

ALASKA LEGISLATIVE COUNCIL FILED 1903-1900 00/2

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HJUD

HB 706

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STATE OF ALASKA
THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary 5-1-86

8:00 AM

Offered: 4/11/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391 (State Affairs) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

BY THE STATE AFFAIRS
COMMITTEE

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

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

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

11 CHAPTER 52. ALASKA EXECUTIVE BRANCH ETHICS ACT.

12 ARTICLE 1. DECLARATIONS.

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

25 (b) The legislature declares that it is the policy of the state,
26 when a public employee is appointed to serve on a state board or
27 commission, that the holding of such offices does not constitute the
28 holding of incompatible offices unless expressly prohibited by the
29 Alaska Constitution, this chapter and any opinions or decisions

1 rendered under it, or another statute.

2 ARTICLE 2. CODE OF ETHICS.

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

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

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

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

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

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

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

28 (c) The attorney general, designated supervisors, hearing offi-
29 cers, and the personnel board must be guided by this section when

1 issuing opinions and reaching decisions.

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

6 (b) A public officer may not

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

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

12 (3) use state time, property, equipment, or other facil-
13 ities to benefit personal or financial interests; or

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

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

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

27 (b) Notice of the receipt by a public officer of a gift with a
28 value in excess of \$50, including the name of the giver and a descrip-
29 tion of the gift and its approximate value, must be provided to the

1 designated supervisor within 30 days after the date of its receipt if
2 the public officer may take or withhold official action that affects
3 the giver.

4 (c) In accordance with AS 39.52.240, a designated supervisor may
5 request guidance from the attorney general concerning whether accep-
6 tance of a particular gift is prohibited.

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

11 Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a)
12 A current or former public officer may not disclose or use information
13 gained in the course of, or by reason of, the officer's official
14 duties that could in any way result in the receipt of any benefit for
15 the officer or an immediate family member, if the information has not
16 also been disseminated to the public.

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

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

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

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

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

6 (c) The prohibition in (a) of this section does not apply to a
7 state loan if

8 (1) the public officer does not take or withhold official
9 action that affects the award, execution, or administration of the
10 loan held by the officer, or an immediate family member;

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

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

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

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

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

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

28 (b) This section does not prohibit activities related to collec-
29 tive bargaining.

1 (c) This section does not preclude a non-salaried member of a
2 board or commission from representing, advising, or assisting in any
3 matter in which the member has a personal or financial interest reg-
4 ulated by the board or commission on which the member serves, except
5 that the member must act in accordance with AS 39.52.220.

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

11 (b) A public employee rendering services for compensation, or
12 engaging in employment outside the employee's agency, shall report by
13 July 1 of each year the outside services or employment to the employ-
14 ee's designated supervisor. During the year, any change in an employ-
15 ee's outside service or employment activity must be reported to the
16 designated supervisor as it occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 AS 39.52.110 -- 39.52.190.

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

9 (b) The attorney general may offer oral advice if delay would
10 cause substantial inconvenience or detriment to the requesting party.

11 (c) The designated supervisor or a board or commission shall
12 make a written determination based on the advice of the attorney
13 general. If the advice of the attorney general provides more than one
14 way for a public officer to avoid or correct a problem found under
15 AS 39.52.110 -- 39.52.190, the designated supervisor or the board or
16 commission shall, after consultation with the officer, determine the
17 alternative that is most appropriate and advise the officer of any
18 action required of the officer to avoid or correct the problem.

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

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

26 (f) A person may rely on an advisory opinion that is currently
27 in effect.

28 (g) A request for advice made under (a) of this section
29 confidential.

1 (h) The attorney general shall publish in the Alaska Administra-
2 tive Journal, with sufficient deletions to prevent disclosure of the
3 persons whose identities are confidential under (g) of this section,
4 the advisory opinions issued under this section that the attorney
5 general determines to be of major import because of their general
6 applicability to executive branch officers.

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

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

17 Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY
18 GENERAL REVIEW. (a) A designated supervisor shall quarterly submit a
19 report to the attorney general which states the facts, circumstances,
20 and disposition of any disclosure made under AS 39.52.210 -- 39.52.-
21 240.

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

26 (c) The report prepared under this section is confidential and
27 not available for public inspection unless formal proceedings under
28 AS 39.52.350 are initiated based on the report. If formal proceedings
29 are initiated, the relevant portions of the report are public

1 documents open to inspection. The attorney general shall, however,
2 make available to the public a summary of the reports received under
3 this section, with sufficient deletions to prevent disclosure of a
4 person's identity.

5 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

13 (c) If a complaint alleges a violation of AS 39.52.110 -- 39.-
14 52.190 by the governor, lieutenant governor, or the attorney general,
15 the matter shall be referred to the personnel board. The personnel
16 board shall retain independent counsel who shall act in the place of
17 the attorney general under (d) -- (i) of this section, AS 39.52.320 --
18 39.52.350, and AS 39.52.360(c) and (d).

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

27 (e) The attorney general may refer a complaint to the subject's
28 designated supervisor for resolution under AS 39.52.210 or 39.52.220.

29 (f) If the attorney general accepts a complaint for inves-

1 tigation, the attorney general shall serve a copy of the complaint
2 upon the subject of the complaint, for a response. The attorney
3 general may require the subject to provide, within 20 days after ser-
4 vice, full and fair disclosure in writing of all facts and circum-
5 stances pertaining to the alleged violation. Misrepresentation of a
6 material fact in a response to the attorney general is a violation of
7 this chapter. Failure to answer within the prescribed time, or within
8 any additional time period that may be granted in writing by the
9 attorney general, may be considered an admission of the allegations in
10 the complaint.

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

15 (h) A violation of this chapter may be investigated within two
16 years after discovery of the alleged violation.

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

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

28 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After deter-
29 mining that the conduct of the subject of a complaint does not warrant

1 a hearing under AS 39.52.360, the attorney general shall recommend
2 action to correct or prevent a violation of this chapter. The attorney
3 general shall communicate the recommended action to the complain-
4 ant and the subject of the complaint. The subject of the complaint
5 shall comply with the attorney general's recommendation.

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

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

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

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

29 (b) The subject of the accusation shall file an answer with the

1 attorney general within 20 days after service of the accusation, or at
2 a later time specified by the attorney general. If the subject of the
3 accusation fails to timely answer, the allegations are considered
4 admitted.

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

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

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

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

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

25 (d) The parties to a hearing are the attorney general and the
26 subject of the accusation. The subject of an accusation may be repre-
27 sented by counsel. Each party has an opportunity to be heard and
28 cross-examine witnesses, who shall testify under oath.

29 (e) The Administrative Procedure Act does not apply to hearings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 ARTICLE 5. ENFORCEMENT; REMEDIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

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

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

20 (3) accept a gift.

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

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

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

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

1 context requires otherwise,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (9) "financial interest" means

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (A) a public employee; and

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

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

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

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

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

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

1 shall

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

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

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

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

13 (5) elect a chairman from its membership;

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

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

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

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

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

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

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

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

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

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

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

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

19 * Sec. 8. AS 39.52.010, 39.52.210 -- 39.52.260, and 39.52.910 --
20 39.52.950, enacted in sec. 1 of this Act, and secs. 2 -- 7 of this Act take
21 effect July 1, 1986.

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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JUNEAU, ALASKA 99811
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May 2, 1986

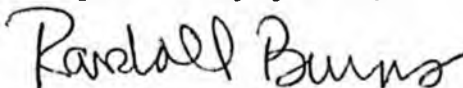
The Honorable Mike Miller
Chair, House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Miller:

Enclosed with this letter is a cut-and-paste comparison of AS 24.60, the Legislature's "Standards of Conduct," and the proposed Alaska Executive Branch Ethics Act [CSHB 706(SA)]. In addition, enclosed are a number of proposed amendments to the executive branch ethics bill. These amendments are proposed in response to comments made by members of your committee during yesterday morning's hearing on HB 706 and are submitted for your Committee's consideration.

Susan Cox and I stand ready to meet with any member of the House Judiciary Committee, or their staff, to discuss the bill generally, the enclosed proposed amendments, or any other matters related to HB 706. We look forward to the next meeting.

Respectfully yours,



Randall P. Burns
Special Assistant
to the Attorney General

Enclosure

cc: Susan D. Cox

HOUSE JUDICIARY COMMITTEE
PROPOSED AMENDMENTS TO CSHB 706 (SA)

Amendment No. 1:

Page 2
Line 11

(11) in a representative democracy, the representatives are drawn from society and, therefore, cannot always [AND SHOULD NOT] be without personal and financial interests in the decisions and policies of government;

Amendment No. 2:

Page 2
Line 21

(b) Unethical conduct is prohibited, but there is no substantial impropriety or the appearance of impropriety if, as to a specific matter, a public officer's...

Amendment No. 3:

Page 3
Line 13

(3) use state time, property, equipment, or other facilities in order to benefit a personal or financial interest [INTERESTS];

Amendment No. 4:

Page 4
Line 10

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OR INFORMATION. (a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties in order to [THAT COULD RESULT IN THE RECEIPT OF A] benefit a personal or financial interest of [FOR] the officer or an immediate family member, unless the information has also been disseminated to the public.

Comparison of AS 24.60 (the Legislature's "Standards of Conduct") and Proposed AS 39.52 (the "Executive Branch Ethics Act")

AS 24.60

Sec. 24.60.010. Legislative findings and purpose. The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this act to establish standards of conduct for state legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter. (S 1 ch 36 SLA 1984)

Sec. 24.60.020. Applicability. (a) This chapter applies to a member of the legislature and to a permanent or temporary employee of an agency of the legislature. This chapter does not apply to

(1) a former member of the legislature or to a person formerly employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature;

(3) a person employed by the legislature or an employee of an agency of the legislature whose compensation is below Step A, Range 18 of the state salary schedule established in AS 39.27.011(a).

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature. They do not supersede or repeal provisions of the criminal laws of the state. (S 1 ch 36 SLA 1984)

AS 39.52

Sec. 39.52.010. DECLARATION OF POLICY. (a) It is declared (1) that high moral and ethical standards among public officers in the executive branch are essential to the conduct of free government; and (2) that the legislature believes that a code of ethics for the guidance of public officers will discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this state in their public officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute

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

(b) The provisions of this chapter supersede the common law on conflicts of interests that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, excluding nepotism, adopted under AS 39.25. However, nothing in this chapter precludes a prosecution under an applicable criminal statute nor prevents enforcement of another state law that imposes a stricter standard of ethical conduct on public officers.

(c) The provisions of this chapter are not subject to negotiation by collective bargaining under AS 23.40 or AS 42.40.720 - 42.40.880.

AS 24.60

Misuse of Official Position

Sec. 24.60.030. ~~_____~~. (a) A person to whom this chapter applies may not use public office for private advancement or gain.

Scope of Standards AS 24.60.030 (b) - (e)

(b) A conflict of interest exists when a person to whom this chapter applies takes or withholds official action or exerts official influence that could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(c) Conflicts of interest are prohibited but there is not a conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant;

(2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action.

(d) A conflict exists if benefits accrue to a person to whom this chapter applies beyond that which may accrue uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

(e) It is not a conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence within the state, including meals, lodging or transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event;

(4) food and foodstuffs indigenous to the state that are generally shared as a cultural or social norm;

(5) gifts from the person's family; or

(6) gifts of nominal value given by a nonprofit organization in recognition of public service by the recipient.

Campaign Contributions AS 24.60.030 (f) and (g)

(f) It is a conflict of interest for a member of the legislature to accept money from an event held within the capital city during the session if a substantial purpose of the event is to raise money on behalf of the member for state legislative campaign purposes or for other state legislative political purposes.

(g) Members of the legislature elected to represent the capital city are exempt from the requirements of (f) of this section. (S 1 ch 36 SLA 1984)

(see also AS 24.60.080 "Gifts")

Sec. 24.60.080. Gifts. Unless otherwise provided for under AS 24.60.030, a person to whom this chapter applies may not solicit a gift in any amount, or accept or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, if the gift was intended as a reward or inducement for an official action by the person. A gift of travel and hospitality within the state received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section, nor are political contributions received and reported under AS 15.13.040. (S 1 ch 36 SLA 1984)

AS 39.52

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

Sec. 39.52.110. SCOPE OF CODE. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature affirms that this chapter does not prevent an officer from following other independent pursuits so long as these pursuits do not interfere with the full and faithful discharge of an officer's public duties and responsibilities. The legislature further recognizes that

(1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;

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

(3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

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

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

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board shall be guided by this section when issuing opinions and reaching decisions.

Campaign Contributions AS 39.52.130 (d)

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

Contracts or Leases

Sec. 24.60.040. Contracts or leases. (a) A person to whom this chapter applies may not be a party to or have an interest in a state contract or lease unless the contract or lease is let under AS 37.05.230 or the total annual amount of the state contract or lease is \$1,000 or less, or is a standardized contract or lease which was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation or group. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefit.

(b) In this section, "direct or indirect financial benefits" means income, profits or other financial benefits under a state contract, without regard to whether the income, profits or other financial benefits ensue to the person as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor. (1 ch 36 SLA 1984)

Sec. 24.60.045. Hazardous waste contracts. A legislative staff member may not solicit or receive a contract concerning hazardous waste from a state agency or department other than the legislature during the interim following a session in which the person worked. This section applies to legislative staff members Range 18 or higher. In this section "hazardous waste" has the meaning given in AS 46.03.900. (10 ch 77 SLA 1984)

Loans

Sec. 24.60.050. State loans. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification. The committee shall issue a list of those state programs and loans from the state that it considers to meet the standards of this paragraph within 30 days after July 19, 1984. It shall annually issue a revised list.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a person to whom this chapter applies may be in a position to influence the loan agency, the committee must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the person shall send a notice of the application to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement or if the applicant is not required to file a disclosure statement will place the notice in a legislative employee-loan file that is open to the public. All records relating to a state loan to a person to whom this chapter applies may be disclosed to the committee.

(d) Each February 1, each state loan agency must deliver a listing of all outstanding loans to persons to whom this chapter applies, except for loans described in (a) of this section, to the presiding officer of each house. The list must include the name of the person, the date of issuance and current status of the loan. The list shall be published in the supplemental journal.

(e) The division of legislative audit shall annually review state loans granted to or held by persons to whom this chapter applies to determine whether appropriate procedures are observed in granting or reviewing the loans and whether loan conditions imposed by the lending agency are being enforced. The division shall report its findings to the committee by April 1.

(f) In this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private person. (1 ch 36 SLA 1984)

Grants, Contracts, Leases or Loans

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

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

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

(2) takes official action with respect to the award, execution, or administration of the grant, contract, or lease.

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

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

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

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

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

AS 24.60

Use or Disclosure of Confidential Information

Sec. 24.60.060. Confidential information. It is a conflict of interest if a person to whom this chapter applies willfully discloses, or knowingly uses, for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties. (§ 1 ch 36 SLA 1984)

Interests Between Public Officials

Sec. 24.60.070. Interests between public officials. A person to whom this chapter applies shall disclose in the journal of the appropriate body or if the legislature is not in session to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session, the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

(2) legislators;

(3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50;

(4) a registered lobbyist who is not a member of the immediate family of the person. (§ 1 ch 36 SLA 1984)

Gifts

Sec. 24.60.080. Gifts. Unless otherwise provided for under AS 24.60.030, a person to whom this chapter applies may not solicit a gift in any amount, or accept or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, if the gift was intended as a reward or inducement for an official action by the person. A gift of travel and hospitality within the state received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section, nor are political contributions received and reported under AS 15.13.040. (§ 1 ch 36 SLA 1984)

Nepotism

Sec. 24.60.090. Nepotism. (a) A spouse or an individual other than a spouse who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in either house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother, father, sister, or brother.

(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided.

(c) For purposes of this section, a legislator is not an employee of the legislature. (§ 1 ch 36 SLA 1984)

AS 39.52

Use or Disclosure of Confidential Information - AS 39.52.140(d)

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

Supervisor/Subordinate Relationship AS 39.52.120(b)(5)

A public officer may not:

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

Gifts

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

(b) A public officer shall notify the officer's designated supervisor of the receipt of a gift with a value in excess of \$50, including the name of the giver, a description of the gift, and its approximate value, within 30 days after the date of its receipt if the public officer may take or withhold official action that affects the giver.

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

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

Nepotism

AS 39.52.910(b):

(See also AS 39.51.030)

(b) The provisions of this chapter supersede the common law on conflicts of interests that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, excluding nepotism, adopted under AS 39.25. However,

AS 24.60

Representation

Sec. 24.60.100. **Representation.** A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session. (§ 1 ch 36 SLA 1984)

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Use of State Property & Funds

Sec. 24.60.120. **State property and funds.** A person to whom this chapter applies may not use state property, except property under lease from the state, or state funds for private gain. (§ 1 ch 36 SLA 1984)

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AS 39.52

Representation

Sec. 39.52.160. **IMPROPER REPRESENTATION.** (a) A public officer may not represent, advise, or assist a person in any matter pending before the administrative unit that the officer serves, if the representation, advice, or assistance is

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

(2) without compensation, but rendered to benefit a personal or financial interest of the public officer.

(b) This section does not prohibit activities related to collective bargaining.

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

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Use of State Property AS 39.52.120(b)(3)

A public officer may not:

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

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Misuse of Official Position (cont.) AS 39.52.120(b)(1), (2) and (4)

(b) A public officer may not

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

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

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

—

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a)

A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could result in the receipt of a benefit for the officer or an immediate family member, unless the information has also been disseminated to the public.

(b) In this section, information is considered disseminated to the public if an agency has publicized it by

(1) distribution or circulation in an agency publication, report, or notice that is available to the public;

(2) public announcement by press release, telecast, broadcast, or other means;

(3) the normal forms of conveyance of public information used by the agency; or

(4) the giving of a public speech, legislative testimony, comments at a press conference, or presentation at other public forums.

(c) A simple communication, whether written, oral, or telephonic, does not meet the standard imposed by this section; rather, dissemination implies and requires a public distribution of the information, so that the information transmitted becomes public in a more general sense and is dispersed or conveyed in a way calculated to more broadly inform.

Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. (a)

A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

(b) A public employee rendering services for compensation or engaging in employment outside the employee's agency shall report by July 1 of each year the outside services or employment to the employee's designated supervisor. The employee shall also report a change in the employee's outside service or employment activity to the designated supervisor when the change occurs.

Sec. 39.52.150. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. (a)

A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by the officer and in which the officer participated personally and substantially through the exercise of official action. In this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) Nothing in this section prohibits an agency from contracting with a former public officer to act on a matter on behalf of the state.

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

Action on a Conflict

Sec. 24.60.110. Action on a conflict of interest. A legislator who knowingly has a conflict of interest or has been notified of a conflict of interest shall immediately

- (1) resign the conflicting position;
- (2) divest the interest that has resulted in the conflict or potential conflict; or
- (3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session but disclosure does not remove the conflict of interest. (R 1 ch 36 SLA 1984)

Sec. 39.52.190. AIDING A VIOLATION PROHIBITED. It is a violation of this chapter for a public officer to knowingly aid another public officer in a violation of this chapter.

Declaration of Potential Violations by Employees and Members of Boards/Commissions

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

- (1) refrain from taking any official action relating to the matter until a determination is made under this section; and
- (2) immediately disclose the matter in writing to the designated supervisor.

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

- (1) reassign duties to cure the employee's potential violation, if feasible; or
- (2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

(c) A designated supervisor may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public employee is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190.

Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS. (a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor. The supervisor shall determine whether the member's involvement violates AS 39.52.110 - 39.52.190. If a supervisor discloses a matter that may result in a violation of AS 39.52.110 - 39.52.190, or if a member of the board or commission objects to a ruling of a supervisor, the members present at a meeting, excluding the involved member, shall vote on the matter. If the supervisor or a majority of the members voting determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter.

(b) The designated supervisor or the board or commission may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a member of a board or commission is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190.

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

Select Committee on Ethics

Sec. 24.60.130. Select committee on legislative ethics. (a) There is established within the legislative branch of state government the Select Committee on Legislative Ethics.

(b) The committee consists of seven members, in two subcommittees, as follows:

(1) the senate subcommittee consists of three members of the senate, appointed by the president of the senate with the concurrence by roll call vote of two-thirds of the full membership of the senate; and

(2) the house subcommittee consists of three members of the house, appointed by the speaker of the house with the concurrence by roll call vote of two-thirds of the full membership of the house; and

(3) one public member, who is selected by two-thirds of each subcommittee and who is ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house, shall serve on both the full committee and each subcommittee

(c) No more than two legislative members of each subcommittee may be members of the same political party or the same organizational caucus.

(d) The members of each subcommittee shall elect a chair. The chair selected by the senate subcommittee shall chair the full committee in odd-numbered years and the chair selected by the house subcommittee shall chair the full committee in even-numbered years.

(e) A vacancy on the committee shall be filled under (b) of this section.

(f) The committee or a subcommittee may contract for professional services and may employ staff as it considers necessary.

(g) Each member serves for the duration of the legislature during which the member is appointed.

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an advisory opinion requested by the member. When a legislative member is disqualified under this subsection, the presiding officer of that member's house shall, with the concurrence by roll call vote of two-thirds of the full membership of that house, appoint another member from that house to act as a member of the committee in the proceeding. (§ 1 ch 36 SLA 1984)

Sec. 24.60.140. Authority of the committee. (a) The senate subcommittee has authority over proceedings concerning conduct by a member or former member of the senate or a person employed by a member or a committee of the senate.

(b) The house subcommittee has authority over proceedings concerning the conduct by a member or former member of the house or a person employed by a member or a committee of the house.

(c) The full committee has authority

(1) over proceedings concerning the conduct by an employee of an agency of the legislature;

(2) to review any matter arising under this chapter that would result in action being required by both houses of the legislature; and

(3) to issue advisory opinions under AS 24.60.160. (§ 1 ch 36 SLA 1984)

Sec. 24.60.150. Duties of the committee. (a) The committee shall

(1) adopt procedures to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) publish semi-annual summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions that have remained confidential.

(b) The committee may

(1) recommend legislation to the legislature the committee considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(2) subpoena witnesses, administer oaths, and take testimony relating to matters before the committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee. (§ 1 ch 36 SLA 1984)

AS 24.60

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Advisory Opinions

Sec. 24.60.160. Advisory opinions. The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended by the committee for not more than an additional 10 days if the person requesting the opinion consents. The opinion issued is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential but may be made public if a written request by the person who requested the opinion is filed with the committee. (S 1 ch 36 SLA 1984)

Advisory Opinions

Sec. 39.52.240. ADVISORY OPINIONS. (a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall issue an opinion interpreting this chapter. The requester shall supply any additional information requested by the attorney general in order to issue the opinion. Within 60 days after receiving a complete request, the attorney general shall issue an advisory opinion on the question.

(b) The attorney general may offer oral advice if delay would cause substantial inconvenience or detriment to the requesting party, but the attorney general shall provide a brief written statement, summarizing the content of the oral advice, to the designated supervisor within two working days of the proffered advice.

(c) The designated supervisor or a board or commission shall make a written determination based on the advice of the attorney general. If the advice of the attorney general provides more than one way for a public officer to avoid or correct a problem found under AS 39.52.110 - 39.52.190, the designated supervisor or the board or commission shall determine the alternative that is most appropriate after consultation with the officer, and shall advise the officer of action required to avoid or correct the problem.

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

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

(f) A person may rely on an advisory opinion that is currently in effect.

(g) A request for advice made under (a) of this section is confidential.

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

Advice to Former Public Officers

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

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

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Sec. 39.52.240. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY

GENERAL REVIEW. (a) A designated supervisor shall submit a quarterly report to the attorney general that states the facts, circumstances, and disposition of disclosures made under AS 39.52.210 - 39.52.240.

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

(c) The report prepared under this section is confidential and not available for public inspection unless formal proceedings under AS 39.52.350 are initiated based on the report. If formal proceedings are initiated, the relevant portions of the report are public documents open to inspection. However, the attorney general shall make available to the public a summary of the reports received under this section, with sufficient deletions to prevent disclosure of each person's identity.

Complaints; Proceedings

Sec. 24.60.170. Proceedings before the committee. (a) The committee may initiate, receive and consider complaints alleging a violation of this chapter.

(b) The committee may investigate a violation of this chapter in a proceeding begun within two years after the alleged violation occurs and within one year after termination of state service. Nothing in this subsection bars proceedings against a person who intentionally prevents discovery of a violation of this chapter.

(c) Before the committee may exercise power authorized in this section, the committee shall by resolution supported by a majority vote of the full membership of the committee, define the nature and scope of the inquiry. The committee shall investigate all complaints on a confidential basis.

(d) A proceeding is commenced by the filing of a complaint with the committee. A complaint may be initiated by any person. A complaint shall be in writing and signed under oath by the person making the complaint. No complaint, other than a complaint initiated by at least two-thirds of the members of the committee, may be filed within a period of 60 days preceding a state primary or general election. All proceedings pending before the committee on the 60th day preceding a state primary or general election are stayed until certification of the election unless the proceedings are based on a complaint initiated by at least two-thirds of the members of the committee. The committee shall not file in writing a person against whom a complaint has been filed a stay of the proceeding. If the person objects in writing to the stay the proceedings shall continue.

(e) The committee shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter. If the committee determines that a complaint does not contain allegations of facts sufficient, if the alleged facts are treated as true, to constitute a violation of this chapter, the committee may summarily dismiss the complaint.

(f) The committee shall investigate the charges filed under this section and issue an opinion to the person alleged to have violated a provision of this chapter.

(g) If the committee determines that a probable violation exists that may be corrected by action of the person and that does not warrant sanctions other than correction, the opinion shall recommend corrective action. The person against whom the complaint was made may comply with the opinion or may request a hearing before the committee. After the hearing the committee may amend or affirm the opinion.

(h) If the person fails to comply with the opinion or if a majority of the members of the committee determine that there is probable cause for belief that a violation of this chapter that may not be corrected under (g) of this section has occurred, the committee shall formally charge the person. The charge and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the charge and statement to respond in writing to the committee.

(cont.)

Complaints; Hearing Procedures
Actions of Attorney General and
Personnel Board

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

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

(c) If a complaint alleges a violation of AS 39.52.110 - 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) - (i) of this section, AS 39.52.320 - 39.52.350, and 39.52.360.

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

(e) The attorney general may refer a complaint to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220.

(f) If the attorney general accepts a complaint for investigation, the attorney general shall serve a copy of the complaint upon the subject of the complaint, for a response. The attorney general may require the subject to provide, within 20 days after service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the attorney general is a violation of this chapter. Failure to answer within the prescribed time, or within any additional time period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.

(cont.)

(j) The committee may set a time and place for a hearing before the committee with a minimum of 10 days notice to the complainant, if any, and to the person charged with a violation of this chapter. A representative of the committee and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. Hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The committee is not bound by the rules of evidence but the committee's findings must be based upon competent and substantial evidence. Testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence are available only to the committee and its staff and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the committee without charge.

(k) A decision of the committee shall be in writing and signed by the majority of the members of the committee. Each decision of the committee must be accompanied by a written order of the committee determining that a violation of this chapter exists or does not exist. The order is confined to this determination. This order is a public record.

(l) If the committee issues a decision finding that a member of the legislature has violated a provision of this chapter or that a legislator has declined or failed to cooperate with the committee, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation or the failure to cooperate and may contain recommendations concerning any penalties the legislature may lawfully impose. The committee shall make the decision public 30 days after the referral. The legislature shall act on the decision as it considers appropriate.

(m) If the majority of the members of the committee agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the committee shall issue a public statement of its decision 30 days after the date of the decision. The legislature shall act on the decision as it considers appropriate. In the case of an employee the action may include suspension, demotion, or dismissal. The employee is entitled to a hearing before final action is taken.

(n) A committee member or member of the committee staff who divulges information concerning a proceeding, except as permitted by this chapter, is guilty of a class A misdemeanor. (S 1 ch 36 SLA 1984)

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

(h) A violation of this chapter may be investigated within two years after discovery of the alleged violation.

(i) The unwillingness of a complainant to assist in an investigation, the withdrawal of a complaint, or restitution by the subject of the complaint may, but need not in and of itself, justify termination of an investigation or proceeding.

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

Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After determining that the conduct of the subject of a complaint does not warrant a hearing under AS 39.52.360, the attorney general shall recommend action to correct or prevent a violation of this chapter. The attorney general shall communicate the recommended action to the complainant and the subject of the complaint. The subject of the complaint shall comply with the attorney general's recommendation.

Sec. 39.52.340. CONFIDENTIALITY. (a) Before the initiation of formal proceedings under AS 39.52.350, information regarding an investigation conducted under this chapter, or obtained by the attorney general during the investigation, is confidential. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation.

(b) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

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

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

Sec. 39.52.350. PROBABLE CAUSE FOR HEARING. (a) If the attorney general determines that there is probable cause to believe that a knowing violation of this chapter or a violation that cannot be corrected under AS 39.52.330 has occurred, or that the subject of a complaint failed to comply with a recommendation for corrective or preventive action, the attorney general shall initiate formal proceedings by serving a copy of an accusation upon the subject of the accusation. The accusation shall specifically set out the alleged violation. After service, the accusation is a public document open to inspection. Except as provided in AS 39.52.370(c), all subsequent proceedings are open to the public.

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

(cont.)

(c) If the subject of the accusation denies that a violation of this chapter has occurred, the attorney general shall refer the matter to the personnel board, which shall appoint a hearing officer to conduct a hearing.

(d) If the subject of the accusation admits a violation of this chapter, the attorney general shall refer the matter to the personnel board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.450, as appropriate.

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

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

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

(d) The parties to a hearing are the attorney general and the subject of the accusation. The subject of an accusation may be represented by counsel. Each party has an opportunity to be heard and cross-examine witnesses, who shall testify under oath.

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

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

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

(h) Within 10 days after the conclusion of a formal hearing, the hearing officer shall serve a written report on the personnel board and the parties, unless the personnel board grants an extension of time. The report must contain the officer's findings of fact, conclusions of law, and recommendation. The hearing officer shall submit the record to the personnel board.

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

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

(cont.)

(c) The personnel board shall review each report submitted by a hearing officer and shall either adopt or amend the findings of fact, conclusions of law, and recommendation of the officer. Deliberations of the personnel board must be conducted in sessions closed to the public.

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

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

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

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

(b) Subpoenas shall be served in the manner prescribed by AS 44.2.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

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

Enforcement and Remedies

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

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

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

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

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

(cont.)

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

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

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

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

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

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

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

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

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

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

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

Sec. 24.60.180. Cooperation by state agencies. Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the committee or a subcommittee by providing information and assistance, including disclosure of financial material and other records relating to a potential violation of this chapter. (§ 1 ch 36 SLA 1984)

Sec. 24.60.190. Definition of "committee." In this chapter, "committee" means the Select Committee on Legislative Ethics or where appropriate, the applicable subcommittee. (§ 1 ch 36 SLA 1984)

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

- (1) acquire a personal interest in an organization or a financial interest in a business or undertaking that may benefit from official action taken or withheld by the agency or unit;
- (2) have a personal or financial interest in a state grant, contract, lease, or loan administered by the agency or unit; or
- (3) accept a gift.

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

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

Sec. 39.52.950. REGULATIONS. The attorney general may adopt regulations under the Administrative Procedure Act necessary to interpret and implement this chapter.

Sec. 39.52.960. DEFINITIONS. In this chapter, unless the context requires otherwise,

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

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

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

(4) "board or commission" means a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad;

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

(6) "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 the person for another;

(cont.)

(7) "designated supervisor" or "supervisor" means

(A) the commissioner of each department in the executive branch, for public employees within the department;

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

(C) the chief executive officer of the Alaska Railroad, for railroad employees;

(D) the attorney general, for the governor and lieutenant governor;

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

(F) the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and

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

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

(8) "financial interest" means

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

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

(9) "gain" includes actual or anticipated gain, benefit, profit, or compensation;

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

(11) "instrumentality of the state" means a state agency or administrative unit, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska, the Alaska Railroad, and any public or quasi-public corporations, boards, or commissions; and municipalities;

(12) "nonsalaried member of a board or commission" means a member of a board or commission who is not a public employee by virtue of membership on a board or commission; receipt of per diem, nominal compensation for attendance at meetings, and travel expense reimbursement does not make a member of a board or commission a public employee for purposes of this chapter;

(13) "official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

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

(15) "person" includes a natural person, a business, and an organization;

(cont.)

AS 24.60

AS 39.52

(16) "personal interest" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, non-profit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit; in this paragraph "parent" includes a biological parent, an adoptive parent, and a step-parent of the public officer;

(17) "personnel board" or "board" means the personnel board established in AS 39.25.060;

(18) "public employee" or "employee" means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service;

(19) "public officer" or "officer" means

(A) a public employee; and

(B) a member of a board or commission;

(20) "source of income" means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or child, or a combination of them, holds a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source; in this paragraph "child" includes a biological child, an adoptive child, and a stepchild.

Personnel Board → 39.25.060

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

(c) A board member may be removed by the governor only for cause [HOLDS OFFICE AT THE PLEASURE OF THE GOVERNOR NOT WITHSTANDING THE MEMBER'S TERM].

Sec. 3. AS 39.25.070 is amended to read:

Sec. 39.25.070. POWERS AND DUTIES OF PERSONNEL BOARD. In addition to the other duties imposed by this chapter, the personnel board shall

(1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.160;

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

(3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170;

(4) establish its own rules of procedure (two members constitute a quorum for the transaction of business and two affirmative votes are required for final action on matters acted upon by the board);

(5) elect a chairman from its membership;

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

(cont.)

AS 24.00

AS 39.52

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

(8) retain independent counsel as required under AS 39.52.310(c);

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

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

(11) impose penalties under AS 39.52.410, 39.52.440, and 39.52.450.

Sec. 4. AS 42.40.710 is amended to read:

Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39, except AS 39.52, do not apply to employees of the corporation.

For Bill/Resolution No. CSHB 430 (Fin) Page 2 of 3

Protection in the Department of Law, the Office of the Ombudsman, and the Department of Health and Social Services, Communicable Disease Control Section. Licensing of Audiologists and hearing aid dealers may be one instance where the need for licensure out-weighs the small number of practitioners.

An estimate of operating costs derived from comparing qualifications and numbers of practitioners with a similar existing license function indicate the costs to total \$4.5 each year. Of the yearly costs; \$.1 is expected to be new costs as a result of this legislation, for printing of application and statute booklets. The remainder of \$4.4 consists largely of personal services costs which would be absorbed by the division through funding already included in the agency's operating budget.

The following fee schedule was developed so that fees generated over the four-year renewal cycle would match, as closely as possible, costs over the same period.

Revenues were estimated on the following fee schedule:

Application Fee	\$ 30	
Credentials Review Fee	20	
Temporary Permit Fee	100	
Audiologist:		
License & Renewal Fee	520	quadrennially (\$130 annually)
Hearing Aid Dealers	200	annually

As a result of quadrennial licenses issued to Audiologists, revenues collected in FY 87 essentially cover a portion of the costs in FY 88 to FY 90. A detailed description follows:

FY 87:			
12 Audiologists seeking licensure	\$ 6.2		
10 Hearing Aid Dealers	2.0		
22 Application/Credentials Review	1.1		
	<u>\$ 9.3</u>		
		\$ 9.3	
		- 4.5	costs
		<u>\$ 4.8</u>	balance
FY 88:			
Assuming there will be two new applicants seeking Audiology temporary permits	\$.2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License fee	.4		
10 Hearing Aid Dealers renewing	2.0		
	<u>\$ 2.7</u>		
		\$ 4.8	balance forward
		<u>2.7</u>	
		<u>\$ 7.5</u>	
		- 4.5	costs
		<u>\$ 3.0</u>	balance

FY 89:

Assuming there will be two new applicants seeking Audiology temporary permits	\$.2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
12 Hearing Aid Dealers	2.4		
	<u>\$ 3.1</u>		
		\$ 3.0	balance forward
		<u>3.1</u>	
		<u>\$ 6.1</u>	
		- 4.5	costs
		<u>\$ 1.6</u>	balance

FY 90:

Assuming there will be two new applicants seeking Audiology temporary permits	\$.2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
14 Hearing Aid Dealers renewing	2.8		
	<u>\$ 3.5</u>		
		\$ 1.6	balance forward
		<u>3.5</u>	
		<u>\$ 5.1</u>	
		- 4.5	costs
		<u>\$.6</u>	balance

FY 91 will be the start of a new quadrennial license period for Audiologists, and is the reason for revenues increasing from \$3.5 in FY 90 to \$10.1 in FY 91.

FY 91:

Assuming there will be one new applicant seeking licensure as an Audiologist	\$.5		
2 new Hearing Aid Dealers, license fee	.4		
Application & Credentials fee for 3 new applicants	.2		
12 Audiologists renewing	6.2		
14 Hearing Aid Dealers renewing	2.8		
	<u>\$10.1</u>		

REQUEST Page 1 of 3 Revision Date: 4-3-86
 Bill/Resolution No. HB 706 (SSSB 391) FISCAL DETAIL
 Title: Act relating to the ethical Agency Affected: Department of Administration
conduct of government. BRU: Division of Personnel

Sponsor: Rules by request of Governor Components: _____
 Requestor: Governor's Office
 Date of Request: 4-1-86

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	7.9	13.2	10.6	7.9	7.3
CONTRACTUAL	0	32.0	50.1	39.5	28.8	11.2
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	39.9	63.3	50.1	36.7	23.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	39.9	63.3	50.1	36.7	23.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	39.9	63.3	50.1	36.7	23.5

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary See attached.

Prepared By: Frank Raye, Director *Frank Raye* HAND DELIVERED
 Division: Personnel Phone: 465-4430
 Date: 4/3/86

Approved by Commissioner: Eleanor Andrews *Eleanor Andrews* Date: 4/4/86
 Agency: Department of Administration

REQUEST Page 1 of 3 Revision Date: 4/3/86
 Bill/Resolution No.: CSSB 430 (FIN) FISCAL DETAIL
 Title: Regulating audiologists, Agency Affected: Commerce & Econ. Dev.
hearing aid dealers & dispensing BRU: Occupational Licensing
of hearing aids
 Sponsor: House HESS Components: _____
 Requestor: House Finance Committee
 Date of Request: 4/3/86

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE		10.3	2.7	3.1	3.5	10.3

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

The \$100 estimated as needed for printing of applications and statute booklets can be absorbed within the Department's FY 87 budget.

Prepared by: Al Adams, Chair *APA* Phone: 465-3706
 Division: House Finance Committee Date: 4/3/86

Approved by Commissioner: _____ Date: _____
 Agency: _____

For Bill/Resolution No. CS FOR HB 15 (C&RA) page 2 of 2

HB 706 (SSSB 391)

page 2 of 3

This fiscal note was developed on the basis of two elections per year from areas outside municipalities wishing to be annexed. It assumes that one request would be received from a punch card precinct and the other from a handmarked precinct. The cost for a punch card precinct is \$5.8 while a handmarked precinct is \$2.8. Computer counted (punch card) precincts are generally higher due to the need for computer programming and a Data Processing Review Board to oversee the computer counting of ballots.

We have specified the costs for each type of precinct so that if there were more than two such elections administered by the State within a year, the Legislature could identify the potential costs by multiplying the precinct cost by the number of additional elections beyond two.

This bill provides a code of ethics for the guidance of public officers and employees in the executive branch. It establishes procedures to determine if violations exist and requires the attorney general to investigate suspected violations and bring allegations before the State Personnel Board where appropriate. The Personnel Board's duties are to appoint a hearing officer in instances where the alleged violation is contested, adopt or amend hearing officers' recommendations, and impose penalties for confirmed violations.

The members of the State Personnel Board serve without compensation but are entitled to receive travel expenses and per diem when convened. The Board would have to retain independent counsel when they required legal advice to ensure the integrity of the proposed legislation.

It is anticipated that questions and determinations of activities which pose a possible violation of the code of ethics will be more numerous during the first twelve to eighteen months after the bill becomes effective. This assumption is reflected in the number of hearings and Personnel Board meetings budgeted for successive fiscal years.

	FY 87 Effective (1-1-87)	FY 88	FY 89	FY 90	FY 91
Hearings	3	4	3	2	1
Board Meetings	3	5	4	3	2

No inflation factor is used.

Hearings: \$3,150

Hearing Officer - \$75 per hour x 30 hours = \$2,250
 Transcription and report preparation - \$30 per hour x 30 hours = \$900
 Contractual = \$3,150

Personnel Board Meetings (two days each): \$10,140

Travel - 3 members (and legal council) x \$540 = \$2,160
 Per diem - 3 members x \$80 x 2 days = \$480
 Travel = \$2,640

Legal Services - \$150 per hour x 50 hours = \$7,500
 Contractual = \$7,500

	CONTRACTUAL	TRAVEL
FY 87		
Hearings:	\$ 9,450	
Meetings:	22,500	\$ 7,920
	\$31,950	

April 7, 1986

No. 110

HB 706 (SSCD 391) page 3 of 3

	<u>CONTRACTUAL</u>	<u>TRAVEL</u>
<u>FY 88</u>		
Hearings:	\$12,600	
Meetings:	37,500	\$13,200
	<u>\$50,100</u>	
<u>FY 89</u>		
Hearings:	\$ 9,450	
Meetings:	30,000	\$10,560
	<u>39,450</u>	
<u>FY 90</u>		
Hearings:	\$ 6,300	
Meetings:	22,500	\$ 7,920
	<u>28,800</u>	
<u>FY 91</u>		
Hearings:	\$ 3,150	
Meetings:	15,000	\$ 5,280
	<u>18,150</u>	

REQUEST Page 1 of 2

Bill Resolution No.: CS for HB 15 (C&RA)
 Title: An Act Relating to advisory elections on annexations

Sponsor: CRA Committee
 Requestor: House RULES
 Date of Request: 1/29/86

FISCAL DETAIL

Agency Affected: Office of the Governor
 BRU: Division of Elections

Components: Elections

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	8.6	9.0	9.5	10.0	10.5	11.0

CAPITAL	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91

REVENUE	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91

FUNDING : (Thousands of Dollars)

GENERAL FUND	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
GENERAL FUNDS	8.6	9.0	9.5	10.0	10.5	11.0
OTHER						
TOTAL	8.6	9.0	9.5	10.0	10.5	11.0

POSITIONS :

FULL-TIME	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached page.

Prepared by: Sherry Valentine Phone: 465-4611
 Division: Elections Date: 1/31/86

Approved by Commissioner: Sherry Valentine Date: 2/10/86
 Agency: Elections

SS
SB
391

SS
SB
391

Revision Date: 4-3-86

REQUEST FISCAL DETAIL
 Bill/Resolution No.: SSSB 391 Agency Affected: Department of Administration
 Title: Act relating to the ethical conduct of governmental activities; BRU: Division of Personnel
 Sponsor: Rules by request of Governor Components:
 Requestor: Governor's Office
 Date of Request: 4-1-86

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	7.9	13.2	10.6	7.9	5.3
CONTRACTUAL	0	32.0	50.1	39.5	28.8	18.2
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	39.9	63.3	50.1	36.7	23.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	39.9	63.3	50.1	36.7	23.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	39.9	63.3	50.1	36.7	23.5

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary See attached.

Prepared By: Frank Rye, Director
 Division: Personnel
 Phone: 465-4430
 Date: 4/3/86

Approved by Commissioner: Eleanor Andrews
 Agency: Department of Administration
 Date: 4/4/86

This bill provides a code of ethics for the guidance of public officers and employees in the executive branch. It establishes procedures to determine if violations exist and requires the attorney general to investigate suspected violations and bring allegations before the State Personnel Board where appropriate. The Personnel Board's duties are to appoint a hearing officer in instances where the alleged violation is contested, adopt or amend hearing officers' recommendations, and impose penalties for confirmed violations.

The members of the State Personnel Board serve without compensation but are entitled to receive travel expenses and per diem when convened. The Board would have to retain independent counsel when they required legal advice to ensure the integrity of the proposed legislation.

It is anticipated that questions and determinations of activities which pose a possible violation of the code of ethics will be more numerous during the first twelve to eighteen months after the bill becomes effective. This assumption is reflected in the number of hearings and Personnel Board meetings budgeted for successive fiscal years.

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 Transcription and report preparation - \$30 per hour x 30 hours = \$900
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Personnel Board Meetings (two days each): \$10,140

Travel - 3 members (and legal council) x \$540 = \$2,160
 Per diem - 3 members x \$80 x 2 days = \$480
 Travel = \$2,640

Legal Services - \$150 per hour x 50 hours = \$7,500
 Contractual = \$7,500

	CONTRACTUAL	TRAVEL
FY 87		
Hearings:	\$ 9,450	
Meetings:	22,500	\$ 7,920
	\$31,950	



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 4, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to establish in statute a code of ethics for all employees and board or commission members in the executive branch. Section 1 of the bill creates in AS 39 a new chapter entitled the "Alaska Executive Branch Ethics Act." The new chapter, AS 39.52, replaces the relatively unknown and unworkable aspects of the common law on conflicts of interests with concrete standards of conduct.

In these times of severe constraints on the state budget, the bill relies upon two existing state entities to shoulder responsibility for enforcement of the code of ethics (i.e., the Department of Law and the state's personnel board), rather than attempt to create a costly separate board or commission to administer the new law.

New staff positions in the Department of Law will (1) provide the executive branch with opinions and advice concerning the substance and intent of the code of ethics, (2) accept and investigate legitimate complaints, and (3) take to formal hearing probable-cause violations of the code. The state's personnel board, which has already had some experience in evaluating allegations of employee misconduct, will appoint hearing officers or independent counsel and act as the final determiner in matters that have gone to hearing, and will, through the provision of new enforcement powers granted to the board, order appropriate penalties and remedies. Sections 2 and 3 of this bill specifically amend

existing statutes relating to the personnel board to reflect the board's new duties and responsibilities under this bill.

A sectional analysis of new legislation follows, both for the legislature's use in reviewing the proposed bill and for the use of future researchers. I believe that this bill deserves the prompt attention of the legislature. Passage of a code of ethics for the executive branch is a priority of my administration and, I hope, a priority of the legislature as well.

SECTIONAL ANALYSIS

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

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

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

ARTICLE 1. DECLARATIONS.

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

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

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

Sec. 39.52.110. SCOPE OF CODE. To clarify the intent behind the code of ethics, this section describes its scope. One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. I wanted to make it clear in this section of the bill that the

legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers cannot and should not be without a personal or financial stake in Alaska, so long as those private interests do not interfere with the full and faithful discharge of the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

While the code's subsequent provisions set out stern prohibitions on conduct, public officers are encouraged to have and maintain private interests so long as those interests do not improperly benefit the officers through abuse of the responsibilities given to them by their public office.

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

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

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

Sec. 39.52.130. IMPROPER GIFTS OR BENEFITS. This section addresses another potential abuse: the receipt of a gift or benefit under circumstances in which it could be inferred that the gift or benefit was intended to improperly influence the officer in the performance of his or her

official duties. This section creates an objective -- rather than a subjective -- test by which the propriety of soliciting or receiving a gift or benefit can be judged from the viewpoint of a "reasonable person." Travel or hospitality given to aid a public officer in the performance of official duties may be accepted if the officer's designated supervisor (defined in AS 39.52.960) determines that acceptance does not interfere with the full and faithful discharge of the officer's public duties and responsibilities. AS 39.52.130(a).

The bill also sets up a reporting requirement for the receipt of a gift or benefit worth over \$25 if the public officer can take or withhold official action that benefits the giver. AS 39.52.130(b).

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

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

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. One commonly expressed complaint is that public officers are able to improperly benefit themselves or family members through the improper use of information gained in the course of their employment. The so-called "insider information" problem is the issue addressed in AS 39.52.140. This section specifically prohibits the use or disclosure of information that either has not been "communicated" to the public (AS 39.52.140(a)) or is confidential by law (AS 39.52.-140(b)).

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

Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. Much public scrutiny has recently been focused on the conduct addressed by this provision of

the code of ethics. This section prohibits an officer from improperly influencing state grant, contract, lease, or loan procedures. Specifically, a public officer or member of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. AS 39.52.150(a). There are exceptions listed to this broad prohibition, which focus on the specific conditions under which the grant, contract, lease, or loan is solicited or awarded. AS 39.52.150(b) -- 39.52.150(c).

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

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

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

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

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

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

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

Specifically, AS 39.52.180 prohibits certain types of representation by former public officers for two years after leaving their public positions. The two-year ban is narrowly drawn: an officer is only prohibited from representing, advising, or assisting a person for compensation regarding a matter (1) that was under consideration by the administrative unit directly served and (2) in which the officer participated personally and substantially through the exercise of official action. A "matter" is precisely defined to include a case, proceeding, application, contract, or determination, and does not include activities related to legislation or regulations. AS 39.52.180(a).

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

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

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

Article 3 sets out the various procedures that public officers have available to them for the prevention of a violation of the code of ethics. A major aspect of this

legislation is its "preventative" posture. Public officers must be able to seek and receive prompt advice in order to avoid actions that might violate the code. It is these preventative procedures that give the bill its true strength, because it provides a positive approach to solving potential abuses and appropriately assists officers before the fact, rather than waiting for violations to occur which the attorney general must then prosecute.

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

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

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

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

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

Sec. 39.52.240. ADVISORY OPINIONS. This section covers requests by designated supervisors, or boards or

commissions, for advice from the attorney general regarding appropriate conduct under AS 39.52. It is important to note that requests for advisory opinions are confidential. AS 39.52.240(g).

Advisory opinions must be issued within 60 days after the attorney general receives a completed request. AS 39.52.-240(a). Because, however, there may be instances where delay in the receipt of an opinion would cause substantial inconvenience or detriment to the requesting party, this section allows the attorney general to give oral advice. AS 39.52.240(b). The designated supervisor or board or commission then makes a determination regarding an ethical problem. AS 39.52.240(c). If the attorney general has suggested more than one alternative, the supervisor or board or commission will select the most appropriate way to avoid or correct the problem. Id.

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

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

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

ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

If a complaint alleges a violation by the governor, lieutenant governor, or the attorney general, the personnel board shall appoint independent counsel who shall act in place of the attorney general in reviewing the validity of the complaint filed and, if sufficient, taking the matter to hearing. AS 39.52.310(c). The attorney general shall review each complaint filed to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of AS 39.52. A complaint may be dismissed (AS 39.52.310(d)) or referred to the appropriate supervisor or board chair for resolution (AS 39.52.310(e)).

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

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

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

complaint is required to comply with the attorney general's recommendation.

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

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

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

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

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

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

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

Sec. 39.52.370. PERSONNEL BOARD ACTION. Either party to the hearing may protest the hearing officer's decision before the personnel board. Oral argument before the personnel board will be provided if requested. AS 39.52.-370(a). The board may, for good cause shown, convene a hearing de novo or further augment the record with additional evidence. AS 39.52.370(b).

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

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

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

ARTICLE 5. ENFORCEMENT; REMEDIES.

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

Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT.

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

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

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

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

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

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

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

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

Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL. This section clarifies that the civil penalties provided for in art.

5 of the ethics Act are in addition to any criminal actions that may be pursued.

ARTICLE 6. GENERAL PROVISIONS.

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

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

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

Sec. 39.52.940. CONSTRUCTION. This section calls for a liberal construction of the bill's provisions in order to promote high ethical standards in state government.

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

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

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

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

Section 4: This section of the bill provides for consistency between AS 42.40, regarding employees of the Alaska Railroad, and the new AS 39.52, which covers employees of the railroad as well as directors of the Alaska Railroad Corporation.

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

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

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

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

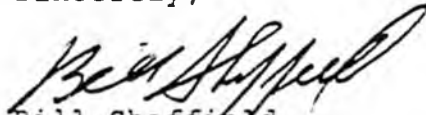
Section 9: The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions (AS 39.52.110 -- 39.52.190 and AS 39.52.310 -- 39.52.460) will take effect January 1, 1987.

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

CONCLUSION

Several attempts have been made in past years to enact legislation providing ethical standards for the executive branch. Most recently at my request, SB 501 was introduced in 1984, but it did not pass during the Thirteenth Alaska Legislature. I strongly endorse this bill and urge its serious consideration and passage this session.

Sincerely,


Bill Sheffield
Governor

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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April 15, 1986

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The Honorable Katie Hurley
Chair
House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Hurley:

This letter is written to provide the House State Affairs Committee with a sectional analysis of the Committee Substitute for House Bill 706, the proposed ethics law. The primary achievement of this bill is the establishment, in statute, of a code of ethics for all public officers in the executive branch. The bill replaces the relatively unknown and unworkable aspects of the common law on conflict of interests with more concrete standards. The standards have been developed with two somewhat competing goals in mind: the need to clearly establish high standards of conduct for executive branch officers and the desire to allow those officers to engage in personal and financial activities outside the public sector.

As you are aware, several attempts have been made in past years to enact legislation providing ethical standards for the executive branch. Most recently, Senate Bill 501 was introduced in 1984 at the request of Governor Sheffield, but it did not pass during the 13th Alaska Legislature.

The bill before you reflects the combined work of the Senate Special Committee on Procurement and Ethics, the Senate State Affairs Committee, and the Department of Law. Hopefully, the enclosed sectional analysis will answer many of your committee's concerns regarding the ethics bill; however, the staff of the Department of Law stands ready to assist the committee in its review and discussion of HB 706.

The Honorable Katie Hurley, Chair
House State Affairs Committee
Alaska State Legislature

April 15, 1986
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We would like to thank you in advance for the time and energy you, your staff, and the other committee members will no doubt devote to this bill.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By:

Randall Burns
Randall P. Burns
Special Assistant
to the Attorney General

RPB/alg

Enclosure

SECTIONAL ANALYSIS

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

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- Article 5: Enforcement; Remedies
- Article 6: General Provisions

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

ARTICLE 1. DECLARATIONS.

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

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

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

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

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

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

plaint must respond within 30 days with full and fair disclosure in writing of all the facts and circumstances pertaining to the alleged violation. AS 39.52.310(f). The attorney general shall investigate to determine whether a violation of the chapter has occurred. AS 39.52.310(g). A violation of AS 39.52 can be investigated only within two years after discovery of the alleged violation. AS 39.52.310(h).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5. ENFORCEMENT; REMEDIES.

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

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

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

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

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

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