: This section amends AS 39.25.070, relating to the powers of the personnel board, to add authority to perform the functions granted to the board by the new ethics Act, including authority to appoint independent counsel, appoint hearing officers, review the recommendations of hearing officers, determine whether a violation of the code of ethics had occurred, and impose penalties for a violation of the code.

Section 4: This section of the bill requires the Railroad Corporation to adopt a substantially similar code of ethics by January 1, 1987.

Section 5: This section of the bill merely adds attorney general ethics advisory opinions to the list of items to be published in the Alaska Administrative Journal, consistent with the proposed requirement in AS 39.52.240(h) [see sec. 1 of the bill].

Section 6: Because the enforcement and remedy provisions in the new ethics law do not take effect until January 1987, this section of the bill clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before January 1, 1987, unless the violation continues after that date.

Section 7: Under this section of the bill, an agency with an existing policy related to conflicts of interests or the ethical performance of official duties is required to submit that policy to the attorney general for necessary review and approval by January 1, 1987.

Section 8: The sections of the ethics law regarding policy, the issuance of advisory opinions, declarations of potential violations, and the definition section, take effect July 1, 1986.

Section 9: The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions (AS 39.52.110 -- 39.52.190 and AS 39.52.310 -- 39.52.460) will take effect January 1, 1987.

Different effective dates have been provided so that public officers, immediately upon passage of the bill, may seek guidance from the attorney general concerning their standing under the new code of ethics, in order that any reassignments, transfers, or divestitures that need to occur can be accomplished before the code of ethics, as well as the complaint process, is in force.

Differences between
House & Senate versions Cramer

A M E N D M E N T

Offered in the JUDICIARY COMMITTEE

By the Judiciary

TO: C S S S S B 391(SA) am

Committee

Page 1, line 17, after "officers" insert:

"will encourage public officers to avoid conduct that even appears to violate the trust that the people have placed in them,"

Page 2, line 12:

Delete: "cannot and should not"

Insert: "may not always"

Page 3, line 13:

After "ities" insert "with intent"

After "benefit" insert "a"

Delete: "interests" and insert "interest"

Page 4, line 12, delete "current or former"

Page 4, line 14:

Delete: "that could in any way result in the receipt of any benefit for"

Insert: "with intent to benefit a personal or financial interest of"

Page 9, line 10, after the period insert:

"However, the attorney general shall provide a brief written statement, summarizing the content of the oral advice, to the designated supervisor within two working days after the oral advice was given."

Page 9, line 29, after "confidential" insert:

"unless the subject of the opinion in writing waives confidentiality and authorizes release of the request or of the full text of the advisory opinion"

Page 10, lines 1 - 2:

Delete: "publish in the Alaska Administrative Journal"

Insert: "make the advisory opinions issued under this section available for public inspection"

Page 12, line 15:

Delete: "violation of this chapter may be investigated within"

Insert: "hearing may not be initiated more than"

Page 21, line 18, delete "including" and insert "but excluding"

Page 22, lines 5 - 6, delete all material and reletter remaining subparagraphs.

Page 23, line 8, delete "such entities as"

Page 23, lines 8 - 9, delete "the Alaska Railroad,"

Page 23, line 10, after "municipalities" insert:

"but excludes the Alaska Railroad"

Page 26, line 5, after "." insert:

"If the governor determines that the corporation has not adopted a substantially equivalent code by January 1, 1987, the governor shall issue a finding of failure to comply with this section and shall request the attorney general to establish a code for the corporation that satisfies the requirements of this section. The code established by the attorney general is binding on the corporation."

Page 26, lines 6 - 8, delete all material.

Renumber remaining bill sections.

Page 26, line 20, delete "2 - 7" and insert "2 - 6"

HCS 55 SB 391 (Jnd)

SECTIONAL ANALYSIS

Section 1: This section of the bill amends AS 39 ("Public Officers and Employees") by adding a new chapter called the "Alaska Executive Branch Ethics Act." The proposed new Act contains six articles:

- Article 1: Declarations
- Article 2: Code of Ethics
- Article 3: Disclosure and Action to Prevent Violation of Code
- Article 4: Complaints; Hearing Procedures
- Article 5: Enforcement; Remedies
- Article 6: General Provisions

Because sec. 1 comprises almost the entire bill, we have organized our analysis of sec. 1 by the articles listed above.

ARTICLE 1. DECLARATIONS.

Article 1 of the new chapter sets out legislative declarations. The important public purpose behind the need for and adoption of an executive-branch ethics statute requires a strong legislative statement in the statute itself.

Sec. 39.52.010. DECLARATION OF POLICY. AS 39.52.010 specifically states the legislature's belief in the value of a code of ethics for executive-branch officers as a safeguard of the public trust. ("Officers" is defined as all employees of executive-branch agencies and all members of boards or commissions.)

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

Sec. 39.52.110. SCOPE OF CODE. To clarify the intent behind the code of ethics, this section describes its scope. One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. This section of the bill makes it clear that the legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers may not always be without a personal or financial stake in Alaska, so long as those private interests do not interfere with the full and faithful discharge of the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

While the code's subsequent provisions set out stern prohibitions on conduct, public officers are encouraged to have and maintain private interests so long as those interests do not improperly

benefit the officers through abuse of the responsibilities given to them by their public office.

The code of ethics establishes eight types of ethical violations: (1) misuse of official position; (2) improper acceptance or solicitation of gifts; (3) improper use or disclosure of information; (4) improper influence in state grants, contracts, leases, or loans; (5) improper representation; (6) acceptance of certain prohibited employment outside of government positions; (7) prohibited representation in matters after leaving state service; and (8) aiding in a violation of the code. AS 39.52.120 -- 39.52.190.

Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. One of the clearest areas of public concern revolves around the conduct addressed in AS 39.52.120. This section prohibits a public officer from using, or attempting to use, an official position for personal gain or to intentionally secure unwarranted benefits for any person. AS 39.52.120(a).

Several types of actions are specifically mentioned as examples of misuse of official position: e.g., the use of one's position to extract other employment or contracts; the use of state time, property, or equipment to benefit the officer's personal or financial interests; the taking or withholding of official action by an officer in order to benefit the officer's personal or financial interests. This section also addresses the supervisor/subordinate relationship and prohibits activities that could suggest coercion of a subordinate by a supervisor. AS 39.52.120(b).

Sec. 39.52.130. IMPROPER GIFTS. This section addresses another potential abuse: the receipt of a gift under circumstances in which it could be inferred that the gift was intended to improperly influence the officer in the performance of his or her official duties by benefitting the officer's personal or financial interests. This section creates an objective -- rather than a subjective -- test by which the propriety of soliciting or receiving a gift can be judged from the viewpoint of a "reasonable person."

The bill also sets up a reporting requirement for the receipt of a gift worth over \$50 if the public officer can take or withhold official action that benefits the giver. AS 39.52.130(b).

A designated supervisor may seek advice from the attorney general regarding the acceptance of gifts. AS 39.52.130(c).

The restrictions relating to gifts do not apply to campaign contributions to candidates for elected office so long as the contributions comply with the laws and regulations governing elections and campaign disclosure. AS 39.52.130(d).

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. One commonly expressed complaint is that public officers are able to improperly benefit themselves or family members through the improper use of information gained in the course of their employment. The so-called "insider information" problem is the issue addressed in AS 39.52.140. This section specifically prohibits the use or disclosure of information that either has not been "disseminated" to the public (AS 39.52.140(a)) or is confidential by law (AS 39.52.140(d)).

This section sets a fairly high standard. It requires, before officers (or members of their immediate families) can benefit personally or financially from the use or disclosure of information available, that the information first have "been disseminated to the public" It is believed that more than just simple "availability" is necessary to avoid claims that public sector officers are acting improperly because of their access to potentially very beneficial information

Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. Much public scrutiny has recently been focused on the conduct addressed by this provision of the code of ethics. This section prohibits an officer from improperly influencing state grant, contract, lease, or loan procedures. Specifically, a public officer or member of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. AS 39.52.150(a). There are exceptions listed to this broad prohibition, which focus on the specific conditions under which the grant, contract, lease, or loan is solicited or awarded. AS 39.52.150(b) -- 39.52.150(c).

In addition, a public officer must report to the commission any personal or financial interests held by the officer or an immediate family member in any state grant, contract, lease, or loan that is awarded by the agency the officer serves. AS 39.52.150(d).

Sec. 39.52.160. IMPROPER REPRESENTATION. Another public concern addressed by the code is the issue of public officers using the advantage of their position in representation before public agencies to benefit their personal or financial interests. This section generally prohibits an officer from representing, advising, or assisting any person concerning a matter pending before the administrative unit that the officer serves. AS 39.52.160(a).

This prohibition does not apply, however, to activities related to collective bargaining, such as the processing of a grievance by an employee representative. AS 39.52.160(b).

In addition, this section clarifies, in the case of a non-salaried member of a board or commission, that the prohibition on representation does not preclude a member of a board or commission from taking responsibility for a matter affecting the member's personal business which is regulated by the very board or commission on which the member serves, so long as the member does not participate, deliberate, or vote on the particular matter when the issue comes before the board or commission for its review or determination. AS 39.52.160(c).

Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. Although AS 39.52.110 makes it clear that holding employment outside of state service is acceptable, the public interest requires that certain restrictions be placed on this privilege. This section prohibits public employees from rendering services or accepting employment outside of their agencies if the outside service or employment is incompatible or in conflict with the proper discharge of their official duties. AS 39.52.170(a). As is currently required by personnel rules, public employees must annually report outside employment to their designated supervisor, as well as when changes occur during the year. AS 39.52.170(b).

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. The most difficult area to address in this legislation is the post-employment situation. The public interest requires that some restrictions be placed on the range of activities that former public officers may perform in the private sector. Of course, regardless of whether employment is in the public or private sector, the expertise and knowledge one gains in a job are transferable skills that employees rightfully take with them and that enable the employees to seek more responsible positions. We must also consider that while Alaska has a relatively small workforce, government is the state's largest employer.

The development of a post-employment provision that places legitimate restrictions on the use of one's employment experience is, for these reasons, a difficult task. We believe that the post-employment section of this bill reflects a compromise between competing interests. That compromise protects the state's significant interests but does not unfairly restrict an officer's ability to work in the private sector after leaving state service.

Specifically, AS 39.52.180 prohibits certain types of representation by former public officers for two years after leaving their public positions. The two-year ban is narrowly drawn: an officer is only prohibited from representing, advising, or assisting a person for compensation regarding a matter (1) that was under consideration by the administrative unit directly served and (2) in which the officer participated personally and substantially through the exercise of official action. A "matter" is precisely defined to include a case, proceeding, application, contract, or

determination, and does not include activities related to legislation or regulations. AS 39.52.180(a).

This section does not prevent an agency from contracting with a former public officer to act on the state's behalf. AS 39.52.180(b). Additionally, the head of an agency may waive, in writing, application of this section after determining that representation by a former public officer is not adverse to the public interest. A waiver is subject to the approval of the attorney general. AS 39.52.180(c).

Sec. 39.52.190. AIDING A VIOLATION. Finally, the bill simply states that it is an ethical violation for a public officer to knowingly aid another officer in a violation of AS 39.52.

ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT VIOLATION OF CODE.

Article 3 sets out the various procedures that public officers have available to them for the prevention of a violation of the code of ethics. A major aspect of this legislation is its "preventative" posture. Public officers must be able to seek and receive prompt advice in order to avoid actions that might violate the code. It is these preventative procedures that give the bill its true strength, because it provides a positive approach to solving potential abuses and appropriately assists officers before the fact, rather than waiting for violations to occur which the attorney general must then prosecute.

Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC EMPLOYEES. This section establishes a procedure for handling a potential violation of the code of ethics. A public employee who believes that he or she may be involved in a matter that could result in a violation of the code of ethics is required to immediately disclose the potential conflict to the designated supervisor and to refrain from taking any official action until a determination is made as to a possible conflict or ethical problem. AS 39.52.210(a).

The employee's designated supervisor shall then make a written determination of whether the employee's involvement could or does violate the code of ethics. AS 39.52.210(b). The supervisor shall reassign duties to cure the employee's violation, or direct the divestiture or removal by the employee of the conflicting personal or financial interests. Id. The supervisor may seek an advisory opinion from the attorney general. AS 39.52.210(c).

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Advisory opinions must be issued within 60 days after the attorney general receives a completed request. AS 39.52.240(a). Because, however, there may be instances where delay in the receipt of an opinion would cause substantial inconvenience or detriment to the requesting party, this section allows the attorney general to give oral advice. The oral advice must be followed up by a brief written statement summarizing the content of the oral advice. AS 39.52.240(b). The designated supervisor or board or commission, after consultation with the officer, then makes a determination regarding an ethical problem. AS 39.52.240(c). If the attorney general has suggested more than one alternative, the supervisor or board or commission will select the most appropriate way to avoid or correct the problem. Id.

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Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS. Former public officers who need advice regarding their standing in relationship to the code of ethics may request an advisory opinion from the attorney general. AS 39.52.250(a). A former public officer who follows the advice of the attorney general is not liable under

this new chapter for any action carried out in accordance with that advice, so long as the circumstances were fully disclosed. AS 39.52.250(b).

Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY GENERAL REVIEW. This section requires all designated supervisors to report to the attorney general any potential violations reported to them and the disposition of each matter. AS 39.52.260(a). The attorney general is required to review each of the reports filed, and may request additional information. AS 39.52.260(b). The report prepared by the supervisor is confidential and not available for public inspection unless formal proceedings are initiated as a result of a report filed. However, summaries of the report will be made available with sufficient deletions to prevent disclosure of any person's identity. AS 39.52.260(c).

ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

Article 4 of the new chapter establishes a complete process for handling complaints regarding violations of the provisions of AS 39.52.

Sec. 39.52.310. COMPLAINTS. This section sets out the procedures for handling a complaint, whether filed with the attorney general or initiated by the attorney general, and establishes the conditions under which a complaint will be accepted and investigated. The attorney general can initiate a complaint or elect to treat as a complaint a matter referred by a supervisor. AS 39.52.310(a). In addition, any person can file a complaint with the attorney general in writing. AS 39.52.310(b).

If a complaint alleges a violation by the governor, lieutenant governor, or the attorney general, the personnel board shall appoint independent counsel who shall act in place of the attorney general in reviewing the validity of the complaint filed and, if sufficient, taking the matter to hearing. AS 39.52.310(c).

The attorney general shall review each complaint filed to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of AS 39.52. A complaint may be dismissed (AS 39.52.310(d)) or referred to the appropriate supervisor or board chair for resolution (AS 39.52.310(e)).

If the attorney general accepts a complaint for investigation, the attorney general must provide a copy of the complaint to the subject of the complaint for a response. The subject of the complaint must respond within 20 days with full and fair disclosure in writing of all the facts and circumstances pertaining to the alleged violation. AS 39.52.310(f). The attorney general shall investigate to determine whether a violation of the chapter has occurred. AS 39.52.310(g). A hearing may not be initiated more

than two years after discovery of an alleged violation. AS 39.52.310(h).

Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS. If it appears that there is no probable cause to believe that a violation of the chapter has occurred, the attorney general will dismiss the complaint and prepare and file with the personnel board a confidential summary of the matter. The attorney general is required to communicate disposition of this matter promptly to both the complainant and the subject of the complaint.

Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. This section provides the attorney general with the latitude to recommend action to correct or prevent a violation of the law, if the conduct complained about does not warrant the initiation of formal proceedings. The subject of the complaint is required to comply with the attorney general's recommendation.

Sec. 39.52.340. CONFIDENTIALITY. Information obtained by the attorney general during an investigation is confidential, unless and until formal proceedings are initiated. AS 39.52.340(a). The attorney general and persons contacted during the course of an investigation are required to maintain confidentiality regarding the existence of the investigation. Id. A person who violates the confidentiality provisions of this section is guilty of a class A misdemeanor. Id.

It is not a violation of this section, however, for a person to contact an attorney or participate in a criminal investigation. AS 39.52.340(b). This section also provides that the subject of the complaint may, if he or she so chooses, waive the confidentiality protections of this section. AS 39.52.340(c).

Sec. 39.52.350. PROBABLE CAUSE. If the attorney general finds that there is probable cause to believe that an officer has violated the code of ethics, the attorney general initiates formal proceedings by serving an accusation upon the subject of the complaint. The accusation must specifically set out the alleged violation and, after service, is a public document. Except for deliberations of the personnel board, all subsequent proceedings are open to the public. AS 39.52.350(a).

The subject of the accusation must file an answer to the accusation. AS 39.52.350(b). If the subject denies that a violation has occurred, the attorney general shall refer the matter to the personnel board for appointment of a hearing officer to conduct a hearing. AS 39.52.350(c). If, however, the subject admits an ethical violation, the attorney general shall refer the matter to the personnel board to impose appropriate penalties. AS 39.52.350(d).

Sec. 39.52.360. HEARINGS. AS 39.52.360 establishes the formal hearing process to be followed if a matter is referred to the

personnel board for hearing. The hearing officer appointed by the personnel board may conduct pre-hearing conferences, administer oaths, hold hearings, take testimony, and issue subpoenas upon application by a party. AS 39.52.360(a) and (b).

The attorney general presents the charges and has the burden of demonstrating by a preponderance of evidence that the subject of the accusation has violated the new chapter. AS 39.52.360(c). The subject of an accusation may be represented by counsel; each party has the opportunity to be heard and cross-examine witnesses. AS 39.52.360(d).

Hearings held under this section are not subject to the Administrative Procedure Act. AS 39.52.360(e). During the hearing itself, technical rules of evidence do not apply but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. AS 39.52.360(f). At the conclusion of the hearing, the hearing officer may direct the submission of proposed orders (AS 39.52.360(g)), and within 30 days after the conclusion of the formal hearing, the hearing officer must file a written report with the personnel board containing the officer's findings of fact, conclusions of law, and recommendation (AS 39.52.360(h)).

Sec. 39.52.370. PERSONNEL BOARD ACTION. Either party to the hearing may protest the hearing officer's decision before the personnel board. Oral argument before the personnel board will be provided if requested. AS 39.52.370(a). The board may, for good cause shown, convene a hearing de novo or further augment the record with additional evidence. AS 39.52.370(b).

The personnel board shall review each report submitted by the hearing officer and any briefs filed and must either adopt or amend the findings of fact, conclusions of law, and recommendation of the hearing officer. AS 39.52.370(c). The deliberations of the personnel board are not open to the public. Id. If the personnel board determines that a violation has occurred, it may impose certain civil penalties. AS 39.52.370(d). If the board determines that a violation has not occurred, it shall issue a written order of dismissal. Id. The personnel board secretary must promptly inform both parties of the board's action. AS 39.52.370(e). The subject of the accusation may appeal the board's decision by filing an appeal in the superior court. AS 39.52.370(f).

Sec. 39.52.380. SUBPOENAS. This section gives the attorney general, independent counsel retained by the personnel board, the personnel board, and appointed hearing officers certain subpoena powers.

Sec. 39.52.390. SERVICE. This section dictates how service of an accusation and other documents must be accomplished.

ARTICLE 5. ENFORCEMENT; REMEDIES.

Article 5 describes the enforcement powers available to both the personnel board and the state when a violation of the ethics Act has occurred. Because we wish the attorney general and the personnel board to be able to take relatively swift action, we have provided for a wide range of civil remedies and penalties, as opposed to providing for criminal penalties for violation of the Act.

Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. Under this section, if a public employee is found to have violated AS 39.52, the personnel board has the authority to order the employee to stop engaging in the illegal action; may order divestiture, establishment of a blind trust, restitution, or forfeiture; and recommend that the employee's agency take disciplinary action against that employee, including dismissal. AS 39.52.410(a).

If the personnel board determines that a non-salaried member of a board or commission has violated AS 39.52, it may order the member to refrain from voting, deliberating, or participating in the matter; order restitution; or, in appropriate cases, recommend that the governor remove the offending member from the board or commission (in which case, the governor must act to immediately remove that member from office). AS 39.52.410(b).

If the board determines that a former public officer has violated AS 39.52, it shall issue a public statement of its findings and seek the attorney general's assistance in pursuing all legal remedies against that individual. AS 39.52.410(c).

Finally, if the board finds the governor or lieutenant governor in violation of AS 39.52, the board shall file a report of the matter with the President of the Alaska State Senate, together with its findings. AS 39.52.410(d).

Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. This section states that a violation of the code of ethics contained in AS 39.52 is a valid reason for an executive-branch agency to discipline an employee. AS 39.52.420(a). An agency may initiate appropriate disciplinary action without waiting for the attorney general to file an accusation or the board to complete formal proceedings. AS 39.52.420(b).

Sec. 39.52.430. ACTIONS VOIDABLE. This section describes the actions that may be taken by the state if state grants, contracts, leases, or loans have been entered into or received in violation of AS 39.52.

Sec. 39.52.440. CIVIL PENALTIES. This section provides that the personnel board may impose civil penalties not to exceed \$5,000 on a current or former public officer for a violation of the ethics Act.

Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. This section gives the personnel board the authority to seek from a current or former public officer payment of up to twice the financial benefit realized by a person in violation of AS 39.52.

Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. This section clarifies that the civil penalties provided for in art. 5 of the ethics Act are in addition to any criminal actions that may be pursued.

ARTICLE 6. GENERAL PROVISIONS.

Sec. 39.52.910. APPLICABILITY. This section gives notice that the bill applies generally to all public officers in executive-branch agencies, and that AS 39.52 supersedes the common law on conflicts of interests, including replacement of the common law standard of "the appearance of impropriety" with the specific standards set out in the code of ethics in art. 2 of AS 39.52. AS 39.52.910(a) and (b). This chapter is not subject to collective bargaining. AS 39.52.910(c).

Sec. 39.52.920. AGENCY POLICIES. This section establishes that agencies have the authority to adopt written policies for their employees which are more restrictive than the code of ethics. These agency policies are subject to the attorney general's review and approval.

Sec. 39.52.930. COOPERATION. This section requires agencies in all branches of state government to cooperate fully with the attorney general and the personnel board in the performance of their duties.

Sec. 39.52.940. CONSTRUCTION. This section calls for the bill's provisions to be construed to promote high ethical standards in state government.

Sec. 39.52.950. REGULATIONS. Under this section, the attorney general is empowered to adopt necessary regulations to implement AS 39.52.

Sec. 39.52.960. DEFINITIONS. This section of the new chapter sets out definitions for the new code of ethics.

Section 2: This section of the bill amends AS 39.25.060(c) to make the members of the personnel board removable only for cause. The additional responsibilities granted the board under the new ethics law require that the members of the personnel board be free from possible interference in the performance of their duties. Therefore, unless cause can be shown, the governor should be prohibited from freely removing personnel board members from office.

Section 3: This section amends AS 39.25.070, relating to the powers of the personnel board, to add authority to perform the functions granted to the board by the new ethics Act, including authority to appoint independent counsel, appoint hearing officers, review the recommendations of hearing officers, determine whether a violation of the code of ethics had occurred, and impose penalties for a violation of the code.

Section 4: This section of the bill requires the Railroad Corporation to adopt a substantially similar code of ethics by January 1, 1987.

Section 5: Because the enforcement and remedy provisions in the new ethics law do not take effect until January 1987, this section of the bill clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before January 1, 1987, unless the violation continues after that date.

Section 6: Under this section of the bill, an agency with an existing policy related to conflicts of interests or the ethical performance of official duties is required to submit that policy to the attorney general for necessary review and approval by January 1, 1987.

Section 7: The sections of the ethics law regarding policy, the issuance of advisory opinions, declarations of potential violations, and the definition section, take effect July 1, 1986.

Section 8: The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions (AS 39.52.110 -- 39.52.190 and AS 39.52.310 -- 39.52.460) will take effect January 1, 1987.

Different effective dates have been provided so that public officers, immediately upon passage of the bill, may seek guidance from the attorney general concerning their standing under the new code of ethics, in order that any reassignments, transfers, or divestitures that need to occur can be accomplished before the code of ethics, as well as the complaint process, is in force.

SECTIONAL ANALYSIS

Section 1: This section of the bill amends AS 39 ("Public Officers and Employees") by adding a new chapter called the "Alaska Executive Branch Ethics Act." The proposed new Act contains six articles:

- Article 1: Declarations
- Article 2: Code of Ethics
- Article 3: Disclosure and Action to Prevent Violation of Code
- Article 4: Complaints; Hearing Procedures
- Article 5: Enforcement; Remedies
- Article 6: General Provisions

Because sec. 1 comprises almost the entire bill, we have organized our analysis of sec. 1 by the articles listed above.

ARTICLE 1. DECLARATIONS.

Article 1 of the new chapter sets out legislative declarations. The important public purpose behind the need for and adoption of an executive-branch ethics statute requires a strong legislative statement in the statute itself.

Sec. 39.52.010. DECLARATION OF POLICY. AS 39.52.010 specifically states the legislature's belief in the value of a code of ethics for executive-branch officers as a safeguard of the public trust. ("Officers" is defined as all employees of executive-branch agencies and all members of boards or commissions.)

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

Sec. 39.52.110. SCOPE OF CODE. To clarify the intent behind the code of ethics, this section describes its scope. One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. This section of the bill makes it clear that the legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers cannot and should not be without a personal or financial stake in Alaska, so long as those private interests do not interfere with the full and faithful discharge of the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

While the code's subsequent provisions set out stern prohibitions on conduct, public officers are encouraged to have and maintain private interests so long as those interests do not improperly

benefit the officers through abuse of the responsibilities given to them by their public office.

The code of ethics establishes eight types of ethical violations: (1) misuse of official position; (2) improper acceptance or solicitation of gifts or benefits; (3) improper use or disclosure of information; (4) improper influence in state grants, contracts, leases, or loans; (5) improper representation; (6) acceptance of certain prohibited employment outside of government positions; (7) prohibited representation in matters after leaving state service; and (8) aiding in a violation of the code. AS 39.52.120 -- 39.52.190.

Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. One of the clearest areas of public concern revolves around the conduct addressed in AS 39.52.120. This section prohibits a public officer from using, or attempting to use, an official position for personal gain or to intentionally secure unwarranted benefits for any person. AS 39.52.120(a).

Several types of actions are specifically mentioned as examples of misuse of official position: e.g., the use of one's position to extract other employment or contracts; the use of state time, property, or equipment to benefit the officer's personal or financial interests; the taking or withholding of official action by an officer in order to benefit the officer's personal or financial interests. This section also addresses the supervisor/subordinate relationship and prohibits activities that could suggest coercion of a subordinate by a supervisor. AS 39.52.120(b).

Sec. 39.52.130. IMPROPER GIFTS. This section addresses another potential abuse: the receipt of a gift under circumstances in which it could be inferred that the gift was intended to improperly influence the officer in the performance of his or her official duties by benefitting the officer's personal or financial interests. This section creates an objective -- rather than a subjective -- test by which the propriety of soliciting or receiving a gift can be judged from the viewpoint of a "reasonable person."

The bill also sets up a reporting requirement for the receipt of a gift worth over \$50 if the public officer can take or withhold official action that benefits the giver. AS 39.52.130(b).

A designated supervisor may seek advice from the attorney general regarding the acceptance of gifts. AS 39.52.130(c).

The restrictions relating to gifts do not apply to campaign contributions to candidates for elected office so long as the contributions comply with the laws and regulations governing elections and campaign disclosure. AS 39.52.130(d).

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. One commonly expressed complaint is that public officers are able to improperly benefit themselves or family members through the improper use of information gained in the course of their employment. The so-called "insider information" problem is the issue addressed in AS 39.52.140. This section specifically prohibits the use or disclosure of information that either has not been "disseminated" to the public (AS 39.52.140(a)) or is confidential by law (AS 39.52.140(b)).

This section sets a fairly high standard. It requires, before officers (or members of their immediate families) can benefit personally or financially from the use or disclosure of information available, that the information first have "been disseminated to the public." This means that the information was not simply "available" to the public, but that in some affirmative way the information was first disseminated to others outside the agency, whether by newsletter, legislative testimony, a published report, a press release, a legal notice, a speech, etc. It is believed that more than just simple "availability" is necessary to avoid claims that public sector officers are acting improperly because of their access to potentially very beneficial information.

Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. Much public scrutiny has recently been focused on the conduct addressed by this provision of the code of ethics. This section prohibits an officer from improperly influencing state grant, contract, lease, or loan procedures. Specifically, a public officer or member of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. AS 39.52.150(a). There are exceptions listed to this broad prohibition, which focus on the specific conditions under which the grant, contract, lease, or loan is solicited or awarded. AS 39.52.150(b) -- 39.52.150(c).

In addition, a public officer must report to the commission any personal or financial interests held by the officer or an immediate family member in any state grant, contract, lease, or loan that is awarded by the agency the officer serves. AS 39.52.150(d).

Sec. 39.52.160. IMPROPER REPRESENTATION. Another public concern addressed by the code is the issue of public officers using the advantage of their position in representation before public agencies to benefit their personal or financial interests. This section generally prohibits an officer from representing, advising, or assisting any person concerning a matter pending before the administrative unit that the officer serves. AS 39.52.160(a).

This prohibition does not apply, however, to activities related to collective bargaining, such as the processing of a grievance by an employee representative. AS 39.52.160(b).

In addition, this section clarifies, in the case of a non-salaried member of a board or commission, that the prohibition on representation does not preclude a member of a board or commission from taking responsibility for a matter affecting the member's personal business which is regulated by the very board or commission on which the member serves, so long as the member does not participate, deliberate, or vote on the particular matter when the issue comes before the board or commission for its review or determination. AS 39.52.160(c).

Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. Although AS 39.52.110 makes it clear that holding employment outside of state service is acceptable, the public interest requires that certain restrictions be placed on this privilege. This section prohibits public employees from rendering services or accepting employment outside of their agencies if the outside service or employment is incompatible or in conflict with the proper discharge of their official duties. AS 39.52.170(a). As is currently required by personnel rules, public employees must annually report outside employment to their designated supervisor, as well as when changes occur during the year. AS 39.52.170(b).

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. The most difficult area to address in this legislation is the post-employment situation. The public interest requires that some restrictions be placed on the range of activities that former public officers may perform in the private sector. Of course, regardless of whether employment is in the public or private sector, the expertise and knowledge one gains in a job are transferable skills that employees rightfully take with them and that enable the employees to seek more responsible positions. We must also consider that while Alaska has a relatively small workforce, government is the state's largest employer.

The development of a post-employment provision that places legitimate restrictions on the use of one's employment experience is, for these reasons, a difficult task. We believe that the post-employment section of this bill reflects a compromise between competing interests. That compromise protects the state's significant interests but does not unfairly restrict an officer's ability to work in the private sector after leaving state service.

Specifically, AS 39.52.180 prohibits certain types of representation by former public officers for two years after leaving their public positions. The two-year ban is narrowly drawn: an officer is only prohibited from representing, advising, or assisting a person for compensation regarding a matter (1) that was under consideration by the administrative unit directly served and (2)

in which the officer participated personally and substantially through the exercise of official action. A "matter" is precisely defined to include a case, proceeding, application, contract, or determination, and does not include activities related to legislation or regulations. AS 39.52.180(a).

This section does not prevent an agency from contracting with a former public officer to act on the state's behalf. AS 39.52.180(b). Additionally, the head of an agency may waive, in writing, application of this section after determining that representation by a former public officer is not adverse to the public interest. A waiver is subject to the approval of the attorney general. AS 39.52.180(c).

Sec. 39.52.190. AIDING A VIOLATION. Finally, the bill simply states that it is an ethical violation for a public officer to knowingly aid another officer in a violation of AS 39.52.

ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT VIOLATION OF CODE.

Article 3 sets out the various procedures that public officers have available to them for the prevention of a violation of the code of ethics. A major aspect of this legislation is its "preventative" posture. Public officers must be able to seek and receive prompt advice in order to avoid actions that might violate the code. It is these preventative procedures that give the bill its true strength, because it provides a positive approach to solving potential abuses and appropriately assists officers before the fact, rather than waiting for violations to occur which the attorney general must then prosecute.

Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC EMPLOYEES. This section establishes a procedure for handling a potential violation of the code of ethics. A public employee who believes that he or she may be involved in a matter that could result in a violation of the code of ethics is required to immediately disclose the potential conflict to the designated supervisor and to refrain from taking any official action until a determination is made as to a possible conflict or ethical problem. AS 39.52.210(a).

The employee's designated supervisor shall then make a written determination of whether the employee's involvement could or does violate the code of ethics. AS 39.52.210(b). The supervisor shall reassign duties to cure the employee's violation, or direct the divestiture or removal by the employee of the conflicting personal or financial interests. Id. The supervisor may seek an advisory opinion from the attorney general. AS 39.52.210(c).

Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS. This section establishes procedures for handling a potential violation of the code of ethics by a member of a board or commission. A member of a board or commission who believes he or she may be involved in a matter that could result in a violation of a code of ethics must disclose the potential conflict on the record. AS 39.52.220(a). The board chair, as the designated supervisor, rules on whether or not the member's involvement could violate the code of ethics. Id. If a determination is made that a violation would exist if the member continued to participate, then the member must not only refrain from voting on the matter, but must also refrain from deliberating or participating in discussions regarding that particular matter. Id.

The designated supervisor or the board or commission may request advice from the attorney general. AS 39.52.220(b).

Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. This section states that any person may report a potential violation of the code of ethics to a designated supervisor for review and appropriate action.

Sec. 39.52.240. ADVISORY OPINIONS. This section covers requests by designated supervisors, or boards or commissions, for advice from the attorney general regarding appropriate conduct under AS 39.52. It is important to note that requests for advisory opinions are confidential. AS 39.52.240(g).

Advisory opinions must be issued within 60 days after the attorney general receives a completed request. AS 39.52.240(a). Because, however, there may be instances where delay in the receipt of an opinion would cause substantial inconvenience or detriment to the requesting party, this section allows the attorney general to give oral advice. AS 39.52.240(b). The designated supervisor or board or commission, after consultation with the officer, then makes a determination regarding an ethical problem. AS 39.52.240(c). If the attorney general has suggested more than one alternative, the supervisor or board or commission will select the most appropriate way to avoid or correct the problem. Id.

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Sec. 39.52.340. CONFIDENTIALITY. Information obtained by the attorney general during an investigation is confidential, unless and until formal proceedings are initiated. AS 39.52.340(a). The attorney general and persons contacted during the course of an investigation are required to maintain confidentiality regarding the existence of the investigation. Id. A person who violates the confidentiality provisions of this section is guilty of a class A misdemeanor. Id.

It is not a violation of this section, however, for a person to contact an attorney or participate in a criminal investigation. AS 39.52.340(b). This section also provides that the subject of the complaint may, if he or she so chooses, waive the confidentiality protections of this section. AS 39.52.340(c).

Sec. 39.52.350. PROBABLE CAUSE. If the attorney general finds that there is probable cause to believe that an officer has violated the code of ethics, the attorney general initiates formal proceedings by serving an accusation upon the subject of the complaint. The accusation must specifically set out the alleged violation and, after service, is a public document. Except for deliberations of the personnel board, all subsequent proceedings are open to the public. AS 39.52.350(a).

The subject of the accusation must file an answer to the accusation. AS 39.52.350(b). If the subject denies that a violation has occurred, the attorney general shall refer the matter to the personnel board for appointment of a hearing officer to conduct a hearing. AS 39.52.350(c). If, however, the subject admits an ethical violation, the attorney general shall refer the matter to

the personnel board to impose appropriate penalties. AS 39.52.350(d).

Sec. 39.52.360. HEARINGS. AS 39.52.360 establishes the formal hearing process to be followed if a matter is referred to the personnel board for hearing. The hearing officer appointed by the personnel board may conduct pre-hearing conferences, administer oaths, hold hearings, take testimony, and issue subpoenas upon application by a party. AS 39.52.360(a) and (b).

The attorney general presents the charges and has the burden of demonstrating by a preponderance of evidence that the subject of the accusation has violated the new chapter. AS 39.52.360(c). The subject of an accusation may be represented by counsel; each party has the opportunity to be heard and cross-examine witnesses. AS 39.52.360(d).

Hearings held under this section are not subject to the Administrative Procedure Act. AS 39.52.360(e). During the hearing itself, technical rules of evidence do not apply but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. AS 39.52.360(f). At the conclusion of the hearing, the hearing officer may direct the submission of proposed orders (AS 39.52.360(g)), and within 30 days after the conclusion of the formal hearing, the hearing officer must file a written report with the personnel board containing the officer's findings of fact, conclusions of law, and recommendation (AS 39.52.360(h)).

Sec. 39.52.370. PERSONNEL BOARD ACTION. Either party to the hearing may protest the hearing officer's decision before the personnel board. Oral argument before the personnel board will be provided if requested. AS 39.52.370(a). The board may, for good cause shown, convene a hearing de novo or further augment the record with additional evidence. AS 39.52.370(b).

The personnel board shall review each report submitted by the hearing officer and any briefs filed and must either adopt or amend the findings of fact, conclusions of law, and recommendation of the hearing officer. AS 39.52.370(c). The deliberations of the personnel board are not open to the public. Id. If the personnel board determines that a violation has occurred, it may impose certain civil penalties. AS 39.52.370(d). If the board determines that a violation has not occurred, it shall issue a written order of dismissal. Id. The personnel board secretary must promptly inform both parties of the board's action. AS 39.52.370(e). The subject of the accusation may appeal the board's decision by filing an appeal in the superior court. AS 39.52.370(f).

Sec. 39.52.380. SUBPOENAS. This section gives the attorney general, independent counsel retained by the personnel board, the personnel board, and appointed hearing officers certain subpoena powers.

Sec. 39.52.390. SERVICE. This section dictates how service of an accusation and other documents must be accomplished.

ARTICLE 5. ENFORCEMENT; REMEDIES.

Article 5 describes the enforcement powers available to both the personnel board and the state when a violation of the ethics Act has occurred. Because we wish the attorney general and the personnel board to be able to take relatively swift action, we have provided for a wide range of civil remedies and penalties, as opposed to providing for criminal penalties for violation of the Act.

Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. Under this section, if a public employee is found to have violated AS 39.52, the personnel board has the authority to order the employee to stop engaging in the illegal action; may order divestiture, establishment of a blind trust, restitution, or forfeiture; and recommend that the employee's agency take disciplinary action against that employee, including dismissal. AS 39.52.410(a).

If the personnel board determines that a non-salaried member of a board or commission has violated AS 39.52, it may order the member to refrain from voting, deliberating, or participating in the matter; order restitution; or, in appropriate cases, recommend that the governor remove the offending member from the board or commission (in which case, the governor must act to immediately remove that member from office). AS 39.52.410(b).

If the board determines that a former public officer has violated AS 39.52, it shall issue a public statement of its findings and seek the attorney general's assistance in pursuing all legal remedies against that individual. AS 39.52.410(c).

Finally, if the board finds the governor or lieutenant governor in violation of AS 39.52, the board shall file a report of the matter with the President of the Alaska State Senate, together with its findings. AS 39.52.410(d).

Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. This section states that a violation of the code of ethics contained in AS 39.52 is a valid reason for an executive-branch agency to discipline an employee. AS 39.52.420(a). An agency may initiate appropriate disciplinary action without waiting for the attorney general to file an accusation or the board to complete formal proceedings. AS 39.52.420(b).

Sec. 39.52.430. ACTIONS VOIDABLE. This section describes the actions that may be taken by the state if state grants, contracts, leases, or loans have been entered into or received in violation of AS 39.52.

Sec. 39.52.440. CIVIL PENALTIES. This section provides that the personnel board may impose civil penalties not to exceed \$5,000 on a current or former public officer for a violation of the ethics Act.

Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. This section gives the personnel board the authority to seek from a current or former public officer payment of up to twice the financial benefit realized by a person in violation of AS 39.52.

Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. This section clarifies that the civil penalties provided for in art. 5 of the ethics Act are in addition to any criminal actions that may be pursued.

ARTICLE 6. GENERAL PROVISIONS.

Sec. 39.52.910. APPLICABILITY. This section gives notice that the bill applies generally to all public officers in executive-branch agencies, and that AS 39.52 supersedes the common law on conflicts of interests, including replacement of the common law standard of "the appearance of impropriety" with the specific standards set out in the code of ethics in art. 2 of AS 39.52. AS 39.52.910(a) and (b). This chapter is not subject to collective bargaining. AS 39.52.910(c).

Sec. 39.52.920. AGENCY POLICIES. This section establishes that agencies have the authority to adopt written policies for their employees which are more restrictive than the code of ethics. These agency policies are subject to the attorney general's review and approval.

Sec. 39.52.930. COOPERATION. This section requires agencies in all branches of state government to cooperate fully with the attorney general and the personnel board in the performance of their duties.

Sec. 39.52.940. CONSTRUCTION. This section calls for the bill's provisions to be construed to promote high ethical standards in state government.

Sec. 39.52.950. REGULATIONS. Under this section, the attorney general is empowered to adopt necessary regulations to implement AS 39.52.

Sec. 39.52.960. DEFINITIONS. This section of the new chapter sets out definitions for the new code of ethics.

Section 2: This section of the bill amends AS 39.25.060(c) to make the members of the personnel board removable only for cause. The additional responsibilities granted the board under the new ethics law require that the members of the personnel board be free from possible interference in the performance of their duties. Therefore, unless cause can be shown, the governor should be prohibited from freely removing personnel board members from office.

Section 3: This section amends AS 39.25.070, relating to the powers of the personnel board, to add authority to perform the functions granted to the board by the new ethics Act, including authority to appoint independent counsel, appoint hearing officers, review the recommendations of hearing officers, determine whether a violation of the code of ethics had occurred, and impose penalties for a violation of the code.

Section 4: This section of the bill requires the Railroad Corporation to adopt a substantially similar code of ethics by January 1, 1987.

Section 5: This section of the bill merely adds attorney general ethics advisory opinions to the list of items to be published in the Alaska Administrative Journal, consistent with the proposed requirement in AS 39.52.240(h) [see sec. 1 of the bill].

Section 6: Because the enforcement and remedy provisions in the new ethics law do not take effect until January 1987, this section of the bill clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before January 1, 1987, unless the violation continues after that date.

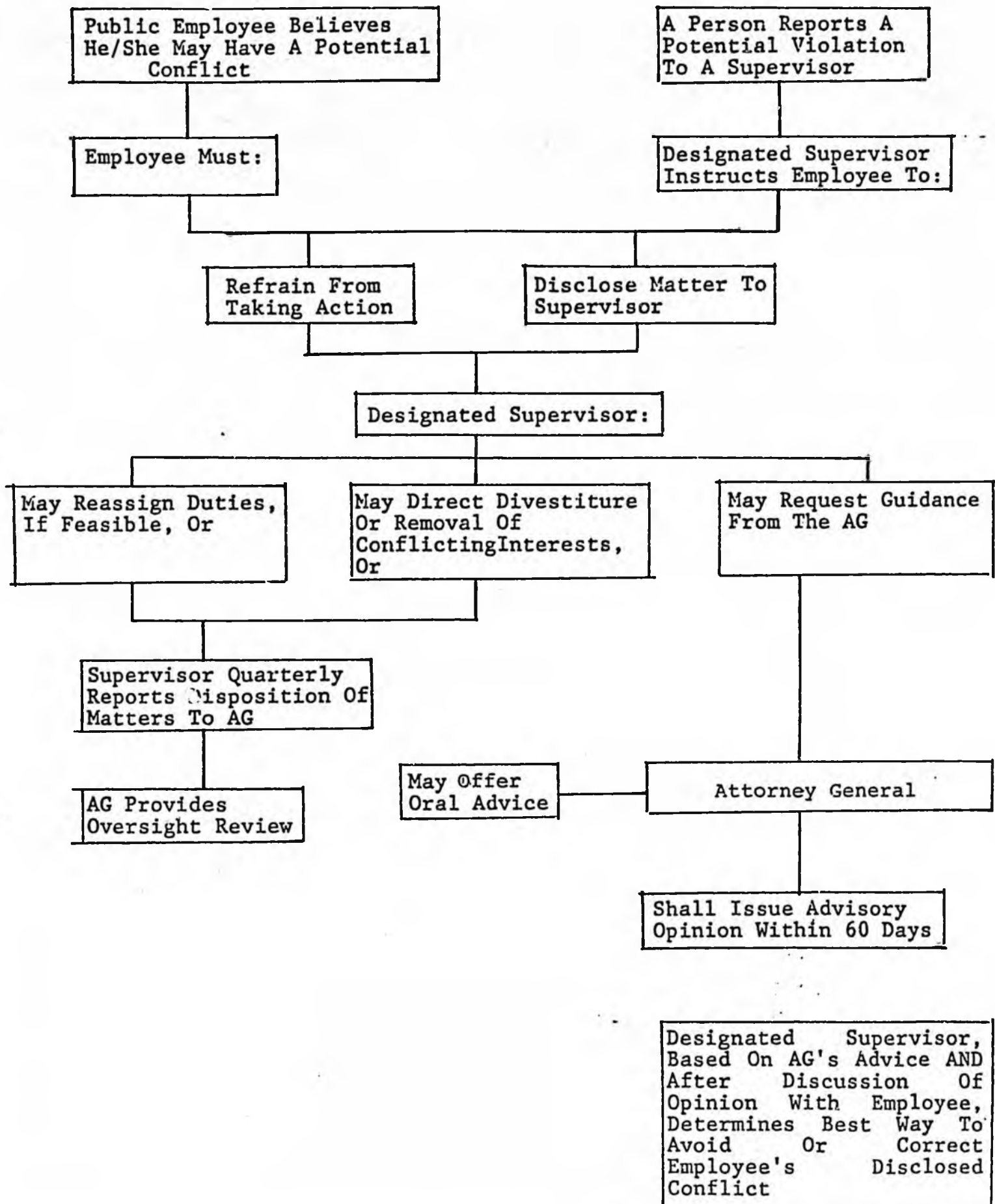
Section 7: Under this section of the bill, an agency with an existing policy related to conflicts of interests or the ethical performance of official duties is required to submit that policy to the attorney general for necessary review and approval by January 1, 1987.

Section 8: The sections of the ethics law regarding policy, the issuance of advisory opinions, declarations of potential violations, and the definition section, take effect July 1, 1986.

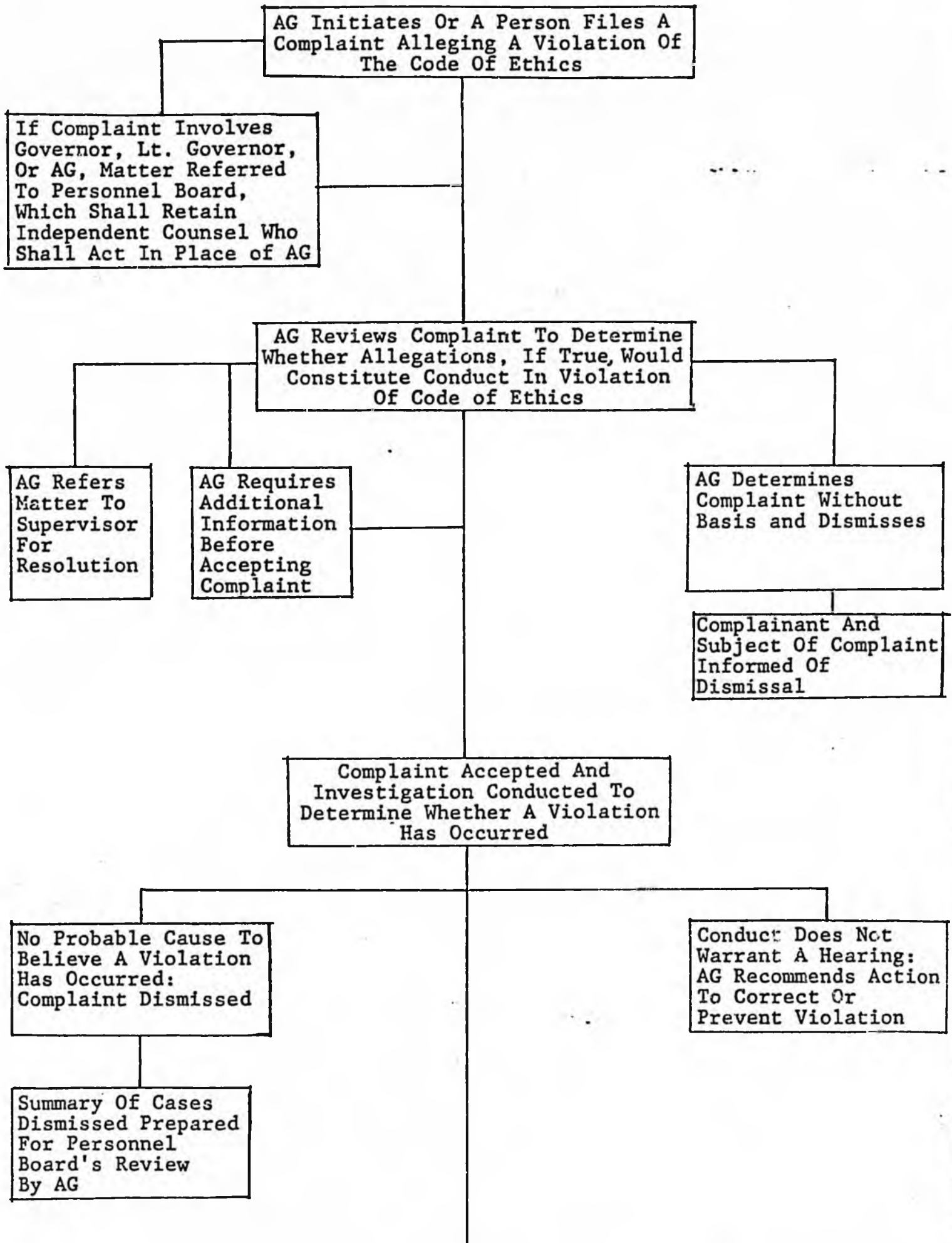
Section 9: The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions (AS 39.52.110 -- 39.52.190 and AS 39.52.310 -- 39.52.460) will take effect January 1, 1987.

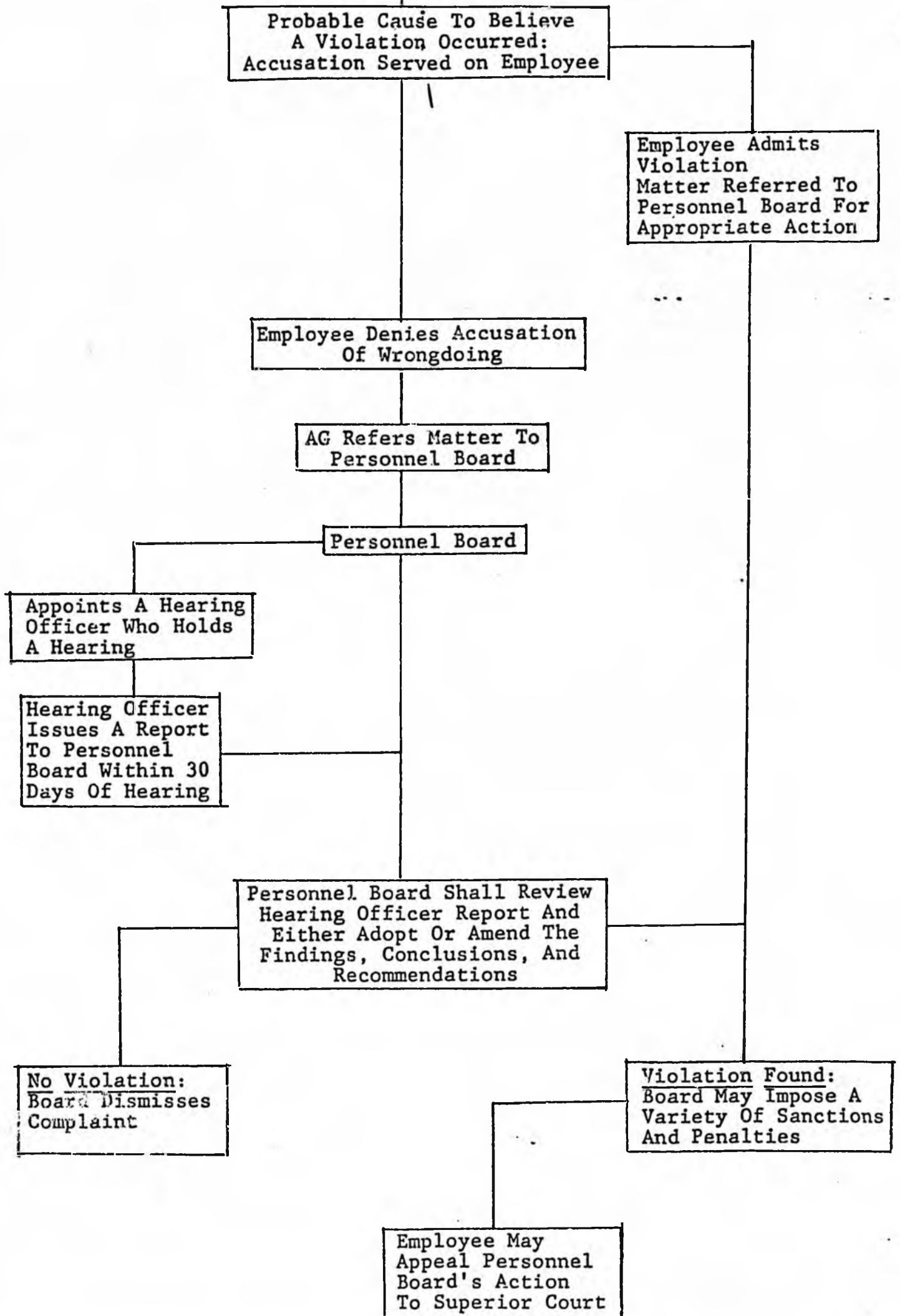
Different effective dates have been provided so that public officers, immediately upon passage of the bill, may seek guidance from the attorney general concerning their standing under the new code of ethics, in order that any reassignments, transfers, or divestitures that need to occur can be accomplished before the code of ethics, as well as the complaint process, is in force.

Procedure To Be Followed When A Public Employee Discloses A Potential Conflict
 Or
 A Person Reports A Potential Violation



Complaint And Hearing Procedures
When A Violation Of The Code of Ethics Is Alleged





Offered: 5/10/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the ethical conduct of govern-
7 mental activities; and providing for an effective
8 date."

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

10 * Section 1. AS 39 is amended by adding a new chapter to read:

11 CHAPTER 52. ALASKA EXECUTIVE BRANCH ETHICS ACT.

12 ARTICLE 1. DECLARATIONS.

13 Sec. 39.52.010. DECLARATION OF POLICY. (a) It is declared (1)
14 that high moral and ethical standards among public officers in the
15 executive branch are essential to the conduct of free government; and
16 (2) that the legislature believes that a code of ethics for the guid-
17 ance of public officers will encourage public officers to avoid
18 conduct that even appears to violate the trust that the people have
19 placed in them, will discourage those officers from acting upon
20 personal or financial interests in the performance of their public
21 responsibilities, will improve standards of public service, and will
22 promote and strengthen the faith and confidence of the people of this
23 state in their public officers. It is further declared that holding
24 public office or employment is a public trust and that as one safe-
25 guard of that trust, the people require public officers to adhere to a
26 code of ethics.

27 (b) The legislature declares that it is the policy of the state,
28 when a public employee is appointed to serve on a state board or
29 commission, that the holding of such offices does not constitute the

1 holding of incompatible offices unless expressly prohibited by the
2 Alaska Constitution, this chapter and any opinions or decisions ren-
3 dered under it, or another statute.

4 ARTICLE 2. CODE OF ETHICS.

5 Sec. 39.52.110. SCOPE OF CODE. (a) The legislature reaffirms
6 that each public officer holds office as a public trust, and any
7 effort to benefit a personal or financial interest through official
8 action is a violation of that trust. In addition, the legislature
9 finds that, so long as it does not interfere with the full and faith-
10 ful discharge of an officer's public duties and responsibilities, this
11 chapter does not prevent an officer from following other independent
12 pursuits. The legislature further recognizes that

13 (1) in a representative democracy, the representatives are
14 drawn from society and, therefore, may not always be without personal
15 and financial interests in the decisions and policies of government;

16 (2) people who serve as public officers retain their rights
17 to interests of a personal or financial nature; and

18 (3) standards of ethical conduct for members of the execu-
19 tive branch need to distinguish between those minor and inconsequen-
20 tial conflicts that are unavoidable in a free society, and those
21 conflicts of interests that are substantial and material.

22 (b) Unethical conduct is prohibited, but there is no substantial
23 impropriety if, as to a specific matter, a public officer's

24 (1) personal or financial interest in the matter is insig-
25 nificant, or of a type that is possessed generally by the public or a
26 large class of persons to which the public officer belongs; or

27 (2) action or influence would have insignificant or conjec-
28 tural effect on the matter.

29 (c) The attorney general, designated supervisors, hearing

1 officers, and the personnel board shall be guided by this section when
2 issuing opinions and reaching decisions.

3 Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. (a) A public
4 officer may not use, or attempt to use, an official position for
5 personal gain, and may not intentionally secure or grant unwarranted
6 benefits or treatment for any person.

7 (b) A public officer may not

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

10 (2) accept, receive, or solicit compensation for the per-
11 formance of official duties or responsibilities from a person other
12 than the state;

13 (3) use state time, property, equipment, or other facil-
14 ities with intent to benefit a personal or financial interest;

15 (4) take or withhold official action in order to affect a
16 matter in which the public officer has a personal or financial inter-
17 est; or

18 (5) attempt to benefit a personal or financial interest
19 through coercion of a subordinate.

20 Sec. 39.52.130. IMPROPER GIFTS. (a) A public officer may not
21 solicit, accept, or receive, directly or indirectly, a gift, whether
22 in the form of money, service, loan, travel, entertainment,
23 hospitality, employment, promise, or in any other form, that is a
24 benefit to the officer's personal or financial interests, under
25 circumstances in which it could reasonably be inferred that the gift
26 is intended to influence the performance of official duties, actions,
27 or judgment.

28 (b) A public officer shall notify the officer's designated
29 supervisor of the receipt of a gift with a value in excess of \$50,

1 including the name of the giver, a description of the gift, and its
2 approximate value, within 30 days after the date of its receipt if the
3 public officer may take or withhold official action that affects the
4 giver.

5 (c) A designated supervisor may request guidance from the
6 attorney general under AS 39.52.240 concerning whether acceptance of a
7 particular gift is prohibited.

8 (d) The restrictions relating to gifts imposed by this section
9 do not apply to a campaign contribution to a candidate for elective
10 office if the contribution complies with laws and regulations govern-
11 ing elections and campaign disclosure.

12 Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a)
13 A public officer may not disclose or use information gained in the
14 course of, or by reason of, the officer's official duties with intent
15 to benefit a personal or financial interest of the officer or an
16 immediate family member, if the information has not also been
17 disseminated to the public.

18 (b) A current or former public officer may not disclose or use,
19 without appropriate authorization, information acquired in the course
20 of official duties that is confidential by law.

21 Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS,
22 LEASES, OR LOANS. (a) A public officer, or an immediate family
23 member, may not attempt to acquire, receive, apply for, be a party to,
24 or have a personal or financial interest in a state grant, contract,
25 lease, or loan if the public officer may take or withhold official
26 action that affects the award, execution, or administration of the
27 state grant, contract, lease, or loan.

28 (b) The prohibition in (a) of this section does not apply to a
29 state grant, contract, or lease competitively solicited unless the

1 officer

2 (1) is employed by the administrative unit awarding the
3 grant, contract, or lease or is employed by the administrative unit
4 for which the grant, contract, or lease is let; or

5 (2) takes official action with respect to the award, exe-
6 cution, or administration of the grant, contract, or lease.

7 (c) The prohibition in (a) of this section does not apply to a
8 state loan held by the officer or an immediate family member if

9 (1) the public officer does not take or withhold official
10 action that affects the award, execution, or administration of the
11 loan;

12 (2) the loan is generally available to members of the
13 public; and

14 (3) the loan is subject to fixed eligibility standards.

15 (d) A public officer shall report in writing to the designated
16 supervisor a personal or financial interest held by the officer or an
17 immediate family member in a state grant, contract, lease, or loan
18 that is awarded, executed, or administered by the agency the officer
19 serves.

20 Sec. 39.52.160. IMPROPER REPRESENTATION. (a) A public officer
21 may not represent, advise, or assist a person in any matter pending
22 before the administrative unit that the officer serves, if the rep-
23 resentation, advice, or assistance is

24 (1) for compensation, unless the representation, advice,
25 assistance, and compensation are required by statute, regulation, or
26 court rule, or is otherwise customary; or

27 (2) without compensation, but rendered to benefit a per-
28 sonal or financial interest of the public officer.

29 (b) This section does not prohibit activities related to

1 collective bargaining.

2 (c) A nonsalaried member of a board or commission may represent,
3 advise, or assist in any matter in which the member has a personal or
4 financial interest regulated by the board or commission on which the
5 member serves if the member complies with AS 39.52.220.

6 Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. (a) A public
7 employee may not render services to benefit a personal or financial
8 interest or engage in or accept employment outside the agency which
9 the employee serves if the outside employment or service is incom-
10 patible or in conflict with the proper discharge of official duties.

11 (b) A public employee rendering services for compensation or
12 engaging in employment outside the employee's agency shall report by
13 July 1 of each year the outside services or employment to the employ-
14 ee's designated supervisor. The employee shall also report a change
15 in the employee's outside service or employment activity to the
16 designated supervisor when it occurs.

17 Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE
18 SERVICE. (a) A public officer who leaves state service may not, for
19 two years after leaving state service, represent, advise, or assist a
20 person for compensation regarding a matter that was under considera-
21 tion by the administrative unit served by the public officer and in
22 which the officer participated personally and substantially through
23 the exercise of official action. In this subsection, "matter" in-
24 cludes a case, proceeding, application, contract, or determination,
25 but does not include the proposal or consideration of legislative
26 bills, resolutions and constitutional amendments, or other legislative
27 measures; or the proposal, consideration, or adoption of administra-
28 tive regulations.

29 (b) Nothing in this section prohibits an agency from contracting

1 with a former public officer to act on a matter on behalf of the
2 state.

3 (c) If the attorney general approves, the head of an agency may
4 waive application of (a) of this section after determining that
5 representation by a former public officer is not adverse to the public
6 interest. The waiver must be in writing and a copy of the waiver must
7 be provided to the attorney general.

8 Sec. 39.52.190. AIDING A VIOLATION PROHIBITED. It is a viola-
9 tion of this chapter for a public officer to knowingly aid another
10 public officer in a violation of this chapter.

11 ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT
12 VIOLATION OF CODE.

13 Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC
14 EMPLOYEES. (a) A public employee who is involved in a matter that
15 may result in a violation of AS 39.52.110 - 39.52.190 shall

16 (1) refrain from taking any official action relating to the
17 matter until a determination is made under this section; and

18 (2) immediately disclose the matter in writing to the
19 designated supervisor.

20 (b) A public employee's designated supervisor shall make a
21 written determination whether an employee's involvement violates
22 AS 39.52.110 - 39.52.190. If the supervisor determines that a vio-
23 lation could exist or will occur, the supervisor shall

24 (1) reassign duties to cure the employee's potential vio-
25 lation, if feasible; or

26 (2) direct the divestiture or removal by the employee of
27 the personal or financial interests that give rise to the potential
28 violation.

29 (c) A designated supervisor may request guidance from the

1 attorney general, in accordance with AS 39.52.240, when determining
2 whether a public employee is involved in a matter that may result in a
3 violation of AS 39.52.110 - 39.52.190.

4 Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS
5 OF BOARDS OR COMMISSIONS. (a) A member of a board or commission who
6 is involved in a matter that may result in a violation of AS 39.52.-
7 110 - 39.52.190 shall disclose the matter on the public record and in
8 writing to the designated supervisor. The supervisor shall determine
9 whether the member's involvement violates AS 39.52.110 - 39.52.190.
10 If a member of the board or commission objects to the ruling of the
11 supervisor, or if the supervisor discloses an involvement requiring a
12 determination, the members present at a meeting, excluding the in-
13 volved member, shall vote on the matter. If the supervisor or a
14 majority of the members voting determine that a violation will exist
15 if the member continues to participate, the member shall refrain from
16 voting, deliberating, or participating in the matter.

17 (b) The designated supervisor or the board or commission may
18 request guidance from the attorney general, in accordance with AS 39.-
19 52.240, when determining whether a member of a board or commission is
20 involved in a matter that may result in a violation of AS 39.52.110 -
21 39.52.190.

22 Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. A person may
23 report to a public officer's designated supervisor, under oath and in
24 writing, a potential violation of AS 39.52.110 - 39.52.190 by the
25 public officer. The supervisor shall provide a copy of the report to
26 the officer who is the subject of the report, and shall review the
27 report to determine whether a violation may exist. The supervisor
28 shall comply with AS 39.52.210 or 39.52.220 if the supervisor
29 determines that the matter may result in a violation of AS 39.52.110 -

1 39.52.190.

2 Sec. 39.52.240. ADVISORY OPINIONS. (a) Upon the written re-
3 quest of a designated supervisor or a board or commission, the attor-
4 ney general shall issue an opinion interpreting this chapter. The re-
5 quester shall supply any additional information requested by the
6 attorney general in order to issue the opinion. Within 60 days after
7 receiving a complete request, the attorney general shall issue an
8 advisory opinion on the question.

9 (b) The attorney general may offer oral advice if delay would
10 cause substantial inconvenience or detriment to the requesting party.
11 However, the attorney general shall provide a brief written statement
12 that summarizes the content of the oral advice to the designated
13 supervisor within two working days after the oral advice was given.

14 (c) The designated supervisor or a board or commission shall
15 make a written determination based on the advice of the attorney
16 general. If the attorney general suggests more than one way for a
17 public officer to avoid or correct a problem found under AS 39.52.-
18 110 - 39.52.190, the designated supervisor or the board or commission
19 shall, after consultation with the officer, determine the alternative
20 that is most appropriate and advise the officer of action required of
21 the officer to avoid or correct the problem.

22 (d) A public officer is not liable under this chapter for an
23 action carried out in accordance with a determination made under
24 AS 39.52.210 - 39.52.240 if the officer fully disclosed all relevant
25 facts reasonably necessary to the determination.

26 (e) The attorney general may reconsider, revoke, or modify an
27 advisory opinion at any time, including upon a showing that material
28 facts were omitted or misstated in the request for the opinion.

29 (f) A person may rely on an advisory opinion that is currently

1 in effect.

2 (g) A request for advice made under (a) of this section is
3 confidential unless the subject of the opinion waives the
4 confidentiality protection and authorizes in writing the release of
5 the request or the full text of the advisory opinion.

6 (h) The attorney general shall make the advisory opinion issued
7 under this section available for public inspection with sufficient
8 deletions to prevent disclosure of the persons whose identities are
9 confidential under (g) of this section.

10 Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS. (a) A former
11 public officer may request, in writing, an opinion from the attorney
12 general interpreting this chapter. The attorney general shall give
13 advice in accordance with AS 39.52.240(a) or (b) and make opinions
14 available to the public in accordance with AS 39.52.240(h).

15 (b) A former public officer is not liable under this chapter for
16 an action carried out in accordance with the advice of the attorney
17 general issued under this section if the public officer fully dis-
18 closed all relevant facts reasonably necessary to the issuance of the
19 advice.

20 Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY
21 GENERAL REVIEW. (a) A designated supervisor shall quarterly submit a
22 report to the attorney general that states the facts, circumstances,
23 and disposition of disclosures made under AS 39.52.210 - 39.52.240.

24 (b) The attorney general shall review determinations reported
25 under this section. The attorney general may request additional
26 information from a supervisor concerning a specific disclosure and its
27 disposition.

28 (c) The report prepared under this section is confidential and
29 not available for public inspection unless formal proceedings under

1 AS 39.52.350 are initiated based on the report. If formal proceedings
2 are initiated, the relevant portions of the report are public docu-
3 ments open to inspection. However, the attorney general shall make
4 available to the public a summary of the reports received under this
5 section, with sufficient deletions to prevent disclosure of each
6 person's identity.

7 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

8 Sec. 39.52.310. COMPLAINTS. (a) The attorney general may
9 initiate a complaint, or elect to treat as a complaint any matter
10 disclosed under AS 39.52.210, 39.52.220, 39.52.250, or 39.52.260.

11 (b) A person may file a complaint with the attorney general
12 regarding the conduct of a current or former public officer. A com-
13 plaint must be in writing, be signed under oath, and contain a clear
14 statement of the details of the alleged violation.

15 (c) If a complaint alleges a violation of AS 39.52.110 - 39.-
16 52.190 by the governor, lieutenant governor, or attorney general, the
17 matter shall be referred to the personnel board. The personnel board
18 shall retain independent counsel who shall act in the place of the
19 attorney general under (d) - (i) of this section, AS 39.52.320 -
20 39.52.360.

21 (d) The attorney general shall review each complaint filed to
22 determine whether it is properly completed and contains allegations
23 which, if true, would constitute conduct in violation of this chapter.
24 The attorney general may require the complainant to provide additional
25 information before accepting the complaint. If the attorney general
26 determines that the allegations in the complaint do not warrant an
27 investigation, the attorney general shall dismiss the complaint with
28 notice to the complainant and the subject of the complaint.

29 (e) The attorney general may refer a complaint to the subject's

1 designated supervisor for resolution under AS 39.52.210 or 39.52.220.

2 (f) If the attorney general accepts a complaint for investiga-
3 tion, the attorney general shall serve a copy of the complaint on the
4 subject of the complaint, for a response. The attorney general may
5 require the subject to provide, within 20 days after service, full and
6 fair disclosure in writing of all facts and circumstances pertaining
7 to the alleged violation. Misrepresentation of a material fact in a
8 response to the attorney general is a violation of this chapter.
9 Failure to answer within the prescribed time, or within any additional
10 time period that may be granted in writing by the attorney general,
11 may be considered an admission of the allegations in the complaint.

12 (g) If a complaint is accepted under (f) of this section, the
13 attorney general shall investigate to determine whether a violation of
14 this chapter has occurred. At any stage of an investigation or re-
15 view, the attorney general may issue a subpoena under AS 39.52.380.

16 (h) A hearing may not be initiated more than two years after
17 discovery of the alleged violation.

18 (i) The unwillingness of a complainant to assist in an investi-
19 gation, the withdrawal of a complaint, or restitution by the subject
20 of the complaint may, but need not in and of itself, justify termina-
21 tion of an investigation or proceeding.

22 Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS. If, after
23 investigation, it appears that there is no probable cause to believe
24 that a violation of this chapter has occurred, the attorney general
25 shall dismiss the complaint and prepare and file a confidential summa-
26 ry with the personnel board. The attorney general shall communicate
27 disposition of the matter promptly to the complainant and to the
28 subject of the complaint.

29 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After

1 determining that the conduct of the subject of a complaint does not
2 warrant a hearing under AS 39.52.360, the attorney general shall
3 recommend action to correct or prevent a violation of this chapter.
4 The attorney general shall communicate the recommended action to the
5 complainant and the subject of the complaint. The subject of the
6 complaint shall comply with the attorney general's recommendation.

7 Sec. 39.52.340. CONFIDENTIALITY. (a) Before the initiation of
8 formal proceedings under AS 39.52.350, information regarding an inves-
9 tigation conducted under this chapter, or obtained by the attorney
10 general during the investigation, is confidential. The attorney
11 general and all persons contacted during the course of an investiga-
12 tion shall maintain confidentiality regarding the existence of the
13 investigation.

14 (b) It is not a violation of this section for a person to con-
15 tact an attorney or to participate in a criminal investigation.

16 (c) The subject of the complaint may, in writing, waive the
17 confidentiality protection of this section.

18 (d) A person who violates this section is guilty of a class A
19 misdemeanor.

20 Sec. 39.52.350. PROBABLE CAUSE FOR HEARING. (a) If the attor-
21 ney general determines that there is probable cause to believe that a
22 knowing violation of this chapter or a violation that cannot be cor-
23 rected under AS 39.52.330 has occurred, or that the subject of a com-
24 plaint failed to comply with a recommendation for corrective or pre-
25 ventive action, the attorney general shall initiate formal proceedings
26 by serving a copy of an accusation upon the subject of the accusation.
27 The accusation shall specifically set out the alleged violation.
28 After service, the accusation is a public document open to inspection.
29 Except as provided in AS 39.52.370(c), all subsequent proceedings are

1 open to the public.

2 (b) The subject of the accusation shall file an answer with the
3 attorney general within 20 days after service of the accusation, or at
4 a later time specified by the attorney general. If the subject of the
5 accusation fails to timely answer, the allegations are considered
6 admitted.

7 (c) If the subject of the accusation denies that a violation of
8 this chapter has occurred, the attorney general shall refer the matter
9 to the personnel board, which shall appoint a hearing officer to con-
10 duct a hearing.

11 (d) If the subject of the accusation admits a violation of this
12 chapter, the attorney general shall refer the matter to the personnel
13 board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.-
14 450, as appropriate.

15 Sec. 39.52.360. HEARINGS. (a) The hearing officer may convene
16 a pre-hearing conference to set a time and place for the hearing,
17 stipulate as to matters of fact and to simplify issues, identify and
18 schedule pre-hearing matters, and resolve other similar matters before
19 the hearing.

20 (b) The hearing officer may administer oaths, hold hearings, and
21 take testimony. Upon application by a party to the hearing, the
22 hearing officer may issue subpoenas under AS 39.52.380.

23 (c) The attorney general shall present the charges before the
24 hearing officer. At a hearing, the attorney general has the burden of
25 demonstrating by a preponderance of the evidence that the subject of
26 the accusation has, by act or omission, violated this chapter.

27 (d) The parties to a hearing are the attorney general and the
28 subject of the accusation. The subject of an accusation may be repre-
29 sented by counsel. Each party has an opportunity to be heard and

1 cross-examine witnesses, who shall testify under oath.

2 (e) The Administrative Procedure Act does not apply to hearings
3 under this section, except as provided in AS 39.52.380.

4 (f) Technical rules of evidence do not apply, but the hearing
5 officer's findings must be based upon reliable and relevant evidence.
6 All testimony and other evidence taken at the hearing must be recorded
7 and the evidence maintained. Copies of transcripts of the hearing
8 record are available to the subject of the accusation at the subject's
9 expense; however, upon request, a copy of the recording of the hearing
10 shall be furnished without charge to the subject of the accusation.

11 (g) At the conclusion of the formal hearing, the hearing officer
12 may direct either or both parties to submit proposed findings of fact,
13 conclusions of law, and recommendation to be filed within 10 days
14 after the conclusion of the hearing.

15 (h) Within 30 days after the conclusion of a formal hearing, the
16 hearing officer shall serve a written report on the personnel board
17 and the parties, unless the personnel board grants an extension of
18 time. The report must contain the officer's findings of fact, conclu-
19 sions of law, and recommendation. The hearing officer shall submit
20 the record to the personnel board.

21 Sec. 39.52.370. PERSONNEL BOARD ACTION. (a) Within 10 days
22 after receipt of the hearing officer's report, either party may pro-
23 test the officer's findings of fact, conclusions of law, and recommen-
24 dation. If a protest is filed, the protesting party shall serve a
25 copy of the protest on the other party. The personnel board shall
26 provide an opportunity for oral argument only if requested by a party.
27 The board chair shall set the deadline for submission of requests for
28 oral argument, and set the dates for submission of briefs and oral
29 argument before the board, if requested.

1 (b) The board may issue subpoenas under AS 39.52.380, and may,
2 for good cause shown, augment the hearing record, in whole or in part,
3 or hold a hearing de novo.

4 (c) The personnel board shall review each report submitted by a
5 hearing officer and shall either adopt or amend the findings of fact,
6 conclusions of law, and recommendation of the officer. Deliberations
7 of the personnel board must be conducted in sessions not open to the
8 public.

9 (d) If the personnel board determines that a violation occurred,
10 it may impose penalties under AS 39.52.410, 39.52.440, and 39.52.450,
11 as appropriate. If the board determines that no violation occurred,
12 the board shall issue a written order of dismissal.

13 (e) The personnel board secretary shall promptly notify the
14 parties and the public officer's designated supervisor of the board's
15 action.

16 (f) The subject of the accusation may appeal the personnel
17 board's decision by filing an appeal in the superior court as provided
18 in the Alaska Rules of Appellate Procedure.

19 Sec. 39.52.380. SUBPOENAS. (a) As provided in AS 39.52.310(g),
20 39.52.360(b), and 39.52.370(b), the attorney general, independent
21 counsel retained under AS 39.52.310(c), a hearing officer, the subject
22 of an accusation, and the personnel board may summon witnesses and
23 require the production of records, books, and papers by the issuance
24 of subpoenas.

25 (b) Subpoenas shall be served in the manner prescribed by
26 AS 44.62.430 and Rule 45 of the Alaska Rules of Civil Procedure.
27 Failure or refusal to obey a subpoena issued under this chapter is
28 punishable as contempt in the manner provided by law and court rules.
29 The superior court may compel obedience to the subpoena in the same

1 manner as prescribed for obedience to a subpoena issued by the court.

2 Sec. 39.52.390. SERVICE. Service of an accusation shall be made
3 under Rule 4 of the Alaska Rules of Civil Procedure. Service of any
4 other pleading, motion, or other document shall be made under Rule 5
5 of the Alaska Rules of Civil Procedure.

6 ARTICLE 5. ENFORCEMENT; REMEDIES.

7 Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT. (a) If
8 the personnel board determines that a public employee has violated
9 this chapter, it

10 (1) shall order the employee to stop engaging in any
11 official action related to the violation;

12 (2) may order divestiture, establishment of a blind trust,
13 restitution, or forfeiture; and

14 (3) may recommend that the employee's agency take
15 disciplinary action, including dismissal.

16 (b) A violation of this chapter is grounds for removal of a
17 board or commission member for cause. If the personnel board
18 determines that a nonsalaried member of a board or commission has vi-
19 olated this chapter, it

20 (1) shall order the member to refrain from voting,
21 deliberating, or participating in the matter;

22 (2) may order restitution; and

23 (3) may recommend to the appropriate appointing authority
24 that the member be removed from the board or commission; if
25 recommended, the appointing authority shall immediately act to remove
26 the member from office.

27 (c) If the personnel board determines that a former public
28 officer has violated this chapter, it shall

29 (1) issue a public statement of its findings, conclusions,

1 and recommendation; and

2 (2) request the attorney general to exercise all legal and
3 equitable remedies available to the state to seek whatever relief is
4 appropriate.

5 (d) If the personnel board finds a violation of this chapter by
6 a public officer removable from office only by impeachment, it shall
7 file a report with the president of the senate, with its finding. The
8 report must contain a statement of the facts alleged to constitute the
9 violation.

10 Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION. (a) In
11 addition to any other cause an agency may have to discipline a public
12 employee, an agency may reprimand, demote, suspend, discharge, or
13 otherwise subject an employee to agency disciplinary action commensu-
14 rate with the violations of this chapter. This section does not
15 prohibit the review of a disciplinary action in the manner prescribed
16 by an applicable collective bargaining agreement or personnel statute
17 or rule.

18 (b) An agency may initiate appropriate disciplinary action in
19 the absence of an accusation under this chapter or during the pendency
20 of a hearing or personnel board action.

21 Sec. 39.52.430. ACTIONS VOIDABLE. (a) In addition to any other
22 penalty provided by law, a state grant, contract, or lease entered
23 into in violation of this chapter is voidable by the state. In a
24 determination under this section of whether to void a grant, contract,
25 or lease, the interests of third parties who could be damaged may be
26 taken into account. The attorney general shall give notice of intent
27 to void a state grant, contract, or lease under this section no later
28 than 30 days after the personnel board's determination of a violation
29 under this chapter.

1 (b) In addition to any other penalty provided for by law, the
2 state may require a state loan received in violation of this chapter
3 to become immediately payable.

4 (c) Any state action taken in violation of this chapter is
5 voidable, except that the interests of third parties and the nature of
6 the violation may be taken into account. The attorney general may
7 pursue any other available legal and equitable remedies.

8 (d) The attorney general may recover any fee, compensation,
9 gift, or benefit received by a person as a result of a violation of
10 this chapter by a current or former public officer. Action to recover
11 under this subsection must be brought within two years after discovery
12 of the violation.

13 Sec. 39.52.440. CIVIL PENALTIES. The personnel board may impose
14 on a current or former public officer civil penalties not to exceed
15 \$5,000 for a violation of this chapter. A penalty imposed under this
16 section is in addition to and not instead of any other penalty that
17 may be imposed according to law.

18 Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT. The
19 personnel board may, in addition to the civil penalties set out in
20 this chapter, require a current or former public officer who has
21 financially benefited a person in violation of this chapter to pay to
22 the state up to twice the amount that the person realized from the
23 violation.

24 Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. To the extent
25 that violations under this chapter are punishable in a criminal
26 action, the criminal penalty is in addition to the civil remedies set
27 out in this chapter.

28 ARTICLE 6. GENERAL PROVISIONS.

29 Sec. 39.52.910. APPLICABILITY. (a) Except as specifically

1 provided, this chapter applies to all public officers within execu-
2 tive-branch agencies, including members of boards or commissions.
3 This chapter does not apply to a former public officer of an execu-
4 tive-branch agency unless a provision specifically states that it so
5 applies. This chapter does not apply to legislators covered by
6 AS 24.60.

7 (b) The provisions of this chapter supersede the common law on
8 conflicts of interests that may apply to a public officer of an execu-
9 tive-branch agency and any personnel rules relating to conflicts of
10 interests, excluding nepotism, adopted under AS 39.25. However,
11 nothing in this chapter precludes a prosecution under an applicable
12 criminal statute or prevents enforcement of another state law that
13 imposes a stricter standard of ethical conduct on public officers.

14 (c) The provisions of this chapter are not subject to negotia-
15 tion by collective bargaining under AS 23.40.

16 Sec. 39.52.920. AGENCY POLICIES. Subject to the review and
17 approval of the attorney general, an agency may adopt a written policy
18 that meets the requirements of this chapter and further limits the
19 extent to which a public officer in the agency or an administrative
20 unit of the agency may

21 (1) acquire a personal interest in an organization or a
22 financial interest in a business or undertaking that may benefit from
23 official action taken or withheld by the agency or unit;

24 (2) have a personal or financial interest in a state grant,
25 contract, lease, or loan administered by the agency or unit; or

26 (3) accept a gift.

27 Sec. 39.52.930. COOPERATION. All agencies and instrumentalities
28 of the state shall cooperate fully with the attorney general and the
29 personnel board in the performance of their duties under this chapter.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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20 this chapter, require a current or former public officer who has
21 financially benefited a person in violation of this chapter to pay to
22 the state up to twice the amount that the person realized from the
23 violation.

24 Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. To the extent
25 that violations under this chapter are punishable in a criminal
26 action, the criminal penalty is in addition to the civil remedies set
27 out in this chapter.

28 ARTICLE 6. GENERAL PROVISIONS.

29 Sec. 39.52.910. APPLICABILITY. (a) Except as specifically

1 Sec. 39.52.940. CONSTRUCTION. This chapter shall be construed
2 to promote high standards of ethical conduct in state government.

3 Sec. 39.52.950. REGULATIONS. The attorney general may adopt
4 regulations under the Administrative Procedure Act necessary to inter-
5 pret and implement this chapter.

6 Sec. 39.52.960. DEFINITIONS. In this chapter, unless the con-
7 text requires otherwise,

8 (1) "administrative unit" means a branch, bureau, center,
9 committee, division, fund, office, program, section, or any other
10 subdivision of an agency;

11 (2) "agency" means a department, office of the governor, or
12 entity in the executive branch, including but not limited to the
13 University of Alaska, public or quasi-public corporations, and boards
14 or commissions, but excluding the Alaska Railroad Corporation;

15 (3) "benefit" means anything that is to a person's advan-
16 tage or self-interest, or from which a person profits, regardless of
17 the financial gain, including any dividend, pension, salary, acqui-
18 sition, agreement to purchase, transfer of money, deposit, loan or
19 loan guarantee, promise to pay, grant, contract, lease, money, goods,
20 service, privilege, exemption, patronage, advantage, advancement, or
21 anything of value;

22 (4) "board or commission" means a board, commission, au-
23 thority, or board of directors of a public or quasi-public corpo-
24 ration, established by statute in the executive branch, but excluding
25 the Alaska Railroad;

26 (5) "business" includes a corporation, company, firm,
27 partnership, sole proprietorship, trust or foundation, or any other
28 individual or entity carrying on a business, whether operated for
29 profit or non-profit;

1 (6) "child" includes a biological child, an adoptive child,
2 and a stepchild;

3 (7) "compensation" means any money, thing of value, or
4 economic benefit conferred on or received by a person in return for
5 services rendered or to be rendered by the person for another;

6 (8) "designated supervisor" or "supervisor" means

7 (A) the commissioner of each department in the execu-
8 tive branch, for public employees within the department;

9 (B) the president of the University of Alaska, for
10 university employees;

11 (C) the attorney general, for the governor and lieu-
12 tenant governor;

13 (D) the executive director of a board or commission
14 for the staff of the board or commission;

15 (E) the chair or acting chair of the board or commis-
16 sion, for the members and the executive director of a board or
17 commission; and

18 (F) the governor, for commissioners and for other
19 public officers not included in (A) - (E) of this subsection; or

20 (G) a public officer designated by a commissioner, the
21 university president, or the governor to act as the supervisor if
22 the name and position of the officer designated has been reported
23 to the attorney general;

24 (9) "financial interest" means

25 (A) an interest held by a public officer or an immedi-
26 ate family member, which includes an involvement or ownership of
27 an interest in a business, including a property ownership, or a
28 professional or private relationship, that is a source of income,
29 or from which, or as a result of which, the person has received

1 or expects to receive a financial benefit;

2 (B) holding a position in a business, such as an
3 officer, director, trustee, partner, employee, or the like, or
4 holding a position of management;

5 (10) "gain" includes actual or anticipated gain, benefit,
6 profit, or compensation;

7 (11) "immediate family member" means a public officer's
8 spouse, parent, child, brother, sister, grandparent, grandchild, aunt,
9 uncle, niece, nephew, in a full, half, or step relationship, and a
10 regular member of the officer's household;

11 (12) "instrumentality of the state" means a state agency or
12 administrative unit, whether in the legislative, judicial, or execu-
13 tive branch, including the University of Alaska, and any public or
14 quasi-public corporations, boards, or commissions; the term includes
15 municipalities but excludes the Alaska Railroad;

16 (13) "nonsalaried member of a board or commission" means a
17 member of a board or commission who is not a public employee by virtue
18 of membership on a board or commission; receipt of per diem, nominal
19 compensation for attendance at meetings, and travel expense reimburse-
20 ment does not make a member of a board or commission a public employee
21 for purposes of this chapter;

22 (14) "official action" means a recommendation, decision,
23 approval, disapproval, vote, or other similar action, including inac-
24 tion, by a public officer;

25 (15) "organization" includes a group, association, society,
26 political party, or other entity made up of two or more persons,
27 whether operated for profit or nonprofit;

28 (16) "parent" includes a biological parent, an adoptive
29 parent, and a step-parent of the public officer;

1 (17) "person" includes a natural person, a business, and an
2 organization;

3 (18) "personal interest" means an interest held or involve-
4 ment by a public officer, or the officer's immediate family member or
5 parent, including membership, in any organization, whether fraternal,
6 non-profit, for profit, charitable, or political, from which, or as a
7 result of which, the person or organization receives a benefit;

8 (19) "personnel board" or "board" means the personnel board
9 established in AS 39.25.060;

10 (20) "public employee" or "employee" means a permanent,
11 probationary, seasonal, temporary, provisional, or nonpermanent em-
12 ployee of an agency, whether in the classified, partially exempt, or
13 exempt service;

14 (21) "public officer" or "officer" means

15 (A) a public employee;

16 (B) a member of a board or commission;

17 (22) "source of income" means an entity for which service is
18 performed for compensation or which is otherwise the origin of pay-
19 ment; if the person whose income is being reported is employed by
20 another, the employer is the source of income; if the person is self-
21 employed by means of a sole proprietorship, partnership, professional
22 corporation, or a corporation in which the person, the person's spouse
23 or child, or a combination of them, holds a controlling interest, the
24 "source" is the client or customer of the proprietorship, partnership,
25 or corporation; if the entity which is the origin of payment is not
26 the same as the client or customer for whom the service is performed,
27 both are considered the source.

28 * Sec. 2. AS 39.25.060(c) is amended to read:

29 (c) A board member may be removed by the governor only for cause

1 [HOLDS OFFICE AT THE PLEASURE OF THE GOVERNOR NOTWITHSTANDING THE
2 MEMBER'S TERM].

3 * Sec. 3. AS 39.25.070 is amended to read:

4 Sec. 39.25.070. POWERS AND DUTIES OF PERSONNEL BOARD. In addi-
5 tion to the other duties imposed by this chapter, the personnel board
6 shall

7 (1) approve or disapprove amendments to the personnel rules
8 in accordance with AS 39.25.140;

9 (2) consider and act upon recommendations for the extension
10 of the partially exempt service and the classified service as provided
11 in AS 39.25.130;

12 (3) hear and determine appeals by employees in the clas-
13 sified service as provided in AS 39.25.170;

14 (4) establish its own rules of procedure (two members
15 constitute a quorum for the transaction of business and two affirma-
16 tive votes are required for final action on matters acted upon by the
17 board);

18 (5) elect a chairman from its membership;

19 (6) have the power to administer oaths, subpoena witnesses,
20 and compel the production of books and papers pertinent to a hearing
21 authorized by this chapter;

22 (7) employ staff members, who shall be in the classified
23 service;

24 (8) retain independent counsel as required under AS 39.-
25 52.310(c);

26 (9) appoint, and review the findings, conclusions, and
27 recommendations of, hearing officers under AS 39.52.350(c), 39.52.360,
28 and 39.52.370;

29 (10) issue findings, conclusions, and decisions regarding

1 violations of the code of ethics in AS 39.52.110 - 39.52.190; and
2 (11) impose penalties under AS 39.52.410, 39.52.440, and
3 39.52.450.

4 * Sec. 4. AS 42.40.710 is amended to read:

5 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
6 Railroad are employees of the corporation and not of the state. The
7 provisions of AS 39 do not apply to employees of the corporation.
8 However, no later than January 1, 1987, the corporation shall adopt a
9 code of ethics for its directors and employees that is substantially
10 equivalent to that adopted in AS 39. If the governor determines that
11 the corporation has not adopted a substantially equivalent code by
12 January 1, 1987, the governor shall issue a finding of failure to
13 comply with this section and shall request the attorney general to
14 establish a code for the corporation that satisfies the requirements
15 of this section. The code established by the attorney general is
16 binding on the corporation and is not subject to negotiation under AS
17 42.40.720 - 42.40.880.

18 * Sec. 5. The attorney general and the personnel board have no juris-
19 diction over an alleged violation of AS 39.52.110 - 39.52.190 that occurred
20 before January 1, 1987, unless the violation continues after that date.

21 * Sec. 6. An agency or administrative unit with a policy in effect on
22 July 1, 1986, related to the subject of AS 39.52.110 - 39.52.190 shall, by
23 January 1, 1987, submit the policy to the attorney general for review as to
24 conformity with the provisions enacted in this Act, the attorney general's
25 suggestions for amendment, and the attorney general's necessary approval
26 under AS 39.52.920.

27 * Sec. 7. AS 39.52.010, 39.52.210 - 39.52.260, and 39.52.910 - 39.52.-
28 960, enacted in sec. 1 of this Act, and secs. 2 - 6 of this Act take effect
29 July 1, 1986.

1 * Sec. 8. AS 39.52.110 - 39.52.190, and 39.52.310 - 39.52.460, enacted
2 in sec. 1 of this Act, take effect January 1, 1987.