

LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

SB 415 cont.

682

273

200 Ethics, Conflict of Interest, and Personal Financial Disclosure

This is the Ethics, Conflict of Interest, and Personal Financial Disclosure Act.

202 Intent and Purpose

The proper operation of democratic government requires that a public official or employee be independent and impartial; that government policy and decisions be made through the established processes of government; that a public official or employee not use public office to obtain private benefits; that a public official or employee avoid action which creates the appearance of using public office to obtain a benefit; and that the public have confidence in the integrity of its government and public officials and employees.

Public office is a public trust. That trust is eroded by actions that appear to place the private interest of a public official or employee above the public good. This Act seeks to avoid the erosion of public confidence that arises through such conflicts or appearances of conflict, and to declare as public policy of this state that a public official or employee shall work for the benefit of the people of the state.

204 Definitions

204.01 "Anything of value" means the following:

- (1) A pecuniary item, including money, or a bank bill or note.
- (2) A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.
- (3) A stock, bond, note, or other investment interest in an entity.
- (4) A receipt given for the payment of money or other property.
- (5) A right in action.
- (6) A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel.
- (7) A loan.
- (8) A work of art, antique, or collectible.
- (9) An automobile or other means of personal transportation.
- (10) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty.
- (11) A promise or offer of employment.
- (12) Any other thing of value that is pecuniary or compensatory in value to a person, including a discount or transaction at less than fair market value.

204.02 "Business associate" includes the following:

- (1) An employer.
- (2) A general or limited partnership, or a general or limited partner within the partnership.
- (3) A corporation:
 - (A) that is family-owned; or
 - (B) in which all shares of stock are closely-held;or the shareholders, owners, or officers of the corporation.
- (4) A corporation in which the public official or employee, or other person subject to the Act:
 - (A) has an investment interest;

(B) owns; or

(C) has a beneficial interest in shares of stock which constitute more than:

(i) five percent (5%) of the value of the corporation, or

(ii) [a specific dollar figure, probably \$500 to \$1,000].

(5) A corporation, business association, or other business entity in which the public official or employee, or other person subject to the Act serves as an agent or a compensated representative.

(6) An association not otherwise covered by this definition between the public official or employee, or other person subject to the Act, and another person, which involves the conduct of a common enterprise.

204.03 "Candidate" means an individual who seeks nomination or election to [state] office. An individual is a candidate when the individual:

(1) files a statement of candidacy or petition for nomination for office with the appropriate filing officer;

(2) is nominated for office by:

(A) a party at a primary;

(B) nominating convention; or

(C) petition for nomination;

(3) solicits or receives and retains contributions, makes expenditures, or gives consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when:

(A) the solicitation is made;

(B) the contribution is received and retained; or

(C) the expenditure is made; or

(4) is an officeholder who is the subject of a recall election.

COMMENT:

This section is intended to cover all persons who seek office at an election, regardless of the type of election by which the office is obtained. For example, a person seeking appointment by a political party caucus to fill a vacant office would be a candidate under this section. This definition also covers unannounced candidates who are accepting contributions or making expenditures in obvious furtherance of a candidacy.

204.04 "Change order" means a change in a contract term:

- (1) not specifically provided for in the contract
- (2) that authorizes or necessitates an increase or decrease in the cost of the contract or the time to completion.

204.05 "Charitable organization" means an organization described in 26 U.S.C. 170(c) as it currently exists or as it may be amended.

204.06 "Consultant" means an individual other than an elected official or public employee who contracts to:

- (1) evaluate bids for public contracts; or
- (2) award public contracts;

for the state or political subdivision.

204.07 "Economic interest" means an interest distinct from that of the general public in a state purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official or employee may gain an economic benefit of fifty dollars (\$50) or more.

204.08 "Employee" means a person appointed to a position, paid or unpaid, in state, county, or municipal government, including members of the judiciary.

204.09 "Family member" means an individual:

- (1) related to another individual by birth, marriage, or adoption; and
- (2) who is the spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

204.10 "Informal representation" means a contact, including a request for information, whether in person, by mail, or by telephone, made with a state or local agency official or employee on behalf of a client or constituent.

204.11 "Judge" means an official who presides over a state, county, or municipal court [or an administrative law tribunal].

204.12 "Kickback" means money, fee, commission, credit, gift, gratuity, thing of value, or compensation provided, directly or indirectly, to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee for improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

204.13 (a) "Local entity" means a local or regional government office, department, division, bureau, board, or commission.

- (b) The term does not include a court.

204.14 "Negotiating" or "negotiate for employment" means a communication, directly or indirectly, with a prospective employer to discuss rendering services for compensation to that prospective employer.

204.15 "Negotiation for employment" means the period that begins with a communication to a prospective employer to discuss rendering services for compensation to the prospective employer.

204.16 "Occasional" means occurring no more than:

(A) six (6) times a year; and

(B) one (1) time per month.

204.17 "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.

204.18 "Participation" includes decision, approval, disapproval, recommendation, the rendering of advice, or vote.

204.19 "Particular matter" includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, rulemaking, or legislation.

204.20 "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

204.21 "Prime contractor" means a person who has entered into a public contract.

204.22 "Prime contractor employee" means an officer, employee, or agent of a prime contractor.

204.23 "Public contract" means a contract for goods, services, or construction let by a unit of state or local government.

204.24 "Public member" means a member appointed to a noncompensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses and a per diem payment for services.

204.25 (a) "Public official" means an individual elected to a state, county, or municipal office, or an individual who is appointed to fill a vacancy in the office. The term includes a member of the [board of regents or trustees, chancellor and vice chancellor or equivalent of the state university system, and a president of a state university].

(b) The term does not include a public member of an advisory board, commission, or council.

204.26 "Remunerable activity" means a service for which a person receives payment in the form of a wage, salary, or other goods or services.

204.27 "Representation" means an appearance before a state or local entity whether gratuitous or for compensation.

204.28 "Sheltered market" has the meaning ascribed to it in Section 2 of the federal Minority and Female Business Enterprise Act as it currently exists and as it may be amended.

204.29 (a) "State entity" means a state agency, office, department, division, bureau, board, commission, or council, including the legislature.

(b) The term does not include a court or an agency in the judicial branch.

204.30 "Subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for obtaining goods or services under a prime contract.

204.31 "Subcontractor" means:

(1) a person, other than the prime contractor, who offers to furnish or furnishes goods or services under a prime contract or a subcontract entered into in connection with the prime contract; and

(2) a person who offers to furnish or furnishes goods or services to the prime contractor or a higher tier subcontractor.

204.32 "Subcontractor employee" means an officer, employee, or agent of a subcontractor.

204.33 "Substantial value" means a monetary value of fifty dollars (\$50) or more, if a monetary value is ascertainable, or if a monetary value is not ascertainable, anything of more than nominal value.

204.34 "Unit of state or local government" means the state or a unit or agency of state government; a county or municipal government or committee or an agency of county or municipal government; or any other entity funded by or expending tax dollars or the proceeds of publicly guaranteed bonds.

204.35 "Unwarranted privilege" means a privilege, treatment, or advantage not available to others on an equal basis.

206 Agency Organization

206.01 Establishment and Composition of the Agency

(1) The agency is established as an independent authority.

(2) The agency consists of five (5) members. The members are appointed by the governor from a panel of ten (10) individuals nominated by the chief justice of the [state court of last resort]. A member of the agency must be a citizen of the United States and a resident of this state. A member of the agency shall not be:

- (A) a public official;
- (B) a public employee; or
- (C) a candidate;

while a member of the agency.

(3) A member of the agency serves a term of four (4) years. However, the initial members of the agency serve the following terms:

- (A) One (1) member serves a term of one (1) year.
- (B) One (1) member serves a term of two (2) years.
- (C) One (1) member serves a term of three (3) years.
- (D) Two (2) members serve a term of four (4) years.

(4) An individual may not serve more than two (2) consecutive terms as a member of the agency. A member of the agency continues in office until a successor is appointed and has qualified.

206.02 Election and Duties of the Chair and Vice Chair

The chair and vice chair of the agency are elected by the members of the agency. The chair and vice chair serve a term of one (1) year, and may be re-elected. The chair presides at meetings of the agency. The vice chair presides in the absence or disability of the chair.

206.03 Agency Meetings

The agency meets at the call of the chair or a majority of its members. A quorum consists of three (3) or more members. An affirmative vote of three (3) or more members is necessary for an agency action.

206.04 Filling of a Vacancy

A vacancy is filled for the remainder of an unexpired term in the same manner as an original appointment, except that the chief justice of the [state court of last resort] shall nominate two (2) individuals for gubernatorial appointment to a vacancy.

206.05 Removal of a Member

The governor may remove or suspend a member of the agency upon filing with the agency a written finding of the member's misfeasance or malfeasance, and upon serving a copy of the written finding on the member removed or suspended.

206.06 Expenses for Agency Members

A member of the agency serves without compensation, but is afforded actual and necessary expenses incurred in the performance of duties.

206.07 Agency Staff

(1) The agency may employ and remove the persons necessary to perform its functions.

(2) An executive director shall administer the daily business of the agency, and perform the duties assigned by the agency.

(3) The agency shall fix the compensation of its employees. The staff of the agency is outside of the [classified state service]. A member of the staff of the agency shall not be:

(A) a public official; or

(C) a candidate;

while a member of the staff of the agency.

206.08 Filing of Statement of Financial Disclosure

A member and an employee of the agency shall file a statement of financial disclosure with the agency.

206.09 Prohibition on Political Activity by Agency Members and Staff

A member of the agency and its staff shall not participate in political management or in a political campaign during the member or employee's term of office or employment. A member of the agency and its staff shall not:

(1) make a financial contribution to a candidate;

(2) make a financial contribution to a political committee; or

(3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

206.10 Prohibition on Lobbying Activity by Agency Members and Staff

(1) A member of the agency and its staff may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist, unless the lobbying activities are:

- (A) authorized by the agency;
- (B) conducted on behalf of the agency; and
- (C) permitted under state law.

208 Agency Authority

208.01 General Powers of the Agency

Except as expressly provided otherwise, the agency is responsible for administering the provisions of this chapter. The agency shall have the power and duties set forth in this Act.

208.02 Issuance of Advisory Opinions

(1) The agency may render advisory opinions concerning this Act based upon real or hypothetical circumstances, when requested in writing by:

(A) a public official or employee; or

(B) a person who is personally and directly involved in the matter.

(2) An advisory opinion must be made available to the public, but the identity of the person requesting the opinion and of a person whose conduct is involved in the circumstances described in the request for opinion, is confidential.

208.03 Conduct of Investigations

(1) The agency may conduct investigations, inquiries, and hearings concerning any matter covered by this Act and certify its own acts and records. In investigating complaints of violations of this Act, the agency by a two-thirds (2/3) vote, may request the issuance of a subpoena in accordance with state law.

(2) The agency may determine whether to:

(A) investigate; and

(B) act upon a complaint.

When the agency determines that assistance is needed in conducting investigations, or when required by law, the agency shall request the assistance of other appropriate agencies.

208.04 Adoption of Rules

The agency shall adopt, amend, repeal, and enforce rules to implement this Act.

208.05 Prescription of Forms and Preservation of Documents

The agency shall prescribe and provide forms for reports, statements, notices, and other documents required by this Act. Documents filed with the agency as public records must be retained for at least four (4) years from the date of their receipt.

COMMENT:

States should check this provision against other provisions of state law which govern retention of records. Most states have a general statute which covers the retention and disposition of public records.

208.06 Review of Statements

The agency shall:

(1) review each statement filed in accordance with this Act for compliance with its provisions; and

(2) notify the individual on whose behalf the statement is filed of an omission or deficiency.

208.07 Access to Statements

(1) The agency shall make statements and reports filed with the agency available upon the written request of an individual for public inspection and copying during regular office hours. The agency shall make copying facilities available free of charge or at a cost not to exceed actual cost. A statement may be requested by mail, and the agency shall mail a copy of the requested statement to the individual making the request upon payment of appropriate postage costs.

(2) The agency shall forward a copy of the request to the person whose statement has been examined.

208.08 Maintenance of Statements

The agency shall compile and maintain an index of reports and statements filed with the agency to facilitate public access to the reports and statements.

208.09 Access to Information for Investigations

The agency may require the cooperation of a state agency, official, employee, and other person whose conduct is regulated by this Act. An individual shall make information reasonably related to an investigation available to the agency on written request.

208.10 Annual Report of the Agency

No later than [December 1] of each year, the agency shall report to the legislature and the governor on the agency's activities in the preceding [fiscal] year. The report must contain the names and duties of each individual employed by the agency, and a summary of agency determinations and advisory opinions. The agency shall prevent disclosure of the identity of a person involved in the [decisions or] opinions. The report may contain other information on matters within the agency's jurisdiction and recommendations for legislation as the agency deems desirable.

208.11 Publication of Information

The agency shall publish and make available to the persons subject to this Act and the public explanatory information concerning this Act, the duties imposed by it, and the means for enforcing it.

208.12 Research and Educational Outreach

The agency may:

- (1) conduct research concerning state governmental ethics; and
- (2) implement the educational programs it considers necessary to effectuate this Act.

208.13 Oaths and Subpoenas

The agency may:

- (1) administer oaths and affirmations for the testimony of witnesses; and
- (2) issue subpoenas, subject to judicial enforcement, for the procurement of witnesses and materials relevant to the agency's investigations, including books, papers, records, documents, or other tangible objects.

208.14 Local Rules

The agency shall rules governing state government conflicts of interest, financial disclosure, and lobbyist regulation. The rules may be adopted by a local jurisdiction or imposed upon a local jurisdiction under this Act.

208.15 Other Duties

The agency may perform the other acts, duties, and functions authorized by this Act that it deems appropriate in connection with this Act.

210 Complaints

210.01 Complaints Initiated by an Individual

(1) The agency shall accept from an individual, either personally or on behalf of an organization or governmental body, a verified complaint in writing that states the name of a person alleged to have committed a violation of this Act, and sets forth the particulars of the violation.

(2) The agency shall forward a copy of the complaint and a general statement of the applicable law with respect to the complaint to the respondent.

(3) If the agency determines that the complaint does not allege facts sufficient to constitute a violation of the Act, it shall dismiss the complaint and notify the complainant and the respondent. If the agency determines that the complaint alleges facts sufficient to constitute a violation of the Act, an investigation may be conducted with respect to an alleged violation.

210.02 Complaints Initiated by the Agency

(1) If the agency determines that information the agency has received:

(A) provides an adequate basis for the belief that a violation of the Act has been committed; or

(B) that an investigation of a possible violation is warranted;

an investigation may be conducted with respect to an alleged violation.

(2) If the agency, during the course of an investigation, or upon the receipt of information finds probable cause to believe that a violation of the Act has occurred, it may, upon its own motion, make a complaint in writing, stating the name of the person who is alleged to have committed a violation of the Act, and set forth the particulars thereof. A complaint initiated by the agency must be signed by two-thirds (2/3) or more of the members of agency.

(3) The agency shall forward a copy of the complaint, and a general statement of the applicable laws with respect to the complaint to the respondent.

210.03 Amendment of Complaints

(1) If a verified complaint has been filed, or if the agency has issued its own complaint, and subsequently the agency finds probable cause to believe that a violation of the Act has occurred, other than an alleged violation in the complaint, the agency may amend the complaint upon its own motion to include the violation.

(2) An amended complaint issued by the agency must be signed by two-thirds (2/3) or more of the members of agency. The agency shall forward a copy of the amended complaint, and a general statement of the applicable laws with respect to the amended complaint to the complainant and respondent.

210.04 Right to Appear

The agency shall afford a public official or employee who is the subject of a complaint an opportunity to explain the conduct alleged to be in violation of the Act. A public official or employee who is the subject of a complaint has the right to appear and be heard [under oath] and to offer information which may tend to exonerate the public official or employee of probable cause to believe that there has been a violation of the Act.

210.05 Right to Request an Investigation of One's Own Conduct

A public official or employee may request the agency to make an investigation of the public official or employee's own conduct, or of allegations made by another individual as to the public official or employee's conduct. This request must be in writing and set forth in detail the reasons for requesting an investigation.

210.06 Statute of Limitations

Action may not be taken on a complaint filed more than three (3) years after the violation of the Act is alleged to have occurred.

210.06 Use of Information in a Criminal Proceeding

Notwithstanding [the provisions of a state confidentiality law], the agency shall turn over to an appropriate government agency [upon request or as a matter of course], evidence that may be used in a criminal proceeding.

COMMENT:

This section requires the agency to make available to an appropriate government official or agency information that may be used in a criminal proceeding. The question that the state needs to resolve is whether this information should be turned over to such an entity automatically, or only after the material has been requested of the agency. Automatic release of materials may promote more prosecutions, for the appropriate prosecutorial authorities may be unaware of certain transgressions without such notice. Release upon request would serve to reduce the burden on prosecutorial authorities, for they would then only be required to look into more information on the investigations that they had initiated.

212 Investigations and Hearings

212.01 Authorization to Conduct an Investigation

Before the agency may subpoena a witnesses, administer oaths, take testimony, or require the production for examination of books or papers with respect to an investigation or hearing, it shall, by resolution adopted by a vote of at least two-thirds (2/3) of its members, define the nature and scope of its inquiry.

COMMENT:

This section requires the agency to define the scope of a proceeding at its outset. The question that the state needs to resolve is whether this definition of the nature and scope of the inquiry is to be limiting or advisory. If the former, the resolution should be drawn as broadly as possible, or made subject to later amendment. If the latter, there should be some specificity to guard against the proverbial government witchhunt.

212.02 Agency Investigatory Powers

In an investigation or hearing conducted under this section, the agency may do the following:

- (1) Require an individual to submit in writing verified reports and answers to questions relevant to the proceedings conducted under this section.
- (2) Administer oaths and require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to the investigation or hearing being conducted.
- (3) Order testimony taken by deposition before an individual designated by the agency who has the power to administer oaths, and, to compel such testimony and the production of evidence by subpoena.
- (4) Pay witnesses the same fees and mileage reimbursement paid in similar circumstances by the courts of the state.
- (5) Request and obtain from the [state department of taxation or revenue] copies of state income tax returns and access to other appropriate information regarding a person who is the subject of an investigation.
- (6) Request the respondent's attendance at a meeting [or hearing] of the agency conducted to obtain further information from the respondent.

212.03 Enforcement of Subpoenas

Enforcement of subpoenas issued by the agency may be effected by written application of the agency to a [local court] judge.

212.04 Probable Cause of Violation

(1) At the conclusion of its investigation, the agency shall, in preliminary written decision with findings of fact and conclusions of law, make a determination of whether probable cause exists to believe that a violation of the Act has occurred. If the agency determines that probable cause does not exist, it shall send written notice of the determination to the respondent and the complainant. The written notice of no probable cause must be in the form of a written decision with findings of fact and conclusions of law.

(2) If the agency determines that there is probable cause to believe that a violation of the Act has been committed, its preliminary decision with findings of fact and conclusions of law may contain an order setting forth a date for hearing before the agency to determine whether a violation of the Act has occurred. The order shall be served upon the respondent. The respondent is entitled to full discovery rights before a hearing is ordered, including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.

(3) If the agency finds probable cause to believe that a violation of the Act has occurred, the agency may waive further proceedings because of action the respondent takes to remedy or correct the alleged violation. The agency shall make the remedial or corrective action taken by the respondent, the agency's decision in light of the action to waive further proceedings, and the agency's justification for its decision, a part of the public record.

212.05 Hearing Procedures

(1) The agency may appoint a qualified individual as a hearing examiner. The hearing examiner must:

(A) be a member of the bar of the state;

(B) not be an elective official or a full-time employee of the executive or legislative branch; and

(C) not be a member or employee of the agency.

(2) The hearing examiner shall conduct a hearing or rehearing under this section in accordance with the [requirements of the state administrative procedure act], except as otherwise expressly provided.

(3) During an investigation or hearing to determine whether a violation of the Act has occurred, the respondent may be represented by counsel of the respondent's choice.

(4) The respondent has the following rights:

(A) To be afforded an opportunity to challenge the veracity and sufficiency of a complaint filed against the respondent.

(B) To present witnesses, who shall be subpoenaed by the agency to compel attendance upon the respondent's request.

(C) To establish pertinent facts and circumstances;

(D) To rebut or offer countervailing evidence;

(E) To question or refute testimony or evidence, including the opportunity to confront and cross-examine an adverse witness.

(F) To exercise fully any pretrial discovery procedure usually available in a civil action.

(5) During an agency hearing conducted to determine whether a violation of the Act has occurred, all evidence, including records the agency considers, shall be fully offered and made a part of the record in the proceedings.

(6) A person whose name is mentioned or who is otherwise identified during an agency hearing, and who, in the opinion of the agency, may be adversely affected as a result, may, upon the request of the person or the person's representative:

(A) appear personally before the agency and testify on the person's own behalf;

(B) have a representative appear to testify; or

(C) rebut or offer countervailing evidence.

The agency may permit any other person to appear and testify at a hearing.

(7) The agency shall not be bound by the strict rules of evidence when conducting a hearing to determine whether a violation of this Act has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

(8) After the conclusion of its hearing, the agency shall, as soon as practicable:

(1) begin deliberations on the evidence presented at the hearing; and

(2) determine whether the respondent has violated the Act.

(9) If a hearing officer is appointed and a majority of the members of the agency are not present at the hearing, the agency shall not begin deliberations until after:

(A) the proposed decision is served upon the agency and the parties;
and

(B) an opportunity is provided for oral arguments.

(10) A hearing to determine whether there has been a violation of the Act must be public, unless the agency votes to hear the evidence in executive session.

(11) A member of the agency may administer oaths. A member of the agency may hear testimony or receive other evidence in a proceeding before the agency.

212.06 Orders and Recommendations

(1) No later than [a reasonable time] after the conclusion of a hearing to determine whether a violation of the Act has occurred, the agency shall set forth its determination in a written decision with findings of fact and conclusions of law. The agency shall send its written decision with findings of fact and conclusions of law to the respondent and complainant.

(2) If the agency determines that a violation of the Act has occurred, its written decision with findings of fact and conclusions of law must contain one (1) or more of the following orders or recommendations:

(A) In the case of a state official liable to impeachment, a recommendation to the presiding officer of each chamber of the legislature that the official be removed from office.

(B) In the case of a public official or employee in the [classified or unclassified] service, a recommendation to the appropriate appointing authority that the public official or employee be censured, suspended, or removed from office or employment.

(C) In the case of a member of the state legislature, a recommendation to the presiding officer of the appropriate chamber of the legislature that the legislator be censured, suspended, or removed from office.

(D) In the case of a judge, a recommendation to the [state court of last resort] and to the presiding officer of each chamber of the legislature that the judge be censured, suspended, or removed from office.

(E) An order requiring the public official or employee to conform the official or employee's conduct to the requirements of the Act.

(F) An order requiring the public official or employee to pay a civil penalty of not more than [\$2,000] for each violation of the Act. The attorney general, when requested by the agency, shall institute proceedings to recover a fine or forfeiture incurred under this section not paid by, or on behalf of, the person against whom it is assessed.

(G) Other recommendations or orders, including forfeiture of receipts or profits obtained through a violation of the Act, as necessary and appropriate, consistent with the Act.

(3) A fine imposed by the agency, disciplinary action taken by an appropriate authority, or a determination not to take disciplinary action made by an appropriate authority is public record.

(4) This section does not limit the power of:

(A) either chamber of the legislature to discipline its own members or to impeach a public official; or

(B) of a department to discipline its officials or employees.

212.07 Rehearings

(1) After the service upon the alleged violator by the agency of a decision under section 212.06 containing an order or recommendation, the respondent may apply to the agency for a rehearing with respect to a matter determined in the decision.

(2) An application for a rehearing is governed by rules established by the agency. The agency may grant one (1) rehearing to a particular respondent.

(3) An agency order may not become effective:

(A) before twenty (20) days after it is issued;

(B) while an application for rehearing or a rehearing is pending; or

(C) before ten (10) days after the application for rehearing is either denied, or the agency has announced its final determination on rehearing.

212.08 Action by the Attorney General

(1) The attorney general may recover a fee, compensation, gift, or profit received by a person as a result of a violation of the Act.

(3) Action taken by the attorney general under this subsection must be brought no later than one (1) year after a determination of a violation of the Act.

212.09 Appeal

A final action by the agency under this Act is subject to review in accordance with the [state administrative procedure act].

212.10 Settlement Agreements

A public official or employee under investigation by the agency for a possible violation of the Act may enter into a settlement agreement with the agency to resolve the matter to preclude further proceedings or hearings. A settlement agreement is a matter of public record.

212.11 Authentication of Agency Actions

A decision or advisory opinion of the agency must be in writing and signed by at least two-thirds (2/3) of the members of the agency.

212.12 Public Inspection of Records

(1) Except as provided in subsection (2) below, all agency records are open for public inspection during normal business hours.

(2) The following agency records are not open for public inspection:

(A) Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity of the individual requesting the information, or the governmental entity or organization on whose behalf the opinions are requested. The agency may make records described by this subdivision public with the consent of the individual requesting the advisory opinion, or the governmental entity or organization on whose behalf the opinions are requested.

(B) Records obtained or prepared by the agency in connection with an investigation or complaint. However, the agency shall permit inspection of the following:

(i) Records made public in the course of a hearing.

(ii) Verified complaints filed with the agency.

(iii) Complaints issued by the agency.

(iv) Probable cause decisions with findings of fact and conclusions of law.

(v) Decisions with findings of fact and conclusions of law issued after a hearing.

(vi) A determination made by the agency regarding a rehearing.

(vii) A settlement agreement entered into by the agency and a respondent.

(3) A person who makes or purports to make public the substance or a portion of an advisory opinion requested by or on behalf of the person has waived the confidentiality of the request for an advisory opinion, and of a record obtained by the agency in connection with the request for an advisory opinion.

(4) The agency may publicly respond to a statement or interpretation made concerning the contents of an advisory opinion or decision it has issued or is purported to have issued.

212.13 Cooperation of Other State Entities

The agency may request and shall receive from every officer, department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, cooperation and assistance in the performance of its duties.

212.14 Publication of Decisions and Opinions

The agency shall publish its decisions and opinions annually. The agency shall make sufficient deletions in published advisory opinions to prevent the disclosure of the identity of the persons involved in the situations presented in the opinions.

212.15 Freedom from Reprisal for Disclosure of Improper Acts

(1) A public official or employee who reports or attempts to report to the agency or the official or employee's department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, information concerning an action that the public official or employee reasonably believes to involve:

- (A) corruption;
- (B) unethical practices;
- (C) violation of federal, state, or local laws or regulations;
- (D) mismanagement;
- (E) gross waste of public funds;
- (F) abuse of authority;
- (G) danger to the public safety; or
- (H) other alleged acts of impropriety;

within a state department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, may not be subject to discipline or reprisal for reporting the acts of alleged impropriety to the extent that the public official or employee is not directly responsible for the acts complained of.

(2) A public official or employee shall not subject a person who reports to a government entity or the agency information concerning an action the person reasonably believes is a violation of the Act, or of any order, or rule, issued by the agency to reprisal or retaliation.

(3) A public official or employee who is discharged, disciplined, or otherwise penalized by a government employer in violation of this section may, after exhausting all available administrative remedies, bring a civil action, no later than ninety (90) days after the date of the final administrative determination or not later than ninety (90) days after the violation, whichever is later, in [district-level] court for:

- (A) reinstatement to the position held at the time of the disclosure;
- (B) payment of back wages and benefits; and
- (C) other relief as the public official or employee may deem appropriate or necessary.

(4) An employee found to have knowingly made a false report shall be subject to disciplinary action which may include dismissal.

COMMENT:

An individual, particularly a public employee, should be free to speak out on issues relating to fraud, waste, and abuse in government without fear of retaliation through demotion, transfer, cut in pay, or an unsatisfactory performance review. This provision permits a public employee or any person to disclose alleged improprieties without reprisal by the government. Safeguards for reinstating an employee and discouraging willful misconduct through making false accusations are also included.

212.16 Copy of the Act to be Furnished to Public Officials and Employees

(1) Each public official and employee shall receive a copy of this Act [notice of amendments,] and a brochure describing the general application of the Act before January 15 of each year, from the public official or employee's department, division, board, bureau, commission, chamber of the legislature, or other agency of the state, upon assuming the duties of office or position within state government.

(2) The [jurisdiction] may choose to assume the responsibility for the distribution of the Act for appropriate public officials and employees under subsection (1) above if it annually includes a copy of the Act with each official or employee's paycheck or statement of electronic funds transfer.

214 Use of Title and Prestige of Public Office

A public official or employee shall not use the public official or employee's title or the prestige of the public official or employee's office to give the public official or employee or any other person unwarranted privilege, including the following:

- (1) Seeking employment or contracts for goods or services.
- (2) Conducting private business activities or activities for private financial gain.
- (3) Endorsing or assisting a political party or a candidate for elective office.
- (4) Soliciting campaign support or assistance, including money or votes, for a political party or a candidate for elective office.
- (5) Seeking to provide an endorsement or advantage for an individual or entity that is not a part of the public official or employee's regular business on behalf of the [jurisdiction].

COMMENT:

The objective of this section is to prohibit government officials from affording themselves and others unwarranted advantages by the inappropriate use of official title or prestige of office. Because of the power and authority of government, prestige often accompanies public office. This prestige generally manifests itself when public officials refer to their official titles or to their positions in government. When carrying out the business of government, a public official's use or mention of his or her official title or affiliation with a government entity is, of course, proper and necessary. To recognize this, but to also prevent the misuse of titles and prestige, some distinction must be drawn between the proper and improper use of title and prestige of office.

A reference to a public official or employee's official title or position when dealing with non-governmental matters may give the erroneous impression of governmental approval or acquiescence to such matters, possibly resulting in unwarranted enhancement of those affairs.

The section particularly focuses upon the misuse of the prestige of office for commercial and political purposes. This section prohibits trading on the office for commercial purposes regardless of whether the public official or employee receives any pecuniary benefit. Thus, at least arguably, an individual elected President of the United States could not appear in an advertisement--with or without compensation--taped at the President's inauguration which quotes the President as saying the first thing he or she wants to do is to "Visit Disney World." However, appearance in a public service advertisement would not be prohibited.

The endorsement of political parties and candidates for public office by most public officials and employees is constitutionally protected, commonplace, and would not be proscribed by this section. Rather, this section would serve to temper these endorsements by playing down the public servant's government affiliation and emphasizing instead the individual. Thus, an advertisement for a Massachusetts candidate running during the 1988 campaign would not say that the candidate was "endorsed by the Governor of Massachusetts," or "endorsed by Governor Dukakis," but would instead read that the candidate was "endorsed by Michael Dukakis."

The language in this section is not intended to prohibit someone from writing a routine letter of reference or recommendation for employment in response to a request from an individual for a friend, acquaintance, or colleague, if it is done in good faith, but it is intended to keep a public official or employee from trading on his or her government service to, for example, write a letter to a judge urging a reduced criminal sentence for someone.

This section will, of necessity, be difficult to police and will have to be enforced on a subjective, rather than objective, basis. There also may be serious constitutional questions as to its effect on regulating free speech.

216 Restraints on Use of Public Position to Obtain Private Benefit

(1) A public official or employee shall not use or attempt to use the public position to obtain private financial gain, contract, employment, license, or other personal or private advantage, direct or indirect; for the public official or employee, for a relative, or for an entity in which the public official or employee has a present or potential economic interest.

(2) A public official or employee, or a former public official or employee, shall not disclose or use for the public official or employee, or a former public official or employee's own economic benefit, or that of another person, confidential information acquired by the public position or employment that is not generally available to the public.

COMMENT:

This section is unique in that former officials and employees are included in the confidential information section.

218 Restraints on Private Actions of Public Officials and Employees

(1) A public official or public employee, or a member of the immediate family or a business associate of a public official or public employee, shall not solicit or accept anything of value, or the promise or offer of anything of value, from:

(A) a person regulated by or providing goods or services to, the government entity that the public official or employee serves;

(B) a person who has offered, or expressed an intention to provide, goods or services to the government entity that the public official or employee serves; or

(C) a person who was regulated by, or provided goods and services to, the government entity that the public official or employee serves, when circumstances show that the thing of value was promised or offered to or received by the public official within a reasonable period of time after the termination of a relationship between the person and the government entity.

(2) A public official or employee shall not solicit or accept anything of value, other than allowed under this Act, to perform the official or employee's public duties and responsibilities. This provision does not prohibit a government entity from receiving donated funds, goods, or services, except if the donated funds, goods, or services are given to the government entity with the specified purpose of compensating identified public officials or employees, or their respective positions.

220 Restraints on Use of Public Position to Obtain Benefits for Business or Social Acquaintances

(1) A public official or employee shall not participate in a particular matter involving the public official or employee's agency:

(A) in a manner or under circumstances that the public official or employee knows or reasonably should know that the official or employee's participation in the particular matter may substantially influence the particular matter; and

(B) the public official or employee has actual knowledge that a business associate or a person with whom the public official or employee has a personal, financial, or other non-business relationship has an economic interest in the particular matter, or may receive an unwarranted privilege as a result of the official or employee's participation.

(2) In addition to any other penalty provided in this Act, a particular matter entered into in violation of subsection (1) may be cancelled or rescinded by the agency upon its finding that:

(A) a violation occurred;

(B) the violation substantially influenced the particular matter;

(C) the public interest would be served; and

(D) the cancellation or rescission may be accomplished in a manner that would not adversely affect the interests of an innocent third party.

COMMENT:

This section is designed to curb what is commonly referred to as "cronyism." Examples of cronyism include a public official manipulating bid specifications to ensure that his fraternity brother gets a contract; hiring the daughter of a next door neighbor, even though she is not qualified for the job; purchasing a building through a real estate agent who is a personal friend and who will receive a hefty commission; and leasing office space for a state agency from a large campaign contributor.

Cronyism tends to erode public confidence and perpetuate the belief that "it's not what you know, but who you know" that leads to government contracts or jobs. Cronyism may also result in major financial losses to government by promoting unnecessarily expensive contracts or hirings.

Although cronyism may be instantly recognizable, it is not so easily defined. The problem involves highly subjective relationships that only broad definitions reach. Any statute seeking to legislate against cronyism may therefore be subject to criticism as being overly broad and unconstitutionally vague.

The issue is further complicated by the recognition that many public officials, especially elective officials, have a wide range of acquaintances, and, in fact, it is probably because of their broad-based popularity that they hold the positions that they do. Thus, it is almost impossible to legislate as to these social relationships.

In drafting this section, an attempt was made to detail specific types of relationships, but because the process was so flawed, the term "significant non-governmental personal relationship" was instead substituted, anticipating refinement on a case-by-case basis.

222 Restraints on Private Actions of Candidates, Nominees, Designees, and
Officials-Elect

224 Restraints on Nepotism

(1) A public official or employee shall not:

- (A) employ;
- (B) appoint;
- (C) promote;
- (D) transfer; or
- (E) advance

to an office or position of the state, county, municipality, or political subdivision, or supervise or manage a member of the public official or employee's household or an immediate family member, except upon the approval of the agency.

(2) This section does not apply to an employee who has been employed in the same division of an office or department before the immediate family member became a public official or employee with the authority to make the appointment, employment, or promotion decision.

(3) An employee exempted under subdivision (2) may not be promoted, advanced, transferred, or appointed to another office within the same division of an office or department by the public official or employee who is an immediate family member.

COMMENT:

This section prohibits the hiring, advancement, transfer, or appointment of a family member related to a public official or employee who has supervisory or management control over that person.

An exception is made for a person already serving in the position prior to the election or hiring of the supervisor or manager. However, if the exception applies, the supervisor or manager could not participate in personnel actions affecting that family member.

The agency is afforded the authority to grant an exemption. Approval should not be routinely granted, and should be based upon the professional needs of the government entity. Some small units of government find it difficult to avoid granting exemptions due to the limited number of individuals willing to serve.

226 Restraints on Use of Public Facilities, Supplies, Services, Time, and Personnel for Campaign Activities

(1) A public official or employee shall not use public funds, time, personnel, facilities, or equipment for the public official or employee's private gain or that of another unless the use is authorized by law.

(2) A public official or employee shall not use public funds, time, personnel, facilities, or equipment for political or campaign activity unless the use is:

(A) authorized by law; or

(B) properly incidental to another activity required or authorized by law.

(3) The agency may adopt rules specifying examples of political or campaign activity permissible or not permissible under this section.

COMMENT:

This section deals with two areas of misconduct. Section 226(1) covers situations where an employee or official is improperly using public resources for personal gain or that of another. Many states currently have some form of this prohibition by statute, personnel rule, or legal opinion. In recent years, states have become more involved in economic development activities that involve using state resources to assist private endeavors. The modifying language allowing the use of public resources where authorized by law recognizes this activity by providing for possible exceptions to the prohibition. One drafting alternative would be to limit vagueness by inserting the word "misuse" in the first line after the word "not." However, this might make enforcement more difficult.

Section 226(2) covers situations where an official or employee is using public resources for political activity. A review of several state laws and legal opinions suggests that a consensus approach does not exist regarding the regulation of use of public resources for political activity. The State of Washington applies this type of bar to ballot questions, while other states have various types of prohibitions applicable only to candidates. In adopting the language in section 226(2), a definition of political or campaign activity should also be considered for inclusion in the law. Some states, including Connecticut and Wisconsin, limit state-paid materials that can be sent out by an incumbent for a period immediately prior to an election even if those materials could arguably be considered to serve a reasonable governmental purpose. Other states, including Alabama, have broad prohibitions against the use of public resources similar to section 226(2).

Difficult issues can arise under this type of provision, especially regarding the political activities of incumbent elected officials. For example, these officials are often assigned staff and vehicles that may be accompanying the official to events or activities that range from partly political to purely political. Similarly, legislative personnel staff, where these positions

exist, may be involved with people or events that could be considered political activity (for a broad review of issues regarding use of legislative staff see "Political Campaign Activity - The Use of Legislative Staff and Resources," published by the New York State Senate Research Service in January of 1988).

Another drafting consideration regarding section 226(2) is whether it should be included in the jurisdiction's ethics law or its election law. A drafting alternative is to include section 226(2) in the ethics law with a cross-reference in the election law.

An alternative to section 226 is to rely upon a general prohibition against using an official's or employee's position for personal gain or the gain of another as a means for reaching these types of misconduct. Some states regard a broad approach as a general tool that can be used to prohibit or allow conduct based on whether it appears to be improper. This broader approach was rejected for the model law as not being clear enough to let those covered by the law know the topics to be covered, and because these types of sections have more potential for legal challenge on the grounds of vagueness.

Sections 226(1) and (2) have been drafted to allow some administrative or statutory flexibility to deal with gray areas, provide for exceptions, and to facilitate more specific guidelines. Wisconsin, for example, has issued guidelines covering specific prohibited uses of state resources for political activity. A drafting alternative would be to only include the prohibitions and not the language providing for exceptions. Generally, some flexibility is seen as desirable; however, given the range of conduct that could be at issue the need to have the option to be specific as frequent problem areas arise is paramount.

228 Restraints on Votes, Deliberations, and Discussions

(1) A public official shall not participate in, vote on, influence, or attempt to influence an official decision if the public official or business with which the public official is associated has:

- (A) a pecuniary interest in; or
- (B) a potential benefit from;

the matter under consideration by the governmental entity of which the public official is a member. A potential benefit includes detriment to a business competitor to the public official or business with which the public official is associated.

(2) Except as permitted in subdivision (3), a public official described by this subdivision but not exempt shall abstain from participation in the discussion and vote on the decision. The public official's abstention and the reason for the abstention must be recorded in the governmental entity's minutes.

(3) A public official may participate in, vote on, or influence or attempt to influence an official decision if the only pecuniary interest or potential benefit that may accrue to the public official is incidental to the public servant's position, or which accrues to the public official as a member of a profession, occupation, or large class, to no greater extent than the pecuniary interest or potential benefit could reasonably be expected to accrue to all other members of the profession, occupation, or large class.

COMMENTS:

Subsections (1) and (2) would generally preclude a public servant from any involvement in an official matter in which the public servant had an interest in or potential benefit from the interest if the benefit did not accrue to the entire profession, occupation, or large class. The term large class should be defined. The prohibition would not apply when the public servant's interest or benefit is prohibited by another ethics measure. The abstention does not legalize a prohibited interest. This provision applies to an interest not otherwise prohibited. The section also prohibits a public official from using public office to harm a business competitor. An additional benefit of this provision is that it can be used to gauge whether a measure being voted upon is weak or strong; if there are a number of abstentions, the measure may be extremely comprehensive, while few abstentions may suggest that the measure does not cover as much.

230 Restraints on Public Official and Employee Representation of Clients Before Government Entities

230.01 Appearance as an Advocate

(1) A public official or employee shall not appear as the advocate of another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

230.02 Appearance as an Attorney

(1) A public official or employee shall not appear as an attorney for another person before a state or local entity.

(2) A public official or employee may appear in an advocacy role before a state or local entity on behalf of:

(A) the public official or employee in the public official or employee's personal capacity;

(B) a member of the public official's immediate family; or

(C) the government entity that is the public official or employee's principal employer.

(3) This section does not limit a public official or employee from appearing as an attorney before a state or local entity on a purely ministerial matter which does not require discretion on the part of the state or local entity.

COMMENT:

The preceding two sections prohibit a public official or employee from appearing before other government entities as an advocate or attorney for another person. This limitation is imposed to remove the appearance of impropriety that may arise when an official or employee seeks to influence the actions of other government officials who may be more prone to side with the official or employee than with an adversary unknown to them.

An alternative approach is to limit the prohibition on representation to appearances before entities on the same level of government that the public official or employee serves. States may also wish to allow public officials or employees to represent clients before such bodies as workers' compensation commissions, whose proceedings are adversarial in nature.

A state with a part-time legislature may wish to permit legislators to represent clients or constituents with appropriate disclosure. Language that would permit this is:

A member of the legislature may represent a client or constituent before a state or local entity if the member files a disclosure statement with the agency and with the [ethics panel or presiding officer of the chamber in which the members serves] stating the services rendered.

230.03 Representation for a Former Client

A public official or employee shall not provide formal or informal representation for a client, constituent, or other person whom the public official or employee has represented for a fee or other consideration in a matter within the preceding twelve (12) months.

230.04 Partnership with a Person Who Provides Representation Before Government

A public official or employee shall not have a formal or informal business partnership with a person who provides representation before a state or local entity for a fee or other consideration.

230.05 Use of an Agent to Perform Prohibited Acts

A public official or employee shall not authorize or request another person to perform an act on the public official or employee's behalf that the public official or employee is prohibited from performing under this section.

230.06 Representation by a Public Member of a Board, Commission, or Council

(1) A public member of a board, commission, or council may represent a client or constituent before a state or local entity if the member files a disclosure statement with the agency and with the board, commission, or council on which the member serves stating the services rendered.

(2) A public member of a board, commission, or council is not required to file a disclosure statement for representation on a purely ministerial matter that does not require discretion by the state or local entity.

COMMENT:

A state may wish to permit public members of a board, commission, or council to represent clients or constituents with appropriate disclosure. Language that would permit this is:

"A public member of a board, commission, or council may represent a client or constituent before a state or local entity if the member files a disclosure statement with the agency and with the board, commission, or council on which the member serves stating the services rendered."

232 Restraints on Solicitation or Acceptance of Gifts and Gratuities

(1) A person shall not, directly or indirectly, give, offer, or promise anything of value to a:

(A) public official or employee; or

(B) a person who has been selected to be a public official or employee;

with the intent to :

(i) influence an official act;

(ii) influence a public official or employee, or individual who has been selected to be a public official or employee, to commit, aid in committing, collude in, or allow fraud on a state, county, or municipal entity; or

(iii) induce a public official or employee, or individual who has been selected to be a public official or employee, to perform or fail to perform an act in violation of the public official or employee's lawful duty.

(2) A public official or employee, or individual who has been selected to be a public official or employee, shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for the public official or employee, or individual who has been selected to be a public official or employee, or for any other person or entity, in return for being:

(A) influenced in the performance of an official act;

(B) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a state, county, or municipal governmental entity; or

(C) induced to perform or fail to perform an act in violation of the public official or employee's official duty.

(3) A person shall not, directly or indirectly, give, offer, or promise to give anything of value to another person or entity, with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

(A) a court;

(B) a committee or either house or both houses of the legislature; or

(C) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(4) A person shall not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a a trial or other proceeding before:

(A) a court;

(B) a committee or either house or both houses of the legislature; or

(C) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(5) Subsections (3) and (4) do not prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence at a trial, hearing, or proceeding, or, in the case of an expert witness involving a technical or professional opinion, a reasonable fee for time spent in the preparation of the opinion, and in appearing or testifying.

234 Restrictions on Acceptance of Honoraria

(1) A public official or employee shall not accept an honorarium of more than one thousand dollars (\$1,000), excluding amounts for actual travel and subsistence expenses for the public official or employee, for a speech or article, or honoraria aggregating more than ten thousand dollars (\$10,000) in a calendar year.

(2) A public official or employee shall not accept an honorarium for a speech or article unless the subject matter of the speech or article is unrelated to the subject of the public official or employee's official responsibilities.

(3) If an honorarium payable to a public official or employee is paid instead at the public official or employee's request to a charitable organization selected by the payor from a list of five (5) or more charitable organizations provided by the public official or employee, the public official or employee has not, for purposes of this section, accepted the honorarium.

236 Restraints on Public Officials' Private Interests in Public Contracts

236.01 Prohibition on Public Officials' Interest in Public Contracts

(1) A public official or employee may not have a direct or indirect interest in a public contract unless:

(A) the value of the contract, when added to the value of all public contracts granted in the past twelve (12) months in which the public official or employee has an interest, is less than one thousand dollars (\$1,000);

(B) the contract is available on the same terms to the general public or a broad class of persons; or

(C) the contract is provided by the sole supplier of the goods or services within the geographical boundaries of the state or local subdivision, and the circumstances under which the contract is granted are publicly disclosed.

(2) The interest of an immediate family member is an interest of the public official or employee for the purposes of subsection (1) unless the details of the contract are publicly disclosed.

(3) A public official or employee shall not use confidential information, gained in government service, to help obtain or perform the contract.

(4) A contract entered into in contravention of this section is voidable at the option of the agency unless a third party has in good faith relied upon the contract.

COMMENT:

A public official or employee has considerable insight into the procedures and future plans of the agency the official or employee serves. The official or employee may at least be acquainted with the agency's procurement personnel. While chances are lower that an official or employee would be so well-versed with the personnel and circumstances surrounding a procurement by another agency or level of government, there still exists the potential for impropriety, or, at a minimum, for the appearance of impropriety. To maintain confidence in the process when it contracts for goods or services with a government employee, those responsible for contract approval must be scrupulous in their scrutiny of the process attendant to award. If there is a suspicion that the use of inside information or the improper use of position has played a role in the decisionmaking process, approval of the contract should be suspended until the suspicion has been resolved.

236.02 Restraint from Deliberation where Contract Conflict is Present

A public official or employee shall not participate in obtaining or granting a public contract in which the official or employee or a member of the official or employee's immediate family has a direct or indirect interest unless the contract is available on the same terms to the general public or a broad class of persons.

236.03 Interest Arising from a Contract

An interest in a contract does not arise from an interest in a corporation unless the combined holdings in the corporation of the public official or employee and their immediate family members exceed two percent (2%) of the outstanding shares.

COMMENT:

This section attempts to prevent the appearance of impropriety that arises when people in power profit from public contracts, and the actual impropriety that results from a public official or employee acting in a matter in which the officeholder or employee has a conflict of interest. Because the latter involves misconduct, it applies to all public officials and employees. The former applies only to those in a position of some power.

While it may not appear fair to prevent spouses and other close family members from having an interest in a public contract, it is clear that public confidence may be diminished if there are no restrictions on them. Thus, subsection (1) permits family members to receive contracts provided there is full public disclosure. Subsection (2) would prevent public officials or employees from helping family members to obtain such contracts.

238 Restraints on Public Officials' Employment Apart from Public Position

238.01 Candidate Disclosure of Remunerable Activity

(1) A candidate for public office shall file, no later than fourteen (14) days after filing the declaration of candidacy or petition for nomination, a disclosure of remunerable activity with the agency. The disclosure must be on a form prescribed by the agency. The agency shall maintain the form as a part of the candidate's election records. The form is a public record.

(2) The form for the disclosure of remunerable activity must require the candidate to briefly describe:

(A) remunerable activity in which the candidate engages;

(B) whether or not the remunerable activity is a full-time occupation;
and

(C) the number of hours per week the candidate engages in the remunerable activity. If the candidate believes it is inaccurate or misleading to describe the candidate's engagement in the remunerable activity in terms of hours per week, the candidate can attach a brief statement. The statement must contain an accurate statement of how much time the candidate engages in the remunerable activity in the course of a month or a year.

(3) A public official shall amend the official's disclosure of remunerable activity to reflect a change in the remunerable activity. The disclosure must be amended no later than seven (7) days after the change in the remunerable activity. Changes that must be reported include the following:

(A) Terminating a remunerable activity.

(B) Being dismissed from a remunerable activity.

(C) Engaging in a new remunerable activity.

(D) Spending more time or less time in a remunerable activity.

238.02 Remunerable Activity of a Judge

(1) A judge who holds a full-time position shall not engage in remunerable activity except occasional remunerable activity that has no connection to a case pending in the court over which the judge presides. A judge shall amend the judge's disclosure of remunerable activity no later than seven (7) days after engaging in a remunerable activity.

(2) The amendment must include the person or organization from whom the judge received the remuneration and the amount of the remuneration. If the remuneration was in the form of goods and services, the judge shall describe those goods or services accurately and estimate their dollar value. A judge who holds a full-time position and is appointed to that position shall comply with this disclosure requirement no later than fourteen (14) days after the judge's appointment.

(3) The state [court of last resort] or its agent shall designate which judgeships are full-time positions and which judgeships are part-time.

(4) A judge who holds a part-time position is subject to the disclosure requirement set forth in subsection (1). A judge who holds a part-time position and is appointed to that position shall comply with this disclosure requirement no later than fourteen (14) days after the judge's appointment. The judge is disqualified from a case if the judge's remunerable activity might cause a reasonable person to believe that the judge will financially benefit from the disposition of the case.

(5) The state [court of last resort] shall designate an agent to advise a judge if the judge has a question regarding the judge's remunerable activity. The agent's advice must be rendered in writing and is a public record. The advice is not binding on the judge who seeks it.

238.03 Others Required to Disclose Remunerable Activity

(1) A public employee who directs a state agency shall comply with the remunerable activity disclosure requirement described in subsection (1).

(2) The legislative body of the state, county, or municipality may designate other public employee positions as subject to the remunerable activity disclosure requirement described in 238.01.

(3) A public employee subject to the remunerable activity disclosure requirement described in 238.01 shall comply no later than fourteen (14) days after assuming the position that subjects the employee to the requirement.

238.04 Restrictions on Remunerable Private Activity

(1) A public official shall not engage in remunerable activity if that activity enables the official to realize financial or material gain in discharging the official's official duties or responsibilities.

(2) A public employee shall not engage in remunerable activity if that activity enables the employee to realize financial or material gain in discharging the employee's official duties or responsibilities.

240 Restraints on Former Officials and Negotiations for Other Employment

240.01 Disqualification of Former Officers and Employees

(1) A former member of the state legislature or former officer of the executive, legislative, or judicial branch of the government of the state, or an independent agency of the state, including a part-time member of a board, commission, or committee who was appointed by the governor, shall not knowingly act as agent or attorney for, or assist or represent, with or without compensation, another person, except the state:

(A) in connection with a proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter involving a party in which the state is a party or has a direct and substantial interest; and

(B) in which the person participated personally and substantially as a member, officer, or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while employed or serving.

(2) A person described in subsection (1) shall not, within two (2) years after the person's employment or government service has ceased, knowingly act as agent or attorney for, or otherwise represent, any person (except the state) before:

(A) the state legislature, or a department, agency, or court of the state, or a member, officer, or employee of such an entity,

(B) in connection with a proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter involving a party in which the state is a party or has a direct and substantial interest, and,

(C) which was pending under the person's official responsibility as a member, officer, or employee within one (1) year before the termination of the responsibility.

(3) A person as described in subsection (4), within one (1) year after the employment has ceased, shall not knowingly act as agent or attorney for, or otherwise represent, a person or entity other than the state in an appearance before, or with the intent to influence, make an oral or written communication on behalf of a person or entity other than the state, to:

(A) the department, agency, house of the state legislature, or court in which the person served as an officer, employee, or member, or an officer, employee, or member of that entity. and

(B) in connection with a proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter, and

(C) that is or can be the subject of official action by the department or agency or by the officer or employee to whom the representation or communication is made.

(4) Subsection (3) applies to a person who was:

(A) A member of the governor's cabinet;

(B) A member of the state legislature;

(C) A justice of the [state court of last resort and any intermediate appellate courts];

(D) An individual acting as the director of a state agency, who is not also a member of the governor's cabinet;

(E) A member of a board, commission, or committee appointed by the governor; and

(F) [Senior staff of the legislature and senior staff of departments and agencies other than those covered by subdivision (D). The description of these individuals will depend upon the state's personnel scheme. The thought is to cover at least the deputies and possibly the division chiefs of departments and agencies, and, for the legislative staff, each member's staff director and each committee staff director and counsel. Leadership staff positions should also be considered for coverage.]

242.02 Exceptions

The restrictions of subsections (1), (2), and (3) do not apply if:

(1) the former member, officer, or employee is testifying under oath to facts that are within the individual's knowledge, or as an expert witness who does not accept compensation other than regularly provided for by law, or rule for subpoenaed witnesses; or

(2) the former member, officer, or employee is an elected representative of the federal government, or a local government within the state, or whose principal occupation or employment is with the federal government or a local government, and the appearance, communication, assistance, or representation is on behalf of the government; or

(3) the former member, officer, or employees' assistance, appearance, or communication is solely for the purpose of furnishing scientific or technical information under procedures established by the [attorney general or the agency.]

240.03 Administrative Debarment

If the head of a department or agency of the executive branch in which a former officer or employee served finds, after notice and opportunity for a hearing, that the former officer or employee violated subsection (1), (2), or (3) of this section, the department or agency head may prohibit that person from making, on behalf of any other person (except the state), an appearance

before, or with the intent to influence, an oral or written communication to the department or agency on a matter for not more than five (5) years. The disciplinary action is subject to review in an appropriate state [district level] court. A department or agency shall, in consultation with [the attorney general or the agency], adopt rules to implement this subsection.

242.04 Negotiating for Non-government Employment

(1) An officer or employee of state government may not participate personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, or otherwise in a proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, legislation, or other matter the outcome of which will have an effect on the financial interests of an individual or an organization with whom the officer is negotiating for, or has an agreement or arrangement for employment.

(2) An officer or employee who may not act in a matter under subsection (1) shall notify the officer or employee's supervisor in writing of the disqualification, or if the officer or employee is a member of a board, commission, or committee appointed by the governor, shall notify the chairman in writing. The chairman shall note the member's recusal for the record in a public proceeding in which the recusal is required. If the officer or employee is the chairman, the chairman shall notify the governor and the member of the board, commission, or committee who will preside during the consideration of the particular matter in which the chairman is disqualified.

(3) The restriction of subsection (1) does not apply if:

(A) the matter concerns setting broad policy or rule that does not involve parties;

(B) the effect on the interest of the person or organization with whom the officer or employee is negotiating is not unique; and

(C) the person or organization would neither profit nor lose more than ten thousand dollars (\$10,000) as a result of the outcome of the matter during the twelve (12) months following final action on the matter.

(4) A member of the state legislature shall not, during a legislative session, negotiate for employment with a person who seeks action from the legislator, either personally, or from a committee on which the member serves.

COMMENT:

"Particular matter" as used in the post-employment subsection (3) and the negotiating for employment subsection (1) is purposefully a much broader term than "particular matter involving a specific party or parties" in the post-employment subsections (1) and (2) where there is party-specific information and rights involved. The reason for such a differentiation is that post-employment subsection (3) prohibits use of former position, not information, and should include general rulemaking and policy decisions. Those same kinds

of broad governmental processes should also be protected from potential abuse without a case-by-case determination of the officer or employee's integrity, which is why "particular matter" is used in negotiating for employment subsection (1) as well. In post-employment subsections (1) and (2), legislators need not fear, because legislation is not normally a particular matter involving a specific party or parties. On those occasions where legislators do involve themselves in such matters, wither through constituency work or through private bills, then the restrictions of post-employment subsections (1) and (2) should apply.

242.05 Post-Government Employment Restrictions

(1) A former public official or employee shall not assist another (other than the [government]), or act in a representative capacity for another (other than the [government]), on a particular matter involving a specific party or parties in which the former official or employee had participated personally and substantially as an official or employee if the [government] is a party or retains a substantial interest in the matter.

(2) A former public official or employee shall not, within twelve (12) months after termination of government employment, act in a representative capacity for another (other than the [government]) to or before a department, agency, court, or legislative body or official or employee of the entity on a particular matter involving a specific party or parties that was under the official or employee's responsibility and in which the [government] is a party or retains a substantial interest.

(3) A former public official or employee may not communicate with an official or employee of the agency or regulatory body in which the official or employee served, on behalf of another, with the intent to influence an official action of that agency, regulatory body, official, or employee within twelve (12) months after terminating service as the director of an executive department or agency, or member of a regulatory body.

(4) An individual may not communicate with a member, officer, or employee of the house in which the individual served on behalf of another with the intent to influence an official act of that member, officer, or employee, unless the communication is made on behalf of the state [or local government] within twelve (12) months after terminating the individual's service as a member of the state legislature or as an officer or employee of the legislature.

242.06 Negotiating for Employment

(1) An official or employee of the executive branch shall not take official action in a matter that will have a direct effect upon the financial interest of a person or organization with whom the official or employee is negotiating or has an agreement or arrangement for future employment.

(2) A member of the state legislature shall not, during a legislative session, negotiate for employment with a person or organization that is seeking an official action directly from that member or from a committee on which the member sits.

(3) An officer or employee of the legislative branch shall not negotiate for employment with a person or organization which is seeking an official action from that officer or employee, the member of the legislature for whom that officer or employee works, or from a committee on which the member for whom the employee works sits.

(4) A judge, or officer or employee of the judicial branch, shall not take an official action in a particular matter involving a specific party or parties in which a person or organization with whom the judge, officer, or employee is negotiating for employment is a party, or represents a party in that matter.

244 Interference With Public Contracting

244.01 Legislative Findings and Intent

The legislature finds that the cost to the public is increased, and the quality of goods, services, and construction paid for by public funds is decreased when contracts for public services or construction are obtained by means other than through independent non-collusive submission of bids or offers by individual contractors or suppliers, and the evaluation of those bids or offers by the governmental unit under only criteria publicly announced in advance.

244.02 Bid Rigging

A person commits bid rigging when the person knowingly agrees with a person who is, or but for the agreement would be, a competitor of the person concerning a bid submitted or not submitted by the person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to the person or another, and the person either:

(1) provides the person or receives from another information concerning the price or material term or terms of the bid that would not otherwise be disclosed to a competitor in an independent noncollusive submission of bids; or

(2) submits a bid that is of such price or other material term or terms that the person does not intend the bid to be accepted.

244.03 Bid Rotating

A person commits bid rotating when, under a collusive scheme or agreement with another, the person engages in a pattern over time (which, for the purposes of this section includes at least three (3) contract bids within a period of ten (10) years, the most recent of which occurs after the effective date of this Act) of submitting sealed bids to units of state or local government with the intent that the award of the bids rotates, or is distributed among, persons or business entities that submit bids on a substantial number of the same contracts.

244.04 Acquisition or Disclosure of Bidding Information by a Public Official or Employee

(1) An official or employee of a unit of state or local government shall not knowingly open a sealed bid at a time or place other than as specified in the invitation to bid or as otherwise designated by the state or local unit of government, or outside the presence of witnesses required by the applicable statute or ordinance.

(2) An official or employee of a unit of state or local government may make a disclosure to an interested person if the disclosure is also made generally available to the public.

244.05 Interference with Contract Submission and Award by a Public Official or Employee

(1) An official or employee of a unit of state or local government shall not knowingly convey, directly or indirectly, outside of the publicly available official invitation to bid, pre-bid conference, or solicitation for contracts procedure used in a sheltered market procurement adopted under statute or ordinance by that unit of government, to a person who has submitted or intends to submit a bid or proposal for contract to that unit of government, information concerning the specifications for the contract or the identity of a particular potential subcontractor, if inclusion of the terms or contractors in the bid or offer would influence the likelihood of acceptance of the bid or offer.

(2) An official or employee of a unit of state or local government shall not, directly or indirectly, knowingly inform a bidder or offeror that the bid or offer will be accepted only if specified individuals are included as subcontractors.

(3) An official or employee of a unit of state or local government does not violate this Act if the official or employee follows procedures established by federal or state minority- or female-owned business enterprise programs.

(4) A bidder or offeror who is the recipient of communications from the unit of government that the bidder or offeror reasonably believes to be proscribed [by subsections (1) or (2)] shall inform either the attorney general or [county prosecutor] for a county in which the unit of government is located no later than two (2) days after receipt of the communications.

(5) An official or employee of a unit of state or local government shall not knowingly award a contract based on criteria that were not publicly disseminated by the invitation to bid, when the invitation to bid is required by statute or ordinance, the pre-bid conference, or a solicitation procedure used in a sheltered market procurement procedure adopted under statute or ordinance.

244.06 Kickbacks

(1) A person commits kickback acceptance when the person knowingly:

(A) provides, attempts to provide, or offers to provide a kickback;

(B) solicits, accepts, or attempts to accept a kickback; or

(C) includes, directly or indirectly, the amount of a kickback prohibited by [subdivisions (A) or (B)] in the contract price charged by a subcontractor to a prime contractor or a higher tier contractor, or in the contract price charged by a prime contractor to a unit of state or local government for a public contract.

(2) A person who has received an offer of a kickback, or has been solicited to make a kickback shall report it to a law enforcement official, the attorney general, or the county prosecutor for a county in which the contract is to be performed.

(3) A unit of state or local government may, in a civil action, recover a civil penalty from a person who knowingly engages in conduct that violates [subdivision (1)(C)] in twice the amount of each kickback involved in the violation. This subsection does not limit the ability of a unit of state or local government to recover monies or damages regarding public contracts under another statute or ordinance. A civil action is barred unless the action is commenced no later than six (6) years after the later of:

(A) the date the conduct establishing the cause of action occurred; or

(B) the date on which the unit of state or local government knew or should have known that the conduct establishing the cause of action occurred.

244.07 Bribery of an Inspector Employed by a Contractor

(1) A person shall not offer a person employed by a contractor or subcontractor on a public project contracted for by a unit of state or local government, property or other thing of value with the intent that the offer is for the purpose of obtaining wrongful certification or approval of the quality or completion of goods or services supplied or performed in the course of work on the project.

(2) A person employed by a contractor or subcontractor on a public project contracted for by a unit of state or local government shall not accept property or other thing of value either before or afterward issues wrongful certification knowing that the property or thing of value was intentionally offered to influence the certification or approval of the quality or completion of goods or services supplied or performed under subcontract to that contractor.

(3) A person employed by a contractor or subcontractor on a public project contracted for by a unit of state or local government shall report an offer of property or other thing of value intentionally offered to influence the certification or approval of the quality or completion of goods or services supplied or performed under subcontract to that contractor to a law enforcement official, including the attorney general or the county prosecutor for a county in which the contract is to be performed.

244.08 Change Orders

(1) This section applies to a change order that authorizes or necessitates an increase or decrease:

(A) in either the cost of the contract by ten thousand dollars (\$10,000) or more; or

(B) in the time of completion by thirty (30) days or more.

(2) An official or employee of a unit of state or local government shall not knowingly authorize a change in a government contract without a determination in writing by the unit of state or local government or its designee on whose behalf the contract was signed, that the circumstances said to necessitate the change in performance:

(A) were not reasonably foreseeable at the time the contract was signed;

(B) were not within the contemplation of the unit of state or local government; or

(C) are authorized by law.

The written determination is a public record.

244.09 Rules of Evidence

(1) The certified bid is prima facie evidence of the bid.

(2) In the absence of practices proscribed by this Act, it is presumed that a person who submits a bid in response to an invitation to bid by a unit of state or local government submits a bid independent of all other bidders, without information obtained from the governmental entity outside the invitation to bid, and in a good faith effort to obtain the contract.

(3) A bid submitted to, and contract executed by a unit of state or local government must contain a certification by the contractor that the contractor is not barred from bidding on the contract as a result of a violation of either the bid rigging or bid rotating provisions of this Act. The state and units of local government shall provide the appropriate form for the certification.

COMMENT:

This section should cover the promise to give somebody something in the future, also.

246 Personal Financial Disclosure

246.01 Exceptions to Reporting Requirements

This section does not require the disclosure of financial information concerning the following:

(A) A spouse living separate and apart from the public official or public employee.

(B) A former spouse.

(C) A seasonal or special occasion gift exchanged between family members or family friends.

(D) A campaign contribution.

(E) A gift of a nonpecuniary occasional nature that is not substantial in value.

(F) An award presented at a public ceremony in recognition of the civic, governmental, cultural, charitable, or religious activities of a public official, public employee, or immediate family member.

(G) Income received by a dependent child from a trust established for that child by a family member.

246.02 Public Officials and Employees Required to File and Threshold Amounts

(1) A:

(A) public official; or

(B) a public employee earning thirty-five thousand dollars (\$35,000) or more annually in straight salary or in salary and overtime payments, including a public employee who receives an increase in pay during the year to an amount of thirty-five thousand dollars (\$35,000) or more;

who held an elected or appointed position or were employed at the state, county, or municipal level on January 1 of a calendar year shall file a statement of financial interests no later than April 30 of that calendar year.

COMMENT

The requirement that a public official or employee file a statement of financial interest, identifying the official or employee's personal financial interests and that of family members, reminds the official or employee both of what financial interests are actually held, and of the need to avoid affecting them through a personal action or inaction. Violations are also deterred by the knowledge that a filer's financial interests have been made a matter of public record, making it easier to detect a violation.

(2) A consultant shall file a statement of economic interests no later than ten (10) days after entering into a contractual relationship with the state or a political subdivision if the consultant, or a member of the household of the consultant has an economic interest in an entity:

(A) whose bid was evaluated by the consultant and who was subsequently awarded the contract by the state or the political subdivision that contracted with the consultant; or

(B) who was awarded a contract by the consultant.

(3) The financial and economic interests of a public official, public employee, or consultant, or a member of the immediate family of a public official or employee, or a member of the household of a public official or employee or consultant must be shown in the following category amounts:

(A) Category 1: less than \$1,000.

(B) Category 2: \$1,000 - \$5,000.

(C) Category 3: \$5,001 - \$10,000.

(D) Category 4: \$10,001 - \$15,000.

(E) Category 5: \$15,001 - \$20,000.

(F) Category 6: \$20,001 - \$30,000.

(G) Category 7: \$30,001 - \$40,000.

(H) Category 8: \$40,001 - \$50,000.

(I) Category 9: \$50,001 - \$75,000.

(J) Category 10: \$75,001 - \$100,000.

(K) Category 11: over \$100,000.

246.03 Agency Handling of Disclosure Statements

(1) The agency may grant a reasonable extension of time for filing a statement of financial interests. The extension may not:

(A) exceed thirty (30) days, except in cases of illness or incapacitation; or

(B) permit a statement of financial interests to be filed later than fifteen (15) days before an election.

(2) A statement of financial interests becomes a public record available for copying when received by the agency. A statement may be reviewed and copied at the office of the agency during ordinary business hours.

(3) The statements of financial interests must be retained for a five (5) year period in the office of the agency.

246.04 Information Required

(1) A statement of financial interests must contain full and complete information concerning the following:

(A) The name, residential address, business or governmental address, residential and work place telephone number of the public official or employee or consultant.

(B) The source, type, and amount or value of income received from the governmental position by the public official, public employee, consultant, spouse, or dependents.

(C) The source, type, and amount or value of income received from:

- (i) a business;
- (ii) corporation;
- (iii) partnership;
- (iv) sole proprietorship;
- (v) firm; or

(vi) other legal, professional, or occupational entity or organization;

by the public official, public employee, consultant, spouse, and dependents.

(D) The source, date, and amount of honoraria, including speeches, appearances, articles or other publications:

- (i) received during the calendar year; and
- (ii) that exceed fifty dollars (\$50) in amount or value;

by the public official, public employee, or consultant, and the official or employee or consultant's spouse and dependents.

(E) The source and value of gifts including food, lodging, or entertainment:

(i) received by a public official, public employee, consultant, and the official or employee or consultant's spouse and dependents; and

- (ii) in excess of twenty-five dollars (\$25);

including a notation of the word "lobbyist" to identify gifts received by the public official, public employee, consultant, and the official or employee or consultant's spouse and dependents from a person engaged in lobbying activities or any lobbyist organization.

(F) The description (commercial, residential, or rural), location, and amount of profit received from the sale, lease, or rental of real property during the calendar year by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members, and the name of the person the profit was received from.

If the sale, lease, or rental of real property involves a state, county, or municipal instrumentality of government, a copy of the contract, lease, or rental agreement must be attached to the statement of financial interests.

(G) The description, location, and amount of profit received from the sale, lease, or rental of personal property during the preceding calendar year by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

If the sale, lease, or rental of personal property involves a state, county, or municipal instrumentality of government, a copy of the contract, lease, or rental agreement must be attached to the statement of financial interests.
(Note: should we also ask for info on the purchaser/renter?)

(H) The identity, date, and value received from the purchase, sale, or exchange of:

- (i) stocks;
- (ii) bonds;
- (iii) debentures;
- (iv) commodities futures; or
- (v) other form of securities;

during the preceding calendar year by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(I) The source and description of consultant or professional fees, or other compensation received from a governmental instrumentality by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year.

(J) The source of fees received by the public official, public employee, or consultant, and the official or employee or consultant's spouse and dependents for service as a director or trustee of a corporation, firm, business, or other organization.

(K) The name, address, and amount of dividends or interest received from a:

- (i) bank;
- (ii) credit union;

(iii) cash management account;

(iv) savings and loan institution; or

(v) other financial organization that receives deposits of money and pays interests or dividends to the public official, public employee, or consultant, or the official or employee or consultant's immediate family members.

(L) The source and description of goods or services received by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members instead of a monetary amount.

(M) The source and identification of royalties received by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(N) The source, description, and amount of income received from a trust by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(O) The description and amount of income received from:

(i) a certificate of interest or participation in a profit-sharing agreement; or

(ii) in an oil, gas, or other mineral royalty or lease;

by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

(P) The description and amount of income received from a business, partnership, proprietorship, or public corporation:

(i) in which the public official, public employee, or consultant, or the official or employee or consultant's immediate family members own five percent (5%) or more of the stock or fair market value; and

(ii) which does business with state, county, or municipal instrumentalities of government.

(Q) A list of businesses, partnerships, corporations, firms, or other organizations with the amount of retainers paid to the public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year;

(R) The circumstances, dates, and amounts of winnings from gambling or gaming activity, including state lotteries, casino, pari-mutuel, over-the-counter or other forms of gambling, accruing to the public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year.

(S) The source and amount of bonuses received as an officer, employee, partner, owner, sole proprietorship, or consultant from a business, corporation, partnership, professional association, or proprietorship by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year.

(T) A description and amount of reimbursements totaling more than one hundred dollars (\$100) received from named payers and providers other than:

(i) the state or a state instrumentality;

(ii) a county or municipality or a county or municipal instrumentality; or

(iii) a nonprofit organization;

received by a public official, public employee, or consultant, and the official or employee or consultant's immediate family members during the preceding calendar year.

(U) A listing by name and address of:

(i) each creditor to whom the public official, public employee, or consultant, and the official or employee or consultant's immediate family members owed a debt in excess of five hundred dollars (\$500) at any time during the calendar year, other than for a credit card or retail installment contract; and

(ii) the rate of interest charged the public official, public employee, or consultant, and the official or employee or consultant's immediate family members.

If a discharge of the debt has been made, the date of the transaction must be shown.

(V) The amount and listing by name and address of all clients represented by the public official, public employee, or consultant, and the official or employee or consultant's immediate family members before a state, county, or municipal regulatory agency for a fee, reward, gift, or other compensation during the preceding calendar year.

(2) The information shall be filed on a form prescribed by the agency.

248 Forfeiture of Pension and Retirement Benefits

(1) A public official or employee, or a survivor, heir, successor, or estate of a public official or employee who is convicted of a felony:

(A) relating to; or

(B) arising out of;

the public official or employee's public service shall not receive the portion of pension or retirement benefits paid by a public entity and interest accrued on that portion.

(2) A public official or employee entering public service subsequent to the passage of this Act is deemed to have consented to this section as a condition of coverage.

COMMENT:

Principles of fairness are at stake in the distribution of the government share of retirement or pension benefits to a public official or employee who has abused the public trust. Situations in Pennsylvania and Illinois have highlighted the problem in recent years. This section denies the government's payments (and accrued interest on the payments) to a public official or employee's pension or retirement plan if the official or employee's felony conviction is related to the individual's government service. The public official or employee is still entitled to redeem the employee's share of the contribution to the pension or retirement plan.

250 Tax Treatment of Fines and Repayments

(1) A fine, penalty, reimbursement, or other payment ordered by the agency or court in connection with making the government whole for a transaction improperly entered into by a public official, employee, or consultant, or a member of the immediate household of a public official, employee, or consultant does not qualify for a state or local tax credit or deduction.

(2) The guilt or innocence of a party making a payment under subsection (1) has no effect upon the state or local tax consequences, nor does an admission or failure to admit guilt or complicity in a transaction.

COMMENT:

A corrupt public official or employee should not be able to profit from his or her action in any manner, direct or indirect. Much of the language of this statute has been oriented to proscribing the direct benefits. This section and section 248 are devoted to keeping the wrongdoer from deriving some good from the wrongdoing. The scenario is not hypothetical; former Vice President Spiro T. Agnew tried to do just this.

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

S

B

4

1

5

CSSB 355(Jud)am

example, the relationship of authority between a child and the child's teacher may continue even during the intervals between classes. On the other hand, an adult who volunteers to chaperon a single school dance does not thereby automatically create a continuing relationship of authority with all students attending the dance."

CSSB 355(Jud)am is on today's calendar.

House Finance

CSSB 415(Fin)am

The Finance Committee has considered:

CS FOR SENATE BILL NO. 415 (Finance) amended
"An Act establishing a legislative ethics commission and standards of conduct for legislators, candidates for the legislature, and legislative employees, former legislators and employees, and lobbyists; requiring financial disclosures by legislators, candidates for the legislature, and certain legislative employees; amending legislators' compensation and allowances; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

HOUSE CS FOR CS FOR SENATE BILL NO. 415 (Finance)
(same title)

Recommending do pass (2): Ulmer, Rieger

Recommending do not pass (2): Swackhammer, Wallis

No recommendation (4): Larson (Co-chairman), Koponen, Brown, Barnes

The following previously published notes apply to HCS CSSB 415(Fin) (May 4, 1990):

Senate fiscal note, Senate Finance Committee
Senate fiscal note, Alaska Public Offices Commission

CSSB 415(Fin)am appears on today's calendar.

CSSB 434(Fin)

The Finance Committee has considered:

CS FOR SENATE BILL NO. 434 (Finance)
"An Act establishing a task force to continue state initiatives for the development of a trans-Alaska natural gas pipeline; and providing for an effective date."

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Act establishing a
Legislative ethics commission
Sponsor: Senator Pourchot
Requestor: Senate Finance

Agency Affected: Legislative Affairs Agency
BRU: Legislative Council
Components: Council and Subcommittees
Legislative Ethics Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	85.0					
TRAVEL	36.0					
CONTRACTUAL	24.0					
SUPPLIES	3.0					
EQUIPMENT	20.5					
Publication	20.0					
Phones, Postage	5.0					
MISCELLANEOUS						
TOTAL OPERATING	193.5	*	*	*	*	*
CAPITAL	0					
REVENUE	0					

FUNDING: (Thousands of Dollars)

GENERAL FUND	193.5					
FEDERAL FUNDS						
OTHER						
TOTAL	193.5					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This fiscal note funds the commission from January 1, 1991 through June 30, 1991.

*Funding in succeeding years will be included in the legislative budget

Prepared by: Senator Rick Uehling, Co-chairman Phone: 465-4821
Division: Senate Finance Committee Date: May 4, 1990

Approved by Commissioner _____ Date: _____
Agency: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An act establishing a legis-
lative ethics commission
 Sponsor: Sen. Pourchot
 Requestor: Senate Finance

Agency Affected: Dept. of Administration
 BRU: AK Public Offices Commission

Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	150.4	151.2	155.7	160.2	164.9	170.0
TRAVEL	3.5	0	2.0	0	0	0
CONTRACTUAL	16.3	16.3	16.3	16.3	16.3	16.3
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	8.0	0	0	0	0	0
LAND & STRUCTURES	6.3	6.3	6.3	6.3	6.3	6.3
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	184.5	173.8	180.3	182.8	187.5	192.6
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	184.5	173.8	180.3	182.8	187.5	192.6
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	184.5	173.8	180.3	182.8	187.5	192.6

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

See attached narrative.

Prepared by: Karla Forsythe, Executive Director Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 5/3/90
 Approved by Commissioner: Rodman Wilson, Vice-Chair (Acting Chair) Date: 5/3/90
 Agency: Alaska Public Offices Commission

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CSSB 415 Narrative

This bill includes several provisions which will create new prohibitions on campaign finance activity by legislative candidates and lobbyists. The Alaska Public Offices Commission will administer the provisions and will investigate and adjudicate alleged violations.

The campaign finance provisions prohibit misuse of campaign contributions, prohibit improper disbursement of surplus campaign funds, and restrict the time period during which funds may be raised. The lobbying provisions prohibit lobbyists from using state property or resources, and from becoming actively involved in campaign management or fundraising.

The commission anticipates it will incur startup costs as it prepares to assume its duties in administering these provisions. Staff time will have to be spent revising forms, manuals, and training materials, and preparing proposed regulation changes for commission review. All of these tasks must be accomplished at the same time that staff is handling the largest election cycle in the agency's history, since the provisions take effect November 6, 1990. Existing staff cannot undertake these startup activities while processing work generated by the election, so new positions must be filled as soon as possible. Printing and distribution costs for new materials could be absorbed with existing funds, since the commission reprints and distributes materials annually.

The commission also will receive ongoing requests for advice about interpretation of the law, including questions such as whether a planned campaign expenditure is permissible, and whether a loan is "bona fide" and therefore can be retired from surplus campaign funds. Staff will also be required to respond to increased questions from local candidates due to confusion over which set of rules apply to them. Staff will need extra funds in FY 93 (the first election during which candidates must comply with the law) to travel to locations throughout the state to conduct training seminars to help candidates comply with the new provisions.

The commission anticipates several new complaints annually alleging that a legislative candidate or a lobbyist has violated one or more of these prohibitions. Potential complaints include allegations that campaign funds have been used for a candidate's personal benefit, that a candidate has knowingly paid more than fair market value for campaign goods or more than fair market wages to family members, that a legislator has solicited contributions outside the prescribed time period, and that a lobbyist is not observing the new fundraising restrictions. The commission anticipates that one complaint annually will proceed to public hearing before the commission, the expense of which cannot be absorbed from funds currently budgeted.

The commission will need to hold a hearing in FY 91 to work on regulatory changes. The expenses of such a hearing are not funded within the current budget.

In order to meet the mandates of the new law, the commission will need to add one professional staff member (Associate Coordinator - Range 18) and one paraprofessional staff member (Paralegal - Range 16) to absorb the ongoing advice and complaint investigation workload. Because the one secretary/receptionist in the Anchorage office cannot absorb additional telephone, front counter, filing and typing tasks which will result from the increased workload, the commission also will need an additional secretary (Range 10). In order to investigate complaints about lobbyists, the single staff member in the Juneau office will require half-time clerical help throughout the year, to free her time for advice to lobbyists about application of the law to their activities, and for investigatory factfinding.

The commission's current office space in Anchorage is too small to house these new positions. Modest-sized space is available across the hall from the Anchorage office, which with minor remodeling could be made functional. The new positions will also need a total of two new computers, two desks and chairs, and telephones.

A detailed breakdown of the costs associated with administration and enforcement of this bill is attached.

Actual Costs FY91

Personnel: Range 18A \$37,548
 Range 16A \$32,580
 Range 10A \$22,140
 PT Range 08A \$10,122

Benefits Rate: .286

Insurance Rate: \$386.19

Travel: 1 regulations hearing
 & candidate training \$3500

Hearings legal fees \$12,000
 witness fees \$ 250
 subpoenas \$ 3,000
 transcripts \$ 1,000

 total \$16,250

Equipment: Computer (2) \$6244
 Desk & Chair (2) \$1200
 Phone Equipment \$ 200
 Phone Installation \$ 300

Office Space : 521 square feet x \$1.00 \$6252

6-2007P
Gaguine
5/7/90

Original sponsor(s): SEN. POURCHOT/Select Committee on Legislative Ethics

1 IN THE SENATE BY THE FINANCE COMMITTEE
 2 HOUSE CS FOR CS FOR SENATE BILL NO. 415 (Finance)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 SIXTEENTH LEGISLATURE - SECOND SESSION
 5 A BILL

6 For an Act entitled: "An Act establishing a legislative ethics commission
 7 and standards of conduct for legislators, candidates
 8 for the legislature, and legislative employees,
 9 former legislators and employees, and lobbyists;
 10 requiring financial disclosures by legislators,
 11 candidates for the legislature, and certain legisla-
 12 tive employees; amending legislators' compensation
 13 and allowances; and providing for an effective date."

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

15 * Section 1. SHORT TITLE. This Act may be known as the Legislative
 16 Ethics Act of 1990.

17 * Sec. 2. AS 24 is amended by adding a new chapter to read:

18 CHAPTER 61. LEGISLATIVE ETHICS ACT OF 1990.

19 ARTICLE 1. PURPOSE AND LEGISLATIVE FINDINGS.

20 Sec. 24.61.010. PURPOSE. This chapter is enacted to

21 (1) assure the integrity of representative government and
 22 sustain the confidence and trust of the people of this state in their
 23 representatives, the legislature as a whole, and the legislative
 24 process;

25 (2) provide a comprehensive and unified statement of the
 26 ethical principles, considerations, and obligations inherent in the
 27 public trust theory of government service and establish specific
 28 standards of conduct to ensure that those entrusted with public au-
 29 thority avoid conduct that might undermine the people's respect for

1 the legislature; and

2 (3) establish a positive, effective, and comprehensive
3 ethics program that is clear, practical, and fair.

4 Sec. 24.61.015. LEGISLATIVE FINDINGS. The legislature finds
5 that

6 (1) high moral and ethical standards among public servants
7 in the legislative branch of government are essential to the conduct
8 of fair, open, and responsive representative government;

9 (2) the people of this state need and deserve a legislature
10 led by outstanding public servants whose devotion and commitment to
11 pursuing the public interest through established democratic processes
12 outweigh any competing personal or political considerations;

13 (3) state government relies heavily on part-time citizen
14 public servants; it is, therefore, essential to attract talented and
15 principled people willing to provide their time and energy to the
16 state, often with substantial personal and financial sacrifices;

17 (4) the best way to attract the right people is to ensure
18 that the government is respected for its honesty and integrity and
19 that the rules governing their conduct during and after leaving public
20 service are as clear, fair, and complete as possible; the rules,
21 however, should not impose unreasonable or unnecessary burdens that
22 will discourage citizens from entering or staying in government ser-
23 vice;

24 (5) the political culture of the state is the product of a
25 unique blend of history, geography, climate, population, and ethnic
26 influences that must be taken into account in the development of rules
27 and standards regulating the conduct of legislators, legislative
28 employees, and those who work regularly with the legislature;

29 (6) the state's commitment to the notion of a citizen

1 legislature requires that legislators be drawn from all parts of
2 society; they cannot and should not be without personal and financial
3 interests in the decisions and policies of government, and they are
4 expected and permitted to earn outside income;

5 (7) as a result of the state's small population and close
6 sense of community, most legislators and legislative employees have a
7 network of relationships in and outside the legislature that creates
8 potential conflicts of interest;

9 (8) the state's vast size requires frequent travel, usually
10 by air, which increases the expense and burden of public service;

11 (9) the state's cultural diversity is reflected in gift-
12 giving and hospitality customs that may clash with standards prohibit-
13 ing acceptance of gratuities;

14 (10) it is important to preserve the vitality of the state's
15 culture and citizen involvement by assuring that standards of conduct
16 acknowledge real and practical needs of individual legislators and
17 legislative employees without compromising vital universal notions of
18 public service ethics, including the principle that public office is a
19 public trust;

20 (11) upon taking the oath of office, legislators enter into
21 a special trust with the people of the state involving extraordinary
22 powers and equally extraordinary legal and moral obligations; one
23 aspect of these obligations requires that those entrusted with public
24 authority unfailingly demonstrate that they are worthy of the public's
25 respect and are devoted to maintaining the absolute integrity of
26 government;

27 (12) effective democratic government depends on the will-
28 ings of the people to exercise responsible citizenship by voluntary
29 compliance with laws and by active participation in the democratic

1 process; when the public's trust in and respect for government is
2 high, citizens are more likely to fully participate by voting, becom-
3 ing better informed, and becoming more active in public debate and
4 discourse in a way that engenders civic pride and makes government
5 more representative, more responsive, and more effective;

6 (13) unethical or illegal behavior by a legislator or legis-
7 lative employee tends to diminish the stature of the legislature and
8 produce cynicism that erodes public confidence in government; thus,
9 all who serve the legislature have a solemn responsibility to avoid
10 improper conduct and prevent improper behavior by colleagues and
11 subordinates;

12 (14) the principles of public service ethics pervading this
13 chapter view the ethical obligations of public servants in a positive
14 way; high standards of conduct and specific regulations to enforce
15 them are not driven by negative assumptions about the character of
16 those who serve government, but as expressions of the need for clarity
17 and uniformity about the higher duties of public service and the noble
18 dimension of democracy;

19 (15) no code of conduct, however comprehensive, can antici-
20 pate all situations in which the principles and standards apply, nor
21 can it prescribe behaviors that are appropriate to those situations;
22 in addition, laws and regulations regarding ethical responsibilities
23 cannot legislate morality, eradicate corruption, or eliminate bad
24 judgment;

25 (16) legislators and legislative employees who are committed
26 to the ethical principles embodied in the public trust concept of
27 government must exercise considerable discretion and judgment so as to
28 adhere to the spirit of the rules and laws; in exercising this judg-
29 ment it is essential to recognize that an act is not ethical simply

1 because it is legal and that conduct is not proper simply because it
2 is permissible;

3 (17) legislative decisions must be made in a context of
4 clashing interests; the growing effect of state laws and regulations
5 creates incentives for competing special interests to seek to influ-
6 ence the election and policy-making processes through organized adv-
7 cacy and through the use of campaign contributions;

8 (18) the cost of running for office has risen dramatically
9 in recent years; as a result, many public officials, including legis-
10 lators, spend an increasing amount of time negotiating with special
11 interests in a way that may unduly enlarge the voice and power of
12 those interests;

13 (19) legislators and legislative employees must be extremely
14 cautious and circumspect about accepting a gratuity or favor, especi-
15 ally from persons or entities that have a substantial interest in
16 their legislative, administrative, or political actions; even where
17 there is a genuine personal friendship, the acceptance of personal
18 benefits from those who could gain advantage by influencing official
19 actions raises suspicions that tend to undermine public trust;

20 (20) therefore, the state needs a comprehensive ethics
21 program that responds to the challenges of the contemporary political
22 climate, preserves and protects the integrity of the legislative
23 process, and respects the needs of those who serve the legislature.

24 ARTICLE 2. STANDARDS OF CONDUCT.

25 Sec. 24.61.100. MISUSE OF OFFICE FOR PRIVATE GAIN: GENERAL
26 PRINCIPLE. Inherent in the concept that public office is a public
27 trust is the principle that legislators and legislative employees
28 refrain from using or attempting to use their government position to
29 attain

1 (1) personal financial gain, other than official legisla-
2 tive compensation;

3 (2) benefits, advantages, or privileges not available to
4 the public at large, either for themselves, members of their immediate
5 families, or their friends; or

6 (3) political advantages where the use of office is incon-
7 sistent with the obligation to use public office only to advance the
8 public interest.

9 Sec. 24.61.110. IMPROPER BENEFIT FROM PERFORMANCE OF PUBLIC
10 DUTIES. (a) A legislator or legislative employee may not solicit,
11 agree to accept, or accept a benefit other than official compensation
12 for the performance of public duties. This subsection may not be
13 construed to prohibit lawful solicitation for and acceptance of cam-
14 paign contributions or the acceptance of a lawful gratuity under
15 AS 24.61.350. A person who violates this subsection is guilty of
16 receiving unlawful gratuities under AS 11.56.120 and is subject to
17 civil sanctions under AS 24.61.560(a).

18 (b) A legislator or legislative employee may not accept anything
19 of value under circumstances where the legislator or legislative
20 employee knows or reasonably should know that it is offered with the
21 intent to influence legislative, administrative, or political action.
22 A person who violates this subsection is guilty of receiving a bribe
23 under AS 11.56.110 and is subject to civil sanctions under AS 24.61.-
24 560(a). In this subsection, "anything of value" has the meaning given
25 to "benefit" in AS 11.56.130.

26 Sec. 24.61.120. DUTY TO REPORT IMPROPER OFFERS. (a) Legisla-
27 tors and legislative employees who receive an offer of anything of
28 value that reasonably appears to have been intended to improperly
29 influence legislative, administrative, or political action, shall

1 reject the offer and inform the person that there may be a violation
2 of bribery laws.

3 (b) If the attempt to improperly influence is clear, the person
4 receiving the offer shall report it to law enforcement authorities.

5 (c) A person who violates this section is subject to civil
6 sanctions under AS 24.61.560(a).

7 Sec. 24.61.130. MISUSE OF STATE PROPERTY AND RESOURCES FOR
8 PRIVATE GAIN OR PERSONAL ADVANTAGE. (a) A legislator or legislative
9 employee may not use public funds, facilities, equipment, services, or
10 any other government asset or resource for a nongovernmental purpose
11 or for the private gain or advantage of either the legislator, legis-
12 lative employee, or another person. This subsection does not prohibit
13 (1) the occasional or limited use of state property and resources for
14 personal purposes if the use does not interfere with the performance
15 of public duties, the cost or value related to the use is so nominal
16 that reimbursement procedures would not be justified, and the use does
17 not create the appearance of impropriety or improper influence; or (2)
18 the use of mailing lists, computer data, or other information lawfully
19 obtained from a government agency and available to the public for
20 nongovernmental purposes. A person who violates this subsection is
21 subject to civil sanctions under AS 24.61.560(a) and may be prosecuted
22 for theft under AS 11.46.

23 (b) A legislator or legislative employee may not seek, accept,
24 use, allocate, grant, or award public funds for a purpose other than
25 that approved by law, or make a false statement in connection with a
26 claim, request, or application for compensation, reimbursement, or
27 travel allowances from public funds. A person who violates this
28 subsection is subject to civil sanctions under AS 24.61.560(a) and may
29 be subject to criminal penalties under another law.

030383

1 (c) A legislator or legislative employee may not require at any
2 time or authorize on government time a legislative employee to perform
3 personal services or assist in a private activity on government time
4 except in unusual and infrequent situations where the person's service
5 is reasonably necessary to permit the legislator or legislative em-
6 ployee to perform official duties. A person who violates this subsec-
7 tion is subject to civil sanctions under AS 24.61.560(a) and may be
8 subject to criminal penalties under another law.

9 Sec. 24.61.140. MISUSE OF STATE PROPERTY AND RESOURCES FOR
10 POLITICAL PURPOSES. (a) It is the intent of this section to ensure
11 that public resources, including funds, facilities, and personnel are
12 used only for the good of the public at large and not to further
13 partisan campaign purposes or to influence the outcome of an election;
14 that elections are fair and open and not distorted by the use of
15 public resources to the advantage of individual candidates; and that
16 taxpayers are not forced to subsidize the campaign of an incumbent
17 legislator.

18 (b) A legislator or legislative employee may not use or author-
19 ize the use of public funds, facilities, equipment, services, or
20 another government asset or resource for the purpose of political fund
21 raising or campaigning. This subsection does not prohibit the use of
22 mailing lists, computer data, or other public information lawfully
23 obtained from a government agency and available to the general public
24 for nongovernmental purposes. A person who violates this subsection
25 may be prosecuted for theft under AS 11.46.

26 (c) A legislative employee may not on government time assist in
27 political party activities, campaigning, fund raising, or other parti-
28 san or personal political activities. A legislator may not require an
29 employee to perform an act in violation of this subsection.

1 (d) The legislative council shall adopt policies relating to a
2 legislator's use of public funds for the production of newsletters or
3 similar publications for distribution to the legislator's constitu-
4 ents. The policies must address the form and content of these publi-
5 cations.

6 (e) Unless superseded by policies relating to the use of govern-
7 ment resources for political purposes developed by the legislative
8 council and adopted by the commission as regulations under AS 24.61.-
9 160, the following prohibitions apply:

10 (1) a legislator may not use or authorize the use of public
11 funds, property, personnel, or other resources to produce, print,
12 photocopy, publish, broadcast, or otherwise disseminate material
13 primarily intended to influence an election; this provision applies to
14 newsletters and other constituent correspondence that by their nature,
15 content, timing, or use are intended to influence an election, even if
16 the materials do not make a specific reference to the election, but
17 does not apply to newsletters and other constituent correspondence
18 that express the legislator's opinions or views on issues before the
19 legislature, or that describe the legislator's votes, legislative
20 proposals, or other legislative action.

21 (2) unless approved by the commission, public funds may not
22 be used to print or distribute a mass mailing from or about a legisla-
23 tor who is a candidate for reelection to the legislature or another
24 state office during the period beginning 60 days before the primary
25 election in which the legislator is a candidate, and ending the day
26 after a general or special election in which the legislator is a
27 candidate;

28 (3) a legislator, or another person on behalf of the legis-
29 lator, or a campaign committee of the legislator, may not solicit or

1 accept or authorize the solicitation or acceptance of, a campaign
2 contribution in a facility or office ordinarily used to conduct state
3 government business; this provision applies to telephone conversa-
4 tions, personal meetings, and solicitations by mail; if an unsolicited
5 contribution is offered it shall be refused or returned promptly; if
6 an unsolicited contribution is received in the mail, or a lawfully
7 solicited contribution is misdirected to an office ordinarily used to
8 conduct state business, if otherwise lawful it may be accepted but it
9 may not be processed in that office and it shall be delivered promptly
10 to an appropriate location.

11 (f) Except for a person who violates (e)(1) of this section or a
12 regulation adopted under AS 24.61.160 that supersedes (e)(1) of this
13 section and whose conduct may be prosecuted as theft under AS 11.46, a
14 person who violates (c) or (e)(1) - (3) of this section or a regu-
15 lation adopted under AS 24.61.160 that supersedes (e)(1) - (3) of this
16 section is guilty of a class A misdemeanor.

17 (g) In addition to criminal penalties, a person who violates
18 (b), (c), or (e)(1) - (3) of this section or a regulation relating to
19 (b), (c), or (e)(1) - (3) of this section is subject to civil sanc-
20 tions under AS 24.61.560(a).

21 Sec. 24.61.150. OBLIGATION OF SUBORDINATES TO REFUSE TO PERFORM
22 IMPROPER TASKS. (a) A legislative employee who knows or reasonably
23 should know that the employee has been asked to perform a personal or
24 political task in violation of AS 24.61.110 - 24.61.450 shall refuse
25 to perform the task.

26 (b) If a legislator or legislative employee with supervisory
27 authority persists in requesting or demanding that a legislative
28 employee perform prohibited tasks, or if reprisals are threatened or
29 sanctions imposed as a result of the refusal to perform prohibited

1 tasks, the legislative employee subjected to the requests, threats, or
2 sanctions shall report the matter to the commission.

3 (c) A person who violates this section is subject to civil
4 sanctions under AS 24.61.560(a).

5 Sec. 24.61.160. REGULATIONS CONCERNING USE OF PUBLIC RESOURCES.

6 (a) The legislative council shall develop and recommend for adoption
7 by the commission detailed regulations relating to the use of govern-
8 ment property, resources, and personnel. The legislative council
9 shall annually review the regulations and recommend necessary changes
10 to the commission.

11 (b) If the legislative council fails to make recommendations for
12 the adoption or modification of regulations under (a) of this section,
13 the commission may develop and adopt the regulations on its own initi-
14 ative.

15 Sec. 24.61.180. MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRI-
16 VATE GAIN OR PERSONAL ADVANTAGE. (a) A legislator or legislative
17 employee may not use or aid, induce, cause, or encourage others to
18 use, the authority, title, official letterhead, or prestige of the
19 legislator's or legislative employee's office for the benefit of the
20 legislator or legislative employee.

21 (b) A legislator or legislative employee may not solicit or
22 accept anything of value under terms and conditions where the compen-
23 sation is not commensurate with the services performed or where a
24 reasonable person would believe that the authority, title, or prestige
25 of office had been exploited.

26 (c) A legislator or legislative employee may not endorse commer-
27 cial products by agreeing to use official letterhead or the legisla-
28 tor's or employee's title in paid advertisements, unless the endorse-
29 ment is for a public purpose and the person receives no compensation.

1 (d) Nothing in this section may be construed to prohibit appro-
2 priate uses of official letterhead. The legislative council shall
3 adopt a written definition of "official letterhead" and its appropri-
4 ate uses, which must include, but are not limited to, letters of
5 recommendation for employment, scholarships, fellowships, internships,
6 entry into educational institutions, appointments to boards or commis-
7 sions, and honorary awards.

8 (e) Nothing in this section may be construed to prohibit the use
9 of a legislator's official title as a part of a political campaign or
10 political endorsement.

11 (f) A person who violates this section is subject to civil
12 sanctions under AS 24.61.560(a) in addition to appropriate criminal
13 penalties under another law.

14 Sec. 24.61.190. POST-SERVICE RESTRICTIONS TO PREVENT MISUSE OF
15 PUBLIC OFFICE BY FORMER LEGISLATORS. (a) A former legislator may
16 not, during the next regular session of the legislature after leaving
17 office, act as a lobbyist in seeking to influence a

18 (1) legislator or legislative employee to take or withhold
19 legislative, administrative, or political action; or

20 (2) state agency, public official, or employee to take or
21 withhold official action.

22 (b) A former legislator, within one year after leaving office,
23 may not solicit or accept anything of value under terms and conditions
24 where the compensation by reasonable objective standards is not com-
25 mensurate with the services performed or where a reasonable person
26 would believe that the stature of office had been exploited.

27 (c) A person who violates of this section is guilty of a class A
28 misdemeanor and is subject to civil sanctions under AS 24.61.560(a).

29 Sec. 24.61.200. ALLOWABLE USES OF CAMPAIGN FUNDS. Campaign

1 funds may be properly expended for an otherwise lawful purpose intend-
2 ed to influence voters to elect or reelect the legislative candidate
3 to the legislature including, but not limited to: payment of staff
4 and consultants; rental of space and rental or purchase of equipment
5 for a campaign office; purchase of media time and space; design work;
6 printing of campaign materials; postage; taking polls and interpreting
7 them; telephone installation and usage; costs of distribution of
8 materials; advertising in organizational and club bulletins or other
9 brochures; inscribed promotional materials, including buttons, pen-
10 cils, pens, and items of clothing; necessary travel and related expen-
11 ses for the candidate and members of the candidate's staff or immedi-
12 ate family provided that the travel and lodging are directly related
13 to attempts to raise campaign funds or influence voters; victory and
14 thank you celebrations; newsletters and mass mailings promoting the
15 candidate; and payment of attorney fees and other legal expenses
16 incurred in the defense of a civil, criminal, or administrative action
17 arising directly out of the conduct of the campaign or election pro-
18 cess or out of the performance of activities within the scope of a
19 candidate's legislative duties.

20 Sec. 24.61.205. PROHIBITED USES OF CAMPAIGN FUNDS. (a) A
21 candidate for the legislature may not

22 (1) use funds raised and designated as campaign funds for
23 the personal benefit of the candidate or another person, or for pay-
24 ment of attorney fees and other legal expenses arising from civil,
25 criminal, or administrative actions based on conduct not directly
26 related to the campaign or official duties;

27 (2) convert surplus campaign funds or interest earned on
28 campaign funds to personal income;

29 (3) seek or claim a tax deduction or other economic benefit

1 for surplus funds disbursed to a charity under law.

2 (b) A legislative candidate may not borrow from campaign funds
3 or loan them to another person or group.

4 (c) A legislative candidate, or another person on behalf of the
5 legislative candidate, or a campaign committee of the legislative
6 candidate, may not knowingly pay more than the fair market value for
7 goods or services purchased for the campaign.

8 (d) Campaign funds may not be paid to a member of the candi-
9 date's immediate family as an employee or for goods or services pro-
10 vided to the campaign unless the amounts paid do not exceed the fair
11 market value of the goods or services provided.

12 (e) Except for funds received or postmarked before a general or
13 special election, a legislative candidate, and a committee related to
14 the election, may not accept campaign contributions. A post-election
15 contribution must be returned.

16 (f) A legislative candidate and a committee controlled by a
17 legislative candidate may not use campaign funds to make a contribu-
18 tion to another candidate running for office or to a committee sup-
19 porting or opposing a candidate for office.

20 (g) Campaign funds may not be used to pay fines or other mone-
21 tary penalties or costs assessed against a candidate by a court or
22 other body, unless the fine, penalty, or cost is assessed as a result
23 of proscribed actions by a member or employee of a campaign committee
24 or another person acting on behalf of the candidate under circum-
25 stances where the candidate did not know of those actions.

26 Sec. 24.61.210. DISBURSEMENT OF SURPLUS CAMPAIGN FUNDS. (a) If
27 a legislative candidate ceases to be a candidate or if there remains a
28 balance in the account of the candidate or a committee controlled by
29 the candidate after the date of the election, unexpended funds may be

1 used as provided in this subsection or to pay for a victory or thank
2 you party. Within 60 days after the end of the candidacy or the
3 election, unexpended funds shall be

4 (1) used to retire bona fide loans supported by written
5 documentation including loans made to a campaign by the legislative
6 candidate or a member of the candidate's immediate family provided
7 that all other outstanding loans are paid first;

8 (2) returned on a pro rata basis to those who have made
9 contributions in excess of \$100 in the aggregate a year;

10 (3) donated to the general fund of the state or of a munic-
11 ipality;

12 (4) donated to one or more organizations that qualify as
13 charitable organizations under 26 U.S.C. 501(c)(3) provided that the
14 charity is not one that is controlled by the candidate or a member of
15 the candidate's immediate family or in which the candidate or a member
16 of the candidate's immediate family is personally involved as a direc-
17 tor, trustee, member of the board, officer, or other position of
18 responsibility;

19 (5) transferred to an ongoing political account controlled
20 by the candidate, but only in the amounts and according to the re-
21 quirements set out in (b) of this section; or

22 (6) transferred to a legislative office account, for expen-
23 ditures qualifying as business expenses under 26 U.S.C. 162.

24 (b) A maximum of \$2,500 for candidates for the house and \$5,000
25 for candidates for the senate of surplus campaign funds may be trans-
26 ferred to an ongoing political account controlled by the candidate.

27 (c) Funds carried over under (b) of this section may be expended
28 for any political purpose for which campaign funds can otherwise
29 properly be used.

1630391

1 Sec. 24.61.220. PAYMENT OF LEGAL EXPENSES; LEGAL DEFENSE FUNDS.

2 (a) A legislative candidate, legislator, or legislative employee may
3 establish a legal defense fund to assist with the payment of attorney
4 fees and other costs arising from the legislator's or employee's
5 defense of a civil, criminal, or administrative action brought against
6 the legislator or employee. Contributions to a legal defense fund
7 that meet the requirements of this section are not subject to the
8 restrictions in AS 24.61.350.

9 (b) A legislative candidate, legislator, or legislative employee
10 who wishes to establish a legal defense fund account shall file a
11 statement of organization for the legal defense fund with the commis-
12 sion. The statement of organization must identify the specific civil,
13 criminal, or administrative proceeding or proceedings for which the
14 legal defense fund is established.

15 (c) The legal defense fund shall establish a single account at
16 an office of a financial institution located in the state. A donation
17 to the candidate, legislator, or legislative employee for legal expen-
18 ses shall be deposited into that account if the donation meets the
19 requirements of (d) of this section.

20 (d) Only a donation that is specifically designated by the donor
21 as being for the legal defense fund and is made payable to the legal
22 defense fund may be deposited in the legal defense fund account. A
23 donation that the recipient believes is intended for the legal defense
24 fund but that does not meet the requirements of this subsection shall
25 be returned to the donor.

26 (e) Expenditures from the legal defense fund account may be made
27 only for legal costs directly related to the civil, criminal, or
28 administrative proceeding or proceedings for which the legal defense
29 fund is established. Expenditures from the legal defense fund account

1 may not be used to pay or reimburse fines, penalties, judgments, or
2 settlements in connection with a criminal prosecution or a civil or
3 administrative action in which the legislative candidate, legislator,
4 or legislative employee is found to have committed, or admits to
5 having committed a violation of the law.

6 (f) Surplus funds remaining in the legal defense fund account
7 after the proceeding or proceedings for which the account is estab-
8 lished have concluded may not be used for another purpose. These
9 funds shall, within six months after the conclusion of the proceeding
10 or proceedings, be

11 (1) returned to donors on a pro rata basis as to contribu-
12 tions in excess of \$100 in the aggregate;

13 (2) donated to the state or to a municipality; or

14 (3) donated to a charitable organization that meets the
15 requirements of AS 24.61.210(a)(4).

16 (g) This section constitutes the sole means for legislators,
17 candidates for the legislature, and legislative employees to solicit
18 or accept donations for legal costs that may not be paid from campaign
19 funds under AS 24.61.202. Except for AS 24.61.240(b) and (c), the
20 provisions of this chapter relating to the solicitation and acceptance
21 of campaign funds apply to the solicitation and acceptance of contri-
22 butions to a legal defense fund established under this section. The
23 commission may adopt regulations limiting the dollar amount of contri-
24 butions under this section and shall adopt regulations requiring the
25 disclosure of donors to a legal defense fund.

26 (h) Funds received from fund-raising events must be clearly
27 designated in advance as either for campaign purposes or for the legal
28 defense fund and all proceeds shall be dealt with as required by this
29 chapter.

1 (i) A person who violates this section is guilty of a class A
2 misdemeanor and is subject to civil sanctions under AS 24.61.560(a).

3 Sec. 24.61.230. COERCION. (a) A legislator may not, directly
4 or by authorizing another to act on the legislator's behalf, state or
5 imply that the legislator's consideration of an issue, cause, or piece
6 of legislation, or the legislator's willingness to meet with a person,
7 is dependent on the person making a campaign contribution, donating to
8 a cause favored by the legislator, or providing a thing of value to
9 the legislator.

10 (b) A legislator may not directly, or by authorizing another to
11 act on the legislator's behalf,

12 (1) agree to, or threaten to take or withhold a legisla-
13 tive, administrative, or political action, including but not limited
14 to support or opposition to a bill, employment, nominations, and
15 appointments, as a result of a person's decision to provide or not
16 provide a political contribution;

17 (2) state or imply that the legislator will perform or
18 refrain from performing a lawful constituent service as a result of a
19 person's decision to provide or not provide a political contribution.

20 (c) Unless the conduct violates a provision of AS 11 and the
21 person is subject to prosecution under that provision, a person who
22 violates (a) or (b) of this section is guilty of a class A misde-
23 meanor.

24 (d) In addition to criminal penalties, a person who violates
25 this section is subject to civil sanctions under AS 24.61.560(a).

26 Sec. 24.61.240. FUND RAISING LIMITATIONS. (a) A legislator may
27 not, either directly, through a campaign committee, or other means,
28 solicit or accept a campaign contribution or a promise or pledge to
29 make a contribution while the legislature is in regular session, nor

1 may a legislator solicit campaign funds or host a campaign fund-
2 raising event for another person while the legislature is in session.
3 This subsection does not prevent fundraising activity for a charitable
4 organization if the activity does not violate AS 24.61.230.

5 (b) A legislator or a candidate for the legislature may not,
6 either directly, through a campaign committee, or other means, solicit
7 or accept a campaign contribution or a promise or pledge to make a
8 contribution relating to candidacy for the legislature in an election
9 other than a special election under AS 15.40 except during the follow-
10 ing periods:

11 (1) legislators, and other incumbent elected public offi-
12 cials intending to run for the legislature, may raise funds from
13 June 1 until December 31 in the year before the year of an election in
14 which they intend to be a candidate, and from June 1 through the
15 general election in November in the year of the election; in this
16 paragraph, "public official" means a person required to file a cam-
17 paign disclosure statement under AS 15.13;

18 (2) candidates for the legislature who are not in public
19 office at the time of their candidacy may raise funds from June 1 in
20 the year before the year of an election in which they intend to be a
21 candidate through the general election in November in the year of the
22 election.

23 (c) This section does not prohibit a legislator or a candidate
24 for the legislature from making an otherwise lawful contribution or
25 from attending an otherwise lawful fund-raising activity at any time.

26 Sec. 24.61.245. ENFORCEMENT OF CAMPAIGN FUND PROVISIONS. The
27 Alaska Public Offices Commission shall enforce AS 24.61.205, 24.61.-
28 210, and 24.61.240. A person who believes that AS 24.61.205, 24.61.-
29 210, or 24.61.240(a) or (b) has been violated may file a complaint