

ALASKA LEGISLATURE COMMITTEE FILES 1985-1988 80/2

3390 HJUD HB 706 - HJR 1

86

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

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

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

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

ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

Section 4: This section of the bill 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 1, 1987, this section of the bill clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before January 1, 1987, unless the violation continues after that date.

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

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

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

Different effective dates have been provided so that public officers, immediately upon passage of the bill, may seek guidance from the attorney general concerning their standing under the new code of ethics, in order that any reassignments, transfers, or

divestitures that need to occur can be accomplished before the code of ethics, as well as the complaint process, is in force.

SENATE STATE AFFAIRS COMMITTEE AMENDMENTS
TO EXECUTIVE BRANCH ETHICS ACT (HB 706/SB 391)

Amendment No. 1:

Page 1
Line 25

(b) [THE LEGISLATURE RECOGNIZES THAT IT MAY BE NECESSARY FOR PUBLIC OFFICIALS WHO MAY HAVE POTENTIALLY CONFLICTING PUBLIC RESPONSIBILITIES TO SERVE ON STATE BOARDS OR COMMISSIONS.] 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 [TWO OR MORE] 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.

Amendment No. 2:

Page 2
Line 4

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 finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. [THIS CHAPTER, HOWEVER, DOES NOT PREVENT AN OFFICER FROM ACCEPTING OTHER EMPLOYMENT OR FOLLOWING A PURSUIT THAT DOES NOT INTERFERE WITH THE FULL AND FAITHFUL DISCHARGE OF THE OFFICER'S PUBLIC DUTIES AND RESPONSIBILITIES.] The legislature further recognizes that...

Amendment No. 3:

Page 3
Line 15

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

(5) [ENGAGE IN A CLOSE ECONOMIC ASSOCIATION WITH A SUBORDINATE;

(6) DIRECTLY SOLICIT A SUBORDINATE FOR THE PURPOSE OF SELLING PRODUCTS OR SERVICES; OR

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

Amendment No. 4:

Page 3
Line 24

Sec. 39.52.130. IMPROPER GIFTS [OR BENEFITS].
(a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift [OR BENEFIT], 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 [OR BENEFIT] is intended to influence the officer in the performance of official duties, actions, or judgment. [NOTHING IN THIS SECTION PRECLUDES THE ACCEPTANCE OF TRAVEL OR HOSPITALITY GIVEN TO A PUBLIC OFFICER TO AID OR ASSIST IN THE PERFORMANCE OF OFFICIAL DUTIES IF THE OFFICER'S DESIGNATED SUPERVISOR DETERMINES THAT ACCEPTANCE DOES NOT INTERFERE WITH THE FULL AND FAITHFUL DISCHARGE OF THE OFFICER'S PUBLIC DUTIES AND RESPONSIBILITIES.]

Amendment No. 5:

Page 4
Line 7

(b) Notice of the receipt by a public officer of a gift [OR BENEFIT] with a value in excess of \$50 [\$25], including the name of the giver and a description of the gift [OR BENEFIT] and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt if the public officer may take or withhold official action that affects [BENEFITS] the giver.

Amendment No. 6:

Page 4
Line 13

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift [OR BENEFIT] is prohibited.

Amendment No. 7:

Page 4
Line 16

(d) The restrictions relating to gifts [OR BENEFITS] 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.

Amendment No. 8:

Page 4
Line 20

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 in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated [COMMUNICATED] to the public.

Amendment No. 9:

Page 6
Line 20

(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 [QUARTERLY REPORT] the outside services or employment [ACTIVITIES] to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs.

Amendment No. 10:

Page 8
Line 7

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

Amendment No. 11:

Page 8
Line 24

(b) [IN ACCORDANCE WITH AS 39.52.240, THE] The designated supervisor or the board or commission may request guidance from the attorney general, in accordance with AS 39.52.240, when determining [CONCERNING] 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.

Amendment No. 12:

Page 9
Line 11

Sec. 39.52.240. ADVISORY OPINIONS. (a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall [MAY] issue opinions interpreting this chapter. The requester must 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.

Amendment No. 13:

Page 20
Line 19

(C) accept a gift [OR BENEFIT]; or....

Amendment No. 14:

Page 25
Line 27

(8) retain independent counsel in accordance with AS 39.52.310(c);

(9) appoint, and review the findings, conclusions, and recommendations of, hearing officers in accordance with AS 39.52.350(c), 39.52.360, and 39.52.-370;

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

(11) [(10)] impose the penalties described in AS 39.52.410, 39.52.440, and 39.52.450.

Amendment No. 15:

Page 9
Line 18

(c) The designated supervisor or board or commission shall make a written determination based on the advice of the attorney general. If the advice of the attorney general provided 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, after consultation with the officer, determine the alternative that is most appropriate and advise the officer of any action required of the officer to avoid or correct the problem.

Amendment No. 16:

Page 10
Line 6

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

Amendment No. 17:

Page 10
Line 8

(h) The attorney general shall publish [THE ADVISORY OPINIONS] in the Alaska Administrative Journal, with sufficient deletions to prevent disclosure of the persons whose identities are confidential under (g) of this section, the advisory opinions issued under this section that the attorney general determines to be of major import because of their general applicability to executive branch officers.

Amendment No. 18:

Page 11
Line 2

(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. The attorney general shall, however, make available to the public a summary [AN EXTRACT] of the reports received under this section, with sufficient deletions to prevent disclosure of a person's identity.

Amendment No. 19:

Page 12
Line 12

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 [IS] considered an admission of the allegations in the complaint.

Amendment No. 20:

Page 17
Line 15

(b) If the personnel board determines that a non-salaried 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.

Amendment No. 21:

Page 17
Line 9

(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.

Amendment No. 22:

Page 17
Line 26

(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 with the

president of [THE MATTER TO] the Senate, with its findings. The report must contain a statement of the facts alleging to constitute the violation.

Amendment No. 23:

Page 18
Line 23

(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 [MAY] be damaged may [MUST] 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 [60] days after the personnel board's determination of a violation under this chapter.

Amendment No. 24:

Page 18
Line 24

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

Amendment No. 25:

Page 18
Line 28

(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 [THREE] years after discovery of the violation.

Amendment No. 26:

Page 19
Line 20

(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.

Amendment No. 27:

Page 20
Line 7

Sec. 39.52.920. AGENCY POLICIES. Subject to the review and approval of the attorney general, an agency

may adopt a written policy that, [(1)] 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) [(A)] 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) [(B)] have a personal or financial interest in a state grant, contract, lease, or loan administered by the agency or unit; or

(3) [(C)] accept a gift [OR BENEFIT; OR

(2) REQUIRES A PUBLIC OFFICER OF THE AGENCY OR UNIT TO TURN OVER A GIFT TO THE AGENCY OR UNIT].

Amendment No. 28:

Page 20
Line 25

Sec. 39.52.940. CONSTRUCTION. This chapter must be [LIBERALLY] construed to promote high standards of ethical conduct in state government.

Amendment No. 29:

Page 21
Line 7

(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;

Amendment No. 30:

Page 22
Line 22

(9) "financial interest" means

(A) an interest held by a public officer or [,] an immediate family member, [OR PARENT,] 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;

[(C) INVOLVEMENT, OR OWNERSHIP OF AN

INTEREST, IN A PROPERTY OR A BUSINESS AS SPECIFIED
BY REGULATION OF THE ATTORNEY GENERAL;]

Amendment No. 31:

Page 23
Line 6

(10) "gain" includes actual or anticipated gain, benefit, profit, or compensation [, WHETHER FOR ONESELF OR FOR ANOTHER PERSON];

Amendment No. 32:

Page 24
Line 4

(18) "personal interest" means [(A)] 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, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

[(B) AN INVOLVEMENT, AS MAY BE SPECIFIED BY THE REGULATIONS OF THE ATTORNEY GENERAL, IN ANY ORGANIZATION;]

Amendment No. 33:

Page 24
Line 13

(20) "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;

Amendment No. 34:

Page 18
Line 12

(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.

Daily News *4/7/86*

A welcome revision

Gov. Bill Sheffield's latest version of his ethics bill corrects a serious flaw: It no longer threatens to undermine the Alaska Public Offices Commission.

His earlier version would have had the governor, lieutenant governor, department heads and division directors bare their souls to a new ethics panel instead of the APOC.

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Losing part of its mission would have been a blow to the voter-created watchdog agency. At best, it gets grudging budget support from most legislators it oversees. With the new panel costing \$670,000 a year, the proposed switch would have kicked one of the legs out from under the agency's already shaky budget table.

With revenues plummeting, legislators complained about the high cost of implementing the governor's original ethics bill. To trim the cost, he has cut out the new panel, leaving the APOC with authority over financial disclosures. That move doesn't just save money; it removes the threat to a watchdog agency that needs all the support it can get.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4-3-86

REQUEST Page 1 of 3

FISCAL DETAIL

Bill/Resolution No: HB 706 (SSSB 391)
Title: Act relating to the ethical
conduct of government.

Agency Affected: Department of Administration
BRU: Division of Personnel

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

Components: _____

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 Raye, Director
Division: Personnel

Phone: 465-4430

Date: 4/3/86

Approved by Commissioner: Eleanor Andrews
Agency: Department of Administration

Date: 4/4/86

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

HB 706 (S) SSSB 391)

page 2 of 3

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
<u>Hearings</u>	3	4	3	2	1
<u>Board Meetings</u>	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

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

	<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>	

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 4/8/86

REQUEST

Bill/Resolution No.: HB 706
 Title: "An Act relating to the ethical conduct of government; and providing for an effective date."
 Sponsor: By Request of the Governor
 Requestor: Governor's Office/OMB
 Date of Request: April 7, 1986

FISCAL DETAIL

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		155.2	170.6	175.7	181.0	186.4
TRAVEL		5.0	5.2	5.4	5.6	5.8
CONTRACTUAL		7.3	7.9	8.1	8.3	8.5
SUPPLIES		10.1	6.2	6.4	6.6	6.8
EQUIPMENT		9.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		187.1	189.9	195.6	201.5	207.5

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		187.1	189.9	195.6	201.5	207.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 4/8/86
 Approved by Commissioner: Richard I. Pegues (FUK)
Harold M. Brown, Attorney General Date: 4/8/86
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 706

This bill provides a code of ethics for the guidance of public officers and employees in the executive branch. It establishes procedure to determine if violations exist and requires that the attorney general provide advisory opinions to interpret the Act and recommend corrective action, as may be needed. The bill also requires that the attorney general investigate complaints or suspected violations and bring allegations before the state personnel board, where appropriate. Based on the experience of other states who have implemented similar legislation, we can expect between 200 and 300 requests for advisory opinions during the first year (FY 87) after the bill goes into effect. We have no accurate guide to determine how many complaints may have to be investigated, but obviously there will be more than a few. Consequently, there will be a heavy caseload almost from the day the bill takes effect on July 1, 1986. We therefore anticipate that the services of two attorneys will be needed for at least the first two years. This is the time it will take to deal with a wide variety of conflict issues that will arise when the bill is implemented.

Cost Summary - Executive Branch Ethics Bill

	<u>Attorney IV</u>	<u>Attorney III</u>	<u>Leg. Secretary I</u>	<u>Total</u>
71000	71.5	52.8	30.9	155.2
72000	3.0	2.0	-0-	5.0
73000	2.4	2.0	2.9	7.3
74000	3.9	3.5	2.7	10.1
75000	1.5	1.5	6.5	9.5
Total	82.3	61.8	43.0	187.1

FY 87 costs are based on 12 months each for the Attorney IV and the Legal Secretary, and 10 months for the Attorney III. Costs beyond FY 87, extend the Attorney III to 12 months, delete one-time costs, and include a 3% annual inflation factor.

Position Title Attorney IV			No. of Positions 1	Range/Step 24A	Dep. Unit PX	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location AWA - Juneau		Election District 4	Leg.		

Type of Expenditure		Amount
1	2	3
Salary	56,244	
Benefits	15,248	
Premium Pay		
Other		
Total Personal Services		
Travel		3,000
Contractual		2,400
Commodities		3,900
Equipment		1,500
Other		
Total Cost		82,292

Receipt Code	Funding Source	Amount
	Federal Receipts 1002	82,292
	G. F. Match 1003	
	General Funds 1004	
	I-A Receipts 1005	
	Program Receipts 1028	
	CIP Receipts 1061	
	Other	

For B&M Use Only
Key Number _____

Justification

This is a request for the first of two attorneys that will be needed to implement the executive branch ethics bill. The bill provides that the attorney general will provide advisory opinions to agencies, boards and commissions regarding potential conflicts of interest. The bill also provides that the attorney general will investigate all complaints and, where appropriate, bring allegations before the state personnel board for action. The attorney general would also be empowered to seek civil penalties. Based on the experience of other states, we anticipate between 200 and 300 requests for advisory opinions during the first year that the bill goes into effect. For this reason, we are reporting that this position be established at the beginning of FY 87. The duties of the position will require full working level attorney experience and allocation to Attorney IV is therefore recommended.

Request For
New Position

Agency Department of Law
 DRU Legal Services
 Component Operations

Page 1 of 1
 Revised Date _____

FY 87

Position Title Attorney III			No. of Positions 1	Range/Step 22A	Base Unit PX	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 10	RP Number	Location AWA-Juneau		Election District 4	Leg.		

Type of Expenditure		Amount
1	2	3
Salary	40,950	
Benefits	11,592	
Premium Pay		
Other		
Total Personal Services		52,842
Travel		2,000
Contractual		2,000
Commodities		3,500
Equipment		1,500
Other		
Total Cost		61,842

Receipt Code	Funding Source	Amount
	Federal Receipts 1002	
	G. F. Match 1003	
	General Funds 1004	61,842
	I-A Receipts 1005	
	Program Receipts 1028	
	CIP Receipts 1061	
	Other	

For D&M Use Only
Key Number _____

Justification

This is a request for the second of two attorneys that will be needed to implement the executive branch ethics bill. This position will assist the first attorney in rendering advisory opinions and will have primary responsibility for investigating complaints. We anticipate a flood of opinion requests beginning on July 1, 1986. Complaint handling will begin on January 1, 1987. Advisory opinion requests must be satisfied within 60 days. Because we expect between 200 and 300 such requests within the first year, and because we must also be in a position to begin investigating complaints by January 1, 1987, this second position should be established by September 1, 1986. Allocation to the Attorney III level is recommended in view of the availability of the Attorney IV, who can handle the more complex issues.

Request For
New Position

Agency Department of Law
 DRU Legal Services
 Component Operations

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Position Title Legal Secretary I			No. of Positions 1	Range/Step 10B	Off. Unit GGU	Gov.	Approv.	Disapp.
Time Status PTT	Staff Months 12	RP Number	Location AWA-Juneau		Election District 4	Leg.		
Justification								
<p>This is a request for a legal secretary position to provide clerical support for the two attorneys being assigned to handle executive branch ethics work. This work will involve a high volume of written opinions, prosecution of violations, and civil litigation to impose and collect penalties. The position will be responsible for producing all of the written work, including opinions and legal documents. Allocation to Legal Secretary I is therefore recommended.</p>								
Type of Expenditure			Amount					
1			2			3		
Salary			22,716					
Benefits			8,224					
Premium Pay								
Other								
Total Personal Services						30,490		
Travel						2,900		
Contractual						2,700		
Commodities						6,500		
Equipment								
Other								
Total Cost						43,040		
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004			43,040		
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number _____								

Request For
New Position

Agency Department of Law
 BRU Legal Services
 Component Operations

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 Revised Date _____

FY 87

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 30, 1986

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

Dear Representative Miller:

This letter is written to provide the House Judiciary Committee with a sectional analysis of the Committee Substitute for House Bill 706 (amended House State Affairs), 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 House and Senate State Affairs Committees, 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 Mike Miller, Chair
House Judiciary Committee
Alaska State Legislature

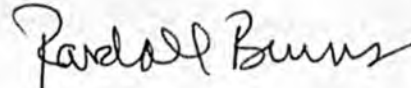
April 30, 1986
Page 2

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,

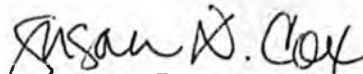
HAROLD M. BROWN
ATTORNEY GENERAL

By:



Randall P. Burns
Special Assistant
to the Attorney General

By:



Susan Cox
Assistant 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:

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

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

ARTICLE 1. DECLARATIONS.

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

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

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

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

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

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

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

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

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

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

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

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

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

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

This section sets a fairly high standard. It requires, before officers (or members of their immediate families) can benefit personally or financially from the use or disclosure of information available, that the information first have "been disseminated to the public." "Disseminated" is defined to mean that in some affirmative way the information has first been publicized outside the agency, whether by distribution in an agency publication, public announcement, public comment, or by any other form of conveyance of public information normally used by the agency. AS 39.52.140(b).

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; rather, the information must be dispersed or conveyed in a way "calculated to more broadly inform." AS 39.52.140(c).

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. The oral advice must be followed up by a brief written statement summarizing the content of the oral advice. AS 39.52.240(b). The designated supervisor or board or commission, after consultation with the officer, then makes a determination regarding an ethical problem. AS 39.52.240(c). If the attorney general has suggested more than one alternative, the supervisor or board or commission will select the most appropriate way to avoid or correct the problem. Id.

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 must be available for public inspection, 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

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

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

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

Sec. 39.52.380. SUBPOENAS. This section gives the attorney general, independent counsel retained by the personnel board, the

personnel board, and appointed hearing officers certain subpoena powers.

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

ARTICLE 5. ENFORCEMENT; REMEDIES.

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

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

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

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

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

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

Sec. 39.52.430. ACTIONS VOIDABLE. This section describes the actions that may be taken by the state if state grants,

contracts, leases, or loans have been entered into or received in violation of AS 39.52.

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

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

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

ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

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

Section 2: This section of the bill amends AS 39.25.060(c) to make the members of the personnel board removable only for cause. The additional responsibilities granted the board under the new

ethics law require that the members of the personnel board be free from possible interference in the performance of their duties. Therefore, unless cause can be shown, the governor should be prohibited from freely removing personnel board members from office.

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

Section 4: This section of the bill 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: Because the enforcement and remedy provisions in the new ethics law do not take effect until January 1987, this section of the bill clarifies that the attorney general and the personnel board do not have jurisdiction over any alleged violation of the code of ethics occurring before January 1, 1987, unless the violation continues after that date.

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

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

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

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

HOUSE STATE AFFAIRS COMMITTEE AMENDMENTS
TO EXECUTIVE BRANCH ETHICS ACT [CSHB 706 (SA)]

Amendment No. 1:

Page 4
Line 16

(b) In this 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;

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

(3) the normal forms of conveyance of public information used by an 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.

(d) [(b)] 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.

Amendment No. 2:

Page 9
Line 24

(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.

Amendment No. 3:

Page 10
Line 19

(h) The attorney general shall [PUBLISH IN THE ALASKA ADMINISTRATIVE JOURNAL] 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 [, THE ADVISORY OPINIONS ISSUED UNDER THIS SECTION THAT THE ATTORNEY GENERAL DETERMINES TO BE OF MAJOR IMPORT BECAUSE OF THEIR GENERAL APPLICABILITY TO EXECUTIVE BRANCH OFFICERS].

Amendment No. 4:

Page 26
Line 19

Sec. 5 is deleted:

[* SEC. 5. AS 44.62.175(a) IS AMENDED BY ADDING A NEW PARAGRAPH TO READ:

(10) IN ACCORDANCE WITH AS 39.52.-240(h), ADVISORY OPINIONS OF THE ATTORNEY GENERAL.]

The rest of the sections are renumbered accordingly.

SENATE STATE AFFAIRS COMMITTEE AMENDMENTS
TO EXECUTIVE BRANCH ETHICS ACT (HB 706/SB 391)

Amendment No. 1:

Page 1
Line 25

(b) [THE LEGISLATURE RECOGNIZES THAT IT MAY BE NECESSARY FOR PUBLIC OFFICIALS WHO MAY HAVE POTENTIALLY CONFLICTING PUBLIC RESPONSIBILITIES TO SERVE ON STATE BOARDS OR COMMISSIONS.] 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 [TWO OR MORE] 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.

Amendment No. 2:

Page 2
Line 4

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 finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. [THIS CHAPTER, HOWEVER, DOES NOT PREVENT AN OFFICER FROM ACCEPTING OTHER EMPLOYMENT OR FOLLOWING A PURSUIT THAT DOES NOT INTERFERE WITH THE FULL AND FAITHFUL DISCHARGE OF THE OFFICER'S PUBLIC DUTIES AND RESPONSIBILITIES.] The legislature further recognizes that...

Amendment No. 3:

Page 3
Line 15

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

(5) [ENGAGE IN A CLOSE ECONOMIC ASSOCIATION WITH A SUBORDINATE;

(6) DIRECTLY SOLICIT A SUBORDINATE FOR THE PURPOSE OF SELLING PRODUCTS OR SERVICES; OR

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

Amendment No. 4:

Page 3
Line 24

Sec. 39.52.130. IMPROPER GIFTS [OR BENEFITS].
(a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift [OR BENEFIT], 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 [OR BENEFIT] is intended to influence the officer in the performance of official duties, actions, or judgment. [NOTHING IN THIS SECTION PRECLUDES THE ACCEPTANCE OF TRAVEL OR HOSPITALITY GIVEN TO A PUBLIC OFFICER TO AID OR ASSIST IN THE PERFORMANCE OF OFFICIAL DUTIES IF THE OFFICER'S DESIGNATED SUPERVISOR DETERMINES THAT ACCEPTANCE DOES NOT INTERFERE WITH THE FULL AND FAITHFUL DISCHARGE OF THE OFFICER'S PUBLIC DUTIES AND RESPONSIBILITIES.]

Amendment No. 5:

Page 4
Line 7

(b) Notice of the receipt by a public officer of a gift [OR BENEFIT] with a value in excess of \$50 [\$25], including the name of the giver and a description of the gift [OR BENEFIT] and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt if the public officer may take or withhold official action that affects [BENEFITS] the giver.

Amendment No. 6:

Page 4
Line 13

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift [OR BENEFIT] is prohibited.

Amendment No. 7:

Page 4
Line 16

(d) The restrictions relating to gifts [OR BENEFITS] 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.

Amendment No. 8:

Page 4
Line 20

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 in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated [COMMUNICATED] to the public.

Amendment No. 9:

Page 6
Line 20

(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 [QUARTERLY REPORT] the outside services or employment [ACTIVITIES] to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs.

Amendment No. 10:

Page 8
Line 7

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

Amendment No. 11:

Page 8
Line 24

(b) [IN ACCORDANCE WITH AS 39.52.240, THE] The designated supervisor or the board or commission may request guidance from the attorney general, in accordance with AS 39.52.240, when determining [CONCERNING] 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.

Amendment No. 12:

Page 9
Line 11

Sec. 39.52.240. ADVISORY OPINIONS. (a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall [MAY] issue opinions interpreting this chapter. The requester must 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.

Amendment No. 13:

Page 20
Line 19

(C) accept a gift [OR BENEFIT]; or....

Amendment No. 14:

Page 25
Line 27

(8) retain independent counsel in accordance with AS 39.52.310(c);

(9) appoint, and review the findings, conclusions, and recommendations of, hearing officers in accordance with AS 39.52.350(c), 39.52.360, and 39.52.-370;

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

(11) [(10)] impose the penalties described in AS 39.52.410, 39.52.440, and 39.52.450.

Amendment No. 15:

Page 9
Line 18

(c) The designated supervisor or board or commission shall make a written determination based on the advice of the attorney general. If the advice of the attorney general provided 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, after consultation with the officer, determine the alternative that is most appropriate and advise the officer of any action required of the officer to avoid or correct the problem.

Amendment No. 16:

Page 10
Line 6

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

Amendment No. 17:

Page 10
Line 8

(h) The attorney general shall publish [THE ADVISORY OPINIONS] in the Alaska Administrative Journal, with sufficient deletions to prevent disclosure of the persons whose identities are confidential under (g) of this section, the advisory opinions issued under this section that the attorney general determines to be of major import because of their general applicability to executive branch officers.

Amendment No. 18:

Page 11
Line 2

(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. The attorney general shall, however, make available to the public a summary [AN EXTRACT] of the reports received under this section, with sufficient deletions to prevent disclosure of a person's identity.

Amendment No. 19:

Page 12
Line 12

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 [IS] considered an admission of the allegations in the complaint.

Amendment No. 20:

Page 17
Line 15

(b) If the personnel board determines that a non-salaried 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.

Amendment No. 21:

Page 17
Line 9

(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.

Amendment No. 22:

Page 17
Line 26

(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 with the president of [THE MATTER TO] the Senate, with its findings. The report must contain a statement of the facts alleging to constitute the violation.

Amendment No. 23:

Page 18
Line 23

(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 [MAY] be damaged may [MUST] 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 [60] days after the personnel board's determination of a violation under this chapter.

Amendment No. 24:

Page 18
Line 24

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

Amendment No. 25:

Page 18
Line 28

(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 [THREE] years after discovery of the violation.

Amendment No. 26:

Page 19
Line 20

(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.

Amendment No. 27:

Page 20
Line 7

Sec. 39.52.920. AGENCY POLICIES. Subject to the review and approval of the attorney general, an agency may adopt a written policy that, [(1)] 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) [(A)] 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) [(B)] have a personal or financial interest in a state grant, contract, lease, or loan administered by the agency or unit; or

(3) [(C)] accept a gift [OR BENEFIT; OR

(2) REQUIRES A PUBLIC OFFICER OF THE AGENCY OR UNIT TO TURN OVER A GIFT TO THE AGENCY OR UNIT].

Amendment No. 28:

Page 20
Line 25

Sec. 39.52.940. CONSTRUCTION. This chapter must be [LIBERALLY] construed to promote high standards of ethical conduct in state government.

Amendment No. 29:

Page 21
Line 7

(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;

Amendment No. 30:

Page 22
Line 22

(9) "financial interest" means

(A) an interest held by a public officer or [,] an immediate family member, [OR PARENT,] 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;

[(C) INVOLVEMENT, OR OWNERSHIP OF AN INTEREST, IN A PROPERTY OR A BUSINESS AS SPECIFIED BY REGULATION OF THE ATTORNEY GENERAL;]

Amendment No. 31:

Page 23
Line 6

(10) "gain" includes actual or anticipated gain, benefit, profit, or compensation [, WHETHER FOR ONESELF OR FOR ANOTHER PERSON];

Amendment No. 32:

Page 24
Line 4

(18) "personal interest" means [(A)] 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, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

[(B) AN INVOLVEMENT, AS MAY BE SPECIFIED BY THE REGULATIONS OF THE ATTORNEY GENERAL, IN ANY ORGANIZATION;]

Amendment No. 33:

Page 24
Line 13

(20) "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;

Amendment No. 34:

Page 18
Line 12

(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.

Amendment No. 35:

Page 21
Line 5

(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, but excluding the Alaska Railroad Corporation;

Amendment No. 36:

Page 21
Line 16

(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];

Amendment No. 37:

Page 26
Line 1

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. However, no later than January 1, 1987, the corporation shall adopt a code of ethics for its directors and employees that is substantially equivalent to that adopted in AS 39.

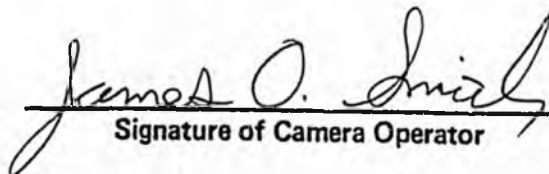


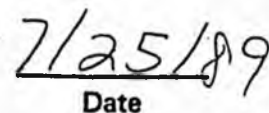
RECORDS



CERTIFICATION

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Signature of Camera Operator


Date

HCR

20

April 18, 1985

HCR 20

The Speaker waived the Judiciary Committee referral on HOUSE CONCURRENT RESOLUTION NO. 20 (report on maximizing local hire) at the request of the Chairman.

HCR 20 was taken from the Judiciary Committee and sent to the Rules Committee for placement on the calendar.

HB 295

Representative Pignalberi added his name as co-sponsor to HOUSE BILL NO. 295 (special appropriation to the Department of Labor for study of unemployment in Alaska and other issues related to Alaska hire; effective date).

HB 316

Representative Davis added his name as co-sponsor to HOUSE BILL NO. 316 (navigable or public waters of the state; effective date).

ENGROSSMENTCSHB 281(Res)am

CSHB 281(Res)am was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

ENROLLMENTHB 121

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate and the engrossed and enrolled copies were transmitted to the Office of the Governor at 4:50 p.m., April 17, 1985:

HB 121

Changing the name of the division of telecommunications systems in the Department of Administration; effective date

ANNOUNCEMENTS

Loans

Capitol 124

3:00 p.m., 4/18

Held over:

HB 105 International airports revenue bonds authorization

NAL

r, Goll

ed.

"Shall CSHB 281(Res)am
taken with the following

ey, Boucher, Cato,
tten, Davis, Duncan,
r, Gruenberg,
Hanley, Herrmann,
ins, Koponen, Larson,
er, M.M., Miller, M.W.,
rce, Pettyjohn,
gnalberi, Pourchot,
stad, Shulz, Sund,
aylor, Thompson,
lis

rou

the House on reconsideration
ark for engrossment.

BUSINESS

and asked unanimous consent
excused from a call of the

after adjournment
April 19, 1985.

April 25 through
5.

April 19 through

Pettyjohn - after
through plane time

so ordered.

Offered: 4/9/85
Referred: Judicial

Original sponsors: Pignalberi, Thompson,
Marrou, et al

1 IN THE HOUSE BY THE LABOR AND
COMMERCE COMMITTEE
2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 20 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 Relating to a report on maximizing local
6 hire.
7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:
8 WHEREAS the unemployment and underemployment of Alaskans causes seri-
9 ous social and economic problems in the state; and
10 WHEREAS the legislature is seeking ways to remedy the unemployment and
11 underemployment of Alaskans;
12 BE IT RESOLVED by the Alaska State Legislature that the attorney
13 general and the commissioner of labor are requested to report to the legis-
14 lature by the first day of the Second Session of the Fourteenth Legislature
15 on a course of action the state may take in order to maximize local hire.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HCR 20
 Title: "Relating to a report on maximizing local hire"
 Sponsor: Pignalberi, et al.
 Requestor: House Labor & Commerce
 Date of Request: 3/22/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety Wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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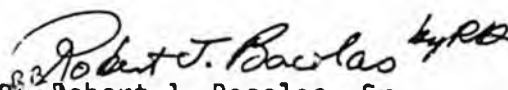
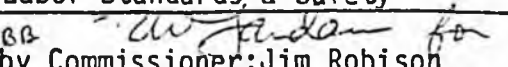
FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary


 Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
 Division: Labor Standards & Safety Date: 3/22/85

 Approved by Commissioner: Jim Robison Date: 3/22/85
 Agency: Labor

Distribution (by Agency preparing fiscal note):

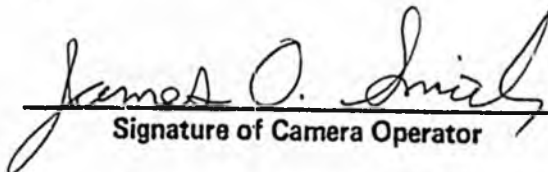
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

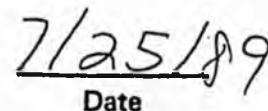


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Signature of Camera Operator


Date

HJR

1

HOUSE JUDICIARY COMMITTEE

BILLS IN COMMITTEE

COMPANION LEGISLATION

<u>BILL NO.</u>	<u>SPONSOR</u>	<u>BILL TITLE</u>	<u>HEARING DATES</u>	<u>FURTHER</u>	<u>BILL NO.</u>	<u>STATUS</u>	<u>COMMENTS</u>
HJR 1	Phellego and Marten	Proposing an amendment to the constitution of the state of alaska providing that a legislator who is convicted of a felony forfeits legislative office	1/24 - judiciary 1:30 pm 1st hearing				leave in committee without prejudice 1/24/85

Revision Date: JAN 22 1985REQUESTBill/Resolution No.: HJR 1Title: "Proposing...a legislator... convicted of a felony forfeits...office."Sponsor: Repr. PhillipsRequestor: House JudiciaryDate of Request: 1/16/85FISCAL DETAILAgency Affected: Department of LawProgram Category Affected: Administration of JusticeBRU, Program or Subprogram(s) Affected: ProsecutionEXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>		-				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<u>TOTAL OPERATING</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

<u>CAPITAL</u>						
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<u>REVENUE</u>						
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FUNDING: (Thousands of Dollars)

<u>GENERAL FUND</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<u>FEDERAL FUNDS</u>						
<u>OTHER</u>						
<u>TOTAL</u>						

POSITIONS:

<u>FULL-TIME</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<u>PART-TIME</u>						
<u>TEMPORARY</u>						

ANALYSIS: Attach a separate page if necessary

This resolution proposes an amendment to the state's constitution that would provide that a Legislator who is convicted of a felony involving moral turpitude forfeits legislative office. An appeal from a judgment of conviction by the trial court to the Supreme Court would be an expedited appeal. Approval of the Resolution, and the subsequent adoption of the amendment, by the state's electorate, would not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, DirectorPhone: 465-3672Division: Administrative ServicesDate: 1/21/85Approved by Commissioner: Norman C. GorsuchDate: 1/21/85Agency: Department of LawDistribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU ALASKA 99811
(907) 465-4848



BOX 142
EAGLE RIVER, ALASKA
99577
(907) 694-4944

Representative Randy Phillips
HOUSE DISTRICT 15

TO: THE HONORABLE M. MIKE MILLER
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FROM: REPRESENTATIVE RANDY PHILLIPS *R.P.*

DATE: JANUARY 16, 1985

RE: HOUSE JOINT RESOLUTION 1

This resolution proposes an amendment to our State Constitution that would provide that once a legislator is convicted of a felony, he or she forfeits office. As with all proposed Constitutional amendments, if this resolution passes the Legislature, it will be presented to Alaska's voters at the next general election.

With a statement in our Constitution that a legislator vacates his or her office on the date "that judgment of conviction is affirmed by the Supreme Court, or the period for appeal has expired", there would be no question as to when a legislator must vacate office if convicted of a felony.

Under the resolution, appeals from a lower court conviction are to be handled by the Supreme Court on an expedited basis. Rule 216, Appellate Rules of Procedure, presently provides three instances in which expedited appeals may be granted. It is anticipated that should this resolution be adopted by the voters that the Supreme Court would add a fourth class to this Rule. Rule 216 also provides that any notice of appeal under an expedited appeal must be filed within ten days after the entry of judgment in the lower court. The person appealing the conviction then has ten days to file the memoranda on appeal and there is then a ten-day reply period for the appellant. At this point the court may either require a reply memorandum from the person filing the appeal or may expeditiously dispose of the appeal.

I would urge your support of this resolution in order that the matter may be placed before Alaska's voters.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HJR No. 1
 Title: Proposing amendment to Constitution/legislator convicted felon forfeits office.
 Sponsor: Rep. Randy Phillips
 Requestor: Rep. M. M. Miller
 Date of Request: 1/17/85

FISCAL DETAIL

Agency Affected: Legislative Affairs
 Program Category Affected: General Government
 BRU, Program or Subprogram(s) Affected: Salaries & Allowances

JAN 22 1985

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL	3.2					
300 CONTRACTUAL	4.0					
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	7.2					

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	7.2					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Moving costs and an annual \$4,000 allowance would be incurred by the addition of a new legislator when the vacancy occurred. A refund or partial payment would not take place for either the legislator that is forfeiting office or the newly appointed legislator.

Pamela A. Calhoun

Prepared By: Pamela A. Calhoun, Manager
 Division: Administrative Services

Phone: 465-3850
 Date: 1/22/85

Approved by Dep. Exec. Director: Don Fisher
 Agency: Legislative Affairs Agency

Date: 1/22/85

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

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

JAN 18 1985

Revision Date: _____

REQUEST

Bill/Resolution No.: HJR No. 1
 Title: Requiring a legislator
 convicted of a felony to forfeit office.
 Sponsor: Phillips/Martin
 Requestor: _____
 Date of Request: 1/14/85

FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Division of Elections
 BRU, Program or Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	**0	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

**No additional fiscal impact is anticipated for a house seat. However, a senate seat vacated more than two years and five months prior to the end of the term requires that a special election be held to fill the vacant seat. The cost to hold a special elections is estimated to be \$70,500 per district.

Prepared By: Sherry Valentine, Deputy Director Phone: 465-4611
 Division: Division of Elections Date: 1/18/85

Approved by Commissioner: [Signature] for Lt. Gov. McAlpine Date: 1-18-85
 Agency: Lt. Gov.

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

MEMORANDUM

State of Alaska

to Hon. Terry Miller
Lieutenant Governor

DATE: November 7, 1980

ATTN: Patty Ann Polley, Director
Division of Elections

FILE NO J-66-001-81

TELEPHONE NO: 465-3665

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Restoration of vot-
ing rights to con-
victed felons

By:

Laura L. Davis 
Assistant Attorney General

You have requested that we respond to an inquiry by Akeela House of Anchorage regarding the scope of the disqualification of convicted felons from voting. We discuss the applicable provisions of the 1980 Election Code below. We will send copies of this memo and the attached information to Akeela House.

Attached is our memorandum dated August 14, 1968 on this subject. It provides background on the disqualification of convicted felons from voting in Alaska. The 1980 Election Code revised AS 15.05.030 to provide as follows:

LOSS AND RESTORATION OF VOTING RIGHTS. (a) A person convicted of a crime that constitutes a felony involving moral turpitude under state law may not vote in a state or municipal election from the date of his conviction through the date of the restoration of voting rights under this section. The right to vote withdrawn under this section is automatically restored upon the unconditional discharge of the person.

(b) The commissioner of health and social services shall establish procedures by which a person unconditionally discharged is advised of the restoration of voting rights withdrawn by a conviction. § 4, ch. 100, SLA 1980.

The new Election Code also amends AS 15.60.010 to include the following definitions of terms used in AS 15.05.030:

(8) "felony involving moral turpitude" includes those crimes which are immoral or wrong in themselves such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery; . . .

(32) "unconditional discharge" means that a person is released from all disability arising under a conviction and sentence, including probation and parole. § 207, ch. 100, SLA 1980.

In our opinion, the new code has not changed the date upon which a voting disability or a felony conviction is imposed, but it has extended the disability to persons receiving suspended sentences. The disqualification attaches at the time of final judgment of conviction. A person is not disqualified from voting pending an appeal of a conviction. However, absent an appeal, a person who receives a suspended sentence, or a suspended imposition of sentence is disqualified until his or her unconditional discharge. Under the former law, such persons would not have been disqualified.

Under the new code, the definition of felony involving moral turpitude has been revised. The statutory definition mentions several specific crimes, and includes all crimes which are "immoral or wrong in themselves." The Criminal Division of the Department of Law in cooperation with the Division of Corrections of the Department of Health & Social Services, has developed a list of crimes contained in the revised Criminal Code which constitute the felonies involving moral turpitude. This list is attached for your guidance.

We hope that this answers your questions.

LLD/pjg

Enc.

cc w/enc.: Mike Dunham, Outreach Counselor
Akeela House - Anchorage

FELONIES INVOLVING MORAL TURPITUDE

Murder in the First Degree
 Murder in the Second Degree
 Manslaughter
 Assault in the First Degree
 Assault in the Second Degree
 Kidnapping
 Sexual Assault in the First Degree
 Sexual Assault in the Second Degree
 Sexual Assault in the Third Degree
 Incest
 Unlawful Exploitation of a Minor
 Robbery in the First Degree
 Robbery in the Second Degree
 Extortion
 Coercion
 Theft in the First Degree
 Theft in the Second Degree
 Burglary in the First Degree
 Burglary in the Second Degree
 Arson in the First Degree
 Arson in the Second Degree
 Criminal Mischief in the First Degree
 Criminal Mischief in the Second Degree
 Forgery in the First Degree
 Forgery in the Second Degree
 Criminal Possession of a Forgery Device
 Offering a False Instrument for Recording
 Scheme to Defraud
 Falsifying Business Records
 Commercial Bribe Receiving
 Commercial Bribery
 Endangering the Welfare of a Minor
 Bribery
 Receiving a Bribe
 Perjury
 Perjury by Inconsistent Statements
 Escape in the First Degree
 Escape in the Second Degree
 Promoting Contraband in the First Degree
 Interference with Official Proceedings
 Receiving a Bribe by a Witness or Juror
 Jury Tampering
 Misconduct by a Juror
 Tampering with Physical Evidence
 Hindering Prosecution in the First Degree
 Terroristic Threatening
 Riot
 Criminal Possession of Explosives
 Unlawful Furnishing of Explosives
 Promoting Prostitution in the First Degree

ALASKA

STATE LEGISLATURE

February 4, 1983

MEMORANDUM

Instances of the phrase "Moral Turpitude" in Alaska Statutes:

AS 04.11.37 ✓
AS 05.15.060 ✓
AS 08.24.110 ✓
AS 08.24.290 ✓
AS 08.42.090 ✓
AS 08.54.110 ✓
AS 08.64.380 ✓
AS 08.88.171 ✓
AS 14.07.145 ✓
AS 14.20.030 ✓
AS 14.20.170 ✓
AS 14.20.175 ✓
AS 15.05.030 ✓

AS 15.07.135 ✓
AS 15.60.010 ✓
AS 18.65.440 ✓
AS 21.09.150 ✓
AS 21.22.020 ✓
AS 22.30.011 ✓
AS 22.30.070 ✓

moral obligation. See Obligation.

moral turpitude. The act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man. *State v. Adkins*, 40 Ohio App.2d 473, 320 N.E.2d 308, 311, 69 O.O.2d 416. Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others. *Lee v. Wisconsin State Bd. of Dental Examiners*, 29 Wis.2d 330, 139 N.W.2d 61, 65. The quality of a crime bringing grave infringement of the moral sentiment of the community as distinguished from statutory malum prohibitum. *People v. Ferguson*, 55 Misc.2d 711, 286 N.Y.S.2d 976, 981. See also Turpitude.

morandae solutionis causa /morændiy sæl(y)üw-shiyównas kóza/. Lat. For the purpose of delaying or postponing payment or performance.

ora reprobatur in lege /móra réprábéyðar in liyjly/. Lat. Delay is reprobated in law.

oratorium /móhratór(i)yam/. A term designating suspension of all or of certain legal remedies against debtors, sometimes authorized by law during financial distress. A period of permissive or obligatory delay; specifically, a period during which an obligor has a legal right to delay meeting an obligation. *State ex rel. Jensen Livestock Co. v. Hyslop*, 111 Mont. 122, 107 P.2d 1088, 1092. Delay or postponement of an action or proceeding. See Injunction; Restraining order.

more favorable terms clause. A provision in a labor-management contract by which the union agrees not to make more favorable agreements with other and competing employers.

more or less. About; substantially; or approximately; implying that both parties assume the risk of any ordinary discrepancy. The words are intended to cover slight or unimportant inaccuracies in quantity. *Carter v. Finch*, 186 Ark. 954, 57 S.W.2d 408; and are ordinarily to be interpreted as taking care of unsubstantial differences or differences of small importance compared to the whole number of items transferred.

moreover. In addition thereto, also, furthermore, likewise, beyond this, besides this.

organic-marriage. See Marriage.

organgina, or morgangiva /morgánjona/*jova/. A gift on the morning after the wedding; dowry; the husband's gift to his wife on the day after the wedding.

orgue /mörg/. A place where the bodies of persons found dead are kept for a limited time and exposed to view, to the end that their relatives or friends may identify them.

ormon. A member of the Church of Jesus Christ of Latter-day Saints. The Church was organized in 1830 at Seneca, New York, by Joseph Smith, and today its headquarters are in Salt Lake City, Utah.

orning loan. An unsecured loan to permit the borrower, generally a stockbroker, to carry on his business for the day.

Moron. A term indicating a mentally defective person usually having a mental age of eight to twelve years and an I.Q. of 50 to 70.

Morphinomania, or morphinism /mórfanóméyn(i)ya /mórfanizam/. The opium habit. An excessive desire for morphia.

Morris Plan Company. An industrial bank which accepts money from the public for investment in investment certificates which draw interest periodically payable to the investor, and which bank lends money principally to steadily employed salaried people who are required to secure repayment with the endorsement of two other employed salaried people, the contract calling for installment payments over a one year period. Other secured loans are also made. *Board of Com'rs of Tulsa County v. Remedial Finance Corporation*, 186 Okl. 648, 100 P.2d 240, 242.

Mors /mórz/. Lat. Death. *State v. Logan*, 344 Minn. 351, 126 S.W.2d 256, 259.

Mors dicitur ultimum supplicium /mórz dísdar últímam sæplish(i)yám/. Death is called the "last punishment," the "extremity of punishment."

Morsellum, or morsellus, terra /morsélam téhry /'las/. In old English law, a small parcel or bit of land.

Mors omnia solvit /mórz ómniya sólvat/. Death dissolves all things. Applied to the case of the death of a party to an action.

Mortal. Destructive to life; causing or occasioning death; exposing to or deserving death, especially spiritual death; deadly; fatal, as, a mortal wound, or mortal sin; of or pertaining to time of death.

Mortality. The relative incidence of death.

Mortality tables. A means of ascertaining the probable number of years any man or woman of a given age and of ordinary health will live. A mortality table expresses, on the basis of the group studied, the probability that, of a number of persons of equal expectations of life who are living at the beginning of any year, a certain number of deaths will occur within that year. *National Life & Acc. Ins. Co. v. U. S.*, D.C.Tenn., 381 F.Supp. 1034, 1037.

Such tables are used by insurance companies to determine the premium to be charged for those in the respective age groups.

Mort civile /mórt(s) sæviyl/. In French law, civil death, as upon conviction for felony. It was nominally abolished in 1854, but something very similar to it, in effect at least, still remains. Thus, the property of the condemned, possessed by him at the date of his conviction, goes and belongs to his successors (*héritiers*), as in case of an intestacy; and his future acquired property goes to the state by right of its prerogative (*par droit de déshérence*), but the state may, as a matter of grace, make it over in whole or in part to the widow and children.

Mort d'ancestor /mórt dænsəstər/. An ancient and now almost obsolete remedy in the English law. An assize of mort d'ancestor was a writ which lay for a person whose ancestor died seised of lands in fee

simple, and after his death this writ directed the assize, who should recognize whether or not on the day of his death he were the next heir.

Mortgage /mórgaj/. A security interest created by a written instrument for the performance of an obligation. At common law, a mortgage was absolute in its form and the like, by the performance of some act and the like, by the debtor, to become void if the terms prescribed in the conveyance. The nature of the legal title to the property subject to defeasance by the performance of the obligation.

The above definition applies to a mortgage in common-law (i.e. estate) mortgage. Such conveyances are absolute in form but in substance are regarded as a mere security. *Zeigler v. Zeigler*, 894, 896. It is a conveyance of some other property for the performance of some other obligation. A transaction may take the form of a conveyance in effect but be a hybrid or in substance a mortgage.

See also Assumption of mortgage; Bulk mortgage; Corporate mortgage; Corporate trust; In rem mortgage; Release of mortgage; Submortgage; Tax mortgage; Union mortgage; see Bona fide.

Amortized mortgage. A mortgage which pays the current interest of principal in its payments.

Blanket mortgage. A mortgage which creates a lien on a substantial portion of the mortgagor's assets.

Closed-end mortgage. A mortgage which is not altered during the term of the mortgage.

Consolidated mortgage. A mortgage which replaces or to consolidate two or more mortgages.

Construction drawn. A mortgage drawn to finance building.

Conventional mortgage. A mortgage which is a contract by which the mortgagor conveys property, or a portion of it, to the mortgagee to secure the execution of the mortgage without divesting the mortgagor of the property. The mortgagee is not obliged to give up the property to the creditor over the mortgagor's objection. The mortgagee's obligation of the property is a general lien at common law.

contents thereof had been approved by three justices, or the majority of the grand jury at assizes or quarter sessions. No petition could be delivered by more than ten persons.

Tun. A measure of wine or oil, containing four hogshheads.

Tungreve /tʌŋgri:v/. A town-reeve or bailiff.

Tunnage. A duty in England anciently due upon all wines imported, over and above the prisage and butlerage.

Turba /tʌrbə/. Lat. In the civil law, a multitude; a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least.

Turbary /tʌrbəri/. Turbary, or common of turbary, is the right or liberty of digging turf upon another man's ground.

Turf and twig. A piece of turf, or a twig or a bough, were delivered by the feoffee to the feoffee in making livery of seisin. 2 Bl.Comm. 315.

Turn, or tourn /tɜ:n/. In English law, the great court-leet of the county, as the old county court, was the court-baron. Of this the sheriff was judge, and the court was incident to his office; wherefore it was called the "sheriff's tourn;" and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred.

Turncoat witness. A witness whose testimony was expected to be favorable but who turns around and becomes an adverse witness.

Turned to a right. In English law, this phrase means that a person whose estate is divested by usurpation cannot expel the possessor by mere entry, but must have recourse to an action, either possessory or droual.

Turning State's evidence. See State's evidence.

Turnkey. A person, under the superintendence of a jailer, who has the charge of the keys of the prison, for the purpose of opening and fastening the doors.

Turn-key contract. Term used in building trade to designate those contracts in which builder agrees to complete work of building and installation to point of readiness for occupancy. It ordinarily means that builder will complete work to certain specified point, such as building a complete house ready for occupancy as a dwelling, and that builder agrees to assume all risk. Gantt v. Van der Hoek, 251 S.C. 307, 162 S.E.2d 267, 270.

In oil drilling industry a job wherein driller of oil well undertakes to furnish everything and does all work required to complete well, place it on production, and turn it over ready to turn the key and start oil running into tanks. Retsal Drilling Co. v. Commissioner of Internal Revenue, C.C.A.Tex., 127 F.2d 355, 357. A turn-key contract to drill a well involves the testing of the formation contemplated by the parties and completion of a producing well or its abandonment as a dry hole, all done for an agreed-upon total consideration, putting the risk of rising costs, well trouble, weather, and th... like upon the

driller, but it does not, in the absence of a clear expression, require the driller to guarantee a producing well. *Tutah Drilling Co. v. Abraham*, 64 N.M. 380, 328 P.2d 1083, 1091.

Turntable doctrine. Also termed "attractive nuisance" doctrine. This doctrine requires the owner of premises not to attract or lure children into unsuspected danger or great bodily harm, by keeping thereon attractive machinery or dangerous instrumentalities in an exposed and unguarded condition, and where injuries have been received by a child so enticed the entry is not regarded as unlawful, and does not necessarily preclude a recovery of damages; the attractiveness of the machine or structure amounting to an implied invitation to enter. It imposes a liability on a property owner for injuries to a child of tender years, resulting from something on his premises that can be operated by such a child and made dangerous by him, and which is attractive to him and calculated to induce him to use it, where he fails to protect the thing so that a child of tender years cannot be hurt by it.

Doctrine is that who maintains or creates upon his premises or upon the premises of another in any public place an instrumentality or condition which may reasonably be expected to attract children of tender years and to constitute a danger to them is under duty to take the precautions that a reasonably prudent person would take under similar circumstance, to prevent injury to such children. *Schock v. Ringling Bros. and Barnum & Bailey Combined Shows*, 5 Wash.2d 599, 105 P.2d 838, 843.

The dangerous and alluring qualities of a railroad turntable gave the "attractive nuisance rule" the name of "Turntable Doctrine." *Louisville & N. R. Co. v. Vaughn*, 292 Ky. 120, 166 S.W.2d 43, 46.

See also Attractive nuisance doctrine.

Turpis /tɜ:ps/. Lat. In the civil law, base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons.

Turpis causa /tɜ:ps kɔ:zə/. A base cause; a vile or immoral consideration; a consideration which, on account of its immorality, is not allowed by law to be sufficient either to support a contract or found an action; e.g., future illicit intercourse.

Turpis contractus /tɜ:ps kɔntrɛktɜ:s/. An immoral or iniquitous contract.

Turpis est pars que non convenit cum suo toto /tɜ:ps est pɑ:z kwɪ nɔn kɔnvi:nat kəm s(y)u:wɔw tɔ:dwɔw/. The part which does not agree with its whole is of mean account [entitled to small or no consideration].

Turpitude /tɜ:pɪt(y)u:dwɪ/. In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals. An action showing gross depravity. *Traders & General Ins. Co. v. Russell*, Tex.Civ. App., 99 S.W.2d 1079, 1084.

Moral turpitude. A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than "turpi-

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tude," i.e., anything done contrary to justice, honesty, modesty, or good morals. It is also commonly defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

Although a vague term, it implies something immoral in itself, regardless of its being punishable by law. Thus excluding unintentional wrong, or an improper act done without unlawful or improper intent. It is also said to be restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are *malum in se* and disclose a depraved mind. *Bartos v. United States District Court for District of Nebraska*, C.C.A.Neb., 19 F.2d 722, 724.

Turpitude /t(ɪ)ɹpɪt(ɪ)ʊd(ɪ)w/. Lat. Baseness; infamy; immorality; turpitude.

Tuta est custodia quæ sibi met creditur /t(ɪ)ʊwðə ɛst kɔstɔwd(i)jə kwɪj sɪbɪmɛt krɛdɛdɔr/. That guardianship is secure which is intrusted to itself alone.

Tutela /t(ɪ)uwtɪjlə/. Lat. In the civil law, tutelage; that species of guardianship which continued to the age of puberty; the guardian being called "tutor," and the ward, "pupillus." A power given by the civil law over a free person to defend him when by reason of his age he is unable to defend himself. A child under the power of his father was not subject to tutelage, because not a free person, *caput liberum*.

Tutelæ actio /t(ɪ)uwtɪjli jəksh(i)ow/. Lat. In the civil law, an action of tutelage; an action which lay for a ward or pupil, on the termination of tutelage, against the tutor or guardian, to compel an account.

Tutelage /t(ɪ)ʊwdələj/. Guardianship; state of being under a guardian. See *Tutela*.

Tutela legitima /t(ɪ)uwtɪjlə ləjɪdɪmə/. Legal tutelage; tutelage created by act of law, as where none had been created by testament.

Tutelam reddere /t(ɪ)uwtɪjləm rɛdɛrɪj/. Lat. In the civil law, to render an account of tutelage. *Tutelam repscere*, to demand an account of tutelage.

Tutela testamentaria /t(ɪ)utiylə tɛstəmentɛr(i)jə/. Testamentary tutelage or guardianship; that kind of tutelage which was created by will.

Tuteur. In French law, a kind of guardian.

Tuteur officieux. A person over fifty years of age may be appointed a tutor of this sort to a child over fifteen years of age, with the consent of the parents of such child, or, in their default, the *conseil de famille*. The duties which such a tutor becomes subject to are analogous to those in English law of a person who puts himself *in loco parentis* to any one.

Tuteur subrogé. The title of a second guardian appointed for an infant under guardianship. His functions are exercised in case the interests of the infant and his principal guardian conflict.

Tutus erratur ex parte mitiore /t(ɪ)ʊwsh(i)jəs ɛhrɛyðɔr ɛks pɑrdɪj mɪʃɪjɔrɪj/. It is safer to err on the gentler side [or on the side of mercy].

Tutus semper est errare aculetando, quam in puniendo, ex parte misericordie quam ex parte justitie /t(ɪ)ʊwsh(i)jəs sɛmpɔr ɛst ɛhrɛrɪj ɔkwɪjɔtɛndow, kwɛm in pywnɪjɛndow, ɛks pɑrdɪj mɪzɔrkɔrdɪjɪj kwɛm ɛks pɑrdɪj jɔstɪʃɪjɪj/. It is always safer to err in acquitting than punishing, on the side of mercy than on the side of justice.

Tutor /t(ɪ)ʊwðɔr/. One who teaches, usually a private instructor. *State ex rel. Veeder v. State Board of Education*, 97 Mont. 121, 33 P.2d 516, 522.

In the civil law, this term corresponds nearly to "guardian" (i.e., a person appointed to have the care of the person of a minor and the administration of his estate), except that the guardian of a minor who has passed a certain age is called "curator," and has powers and duties differing somewhat from those of a tutor.

Tutor alienus /t(ɪ)ʊwðɔr ɛylɪjɪjɪnəs/. In English law, the name given to a stranger who enters upon the lands of an infant within the age of fourteen, and takes the profits. He may be called to an account by the infant and be charged as guardian in socage.

Tutor proprius /t(ɪ)ʊwðɔr prɔwprijəs/. The name given in old English law to one who is rightly a guardian in socage, in contradistinction to a *tutor alienus*.

Tutorship. The office and power of a tutor. The power which an individual, *sui juris*, has to take care of the person of one who is unable to take care of himself. There are four sorts of tutorships: Tutorship by nature; tutorship by will; tutorship by the effect of the law; tutorship by the appointment of the judge. Civ. Code La. art. 247.

Tutorship by nature. Upon the death of either parent, the tutorship of minor children belongs of right to the other. Upon divorce or judicial separation from bed and board of parents, the tutorship of each minor child belongs of right to the parent under whose care he or she has been placed or to whose care he or she has been entrusted. All those cases are called tutorship by nature. Civ. Code La. art. 250.

Tutorship by will. The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the father or mother dying last. This is called "tutorship by will," because generally it is given by testament; but it may likewise be given by any declaration by the surviving father or mother, or the parent who is the curator of the other spouse, executed before a notary and two witnesses. Civ. Code La. art. 257.

Tutrix /t(ɪ)ʊwtrɪks/. A female tutor.

T.V.A. Tennessee Valley Authority.

Two night guest /tʊwnɔjt gɛst/. In Saxon law, a guest on the second night. By the laws of Edward the Confessor it was provided that a man who lodged at an inn, or at the house of another, should be considered, on the first night of his being there, a stranger (*uncouth*); on the second night, a guest; on the third night, a member of the family. This had reference to the responsibility of the host or entertainer for offenses committed by the guest.

Twelfthndl. The high government, who were done to such made according to U

Twelfth Amendment. tion (1804) which a presidential election vote for President ballots instead of vot on single ballot as b

Twelve-day writ. A 18 & 19 Vict., c. 67 of exchange and pro of court in 1880.

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Rule 216. Expedited Appeals.

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

- (1) Extradition appeals;
- (2) Juvenile waiver appeals;
- (3) Peremptory challenge appeals.

(b) **Definitions.**

(1) An appeal from an order of the superior court granting or denying an application for a writ of habeas corpus filed under AS 12.70.090 by a person arrested on a governor's warrant under the Uniform Criminal Extradition Act, is an "extradition appeal." An appeal from any other final judgment of the superior court relating to the extradition of a person charged in this state or elsewhere with a crime is also an "extradition appeal," except that any appeal from a final judgment convicting a person of a crime is not an "extradition appeal."

(2) A "juvenile waiver appeal" is an appeal from an order under AS 47.10.060(a) finding that a minor is not amenable to treatment under AS 47.10.

(3) A "peremptory challenge appeal" is an appeal by a criminal defendant from an order denying the defendant's motion for change of judge under Criminal Rule 25(d).

(c) **Jurisdictional Limitation.** This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Rule 202.

(d) **Notice of Appeal.**

(1) The notice of appeal in an appeal under this rule shall be filed with the clerk of the court which entered the order or judgment being appealed, within 10 days after the date shown in the clerk's certificate of distribution on the order or judgment.

(2) The notice shall identify the appeal as an appeal under this rule, but the court of appeals will apply this rule to cases within its scope whether they are so identified or not.

(e) **Forwarding Notice of Appeal.** Immediately upon the filing of a notice of appeal in an appeal under this rule, the clerk of the trial courts shall notify the clerk of the appellate courts in the manner provided in Rule 204 (i).

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(f) **Record on Appeal.** The appellant shall not designate a record on appeal. The entire superior court file shall serve as the record on appeal, together with a cassette tape recording of any hearing held in superior court if deemed necessary by the court of appeals. Promptly upon the filing of the appellee's memorandum, the clerk of the trial courts shall transmit the original and copies of the record on appeal to the clerk of the appellate courts in the same manner as for other appeals.

(g) **Memoranda on Appeal.**

(1) Within 10 days after filing a notice of appeal in an appeal under this rule, the appellant shall file with the court of appeals the original of a typewritten memorandum in support of the appeal together with proof of service on all other parties.

(2) Within 10 days after service of the appellant's memorandum, the appellee may file with the court of appeals the original of a typewritten memorandum in opposition to the appeal.

(3) No reply memorandum may be filed unless ordered by the court.

(4) The memoranda need not comply with the requirements of Rule 212 unless ordered by the court of appeals.

(5) The clerk of the appellate courts shall forthwith duplicate copies of the memoranda for use of the court.

(h) **Disposition of Appeals.** Appeals under this rule will be disposed of expeditiously by the court of appeals on the record and memoranda. Oral argument may be granted in the court's discretion. (Supreme Court Order 439 effective November 15, 1980; amended by Supreme Court Order 554 effective April 4, 1983; and by Supreme Court Order 575 effective February 1, 1984)