

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9469 HOUSE STATE AFFAIRS

105

1 (17) "upper-level employee" means a legislative employee, other than
2 a legislator, who is compensated at Range 19 or above of the state salary schedule
3 under AS 39.27.011.

4 * Sec. 65. AS 39.25.070 is amended to read:

5 Sec. 39.25.070. Powers and duties of personnel board. In addition to the
6 other duties imposed by this chapter, the personnel board shall

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

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

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

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

16 (5) elect a chair [CHAIRMAN] from its membership;

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

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

20 (8) carry out its powers and duties under AS 39.52 [RETAIN
21 INDEPENDENT COUNSEL IN ACCORDANCE WITH AS 39.52.310(c);

22 (9) APPOINT, AND REVIEW THE FINDINGS, CONCLUSIONS,
23 AND RECOMMENDATIONS OF, HEARING OFFICERS IN ACCORDANCE WITH
24 AS 39.52.350(c), 39.52.360, AND 39.52.370;

25 (10) ISSUE FINDINGS, CONCLUSIONS, AND DECISIONS
26 REGARDING VIOLATIONS OF THE CODE OF ETHICS IN AS 39.52.110 -
27 39.52.190; AND

28 (11) IMPOSE THE PENALTIES DESCRIBED IN AS 39.52.410,
29 39.52.440, AND 39.52.450].

30 * Sec. 66. AS 39.25.160 is amended by adding a new subsection to read:

31 (j) A state employee, whether in the classified, partially exempt, or exempt

1 service, may not campaign on behalf of a political candidate on government time.
2 This subsection does not prohibit the employees of the division of elections from
3 carrying out duties related to elections or the members and employees of the
4 commission on judicial conduct from carrying out duties relating to the evaluation of
5 justices and judges. This subsection does not apply to the governor and lieutenant
6 governor and members of the legislature.

7 * Sec. 67. AS 39.50.020 is amended to read:

8 **Sec. 39.50.020. Report of financial and business interests.** (a) A public
9 official other than the governor or the lieutenant governor [JUDICIAL OFFICER,
10 COMMISSIONER, CHAIR OR MEMBER OF A STATE COMMISSION OR BOARD
11 SPECIFIED IN AS 39.50.200(b), A PERSON HIRED OR APPOINTED AS HEAD
12 OR DEPUTY HEAD OF, OR DIRECTOR OF A DIVISION WITHIN, A
13 DEPARTMENT IN THE EXECUTIVE BRANCH, A PERSON APPOINTED
14 AS ASSISTANT TO THE GOVERNOR, A STATE INVESTMENT OFFICER AND
15 THE STATE COMPTROLLER IN THE DEPARTMENT OF REVENUE, AND A
16 MUNICIPAL OFFICER] shall file a statement giving income sources and business
17 interests, under oath and on penalty of perjury, within 30 days after taking office as
18 a public official. Candidates for state elective office other than a candidate who is
19 subject to AS 24.60 shall file the [SUCH A] statement with the director of elections
20 at the time of filing a declaration of candidacy or a nominating petition [,] or
21 [WITHIN 30 DAYS OF] becoming a candidate by any other means. Candidates for
22 elective municipal office shall file the [SUCH A] statement at the time of filing a
23 nominating petition, declaration of candidacy, or other required filing for the elective
24 municipal office. Refusal or failure to file within the time prescribed shall require that
25 the candidate's filing fees, if any, and filing for office be refused or that a previously
26 accepted filing fee be returned and the candidate's name removed from the filing
27 records. A statement shall also be filed by public officials no later than March
28 [APRIL] 15 or 15 days after the person files a federal income tax return in each
29 following year, whichever comes first. Persons who are members of boards or
30 commissions not named in AS 39.50.200(b) are not required to file financial
31 statements.

1 (b) A public official other than an elected or appointed municipal officer
2 [THE GOVERNOR, LIEUTENANT GOVERNOR, JUDICIAL OFFICERS, EACH
3 COMMISSIONER, HEAD OR DEPUTY HEAD OF, OR DIRECTOR OF A
4 DIVISION WITHIN, A DEPARTMENT IN THE EXECUTIVE BRANCH,
5 ASSISTANT TO THE GOVERNOR, STATE INVESTMENT OFFICERS AND THE
6 STATE COMPTROLLER IN THE DEPARTMENT OF REVENUE, OR CHAIR OR
7 MEMBER OF A COMMISSION OR BOARD REQUIRED TO REPORT UNDER
8 THIS CHAPTER,] shall file the statement with the Alaska Public Offices Commission.
9 Candidates for the office of governor and lieutenant governor and, if the candidate is
10 not subject to AS 24.60, the legislature shall file the statement under AS 15.25.030 or
11 15.25.180. Municipal officers, and candidates for elective municipal office, shall file
12 with the municipal clerk or other municipal official designated to receive their filing
13 for office. All statements required to be filed under this chapter are public records.

14 * Sec. 68. AS 39.50.030(a) is amended to read:

15 (a) Each statement must [SHALL] be an accurate representation of the
16 financial affairs of the public official or candidate and must [SHALL] contain the
17 same information for each member of the person's family, as specified in (b) and (d)
18 of this section, to the extent that it is ascertainable by the public official or candidate.
19 [AN ASSET OR LIABILITY UNDER \$500, HOUSEHOLD GOODS, AND
20 PERSONAL EFFECTS NEED NOT BE IDENTIFIED.]

21 * Sec. 69. AS 39.50.030(b) is amended to read:

22 (b) Each statement filed by a public official or candidate under this chapter
23 must [SHALL] include the following:

24 (1) the source of all income over \$1,000 [\$100] during the preceding
25 calendar year, including taxable and nontaxable capital gains, received by the person,
26 the person's spouse or dependent child, or a nondependent child of the person who is
27 living with that person, except that a source of income that is a gift must be
28 included if the value of the gift exceeds \$250;

29 (2) the identity, by name and address, of each business in which the
30 person, the person's spouse or dependent child, or a nondependent child of the person
31 who is living with that person was a stockholder, owner, officer, director, partner,

1 proprietor, or employee during the preceding calendar year;

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

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

9 (5) the identity of each trust or other fiduciary relation in which the
10 person, the person's spouse or dependent child, or a nondependent child of the person
11 who is living with that person held a beneficial interest exceeding \$1,000 during the
12 preceding calendar year, a description and identification of the property contained in
13 each trust or relation, and the nature and extent of the beneficial interest in it;

14 (6) any loan or loan guarantee of more than \$1,000 made to the
15 person, the person's spouse or dependent child, or a nondependent child of the person
16 who is living with that person, and the identity of the maker of the loan or loan
17 guarantor and the identity of each creditor to whom the person, the person's spouse or
18 dependent child, or a nondependent child of the person who lives with that person
19 owed more than \$1,000; this paragraph requires disclosure of a loan, loan
20 guarantee, or indebtedness only if the loan or guarantee was made, or the
21 indebtedness incurred, during the preceding calendar year, or if the amount still
22 owing on the loan, loan guarantee, or indebtedness was more than \$1,000 at any
23 time during the preceding calendar year [\$500 OR MORE];

24 (7) a list of all contracts and offers to contract with the state or an
25 instrumentality of the state during the preceding calendar year held, bid, or offered by
26 the person, the person's spouse or dependent child, a nondependent child of the person
27 who is living with that person, a partnership or professional corporation of which
28 the person is a member [THE PERSON'S MOTHER OR FATHER], or a corporation
29 in which the person or the person's spouse or children, or a combination of them, hold
30 a controlling interest; and

31 (8) a list of all mineral, timber, oil, or any other natural resource lease

1 held, or lease offer made, during the preceding calendar year by the person, the
2 person's spouse or dependent child, a nondependent child of the person who is living
3 with that person, [THE PERSON'S MOTHER OR FATHER,] a partnership or
4 professional corporation of which the person is a member, or a corporation in which
5 the person or the person's spouse or children, or a combination of them, holds a
6 controlling interest.

7 * **Sec. 70.** AS 39.50.030 is amended by adding new subsections to read:

8 (d) In addition to the requirements of (b) of this section, each statement filed
9 under this chapter by a public official in the executive branch of state government
10 other than the chair or a member of a state commission or board must include a
11 disclosure of the formation or maintenance of a close economic association involving
12 a substantial financial matter as required by this subsection. The disclosure must be
13 sufficiently detailed so that a reader can ascertain the nature of the association. A
14 public official shall disclose a close economic association with

15 (1) a legislator;

16 (2) a public official who is not an elected or appointed municipal
17 officer;

18 (3) a lobbyist; or

19 (4) a public officer if the person required to make the disclosure is the
20 governor or the lieutenant governor.

21 (e) If a public official required to disclose a close economic association under
22 (d) of this section forms a close economic association after the date on which the
23 public official files the financial disclosure statement required by (a) of this section,
24 disclosure of the association must be made to the commission within 60 days after the
25 formation of the association.

26 (f) When making a disclosure under (d) of this section concerning a
27 relationship with a lobbyist to whom the public official is married or who is the public
28 official's spousal equivalent, the public official shall also disclose the name and
29 address of each employer of the lobbyist and the total monetary value received from
30 the lobbyist's employer. The public official shall report changes in the employers of
31 the spouse or spousal equivalent within 48 hours after the change. In this subsection,

1 "employer of the lobbyist" means the person from whom the lobbyist received money,
2 or goods or services having a monetary value, for engaging in lobbying on behalf of
3 the person.

4 (g) In this section,

5 (1) "close economic association" means a financial relationship that
6 exists between a public official required to disclose a close economic association under
7 (d) of this section and some other person or entity, including a relationship where the
8 public official serves as a consultant or advisor to is a member or representative of,
9 or has a financial interest in an association, partnership, business, or corporation;

10 (2) "lobbyist" has the meaning given in AS 24.60.990(a);

11 (3) "public officer" has the meaning given in AS 39.52.960;

12 (4) "spousal equivalent" means a person who is cohabiting with another
13 person in a relationship that is like a marriage but that is not a legal marriage.

14 * Sec. 71. AS 39.50.070 is amended to read:

15 **Sec. 39.50.070. Failure to report by certain public officials**
16 **[DEPARTMENT, DIVISION, OR DEPUTY DEPARTMENT HEADS]. A public**
17 **official [PERSON HIRED OR APPOINTED AS THE HEAD OR DEPUTY HEAD**
18 **OF, OR DIRECTOR OF A DIVISION WITHIN, A DEPARTMENT] in the executive**
19 **branch of state government, other than the governor or lieutenant governor or a**
20 **chair or member of a state board or commission, who refuses or fails to file a**
21 **report of financial interests required under this chapter when due may not hold office,**
22 **and the person's name may not be submitted to the legislature for confirmation, until**
23 **the person complies. The person may not be confirmed, hired, or appointed, and the**
24 **person forfeits and may not be paid any salary, per diem, or travel expenses, until the**
25 **person complies. If, after installation in office or beginning employment in the**
26 **position [AS THE HEAD OR DEPUTY HEAD OF, OR DIRECTOR OF A**
27 **DIVISION WITHIN, A DEPARTMENT], the person refuses or fails to file the**
28 **required statement when due, the person is guilty of a misdemeanor and upon**
29 **conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and**
30 **shall be removed from office if compliance is not made within 30 days after the due**
31 **date of the report.**

1 * Sec. 72. AS 39.50.200(a)(8) is amended to read:

2 (8) "public official" means

3 (A) a judicial officer;

4 (B) [,] the governor or [,] the lieutenant governor;

5 (C) [,] a person hired or appointed in [AS THE HEAD OR
6 DEPUTY HEAD OF, OR DIRECTOR OF A DIVISION,] a department in the
7 executive branch as

8 (i) the head or deputy head of the department;

9 (ii) the director or deputy director of a division;

10 (iii) a special assistant to the head of the department;

11 (iv) a person serving as the legislative liaison for the

12 department;

13 (D) a person hired as [,] an employee in the office of
14 [ASSISTANT TO] the governor or the office of the lieutenant governor
15 other than

16 (i) a clerical, security, messenger, or maintenance
17 employee, or other employee in the office of the governor or the
18 office of the lieutenant governor whom the personnel board
19 designates because the employee is not employed in an executive or
20 professional capacity or as an administrator and does not exercise
21 discretion over policy matters;

22 (ii) an employee of the State Commission for Human
23 Rights, including the director;

24 (iii) an employee of the office of equal employment
25 opportunity; however, the director of the office is a public official;

26 (iv) an employee of the division of elections; however,
27 the director of the division is a public official;

28 (v) an employee of the Alaska Human Resource
29 Investment Council, including the director;

30 (vi) an employee of the Alaska Human Relations
31 Commission, including the director;

- 1 (E) the [,] chair or a member of a state commission or board;
 2 (F) [,] state investment officers and the state comptroller in the
 3 Department of Revenue;
 4 (G) [,] the executive director of the Alaska Tourism Marketing
 5 Council;
 6 (H) the chief procurement officer appointed under
 7 AS 36.30.010; and
 8 (I) [, AND] each appointed or elected municipal officer;

9 * Sec. 73. AS 39.52.010(a) is amended to read:

- 10 (a) It is declared that
 11 (1) [THAT] high moral and ethical standards among public officers in
 12 the executive branch are essential to assure the trust, respect, and confidence of the
 13 people of this state; [TO THE CONDUCT OF FREE GOVERNMENT; AND]
 14 (2) [THAT THE LEGISLATURE BELIEVES THAT] a code of ethics
 15 for the guidance of public officers will
 16 (A) discourage those officers from acting upon personal or
 17 financial interests in the performance of their public responsibilities;
 18 (B) [, WILL] improve standards of public service; and
 19 (C) [, AND WILL] promote and strengthen the faith and
 20 confidence of the people of this state in their public officers;
 21 (3) [. IT IS FURTHER DECLARED THAT] holding public office or
 22 employment is a public trust and that as one safeguard of that trust, the people require
 23 public officers to adhere to a code of ethics;
 24 (4) a fair and open government requires that executive branch
 25 public officers conduct the public's business in a manner that preserves the
 26 integrity of the governmental process and avoids conflicts of interest;
 27 (5) in order for the rules governing conduct to be respected both
 28 during and after leaving public service, the code of ethics must be administered
 29 fairly without bias or favoritism;
 30 (6) no code of conduct, however comprehensive, can anticipate all
 31 situations in which violations may occur nor can it prescribe behaviors that are

1 appropriate to every situation; in addition, laws and regulations regarding ethical
2 responsibilities cannot legislate morality, eradicate corruption, or eliminate bad
3 judgment; and

4 (7) compliance with a code of ethics is an individual responsibility;
5 thus all who serve the state have a solemn responsibility to avoid improper
6 conduct and prevent improper behavior by colleagues and subordinates.

7 * Sec. 74. AS 39.52.110(c) is amended to read:

8 (c) Designated [THE ATTORNEY GENERAL, DESIGNATED] supervisors,
9 hearing officers, and the personnel board must be guided by this section when issuing
10 opinions and reaching decisions.

11 * Sec. 75. AS 39.52.120(b) is amended to read:

12 (b) A public officer may not

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

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

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

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

21 (5) attempt to benefit a personal or financial interest through coercion
22 of a subordinate or require another public officer to perform services for the
23 private benefit of the public officer at any time;

24 (6) use or authorize the use of state funds, facilities, equipment,
25 services, or another government asset or resource for partisan political purposes;
26 this paragraph does not prohibit use of the governor's residence for meetings to
27 discuss political strategy and does not prohibit use of the communications
28 equipment in the governor's residence so long as there is no special charge to the
29 state for the use; in this paragraph, "for partisan political purposes"

30 (A) means having the intent to differentially benefit or harm

31 a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(i) candidate or potential candidate for elective office:

or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

* Sec. 76. AS 39.52.120 is amended by adding a new subsection to read:

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who engages in political campaign activities other than incidental campaign activities as described in this subsection during the work day shall take approved leave for the period of campaigning.

* Sec. 77. AS 39.52.130(b) is amended to read:

(b) Notice of the receipt by a public officer of a gift with a value in excess of \$150 [\$50], including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt

(1) if the public officer may take or withhold official action that affects the giver; or

(2) if the gift is connected to the public officer's governmental status.

* Sec. 78. AS 39.52.130(c) is amended to read:

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the personnel board [ATTORNEY GENERAL] concerning whether acceptance of a particular gift is prohibited.

* Sec. 79. AS 39.52.130 is amended by adding new subsections to read:

(e) A public officer who, on behalf of the state, accepts a gift from another government or from an official of another government shall, within 60 days after its receipt, notify the Office of the Governor in writing. The Office of the Governor shall determine the appropriate disposition of the gift. In this subsection, "another

1 government" means a foreign government or the government of the United States,
2 another state, a municipality, or another jurisdiction.

3 (f) A public officer who knows or reasonably ought to know that a family
4 member has received a gift because of the family member's connection with the public
5 office held by the public officer shall report the receipt of the gift by the family
6 member to the public officer's designated supervisor if the gift would have to be
7 reported under this section if it had been received by the public officer or if receipt of
8 the gift by a public officer would be prohibited under this section.

9 * Sec. 80. AS 39.52 is amended by adding a new section to read:

10 **Sec. 39.52.132. Restrictions on fund raising.** (a) The governor, lieutenant
11 governor, or a commissioner may not

12 (1) on a day when either house of the legislature is in regular or special
13 session, solicit or accept a contribution or a promise or pledge to make a contribution
14 for a candidate for state office; however, the governor or the lieutenant governor may
15 solicit or accept a contribution, promise, or pledge for a campaign for state office that
16 occurs during the 90 days immediately preceding an election in which the governor or
17 lieutenant governor is a candidate for state office;

18 (2) accept money from an event held on a day when either house of the
19 legislature is in regular or special session if a substantial purpose of the event is to
20 raise money on behalf of the governor or lieutenant governor for a campaign for state
21 office; however, this paragraph does not prohibit the governor or lieutenant governor
22 from accepting money from an event held during the 90 days immediately preceding
23 an election in which the governor or lieutenant governor is a candidate for state office;
24 or

25 (3) expend money in a campaign for state office that was raised by or
26 on behalf of the governor or lieutenant governor under a declaration of candidacy or
27 a general letter of intent to become a candidate for public office if the money was
28 raised on a day when either house of the legislature was in a legislative session;
29 however, this paragraph does not apply to money raised during the 90 days
30 immediately preceding an election in which the governor or lieutenant governor is a
31 candidate for state office.

1 (b) In this section,

2 (1) "commissioner" means the head of a principal executive department
3 in the state government;

4 (2) "contribution" has the meaning given in AS 15.13.400.

5 * Sec. 81. AS 39.52.170 is amended by adding a new subsection to read:

6 (c) The head of a principal executive department of the state may not accept
7 employment for compensation outside the agency that the executive head serves.

8 * Sec. 82. AS 39.52.180(c) is amended to read:

9 (c) The head of an agency may waive application of (a) of this section after
10 determining that representation by a former public officer is not adverse to the public
11 interest. The waiver must be in writing and a copy of the waiver must be provided
12 to the personnel board [ATTORNEY GENERAL] for approval or disapproval.

13 * Sec. 83. AS 39.52.180 is amended by adding a new subsection to read:

14 (d) A former governor, lieutenant governor, or head of a principal department
15 in the executive branch may not engage in activity as a lobbyist under AS 24.45 for
16 a period of one year after leaving service as the governor, lieutenant governor, or
17 department head, as appropriate. This subsection does not prohibit service as a
18 volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as
19 defined under regulations of the Alaska Public Offices Commission.

20 * Sec. 84. AS 39.52.210 is amended to read:

21 **Sec. 39.52.210. Declaration of potential violations by public employees.** (a)

22 A public employee who is involved in a matter that may result in a violation of
23 AS 39.52.110 - 39.52.190 shall

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

26 (2) immediately disclose the matter in writing to the designated
27 supervisor and the personnel board.

28 (b) A public employee's designated supervisor shall make a written
29 determination whether an employee's involvement violates AS 39.52.110 - 39.52.190
30 and shall provide a copy of the written determination to the public employee and
31 to the personnel board. If the supervisor determines that a violation could exist or

1 will occur, the supervisor shall,

2 (1) reassign duties to cure the employee's potential violation, if feasible;

3 or

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

6 (c) A designated supervisor may request guidance from the personnel board
7 [ATTORNEY GENERAL], in accordance with AS 39.52.240, when determining
8 whether a public employee is involved in a matter that may result in a violation of
9 AS 39.52.110 - 39.52.190.

10 * Sec. 85. AS 39.52.220 is amended to read:

11 **Sec. 39.52.220. Declaration of potential violations by members of boards**
12 **or commissions.** (a) A member of a board or commission who is involved in a
13 matter that may result in a violation of AS 39.52.110 - 39.52.190 shall disclose the
14 matter on the public record and in writing to the designated supervisor and to the
15 personnel board. The supervisor shall determine whether the member's involvement
16 violates AS 39.52.110 - 39.52.190 and shall provide a copy of the written
17 determination to the board or commission member and to the personnel board.

18 If a member of the board or commission objects to the ruling of the supervisor, or if
19 the supervisor discloses an involvement requiring a determination, the members present
20 at a meeting, excluding the involved member, shall vote on the matter. If the
21 supervisor or a majority of the members voting determine that a violation will exist
22 if the member continues to participate, the member shall refrain from voting,
23 deliberating, or participating in the matter.

24 (b) The member of a board or commission, the designated supervisor, or the
25 board or commission may request guidance from the personnel board [ATTORNEY
26 GENERAL], in accordance with AS 39.52.240, when determining whether a member
27 of a board or commission is involved in a matter that may result in a violation of
28 AS 39.52.110 - 39.52.190.

29 * Sec. 86. AS 39.52.230 is amended to read:

30 **Sec. 39.52.230. Reporting of potential violations.** A person may report to
31 a public officer's designated supervisor, under oath and in writing, a potential violation

1 of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a
2 copy of the report to the officer who is the subject of the report and to the personnel
3 board, and shall review the report to determine whether a violation may exist. The
4 supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor
5 determines that the matter may result in a violation of AS 39.52.110 - 39.52.190.

6 * Sec. 87. AS 39.52.240(a) is amended to read:

7 (a) Upon the written request of a designated supervisor or a board or
8 commission, the personnel board [ATTORNEY GENERAL] shall issue opinions
9 interpreting this chapter. The requester must supply any additional information
10 requested by the personnel board [ATTORNEY GENERAL] in order to issue the
11 opinion. Within 60 days after receiving a complete request, the personnel board
12 [ATTORNEY GENERAL] shall issue an advisory opinion on the question.

13 * Sec. 88. AS 39.52.240(b) is amended to read:

14 (b) The personnel board [ATTORNEY GENERAL] may offer oral advice if
15 delay would cause substantial inconvenience or detriment to the requesting party.

16 * Sec. 89. AS 39.52.240(c) is amended to read:

17 (c) In the case of a request for advice from a designated supervisor or a
18 board or commission, the [THE] designated supervisor or the [A] board or
19 commission shall make a written determination based on the advice of the personnel
20 board [ATTORNEY GENERAL]. If the advice [OF THE ATTORNEY GENERAL]
21 provides more than one way for a public officer to avoid or correct a problem found
22 under AS 39.52.110 - 39.52.190, the designated supervisor or the board or commission
23 shall, after consultation with the officer, determine the alternative that is most
24 appropriate and advise the officer of any action required of the officer to avoid or
25 correct the problem.

26 * Sec. 90. AS 39.52.240(e) is amended to read:

27 (e) The personnel board [ATTORNEY GENERAL] may reconsider, revoke,
28 or modify an advisory opinion at any time, including upon a showing that material
29 facts were omitted or misstated in the request for the opinion.

30 * Sec. 91. AS 39.52.240(h) is amended to read:

31 (h) The personnel board [ATTORNEY GENERAL] shall publish in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Alaska Administrative Journal, with sufficient deletions to prevent disclosure of the persons whose identities are confidential under (g) of this section, the advisory opinions issued under this section that the personnel board [ATTORNEY GENERAL] determines to be of major import because of their general applicability to executive branch officers.

* Sec. 92. AS 39.52.250 is amended to read:

Sec. 39.52.250. Advice to former public officers. (a) A former public officer may request, in writing, an opinion from the personnel board [ATTORNEY GENERAL] interpreting this chapter. The personnel board [ATTORNEY GENERAL] shall give advice in accordance with AS 39.52.240(a) or (b) and publish opinions in accordance with AS 39.52.240(h).

(b) A former public officer is not liable under this chapter for any action carried out in accordance with the advice of the personnel board [ATTORNEY GENERAL] issued under this section, if the public officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice.

* Sec. 93. AS 39.52.260 is amended to read:

Sec. 39.52.260. Designated supervisor's report and personnel board [ATTORNEY GENERAL] review. (a) A designated supervisor shall quarterly submit a report to the personnel board that [ATTORNEY GENERAL WHICH] states the facts, circumstances, and disposition of any disclosure made under AS 39.52.210 - 39.52.240.

(b) The personnel board [ATTORNEY GENERAL] shall review determinations reported under this section. The personnel board [ATTORNEY GENERAL] may request additional information from a supervisor concerning a specific disclosure and its disposition.

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

1 identity.

2 * Sec. 94. AS 39.52 is amended by adding a new section to article 3 to read:

3 **Sec. 39.52.270. Disclosure statements.** (a) A public officer required to file
4 a disclosure statement under this chapter shall meet the requirements of this subsection
5 in making the disclosure. When the public officer files a disclosure statement under
6 this chapter, the public officer signing the disclosure shall certify that, to the best of
7 the public officer's knowledge, the statement is true, correct, and complete. The
8 disclosure must state that, in addition to any other penalty or punishment that may
9 apply, a person who submits a false statement that the person does not believe to be
10 true is punishable under AS 11.56.200 - 11.56.240.

11 (b) A designated supervisor who receives a disclosure statement under
12 AS 39.52.110 - 39.52.220 shall review it. If the designated supervisor believes that
13 there is a possibility that the activity or situation reported in a disclosure statement
14 filed under AS 39.52.110 - 39.52.190 may result in a violation of this chapter, the
15 designated supervisor shall take appropriate steps under AS 39.52.210 - 39.52.240.
16 Failure of the designated supervisor to proceed under AS 39.52.210 - 39.52.240 does
17 not relieve the public officer of the public officer's obligations under those statutes.

18 (c) In this section, "disclosure statement" means a report or written notice filed
19 under AS 39.52.110 - 39.52.220.

20 * Sec. 95. AS 39.52.310(a) is amended to read:

21 (a) The personnel board [ATTORNEY GENERAL] may initiate a complaint,
22 or elect to treat as a complaint, any matter disclosed under AS 39.52.210, 39.52.220,
23 39.52.250, or 39.52.260. The personnel board may not, during a campaign period,
24 initiate a complaint concerning the conduct of the governor or lieutenant governor
25 who is a candidate for election to state office.

26 * Sec. 96. AS 39.52.310(b) is amended to read:

27 (b) A person may file a complaint with the personnel board [ATTORNEY
28 GENERAL] regarding the conduct of a current or former public officer. A complaint
29 must be in writing, be signed under oath, and contain a clear statement of the details
30 of the alleged violation. The personnel board shall return a complaint concerning
31 the conduct of the governor or lieutenant governor who is a candidate for election

1 to state office as provided in (i) of this section if the complaint is initiated during
2 a campaign period.

3 * Sec. 97. AS 39.52.310(c) is amended to read:

4 (c) If a complaint alleges a violation of AS 39.52.110 - 39.52.190 by the
5 governor, lieutenant governor, or the attorney general, the [MATTER SHALL BE
6 REFERRED TO THE PERSONNEL BOARD. THE] personnel board shall retain
7 independent counsel who shall act in the place of the attorney general under
8 AS 39.52.350 [(d) - (i) OF THIS SECTION, AS 39.52.320 - 39.52.350,] and
9 39.52.360(c) and (d). Notwithstanding AS 36.30.015(d), the personnel board may
10 contract for or hire independent counsel under this subsection without notifying
11 or securing the approval of the Department of Law.

12 * Sec. 98. AS 39.52.310(d) is amended to read:

13 (d) The personnel board [ATTORNEY GENERAL] shall review each
14 complaint filed, to determine whether it is properly completed and contains allegations
15 which, if true, would constitute conduct in violation of this chapter. The personnel
16 board [ATTORNEY GENERAL] may require the complainant to provide additional
17 information before accepting the complaint. If the personnel board [ATTORNEY
18 GENERAL] determines that the allegations in the complaint do not warrant an
19 investigation, the personnel board [ATTORNEY GENERAL] shall dismiss the
20 complaint with notice to the complainant and the subject of the complaint.

21 * Sec. 99. AS 39.52.310(e) is amended to read:

22 (e) The personnel board [ATTORNEY GENERAL] may refer a complaint
23 to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220.

24 * Sec. 100. AS 39.52.310(f) is amended to read:

25 (f) If the personnel board [ATTORNEY GENERAL] accepts a complaint for
26 investigation, the personnel board [ATTORNEY GENERAL] shall serve a copy of
27 the complaint upon the subject of the complaint, for a response. The personnel board
28 [ATTORNEY GENERAL] may require the subject to provide, within 20 days after
29 service, full and fair disclosure in writing of all facts and circumstances pertaining to
30 the alleged violation. Misrepresentation of a material fact in a response to the
31 personnel board [ATTORNEY GENERAL] is a violation of this chapter. Failure to

1 answer within the prescribed time, or within any additional time period that may be
2 granted in writing by the personnel board [ATTORNEY GENERAL], may be
3 considered an admission of the allegations in the complaint.

4 * Sec. 101. AS 39.52.310(g) is amended to read:

5 (g) If a complaint is accepted under (f) of this section, the personnel board
6 [ATTORNEY GENERAL] shall investigate to determine whether a violation of this
7 chapter has occurred. At any stage of an investigation or review, the personnel board
8 [ATTORNEY GENERAL] may issue a subpoena under AS 39.52.380.

9 * Sec. 102. AS 39.52.310 is amended by adding new subsections to read:

10 (j) The personnel board shall return a complaint concerning the conduct of the
11 governor or lieutenant governor who is a candidate for state office received during a
12 campaign period to the complainant unless the governor or lieutenant governor, as
13 appropriate, permits the personnel board to assume jurisdiction under this subsection.
14 If the personnel board receives a complaint concerning the conduct of the governor or
15 lieutenant governor who is a candidate during the campaign period, the personnel
16 board shall immediately notify the subject of the complaint of the receipt of the
17 complaint, of the suspension of the personnel board's jurisdiction during the campaign
18 period, and of the candidate's right to waive the suspension of jurisdiction under this
19 subsection. The candidate may, within 11 days after the personnel board mails or
20 otherwise sends notice of the complaint to the candidate, notify the personnel board
21 that the candidate chooses to have the personnel board proceed with the complaint
22 under this section. If the candidate does not act within that time or if the candidate
23 notifies the personnel board that the candidate is not waiving the suspension of
24 jurisdiction, the personnel board shall return the complaint to the complainant with
25 notice of the suspension of jurisdiction under this subsection and of the right of the
26 complainant to file the complaint after the end of the campaign period.

27 (k) A campaign period under this section begins on the later of 45 days before
28 a primary election in which the governor or lieutenant governor is a candidate for state
29 office or the day on which the individual files as a candidate for state office and ends
30 at the close of election day for the general or special election in which the individual
31 is a candidate or on the day that the candidate withdraws from the election, if earlier.

1 For a candidate who loses in the primary election, the campaign period ends on the
2 day that results of the primary election showing that another individual won the
3 election are certified.

4 * Sec. 103. AS 39.52.320 is amended to read:

5 **Sec. 39.52.320. Dismissal before formal proceedings.** If, after investigation,
6 it appears that there is no probable cause to believe that a violation of this chapter has
7 occurred, the personnel board [ATTORNEY GENERAL] shall dismiss the complaint
8 and [PREPARE AND FILE A CONFIDENTIAL SUMMARY WITH THE
9 PERSONNEL BOARD. THE ATTORNEY GENERAL] shall communicate
10 disposition of the matter promptly to the complainant and to the subject of the
11 complaint.

12 * Sec. 104. AS 39.52.330 is amended to read:

13 **Sec. 39.52.330. Corrective or preventive action.** After determining that the
14 conduct of the subject of a complaint does not warrant a hearing under AS 39.52.360,
15 the personnel board [ATTORNEY GENERAL] shall recommend action to correct or
16 prevent a violation of this chapter. The personnel board [ATTORNEY GENERAL]
17 shall communicate the recommended action to the complainant and the subject of the
18 complaint. The subject of the complaint shall comply with the personnel board's
19 [ATTORNEY GENERAL'S] recommendation.

20 * Sec. 105. AS 39.52.340(a) is amended to read:

21 (a) Before the initiation of formal proceedings under AS 39.52.350, the
22 complaint and all other documents and information regarding an investigation
23 conducted under this chapter [,] or obtained by the personnel board [ATTORNEY
24 GENERAL] during the investigation are [, IS] confidential and not subject to
25 inspection by the public. All meetings of the personnel board concerning the
26 complaint and investigation before the determination of probable cause are closed
27 to the public. If, in the course of an investigation or probable cause
28 determination, the personnel board finds evidence of probable criminal activity,
29 the personnel board shall transmit a statement and factual findings limited to
30 that activity to the appropriate law enforcement agency. If the personnel board
31 finds evidence of a probable violation of AS 15.13, the personnel board shall

1 transmit a statement to that effect and factual findings limited to the probable
2 violation to the Alaska Public Offices Commission. The personnel board
3 [ATTORNEY GENERAL] and all persons contacted during the course of an
4 investigation shall maintain confidentiality regarding the existence of the investigation.
5 [A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS A
6 MISDEMEANOR.]

7 * Sec. 106. AS 39.52.350 is amended to read:

8 **Sec. 39.52.350. Probable cause for hearing.** (a) If the personnel board
9 [ATTORNEY GENERAL] determines that there is probable cause to believe that a
10 knowing violation of this chapter or a violation that cannot be corrected under
11 AS 39.52.330 has occurred, or that the subject of a complaint failed to comply with
12 a recommendation for corrective or preventive action, the personnel board
13 [ATTORNEY GENERAL] shall initiate formal proceedings by requesting the
14 attorney general to serve [SERVING] a copy of an accusation upon the subject of
15 the accusation. The accusation shall specifically set out the alleged violation. After
16 service, the accusation is a public document open to inspection. Except as provided
17 in AS 39.52.370(c), all subsequent proceedings are open to the public.

18 (b) The subject of the accusation shall file an answer with the personnel
19 board and the attorney general within 20 days after service of the accusation, or at
20 a later time specified by the personnel board [ATTORNEY GENERAL]. If the
21 subject of the accusation fails to timely answer, the allegations are considered
22 admitted.

23 (c) If the subject of the accusation denies that a violation of this chapter has
24 occurred, the [ATTORNEY GENERAL SHALL REFER THE MATTER TO THE]
25 personnel board [, WHICH] shall appoint a hearing officer to conduct a hearing.

26 (d) If the subject of the accusation admits a violation of this chapter, the
27 [ATTORNEY GENERAL SHALL REFER THE MATTER TO THE] personnel board
28 shall [TO] impose penalties under AS 39.52.410, 39.52.440, and 39.52.450, as
29 appropriate.

30 * Sec. 107. AS 39.52.920 is amended to read:

31 **Sec. 39.52.920. Agency policies.** Subject to the review and approval of the

1 personnel board [ATTORNEY GENERAL], an agency may adopt a written policy
2 that, in addition to the requirements of this chapter, limits the extent to which a public
3 officer in the agency or an administrative unit of the agency may

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

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

9 (3) accept a gift.

10 * Sec. 108. AS 39.52.950 is amended to read:

11 Sec. 39.52.950. Regulations. The attorney general may adopt regulations
12 under AS 44.62 ([THE] Administrative Procedure Act) necessary to interpret and
13 implement the provisions concerning complaints under this chapter. The personnel
14 board may adopt regulations under AS 44.62 (Administrative Procedure Act)
15 necessary to interpret and implement the other provisions of this chapter.

16 * Sec. 109. AS 39.52.960(11) is amended to read:

17 (11) "immediate family member" means

18 (A) the spouse of the person;

19 (B) another person cohabiting with the person in a conjugal
20 relationship that is not a legal marriage;

21 (C) a child, including a stepchild and an adoptive child, of
22 the person;

23 (D) a parent, sibling, grandparent, aunt, or uncle of the
24 person; and

25 (E) a parent, sibling, grandparent, aunt, or uncle of the
26 person's spouse [A PUBLIC OFFICER'S SPOUSE, A RELATION BY
27 BLOOD WITHIN AND INCLUDING THE SECOND DEGREE OF
28 KINDRED, AND A REGULAR MEMBER OF THE OFFICER'S
29 HOUSEHOLD];

30 * Sec. 110. AS 44.62.175(a) is amended to read:

31 (a) The lieutenant governor shall publish or contract for the publication of the

1 Alaska Administrative Journal. The journal shall be published weekly. The journal
2 must include

3 (1) notices of proposed actions given under AS 44.62.190(a);
4 (2) notices of state agency meetings required under AS 44.62.310(e),
5 even if the meeting has been held;

6 (3) notices of solicitations to bid issued under AS 36.30.130;

7 (4) notices of state agency requests for proposals issued under
8 AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and
9 AS 43.40.010;

10 (5) executive orders and administrative orders issued by the governor;

11 (6) written delegations of authority made by the governor or the head
12 of a principal department under AS 44.17.010;

13 (7) the text or a summary of the text of a regulation or order of repeal
14 of a regulation for which notice is given under AS 44.62.190(a), including an
15 emergency regulation or repeal whether or not it has taken effect;

16 (8) a summary of the text of recently issued formal opinions and
17 memoranda of advice of the attorney general;

18 (9) a list of vacancies on boards, commissions, and other bodies whose
19 members are appointed by the governor; and

20 (10) in accordance with AS 39.52.240(h), advisory opinions of the
21 personnel board [ATTORNEY GENERAL].

22 * Sec. 111. AS 24.60.990(a)(9) is repealed.

23 * Sec. 112. RELIANCE ON ADVISORY OPINIONS OF THE ATTORNEY GENERAL.
24 Notwithstanding the amendments made to AS 39.52.240 - 39.52.250 by secs. 87 - 92 of this
25 Act, a public officer or a former public officer may rely on an advisory opinion given by the
26 attorney general under AS 39.52.240 - 39.52.250 before the effective date of this bill section
27 to the same extent that the public officer or former public officer could have relied on the
28 opinion if those sections had not been amended by this Act.

29 * Sec. 113. PROVISIONS MADE SPECIFICALLY APPLICABLE TO INCUMBENT
30 LEGISLATORS. Notwithstanding any other provision of AS 15.13, the provisions of
31 AS 15.13.116(d), added by sec. 8 of this Act, apply to authorize a legislator holding office

1 in the legislature during the First Regular Session of the Twentieth Alaska State Legislature
2 who, under sec. 32, ch. 48, SLA 1996, retains unused campaign contributions in the
3 candidate's election campaign account, to transfer to a public office expense term account as
4 permitted under AS 15.13.116(d), enacted by sec. 8 of this Act. All amounts expended under
5 this section shall be annually accounted for under AS 15.13.110(a)(4).

6 * **Sec. 114.** Sections 7, 8, and 113 of this Act are retroactive to December 31, 1996.

7 * **Sec. 115.** Sections 2 - 5, 7 - 9, 113, and 114 of this Act take effect immediately under
8 AS 01.10.070(c).

9 * **Sec. 116.** Sections 1, 6, and 10 - 112 of this Act take effect January 1, 1999.

MEMORANDUM

State of Alaska
Department of Law

TO: Ben Brown
Aide to Senator Kelly

DATE: April 14, 1998

FILE:

TEL NO.: 465-3600

FROM: Stephen C. Slotnick *NSL*
Assistant Attorney General

SUBJECT:

Ben, I am concerned that amendment L-1 to SB 105, which was adopted by House State Affairs last Thursday (pursuant to our joint recommendation) may be unconstitutional.

I am concerned about the provision of AS 39.52.335(f) which would allow the Personnel Board to make public the names of accused ethics violators, even though the alleged violator might not have had due process to clear his or her name.

The Alaska Constitution has a special provision of its due process clause relating to investigations: "The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed." Alaska Const., art. I § 7. See also *O'Leary v. Superior Ct.*, 816 P.2d 163, 171-72 (Alaska 1991).

To remedy the problem, I have drafted two alternative versions of AS 39.52.335(f) for your consideration.

Version 1: *Eliminate publication of names, but allow publication of a report.* The first version allows publication of an expurgated report. This protects the interests of the individual, but allows for public criticism or praise of the attorney general in a report.

Version 2: *Provide that a court may order publication of the name of the subject under certain conditions.* The second version allows an interested party to request that a court order publication of the matter, including the subject's name, if the Personnel Board recommends publication and the court determines that (i) the settlement of the case is clearly contrary to the Ethics Act; (ii) at least one allegation against the subject is supported by substantial evidence, and (iii) publication will not infringe on the rights of the subject. This version is patterned after Criminal Rule 6.1 for release of grand jury reports.

Version 1

**** Sec. 91. AS 39.52.335** is amended to read:

Sec. 39.52.335. Summary of disposition of complaints and review by personnel board. (a) When the attorney general initiates or receives a complaint under AS 39.52.310, the attorney general shall immediately forward a copy of the complaint to the personnel board.

(b) Each month, the attorney general shall file a report with the personnel board concerning the status of each pending complaint and the resolution of complaints that have been closed since the previous report.

(c) If a complaint is dismissed under AS 39.52.320 or resolved under AS 39.52.330, the attorney general shall promptly prepare a summary of the matter and provide a copy of the summary to the personnel board and the complainant. The summary is confidential unless the dismissal or resolution agreed to under AS 39.52.320 or 39.52.330 is public.

[(1) ATTORNEY GENERAL DESIGNATES THAT IT IS A PUBLIC DOCUMENT; OR

(2) PERSONNEL BOARD MAKES THE MATTER PUBLIC UNDER (F) OF THIS SECTION.]

(d) Within 15 days after receipt of a summary under this section, a complainant may file comments with the personnel board regarding the disposition of the complaint.

(e) At its next regular meeting that begins more than 15 days after receipt of a summary under this section, the personnel board shall review the summary and comments,

if any, filed by the complainant. The personnel board may compel the attendance of the subject of the complaint or the complainant at the meeting and may compel the production of documents. Attendance may be by teleconference. The attorney general or the attorney general's designee shall be available to respond to questions from the personnel board concerning the disposition of the complaint.

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint. [IF THE PERSONNEL BOARD FINDS THAT A DISMISSAL OR RESOLUTION OF A COMPLAINT CLEARLY WAS CONTRARY TO THE REQUIREMENTS OF THIS CHAPTER, THE BOARD MAY NOTIFY THE SUBJECT OF THE COMPLAINT THAT THE BOARD INTENDS TO MAKE THE COMPLAINT, THE DISPOSITION BY THE ATTORNEY GENERAL, AND THE BOARD'S FINDINGS PUBLIC. THE SUBJECT OF THE COMPLAINT MAY REQUEST A HEARING BEFORE THE BOARD WITHIN 15 DAYS AFTER THE BOARD NOTIFIES THE SUBJECT OF ITS INTENTION TO MAKE THE MATTER PUBLIC TO REQUEST THE BOARD TO RECONSIDER ITS DECISION. IF THE SUBJECT REQUESTS A HEARING, THE BOARD MAY NOT MAKE THE MATTER PUBLIC UNTIL AFTER THE HEARING TO RECONSIDER ITS DECISION.]

(g) If the summary is confidential under (c) of this section, then, [UNLESS THE PERSONNEL BOARD DETERMINES THAT THE MATTER SHOULD BE MADE PUBLIC UNDER (F) OF THIS SECTION,]

(1) comments filed by the complainant, if any, are confidential;

(2) the personnel board shall conduct the review of the summary in

executive session; and

(3) the personnel board report [DECLINING TO MAKE THE MATTER PUBLIC], if any, is confidential; the personnel board shall make available to the public an expurgated copy of a confidential report with sufficient deletions and editing to prevent disclosure of the identity of the persons involved in the matter."

Version 2

**** Sec. 91. AS 39.52.335** is amended to read:

Sec. 39.52.335. Summary of disposition of complaints and review by personnel board and superior court. (a) When the attorney general initiates or receives a complaint under AS 39.52.310, the attorney general shall immediately forward a copy of the complaint to the personnel board.

(b) Each month, the attorney general shall file a report with the personnel board concerning the status of each pending complaint and the resolution of complaints that have been closed since the previous report.

(c) If a complaint is dismissed under AS 39.52.320 or resolved under AS 39.52.330, the attorney general shall promptly prepare a summary of the matter and provide a copy of the summary to the personnel board and the complainant. The summary is confidential unless the

(1) [ATTORNEY GENERAL DESIGNATES THAT IT IS A PUBLIC DOCUMENT] dismissal or resolution agreed to under AS 39.52.320 or 39.52.330 is public; or

(2) [PERSONNEL BOARD] superior court makes the matter public under ((f)h) of this section

(d) Within 15 days after receipt of a summary under this section, a complainant may file comments with the personnel board regarding the disposition of the complaint.

(e) At its next regular meeting that begins more than 15 days after receipt of a summary under this section, the personnel board shall review the summary and comments,

if any, filed by the complainant. The personnel board may compel the attendance of the subject of the complaint or the complainant at the meeting and may compel the production of documents. Attendance may be by teleconference. The attorney general or the attorney general's designee shall be available to respond to questions from the personnel board concerning the disposition of the complaint.

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint. [IF THE PERSONNEL BOARD FINDS THAT A DISMISSAL OR RESOLUTION OF A COMPLAINT CLEARLY WAS CONTRARY TO THE REQUIREMENTS OF THIS CHAPTER, THE BOARD MAY NOTIFY THE SUBJECT OF THE COMPLAINT THAT THE BOARD INTENDS TO MAKE THE COMPLAINT, THE DISPOSITION BY THE ATTORNEY GENERAL, AND THE BOARD'S FINDINGS PUBLIC. THE SUBJECT OF THE COMPLAINT MAY REQUEST A HEARING BEFORE THE BOARD WITHIN 15 DAYS AFTER THE BOARD NOTIFIES THE SUBJECT OF ITS INTENTION TO MAKE THE MATTER PUBLIC TO REQUEST THE BOARD TO RECONSIDER ITS DECISION. IF THE SUBJECT REQUESTS A HEARING, THE BOARD MAY NOT MAKE THE MATTER PUBLIC UNTIL AFTER THE HEARING TO RECONSIDER ITS DECISION.] If the matter is confidential and the board determines that publication of the name of the subject is in the public interest, the report may include a recommendation that the matter be made public.

(g) If the summary is confidential under (c) of this section, then, [UNLESS THE PERSONNEL BOARD DETERMINES THAT THE MATTER SHOULD BE MADE PUBLIC UNDER (F) OF THIS SECTION,]

(1) comments filed by the complainant, if any, are confidential;

(2) the personnel board shall conduct the review of the summary in executive session; and

(3) the personnel board report [DECLINING TO MAKE THE MATTER PUBLIC], if any, is confidential; the personnel board shall make available to the public an expurgated copy of a confidential report with sufficient deletions and editing to prevent disclosure of the identity of the persons involved in the matter.

(h) If the matter is not made public and the personnel board report includes a recommendation that the matter be made public, an interested party may file an action against the state in superior court, requesting that the court make public the complaint, the attorney general's disposition of the complaint, and the personnel board report. The court may order the matter or portions of the matter made public if the court determines that

(1) the dismissal or resolution of the complaint was clearly contrary to the requirements of this chapter;

(2) one or more of the allegations in the information to be released is supported by substantial evidence;

(3) the matter concerns the public interest; and

(4) release of the information will not infringe upon any protected rights or liberties of the subject.

Article I

Declaration of Rights

Decl:

Section 7 - Due Process.

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Secti

Exces:
cruel :
based
the pu

Section 8 - Grand Jury.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

Secti

The p
when
safety

Section 9 - Jeopardy and Self-Incrimination.

No person shall be put in jeopardy twice for the same offense. No person shall be compelled in any criminal proceeding to be a witness against himself.

Secti

The r
propo
seizur
cause
place

Section 10 - Treason.

Treason against the State consists only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Secti

No bi
the ol
speci:
corru

Section 11 - Rights of Accused.

In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Sect

In civ
dolla
as it
verdi
recor

Sect

Ther:
civil :

Sect

Priva
just c

Adopted

AMENDMENT

0-LS0074L.1

Cramer
4/3/98

OFFERED IN THE HOUSE

TO: HCS CSSB 105(), Draft Version "L"

- 1 Page 46, lines 7 - 10:
- 2 Delete all material.

- 3 Renumber the following bill sections accordingly.

- 4 Page 47, line 8, following "time,":
- 5 Insert "the attorney general and"

- 6 Page 47, lines 23 - 26:
- 7 Delete all material.

- 8 Renumber the following bill sections accordingly.

- 9 Page 49, lines 8 - 12:
- 10 Delete all material.

- 11 Renumber the following bill sections accordingly.

- 12 Page 49, line 20:
- 13 Delete "AS 39.52.210"
- 14 Insert "AS 39.52.210(a)"

- 15 Page 49, line 21:
- 16 Delete "Sec. 39.52.210. Declaration of potential violations by public employees."

1 Page 49, line 27:

2 Delete "personnel board"

3 Insert "attorney general"

4 Page 49, following line 27:

5 Insert

6 "** Sec. 82. AS 39.52.210(b) is amended to read:"

7 Renumber the following bill sections accordingly.

8 Page 49, line 31:

9 Delete "personnel board"

10 Insert "attorney general"

11 Page 50, lines 6 - 9:

12 Delete all material.

13 Page 50, line 15:

14 Delete "personnel board"

15 Insert "attorney general"

16 Page 50, line 17:

17 Delete "personnel board"

18 Insert "attorney general"

19 Page 50, lines 25 - 26:

20 Delete "personnel board [ATTORNEY GENERAL]"

21 Insert "attorney general"

22 Page 51, lines 2 - 3:

23 Delete "personnel board"

24 Insert "attorney general"

1 Page 51, lines 6 - 15:

2 Delete all material.

3 Renumber the following bill sections accordingly.

4 Page 51, lines 19 - 20:

5 Delete "personnel board [ATTORNEY GENERAL]"

6 Insert "attorney general"

7 Page 51, line 26, through page 53, line 1:

8 Delete all material and insert:

9 "* Sec. 86. AS 39.52.260 is amended by adding a new subsection to read:

10 (d) The attorney general shall submit to the personnel board a copy of the
11 quarterly reports received from designated supervisors under (a) of this section
12 together with a report on the attorney general's review conducted under (b) of this
13 section."

14 Renumber the following bill sections accordingly.

15 Page 53, line 21:

16 Delete "personnel board [ATTORNEY GENERAL]"

17 Insert "attorney general"

18 Page 53, line 23:

19 Delete "personnel board"

20 Insert "attorney general"

21 Page 53, line 26, through page 54, line 2:

22 Delete all material.

23 Renumber the following bill section accordingly.

1 Page 54, lines 5 - 8:

2 Delete "[MATTER SHALL BE REFERRED TO THE PERSONNEL BOARD. THE]
3 personnel board shall retain independent counsel who shall act in the place of the attorney
4 general under AS 39.52.350 [(d) - (i) OF THIS SECTION, AS 39.52.320 - 39.52.350,]"

5 Insert "matter shall be referred to the personnel board. The personnel board shall
6 return a complaint concerning the conduct of the governor or lieutenant governor who
7 is a candidate for election to state office as provided in (j) of this section if the complaint
8 is initiated during a campaign period. The personnel board shall retain independent
9 counsel who shall act in the place of the attorney general under (d) - (i) of this section.
10 AS 39.52.320 - 39.52.350,"

11 Page 54, line 12, through page 55, line 8:

12 Delete all material.

13 Renumber the following bill sections accordingly.

14 Page 56, lines 4 - 19:

15 Delete all material and insert:

16 **** Sec. 91.** AS 39.52 is amended by adding a new section to read:

17 **Sec. 39.52.335. Summary of disposition of complaints and review by**
18 **personnel board.** (a) When the attorney general initiates or receives a complaint
19 under AS 39.52.310, the attorney general shall immediately forward a copy of the
20 complaint to the personnel board.

21 (b) Each month, the attorney general shall file a report with the personnel
22 board concerning the status of each pending complaint and the resolution of
23 complaints that have been closed since the previous report.

24 (c) If a complaint is dismissed under AS 39.52.320 or resolved under
25 AS 39.52.330, the attorney general shall promptly prepare a summary of the matter
26 and provide a copy of the summary to the personnel board and the complainant. The
27 summary is confidential unless the

28 (1) attorney general designates that it is a public document; or

29 (2) personnel board makes the matter public under (f) of this section.

1 (d) Within 15 days after receipt of a summary under this section, a
2 complainant may file comments with the personnel board regarding the disposition of
3 the complaint.

4 (e) At its next regular meeting that begins more than 15 days after receipt of
5 a summary under this section, the personnel board shall review the summary and
6 comments, if any, filed by the complainant. The personnel board may compel the
7 attendance of the subject of the complaint or the complainant at the meeting and may
8 compel the production of documents. Attendance may be by teleconference. The
9 attorney general or the attorney general's designee shall be available to respond to
10 questions from the personnel board concerning the disposition of the complaint.

11 (f) After review of the summary, the personnel board may issue a report on
12 the disposition of the complaint. If the personnel board finds that a dismissal or
13 resolution of a complaint clearly was contrary to the requirements of this chapter, the
14 board may notify the subject of the complaint that the board intends to make the
15 complaint, the disposition by the attorney general, and the board's findings public.
16 The subject of the complaint may request a hearing before the board within 15 days
17 after the board notifies the subject of its intention to make the matter public to request
18 the board to reconsider its decision. If the subject requests a hearing, the board may
19 not make the matter public until after the hearing to reconsider its decision.

20 (g) If the summary is confidential under (c) of this section, then, unless the
21 personnel board determines that the matter should be made public under (f) of this
22 section,

23 (1) comments filed by the complainant, if any, are confidential;

24 (2) the personnel board shall conduct the review of the summary in
25 executive session; and

26 (3) the personnel board report declining to make the matter public, if
27 any, is confidential; the personnel board shall make available to the public an
28 expurgated copy of a confidential report with sufficient deletions and editing to
29 prevent disclosure of the identity of the persons involved in the matter."

30 Renumber the following bill sections accordingly.

1 Page 56, line 21:

2 Delete "Before"

3 Insert "Except as provided in AS 39.52.335, before [BEFORE]"

4 Page 56, lines 23 - 24:

5 Delete "personnel board [ATTORNEY GENERAL]"

6 Insert "attorney general"

7 Page 56, lines 25 - 27:

8 Delete "All"

9 Insert "In the case of a complaint concerning the governor, lieutenant governor,
10 or attorney general, all"

11 Page 56, line 28:

12 Delete "personnel board"

13 Insert "attorney general"

14 Page 56, line 29:

15 Delete "personnel board"

16 Insert "attorney general"

17 Page 56, line 30:

18 Delete "personnel board"

19 Insert "attorney general"

20 Page 56, line 31:

21 Delete "personnel board"

22 Insert "attorney general"

23 Page 57, lines 2 - 3:

24 Delete "personnel board [ATTORNEY GENERAL]"

25 Insert "attorney general"

1 Page 57, line 7, through page 58, line 9:

2 Delete all material.

3 Page 58, line 13:

4 Delete "the provisions concerning complaints under"

5 Page 58, line 15:

6 Delete "the other provisions of"

7 Insert "its duties under"

8 Page 58, line 30, through page 59, line 21:

9 Delete all material.

10 Renumber the following bill sections accordingly.

11 Page 58, lines 23 - 28:

12 Delete all material.

13 Renumber the following bill sections accordingly.

14 Renumber internal references to bill sections in accordance with this amendment. Below are
15 listed all the internal bill section references in this bill:

16 Page 59, line 24

17 Page 59, line 31

18 Page 60, line 4

19 Page 60, line 6

20 Page 60, line 7

21 Page 60, line 9

1 Renumber internal references to bill sections in accordance with this amendment. Below are
2 listed all the internal bill section references in this bill:

3 Page 59, line 24

4 Page 59, line 31

5 Page 60, line 4

6 Page 60, line 6

7 Page 60, line 7

8 Page 60, line 9

~~AMENDMENT~~

or take leave from ^{passed}
or take leave from ^{passed}
or take leave from ^{passed}
or take leave from ^{passed}

OFFERED IN THE HOUSE

TO: HCS CSSB 105(), Draft Version "L"

1 Page 38, following line 29:

2 Insert a new bill section to read:

3 **** Sec. 66.** AS 39.25.160(e) is amended to read:

4 (e) An employee in the classified, [OR] partially exempt, or exempt service
5 who seeks nomination or becomes a candidate for state or national elective political
6 office shall immediately resign any position held in the state service. The employee's
7 position becomes vacant on the date the employee files a declaration of candidacy for
8 state or national elective office. This subsection does not apply to

9 (1) a justice, judges, magistrates, and employees of the judicial
10 branch, including employees of the judicial council;

11 (2) the governor or the lieutenant governor;

12 (3) a member of the legislature;

13 (4) an employee seeking election as a delegate to a constitutional
14 convention;

15 (5) officers and employees of the University of Alaska;

16 (6) certificated teachers and noncertificated employees employed
17 by a regional educational attendance area established and organized under
18 AS 14.08.031 - 14.08.041 to teach in, administer, or operate schools under the
19 control of a regional educational attendance area school board;

20 (7) certificated teachers employed by the Department of Education
21 as correspondence teachers, teachers in skill centers operated by the Department
22 of Education, or teachers at Mt. Edgecumbe School;

23 (8) members of boards and commissions and authorities if the
24 member is not entitled to compensation other than per diem and travel for
25 service on the board, commission, or authority;

- 1 (9) emergency fire-fighting personnel employed by the Department
- 2 of Natural Resources for a fire emergency or for fire prevention and related
- 3 activities conducted under AS 41.15.030;
- 4 (10) youth employed by the Department of Natural Resources
- 5 under the Youth Employment and Student Intern programs;
- 6 (11) students employed by the state institutions in which the
- 7 students are enrolled;
- 8 (12) persons engaged in employment or pre-employment training
- 9 programs operated by the Department of Military and Veterans' Affairs;
- 10 (13) a participant in the Alaska temporary assistance program
- 11 under AS 47.27 who holds a temporary position with the state in order to obtain
- 12 job training or experience."

13 Renumber internal references to bill sections in accordance with this amendment. Below are
14 listed all the internal bill section references in this bill:

- 15 Page 59, line 24
- 16 Page 59, line 31
- 17 Page 60, line 4
- 18 Page 60, line 6
- 19 Page 60, line 7
- 20 Page 60, line 9

Passed

AMENDMENT

OFFERED IN THE HOUSE

TO: HCS CSSB 105() ; Draft Version "L"

1 Page 28, line 30, following "":

2 Insert "The committee shall respond to a complaint concerning the conduct of a
3 candidate for election to state office received during the campaign period in accordance
4 with (o) of this section."

5 Page 32, following line 8:

6 Insert a new bill section to read:

7 **** Sec. 52.** AS 24.60.170 is amended by adding a new subsection to read:

8 (o) The committee shall return a complaint concerning the conduct of a
9 candidate for state office received during a campaign period to the complainant unless
10 the subject of the complaint permits the committee to assume jurisdiction under this
11 subsection. If the committee receives a complaint concerning the conduct of a
12 candidate during the campaign period, the committee shall immediately notify the
13 subject of the complaint of the receipt of the complaint, of the suspension of the
14 committee's jurisdiction during the campaign period, and of the candidate's right to
15 waive the suspension of jurisdiction under this subsection. The candidate may, within
16 11 days after the committee mails or otherwise sends notice of the complaint to the
17 candidate, notify the committee that the candidate chooses to have the committee
18 proceed with the complaint under this section. If the candidate does not act within
19 that time or if the candidate notifies the committee that the candidate is not waiving
20 the suspension of committee jurisdiction, the committee shall return the complaint to
21 the complainant with notice of the suspension of jurisdiction under this subsection and
22 of the right of the complainant to file the complaint after the end of the campaign
23 period. A campaign period under this subsection begins on the later of 45 days before
24 a primary election in which the legislator or legislative employee is a candidate for

1 state office or the day on which the individual files as a candidate for state office and
2 ends at the close of election day for the general or special election in which the
3 individual is a candidate or on the day that the candidate withdraws from the election,
4 if earlier. For a candidate who loses in the primary election, the campaign period
5 ends on the day that results of the primary election showing that another individual
6 won the election are certified."

7 Renumber the following bill sections accordingly.

8 Renumber internal references to bill sections in accordance with this amendment. Below are
9 listed all the internal bill section references in this bill:

10 Page 59, line 24

11 Page 59, line 31

12 Page 60, line 4

13 Page 60, line 6

14 Page 60, line 7

15 Page 60, line 9

Passed

0-LS0074L.5
Cramer
4/3/98

AMENDMENT

OFFERED IN THE HOUSE

TO: HCS CSSB 105(), Draft Version "L"

1 Page 2, line 6, through page 4, line 29:

2 Delete all material and insert:

3 "(d) A candidate or an individual who has filed with the commission the
4 document necessary to permit that individual to incur election-related expenses under
5 AS 15.13.100 for election or reelection to the state legislature may not solicit or
6 accept a contribution while [IF] the legislature is convened in a regular or special
7 legislative session unless [, AND] the solicitation or acceptance occurs during the
8 90 days immediately preceding an election in which the candidate or individual is
9 a candidate [MEMBER OF THE LEGISLATURE, OR EMPLOYED AS A
10 MEMBER OF THE LEGISLATOR'S STAFF OR AS A MEMBER OF THE STAFF
11 OF A LEGISLATIVE COMMITTEE].

12 * Sec. 3. AS 15.13.074(c) is amended to read:

13 (c) A person or group may not make a contribution

14 (1) to a candidate for governor or lieutenant governor or an individual
15 who files with the commission the document necessary to permit that individual to
16 incur certain election-related expenses as authorized by AS 15.13.100 for governor or
17 lieutenant governor, [WHEN THE OFFICE IS TO BE FILLED AT A GENERAL
18 ELECTION.] before the later of the following dates:

19 (A) the date the individual

20 (i) becomes a candidate; or

21 (ii) files with the commission the document necessary
22 to permit the individual to incur certain election-related expenses
23 as authorized by AS 15.13.100; or

24 (B) January 1 of the year of the [GENERAL.] election when
25 the office is to be filled at a general election or the date of the

0-1.S00741..5

1 proclamation when the office is to be filled at a special election:

2 (2) to a candidate for the state legislature or an individual who files
3 with the commission the document necessary to permit that individual to incur certain
4 election-related expenses as authorized by AS 15.13.100 for the state legislature [,
5 WHEN THE OFFICE IS TO BE FILLED AT A GENERAL ELECTION.] while the
6 legislature is convened in a [ITS] regular or special legislative session, unless the
7 contribution is made during the 90 days immediately preceding an election in
8 which the candidate or individual is a candidate, or [AND] before the later of the
9 following dates:

10 (A) the date the individual

11 (i) becomes a candidate; or

12 (ii) files with the commission the document necessary
13 to permit the individual to incur certain election-related expenses as
14 authorized by AS 15.13.100; or

15 (B) January 1 of the year of the [GENERAL.] election;

16 (3) to a candidate or an individual who files with the commission the
17 document necessary to permit that individual to incur certain election-related expenses
18 as authorized by AS 15.13.100 for an office that is to be filled at a [SPECIAL
19 ELECTION OR] municipal election before the later of the following dates:

20 (A) the date the individual

21 (i) becomes a candidate; or

22 (ii) files with the commission the document necessary
23 to permit that individual to incur certain election-related expenses as
24 authorized by AS 15.13.100;

25 (B) the date that is nine months before the date of the
26 [GENERAL OR REGULAR] municipal election [OR THAT IS BEFORE THE
27 DATE OF THE PROCLAMATION OF THE SPECIAL ELECTION AT
28 WHICH THE CANDIDATE OR INDIVIDUAL SEEKS ELECTION TO
29 PUBLIC OFFICE]; or

30 (4) to any candidate later than the 45th day

31 (A) after the date of a primary election if the candidate

32 (i) has been nominated at the primary election or is

0-LS0074\L.5

- 1 running as a write-in candidate; and
2 (ii) is not opposed at the general election;
3 (B) after the date of the primary election if the candidate was
4 not nominated at the primary election; or
5 (C) after the date of the general election, or after the date of
6 a municipal or municipal runoff election, if the candidate was opposed at the
7 general, municipal, or municipal runoff election."

8 Renumber the following bill sections accordingly.

9 Page 16, line 18:

- 10 Delete "state office"
11 Insert "the state legislature"

12 Page 16, line 19:

- 13 Delete "state office"
14 Insert "the state legislature"

15 Page 16, line 21:

- 16 Delete "state office"
17 Insert "the state legislature"

18 Page 16, line 26:

- 19 Delete "office [LEGISLATIVE]"
20 Insert "legislative"

21 Page 16, lines 28 - 29:

- 22 Delete "state office"
23 Insert "the state legislature"

24 Page 16, line 30:

- 25 Delete "state office"

0-LS0074\L.5

- 1 Insert "the state legislature"

- 2 Page 17, line 5:
- 3 Delete "state office"
- 4 Insert "the state legislature"

- 5 Page 48, line 9, through page 49, line 4:
- 6 Delete all material.

- 7 Renumber the following bill sections accordingly.

- 8 Renumber internal references to bill sections in accordance with this amendment. Below are
- 9 listed all the internal bill section references in this bill:
- 10 Page 59, line 24
- 11 Page 59, line 31
- 12 Page 60, line 4
- 13 Page 60, line 6
- 14 Page 60, line 7
- 15 Page 60, line 9

Withdrawn

0-1.S0074AL.6
Cramer
4/3/98

AMENDMENT

OFFERED IN THE HOUSE

TO: HCS CSSB 105(). Draft Version "L"

1 Page 10, lines 30 - 31:

2 Delete "legislator, legislative employee."

3 Insert "legislative employee"

4 Page 11, following line 2:

5 Insert new bill sections to read:

6 ** Sec. 13. AS 24.45.041(b) is amended to read:

7 (b) The registration form prescribed by the commission must include

8 (1) the lobbyist's full name and complete permanent residence and
9 business address and telephone number, as well as any temporary residential and
10 business address and telephone number in the state capital during a legislative session;

11 (2) the full name and complete address of each person by whom the
12 lobbyist is retained or employed;

13 (3) whether the person from whom the lobbyist receives compensation
14 employs the person solely as a lobbyist or whether the person is a regular employee
15 performing other services for the employer that include but are not limited to the
16 influencing of legislative or administrative action;

17 (4) the nature or form of the lobbyist's compensation for engaging in
18 lobbying, including salary, fees, or reimbursement for expenses received in
19 consideration for, or directly in support of or in connection with, the influencing of
20 legislative or administrative action;

21 (5) a general description of the subjects or matters on which the
22 registrant expects to lobby or to engage in the influencing of legislative or
23 administrative action;

24 (6) the full name and complete address of the person, if other than the

0-LS0074\L.6

1 registrant, who has custody of the accounts, books, papers, bills, receipts, and other
2 documents required to be maintained under this chapter;

3 (7) the identification of a legislator, legislative employee, or public
4 official to whom the lobbyist is married or who is the spousal equivalent of the
5 lobbyist; in this paragraph, "spousal equivalent" has the meaning given in
6 AS 39.50.030(g).

7 * Sec. 14. AS 24.45 is amended by adding a new section to read:

8 **Sec. 24.45.165. Spouses and cohabitants of elected officials.** (a) A spouse
9 or spousal equivalent of the governor, the lieutenant governor, or a legislator may not
10 engage in lobbying the executive branch of state government or the legislature during
11 the elected official's term of office.

12 (b) In this section,

13 (1) "elected official" means the governor, the lieutenant governor, or
14 a legislator;

15 (2) "engage in lobbying" means to act as a lobbyist;

16 (3) "spousal equivalent" has the meaning given in AS 39.50.030(g)."

17 Renumber the following bill sections accordingly.

18 Page 19, line 10:

19 Delete "legislator or"

20 Page 19, line 11:

21 Delete "legislator's or"

22 Delete "legislator or"

23 Page 19, line 14:

24 Delete "legislator or"

25 Page 19, following line 17:

26 Insert a new bill section to read:

27 * Sec. 30. AS 24.60.070(d) is amended to read:

0-I.S0074M.6

1 (d) When making a disclosure under (a) of this section concerning a
2 relationship with a lobbyist to whom the legislator or legislative employee is married
3 or who is the legislator's or legislative employee's spousal equivalent, the legislator
4 or legislative employee shall also disclose the name and address of each employer of
5 the lobbyist and the total monetary value received by the lobbyist from the lobbyist's
6 employer. The legislator or legislative employee shall report changes in the employer
7 of the spouse or spousal equivalent within 48 hours after the change. In this
8 subsection, "employer of the lobbyist" means the person from whom the lobbyist
9 received amounts or things of value for engaging in lobbying on behalf of the person."

10 Renumber the following bill sections accordingly.

11 Page 42, line 31, following "":

12 Insert "This subsection does not apply to the governor or the lieutenant governor."

13 Page 43, following line 13:

14 Insert a new bill section to read:

15 "* Sec. 74. AS 39.50.030(f) is amended to read:

16 (f) When making a disclosure under (d) of this section concerning a
17 relationship with a lobbyist to whom the public official is married or who is the
18 public official's spousal equivalent, the public official shall also disclose the name and
19 address of each employer of the lobbyist and the total monetary value received from
20 the lobbyist's employer. The public official shall report changes in the employers of
21 the spouse or spousal equivalent within 48 hours after the change. [THIS
22 SUBSECTION DOES NOT APPLY TO THE GOVERNOR OR THE LIEUTENANT
23 GOVERNOR.] In this subsection, "employer of the lobbyist" means the person from
24 whom the lobbyist received money, or goods or services having a monetary value, for
25 engaging in lobbying on behalf of the person."

26 Renumber the following bill sections accordingly.

27 Page 59, following line 22:

0-1.50074VL6

1 Insert a new bill section to read:

2 "* **Sec. 116.** AS 24.45.165 is repealed."

3 Renumber the following bill sections accordingly.

4 Page 60, following line 5:

5 Insert a new bill section to read:

6 "* **Sec. 119.** **CONDITIONAL EFFECT OF AND CONDITIONAL EFFECTIVE DATE**
7 **OF CERTAIN RESTRICTIONS AND REQUIREMENTS RELATING TO CERTAIN**
8 **LOBBYISTS.** (a) Section 13 of this Act, amending AS 24.45.041(b), sec. 30 of this Act,
9 amending AS 24.60.070(d), which is enacted in sec. 29 of this Act, sec. 74 of this Act,
10 amending AS 39.50.030(f), which is enacted in sec. 73 of this Act, and sec. 116 of this Act,
11 repealing AS 24.45.165, take effect only if

12 (1) a court enters a final judgment that AS 24.45.165, enacted by sec. 14 of
13 this Act, prohibiting spouses and spousal equivalents of certain elected officials from
14 engaging in certain lobbying violates the state or federal constitution; and

15 (2) either the time for appeal of that judgment expires or, if an appeal is
16 taken, the court enters a final order on appeal that AS 24.45.165, enacted by sec. 14 of this
17 Act, violates the state or federal constitution.

18 (b) If secs. 13, 30, 74, and 116 of this Act take effect under (a) of this section, they
19 take effect on the later of (1) the date a court enters a final judgment that AS 24.45.165,
20 enacted by sec. 14 of this Act, is unconstitutional, and (2) the expiration of any time for
21 appeal of that judgment or upon entry of a final order on the appeal that AS 24.45.165,
22 enacted by sec. 14 of this Act, is unconstitutional. The attorney general shall promptly notify
23 the lieutenant governor and the revisor of statutes of a judgment described in this section."

24 Renumber the following bill sections accordingly.

25 Renumber internal references to bill sections in accordance with this amendment. Below are
26 listed all the internal bill section references in this bill:

27 Page 59, line 24

28 Page 59, line 31

0-I.S0074M.6

- 1 Page 60, line 4
- 2 Page 60, line 6
- 3 Page 60, line 7
- 4 Page 60, line 9

Left on the table
AMENDMENT

0-LS0074\L.8
Cramer
4/8/98

OFFERED IN THE HOUSE

BY REPRESENTATIVE RYAN

TO: HCS CSSB 105(), Draft Version "L"

1 Page 37, following line 19:

2 Insert a new bill section to read:

3 **** Sec. 63.** AS 24.60 is amended by adding a new section to read:

4 **Sec. 24.60.975. Liability for filing a frivolous legislative ethics complaint.**

5 A person who files a complaint against a legislator under AS 24.60.170 ~~AND~~ *AND*
6 the complaint is frivolous or that the committee lacks jurisdiction to consider it is *that*
7 liable to the subject of the complaint if the complaint is dismissed under
8 AS 24.60.170(c) as frivolous or because the committee's lack of jurisdiction is
9 apparent on the face of the complaint. The subject of the complaint may recover the
10 greater of actual damages or \$5,000 from the person who filed the complaint."

11 Renumber the following bill sections accordingly.

12 Renumber internal references to bill sections in accordance with this amendment. Below are
13 all internal bill section references in this bill:

14 Page 59, line 24

15 Page 59, line 31

16 Page 60, line 4

17 Page 60, line 6

18 Page 60, line 7

19 Page 60, line 9

Failed
4-2



Official Business

revised sectional analysis of proposed HCS for CSSB 105 (StAff)
Alaska State Legislature

1

Senate

Rules Committee

State Capitol
Juneau, AK. 99801-1182

MEMORANDVM.

TO: Representative James, Chairman
House State Affairs Committee

FROM: Benjamin Brown, Legislative Aide to Senator Kelly

DATE: 4 April 1998

IN RE: revised sectional analysis of proposed HCS for CSSB 105 (StAff)
(WORK DRAUGHT No. 0-LS0074\L dated 2 April '98)

"An Act relating to legislative and executive branch ethics; relating to campaign finances for candidates for state or municipal office; relating to the conduct of lobbyists with respect to public officials; relating to the filing of disclosures by certain state employees and officials; making a conforming amendment to the definition of 'public official' for employment security statutes; and providing for an effective date. (N.B. The title has changed with the addition of the word 'municipal' in the second clause. This change requires no vote due to a draughting oversight before the bill passed the Senate. (Refer to Attachment 1 - Cramer memo of 26 February '98.)

This memorandum is meant to summarise and analyse each section of the proposed House State Affairs Committee Substitute for SB 105 (hereinafter referred to as the HCS). Please note that a sectional analysis is not generally considered to be the most authoritative interpretation of a bill; the bill itself is the best statement of its specific effects.

SECTION 1: AS 15.13.060.(c) TREASURERS FOR JUDICIAL RETENTION CAMPAIGNS. This section amends the State Elections Act to require candidates running to retain a judicial appointment to disclose the name

and address of a campaign treasurer with the Alaska Public Offices Commission (APOC). It was added at the recommendation of the draughter.

SECTION 2: AS 15.13.072.(d) RESTRICTIONS ON SOLICITATION AND ACCEPTANCE OF CONTRIBUTIONS. This section amends the State Elections Act to prohibit candidates for election or reelection to state office from *soliciting or accepting* a campaign contribution while the legislature is in regular or special session, as amended on the Senate floor. A further change from the State Affairs Subcommittee incorporates a 90 day exemption to allow candidates to raise money in the period immediately preceding an election.

SECTION 3: AS 15.13.074(c) PROHIBITED CONTRIBUTIONS prohibits a person or group from *contributing* to a candidate for state office while the legislature is convened in its regular session, as amended on the Senate floor. It deletes a reference to contributions to the governor or lieutenant-governor, made unnecessary by the incorporation of the term state office in the State Elections Act. A further change from the House State Affairs Subcommittee (hereinafter referred to as 'the Subcommittee') allows fundraising from the 1st of June in the year preceding the year in which a candidate will participate in an election.

SECTION 4: AS 15.13.074(h) PRIOR YEAR FUNDRAISING BY GOVERNOR AND LIEUTENANT-GOVERNOR. This section changes references to the allowable dates for fundraising in the section of the State Elections Act dealing with the relationship between groups and elected officials in the executive branch.

SECTION 5: AS 15.13.074(i) 90 DAY EXEMPTION FOR CONTRIBUTIONS TO CANDIDATES FOR STATE OFFICE. This section adds a new section to the State Elections Act which explicitly allows contributions to be made in the 90 days preceding an election in which some one is a candidate.

SECTION 6: AS 15.13.110(a) POET ACCOUNT REFERENCE IN REPORTING REQUIREMENTS. This section amends the name of the account a successful legislative candidate can establish with unused campaign assets under AS 15.13.116.

SECTION 7: AS 15.13.116(a) DISBURSEMENT OF CAMPAIGN ASSETS This section allows a transfer of unused campaign contributions to a legislative office account reserve, in accordance with the new subsection which follows, as amended on the Senate floor. Section 113 and 114 allow this section and the Section 8 to take effect immediately and to be retroactive to the 31st of

December 31 1996. A further change from the Subcommittee amends the name of the account a successful legislative candidate can establish with unused campaign assets under AS 15.13.116.

SECTION 8: AS 15.13.116(d) DISBURSEMENT OF CAMPAIGN ASSETS

This section adds a new subsection (d) which allows a legislator to transfer up to \$5000 per year from a POET reserve to a POET account. It further allows a transfer from unused campaign assets of up to \$20,000 for senators and \$10,000 for representatives to a POET reserve. (AS 15.13.116 [9][D] currently allows a one time transfer of funds to an office account at \$5000 multiplied by the number of years in the term.) At the end of the legislator's term, a balance in POET reserve must be disposed of as provided in (a)(3) or (a)(6) of this section, which includes charitable donations and repaying contributors. Sections 113 and 114 allow this section and Section 7 to take effect immediately and to be retroactive to the 31st of December 1996.

SECTION 9: AS 15.13.400(12) NEW DEFINITION This section adds 'state office' to the list of defined terms in the State Elections Law, relating to changes made in Sections 2 and 3. State office is defined as office of governor, lieutenant-governor, member of the legislature, or similar state office.

SECTION 10: AS 23.20.526(d) EXCLUSIONS FROM DEFINITION OF EMPLOYMENT This section makes a conforming amendment based on changes in this bill to the executive branch employment security statutes to ensure that the people who are not eligible for unemployment compensation remain ineligible. (Refer to Attachment 2 - Cramer memo of 13 February '98.)

SECTION 11: AS 24.25.010(e) SUBPOENA POWERS: The Legislative Ethics Code specifically grants the ethics committee the authority to subpoena witnesses under AS 24.60.150(b)(2). The statute to be amended by this bill sets out general authority for legislative subpoenas and includes a reference requiring the concurrence of the Senate President or Speaker of the House. Subsection (e) currently provides that the section does not apply to the Legislative Council or the Legislative Budget & Audit Committee. Like the ethics committee, both Leg Council and LB&A are permanent interim committees and both have express grants of authority to subpoena witnesses. It is the opinion of the ethics committee, and the committee's legal counsel, that not including the ethics committee in the AS 24.25.010(e) exemption was an oversight, given the specific grant of authority to subpoena witnesses in the ethics code itself.

SECTION 12: AS 24.45.041(b) REPORTING SPOUSAL RELATIONSHIPS BY LOBBYISTS This section adds a new provision to the legislative lobbying law requiring lobbyists to disclose spousal relationships with

legislators, legislative employees, and some public officials. At the recommendation of the draughter a definition of spousal equivalent is cited in the HCS.

SECTION 13: AS 24.45.171(12) DEFINITIONS Adds 'upper level employee' to the definition of public official or public officer in relation to the legislative lobbying law, and specifies that judicial and municipal officers are not included in the definition.

SECTION 14: AS 24.60.030(a) RESTRICTION ON LEGISLATOR AND LEGISLATIVE EMPLOYEE BEHAVIOR This section amends the Legislative Ethics Code to improve the restrictions on behavior by persons in the legislative branch. It specifically disallows the use of public resources for nonlegislative purposes or for partisan political purposes. It allows limited use of some resources if the cost in nominal or re-embursement is made, and makes facsimile use legally the same as telephone use. Section 14 allows Leg Council to designate space for health and fitness purposes to allow the Capitol School gym to be designated for legislative use. It also allows legislators to use their private offices in the Capitol for personal or political purposes if there is no cost and the use doesn't interfere with performance of public duties. Finally, Section 14 permits storing campaign records in a legislative office.

SECTION 15: AS 24.60.030(c) MASS MAILING This extends the current provision of the Legislative Ethics Code which prohibits use of state funds to print or distribute a mass mailing from or about a legislator who is a candidate for state office during the period 90 days before the primary and ending the day after the general election. The HCS prohibits such mailings by legislators and legislative employees who are candidates for federal or municipal office, or to telephone and electric cooperative boards. While other sections of the ethics code clearly prohibit use of state funds for campaign purposes, this section highlights what are considered to be a critical periods and provides a guideline for those who issue mailings during those times. This prohibition does not apply to a legislator's LAA office allowance.

SECTION 16: AS 24.60.030(d) CAMPAIGN LITERATURE This section adds fundraising notices to the list of current prohibitions on distributing or posting campaign literature in state facilities. The prohibitions currently apply only to legislators or someone acting on behalf of a legislator while the HCS expands that prohibition to include legislative employees. It allows a legislator to post materials related to a past election in his or her private legislative office.

SECTION 17: AS 24.60.030(f) BOARD MEMBERSHIP This section changes the board membership disclosure period from 30 days to 60 days and would

require the committee to publish the disclosures in the journal. It allows exemptions legislators and legislative employees whose appointments are already published in the journal from disclosing redundantly.

SECTION 18: AS 24.60.030(g) CONFLICTS OF INTERESTS This section changes the *prohibition* on taking legislative, administrative or political action to a *disclosure requirement* prior to taking action if one has any of the 'interests' defined, which are expanded beyond equity or ownership interest to include employment, contracts, and board memberships. It also sets out that the disclosure is to be publicly announced if the action is being taken in a committee meeting or on the floor. Actions being taken other than in committee or on the floor (E.G. drafting a bill or testifying in an administrative hearing) would be disclosed in writing to the ethics committee within seven days. Disclosures, whether oral or written, must include the nature of the financial interest and a short description of how the action affects the interest.

SECTION 19: AS 24.60.030 GOVERNMENT TIME This section adds a new subsection to the restrictions on legislative behavior, instructing the ethics committee, when determining in a complaint proceeding whether an employee was performing a task on government time, to consider the schedule set by the employee's supervisor. It requires an employee to take leave for the period of time he or she is engaged in political campaign activities, other than incidental campaign activities. Political campaign activities are permissible on government time if the activities are part of the normal legislative duties, including answering phone calls and handling incoming correspondence.

SECTION 20: AS 24.60.031(a) FUNDRAISING DURING SESSION This section clarifies that the restrictions on fundraising during session are in effect on a day when either house is in regular or special session. A legislator or legislative employee would not be able to solicit or accept contributions to state office campaigns during session, could not accept money from events held for state office political purposes during session, and could not expend money for state office campaigns if the money was raised during session. A change from the Subcommittee added an exemption for contributions made in the 90 days preceding an election in which some one is a legislator is a candidate.

SECTION 21: AS 24.60.039 EMPLOYMENT DISCRIMINATION This section reflects the ethics committee's shared jurisdiction with the State Commission for Human Rights on complaints filed against a legislator or legislative employee concerning violations of the employment discrimination statute, AS 18.80.220. Current law requires the committee to deal with a complaint alleging a violation of that statute in the same manner they would deal with any other complaint. The proposed language gives the committee the

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

require the committee to publish the disclosures in the journal. It allows exemptions legislators and legislative employees whose appointments are already published in the journal from disclosing redundantly.

SECTION 18: AS 24.60.030(g) CONFLICTS OF INTERESTS This section changes the *prohibition* on taking legislative, administrative or political action to a *disclosure requirement* prior to taking action if one has any of the 'interests' defined, which are expanded beyond equity or ownership interest to include employment, contracts, and board memberships. It also sets out that the disclosure is to be publicly announced if the action is being taken in a committee meeting or on the floor. Actions being taken other than in committee or on the floor (E.G. drafting a bill or testifying in an administrative hearing) would be disclosed in writing to the ethics committee within seven days. Disclosures, whether oral or written, must include the nature of the financial interest and a short description of how the action affects the interest.

SECTION 19: AS 24.60.030 GOVERNMENT TIME This section adds a new subsection to the restrictions on legislative behavior, instructing the ethics committee, when determining in a complaint proceeding whether an employee was performing a task on government time, to consider the schedule set by the employee's supervisor. It requires an employee to take leave for the period of time he or she is engaged in political campaign activities, other than incidental campaign activities. Political campaign activities are permissible on government time if the activities are part of the normal legislative duties, including answering phone calls and handling incoming correspondence.

SECTION 20: AS 24.60.031(a) FUNDRAISING DURING SESSION This section clarifies that the restrictions on fundraising during session are in effect on a day when either house is in regular or special session. A legislator or legislative employee would not be able to solicit or accept contributions to state office campaigns during session, could not accept money from events held for state office political purposes during session, and could not expend money for state office campaigns if the money was raised during session. A change from the Subcommittee added an exemption for contributions made in the 90 days preceding an election in which some one is a legislator is a candidate.

SECTION 21: AS 24.60.039 EMPLOYMENT DISCRIMINATION This section reflects the ethics committee's shared jurisdiction with the State Commission for Human Rights on complaints filed against a legislator or legislative employee concerning violations of the employment discrimination statute, AS 18.80.220. Current law requires the committee to deal with a complaint alleging a violation of that statute in the same manner they would deal with any other complaint. The proposed language gives the committee the

option to refer those who file a complaint of employment discrimination to the human rights commission and defer consideration of the complaint until after the commission has completed its proceedings.

SECTION 22: AS 24.60.040(a) CONTRACTS AND LEASES This section broadens the contract and lease criteria beyond those currently in the Legislative Ethics Code, which restricts a legislator or legislative employee from having a financial interest in a state contract or lease unless:

- it is let through competitive bidding in accordance with the Procurement Code or
- it is worth \$1000 or less annually or
- it is standardized, under publicly established guidelines and generally available to the public at large.

The new language allows participation in contracts or leases that are let under AS 36.30, the State Procurement Code, which addresses a variety of award methods, including sole-source. It also allows participation in contracts and lease that are let under similar procedures to those in AS 36.30 which addresses such agencies as the University, the Railroad and the Legislature. The new language sets a new reporting threshold at \$5000, changed from the previous \$1000. It also refines the family member disclosure requirement to make a legislator or legislative employee who knows, or reasonably ought to know, that a family member is participating in a state contract or lease to disclose. The relaxation of prohibitions is balanced by the new disclosure requirement. Currently a legislator or legislative employee does not disclose to the ethics committee participation in contracts or leases permitted by the code. The proposed language requires disclosure by the legislator, legislative employee, and family members of participation in any state contract or lease over \$5000 annually.

SECTION 23: AS 24.60.040(c) CONTRACTS AND LEASES This section adds a new subsection that clarifies that a grant, contract, or lease that falls under one of the state loan or benefit programs in AS 24.60.050, is not subject to this section. The ethics committee publishes a list of programs that do not meet the criteria in AS 24.60.050 and requires disclosure of participation in any of the listed programs. It also clarifies that for the purposes of complying with the ethics code, a grant that results in a contract is subject to this section.

SECTION 24: AS 24.60.050(c) REFRAIN FROM PUBLICATION This section allows the ethics committee to protect an individual's right to privacy concerning participation in state loan and benefit programs and sets a confirming disclosure date. This follows an advisory opinion issued by the committee in 1994 explaining that it chose to not publish the name of a person

who received a benefit from the Violent Crimes Compensation Board, but did not publish that a person covered by the ethics code had received a benefit.

SECTION 25: AS 24.60.060(b) PROTECTIVE ORDER This section adds a new subsection that set out that the subject of an ethics complaint would be in violation of the code for releasing information deemed confidential under a protective order issued by the committee. This change would allow the committee to broaden discovery by the subject while still protecting any innocent, or 'not involved' parties.

SECTION 26: AS 24.60.070(b) DEADLINE FOR CLOSE ECONOMIC ASSOCIATION DISCLOSURE This section adds a deadline to the current code requiring disclosure of close economic associations citing AS 24.60.105. The 15th of February deadline is in line with others and the 60 day disclosure for new associations matches the new language for disclosures throughout the bill.

SECTION 27: AS 24.60.070 SPOUSAL/SPOUSAL EQUIVALENT LOBBYIST DISCLOSURE This section adds a new subsection which requires legislators and legislative employees who are married to or who are the spousal equivalents of a lobbyist, to disclose as a close economic association, the name and address of each of the lobbyist's clients, and the total monetary value received from each client annually. Changes to the list would have to be reported within 48 hours.

SECTION 28: AS 24.60.080(a) GIFTS This section increases the gift limit in the Legislative Ethics Code from \$100 to \$250 annually. It also clarifies that those gifts that come under subsection (c) (hospitality, discounts, food shared as a cultural norm, travel or hospitality for obtaining information on legislative matters, gifts from immediate family, and gifts not connected to legislative status) are exceptions to the general prohibition on accepting gifts. Gifts on behalf of a charitable organization (new subsection [h]) are exempted from both accepting and soliciting prohibitions. New language has been added that restricts legislators and legislative employees from accepting anything of monetary value other than food or beverage for immediate consumption from a lobbyist during session.

SECTION 29: AS 24.60.080(c) GIFT EXEMPTIONS This section clarifies that a stay in a vacation home located outside the state is not an exempted gift. By amending sub-paragraph (2)(B) it would allow legislators and legislative employees to accept discounts while on state business if the discount benefits the state. Paragraph (7) allows legislators and personal staff of legislators, but not other legislative employees, to accept discounts and welcoming gifts in the capital city during session.

SECTION 30: AS 24.60.080(d) GIFT REPORTING This section changes gift references to correspond with those made in previous sections (I.E. the \$250 limit). It changes the reporting date for gifts not related to legislative status to the 15th of February deadline. It mandates forwarding of gift disclosure to APOC by the ethics committee. Currently, a legislator or legislative employee who receives a gift of over \$100 not related to legislative status is required to report, confidentially, the name of donor and description of the gift received under this category. If the gift has a value of over \$250, the actual value must also be reported. The new language requires reporting, confidentially, only the name of donor and description of gift for all gifts over \$250 not related to legislative status. Changes made by Sections 57 through remove APOC's responsibility to deal with reports of gifts received by legislators and legislative directors. This will ease confusion over what is reported to whom. Under the proposed changes, all gifts would be reported to the ethics committee, and copies of the non-confidential gift disclosures forwarded to APOC.

SECTION 31: AS 24.60.080(e) LOW BUDGET CAMPAIGNS This section makes a technical change in response to the new campaign finance reform law, to allow certain contributions to 'low budget' campaigns to fall within the contribution definition.

SECTION 32: AS 24.60.080(f) GOVERNMENT GIFTS This section allows acceptance of gift from a foreign government, the U.S. government, another state government, or a municipal government on behalf of the Legislature. The gift must be delivered to Leg Council within 60 days. This bill increases the threshold to \$250 to correspond with other changes relating to gifts.

SECTION 33: AS 24.60.080(g) FAMILY This section defines the terms in the immediate family and family member to include cohabitators, when used in relation to gifts received from immediate family and the new subsections in AS 24.60.080: inheritance from a family member (i) or gifts received by a family member (k).

SECTION 30: AS 24.60.080 NEW GIFTS EXEMPTIONS This section adds new subsections to the exemptions on the ban on receiving gifts.

New subsection (h) permits soliciting and accepting gifts on behalf of charitable organizations, which is in accordance with an advisory opinion issued by the ethics committee.

New subsection (i) requires reporting of receipt, but not value of, an inheritance from a person other than a family member as current statute does not address inheritance.

New subsection (j) sets out that gifts of volunteer services for legislative purposes may be accepted by a legislator, legislative committee or legislative agency as a gift to the state, so long as the person donating the services is not paid by another source. It allows a legislator, legislative committee or legislative agency to accept a UA Intern or JTPA trainee as well as any other educational trainees the committee approves but to maintain confidentiality, the ethics committee is not permitted to accept volunteer services. This subsection also requires volunteers, interns, and educational trainees to comply generally with the Legislative Ethics Code, with the exceptions of the following sections: contracts and leases, close economic associations, nepotism or representation before state agencies. The nepotism exemption allows family members to volunteer their time to legislative offices.

New subsection (k) specifically addresses that gifts from another source, to a family member or spousal equivalent of a legislator or legislative employee fall within the restrictions and reporting requirements. It requires disclosure by a legislator or legislative employee who knows, or reasonably ought to know, that a family member has received a gift because of the family member's connection to the legislator or legislative employee. If the gift was given directly to the legislator or employee and if it would have to be reported by the legislator or employee, then the same gift, if the gift was given to a family member because of his or her connection to a legislator or legislative employee, would require disclosure. Gifts of travel for matters of legislative concern given to allow a spouse to travel with a legislator, would have to be reported. The same holds true for gifts that legislators or legislative employees would be prohibited from accepting, that are received by family members. For example, gift of over \$250 given to the spouse of a legislator, primarily because of the connection to the legislator, would have to be reported. The reasonably ought to know standard reduces the burden on those covered by the Legislative Ethics Code to know of gifts provided to family members with whom there is little or no contact.

New subsection (l) sets out that the value of the gift is fair market value, to the extent that fair market value can be determined.

SECTION 35: AS 24.60.085(a) EARNED INCOME AND HONORARIA

The amendments in this section would allow legislators and legislative employees to accept compensation that is less than fees generally charged, in effect of this change allowing an attorney to do pro bono work or an engineer to charge a reduced rate for review of plans for a non-profit organization.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA



(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 26, 1998

SUBJECT: Title of CSSB 105(FIN) am (Legislative and Executive branch ethics and campaign finance)

TO: Senator Tim Kelly
Attn: Ben Brown

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked for a memorandum concerning whether a resolution is needed to waive application of the Uniform Rules for a title amendment to the campaign finance and ethics bill referenced above. The title as passed by the Senate reads:

"An Act relating to legislative and executive branch ethics; relating to campaign finances for candidates for state office; relating to the conduct and regulation of lobbyists with respect to public officials; relating to the filing of disclosures by certain state employees and officials; making a conforming amendment to the definition of 'public official' for employment security statutes; and providing for an effective date."

As passed by the Senate, the bill contains an amendment to AS 15.13.072(d) which affects municipal elections as well as elections for state office (for the governor, lieutenant governor, and members of the legislature) but there was a drafting error and the amendment inadvertently failed to amend the bill title.¹⁷ To correct this oversight, the title should be amended. One possibility is to amend the second clause of the title to read: "relating to campaign finances for candidates for state or **municipal** office."

¹⁷ Existing law prohibits a legislator or legislative employee who is a candidate for any office from soliciting and accepting contributions during a legislative session. The amendment to AS 15.13.072(d) in the bill prohibits all candidates who are running for election to state office from soliciting contributions during a legislative session. Current law prohibits legislators and legislative employees who are running for municipal office from soliciting or accepting contributions during a session but under the bill they would be permitted to do so.

Senator Tim Kelly
February 26, 1998
Page 2

Although the bill is in the second house, it is my opinion that the title change described above does not require a concurrent resolution waiving the Uniform Rules. While Uniform Rule 24(c) prohibits a committee of the second house from reporting out a committee substitute or amendment that requires a title change, other than a clerical or technical one, the title change here is not "required" by an amendment or change in the second house. Rather, it is required to correct the defective title in bill as passed by the first house. Accordingly, our office has in the past considered such changes to be "technical." The requirements of Uniform Rules 35 and 41(b) are consistent with Uniform Rule 24, stating that motions or propositions that require a change in the title of the bill as enacted in the house of origin, other than a clerical or technical change, are out of order. Of course, the Senate will still have the right to consider whether to concur in any changes to the bill made by the House, including a change to the title.

Please let me know if you have additional questions on this matter.

TC:jdr
98-118.jdr

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101



130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 13, 1998

SUBJECT: Explanation of the amendment to Unemployment Compensation laws contained in the Legislative and Executive Branch Ethics bill (CSSB 105(FIN) am)

TO: Senator Tim Kelly
Attn: Ben Brown

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked for an explanation of sec. 6 of the above-referenced bill. Section 6 amends AS 23.20.526(d), which sets out certain kinds of work that will not be considered "employment" for purposes of the state's unemployment compensation laws. In paragraph (8) of that subsection, existing law provides that employment by a state or a political subdivision of the state does not count as employment if the service is performed by an individual in the exercise of duties as a "public official" as defined in AS 39.50.200(a)." Section 70 of CSSB 105(FIN) am amends the definition of "public official" by adding executive branch employees who are in the exempt or partially exempt service who are compensated at Range 19 or better unless they are members of a collective bargaining unit. This amendment to AS 39.50.200 was intended to make these executive branch employees file financial disclosure statements. It was not intended to make them ineligible for unemployment compensation benefits. In order to avoid having them excluded from unemployment compensation benefits under AS 23.20.526(8), that paragraph was rewritten. Instead of relying on the definition of "public official" in AS 39.50.200(a), it now lists all of the officials who were included in the definition before the addition of Range 19-plus executive branch employees.

I hope this clarifies the purpose for this bill section. Let me know if you have additional questions about it.

TC:jdr
98-087.jdr

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



MEMORANDUM

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

TO: Honorable Senator Tim Kelly
Honorable Representative Jeannette James

FROM: Pat Davidson *PatD*
Legislative Auditor

DATE: April 3, 1998

RE: CSSB 105 amendment proposal

At the April 1, 1998 meeting of the Legislative Budget and Audit Committee, Senator Pearce requested that we offer an amendment to CSSB105.

Since our report from which this amendment is derived is in confidential preliminary status we cannot provide the specific details for this suggested amendment. However, the amendment in general, provides that misuse of state funds by a state employee can be a matter of public record.

We are presenting for your consideration an amendment to AS 39.25.080, which may fittingly be incorporated into CSSB 105. Our proposal reads:

(c) The confidentiality provided to personnel actions under this section cannot be used to limit the disclosure of information regarding the use of state funds.

We feel that the above amendment would achieve the rationale behind the personnel records' confidentiality statute, as well as better serve the concept of public disclosure and accountability.

Should you have any questions on this, please do not hesitate to contact me.

cc: Senator Drue Pearce



Official Business

Alaska State Legislature

Senate

State Capitol
Juneau, AK. 99801-1182

Rules Committee

COMMITTEE SUBSTITUTE FOR SENATE BILL 105 (Fin) am SPONSOR STATEMENT

Committee Substitute for Senate Bill 105 (Fin) am makes improvements to Alaska's campaign finance, legislative ethics, and executive branch ethics codes. The original version was introduced by the Senate Rules Committee as requested by the Select Committee on Legislative Ethics. Last session SB 105 passed the Senate on a vote of 17 - 2, and the bill is now before the House State Affairs Committee. This bill addresses a variety of concerns identified by the Select Committee on Legislative Ethics over the past few years. SB 105 also raises ethical standards for the entire executive branch, and will require the governor, the cabinet, and other upper-level public employees to meet many of the same high disclosure standards already in place for the Legislature.

SB 105 will help the public and those covered by the legislative and executive branch ethics codes to understand the law better, and will clarify exactly what conduct is expected in the service the State of Alaska. The Legislature began to operate under a new ethics code five years ago, and this law has worked as intended. Some ambiguities, however, have made compliance with and enforcement of the law more difficult than it needs to be. SB 105 makes several targeted changes to AS 24.60, the legislative ethics code.

The Legislature answers to the Select Committee on Legislative Ethics, made up of five public members and four members from the Legislature. SB 105 transfers oversight authority for executive branch ethics from the politically-appointed Attorney-General to the governor-appointed and legislatively-confirmed public members of the State Personnel Board. The executive branch will henceforward answer to this independent public group.

The executive branch ethics act was passed in the mid-80s in response to a perceived lack of ethical standards in state government. Oversight authority for executive branch ethics was placed with the Attorney-General, and the Department of Law has since run executive branch ethics. The relatively simple language of the executive branch ethics act has been interpreted to yield a body of precedent that currently governs executive branch ethics. In comparison to the legislative ethics code, the executive branch act is not as specific as to sorts of prohibited activity. Perhaps most notably absent is an explicit ban on political or campaign activity. SB 105 takes several provisions

of the legislative ethics act that belong in the executive act, adding them as standard of conduct for all public officers (public employees and board/commission members). The intent is to take the parts of the executive branch ethics act that have worked, and build on their foundation with some of the stronger points of the legislative law. The bill does, however, take into account the difference between the two branches of government.

In addition to improving the executive branch ethics act, SB 105 requires the governor, the cabinet, and other upper-level public employees to disclose more information about economic interests, receipt of gifts, and conflicts of interest. It also expands disclosure requirements in the legislative branch to include staff other than directors. 'Upper-level' legislative and executive branch employees (those paid at range 19 or above) will have to disclose annually in accordance with standards already in place for the Legislature. Gift and conflict of interest disclosures for executive branch employees will continue to go to 'designated ethics supervisors' as they currently do, but for upper-level employees, these documents will also be forwarded to the Personnel Board for public availability. Gift and conflict of interest disclosures for legislative employees will continue to go to the Ethics Committee. Annual financial disclosure forms for both branches of government will go to APOC.

Other changes made by *CSSB 105 (Fin) am* to Titles 15, 24, and 39 include:

- a new definition in the elections law (AS 15.13) "state office" (governor, lieutenant-governor, legislator, and constitutional convention delegate) and imposition of a total ban on fund-raising for state office campaigns during legislative sessions
- a prohibition on the practice of what is known as 'spousal lobbying' which includes lobbying activity by legislators' spouses and spousal equivalents
- new disclosure requirements on lobbying activity by spouses of legislative employees or upper-level public officers
- clarification of many provisions in both the legislative and executive branch ethics codes, such as the definition of 'immediate family' for disclosure, and the Ethics Committee's right to subpoena independently

The 20th Alaska Legislature will maintain its commitment to ensuring a high level of ethical behavior, not only in the legislative branch, but consistently throughout state government, by passing *CSSB105 (Fin) am* this session.

1/20/98 Mtg RE SB105 2:00

Neil Slotnik

Dept of Law

Crystal Smith

Christie Liddles

Ben Pearson

Barbara Cotton

Patrick Flynn

Lenny Casper - Leg. Legal

Suzie Barnett on Conf. phone, Leg Ethics Comm.

(We all agree the goal is to apply
law & equal standards to all
branches -

Disagreement is how to get there.)

2/2/98 Mtg - Above ppl plus

→ Personnel Director Mike McMullen
→ Ass't Daniella Lopez

9:30
Mon
here.

Amendments to CSSB 105 (FIN)am

Page 57, line 12

after "shall" insert "in its discretion determine to conduct a hearing or to".

Page 57, after line 27

insert a new bill sections to read

Sec. 107. AS 39.52.360 is amended by adding a new subsection to read

"(i) If the personnel board has determined to conduct the hearing itself under AS 39.52.350(c), references in this section to the hearing officer shall mean the personnel board."

Sec. 108. AS 39.52.370(a) is amended to read

"Within 10 days after receipt of the hearing [OFFICER'S] report, either party may protest the [OFFICER'S] finding of fact, conclusions of law, and recommendation, and, if a protest is filed, shall serve a copy on the other party. Oral argument before the personnel board must be provided only if requested by either party. The board chair shall set the deadline for submission of requests for oral argument, and set the dates for submission of briefs and oral argument before the board, if requested."

Renumber remaining sections accordingly.

(from Mike)

WORK DRAFT

WORK DRAFT

WORK DRAFT

*Swell
258-2106*

*From
Debb
Slotnik*

O-LS1208W
Cramer
12/3/97

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE _____ RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to signed statements under the Executive Branch Ethics Act."

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

3 * Section 1. AS 39.52 is amended by adding a new section to article 3 to read:

4 Sec. 39.52.270. Disclosure statements. (a) A public officer required to file
5 a disclosure statement under this chapter shall meet the requirements of this subsection
6 in making the disclosure. When the public officer files a disclosure statement under
7 this chapter, the public officer signing the disclosure shall certify that, to the best of
8 the public officer's knowledge, the statement is true, correct, and complete. The
9 disclosure must state that, in addition to any other penalty or punishment that may
10 apply, a person who submits a false statement that the person does not believe to be
11 true is punishable under AS 11.56.200 - 11.56.240.

12 (b) A designated supervisor who receives a disclosure statement under
13 AS 39.52.110 - 39.52.220 shall review it. If the designated supervisor believes that
14 there is a possibility that the activity or situation reported in a disclosure statement
15 filed under AS 39.52.110 - 39.52.190 may result in a violation of this chapter, the

WORK DRAFT

WORK DRAFT

0-LS1208B

1 designated supervisor shall take appropriate steps under AS 39.52.210 - 39.52.240.
 2 Failure of the designated supervisor to proceed under AS 39.52.210 - 39.52.240 does
 3 not relieve the employee of the employee's obligations under those statutes.
 4 (c) In this section, "disclosure statement" means a report or written notice filed
 5 under AS 39.52.110 - 39.52.220.
 6 * Sec. 2. AS 39.52.350(b) is amended to read:
 7 (b) The subject of the accusation shall file an answer with the attorney general
 8 within 20 days after service of the accusation, or at a later time specified by the
 9 attorney general. The answer must be signed under oath. If the subject of the
 10 accusation fails to timely answer, the allegations are considered admitted.

Overview of the Executive Branch Ethics Act

SCOPE OF THE CODE

- The Ethics Act requires a high moral and ethical standard for public officers.
- The Act does not proscribe conflicts that are insignificant or conjectural.

MISUSE OF OFFICIAL POSITION

- A public officer may not use or attempt to use an official position for personal gain. *Use of state time or equipment to benefit a personal or financial interest is prohibited. You may be required to recuse yourself from certain matters or to divest yourself of certain financial interests if you have a conflict of interest.*
- A public officer may not intentionally secure or grant unwarranted benefits or treatment for any person.
- A public officer may not take official action that is based on motivation other than the best interest of the state.
- "Financial interest" includes a professional or private relationship of an officer or immediate family member from which a person receives a financial benefit.
- "Personal interest" includes an interest held or involvement by an officer or the officer's immediate family member in any organization, including nonprofit and political, from which a person or organization receives a benefit.

GIFTS

- A public officer may not solicit or receive gifts under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties.
- A gift worth less than \$50 is presumably not intended to influence the public officer.

OUTSIDE EMPLOYMENT

- A public officer may not pursue outside employment--including volunteer work--that is incompatible with the officer's official duties.
- After leaving state service, for two years a former public officer may not accept private employment on any matter on which the officer took official action.

DISCLOSURES

- A public officer must disclose receipt of all gifts worth more than \$50 when it could be inferred that the gift was intended to influence the officer in performance of official duties.
- A public officer must disclose all potential conflicts. *If the officer's designated supervisor determines that there will be an actual conflict, the officer's duties may be reassigned (for commissioners, this will usually mean recusal) or the supervisor may order divestiture of financial interests.*

- A public officer must disclose all outside employment for compensation.
- A public officer must disclose an interest--including the interests of family members--in a state grant, contract, lease, or loan executed by the officer's administrative agency.

DESIGNATED ETHICS SUPERVISORS

- The commissioner of a department (or designee) is the designated ethics supervisor for employees of the department
- The governor (or designee) is the designated ethics supervisor for commissioners and employees in the governor's & Lt. governor's office.
- The attorney general (or designee) is the designated ethics supervisor for the governor and Lt. governor

STATE INFORMATION

- A current or former public officer may not use or disclose state information that has not been disseminated to the public--i.e., published.
- Disclosure of confidential information is a violation of the ethics act.

ADVISORY OPINIONS

- Designated ethics supervisors may request written ethics opinions from the attorney general. Commissioners and designated ethics supervisors are encouraged to seek informal oral advice

COMPLAINTS

- If an action has occurred that may be in violation of the act, a complaint should be filed with the attorney general.
- The attorney general may resolve or dismiss a complaint or may bring an action before the personnel board. Penalties for a violation may include dismissal, repayment of ill-gotten gains, or fines.

Department of Law Contact: Neil Slotnick
Assistant Attorney General--Juncau
465-6710

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 1, 1995

Gary Bader
Chair, Personnel Board
P.O. Box 110201
Juneau, Alaska 998111-0201

Re: Dismissal of Ethics Act accusation concerning
Brenda Wilcox
AGO file # 663-95-0186

Dear Mr. Bader,

The Attorney General has approved a stipulation of dismissal and personal assurance of compliance in the Ethics Act accusation filed against Brenda Wilcox. This letter explains the reasons for this action.

As you know, the administrative process for investigation of potential violations of the Ethics Act begins with filing of a complaint. The subject of the complaint is required to respond to the allegations contained in the complaint. Frequently, the subject of the complaint, the attorney general, and the subject's designated ethics supervisor will resolve the matter through corrective or preventive action that obviates the need to proceed to the next step in the administrative process, the accusation.

In this case, the office of the Attorney General had served an Ethics Act complaint on a state employee, Ms. Wilcox. The complaint alleged that Ms. Wilcox had used state time and equipment for campaign-related purposes. Significantly, in her response to the complaint, Ms. Wilcox did not deny that she had used state time and equipment for campaign-related purposes, but did deny that a violation had occurred. This office determined that this response constituted probable cause that Ms. Wilcox violated the Act. Further, based on this response, we determined that corrective or preventive action under AS 39.52.330 was not feasible. Accordingly, this office filed an accusation against Ms. Wilcox without attempting to negotiate a resolution to the matter.

Following the filing of the accusation, however, this office received new information that indicated that this case was appropriate for settlement and that formal proceedings before the Personnel Board were not necessary. First, after the filing of the accusation, Ms. Wilcox resigned her state employment. Although that fact alone would not justify dismissal of formal proceedings, it is a factor that should be considered in determining whether the burden of formal proceedings is appropriate.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1991
PHONE: (907) 269-5100
FAX: (907) 276-3697
- KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2311
FAX: (907) 451-2846
- P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

Gary Bader
Chair, Personnel Board

March 1, 1995
Page 2

Second, Ms. Wilcox disclosed several facts that revealed that her violation of the Ethics Act was not as extensive as we originally believed. For example, Ms. Wilcox disclosed that she had submitted leave slips for the time when she had engaged in campaign-related activities during state working hours. She further explained, however, that her supervisor had torn up the leave slips because Ms. Wilcox worked in excess of the required 37.5 hours per week. Based on this information, it would appear that Ms. Wilcox did not use state time for campaign-related purposes.

Ms. Wilcox also revealed that her use of state equipment for campaign purposes was limited to a few instances and that her supervisors had knowledge of this use. Although this does not excuse the violation, it does, in our view, mitigate the violation and makes this case amenable to settlement. Ms. Wilcox also informed us that she would sign a statement agreeing that use of state time and equipment for campaign-related purposes constituted a violation of the Ethics Act and that she would personally assure the state that she would not use state time or equipment for campaign purposes if she became employed by the state again. Further, she agreed to pay a \$250 fine.

After conferring with Ms. Wilcox's designated ethics supervisor, Mike Nizich, the Attorney General determined that continued expenditure of state resources on this case was not in the public interest. The Attorney General has plenary authority over litigation in which the state is a party, and may dismiss litigation when he determines that it is not in the public interest. *Public Defender Agency v. Superior Court, Third Judicial Dist.*, 534 P.2d 947, 950 (Alaska 1975). Accordingly, the Attorney General has dismissed this case.

I hope this letter satisfactorily explains the reasons for this action. If you have any questions, I will be available to answer them at your March 14 meeting.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Stephen C. Slotnick
Assistant Attorney General

SCS:
Enclosure

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE PERSONNEL BOARD
DEPARTMENT OF ADMINISTRATION
STATE OF ALASKA

In the matter of)
))
 Brenda Wilcox,))
))
 Respondent))
_____)

STIPULATION TO SETTLEMENT, DISMISSAL AND VOLUNTARY
ASSURANCE OF COMPLIANCE

The Attorney General of the State of Alaska, under the authority of AS 39.52.310, and the respondent in this matter, Brenda Wilcox, agree to settle and dismiss the pending accusation filed with the personnel board under the Executive Branch Ethics Act. In agreeing to settle this case, respondent admits no liability, but offers an assurance of voluntary compliance. Terms of settlement are as follows:

1. Respondent will pay the sum of \$250.00 to the state.
2. Respondent agrees that the Executive Branch Ethics Act prohibits the use of state time, equipment, property, or other facilities in campaign-related activities.
3. Respondent agrees that she will abide by the provisions of the Executive Branch Ethics Act, or any other applicable state law, if she becomes a public officer of the State of Alaska in the future.
4. By this document, the state dismisses this accusation with prejudice and no further actions against respondent will be undertaken based on any allegations of

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE 465-3600

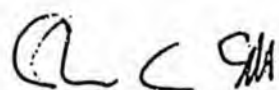
1 STIPULATION TO SETTLEMENT AND DISMISSAL
2 IN RE BRENDA WILCOX

February 10, 1995
Page 2

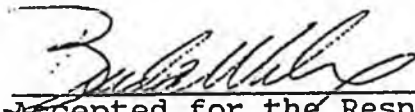
3
4 campaign-related activities undertaken while a public officer
5 during the year 1994.
6

7
8 Accepted for the State of Alaska

9 Dated: February 10, 1995

10 
11 _____
12 Stephen C. Slotnick
13 Assistant Attorney General

14 Dated February 10, 1995

15 
16 _____
17 Accepted for the Respondent
18 Brenda Wilcox
19
20
21
22
23
24
25
26

MEMORANDUM

State of Alaska
Department of Law

TO: Commissioner

DATE: March 12, 1996

FILE NO.: 663-96-0272

TELEPHONE NO.: 465-3600

FROM: Douglas D. Gardner *D.M.*
Assistant Attorney General
Human Services Section - Juneau

SUBJECT: Cash award in
recognition of superior
job performance
(Executive Ethics Act;
AS 39.52)

Pursuant to AS 39.52, the Alaska Executive Branch Ethics Act ("Act"), you have requested advice regarding whether Mr. A -- a state employee -- may accept a monetary award in recognition of his job performance. In accordance with AS 39.52.240(b), we previously provided you with our initial verbal advice that Mr. A should not accept the award from B.¹ We based that advice on AS 39.52.120(b)(2), which prohibits a state employee from accepting compensation for the performance of official duties from an entity other than the state. This written opinion confirms our initial advice.

BACKGROUND

The following is our understanding of the facts, based on information provided in your memorandum of January 5, 1995.²

¹ Assistant Attorney General Neil Slotnick provided the initial oral advice confirmed by this opinion.

² The information attached to your memorandum of January 5, 1996, includes: (1) two letters dated May 8, 1995, and September 1, 1995; (2) Notice of Award; (3) State of Alaska Position Description Questionnaire (PDQ) dated March 21, 1995. In addition to the above information, on February 9, 1996, Mr. A submitted a copy of the personnel agreement applicable to his position for FY-XX.

1. Mr. A's Job Duties

Mr. A is employed by the State of Alaska. Mr. A's position is funded by an interagency personnel agreement between a department of the State of Alaska and B, an agency of the federal government. Mr. A serves at the pleasure of both agencies. The state pays Mr. A's salary and is later reimbursed by B. B is later reimbursed by C, a private corporation, for work performed by Mr A.

Under the direction of the state and B's on-site officer, Mr. A provides technical assistance regarding policies, procedures, and enforcement of state statutes and safety regulations. These inspections ensure that regulations protecting the safety of the public and employees working on the project are properly observed.

2. The Award

During 1994, Mr. A directed the XYZ safety and inspection project. In recognition of his superior job performance in directing the XYZ program, Mr. A was nominated for a monetary award. As a result, Mr. A was awarded \$1,265 by B. This award was based on a percentage of Mr. A's annual salary. Prior to disbursing Mr. A's award, a department of the State of Alaska requested our opinion on whether such an award was prohibited by the Act. Pending the release of this opinion, B has retained possession of Mr. A's award.

DISCUSSION

In our oral advice we advised that Mr. A should not accept the monetary award from B because, under AS 39.52.120(b),

A public officer may not . . .

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

AS 39.52.960(7) defines "compensation" to include:

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

The award presented by B to Mr. A is a "bonus" directly correlated to Mr. A's salary and constitutes compensation to him for services rendered. Black's Law Dictionary defines "bonus" as "[a]n addition to salary or wages normally paid for extraordinary work. An inducement to employees to procure efficient and faithful service." Black's Law Dictionary 182 (rev. 6th ed. 1990).

We base our finding that this award constitutes compensation for services rendered on the following factors. First, and most significantly, B's "award" or bonus was directly related to the quality and quantity of work performed by Mr. A as part of his official duty as a state employee.

Next, in calculating the award, B multiplied Mr. A's salary for FY-94 (\$63,240) by 2 percent, resulting in an award of \$1,265. Thus, the "award" was work-related and based on the value of services performed by Mr. A.

As a state employee, Mr. A is prohibited by AS 39.52.120(b) from accepting compensation from B for performance of his official duties. One purpose of AS 39.52.120(b) is to prevent state employees from receiving "double-pay" for performing their normal official duties. See 1987 Inf. Op. Att'y Gen. (April 24; 663-96-0389). A second purpose of the Act is to assure the public that state officials are not influenced by remuneration from non-state entities. AS 39.52.010. If Mr. A accepted the monetary award or "bonus" from B, he would be receiving additional payment by a non-state entity for the performance of his official duties. Due to the restriction in AS 39.52.120(b)(4), it is our opinion that Mr. A may not accept B's monetary "award." However, Mr. A may request that B donate the award to a charity. The charity, however, must be an organization in which neither Mr. A "or his immediate family members" hold a membership or other interest. 1991 Inf. Op. Att'y Gen. (July 1; 663-91-0489).

Commissioner
663-96-0272

March 12, 1996
Page 4

If you have any questions regarding this opinion, please
do not hesitate to call.

DDG/bap