

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6130 HOUSE STATE AFFAIRS

538

House Bill 525
Analysis of Fiscal Implications to the Retirement Funds
Prepared by Division of Retirement & Benefits
Department of Administration
February 23, 1990

Analysis: This bill will require that village public safety officers be include in the Public Employees' Retirement System and that contributions be paid for by the state. There are currently 125 village public safety officers working for Native Corporations and receiving benefits through them.

Because there are only 125 people involved, there would not be an adverse impact on the actuarial soundness of the PERS. The increase in the unfunded liability and the decrease in the funding ratio would be negligible.

H B

528

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 528

Government Ethics Reform Project

Received February 12, 1990
by Rep. Collins, Boucher, Leman, Zawacki

Heard March 6, 1990
Heard March 7, 1990

Passed Out of Committee March 7, 1990
5 Do Pass

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HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

RULES

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 528

HOUSE BILL NO. 528

GOVERNMENT ETHICS REFORM PROJECT

"An Act relating to the laws governing standards of conduct by public officers and employees; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] have attached amendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
[] zero fiscal note _____
[X] zero with analysis APOC

- [] fiscal note(s) _____
[] zero fiscal note(s) _____
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not
Pass
No Rec
Amend

	Do Not Pass	No Rec	Amend

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the laws governing standards of conduct ...
Sponsor: Representative Collins
Requestor: _____

Agency Affected: Dept. of Administration
BRU: Alaska Public Offices Commission
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	0	0	0	0	0	0
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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)

SEE ATTACHMENT.

Prepared by: Karla L. Forsythe, Executive Director Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 2/23/90
 Approved by Commissioner: Annie Laurie Wimmer Krumm Howard
 Agency: Howard, Acting Chair Date: 2/25/90
Alaska Public Offices Commission

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

NARRATIVE

This bill would unify AS 24.60 (Standards of Conduct of Legislators and Legislative Employees), AS 39.50 (the Conflict of Interest Law), and AS 39.52 (the Executive Branch Ethics Act), and would create a new executive branch agency to administer and enforce the unified ethics code.

The provisions of AS 39.50 can be divided into two categories. The first category of provisions requires disclosure of financial interests by state and local candidates, judges, specified commission and board members, and specified appointed officials, who must file financial disclosure statements with the commission. The law sets out the information which each such statement shall provide, establishes filing deadlines, and provides for criminal and civil penalties for failure to file a properly completed and certified report within the time required by law.

The second set of provisions could be characterized as establishing ethical standards. Under AS 39.50.040, a public official may transfer all or a portion of the official's assets to a blind trust. Under AS 39.50.090 ("Prohibited Acts"), a public official may not use the official's position or office for the primary purpose of financial gain, may not pay or offer to pay money for advice or assistance given in the course of the official's employment, and may not represent a client before a state or municipal body for a fee.

The commission and staff spend a considerable amount of time enforcing those sections of AS 39.50 which require disclosure of financial interests. However, there is virtually no administration

of the sections dealing with blind trusts and prohibited acts. Since creation of a blind trust is optional, there is nothing to enforce if an official fails to create such a trust. With regard to prohibited acts, the commission is rarely presented with facts which clearly show that an official has used public office for the primary purpose of financial gain. Moreover, under the Alaska Supreme Court's decision in State v. Dankworth, 672 P.2d 148 (Alaska A. 1983), action taken by a legislator in a legislative capacity which could benefit the legislator is protected under legislative immunity. The section of the law prohibiting officials from representing clients before a state agency for a fee has been effectively repealed for legislators by a contradictory provision in the Legislative Ethics Act. Thus, these sections generate little or no administrative or enforcement work for the commission.

It is assumed for purposes of this fiscal note that HR 528 contemplates strengthening those provisions of the Conflict of Interest Law which establish ethical standards, resolving inconsistencies between the various ethics laws, and transferring administrative and enforcement responsibility to a new agency.

Based on this assumption, the commission has submitted a zero fiscal note. The commission devotes no resources to enforcement of these sections of the conflict of interest law dealing with ethical standards, because these sections are extremely difficult to enforce as currently drafted. Therefore, transfer of this function to another agency would have no fiscal impact on the commission.

Alaska State Legislature

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Committee
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Representative Virginia Collins

HOUSE BILL 528

SPONSOR STATEMENT

House Bill 528 finds the public perceives the current internal policing mechanism, the Select Committee on Legislative Ethics, does not adequately police its members. It is difficult for any organization to police itself.

House Bill 528 addresses the need to have a uniform code of ethics for the legislature, officials covered by the conflict-of-interest initiative, and the executive branch of government.

It would direct the division of legal services of the Legislative Affairs Agency to prepare a comprehensive bill establishing a unified code of ethics for all state officers and employees.

An autonomous body would be created within the executive branch of state government to enforce the unified code. It is the intent of the sponsor that the autonomous body would be composed of a majority of public members. Only public members could vote.

House Bill 528 would attempt to find the most credible and comprehensive means of addressing our code of ethics. It is the intent of the sponsor that the legal services division would take input from interested legislators, the public, and other sources including, but not limited to, other legislative proposals. They would prepare a bill draft which would receive public hearings. Revisions would be made to the draft and the revised draft would be submitted to the Rules Committees of the respective bodies of the legislature on the first day of the first session of the Seventeenth Alaska State Legislature.

(F) a payment or reimbursement for expenses in the categories set out in AS 24.45.051(2);

(11) "person", in addition to the terms set out in AS 01.10.060 includes a labor union; and

(12) "public official" or "public officer" means a public official as defined in AS 39.50.200(a); however, it does not include a judicial officer or an elected or appointed municipal officer. (§ 2 ch 167 SLA 1976; am § 39 ch 37 SLA 1986)

Effect of amendments. — The 1986 amendment in paragraph (12) substituted "officer" for "office" and deleted "or public office" following "public official"

Chapter 55. Office of the Ombudsman.

Article

1. Organization (§§ 24.55.060, 24.55.070)
5. Miscellaneous (§ 24.55.275)

Article 1. Organization.

Section

60. Compensation
70. Staff and delegation

Sec. 24.55.060. Compensation. The ombudsman is entitled to receive an annual salary equal to Step A, Range 26 on the salary schedule set out in AS 39.27.011(a) for Juneau. (§ 1 ch 32 SLA 1975; am § 5 ch 21 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "Step A, Range 26 on the salary schedule set out in AS 39.27.011(a) for Juneau" for "that of a superior court judge."

Sec. 24.55.070. Staff and delegation. (a) The ombudsman may appoint a deputy ombudsman. The ombudsman shall also appoint assistants and clerical personnel necessary to carry out the provisions of this chapter.

(b) The ombudsman may delegate to the deputy or assistants any of the ombudsman's duties except those specified in AS 24.55.190 and 24.55.200, however, during the ombudsman's absence from the principal business offices, the ombudsman may delegate the duties specified in AS 24.55.190 and 24.55.200 to the deputy for the duration of the absence. The duties specified in AS 24.55.190 and 24.55.200 shall be performed by the deputy ombudsman when serving as acting ombudsman under AS 24.55.040(b).

(c) The ombudsman and the staff appointed by the ombudsman are in the exempt service under AS 39.25.110 and are not subject to the employment policies under AS 24.10 or AS 24.20. (§ 1 ch 32 SLA 1975; am § 6 ch 21 SLA 1987)

Sec. 24.60.020. Applicability. (a) Except as otherwise provided in this subsection, this chapter applies to a member of the legislature and to a person employed by the legislative branch of government. This chapter does not apply to

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

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

(3) a person employed by the legislative branch of government whose position is established below Range 18 of the state salary schedule established in AS 39.27.011(a).

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature or a person employed by the legislative branch of government. They do not supersede or repeal provisions of the criminal laws of the state. (§ 1 ch 36 SLA 1984; §§ 2, 3 ch 113 SLA 1986; am § 1 ch 167 SLA 1988)

Effect of amendments. — The 1986 amendment in subsection (a) in the introductory language substituted "Except as otherwise provided in this subsection, this" for "This" and "and to a person employed by the legislative branch of government" for "and to a permanent or temporary employee of an agency of the legislature," in paragraph (1) substituted "the legislative branch of government" for "a member of the legislature or an agency of the legislature," in paragraph (3) substituted "legislative branch of government" for "legislature or an employee of an agency of the legislature," added para-

graph (4) and made a related punctuation change, and in the first sentence of subsection (b) substituted "or" for a comma and "the legislative branch of government" for "a member of the legislature, or to a permanent or temporary employee of an agency of the legislature."

The 1988 amendment, effective June 18, 1988, in subsection (a), substituted "position is established below" for "compensation is below Step A" in paragraph (3) and repealed former paragraph (4), which read "a person employed privately by a legislator if the person does not perform legislative duties."

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

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

(c) Conflicts of interest are prohibited but there is no conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance of impropriety because

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

(2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of

interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action.

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

(e) *[Repealed, § 8 ch 167 SLA 1988.]*

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

(g) Members of the legislature elected to represent the capital city are exempt from the requirements of (f) of this section. (§ 1 ch 36 SLA 1984; am § 27 ch 85 SLA 1988; am § 8 ch 167 SLA 1988)

Effect of amendments. — The first 1985 amendment, effective June 2, 1985, added "or" at the end of subsection (c)(1).

The second 1988 amendment, effective June 18, 1988, repealed former subsection

(e), which related to activities which were not conflicts of interest.

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

Sec. 24.60.040. Contracts or leases. (a) A person to whom this chapter applies may not be a party to or have an interest in a state contract or lease unless the contract or lease is let through competitive sealed bidding under AS 36.30 (State Procurement Code) or the total annual amount of the state contract or lease is \$1,000 or less, or is a standardized contract or lease which was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation or group. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits.

(b) In this section, "direct or indirect financial benefits" means income, profits or other financial benefits under a state contract, without regard to whether the income, profits or other financial benefits ensue to the person as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor. (§ 1 ch 36 SLA 1984; am § 24 ch 106 SLA 1986; am § 4 ch 113 SLA 1986)

Effect of amendments. — The first 1986 amendment substituted "through competitive sealed bidding under AS 36.30 (State Procurement Code)" for "under AS 37.05.230" in the first sentence in subsection (a).

The second 1986 amendment in the first sentence of subsection (a) substituted "by competitive sealed bid" for "under AS 37.05.230."

Sec. 24.60.050. State programs and loans. (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan

- (1) is generally available to members of the public;
- (2) is subject to fixed eligibility standards; and
- (3) requires minimal discretion in determining qualification.

(b) The committee shall annually review state programs and state loans and publish a list of programs and loans that, in the view of the committee,

- (1) meet the standards of (a) of this section;
- (2) do not meet the standards of (a) of this section.

(c) Each February 1, each person to whom this chapter applies shall deliver to the division of legislative audit a report of each participation by the person in a state program or receipt of a state loan as of January 15 of that year for a program or loan listed in (b)(2) of this section. The division of legislative audit shall prepare an appropriate report for the presiding officer of each house that lists the name of the person and kind of program participation or loan. The lists shall be published in the supplemental journals before February 15.

(d) Each person to whom this chapter applies who begins participation in a state program or who receives a loan listed under (b)(2) of this section after January 15 of each year shall deliver a report of the program or loan to the committee within 30 days after the participation in the state program or receipt of a state loan begins. The report shall be published in the appropriate supplemental journal if received by the committee during the regular session of the legislature. Each report filed with the committee under this subsection is open to the public.

(e) Each record of a state agency relating to participation in a state program or receipt of a state loan by a person to whom this chapter applies may be disclosed to the committee and to the division of legislative audit.

(f) The committee shall annually identify the program and loans to be audited by the division of legislative audit during the following year, including the scope of the audit. The division of legislative audit shall prepare a report to the committee on the audit of the participation in state programs and the receipt of loans from the state by persons to whom this chapter applies. The report to the committee is confidential until it is released by the committee.

(g) In this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a person to whom this chapter applies. (§ 1 ch 36 SLA 1984; am § 5 ch 113 SLA 1986; am § 2 ch 167 SLA 1988)

Effect of amendments. — The 1986 amendment at the end of subsection (d) added "before February 5 of each year." The 1988 amendment, effective June 16, 1988, rewrote this section to the extent that a detailed comparison is impracticable.

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

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

(2) legislators;

(3) a public official who is required to file a financial disclosure statement under AS 39.50 and is not an appointed municipal officer;

(4) a registered lobbyist;

(5) a person to whom this chapter applies who is employed by the legislative branch of government if the close economic association is with a legislator. (§ 1 ch 36 SLA 1984; § 6 ch 113 SLA 1986)

Effect of amendments. — The 1986 amendment in the introductory language substituted "by" for "for" following "in the journal" and "fifth" for "first," in paragraph (3) substituted "who" for "in another branch, if the public official" and added "and is not an appointed municipal officer," at the end of paragraph (4) deleted "who is not a member of the immediate family of the person," added paragraph (5), and made a related punctuation change.

Sec. 24.60.080. Gifts. (a) A person to whom this chapter applies may not solicit, accept, or receive, directly or indirectly, a gift in any amount, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) Except as provided in (c) of this section, the receipt of a gift worth \$50 or more by a person to whom this chapter applies is prohibited.

(c) Notwithstanding (b) of this section, it is not a violation of this section for a person to whom this chapter applies to accept

(1) hospitality, other than hospitality described in (4) of this subsection

(A) with incidental transportation at the residence of a person; or

(B) at a social event or meal;

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

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

(4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern;

(5) gifts from the family of the person.

(d) A person to whom this chapter applies who accepts a gift of travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern shall disclose the gift if it has a value of \$100 or more. The disclosure must include the name and occupation of the person making the gift and the approximate value of the gift. Each gift required to be disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift in the journal of the appropriate body or, if the legislature is not in session, to the committee. The committee shall maintain a public record of the disclosure it receives and shall forward the disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular session.

(e) A political contribution that is reported under AS 15.13.040 is not a gift under this section. (§ 1 ch 36 SLA 1984; am § 3 ch 167 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 18, 1988, re-wrote this section to the extent that a detailed comparison is impracticable.

Sec. 24.60.100. Representation. A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal by the fifth day of the session. (§ 1 ch 36 SLA 1984; § 7 ch 113 SLA 1986)

Effect of amendments. — The 1986 amendment substituted "by" for "for" and "fifth" for "first."

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

(1) resign the conflicting position;

(2) divest the interest that has resulted in the conflict or potential conflict; or

(3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the

disclosure to the respective house for inclusion in the journal by the fifth day of the session but disclosure does not remove the conflict of interest. (§ 1 ch 36 SLA 1984; am § 8 ch 113 SLA 1986)

Effect of amendments. — The 1946 amendment in paragraph (3) substituted "by" for "for" and "fifth" for "first."

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

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

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

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

(3) three public members who are selected by the Chief Justice of the Alaska Supreme Court and who are ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house, shall serve on both the full committee and each subcommittee.

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

(d) The members of each subcommittee shall elect a chair who must be a member of the legislature. The chair selected by the senate subcommittee shall chair the full committee beginning the first day of the regular session in odd-numbered years and the chair selected by the house subcommittee shall chair the full committee beginning the first day of the regular session in even-numbered years.

(e) Except as provided in this subsection, a vacancy on the committee shall be filled under (b) of this section. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the first regular session of a legislature or during the interim between regular sessions of that legislature serves without concurrence or ratification through the 10th day of the second regular session of the legislature. An individual who is appointed to fill a vacancy that occurs during the last 10 days of the second regular session of a legislature or during the interim after the second regular session without concurrence or ratification through the convening of the first regular session of the next legislature.

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

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

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an advisory opinion requested by the member. If the legislature is in session when a legislative member is disqualified under this subsection, the presiding officer of that member's house shall, with the concurrence by roll call vote of two-thirds of the full membership of that house, appoint another member from that house to act as a member of the committee in the proceeding. If the legislature is not in session when a legislative member is disqualified, the presiding officer of the house of which the disqualified legislator is a member shall appoint another member from that house, with a recorded concurrence of a majority vote of the subcommittee of that house, to act as a member of the committee in the proceeding.

(i) A quorum of a committee established under this section consists of a majority of the members of the committee. A quorum of a subcommittee established under this section consists of a majority of the members of the subcommittee. Notwithstanding the provisions of this subsection, a committee does not have a quorum unless three legislative members are present and a subcommittee does not have a quorum unless two legislative members are present. (§ 1 ch 36 SLA 1984; am §§ 9, 10 ch 113 SLA 1986; am §§ 4 — 6 ch 167 SLA 1988)

Effect of amendments. — The 1986 amendment in subsection (b) in the introductory language substituted "nine" for "seven" and in paragraph (3) substituted "three public members" for "one public member," "are" for "is" in two places, and "the Chief Justice of the Alaska Supreme Court" for "two-thirds of each subcommittee"; and in subsection (h) at the beginning of the second sentence substituted "If the legislature is in session when" for "When" and added the last sentence.

The 1988 amendment, effective June 18, 1988, in subsection (d), added "who must be a member of the legislature" at the end of the first sentence and inserted "beginning the first day of the regular session" twice in the second sentence; in subsection (e), added the last two sentences and added "Except as provided in this subsection" at the beginning of the first sentence; and added subsection (i)

Sec. 24.60.150. Duties of the committee. (a) The committee shall (1) adopt procedures to facilitate the receipt of inquiries and prompt rendition of its opinions;

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

(b) The committee may

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

(2) subpoena witnesses, administer oaths, and take testimony relating to matters before the committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee. (§ 1 ch 36 SLA 1984; am § 11 ch 113 SLA 1986)

Effect of amendments. — The 1986 amendment in paragraph (2) of subsection (a) substituted "and" for a comma and deleted "and informal advisory opinions," following "advisory opinions."

Sec. 24.60.160. Advisory opinions. The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies or a person elected to the legislature who at the time of election is not a member of the legislature as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended by the committee for not more than an additional 10 days if the person requesting the opinion consents. The opinion issued is binding on the committee in any subsequent proceeding concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential but may be made public if a written request by the person who requested the opinion is filed with the committee. (§ 1 ch 36 SLA 1984; am § 12 ch 113 SLA 1986)

Effect of amendments. — The 1986 amendment in the first sentence inserted "or a person elected to the legislature who" at the time of election is not a member of the legislature."

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

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

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

(d) A proceeding is commenced by the filing of a complaint with the committee. A complaint may be initiated by any person. A complaint shall be in writing and signed under oath by the person making the complaint. A complaint, other than a complaint initiated by at least

two-thirds of the members of the committee, may not be filed within a period of 60 days preceding a state primary or general election. Each proceeding pending before the committee on the 60th day preceding a state primary or general election is stayed until certification of the election unless the proceeding is based on a complaint initiated by at least two-thirds of the members of the committee or, on a complaint initiated by a person who is not a member of the committee, if two-thirds of the members of the committee direct the continuation of the proceeding. The committee shall notify in writing a person against whom a complaint has been filed of a stay of the proceeding. If the person objects in writing to the stay the proceedings shall continue.

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

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

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

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

(i) The committee may set a time and place for a hearing before the committee with a minimum of 10 days notice to the complainant, if any, and to the person charged with a violation of this chapter. A representative of the committee and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. Hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The committee is not bound by

the rules of evidence but the committee's findings must be based upon competent and substantial evidence. Testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence are available only to the committee and its staff and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the committee without charge.

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

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

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

(m) A committee member or member of the committee staff who divulges information concerning a proceeding, except as permitted by this chapter, is guilty of a class A misdemeanor. (§ 1 ch 36 SLA 1984; am § 13 ch 113 SLA 1986; am § 7 ch 167 SLA 1988)

Effect of amendments. — The 1986 amendment in subsection (l) in the first sentence substituted "the legislative branch of government" for "a legislator or of an agency of the legislature."

The 1988 amendment, effective June 18, 1988, in subsection (d), substituted "A" for "No" in the fourth sentence, inserted "not" in the fourth sentence, and

rewrote the fifth sentence, which read "All proceedings pending before the committee on the 60th day preceding a state primary or general election are stayed until certification of the election unless the proceedings are based on a complaint initiated by at least two-thirds of the members of the committee."

Sec. 24.60.190. Definitions. In this chapter

(1) "committee" means the Select Committee on Legislative Ethics or where appropriate, the applicable subcommittee;

(2) "person employed by the legislative branch of government" means a person who is employed by

(A) an individual legislator;

(B) a legislative body, including a legislative committee; or

(C) an agency of the legislature established under AS 24.20 and AS 24.55. (§ 1 ch 36 SLA 1984; am § 14 ch 11 SLA 1986)

Effect of amendments. — The 1986 amendment rewrote the catchline, designated the existing definition as paragraph (1), added paragraph (2), and made related punctuation changes.

Alaska Statutes

Title 25. Marital and Domestic Relations.

Chapter

05. Alaska Marriage Code (§§ 25.05.091 — 25.05.105, 25.05.131 — 25.05.151, 25.05.181, 25.05.201, 25.05.221, 25.05.341)
 15. Husband and Wife (§ 25.15.100)
 20. Parent and Child (§§ 25.20.050, 25.20.090)
 23. Adoption (§§ 25.23.030 — 25.23.080, 25.23.100, 25.23.125 — 25.23.150, 25.23.170, 25.23.173, 25.23.180, 25.23.185, 25.23.230 — 25.23.240)
 24. Divorce and Dissolution of Marriage (§§ 25.24.150 — 25.24.170, 25.24.230, 25.24.310)
 25. Uniform Reciprocal Enforcement of Support Act (§§ 25.25.100, 25.25.250)
 30. Uniform Child Custody Jurisdiction Act (§§ 25.30.010, 25.30.020, 25.30.070)
 35. Domestic Violence (§§ 25.35.010, 25.35.020, 25.35.040, 25.35.060)

Chapter 05. Alaska Marriage Code.

Article

3. Procedure to Obtain a License (§§ 25.05.091 — 25.05.105)
 4. Medical Reports (§§ 25.05.121 — 25.05.151)
 5. Special Circumstances (§ 25.05.181)
 6. Forms, Records and Reports (§§ 25.05.201, 25.05.221)
 8. Penalties (§ 25.05.341)

Article 3. Procedure to Obtain a License.

Section

91. Application for license
 101. [Repealed]

Section

105. [Repealed]

Sec. 25.05.091. Application for license. One of the contracting parties to a prospective marriage shall, at least three days before the time of issuance, file with the licensing officer written, verbal, or telegraphic application for a license. Before issuance of the license, each contracting party shall make a statement under oath that the contemplated marriage meets the requirements of law, giving the names, relationship if any, residence, occupation, and age of each party; naming guardians of any party under the legal age for marriage; and describing any prior marriage of either party, and the manner of dissolution of it. This statement may be made and executed

behalf of the member for state legislative campaign purposes or for other state legislative political purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) legislators;

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

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

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

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

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

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

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

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

(1) resign the conflicting position;

(2) divest the interest that has resulted in the conflict or potential conflict; or

(3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session but disclosure does not remove the conflict of interest. (§ 1 ch 36 SLA 1984)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The full committee has authority

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

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

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

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

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

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

(b) The committee may

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

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

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

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

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

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

(d) A proceeding is commenced by the filing of a complaint with the committee. A complaint may be initiated by any person. A complaint shall be in writing and signed under oath by the person making the complaint. No complaint, other than a complaint initiated by at least two-thirds of the members of the committee, may be filed within a period of 60 days preceding a state primary or general election. All proceedings pending before the committee on the 60th day preceding a state primary or general election are stayed until certification of the election unless the proceedings are based on a complaint initiated by at least two-thirds of the members of the committee. The committee shall notify in writing a person against whom a complaint has been filed of a stay of the proceeding. If the person objects in writing to the stay the proceedings shall continue.

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

violation of this chapter, the committee may summarily dismiss the complaint.

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

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

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

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

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

(k) If the committee issues a decision finding that a member of the legislature has violated a provision of this chapter or that a legislator

has declined or failed to cooperate with the committee, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation or the failure to cooperate and may contain recommendations concerning any penalties the legislature may lawfully impose. The committee shall make the decision public 30 days after the referral. The legislature shall act on the decision as it considers appropriate.

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

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

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

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

(4) act as an appeals board, hold hearings at the request of an employer, employee, surviving spouse, or a beneficiary on decisions made by the administrator that relate to the deferred compensation program for state employees, and submit its findings to the administrator;

(5) prescribe the policies for the proper operation of the deferred compensation program for state employees and take other action that it considers necessary to carry out the intent and purpose of the program.

(b) In this section "administrator" means the administrator of the deferred compensation program for state employees. (§ 38 ch 146 SLA 1980)

Sec. 39.45.030. Investment authority. (a) The administrator of the state or political subdivision deferred compensation program is authorized, subject to contracts with individual employees, to invest the funds held under a deferred compensation program in

(1) fixed and variable life insurance and annuity contracts or other contracts issued by life insurance companies;

(2) shares of or deposits in insured state or federal chartered credit unions in the state;

(3) shares of or deposits in insured state or federal chartered savings and loan associations in the state;

(4) deposits in insured mutual savings banks in the state;

(5) deposits in insured state and national banks in the state; and
(6) multi-employer trusts established for investment of deferred compensation assets of state and local governments.

(b) In this section, "insured" means insured by the federal government or an agency of the federal government. (§ 1 ch 40 SLA 1973; am §§ 2, 3 ch 125 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a) designated part of the existing language as paragraph (1), in paragraph (1) added "or other contracts issued by life insurance companies," added paragraphs (2)-(6), and added subsection (b).

Sec. 39.45.040. Additional benefits. The deferred compensation program established under this chapter exists and serves in addition to any existing retirement, pension, or benefit system established by the state or its political subdivisions and may not effect a reduction in benefits receivable under an existing system. (§ 1 ch 40 SLA 1973)

Revisor's notes. — In ch. 40, SLA 1973, this section contained the phrase "may not affect a reduction." That appears to involve a typographical error, and "affect" has been changed to "effect" here.

Sec. 39.45.050. Tax deferred investments. The administrator of a deferred compensation program under this chapter shall invest only in contracts that allow for deferment of the state and federal income tax until benefits are receivable under the program and shall make appropriate withholding adjustments in each participating employee's payroll. (§ 1 ch 40 SLA 1973)

Sec. 39.45.060. Definition. In this chapter "employee" means a person, whether appointed, elected or under contract, who provides services for the state or a political subdivision of the state for which compensation is given. (§ 1 ch 40 SLA 1973)

Chapter 50. Conflict of Interest.

Section	Section
10. Findings and purpose	90. Prohibited acts
20. Report of financial and business interests	100. Enforcement by private citizens
25. Notification to candidates for legislature	110. Report of financial interests of judicial officers
30. Contents of statements	120. Report of financial interests of legislators
35. Exemptions	130. Report of financial interests of governor and lieutenant governor
40. Blind trusts	135. Civil penalty: Late filing of required reports
50. Administration and inspection	145. Participation by municipalities
60. Penalty for willful violation of disclosure requirements	200. Definitions
70. Failure to report by department, division, or deputy department heads	
80. Failure to report by a commission or board chairman or member	

Cross references. — For other ethics provisions applicable to the legislative branch, see AS 24.60; for other ethics provisions applicable to the executive branch, see AS 39.52; for other ethics provisions applicable to the judiciary, see the Code of Judicial Conduct in the Rules of Court.

Editor's notes. — Section 2, 1974 Initiative Proposal No. 2, provides: "Severability. If any provision of this chapter or portion of a provision is declared by a court of competent jurisdiction to be invalid, for any cause, such invalid provision or portion of it shall be considered to be nonexistent and the remainder of this chapter shall continue in full force and effect."

Section 3, 1974 Initiative Proposal No. 2, provides: "Repeal of Inconsistent Law. In case of conflict between provisions of this chapter and other provisions contained in the Alaska Statutes, the provisions of this chapter shall taken precedence."

Sec. 39.50.010. Findings and purpose. (a) It is declared by the people of the State of Alaska that the purposes of this chapter are:

(1) to discourage public officials from acting upon a private or business interest in the performance of a public duty;

(2) to assure that public officials in their official acts are free of the influence of undisclosed private or business interests;

(3) to develop public confidence in persons seeking or holding public office, enhance the dignity of the offices and make them attractive to citizens who are motivated to public service; and

(4) to develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who seek and hold public office.

(b) The people of the State of Alaska declare that:

(1) public office is a public trust that should be free from the danger of conflict of interest;

(2) the public has a right to know of the financial and business interests of persons who seek or hold public office;

(3) a compelling state interest requires that candidates for office and office holders disclose their personal and business financial interests;

(4) reasonable disclosure requirements do not violate an individual's right to privacy when the individual seeks or holds public office and a compelling state interest in the disclosure exists; and

(5) reasonable disclosure requirements do not have the effect of chilling the exercise of the right of a qualified person to seek or hold public office. (1974 Initiative Proposal No. 2, § 1)

NOTES TO DECISIONS

Purposes of Alaska's Conflict of Interest law as set forth in this section have been generally regarded as legitimate goals. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

The purpose of the Conflict of Interest statute is to bring to light all conflicts — actual and potential. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Financial disclosure laws have the purpose of promoting efficient, ethical government and preserving the integrity and fairness of the political process both in fact and in appearance. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

To determine the validity of the disclosure provisions of the Conflict of Interest law, both the nature and the extent of the privacy invasion and the strength of the state interest requiring disclosure must be considered. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Governmental interest balanced against individual's privacy interest. — The extent to which the governmental

interest in promoting fair and honest government would be impeded by not strictly complying with the Conflict of Interest law does not outweigh the individual's privacy interest in protecting sensitive personal information from public disclosure. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Certain types of information communicated in the context of the physician-patient relationship fall within a constitutionally-protected zone of privacy. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Reporting names of physician's patients. — Until appropriate regulations are promulgated, the Conflict of Interest law may not be applied so as to require reporting the names of individual patients of a physician. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Cited in State, Pub. Offices Comm'n v. Marshall, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Collateral references. — 63A Am. 07 C.J.S., Officers, § 204. *Jur. 2d*, Public Officers and Employees, §§ 335 — 337, 368, 411.

Sec. 39.50.020. Report of financial and business interests.

(a) A judicial officer, commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, a person appointed as assistant to the governor, and a municipal officer, shall file a statement giving income sources and business interests, under oath and on penalty of perjury, within 30 days after taking office as a public official. Candidates for state elective office shall file such a statement at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating petition, or within 30 days of becoming a candidate by any other means. Candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that a previously accepted filing fee be returned and the candidate's name removed from the filing records. A statement shall also be filed by public officials no later than April 15 or 15 days after the person files a federal income tax return in each following year, whichever comes first. Persons who, on or after December 11, 1974, were members of boards or commissions not named in AS 39.50.200(b) are not required to file financial statements.

(b) The governor, lieutenant governor, members of the legislature, and candidates for these offices, judicial officers, each commissioner, head or deputy head of, or director of a division within, a department in the executive branch, assistant to the governor or chairman or member of a commission or board required to report under this chapter, shall file the statement with the Alaska Public Offices Commission. Municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records. (1974 Initiative Proposal No. 2, § 1; am §§ 1, 2 ch 25 SLA 1975)

Opinions of attorney general. — A candidate for municipal office may amend an erroneous conflict-of-interest statement prior to an election, without having his name removed from the ballot, where

the candidate appears to have timely filed a statement in good faith with the proper election official. September 9, 1985 Op. Atty Gen.

NOTES TO DECISIONS

The proper location for the filing of the financial disclosure statement is unclear. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Subsection (d) of this section requires financial disclosure statements to be filed in the office of the Alaska Public Offices Commission in Anchorage, but the administrative practice of the lieutenant governor's office has been customarily to accept financial disclosure statements from candidates and then forward the statements to the Alaska Public Offices Commission. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Subsection (a) contemplates filing concurrent with filing of declaration of candidacy. — Subsection (a) of this section contemplates that the act of filing a financial disclosure statement by a candidate is to be carried out concurrently with the act of filing the declaration of candidacy. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

But such filing is impossible for Juneau resident. — It is "patently impossible" for a Juneau resident to have filed his financial disclosure statement at the same time he filed his declaration of candidacy, since the latter may be filed in Juneau (AS 15.25.040(c)) while the only authorized place of filing the former is Anchorage (this section). *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Collateral references. — Validity and construction of orders and enactments requiring public officers and employees, or

substantial compliance with filing requirements is sufficient. — Given the lack of clarity inherent in this section and the impossibility of compliance with this section for a would-be candidate living in Juneau who files his declaration of candidacy near the June deadline, substantial compliance with the filing requirements of this section will suffice. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

If a Juneau resident mailed his financial disclosure statement to the Alaska Public Offices Commission in Anchorage on June 1, 1976, and his name was to appear on the forthcoming primary ballot. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Effect of unequal enforcement of this section on filing requirements of AS 15.13.060(c). — Unequal enforcement of this section did not require the conclusion that a candidate had in fact substantially complied with the filing requirements of AS 15.13.060(c) where the record did not show any intentional or purposeful discrimination against the candidate. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Applied in *Falke v. State*, Sup. Ct. Op. No. 3038 (File No. S-405), 717 P.2d 369 (1986).

Cited in *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2408 (File No. 5614), 633 P.2d 227 (1981).

candidates for office, to disclose financial condition, interests, or relationships. 22 ALR4th 237.

Sec. 39.50.025. Notification to candidates for legislature. On receipt of a statement under AS 39.50.020 from a candidate for the legislature the commission shall mail, by certified mail, a copy of AS 24.60 (Standards of Conduct) to the candidate at the address shown on the report. (§ 3 ch 36 SLA 1984)

Sec. 39.50.030. Contents of statements. (a) Each statement shall be an accurate representation of the financial affairs of the public official or candidate and shall contain the same information for each member of the person's family, as specified in (b) of this section, to the extent that it is ascertainable by the public official or candidate. An asset or liability under \$500, household goods, and personal effects need not be identified.

(b) Each statement filed by a public official or candidate under this chapter shall include the following:

(1) the source of all income over \$100 during the preceding calendar year, including taxable and nontaxable capital gains, received by the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person;

(2) the identity, by name and address, of each business in which the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year;

(3) the identity and nature of each interest owned in any business during the preceding calendar year by the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person;

(4) the identity and nature of each interest in real property, including an option to buy, owned at any time during the preceding calendar year by the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person;

(5) the identity of each trust or other fiduciary relation in which the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person held a beneficial interest during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(6) any loan or loan guarantee made to the person, the person's spouse or dependent child, or a nondependent child of the person who is living with that person, and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the person, the person's spouse or dependent child, or a nondependent child of the person who lives with that person owed \$500 or more;

(7) a list of all contracts and offers to contract with the state or an instrumentality of the state during the preceding calendar year held, bid, or offered by the person, the person's spouse or dependent child, a nondependent child of the person who is living with that person, the person's mother or father, or a corporation in which the person or the person's spouse or children, or a combination of them, hold a controlling interest; and

(8) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the person, the person's dependent child, a nondependent child of the person who is living with that person, the person's mother or father, a partnership or professional corporation of which the person is a member, or a corporation in which the person or the person's spouse or children, or a combination of them, holds a controlling interest.

(c) [Repealed, § 26 ch 25 SLA 1975.] (1974 Initiative Proposal No. 2, § 1; am §§ 3, 4, 26 ch 25 SLA 1975)

Opinion of attorney general. — Requiring an attorney who is a public official to disclose the names of clients, including the clients of the firm, is valid and

legally supportable; and disclosure of such names does not violate any constitutional or professional privileges. February 15, 1985 Op. Att'y Gen.

NOTES TO DECISIONS

To determine the validity of the disclosure provisions of the Conflict of Interest law, both the nature and the extent of the privacy invasion and the strength of the state interest requiring disclosure must be considered. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Certain types of information communicated in the context of the physician-patient relationship fall within a constitutionally-protected zone of privacy. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Patient of a physician is a client for medical services and falls within the scope of this chapter. *Falcon v. Alaska*

Pub. Offices Comm'n, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Source of Income. — The Conflict of Interest law encompasses a physician's individual patients as sources of income. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Reporting individual names of physician's patients. — Until appropriate regulations are promulgated, the Conflict of Interest law may not be applied so as to require reporting the names of individual patients of a physician. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Applied in *Warren v. Thomas*, Sup. Ct. Op. No. 1484 (File No. 2919), 568 P.2d 400 (1977).

Sec. 39.50.035. Exemptions. A person subject to this chapter is not exempt from any of its provisions except to the extent state courts determine that legally privileged professional relationships preclude complete compliance. (§ 5 ch 25 SLA 1975)

NOTES TO DECISIONS

This section applies only to legal privileges, not ethical mandates. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Fact that a physician is subject to

professional discipline for revealing the names of patients does not create a "legal privilege." *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Sec. 39.50.040. Blind trusts. (a) A public official may transfer all or a portion of the official's assets to a blind trust for the duration of service in public office. The original assets placed in the blind trust shall be listed by the official in the statement required to be filed under this chapter. The instrument creating the blind trust must be included with the statement.

(b) For a trust to qualify under this section,

(1) assets transferred to the trust shall be marketable;

(2) the trustee shall be a bank or other institutional fiduciary;

(3) the trustee shall have full authority to manage the trust, including the purchase, sale, and exchange of its assets in accordance with fiduciary principles;

(4) information regarding the identity and the nature of its assets shall be confidential from the trustor for the duration of the trust;

(5) the trustee shall be required to report any known breach of confidentiality or the termination of the trust to the office where the trustor is required to file statements under this chapter; and

(6) [Repealed, § 26 ch 25 SLA 1975.] (1974 Initiative Proposal No. 2, § 1; am §§ 6, 26 ch 25 SLA 1975)

NOTES TO DECISIONS

Cited in *Warren v. Thomas*, Sup. Ct. Op. No. 1484 (File No. 2919), 568 P.2d 400 (1977).

Sec. 39.50.050. Administration and inspection. (a) The Alaska Public Offices Commission created under AS 15.13.020(a) shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution, standardized forms on which the reports required by this chapter shall be filed.

(b) The commission shall adopt regulations to implement and interpret the provisions of this chapter. Regulations or interpretation shall be within the intent and purpose of this chapter and are subject to judicial review under the Administrative Procedure Act (AS 44.62).

(c) Reports filed under this chapter shall be kept on file for at least six years and are public records.

(d) To facilitate the filing of reports under AS 24.45 (Regulation of Lobbying) and the information required to be provided under AS 24.45.051(4) and (5), the commission shall publish copies of the reports required under this chapter not later than the convening of each regular session of the legislature. Copies of this publication shall be provided on request; however, the commission may make a charge for the publication that may not exceed the actual cost of printing, postage and handling. (1974 Initiative Proposal No. 2, § 1; am §§ 7, 8 ch 25 SLA 1975; am § 7 ch 167 SLA 1976)

Opinions of attorney general. — The commission's power to investigate violations of AS 39.50.090 derives from AS 39.50.050, which authorizes the commission to administer AS 39.50 and promulgate regulations to implement the chapter. In carrying out this responsibility, the

commission staff should immediately notify the chief prosecutor whenever commission records, files, and inquiries reveal a possible criminal violation of AS 39.50.090. November 26, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

This section requires the commission to promulgate regulations to implement and interpret the provisions of the Conflict of Interest law. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 409 (1977).

Scope of regulations. — The commission may well wish to promulgate regula-

tions which apply to relationships other than that of physician-patient. *Falcon v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 409 (1977).

Quoted in *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 39.50.060. Penalty for wilful violation of disclosure requirements. (a) A person required to file a report of financial or business interests under this chapter who refuses or knowingly fails to disclose required information within the time required in this chapter, or who provides false or misleading information, knowing it to be false or misleading, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for a period of not more than six months, or by both.

(b) Any person failing or refusing to comply with the requirements of this chapter, in addition to the penalties prescribed, shall forfeit nomination to office and may not be seated or installed in office if the person has not complied. Nominated, hired, or appointed officials, commissioners, chairmen or members of commissions or boards specified in AS 39.50.200(b) may not be confirmed by the legislature if compliance has not been made. In the case of elected officials, the lieutenant governor, or other certifying authority, may not certify a person's nomination for office or the person's election to office if compliance was not made within the time required. The nomination to office or election to office shall be certified to the highest vote getter for that nomination for that office or election to that office who has complied within the times required and who shall be declared nominated or elected. (1974 Initiative Proposal No. 2, § 1; am § 9 ch 25 SLA 1975)

NOTES TO DECISIONS

Applied in *Warren v. Thomas*, Sup. Ct. Op. No. 1484 (File No. 2979), 568 P.2d 400 (1977).

Quoted in *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 39.50.070. Failure to report by department, division, or deputy department heads. A person hired or appointed as the head or deputy head of, or director of a division within, a department in the executive branch who refuses or fails to file a report of financial interests required under this chapter when due may not hold office, and the person's name may not be submitted to the legislature for confirmation until the person complies. The person may not be confirmed, hired, or appointed, and the person forfeits and may not be paid any salary, per diem, or travel expenses until the person complies. If, after installation as the head or deputy head of, or director of a division within, a department, the person refuses or fails to file the required statement when due, the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and shall be removed from office if compliance is not made within 30 days after the due date of the report. (1974 Initiative Proposal No. 2, § 1; am § 10 ch 25 SLA 1975)

NOTES TO DECISIONS

Applied in *Warren v. Thomas*, Sup. Ct. Op. No. 1484 (File No. 2979), 568 P.2d 400 (1977).

Cited in *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 39.50.080. Failure to report by a commission or board chairman or member. A person hired or appointed as a commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b) who fails to file a report of financial interests required under this chapter when due may not hold office, and the person's name may not be submitted to the legislature until the person complies. The person may not be confirmed, and the person forfeits and may not be paid any salary, per diem or travel expense, until the person complies. If, after being seated as commissioner, chairman or member of such a commission or board the person refuses or fails to file the required statement when due, the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and shall be removed from office if compliance is not made within 30 days after the due date. (1974 Initiative Proposal No. 2, § 1; am § 11 ch 25 SLA 1975)

NOTES TO DECISIONS

Cited in *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 39.50.090. Prohibited acts. (a) A public official may not use the official position or office for the primary purpose of obtaining personal financial gain or financial gain for a spouse, child, mother, father, or business with which the official is associated or in which the official owns stock.

(b) A person may not offer or pay to a public official, and a public official may not solicit or receive money for legislative advice or assistance, or for advice or assistance given in the course of the official's public employment or relating to the public employment. However, this prohibition does not apply to a chairman or member of a state commission or board or municipal officer if the subject matter of the legislative advice or assistance is not related directly to the function of the commission, board, or municipal body served by the municipal officer; this exception from the general prohibition does not apply to one whose service on a state commission or board constitutes the person as a full-time state employee under AS 39.

(c) A public official may not represent a client before a state agency for a fee. However, this prohibition does not apply to a municipal officer, or chairman or member of a state commission or board except with regard to representation before that commission or board; this exception from the general prohibition does not apply to one whose service on the commission or board constitutes the person as a full-time state employee under this title.

(d) A municipal officer may not represent a client for a fee before the municipal body the officer serves.

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

(f) In this section, "public official" includes, in addition to the persons specified in AS 39.50.200(a), chairmen and members of all commissions and boards created by statute or administrative action as agencies of the state. (1974 Initiative Proposal No. 2, § 1; am § 12 ch 25 SLA 1975; am § 1 ch 40 SLA 1975; am §§ 2, 3 ch 211 SLA 1975)

Opinions of attorney general. — Subsection (f) of this section does not cover a municipal officer or employee who, as part of his official duties, represents his department before boards, committees, or the assembly of the same government. The rule which forbids the simultaneous holding of incompatible offices would, however, prohibit a person from being both an employee-advocate of a municipal department and a member of the municipal assembly evaluating the advocate's position. November 26, 1984 Op. Att'y Gen.

An official may be in violation of the

common law of conflict of interests even though he is not in violation of this section. November 26, 1984 Op. Att'y Gen.

The commission's power to investigate violations of this section derives from AS 39.50.050, which authorizes the commission to administer AS 39.50 and promulgate regulations to implement the chapter. In carrying out this responsibility, the commission staff should immediately notify the chief prosecutor whenever commission records, files, and inquiries reveal a possible criminal violation of this section. November 26, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

Activity protected by Alaska Const., art. II, § 6. — Actions of senate finance chairman in acquiring property while promoting its sale to the state at a purchase price which would result in his receiving substantial profits and in using his influence as a legislator to secure an appropriate

action for the purchase by the state in the governor's proposed budget were clearly legislative and therefore within the immunity granted in art. II, § 6 of the state constitution. *State v. Dankworth*, Sup. Ct. App. Op. No. 308 (File No. 7543), 672 P.2d 148 (1983).

Sec. 39.50.100. Enforcement by private citizens. A qualified Alaska voter may bring a civil action to enforce any of the sections of this chapter. (1974 Initiative Proposal No. 2, § 1)

Sec. 39.50.110. Report of financial interests of judicial officers. Each judicial officer as defined in AS 39.50.200(a) shall file reports of financial and business interests required by this chapter. A judicial officer who refuses or fails to file a report when it is due forfeits and may not be paid salary, per diem, or travel expenses after the due date, until compliance, and is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000. The indicted officer may not be appointed by the governor or other authority until compliance. Upon failure or refusal to comply within 30 days of the due date, the judicial officer forfeits office and shall be removed from office. (1974 Initiative Proposal No. 2, § 1; am § 13 ch 25 SLA 1975)

NOTES TO DECISIONS

Cited in State, Pub. Offices Comm'n v. Marshall, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 39.50.120. Report of financial interests of legislators. Each legislator shall file the reports of financial or business interests required by this chapter. A legislator who refuses or fails to file the report when due forfeits and may not be paid salary, per diem, or travel expenses after the due date until compliance and is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000. (1974 Initiative Proposal No. 2, § 1; am § 14 ch 25 SLA 1975)

Sec. 39.50.130. Report of financial interests of governor and lieutenant governor. The governor and lieutenant governor shall each file a report of financial interests required by this chapter. If the governor or lieutenant governor fails to file the report when due, salary, per diem, and travel expenses after the due date are forfeited and may not be paid until compliance, and the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not less

than \$100 nor more than \$1,000. (1974 Initiative Proposal No. 2, § 1; am § 15 ch 25 SLA 1975)

Sec. 39.50.135. Civil penalty: Late filing of required reports. A person who fails to file a properly completed and certified report within the time required by this chapter is subject to a civil penalty of not more than \$10 a day for each day the delinquency continues as the commission determines subject to appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 39.50.060 — 39.50.130 does not excuse that person from filing reports required by this chapter. (§ 8 ch 167 SLA 1976)

Sec. 39.50.140. Accepting bribe. [Repealed, § 26 ch 25 SLA 1975.]

Sec. 39.50.145. Participation by municipalities. A municipality may exempt its municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800(20), or a special municipality-wide election, vote to exempt its municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative election. (§ 16 ch 25 SLA 1975; am § 1 ch 211 SLA 1975; am § 62 ch 74 SLA 1985)

Effect of amendments. — The 1985 amendment in the first sentence substituted "a" for "any" preceding "regular election" and "AS 29.71.800(20)" for "AS 29.78.010(14)" and at the end of the section substituted "election" for "ordinance."

Sec. 39.50.150. Initial filing date for public officials. [Repealed, § 60 ch 21 SLA 1985.]

Sec. 39.50.200. Definitions. (a) In this chapter

(1) "assistant to the governor" includes any executive, legislative, special, administrative or press assistant to the governor, and any person similarly employed.

(2) "child" includes a biological child, an adoptive child, and a step-child;

(3) "commission" means the Alaska Public Offices Commission created under AS 15.13.020(a);

(4) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska and the Alaska State Building Authority;

(5) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court;

(6) "mother or father" includes a biological parent, an adoptive parent, and a step-parent;

(7) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality;

(8) "public official" means a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division within, a department in the executive branch, and assistant to the governor, chairman or member of a state commission or board, and each appointed or elected municipal officer;

(9) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

(b) In this chapter "state commission or board" means the

(1) Agricultural Revolving Loan Fund Board (AS 03.10.050);

(2) Alaska State Council on the Arts (AS 44.27.040);

(3) Alcoholic Beverage Control Board (AS 04.06.010);

(4) State Assessment Review Board (AS 43.56.040);

(5) [Repealed, § 1 ch 54 SLA 1981.]

(6) Board of Education (AS 14.07.075);

(7) Alaska Public Broadcasting Commission (AS 44.21.256);

(8) Alaska Public Offices Commission (AS 15.13.020);

(9) Employment Security Advisory Council (AS 23.20.025);

(10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020);

(11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010);

(12) Alaska State Building Authority (AS 18.55.020);

(13) State Commission for Human Rights (AS 18.80.010);

- (14) [Repealed, § 86 ch 59 SLA 1982.]
 (15) Alaska Judicial Council (art. IV, § 8, Alaska Constitution);
 (16) Commission on Judicial Conduct (art. IV, § 10, Alaska Constitution);
 (17) Governor's Commission on the Administration of Justice (AS 44.19.110);
 (18) Local Boundary Commission (AS 44.47.565);
 (19) Occupational Safety and Health Review Board (AS 18.60.057);
 (20) Board of Parole (AS 33.16.020);
 (21) State Personnel Board (AS 39.25.060);
 (22) [Repealed, § 20 ch 110 SLA 1981.]
 (23) Public Employees Retirement Board (AS 39.35.030);
 (24) Alaska Public Utilities Commission (AS 42.05.010);
 (25) University of Alaska Board of Regents (AS 14.40.120);
 (26) Alaska Royalty Oil and Gas Development Advisory Board (AS 38.06.020);
 (27) [Repealed, § 86 ch 59 SLA 1982.]
 (28) [Repealed, § 86 ch 59 SLA 1982.]
 (29) Alaska Teachers' Retirement Board (AS 14.25.035);
 (30) [Repealed, 1983 Initiative Proposal No. 2, § 6.]
 (31) Workers' Compensation Board (AS 23.30.005);
 (32) Alaska Commission on Postsecondary Education (AS 14.42.015);
 (33) Alaska Municipal Bond Bank Authority (AS 44.85.020);
 (34) [Repealed, § 1 ch 54 SLA 1981.]
 (35) Alaskan Medical Facility Authority (AS 18.26);
 (36) Alaska Oil and Gas Conservation Commission (AS 31.05);
 (37) Alaska Housing Finance Corporation (AS 18.56.010 — 18.56.900);
 (38) Alaska Coastal Policy Council members and their alternates (AS 44.19.155);
 (39) [Repealed, § 1 ch 75 SLA 1979.]
 (40) Board of Fisheries (AS 16.05.221(a));
 (41) Board of Game (AS 16.05.221(b));
 (42) Board of Trustees and executive director of the Alaska Permanent Fund Corporation (AS 37.13.040);
 (43) [Repealed, § 69 ch 14 SLA 1987.]
 (44) Alaska Seafood Marketing Institute (AS 16.51.010);
 (45) Council on Domestic Violence and Sexual Assault (18.66.01);
 (46) Alaska Power Authority public directors (AS 44.83.030);
 (47) Alaska Resources Corporation (AS 37.12.010); and
 (48) Guide Board (AS 08.54.010). (1974 Initiative Proposal No. 2, § 1; am §§ 18, 19 ch 25 SLA 1975; am § 3 ch 79 SLA 1975; am § 2 ch 170 SLA 1975; am § 18 ch 263 SLA 1976; am § 2 ch 67 SLA 1977; am § 2 ch 141 SLA 1978; am § 2 ch 158 SLA 1978; am § 9 ch 167 SLA 1978; am § 2 ch 66 SLA 1979; am § 3 ch 75 SLA 1979; am § 37 ch 3

SLA 1980; am § 28 ch 12 SLA 1980; am § 8 ch 18 SLA 1980; am §§ 39 — 43 ch 94 SLA 1980; am § 5 ch 148 SLA 1980; am E.O. No. 44 § 2 (1980); am § 1 ch 54 SLA 1981; am § 2 ch 101 SLA 1981; am § 5 ch 106 SLA 1981; am § 20 ch 110 SLA 1981; am § 86 ch 59 SLA 1982; am 1983 Initiative Proposal No. 2, § 6; am § 107 ch 6 SLA 1984; am § 1 ch 52 SLA 1984; am § 63 ch 74 SLA 1985; am § 5 ch 88 SLA 1985; am § 26 ch 71 SLA 1986; am § 69 ch 14 SLA 1987)

Revisor's notes. — Subsection (a) was reorganized in 1984 to alphabetize the defined terms.

Effect of amendments. — The first 1984 amendment added paragraphs (46) and (47) to subsection (b).

The second 1984 amendment inserted "the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency" in paragraph (a)(8).

The first 1985 amendment repealed

paragraph (b)(30), concerning the Alaska Transportation Commission.

The second 1985 amendment in paragraph (a)(7) substituted "or" for "including but not limited to" and deleted "under AS 29.68" at the end of the paragraph.

The third 1985 amendment in paragraph (b)(20) deleted "State" preceding "Board" and substituted "AS 33.16.020" for "AS 33.15.010."

The 1986 amendment added paragraph (b)(48).

The 1987 amendment repealed subsection (b)(43), which read "Alaska Energy Center (AS 46.12)."

NOTES TO DECISIONS

Purpose of the Conflict of Interest law is to bring to light all conflicts — actual and potential. *Falcon v. Alaska Pub. Offices Comm'n.* Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Patient of a physician is a client for medical services and falls within the scope of this chapter. *Falcon v. Alaska*

Pub. Offices Comm'n. Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

And source of income. — The Conflict of Interest law encompasses a physician's individual patients as sources of income. *Falcon v. Alaska Pub. Offices Comm'n.* Sup. Ct. Op. No. 1512 (File No. 3220), 570 P.2d 469 (1977).

Chapter 51. Miscellaneous Provisions.

Sec. 39.51.010. Misuse of confidential information. [Repealed, § 21 ch 166 SLA 1978. For current law see AS 11.56.860.]

Secs. 39.51.020, 39.51.030. [Renumbered as AS 39.90.010 and AS 39.90.020.]

109 SLA 1970; am § 16 ch 159 SLA 1972; am § 35 ch 1 SLA 1974; am § 110 ch 127 SLA 1974; am § 3 ch 200 SLA 1975; am §§ 9, 10, 16 ch 205 SLA 1975; am §§ 5, 6 ch 27 SLA 1976; am §§ 22, 23 ch 123 SLA 1976; am § 1 ch 141 SLA 1976; am § 7 ch 218 SLA 1976; am §§ 6, 7 ch 245 SLA 1976; am §§ 12, 13 ch 263 SLA 1976; am § 54 ch 128 SLA 1977; am § 3 ch 58 SLA 1979; am § 3 ch 67 SLA 1979; am § 14 ch 82 SLA 1979; am § 27 ch 12 SLA 1980; am §§ 47, 48 ch 13 SLA 1980; am §§ 36, 37 ch 146 SLA 1980; am §§ 68 — 73 ch 137 SLA 1982; am §§ 2, 3 ch 27 SLA 1983; am §§ 47 — 53 ch 82 SLA 1986; am § 50 ch 117 SLA 1986; am § 33 ch 106 SLA 1988; am § 4 ch 58 SLA 1989; am § 2 ch 60 SLA 1989; am § 6 ch 104 SLA 1989)

Revisor's notes. — Minor word changes were made in 1989 to reconcile amendments to (21)(C)(iv) of this section by chapters 58 and 104 SLA 1989.

Effect of amendments. — The 1988 amendment, effective June 5, 1988, repealed and reenacted paragraph (29), which read "pension fund means all assets held in the name of the system."

The first 1989 amendment, effective May 31, 1989, added item (viii) in subparagraph (21)(B) and "except as provided under AS 39.35.131 and 39.35.381" at the end of item (iv) in subparagraph (21)(C).

The second 1989 amendment, effective August 28, 1989, inserted "incentive cash awards under AS 39.51.120" near the end of paragraph (8).

The third 1989 amendment, effective July 1, 1989, added "or the optional university retirement program" at the end of item (21)(C)(iv). The amendments were harmonized by the revisor. See the revisor's note.

Editor's notes. — Chapter 205, SLA 1975, which amended this section, was submitted to the voters in referendum and was rejected.

NOTES TO DECISIONS

Cited in *Laing v. Laing*, 741 P.2d 649 (Alaska 1987).

Chapter 37. Elected Public Officers Retirement System.

[Rejected at Referendum]

Cross references. — For alternate benefits for certain EPORS members, see AS 39.35.389.

Editor's notes. — Section 5, ch. 89, SLA 1987 provides: "Notwithstanding former AS 39.37.130 and 39.37.140, a former member of the Elected Public Officers Retirement System who received an involuntary refund of the individual's account because of a levy may repay the amount levied together with accrued interest. Upon payment of the full amount owing, the former member regains all rights that were terminated because of the refund."

Section 35, ch. 106, SLA 1988 provides:

"Notwithstanding former AS 39.37.060 and sec. 51, ch. 117, SLA 1986, the surviving spouse of an elected public officer who has retirement rights under the Elected Public Officers' Retirement System is eligible to continue receiving survivors' benefits upon remarriage. If there is no surviving spouse or surviving dependent child entitled to benefits under former AS 39.37.060 or if, after payment of all survivors' benefits due under former AS 39.37.060, less than the amount of contributions made by the elected public officer under former AS 39.37.070 and interest credited has been paid, the difference be-

tween the amount of contributions and the amount of benefits paid shall be paid to the designated beneficiary of the elected public officer. If there is no designated beneficiary or if no designated beneficiary survives the elected public officer, the balance of the contributions and interest credited shall be paid to the

"(1) surviving spouse or, if there is none surviving,

"(2) surviving children in equal parts, or, if there is none surviving,

"(3) surviving parents in equal parts, or, if there is none surviving,

"(4) elected public officer's estate."

Chapter 50. Conflict of Interest.

Section	Section
20. Report of financial and business interests	200. Definitions

Sec. 39.50.020. Report of financial and business interests.

(a) A judicial officer, commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, a person appointed as assistant to the governor, and a municipal officer, shall file a statement giving income sources and business interests, under oath and on penalty of perjury, within 30 days after taking office as a public official. Candidates for state elective office shall file such a statement with the director of elections at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating petition, or within 30 days of becoming a candidate by any other means. Candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that a previously accepted filing fee be returned and the candidate's name removed from the filing records. A statement shall also be filed by public officials no later than April 15 or 15 days after the person files a federal income tax return in each following year, whichever comes first. Persons who, on or after December 11, 1974, were members of boards or commissions not named in AS 39.50.200(b) are not required to file financial statements.

(b) The governor, lieutenant governor, members of the legislature, judicial officers, each commissioner, head or deputy head of, or director of a division within, a department in the executive branch, assistant to the governor or chairman or member of a commission or board required to report under this chapter, shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor, lieutenant governor, and the legislature shall file the statement under AS 15.25.030 or 15.25.180. Municipal officers, and candidates

for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records. (1974 Initiative Proposal No. 2, § 1; am §§ 1, 2 ch 25 SLA 1975; am § 32 ch 67 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 28, 1989, inserted "with the director of elections" in the second sentence in subsection (a); deleted "and candidates for these offices" before "judicial officers" in the first sentence in subsection (b); and added the second sentence in subsection (b).

Sec. 39.50.200. Definitions. (a) In this chapter

(1) "assistant to the governor" includes any executive, legislative, special, administrative or press assistant to the governor, and any person similarly employed;

(2) "child" includes a biological child, an adoptive child, and a step-child;

(3) "commission" means the Alaska Public Offices Commission created under AS 15.13.020(a);

(4) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska and the Alaska State Housing Authority;

(5) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court;

(6) "mother or father" includes a biological parent, an adoptive parent, and a step-parent;

(7) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality;

(8) "public official" means a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division, a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, the executive director of the Alaska Tourism Marketing Council, and each appointed or elected municipal officer;

(9) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of

a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership or corporation, but if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source;

(b) In this chapter "state commission or board" means the

(1) Agricultural Revolving Loan Fund Board (AS 03.10.050);

(2) Alaska State Council on the Arts (AS 44.27.040);

(3) Alcoholic Beverage Control Board (AS 04.06.010);

(4) State Assessment Review Board (AS 43.56.040);

(5) [Repealed, § 1 ch 54 SLA 1981.]

(6) Board of Education (AS 14.07.075);

(7) Alaska Public Broadcasting Commission (AS 44.21.256);

(8) Alaska Public Offices Commission (AS 15.13.020);

(9) Employment Security Advisory Council (AS 23.20.025);

(10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020);

(11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010);

(12) Alaska State Housing Authority (AS 18.55.020);

(13) State Commission for Human Rights (AS 18.80.010);

(14) [Repealed, § 86 ch 59 SLA 1982.]

(15) Alaska Judicial Council (art. IV, § 8, Alaska Constitution);

(16) Commission on Judicial Conduct (art. IV, § 10, Alaska Constitution);

(17) Governor's Commission on the Administration of Justice (AS 44.19.110);

(18) Local Boundary Commission (AS 44.47.565);

(19) Occupational Safety and Health Review Board (AS 13.60.057);

(20) Board of Parole (AS 33.16.020);

(21) State Personnel Board (AS 39.25.060);

(22) [Repealed, § 20 ch 110 SLA 1981.]

(23) Public Employees Retirement Board (AS 39.35.030);

(24) Alaska Public Utilities Commission (AS 42.05.010);

(25) University of Alaska Board of Regents (AS 14.40.120);

(26) Alaska Royalty Oil and Gas Development Advisory Board (AS 38.06.020);

(27) [Repealed, § 86 ch 59 SLA 1982.]

(28) [Repealed, § 86 ch 59 SLA 1982.]

(29) Alaska Teachers' Retirement Board (AS 14.25.035);

(30) [Repealed, 1983 Initiative Proposal No. 2, § 6.]

(31) Workers' Compensation Board (AS 23.30.005);

(32) Alaska Commission on Postsecondary Education (AS 14.42.015);

- (33) Alaska Municipal Bond Bank Authority (AS 44.85.020);
 (34) [Repealed, § 1 ch 54 SLA 1981.]
 (35) Alaska Medical Facility Authority (AS 18.26);
 (36) Alaska Oil and Gas Conservation Commission (AS 31.05);
 (37) Alaska Housing Finance Corporation (AS 18.56.010 — 18.56.900);
 (38) Alaska Coastal Policy Council members and their alternates (AS 44.19.155);
 (39) [Repealed, § 1 ch 75 SLA 1979.]
 (40) Board of Fisheries (AS 16.05.221(a));
 (41) Board of Game (AS 16.05.221(b));
 (42) Board of Trustees and executive director of the Alaska Permanent Fund Corporation (AS 37.13.040);
 (43) [Repealed, § 69 ch 14 SLA 1987.]
 (44) Alaska Seafood Marketing Institute (AS 16.51.010);
 (45) Council on Domestic Violence and Sexual Assault (18.66.010);
 (46) Alaska Energy Authority public directors (AS 44.83.030);
 (47) Alaska Resources Corporation (AS 37.17.010);
 (48) Big Game Commercial Services Board AS 08.54.300; and
 (49) Alaska Tourism Marketing Council (AS 44.33.700). (1974 Initiative Proposal No. 2, § 1; am §§ 18, 19 ch 25 SLA 1975; am § 3 ch 79 SLA 1975; am § 2 ch 170 SLA 1976; am § 18 ch 263 SLA 1976; am § 2 ch 67 SLA 1977; am § 2 ch 141 SLA 1978; am § 2 ch 158 SLA 1978; am § 9 ch 167 SLA 1978; am § 2 ch 66 SLA 1979; am § 3 ch 75 SLA 1979; am § 37 ch 3 SLA 1980; am § 28 ch 12 SLA 1980; am § 8 ch 18 SLA 1980; am §§ 39 — 43 ch 94 SLA 1980; am § 5 ch 148 SLA 1980; am E.O. No. 44 § 2 (1980); am § 1 ch 54 SLA 1981; am § 2 ch 101 SLA 1981; am § 5 ch 106 SLA 1981; am § 20 ch 110 SLA 1981; am § 86 ch 59 SLA 1982; am 1983 Initiative Proposal No. 2, § 6; am § 107 ch 6 SLA 1984; am § 1 ch 62 SLA 1984; am § 63 ch 74 SLA 1985; am § 5 ch 88 SLA 1985; am § 26 ch 71 SLA 1986; am § 69 ch 14 SLA 1987; am §§ 3, 4 ch 78 SLA 1988; am § 10 ch 37 SLA 1989)

Effect of amendments. — The 1988 amendment, effective July 1, 1988, inserted "the executive director of the Alaska Tourism Marketing Council" in subsection (a)(8) and added subsection (b)(49).

The 1989 amendment, effective May 12, 1989, rewrote subsection (b)(48) which read "Guide Board AS 08.54.010."

Chapter 51. Incentive Award Program.

Section

110. Incentive awards.
 120. Payment of awards.
 130. Amount of awards.
 140. Meritorious achievement.
 150. Limitation on awards.

Section

160. Awards to former employees.
 170. Incentive awards board.
 180. Annual report.
 200. Definitions.

Cross references. — For required report by office of management and budget and division of personnel, see § 4, ch 60, SLA 1989 in the Temporary and Special Acts.

Effective date of chapter. — Chapter

60, SLA 1989, which enacted this chapter, took effect on August 28, 1989.

Delayed repeal of chapter. — Section 3, ch 60, SLA 1989 repeals this chapter effective July 1, 1993.

Sec. 39.51.110. Incentive awards. [Repealed effective July 1, 1993]. The Incentive Awards Board may authorize the commissioner of a department or the executive head of an agency other than a department to pay an employee a cash award and incur necessary expense for the honorary recognition of the employee if the employee has contributed to the efficiency, economy, or other improvement of state operations by a superior suggestion, invention, accomplishment, or other superior personal effort in connection with or related to the employee's official employment. (§ 1 ch 60 SLA 1989; r § 3 ch 60 SLA 1989)

Legislative history reports. — For (SCS CSIB 138(Fin)), see 1989 Senate Senate letter of intent on ch. 60, SLA 1989 Journal 1616.

Sec. 39.51.120. Payment of awards. [Repealed effective July 1, 1993]. (a) A cash award under this chapter is in addition to the regular pay of the recipient. Acceptance of a cash award constitutes an agreement that the use by the state of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the state by the employee.

(b) A department or agency may pay a cash award and the expense for the honorary recognition of an employee from the appropriation available to the activity or activities primarily benefiting from the idea, method, or device that forms the basis for the award. The commissioner of the department or head of the agency shall recommend to the board the amount to be paid by each activity for an award.

(c) An employee may receive a cash award only if the board is satisfied that a net savings has been realized by the department or agency as a direct result of the employee's concept or idea, and the proposal has been developed outside normal working hours.

Wrestling with ethics

THERE ARE two aspects to the current ethics debates now occupying an undue amount of time in the state Senate.

One involves Democratic Sen. Al Adams of Kotzebue and the possible impropriety of his actions in past years relating to the North Slope Borough scandal.

The other involves the whole question of a code of ethics by which members of the legislature should live and conduct their business.

In both cases, the Senate is going about things in precisely the wrong way.

Let's look at both of these matters.

WITH RESPECT to Sen. Adams, once a legislative power but now strictly a back-bencher, his role as a player in the North Slope affairs already has been looked into once by a legislative ethics committee.

That committee essentially white-washed the affair. It said allegations against Mr. Adams dealt with events occurring prior to adoption of existing ethics laws and, therefore, there was no action the legislature could take.

The report proved nothing except that the legislature is not an investigative body and should quit trying to be one.

Instead, the matter of whether Mr. Adams accepted kickbacks from a North Slope contractor or was engaged in other improprieties should be turned over the attorney general's office — with a strong legislative directive that it investigate and bring charges if warranted or that it clear the senator once and for all if there is no basis for charges.

The legislature should be precise and specific, demanding quick and thorough action from the attorney general. And having put the matter in his hands, the senators should get back to the business of lawmaking — the job they are in Juneau to do.

As to the general question about the need for a new code of ethics law, the senators erred again to spend \$70,000 to hire a California consultant to handle that task.

Good grief.

They called for no bids from any other consultant.

They evidently made no effort to ascertain whether any Alaska firm or individuals are qualified to do the job.

They indicated, by such precipitous action, that there are no Alaskans with either sufficient ethics or an adequate knowledge of ethical considerations to handle such an assignment — more readily, more quickly and with a better understanding of Alaska's political temptations.

AND THAT'S simply flat wrong. Even if the members of the Senate, charged with serving the state decently, honestly, morally and prudently, don't themselves know enough to write a realistic code of ethics, there are certainly many others in Alaska who do.

We're grateful the legislators are concerned — especially in an election year such as this — that people care about their ethical standards. And it's good they want to demonstrate how straight and pure they are.

But they shouldn't need a Californian to draw them a map of the road.

Senate hires ethics consultant to build public faith in lawmakers

By RICHARD MAUER
Daily News reporter

Ethics consultant Michael Josephson said Friday he hoped the package of reforms he will propose to the Alaska Senate will become a model for legislatures around the country.

Speaking at a press conference in Anchorage to formally inaugurate his \$70,000 study of Alaska's legislative ethics code, Josephson said: "Things are no worse here than in most places."

Josephson runs an institute on governmental ethics in California. The senate leadership hired him "to reinstate public confidence" in the legislature's ability to regulate the conduct of its members.

Though some senators objected to hiring someone from another state to tell them how to behave, Josephson has some experience with the loss of public confidence in state legislatures. In California, he said, a recent survey showed that 55 percent of the people believed legislators there regularly take bribes.

Josephson said he hoped to write a complete ethics package that would be difficult to dismember by legislators interested in diluting its impact.

Without getting into specifics, Josephson said his experience indicates the new law should encompass gifts, honoraria, employment outside the legislature and

Sen. Fred Zharoff identified himself as one of the people who voted against hiring Josephson. Josephson replied, "I don't blame you, with that attitude."

conflicts of interest. He was non-committal about whether he favored legislative self-regulation, oversight by a committee of citizens like the Alaska Public Offices Commission, or a combination of the two, as exists now.

In the case of part-time, citizen legislatures like Alaska, it's common for legislators to have conflicts of interest between their public and private duties. If the law requires them to disclose their outside sources of income, it's important that those disclosures be more than "cosmetic." Under current law in Alaska, legislators must say who they work for, but not how much they make.

Enforcement of the rules should be accomplished by meaningful sanctions that range from censure to stripping of power to expulsion from office. Criminal penalties should only be reserved for the most serious infractions, such as bribery. Speaking of former U.S. Attorney General Edwin Meese, he rejected Meese's notion that ethical behavior was only unindictable behavior.

"That's not acceptable to the Government Ethics Center," he

said, referring to his organization.

His report is supposed to be completed by April 2. He acknowledged it was a "1/2 job," but one he could accomplish because of his years of grounding in the subject. He said his work was "80 percent" done before he even started.

Josephson demonstrated a willingness to step on some legislative toes. He had been asked to delay his opening statement until the arrival of Sen. Pourchot, but when 20 minutes had passed, decided enough was enough. Pourchot, D-Anchorage, arrived a few minutes later with Sen. Fred Zharoff, D-Kodiak.

From the back of the room, Zharoff questioned whether he was trying to push some preconceived ideas on the legislature.

Not knowing he was a senator, Josephson responded, "Stop it, stop it. You're ridiculously cynical."

That's when Zharoff identified himself as one of the people who voted against hiring Josephson.

"I don't blame you, with that attitude," Josephson retorted.



Anchorage Daily News/Bob Hallen
Michael Josephson speaks Friday at the Legislative Information Office.

Sunday, February 18, 1989, The Anchorage Times

\$70,000 ethics revamp is 'rush job'

By DANIEL R. SADDLER
Times Writer

An ethics consultant hired to revamp Alaska legislative laws into a model for the nation says 80 percent of the work has already been done while working for another project.

The state Senate voted 11-5 Tuesday to pay \$70,000, plus expenses, to the California-based Josephson Institute for the Advancement of Ethics to produce a package of proposed ethics rules and regulations for the state legislature.

Director Michael Josephson said the work would be "a rush job" that would rely heavily on the institute's two-year project to produce a "white paper" study of legislative ethics, to

'It's not as if we were starting from scratch . . . but we need to customize it.'

— Michael Josephson, ethics consultant

be presented at the White House in March.

"(The study) will be the basis for any legislative package," Josephson said Friday. "It's not as if we were starting from scratch . . . but we need to customize it."

The institute's 11-member commission of former public servants and academicians already has thought out its positions on ethics in public service, Josephson said at a press con-

ference. They will concentrate on finding the best procedures to enforce and encourage ethical behavior, he said.

Government ethics are an increasingly important issue around the nation, Josephson said the 6-year-old institute had been hoping to find a city or state willing to create a set of ethics regulations to serve as a national model. But he denied actively trying to peddle the study.

"Every state I've been in has an ethics problem today," he said. "I don't think things are any worse here (in Alaska), but I don't think they are any better." He gave the state legislature good marks for having a written ethics code at all.

Josephson arrived in Anchorage Thursday. He'll spend the next two weeks interviewing lawmakers, reporters and professors, then return to California to spend a month writing the report and proposed legislation package, he said.

He praised the senators for risking an outside agency's study and said his recommendations would "lean toward the greatest possible public disclosure" of ethical problems.

Anchorage Times Wed. Feb. 14, 1990

Adams will allow Senate to examine ethics papers

By DAVE PATRICK
Times Juneau Bureau

JUNEAU — Sen. Al Adams said Tuesday he will waive rights of confidentiality to ethics committee documents relating to his North Slope business dealings, a move that could lay the groundwork for Senate action against him.

Adams announced his decision during a meeting of the Senate majority caucus Tuesday morning.

The laws regarding the conduct of legislators have come under attack following a leak of confidential legislative ethics committee documents.

The meeting Tuesday of a coalition of Senate Republicans and Democrats was prompted by an Anchorage Daily News article last week, which quoted from an ethics committee investigative report and a legal memo.

The leak touched off an investigation by the Alaska State Troopers of the ethics panel and its

staff for possible law violations in releasing the documents. The article detailed nine charges of misconduct involving Adams, who was accused of using his elected position to obtain kickbacks from a contractor doing work on the North Slope.

Adams denies any wrongdoing. The ethics committee, made up of three senators and three non-legislators, said it lacked jurisdiction when it dismissed an ethics complaint last year against him.

Senate President Tim Kelly, R-Anchorage, wrote to Adams on Tuesday asking for the waiver of confidentiality and release of documents to Senate members after the troopers finish their investigation.

Many of the allegations revealed in the news article place Adams outside of criminal prosecution due to statute of limitations restrictions, said Larry Weeks, of the Attorney General's office.

Senate bypasses bidding process, hires consultant

2ch. Times Wed. Feb 14, 1990

• Examination of ethics papers OK'd A-11

By DAVE PATRICK
Times Juneau Bureau

JUNEAU — Senate leaders hired an ethics consultant Tuesday, promptly raising questions about the ethics involved in the hiring process.

Tuesday's action started with a decision by the Senate majority caucus to employ a consultant to advise them on ethics regulations. The Senate Rules Committee followed the caucus vote Tuesday afternoon by approving a \$70,000 contract with Michael Josephson, who heads an ethics institute in Marina del Rey, Calif.

Eleven majority caucus members voted to hire the consultant without putting the contract up for bids. But that posed its own ethical questions, according to some Senate members.

"The committee is charged by law and what we're doing here is breaking state law," said Sen. Jack Coghill, R-Nenana, who wanted the contract put out for bid.

But Sen. Arliss Sturgulewski, R-Anchorage and chairwoman of the Senate Rules Committee said awarding a contract without bids is permissible because the Josephson Institute is "uniquely qualified to assist legislators."

See Ethics, page A-11

Ethics

Continued from page A-1

Sturgulewski said the state code for professional services provides for such an exception when the state seeks the services of someone who has specialized knowledge.

Josephson, who has done previous consulting work for legislatures in Arizona, Missouri and New Mexico, will put together an ethics package for the legislature on a wide range of issues. They include procedures for dealing with ethics charges and for the receipt of gifts, conflicts of interest, lobbying regulations and the use of campaign funds.

Many of the Democrats and Republicans in the Senate majority caucus clearly think it's time for an overhaul in the state's ethics laws.

Recent news reports of a confidential ethics committee investigation paint a picture of a senator accused of serious misconduct and a committee caught up in procedures.

The ethics committee last year dismissed a complaint against Sen. Al Adams, D-Koizebue, saying the committee lacked jurisdiction due to time

constraints imposed by the statute of limitations and a deadline for filing ethics complaints. Adams denies any wrongdoing.

Although committee chairman Sen. Pat Pourchot, D-Anchorage, said last year that there was no "smoking gun" to be found in the Adams' investigation, he is among those who are frustrated with the limits placed on the committee.

"I frankly concur that it's time to take a look at this process," Pourchot said during the caucus meeting.

"If the public thinks we're crooks, then it's our responsibility to bend over backwards to restore that trust," said Sen. Jan Faiks, R-Anchorage, who defended hiring the consultant.

Senate President Tim Kelly said the state's ethics laws have been ineffective since they were put on the books in 1984, and he would accept whatever the consultant offered.

Sen. Fred Zharoff, D-Kodiak, questioned the need for a wholesale change in the ethics laws. "I haven't had anybody tell me that we have got a serious problem, that the machine is broken," he said.

The 17-member bipartisan caucus voted 11-5 to approve the contract. One member was absent.

Senators seek to examine secret ethics report on Adams

By DAVID POSTMAN
Daily News reporter

JUNEAU — State senators say they want to know what is in a confidential ethics committee report on Sen. Al Adams so they can decide if "something more needs to be done."

The Senate is also considering hiring a California ethics expert to review the quandary over the Adams case and to take a "much broader" look at the legislature's

ethics law, according to Senate President Tim Kelly. Kelly, R-Anchorage, said the Senate majority will consider that and other proposals dealing with Adams and ethics at a caucus today.

Kelly said some senators have been asking him to release a confidential report compiled on Adams, a Kotzebue Democrat, by Ron Otte, the former Anchorage police chief who was hired by the Senate subcommittee on ethics to investi-

gate charges against the senator. The report is confidential and it is against the law for it to be released.

The Daily News obtained a copy of the report and wrote a story based on its findings last week. According to the secret document, Adams apparently committed several ethical lapses, including forgery, falsification of documents, giving misleading testimony under oath and collecting hundreds of

thousands of dollars in consulting fees from a North Slope contractor while doing little or no work.

The Senate subcommittee concluded in May that Adams' activities happened too long ago to fall under its own jurisdiction and declined the one other avenue open to it: recommending to the full Senate that a special committee be formed to investigate Adams.

But now, with release of the report to the newspaper, Kelly

said senators say they, too, want to see what Otte and the committee found out about Adams.

"I think we should ask Al Adams to release the report to the Senate," said Sen. Arliss Sturgulewski, R-Anchorage. "We have seen the allegations in the paper. But we need to see the investigation."

"I want to make the judgment

Please see Back Page. ETHICS

Continued from Page A-1

myself to see if something more needs to be done."

Adams said he doesn't have a copy of the report but that his attorney was looking into the matter Monday. He said no senator has asked him to get a copy of the report and release it.

Sen. Pat Pourchot, chairman of the Senate ethics subcommittee, said that may be one of the few avenues available to the committee if the Senate wants to see the report. He doesn't think the committee can give it directly to the full Senate.

"Tim (Kelly) has raised that question and our attorney doesn't see how that is possible," said Pourchot, D-Anchorage. He said the law about confidentiality is clear and the ethics panel could not even release the investigative report to state prosecutors unless complete confidentiality could be guaranteed.

"Is it our job to circumvent the

spirit of the law? I'd feel real uncomfortable if that is what we are trying to do," Pourchot said.

But Kelly and other senators said that it is important for them to know what is in the report since the entire Senate is being criticized — primarily by the Daily News, they say — for not taking action against Adams.

"I think it is fair to say that senators are as ignorant as the general public as to what is in the report and I think there is an interest in the Senate to get the facts straight," Kelly said. He also said the Senate doesn't know if the Daily News story was accurate or complete and, "We have all been around long enough in public life not to trust a single source."

Sen. Steve Frank, R-Fairbanks, said he has gotten only a few calls and public opinion messages from constituents about the Adams case. But he said the Senate cannot let the issue die.

"I think the Senate has to confront itself on how to deal with

it," he said. "I'm not sure the Senate is terribly well equipped to deal with it. But I think we have to address it."

One of the ways the Senate hopes to address at least the perception of an ethics problem, is with a California ethics expert. Kelly confirmed Monday that the Senate was considering hiring Michael Josephson, president of the Joseph and Edna Josephson Institute for the Advancement of Ethics.

Kelly, though, refused to talk about the negotiations or exactly what Josephson will do until an agreement is reached with the ethics expert.

Josephson is a retired law professor who runs a non-profit ethics institute in Marina del Rey, Calif. The institute has conducted more than 100 workshops for politicians, business people, journalists and educators, according to the institute's latest quarterly magazine. According to his biography, Josephson has held ethics seminars

for the U.S. Conference of Mayors, senior staff of the U.S. House and Senate and major American newspapers.

He also spoke to a meeting of the Legislative Leaders Foundation in Boston which was attended by Sen. Jan Falks, R-Anchorage, then Senate president. Falks then hired Josephson to give a seminar in Anchorage for legislators, staff and reporters.

Josephson did not return a phone call Monday. In an interview last week, he said his organization is preparing a massive "white paper" on legislative ethics that will be released next month.

He said it is difficult for legislators to police themselves on ethics.

"It is literally illogical and inconceivable to expect a political body — politicians who need to work with each other on a day-to-day basis — to pay the kind of disciplined oversight that ethics really mandates," he said.

Senators do very little and do that badly

ADN
2/10/90



**michael
carey**

The Senate follies got a bad review this week — and rightly so.

The ethics subcommittee's cowardly refusal to deal with Sen. Al Adams outrageous behavior revealed, once again, that the Senate is a private club in which members' concerns routinely take precedence over the public interest.

Despite strong indications from former Anchorage police chief Ron Otte that Sen. Adams is a liar and a cheat who probably is guilty of perjury, forgery, influence-peddling and pigging out at the public trough, subcommittee chairman Pat Pourchot and his colleagues turned their backs on the charges.

Instead of investigating Adams, wrathful senators called out the troopers to discover who leaked the ethics report to the Daily News. In fact, not one legislator ever has suggested Al Adams' behavior might be immoral, illegal or just plain disgusting.

Oh yes, senators are tough on crime. They put up big money for jails and then write laws to fill 'em.

A couple of weeks back they were ready to put lecherous hearing-aid salesmen who seduce high school girls in the black hole of Calcutta.

But there's one group of miscreants that senators haven't got the guts to police — wayward solons.

A senator who goes bad has nothing to fear from his colleagues. Senators are terrified of ethics problems and ethics probes. They know that, openly discussing the behavior and character of a

colleague will be painful and divisive. They fear that they will lose friends and make enemies if they speak up.

Senators would rather live with the stench of corruption than risk the dangers of cleaning house.

Consequently, it's no surprise Senate ethics legislation is a fraud and a fake. The secret process senators created to investigate ethics complaints wasn't just doomed to fail, it was designed to fail.

Senators' obsession with the possibility that an "innocent" colleague might be accused of a crime guaranteed they wouldn't have an honorable public process for resolving ethics complaints.

The Senate's behavior will not change unless its makeup is changed. And I don't mean by the election of "good people." A few nonest Joes and Janes won't do a thing to eliminate the obscene deference, the woe-filled tolerance that senators show one another.

The Senate is too small,

too intimate, too claustrophobic. Make it larger — add another 20 senators. If senators are forced to compete in a bigger arena, they won't be as dependent on or as fearful of each other.

There's another problem, though, that restructuring the Senate won't fix. Collectively, the members have no philosophy, no goals, no platform. They organize for no purpose except to satisfy the vanity and egotism of the leaders and spend money.

The party programs are meaningless, the promises made during the campaign empty. Senators' floor debates are devoid of intellectual content and their public statements designed to pacify the voters and the press.

Senators have no collective sense of purpose — and Alaska will continue to drift until they find one.

□ Michael Carey is editorial page editor of the Anchorage Daily News.

Adams says key ethics source not credible

Anchorage Times
By DAVE PATRICK 3/8/80
Times Juneau Bureau

JUNEAU — Sen. Al Adams said Wednesday the release of confidential Legislative Ethics Committee documents paints a damaging but distorted picture of the committee's investigation into his business dealings on the North Slope.

The leak of the documents prompted an investigation that began Monday by the Alaska State Troopers, who will focus on the six-member ethics panel and its staff. The committee said it lacked jurisdiction last year when it dismissed an ethics complaint against Adams.

A copyright article published Wednesday by the Anchorage Daily News quoted extensively from two documents prepared for the ethics panel. The

article detailed nine charges of misconduct involving Adams, who was accused of using his elected position to obtain kickbacks from a building contractor.

"I've always maintained my innocence on that," Adams said Wednesday in a telephone interview with The Times. The Kotzebue Democrat is traveling and said he had not read the published report, although he had heard an account of it from his attorney.

"One of the things that you need to look at is the credibility of the person that testified against me," Adams said.

Anchorage contractor Thomas Gittins testified in December 1981 that he paid Adams \$772,688 before Adams, page B-3

Kelly refuses to release ethics report on senator

By DAVE PATRICK
Times Juneau Bureau

JUNEAU — Sen. President Tim Kelly, R-Anchorage, refused a request by The Anchorage Times today to release copies of the Legislative Ethics Committee report on the investigation of Sen. Al Adams, D-Kotzebue.

Times Executive Editor Hugh Cunningham made the request on the basis that the report has become public information.

Excerpts of the documents were published Wednesday morning in the Anchorage Daily

News. Kelly sought an opinion from legislative legal counsel John Gagline, who found that Kelly would be breaking the law by divulging ethics committee material, even if the material has been published.

"There is no provision in the law that states that confidential material loses its confidentiality simply because one copy is intentionally or inadvertently disclosed to the press," wrote Gagline. Kelly said he will abide by the legal opinion.

Continued from page --

tween 1982 and 1984 in return for Adams' influence in winning North Slope Borough contracts. Gittins also said Adams used forged documents to substitute his own \$400,000 local-hire study for one Gittins already had begun.

"I didn't have a chance to challenge that in court," Adams said. But the published report also said Adams declined to respond to the charges when given opportunities by an ethics committee investigator. Adams said Wednesday he refused to respond on the advice of his attorney.

Adams also indicated he would not favor the formation of a special legislative committee to investigate the charges. That was one of the options presented and dismissed by the ethics committee last May, according to the published report.

"I don't think it would be needed," Adams said. "I think these allegations have been settled. I think the Daily News is just on a witch hunt again."

Adams' attorney John Rubini questioned what he described as the "selective" presentation of the information gleaned from the confidential documents.

He cited a passage quoting ethics committee legal counsel John Gagline accusing Adams of "greed and extremely poor judgment." The passage also noted Gagline's recommendation that the complaint against Adams should be dismissed on procedural grounds.

Rubini said he called Gagline Wednesday about the critical quote and was told by Gagline

Continued from Page A-1

ultimate' backdrop is the public doesn't believe our system works. That in itself is a compelling enough reason to change it."

Most of the reform talk in Juneau is being fueled by the controversy over the Senate ethics subcommittee's investigation of Adams. The investigation was begun last year after a witness in the federal North Slope Borough corruption trial made allegations about some of Adams' business dealings.

The subcommittee hired former Anchorage Police Chief Ron Oite to investigate the charges. But in May, the subcommittee dropped the case because it ruled that two statute of limitations laws put the allegations out of the subcommittee's reach.

But Oite's confidential report, obtained by the Daily News, shows Adams apparently committed several ethical lapses connected to his consulting work on North Slope projects. The state troopers are investigating the leak of the document to the paper.

When that investigation is complete, probably in a week or two, Adams said he will ask the ethics subcommittee for a copy of the report and then release it to the Senate. It is unclear, though, what confidentiality rules will cover the report once it leaves the hands of the ethics subcommittee.

Adams' attorney, John Ruban, and the ethics subcommittee's attorney, John Gagliuso, are resistent to that issue. Kelly also said that he has asked retired Judge Thomas Stewart, a member of the ethics subcommittee, to write an advisory opinion on what he thinks the Senate should do with the Adams case. Kelly also asked Stewart to report on what he thinks needs to be done about the leak of the report to the Daily News.

The Adams case will be a small part of the project Josephson said he plans to begin Friday.

The four-month, \$70,000 contract calls for Josephson to "review the present laws and rules of the Alaska Legislature, draft legislation and prepare a report regarding matters of legislative ethics" including laws covering investigations, gifts, conflicts of interest, campaign financing and lobbying. The report is due April 2.

"I expect unfettered discretion and no attempt to influence the outcome," Josephson said from California. "We think ethics is a non-partisan issue and we have always brought the bad news. We call a load of hay a load of hay."

This is the most ambitious project ever undertaken by the institute's commission on government ethics. Josephson and others in the group have testified before Congress and various state legislatures on a wide variety of ethical issues.

But Josephson said this is the first time he has been asked to draft a complete package of ethics laws. Most of the initial work, interviewing legislators and others, will be done by Josephson and his staff.

Any recommendations or findings will be reviewed by the commission, made up of current and former Lower 48 state and federal lawmakers, journalists and others. "This is the consultation who provides what I call realism," Josephson said. "So we don't get too academic or pie in the sky."

Anchorage Daily News Wed. Feb. 14, 1970
Adams tells Senate he's willing to share ethics report

By DAVID POSTMAN
Daily News reporter

JUNEAU - Sen. Al Adams, D-Kotzebue, said Tuesday he is willing to share with his colleagues the secret report compiled on him by the Senate ethics subcommittee.

Adams does not have a copy of the report, but has agreed to ask the subcommittee for one. If the subcommittee turns it over to him, he said, he'll give copies to other senators.

Adams told a Senate caucus that because the report was leaked and a story written about it by the Anchor-

age Daily News last week, "It now creates a situation where this report should be released to you individually."

In a letter Tuesday, Senate President Tim Kelly had asked Adams to request a copy of the still-confidential report from the ethics subcommittee and then release it to all members of the Senate.

While Adams was willing to go along with Kelly's suggestion, the Senate president had a tougher time Tuesday convincing colleagues to go along with other parts of a Senate lead-

ership plan to "to reinstate public confidence" in the legislature.

The key part of that plan is the hiring of a California ethics expert to review Alaska's ethics laws and find ways to make them better. After two contentious meetings, senators approved a \$70,000 contract with Michael Josephson and his Josephson Institute for the Advancement of Ethics.

"My constituency has let me know in no uncertain terms that they don't like several of the situations that have arisen with the ethics committee in the last few

years, and it's time for a substantial change," Kelly said. Kelly was careful to say that he thought the subcommittee was doing as good a job as possible under the law, but that the law is flawed.

At a meeting of the 17-member Senate majority coalition, Kelly, R-Anchorage, faced opposition to the plan from a group of Democrats and one stray Republican.

The opposition was based on several themes: the ethics expert is biased; he is from California; there isn't any problem and if there is, it's the fault of the news media.

"I haven't had anyone tell me that we have a serious problem," Sen. Fred Zhoroff, D-Kodiak, said in the morning meeting. "I feel real offended that we have to bring someone in to tell us how to run our lives here as legislators."

He said the press is to blame for any perception that the legislature has any ethical problem because "they don't write about what's in the legislature that's good."

An exception to that negative reporting, he said, was

Please see Back Page, ETHICS



Daily News photo

Sen. Al Adams

Ethics charges probed in depth

By DUNCAN FOWLER

Legislative oversight of Alaska's government is an important responsibility and part of that oversight is performed by the ombudsman. One of the most difficult roles for the ombudsman is review of employee misconduct complaints.

Stories on this page describe our review of three of the more than 40 misconduct complaints received last year. These three complaints consumed the equivalent of more than a third of a year of an investigator's time.

Misconduct allegations and the subsequent investigation do affect the career and reputation of the accused employee and

impact co-workers and families. While all individuals must be accountable, public employees are especially vulnerable to sometimes questionable allegations. Consequently, every attempt is made to protect employee rights while thoroughly exploring the allegations.

If after receiving a complaint the ombudsman believes there may have been misconduct, he may refer the matter to the chief executive officer of the agency involved, a grand jury or other appropriate official or agency. In practice, misconduct complaints usually are reviewed to see if the person should first complain to the offending employee's supervisor. Criminal allegations are usually referred to the ap-

propriate law enforcement agency. Only rarely are complainants referred to the Executive Ethics Act process because that precludes an ombudsman review of the results.

If the ombudsman accepts the misconduct complaint, investigation procedures are outlined in statutes and regulations. The allegations must be in writing and signed by the person making the complaint. An assistant ombudsman will assist those who need help drafting the complaint. If the facts can be verified through a third source, it may not be necessary to reveal a complainant's name. Despite passage of the Alaska Whistleblower Act, and the protections it provides those who report abuses in government, many complainants still worry about retaliation.

The public employee and supervisor are notified in writing about misconduct complaints. Sworn testimony is often taken to insure the validity of statements and protect employees and witnesses from potential retaliation by agency personnel. Subpoenas are issued for records relevant to the investigation. The investigative results are reviewed and confirmed by a series of ombudsman staff reviews.

Regulations provide the investigated employee first receives the preliminary report. The employee can offer additional material. After the employee's comments have been considered and, if appropriate, inserted, another report is prepared and sent to the agency supervisor.

The agency also is given the opportunity to submit information. Then a final

report is issued to the employee and the agency. Often, a separate report must be prepared for the complainant. Confidential information obtained during investigations sometimes may not be released to the complainant or general public.

Should our investigation conclude a misconduct complaint is justified, recommendations are made to correct or improve the agency practices. If we believe disciplinary action should be taken, the agency is asked to verify our report and take appropriate action with the employee.

In addition to the stories on the page, other examples of misconduct complaints from last year include: an allegation a child custody investigator was biased; allegations people were hired based on personal relationships; allegations of use or taking of state property; complaints alleging foul language and threats of harm made by government employees; and abuse of discretion when terminating a partially exempt employee.

About half of our misconduct investigations exonerate the employee. The exonerations lift the cloud from the employee and end speculation about conduct. All misconduct investigations are sobering reminders to the employee and co-workers that each is can be held responsible for the way they perform their jobs.

In misconduct cases where error is found, responsible agencies usually take quick corrective action. Directors of most agencies wish to make it clear to employees and the public, such behavior will not be tolerated.

Leave questions prompt review

A Department of Corrections employee failed to report more than five weeks of leave and attended work irregularly; an ombudsman investigation revealed.

Another allegation—that the person did not have sufficient work to occupy a regular workday—was found indeterminate.

The commissioner of the Department of Corrections rejected the findings critical of the employee but agreed to carry out most of the ombudsman's recommendations, including an internal review of the accusations. In the eight months since the close of the investigation, however, the commissioner has not completed that review.

The department has not yet reported back to the ombudsman on whether the employee's workload has been audited, whether there was an intent by the employee to hide five weeks of leave, or whether department-wide policies on leave and attendance have been adopted. The commissioner did review the role of the employee's supervisor and found no fault.

The questioned leave included two periods of absence totaling over five weeks which had not been processed. This problem occurred twice in a 13-month period. After the ombudsman's review revealed the leave had not been deducted from the employee's account, the employee submitted leave slips at the request of the employee's supervisor. The leave was then processed.

Subpoenaed records from a local athletic club revealed the employee fre-

quently used the facility during work hours or left work early to use the club. The employee's work shift officially ended at 4:30 but sworn testimony from people in the employee's office confirmed the person rarely worked until 4 p.m., often came to work late and frequently read magazines at work. Several times the employee claimed sick leave inappropriately.

A review of medical records subpoenaed from the employee's health insurance company revealed a similar pattern of not reporting medical appointments as leave.

The employee, who submitted a detailed rebuttal of the ombudsman allegations, argued that a rigorous travel schedule with long hours on duty more than made up for the hours not reported as leave. The employee pointed to a long tradition of compensatory or flex-time allowed for extra hours on duty.

Department employees confirmed the existence of this informal flex-time policy. Several workers pointed out their workload was too heavy to use it very often; other employees showed they had used it with the written permission of their supervisors. Testimony from the employee's colleagues showed the employee's attendance contrasted with others who strictly observed official work hours. The employee's supervisor testified these changes in the employee's schedule were not discussed or cleared with the supervisor.

The employee's supervisor has since set up a system for monitoring the leave reporting of subordinates.

Real estate venture found inappropriate

A program manager for the Alaska National Guard acted improperly and contrary to law when he sold real estate for personal profit to employees in his direct line of supervision, the ombudsman found.

The manager also used state time, equipment, and employees to transact personal real estate business, the ombudsman added.

Last spring, the ombudsman received three complaints against the office manager. In addition to the improper real estate transactions, the manager allegedly allowed unauthorized staff to sign contracts and obligate state funds and to write bid specifications for architectural and engineering repairs when they were not qualified to do so.

The manager and other staff also prepared and smoked fish at the office during routine work hours and inconsistently allowed certain staff to use compensatory time when there was no written policy in effect.

The ombudsman found no validity to allegations that the manager improperly accepted gifts: from a travel agent with whom his office booked travel; from a contractor from whom his office purchased composting toilets for remote national guard training sites; and from a computer vendor who sold the office personal computers and software.

Finally, the ombudsman's review of whether composting toilets purchased by the facilities maintenance office were cost efficient and operated properly was indeterminate. There was testimony and information reasonably arguing for both sides.

The manager's supervisor, Lt. Colonel Michael Murray, accepted the ombudsman's recommendation to consider taking appropriate disciplinary action against the manager and note the violations in the manager's personnel file. Employees who participated in the yearly fish smoking event have been warned that this type of activity will not be tolerated in the future. Also, a new compensatory time policy was scheduled for release in late 1989.

Problems noted with contracting, preparation of bid specifications, and architectural and engineering repairs were remedied by the Department of Transportation and Public Facilities overseeing facilities contracting for the National Guard. The Department of Transportation and Public Facilities also will periodically perform audits to make sure contracting is done within the letter of the law.

Building maintenance specialists were delegated contracting authority and only those staff will sign contracts. The Facilities Maintenance Office will initiate professional service agreements for architectural and engineering repairs for which facilities employees lack expertise.

State inspector cleared of bias

Charges of bias against a seafood sanitation inspector were found to be unsubstantiated after a recent ombudsman investigation.

In September, a seafood processing plant manager told the ombudsman's office a state sanitation inspector was applying different sanitation standards for different seafood processing plants. Statutes which govern ombudsman investigations of misconduct by state employees require that misconduct complaints be made in writing and the processor did make a written complaint after the initial telephone call.

"The heart of the complaint was that the inspector made the complaining processor comply with the letter of the law while the processor's competitor did not have to meet those tough standards," Ombudsman Duncan Fowler said. "In order to verify these serious allegations, I initiated a review of the inspection records for both plants for the last five years, and a review of enforcement actions taken by the state against both processors. I then arranged for an investigator to visit both plants with a United States Food and Drug Administration sanitation inspector to verify conditions in both plants," Fowler noted.

The record review showed the complaining processor received two notices of violation—one for not having a siphoning prevention system to protect the water system and once for maggots in the plant. The processor the complainant believed was given preferential treatment was issued four notices of violation during the same period—two were for water pollution, one for improper sewage discharge and one for inadequate protection against insect entry.

The complaining processor was issued citations twice but neither was based on sanitation or processing plant structure. The first was for operating a processing facility without a license and the second citation was for shipping an order of crab on which the state had placed a hold order. The ombudsman's office, by statute, cannot review the judicial dispensations of those actions.

The record review by an ombudsman investigator also showed the "scores" issued following seafood sanitation inspections were remarkably similar for both processing plants for the past five years. Scores for the competing processor ranged from a low of 106 to a high of 149 out of a possible 158 points. The complaining pro-

cessor's scores for the same period of time ranged from 95 to 151. On those infrequent occasions when a state inspector other than the inspector charged with bias scored the plants, the scores were not dramatically different from the scores given by the inspector the complainant believed was biased.

In addition to the record review, the ombudsman arranged to have an ombudsman investigator accompany a Food and Drug Administration sanitation inspector through both processing plants. The Food and Drug Administration loaned an inspector with several years experience to this ombudsman project because of the serious nature of allegations made against the state inspector.

During the on-site inspection with the federal inspector, the federal inspector and ombudsman investigator noted: clothes, gloves and aprons were not as clean at the plant run by the complaining processor; hair nets and scarves were not in use at the complaining processor's plant; maggots were found at the complaining processor's plant; hand and foot dip were used regularly at the competing processor's plant and not at the complaining processor's plant; and plastic food wrap was stored on possibly contaminated surfaces at the complaining processor's plant.

Other items noted during the on-site inspection of the complaining processor's plant included some structural problems and no required chlorine in the water that comes in contact with the food product. The surprise visit to the competing processor's plant noted only two flaws—cigarette butts on the floor near where food product was processed and uncovered food trays in areas where birds can congregate.

Following the record review, the on-site inspection, and review of the Food and Drug Administration inspection report generated by the on-site inspection, the ombudsman found the allegations of bias made by the processor against the state inspector unsubstantiated. The record review did not reflect any disparity in inspection scores and showed twice as many notices of violations to the competing processor. The surprise on-site review indicated plant conditions consistent with the historical scores given by the state inspector.

The ombudsman recommended the complainant may wish to attend seminars and workshops on sanitation hosted by state and federal agencies and by private food processing associations.

Alaska State Legislature

Anchorage * District 10

P.O. Box V
Juneau, Alaska 99811
(907) 465-2828

3111 C Street, Suite 412
Anchorage, Alaska 99503
(907) 561-2040



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Member
1990
Alaska Legislative
Council
Labor & Commerce
Committee
Special Committee
on Foreign Trade
Finance Sub-Committee
for Labor

Representative Virginia Collins

February 12, 1990

Representative H. A. "Red" Boucher
Capitol, Room 102
Juneau, Alaska 99811

Dear Representative Boucher, *Red*

I would like to thank you for signing on as a co-sponsor to House Bill 528, "An Act relating to the laws governing standards of conduct by public officers and employees; and providing for an effective date."

The bill has been referred to your House State Affairs Committee, so I look forward to working with you on the bill.

I really appreciate your interest and your support! Thanks again.

Sincerely,

Virginia Collins
Representative Virginia Collins
District 10-B

b. Example / checklist Contact sheet

LEGISLATIVE SPONSOR: House State Affairs

TC DATE/DAY: Wed, Feb 28

Pub. Hear Work Ses. Inv. Hear

TIME: 8:30-10AM

LEGISLATIVE REFERENCE: HR 528

JUNEAU ROOM: Cap 102

SUBJECT: Government Ethics Reform Project

BRIDGE: _____

OF PORTS: _____

CONTACT: Dennis PH: 4963

DATE TAKEN/BY: B 2/22 C. Dennis phcc

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

- Anchorage
- Barrow *
- Bethel
- Delta Junction *
- Dillingham *
- Fairbanks
- Glennallen *
- Juneau
- Ketchikan
- Kodiak
- Kotzebue
- Mat-Su
- Nome
- Petersburg *
- Sitka
- Soldotna
- Valdez *

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

*DID NOT HEAR
reached 3/01 - can't telecon.*

OFFNETS: Karla Forsythe
276-4176

CHAIRING SITE: Juneau

CHAIRPERSON: Boucher

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

SPECIAL INSTRUCTIONS

Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: House State Affairs

TC DATE/DAY: Tues Mar 10

Pub. Hear Work Ses. Inv. Hear

TIME: 8:30AM-10AM

LEGISLATIVE REFERENCE: HB528

JUNEAU ROOM: Cap 102

SUBJECT: Gov Ethics Reform Project

BRIDGE: _____

OF PORTS: _____

CONTACT: Ann PH: 4963

DATE TAKEN/BY: 3/2/90 Becky

TELECONFERENCE SITES:

LIO'S

LTC'S

VTS'S

- Anchorage
- Barrow *
- Bethel
- Delta Junction *
- Dillingham *
- Fairbanks
- Glennallen *
- Juneau
- Ketchikan
- Kodiak
- Kotzebue
- Mat-Su
- Nome
- Petersburg *
- Sitka
- Soldotna
- Valdez *

- Homer
- Wrangell

See List on Reverse Side

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

OFFNETS: Carla Forsythe
276-4176

CHAIRING SITE: Juneau

CHAIRPERSON: Maclean

[] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON

DATE

SPECIAL INSTRUCTIONS

HB

537

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 537

Property Acquisition Practices

Received February 12, 1990
by Rep. Boucher by Request

Heard March 21, 1990
Heard March 29, 1990
Heard April 4, 1990

Adopted CS# 537 (SA) April 4, 1990

Passed Out of Committee April 4, 1990
1 Do Pass
3 No Recommendation

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HB 537: Property Acquisition Practices

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- Item 1A:** Fiscal Notes and Analyses by Department of
Transportation/Public Facilities and Alaska Court
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- Item 2:** Position Paper from DOT/PF, March 20, 1990
- Item 3:** Letter from Pletcher, Einig, Lottridge & Moser,
March 19, 1990
- Item 4:** Letter from William R. Satterberg, Jr., March 18,
1987
- Item 5:** Motion for Immediate Possession in State v
Texaco, September 11, 1989
- Item 6:** Sectional Analysis, April 4, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 537

HOUSE BILL NO. 537

PROPERTY ACQUISITION PRACTICES

"An Act relating to the taking and compensation for damage of property by the state; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB537(SA) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact DOT/PF + Court Supt. fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

[Signature]

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]

Chairman's Signature

Item 1A

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: C.S. H.B. 537
PUBLISH DATE: April 2, 1990

REQUEST: FISCAL NOTE

Revision Date: Agency Affected: DOT&PF
Title: An Act Relating to Taking and Compensation for Damages of Property BRU: Engineering & Operations Standards
Sponsor: Representative Boucher Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	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	2888.0	2888.0	2888.0	2888.0	2888.0	2888.0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	2888.0	2888.0	2888.0	2888.0	2888.0	2888.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2888.0	2888.0	2888.0	2888.0	2888.0	2888.0

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: ATTACHED

Prepared by: Milton H. Lentz
Division: Engineering and Operations Standards
Approved by Commissioner: _____
Agency: Department of Transportation and Public Facilities
Phone: 465-2985
Date: April 2, 1990
Date: 4/2/90

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

For further information contact Catherine McHugh at 465-3900

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution C.S. H.B. No. 537

This Fiscal Note is based on several assumptions:

- (1) A ratio of 1 to 5 commercial properties effected by eminent domain (based on 5 year average) will include business or loss of good will.
- (2) Estimated complexity of the property.
- (3) Legal issues involved in determining business losses.

Our assumptions are believed to be typical under language of this bill.

5 parcels	@	\$ 50,000	(payment for business loss)	=	\$ 250,000
3 parcels	@	\$200,000	(payment for business loss)	=	\$ 600,000
2 parcels	@	\$300,000	(payment for business loss)	=	\$ 600,000
1 parcel	@	\$800,000	(payment for business loss)	=	\$ 800,000
TOTAL					\$2,250,000

PLUS:

Additional Appraisal Cost*	11 parcels	@	\$ 8,000	=	\$ 88,000
Legal Cost*	11 parcels	@	\$50,000	=	\$550,000

If no urban projects were programmed , the fiscal impact of this bill would be greatly reduced since fewer commercial properties would be encountered.

Please note that all costs in this Fiscal Note will be borne entirely with State Funds as payments for business losses are ineligible for federal participation.

*Compensating business losses would require a specialty appraisal to determine compensation due. This specialty appraisal cost is over and above the normal cost for appraising real estate. The legal cost for attorneys and court costs would also be over and above the normal litigation cost.

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: <u>An Act relating to the taking and</u>	BRU:	<u>Trial Courts</u>
		<u>compensation for damages of property...</u>
Sponsor: <u>State Affairs</u>	Components:	
Requestor:		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		22.9	22.9	22.9	22.9	22.9
Travel		1.0				
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	23.9	22.9	22.9	22.9	22.9

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

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

FUNDING: (Thousands of Dollars)

General Funds	0.0	23.9	22.9	22.9	22.9	22.9
Federal Funds						
Other						
TOTAL	0.0	23.9	22.9	22.9	22.9	22.9

POSITIONS:

Full-time						
Part-time		1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/02/90
 Date: 04/02/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

Alaska Court System
Fiscal Analysis
CSHB 537

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro tempore superior court judge, Anchorage, permanent part-time, 6 months	\$9,663	\$13,256	\$22,919
 <u>Travel (one-time cost)</u>			
Meeting of Civil Rules Committee to revise Civil Rule 72. One meeting for two days.			<u>1,000</u>
	Total cost		<u><u>\$23,919</u></u>

Fiscal Analysis - CSHB 537

Although this proposed legislation significantly changes the current eminent domain law, it is difficult to determine the extent of its fiscal impact on the court system. Under current law, the issue of just compensation is decided by a master or jury after the plaintiff has been granted a right of entry. AS 09.55.310(a), AS 09.55.450(a). Section 3 of the proposed statute would prohibit the granting of the right of entry until the court determines that the amount of the deposit is adequate just compensation for the property at issue. This means that the court would be required to take evidence of what is just compensation before the right of entry is granted. This requirement would add to the length of the hearing on objections to the declaration of taking under AS 09.55.450(a).

Also, section 4 of this bill adds several issues for the court to decide in determining whether to divest the plaintiff of title or possession: adequacy of deposited compensation, plaintiff's compliance with the provision of the Relocation Assistance and Real Property Acquisition Practices Act (AS 34.60), and whether plaintiff obtained preliminary replat authority.

Section 1 of the proposed bill adds business loss to the damages the jury or master must determine under AS 09.55.310(a). The requirements of both of these sections will take more superior court time.

This proposed legislation will also require the amendment of Civil Rule 72 which sets out the pleading, motion, deposit and distribution as well as the trial procedures for eminent domain proceedings.

The State of Alaska Department of Law currently has 80 eminent domain cases in the court system, either at the trial or appellate level. The Municipality of Anchorage estimates approximately 10 new cases each year. Based on an estimate of 50 cases per year, with additional court time of 2.5 days per case at the trial level, the court system would need the services of one part-time pro tem superior court judge at a cost of \$22,900. The necessary amendments to Civil Rule 72 would cost \$1,000.

*Department of Transportation and Public Facilities***POSITION PAPER**

Bill No: H.B. 537

Approved: Mark S. Hickey
CommissionerTitle: An Act Relating to the Taking and Compensation
for Damage of Property by the State

Date: March 20, 1990

The Department of Transportation and Public Facilities is concerned with the inclusion of business losses in House Bill No. 537. Payment of long term business losses will have a substantial effect on the department's ability to handle the highway program. Not only will it be a costly program but without case law and a decade of practice, it could jeopardize projects, especially in urban areas. If the bill continues to move in this direction, Alaska will be one of the few states that recognizes business losses as a part of the acquisition process. In addition to the legal issues the appraisals cost could more than triple when trying to determine long term business losses that may be subjective at best. The Federal Highway Administration has suggested that business losses are not generally federal participating. The Relocation Assistance program was designed and enacted at the federal level to assist business that are forced to move or go out of business due to a federal-aid program.

Without specific direction or language addressing the intent of this bill, or how such action will be handled, it is impossible to quantify the impact of paying long term business losses in the State of Alaska.

Item 3

PLETCHER, WEINIG, LOTTRIDGE & MOSER

ASSOCIATED IN THE PRACTICE OF LAW

2550 DENALI STREET, SUITE 700
ANCHORAGE, ALASKA 99503

JOHN W. PLETCHER, III
A PROFESSIONAL CORPORATION

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ELLIOTT T. DENNIS
ATTORNEY AT LAW

TASHA M. PORCELLO
ATTORNEY AT LAW

March 19, 1990

Representative Jim Zawacki
P.O. Box V
Juneau, Alaska 99811

Re: House Bill 537

Dear Jim:

Enclosed are amendments which I believe would be appropriate in reforming Alaska's antiquated and unjust eminent domain laws. As you know, there is no statutory provision requiring just compensation for business loss to property owners whose land has been taken or damaged for a public project. The Alaska Supreme Court, in State v. Hammer, 550 P.2d 820 (Alaska 1976), recognized that a business is a form of property which cannot be taken or damaged unless the property owner is fully indemnified for the loss. The court recognized that just compensation is determined by what the property owner has lost, not what the State has gained. However, because of the specific facts before it, the Supreme Court limited its holding to just compensation for temporary loss of business during relocation of that business. It did not address a situation in which long term business loss is provable or where a business has been forced to close its doors permanently as a consequence of the State's exercise of the power of eminent domain.

Since the Hammer decision, the State and the various municipalities condemning property for public purposes have attempted to circumvent their obligations to fully indemnify property owners for business loss. Over the years, uncounted businesses have been seriously damaged or destroyed as a consequence of condemnation for public projects. Few of these property owners had the economic resources to litigate a case for permanent loss of business damage to the Alaska Supreme Court. Hence, the issue of long term or permanent business loss has not been ruled upon.

Often, the State and municipalities, when exercising a declaration of taking, refuses to appraise and make a deposit of estimated just compensation for any business loss. Moreover, the state and various municipalities have often resorted to

Representative James Zawacki
March 19, 1990
Page 2

"lowballing" appraisals so that their deposit of estimated just compensation is low. When challenged in court on this issue, the condemners usually respond, that the court has no jurisdiction to review the adequacy of the deposit; that this is a matter exclusively within the discretion of the condemning agency.

Since 1971, the State has enacted the Uniform Real Property Acquisition Act, which parallels the Federal 1970 Act concerning federally funded projects. The Act sets forth specific guidelines requiring the condemner to appraise property prior to institution of eminent domain proceedings; to engage in fair, good faith negotiations prior to instituting condemnation proceedings; and to allow property owners at least 90 days to vacate the premises after right of entry has been granted by the court. All too often, these measures have been ignored or side stepped by condemners. All that the Federal Act does is to simply admonish condemners to go and treat their subjects kindly. It is not enforceable by any court action. The State Act has been interpreted similarly by the courts.

If these practices are to be stopped, both Title 34 and Title 9 of the Alaska Statutes need to be amended to make the Uniform Acquisition Act enforceable and to require full indemnification of a property owner for any provable business loss legally caused by the exercise of the power of eminent domain. It would be desirable if the Uniform Acquisition Act were to be broadened, so that it applies to all state projects, not to just those which are federally funded. The state's oppressive practices in winking at the Uniform Acquisition Act occur in both situations.

I am aware of these practices, having spent nine years as a trial attorney who condemned land on behalf of the Greater Anchorage Area Borough and Municipality of Anchorage, as well as seven years as an attorney for condemnees.

The proposed amendments to Title 34 would make the Act applicable to all State projects and would require the State to appraise business loss prior to institution of eminent domain proceedings.

The amendments to Title 9 would require that a property owner be fully indemnified for any provable business loss legally caused by condemnation; would give the courts jurisdiction to review the adequacy of any deposit of estimated just compensation in conjunction with a declaration of taking; and would require that any condemning authority, state or municipal, comply with the Uniform Acquisition Act or its municipal counterpart.

Representative James Zawacki
March 19, 1990
Page 3

These reforms are long overdue. The proposed amendments to Title 34 and Title 9 would insure that no citizen be forced to pay a disproportion cost for a public project.

I would be most appreciative if you could see fit to become a cosponsor of H.B 537, with the amendments which I have suggested. I understand that a public hearing will be held on the bill in the House Affairs Committee at 9:00 a.m. on March 21, 1990.


At the District 7 Republican Convention, the following resolution was passed:

The Legislature should enact a statute providing that if the State of Alaska or any Municipality takes or damages property for public purpose through the power of eminent domain, the property owner is entitled to full indemnification for any provable business loss legally caused by exercise of the eminent domain power.

Thanks for your help.

Sincerely,

PLETCHER, WEINIG,
LOTTRIDGE & MOSER


Richard A. Weinig

RAW/kaa

Introduced: 2/12/90
Referred: State Affairs, and Judiciary

6-1833A

BY REP. BOUCHER BY REQUEST

1 IN THE HOUSE

2

HOUSE BILL NO. 537

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the taking and compensation for
7 damage of property by the state; and providing for an
8 effective date."

9

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

10

* Section 1. AS 34.60.020 is amended to read:

11

Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State

12

agencies shall establish and provide the means for implementing a

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program providing fair and reasonable relocation and other payment for

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persons displaced as a result of ~~federally assisted~~ activities under-

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taken by state agencies, to carry out relocation assistance programs

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for persons displaced, and to provide payments to persons as a result

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of taking or damaging [ACQUISITION] of [REAL] property for activities

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of state agencies.

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* Sec. 2. AS 34.60.040(a) is amended to read:

20

(a) When the taking or damaging [ACQUISITION] of [REAL] property

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for a ~~federally assisted~~ program or project undertaken by a state

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agency will result in the displacement of a person, the state agency

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responsible for the program or project shall make payment to the

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displaced person, upon proper application as approved by the state

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agency, for

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(1) actual reasonable expenses in moving a person, the

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person's family, business, farm operation, or other personal property;

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(2) actual direct losses of tangible personal property as a

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result of moving or discontinuing a business or farm operation, but

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WORK DRAFT

1 have been required to relocate the property as determined by the state
2 agency; and

3 (3) actual reasonable expenses in searching for a replace-
4 ment business or farm.

5 * Sec. 3. AS 34.60.050 is amended to read:

6 Sec. 34.60.050. REPLACEMENT HOUSING FOR HOMEOWNERS. (a) In
7 addition to payments otherwise authorized by this chapter, the state
8 agency shall make an additional payment not to exceed \$22,500 [,] to a
9 displaced person who is displaced from a dwelling actually owned and
10 occupied by the person for not less than 180 days before the initia-
11 tion of negotiations for the acquisition of the property. This addi-
12 tional payment must [SHALL] include the following elements:

13 (1) the amount, if any, that [WHICH], when added to the
14 taking [ACQUISITION] cost of the dwelling taken [ACQUIRED] by the
15 state agency, equals the reasonable cost of a comparable replacement
16 dwelling that [WHICH] is a decent, safe, and sanitary dwelling ade-
17 quate to accommodate the displaced person, is reasonably accessible to
18 public services and places of employment, and is available on the
19 private market; all determinations required to carry out this para-
20 graph shall be made in accordance with standards established by the
21 state agency making the additional payment;

22 (2) the amount, if any, that [WHICH] will compensate the
23 displaced person for any increased interest costs that [WHICH] the
24 displaced person is required to pay for financing the taking [ACQUI-
25 SITION] of the comparable replacement dwelling; this amount may be paid
26 only if the dwelling taken [ACQUIRED] by the state agency was encum-
27 bered by a bona fide mortgage that [WHICH] was a valid lien on the
28 dwelling for not less than 180 days before the initiation of negotia-
29 tions for the taking [ACQUISITION] of the dwelling; and

1 taking [ACQUISITION] of the dwelling; and

2 (3) reasonable expenses incurred by the displaced person
3 for evidence of title, recording fees, and other closing costs inci-
4 dent to the purchase of the replacement dwelling, but not including
5 prepaid expenses.

6 (b) The additional payment authorized by (a) of this section may
7 be made only to a displaced person who purchases and occupies a re-
8 placement dwelling that [WHICH] is decent, safe, and sanitary not
9 later than the end of the one-year [ONE YEAR] period beginning on the
10 date on which the person receives from the state agency final payment
11 of all costs of the taken dwelling [,] or the date on which the person
12 moves from the taken [ACQUIRED] dwelling, whichever is the later date.

13 * Sec. 4. AS 34.60.060 is amended to read:

14 Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In
15 addition to amounts otherwise authorized by this chapter, the state
16 agency shall make a payment to or for a displaced person displaced
17 from a dwelling, who is not eligible to receive a payment under
18 AS 34.60.050, if the dwelling was actually and lawfully occupied by
19 the displaced person for not less than 90 days before the initiation
20 of negotiations for taking [ACQUISITION OF] the dwelling. The payment
21 shall be either

22 (1) the amount necessary to enable the displaced person to
23 lease or rent for a period not to exceed three years and six months
24 [,] a decent, safe, and sanitary dwelling of standards adequate to
25 accommodate the displaced person in areas not generally less desirable
26 in regard to public utilities and public and commercial facilities,
27 and reasonably accessible to the person's place of employment, but not
28 to exceed \$5,250; or

29 (2) the amount necessary to enable the displaced person to

HOUSE NUMBER

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make a down payment, including incidental expenses described in

AS 34.60.050(a)(3), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate the displaced person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$5,250.

* Sec. 5. AS 34.60.070 is amended to read:

Sec. 34.60.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY.

The state agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to take or compensate for damage to [ACQUIRE REAL] property, whichever is the earlier, shall reimburse the owner, to the extent the department considers fair and reasonable, for expenses necessarily incurred for

(1) recording fees, transfer taxes, and similar expenses incidental to conveying the [REAL] property to the state agency;

(2) penalty costs for prepayment of a preexisting recorded mortgage entered into in good faith encumbering the real property, if the mortgage was a valid lien on the property for not less than 180 days before the initiation of negotiations for the acquisition of the property; and

(3) the pro rata portion of [REAL] property taxes paid that [WHICH] are allocable to a period subsequent to the date of vesting title in the state [,] or the effective date of possession of the [REAL] property by the state agency, whichever is the earlier.

* Sec. 6. AS 34.60.080(a) is amended to read:

(a) The state court having jurisdiction of a proceeding instituted by the state agency to take [ACQUIRE REAL] property by condemnation shall award the owner of a [ANY] right to, or title to, or interest in, the [REAL] property a sum that [WHICH] will in the opinion of ~~the court reimburse the owner for reasonable costs, disbursements, and~~

1 the court reimburse the owner for reasonable costs, disbursements, and
 2 expenses, including reasonable attorney, appraisal, and engineering
 3 fees [,] actually incurred because of the condemnation proceedings, if
 4 (1) the final judgment is that the state agency cannot take
 5 [ACQUIRE] the [REAL] property by condemnation; or
 6 (2) the proceeding is abandoned by the state agency.

7 * Sec. 7. AS 34.60.090(a) is amended to read:

8 (a) When the taking or damaging [ACQUISITION] of [REAL] property
 9 for a program or project undertaken by a state agency for a [federally
 10 assisted] program or project undertaken by the state agency will result
 11 in the displacement of a person [ON OR AFTER JANUARY 2, 1971], the
 12 state agency shall provide a relocation assistance advisory program
 13 for displaced persons that [WHICH] offers the services described in
 14 (c) of this section. If the state agency determines that a person
 15 occupying property immediately adjacent to the [REAL] property taken
 16 [ACQUIRED] is caused substantial economic injury because of the taking
 17 [ACQUISITION], it may offer the occupant relocation advisory services
 18 under the program.

19 * Sec. 8. AS 34.60.120 is amended to read:

20 Sec. 34.60.120. UNIFORM [REAL] PROPERTY TAKING AND DAMAGE COM-
 21 PENSATION [ACQUISITION] POLICY. A state agency or other entity taking
 22 or damaging [ACQUIRING REAL] property for a [ANY] project or program
 23 in which ^{state} ~~federal or federal aid~~ funds are used shall to the greatest
 24 extent practicable comply with the following policies:

- 25 (1) Every reasonable effort shall be made to expeditiously
 26 take or make compensation for [ACQUIRE, REAL] property by negotiation.
 27 (2) Property to be taken or damaged [REAL PROPERTY] shall
 28 be appraised before the initiation of negotiations, and the owner or a
 29 designated representative shall be given an opportunity to accompany

the appraiser during inspection of the property.

1 (3) Before the initiation of negotiations for [REAL] prop-
2 erty, an amount shall be established that [WHICH] is reasonably be-
3 lieved to be just compensation for the [REAL] property taken or
4 damaged, and that amount shall be offered for the property. In no
5 event shall the amount be less than the approved appraisal of the fair
6 market value of the property. A decrease or increase in the fair
7 market value of [REAL] property before the date of valuation caused by
8 the public improvement for which the property is taken [ACQUIRED] or
9 by the likelihood that the property would be taken [ACQUIRED] for or
10 damaged by the improvement, other than that due to physical deterio-
11 ration within the reasonable control of the owner, will be disregarded
12 in determining the compensation for the property. The owner of the
13 [REAL] property to be taken [ACQUIRED] shall be provided with a writ-
14 ten statement of, and a summary of the basis for, the amount estab-
15 lished as just compensation.

16 (4) An owner may not be required to surrender possession of
17 [REAL] property before the state agency concerned pays the agreed
18 purchase price or deposits with the court in accordance with applica-
19 ble law, for the benefit of the owner, an amount not less than the
20 approved appraisal of the fair market value of the property [,] or the
21 amount of the award of compensation in the condemnation proceeding for
22 the property.

23 (5) The construction or development of a public improvement
24 shall be so scheduled that, to the greatest extent practicable, a
25 person lawfully occupying [REAL] property is not required to move from
26 a dwelling, assuming a replacement dwelling will be available, or to
27 move the person's business or farm operation [,] without at least 90
28 days' written notice of the date by which the move is required.

29 ~~(6) If an owner or tenant is permitted to occupy the [REAL]~~

1 (6) If an owner or tenant is permitted to occupy the [REAL]
2 taken or damaged property [ACQUIRED] on a rental basis for a short
3 term or for a period subject to termination by the state agency on
4 short notice, the amount of rent required shall not exceed the fair
5 rental value of the property to a short-term occupier.

6 (7) In no event may the time of condemnation be advanced or
7 negotiations or condemnation and the deposit of funds in court for the
8 use of the owner be deferred, nor any other coercive action be taken
9 in order to compel an agreement on the price to be paid for the taking
10 or damage to property.

11 (8) If an interest in [REAL] property is to be taken or
12 damaged [ACQUIRED] by exercise of the power of eminent domain, formal
13 condemnation proceedings shall be instituted. The [ACQUIRING] state
14 agency may not intentionally make it necessary for an owner to insti-
15 tute legal proceedings to prove the fact of the taking or damage of
16 the [REAL] property.

17 (9) If the taking or damage [ACQUISITION] of only part of
18 the property would leave its owner with an uneconomic remnant, an
19 offer to take [ACQUIRE] the entire property shall be made.

20 * Sec. 9. AS 34.60.130(a) is amended to read:

21 (a) Notwithstanding another [ANY OTHER] provision of law, if a
22 state agency takes an [ACQUIRES ANY] interest in real property, the
23 state agency must take [ACQUIRE] at least an equal interest in all
24 buildings, structures, or other improvements located upon the real
25 property that [WHICH] the state agency requires to be removed from the
26 real property or that [WHICH] the state agency determines will be
27 adversely affected by the use to which the real property will be put.

28 * Sec. 10. AS 34.60.130(b) is amended to read:

29 (b) For the purpose of determining just compensation to be paid

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for a building, structure, or other improvement required to be taken

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[ACQUIRED] under (a) of this section, the building, structure, or other improvement is considered to be a part of the real property to be taken [ACQUIRED] notwithstanding the right or obligation of a tenant, as against the owner of another [ANY OTHER] interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term, and the fair market value that [WHICH] the building, structure, or improvement contributes to the fair market value of the real property to be taken [ACQUIRED], or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

* Sec. 11. AS 34.60.150 is amended to read:

Sec. 34.60.150. DEFINITIONS. In this chapter

(1) "business" means any lawful activity, excepting a farm operation, conducted primarily

(A) for the purchase, sale, lease, and rental of personal and real property, and manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) for assisting, solely for the purpose of AS 34.60.040(a), in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted;

(2) "displaced person" means a [ANY] any person who [, ON OR AFTER JANUARY 2, 1971] ~~moves from [REAL] property, or moves per~~

1 OR AFTER JANUARY 2, 1971] moves from [REAL] property, or moves per-
 2 sonal property from [REAL] property, as a result of the taking [ACQUI-
 3 SITION] of the [REAL] property, in whole or in part, or as a result of
 4 the written order of the state agency to vacate [REAL] property, for a
 5 program or project undertaken by the state agency, and solely for the
 6 purpose of AS 34.60.040(a) and 34.60.090, as a result of the taking
 7 [ACQUISITION] of, or as a result of the written order of a state
 8 agency to vacate other [REAL] property on which the person conducts a
 9 business or farm operation for the program or project;

10 (3) "farm operation" means any activity conducted solely or
 11 primarily for the production of one or more agricultural products or
 12 commodities, including timber, for sale or home use, and customarily
 13 producing these products or commodities in sufficient quantity to be
 14 capable of contributing materially to the operator's support;

15 (4) "mortgage" means those classes of liens commonly given
 16 to secure advances on, or the unpaid purchase price of, real property
 17 [,] under the law of the state in which the real property is located,
 18 together with the credit instruments, if any, secured by the property;

19 (5) "person" means an individual, partnership, corporation,
 20 or association;

21 (7) ~~(6)~~ "state agency" means a department, agency, instrumen-
 22 tality, corporate authority of the state, or a political subdivision
 23 of the state, or a department, agency, instrumentality or authority of
 24 two or more political subdivisions of the state participating in
 25 federally assisted programs.

26 * Sec. 12. AS 34.60.100 is repealed.

27 * Sec. 13. This Act takes effect immediately under AS 01.10.010(c).

(6) "property" includes short-term and
 long term business interests;

AS 09.055 is amended as follows:

* Section 14. AS 09.55.310 is amended to read:

Sec. 09.55.310. HEARING. (a) The jury or master shall hear the allegations and evidence of persons interested and shall ascertain and assess the following:

(1) the value of the property sought to be condemned, and all improvements on it pertaining to the realty, and of each separate estate or interest in it; if it consists of different parcels, the value of each parcel and each estate or interest in each parcel shall be separately assessed;

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff;

(3) separately, how much the portion not sought to be condemned and each estate or interest in it will be benefitted, if at all, by the construction of the improvements proposed by the plaintiff; and, if the benefit is equal to the damages assessed under (2) of this section, the owner of the parcel shall be allowed no damages except the value of the portion taken; but if the benefits are less than the damages so assessed, the former shall be deducted from the latter

and the remainder shall be the only damages allowed in addition to the value;

(4) if the property sought to be condemned is for a railroad, the cost of good and sufficient fences along the line of the railroad, and the cost of cattle guards where fences may cross the line of the railroad.

(5) the full amount of business loss and/or loss of goodwill legally caused by exercise of the power of eminent domain.

(b) As far as practicable, compensation shall be assessed for each source of damages separately.

* Sec. 15. AS 09.430 is amended to read:

Sec. 09.55.430. CONTENTS OF DECLARATION OF TAKING. The declaration of taking shall contain

(1) a statement of the authority under which the property or an interest in it is taken;

(2) a statement of the public use for which the property or an interest in it is taken;

(3) a description of the property sufficient for the identification of it;

(4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it;

(7) a statement that the property is taken by necessity for a project located in a manner which is most compatible with the greatest public good and the least private injury including, but not limited to, the full amount of business loss and/or loss of goodwill legally caused by exercise of the power of eminent domain.

* Sec. 3. AS 09.55.440 is amended to read:

Sec. 09.55.440. VESTING OF TITLE AND COMPENSATION. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceed and established by judgment. the judgment shall include interest at the rate set out in AS 09.30.070 on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

(b) Upon motion of a party in interest and notice to all parties, the court shall [may] order that the money deposited or a part of it be paid immediately to the person or persons entitled to it or an account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess.

* Sec. 16. AS 09.55.450 is amended to read:

Sec. 09.55.450. RIGHT OF ENTRY AND POSSESSION.

(a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law. The court shall not grant the right of entry until it determines that the amount of estimated just compensation deposited pursuant to AS 09.55.440(a) is adequate just compensation for all property, real or

personal, which has been taken or damage. Where the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during such possession.

(b) The court may direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation, and make orders with respect to encumbrances, liens, rents, insurance, and other charges as are just and equitable.

(c) The right to take possession and title in advance of final judgment where a declaration of taking is filed is in addition to any other rights to take possession provided in AS 09.55.240 -- 09.55.460.

* Sec. 18. 09.55.460 is amended to read:

Sec. 05.44.460. EFFECT OF APPEAL. (a) No appeal or a bond or undertaking given operates to prevent or delay the vesting of title to real property or the right to possession of it.

(b) The plaintiff may not be divested of a title or possession acquired except where the court finds that (1) the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury; (2) the amount of estimated just compensation deposited pursuant to AS 09.55.440(a) is adequate, (3) the State of Alaska failed to comply with AS 34.60.010 -- 150;

(4) a municipal corporation failed to comply with municipal ordinances concerning relocation assistance or real property acquisition practices which are substantially similar to AS 34.60.010 -- 150; or (5) plaintiff failed to comply with AS 09.55.275. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to it for the period during which the property was in the possession of the plaintiff, (2) recover for the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking unless such restoration is impossible, in which case the court shall award damages to the property persons as compensation for any diminution in the value of the property caused by the plaintiff's wrongful possession.

Jeremy
HB 533

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MAR 23 1987

March 18, 1987

The Honorable John B. "Jack" Coghill
The Alaska State Senate
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

RE: Proposed Legislation Eminent Domain Condemnation

Dear Senator Coghill:

Pursuant to our telephone conversation of Monday, March 2, 1987, this letter is to outline for your consideration some problems which I perceive with respect to the handling of condemnation cases in Alaska.

Specifically, under Alaska law, as established both constitutionally and by statute, condemnation cases represent a very special instance involving the government's treatment of its citizens. Article I, Section 18 of the Alaska Constitution provides that private property may not be taken or damaged by the State of Alaska without just compensation being offered. Although this mandate, by and of itself, is meritorious, the fact of the matter is that the administration of condemnation matters by the State of Alaska leaves much to be desired at this time.

As you are aware, I have worked in the field of eminent domain since 1976, and have done work for both the condemnor and the condemnee. I consider my work in the field to be relatively extensive, and have been involved with proceedings ranging from the most simple of takings to the extremely complex. Over the years, certain problems have presented themselves.

Perhaps one of the greatest problems in the field of condemnation rests in the area of having the case proceed to judgment with payment to the condemnee. Virtually all cases which have been taken through trial in the field of eminent domain have been appealed by the State of Alaska in the event of an adverse verdict to the State. Because the State of Alaska is not required by law to post a bond pending an appeal to the Supreme Court, it is a simple exercise to file

an appeal and thus delay the settlement of a case for well over an additional year. During the appeal time, the landowner continues to incur substantial attorney's fees. Furthermore, during appeal, in the past, attorney's fees incurred have not been compensable even though the landowner has received its attorney's fees before lower court proceedings. As such, the State is given a very potent weapon to compel a settlement by simply filing an appeal, knowing full well that the landowner generally will have to expend between five to twenty thousand dollars (\$5,000 - \$20,000) for appellate briefing which, most likely, will not be reimbursed under the current state of the law.

Another area of eminent domain which has caused serious concern as of recent has been in the area of mineral and materials resources. Although the landowner is capable of selling the resource on a unit basis in the marketplace, the State of Alaska appraises the property using a simple real estate formula of before and after values, essentially not taking into consideration the unit value of the material. A classic example of this occurred in Nome where the State of Alaska utilized on the Hastings Creek Project several tons of material, but offered the landowners only surface value for the property. The State agreed on the Nome Project that the material had distinct value, moreover, and further stated that one of the major reasons for condemning the parcel, which was owned by Allen Vezey and the Bering Straits Native Corporation, was to obtain the source of material.

Another area of concern in mineral and materials acquisition exists. When material and mineral properties which are known to exist are condemned by the State of Alaska, an obligation should be placed upon the State, by statute, to do a reasonable subsurface evaluation of the parcel. To date, the State of Alaska has simply insisted that the responsibility is that of the landowner to hire the drilling experts, geologists, or the like, knowing full well that substantial costs might be entailed in employing such resources. Again, the landowner has been faced with the burden, as opposed to the State of Alaska, in evaluating the property, and the Nome cases cited are another example.

An area of current abuse of eminent domain pertains to the deposit made by the State of Alaska. Under Alaska law, once a deposit is made, the landowner may withdraw the deposit for his use during the pendency of the condemnation case. The problem which occurs, however, is that there is nothing to compel the State of Alaska to make a good faith deposit. Although the law does state that a good faith deposit is implied, the State of Alaska has the option of either depositing far too little for the property, or, conversely, an amount far too great. In the case of an insufficient deposit, the landowner is faced with virtually no funds with which to present its defense. In the event of

an overly substantial deposit, however, the landowner can be tricked into withdrawing the entire deposit and spending the deposit before the conclusion of the case, only to find that the landowner must now reimburse the State of Alaska for the amount of money withdrawn at 10.5 percent interest. As such, a trap for the unwary exists under the second scenario under a situation where, say, the deposit is over twice as large as the amount the State intends to offer at trial and, once the landowner has withdrawn the entire amount of money, the landowner becomes subject to the State's mercy. This issue could be remedied by requiring the State of Alaska to offer an amount which is commensurate with the highest appraisal performed for the State of Alaska and by further mandating, by law, that the State of Alaska cannot offer less than the deposit either at the trial of the case, or in settlement. In short, the State would be bound by its deposit.

Recognizing the above-stated concerns, I am enclosing with this correspondence to you some proposed legislation. Needless to say, the proposed legislation is in draft format and, as such, there is no pride of authorship involved. If even some of the proposed legislation can be embodied into law in the 1987 session, many of the abuses currently followed by the State of Alaska will be curtailed.

I look forward to your thoughts on this matter.

Sincerely yours,

~~William R. Satterberg, Jr.~~

WRS/cf

Enclosures

Proposed Legislation:

Additional Section to Eminent Domain Code, Title 9

ATTORNEY'S FEES

A condemnee shall not be denied its costs and attorney's fees for issues raised during litigation unless the court determines upon a full review of the facts and law of the case that the specific issue raised by the condemnee for which denial of attorney's fees is sought by the condemning authority is a frivolous issue. The failure of a condemnee to prevail upon a point of law raised during condemnation proceedings shall not be the sole basis for a denial of attorney's fees to the condemnee if the issue of law has been fairly raised in the context of the lawsuit.

In the event of an appeal by the State of Alaska of any judgment in a condemnation case, the condemnee shall be entitled to its full and reasonable attorney's fees incurred on appeal. In the event of an appeal by the condemnee of any judgment in a condemnation case, the condemnee shall be entitled to its full and reasonable attorney's fees if it prevails on appeal. The Supreme Court is further authorized to award attorney's fees to the condemnee in the event of an unsuccessful appeal by the condemnee in the event that the Supreme Court determines that the appeal was taken in good faith and was not frivolous.

Proposed Legislation, cont.:

DEPOSIT AND DISTRIBUTION

The amount of funds deposited by the State of Alaska in any condemnation case shall constitute the State's offer, to which the State of Alaska shall be bound. In the event that the State of Alaska submits that an amount less than the State's deposit shall form the basis of just compensation for the purposes of a master's hearing or trial, the landowner shall still be entitled to retain the deposit made by the State of Alaska as full compensation notwithstanding any jury verdict or award resulting in just compensation being determined as less than the deposit made by the State.

In the event of a condemnation involving property having a distinct mineral or material source value, the condemning authority must conduct a reasonable subsurface analysis to determine the specific quality and quantity of the material source being acquired and the fair market value of such. Any offer to the landowner shall be made in consideration of the specific subsurface value of the property as determined following such subsurface analysis.

The State of Alaska shall not be entitled to acquire property by eminent domain for the purposes of obtaining a materials source, nor shall the State of Alaska be entitled to design a project in such a manner so as to take advantage of a material source under circumstances where reasonable design standards would not provide for the acquisition of the materials source. In the event of the acquisition of a material source by the State of Alaska, the State of Alaska shall pay to the owner the owner's net profit for the source as computed upon unit values existing in the marketplace. Although the demands created by the project for which the source was acquired may not be computed in arriving at just compensation, nothing shall preclude the consideration of demands and markets created by unrelated projects in the establishing of just compensation to be paid.

More Proposed Legislation:

INTERIM AWARD OF COSTS AND ATTORNEYS FEES

Upon application to the court by any condemnee, the court shall make an interim award of costs and attorneys fees to any such applicant if the court, following application, determines that the interim award of the costs and fees sought by the applicant represents those costs and fees reasonably and necessarily incurred by the condemnee in seeking just compensation. Application by the condemnee for costs and fees shall not be more often than on a quarterly basis following the institution of condemnation proceedings. In the event that any interim application for costs and fees shall involve or disclose privileged communications, the court shall be entitled to review any such application in camera.

Any award of costs or fees under this provision shall be conclusive and not subject to repayment by the condemnee in the event of a failure by the condemnee to prevail in the overall disposition of its case.

DEPOSIT OF MASTER'S AWARD

In the event of an appeal by the condemnor of any master's award, the condemnor shall deposit within twenty (20) days of any such appeal that amount of money forming the master's award, for the use and benefit of the condemnee.

Proposed Legislation, cont.:

PROHIBITION OF AWARD OF CONDEMNOR'S ATTORNEYS FEES
IN CONDEMNATION CASES

At no time shall a condemnor be entitled to an award of attorneys fees or costs as against a condemnee in any cause of action involving either trial or appellate proceedings.