

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3432

HJUD

SB 391

308



# RECORDS



# CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

*James O. Smith*  
Signature of Camera Operator

*7/25/89*  
Date

S B

z p l

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3600

May, 1986

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

Jeanie Henry

House Judiciary	5/7/86	1:30pm
" "	5/9/86	1:30pm
" "	5/9/86	7:00pm

HOUSE

COMMITTEE REPORT

(7)

Date referred: 4/29/86

FURTHER REFERRALS: FINANCE

DATE: \_\_\_\_\_

The JUDICIARY \_\_\_\_\_ Committee has considered CSSSSB 391(SA) am

"An Act relating to the ethical conduct of governmental activities; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with \_\_\_\_\_  same title
- replace with \_\_\_\_\_  new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Chairman

Version #1 ✓  
Cramer  
5/9/86

Original sponsor: Rules/Governor

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

5 A BILL

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

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

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

11 CHAPTER 52. ALASKA EXECUTIVE BRANCH ETHICS ACT.

12 ARTICLE 1. DECLARATIONS.

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

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

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

4 ARTICLE 2. CODE OF ETHICS.

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

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

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

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

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

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

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

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

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

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

7 (b) A public officer may not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 officer

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

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

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

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

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

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

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

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

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

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

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

1 collective bargaining.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 39.52.190.

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

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

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

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

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

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

1 in effect.

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

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

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

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

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

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

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

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

7 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

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

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

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

1 designated supervisor for resolution under AS 39.52.210 or 39.52.220.

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

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

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

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

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

29 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After

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

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

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

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

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

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

1 open to the public.

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

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

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

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

20 (b) The hearing officer may administer oaths, hold hearings, and  
21 take testimony. Upon application by a party to the hearing, the  
22 hearing officer may issue subpoenas under AS 39.52.360.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ARTICLE 5. ENFORCEMENT; REMEDIES.

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

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

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

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

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

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

22 (2) may order restitution; and

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

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

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

1 and recommendation; and

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

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

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

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

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

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

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

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

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

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

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

28 ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

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

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

26 (3) accept a gift.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (9) "financial interest" means

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

1 or expects to receive a financial benefit;

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (A) a public employee;

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

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

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

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

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

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

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

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

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

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

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

18 (5) elect a chairman from its membership;

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

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

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

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

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

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

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

5 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska  
6 Railroad are employees of the corporation and not of the state. The  
7 provisions of AS 39, except AS 39.52, do not apply to employees of the  
8 corporation. However, no later than January 1, 1987, the corporation  
9 shall adopt a code of ethics for its directors and employees that is  
10 substantially equivalent to that adopted in AS 39. If the governor  
11 determines that the corporation has not adopted a substantially  
12 equivalent code by January 1, 1987, the governor shall issue a finding  
13 of failure to comply with this section and shall request the attorney  
14 general to establish a code for the corporation that satisfies the  
15 requirements of this section. The code established by the attorney  
16 general is binding on the corporation and is not subject to  
17 negotiation under AS 42.40.720 - 42.40.880.

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

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

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

1       \* Sec. 8. AS 39.52.110 - 39.52.190, and 39.52.310 - 39.52.460, enacted  
2 in sec. 1 of this Act, take effect January 1, 1987.  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Version #2  
Cramer  
5/9/86  
(Whistleblower)

Original sponsor: Rules/Governor

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

5 A BILL

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

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

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

11 CHAPTER 52. ALASKA EXECUTIVE BRANCH ETHICS ACT.

12 ARTICLE 1. DECLARATIONS.

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

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

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

4 ARTICLE 2. CODE OF ETHICS.

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

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

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

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

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

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

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

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

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

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

7 (b) A public officer may not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 officer

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

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

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

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

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

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

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

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

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

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

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

collective bargaining.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 39.52.190.

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

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

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

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

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

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

1 in effect.

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

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

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

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

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

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

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

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

7 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

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

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

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

1 designated supervisor for resolution under AS 39.52.210 or 39.52.220.

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

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

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

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

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

29 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After

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

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

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

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

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

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

1 open to the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ARTICLE 5. ENFORCEMENT; REMEDIES.

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

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

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

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

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

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

22 (2) may order restitution; and

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

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

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

1 and recommendation; and

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

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

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

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

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

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

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

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

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

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

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

28 ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

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

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

26 (3) accept a gift.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (9) "financial interest" means

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

1 or expects to receive a financial benefit;

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (A) a public employee;

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

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

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

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

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

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

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

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

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

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

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

18 (5) elect a chairman from its membership;

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

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

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

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

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

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

4 \* Sec. 4. AS 39.51 is amended by adding new sections to read:

5 ARTICLE 2. PROTECTION FOR PUBLIC EMPLOYEES.

6 Sec. 39.51.100. EMPLOYEES PROTECTED. (a) A public employer may  
7 not discharge, threaten, or otherwise discriminate against an employee  
8 regarding the employee's compensation, terms, conditions, location, or  
9 privileges of employment because

10 (1) the employee or a person acting on behalf of the  
11 employee reports to a public body or is about to report to a public  
12 body, reasonably believing the report to be true;

13 (A) a violation of a state, federal, or municipal law,  
14 regulation or ordinance; or

15 (B) a substantial and specific danger to public health  
16 or safety;

17 (2) the employee is requested by a public body to partici-  
18 pat. in a court action or in an investigation, hearing, or inquiry  
19 held by that public body; or

20 (3) the employee, or a person acting on behalf of the  
21 employee, reports to a public body or is about to report to a public  
22 body, reasonably believing the report to be true, mismanagement, a  
23 gross waste of funds, or an abuse of authority.

24 (b) This section does not require an employer to compensate an  
25 employee for participation in an investigation, hearing, or inquiry  
26 held by a public body.

27 (c) This section and AS 39.51.110 do not apply if the report  
28 made under subsections (a)(1) or (a)(3) of this section discloses  
29 information which is legally required to be confidential.

1 (d) A person who alleges a violation of this section may bring a  
2 civil action for appropriate injunctive relief, actual damages, or  
3 both, within 90 days after the occurrence of the alleged violation.

4 (e) The person must show by clear and convincing evidence that  
5 the employer violated (a) of this section.

6 (f) The provisions of AS 39.51.100 - 39.51.120 do not diminish  
7 or impair the rights of a person under a collective bargaining agree-  
8 ment.

9 (g) An employer shall post notices and use other appropriate  
10 means to inform employees of their protections and obligations under  
11 AS 39.51.100 - 39.51.120.

12 Sec. 39.51.110. RELIEF AND PENALTIES. (a) The court may order  
13 an employer who has violated AS 39.51.100 to reinstate the employee,  
14 pay the employee back wages, reinstate fringe benefits and seniority  
15 rights, and pay actual damages.

16 (b) A public body may not disqualify a person who alleges a  
17 violation of AS 39.51.100 - 39.51.120 from eligibility to

18 (1) bid on contracts with the public body;

19 (2) receive land under a law of the state or an ordinance  
20 of the municipality;

21 (3) receive another right or benefit to which the person is  
22 entitled.

23 (c) A person who violates AS 39.51.100 - 39.51.120 is liable for  
24 a civil fine of not more than \$10,000.

25 (d) A person who attempts to prevent another person from making  
26 a report or participating in a matter under AS 39.51.100(a) with  
27 intent to impede or prevent a public inquiry on the matter is liable  
28 for a civil fine of not more than \$10,000.

29 Sec. 39.51.120. DEFINITIONS. In AS 39.51.100 - 39.51.120,

1 (1) "employee" or "public employee" means a person who  
2 performs a service for wages or other remuneration under a contract of  
3 hire, written or oral, express or implied for a public employer;

4 (2) "employer" or "public employer" includes the state, a  
5 public or quasi-public corporation or authority established by law,  
6 the University of Alaska, a municipality, a political subdivision of  
7 the state, and the Alaska Railroad;

8 (3) "public body" includes a federal, state, or municipal  
9 officer or agency.

10 \* Sec. 5. AS 42.40.710 is amended to read:

11 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska  
12 Railroad are employees of the corporation and not of the state. The  
13 provisions of AS 39, except AS 39.52, do not apply to employees of the  
14 corporation. However, no later than January 1, 1987, the corporation  
15 shall adopt a code of ethics for its directors and employees that is  
16 substantially equivalent to that adopted in AS 39. If the governor  
17 determines that the corporation has not adopted a substantially  
18 equivalent code by January 1, 1987, the governor shall issue a finding  
19 of failure to comply with this section and shall request the attorney  
20 general to establish a code for the corporation that satisfies the  
21 requirements of this section. The code established by the attorney  
22 general is binding on the corporation and is not subject to  
23 negotiation under AS 42.40.720 - 42.40.880.

24 \* Sec. 6. The attorney general and the personnel board have no juris-  
25 diction over an alleged violation of AS 39.52.110 - 39.52.190 that occurred  
26 before January 1, 1987, unless the violation continues after that date.

27 \* Sec. 7. An agency or administrative unit with a policy in effect on  
28 July 1, 1986, related to the subject of AS 39.52.110 - 39.52.190 shall, by  
29 January 1, 1987, submit the policy to the attorney general for review as to

1 conformity with the provisions enacted in this Act, the attorney general's  
2 suggestions for amendment, and the attorney general's necessary approval  
3 under AS 39.52.920.

4 \* Sec. 8. AS 39.52.010, 39.52.210 - 39.52.200, and 39.52.910 - 39.52.-  
5 960, enacted in sec. 1 of this Act, and secs. 2 - 7 of this Act take effect  
6 July 1, 1986.

7 \* Sec. 9. AS 39.52.110 - 39.52.190, and 39.52.310 - 39.52.460, enacted  
8 in sec. 1 of this Act, take effect January 1, 1987.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

CSSB 341 (SA)

May 8, 1986

House Judiciary Committee

A.G.C. of Alaska, on behalf of our 700 member firms, supports the CSSB 341 by the House State Affairs Committee. When the original bill was introduced we had reservations with certain aspects of the bill. However, since then several amendments have occurred, during the thirteen hearings this Session, which have greatly improved the bill.

We applaud the Legislature and drafters for using "The Model Procurement Code for State and Local Governments," published by the American Bar Association as a basis for this legislation.

There is one major difference between "The Model Procurement Code" and the original bill and CSSB 341(SA): construction is treated differently.

"The Model Procurement Code" recognized construction as unique to the procurement process and devoted a separate article (Article 5) to the procurement of construction. The original bill and CSSB 341(SA) do not devote a separate section to construction. Instead, throughout the bill they refer to "procurement of supplies, services, professional services and construction."

Although this is a flaw of the legislation, we believe that as the bill has progressed through the legislative process that CSSB 341(SA) has evolved into legislation that is workable in the real, day-to-day, world of the construction industry.

Therefore, we would urge the Committee to pass CSSB 341 (SA) out of Committee intact. We would further urge the Committee to closely scrutinize any further changes to the portions of the bill relating to the construction industry.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

REQUEST

Bill/Resolution No. : CSSSSB 391 ( S.A. )  
 Title : Act relating to the ethical  
conduct of government

Sponsor : Rules by Request of the  
 Requestor : Governor  
 Date of Request : \_\_\_\_\_

FISCAL DETAIL

Agency Affected : Dept. of Administration  
 BRU : Division of Personnel

Components : \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

**FUNDING : (Thousands of Dollars)**

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

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

This fiscal note zeroes previous fiscal note funding for the Dept. of Administration.

Prepared by : Senator Jan Faika Co-chairman Phone : 465-4523  
 Division : Senate Finance Committee Date : \_\_\_\_\_

Approved by Commissioner : \_\_\_\_\_ Date : \_\_\_\_\_  
 Agency : \_\_\_\_\_

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSSSSB 391 ( S.A )  
 Title : Act relating to the ethical  
conduct of government

Sponsor : Rules by Request of the  
 Requestor : Governor  
 Date of Request : \_\_\_\_\_

**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		51.8	56.8	58.5	60.3	62.1
TRAVEL		1.7	1.7	1.8	1.9	1.9
CONTRACTUAL		2.4	2.6	2.7	2.8	2.8
SUPPLIES		3.4	2.1	2.1	2.2	2.2
EQUIPMENT		3.2	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		62.5	63.2	65.1	67.2	69.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		62.5	63.2	65.1	67.2	69.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman  
 Division : Senate Finance Committee

Phone : 465-4523  
 Date : 4/21/86

Approved by Commissioner : \_\_\_\_\_  
 Agency : \_\_\_\_\_

Date : \_\_\_\_\_

Distribution (by Agency preparing fiscal note) :

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

45

## STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 3/26/86

**REQUEST**

Bill/Resolution No. : SSSB 391  
 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 : March 24, 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	86.4
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						
<b>TOTAL OPERATING</b>		187.1	189.9	195.6	201.5	207.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		187.1	189.9	195.6	201.5	207.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**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 : 3/26/86

Approved by Commissioner Harold M. Brown, Atty General Date : 3/26/86  
 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. SS SB 391

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 on 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	<u>1.5</u>	<u>1.5</u>	<u>6.5</u>	<u>9.5</u>
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 <b>Attorney IV</b>			No. of Positions 1	Range/Step 24A	Barg. Unit PX	Govt.	Approv.	Disapt.
Time Status T	Staff Months 12	RP Number	Location AWA - Juneau		Election District 4	Leg.		
Type of Expenditure			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.					
Amount								
1	2	3						
Salary	56,244							
Benefits	15,248							
Premium Pay								
Other								
Total Personal Services		71,492						
Travel		3,000						
Contractual		2,400						
Commodities		3,900						
Equipment		1,500						
Other								
Total Cost		82,292						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
			82,292					
For B&M Use Only								
Key Number								

**Request For  
New Position**

Agency Department of Law  
 BRU Legal Services  
 Component Operations

Page 1 of 1  
 Revised Date

**FY 87**



Position Title <b>Legal Secretary I</b>			No. of Positions <b>1</b>	Range/Step <b>10B</b>	Dep. Unit <b>GGU</b>	Gov.	Approv.	Disapp.
Time Status <b>PFT</b>	Staff Months <b>12</b>	RP Number	Location <b>AWA-Juneau</b>		Election District <b>4</b>	Leg.		
Type of Expenditure			Justification					
		Amount	<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 enalties. 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>					
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		43,040						
Total Cost								
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

Page 1 of 1  
 Revised Date

**FY 87**



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

~~SB 391~~  
SSSB391

April 2, 1986

The Honorable Don Bennett  
President of the Senate  
Alaska State Legislature  
P. O. Box V  
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a sponsor substitute for Senate Bill 391, a bill relating to the ethical conduct of executive-branch officers. This sponsor substitute was necessitated by the substantial costs associated with the original version of SB 391, costs that primarily resulted from the creation of a separate commission to administer the new ethics Act.

While we adjudge the original version of SB 391 to be "perfect world" legislation, the version before you is one of those rarities: a compromise that substantially reduces the level of funding necessary while maintaining the bill's primary goal: the establishment -- in statute -- of a code of ethics for all public officers in the executive branch, and replacement of the relatively unknown and unworkable aspects of the common law on conflicts of interests with concrete standards of conduct.

The sponsor substitute continues to establish in AS 39 a new chapter entitled the "Alaska Executive Branch Ethics Act," but this sponsor substitute removes from the bill the creation of a separate commission to administer the new law. Instead, the bill relies upon two existing entities to shoulder responsibility for enforcement of the code of ethics: the Department of Law and the state's personnel board.

New staff positions in the Department of Law will 1) provide the executive branch with opinions and advice concerning the

substance and intent of the code of ethics, 2) accept and investigate legitimate complaints, and 3) take to formal hearing probable cause violations of the code. The state's personnel board, which has already had some limited experience in evaluating allegations of employee misconduct, will appoint hearing officers or independent counsel and act as the final determiner in matters that have gone to hearing, and will, through the provision of new enforcement powers to the board, order appropriate penalties and remedies.

As a result of conversations with representatives of various departments, language has been added to AS 39.52.130(a), providing for acceptance of travel or hospitality by department personnel if acceptance does not compromise an officer in the proper performance of his or her duties.

In this sponsor substitute, under certain conditions, a non-salaried member of a board or commission is not precluded from participating in personal or financial matters that are regulated by the board or commission on which the member serves. AS 39.52.160(c).

Sections 2 and 3 of the sponsor substitute amend existing statutes relating to the personnel board, to reflect the board's duties and responsibilities under this bill.

In addition, this substitute legislation does not transfer any of the financial disclosure reporting requirements from the current conflict of interests law (AS 39.50) to the new executive ethics chapter. Executive branch officials who currently file conflict of interest statements will continue to file their statements with the Alaska Public Offices Commission.

Because no transfer of financial disclosure reporting requirements is contained in this sponsor substitute, the bill's previous extensive amendments to AS 39.50 have been eliminated. While many of the proposed changes to AS 39.50 deserve the attention of the legislature, many of the changes exist in other bills currently before the legislature, and we have, for that reason, and for the sake of simplicity, dropped them from this substitute bill.

Finally, inasmuch as passage of the "whistleblower" legislation currently pending before the legislature appears likely, I have also removed similar whistleblower provisions from SB 391.

Hence, SSSB 391 is considerably shortened and much leaner than the original. A sectional analysis of the revised legislation follows, for the legislature's use in reviewing the proposed bill and for the use of future researchers.

I believe that this sponsor substitute deserves prompt attention by the legislature. Passage of a code of ethics for the executive branch is a priority of my administration and, I hope, a priority of the legislature as well.

SECTIONAL ANALYSIS  
OF SSSB 391

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 of SB 391 comprises almost the entire bill, we have decided to organize our analysis of sec. 1 by the articles listed above.

ARTICLE 1. DECLARATIONS.

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

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

ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

Sec. 39.52.110. SCOPE OF CODE. To clarify the intent behind the code of ethics, this section describes its scope. One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. I wanted to make it clear in this section of the bill that the legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers cannot and should not be without a personal or financial stake in Alaska, so long as those private interests do not interfere with the full and

faithful discharge of the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

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

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

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

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

Sec. 39.52.130. IMPROPER GIFTS OR BENEFITS. This section addresses another potential abuse: the receipt of a gift or benefit under circumstances in which it could be inferred that the gift or benefit was intended to improperly influence the officer in the performance of his or her official duties. This section creates an objective -- rather than a subjective -- test by which the propriety of soliciting or receiving a gift or benefit can be judged from the viewpoint of a "reasonable person." Travel or hospitality given to aid a public officer in the performance of official duties may be accepted if the officer's designated

supervisor (defined in AS 39.52.960) determines that acceptance does not interfere with the full and faithful discharge of the officer's public duties and responsibilities. AS 39.52.130(a).

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

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

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

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

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

Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS. Much public scrutiny has recently been focused on the conduct addressed by this provision of the code of ethics. This section prohibits an officer from improperly influencing state grant, contract, lease, or loan procedures. Specifically, a public officer or member of the officer's immediate family may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract,

lease, or loan if the public officer may take or withhold official action that affects its award, execution, or administration. AS 39.52.150(a). There are exceptions listed to this broad prohibition, which focus on the specific conditions under which the grant, contract, lease, or loan is solicited or awarded. AS 39.52.150(b) -- 39.52.150(c).

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

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

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

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

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

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. The most difficult area to address in this legislation is the post-employment situation. The public interest requires that some restrictions be placed on the

range of activities that former public officers may perform in the private sector. Of course, regardless of whether employment is in the public or private sector, the expertise and knowledge one gains in a job are transferable skills that employees rightfully take with them and that enable the employees to seek more responsible positions. We must also consider that while Alaska has a relatively small workforce, government is the state's largest employer.

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

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

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

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

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

Article 3 sets out the various procedures that public officers have available to them for the prevention of a violation of the code of ethics. A major aspect of this legislation is its "preventative" posture. Public officers must be able to seek and receive prompt advice in order to avoid actions that might violate the code. It is these preventative procedures that give the bill its true

strength, because it provides a positive approach to solving potential abuses and appropriately assists officers before the fact, rather than waiting for violations to occur which the attorney general must then prosecute.

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

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

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

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

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

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

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

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

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

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

#### ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

Sec. 39.52.310. COMPLAINTS. This section sets out the procedures for handling a complaint, whether filed with the

attorney general or initiated by the attorney general, and establishes the conditions under which a complaint will be accepted and investigated. The attorney general can initiate a complaint or elect to treat as a complaint a matter referred by a supervisor. AS 39.52.310(a). In addition, any person can file a complaint with the attorney general in writing. AS 39.52.310(b).

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

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

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

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

Sec. 39.52.340. CONFIDENTIALITY. Information obtained by the attorney general during an investigation is confidential, unless and until formal proceedings are initiated. AS 39.52.340(a). The attorney general and persons contacted

during the course of an investigation are required to maintain confidentiality regarding the existence of the investigation. Id. A person who violates the confidentiality provisions of this section is guilty of a class A misdemeanor. Id.

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

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

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

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

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

Hearings held under this section are not subject to the Administrative Procedure Act. AS 39.52.360(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. AS 39.52.410(a).

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

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

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

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

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

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

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

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

#### ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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