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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1981

SUBJECT: Model state conflict of interest/financial
disclosure law (Work Order No. 12-0463)

TO: Senator Vic Fischer

FROM: Richard A. Bradley *B*
Legislative Counsel

Enclosed is the bill responsive to your request.

As you will immediately note from a comparison of this bill with the bill draft prepared by the National Municipal League Model State Conflict of Interest and Financial Disclosure Act, I have taken substantial liberties with the bill.

In part this is a result of the need to conform the bill to the Alaska legislative format but an equally compelling reason for the changes is that in places the bill did not seem to represent a coherent piece of legislation. In general, I will not identify changes in the bill that represent only a change in nonsubstantive language. Where I have had such difficulty that I departed from the model draft substantially, I will try to identify the changes and indicate my reasons for the departure.

Much of the material dealing with the establishment of the commission will of course duplicate existing law, most of which is contained within AS 15.13.020 and 15.13.030. The repeal of these sections will be dealt with in the latter sections of the bill.

Sec. 1, the short title is deleted; such titles are infrequently used in Alaska.

Sec. 2 of the draft becomes bill sec. 1. Consistently with our usual style, we have put the findings into temporary law.

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Sec. 3 is the definitions section. It appears at the end of this section of the bill, as Sec. 39.49.400, amplified with definitions that were buried throughout the draft bill.

Sec. 4 of the draft is broken into two parts:

- (1) The commission is established; and
- (2) Provisions relating to the membership of the commission are collected into a single section. Bill sec. 20(e) eliminates the requirement that the legislature concur in the removal of a member of the commission. If you wish to have language offering procedural protections to the members of the commission beyond what is contained in the bill, we may do so legally. Article III, section 26 provides that members of a regulatory or quasi-judicial board or commission "may be removed as provided by law". Under that grant, the legislature may establish simple or elaborate procedures for the removal of such an officer by the governor.

You may recall the Breeze case from several years ago. At least one of the issues that that case presented was whether the legislature could "share" the power of the governor to remove an executive officer. The Alaska Pipeline Commission law states that the legislature has to concur in a removal for it to take effect. AS 42.06.050. The governor refused to acknowledge a legislative role. The Department of Law's position at a hearing on gubernatorial authority was that the law could be as elaborate as the legislature wished but the legislature could not share the power of removal.

Joe Josephson, who was attorney for Breeze at the time, told me that he did not agree with the Department of Law's position and thought that the Supreme Court stood a good chance of agreeing with his position, based on law in other states and several law review articles discussing this issue. As you may recall, complications in the case prevented the case from going to a decision.

I am agreeable to inserting such a provision into your bill, if you wish. But I should mention that it may incur a gubernatorial veto if past practice is at all predictive of future practice.

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The material in sec. 4(b) regarding the initial members is moved to the end of the bill as temporary law.

Sec. 4(c) is established as a new bill sec. 30 dealing with the presiding officer of the commission. A portion of the section is deleted as stating generally understood principles and the last sentence is restated.

Sec. 4(d) is found at sec. 40. I continued the P.O.C. compensation of \$50 per day in addition to travel expenses and per diem now found at AS 15.13.020(f). Sec. 4(e) has become sec. 50. I deleted the authority of the commission to engage its own legal counsel and in that regard I essentially continued the concepts now found at AS 15.-13.122. See bill sec. 90.

The material at draft sec. 4(g) is largely unnecessary. The requirements for public meetings are covered at AS 44.62.310. The authority of the commission exists and may be exercised at any point within the state though not, perhaps, outside the state. As suggested above, sec. 90 of the bill is derived from AS 15.13.122 but is substantial. See

Draft sec. 5 becomes bill sec. 80; while largely recast, no substantive changes are made.

Sec. 90 is new material; it replaces draft sec. 5(d)(iii).

Draft sec. 6(a) seemed confused and wordy. I have rewritten the material and broken (a) into new subsections 100(a) - (c). Sec. 6(b) becomes sec. 100(d) and (e) and sec. 6(c) becomes sec. 110. Sec. 6(d) and (e) are eliminated as unnecessary; cf, Appellate Rule 4b of the Supreme Court Rules.

Draft sec. 7 is recast into sec. 120. Draft sec. 8 becomes sec. 130. Draft sec. 9 becomes sec. 140. The latter half of sec. 9(c) has been deleted from its location in the bill; it essentially states a definition and has been moved.

Sec. 9(d) is amended to delete the phrase "in its files" from the mandate. As I see the change, the files generated which are incredibly voluminous (as you are coming to know) need not be maintained within the offices of the commission but may be transferred to archives, etc. I also changed the date for destruction to ten years from the date on which

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they were due rather than the date on which they were filed. The latter date has no meaning for records management.

Draft sec. 10 becomes sec. 150; the section adds financial disclosure requirements. I added the phrase "known to him" to sec. 150(a). The concept is contained within the existing law, AS 39.50.030(a): "to the extent that it is ascertainable by the public official or candidate". If it were not specified, it would need to be implied since while the law may require a public official or candidate to disclose information regarding his financial condition, I know of no mechanism by which family members may be compelled to disclose to the public official. The result is that the public official discloses what he himself knows or what is public knowledge already as to the finances of others.

Sec. 150(b) is undoubtedly a critical section. That being the case, I may say that I have made no attempt to compare the new list with the list contained within AS 39.50.030(b) nor have I sought to prepare an ideal list.

The section uses several different words to indicate what is "done" with the information. Among these words are "shown" and "disclosed". I have substituted "reported" for them wherever found. In sec. 150(b)(9), the draft had a blank requiring legislative discretion to determine the level of equity ownership in a business entity doing \$25,000 or more business with the state during the year for reporting purposes. I have used the figure of 50 percent as a reasonable threshold.

Similarly, a threshold for the level of gifts that need to be reported is required in sec. 150(b)(10). I have used the figure of \$100 which I took from the threshold in AS 39.50.030(b). The figure may be low and "has not been adjusted for inflation". [In my own view, a public official or candidate who is for sale for \$100 does not know his own value.]

Sec. 11 has become sec. 160.

I did not delete sec. 170(b) [Draft sec. 12] though I consider it redundant to the more substantive provisions of the bill. I do consider that sec. 12(c) is completely redundant and have deleted it.

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Draft sec. 13 has become sec. 180. I have reorganized the subsections of sec. 180(a) for clarity. The latter half of sec. 180(b) is a definition and I have moved it to the definitions section.

Draft sec. 16 has become sec. 210 and is rewritten for clarity and to conform it to the Alaska structure of government. For the same reasons, I have rewritten sec. 220.

Draft sec. 18 becomes sec. 230. It is rewritten to eliminate the definition of a "gift" from the early part of the section. That material is moved to the definitions section.

Draft sec. 20 becomes sec. 250. It is rewritten for clarity. This section should be carefully reviewed for the policy it proposes; it appears that the prohibitions on representation after the termination of employment or the term of office are somewhat draconian. Note also that it applies to members of the legislature.

Draft sec. 21 becomes sec. 260. Sec. 21(d) is revised to eliminate what I believe may be an unconstitutional restriction on election to public office. The qualifications for election to public office are established in the constitution. The general rule is that the legislature may not vary the qualifications.

Since there is no similar restriction as to appointive office or to employment, I have left the disqualification in place as to those situations.

Sec. 22 becomes sec. 270. Sec. 270(b) is rewritten for clarity and to eliminate unnecessary material. The latter part of the section constitutes a definition and the material is moved to that section. Sec. 270(c) is substantially changed by the "not less than \$10" material which seemed desirable and by the addition of the references to AS 15.13 and AS 24.25. Note that I have repealed AS 15.-13.125 and AS 24.45.141 which are sections dealing with this subject.

Sec. 24 becomes sec. 290. Sec. 290(a)(i) is eliminated; the suggested language states the usual rule. Sec. 290(c) and

(d) are eliminated as unnecessary. Secs. 26 and 27 are also eliminated as unnecessary.

I have proposed a definitions section as Sec. 39.49.400.

Sec. 400(a)(1) defines assistant to the governor essentially the same as present law; see AS 39.50.200(a)(9).

Sec. 400(a)(2) defines "business". The definition from draft sec. 3(a) was used with modifications for clarity.

The draft law appears to require that "business with which a person is associated" be also defined. I have used draft sec. 3(b) with modifications for clarity. See sec. 400(a)(3).

The definition of "candidate" is derived from the latter portion of draft sec. 9(c).

The definition of "child" is derived from AS 39.50.-200(a)(3).

The definition of "gift" is derived from draft sec. 13(a).

The definition of "limited interest" is derived from the latter part of sec. 13(b).

The definition of "member of household" from the draft bill sec. 3(e) was extensively modified for clarity; it used the word "person" very obscurely.

I may also say that the reach of the section is extraordinarily broad and you may wish to review it to determine whether you wish to go that far. Part of the difficulty with the definition will arise from any implementation of the concept. If it is ever charged that a person has failed to report information regarding a member of the household [who may not live in the common residence of the reporting state official], sec. 400(a)(C), it will be very difficult to determine that fact without an extensive investigation that may approach the edges of a constitutional right of privacy.

The definition of "official action" is from draft sec. 22(b).

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The definition of "parent" is derived from AS 39.50.200(a)(7).

The definition of security is derived from AS 45.55.130(12).

I used the draft's definition of "state employee" with modifications that seemed reasonable. And finally I abandoned the draft definition of "state official" and returned to AS 39.50.200(a)(1) for the definition. The draft's definition did not qualify as a useful definition and would have generated more heat than light.

The remaining sections of the bill deal with the repeal of the sections in AS 15.13 that establish the commission, the repeal of AS 39.50, and the implications these actions have for existing statutory sections that reference AS 39.50. Because there are essentially no subtleties to these amendments, I have not analyzed them.

If I can assist further, please advise.

RAB:ljb

Enclosure

SECTION BY SECTION OVERVIEW
CSSSSB 175 (State Affairs)
Work Draft

<u>Section</u>	<u>Title</u>	<u>Summary Statement</u>
1	Findings and Purpose	Statement of legislative intent
2		
39.49.010	Construction	This chapter is to be liberally construed to promote ethical conduct in state and municipal government.
39.49.020	Applicability	Applies to all elected and appointed officials including any state employee of the three branches of government and any municipal employee. Also applies to a person under a personal services contract to a state agency or municipality.
39.49.030	Gifts	A public official may not solicit or receive a gift under circumstances where it could be inferred that the gift was intended to influence or reward official action.
39.49.040	Confidential Information	A public official is prohibited from using information for personal gain. The public official is also prohibited from disclosing information which is not public information and which the public official acquires from official sources.
39.49.050	Fair Treatment	Specifically states what action is prohibited by a public official
39.49.060	Conflict of Interest	Spells out what constitutes a conflict of interest
39.49.070	Action on Conflict	Outlines the procedures a public official must take in the event of a personal conflict of interest
39.49.080	Government Contracts	Specifies the instances in which the public official or member of her/his household can contract with the state or municipality
39.49.090	Contracts Voidable	The state or municipality may void a contract if the contract entered into violates a provision of this chapter. States that the interest of innocent parties shall be considered in an action to

void a contract, and that the action must also be brought within 60 days after a violation is determined.

- 39.49.100 Restrictions on Former Public Officials A former public official is prohibited from
- 1) using information for personal gain that was acquired in the course of her/his official duties;
 - 2) disclose information not available to the public acquired during the course of her/his official duties;
 - 3) may not assist anyone for compensation on a matter in which she/he personally participated as a public official; and
 - 4) for twelve months after termination of employment from assisting anyone for compensation on matters before the state agency or municipality where she/he was employed.
- 39.49.110 Violation Establishes a two-year statute of limitations for prosecution of a public official or former public official
- 39.49.120 Reporting Conflicts of Interest by Members of Municipal Governing Bodies This section outlines the procedures for members of municipal governing bodies to follow when a conflict of interest exists.
- 39.49.130 Protections for Reporting a Violation "Whistleblower statute" to protect state and municipal public officials for reporting a violation of the ethics code
- 39.49.150 Commission Established Establishes a seven member State Ethics Commission in the Department of Administration appointed by the governor and confirmed by the legislature. Term is five years with a 1 term limitation. Also outlines the qualifications and compensation for members. Gives the Commission the authority to hire an executive director and staff.
- 39.49.160 Offices of the Commission Establishes an office in each senate district but limits one office to each municipality. Campaign, financial disclosure and lobbyists' reports are to be filed in the Commission's central office. The reports are public information.
- 39.49.170 Duties of the Commission Outlines the duties of the Commission

39.49.180	Legal Counsel	Gives the Commission the authority to hire and employ an attorney or to use the attorney general's office for legal advice and representation
39.49.190	Powers of Commission	Incorporates the functions of the Alaska Public Offices Commission. Gives the Commission the authority to issue advisory opinions on ethics and also to initiate investigations and hold hearings.
39.49.200	Complaint Procedures	Establishes complaint procedures and due process requirements for conducting hearings
39.49.210	Determinations	Establishes procedures for the Commission to follow when a violation of the ethics code has been determined
39.49.220	Disciplinary Action for Violation	Gives the appointing authority of the public official the power to discipline a public official who has violated the ethics code. If no action is taken by the appointing authority, the Commission can discipline the public official and assess a civil penalty not to exceed \$2000.
39.49.300	Definitions	Self-explanatory
3		Provisions to amend sections of existing state law to make them consistent with this bill
through		
9		
10		Terminates the terms of the members of the Alaska Public Offices Commission and sets the terms of the new members of the State Ethics Commission.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3000

MEMORANDUM

February 11, 1981

SUBJECT: Model state conflict of interest/financial disclosure law (Work Order No. 12-0463)

TO: Senator Vic Fischer

FROM: Richard A. Bradley
Legislative Counsel **B**

The bill was prepared from a bill draft prepared by the National Municipal League Model State Conflict of Interest and Financial Disclosure Act.

The bill establishes a new state ethics commission. It repeals the provisions of AS 15.13 that establish the Public Offices Commission and it repeals all of AS 39.50. New sections dealing with subjects in the law repealed are established.

Secs. 10 - 70 establish the new commission.

Sec. 80 establishes procedures for the commission.

Sec. 100 establishes a procedure under which complaints of violations are processed. Note that violations of the new AS 39.49, as well as AS 15.13 and AS 24.45 are covered.

Sec. 100 directs the commission to refer violations of the law to the Attorney General.

Sec. 120 establishes a concept new in Alaska though not elsewhere: The concept of advisory opinions from the commission which may be requested by state officials, candidates, and state employees.

Sec. 130 permits the commission to modify a reporting requirement.

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Secs. 140 and 150 establish the requirements of financial disclosure. Note that financial disclosure is by "category" rather than by dollar amount. Sec. 150(a).

Sec. 160 details prohibitions on activity considered a conflict of interest. Special conflict of interest provisions for legislators appear at Sec. 170. Government contracting is regulated as Sec. 180. Conflicts of interest in employment are covered in Sec. 190. A state official or state employee other than legislator who has a personal situation that presents ethical problems is directed to a course of conduct under Sec. 210.

Sec. 220 deals with similar problems for a legislator.

Disclosure of confidential information is regulated under Sec. 240.

Sec. 250 regulates the conduct of former state officials or state employees for two years after termination of state service. Penalties are established in Sec. 260. Commission remedies for violations are established under Sec. 270, including civil penalties. Direct citizen action is authorized under Sec. 280.

The definitions section, Sec. 400 is a mix of the familiar and the new. Essentially no change was made in the list of public officials for whom financial disclosure is required. The term "candidate" is defined.

The term "gift" excludes campaign contributions reported under AS 15.13.

Secs. 3 - 19 of the bill respond to the implications of the repeal of AS 39.50 and portions of AS 15.13 and 24.45.

The Act takes effect July 1, 1981.

RAB:ljb

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

JAY S. HAMMOND, GOVERNOR

JUNEAU BRANCH OFFICE:
POUCH CO
JUNEAU, ALASKA 99811

LOCATION:
ROOM 302 GOLDSTEIN BUILDING
130 SEWARD STREET
PHONE: (907) 455-4864 OR 455-3471

February 5, 1981

The Honorable Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

The Alaska Public Offices Commission would like to express its appreciation for the opportunity to present its views regarding revisions to Alaska's Disclosure Laws. As you are aware, each year since its creation in 1977, the Commission has offered suggestions to eliminate many of the burdensome requirements while also safeguarding the public mandate for disclosure.

During the 1980 session the Legislature passed FCCS HB 230 which was eventually vetoed by the Governor. The Commission felt that a major portion of this Bill contained amendments which would solve many of the present criticisms; however, it also contained several sections which would have severely hampered the Commission's ability to monitor the 1980 elections, as well as, damaged the public perception of the stature of the Commission in years to come. Therefore, the Commission supported Governor Hammond's veto of FCCS HB 230.

It is the understanding of the Commission, however, that FCCS HB 230 will be used as the basic guideline for legislative changes to be made this session. Therefore, the following discussion includes the Commission's views on those sections of FCCS HB 230 which were found to be objectionable, areas the Commission supports and has expanded upon, and several further suggestions that were not addressed in the original Bill.

This discussion paper, in most instances, does not include specific language for the suggested revisions, but rather explains the problem and offers recommendations.

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Should you wish further discussion of the comments offered herein,
our staff will be happy to accommodate you.

On Behalf of

ALASKA PUBLIC OFFICES COMMISSION

RICHARD F. LISTOWSKI
Chairman

RFL:NAC/jk

cc: Senator Vic Fischer
Senator Bettye Farenkamp
Senator Pat Rody

AMENDMENTS TO AS 15.13
CAMPAIGN DISCLOSURE LAW

Sec. 15.13.010 (Re: Applicability)

Presently all candidates who run in a municipal race, in a city with a population of more than 1,000, must register and file with the APOC. On several occasions the Commission has received requests from various clerks regarding the applicability of AS 15.13 to candidates for Service Area Boards or members of an elective board who serve in an advisory capacity. According to the clerks it is often difficult to get people to run for these positions, the candidates spend no money, and the positions are strictly of an advisory nature. A review of the reports on file with the APOC shows that ninety-nine percent of the time there are no expenditures and that when expenditures are made, they average approximately \$10.

Having such candidates file the periodic reports or the statement that will be discussed under Sec. 042 later in this paper, appears to be meaningless. Therefore, the Commission recommends that language which eliminates filing by candidates for Service Area Boards and advisory boards be included.

Sec. 15.13.020 (Re: Selection of Commission Members)

FCCS HB 230 proposed that the current five-year terms of Commission members be reduced to three years. And, that the present process of selection -- recommendation by the two major political parties -- be eliminated.

The Commission opposes elimination of party recommendation. The current process gives credence to the ideology of a bi-partisan commission and guarantees the public appropriate input into the selection of individuals who will monitor the campaign process.

The Commission agrees that the Governor should confirm the remaining fifth Commission member. However, it suggests that the Governor appoint such a member from a list of two names submitted by the four members selected under .020(b). This mechanism would protect the independent and neutral status of this fifth position as well as respect the executive and legislative roles in the appointment process.

Reduction of the term length creates major problems. First, the initial selection process becomes somewhat confusing. In order to avoid the term of two members of the same political party from expiring in consecutive years, initial appointment would be as follows: One Democrat and one Republican serve an initial one-year term; one Democrat and one Republican serve an initial three-year term; the fifth position serves an initial two-year term. This system avoids the problem of consecutive expiration; however, it also means that two new members are appointed each year. Since the major elections are held every other year, the Commission could often find itself with two members who have relatively little knowledge regarding the complex issues of the campaign process and resulting disclosure.

Therefore, the Commission suggests amending this section by 1)

retaining the current process of political party input; 2) appointment of all members by the governor -- rather than only four; 3) confirmation of all members by the legislature; and, 4) retaining five-year terms with the provision of serving no more than one full term.

Sec. 15.13.030 (Re: Limitation on Regulations)

The new subsections contained in FCCS HB 230 to .030, do not prohibit the Commission from promulgating regulations, but these sections do limit the effectiveness of such. The Commission is aware that it must be cautious, especially once the campaign process has begun, not to change guidelines which will ultimately leave candidates unaware of the requirements. However, given the time it takes to promulgate regulations, such an amendment severely hampers the Commission's ability to clarify certain areas of the law in times when it can be proven that a specific need exists.

Sec. 15.13.042 (Re: Filing a Report of Limited or No Campaign Activity)

FCCS HB 230 included language which would allow candidates who did not intend to spend money or accept contributions to file a single report at the beginning of the campaign certifying zero monetary activity. The Commission suggests retaining this exemption provision but would include language allowing candidates to receive and spend up to \$250 before the periodic reports set out in Sec. 110 would be required.

Sec. 15.13.060 (Re: Certification of Reports)

Sec. 15.13.060 requires a candidate or group to appoint a campaign treasurer and states that the treasurer or the candidate is responsible for filing the necessary reports. This requirement has caused several problems, in that, there are often times when the candidate or a group treasurer is out of town on the due date. The group may have several deputy treasurers yet none has the authority to sign the report.

Therefore, the Commission suggests that appropriate language be included in Sec. .060 which allows a deputy treasurer to sign the reports in the absence of the candidate or group treasurer.

AS 15.13.070(b) (Re: Limit on Cash Contributions)

It has been brought to the attention of the Commission that the prohibition against cash contributions which are in excess of \$100 creates problems, especially for those in the bush areas. Often there are no facilities for purchasing money orders, cashier's checks or bank drafts.

Therefore, the Commission suggests that cash contributions in excess of \$100 be allowed; however, for any contribution in excess of this amount, the candidate or group is required to issue a written receipt. By issuing a receipt, the contribution gets into the system, the paper trail begins, and the possibility of the cash being inadvertently misplaced is minimized.

Sec. 15.13.070(d) (Re: Exemption from Recording Requirements)

An amendment offered in FCCS HB 230 to AS 15.13.070(d) allows candidates to accept contributions of \$5.00 or less without recording the name of the contributor. This amendment appears harmless enough; however, it does leave a very large "loophole," should an individual choose to circumvent the law. If this language were to be enacted, there would be nothing to prevent an individual from mailing a five dollar contribution on a daily basis to the same candidate in addition to donating the maximum amount allowed by the law. Such an amendment does not appear to be in line with the intent of the Act. If the impetus for inclusion of this exemption was to eliminate the recording of the names of contributors at events such as fund-raisers where the individuals in attendance are contributing small sums of money, please note that the Commission has adopted administrative regulation 6 AAC 29.326 which pertains to record-keeping requirements for fund raisers. This regulation eliminates the need to record the names of individuals donating to a fund-raiser so long as there are 25 or more persons in attendance and the cash amount received from any individual does not exceed \$50.00.

Sec. 15.13.090 (Re: Identification of Political Communications)

Sec. 15.13.090 has long been an area of criticism and concern. Presently all political advertisements must be identified with the words "paid for by" the name and address of the group and the name of the campaign chairman of the group. Many candidates and groups feel that if there is a billboard which states "Vote for John Smith," and the placard is paid for by John Smith's campaign committee, requiring a full trailer which gives the name, address and treasurer of the committee is unnecessary and tantamount to bureaucratic harassment.

However, the flip side of the coin is the advertisement which says "Vote Against John Smith" or "John Smith Opposes The Curb Your Dog Law," and the authors fail to appropriately identify who is sponsoring the communication.

This past election has given the citizens of Alaska an extensive education regarding "negative campaign" efforts. And, it remains essential that such advertising be properly identified so that the public has the appropriate information.

Therefore, the Commission would suggest .090 be separated into two categories. Category One would allow candidates or a candidate's campaign committee to identify all political communications in support of the candidate with the phrase "paid for by John Smith for House" or "paid for by the Committee to Elect John Smith."

Category Two would address all other groups or individuals paying for political advertisements. The identification on those advertisements must include the name of the group, as well as a contact address or phone number for the group.

FCCS HB 230 offered an amendment which 1) eliminated the 30-day pre-election report; 2) changed the 7-day pre-election report to a 10-day pre-election report; 3) eliminated reporting of expenditures during the 24 hour reporting period; and, 4) changed the 24 hour reporting period to a 48 hour reporting period. Although the Commission is in agreement with the latter two amendments, it strongly opposes elimination of the 30-day report and a change in the 7-day report.

This opposition is based on the following reasons: First, one of the major objectives of this or any disclosure law is to make information available to the public at a time when it will have the most impact. Eliminating the 30-day pre-election report and changing a 7-day pre-election report to a 10-day pre-election report means that major portion of the campaign activity information will be submitted just before the election. Given the vagaries of the mail system it is quite possible that with the proposed changes, many reports will not reach the Commission's offices until a few days prior to the election. As campaign costs increase, so will the time it takes to audit the reports and distribute the information in a meaningful fashion.

Secondly, the 30-day pre-election report gives candidates and groups the opportunity to review the requirements and learn the proper method of reporting. This knowledge and experience helps to ensure that subsequent pre-election reports contain no major errors and that therefore, the public has access to accurate information.

The Commission is aware that many arguments have been raised in opposition to the number of reports required by AS 15.13. However, it is the opinion of the Commission that such criticisms are based on the complexity of the information required rather than the number of reports required.

The Commission has discussed this problem with its staff and feels that many of these problems are of an administrative rather than a legislative nature. The Commission has instructed staff to revise the reporting forms so that the following changes will be accommodated: elimination of itemization of expenditures which are less than \$100; revision of the reporting of accrued expenditures; and revision of the reporting of repayment of loans.

The only change the Commission would suggest to Sec. 110 would be to expand the 24 hour report (i.e., amendments to 48 hours) to include the 3 day period prior to the due date of the 7-day report. This 3 day period is presently uncovered by statute.

Sec. 15.13.120 (Re: Criminal Penalties)

FCCS HB 230 would no longer consider "making a communication to support or defeat a candidate without identification of sponsorship" a criminal offense. The Commission agrees that if a candidate fails to put the words "paid for by" on a flier or leaflet, it should not be considered a criminal matter, especially if the material distributed is supportative of a candidate. However, as shown by this past election there are individuals who will circulate material in opposition to candidates; this material is often fallacious, misleading, and capable of

causing irrevocable injury to the candidate. When such communications are distributed without identification, the public has no basis for making a determination regarding the validity or intent of the sponsor, or of the candidate, bond proposition or ballot issue in question.

Therefore, the Commission suggests maintaining criminal sanctions for unidentified communications whether by an individual, group or candidate, if the purpose is to oppose a candidate, ballot issue or bond proposition.

FCCS HB 230 also reduces the Statute of Limitations for prosecution of a criminal act from four years to one year. The Commission strongly objects to such a revision primarily because the Commission is not an adjudicatory body. In many instances violations do not surface until several months after a report is filed. In off-election years only one report is required at the end of the calendar year. If there is substantial reason to believe a violation has occurred, the Commission's staff must make a preliminary investigation, forward its findings to the Commission, the Commission must hold a hearing -- or in some instances two (2) hearings, and only after this process has occurred may it forward a case to the Attorney General where the decision to dismiss or prosecute is made.

Hence, the Commission recommends the Statute of Limitations remain four years.

AMENDMENTS TO AS 24.45
THE REGULATION OF LOBBYING LAW

AS 24.45.041(c) (Re: Required Photograph)

AS 24.45.041(c) makes reference to a photograph of the lobbyist which may be submitted. AS 24.45.041(e) indicates that the directory of lobbyists shall include such photographs if submitted. As few lobbyists have ever supplied a photograph, and as the directories are simply xerox copies of the registration statements -- making inclusion of any photo difficult -- the Commission suggests that all reference to lobbyist photographs be deleted.

AS 24.45.051 (Re: Reduction of Itemization)

Section 37 of FCCS HB 230 amends AS 24.45.051 to clearly state what lobbyists are required to report, although it does not expand what is currently required. The Commission recommends that this section be amended to the effect that the lobbyist need report only aggregate amounts received for the reporting period and the year, for both salary, fee or retainer and expense disbursements and reimbursements. Thus, the expense portion would not be itemized on the report, merely summarized; however, the expense total would reflect reimbursements or disbursements for the same items that now need be listed individually. This change is also suggested for employer reports required under AS 24.45.061. The Commission contends that such a change would foster simplification of the reporting requirements and thus encourage more timely compliance by those subject to the law. Further, the Commission does not feel that this proposed change would undermine the intent of the original legislation, as the most critical financial information would still be available to the public.

Sec. 24.45.081(a) (Re: Reporting Periods)

Section 24.45.081(a) as amended by FCCS HB 230 would provide for quarterly reporting periods for lobbyists whether or not the legislature were in session. The Commission recommends that the existing situation be maintained, that is: the lobbyist be required to report monthly for the period that the legislature is in session and quarterly thereafter. This suggestion is based on the fact that if lobbyists report only on a quarterly basis throughout the session, the legislative session will be well advanced (mid to late April) before any information concerning financial activity of lobbyists is available to the public. Such a situation is viewed by the Commission as counter to the intent of the Regulation of Lobbying Law.

A final recommendation by the Commission concerning changes to AS 24.45 relates to including in the law language for employers which is comparable to that which presently exists in Sec. 041 for lobbyists. Current language in .041 states that the Commission may not renew lobbying credentials until all previously required lobbyist reports have been filed. By not registering a lobbyist for any employer who did not file all previously required employer reports, the Commission would possess a reasonable yet effective tool with which to foster compliance with the Law.

AMENDMENTS TO AS 39.50
THE CONFLICT OF INTEREST LAW

FCCS HB 230 contained only two sections amending AS 39.50. One of those amendments had been suggested by the Commission in prior years and continues to merit support; the other amendment is of dubious value. Beyond those two amendments, there are other areas of AS 39.50 which could be addressed and the Commission hopes will be addressed, particularly if it is the desire to develop an omnibus bill enacting a comprehensive review of the State's disclosure laws.

There is some "housekeeping" which will not be discussed here, except for general comments about the statute and the type of legislation it represents. Public expectation concerning the scope and jurisdiction of AS 39.50 is often disappointed because the title is a misnomer. AS 39.50 is a financial disclosure statute, not a "Conflict of Interest Law." Simply stated, AS 39.50 does not define a Conflict of Interest, it doesn't prohibit Conflicts of Interest, and it doesn't provide any guidance to public officials specifying the actions necessary to remedy a Conflict of Interest. The title gives rise to expectations that are not met and which would be less likely if the title were accurate. As a financial disclosure law, AS 39.50 provides the public with access to information concerning the financial and business interests of key decision-makers on both the state and municipal level. The following discussion of amendments focuses on improvements to the existing financial disclosure law.

Sec. 39.50.020(a) (Re: Applicability)

In addition to concurring with the amendments proposed in FCCS HB 230 which would assure that all candidates will have Statements on file covering the same preceding year, there should be additional language requiring a termination Statement by those who leave a position which requires them to file. Presently, the public official who leaves government is not required to disclose financial and business interests for any part of the period he or she was in office since the previous Statement was filed. Thus, an official who resigns prior to the April 15th deadline for Statements covering the preceding calendar year can work a maximum of fifteen months for which financial disclosure is not required.

Two brief additions should be made to FCCS HB 230 concerning the fact that the requirement to file a municipal statement does not apply to the candidate for elective municipal office who has a current statement on file with the municipality in which he or she seeks office and that a state public official who files for state elective office is not required to file a statement at the time of becoming a candidate if he or she has a current statement on file with the Commission. The inclusion of such explicit language should be helpful in preventing the unfortunate situation of a candidate's declaration being invalidated due to simple confusion over the need to file a COI Statement.

Sec. 39.50.030(a) (Re: Contents of Statements)

Sec. 030(a) states that "...an asset or liability under \$500, household goods, and personal effects need not be identified." The Commission recommends that this threshold be raised to \$1,000 as current economic conditions make assets or liabilities under \$1,000 of minimal value for public disclosure purposes. Further, this higher threshold is consistent with the "source of income" threshold the Commission is addressing in a later section of this discussion paper.

Sec. 39.50.030(b) (Re: Contents of Statements)

Section 46 of FCCS HB 230 eliminated requirements that public officials include in their Statements information concerning a non-dependent child. On the surface, that might appear to be sensible; however, the complete phrase in the statute is "a non-dependent child who is living with him," and, if only the words "or non-dependent child of his" are removed, the phrase "who is living with him" then modifies spouse or dependent child. The Commission is of the opinion that the financial concerns of an official's spouse or dependent child should be reported notwithstanding permanent residency status. Thus the Commission recommends that the entire phrase "or non-dependent child of his who is living with him" be removed from Sec. 030(b) where it appears.

Sec. 39.50.030(b) (1) (Re: Reporting Income over \$100)

Currently, public officials or candidates must report the source of all income over \$100, including capital gains, whether or not taxable, received by him or his spouse or children during the preceding calendar year. The Commission contends that this low threshold makes the reporting very burdensome for some individuals subject to the law without actually providing critical financial information. Further, the Commission asserts that by increasing the threshold to \$1,000, truly significant sources of income would not be obfuscated by the inclusion of income sources of limited value.

Sec. 39.50.030(b) (5) (Re: Loans or Loan Guarantees)

This subsection presently requires the reporting of only personal loans to the official and family members as indicated. Given the emphasis on the need to report business interests (i.e., partnership, professional corporation, and corporation in which there is controlling interest) in other sections of this law dealing with sources of income, contracts, and leases, this subsection should be amended to include the requirement to report the same information about business loans, loan guarantees, and creditors.

Sec. 39.50.030(b) (7) (Re: Contracts)

Subsection (7) as presently written requires State and municipal officers to report contracts they hold with the state, but not contracts they hold with the municipality. One could hardly believe that th

situation was intended; it must have been a drafting oversight. A municipal official's contract relationship (if any) with the municipality he or she serves is critical to adequate disclosure. Such could also be the case in situations in which a state official makes state funding allocation decisions regarding municipalities with which he or she has a contract. Therefore, the Commission suggests that the definition of "instrumentality of the state" be amended to include municipalities.

Sec. 39.50.050(d) (Re: Publishing of Reports)

In six years of experience there has never been a request for a copy of all the contents of all Statements; "publishing" all 500 plus Conflict of Interest Statements would only be wasteful. If a section concerning accessibility of the Statements is desirable, it should reflect the current practice of making copies of particular Statements upon request for the regular copying charge.

New Section Needed (Re: Municipal Officers)

As 39.50 does not provide for penalties for failure to report by municipal officers as it does for state public officials in sections .070, .089, .110, .120 and .130. The only penalty provision which applies to municipal officials provides a civil penalty for late filing. Short of the potential dangers of a charge of "willful violation" under section .050, it would appear that a municipal official who doesn't file at all is in less jeopardy than one who simply files late.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Sponsor Substitute for Senate Bill No. 175
Title An Act relating to a standard of conduct for public officials and employees;
Requested by Senators Fischer, Hohman, Stimson, Bradley, et al. Date April 21, 1981

II. FISCAL DETAIL

Agency Affected Department of Administration
Program Category Affected Legislative and Elective Operations
BRU, Program, or Subprogram(s) Affected Alaska Public Offices Commission
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		555.3	635.8	671.9		
200 TRAVEL		120.5	132.6	145.9		
300 CONTRACTUAL		168.4	185.2	203.7		
400 COMMODITIES		11.6	12.8	14.1		
500 EQUIPMENT		9.7	-	-		
600 LAND & STRUCTURES		-	-	-		
700 GRANTS, CLAIMS, ETC.		-	-	-		
		865.5	966.4	1035.6		

TOTAL .

FUNDING (Thousands of Dollars)

GENERAL FUND		865.5	966.4	1035.6		
FEDERAL FUNDS		-	-	-		
OTHER (Specify Fund Source)		-	-	-		

POSITIONS

FULL TIME		13	13	13		
PART TIME		3	3	3		
TEMPORARY			2			

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

PERSONAL SERVICES (including benefits) FY 82 Salary Schedule; 10% inflation factor projected

FY 82 APOC Request: 290,800
 -- 1 Executive Director, range 24, 12 ms
 -- 1 Assistant Director, range 21, 12 ms
 -- 1 Regulations Specialist, range 16, 12 ms
 -- 1 Administrative Assistant, range 14, 12 ms
 -- 1 Research Analyst, range 16, 8 ms
 -- 1 Secretary, range 10, 12 ms
 -- 2 Clerk IV's, range 9, 12 ms
 -- 1 Clerk III, range 8, 8 ms
 -- 1 Data Entry Clerk, range 9, 6 ms

IV. DATE May 5, 1981 PREPARED BY Thomas A. Paulson
 AGENCY Alaska Public Offices Commission
 PHONE 276-4176

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80) Gov. Office

Senator Fischer
Beth Spierberg

Additional Funding, Ethic's Commission

-- Reclass Executive Director: 24A to 26A	6,405
-- Attorney, range 24, 12 ms	59,689
-- Reclass Assistant Director; 21A to 23A	6,753
-- Assistant Director; 23, 12ms	55,854
-- Regulation Specialist to Administrative Officer; 16A to 17A	2,400
-- 2 Investigators; range 17, 12 ms	75,436
-- Reclass Secretary: 10A to 12A	2,883
-- Reclass Clerk to Auditor: 9A to 12A	4,184
-- Reclass Clerk to Auditor: 9A to 12A	4,184
-- 2 Clerk IV's; range 9, 12ms	46,760
	<u>555,348</u>

TRAVEL - 10% inflation factor projected

FY 82 APOC Request	38,700
Additional Funding, Ethics Commission	
Staff Travel: 25 trips @ \$400/trip; 2 days each @ \$67/day	13,350
Convention: 1; 5 people @ \$1,000/ea 5 days @ \$60/day	3,900
Commission Travel: 12 meetings per year 7 members x 12 @ \$400/trip (less FY 82 APOC Request)	26,000
7 members x 12 x 3 days @ \$67/day (less FY 82 APOC Request)	8,884
Non-Employee Travel 25 person @ \$400/trip	10,000
Honorarium 12 meetings @ 2 days each, 7 members @ 150/day (less FY 82 APOC Request level)	10,600
	<u>120,434</u>

CONTRACTUAL - 10% inflation factor projected

FY 82 APOC Request:	88,900
Additional Funding, Ethics Commission	
Communications	16,300
Printing and Advertising	10,800
Space Expense	16,200
Repair and Maintenance	6,000
Equipment Rental - word processing	14,600
Witness fees	600
Municipal Contracts (service & instruction)	15,000
	<u>168,400</u>

COMMODITIES - 10% inflation factor projected

FY 82 APOC Request:	6,800
Additional Funding, Ethics Commission	
Misc. Supplies	4,800
	<u>11,600</u>

EQUIPMENT - 10% inflation factor projected

FY 82 APOC Request:	2,100
Additional Funding, Ethics Commission	
6 desks	2,276
6 chairs	903
8 side chairs	698
4 tables	660
2 credenzas	706
6 file cabinets	1,221
3 calculators	822
1 bookcase	103
1 storage cabinet	185

POSITION TITLE Assistant Director				RANGE/STEP 23 A	BARG. UNIT. X	LOCATION Anchorage	GOV. LEG.	APPROV.	DISAPP.
TYPE OF POSITION PPT	STA	MONTHS 12	RP No.	PCN No.	PRIORITY 1	FORM 12	PAGE/LINE		

TYPE OF EXPENDITURE	AMOUNT		
	1	2	3
PERSONAL SERVICES:			
SALARY		44,952	
BENEFITS		7,098	
FICA		2,004	
HEALTH INS.		1,800	
TOTAL PERSONAL SERVICES	01		55,854
TRAVEL	02		12,300
CONTRACTUAL	03		10,200
COMMODITIES	04		800
EQUIPMENT	05		1,300
OTHER			
TOTAL COST			80,454

JUSTIFICATION:

This person would be one of two Assistant Directors reporting to the Executive Director of the Commission. The existing Assistant Director in the Commission's budget would be responsible for Administrative and Technical Services; the new position request is for an Assistant Director for Enforcement. The essential responsibility of this person would be to handle investigations which were necessary either as a result of audits conducted by Commission staff or in response to complaints filed by the public. Routine auditing of reports filed under all of the laws administered by the Commission would be handled by the staff in the Administrative and Technical Service division; in-depth investigations, including field audits, necessitated by complaints would be the responsibility of the Enforcement division. This division also would be responsible for presenting the investigation results to the Commission during the hearing process in order that the Commission could determine whether a violation had occurred and whether referral to the Attorney General was warranted.

CODE	FUNDING SOURCE	AMOUNT
	FED RCPTS. 1002	
	CF MATCH. 1003	
	GEN. FUND 1004	80,454
	LE RCPTS. 1005	
	PG RCPTS 1028	
	OTHER	

CONTINUATION ADDITION	FOR BEM USE ONLY
KEY NUMBER	COLUMN NO.

AGENCY Administration PROGRAM Legislative & Elective Operations

BRU Alaska Public Offices Commission

COMPONENT Alaska Public Offices Commission

13 REQUEST FOR NEW POSITION

FY 82

POSITION TITLE Attorney				CHANGE/STEP 21 A	BARG. UNIT. X	LOCATION Anchorage	GOV.	APPROV.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY 1	FORM 12 PAGE/LINE		LEG.		

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES:		
SALARY	48,264	
BENEFITS	7,621	
FICA	2,004	
HEALTH INS.	1,800	
TOTAL PERSONAL SERVICES	01	59,689
TRAVEL	02	12,300
CONTRACTUAL	03	10,300
COMMODITIES	04	800
EQUIPMENT	05	1,300
OTHER		
TOTAL COST		84,389

JUSTIFICATION:

The major function of this position is the preparation of Advisory Opinions which the Commission would be required to issue to those subject to the Ethics Law who sought direction concerning their requirements in order to be considered in compliance. Such advisory opinions require the services of an attorney who is knowledgeable in both the Ethics Law and in business/financial matters as well. Under the Ethics Law, those subject to it or those contemplating a position under it will need to be advised concerning the potential and actual conflicts between their financial matters and their position in government. In some cases it may be necessary to recommend disposal of particular holdings; in others, some form of blind trust may be sufficient. The Commission's response to such requests are binding and, hence, must be timely, accurate and precise -- the services of an attorney "in-house" will be required to assure such. There are approximately 525 state officials who are subject to the present Conflict of Interest Law, AS 39.50. About the same number would be subject to this ethics legislation and, therefore, the workload dictates the full-time services of an attorney.

CODE	FUNDING SOURCE	
	FED RCPTS. 1002	
	GF MATCH. 1003	
	GEN. FUND 1004	84,389
	LA RCPTS. 1005	
	PGM RCPTS 1020	
	OTHER	

CONTINUATION ADDITION

FOR BGM USE ONLY

KEY NUMBER _____ COLUMN NO. _____

BY Administration PROGRAM Legislative & Elective Operations

ORU Alaska Public Offices Commission

COMPONENT Alaska Public Offices Commission

13 REQUEST FOR NEW POSITION

FY 82

1	POSITION TITLE Investigator				RANGE/STEP 17 A	BARG. UNIT. X	LOCATION Anchorage	GOV	APPROV	DISAPP
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY 1	FORM 12 PAGE/LINE		LEG		

3	TYPE OF EXPENDITURE	AMOUNT	
	1	2	3
4	PERSONAL SERVICES:		
	SALARY	29,460	
5	BENEFITS	4,652	
6	FICA	1,806	
7	HEALTH INS.	1,800	
8	TOTAL PERSONAL SERVICES	01	37,718
9	TRAVEL	02	18,400
10	CONTRACTUAL	03	10,200
11	COMMODITIES	04	800
12	EQUIPMENT	05	1,300
13	OTHER		
14	TOTAL COST		64,418

JUSTIFICATION:

This full-time position is vital if the proposed State Ethics Commission is to fulfill the enforcement provisions inherent in the legislation. Without adequate investigative staffing, the intent of any ethics legislation would be severely undermined. The person filling this position would report to the Executive Director, the Assistant Director for Enforcement and the Attorney, as necessary. He or she would investigate complaints filed by the public and perform other investigations required by the Commission. While it is anticipated that the majority of the investigative work would stem from enactment of the ethics bill, this person also would perform investigations relative to the Campaign Disclosure Law and the Regulation of Lobbying Law.

	CODE	FUNDING SOURCE	
5		FED RCPTS. 1002	
6		GF MATCH. 1003	
7		GEN. FUND 1004	64,418
8		LA RCPTS. 1005	
9		PGM RCPTS 1020	
10		OTHER	

1 CONTINUATION

2 ADDITION

FOR BEM USE ONLY

AA KEY NUMBER

COLUMN NO.

AGENCY Administration PROGRAM Legislative & Elective Operations

ORU Alaska Public Offices Commission

COMPONENT Alaska Public Offices Commission

13 REQUEST FOR NEW POSITION

FY 82

1	POSITION TITLE Investigator			RANGE/STEP 17 A.	DARG. UNIT. X	LOCATION Anchorage	GOV.	APPROV.	DIS.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	PP No.	PCN No.	PRIORITY 1	FORM 12	PAGE/LINE	LEG.	

TYPE OF EXPENDITURE			AMOUNT -
1	2	3	
PERSONAL SERVICES:			
4	SALARY	29,460	
5	BENEFITS	4,652	
6	FICA	1,806	
7	HEALTH INS.	1,800	
8	TOTAL PERSONAL SERVICES	01	37,718
9	TRAVEL	02	18,400
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	CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17		GEN. FUND 1004	64,418
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	

21	CONTINUATION	
22	ADDITION	FOR B&A USE ONLY

AA KEY NUMBER _____ COLUMN NO. _____

AGENCY Administration PROGRAM Legislative & Elective Operations

BRU Alaska Public Offices Commission

COMPONENT Alaska Public Offices Commission

13 REQUEST FOR NEW POSITION

FY 82

1	POSITION TITLE Clerk IV			RANGE/STEP 9 A	BARG. UNIT. X	LOCATION Anchorage	GOV	APPROV	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY 1	FORM 12 PAGE/LINE	LEG		

TYPE OF EXPENDITURE		AMOUNT -
1	2	3
PERSONAL SERVICES:		
1	SALARY	17,700
2	BENEFITS	2,795
5	FICA	1,085
7	HEALTH INS.	1,800
9	TOTAL PERSONAL SERVICES	01 23,380
9	TRAVEL	02
0	CONTRACTUAL	03 6,100
1	COMMODITIES	04 800
2	EQUIPMENT	05 1,200
3	OTHER	
4	TOTAL COST	31,480

JUSTIFICATION:

This full-time clerk position would function as support staff for the two Investigator positions. This position also would perform clerical functions for the Attorney as necessary. The person filling this position would utilize the word processing equipment for typing correspondence, investigative reports and recommendations, and advisory opinions. Filing and other clerical skills would be necessary.

CODE	FUNDING SOURCE	
	FED RCPTS. 1002	
	GF MATCH. 1003	
	GEN. FUND 1004	31,480
	I-A RCPTS. 1005	
	PGM RCPTS 1028	
	OTHER	

1	CONTINUATION	
2	ADDITION	FOR BGM USE ONLY

AA KEY NUMBER: _____ COLUMN NO: _____

AGENCY Administration PROGRAM Legislative & Elective Operations

BRU Alaska Public Offices Commission

COMPONENT Alaska Public Offices Commission

13 REQUEST FOR NEW POSITION

FY 82

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POSITION TITLE Clerk IV				RANGE/STEP 9 A	BARG. UNIT. X	LOCATION Anchorage	GOV	APPROV.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY 1		FORM 12 PAGE/LINE	LEG		

TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES:		
SALARY	17,700	
BENEFITS	2,795	
FICA	1,085	
HEALTH INS.	1,800	
TOTAL PERSONAL SERVICES	01	23,380
TRAVEL	02	
CONTRACTUAL	03	6,100
COMMODITIES	04	800
EQUIPMENT	05	1,200
OTHER		
TOTAL COST		31,480

JUSTIFICATION:

This full-time clerk position would serve as direct support staff to the Assistant Director for Enforcement and the Attorney, as necessary. The person filling this position would utilize the word processing equipment for typing reports, findings, memoranda, and correspondence. This person also would be required to be able to retrieve information stored in the word processor's records management system. Filing and other clerical skills would be necessary.

CODE	FUNDING SOURCE	
	FED RCPTS. 1002	
	GF MATCH. 1003	
	GEN. FUND 1004	31,480
	I-A RCPTS. 1005	
	PGM RCPTS 1028	
	OTHER	

CONTINUATION	
ADDITION	FOR BGM USE ONLY

KEY NUMBER _____ COLUMN NO. _____

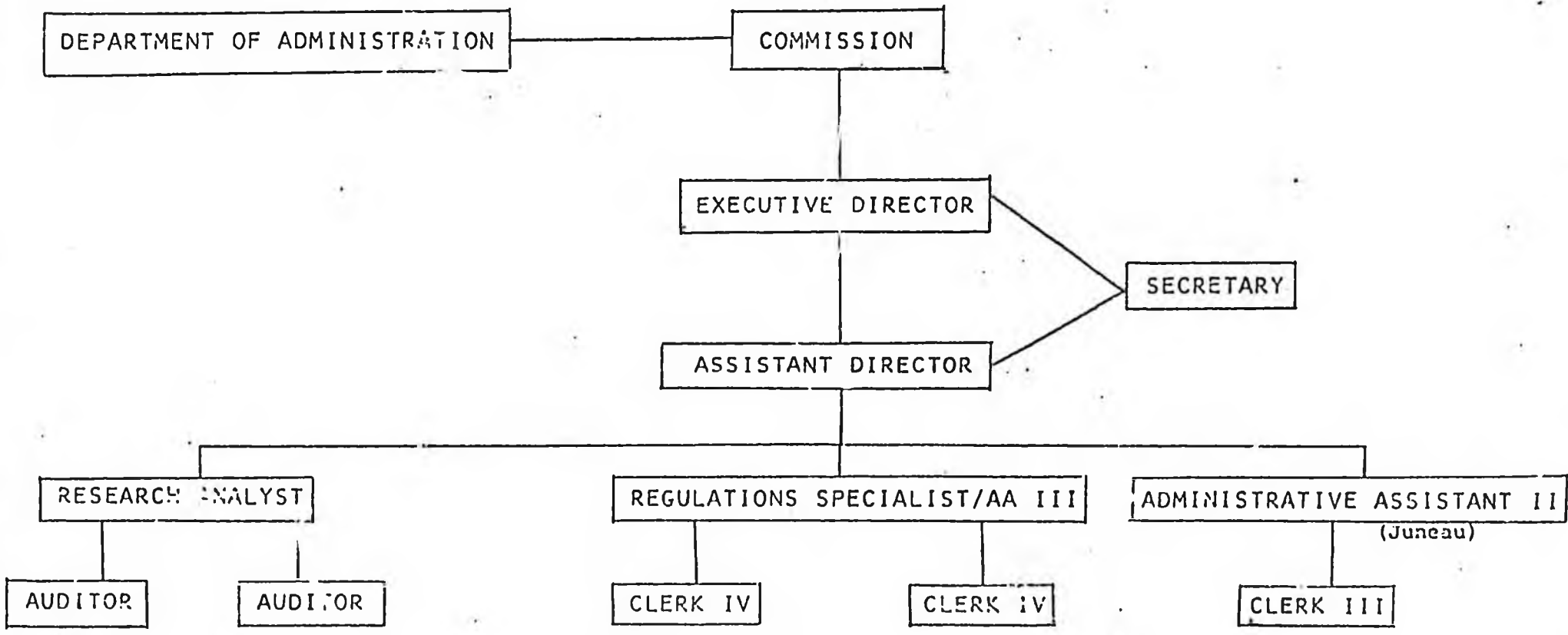
AGENCY Administration PROGRAM Legislative & Elective Operations

nnu Alaska Public Offices Commission

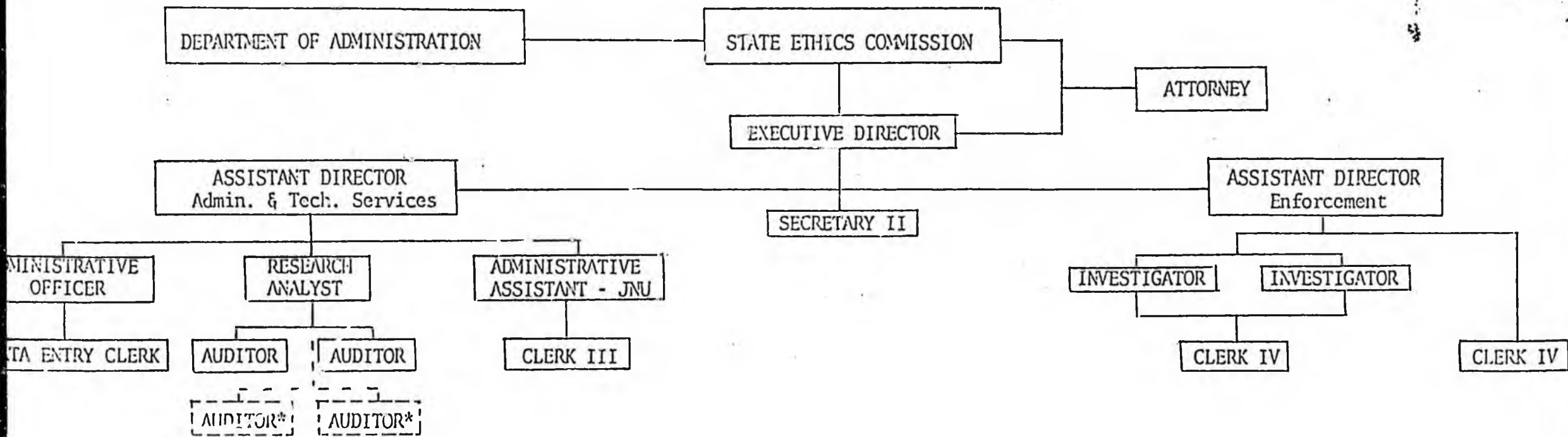
COMPONENT Alaska Public Offices Commission

FY 82

13 REQUEST FOR NEW POSITION



ALASKA PUBLIC OFFICES COMMISSION
ORGANIZATIONAL CHART



STATE ETHICS COMMISSION
ORGANIZATIONAL CHART

positions required during
state election years only

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

INTRODUCTION OF BILLS (Senate) (cont'd)

SB 517. (cont'd)

States facility must maintain licensing to be eligible. Provides 75 percent of the grant shall be used for staff salaries and the remainder shall be used as determined appropriate by the facility to meet nutritional requirements, to purchase equipment appropriate for use by children and for staff training. Provides for issuance of regulations by Department to carry out purposes of section. Provides Act takes effect immediately.

Introduced April 24 and referred to Community & Regional Affairs, then to Finance.

Appropriations (special) (Child Care Assistance) SENATE BILL NO. 518, by Senator Parr. Makes special appropriations in the amount of \$4,050,000 from the general fund to the Department of Community and Regional Affairs to be distributed to licensed day care facilities under the Child Care Grant Program (\$4,000,000) and to be paid to municipalities for administrative costs of administering the Day Care Assistance Program (\$50,000). Provides unexpended and unobligated portions of the appropriations lapse into the general fund June 30, 1982. Provides Act takes effect on the effective date of SB 517.

Introduced April 24 and referred to Community & Regional Affairs, then to Finance.

Appropriations (special) (Little League field improvements) SENATE BILL NO. 519, by Senators Colletta, Mulcahy, Kerttula, Dankworth, Stimson, Rodey, Fischer, Sturgulewski and Bradley. Makes special appropriations for Little League teams for capital improvements to fields and facilities: \$240,000 for payment as a grant to the Municipality of Anchorage to be divided equally among various neighborhood areas of the city for capital improvements to fields and facilities; \$40,000 for payment to the Matanuska-Susitna Borough to be divided equally between the Wasilla and Mat Valley Little League teams for capital improvements to fields and facilities; \$20,000 for payment as a grant to the Kodiak Island Borough to be divided equally among the Kodiak Little League teams for capital improvements to fields and facilities. Provides Act takes effect immediately.

Introduced April 24 and referred to Community and Regional Affairs, then to Finance.

Code of Ethics (state officials & employees) SPONSOR SUBSTITUTE FOR SENATE BILL NO. 175, by Senators Fischer, Hohman, Stimson, Bradley, Kerttula, Rodey, Dankworth, Colletta, Parr, Kelly, Eliason and Sturgulewski. (original bill page 219). Incorporates provisions contained in Senate Bill No. 336 (page 561) as well as provisions of the original bill. Provides the purpose of the bill relating to ethics is to prescribe standards of conduct for public officials of the state and its municipalities and to establish an ethics commission to render advisory opinions and enforce the provisions of the bill so that public confidence in public officials will be preserved.

Adds new chapter to Title 29 relating to Ethics. Applicability section states: "This chapter applies to each elected or appointed public official, including an employee of the state, a state agency or a municipality. This chapter also applies to a person under a personal services contract to a state agency or to a municipality."

INTRODUCTION OF BILLS (Senate)(cont'd)

SSSB 175, (cont'd)

Outlines standards of conduct in relation to accepting of gifts, use or disclosure of confidential information, conflicts of interest, and fair treatment. Provides for action to be taken for a conflict of interest. Prohibits public official or a member of his household from having an interest in the profits or benefits of a state or municipal contract or an investment of state or municipal money. States that a contract entered into by the state or a municipality is voidable if entered into in violation of provisions of the chapter. Restricts former public officials for use of information which is not available to members of the public and which was acquired in the course of official duties. Provides a member of municipal governing bodies shall report conflicts of interest.

Establishes the State Ethics Commission in the Department of Administration to administer statutes dealing with Conflict of Interest, Regulation of Lobbying and State Election Campaigns. Provides Commission may issue advisory opinions upon request of public or former public official as to whether stated facts and circumstances may constitute a violation, accept or initiate charges concerning violations, initiate investigations and hold hearings, subpoena witnesses and take testimony relating to matters before the commission and require the production for examination of books or papers relating to a matter under investigation before the commission; publish summaries of opinions of decisions, and distribution of publications and initiation of programs to educate the public. Further sections deal with complaint procedures, determinations and disciplinary action for violation.

Technical amendments relate to the deletion of language relating to the Alaska Public Offices Commission and replacing it with the State Ethics Commission. Repeals provisions of AS 15.13 (State Election Campaigns): sec. 020 (Alaska Public Offices Commission), sec. 030 (Duties of the Commission), sec. 045 (Investigations, hearings), and sec. 122 (Legal counsel). AS 39.25.120(12) (Partially exempt service. "(12) the executive director and the staff of the Alaska Public Offices Commission."). AS 39.50.090(a) - (e) (Conflict of Interest. Prohibited Acts). Provides for terms of the members of the State Ethics Commission and terminates members of APOC. Provides Act takes effect July 1, 1981.

Introduced April 21 and referred to State Affairs, Judiciary, then to Finance.

Hunting &
Fishing License & Tag
Fees

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 275, by Senator Kerttula by Request. (See page 435, original bill). Relates to the compensation of persons collecting hunting and fishing license and tag fees, amending section of the Fish & Game Code relating to the fee for issuance of licenses and tags (AS 16.05.390) providing a person is entitled to be compensated at a rate of \$50 per year or \$1 per license or tag sold during the year (was entitled to keep five percent of the fee or a fee of 25 cents, whichever is greater). Provides person transmit proceeds on the last day of each month, deleting "except the amount authorized to be retained".

Introduced April 20 and referred to Resources, then to Finance.

Code of Ethics
(state officials & employees)

SENATE BILL NO. 175, by Senators Fischer, Hohman, Stimson, Bradley, Kerttula, Rodey, Dankworth, Colletta, Parr, Kelly, Eliason and Sturgulewski. Adopts a code of ethics for state officials and employees to establish ethical standards for the avoidance of conflicts of interest, and to aid them in avoiding situations or conduct that may give rise to the appearance of impropriety. Adds a new chapter (49) to AS 39, "Conflict of Interest and Financial Disclosure", under which is established the State Ethics Commission within the Department of Administration. Commission to consist of seven members appointed by the Governor and concurred in by the Legislature. Outlines requirements for members (may not hold an elected office, may contribute to political campaign but may not hold a party office or participate in a campaign, may not be a lobbyist). Provides for election of presiding officer, compensation, appointment of an executive director, delegation of authority, establishment of regional offices in each senate district, and outlines the powers and duties of the commission. States that the Attorney General is the legal counsel for the commission and shall advise it in legal matters arising in the discharge of duties and shall represent the commission in actions to which it is party. Provides commission may request the chief justice of the supreme court to appoint a special prosecutor in proceeding involving violation if the AG fails or refuses to prosecute the violation. Provides for initiation of investigations by the commission on its own determination or on the receipt of a sworn complaint. States that the commission shall refer to the AG general violations of the law which it determines merit prosecution, and that the AG has the responsibility for prosecutions and may request evidence from the commission. States commission may issue opinions and interpretations of the law.

Outlines requirements for financial disclosure by state officials and a candidate for state office. States that public official shall file a statement each year, and that a new official shall file for the 12 months before he became a public official. A candidate for state office shall file a statement with the director of elections for the 12 full months before he became a candidate at the time he becomes a candidate. Statements show value of economic interests of official or candidate or members of his household as indicated by categories (from Category I--\$5,000 to Category IV--\$100,000 or more). Statement shall include name, address and position sought by official or candidate, names of household members and names under which they are engaged in business; occupations and principal places of business of official, candidate or household members, name of business associated with during filing year and description and nature of business or activity; listing of all interests in real property, excluding residence which exceed \$5,000, including street address and legal description, date of acquisition or transfer and its value by category; listing of securities of \$5,000 or more; listing of bonds regardless of value (issued by state or municipality); name and address of creditor for debts in excess of \$1,000; name and address of person or business that made payments or provided gross income exceeding \$1,000, excluding securities;

SB 175, (cont'd)

the name and address of a business or governmental client or customer of a business in which the official or candidate or household member is an officer, director, or partner or has an ownership interest of more than 50 percent, if the client or customer has paid an aggregate of \$25,000 or more during the filing year. List of gifts received which exceed \$100 in value.

Outlines conflicts of interest by a state official or employee. States a state official or state employee may not use his public office for private advancement or gain; may not represent or assist person or business before a state agency in a transaction involving the state or municipality of the state in a transaction if the compensation is contingent on success to be achieved in the representation or assistance; may not represent or assist person or business for a fee or other compensation to secure passage of a bill, to obtain contract or payment of a claim, or in any other transaction or proposal if he has participated or may participate as an official or employee in the matter; may not represent or assist person or business before a state agency on a bill, contract, claim, or other transaction or proposal involving official action by the agency if he is an official or employee of the agency. Provides section does not apply to members of the legislature. States that a member of the legislature and a person appointed by the legislature or by a legislator may not represent or assist a person or business before a state agency or before an agency of a municipality for compensation or other benefit or promise of benefit. States that official, employee or member of household may not be a party to or have an interest in the profits or benefits of a state contract or the investment of state money unless contract is let by competitive bidding, contract involves not more than \$150, or contract is for supplies or services which are unobtainable elsewhere or which are furnished as part of a continuing course of dealing, established before the official or employee became associated with the agency, and the transaction is conducted at arm's length, with agency's full knowledge of interest and official or employee takes no part in determinations of specifications, deliberations or decision of agency. States official or employee may have a limited interest as shareholder or creditor. States that a state official or employee may not seek employment with or allow himself to be employed by a business which is or may be regulated by an agency in which he serves. A business may not employ an official or employee if employment violates conflict of interest in employment. States that a state official or employee may not acquire a financial interest which he has reason to believe will be directly and immediately affected by his official action or the action of the agency in which he serves. Provides for filing of a written statement by official or employee in a situation in which he is required to take an action or make a decision in the discharge of official duties that may cause financial benefit or detriment to him, a household member or

to a business with which he is associated. Provides a member of the legislature shall prepare written statement in the same manner, and states that member may request permission to abstain from voting on the issue. States that official or employee may not solicit or accept a gift or gifts having an aggregate value of \$100 or more in a calendar year. Provides official or employee may not disclose or use confidential information or information not available to the public for personal gain or benefit of for gain or benefit of another person or business if he obtained the information through his official position. Restricts use of information for two years after he ends term of office or leaves government service or employment, and states restriction on use of information supersedes a less restrictive requirement of confidentiality that may apply. States that a former state official or employee may not for two years following his term of office or his state employment assist another person or business whether or not for compensation in a transaction or in an appearance in connection with a transaction involving the state or an agency or municipality of the state in which the former state official or former state employee participated during his term of office or employment. Further states that a business in which a former state official or former state employee is a partner or member or, in the case of a professional corporation, a shareholder, and an employee of the business may not for two years following the term of office or employment of the state official or employee assist another person in an appearance or transaction involving the state or an agency or municipality of the state in which the former official or employee participated during his term of office or state employment. Provides penalties for violation of provisions (class A misdemeanor for violation for other than requirement of financial disclosure; class B misdemeanor for violation of financial disclosure), and states that a convicted person may not be eligible for appointive office or for employment with the state or act as a paid lobbyist for a period of four years following the date of conviction, unless court reduces or suspends the period. A plea of nolo contendere is considered a conviction for purposes of the chapter. Provides for enforcement, citizen action and civil actions, and discipline (includes dismissal).

Miscellaneous amendments relating to addition of new statute references. Repeals AS 15.13.020 (Alaska Public Offices Commission); sec. 030 (Duties of the commission); sec. 045 (Investigations, hearings); sec. 122 (Legal counsel); sec. 125 (Civil penalty; late filing of required reports); AS 24.-25.141 (Regulation of Lobbying. Civil penalty: Late registration; filing of required statements or reports); AS 39.25.-120(12)(Partially exempt service. the executive director and staff of APOC); AS 39.50 (Conflict of Interest); and AS 39.49.-400(39) (enacted in this bill, the Alaska Agricultural Action Council)--repealed as of July 1, 1984. Provides Act takes effect July 1, 1981.

SB 175, (cont'd)

Introduced February 11 and referred to State Affairs, then to Judiciary.

Appropriations
(special)
(AK Ag Action
Council)

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 162, by Senators Fahrenkamp, Sackett, Bennett and Parr. (see page 115, original bill). Makes special appropriations in the amount of \$6,700,000 to the Alaska Agricultural Action Council for a small grain marketing system: \$5,700,000 for construction of a tidewater grain terminal; \$700,000 for construction of a grain sub-terminal and elevator facility between Fairbanks and Delta Junction; \$300,000 to contract for organization and operation of a marketing system to purchase and resell small grains grown in Alaska. Provides Act takes effect immediately.

Introduced February 10 and referred to Resources, then to Finance.

INTRODUCTION OF RESOLUTIONS (Senate)

Constitutional
Convention
Committee

SENATE CONCURRENT RESOLUTION NO. 9, by the Rules Committee by Request of the Legislative Council (for the Interim Committee on the Constitutional Convention of the Eleventh Legislature). Establishes a joint House and Senate committee concerned with the organization and procedures of a state constitutional convention. Provides for appointment of three members of each house, appointed respectively by the Speaker and President to comprise a joint committee of the Twelfth Legislature to examine matters pertaining to the organization and conduct of constitutional conventions in Alaska. States that committee has authority both as a special and an interim committee and that work be undertaken with the full voting participation of a judge or justice of the Alaska court system appointed by the chief justice of the supreme court, the lieutenant governor, and by a person appointed by the governor. Resolves that the committee be dissolved November 30, 1982 and that its final report be submitted to the First Session of the Thirteenth Legislature not later than 1/25/83.

Introduced February 10 and referred to Judiciary, then to Finance.

COMMITTEE REPORTS (Senate)

Special
Education

SENATE BILL NO. 18, (see page 10 Reported back to the Senate on February 12 by HESS with the committee recommending it be replaced with a SUBSTITUTE (HESS), and that it do pass. The substitute provides that to receive aid a district must apply to the department and outlines application requirements. States department shall project amount needed to finance state aid and shall request an appropriation from the legislature annually. Provides monies to be appropriated and if insufficient, shall be distributed pro rata among



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

April 23, 1981

1:30 p.m.

Juneau

Behrends Bldg.

MEMBERS PRESENT: SFNATOR FISCHER, CHAIR
SENATOR COLLETTA
SENATOR BRADLEY
SENATOR STIMSON
SENATOR ELIASON

AGENDA: *Note: All references to SB 175 are, in fact, to SSSB 175*

SB 299---An Act relating to elections

SB 175---Code of ethics for state officials and employees, establishing the State Ethics Commission

SB 336---Relating to a standard of conduct for public officials and employees; establishing a State Ethics Commission

SB 167---Relating to the Alaska Public Offices Commission

SB 194---Relating to nepotism in state employment

Senator Fischer called the meeting to order at 1:40 p.m. and outlined the agenda.

SB 299 started out as a series of technical amendments to election code emanating from interim committee work in that area. The proposed Senate State Affairs Committee Substitute for SB 299 includes amendments: changing the state election period. The proposed substitute decreases the primary campaign period, thus shortening the period during which the public is exposed to the absorption of the media with electioneering.

SB 175 and 336 provide for a code of ethics for state employees. SB 175 would dissolve the existing APOC, the functions of which would be performed by a State Ethics Commission. The measure provides a set of specific criteria in the area of ethics and sets standards for state officials and employees.

SB 167 provides technical amendments to the statute governing the Alaska Public Offices Commission.

SB 194, concerning nepotism in state employment extends the law to include Division heads in its provisions.

Frank Flavin, Ombudsman, testified on SB 175 and SB 336. He stated that the office of the Ombudsman has run into many complaints of unethical conduct in the Administrative branch of government. The present conflict of interest law actually functions merely as a financial disclosure law; other aspects of the law are extremely vague and limited in application (only high level public officials are subject to the disclosure law). Mr. Flavin stated that both

SB 336 and SB 175 are adequate. The scope of SB 175 covers all public officials and sets standards of conduct and clarifies areas of the present law which are vague and difficult to apply.

Mr. Flavin then cited potential problems which he encountered in the proposed legislation. He stated that the independence of the commission is essential (including independent legal counsel rather than reliance on the Attorney General in those cases where the commission determines it necessary). The powers provided the commission are "good" in SB 175. Advisory power only would be insufficient; disciplinary action should be part of the function. If the capacity for action rests with the executive branch, the grievance procedure may be pursued in accordance with the collective bargaining process. An appeal to the court, if necessary, could be made after the determination is made by the commission on a given case. SB 175, Mr. Flavin stated, takes the best of ethics legislation of other states.

Senator Fischer asked if SB 175 adequately sets out standards of conduct and criteria for what constitutes a conflict of interest, using as an example a state official applying for a state housing loan, agricultural land or business loan under certain circumstances.

Frank Flavin responded that one can only lay down general standards, that it is impossible to cover every situation. The bill provides for advisory opinions prior to taking action.

Senator Stimson asked about interaction between the office of the Ombudsman and the proposed Ethics Commission.

Frank Flavin responded that the Ombudsman's office might get some referrals for the Ethics Commission in the process of certain investigations if violations are discovered. The Ombudsman's office, he pointed out, is solely advisory; it is a quasi-judicial agency and has no enforcement capability. The Ethics Commission could do a better job in this aspect of the proceeding. Currently, there are no specific standards for conduct. There will be a legislative review of Ethics Commission activities, and the accountability of the agency will depend to some extent on reports received by the legislature.

Richard Listowski and Theda Pittman of the Alaska Public Offices Commission testified on SB 175 and SB 336.

Mr. Listowski stated that if the state were going to establish an Ethics Commission he hoped that it would be adequately funded, with at least \$500,000. He then addressed the issue of municipalities and the problems that arise in second class cities in achieving conformity with the law. The APOC has inadequate staff and budget to permit a traveling staff person. He stated that all municipalities with populations of under 1000 should be able to opt out of compliance with the bill due to logistical obstacles. Mr. Listowski addressed the effective date clause of the bill, suggesting a lag time of six to twelve months on the effective date to enable municipalities to

go "on line". He expressed support for Frank Flavin's ideas on the Ethics Commission being able to seek independent legal counsel.

The Alaska Public Offices Commission, according to representatives Theda Pittman and Rich Listowski, does not express a problem with the abolishing of the APOC (as proposed by SB 175) in favor of the Ethics Commission.

Darlene Livermore, representing the Alaska Public Employees Assn., registered APEA opposition to SB 194, regarding nepotism in state employment. The crux of APEA opposition is primarily the same set of concepts forming the basis of the federal Civil Service Reform Act, part of a trend tending away from the kind of restrictions imposed by SB 194. The current state statutes on nepotism already cover the higher echelons of government officials. Darlene Livermore cited potential problems with the enactment of the legislation resulting from the lack of diversification in Alaska employment opportunities; people are forced into a position where relatives are frequently working for part of an agency. She cited also the potential impact on women, stating that a spouse, traditionally the woman, will step aside if her employment threatens that of her husband. (See personnel Rule 13, not in present statute.) The APEA's position is that nepotism is adequately covered under present law.

Senator Stimson stated that the concept of SB 194 seemed like a step backwards, and inquired as to where the impetus for the legislation had come from. Senator Fischer responded that the legislation had emanated from work conducted by the Blue Ribbon Commission.

Darlene Livermore stated that her experience was that spouses and relatives are scrupulously careful to avoid "criss-crossing" which would constitute the type of problems nepotism legislation sought to prevent.

Senator Fischer stated that the existing law applies only to heads of departments, and asked Ms. Livermore if she would object to the inclusion of Deputy Commissioners and agency heads in the nepotism statutes. She responded that APEA would object to the inclusion of any officials below the level of Commissioner and Deputy Commissioners.

Terry Cramer, Administrative Assistant to the Blue Ribbon Commission on the State Personnel Act, provided testimony in support of SB 194, introduced at the request of the Commission. The present statute prohibiting nepotism in state employment is directed at relatives of the executive head of a department or agency. However, the Personnel Rules also prohibit the employment of persons related (also within the second degree of kindred) to the head of a division or subdivision within which the person is working. In addition, the Rule requires that before a person may be employed in the same agency with a close relative, that the Director of Personnel and the appointing authority for the department or agency must give express approval to the appointment (Rule 13).

The problem, as Terry Cramer pointed out, is that the scope of the Personnel Rules is broader than the scope of the statute. The Attorney General has advised the Division of Personnel that the Rules are therefore not completely enforceable. The Blue Ribbon Commission recommends that the scope of the statute be enlarged to include the provisions of the Personnel Rules.

Senator Stimson stated that he did not see a need to expand the scope of the statute on nepotism.

Patty Ann Polley, Director of the Division of Elections, testified on SB 299, providing committee members with a section by section analysis. Her written testimony did not address changes in election dates proposed by the legislation before the committee. Such a change, she stated, might require changes in other parts of the statutes in addition to those governing the operation of the Division of Elections. Patty Ann Polley stated that the proposed changes in SB 299 are largely housekeeping matters, including clarification of definitions and numbering problems contained in that section of the statute.

Senator Fischer noted that the current law requires that the applicant register his or her name and sex, and asked that thought be given to deleting "sex".

Barry Stern, of the Department of Law testified on SSSB 175, stating that the provisions of the bill are unconstitutional with respect to the manner in which appointments are made. Under the provisions of SSSB 175, the governor would make only two appointments to the Ethics Commission. The Department of Law maintains that when the commission exercises quasi-judicial authority the governor has full appointment power.

Senator Fischer cited instances in which the governor selects from a prepared slate of prospective members for a commission. He asked Mr. Stern if this would fall within his constitutional interpretation. Mr. Stern responded that the governor would still have the option of choosing from off of the slate.

Barry Stern then addressed the portion of SSSB 175 providing for legal counsel for the Ethics Commission. The Department of Law's position is that they would be the appropriate legal counsel for the Ethics Commission and in cases where the Department perceives a conflict they will step aside. Barry was unsure who would select counsel in such a case. He then conducted the committee members through a page by page breakdown of the bill, concluding with the statement that the fact the Ethics Commission can pursue only civil remedies should not preclude the Attorney General conducting criminal prosecution.

Rich Listowski and Theda Pittman, of the APOC, testified on SB 167. Theda Pittman outlined some aspects of SB 167, outlined in a Febru-

Senate State Affairs Committee Minutes
April 23, 1981
page five

ary letter from the APOC to Senator Kelly, with which the Commission disagrees. Theda stated that the changes in composition and terms of commission members proposed in SB 167 promote lack of continuity and experience. She stated that the proposed legislation would generate paperwork, citing the number of reports to be filed by candidates the timing of the reports, and the manner in which big reports filed so close to election day denies the public access to the information. She suggested that 48 hour reports be submitted ten days before the election rather than seven days, that the legislation limit the need to report expenditures in the forty eight hour report, and that the committee consider limiting civil penalties for late forty eight hour reports.

Senator Fischer discussed the possibility of carrying the bills into the interim for further consideration. Senator Stimson stated that he felt the committee had an obligation to do the work, and favored continued consideration of the bills by the committee.

The meeting adjourned at 3:05 p.m.



TESIMONY

FOR THE

STATE AFFAIRS COMMITTEE

CODE OF ETHICS

OCTOBER 27, 1981

ACTIVITY AREAS

Personal Dynamics
Leadership "
Spiritual "
Youth Assistance
Human Improvement
Criminal Justice
Fund Raising
Family life
Economics
Environment
Health
Safety
Energy
Communications
Publications
Governmental
Affairs

On November 1, 1979 the Gold Rush Jaycees presented to the legislators of Alaska, among others, a suggested Code of Ethics for elected officials

We again welcome this opportunity to convey to this State Affairs Committee our interests in and concerns for the character and image our various elected officials portray and exhibit.

We want our elected officials to be responsible and accountable. Most peoples ethical standards of conduct often exceeds those required by law. Ethics are simply not acquired immediately upon entering a specific arena. They are carried around by us constantly.

Elected officials will be ethical when they conform to the rules of good conduct expected of them by the public and peers. Behavior should be above reproach so it will not reflect adversely upon their office or restrict their efficiency and independence.

STANDING COMMITTEES

FINANCE
MEMBERSHIP
PROGRAM
COM. RELATIONS
PUBLICATIONS
RECOGNITION

Constituencies often demand from their officials not what is ethical and moral, but rather what is expedient and good for them. Therefore, compliance with these canons will help to assure mutual confidence, trust, respect, and responsible ideals

We recommend that a Code of Ethics be incorporated into the Uniform Rules of the Legislature as well as the Administration.

SPECIAL COMMITTEES

ELECTION
C P G

Gold Rush Jaycees--2

We also recommend that a State Board of Ethics be established for oversight and enforcement

We support from the Second Session of the Eleventh Legislature SCR 57 (By the Rules Committee--Proposing an Amendment to the Uniform Rules adopting a legislative code of ethics)

We also support from the First Session of the Twelfth Legislature SSSB 175 (By Fischer Bradley, Colletta, Kelly, Sturgulewski, et al--An Act adopting a Code of Ethics for state officials and state employees, establish a State Ethics Commission repealing AS 39.50, and providing for an effective date.

The Jaycees, a leadership training organization, believes that government should be of laws, rather than men. We appreciate this opportunity to express our views.

Larry Hayden
Project Chairman
Box 4-815
Anchorage, Alaska 99509





Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

SENATE STATE AFFAIRS COMMITTEE MINUTES

January 26, 1982

Members Present: Sen. Fischer, Chair
Sen. Colletta
Sen. Bradley
Sen. Eliason
Sen. Stimson

Committee meeting on: Ethics legislation

COMMITTEE CALENDAR

SSSB 175 (Proposed CS for SSSB 175)
An Act relating to a standard of conduct for public officials and employees; establishing a State Ethics Commission; and providing for an effective date.

WITNESS REGISTER

Sen. Arliss Sturgulewski
Pouch V
Juneau, Alaska
465-3818

Summarized Position Statement: Shared Sen. Stimson's concerns on question of former public officials. Problem with bill being too broad; Ethics Commission should have more flexibility.

PREVIOUS ACTION

Reference Number: Hearings held in April, 1981 (4-7-81, 4-23-81) - all-sites teleconference held October, 1981 (10-8-81)

Statutory Reference: Title 39, primarily 39.49.010-39.50.200

Amendments Formally Considered: none

ACTION NARRATIVE

(reel to reel)

0007 Senator Fischer, Chair, opened the meeting at 1:40 p.m., with members Sen. Colletta, Sen. Stimson, and Sen. Eliason in attendance.

Sen. Fischer outlined the agenda, committee consideration of a proposed committee substitute for SSSB 175. He described the work the committee had devoted to the bill during the last

session and during the interim, in cooperation with the Attorney General's office, the Office of the Ombudsman, Legislative Affairs Agency Legal Services Division, and the Human Rights Commission. He then outlined the provisions of the latest committee draft of the proposed committee substitute. The purpose of the legislation is to prescribe standards of ethical conduct not only for legislators, but for all state employees and public officials, including municipal officials. This will help to insure that public confidence in public officials is preserved.

The committee has been working on the bill for a year. The original version had twelve sponsors in the Senate. The State Affairs meeting happened to fall on the same day that a member of the House made a speech on the subject of ethics in the legislature, however the meeting had been scheduled for more than a week, and is not in response to Rep. Fanning's remarks on the House floor this day.

Sen. Colletta added that the State Affairs Committee had met the first day of the legislative session and had established ethics legislation as one of its priorities, as it had been before the session began.

0086

Sen. Fischer then outlined the major provisions of the bill.

SECTION BY SECTION OVERVIEW
CSSSSB 175 (State Affairs)
Work Draft

<u>Section</u>	<u>Title</u>	<u>Summary Statement</u>
1	Findings and Purpose	Statement of legislative intent
2		
39.49.010	Construction	This chapter is to be liberally construed to promote ethical conduct in state and municipal government.
39.49.020	Applicability	Applies to all elected and appointed officials including any state employee of the three branches of government and any municipal employee. Also applies to a person under a personal services contract to a state agency or municipality.
39.49.030	Gifts	A public official may not solicit or receive a gift under circumstances where it could be inferred that the gift was intended to influence or reward official action.

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39.49.030	Gifts	A public official may not solicit or receive a gift under circumstances where it could be inferred that the gift was intended to influence or reward official action.

39.49.040	Confidential Information	A public official is prohibited from using information for personal gain. The public official is also prohibited from disclosing information which is not public information and which the public official acquires from official sources.
39.49.050	Fair Treatment	Specifically states what action is prohibited by a public official
39.49.060	Conflict of Interest	Spells out what constitutes a conflict of interest
39.49.070	Action on Conflict	Outlines the procedures a public official must take in the event of a personal conflict of interest
39.49.080	Government Contracts	Specifies the instances in which the public official or member of her/his household can contract with the state or municipality
39.49.090	Contracts Voidable	The state or municipality may void a contract if the contract entered into violates a provision of this chapter. States that the interest of innocent parties shall be considered in an action to void a contract, and that the action must also be brought within 60 days after a violation is determined.
39.49.100	Restrictions on Former Public Officials	<p>A former public official is prohibited from</p> <ol style="list-style-type: none"> 1) using information for personal gain that was acquired in the course of her/his official duties; 2) disclose information not available to the public acquired during the course of her/his official duties; 3) may not assist anyone for compensation on a matter in which she/he personally participated as a public official; and 4) for twelve months after termination of employment from assisting anyone for compensation on matters before the state agency or municipality where she/he was employed.
39.49.110	Violation	Establishes a two-year statute of limitations for prosecution of a public official or former public official
39.49.120	Reporting Conflicts of Interest by Members of Mu-	This section outlines the procedures for members of municipal governing bodies to follow when a conflict of interest exists.

municipal Govern-
ing Bodies

- 39.49.130 Protections for Reporting a Violation "Whistleblower statute" to protect state and municipal public officials for reporting a violation of the ethics code
- 39.49.150 Commission Established Establishes a seven member State Ethics Commission in the Department of Administration appointed by the governor and confirmed by the legislature. Term is five years with a 1 term limitation. Also outlines the qualifications and compensation for members. Gives the Commission the authority to hire an executive director and staff.
- 39.49.160 Offices of the Commission Establishes an office in each senate district but limits one office to each municipality. Campaign, financial disclosure and lobbyists' reports are to be filed in the Commission's central office. The reports are public information.
- 39.49.170 Duties of the Commission Outlines the duties of the Commission
- 39.49.180 Legal Counsel Gives the Commission the authority to hire and employ an attorney or to use the attorney general's office for legal advice and representation
- 39.49.190 Powers of Commission Incorporates the functions of the Alaska Public Offices Commission. Gives the Commission the authority to issue advisory opinions on ethics and also to initiate investigations and hold hearings.
- 39.49.200 Complaint Procedures Establishes complaint procedures and due process requirements for conducting hearings
- 39.49.210 Determinations Establishes procedures for the Commission to follow when a violation of the ethics code has been determined
- 39.49.220 Disciplinary Action for Violation Gives the appointing authority of the public official the power to discipline a public official who has violated the ethics code. If no action is taken by the appointing authority, the Commission can discipline the public official and assess a civil penalty not to exceed \$2000.

39.49.300	Definitions	Self-explanatory
3 through 9		Provisions to amend sections of existing state law to make them consistent with this bill
10		Terminates the terms of the members of the Alaska Public Offices Commission and sets the terms of the new members of the State Ethics Commission.
(counter # resumed)		
0168		Sen. Fischer stated that it was his hope to move the bill quickly as possible to the Judiciary Committee.
0176		Sen. Stimson stated that he had many questions about the bill. On page 1, line 26-27, concerning personal services contracts, Sen. Stimson was curious about the policing mechanism. How far can we extend this authority?
		Sen. Fischer responded that he did not foresee any legal obstacles, and that none had been foreseen by those from the AG's office and Legal Services who had worked on the legislation; presumably it would be applied by inclusion in the personal services contracts themselves.
		Sen. Stimson inquired if Sen. Fischer didn't see a problem with inclusion of persons who are on short term contracts with municipalities.
		Sen. Fischer stated that he saw a special need for this provision, as many persons on short-term contracts have access to opportunities to exert influence to their own personal advantage; he feels it an important inclusion.
0200		Sen. Stimson expressed curiosity about the provision for handling public officials who are impeachable as opposed to those who are not.
		Sen. Fischer clarified that impeachable officials are those who are elected officials or judges (as opposed to those who are appointed).
		Sen. Stimson inquired if the definition of a "public official only removable by impeachment" was clear.
		Sen. Fischer responded that the Alaska Constitution specifies which state offices are impeachable, and that on the municipal level it is usually addressed in the municipal charter.
0250		Sen. Stimson asked about impeachment proceedings con-

cerning legislators.

Sen. Fischer responded that impeachment is initiated in the Senate. He stated that he has tried to avoid this proposed legislation being confused with determinations made in the case of Sen. Hohman.

Sen. Stimson stated a need to be more practical in the approach. "The situation we're in tells us there is a void---this could be a mechanism for laying out procedures."

Sen. Fischer stated that we may need a separate statute to lay out procedures for impeachment, and suggested that if there is a concern with procedures for impeachment that it be handled separately.

Sen. Stimson stated that the legislation before the committee was a vehicle for addressing violations of many kinds, and that it provided no direction to the Senate.

Sen. Fischer stated that the committee bill was not designed to deal with felonies: rape or bribery, for that matter, but with standards of ethical conduct.

0323 Sen. Stimson responded that any conduct which is inappropriate is a question of ethical conduct. He stated the committee must have something (a bill) that is completely inclusive or nothing at all.

0331 Sen. Colletta perceived problems with the legislation applying to all public and municipal officials. He referred to an ethics bill which he sponsored in 1980 which excluded "methodology", and addressed only legislative activity. He perceived problems in the work draft before the committee which he said he had not resolved for himself, and further stated that he foresaw problems arising in the Judiciary Committee (the next committee of referral). He gave a couple of examples of situations in which it is difficult to determine whether or not there is an infraction of the proposed ethics code.

Sen. Fischer stated that the bill does not address things covered by criminal statutes as there are already laws on the books for that.

Sen. Bradley stated that he, also, saw problems with the proposed legislation with respect to determining whether or not there has been an infraction of the prohibitions.

Sen. Stimson stated that he perceived "ethics" as an umbrella covering also criminal activity.

0372 Sen. Fischer stated that certain laws are general in ap-

plication and that he did not see a need to include specific criminal provisions in the bill; he does not see the role of the Ethics Commission in criminal prosecution, or in the case of violations outside the performance of official duties. He further stated that the bill did not condone activities by virtue of not mentioning them in the bill.

0462

Sen. Stimson queried, "Does that mean this only covers standards of conduct in the performance of duty?" In terms of the role of a legislator, he sees a need to talk about procedures--censure, other things besides impeachment. He would like to see procedures addressed in the legislation. If the committee is not careful, he stated, it will leave out pieces critical to the functioning of the Ethics Commission; this would be most detrimental. He pointed out problems he perceives in the sections of the draft governing what public officials (including former public officials) may and may not do, and noted the inclusion of a time frame in some subsections and the exclusion of it in others.

Sen. Stimson and Sen. Fischer discussed some examples, and Sen. Fischer stated that his understanding was that Sen. Stimson felt the bill should deal with more specific cases and actions.

Sen. Colletta cited what he perceived as inconsistencies in the proposed measure, and attributed the problems to the fact that the proposed bill addresses methodology. He feels that it is impossible to perfectly balance many subjective opinions as has been done in the case of this proposed bill.

0533

Sen. Colletta further stated that he had serious questions regarding the very first page of the bill, in which the Ethics Commission is given a responsibility to act upon things within a wide range of activity, however instances not spelled out in the bill are not considered to be under the purview of the Ethics Commission. The normal course of action, he said, would be to go to (the) Judiciary (branch) with a serious offense.

Sen. Fischer stated that the Commission would be issuing advisory opinions on what kinds of things constitute a violation of a prohibition. He acknowledged that there are many gray areas which cannot be covered specifically in the bill.

Sen. Stimson stated that the "former public officials" section needs clear parameters, that the committee needs to clarify "where we have areas of authority and where we don't".

Sen. Fischer stated that it needs to be done manageably.

- 0563 Sen. Stimson raised questions on the section "Offices of the Commission", stating that it must mean at least a dozen offices.
- 0587 Nancy Groszek, State Affairs Committee professional assistant, stated that the Commission would be able to contract with municipalities for office space. The concept was to provide easier access, particularly on a municipal level.
- 0619 Sen. Arliss Sturgulewski, a co-sponsor of SSSB 175, testified on the measure. She stated that she shared Sen. Stimson's concerns regarding former public officials. "We need to decide what the public purpose is," she stated. She cited trouble with the bill being too broad. Sen. Sturgulewski perceives problems in the present conflict of interest law. Although legislators file with the APOC information concerning their business interests, "nothing ties us into acknowledging that on the floor, or in a vote". She further stated that it is not a clear issue, and that it creates problems; she provided examples to the committee to illustrate her point. She stated that there is a need to create a way to bring potential conflicts before the body. Sen. Sturgulewski further stated that "if we are going to go into detail on what is ethical, the question of magnitude must be addressed." She added that more flexibility should be in the bill with respect to the functioning of the Ethics Commission.

(Sen. Stimson departed.)

- 0678 Sen. Bradley stated that he had many questions regarding the legislation, and he spoke to Sen. Sturgulewski's remarks on conflicts of interest. Sen. Bradley would like to see this area of the legislation clarified, although personally it does not present a problem for him as he has no conflicts. He stated that the bill before the committee is both too broad and too specific (depending upon the specific section under examination).

Sen. Fischer stated that the bill is designed not just to deal with the legislative branch, but with every bureaucrat, the "invisible people" who make life and death decisions. The scope of the legislation is much broader than just legislative activity. Sen. Fischer stated that the committee could continue to work on the bill, or could move it on to the Judiciary Committee and provide that committee with suggestions for proposed changes. He stated his willingness to "keep plugging away" if the members of the committee so desired.

Sen. Bradley stated, "I think we should have an ethics bill," and further that he thinks it will be hard to create one which will satisfy all of the many interested parties.

0726

Sen. Eliason suggested further examination of the areas in which the existing APOC and the proposed legislation come together, and expressed reservations about adding 16 employees to the state payroll. Sen. Eliason expressed a desire to continue work on the bill in the State Affairs Committee.

Sen. Colletta also expressed a desire to continue work on the legislation, and suggested the possibility that the State Affairs and Judiciary committees might work together on the bill.

Sen. Fischer asked that committee members provide as many specific suggestions for alternative approaches and language as they are able.

0744

Sen. Colletta stated that he had thought the legislation would address the legislative process alone...that the measure presently before the committee deals with "the whole bunch". He referred also to the APOC provision which enabled municipalities (which meet certain criteria) to opt-out, whereas the present bill has no such provision.

Sen. Fischer read a constituent public opinion message applauding efforts to pass a worthy and timely ethics bill.

Sen. Colletta reminded that the final judge of legislative action is the populous, and suggested that the Ethics Commission be given the power to determine what actions are ethical, and define its own parameters.

Sen. Fischer stated that Sen. Korttula favored a bill which "spells out as much as possible".

0794

Sen. Colletta stated that there is a need for ethics standards and operating procedures.

Sen. Bradley cited problems with the language in the section of the bill regarding gifts. He feels that use of the word "reasonable" is a legal vulnerability, and that he does not want a commission making determinations on what is reasonable.

Sen. Fischer said, "As Sen. Colletta said, the Commission needs discretionary power to decide."

0820

Sen. Fischer adjourned the meeting at 3:40 p.m.

OFFICE OF THE OMBUDSMAN
STATE OF ALASKA

SPECIAL REPORT 81-2

STANDARDS OF ETHICAL CONDUCT
FOR PUBLIC OFFICIALS AND EMPLOYEES
AND THE NEED FOR AN INDEPENDENT
ETHICS COMMISSION

FEBRUARY 11, 1981

FRANK FLETCHER
OMBUDSMAN

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I. INTRODUCTION

Legislative overview of administrative performance is a primary means of controlling administrative excess or abuse. Through investigation of complaints from the public the Ombudsman serves as a legislative agent in monitoring administrative activities. Because of the unique vantage point of the Office of Ombudsman, between citizen and government, it is in a position to offer a practical perspective to the Legislature on matters of administrative consequence.

In this spirit we recommended the establishment of a State Ethics Commission in our 1976 and 1977 Annual Reports. Our experience continues to indicate the need for such a commission.

The following allegations of misconduct of agency personnel have been investigated by the Office of Ombudsman.

77-0044 A professional board member delayed a competitor's licensing.

77-1062 A board member used his position for individual benefit.

77-0747 A board member issued an improper license to his business associate.

77-0515 A board member used privileged information to benefit his business.

78-0454, 0467, 0468 An agency supervisor revealed exam questions to a friend and subordinate who was in competition for an open position.

78-1294, 1308 A state custodian of surplus property to be auctioned was allowed to bid on the property.

79-0167 In 1975 three agency personnel formed a company that received a contract to redecorate their own state offices. [See "Interiors," Fifth Report of the Ombudsman, 1979, Page 7]

In 1980 the Office of the Ombudsman recommended that the Department of Transportation and Public Facilities establish their own conflict of interest policy as had been initially suggested by DOT/PF internal review personnel. [Ombudsman Complaint J79-0146] This recommendation was accepted and is attached as Appendix C.

The DOT/PF policy is commendable and a step in the right direction. However, it does not cover other departments nor does it have statutory or APA enforceability.

A similar recommendation was made to the Board of Fisheries, and the Board is considering the establishment of such a policy.

II. DEFICIENCIES IN PRESENT LAW

In examining the foregoing complaints we have concluded that the present law governing the ethical conduct of public officials and employees is deficient. AS 39.50 mandates disclosure of personal assets by public officials, but except for a brief section on conflict of interest (AS 39.50.090), does not establish comprehensive standards of ethical conduct. In the main, AS 39.50 addresses disclosure of personal assets, while largely ignoring the actual exercise of conflict of interest.

Present law provides few standards for the Ombudsman, supervisory personnel or the public to measure the ethical conduct of public officials and employees.

Specifically, AS 39.50 is deficient in the following respects:

A. AS 39.50.090 concerning conflicts of interest is vague and ambiguous.

1) AS 39.50.090 Prohibited Acts. provides:

- (a) No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock. (Emphasis added)

There may be several factors involved in an official granting an unfair advantage to another. Factors such as friendship or occupational, political or similar advantages may not be primarily financial, yet are certainly unethical considerations in conducting public affairs.

2) AS 39.50.090(b) provides:

No person may offer or pay to a public official, and no public official may solicit or receive money for legislative advice or assistance, or for advice or assistance given in the course of the officials public employment . . . (Emphasis added)

Again, this section does not cover the exchange of goods and services, equipment, real estate or occupational or similar advantages for the unethical provision of advice. Money may be at the root of all evil yet it hardly constitutes the sum of all evil in the public sector.

B. AS 39.50 is limited in application.

AS 39.50, particularly AS 39.50.090 is too limited in application as it only applies to high level public

officials and their close relatives and business associates. The need for ethical conduct, particularly in regard to conflict of interest, is as necessary for ordinary state employees as it is for high level officials. Many state employees, particularly in the purchasing and contracting areas, are more directly involved with the dispersal of large sums of money than public officials.

In an era when a substantial number of persons have established domestic units outside of marriage a conflict of interest law limited to family relationships is deficient in coverage.

C. AS 39.50 is limited in scope.

AS 39.50 does not adequately cover the following areas of ethical conduct:

- 1) The misuse of state equipment or facilities.
- 2) The release of confidential information for personal gain which is not available to members of the public.
- 3) Financial transactions with subordinates.
- 4) The use of privileged or confidential information for personal gain by former employees.
- 5) The assistance or representation of another person for personal gain by former employees in matters which the employee participated in while employed by the state.

While some of these areas may be covered by departmental or personnel rules there is no comprehensive statutory base providing comprehensive enforceable standards.

D. AS 39.50 provides insufficient guidance for public employees in questions of ethical conduct.

AS 39.50 establishes no procedures for public employees confronted by a conflict of interest situation. Further AS 39.50 does not provide a mechanism for the issuance of advisory opinions to public officials or employees who have an ethical question.

E. Present law does not provide an adequate enforcement mechanism for the maintenance of ethical standards.

There is a need for the establishment of an enforcement tribunal to provide for traditional measure of enforcement such as censure, suspension or removal of employees or officials who have abused their position.

The limited misdemeanor sanctions presently available through AS 39.50.090 are seldom invoked due to the harshness of the remedy. Prosecutorial caseloads are deterrent to any comprehensive enforcement through criminal law sanctions.

There is an additional need for a provision for the voiding of contracts or agreements entered into in violation of ethical standards.

III. PROPOSAL

Appendix A sets out draft legislation similar to that prepared in our Third Annual Report (1977) and introduced as HB 603 in the Tenth Legislature, Second Session.

This legislation establishes standards of conduct for public officials and employees. It provides for the establishment of an ethics commission (expanding APOC duties) to investigate breaches of ethical conduct and the issuance of advisory opinions.

APPENDIX A
DRAFT LEGISLATION

IN THE _____

BILL NO. _____
IN THE LEGISLATURE OF THE STATE OF ALASKA
_____ LEGISLATURE - _____ SESSION
A BILL

For an Act entitled: "An Act relating to a standard of conduct for public officials and employees; providing for a state Ethics Commission; and providing for an effective date."

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

* Section 1. AS 15.13.020(a) is amended to read:

Sec. 15.13.020. STATE ETHICS [ALASKA PUBLIC OFFICES] Commission.
(a) There is created in the office of the lieutenant governor the State Ethics [ALASKA PUBLIC OFFICES] Commission consisting of five members.

* Sec. 2. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, AS 39.55 and this chapter, subject to the provisions of the Administrative Procedure Act (AS 4.62);

* Sec. 3. AS 15.13.030 is amended by adding a new paragraph to read:
(11) administer the provisions of AS 39.55.

* Sec. 4. AS 24.45.021(a) is amended to read:

(a) This chapter shall be administered by the State Ethics [ALASKA PUBLIC OFFICES] Commission created under AS 15.13.020(a).

* Sec. 5. AS 39.50.020(b) is amended to read:

(b) The governor, lieutenant governor, members of the legislature, and candidates for these offices, judicial officers, each commissioner, head or deputy head of, or director of a division within, a department in the executive branch, assistant to the governor or chairman or member of a commission or board required to report under this chapter, shall file the statement with the State Ethics [ALASKA PUBLIC OFFICES] Commission. Municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

* Sec. 6. AS 39.50.050(a) is amended to read:

(a) The State Ethics [ALASKA PUBLIC OFFICES] Commission created under AS 15.13.020(a) shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution, standardized forms on which the reports required by this chapter shall be filed.

* Sec. 7 AS 39 is amended by adding a new chapter to read:
CHAPTER 55. STANDARDS OF CONDUCT.

Sec. 39.55.010. FINDINGS AND PURPOSE. The purpose of this chapter is to

(1) prescribe standards of conduct for public officials and employees of the state;

(2) educate the public with respect to ethics in government; and

(3) establish an ethics commission which will render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

Sec. 29.55.020. CONSTRUCTION. This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

Sec. 39.55.030. APPLICABILITY. This chapter applies to each nominated, appointed or elected public official, and to each employee of the state, including members of departments, boards, commissions, councils, committees, institutions, offices, corporations, authorities, organizations, and persons under personal service contract to the state.

Sec. 39.55.040. GIFTS. No public official or employee may solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part.

Sec. 39.55.050. CONFIDENTIAL INFORMATION. No public official or employee may disclose information which by law or practice is not available to the public and which he acquires in the course of his official duties, or use the information for his personal gain or for the benefit of anyone.

Sec. 39.55.060. FAIR TREATMENT. (a) No public official or employee may use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others. This prohibition includes

(1) seeking other employment or contract for services for himself by the use or attempted use of his office or position;

(2) accepting, receiving, or soliciting compensation or other consideration for the performance of his official duties or responsibilities except as provided by law;

(3) using state time, equipment or other facilities for private business purposes;

(4) soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom he inspects or supervises in his official capacity;

(5) all other uses or attempted uses of official position to secure or grant unwarranted privileges, exceptions, advantages, contracts or treatment.

(b) Nothing in this section may be construed to prohibit a legislator from introducing bills and resolutions, serving on committees, or from making statements or taking action in the exercise of his legislative functions.

Sec. 39.55.070. CONFLICT OF INTEREST. (a) No employee may take any official action directly affecting

(1) a business or other undertaking in which he has a substantial financial interest; or

(2) a private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

(b) A department head who is unable to disqualify himself on any matter described in (a) of this section is not in violation of this section if he has complied with the disclosure requirements of AS 39.50.020.

(c) A member of a board, commission, or committee, whose participation is necessary in order to constitute a quorum to conduct official business on any matter described in (a) of this section, is not in violation of this section if he has complied with the disclosure requirements of AS 39.50.020.

(d) No employee may acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

(e) No public official or employee may assist any person or business or act in a representative capacity before a state agency for a contingent compensation in any transaction involving the state.

(f) No public official or employee may assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee; nor may he assist any person or business or act in a representative capacity for a fee or other compensation on that bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

(g) No employee may assist any person or business or act in a representative capacity before a state agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if he has official authority over that state agency.

Sec. 39.55.080. ACTION UPON CONFLICT. (a) An employee who, in the discharge of his official duties, is required to take an action that is prohibited by this chapter and which would result in a conflict of interest.

(1) may not take the action;

(2) shall prepare a written statement describing the matter requiring action or decision, and the nature of the possible conflict of interest with respect to the action or decision; and

(3) shall deliver copies of the statement to the commission and to his immediate superior, if any.

(b) Upon receipt of a statement under (a) of this section, an employee's superior, if any, shall assign the matter to another employee who does not have a possible conflict of interest. If the employee has no immediate supervisor, he may seek advice from the commission to remove himself from influence over actions and decisions on the matter on which the possible conflict exists.

(c) The commission shall review the statement describing the matter requiring action or decision and the nature of the possible conflict of interest, and may advise the employee under sec. 130(2) of

this chapter. The commission may authorize its director to act in its place in instances where delay is of substantial inconvenience or detriment to the requesting party. Written advice issued under this subsection is confidential except that it may be included in materials referred to the appropriate body under secs. 150 and 160 of this chapter or may be subpoenaed by any court of record or legislative committee or appropriate agency. No person except the person who initially requested preparation of the statement may make the contents of any written advice or other records of the board public. It shall be prima facie evidence of intent to comply with this chapter when a person refers a matter to the commission and abides by the written advice.

(d) A state public official or employee may request the commission to obtain an advisory opinion from the attorney general on the application of this chapter to a given set of circumstances, real or hypothetical, or the commission may request such an opinion on its own motion.

Sec. 39.55.090. CONTRACTS. (a) A state agency may not enter into any contract with a public official or an employee or with a business in which a public official or an employee has a controlling interest, involving services or property of a value in excess of \$1,000, unless the contract is made after public notice and competitive bidding.

(b) A state agency may not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

(c) This section does not apply to a personal contract of employment with the state.

Sec. 39.55.100. CONTRACTS VOIDABLE. In addition to any other penalty provided by law, any contract entered into by the state in violation of this chapter is voidable on behalf of the state; however, in any action to avoid a contract under this section, the interests of third parties who may be damaged by the action shall be taken into account, and the action to void the transaction must be initiated within 60 days after the determination of a violation under this chapter. The attorney general has the authority to enforce this provision.

Sec. 39.55.110. RESTRICTIONS ON EMPLOYMENT. (a) No former public official or employee may disclose any information which by law or practice is not available to the public and which he acquired in the course of his official duties or use the information for his personal gain or the benefit of anyone.

(b) No former employee may, within 12 months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters in which he participated as an employee.

(c) No former employee may, within 12 months after termination of his employment, assist any person or business or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular state agency or subdivision of it with which he had actually served.

(d) This section does not prohibit any agency from contracting with a former public official or employee to act on a matter on behalf of the state within the period of limitations stated in this section, and does not prevent the public official or employee from appearing before any agency in relation to that contract.

Sec. 39.55.120. VIOLATION. (a) Any favorable state action obtained in violation of the standards for public officials and employees and former public officials and employees is voidable by the state in the same manner as contracts are voidable under sec. 100 of this chapter, and the attorney general may pursue all available legal and equitable remedies.

(b) The attorney general may recover any fee, compensation, gift or profit received by any person as a result of a violation of these standards by a public official or employee or former public official or employee. Action to recover under this subsection shall be brought within two years of the violation under this chapter.

Sec. 39.55.130. DUTIES OF COMMISSION. The State Ethics Commission created under AS 15.13.020 shall administer this chapter and has the following powers and duties:

(1) to issue regulations to implement and interpret the provisions of this chapter subject to judicial review in accordance with the provisions of the Administrative Procedure Act (AS 44.62);

(2) to render advisory opinions upon the request of any public official or employee or former public official or employee as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the standards; if no advisory opinion is rendered within 30 days after the request is filed with the commission, it is considered that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the standards; the opinion rendered or considered rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the public official or employee or former public official or employee who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the public official or employee or former public official or employee in the request for an advisory opinion;

(3) to initiate, receive and consider charges concerning alleged violation of this chapter, initiate or make investigations and hold hearings;

(4) to subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relating to any matter under investigation or in question before the commission; before the commission exercises any of the powers authorized in this section with respect to an investigation or hearing, it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry;

(5) to assume jurisdiction for purposes of investigation and of taking appropriate action on alleged violations of this chapter in all proceedings commenced within one year after termination of state employment by a public official or employee; nothing in this paragraph bars proceedings against a person who by fraud or other device prevents discovery of a violation of this chapter; a proceeding shall be considered commenced by the signing of a charge by three or more members of the commission;

(6) to publish yearly summaries of decisions, advisory opinions, and informal advisory opinions; the commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions;

(7) to distribute its publications without cost to the public and initiate and maintain programs with the purpose of educating the public and all legislators and employees on matters of ethics in government employment.

Sec. 39.55.140. COMPLAINT PROCEDURES. (a) Charges concerning a public official or employee or former public official or employee must be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission must be signed by three or more members of the commission. The commission shall notify in writing every public official or employee against whom a charge is received and afford him an opportunity to explain the conduct alleged to be in violation of this chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers provided in sec. 130 of this chapter, and proceedings at this stage may not be public. If the informal advisory opinion indicates a probable violation, the public official or employee or former public official or employee shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the public official or employee or former public official or employee fails to comply with the informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter has occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. He shall have 20 days after service to respond in writing to the charge and statement.

(b) Any commission member or individual, including the individual making the charge, who divulges information concerning the charge before the issuance of the complaint by the commission or, if the investigation discloses that the complaint should not be issued by the commission, at any time divulges any information concerning the original charge or divulges the contents or disclosures except as permitted by this chapter is guilty of a felony and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than five years, or by both.

(c) If, after 20 days following personal service, a majority of the members of the commission conclude that there is reason to believe that a violation of this chapter has been committed, the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. All parties shall have an opportunity to (1) be heard, (2) subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) be represented by counsel, and (4) have the right of cross-examination. All hearings shall be in accordance with AS 44.62. All witnesses shall testify under oath, and the hearings shall be closed to the public unless the party complained against requests an open hearing. The commission is not bound by the strict rules of evidence, but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of the record shall be available only to the complainant and the alleged violator at their own expense.

(d) A decision of the commission pertaining to the conduct of any public official or employee shall be in writing and signed by three or more of the members of the commission.

Sec. 39.55.150. PROCEDURE. (a) Public Officials and Employees Removable Only by Impeachment. When the commission, after hearings under sec. 140(d) of this chapter, determines that there is sufficient cause to file a complaint against a public official or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint shall contain a statement of the facts alleged to constitute the violation. If within 30 days after the referral the legislature has not disposed of the complaint, the commission shall make the charges public. Days during which the legislature is not in session are not included in determining the 30-day period.

(b) Public Officials and Employees other than Public Officials and Employees Removable Only by Impeachment. When the commission determines under sec. 140(d) of this chapter that there is sufficient cause to file a complaint against a public official or employee, other than a public official or employee removable only by impeachment, it shall refer the decision to the governor, for a public official or employee in the executive branch; to the legislature, for a public official or employee in the legislative branch; or to the chief justice of the supreme court, for a public official or employee of the judicial branch. The governor, legislature, or chief justice of the supreme court shall take appropriate action within 60 days and shall notify the commission of the action taken. If it is found that a violation has occurred, the governor, legislature, chief justice of the supreme court, or the commission by a vote of four members, may make the findings and the record of the proceeding public, taking into account the seriousness of the violation. This subsection does not prevent the commission from reporting decisions in the yearly summaries required by sec. 130(b) of this chapter.

(c) Former Employees. The commission may with the consent of four commissioners issue a public statement of its findings and conclusions, and the attorney general may exercise the legal or equitable remedies available to the state.

Sec. 39.55.160. DISCIPLINARY ACTION FOR VIOLATION. In addition to any other powers the personnel board or other appointing authority may have to discipline employees, the personnel board or appointing authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the standards of this chapter.

Sec. 39.55.180. DEFINITIONS. In this chapter,

(1) "business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit;

(2) "commission" means the State Ethics Commission;

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

(4) "controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than 50 per cent;

(5) "employee" means a nominated or appointed employee of the state, including members of departments, boards, commissions, councils, committees, institutions, offices, corporations, authorities, organizations, and persons under contract to the state; "employee" does not

include elected officials and judicial officers;

(6) "employment" means any rendering of services for compensation;

(7) "financial interest" means an interest held by an individual, his spouse, or minor children which is

(A) an ownership interest in a business,

(B) a creditor interest in an insolvent business,

(C) an employment, or prospective employment for which negotiations have begun,

(D) an ownership interest in real or personal property.

(E) a loan or other debtor interest,

(F) a directorship or officership in a business;

(8) "official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority;

(9) "official authority" includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action;

(10) "public official" means a judicial officer, a member of the legislature, the governor and the lieutenant governor.

(11) "state agency" includes a department, board, commission, council, committee, institution, office, corporation, authority or organization in the executive, legislative or judicial branch of state government, and a department, board, commission, council, committee, institution, office, corporation, authority or organization of the state government independent of the executive, legislative and judicial branches of state government.

* Sec. 8. AS 44.62.330(39) is amended to read:

(39) State Ethics [ALASKA PUBLIC OFFICES] Commission

* Sec. 9. AS 39.50.090 is repealed.

* Sec. 10. This Act takes effect July 1, 1978.

APPENDIX B

SEC. 39.50.090 PROHIBITED ACTS

Sec. 39.50.090. Prohibited acts. (a) No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock.

(b) No person may offer or pay to a public official, and no public official may solicit or receive money for legislative advice or assistance, or for advice or assistance given in the course of the official's public employment or relating to his public employment. However, this prohibition does not apply to a chairman or member of a state commission or board or municipal officer if the subject matter of the legislative advice or assistance is not related directly to the function of the commission, board, or municipal body served by the municipal officer; this exception from the general prohibition does not apply to one whose service on a state commission or board constitutes him a full-time state employee under AS 39.

(c) No public official may represent a client before a state agency for a fee. However, this prohibition does not apply to a municipal officer, or chairman or member of a state commission or board except with regard to representation before his own commission or board; this exception from the general prohibition does not apply to one whose service on the commission or board constitutes him a full-time state employee under AS 39.

(d) Violation of this section is a misdemeanor, punishable upon conviction by a fine of not less than \$500, nor more than \$2,000, by imprisonment up to one year, or by both.

(e) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a)(1), chairmen and members of all commissions and boards created by statute or administrative action as agencies of the state.

(f) No municipal officer may represent a client for a fee before the municipal body which he serves. (1974 Initiative Proposal No. 2, § 1; am § 12 ch 25 SLA 1975; am § 1 ch 40 SLA 1975; am §§ 2, 3 ch 211 SLA 1975)

APPENDIX C

DOT/PF CONFLICT OF INTEREST POLICY

MEMORANDUM

State of Alaska

TO Duncan Fouler
Ombudsman
Pouch WO
Juneau, Alaska

DATE: January 7, 1981

FILE NO: 200H-3109

TELEPHONE NO:

FROM R. D. Shumway
Deputy Commissioner
Design & Construction
Department of Transportation
and Public Facilities

SUBJECT: Ombudsman Complaint
No. J79-0146

Attached is DOT/PF Policy and Procedure, 10-0002, "Conflicts of Interest" issued November 5, 1980. This policy follows your recommendations of 2/26/80.

If I can be of further assistance, please let me know.

Attachment

cc: Frank Flavin
Ombudsman
840 K Street, Room 203
Anchorage, Alaska 99501

RDS/sh

POLICY AND PROCEDURES

Effective Date

November 5, 1980

SUBJECT

Supersedes P & P No.

Date

CONFLICTS OF INTERESTS

APPROVED BY

DIVISION

Commissioner

SECTION

Commissioner's Office

CHAPTER TITLE

Policies

PURPOSE:

To establish a policy and procedure to advise employees of their responsibility on possible "Conflicts of Interests."

POLICY:

It shall be the policy of the Department to comply with all State rules and regulations concerning "Conflicts of Interests" which affect employees. Absolute integrity on the part of departmental employees is essential if public confidence in the Department is to be maintained and employees should be guided by the following statements in addition to the Personnel Rules.

1. Excessive fraternization with contractor's key people is discouraged.
2. The solicitation or acceptance of a loan from any contractor, or his representative, doing business with the Department is forbidden.
3. Accepting outside employment with a contractor, or his representative, doing business with the Department is forbidden. Any other type outside employment will comply with P&P 10-0005.
4. Any act that could be interpreted as adversely influencing the ethical and proper discharge of an employee's duties is discouraged.

AUTHORITY:Personnel Rules:

- 13 12.0 Investments in Conflicts with Official Duties
- 13 13.0 Use of Information
- 13 14.0 Gifts and Favors
- 13 15.0 Purchases of Commodities and Supplies
- 13 16.0 Conflicts of Interests

DISTRIBUTION:

All holders of the Policy and Procedures Manual.

PROCEDURES:

All employees in the Department shall be given a copy of P&P 10-0002, "Conflicts of Interests" at the time of their appointment.

Any conflicts of interest arising from an act on the part of the employee shall be cause for immediate disciplinary action.

STATE OF ALASKA

RULE 13

PROHIBITIONS AND PENALTIES

13 12.0 Investments in Conflict with Official Duties

No employee or official of the State shall invest, or hold any investment directly or indirectly in any financial, business, commercial, or private transaction, which creates a conflict with his official duties.

13 13.0 Use of Information

No employee or official of the State shall use information peculiarly within his knowledge or purview concerning the property, government, or affairs of the State to advance the financial or other private interest of himself or others.

13 14.0 Gifts and Favors

No employee or official of the State shall accept any form of gift, loan, or any gratuity for the performance of his duties other than that afforded him by the State.

13 15.0 Purchases of Commodities and Services

No employee or official may be a party to the purchase of or influence the purchase of goods or services for the use of the State from any person, company or business in which he has substantial financial interest unless approved in advance by the Commissioner of Administration. Such approval shall be in written form and be open to inspection by the public.

13 16.0 Conflicts of Interests

No employee or official of the State shall engage in any business or transaction, or shall own a financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his official duties.

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS
BEEN FILMED.

**Model State
Conflict of Interest
and
Financial Disclosure Law**

NATIONAL MUNICIPAL LEAGUE
47 East 68th Street
New York, New York 10021