

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 80/2

3730 HSTA HB 706 606

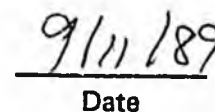


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HB

706

# STATE OF ALASKA THE LEGISLATURE

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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 State Affairs Committee	4/16/1986,	3:00 pm
" " " "	4/17/1986,	7:00 pm
" " " "	4/18/1986,	3:00 pm
" " " "	4/21/1986,	3:00 pm

HOUSE  
COMMITTEE REPORT

Date referred: 4/4/86

JUDICIARY

FURTHER REFERRALS:

FINANCE

DATE: 4/21/86

The STATE AFFAIRS Committee has considered HB 706

"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 CSHB 706 (SA)  same title
- new title

and recommends DO PASS

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

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

SIGNING DO PASS:

Katie Hurley

Mike Hansen

W.A. [unclear]

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SIGNING OTHER RECOMMENDATIONS:

Roger Jenkins No Pass

[unclear] NO Pass

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\_\_\_\_\_

Katie Hurley

Chairman

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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

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

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

April 21, 1986

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

Re: CSHB 706 -- the ethics in the  
executive branch act

Dear Representative Hurley:

Thank you for the opportunity to explain why we believe passage of CSHB 706, relating to ethics in the executive branch, is desirable. In our opinion, there are both practical and good public policy reasons for the adoption of a code of ethics.

First, the practical reasons: The common law regarding conflicts of interests currently applies to all state employees and all members of boards and commissions. The common law is difficult to ascertain and apply for several reasons: 1) there is little or no Alaska caselaw precedent; 2) many other states have enacted statutes to supersede the common law; and 3) the standard of "the appearance of impropriety" is subjective, overly strict, and unworkable. This bill replaces the common law with specific standards of conduct that have been specifically drafted with Alaska's unique circumstances in mind.

Additionally, the bill's provisions for advisory opinions will allow public officers to become readily educated about the code of ethics and how it applies to them. The enforcement provisions are also an important improvement over existing personnel procedures.

Second, the public policy reasons: Last summer's grand jury took the action it did (i.e., referred a matter regarding the conduct of an executive branch official to the Alaska Senate), because it had nowhere else to turn: there were no civil statutes governing executive branch conduct to which the jury could turn for specific guidance. We believe the citizens of this state were shocked to discover such standards did not already exist to protect the public, and that they supported the Senate's decision to form a special committee to pursue the adoption of an executive branch code of ethics. The bill before you was born of that committee's special charge.

Honorable Katie Hurley  
Chair, House State Affairs  
Alaska State Legislature

April 21, 1986  
Page 2

The Legislature, in its law-making capacity, now has a special duty to support the Governor in his attempts to do what the Legislature has already done for itself: set in place guidelines regarding the ethical conduct of officers in the performance of their public duties and responsibilities. Despite its probable popularity as an election-year issue, adoption of a code of ethics is truly necessary because the code will clearly state uniform ethical standards under which all public officers must perform.

Surprisingly, in lieu of passing HB 706, the Alaska Public Employees Association (APEA) has suggested simply amending the existing personnel rules to include the state's exempt employees (and presumably members of boards or commissions). We considered that alternative when drafting the bill, but found it unsatisfactory. The personnel board's rule regarding conflicts of interests embodies common law principles, including the "appearance of impropriety" standard. For that reason, the rule is vague and unhelpful. Moreover, the rule does not have any specific enforcement powers.

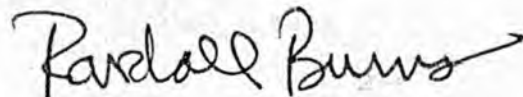
Therefore, because only a statutory enactment can supersede the common law, we believe this bill is necessary. The standards in HB 706 are not a duplication of the personnel rules; rather, they supersede those rules to provide meaningful and workable standards.

Because this bill provides many clear advantages over current procedure in this area, and because it places in law a standard of conduct the public has every right to expect, we ask your Committee's favorable consideration.

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:



Randall P. Burns  
Special Assistant  
to the Attorney General

By:



Susan D. Cox  
Assistant Attorney General

RPB:SDC:cck

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APPROVED: \_\_\_\_\_

Original sponsor: Rules/Governor

BY THE STATE AFFAIRS  
COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 706 (State Affairs)

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 discourage those officers from acting  
18 upon personal or financial interests in the performance of their  
19 public responsibilities, will improve standards of public service, and  
20 will promote and strengthen the faith and confidence of the people of  
21 this state in their public officers. It is further declared that  
22 holding public office or employment is a public trust and that as one  
23 safeguard of that trust, the people require public officers to adhere  
24 to a code of ethics.

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

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1 rendered under it, or another statute.

2 ARTICLE 2. CODE OF ETHICS.

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

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

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

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

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

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

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

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

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1 issuing opinions and reaching decisions.

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

6 (b) A public officer may not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 AS 39.52.110 -- 39.52.190.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

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

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

13 (c) If a complaint alleges a violation of AS 39.52.110 --  
14 39.52.190 by the governor, lieutenant governor, or the attorney gener-  
15 al, the matter shall be referred to the personnel board. The person-  
16 nel board shall retain independent counsel who shall act in the place  
17 of the attorney general under (d) -- (i) of this section, AS 39.52.320  
18 -- 39.52.350, and AS 39.52.360(c) and (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 ARTICLE 5. ENFORCEMENT; REMEDIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ARTICLE 6. GENERAL PROVISIONS.

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

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

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

7 (c) The provisions of this chapter are not subject to negotia-  
8 tion by collective bargaining under AS 23.40 or AS 42.40.720 --  
9 42.40.880.

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

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

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

20 (3) accept a gift.

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

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

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

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

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1 context requires otherwise,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (9) "financial interest" means

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (A) a public employee; and

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

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

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

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

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

29 Sec. 39.25.070. POWERS AND DUTIES OF PERSONNEL BOARD. In

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1 addition to the other duties imposed by this chapter, the personnel  
2 board shall

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

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

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

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

14 (5) elect a chairman from its membership;

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

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

20 (8) retain independent counsel in accordance with AS 39.-  
21 52.310(c);

22 (9) appoint, and review the findings, conclusions, and  
23 recommendations of, hearing officers in accordance with AS 39.52.-  
24 350(c), 39.52.360, and 39.52.370;

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

27 (11) impose the penalties described in AS 39.52.410, 39.52.-  
28 440, and 39.52.450.

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

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

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

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

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

18 \* Sec. 8. AS 39.52.010, 39.52.210 -- 39.52.260, and 39.52.910 --  
19 39.52.960, enacted in sec. 1 of this Act, and secs. 2 -- 7 of this Act take  
20 effect July 1, 1986.

21 \* Sec. 9. AS 39.52.110 -- 39.52.190, and 39.52.310 -- 39.52.460, enact-  
22 ed in sec. 1 of this Act, take effect January 1, 1987.  
23  
24  
25  
26  
27  
28  
29

April 7, 1986

No. 110

HB 706 (SSCS 321) page 3 of 3

	<u>CONTRACTUAL</u>	<u>TRAVEL</u>
<u>FY 88</u>		
Hearings:	\$12,600	
Meetings:	37,500	\$13,200
	\$50,100	
<u>FY 89</u>		
Hearings:	\$ 9,450	
Meetings:	30,000	\$10,560
	39,450	
<u>FY 90</u>		
Hearings:	\$ 6,300	
Meetings:	22,500	\$ 7,920
	28,800	
<u>FY 91</u>		
Hearings:	\$ 3,150	
Meetings:	15,000	\$ 5,260
	18,150	

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FISCAL DETAIL

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

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

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

Components: Elections

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

See attached page.

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

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

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

HB 706 (S.S.S.B. 391)

page 2 of 3

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

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

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

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

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

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

No inflation factor is used.

Hearings: \$3,150

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

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

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

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

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

REQUEST Page 1 of 3  
Bill/Resolution No. HB 706 (SSSB 391)  
Title: Act relating to the ethical  
conduct of government.

Revision Date: 4-3-86  
FISCAL DETAIL  
Agency Affected: Department of Administration  
BRU: Division of Personnel

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

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary See attached.

Prepared By: Frank Roye, Director  
Division: Personnel

Phone: 465-4430  
Date: 4/3/86

Approved by Commissioner: Eleanor Andrews  
Agency: Department of Administration

Date: 4/4/86

HAND DELIVERED

REQUEST Page 1 of 3

Bill/Resolution No.: CSHB 430 (FIN)  
Title: Regulating audiologists,  
hearing aid dealers & dispensing  
of hearing aids  
Sponsor: House HESS  
Requestor: House Finance Committee  
Date of Request: 4/3/86

FISCAL DETAIL

Revision Date: 4/3/86  
Agency Affected: Commerce & Econ. Dev.  
BRU: Occupational Licensing

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	10.3	2.7	3.1	3.5	10.1	
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

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

Prepared by: Al Adams, Chair  
Division: House Finance Committee

Phone: 465-3706  
Date: 4/3/86

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

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

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

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

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

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

Revenues were estimated on the following fee schedule:

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

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

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

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

<b>FY 89:</b>			
Assuming there will be two new applicants seeking Audiology temporary permits	\$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
12 Hearing Aid Dealers	2.4	\$ 3.0	balance forward
	<u>\$ 3.1</u>	3.1	
		<u>\$ 6.1</u>	
		- 4.5	costs
		<u>\$ 1.6</u>	balance

<b>FY 90:</b>			
Assuming there will be two new applicants seeking Audiology temporary permits	\$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
14 Hearing Aid Dealers renewing	2.8	\$ 1.6	balance forward
	<u>\$ 3.5</u>	3.5	
		<u>\$ 5.1</u>	
		- 4.5	costs
		<u>\$ .6</u>	balance

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

<b>FY 91:</b>			
Assuming there will be one new applicant seeking licensure as an Audiologist	\$ .5		
2 new Hearing Aid Dealers, license fee	.4		
Application & Credentials fee for 3 new applicants	.2		
12 Audiologists renewing	6.2		
14 Hearing Aid Dealers renewing	2.8	\$10.1	
	<u>\$10.1</u>		

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : 4/8/86

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		187.1	189.9	195.6	201.5	207.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

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

Distribution (by Agency preparing fiscal note):

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 706

This bill provides a code of ethics for the guidance of public officers and employees in the executive branch. It establishes procedure to determine if violations exist and requires that the attorney general provide advisory opinions to interpret the Act and recommend corrective action, as may be needed. The bill also requires that the attorney general investigate complaints 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	1.5	1.5	6.5	9.5
	<hr/>	<hr/>	<hr/>	<hr/>
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 <b>1</b>	Range/Step <b>24A</b>	Barq. Unit <b>PX</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.		
Justification								
Type of Expenditure			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		82,292				
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
For B&V Use Only Key Number _____								

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

Request For  
New Position

Agency Department of Law  
 DRU Legal Services  
 Component Operations

Page 1 of 1  
 Revised Date \_\_\_\_\_

FY 87

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

**Justification**

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

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

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

For D&M Use Only  
Key Number \_\_\_\_\_

**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>			

Type of Expenditure		Amount
1	2	3
Salary	22,716	
Benefits	8,224	
Premium Pay		
Other		
Total Personal Services		30,490
Travel		2,900
Contractual		2,700
Commodities		6,500
Equipment		
Other		
Total Cost		43,040

Receipt Code	Funding Source	Amount
	Federal Receipts 1002	
	G. F. Match 1003	
	General Funds 1004	43,040
	I-A Receipts 1005	
	Program Receipts 1028	
	CIP Receipts 1061	
	Other	

Justification

This is a request for a legal secretary position to provide clerical support for the two attorneys being assigned to handle executive branch ethics work. This work will involve a high volume of written opinions, prosecution of violations, and civil litigation to impose and collect penalties. The position will be responsible for producing all of the written work, including opinions and legal documents. Allocation to Legal Secretary I is therefore recommended.

For D&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 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 4-3-86

REQUEST Page 1 of 3  
Bill/Resolution No: HB 706 (SSSB 391)  
Title: Act relating to the ethical  
conduct of government.

FISCAL DETAIL  
Agency Affected: Department of Administration  
BRU: Division of Personnel

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

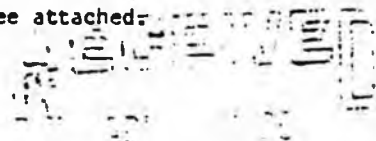
GENERAL FUND	0	39.9	63.3	50.1	36.7	23.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>39.9</b>	<b>63.3</b>	<b>50.1</b>	<b>36.7</b>	<b>23.5</b>

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached:



HAND DELIVERED  
PERSONNEL OFFICE

Prepared By: Frank Raye, Director  
Division: Personnel  
Approved by Commissioner: Eleanor Andrews  
Agency: Department of Administration

Phone: 465-4430  
Date: 4/3/86  
Date: 4/4/86

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

HB 706 (S) SSSB 391)

page 2 of 3

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

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

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

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

No inflation factor is used.

Hearings: \$3,150

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

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

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

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

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

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 4, 1986

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

Dear Representative Grussendorf:

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

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

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

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

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

#### SECTIONAL ANALYSIS

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

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

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

#### ARTICLE 1. DECLARATIONS.

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

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

#### ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

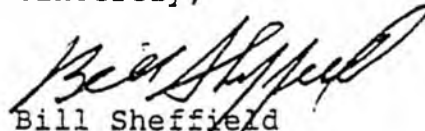
Section 9: The code of ethics itself, the complaint and hearing procedures, and the law's enforcement and remedy provisions (AS 39.52.110 -- 39.52.190 and AS 39.52.310 -- 39.52.460) will take effect January 1, 1987.

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

CONCLUSION

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

Sincerely,



Bill Sheffield  
Governor

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

Amendment No. 1:

Page 1  
Line 25

(b) [THE LEGISLATURE RECOGNIZES THAT IT MAY BE NECESSARY FOR PUBLIC OFFICIALS WHO MAY HAVE POTENTIALLY CONFLICTING PUBLIC RESPONSIBILITIES TO SERVE ON STATE BOARDS OR COMMISSIONS.] The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of [TWO OR MORE] such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute.

Amendment No. 2:

Page 2  
Line 4

Sec. 39.52.110. SCOPE OF CODE. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. [THIS CHAPTER, HOWEVER, DOES NOT PREVENT AN OFFICER FROM ACCEPTING OTHER EMPLOYMENT OR FOLLOWING A PURSUIT THAT DOES NOT INTERFERE WITH THE FULL AND FAITHFUL DISCHARGE OF THE OFFICER'S PUBLIC DUTIES AND RESPONSIBILITIES.] The legislature further recognizes that...

Amendment No. 3:

Page 3  
Line 15

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

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

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

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

Amendment No. 4:

Page 3  
Line 24

Sec. 39.52.130. IMPROPER GIFTS [OR BENEFITS].  
(a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift [OR BENEFIT], whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift [OR BENEFIT] is intended to influence the officer in the performance of official duties, actions, or judgment. [NOTHING IN THIS SECTION PRECLUDES THE ACCEPTANCE OF TRAVEL OR HOSPITALITY GIVEN TO A PUBLIC OFFICER TO AID OR ASSIST IN THE PERFORMANCE OF OFFICIAL DUTIES IF THE OFFICER'S DESIGNATED SUPERVISOR DETERMINES THAT ACCEPTANCE DOES NOT INTERFERE WITH THE FULL AND FAITHFUL DISCHARGE OF THE OFFICER'S PUBLIC DUTIES AND RESPONSIBILITIES.]

Amendment No. 5:

Page 4  
Line 7

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

Amendment No. 6:

Page 4  
Line 13

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

Amendment No. 7:

Page 4  
Line 16

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

Amendment No. 8:

Page 4  
Line 20

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a) A current or former public officer

may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated [COMMUNICATED] to the public.

Amendment No. 9:

Page 6  
Line 20

(b) A public employee rendering services for compensation, or engaging in employment outside the employee's agency, shall report by July 1 of each year [QUARTERLY REPORT] the outside services or employment [ACTIVITIES] to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs.

Amendment No. 10:

Page 8  
Line 7

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

Amendment No. 11:

Page 8  
Line 24

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

Amendment No. 12:

Page 9  
Line 11

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

Amendment No. 13:

Page 20  
Line 19

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

Amendment No. 14:

Page 25  
Line 27

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

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

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

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

Amendment No. 15:

Page 9  
Line 18

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

Amendment No. 16:

Page 10  
Line 6

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

Amendment No. 17:

Page 10  
Line 8

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

Amendment No. 18:

Page 11  
Line 2

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

Amendment No. 19:

Page 12  
Line 1?

Failure to answer within the prescribed time [,] or within any additional time period that may be granted in writing by the attorney general may be [IS] considered an admission of the allegations in the complaint.

Amendment No. 20:

Page 17  
Line 15

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

Amendment No. 21:

Page 17  
Line 9

(a) If the personnel board determines that a public employee has violated this chapter, it (1) shall order the employee to stop engaging in any official action related to the violation; (2) may order divestiture, establishment of a blind trust, restitution, or forfeiture; and (3) may recommend that the employee's agency take disciplinary action, including dismissal.

Amer.dment No. 22:

Page 17  
Line 26

(d) If the personnel board finds a violation of this chapter by a public officer removable from office only by impeachment, it shall file a report with the

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

Amendment No. 23:

Page 18  
Line 23

(a) In addition to any other penalty provided by law, a state grant, contract, or lease entered into in violation of this chapter is voidable by the state. In a determination under this section of whether to void a grant, contract, or lease, the interests of third parties who could [MAY] be damaged may [MUST] be taken into account. The attorney general shall give notice of intent to void a state grant, contract, or lease under this section no later than 30 [60] days after the personnel board's determination of a violation under this chapter.

Amendment No. 24:

Page 18  
Line 24

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

Amendment No. 25:

Page 18  
Line 28

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

Amendment No. 26:

Page 19  
Line 20

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

Amendment No. 27:

Page 20  
Line 7

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

may adopt a written policy that, [(1)] in addition to the requirements of this chapter, limits the extent to which a public officer in the agency or an administrative unit of the agency may

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

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

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

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

Amendment No. 28:

Page 20  
Line 25

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

Amendment No. 29:

Page 21  
Line 7

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

Amendment No. 30:

Page 22  
Line 22

(9) "financial interest" means

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

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

[(C) INVOLVEMENT, OR OWNERSHIP OF AN

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

Amendment No. 31:

Page 23  
Line 6

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

Amendment No. 32:

Page 24  
Line 4

(18) "personal interest" means [(A)] an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

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

Amendment No. 33:

Page 24  
Line 13

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

Amendment No. 34:

Page 18  
Line 12

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

Daily News

4/7/86

## A welcome revision

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

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

121.  
Losing part of its mission would have been a blow to the voter-created watchdog agency. At best, it gets grudging budget support from most legislators it oversees. With the new panel costing \$670,000 a year, the proposed switch would have kicked one of the legs out from under the agency's already shaky budget table.

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

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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April 15, 1986

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

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

Dear Representative Hurley:

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

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

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

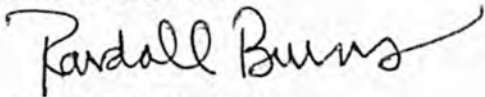
The Honorable Katie Hurley, Chair  
House State Affairs Committee  
Alaska State Legislature

April 15, 1986  
Page 2

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

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

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

RPB/alg

Enclosure

## SECTIONAL ANALYSIS

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

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

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

### ARTICLE 1. DECLARATIONS.

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

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

### ARTICLE 2. CODE OF ETHICS.

Article 2 contains the code of ethics.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE 5. ENFORCEMENT; REMEDIES.

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

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

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

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

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

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

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

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

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

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

#### ARTICLE 6. GENERAL PROVISIONS.

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

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

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

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

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

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